# Workshop 5:30 pm – 6:45 pm

**BUDGET/GENERAL FUND**

**BOARD LIASONS, BUDGET ITEMS AND REQUESTS**

# DRAFT AGENDA

TOWN OF LYONS

***7:00 P.M., MONDAY, NOVEMBER 7, 2016***

BOARD OF TRUSTEES MEETING

SHIRLEY F. JOHNSON COUNCIL CHAMBER

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

I. Roll Call And Pledge Of Allegiance

II. Reflective Moment Of Silence

III. Approval Of The Agenda

IV. Sgt. Bill Crist, Boulder County Sheriff's Office Report

V. Staff Reports (15 Min)

V.1. Grease Trap Inspection Materials

Documents:

GREASE TRAP INSPECTION MATERIALS.PDF

V.2. Cash Flow Projections And Assumptions For Flood Recovery Projects

Documents:

CASH POSITION.PDF
LYONS DISASTER RECOVERY FINANCIAL ANALYSIS.PDF

V.3. Lyons Valley Park Filing #8 Electric Infrastructure Update

Documents:

COVER LVP ELECTRIC 11-07-16.PDF

V.3.a. LVP Filing 8 Invoices

Documents:

NLINE - LVP FILING 8 INVOICES.PDF

V.3.a.i. LVP Filing 8 - Line Item Bill Pay

Documents:

LVP-8 PAY NLINE.PDF

V.4. Emergency Authorization Of Purchase Of Lift Station Pump For Eagle Canyon

Documents:

LIFT STATION PUMP PURCHASE.PDF

VI. Audience Business
Limited to 15 minutes - all comments limited to 4 minutes per person.

VII. Boards And Commissions

VIII. Consent Agenda

VIII.1. Parade Of Lights Fireworks Cover Letter

Documents:

2016 PARADE OF LIGHTS COVER-11-7-16.PDF

VIII.1.a. Parade Of Lights Fireworks Resolution

Documents:

RESOLUTION 2016-93 RESOLUTION REVISED 11.1.16.PDF

VIII.1.a.i. Parade Of Lights Firework Contract Quote

Documents:

JMDISPLAYQUOTE2016.PDF

VIII.1.a.ii. Parade Of Lights Fireworks-Tri State Contract

Documents:

REVISED TRISTATE FIREWORKS HOLIDAY PARADE PSA FINAL 11 1 16.PDF

VIII.1.a.ii.1. Parade Of Lights Fireworks Contract- Exhibit A

Documents:

EXHIBIT A HOLIDAY FIREWORKS 2016-TRI-STATE PROPOSAL.PDF

VIII.2. Resolution 2016-94 - Cover Letter

Documents:

RESOLUTION 2016-94 COVER LETTER.PDF

VIII.2.a. Cover Letter Attachment A
Rocky Mountain E-Bid Summary

Documents:

2 COVER LETTER ATTACHMENT A-E-BID SUMMARY.PDF

VIII.2.a.i. Cover Letter Attachment B
Affirmative Action Steps Taken Summary

Documents:

3COVER LETTER ATTACHMENT B-LYONS INTERNAL AFFIRMATIVE STEPS TAKEN PACKAGE.PDF

VIII.2.b. Resolution 2016-94 Dba Design Concepts

Documents:

4 APPROVING PSA FOR LUMP NAP RESO 11 1 16.PDF

VIII.2.c. Contract With Design Concepts

Documents:

5 REVISED BUYOUT DESIGN AGMT FINAL ATF 11 1 16.PDF

VIII.2.c.i. Contract Attachments A & B
Certificate of Insurance
Professional Licenses

Documents:

6 ATTACHMENTS A AND B DESIGN CONCEPTS INS CERTS _ LICENSES.PDF

VIII.2.c.ii. Contract Attachment C
CDBG Additional Provisions

Documents:

7 UPDATED ATTACHMENT C_CDBG ADDITIONAL PROVISIONS NAP.PDF

VIII.2.c.iii. Contract Attachment D
Patent Rights

Documents:

8 UPDATED ATTACHMENT D_MASTER PATENT RIGHTS 9 28 16.PDF

VIII.3. Resolution 2016-95 Cover Memo

Documents:

RESOLUTION 2016-95 REVISED COVER MEMO 10.28.16.PDF

VIII.3.a. Resolution 2016-95 Library Resolution

Documents:

RESOLUTION 2016-95 RESOLUTION 10.31.16.PDF

VIII.3.b. Resolution 2016-95 Library Second IGA

Documents:

RESOLUTION 2016-95 LIBRARY SECOND IGA REVISED WITH EXH. A FINAL 10.31.16.PDF

VIII.4. Resolution 2016-96 Cover Letter

Documents:

RESOLUTION 2016-96-COVER LETTER FOR AMENDMENT SCADA KBG COMMENTS.PDF

VIII.4.a. Resolution 2016-96 Original Contract And Resolution 2016-64

Documents:

RESOLUTION 2016-96 RESOLUTION 2016-64 ORIGINAL CONTRACT AND RESOLUTION.PDF

VIII.4.a.i. Resolution 2016-96 Resolution Amending SCADA Contract

Documents:

RESOLUTION 2016-96 RESOLUTION AMEND 11.1.16.PDF

VIII.4.a.ii. Resolution 2016-96 Amendment To SCADA Contract Final

Documents:

RESOLUTION 2016-96 AMENDMENT FINAL ATF 11.2.16.PDF

VIII.5. November 2016 Accounts Payable

Documents:

BOT PAYABLES 110716.PDF

VIII.5.a. UPDATED November 2016 Accounts Payable

Documents:

BOT PAYABLES 110716 UPDATE.PDF

VIII.6. October 3 2016 BOT Minutes

Documents:

OCTOBER 3 2016 BOT MINTUES.PDF

VIII.7. October 5, 2016 Special BOT Meeting Minutes

Documents:

10-5-16 BOT MINUTES FINISHED.PDF

VIII.8. October 10, 2016 Special BOT Meeting Minutes

Documents:

OCTOBER 10 2016 MINUTES FINISHED.PDF

VIII.9. October 24 2016 BOT Minutes

Documents:

OCTOBER 24 2016 BOT MINUTES.PDF

IX. General Business

IX.1. Update/Discussion Concerning Waste Water Treatment Plant

Documents:

WWTP SUMMARY.PDF

IX.2. Resolution 2016-97 Resolution

Documents:

RESOLUTION 2016-97 RESOLUTION.PDF

IX.2.a. Resolution 2016-97 Backup Material DHSEM Site Visit Letter And Response

Documents:

DHSEM SITE VISIT FINAL LETTER RESPONSE ACCEPTED - TOWN OF LYONS.PDF

IX.3. Action Plan Response To HUD Investigation

X. Items Removed From The Consent Agenda

XI. Trustee Reports

XII. Summary Of Action Items

XIII. 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."

October 26, 2016

LYONS
COLORADO

Dear Business Owner,

The Town of Lyons recently brought the new wastewater treatment plant online following massive recovery efforts after the 2013 flood. A major part of operating and maintaining the new plant is ensuring all commercial discharge to the sanitary sewer is properly pretreated. As part of the overall management of public infrastructure, Code Enforcement and Public Works staff will be inspecting all grease traps in food establishments.

Fats, Oils and Grease (FOG) can be a major problem for Lyons' sewer system. When poured down the drain, FOG hardens inside pipes, constricting wastewater flow and clogging the pipes. This can lead to sewer backup into your business. Cleaning clogged pipes and responding to sewer backups is costly to business owners and the Town.

Restaurants and other food service establishments are a significant source of FOG because of the amount of grease they use in cooking and other food preparation work. The FOG control program is intended to prevent FOG from entering the sewer system.

Grease traps are required to be installed and maintained in all food preparation establishments per Town of Lyons Municipal Code 7-4-14. This ordinance was passed to protect not only the collections and wastewater treatment systems, but the health, safety and welfare of residents, business owners and the environment.

DOUBLE GATEWAY
TO THE ROCKIES

Please be aware that there are several basic requirements for every food establishment:

- All inline under the sink grease traps must be cleaned a minimum of once a week.
- All grease interceptors must be cleaned quarterly at a minimum – more frequently when deemed necessary at time of inspection.
- All cleaning records must be kept on site for a minimum of 3 years. They must also be submitted to Town Hall after each cleaning event.

The Town will begin routine inspections of all grease traps and grease interceptors in January 2017. Please review the included ordinance for proper installation and maintenance requirements. Also included is the Wastewater Classification Survey. If you have not filled one out and returned it to Town Hall, please do as soon as possible.

I look forward to meeting you in person and working together to improve the Town's treatment of waste and to protect the new multi-million dollar facility for generations to come.

Please feel free to contact me with any questions or concerns you may have about this or any other issue you face as a business in Lyons.

Sincerely,

Amy Lynn,
Town of Lyons Code Enforcement
alynn@townoflyons.com
303-823-6622 ex 25

TELEPHONE
303.823.6622

FACSIMILE
303.823.8257

432 5TH AVENUE • P.O. BOX 49
LYONS • COLORADO 80540

TOWNOFLYONS.COM

# BEST MANAGEMENT PRACTICES
## FOR
## Restaurant
## FATS OILS AND GREASE

Grease Control Best Management Practices (BMPs) will reduce the amount of fats, oils, and grease (FOG), which enter the sewer system from your food service facility.

High oil and grease concentrations can be lowered by minimizing the amount of food being discharged down all drains (including those attached to two or three compartment sinks and automatic dishwashers). The least expensive alternative that can be used in reducing grease in the sewer is improved kitchen management practices.

The following are examples of BMPs that will reduce the amount of grease entering the sewer system from your food service facility. It also gives examples of harmful practices that you should avoid because they increase the amount of grease entering the sewer system.

- NEVER empty waste from a deep fryer into a floor drain
- Scrape or wipe fat, oil, grease, and other food residue from cookware, utensils, etc. before washing or placing in dishwashing machine
- Use paper towels to wipe down work areas
- Use food grade paper to soak up oil and grease under fryer baskets
- Use kitty litter to absorb spills – sweep and dispose in trash
- Collect and empty grill scrapings & fryer vat grease in grease recycling container
- Do not put food or liquid food, including dairy products, milk shake syrups, batters and gravy down the drain
- Empty grease containers before they are completely full to avoid spilling
- Use detergents, not soaps (soap contains oil)
- Use strainers designed for the sinks in your facility to capture as much of the solid material as possible
- Use garbage grinders as sparingly as possible. Food particles that can pass through the grinder may be trapped in the grease trap, and will require expensive maintenance. Those that do not get trapped will pass through the sewer collection system, where they may cause a blockage, and/or may result in fees assessed to your facility

Following these simple guidelines along with having a correctly sized and properly functioning grease trap will reduce the amount of FOG discharged to the sewer system.

**If you are not sure about a practice, please call Public Works Director Kyle Miller at (303) 823-6622 Ext. 15**

# Grease Trap Reporting Form

This form is to be completed by the owner or person responsible for the grease or sand trap at this facility and is to be submitted to the Town of Lyons on a quarterly basis. Failure to meet this requirement may be a violation of the Town's Municipal Code. If you have any questions about the required information, please contact Kyle Miller, Public Works Supervisor at 303-823-6622 ext. 15. **Please make copies of this form to use in the future for required reporting as the Town is not responsible for mailing them to you each quarter.**

**Quarterly Reporting Due Dates**

For the months of: January, February and March – the report is due no later than April 10th
April, May and June – the report is due no later than July 10th
July, August and September – the report is due no later than October 10th
October, November and December – the report is due no later than January 10th

Date Report Created (for this quarter): _____

Facility Name: _____

Contact Person: _____

Address: _____

Telephone Number_____

City: _____ State:_____ Zip: _____

Trap is for a: ____Food Service Facility _____Transportation Service Establishment _____Other_____

Describe Trap Location:

_____

Cleaning of this Trap is Performed by:

_____

Name of Company or Person

The company or person performing the cleaning is a: ____Contract Cleaner _____Responsible Operator/Owner

_____

## Summary of Quarterly Activity

First Month of the Quarter

Date of Cleaning: _____ Time: _____

Amount of material pumped/cleaned out of trap:

_____

Describe any repair work needed:

_____

Repair work was performed

by:_____

Name of Company or Person

Second Month of the Quarter

Date of Cleaning: _____ Time: _____

Amount of material pumped/cleaned out of trap:

_____

Describe any repair work needed:

_____

Repair work was performed

by:_____

Name of Company or Person

Third Month of the Quarter

Date of Cleaning: _____ Time: _____

Amount of material pumped/cleaned out of trap:

_____

Describe any repair work needed:

_____

Repair work was performed

by:_____

Name of Company or Person

**By signing below, I declare that the above information is correct and realize that I may be asked by the Town to provide all supporting documentation for the above described activities at any time.**

**Signature of Responsible Party:** _____ **Title:** _____
**Date:** _____

**Upon completion of this form, it is to be hand delivered or mailed to the**
**Town of Lyons Public Works Department,**
**432 5th Avenue**
**PO Box 49**
**Lyons, Colorado 80540**

For Inline (under the sink or nearby) grease traps only. All full size grease interceptors must be cleaned by a licensed waste hauler.

## How to Clean a Grease Trap

1. Open the lid of the trap.
2. Remove grease layer and place into a sealable container for disposal. Remove the baffles, if possible. Use a tool such as a putty knife to scrape off the grease into the container.
3. Once the grease layer is removed, bail out the clear wastewater to expose the food particulate layer that is on the bottom of the trap. The clear wastewater is temporarily placed into a separate bucket.
4. Bail out the particulate layer into the sealable grease container. Seal this container and place in trash.
5. The wastewater in the bucket may be poured back into the trap.
6. Replace the baffles and lid.
7. Document the procedure on the maintenance log.

LYONS
COLORADO
432 5TH AVENUE • P.O. BOX 49
LYONS • COLORADO 80540

# TOWN OF LYONS
# WASTEWATER CLASSIFICATION SURVEY

## I. GENERAL FACILITY INFORMATION

| | |
|---|---|
| Company Name: | |
| Physical Address: | |
| Mailing Address: | Website: |
| Contact Name: | Phone Number: |
| Standard Industrial Classification (SIC) Code(s): | |

## II. GENERAL DESCRIPTION OF OPERATIONS AT THIS FACILITY INCLUDING PRIMARY PRODUCTS/ SERVICES

| |
|---|
| |
| |
| |
| |
| |
| |
| |

## III. CHECK ALL ACTIVITIES EXPECTED AT THIS FACILITY REGARDLESS OF WHETHER THERE IS WASTEWATER DISCHARGE OR NOT

| | | | | | |
|---|---|---|---|---|---|
| | Assembly | | Metal Finishing | | Other (please specify) |
| | Electroplating | | Offices | | |
| | Flammables/Explosives | | Painting, Stripping, Finishing | | |
| | Food Processing | | Plant wash down | | |
| | Food Service | | Printing, Photography | | |
| | Government | | Repair Shop | | |
| | Laboratory | | Research | | |
| | Manufacturing | | Retail | | |
| | Laundry | | Vehicle Equipment Wash | | |
| | Medical Care | | Warehousing | | |

## IV. WATER USAGE

**a. List water sources and approximate range of water usage**

i. Town of Lyons _____ gallons per month
ii. Private Well(s) _____ gallons per month
iii. Other (specify) _____ gallons per month

**b. Explain how you are using the water. Make sure you include all water that comes in contact with the product or is used in your business process.**

i. Sanitary _____ gallons per month
ii. Landscape/irrigation _____ gallons per month
iii. Swamp Coolers _____ gallons per month
iv. Manufacturing (rinse water) _____ gallons per month
v. Clean Up of process or production area _____ gallons per month
vi. Vehicle Washing _____ gallons per month
vii. Noncontact Cooling Water _____ gallons per month
viii. Contact Cooling Water _____ gallons per month

**c. List the approximate amount of water/wastewater *leaving* your facility (effluent).**

i. Sanitary Sewer _____ gallons per month
ii. Storm Drain _____ gallons per month
iii. Waste Hauler* _____ gallons per month
iv. Leach Field _____ gallons per month
v. Other (specify) _____ gallons per month

* Provide name and address of waste hauler(s) if used:

_____
_____
_____
_____

## V. WASTEWATER INFORMATION

**a. Indicate pre-treatment devices**

___Unknown
___Grease Trap
___Oil Separation
___Other (specify): _____
___No Pretreatment provided
___Sand/Oil Interceptor
___Septic Tank

**b. Indicate the constituents that are or *could be* present in the wastewater discharge:**

___High pH

___Low pH

___ Other Disinfectants

___Flammable Substances

___Solvents

___Pesticides

___Chlorine

___Explosive Substances

___Grease or Oil

___Surfactants (detergents)

___High Temperature Wastes (above 140 degrees Fahrenheit)

___Dissolved Metals such as Arsenic, Beryllium, Cadmium, Chromium, Copper, Iron, Lead, Manganese, Mercury, Nickel, Selenium, Silver, and Zinc

## VI. HAZARDOUS WASTE AND TOXIC POLLUTANTS

**a. Facility's hazardous waste classification**

___ Large Quantity Generator
___Small Quantity Generator
___CESQG
___No hazardous waste generated

**b. Hazardous Waste Disposal (how, where, and frequency):**

_____

_____

_____

c. **Review the following list of toxic pollutants and circle any that are expected to be used in the facility:**

| | | |
|---|---|---|
| Asbestos | 1, 2-Trans-dichlorothylene | Benzo (k) fluoranthene |
| Cyanide | 2, 4-Dichlorophenol | Chrysene |
| Antimony | 1, 2-Dicholoropropane | Acenaphthylene |
| Arsenic | 1, 2-Dichlororopylene | Anthracene |
| Beryllium | 2, 4-Dimethylphenol | Benzo (ghi) perylene |
| Cadmium | 2, 4-Dinitrotoluene | Fluorene |
| Chromium | 2, 6-Dinitrotoluene | Phenanthrene |
| Copper | 1, 2-Diphenylhydrazine | Dibenzo (a,h) anthracene |
| Lead | Ethylbenzene | Indeno (1, 2, 3-cd) pyrene |
| Mercury | Fluoranthene | Pyrene |
| Nickel | 4-Chlorophenyl phenyl ether | Tetrachloroethylene (PCE) |
| Selenium | 4-Bromophenyl phenyl ether | Toluene |
| Silver | Bis (2-chloroisopropyl) ether | Trichloroethylene (TCE) |
| Thallium | Bis (2-chloroethoxy) methane | Vinyl Chloride |
| Zinc | Methylene chloride | Aldrin |
| Acenaphthene | Methyl chloride | Dieldrin |
| Acrolein | Methyl bromide | Chlordane |
| Acrylonitrile | Bromoform (tribromoethane) | 4, 4'-DDT |
| Benzene | Dichlorobromomethane | 4, 4-DDE (p,p'DDX) |
| Benzidine | Chlorodibromomethane | 4, 4'-DDD (p,p'TDE) |
| Carbon tetrachloride | Hexachlorobutadiene | Alpha-endosulfan |
| Chlorobenzene | Hexachlorocyclopentadiene | Beta-endosulfan |
| 1, 2, 4-Trichlorobenzene | Isophorone | Endosulfan sulfate |
| Hexachlorobenzene | Napthalene | Endrin |
| 1, 2-Dichloroehane | Nitrobenzene | Endrin aldehyde |
| 1, 1, 1-Tricholoroethane | 2-Nitrophenol | Heptachlor |
| Hexachloroethane | 4-Nitrophenol | Heptachlor expozide |
| 1, 1-Dichloroethane | 2, 4-Dinitrophenol | Alpha-BHC |
| 1, 1, 2-Thrichloroethane | 4, 6-Dinitro-o-cresol | Beta-BHC |
| 1, 1, 2, 2-Tetrachlorethane | N-nitrosodimethylamine | Gamma-BHC |
| Chloroethane | N-nitrosodiphenylamine | Delta-BHC |
| Bis (2-chloroethyl)ether | N-nitrosodi-n-ropylamine | PCB-1241 (Aroclor 1242) |
| 2-Chloreotylvinyl ether | Phentachlorphenol | PCB-1254 (Aroclor 1254) |
| 2-Chloroaphthalene | Phenol (4APP method) | PCB-1221 (Aroclor 1221) |
| 2, 4, 6-Trichlorophenol | Bis (2-ethylhexyl) phthalate | PCB-1232 (Aroclor 1232) |
| Parachlorometacresol | Butyl benzyl phthalate | PCB-1248 (Aroclor 1248) |
| Chloroform | Di-n-butyl phthalate | PCB-1260 |
| 2-Chlorophenol | Di-n-octyl phthalate | PCB-1016 |
| 1, 2-Dichlorobenzene | Diethyl phthalate | Toxaphene |
| 1, 3-Dichlorobenzene | Dimethyl phthalate | 2, 3, 7, 8-tetrachlorodibenzo-p- |
| 1, 4-Dichlorobenzene | Benzo (a) anthracene | Dioxin |
| 3, 3-Dichlorobenzidine | Benzo (a) pyrene | TPHg, TPHd, or TPHmo |
| 1, 1-Dichloroethylene | 3, 4-Benzofluoranthane | Xylene |
| | | ☐ **NONE** |

## VII. Certification of Information

I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information. I believe the submitted information is true, accurate, and complete. I am aware there are significant penalties for submitting false information including the possibility of fines and/or imprisonment.

_____

Name, Title & Phone Number of Executive Officer or Authorized Agent (please print)

_____

Signature Date

LYONS
COLORADO
432 5TH AVENUE • P.O. BOX 49
LYONS • COLORADO 80540

**TOWN OF LYONS**
**WASTEWATER CLASSIFICATION SURVEY**

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## III. CHECK ALL ACTIVITIES EXPECTED AT THIS FACILITY REGARDLESS OF WHETHER THERE IS WASTEWATER DISCHARGE OR NOT

| | | | | | |
|---|---|---|---|---|---|
| | Assembly | | Metal Finishing | | Other (please specify) |
| | Electroplating | | Offices | | |
| | Flammables/Explosives | | Painting, Stripping, Finishing | | |
| | Food Processing | | Plant wash down | | |
| | Food Service | | Printing, Photography | | |
| | Government | | Repair Shop | | |
| | Laboratory | | Research | | |
| | Manufacturing | | Retail | | |
| | Laundry | | Vehicle Equipment Wash | | |
| | Medical Care | | Warehousing | | |

## IV. WATER USAGE

**a. List water sources and approximate range of water usage**

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iv. Manufacturing (rinse water) _____ gallons per month
v. Clean Up of process or production area _____ gallons per month
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vii. Noncontact Cooling Water _____ gallons per month
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**c. List the approximate amount of water/wastewater *leaving* your facility (effluent).**

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ii. Storm Drain _____ gallons per month
iii. Waste Hauler* _____ gallons per month
iv. Leach Field _____ gallons per month
v. Other (specify) _____ gallons per month

* Provide name and address of waste hauler(s) if used:

_____
_____
_____
_____

## V. WASTEWATER INFORMATION

**a. Indicate pre-treatment devices**

___Unknown
___Grease Trap
___Oil Separation
___Other (specify): _____
___No Pretreatment provided
___Sand/Oil Interceptor
___Septic Tank

**b. Indicate the constituents that are or *could be* present in the wastewater discharge:**

___High pH

___Low pH

___ Other Disinfectants

___Flammable Substances

___Solvents

___Pesticides

___Chlorine

___Explosive Substances

___Grease or Oil

___Surfactants (detergents)

___High Temperature Wastes (above 140 degrees Fahrenheit)

___Dissolved Metals such as Arsenic, Beryllium, Cadmium, Chromium, Copper, Iron, Lead, Manganese, Mercury, Nickel, Selenium, Silver, and Zinc

## VI. HAZARDOUS WASTE AND TOXIC POLLUTANTS

**a. Facility's hazardous waste classification**

___ Large Quantity Generator
___Small Quantity Generator
___CESQG
___No hazardous waste generated

**b. Hazardous Waste Disposal (how, where, and frequency):**

_____

_____

_____

c. **Review the following list of toxic pollutants and circle any that are expected to be used in the facility:**

| | | |
|---|---|---|
| Asbestos | 1, 2-Trans-dichlorothylene | Benzo (k) fluoranthene |
| Cyanide | 2, 4-Dichlorophenol | Chrysene |
| Antimony | 1, 2-Dicholoropropane | Acenaphthylene |
| Arsenic | 1, 2-Dichlororopylene | Anthracene |
| Beryllium | 2, 4-Dimethylphenol | Benzo (ghi) perylene |
| Cadmium | 2, 4-Dinitrotoluene | Fluorene |
| Chromium | 2, 6-Dinitrotoluene | Phenanthrene |
| Copper | 1, 2-Diphenylhydrazine | Dibenzo (a,h) anthracene |
| Lead | Ethylbenzene | Indeno (1, 2, 3-cd) pyrene |
| Mercury | Fluoranthene | Pyrene |
| Nickel | 4-Chlorophenyl phenyl ether | Tetrachloroethylene (PCE) |
| Selenium | 4-Bromophenyl phenyl ether | Toluene |
| Silver | Bis (2-chloroisopropyl) ether | Trichloroethylene (TCE) |
| Thallium | Bis (2-chloroethoxy) methane | Vinyl Chloride |
| Zinc | Methylene chloride | Aldrin |
| Acenaphthene | Methyl chloride | Dieldrin |
| Acrolein | Methyl bromide | Chlordane |
| Acrylonitrile | Bromoform (tribromoethane) | 4, 4'-DDT |
| Benzene | Dichlorobromomethane | 4, 4-DDE (p,p'DDX) |
| Benzidine | Chlorodibromomethane | 4, 4'-DDD (p,p'TDE) |
| Carbon tetrachloride | Hexachlorobutadiene | Alpha-endosulfan |
| Chlorobenzene | Hexachlorocyclopentadiene | Beta-endosulfan |
| 1, 2, 4-Trichlorobenzene | Isophorone | Endosulfan sulfate |
| Hexachlorobenzene | Napthalene | Endrin |
| 1, 2-Dichloroehane | Nitrobenzene | Endrin aldehyde |
| 1, 1, 1-Tricholoroethane | 2-Nitrophenol | Heptachlor |
| Hexachloroethane | 4-Nitrophenol | Heptachlor expozide |
| 1, 1-Dichloroethane | 2, 4-Dinitrophenol | Alpha-BHC |
| 1, 1, 2-Thrichloroethane | 4, 6-Dinitro-o-cresol | Beta-BHC |
| 1, 1, 2, 2-Tetrachlorethane | N-nitrosodimethylamine | Gamma-BHC |
| Chloroethane | N-nitrosodiphenylamine | Delta-BHC |
| Bis (2-chloroethyl)ether | N-nitrosodi-n-ropylamine | PCB-1241 (Aroclor 1242) |
| 2-Chloreotylvinyl ether | Phentachlorphenol | PCB-1254 (Aroclor 1254) |
| 2-Chloroaphthalene | Phenol (4APP method) | PCB-1221 (Aroclor 1221) |
| 2, 4, 6-Trichlorophenol | Bis (2-ethylhexyl) phthalate | PCB-1232 (Aroclor 1232) |
| Parachlorometacresol | Butyl benzyl phthalate | PCB-1248 (Aroclor 1248) |
| Chloroform | Di-n-butyl phthalate | PCB-1260 |
| 2-Chlorophenol | Di-n-octyl phthalate | PCB-1016 |
| 1, 2-Dichlorobenzene | Diethyl phthalate | Toxaphene |
| 1, 3-Dichlorobenzene | Dimethyl phthalate | 2, 3, 7, 8-tetrachlorodibenzo-p-Dioxin |
| 1, 4-Dichlorobenzene | Benzo (a) anthracene | TPHg, TPHd, or TPHmo |
| 3, 3-Dichlorobenzidine | Benzo (a) pyrene | Xylene |
| 1, 1-Dichloroethylene | 3, 4-Benzofluoranthane | ☐ **NONE** |

## VII. Certification of Information

I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information. I believe the submitted information is true, accurate, and complete. I am aware there are significant penalties for submitting false information including the possibility of fines and/or imprisonment.

_____

Name, Title & Phone Number of Executive Officer or Authorized Agent (please print)

_____

Signature Date

**TOWN OF LYONS**
**CASH POSITION AND NOVEMBER PROJECTIONS**
**Period Ending 10/31/16**

11/4/2016 MAM

CASH ON HAND

| Bank of the West | | |
|---|---|---|
| Balance at 10/31/16 | $ | 2,903,583.66 |
| Outstanding checks | | (215,702.09) |
| A/P - Nov Rec'd | | (1,105,331.51) |
| Add'l Nov AP Est | | (750,000.00) |
| Payroll - November Est | | (134,100.00) |
| Deposits-to 11/3/16 | | 41,198.00 |
| | $ | 739,648.06 |

| Colorado Trust-Gen | |
|---|---|
| Balance at 10/31/16 | 3,596,488.69 |
| Tax revenues estimated Nov | 120,000.00 |
| FEMA Disaster Assistance Loan (-0- used to date) | 994,322.00 |
| | 4,710,810.69 |

| | |
|---|---|
| **Cash Projected - 11/30/16** | **5,450,458.75** |
| **Cash Restricted and Reserved** | **(5,649,318.00)** |
| **Cash Available for Recovery Projects** | **(198,859.25)** |

**ACCOUNTS RECEIVABLE**

| | |
|---|---|
| RFR's Submitted not yet Paid | **2,189,830.76** |
| Town A/R Miscellaneous | **21,742.71** |
| | **2,211,573.47** |

**AGING**

| Current | 30 DAYS | 60 DAYS | 90 DAYS | 120 & OVER |
|---|---|---|---|---|
| 78,815.73 | 1,141,733.18 | 232,256.21 | 152,201.52 | 584,824.12 |

Town of Lyons, Colorado
DISASTER RECOVERY EXPENDITURE SCHEDULE

1/4/2018 MAM

| Grant Title | Funding Source | Originating Funding Source | Funding Agency | Total Grant Award | Grant End | As of 30 June 15 Expended | As of 30 June 15 Encumbered | Insurance as of June 15 | As of 30 June 16 Granted | Grant Funds Remaining As of 30 June 16 |
|---|---|---|---|---|---|---|---|---|---|---|
| Sewer Line, Lift Station and Water Distribution Loop for Eastern Campus | EDA | State | DOLA | $ 798,358 | 3/15/2020 | $ - | $ - | | $ - | $798,358 |
| EDA Grant Match | CDBG-DR 2 | Federal | Collaborative | $ 798,358 | 11/30/2017 | $ - | $ - | | $ - | $798,358 |
| CDBG Housing - Round 1 Distributed Funds (DEF) | DEF | Federal | DHSEM-DEF | $ 343,067 | 12/31/2016 | $ 343,067 | | | $ 343,067 | $0 |
| CDBG DR-RG 2 Acquisitions (BOCC) 21263608,21604028 | CDBG-DR 2 | Federal | BCC | $ 1,200,000 | 12/31/2017 | | | | | $1,200,000 |
| CDBG DR-RG 3 LRA Match 21604027 | CDBG-DR 3 | Federal | BCC | $ 400,000 | 12/31/2016 | | | | | $400,000 |
| CDBG DR-RG 3 Planning | CDBG-DR 3 | Federal | DOLA | $ 174,000 | 12/31/2017 | | | | | $174,000 |
| SBV2 Restoration | NRCS-EWP | Federal | CWCB | $ 700,000 | 12/31/2017 | | | | | $700,000 |
| St. Vrain Creek Restoration | DEF | Federal | DHSEM-DEF | $ 1,172,579 | 12/31/2016 | $ 871,841 | $ - | | $ 871,841 | $300,738 |
| BOCC Meadow Park Flood Recovery Project 014380 | BOCC | State | BOCC | $ 1,130,282 | 11/30/2016 | $ 532,475 | | | $ - | $597,808 |
| Replacement for 12" Water Transmission Main | CDPHE | State | CDPHE | $ 1,000,000 | 12/31/2016 | $ 427,368 | $ 175,120 | | $ 602,488 | $672,645 |
| Water and Sewer Rate Study | CDPHE | State | CDPHE | $ 39,960 | 12/31/2016 | $ 21,527 | $ 2,770 | | $ 18,797 | $17,425 |
| Wastewater collection CIP | CDPHE | State | CDPHE | $ 27,200 | 12/31/2016 | $ 3,476 | $ 3,476 | | $ - | $23,724 |
| Feasibility Sanitation Apple Valley | CDPHE | State | CDPHE | $ 67,200 | 12/31/2016 | $ 10,691 | $ 610 | | $ 11,301 | $55,899 |
| Outfall Engineering & Construction | CDPHE | State | CDPHE | $ 322,884 | 12/31/2016 | $ 16,048 | $ 11,135 | | $ 27,184 | $295,695 |
| CIP Project Management | CDPHE | State | CDPHE | $ 132,302 | 12/31/2016 | $ 14,025 | $ - | | $ 14,025 | $118,277 |
| Local Share Forms 1155 | CDPHE | State | CDPHE | $ 9,348 | 6/30/2017 | | $ - | | $ - | $9,348 |
| Local Share Forms 1129 | CDPHE | State | CDPHE | $ 3,792 | 6/30/2017 | | $ - | | $ - | $3,792 |
| Local Share Forms 800 | CDPHE | State | CDPHE | $ 7,211 | 6/30/2017 | | $ - | | $ - | $7,211 |
| Local Share Forms 1156 | CDPHE | State | CDPHE | $ 7,800 | 6/30/2017 | | $ - | | $ - | $7,800 |
| Encapsulment and shear structure for water line on 2nd Ave | CDPHE | State | CDPHE | $ 66,000 | 6/30/2017 | $ 6,216 | $ - | | $ 6,216 | $46,784 |
| LEAP Sustainability Coordinator 2015 & 16 | SuCo | County | SuCo | $ 30,000 | 6/30/2017 | $ 12,794 | $ 15,000 | | $ (2,206) | $17,206 |
| Colorado Heritage Planning Grant | DOLA | State | DOLA | $ 125,000 | 11/30/2016 | $ 31,362 | $ - | | $ 31,362 | $93,638 |
| Hwy 36/Main St Improvements/Stop Light St Canyon | CDOT | Federal/State | CDOT | $ 2,230,000 | 12/31/2016 | $ 1,174,618 | $ 754,688 | | $ 419,931 | $1,055,381 |
| Stone Canyon Intersection and Signal Improvements | SuCo | County | SuCo | $ 660,000 | 9/30/2016 | $ 434,855 | $ 66,000 | | $ 500,855 | $415,145 |
| Staff 02 Positions - RZ P15-043 | CDBG-DR 2 | Federal | DOLA Planning | $ 315,364 | 3/31/2017 | $ 57,144 | $ - | | $ 57,144 | $258,740 |
| St. Vrain Corridor Trail Extension | CPW 4WCF APS | Federal/State | CPW | $ 360,000 | 12/31/2017 | $ - | $ - | | $ - | $360,000 |
| Charge Ahead CDPHE/OC | Charge Ahead CDPHE/OC | State | RAOC | $ 7,925 | 12/31/2016 | $ - | $ - | | $ - | $7,925 |
| Staffing Assistance - Flood Recovery | DOLA EAF | State | DOLA Staffing | $ 1,140,373 | 12/31/2017 | $ 344,130 | $ 334,658 | | $ 678,788 | $461,585 |
| HR Assistance Staffing | DOLA EAF | State | DOLA Staffing | $ 110,000 | 5/31/2018 | $ 3,658 | | | $ 3,658 | $106,341 |
| Elder Development match for EYSE | SuCo | County | SuCo | $ 6,000 | 12/31/2016 | $ - | $ - | | $ - | $6,000 |
| Storm Water/Electric Rate Study RZ P15-044 | CDBG-DR 2 | Federal | DOLA Planning | $ 315,364 | 12/31/2016 | $ 36,210 | $ - | | $ 36,210 | $277,874 |
| Property Acquisitions- LRA | HMGP | Federal | DHSEM HMGP | $ 7,877,966 | 6/6/2017 | $ 3,663,207 | $ 2,072,366 | | $ 5,735,573 | $2,214,043 |
| Housing Elevations | HMGP | Federal | DHSEM HMGP | $ 164,280 | 9/29/2017 | $ 21,532 | $ - | | $ 21,532 | $142,748 |
| DOLA Grant 2016-2017 Mid Main Sanitary | DOLA | State | DOLA | $ 2,500 | 9/30/2017 | $ - | $ - | | $ - | $2,500 |
| Debris Enforcement | HMGP | Federal | DHSEM | $ 129,211 | 3/31/2016 | $ 9,718 | $ - | | $ 9,718 | $119,493 |
| Parking to Park/St. Vrain Habitat project | USFW | Federal | CPW | $ 80,208 | 5/31/2017 | $ - | $ - | | $ - | $80,208 |
| Hazard Identification and Risk Assessment Study | CDBG DR P & R | Federal | DOLA Planning | $ 30,000 | 12/31/2017 | $ - | $ - | | $ - | $30,000 |
| Land Use Plan for Aquired Properties | CDBG DR P & R | Federal | DOLA Planning | $ 105,000 | 12/31/2017 | $ - | $ - | | $ - | $105,000 |
| Meadow Wildwater Features/Fish Habitat | CWCB | State | CWCB | $ 50,000 | 6/30/2016 | $ 47,400 | $ 47,005 | | $ 95,405 | $2,000 |
| Cost of Delay WW TP | CDBG-DR 2 | Federal | Collaborative | $ 661,566.00 | 12/31/2017 | $ - | $ - | | $ - | $661,566 |
| Replace Damaged Pavement | CDBG-DR 2 | Federal | Collaborative | $ 360,000.00 | 12/31/2017 | $ - | $ - | | $ - | $360,000 |
| Test Extension Grant Matching | CDBG-DR 3 | Federal | Collaborative | $ 360,000.00 | 12/31/2017 | $ - | $ - | | $ - | $360,000 |
| FEMA PA LOCAL Match | CDBG-DR 2 | Federal | Collaborative | $ 999,573.52 | 12/31/2017 | $ - | $ - | | $ - | $999,574 |
| FEMA PA LOCAL Match | CDBG-DR 3 | Federal | Collaborative | $ 72,700.00 | 12/31/2017 | $ - | $ - | | $ - | $72,700 |
| 4 | FEMA PA 4146 | Federal | DHSEM PA | $ 706,300 | 9/30/2017 | $ 678,471 | $ 600,536 | | $ 67,382 | $29,098 |
| 13 | FEMA PA 4146 | Federal | DHSEM PA | $ 234,135 | 5/31/2018 | $ 108,386 | $ 109,301 | | $ 407 | $34,747 |
| 20 | FEMA PA 4146 | Federal | DHSEM PA | $ 720,206 | 3/14/2015 | $ 441,241 | $ 804,792 | | $ (363,551) | $279,025 |
| 30 | FEMA PA 4146 | Federal | DHSEM PA | $ 836,830 | 3/14/2015 | $ 107,473 | $ 166,023 | | $ (59,550) | $629,357 |
| 41 | FEMA PA 4146 | Federal | DHSEM PA | $ 516,246 | 7/31/2016 | $ 522,846 | $ 390,162 | $ 5,838 | $ 916,846 | ($322,601) |
| 42 | FEMA PA 4146 | Federal | DHSEM PA | $ 667,203 | 9/30/2017 | $ 390,108 | $ 424,220 | | $ (34,112) | $267,175 |
| 72 | FEMA PA 4146 | Federal | DHSEM PA | $ 182,448 | 3/14/2015 | $ 266,474 | $ 1,032 | | $ 266,542 | ($84,094) |
| 94 | FEMA PA 4146 | Federal | DHSEM PA | $ 119,380 | 9/14/2017 | $ 341,786 | $ 1,240 | $ 152,407 | $ 97,642 | ($122,430) |
| 183 | FEMA PA 4146 | Federal | DHSEM PA | $ 211,306 | 9/30/2017 | $ 557,380 | $ 1,061 | $ 462,149 | $ 194,191 | ($444,394) |
| 347 | FEMA PA 4146 | Federal | DHSEM PA | $ 547 | 3/14/2015 | $ 69,364 | $ 471 | $ 34,700 | $ 34,171 | ($96,097) |
| 383 | FEMA PA 4146 | Federal | DHSEM PA | $ 1,341 | 5/1/2016 | $ 308,988 | $ 1,158 | $ 121,157 | $ 86,970 | ($207,648) |
| 509 | FEMA PA 4146 | Federal | DHSEM PA | $ 1,482 | 6/14/2017 | $ 19,066 | $ 1,287 | $ 239,321 | $ (221,502) | ($16,564) |
| 522 | FEMA PA 4146 | Federal | DHSEM PA | $ 19,021 | 12/31/2015 | $ 190,300 | $ 16,405 | $ 188,465 | $ (4,500) | ($161,277) |
| 562 | FEMA PA 4146 | Federal | DHSEM PA | $ 520,000 | 9/30/2015 | $ 999,587 | $ 582,777 | $ 7,140 | $ 589,917 | ($179,917) |
| 613 | FEMA PA 4146 | Federal | DHSEM PA | $ 2,642,626 | 1/30/2017 | $ 108,610 | $ 88,691 | | $ 197,301 | $2,737,125 |
| 665 | FEMA PA 4146 | Federal | DHSEM PA | $ 447 | 9/30/2015 | $ 46,800 | $ 365 | $ 800 | $ 47,165 | ($46,718) |
| 668 | FEMA PA 4146 | Federal | DHSEM PA | $ 113,880 | 9/14/2017 | $ 19,888 | $ 16,429 | | $ 36,317 | $94,291 |
| 799 | FEMA PA 4146 | Federal | DHSEM PA | $ 61,412 | 8/14/2017 | $ 28,280 | $ 62,985 | | $ 91,265 | ($29,853) |
| 880 | FEMA PA 4146 | Federal | DHSEM PA | $ 1,516,987 | 8/14/2017 | $ 401,879 | $ - | $ 1,112,309 | $ 1,514,188 | $1,114,094 |
| 879 | FEMA PA 4146 | Federal | DHSEM PA | $ 2,221,461 | 6/30/2017 | $ 225,129 | $ 163,161 | | $ 388,290 | $1,833,230 |
| 920 | FEMA PA 4146 | Federal | DHSEM PA | $ 488,992 | 5/30/2017 | $ 381,186 | $ 205,354 | | $ 586,540 | $102,452 |
| 1057 | FEMA PA 4146 | Federal | DHSEM PA | $ 36,000 | 8/14/2016 | $ 18,740 | $ 22,948 | | $ 41,688 | $7,968 |
| 1078 | FEMA PA 4146 | Federal | DHSEM PA | $ 21,467,361 | 9/14/2017 | $ 7,161,062 | $ 2,179,298 | $ 1,367,134 | $ 10,707,494 | $14,305,868 |
| 1091 | FEMA PA 4146 | Federal | DHSEM PA | $ 1,005,234 | 8/14/2016 | $ 685,468 | $ 592,093 | | $ 1,277,561 | $376,709 |
| 1129 | FEMA PA 4146 | Federal | DHSEM PA | $ 196,951 | 12/31/2015 | $ 173,920 | $ 25,602 | | $ 199,527 | $7,391 |
| 1155 | FEMA PA 4146 | Federal | DHSEM PA | $ 373,908 | 7/30/2016 | $ 370,273 | $ 20,379 | | $ 390,652 | ($2,365) |
| 1174 | FEMA PA 4146 | Federal | DHSEM PA | $ 27,362 | 12/31/2016 | $ 107,536 | $ 23,592 | $ 315,945 | $ (292,012) | ($146,176) |
| 1179 | FEMA PA 4146 | Federal | DHSEM PA | $ 322,230 | 3/14/2015 | $ 7,015 | $ - | | $ 7,015 | $315,215 |
| 1184 | FEMA PA 4146 | Federal | DHSEM PA | $ 304,372 | 3/31/2017 | $ 269,305 | $ 65,627 | $ 28,962 | $ 164,407 | $34,977 |
| Total | | | | $ 96,811,588 | | $ 34,974,488 | $ 11,188,802 | $ 4,197,408 | $ 5,719,279 | $36,737,991 |

| Grant Title | Jul-16 Budgeted Expenditure | Jul-16 Actual Expenditure | Aug-16 Budgeted Expenditure | Aug-16 Actual Expenditure | Sep-16 Budgeted Expenditure | Sep-16 Actual Expenditure | Oct-16 Budgeted Expenditure | Oct-16 Actual Expenditure | Nov-16 Budgeted Expenditure | Nov-16 Actual Expenditure | Dec-16 Budgeted Expenditure | Dec-16 Actual Expenditure |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Sewer Line, Lift Station and Water Distribution Loop for Eastern Campus | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| EDA Grant Match | | | | | | | | | | | | |
| CDBG Housing - Round 1 Distributed Funds (DEF) | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ 3,531 | $ - | $ - | $ - | $ - |
| CDBG DR-RG 2 Acquisitions (BOCC) 21263608,21604028 | | | | | | | | | | | $ 900,000 | $ 900,000 |
| CDBG DR-RG 3 LRA Match 21604027 | | | | | | | | | $ 1,000 | $ 1,000 | $ 5,000 | $ 5,000 |
| CDBG DR-RG 3 Planning | | | | | | | | | | | | |
| SBV2 Restoration | | | | | | | | | | | | |
| St. Vrain Creek Restoration | $ - | $ - | $ 111,000 | $ 28 | $ 100,000 | $ 144,000 | $ - | $ - | $ 42,573 | $ 42,573 | $ - | $ - |
| BOCC Meadow Park Flood Recovery Project 014380 | $ - | $ - | $ 140,000 | $ - | $ 140,000 | $ 507,000 | $ - | $ - | $ - | $ - | $ - | $ - |
| Replacement for 12" Water Transmission Main | $ 5,747 | $ 76,393 | $ 5,747 | $ 60 | $ 100,000 | $ 5,286 | $ 100,000 | $ 5,572 | $ 25,000 | $ 25,000 | $ 25,000 | $ 25,000 |
| Water and Sewer Rate Study | $ - | $ - | $ 1,940 | $ 8,277 | $ - | $ 9,940 | $ 12,882 | $ 370 | $ - | $ - | $ - | $ - |
| Wastewater collection CIP | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ 11,862 | $ 11,862 | $ 11,862 | $ 11,862 |
| Feasibility Sanitation Apple Valley | $ - | $ 7,362 | $ - | $ - | $ 14,168 | $ - | $ 14,168 | $ 100 | $ 23,354 | $ 23,482 | $ 26,234 | $ 26,234 |
| Outfall Engineering & Construction | $ 80 | $ 80 | $ - | $ - | $ 12,844 | $ - | $ 12,844 | $ - | $ 100,000 | $ 1,806 | $ - | $ - |
| CIP Project Management | $ 6,418 | $ 7,571 | $ 6,418 | $ 7,671 | $ 6,400 | $ 11,629 | $ 6,400 | $ 6,400 | $ 6,400 | $ 6,400 | $ 6,400 | $ 6,400 |
| Local Share Forms 1155 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Local Share Forms 1129 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Local Share Forms 800 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Local Share Forms 1156 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Encapsulment and shear structure for water line on 2nd Ave | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| LEAP Sustainability Coordinator 2015 & 16 | $ 1,750 | $ 1,744 | $ 1,750 | $ 484 | $ 1,370 | $ 3,120 | $ 1,370 | $ 1,512 | $ 1,370 | $ 1,370 | $ 1,370 | $ 1,370 |
| Colorado Heritage Planning Grant | $ 7,916 | $ 15,031 | $ 7,916 | $ - | $ 15,000 | $ 11,562 | $ 32,948 | $ - | $ - | $ - | $ - | $ - |
| Hwy 36/Main St Improvements/Stop Light St Canyon | $ 321,000 | $ 323,056 | $ 273,375 | $ 180,290 | $ 300,000 | $ - | $ 300,000 | $ - | $ 60,000 | $ 227,636 | $ 60,000 | $ 60,000 |
| Stone Canyon Intersection and Signal Improvements | $ 101,229 | $ 101,123 | $ 120,000 | $ 67,027 | $ 100,000 | $ - | | | $ - | $ - | $ - | $ - |
| Staff 02 Positions - RZ P15-043 | $ 6,716 | $ 7,027 | $ 6,716 | $ 7,329 | $ 36,044 | $ 27,326 | $ 36,044 | $ 22,492 | $ 36,044 | $ 36,044 | $ 36,044 | $ 36,044 |
| St. Vrain Corridor Trail Extension | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ 3,000 | $ 3,000 |
| Charge Ahead CDPHE/OC | $ - | $ - | $ - | $ - | $ 7,925 | $ - | $ - | $ - | $ 8,200 | $ 8,200 | $ - | $ - |
| Staffing Assistance - Flood Recovery | $ 34,027 | $ 44,276 | $ 34,027 | $ 43,836 | $ 100,000 | $ 84,023 | $ 80,000 | $ 23,736 | $ 80,000 | $ 80,000 | $ 80,000 | $ 65,000 |
| HR Assistance Staffing | $ 3,676 | $ 3,322 | $ 3,520 | $ 3,467 | $ 3,520 | $ 4,874 | $ 3,520 | $ 1,007 | $ 3,520 | $ 3,520 | $ 3,520 | $ 3,520 |
| Elder Development match for EYSE | $ - | $ - | $ - | $ - | $ 3,000 | $ 2,105 | $ - | $ - | $ 6,468 | $ 6,468 | $ - | $ - |
| Storm Water/Electric Rate Study RZ P15-044 | $ 80,000 | $ 6,874 | $ 80,000 | $ 19,290 | $ 80,797 | $ 450 | $ 80,726 | $ 80,726 | $ 80,000 | $ 80,000 | $ 80,000 | $ 80,000 |
| Property Acquisitions- LRA | $ - | $ 17,443 | $ - | $ - | $ - | $ - | $ - | $ - | $ 566,787 | $ 566,787 | $ 715,000 | $ 715,000 |
| Housing Elevations | | | | $ - | | $ - | | $ - | $ 8,316 | $ 8,316 | | |
| DOLA Grant 2016-2017 Mid Main Sanitary | | | | $ - | | $ - | | $ - | | | | |
| Debris Enforcement | $ 3,000 | $ 810 | $ 3,000 | $ 3,000 | $ 3,000 | $ 3,000 | $ 3,000 | $ 3,000 | $ 7,017 | $ 7,017 | $ 3,000 | $ 3,000 |
| Parking to Park/St. Vrain Habitat project | | | | | | | | | | | | |
| Hazard Identification and Risk Assessment Study | | | | | | | $ 5,000 | $ 5,000 | $ 5,000 | $ 5,000 | $ 5,000 | $ 5,000 |
| Land Use Plan for Aquired Properties | | | | | $ 23,571 | $ 23,571 | $ 23,571 | $ 23,571 | $ 23,571 | $ 23,571 | $ 23,571 | $ 23,571 |
| Meadow Wildwater Features/Fish Habitat | $ 2,000 | $ - | | | | | | | | | | |
| Cost of Delay WW TP | | | | | | | | | | | $ 661,566 | $ 661,566 |
| Replace Damaged Pavement | | | | | | | | | | | | |
| Test Extension Grant Matching | | | | | | | | | | | | |
| FEMA PA LOCAL Match | | | | | | | | | | | | |
| FEMA PA LOCAL Match | | | | | | | | | | | | |
| 4 | | | | $ 1,000 | | | | | $ 175 | $ 175 | $ 175 | $ 175 |
| 13 | | | | | | | | | $ 175 | $ 175 | $ 175 | $ 175 |
| 20 | | | | | | | | | | | | |
| 30 | | | | | | | | | | | | |
| 41 | | | | | | | | | | | | |
| 42 | | | | | | | | | | | | |
| 72 | | | | | | | | | | | | |
| 94 | | | $ 920 | $ 600 | | $ 905 | | $ 400 | $ 800 | $ 600 | $ 800 | $ 600 |
| 183 | | | $ 202 | $ 201 | | $ 202 | | | $ 202 | $ 202 | $ 202 | $ 202 |
| 347 | | | | | | | | | | | | |
| 383 | | $ 1,713 | | | | | | | | | | |
| 509 | | | | | | | | | | | | |
| 522 | | | | | | | | | | | | |
| 562 | | $ 2,844 | | $ 1,163 | | $ 1,163 | | | | | | |
| 613 | | $ 4,787 | | $ 2,117 | | $ 3,478 | | $ 270 | | | | |
| 665 | | | | | | | | | | | | |
| 668 | | | | | | | | | | | | |
| 880 | | | | $ 1,868 | | $ 2,678 | | $ 460 | | | | $ 10,000 |
| 879 | | | | | | | | | | | | |
| 920 | | | | | | | | | | | | |
| 1057 | | | | | | | | | | | | |
| 1078 | | $ 534,321 | $ 615,000 | $ 434,161 | $ 600,348 | $ 46,586 | $ 1,542,409 | $ 46,586 | $ 627,000 | $ 627,000 | $ 1,587,478 | $ 1,587,478 |
| 1091 | | | | | | | | | | | | |
| 1129 | | | | | | | | | | | | |
| 1155 | | | | | | | | | | | | |
| 1174 | | | | | | | | | | | | |
| 1179 | | | | | | | | | | | | |
| 1184 | | | | | | | | | | | | |
| Total | $ 602,753 | $ 1,340,149 | $ 1,358,149 | $ 800,969 | $ 1,572,478 | $ 932,798 | $ 2,157,409 | $ 268,962 | $ 1,734,764 | $ 1,752,362 | $ 4,165,615 | $ 4,165,615 |

| Grant Title | Q1'17 Budgeted Expenditure | Q1'17 Actual Expenditure | Q2'17 Budgeted Expenditure | Q2'17 Actual Expenditure | Q3'17 Budgeted Expenditure | Q3'17 Actual Expenditure | Q4'17 Budgeted Expenditure | Q4'17 Actual Expenditure |
|---|---|---|---|---|---|---|---|---|
| Sewer Line, Lift Station and Water Distribution Loop for Eastern Campus | $ - | $ - | $ 384,179 | $ 384,179 | $ 384,179 | $ 384,179 | $ - | $ - |
| EDA Grant Match | $ 3,000 | $ 3,000 | $ 381,179 | $ 381,179 | $ 384,179 | $ 384,179 | $ - | $ - |
| CDBG Housing - Round 1 Distributed Funds (DEF) | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| CDBG DR-RG 2 Acquisitions (BOCC) 21263608,21604028 | $ 100,000 | $ 100,000 | | | | | | |
| CDBG DR-RG 3 LRA Match 21604027 | | | $ 400,000 | $ 400,000 | | | | |
| CDBG DR-RG 3 Planning | $ 60,460 | $ 60,460 | $ 125,540 | $ 125,540 | | | | |
| SBV2 Restoration | $ 200,000 | $ 200,000 | $ 500,000 | $ 500,000 | | | | |
| St. Vrain Creek Restoration | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| BOCC Meadow Park Flood Recovery Project 014380 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Replacement for 12" Water Transmission Main | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Water and Sewer Rate Study | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Wastewater collection CIP | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Feasibility Sanitation Apple Valley | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Outfall Engineering & Construction | $ - | $ - | $ 153,253 | $ 153,253 | $ - | $ - | $ - | $ - |
| CIP Project Management | $ 6,400 | $ 6,400 | $ 10,200 | $ 10,200 | $ - | $ - | $ - | $ - |
| Local Share Forms 1155 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Local Share Forms 1129 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Local Share Forms 800 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Local Share Forms 1156 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Encapsulment and shear structure for water line on 2nd Ave | $ - | $ - | $ 25,200 | $ 25,200 | $ - | $ - | $ - | $ - |
| LEAP Sustainability Coordinator 2015 & 16 | $ 1,370 | $ 1,370 | $ 4,112 | $ 4,112 | $ - | $ - | $ - | $ - |
| Colorado Heritage Planning Grant | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Hwy 36/Main St Improvements/Stop Light St Canyon | $ 60,000 | $ 60,000 | $ - | $ - | $ - | $ - | $ - | $ - |
| Stone Canyon Intersection and Signal Improvements | | | $ - | $ - | $ - | $ - | $ - | $ - |
| Staff 02 Positions - RZ P15-043 | $ 36,044 | $ 36,044 | $ 108,132 | $ 108,132 | $ - | $ - | $ - | $ - |
| St. Vrain Corridor Trail Extension | $ 3,000 | $ 3,000 | $ - | $ - | $ - | $ - | $ - | $ 174,000 |
| Charge Ahead CDPHE/OC | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Staffing Assistance - Flood Recovery | $ 80,000 | $ 65,000 | $ 160,000 | $ 160,000 | $ 160,000 | $ 160,000 | $ 75,000 | $ 75,000 |
| HR Assistance Staffing | $ 3,520 | $ 3,520 | $ 10,560 | $ 10,560 | $ 10,560 | $ 10,560 | $ 10,560 | $ 10,560 |
| Elder Development match for EYSE | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Storm Water/Electric Rate Study RZ P15-044 | $ 80,000 | $ 80,000 | $ - | $ - | $ - | $ - | $ - | $ - |
| Property Acquisitions- LRA | $ 715,000 | $ 715,000 | $ 15,000 | $ 15,000 | $ - | $ - | $ - | $ - |
| Housing Elevations | $ - | $ - | $ 46,482 | $ 46,482 | $ 46,481 | $ 46,481 | $ 46,481 | $ 46,481 |
| DOLA Grant 2016-2017 Mid Main Sanitary | $ - | $ - | $ 2,500 | $ 2,500 | $ - | $ - | $ - | $ - |
| Debris Enforcement | $ 3,000 | $ 3,000 | $ 9,297 | $ 9,297 | $ 9,297 | $ 9,297 | $ 9,297 | $ 9,297 |
| Parking to Park/St. Vrain Habitat project | $ - | $ - | $ 80,208 | $ 80,208 | $ - | $ - | $ - | $ - |
| Hazard Identification and Risk Assessment Study | $ - | $ - | $ 15,000 | $ 15,000 | $ - | $ - | $ - | $ - |
| Land Use Plan for Aquired Properties | $ 23,571 | $ 23,571 | $ 70,715 | $ 70,715 | $ - | $ - | $ - | $ - |
| Meadow Wildwater Features/Fish Habitat | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Cost of Delay WW TP | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Replace Damaged Pavement | $ - | $ - | $ 100,000 | $ 100,000 | $ 100,000 | $ 100,000 | $ 100,000 | $ 100,000 |
| Test Extension Grant Matching | $ - | $ - | $ - | $ - | $ - | $ - | $ 175,000 | $ 175,000 |
| FEMA PA LOCAL Match | $ - | $ - | $ - | $ - | $ 999,573 | $ 999,573 | $ - | $ - |
| FEMA PA LOCAL Match | $ - | $ - | $ - | $ - | $ - | $ - | $ 72,700 | $ 72,700 |
| 4 | $ 700 | $ 700 | $ 700 | $ 700 | $ 350 | $ 350 | $ - | $ - |
| 13 | $ 700 | $ 700 | $ 700 | $ 700 | $ 350 | $ 350 | $ 350 | $ 350 |
| 20 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 30 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 41 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 42 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 72 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 94 | $ 2,500 | $ 2,500 | $ 2,500 | $ 2,500 | $ - | $ - | $ - | $ - |
| 183 | $ 606 | $ 606 | $ 606 | $ 606 | $ - | $ - | $ - | $ - |
| 347 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 383 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 509 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 522 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 562 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 613 | $ - | $ - | $ 170,536 | $ 170,536 | $ - | $ - | $ 1,295,000 | $ 1,295,000 |
| 665 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 668 | $ - | $ - | $ 20,000 | $ 20,000 | $ 20,000 | $ 20,000 | $ - | $ - |
| 880 | $ 2,146,000 | $ 2,146,000 | $ 270,000 | $ 270,000 | $ 115,000 | $ 115,000 | $ - | $ - |
| 879 | $ 104,044 | $ 104,044 | $ 308,000 | $ 308,000 | $ 2,177,000 | $ 2,177,000 | $ - | $ - |
| 920 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 1057 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 1078 | $ 1,077,000 | $ 1,077,000 | $ 917,000 | $ 917,000 | $ 1,000,000 | $ 1,000,000 | $ 1,000,000 | $ 1,000,000 |
| 1091 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 1129 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 1155 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 1174 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 1179 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 1184 | $ 40,000 | $ 40,000 | $ 40,000 | $ 40,000 | $ - | $ - | $ - | $ - |
| Total | $ 4,526,961 | $ 4,530,961 | $ 4,122,362 | $ 4,122,362 | $ 5,747,304 | $ 5,747,304 | $ 3,467,712 | $ 3,467,712 |

Town of Lyons, Colorado
DISASTER RECOVERY REIMBURSEMENT SCHEDULE

| Grant Title | Funding Source | Originating Funding Source | Funding Agency | Total Grant Award | Grant End | As of 30 June 16 Expended | As of 30 June 16 Reimbursed | Insurance as of June 16 | As of 30 June 16 Shortfall | Grant Funds Remaining As of 30 June 16 |
|---|---|---|---|---|---|---|---|---|---|---|
| Sewer Line, Lift Station and Water Distribution Loop for Eastern Corridor | EDA | State | DOLA | $ 788 368 | 7/15/2020 | $ - | $ - | | $ - | $788,368 |
| EDA Grant Match | CDBG-DR 2 | Federal | Collaborative | 788 368 | 11/30/2017 | $ - | $ - | | $ - | $788,368 |
| CDBG Housing - Round 1 Designated Funds (DEF) | DEF | Federal | DHSEM-DEF | $ 343,997 | 12/31/2016 | $ 343,997 | | | $ 343,997 | $0 |
| CDBG DR-Rd 2 Acquisitions (BOCO) 21263628 21804008 | CDBG-DR 2 | Federal | BCC | $ 1,200,000 | 12/31/2017 | | | | | $1,200,000 |
| CDBG DR-RD 3 LRA Match 21804027 | CDBG-DR 3 | Federal | BCC | $ 480,000 | 12/31/2018 | | | | | $480,000 |
| CDBG DR-RD 3 Planning | CDBG-DR 3 | Federal | DOLA | $ 174 000 | 12/31/2017 | | | | | $174,000 |
| St. Vrain Creek Restoration | DEF | Federal | DHSEM-DEF | $ 1,172,570 | 12/31/2016 | $ 871,841 | $ - | | $ 871,841 | $300,729 |
| SBV3 Restoration | NRCS-EWP | Federal | CWCB | $ 700,000 | 12/31/2017 | | | | | |
| GOCO Meadow Park Flood Recovery Project #14330 | GOCO | State | GOCO | $ 1,120,252 | 11/30/2016 | $ 532,475 | $ 532,475 | | $ - | $587,800 |
| Replacement for 12" Water Transmission Main | CDPHE | State | CDPHE | $ 1,000,000 | 12/31/2016 | $ 427,365 | $ 175,129 | | $ 252,236 | $572,635 |
| Water and Sewer Rate Study | CDPHE | State | CDPHE | $ 36 660 | 12/31/2016 | $ 31,527 | $ 2,772 | | $ 10,787 | $17,423 |
| Wastewater collection CIP | CDPHE | State | CDPHE | $ 27,000 | 12/31/2016 | $ - | $ 3,476 | | $ (3,476) | $27,000 |
| Possibility Subdivision Apple Valley | CDPHE | State | CDPHE | $ 67,350 | 12/31/2016 | $ 10,981 | $ 616 | | $ 10,181 | $56,350 |
| Outfall Engineering & Construction | CDPHE | State | CDPHE | $ 323,564 | 12/31/2016 | $ 18,340 | $ 11,135 | | $ 4,914 | $305,505 |
| CIP Project Management | CDPHE | State | CDPHE | $ 132,302 | 12/31/2016 | $ 14,025 | $ - | | $ 14,025 | $118,277 |
| Local Share Forms 1156 | CDPHE | State | CDPHE | $ 9,348 | 6/30/2017 | | $ - | | $ - | $9,348 |
| Local Share Forms 1120 | CDPHE | State | CDPHE | $ 2 782 | 6/30/2017 | | $ - | | $ - | $2,782 |
| Local Share Forms 600 | CDPHE | State | CDPHE | $ 7,211 | 6/30/2017 | | $ - | | $ - | $7,211 |
| Local Share Forms 1104 | CDPHE | State | CDPHE | $ 7,609 | 6/30/2017 | | $ - | | $ - | $7,609 |
| Assessment and check structure for water line on 2nd Ave | CDPHE | State | CDPHE | $ 56,000 | 6/30/2017 | $ 6,216 | $ - | | $ 6,216 | $49,784 |
| LEAP Sustainability Coordinator 2016 | SeCo | County | SeCo | $ 30,000 | 6/30/2017 | $ 12,764 | $ 16,030 | | $ 12,205 | $17,205 |
| Colorado Heritage Planning Grant | DOLA | State | DOLA | $ 125,000 | 11/30/2018 | $ 31,362 | $ - | | $ 31,362 | $93,638 |
| Hwy 36/Main St improvements/Stop Light St Canyon | CDOT | Federal/State | CDOT | $ 2,220,000 | 12/31/2018 | $ 1,174,619 | $ 754,886 | | $ 419,521 | $1,053,081 |
| Stone Canyon Intersection and Signal Improvements | SeCo | County | SeCo | $ 900,000 | 6/30/2016 | $ 434,955 | $ 66,000 | | $ 368,955 | $415,145 |
| Staff (3) Positions - R2 P15-043 | CDBG-DR 2 | Federal | DOLA Planning | $ 315,864 | 3/31/2017 | $ 57,144 | $ - | | $ 57,144 | $258,720 |
| St. Vrain Corridor Trail Extension | CPW LWCF NPS | Federal/State | CPW | $ 350,000 | 12/31/2017 | | $ - | | $ - | $350,000 |
| Charge Ahead COPAQC | Charge Ahead COPAQC | State | | $ 7 825 | 12/31/2016 | | $ - | | $ - | $7,825 |
| Staffing Assistance - Flood Recovery | DOLA EIAP | State | DOLA Staffing | $ 1,740,373 | 12/31/2017 | $ 946,130 | $ 834,338 | | $ 1,112,291 | $796,242 |
| HR Assistance Staffing | DOLA EIAP | State | DOLA Staffing | $ 110,000 | 6/31/2018 | $ 3,658 | | | $ 3,658 | $106,341 |
| Farm Development match for EYSE | SeCo | County | SeCo | $ 6 000 | 12/31/2016 | $ - | $ - | | $ - | $6,000 |
| Storm Water/Water Rate Study R2 P15-044 | CDBG-DR 2 | Federal | DOLA Planning | $ 315,864 | 12/31/2016 | $ 38,210 | $ - | | $ 38,210 | $277,654 |
| Housing Acquisitions- LRA | HMGP | Federal | DHSEM HMGP | $ 7,677,860 | 6/6/2017 | $ 3,062,207 | $ 2,072,360 | | $ 1,060,919 | $4,216,940 |
| Housing Elevations | HMGP | Federal | DHSEM HMGP | $ 164 000 | 6/30/2017 | $ 21,532 | $ - | | $ 21,532 | $142,468 |
| DOLA MHI 2016-2017 Mid Term Survey | DOLA | State | DOLA | $ 3 500 | 6/30/2017 | $ - | $ - | | $ - | $3,500 |
| Code Enforcement | HMGP | Federal | DHSEM | $ 126,211 | 3/31/2019 | $ 9,718 | $ - | | $ 9,718 | $116,493 |
| Fishing is Fun/St. Vrain Hatchery project | USFW | Federal | CPW | $ 85,200 | 6/31/2017 | $ - | $ - | | $ - | $85,200 |
| Habitat Identification and Risk Assessment Study | CDBG-DR P& R | Federal | DOLA Planning | $ 300,000 | 12/31/2017 | $ - | $ - | | $ - | $300,000 |
| Land Use Plan for Acquired Properties | CDBG-DR P& R | Federal | DOLA Planning | $ 100 000 | 12/31/2017 | $ - | $ - | | $ - | $100,000 |
| Meadow Wetlands/pr Features/Fish Habitat | CWCB | State | CWCB | $ 60,000 | 6/30/2016 | $ 47,402 | $ 47,096 | | $ 306 | $2,898 |
| Cost of Delay WWTP | CDBG-DR 2 | Federal | Collaborative | $ 561,866 00 | 12/31/2017 | $ - | $ - | | $ - | $561,866 |
| Replace Damaged Pavement | CDBG-DR 2 | Federal | Collaborative | $ 300,000 00 | 12/31/2017 | $ - | $ - | | $ - | $300,000 |
| Trail Extension Grant Activity | CDBG-DR 3 | Federal | Collaborative | $ 300,000 00 | 12/31/2017 | $ - | $ - | | $ - | $300,000 |
| FEMA PA LOCAL Match | CDBG-DR 2 | Federal | Collaborative | $ 986,073 62 | 12/31/2017 | $ - | $ - | | $ - | $986,074 |
| FEMA PA LOCAL Match | CDBG-DR 3 | Federal | Collaborative | $ 72,700 00 | 12/31/2017 | $ - | $ - | | $ - | $72,700 |
| 5 | FEMA PA 4146 | Federal | DHSEM PA | $ 700,368 | 6/30/2017 | $ 576,471 | $ 580,330 | | $ 57,802 | $29,880 |
| 13 | FEMA PA 4146 | Federal | DHSEM PA | $ 234 135 | 5/31/2016 | $ 199,388 | $ 198,881 | | $ 467 | $34,747 |
| 26 | FEMA PA 4146 | Federal | DHSEM PA | $ 720,268 | 3/14/2016 | $ 441,341 | $ 604,782 | | $ (83,541) | $278,025 |
| 28 | FEMA PA 4146 | Federal | DHSEM PA | $ 896 000 | 3/14/2016 | $ 107,473 | $ 196,833 | | $ (79,360) | $520,367 |
| 41 | FEMA PA 4146 | Federal | DHSEM PA | $ 610,346 | 7/31/2016 | $ 532,846 | $ 392,182 | $ 6 000 | $ 139,664 | ($23,501) |
| 42 | FEMA PA 4146 | Federal | DHSEM PA | $ 667,282 | 6/30/2017 | $ 390,108 | $ 424,230 | | $ (34,112) | $267,175 |
| 72 | FEMA PA 4146 | Federal | DHSEM PA | $ 132 448 | 3/14/2016 | $ 266,474 | $ 1,632 | | $ 264,842 | ($66,026) |
| 94 | FEMA PA 4146 | Federal | DHSEM PA | $ 119,380 | 6/14/2017 | $ 341,730 | $ 1,240 | $ 153,407 | $ 97,043 | ($122,430) |
| 120 | FEMA PA 4146 | Federal | DHSEM PA | $ 211,360 | 6/30/2017 | $ 667,360 | $ 1,061 | $ 462,168 | $ 194,131 | ($644,894) |
| 247 | FEMA PA 4146 | Federal | DHSEM PA | $ 647 | 3/14/2016 | $ 66,364 | $ 471 | $ 34,700 | $ 64,213 | ($98,937) |
| 269 | FEMA PA 4146 | Federal | DHSEM PA | $ 1,541 | 5/1/2016 | $ 208 869 | $ 1,160 | $ 121,157 | $ 86,676 | ($207,648) |
| 555 | FEMA PA 4146 | Federal | DHSEM PA | $ 1 468 | 6/14/2017 | $ 18,055 | $ 1,257 | $ 229,821 | $ (212,633) | ($10,884) |
| 623 | FEMA PA 4146 | Federal | DHSEM PA | $ 10,021 | 12/31/2015 | $ 105,396 | $ 16,405 | $ 100,466 | $ (4,502) | ($101,377) |
| 662 | FEMA PA 4146 | Federal | DHSEM PA | $ 529,880 | 6/30/2019 | $ 980,967 | $ 802,777 | $ 7 140 | $ 208,660 | ($178,888) |
| 815 | FEMA PA 4146 | Federal | DHSEM PA | $ 2,642,606 | 1/30/2017 | $ 105,519 | $ 33,681 | | $ 71,838 | $2,737,126 |
| 886 | FEMA PA 4146 | Federal | DHSEM PA | $ 447 | 9/30/2015 | $ 48,366 | $ 866 | $ 866 | $ 47,913 | ($48,347) |
| 896 | FEMA PA 4146 | Federal | DHSEM PA | $ 113,600 | 9/14/2017 | $ 19,666 | $ 16,420 | | $ 4,266 | $94,254 |
| 785 | FEMA PA 4146 | Federal | DHSEM PA | $ 61 412 | 9/14/2017 | $ 20,362 | $ 63,896 | | $ (34,608) | $33,052 |
| 939 | FEMA PA 4146 | Federal | DHSEM PA | $ 1,518,567 | 9/14/2017 | $ 401,672 | $ - | $ 1,112,309 | $ (710,638) | $1,114,266 |
| 970 | FEMA PA 4146 | Federal | DHSEM PA | $ 2,231,401 | 6/30/2017 | $ 325,129 | $ 153,161 | | $ 171,967 | $1,906,322 |
| 989 | FEMA PA 4146 | Federal | DHSEM PA | $ 465,882 | 5/30/2017 | $ 381,168 | $ 205,364 | | $ 175,804 | $107,884 |
| 1067 | FEMA PA 4146 | Federal | DHSEM PA | $ 26 000 | 9/14/2014 | $ 18,742 | $ 22,946 | | $ (4,205) | $7,669 |
| 1078 | FEMA PA 4146 | Federal | DHSEM PA | $ 21,407,351 | 9/14/2017 | $ 7,181,862 | $ 2,176,269 | $ 1,367,134 | $ 3,646,548 | $14,206,669 |
| 1091 | FEMA PA 4146 | Federal | DHSEM PA | $ 1,805,224 | 9/14/2016 | $ 825,466 | $ 302,090 | | $ 33,382 | $579,798 |
| 1129 | FEMA PA 4146 | Federal | DHSEM PA | $ 105,961 | 10/31/2015 | $ 178,020 | $ 25,993 | | $ 152,027 | $7,881 |
| 1158 | FEMA PA 4146 | Federal | DHSEM PA | $ 373,808 | 7/30/2016 | $ 376,273 | $ 20,379 | | $ 355,894 | ($2,365) |
| 1174 | FEMA PA 4146 | Federal | DHSEM PA | $ 27,363 | 12/31/2016 | $ 167,620 | $ 23,588 | $ 516,946 | $ (372,912) | ($140,173) |
| 1179 | FEMA PA 4146 | Federal | DHSEM PA | $ 322,230 | 9/14/2015 | $ 7,015 | $ - | | $ 7,015 | $315,215 |
| 1184 | FEMA PA 4146 | Federal | DHSEM PA | $ 304,373 | 3/31/2017 | $ 369,396 | $ 66,997 | $ 38,962 | $ 164,497 | $34,677 |
| Total | | | | $ 60,811,500 | | $ 34,071,612 | $ 11,168,802 | $ 4,197,406 | $ (12,912,210) | $36,540,887 |

| Grant Title | Jul-16 Budgeted Reimbursement | Jul-16 Actual Reimbursement | Aug-16 Budgeted Reimbursement | Aug-16 Actual Reimbursement | Sep-16 Budgeted Reimbursement | Sep-16 Actual Reimbursement | Oct-16 Budgeted Reimbursement | Oct-16 Actual Reimbursement | Nov-16 Budgeted Reimbursement | Nov-16 Actual Reimbursement | Dec-16 Budgeted Reimbursement | Dec-16 Actual Reimbursement | Q1'17 Budgeted Reimbursement | Q1'17 Actual Reimbursement | Q2'17 Budgeted Reimbursement | Q2'17 Actual Reimbursement | Q3'17 Budgeted Reimbursement | Q3'17 Actual Reimbursement | Q4'17 Budgeted Reimbursement | Q4'17 Actual Reimbursement |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Sewer Line, Lift Station and Water Distribution Loop for Eastern Corridor | $ - | $ - | $ - | $ - | $ - | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| EDA Grant Match | $ - | $ - | $ - | $ - | $ - | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| CDBG Housing - Round 1 Designated Funds (DEF) | $ - | $ - | $ - | $ - | $ - | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| CDBG DR-Rd 2 Acquisitions (BOCO) 21263628 21804008 | | | | | | | | | | | | | | $ - | | $ - | $ 900,000 | $ 800,000 | $ 100,000 | $ 100,000 |
| CDBG DR-RD 3 LRA Match 21804027 | | | | | | | | | $ 1,000 | $ 1,000 | | $ - | | | $ 5,000 | $ 5,000 | | | $ 480,000 | $ 480,000 |
| CDBG DR-RD 3 Planning | | | | | | | | | | | | | | | | | $ 85,400 | $ 80,400 | $ 123,540 | $ 123,540 |
| St. Vrain Creek Restoration | $ - | $ - | $ - | $ - | $ - | | $ - | $ - | $ - | $ - | $ 756,000 | $ 756,000 | $ - | $ - | $ 111,600 | $ 111,600 | $ 100,000 | $ 100,000 | $ - | $ - |
| SBV3 Restoration | | | | | | | | | | | | | | $ - | | $ - | | | $ 200,000 | $ 200,000 |
| GOCO Meadow Park Flood Recovery Project #14330 | $ - | $ - | $ - | $ - | $ - | | $ - | $ - | $ - | $ - | $ - | $ - | $ 587,800 | $ 587,800 | $ - | $ - | $ - | $ - | $ - | $ - |
| Replacement for 12" Water Transmission Main | $ - | $ - | $ - | $ - | $ - | $ 6 000 | | $ - | $ - | $ - | $ - | $ 112,800 | $ 5,747 | $ 5,747 | $ 5,747 | $ 5,747 | $ 188,800 | $ 188,800 | $ 190,062 | $ 190,062 |
| Water and Sewer Rate Study | $ - | $ - | $ - | $ - | $ - | | $ - | $ - | $ - | $ 36,252 | $ - | $ 36,252 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Wastewater collection CIP | $ - | $ - | $ - | $ - | $ - | $ 7,000 | | $ - | $ - | $ 5,586 | $ 5,586 | $ 8,441 | $ 8,441 | $ - | $ - | $ - | $ - | $ - | $ 12,623 | $ 12,623 |
| Possibility Subdivision Apple Valley | $ - | $ - | $ - | $ - | $ - | $ 796 | | $ - | $ - | $ 3,583 | $ 3,583 | $ 4,561 | $ 4,561 | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Outfall Engineering & Construction | $ - | $ - | $ - | $ - | $ - | $ 4,824 | | $ - | $ - | $ 1,730 | $ 1,730 | $ 2,211 | $ 2,211 | $ 90 | $ 90 | $ - | $ - | $ - | $ - | $ - |
| CIP Project Management | $ - | $ - | $ - | $ - | $ - | $ 6,756 | | $ - | $ - | $ 4,000 | $ 4,000 | $ 6,311 | $ 6,311 | $ 6,416 | $ 6,416 | $ 6,416 | $ 6,416 | $ 6,400 | $ 6,400 | $ 6,400 |
| Local Share Forms 1156 | $ - | $ - | $ - | $ - | $ - | | $ - | $ - | $ - | $ - | $ - | $ - | $ 9,348 | $ 9,348 | $ - | $ - | $ - | $ - | $ - | $ - |
| Local Share Forms 1120 | $ - | $ - | $ - | $ - | $ - | | $ - | $ - | $ - | $ - | $ - | $ - | $ 2,782 | $ 2,782 | $ - | $ - | $ - | $ - | $ - | $ - |
| Local Share Forms 600 | $ - | $ - | $ - | $ - | $ - | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Local Share Forms 1104 | $ - | $ - | $ - | $ - | $ - | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ 7,609 | $ 7,609 |
| Assessment and check structure for water line on 2nd Ave | $ - | $ - | $ - | $ 5,323 | $ - | | $ - | $ - | $ 2,176 | $ 2,176 | $ 2,767 | $ 2,767 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| LEAP Sustainability Coordinator 2016 | $ - | $ - | $ - | $ - | $ - | | $ - | $ - | $ - | $ - | $ - | $ - | $ 1,750 | $ 1,750 | $ 1,750 | $ 1,750 | $ 1,370 | $ 1,370 | $ 1,370 | $ 1,370 |
| Colorado Heritage Planning Grant | $ - | $ - | $ - | $ - | $ - | $ 20,368 | | $ - | $ - | $ 26,484 | $ 26,822 | $ 26,822 | $ 7,616 | $ 7,616 | $ 7,616 | $ 7,616 | $ 15,000 | $ 15,000 | $ 33,946 | $ 33,946 |
| Hwy 36/Main St improvements/Stop Light St Canyon | $ - | $ - | $ 459,589 | $ - | $ - | | $ - | $ 430,094 | $ - | $ - | $ - | $ - | $ 207,000 | $ 207,000 | | $ - | | | $ - | $ - |
| Stone Canyon Intersection and Signal Improvements | $ - | $ - | $ - | $ - | $ - | $ 142,000 | | $ 366,667 | $ 121,399 | $ 121,399 | $ 156,096 | $ 156,096 | $ 161,229 | $ 161,229 | $ 130,000 | $ 130,000 | $ 100,000 | $ 100,000 | $ - | $ - |
| Staff (3) Positions - R2 P15-043 | $ - | $ - | $ 31,667 | $ - | $ - | $ 31,000 | | $ - | $ 30,000 | $ 30,000 | $ 25,716 | $ 25,716 | $ 6,716 | $ 6,716 | $ 6,716 | $ 6,716 | $ 35,044 | $ 35,044 | $ 35,044 | $ 35,044 |
| St. Vrain Corridor Trail Extension | $ - | $ - | $ - | $ - | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Charge Ahead COPAQC | $ - | $ - | $ - | $ - | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ 7,825 | $ 7,825 | $ - | $ - |
| Staffing Assistance - Flood Recovery | $ - | $ - | $ 91,200 | $ - | $ - | $ 91,200 | | $ - | $ 36,802 | $ 36,802 | $ 46,691 | $ 46,691 | $ 34,837 | $ 34,837 | $ 34,837 | $ 34,837 | $ 50,000 | $ 50,000 | $ 50,000 | $ 50,000 |
| HR Assistance Staffing | $ - | $ - | $ - | $ 3,658 | | $ - | | $ - | $ 1,261 | $ 1,261 | $ 1,647 | $ 1,647 | $ 3,576 | $ 3,576 | $ 3,576 | $ 3,576 | $ 3,576 | $ 3,576 | $ 3,576 | $ 3,576 |
| Farm Development match for EYSE | $ - | $ - | $ - | $ - | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ 3,000 | $ 3,000 | $ 2,106 | $ 2,106 |
| Storm Water/Water Rate Study R2 P15-044 | $ - | $ - | $ - | $ - | | | $ - | $ - | $ 10,374 | $ 10,374 | $ 17,196 | $ 17,196 | $ 30,368 | $ 30,368 | $ 30,368 | $ 30,368 | $ 40,737 | $ 40,737 | $ 90,736 | $ 90,736 |
| Housing Acquisitions- LRA | $ - | $ - | $ - | $ - | | $ 294,334 | | $ - | $ - | $ - | $ - | $ - | $ 566,797 | $ 566,797 | $ 715,000 | $ 715,000 | $ - | $ - | $ - | $ - |
| Housing Elevations | $ - | $ - | $ - | $ - | | | $ - | $ - | $ - | $ - | $ - | $ - | $ 17,226 | $ 17,226 | $ - | $ - | $ - | $ - | $ - | $ - |
| DOLA MHI 2016-2017 Mid Term Survey | $ - | $ - | $ - | $ - | | | $ - | | | | | | | | | | | | | |
| Code Enforcement | $ - | $ - | $ - | $ - | | | $ - | $ - | $ 3,401 | $ 3,401 | $ 4,373 | $ 4,373 | $ 3,098 | $ 3,098 | $ 3,098 | $ 3,098 | $ 3,098 | $ 3,098 | $ 3,098 | $ 3,098 |
| Fishing is Fun/St. Vrain Hatchery project | $ - | $ - | $ - | $ - | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Habitat Identification and Risk Assessment Study | $ - | $ - | $ - | $ - | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ 6,000 | $ 6,000 |
| Land Use Plan for Acquired Properties | $ - | $ - | $ - | $ - | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ 23,571 | $ 23,571 | $ 23,571 | $ 23,571 |
| Meadow Wetlands/pr Features/Fish Habitat | $ - | $ - | $ - | $ - | | | $ - | $ - | $ - | $ - | $ 2,898 | $ 2,898 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Cost of Delay WWTP | $ - | $ - | $ - | $ - | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Replace Damaged Pavement | $ - | $ - | $ - | $ - | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Trail Extension Grant Activity | $ - | $ - | $ - | $ - | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| FEMA PA LOCAL Match | $ - | $ - | $ - | $ - | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| FEMA PA LOCAL Match | $ - | $ - | $ - | $ - | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 5 | $ - | $ - | $ - | $ - | | $ 30,696 | | $ - | $ 30,777 | $ 30,777 | $ 39,570 | $ 39,570 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 13 | $ - | $ - | $ - | $ - | | | $ - | $ - | $ 100 | $ 100 | $ 206 | $ 206 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 26 | $ - | $ - | $ - | $ - | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 28 | $ - | $ - | $ - | $ - | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 41 | $ - | $ - | $ - | $ - | | | $ - | $ - | $ 47,892 | $ 47,892 | $ 61,400 | $ 61,400 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 42 | $ - | $ - | $ - | $ - | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 72 | $ - | $ - | $ - | $ - | | | $ - | $ - | $ 92,925 | $ 92,925 | $ 119,000 | $ 119,000 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 94 | $ - | $ - | $ - | $ - | | | $ - | $ - | $ 39,466 | $ 39,466 | $ 39,100 | $ 39,100 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 120 | $ - | $ - | $ - | $ - | | | $ - | $ - | $ 67,863 | $ 67,863 | $ 67,861 | $ 67,861 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 247 | $ - | $ - | $ - | $ - | | | $ - | $ - | $ 16,474 | $ 16,474 | $ 19,000 | $ 19,000 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 269 | $ - | $ - | $ - | $ - | | | $ - | $ - | $ 39,396 | $ 39,396 | $ 39,004 | $ 39,004 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 555 | $ - | $ - | $ - | $ - | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 623 | $ - | $ - | $ - | $ - | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 662 | $ - | $ - | $ - | $ - | | 10,440 | | $ 7,720 | $ 139,670 | $ 139,670 | $ 178,643 | $ 178,643 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 815 | $ - | $ - | $ - | $ - | | 20,000 | | $ - | $ 26,140 | $ 26,140 | $ 32,329 | $ 32,329 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 886 | $ - | $ - | $ - | $ - | | | $ - | $ - | $ 16,770 | $ 16,770 | $ 21,861 | $ 21,861 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 896 | $ - | $ - | $ - | $ - | | | $ - | $ - | $ 1,401 | $ 1,401 | $ 1,017 | $ 1,017 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 785 | $ - | $ - | $ - | $ - | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 939 | $ - | $ - | $ - | $ - | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 970 | $ - | $ - | $ 43,217 | $ - | $ - | 14,422 | | $ - | $ 25,166 | $ 25,166 | $ 32,306 | $ 32,306 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 989 | $ - | $ - | $ - | $ 7,563 | $ - | | $ - | $ 37,250 | $ 61,546 | $ 61,546 | $ 79,130 | $ 79,130 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 1067 | $ - | $ - | $ - | $ - | $ - | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 1078 | $ - | $ 225,231 | $ - | $ 238,430 | $ - | 752,982 | | $ 202,464 | $ 1,276,187 | $ 1,276,187 | $ 1,646,912 | $ 1,646,912 | $ - | $ - | $ - | $ - | $ 615,000 | $ 615,000 | $ 600,346 | $ 600,346 | $ 1,542,400 | $ 1,542,400 |
| 1091 | $ - | $ - | $ - | $ - | | | $ - | $ - | $ 11,677 | $ 11,677 | $ 15,013 | $ 15,013 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 1129 | $ - | $ 21,000 | $ - | $ - | | 1,000 | | $ - | $ 53,560 | $ 53,560 | $ 66,992 | $ 66,992 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 1158 | $ - | $ 76,010 | $ - | $ - | | 29,126 | | $ 9,000 | $ 124,000 | $ 124,000 | $ 160,152 | $ 160,152 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 1174 | $ - | $ - | $ - | $ - | | | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 1179 | $ - | $ - | $ - | $ - | | | $ - | $ - | $ 3,466 | $ 3,466 | $ 3,167 | $ 3,167 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 1184 | $ - | $ - | $ - | $ 21,001 | | 1,714 | | $ 7,862 | $ 54,074 | $ 54,074 | $ 68,525 | $ 68,525 | $ - | $ - | $ - | $ 114,231 | $ 114,231 | $ - | $ - | $ - |
| Total | $ - | $ 1,016,747 | $ - | $ 923,475 | $ - | $ 1,196,108 | $ - | $ 1,448,927 | $ 2,442,963 | $ 2,442,963 | $ 3,000,300 | $ 3,000,300 | $ 1,742,107 | $ 1,742,107 | $ 1,780,870 | $ 1,780,870 | $ 2,174,936 | $ 2,174,936 | $ 2,964,560 | $ 2,964,560 |

| Check Shortfall in Payments | As of June 30, 2016 |
|---|---|
| Amount Expended | $ 24,074,488 |
| Amount Reimbursed | $ 15,356,210 |
| Net of Revenues/Expenditures | $ (8,718,278) |
| Adjustment Factor | 1.5677 |

| | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | $ 1,240,149 | $ 800,969 | $ 932,768 | $ 700,802 | $ 1,712,991 | $ 4,165,515 | $ 4,136,881 | $ 4,132,262 | $ 5,747,994 | $ 3,497,712 |
| | $ 1,016,747 | $ 923,475 | $ 1,196,108 | $ 1,448,927 | $ 2,442,963 | $ 3,000,300 | $ 1,742,107 | $ 1,780,870 | $ 2,174,936 | $ 2,964,560 |
| | $ (223,402) | $ 122,506 | $ 263,340 | $ 748,125 | $ 730,972 | $ (267,909) | $ (2,394,773) | $ (2,351,392) | $ (3,572,059) | $ (533,154) |

| STATE OF COLORADO ADVANCE | | |
|---|---|---|
| | $ 600,000 | |
| | $ (2,218,278) | $ (2,441,580) | $ (2,319,174) | $ (2,055,834) | $ (406,906) | $ 83,667 | $ (183,642) | $ (2,578,415) | $ (5,329,807) | $ (8,902,261) | $ (9,441,419) |

Staff Report to Board of Trustees

November 7, 2016

RE: Lyons Valley Park Electric Infrastructure

Markel Homes recently started the infrastructure installation for Filing 8B which involves the completion of McConnell Drive between Goranson and Bohn Court. As part of this filing, new buried electric infrastructure was installed.

Upon the request to engage N-Line to do the installation, town staff became aware of a clause within the original (and subsequent) Subdivision Improvement Agreements (SIA) stating:

> *"…the Town shall, at its own expense, furnish all electrical service to Filing No.8..."*

Below is an excerpt from the SIA.

> 4.0 UNDERGROUNDING OF ALL UTILITIES. The Owner/Developer shall underground all municipal public utilities and shall grant such private easements as are necessary to allow all other utilities, including but not limited to gas, telephone and telecommunications (including cable television) (collectively, "utilities") within the boundaries of LVP Filing No. 8 or which are required to be relocated pursuant to this Agreement or as a condition of approval of LVP Filing No. 8 to be undergrounded. The Town agrees that all franchises, licenses, or permits that it grants to such utility providers to utilize dedicated public utility easements within LVP Filing No. 8 shall require the service provider to locate its facilities underground. All utilities providing public services from the Town of Lyons and its municipal utility systems to Filing No. 8 shall be located within dedicated and platted public utility easements or public street rights-of-way which shall be approved and subject to acceptance by the Town.
>
> 4.1 Pursuant to the Second Amendment to Subdivision Agreement dated March 18, 1996, the Town shall, at its own expense, furnish all electrical service to Filing No. 8 according to the Master Electrical Plan and Construction Drawings and Specifications approved by the parties. Timing of the installation shall be coordinated with the Owner/Developer. The Town shall immediately be responsible for maintenance of the lines that it installs. There shall be no rebate to the Owner/Developer.

Attorney Guckenberger has reviewed the SIA and finds that the town is responsible for the cost. The charge for installation of underground electric service to Filing No. 8 is $51,800.

Public Works Director Kyle Miller has identified enough savings within his 2016 electric operating budget to cover this expense without having to utilize another source.

To(OWNER): Town of Lyons
Attn: Accounts Payable
P.O. Box 49
Lyons, CO 80540
From: N Line Electric, LLC
14293 Longs Peak Court
Longmont, CO 80504

Project: LVP 8

Via(Architect):

RECEIVED
OCT 01 2016
By 10/17

Application No: 1
Invoice No: 14299
Period To: 9/23/2016

Architect's
Project No:
Invoice Date: 9/29/2016
Contract Date:

| CHANGE ORDER SUMMARY | ADDITIONS | DEDUCTIONS |
|---|---|---|
| Approved previous months | 0.00 | 0.00 |
| Approved this month | 0.00 | 0.00 |
| TOTALS | 0.00 | 0.00 |
| Net change by change orders | 0.00 | |

| | | |
|---|---|---|
| 1. ORIGINAL CONTRACT SUM | $ | 51,787.11 |
| 2. Net change by Change Orders | $ | 0.00 |
| 3. CONTRACT SUM TO DATE(Line 1 +/- 2) | $ | 51,787.11 |
| 4. TOTAL COMPLETED & STORED TO DATE | $ | 51,787.11 |
| 5. RETAINAGE | $ | 0.00 |
| 6. TOTAL EARNED LESS RETAINAGE (Line 4 less Line 5) | $ | 51,787.11 |
| 7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate) | $ | 0.00 |
| 8. SALES TAX | $ | 0.00 |
| 9. CURRENT PAYMENT DUE | $ | 51,787.11 |
| 10. BALANCE TO FINISH, PLUS RETAINAGE (Line 3 less Line 6) | $ | 0.00 |

| A | B | C | D | E | F | G | | H | I |
|---|---|---|---|---|---|---|---|---|---|
| ITEM NO. | DESCRIPTION OF WORK | SCHEDULED VALUE | WORK COMPLETED | | MATERIALS PRESENTLY STORED (Not in D or E) | TOTAL COMPLETED AND STORED TO DATE (D+E+F) | % G/C | BALANCE TO FINISH (C-G) | RETAINAGE |
| | | | FROM PREV. APPLICATION (D+E) | THIS PERIOD | | | | | |
| 1 | Install subdivision electrical<br>00.00: Install subdivision electrical | 51,787.11 | 0.00 | 51,787.11 | 0.00 | 51,787.11 | 100 | 0.00 | 0.00 |
| | | 51,787.11 | 0.00 | 51,787.11 | 0.00 | 51,787.11 | 100 | 0.00 | 0.00 |
| | Totals | 51,787.11 | 0.00 | 51,787.11 | 0.00 | 51,787.11 | 100 | 0.00 | 0.00 |

02-66.4038 (per mm/TC) 11-2-16 meeting

Electric ~~02-65-4006~~

Dept.
Acct. No.
Description of Goods / Services: See above LVP-8
Total Amount: $ 51,787.11
Authorized By: [signature]

per LVP SIA #1 dated 1/12/1986

10/25/16
Copy to mm
for coding

To(OWNER): Town of Lyons
Attn: Accounts Payable
P.O. Box 49
Lyons, CO 80540
From: N Line Electric, LLC
14293 Longs Peak Court
Longmont, CO 80504

Project: LVP 8

Via(Architect):

Application No: 1
Invoice No: 14299
Period To: 9/23/2016

Architect's
Project No:
Invoice Date: 9/29/2016
Contract Date:

| CHANGE ORDER SUMMARY | ADDITIONS | DEDUCTIONS |
|---|---|---|
| Approved previous months | 0.00 | 0.00 |
| Approved this month | 0.00 | 0.00 |
| TOTALS | 0.00 | 0.00 |
| Net change by change orders | 0.00 | |

| | | |
|---|---|---|
| 1. ORIGINAL CONTRACT SUM | $ | 51,787.11 |
| 2. Net change by Change Orders | $ | 0.00 |
| 3. CONTRACT SUM TO DATE(Line 1 +/- 2) | $ | 51,787.11 |
| 4. TOTAL COMPLETED & STORED TO DATE | $ | 51,787.11 |
| 5. RETAINAGE | $ | 0.00 |
| 6. TOTAL EARNED LESS RETAINAGE (Line 4 less Line 5) | $ | 51,787.11 |
| 7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate) | $ | 0.00 |
| 8. SALES TAX | $ | 0.00 |
| 9. CURRENT PAYMENT DUE | $ | 51,787.11 |
| 10. BALANCE TO FINISH, PLUS RETAINAGE (Line 3 less Line 6) | $ | 0.00 |

| A | B | C | D | E | F | G | | H | I |
|---|---|---|---|---|---|---|---|---|---|
| ITEM NO. | DESCRIPTION OF WORK | SCHEDULED VALUE | WORK COMPLETED | | MATERIALS PRESENTLY STORED (Not in D or E) | TOTAL COMPLETED AND STORED TO DATE (D+E+F) | % G/C | BALANCE TO FINISH (C-G) | RETAINAGE |
| | | | FROM PREV. APPLICATION (D+E) | THIS PERIOD | | | | | |
| 1 | Install subdivision electrical<br>00.00: Install subdivision electrical | 51,787.11 | 0.00 | 51,787.11 | 0.00 | 51,787.11 | 100 | 0.00 | 0.00 |
| | | 51,787.11 | 0.00 | 51,787.11 | 0.00 | 51,787.11 | 100 | 0.00 | 0.00 |
| | Totals | 51,787.11 | 0.00 | 51,787.11 | 0.00 | 51,787.11 | 100 | 0.00 | 0.00 |

| | | 2014 ACTUAL | 2015 YTD Actual | 2015 BUDGET | 2016 Budget | 2016 YTD Actual | 2016 Year-End Projection | 2017 Budget |
|---|---|---|---|---|---|---|---|---|
| 02-65-4006 | OUTSIDE PROF SERVICE FEES | $ 69,510.85 | $ 76,296.70 | $ 88,000.00 | $ 88,000.00 | $ 40,330.22 | 88,000.00 | $ 88,000.00 |
| 02-65-4027 | MAINTENANCE & SUPPLIES | $ 16,370.54 | $ 18,191.81 | $ 15,000.00 | $ 13,000.00 | $ 7,565.91 | 13,000.00 | $ 13,000.00 |
| | | | | Total Available | | $ 53,103.87 | | |

LYONS
COLORADO

October 12, 2016

re: Pump replacement @ CDOT Lift Station

One of the two pumps in the CDOT Lift Station up Highway 36 has failed and needs to be replaced. Ramey Environmental(REC), the WWTP Operator and lift station maintenance contractor examined the pump and found damage to the impeller and the pump is not operating within its hydraulic limits.

REC supplied a quote for a replacement pump and the cost of labor to install the pump totaling $4,987.52 plus freight delivery of pump. Public Works attempted to obtain 2 additional quotes and was able to get 1 company to respond. Infinity Pumps quoted us a price of $4,419.00 plus freight for the pump only which is $381.48 higher than the REC pump and we would have to pay REC the cost of labor to install the pump.

Public Works was not able to get a 2nd company to supply a quote.

We are requesting permission to proceed with REC quote and have the defective pump replaced as soon as possible.

Kyle Miller
Director of Public Works

DOUBLE GATEWAY
TO THE ROCKIES

TELEPHONE
303.823.6622

FACSIMILE
303.823.8257

432 5TH AVENUE • P.O. BOX 49
LYONS • COLORADO 80540

TOWNOFLYONS.COM

Ramey Environmental Compliance, Inc.
PO Box 99, Firestone, CO 80520
Office: 303-833-5505
Fax: 303-833-5535

# *Estimate: ESD-2583*

**DATE: 8/31/2016**

| NAME / ADDRESS |
|---|
| Town of Lyons<br>PO Box 49<br>432 5th Ave<br>Lyons, CO 80540 |

**Estimated Delivery Time:** *2 BUSINESS WKS*

**Terms:** NET10

***Note: All applicable Freight Charges, Taxes and Permit Fees will be added.***

| Customer PO No.: | PENDING |
|---|---|

*****ESTIMATE IS VALID FOR 30 DAYS*****

*EQUIPMENT SERVICES DIVISION (ESD) PROJECT*

| DESCRIPTION | QTY | COST | TOTAL |
|---|---|---|---|
| Town of Lyons - CDOT Lift Station(ABS Pump)<br><br>Ramey Environmental Compliance (ESD) Division was called out to this site to investigate the lack of performance issue with this Lift Station. Out of the two pumps in this pit one pump was really having performance issues. The technicians pulled this pump and found that the impeller was extremely worn. The type of damage found on this impeller tells us that the pumps are not operating within their hydraulic limits. (See photo of impeller attached) I am recommending that we replace this pump as soon as possible. Included with this pump is a Seal Fail Relay that monitors both seal fail and motor overtemp. The new pump is rated relatively close to the original and has a Vortex Impeller that can be ran anywhere on its hydraulic curve with little or no damage long term. | | | |
| KSB Pump, Model: Amarex NF100-220/044YLG(135):<br>> 230Volt, 3phase<br>> Lifting Bail<br>> Seal Fail Relay<br>> ABS Adaptor Plate<br>NOTE: Reuse of the existing ABS Claw is necessary for connection. | 1 | 4,037.52 | 4,037.52 |
| Field Labor to install the above equipment (2men-5hrs) | 10 | 95.00 | 950.00 |
| Freight/Shipping Cost: To be determined (Pre-paid and add to Invoice) | 1 | TBD | TBD |

*PLEASE LET ME KNOW IF YOU HAVE ANY QUESTIONS.*
*THANK YOU! WAYNE CASS 303-859-5517*

***TOTAL:*** **$4,987.52**

**If this estimate is acceptable, please sign and return by fax to (303)833-5535.**

Authorized Signature

10-11-16
Date

## Scott Olson

**From:** Kelly Clark [kelly@infinitypump.com]
**Sent:** Tuesday, October 11, 2016 8:36 AM
**To:** Scott Olson
**Subject:** ABS Pump

Scott,

Your existing pump model is obsolete.

The current equivalent pump is an ABS XFP 100C and it will work with your current rail system and guide bracket.

I am writing this on the road and can get a more formal quotation to you later today.

Your price per pump is $4,419.00 net plus freight.

Your pump(s) can ship within 1-2 days of order.

NOTE: This is an explosion proof pump. Please ensure that any pump you use for this application is explosion proof.

Thank you for your patience waiting on this one!

Best Regards,

Kelly Clark
Infinity Pump
630-740-0411 Direct

**Meeting Date:** 11/7/16

**Subject: Resolution 2016-93 , A Resolution Approving a Contract with Tri-State Firework for the Parade of Lights Fireworks Display**

**Presenter:** David Cosgrove-Director of Parks, Recreation & Cultural Events

Each year the Town of Lyons Department of Parks, Recreation and Cultural Events solicits quotes for the Annual Lyons Parade of Lights Fireworks Show. This annual event, which has been held for over 30 years, is a festive event that has increased in popularity over time and has become a holiday tradition, not only for residents of Lyons, but for families from throughout the region. The Parade of Lights offers spectators an array of entertainment, including the annual parade which features anywhere from 30 to 50 decorated and illuminated floats; Lyons Lights in Sandstone Park-a spectacular electric light show synchronized to music; live music and food, all culminating with the grand finale, the fireworks display. The event has drawn up to 4,500 spectators to town in years past and consistently draws over 1,500 spectators annually. It has a great economic benefit for the community during what is traditionally a slow time of year for local businesses.

This year the Town received quotes from Tri-State Fireworks, Inc. and J&M Displays. Proposals for each are attached. Staff evaluated the quotes and found that for the same price quoted from each, Tri-State Fireworks offers considerable more shot counts (1,175 as compared to 256). In addition, Tri-State has garnered considerable compliments from the community regarding their show last year and the year prior and has completed their contact satisfactorily.

**TOWN OF LYONS, COLORADO**
**RESOLUTION 2016-93**

**A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH TRI-STATE FIREWORKS, INC.**

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

**WHEREAS**, Section 10-12-20 of the Lyons Municipal Code provides that the Town of Lyons Board of Trustees may by motion grant permission for a public display of fireworks; and

**WHEREAS**, the Town desires to provide a public display of fireworks in conjunction with the Lyons Holiday Parade of Lights; and

**WHEREAS**, the Contractor represents that it possesses the necessary qualifications to provide such a display; and

**WHEREAS**, the Town desires to contract with the Contractor subject to the terms of this Agreement; and

**WHEREAS**, the Board of Trustees desires to authorize and enter into an agreement with Tri-State Fireworks, Inc., for a public fireworks display in conjunction with the Lyons Holiday Parade of Lights in the amount of Six Thousand Five Hundred Dollars and No Cents ($6,500.00), plus the cost of all permits required by local law or regulation, which shall not exceed One Hundred Dollars and No Cents ($100.00), and to authorize the Mayor to execute such agreement.

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

Section 1. The Town Board of Trustees hereby (a) permits a public display of fireworks in conjunction with the Lyons Holiday Parade of Lights; (b) approves the Professional Services Agreement with Tri-State Fireworks, Inc. in the substantially the form attached hereto; (c) authorizes the Town Administrator and the Town Attorney, in consultation with the Mayor, to make such changes as may be necessary to correct any non-material errors or language in the Agreement that does not increase the obligations of the Town; and (d) authorizes the Mayor to execute the Agreement and the Town Clerk to attest the Agreement when in final form.

Section 2. This resolution shall be effective upon its adoption.

**ADOPTED THIS 7th DAY OF NOVEMBER, 2016.**

TOWN OF LYONS, COLORADO

By: _____
Connie Sullivan, Mayor

ATTEST:

_____
Debra K. Anthony, MMC - Town Clerk

September 20, 2016

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Town of Lyons
P.O. Box 49
Lyons, CO 80540

Attn: Marissa Davis

Dear Marissa:

Attached is our proposal for your fireworks display planned for December 3, 2016.

As you can see from the detailed list of shells in the assortments included in this display, J & M Displays carries an unusually large variety of shells. Your audience won't be seeing many duplicates in this show! Notice also that a majority of the colors are pastels and combinations of red and blue with other colors, which will set this program apart from the patriotic themes of Fourth of July displays.

Our proposal includes 8% in bonus product for payment 70 days before the display. Because that due date falls at the end of this week, we are extending the early payment deadline to 50 days before the display, or October 14, 2016.

We have completed the contract paperwork and you will find it attached. Please fill in the information in the highlighted areas and sign and return the paperwork to me as soon as possible so we can prepare your order and have it ready for you. The Display Information form is also included. Please check to be sure everything is accurate and notify us of any corrections.

We look forward to working with you to help the Lyons community celebrate this holiday season kickoff event!

Yours very truly,

Bev Snyder

Beverly S. Snyder
J & M Displays, Inc.
P.O. Box 21181
Denver, CO 80221
303-458-7600
fireworks@jandmdisplayscolorado.com

18064 170th Avenue
Yarmouth, Iowa 52660-9772
1-800-648-3890
Fax: 1-319-394-3265
Email: main@jandmdisplays.com
www.jandmdisplays.com

# J & M Displays Proposal For:
## Town of Lyons

## Main Event

### 3 Inch Assort E-FIRE

| Quantity | Name | Rising Effect | Price | Total |
|---|---|---|---|---|
| 1 | Assortment F of 20 different J&M Brand Shells ELECTRIC FIRE | mixed tails | $197.75 | $197.75 |
| 1 | Assortment G Of 20 different J&M shells ELECTRIC FIRE | | $197.75 | $197.75 |
| Category shell Count: 40 | | | | $395.50 |

### 4 Inch Assort E-FIRE

| Quantity | Name | Rising Effect | Price | Total |
|---|---|---|---|---|
| 1 | Assortment B of 20 different J&M Brand shells ELECTRIC FIRE | mixed tails | $342.00 | $342.00 |
| 1 | Assortment K Of 20 different J&M Brand shells ELECTRIC FIRE | | $342.00 | $342.00 |
| Category shell Count: 40 | | | | $684.00 |

### 4 Inch Special Effect shells

| Quantity | Name | Rising Effect | Price | Total |
|---|---|---|---|---|
| 1 | Crackling coconut | | $40.05 | $40.05 |
| 1 | Golden wave to lemon swimming | | $40.05 | $40.05 |
| 1 | Golden willow (waterfall) | | $40.05 | $40.05 |
| 1 | Kamuro chrysanthemum niagara falls with smiling face | | $40.05 | $40.05 |
| 1 | Silver coconut to blue | | $40.05 | $40.05 |
| Category shell Count: 5 | | | | $200.25 |

### 5 Inch Assort E-FIRE

| Quantity | Name | Rising Effect | Price | Total |
|---|---|---|---|---|
| 1 | Assortment D of 15 different J&M Brand shells ELECTRIC FIRE | mixed tails | $452.00 | $452.00 |
| 1 | Assortment H of 15 different J&M Brand Shells ELECTRIC FIRE | mixed tails | $452.00 | $452.00 |
| Category shell Count: 30 | | | | $904.00 |

### 5 Inch Special Effect Shells

| Quantity | Name | Rising Effect | Price | Total |
|---|---|---|---|---|
| 1 | Crackling kamuro chrys | | $61.25 | $61.25 |
| 1 | Glittering willow with red and blue dahlia pistils | glitter tail | $61.25 | $61.25 |
| 1 | Green strobe | | $61.25 | $61.25 |
| 1 | Nishiki kamuro niagara fall | | $61.25 | $61.25 |
| 1 | Red strobe smiling face | | $61.25 | $61.25 |
| Category shell Count: 5 | | | | $306.25 |

### 6 Inch Assort E-FIRE

| Quantity | Name | Rising Effect | Price | Total |
|---|---|---|---|---|
| 1 | Assortment C of 9 different J&M brand shells ELECTRIC FIRE | mixed tails | $447.00 | $447.00 |
| 1 | Assortment F of 9 different J&M Brand shells ELECTRIC FIRE | | $447.00 | $447.00 |
| Category shell Count: 18 | | | | $894.00 |
| Section shell Count: 138 | | | | $3,384.00 |

# J & M Displays Proposal For:
## Town of Lyons

## Finales

### 3 Inch Finales

| Quantity | Name | Rising Effect | Price | Total |
|---|---|---|---|---|
| 9 | Color dahlia 10 Shot finale chain | mixed tails | $118.45 | $1,066.05 |
| Category shell Count: 90 | | | | $1,066.05 |

### 4 Inch Finales

| Quantity | Name | Rising Effect | Price | Total |
|---|---|---|---|---|
| 3 | Mixed color peony 8 shot finale chain | | $187.40 | $562.20 |
| Category shell Count: 24 | | | | $562.20 |
| Section shell Count: 114 | | | | $1,628.25 |

## Miscellaneous

### Ignition Items

| Quantity | Name | Rising Effect | Price | Total |
|---|---|---|---|---|
| 160 | Igniter 3 meter leads | | $1.95 | $312.00 |
| Category shell Count: 0 | | | | $312.00 |
| Section shell Count: 0 | | | | $312.00 |

## Free 8% for early payment

### 6 Inch Special Effect Shells

| Quantity | Name | Rising Effect | Price | Total |
|---|---|---|---|---|
| 1 | Red strobe with blue moving stars | | $101.40 | $101.40 |
| 1 | Three time time rain with palm pistil | | $101.40 | $101.40 |
| 1 | Twitter glitter to purple butterfly with green eyes | | $101.40 | $101.40 |
| 1 | Willow with flickering and reports | | $101.40 | $101.40 |
| Category shell Count: 4 | | | | $405.60 |
| Section shell Count: 4 | | | | $405.60 |

# Breakdown of Assortment shells in the J&M Displays proposal For:
## Town of Lyons

### 3" Assortment F of 20 different J&M Brand Shells ELECTRIC FIRE

| | |
|---|---|
| Blue Spiderweb | gold tail |
| Brocade Crown to Purple | gold tail |
| Gold Tremalon Diadem | gold tail |
| Golden Wave to Green | gold tail |
| Golden Wave to Purple | gold tail |
| Green Dahlia and white strobe | silver tail |
| Green Flower Rain | green tail |
| Green Spiderweb | gold tail |
| Lemon peony w/ glittering silver palm tree core | silver tail |
| Purple Spiderweb | gold tail |
| Red Flower Rain | gold tail |
| Red Spiderweb | gold tail |
| Red White Blue Dahlia | |
| Red Willow | gold tail |
| Ripples to Blue Wave | gold tail |
| Ripples to Purple wave | purple tail |
| Silver Spiderweb | gold tail |
| Strobing palm tree | silver tail |
| White Spiderweb Ring | silver tail |
| White Strobe | silver tail |

### 3" Assortment G Of 20 different J&M shells ELECTRIC FIRE

Blue wave
Brocade crown to chrys
Brocade crown to crackling
Brocade crown to silver glitter
Glitter Coconut with Green Strobe
Gold Crown
Gold Crown to Aqua
Gold Crown to Purple
Gold Crown to silver Strobe
Gold Crown to White
Green Wave
Lemon Dahlia with Silver Strobe
Mix Aqua peony Purple peony
Mix Sky blue peony Lemon peony
Pink Dahlia with Silver Strobe
Pink Lemon Ring with Crackling Pistil
Purple Dahlia with Silver Strobe
Purple Wave
Red Wave
Silver coconut with Cherry Blossom Pistil

### 4" Assortment B of 20 different J&M Brand shells ELECTRIC FIRE

| | |
|---|---|
| Blue peony with white crossette ring | Silver tail |
| Blue to crackling flower | Crackling tail |
| Chrys to purple with ring of lemon with wave | |
| Glittering lemon coconut | |
| Golden wave to orange with sea blue pistils | Silver tail |
| Green crackling dahlia | Crackling tail |
| Half aqua and half orange with silver crown ring | Silver tail |
| Multicolor dahlia with white strobe pistil | Silver tail |
| Orange peony with aqua pistil | Silver tail |
| Orange to gold willow | Glitter tail |
| Orange with wave pistils | Silver tail |
| Purple to yellow peony | Gold tail |
| Red and green go getters | Red tail |
| Red crackling dahlia | Crackling tail |
| Red peony with red to silver to crackling ring | Crackling tail |
| Red strobe coconut | Gold tail |
| Red to brocade | Red tail |
| Silver wave to blue and green | Silver tail |
| Silver wave to green | Silver tail |
| White strobe with pink pistil | Silver tail |

### 4" Assortment K Of 20 different J&M Brand shells ELECTRIC FIRE

Blue dahlia
Brocade crown
Crackling willow
Eight chrysanthemum (Kaleidoscope)
Flower wave to green
Glitter crossette
Gold willow
Grass green peony with crackling pistil
Green and purple peony
Lemon peony
Lemon to orange peony
Midnight snow ring with double color peony
Multi color chyrsanthemum
Orange wave
Pink champagne to violet
Purple peony with silver palm pistil
Purple wave with green pistil
Red flower wave ring with yellow pistil
Red to green ring with time rain pistil
Yellow wave

# Breakdown of Assortment shells in the J&M Displays proposal For:
## Town of Lyons

**5" Assortment D of 15 different J&M Brand shells ELECTRIC FIRE**

| | |
|---|---|
| Blue and lime green with artillery | |
| Blue and orange glittering coconut | Strobe tail |
| Green to red strobe with blue pistil | |
| Green to silver strobe with purple pistil | |
| Half green and half blue with flower crown ring | Crackling tail |
| Half green and half orange to crackling with cracklin | |
| Pink and chartreuse crossette cross rings | |
| Purple peony with crackling with flash willow pistil | Gold tail |
| Purple ring brocade bowtie | Silver tail |
| Red gamboge to silver strobe with green falling leav | Crackling tail |
| Red glittering crossette | |
| Silver to green with red pistil | Yellow strobe cc |
| Silver to lemon with purple pistil | |
| Wave to green, orange and purple with blue pistil | Crackling tail |
| Yellow peony with crackling with flash willow pistil | Gold tail |

**5" Assortment H of 15 different J&M Brand Shells ELECTRIC FIRE**

| | |
|---|---|
| Brocade chrysanthemum to red strobe | gold tail |
| Brocade Crown with silver strobe pistil | silver tail |
| Crown to glittering | gold tail |
| Golden wave to blue to gold chrysanthemum | gold tail |
| Golden wave to green w/ crackling pistil | gold tail |
| Half blue chry half red chry w/ brocade ring | silver tail |
| Half Golden wave to purple Half Yellow Spiderweb | gold tail |
| Pink Blue & Lemon dahlia | gold tail |
| Purple & Green peony w/ gold palm core | gold tail |
| Purple Spiderweb w/ purple pistil | gold tail |
| Purple to Brocade crown | gold tail |
| Red gamboge to blue chrys w/ Red spiderweb ring | silver tail |
| Red Spiderweb | gold tail |
| Silver Spiderweb w/green ring | silver tail |
| Silver strobe willow w/ Green strobe pistil | silver tail |

**6" Assortment C of 9 different J&M brand shells ELECTRIC FIRE**

| | |
|---|---|
| Blue to purple with wave pistil | Green tail |
| Chrys to lemon to silver with purple pistil | Gold tail |
| Color crossette ring with crackling pistil | |
| Flashing to Lemon wave with red pistil | |
| Flashing willow with lemon and purple scatter | Glitter tail |
| Glittering to blue with pink pistil | Gold tail |
| Green to blue to silver strobe with lemon pistil | Silver tail |
| Green to crackling flower | |
| Green to orange with wave pistil | Green tail |

**6" Assortment F of 9 different J&M Brand shells ELECTRIC FIRE**

Blue peony with fireflower ring
Brocade Crown to Cherry Blossom
Brocade Crown to red strobe
Flower Wave with Purple Pistil
Glitter Crackling Coconut
Gold Crown to green glitter
Mix Aqua & pink peony with Corolla Pistil
Red cycas blue dahlia ring with green saturn
Red to Silver flying dragon

# J & M Displays Proposal For:
## Town of Lyons

**This proposal includes an extention of our $10,000,000.00 spectator liability insurance, and workers compensation on our shoot team.**

| | |
|---|---|
| Fireworks price: | $5,324.25 |
| Discount: | $504.25 |
| Sub-total Fireworks: | **$4,820.00** |
| Sales tax: | |
| Local sales tax: | |
| Insurance processing : | $670.00 |
| License and permit: | |
| Shoot fee | $650.00 |
| Delivery: | $360.00 |
| Musical firing: | |
| Shoot cost: | |
| Total price of show: | **$6,500.00** |

Proposal print 11

| | |
|---|---|
| Total shot count: | 256 |
| Packing check: | 194 |
| Date of display: | 12/3/2016 |
| Customer number: | 0 |

## Summary of Free Items Added to Your Show

**See previous pages for a listing of free items**

**Free items are based on the $4,820.00 fireworks subtotal**

**$405.60 Free for early pay**

**$405.60 Total free**

**Total value of show is $7,409.85. Your price is $6,500.00**

Free Items Summary

## Please note the following comments:

The data in this proposal is confidential, and is to be accorded confidential treatment and shall not be disclosed other than to the official representative of the organization listed on the cover, and only then when in the evaluation of this proposal. Any reproduction of the contents of this proposal, whether in whole or in part, is expressly forbidden. J & M Displays, Inc. requests that all information be safe-guarded from release pursuant to any request under the Freedom of Information Law of this state or any other state or jurisdiction; as it may cause competitive disadvantage to our company. The enclosed concepts and materials are the sole and exclusive property of J & M Displays, Inc. We reserve the right to make substitutions of equal or greater value. Prices and specifications are subject to change without notice.

**Town of Lyons**
**PROFESSIONAL SERVICES AGREEMENT**

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this ____ day of November 2016, by and between the TOWN OF LYONS, COLORADO, a municipal corporation of the State of Colorado, with offices at 432 5th Avenue, Lyons, Colorado 80540 (the "**Town**"), and Tri-State Fireworks, Inc., a Colorado corporation, with offices at 153 S. 4th Avenue, Brighton, CO 80601 (the "**Contractor**"). The Town and the Contractor may collectively be referred to as the "Parties."

**WITNESSETH**

WHEREAS, the Town requires certain professional services as more fully described in this Agreement; and

WHEREAS, the Contractor represents that it possesses the skill, ability, and expertise to perform the services described in this Agreement and within the deadlines provided by the Agreement; and

WHEREAS, the Town desires to contract with the Contractor subject to the terms of this Agreement.

NOW, THEREFORE, for the consideration herein expressed, the Parties mutually agree as follows:

## 1.0 SERVICES AND PURPOSE OF AGREEMENT

1.1 Services. As directed by and under the supervision of the Town Administrator or the Town Representative as specified herein, the Contractor shall provide the follow services as more specifically described in **Exhibit A**, which describes the requirements and deliverables required by this Agreement and is incorporated herein by reference (the "Services"):

- Conduct a professional aerial display of fireworks from approximately 7:40 p.m. to 8:05 p.m. (or at a time otherwise mutually agreed upon by the Parties on the "Event Date") (defined below) such that the aerial display of fireworks shall be visible to viewers and attendees of the Town of Lyons Holiday Parade of Lights.

- The Services include event consultation and coordination with designated Town staff member(s) in advance of, during, and after the event; delivery, set up, firing, and clean up, which activities shall be conducted between 12:00 noon on the Event Date and 12:00 noon the following day.

- All equipment needed to conduct such display shall be provided by the Contractor. See **Exhibit A** for specifics as to type and quantity of fireworks to be displayed.

- All Services shall be conducted by the Contractor in accordance with all fireworks permits required, including but not limited to permits from the Lyons Fire Protection District, and any and all directives attached to and incorporated into such permits. Contractor shall provide the Town with proof that it has secured all required permits prior to commencing the aerial display. The Parties intend that such permits be incorporated into this Agreement as if set forth in full.

- The "Event Date" shall be either:

  December 3, 2016; ***or***

  In the event of inclement weather, fire bans, or other dangerous conditions necessitating the cancellation or postponement of the performance of the Services on December 3, 2016, then at a date, time, and place within the Town determined by the Town in consultation with the Contractor, in accordance with Paragraph 4.2 of this Agreement.

- In the event of a direct and irreconcilable conflict between the description of the Services above and **Exhibit A**, the description of the Services above shall govern and control.

1.2 Town Representative. The Town assigns Dave Cosgrove as the Town Representative for this Agreement. The Town Representative will monitor the Contractor's progress and performance under this Agreement and shall be available to the Contractor to respond to questions, assist in understanding Town policies, procedures, and practices, and supervise the performance of any Town obligations under this Agreement.

1.3 Changes to Services. Any changes to the Services that are mutually agreed upon between the Town and the Contractor shall be made in a formal writing referencing this Agreement and, only upon execution by both Parties of such formal writing, shall become an amendment to the Services described in this Agreement. To be effective, any written change must be signed by the Contractor and by the Town or by a person expressly authorized in writing to sign on behalf of the Town. Changes to the Services or to this Agreement shall not be made through oral agreement or electronic mail messages.

1.4 Meeting Attendance. The Contractor shall attend such meetings of the Town relative to the Scope of Work set forth in **Exhibit A** as may be requested by the Town. Any requirement made by the named representatives of the Town shall be given with reasonable notice to the Contractor so that a representative may attend.

1.5 Lawful Performance. It is further agreed that no party to this Agreement will perform contrary to any state, federal, or county law, or any of the ordinances of the Town of Lyons, Colorado.

## 2.0 COMPENSATION

2.1 Commencement of and Compensation for Services. Following execution of this Agreement by the Town, the Contractor shall be authorized to and shall commence performance of the Services as described in **Exhibit A**, subject to the requirements and limitations on compensation as provided by this Section 2.0 and its subsections.

A. Not to Exceed Amount; Cost Recoupment; Permit Costs. The Contractor shall perform the Services and shall invoice the Town for all Services performed. Compensation for such Services shall not exceed **Six Thousand Five Hundred Dollars and No Cents ($6,500.00)** ("Compensation for Services") unless a larger amount is agreed to by and between the Parties in accordance with the amendment requirements of this Agreement. Notwithstanding this compensation provision, the Parties agree that if the Contractor cannot perform the Services on the Event Date due to inclement weather or other dangerous conditions in accordance with Paragraph 1.1 of this Agreement, the Town shall compensate the Contractor for actual expenses incurred and services rendered in an amount not to exceed **Forty Percent (40%)** of the Compensation for Services amount ("Cost Recoupment") *in lieu of* the Compensation for Services. In addition, the Contractor shall obtain all permits for the Services as required by local law or regulation ("Local Permits"), and the Contractor shall invoice and the Town shall pay the Contractor for the cost of such Local Permits in an amount not exceed **One Hundred Dollars and No Cents ($100.00)**. The Contractor shall be responsible for obtaining and shall bear the cost of obtaining all other permits required by state or federal law or regulation.

B. Non-reimbursable Costs, Charges, Fees, or Other Expenses. Any fee, cost, charge, or expense incurred by the Contractor not otherwise specifically authorized by this Agreement shall be deemed a non-reimbursable cost and shall be borne by the Contractor and shall not be billed or invoiced to the Town and shall not be paid by the Town.

C. Increases in Compensation or Reimbursable Expenses. Any increases or modification to the compensation or reimbursable expenses shall be subject to the approval of the Town and shall be made only by written amendment of this Agreement executed by both Parties.

2.2 Payment Processing. The Contractor shall submit invoices and requests for payment in a form acceptable to the Town. Unless otherwise directed or accepted by the Town, all invoices shall contain sufficient information to account for all appropriate measures of Contractor work effort (e.g., task completion, work product delivery, or time). Following receipt of an invoice from Contractor, the Town shall promptly review the such invoice. All Town payments for Services rendered pursuant to this Agreement

shall be issued in the business name of Contractor only, and in no event shall any such payments be issued to an individual. In no event shall any Town payments to Contractor be in the form of or based upon a salary or an hourly wage rate.

2.3 Town Dispute of Invoice or Invoiced Item(s). The Town may dispute any Contractor compensation and/or reimbursable expense requested by the Contractor described in any invoice and may request additional information from the Contractor substantiating any and all compensation sought by the Contractor before accepting the invoice. When additional information is requested by the Town, the Town shall advise the Contractor in writing, identifying the specific item(s) that are in dispute and giving specific reasons for any request for information. The Town shall pay the Contractor within thirty (30) days of the receipt of an invoice for any undisputed charges or, if the Town disputes an item or invoice and additional information is requested, within thirty (30) days of acceptance of the item or invoice by the Town following receipt of the information requested and resolution of the dispute. To the extent possible, undisputed charges within the same invoice as disputed charges shall be timely paid in accordance with this Agreement. Payment by the Town shall be deemed made and completed upon hand delivery to the Contractor or designee of the Contractor or upon deposit of such payment or notice in the U.S. Mail, postage pre-paid, addressed to the Contractor.

**3.0 CONTRACTOR'S REPRESENTATIONS AND OFFERED PERFORMANCE**

The Contractor offers to perform the Services in accordance with the following Contractor-elected practices and procedures. By this Agreement, the Town accepts such offer and the following are hereby made part of the terms and conditions of this Agreement:

3.1 General. The Contractor shall become fully acquainted with the available information related to the Services. The Contractor shall affirmatively request from the Town Representative and the Town such information that the Contractor, based on the Contractor's professional experience, should reasonably expect is available and which would be relevant to the performance of the Services. The Contractor shall promptly inform the Town concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Agreement. The Contractor shall provide all of the Services in a timely and professional manner. The Contractor shall comply with all applicable federal, state and local laws, ordinances, regulations, and resolutions. *The Contractor understands and acknowledges that the Town does not possess the specialized knowledge and experience in providing the Services, and is expressly relying upon the Contractor to identify and resolve issues such as, but not limited to, fire safety.*

3.2 Independent Contractor. The Contractor shall perform the Services as an independent contractor and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with the Town. This Agreement does not require the Contractor to work exclusively for the Town. This Agreement shall not be interpreted as the Town dictating or directing the Contractor's performance or the time of performance beyond a completion schedule and a range of mutually agreeable work hours, but shall be interpreted as the

Contractor's offer and Town acceptance of terms and conditions for performance. The Contractor's business operations shall not be combined with the Town by virtue of this Agreement, and the Town will not provide any training to Contractor, its agents, or employees beyond that minimal level required for performance of the Services. The Parties acknowledge that the Contractor may require some assistance or direction from the Town in order for the Services to meet the Town's contractual expectations. Any provisions in this Agreement that may appear to grant the Town the right to direct or control Contractor or the Services shall be construed as Town plans or specifications regarding the Services.

3.3 Liability for Employment-Related Rights and Compensation. The Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Contractor, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. The Contractor will comply with all laws, regulations, municipal codes, and ordinances and other requirements and standards applicable to the Contractor's employees, including, without limitation, federal and state laws governing wages and overtime, equal employment, safety and health, employees' citizenship, withholdings, reports and record keeping. **CONTRACTOR ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS CONTRACTOR OR SOME ENTITY OTHER THAN THE TOWN PROVIDES SUCH BENEFITS. CONTRACTOR FURTHER ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO WORKERS' COMPENSATION BENEFITS. CONTRACTOR ALSO ACKNOWLEDGES THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED OR PAID PURSUANT TO THIS AGREEMENT.** To the maximum extent permitted by law, Contractor waives all claims against the Town for any Employee Benefits; the Contractor will defend the Town from any claim and will indemnify the Town against any liability for any Employee Benefits for the Contractor imposed on the Town ; and the Contractor will reimburse the Town for any award, judgment, or fine against the Town based on the position the Contractor was ever the Town 's employee, and all attorneys' fees and costs the Town reasonably incurs defending itself against any such liability.

3.4 Interaction with Public. The Contractor recognizes that its conduct during the performance of the Services hereunder reflects upon its reputation in the community as well as upon the public perception of the Town. Therefore, the Contractor offers and warrants to the Town that the Contractor, its agents and employees will conduct all of their interactions with the citizens and the public relating to the performance of the Services hereunder in such a manner as to provide customer service that reflects positively upon its reputation and the Town's public image.

3.5 Subcontractors. The Parties recognize and agree that subcontractors may be utilized by the Contractor for the performance of certain Services if and as described more

particularly in **Exhibit A**; however, the engagement or use of subcontractors will not relieve or excuse the Contractor from performance of any obligations imposed in accordance with this Agreement and Contractor shall remain solely responsible for ensuring that any subcontractors engaged to perform Services hereunder shall perform such Services in accordance with all terms and conditions of this Agreement.

3.6 Standard of Performance. In performing the Services, the Contractor warrants that it shall use that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by highly competent members of the same profession practicing in the State of Colorado. The Contractor represents to the Town that the Contractor is, and its employees or sub-contractors performing such Services are, properly licensed and/or registered within the State of Colorado for the performance of the Services (if licensure and/or registration is required by applicable law) and that the Contractor and employees possess the skills, knowledge, and abilities to perform the Services competently, timely, and professionally in accordance with this Agreement. In addition, the Contractor warrants and represents that it will provide the Services in accordance with more specific standards of performance as are included within **Exhibit A**. The Contractor represents, covenants and agrees that the Services will be provided to the Town free from any material errors. The Contractor's failure to meet or exceed any of the foregoing standards and warranties may be considered a material breach of this Agreement and may be grounds for termination of the Agreement pursuant to Section 4.0 below, in addition to any other remedies as provided in Section 9.0 below.

3.7 Review of Books and Records. The Contractor shall promptly comply with any written Town request for the Town or any of its duly authorized representatives to reasonably access and review any books, documents, papers, and records of the Contractor that are pertinent to the Contractor's performance under this Agreement for the purpose of the Town performing an audit, examination, or other review of the Services.

3.8 Licenses and Permits. The Contractor shall be responsible at the Contractor's expense for obtaining, and maintaining in a valid and effective status, all licenses and permits necessary to perform the Services unless specifically stated otherwise in this Agreement.

3.9 Affirmative Action. The Contractor warrants that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor warrants that it will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

3.10 Employment of or Contracts with Illegal Aliens. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Contractor shall not contract with a subcontractor that fails to certify that the subcontractor does not knowingly employ or contract with any illegal aliens. By

entering into this Agreement, the Contractor certifies as of the date of this Agreement that it does not knowingly employ or contract with an illegal alien who will perform work under this contract for Services and that the Contractor will participate in the e-verify program or department program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services. The Contractor is prohibited from using either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed. If the Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to notify the subcontractor and the Town within three (3) days that the Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien. The Contractor shall terminate the subcontract if the subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice regarding Contractor's actual knowledge. The Contractor shall not terminate the subcontract if, during such three (3) days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor is required to comply with any reasonable request made by the Department of Labor and Employment made in the course of an investigation undertaken to determine compliance with this provision and applicable state law. If the Contractor violates this provision, the Town may terminate this Agreement, and the Contractor may be liable for actual and/or consequential damages incurred by the Town, notwithstanding any limitation on such damages provided by such Agreement.

3.11 Duty to Warn. The Contractor agrees to call to the Town's attention errors in any drawings, plans, sketches, instructions, information, requirements, procedures, and/or other data supplied to the Contractor (by the Town or by any other party) that it becomes aware of and believes may be unsuitable, improper, or inaccurate in a material way. However, the Contractor shall not independently verify the validity, completeness or accuracy of such information unless included in the Services or otherwise expressly engaged to do so by the Town.

## 4.0 TERM AND TERMINATION

4.1 Term. This Agreement shall be effective on **December 3, 2016 at 12:01 a.m.**, (the "Effective Date") and shall terminate at the earlier of the date on which all obligations of the parties have been met (to include all Services have been completed) or **11:59 p.m. on October 31, 2017** or on a prior date of termination as may be permitted by this Agreement; provided, however, that the Parties may mutually agree in writing to extend the term of this Agreement, subject to annual appropriation. Those provisions that survive termination, to include the indemnification obligations and any warranty obligations, shall remain in effect past termination.

4.2 Continuing Services Required. The Contractor shall perform the Services in accordance with this Agreement commencing on the Effective Date until such Services are terminated or suspended in accordance with this Agreement. The Contractor shall not temporarily delay, postpone, or suspend the performance of the Services without

the written consent of the Town Representative or other Town employee expressly authorized in writing to direct the Contractor's services.

4.3 Town Unilateral Termination. This Agreement may be terminated by the Town for any or no reason upon written notice delivered to the Contractor at least ten (10) days prior to the Event Date (as defined above). Unless otherwise provided in any notice of termination, the Contractor shall provide no further services in connection with this Agreement after receipt of a notice of termination.

4.4 Delivery of Notice of Termination. Any notice of termination permitted by this Section 4.0 and its subsections shall be addressed to the person signing this Agreement on behalf of either Town or Contractor at the address shown below or such other address as either party may notify the other of and shall be deemed given upon delivery if personally delivered, or forty-eight (48) hours after deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

## 5.0 INSURANCE

5.1 Insurance Generally. During the term of this Agreement, the Contractor shall obtain and shall continuously maintain, at the Contractor's expense, insurance of the kind and in the minimum amounts specified as follows by checking the appropriate boxes:

☐ The Contractor shall obtain and maintain the types, forms, and coverage(s) of insurance deemed by the Contractor to be sufficient to meet or exceed the Contractor's minimum statutory and legal obligations arising under this Agreement ("Contractor Insurance"); or

☒ The Contractor shall secure and maintain the following ("Required Insurance"):

☒ Worker's Compensation Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by law. Such policy of insurance shall be endorsed to include the Town as a Certificate Holder.

☒ Comprehensive General Liability insurance with minimum combined single limits of One Million Dollars ($1,000,000.00) each occurrence and of Two Million Dollars ($2,000,000.00) aggregate, with excess liability of Four Million Dollars ($4,000,000.00) as provided in **Exhibit A**. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the Town as Certificate Holder and name the Town, and its elected officials, officers, employees and agents as additional insured parties.

The Contractor's obligation to continuously maintain Display Operator's Liability insurance as required by this paragraph shall survive termination of this Agreement for a period of not less than one hundred eighty (180) days following the Event Date (as defined above). Such insurance shall not be required to be extended and maintained in the event that the Town terminates this Agreement as permitted in paragraph 4.0 and its subsections prior to the Contractor's performance of the Services on the Event Date.

☒ Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars ($1,000,000.00) each occurrence with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the Services, with excess liability of Four Million Dollars ($4,000,000.00) as provided in **Exhibit A**. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Agreement, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the Town as Certificate Holder and name the Town, and its elected officials, officers, employees and agents as additional insured parties.

☐ Professional Liability (errors and omissions) Insurance with a minimum limit of coverage of _____ Dollars ($____.__) per claim and annual aggregate. Such policy of insurance shall be obtained and maintained for one (1) year following completion of all Services under this Agreement. Such policy of insurance shall be endorsed to include the Town as a Certificate Holder.

The Required Insurance shall be procured and maintained with insurers with an A- or better rating as determined by Best's Key Rating Guide. All Required Insurance shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor.

5.2 Additional Requirements for All Policies. In addition to specific requirements imposed on insurance by this Section 5.0 and its subsections, insurance shall conform to all of the following:

A. For both Contractor Insurance and Required Insurance, all policies of insurance shall be primary insurance, and any insurance carried by the Town, its officers, or its employees shall be excess and not contributory insurance to that provided by the Contractor; provided, however, that the Town shall not be obligated to obtain or maintain any insurance whatsoever for any claim, damage, or purpose arising from or related to this Agreement and the Services. The Contractor shall not be an insured party for any Town-obtained insurance policy or coverage.

B. For both Contractor Insurance and Required Insurance, the Contractor shall be solely responsible for any deductible losses.

C. For Required Insurance, no policy of insurance shall contain any exclusion for bodily injury or property damage arising from completed operations.

D. For Required Insurance, every policy of insurance shall provide that the Town will receive notice no less than thirty (30) days prior to any cancellation, termination, or a material change in such policy or in the alternative, the Contractor shall provide such notice as soon as reasonably practicable and in no event less than thirty (30) days prior to any cancellation, termination, or a material change in such policy.

5.3 Failure to Obtain or Maintain Insurance. The Contractor's failure to obtain and continuously maintain policies of insurance in accordance with this Section 5.0 and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the Town may immediately terminate this Agreement, or, at its discretion, the Town may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Town shall be repaid by Contractor to the Town immediately upon demand by the Town, or at the Town's sole discretion, the Town may offset the cost of the premiums against any monies due to the Contractor from the Town pursuant to this Agreement.

5.4 Insurance Certificates. Prior to commencement of the Services, the Contractor shall submit to the Town certificates of insurance for all Required Insurance. Insurance limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this Section 5.0 and its subsections shall be indicated on each certificate of insurance. Certificates of insurance shall reference the Project Name as identified on the first page of this Agreement. The Town may request and the Contractor shall provide within three (3) business days of such request a current certified copy of any policy of Required Insurance and any endorsement of such policy. The Town may, at its election, withhold payment for Services until the requested insurance policies are received and found to be in accordance with the Agreement.

## 6.0 CLAIMS, INDEMNIFICATION, HOLD HARMLESS AND DEFENSE

6.1 Notices of Claim. A Party shall notify the other Party immediately and in writing in the event that a Party learns of a third-party claim or an allegation of a third-party claim arising or resulting from the Parties' performance or failure to perform pursuant to this Agreement. The Parties shall reasonably cooperate in sharing information concerning potential claims.

6.2 Claims Challenging Town Law, Ordinance, Rule, or Policy/Procedure. In the event any claim is asserted by a third party against the Town and/or the Contractor alleging that any law, statute, ordinance, rule or approved Town policy or procedure is unlawful, unconstitutional or otherwise improper, then:

A. The Contractor shall not be entitled to and shall not defend such claim; and

B. The Town may, at its sole discretion, elect to defend, not defend, settle, confess, compromise, or otherwise direct the manner in which such claim is addressed; and

C. The Contractor shall reasonably cooperate with the Town in any Town defense of such claim although the Contractor shall bear any cost or expense incurred by the Contractor in such cooperation, including but not limited to the Contractor's cost and expense incurred in consultation with its own legal counsel; and

D. Only if authorized by law and without waiving the provisions of the Colorado Constitution or the Colorado Governmental Immunity Act, the Town shall indemnify and hold Contractor harmless for any damages, liability, expenses, or court awards, including costs and attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by any third-party, including but not limited to, any person, firm, partnership, or corporation, in connection with or arising out of such claim.

6.3 Indemnification for Certain Claims. For any claim not within the scope of Section 6.2 above, Contractor expressly agrees to indemnify and hold harmless the Town, and any of its council members, board members, commissioners, officials, officers, agents, Contractors, attorneys, or employees from any and all damages, liability, expenses, or court awards, including costs and attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by any third party, including but not limited to, any person, firm, partnership, or corporation, in connection with or arising out of any intentional, reckless, negligent or tortious conduct, error, omission, or act of commission by Contractor or any of its employees, agents, or others acting on Contractor's behalf in performance of the Services. Nothing in this Agreement shall be construed as constituting a covenant, promise, or agreement by the Contractor to indemnify or hold the Town, its elected officials, board members, commissioners, officials, officers, agents, contractors, attorneys, or employees harmless for any negligence solely attributable to the Town, its elected officials, boards, commissions, officials, officers, agents, Contractors, attorneys, or employees. The Contractor's obligation to indemnify pursuant to this

Section shall survive the completion of the Services and shall survive the termination of this Agreement.

6.4 Defense of Claims.

A. Claims Against Both the Town and Contractor. In the event any claim is asserted by a third-party against both the Town and Contractor arising out of any Party's performance of the Services which claim is not within the scope of Section 6.2 above, the Town shall be entitled to elect to defend such claim on behalf of both the Town and Contractor subject to the provisions governing indemnification set forth in this Section. In the event that the Town elects to defend such claim, the Town shall consult with Contractor in such defense but the Town is entitled to exercise its independent discretion in the manner of defense, including but not limited to the selection of litigation counsel and the discretion to settle, confess, compromise, or otherwise direct and dispose of any claim. In the event that the Town elects to defend such claim, Contractor may at its own cost and expense elect to assume the defense of Contractor, in which case Contractor shall bear its own attorneys' fees, costs, and expenses in such defense and such fees, costs, and expenses shall not be subject to indemnification pursuant to this Section.

B. Claims Against Only One Party. In the event of any claim asserted by a third-party against only one Party to this Agreement arising out of any Party's performance of the Services which claim is not within the scope of Section 6.2 above, the Party shall be entitled to elect to defend such claim on behalf of such Party subject to the provisions governing indemnification set forth in this Section. Where appropriate, the defending Party may also elect to join the other Party through third-party practice or otherwise in accordance with the Colorado Rules of Civil Procedure or other applicable rules, in which case the joined Party may defend such claim subject to indemnification pursuant to this Section. In the event that a Party elects to intervene voluntarily in any claim asserted against the other Party arising out of any Party's performance of the Services or any claim that any law, statute, ordinance, rule or approved Town policy or procedure is unlawful, unconstitutional or otherwise improper, the intervening Party shall bear its own attorneys' fees, costs, and expenses in such intervention and such fees, costs, and expenses shall not be subject to indemnification pursuant to this Section.

## 7.0 RECORDS AND OWNERSHIP OF DOCUMENTS

7.1 Retention and Open Records Act Compliance. All records of the Contractor related to the provision of Services hereunder, including public records as defined in the Colorado Open Records Act ("CORA"), and records produced or maintained in accordance with this Agreement, are to be retained and stored in accordance with the Town 's records retention and disposal policies. Those records which constitute "public records" under CORA are to be at the Town offices or accessible and opened for public inspection in accordance with CORA and Town policies. Public records requests for such records shall be processed in accordance with Town policies. Contractor agrees to allow access by the Town and the public to

all documents subject to disclosure under applicable law. Contractor's willful failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Agreement by the Town. For purposes of CORA, the Town Clerk is the custodian of all records produced or created as a result of this Agreement. Nothing contained herein shall limit the Contractor's right to defend against disclosure of records alleged to be public.

7.2 Town's Right of Inspection. The Town shall have the right to request that the Contractor provide to the Town a list of all records of the Contractor related to the provision of Services hereunder retained by the Contractor in accordance with this subsection and the storage location and method. Contractor agrees to allow inspection at reasonable times by the Town of all documents and records produced or maintained in accordance with this Agreement.

7.3 Ownership. Any work product, materials, and documents produced by the Contractor pursuant to this Agreement shall become property of the Town of Lyons upon delivery and shall not be made subject to any copyright unless authorized by the Town. Other materials, methodology and proprietary work used or provided by the Contractor to the Town not specifically created and delivered pursuant to the Services outlined in this Agreement may be protected by a copyright held by the Contractor and the Contractor reserves all rights granted to it by any copyright. The Town shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by Town staff and/or Town contractors; or (2) pursuant to a request under the Colorado Open Records Act, C.R.S. § 24-72-203, to the extent that such statute applies; or (3) pursuant to law, regulation, or court order. The Contractor waives any right to prevent its name from being used in connection with the Services.

7.4 Return of Records to Town. At the Town's request, upon expiration or termination of this Agreement, all records of the Contractor related to the provision of Services hereunder, including public records as defined in the Colorado Open Records Act ("CORA"), and records produced or maintained in accordance with this Agreement, are to be returned to the Town in a reasonable format and with an index as determined and requested by the Town.

## 8.0 FORCE MAJEURE

Neither the Contractor nor the Town shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by "force majeure." As used in this Agreement, "force majeure" means acts of God, acts of the public enemy, acts of terrorism, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

## 9.0 REMEDIES

In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, the Town may exercise the following remedial actions if the Contractor substantially fails to perform the duties and obligations of this Agreement. Substantial failure to perform the duties and obligations of this Agreement shall mean a significant, insufficient, incorrect, or improper performance, activities or inactions by the Contractor. The remedial actions include:

A. Suspend the Contractor's performance pending necessary corrective action as specified by the Town without the Contractor's entitlement to an adjustment in any charge, fee, rate, price, cost, or schedule; and/or

B. Withhold payment to the Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or

C. Deny payment for those services which have not been satisfactorily performed, and which, due to circumstances caused by the Contractor, cannot be performed, or if performed would be of no value to the Town; and/or

D. Terminate this Agreement in accordance with this Agreement; and/or

E. ☐ Other remedies as may be provided by attached addendum or addenda.

The foregoing remedies are cumulative and the Town, in its sole discretion, may exercise any or all of the remedies individually or simultaneously.

## 10.0 MISCELLANEOUS PROVISIONS

10.1 No Waiver of Rights. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party. The Town's approval or acceptance of, or payment for, services shall not be construed to operate as a waiver of any rights or benefits to be provided under this Agreement. No covenant or term of this Agreement shall be deemed to be waived by the Town except in writing signed by the Town Council or by a person expressly authorized to sign such waiver, and any written waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver unless specifically stated.

10.2 No Waiver of Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the Town, its officials, employees, contractors, or agents, or any other person acting on behalf of the Town and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10 of the Colorado Revised Statutes.

10.3 Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section 10.3 shall not authorize assignment.

10.4 No Third-party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third-party, including any agent, sub-consultant or sub-contractor of Contractor. Absolutely no third-party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

10.5 Article X, Section 20/TABOR. The Parties understand and acknowledge that the Town is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the Town are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the Town's current fiscal period ending upon the next succeeding December 31. Financial obligations of the Town payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of Town of Centennial, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.

10.6 Governing Law, Venue, and Enforcement. This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Boulder County, Colorado. To reduce the cost of dispute resolution and to expedite the resolution of disputes under this Agreement, the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement. The Parties agree that the rule that ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement. If there is any conflict between the language of this Agreement and any exhibit or attachment, the language of this Agreement shall govern.

10.7 Survival of Terms and Conditions. The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

10.8 Assignment and Release. All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by the Contractor without the express written consent of the Town. Any written

assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by the Town through the authorizing agent executing this Agreement. No assignment shall release the Contractor from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment.

10.9 Interpretation and Mutual Negotiation. It is the intent of the Parties that this Agreement shall in all instances be interpreted to reflect the Contractor's status as an independent contractor with the Town and that in no event shall this Agreement be interpreted as establishing an employment relationship between the Town and either Contractor or Contractor's employees, agents, or representatives. The Parties agree that this Agreement is the result of mutual negotiation between the Parties and that the Agreement shall not be construed against the Town on grounds relating to drafting, revision, review, or recommendation by any agent or representative of the Town. The Parties further agree that all warranties in this Agreement are made by the Contractor to induce the Town to accept the Contractor's offer to enter into this Agreement and have been incorporated into the Agreement at the Contractor's request.

10.10 Paragraph Captions. The captions of the paragraphs and sections are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

10.11 Agreement Controls. In the event a conflict exists between this Agreement and any term in any exhibit attached or incorporated into this Agreement, the terms in this Agreement shall supersede the terms in such exhibit.

10.12 Integration and Amendment. This Agreement represents the entire and integrated agreement between the Town and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this Agreement must be in writing and be signed by both the Town and the Contractor.

10.13 Severability. Invalidation of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

10.14 Incorporation of Exhibits. Unless otherwise stated in this Agreement, exhibits, applications, or documents referenced in this Agreement shall be incorporated into this Agreement for all purposes. In the event of a conflict between any incorporated exhibit and this Agreement, the provisions of this Agreement shall govern and control.

10.15 Notices. Unless otherwise specifically required by a provision of this Agreement, any notice required or permitted by this Agreement shall be in writing and shall be

deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States Mail properly addressed to the intended recipient.

| **If to the Town** : | **If to Contractor**: |
|---|---|
| Town Administrator<br>Lyons Town Hall<br>PO Box 49<br>432 5th Ave,<br>Lyons, CO 80540 | Tri-State Fireworks, Inc.<br>P.O. Box 31<br>Brighton, CO 80601 |
| With Copy to:<br>Town Attorney<br>Michow Cox & McAskin LLP<br>6530 S. Yosemite Street, Suite 200<br>Greenwood Village, Colorado 80111 | With Copy to: |

10.16 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

## 11.0 ATTACHMENTS

The following are attached to and incorporated into this Agreement for reference:

- ☐ Contractor's Certificate(s) of Insurance
- ☐ Contractor Proof of Professional Licensing
- ☐ Other

## 12.0 AUTHORITY

The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of Town of Lyons and the Contractor and bind their respective entities.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK-SIGNATURE PAGE FOLLOWS

**THIS AGREEMENT is executed and made effective as provided above.**

**TOWN OF LYONS, COLORADO**:

Approval by Town Board of Trustees
☐ Not Required
By: _____
Mayor or Mayor Pro Tem

Approval by Town Administrator
☒ Not Required
By: _____
Victoria Simonsen, Town Administrator

ATTEST:

_____
Debra K. Anthony Town Clerk

APPROVED AS TO FORM (*Excluding Exhibits*)
☐ Not Required
_____
For Town Attorney's Office

**Tri-State Fireworks, Inc.:**

By: _____

Printed name: _____

Its: _____

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STATE OF )
COUNTY OF ) ss.
The foregoing Professional Services Agreement was acknowledged before me this ____ day of _____, 2016, by _____ as _____ of _____, a _____.

Witness my hand and official seal.

My commission expires: _____.

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

# Exhibit “A”

Tri-State Fireworks, Inc. is pleased to provide you with the enclosed fireworks display proposal for Town of Lyons Christmas/Holiday Parade Fireworks: Your display will be fired with our state-of-the-art electrical firing systems to synchronize the display-launching from multiple angles that will fill the sky and engage your audience. Because Tri-State is a direct importer you are insured of the highest quality, latest designs and best product available and we know that our outstanding aerial shells with their exciting colors and effects and our professional crew can provide the spectacular fireworks display that you are looking for on this special celebration.

Tri-State Fireworks utilizes the highest quality foreign and domestic product and out of the attached list of display shells, a choreographed display will be scripted. We will open the display with a dramatic beginning, in the middle of the display, a “mini-finale” using willow type effects that have large bursts to engage the spectators and close with a spectacular aerial finale of Color and Salute.

Throughout the display, we choreograph effects to provide elegance and punctuation with varying colors and effects such as moving stars, falling leaves, willows, strobes, and pattern shells. We will highlight different segments of your program by adding intensity and fullness.

We believe that our show setup, show design and show execution will provided The Town of Lyons with the most exciting, and best quality of fireworks possible.

Thank you again for requesting a proposal from us for this wonderful event and please call or email us if you have any questions.

## Exhibit "A"

# REFERENCES

| | |
|---|---|
| **Town of Broomfield:**<br>Matt Gulley | Location: Broomfield, CO<br>Event: Independence Day Celebration<br>One DesCombes Drive<br>Broomfield, CO 80020<br>(303) 464-6912 |
| **Town of Milliken**<br>Caree Rinebarger | Location: Milliken, CO<br>Event: Beef & Bean Days<br>1101 Broad Street<br>Milliken, CO 80543<br>(970) 660-5045 |
| **Town of Estes Park**<br>Rob Hinkle | Location: Lake Estes<br>Event: Independence Day Celebration<br>1209 Manford Ave.<br>Estes Park, CO 80517<br>(970) 586-6104 |
| **Colorado National Golf Club:**<br>Matt Shalk | Location: Vista Ridge Golf Course<br>Event: Independence Day Celebration<br>2700 Vista Parkway<br>Erie, CO 80516<br>(303) 665-9590 |
| **City of Northglenn:**<br>Steven Stokes | Location: Webster Lake<br>Event: Independence Day Celebration<br>11701 Community Center Dr<br>Northglenn, CO 80233<br>(303) 450-8935 |

Other references available on request

# Exhibit "A"

## Permits

Tri-State Fireworks is a full service pyrotechnic company holding all of the required federal explosive and transportation permits as well as Colorado transportation, Wholesale, Display Retail and pyrotechnic/display operator licenses. We will communicate with the local fire authority and provide all required information to receive fire department authorization.

## General Liability & Auto

| | |
|---|---|
| Producer: | Ryder Rosacker McCue Huston<br>509 W. Koenig St<br>Grand Island, NE 68802<br>Pyrotechnics Group 308-382-2330 |
| General Liability | 1,000,000/2,000,000 liability/Aggregate |
| Excess Liability | 4,000,000 |
| Business Auto: | 1,000,000 |
| Excess Liability | 4,000,000<br>***Meets DOT and Colorado PUC requirements for hazmat*** |

## Workers Compensation

| | |
|---|---|
| Producer: | Pinnacol Assurance<br>7501 E Lowry Blvd<br>Denver, CO 80230-7006<br>Darcy Fuglestad 303-361-4222 |
| Coverage: | 500,000 Bodily injury by accident each event |

# Exhibit "A"

**TO**: Town of Lyons Parks & Recreation
**ATTN:** Dave Cosgrove
**EVENT:** 2016 Christmas/Holiday Fireworks
**DATE:** December 3, 2016

---

## ITEMIZED PRODUCT LISTING

**THREE-INCH SHELLS (150)**

**Selected from:**

Titanium Salute w/tail
Assorted Color Peony
Assorted Oriental Flower
Glittering Silver to Yellow Chrysanthemum
Red Glitter
Purple Tiger Tail w/Titanium
Blue Ring
Brocade to Dark Pink w/Gold Tail
Half Red & Half Blue Chrysanthemum
Brocade Silver to Green Strobe
Sparkling Golden & Silver Light
Blue Ring w/Palm Pistil
Gold Glittering to Red
Green Strobe
Blue Brocade w/ Crackling
Red Ring
Tiger Tails
Red Gamboge to Blue Chrysanthemum
Glittering Silver to Green Chrysanthemum
Green & Red Glitter

Dragon Eggs
Red & Green Peony

Glittering Silver to Purple Chrysanthemum
Golden Wave to Red Chrysanthemum
Green to Crackling
Golden Wave to Blue Chrysanthemum
Golden Wave to Green Chrysanthemum
Glittering Silver to Variegated Chrysanthemum
Green & Silver Glitter
Purple Peony
Red Ring
Gold Tiger Tail w/Dragon Eggs
Silver Sunny Silver Silk Fish
Blue to Crackling
Green Glitter
Red Gamboge to Red Chrysanthemum
Glittering Silver to Blue Chrysanthemum
Golden Wave to Purple Chrysanthemum
Green & Purple Peony
Willow w/Green Leaves Rising w/Rising Green w/Purple Heart
Half Purple & Half White Peony

**AND MORE...**

**FOUR-INCH SHELLS (80)**

**Selected from:**

Yellow Moving Star
Purple Moving Star
Red & Blue
Green & Purple
Multi Color
Dragon Eggs
Red w/Crackling
Green w/Crackling
Silver w/Crackling
Titanium Salute
Charcoal Willow
Green to Purple
Blue to Red
Yellow to Purple
Golden to Blue
Silver to Blue
Green to Crackling
Blue to Crackling
Purple to Crackling
Red to Crackling
Multi Color to Crackling
Green Strobe to Green
Red, White & Blue
Red & Yellow
White Strobe
Red to Purple Crackling
Red Flashing
Glittering Silver
Variegated Glittering
Blue Peony w/Red Comet
Brocade Crown Silver Flashing Ring
Green to Purple Ring w/Crackling Pistil
Golden to Crackling Ring w/Pistil
Two Crackling Silver Sparkling Rain
Silver Chrysanthemum w/Clustering Strobe
Silver Sparking Rain
Strobe Falling Leaves
Green Falling Leaves
Red Falling Leaves
Purple Falling Leaves
Green Silver Sparkling Rain Cr Pistil
Multicolor Silver Spark Rain
Color Peony w/Crackling Rain Pistil
Five Time Flower
Red & Green Bees
Asst Scattering P Y G
Mix Y & P Chrysanthemum w/Whistles
Red & Silver Peony w/Reports
Time Rain to Blue Coco
Octopus
Twice Presented Flowers
Strobe Palm Tree
Crossette Strobe
White Shining Ray
Multi Color Crisscross
Stained Glass
Haga Color Peony w/Crack
Haga Multi-color Silver Sparkling Rain
Haga Green strobe Falling Leaves
Silver Chrysanthemum Cluster Star Pistil
Sparkling Rain w/Red Pistil
Green Iron Tree
Three Ring Chrysanthemums
Double Annulus Chrysanthemum

**AND MORE...**

# *** Multiple Shot Boxes (800 shots) ***

2 - 25 Shot Vertical Red Strobe Willows

1 - 150 Multi Color Blooming Crackle

1 - 300 Shot Red Sun Double Z

1 - 300 5 Angle Blue Stars & Brocade Comets

# *** Grand Aerial Finale ( 145) ***

**3-INCH SHELLS (100)**

80 – Assorted or Brocade Crown Shells
20 – Titanium Salutes

**4-INCH SHELLS (45)**

45 – Assorted or Brocade Crown Shells

*Tri-State reserves the right to substitute product of equal or greater value*

## MISCELLEANEOUS

- Choreographed Program
- General & Auto Liability Insurance
- Workers Compensation Insurance
- Electronically Fired
- Equipment & Personal

**Contract Price: $6,500.00**

**Meeting Date:** November 7, 2016

**Subject: A RESOLUTION (2016-94) AWARDING THE CONTRACT OF THE TOWN OF LYONS LAND USE & MANAGEMENT PLAN FOR NEWLY ACQUIRED PROPERTIES**

**Presenter:** Matt Manley, Flood Recovery Planner

**Background Information:**

The Town of Lyons has successfully completed a process for soliciting proposals in an effort to identify a preferred consultant team to create a Land Use & Management Plan for Newly Acquired Properties. The funds for this project were awarded to the Town of Lyons through a Community Development Block Grant – Disaster Recovery (CDBG-DR) grant which is being administered by the Colorado Department of Local Affairs (DOLA).

This process is intended to evaluate and plan for the future use of the vacant parcels in a way that reflects the desires of the residents of the Confluence Neighborhood, balances the needs and operational constraints of the Town of Lyons, and gives consideration to the vision of all residents of Lyons, while abiding by the deed restrictions imposed on the sites.

This planning effort is critical for the Town to properly plan for the flood recovery and future management of these parcels in accordance with the open space restrictions. The Lyons community must effectively weave these properties into their existing parks, trails, and open space system and work with neighborhoods and adjacent property owners on possibly finding unique opportunities to collaborate on potential uses while taking into consideration ongoing operations and maintenance efficiencies, revenue generating potential, and identifying ways to ensure that these properties fit with the overall character of the community. The desired outcome of this project is six fold:

1. To plan for new, alternative passive and active recreational uses of those properties that have been/will be acquired by the Town of Lyons.
2. Plan for the expansion and connectivity of properties to parks, schools, central business district, public facilities, neighborhoods, and existing and proposed trail systems, including regional trail facilities.
3. Provide for safe access to the St. Vrain River corridor - the center piece of the Town's parks and trail system.
4. Ensure that any new or reconstructed facilities will have the resiliency to withstand future flood events and provide for the further protection of the Town of Lyons - flood conveyance, mitigation and resiliency.
5. To create sustainable municipal revenue stream(s) to assist in the operations and maintenance costs and other Town services through increased visitation of Lyons parks, cultural, and special events.
6. Increase both passive and active recreational opportunities for Town residents and visitors, including physically or access-challenged persons.

The planning process is intended to include a series of public meetings soliciting public input and allowing stakeholders the opportunity to provide feedback regarding the planning effort throughout the process. Specific property owners, neighborhoods, stakeholders, and others may be contacted to ensure proper communication and feedback occurs.

Once the community engagement process has been completed and favorable conceptual uses have been identified, the consultant will be tasked with creating illustrative designs (perspectives, plan views and cross-sections) of the various lots which will become part of the Town of Lyons Parks and Open Space Network. Once the preferred alternatives are determined and vetted against the deed-restrictions and flood-mitigation standards, a Management Plan will be developed along with a fiscal impact analysis.

Lastly, the consultant team will be tasked with helping to identify funding sources that can be targeted toward the adaptation of vacant lots. Lyons is pursuing all funding sources available to implement recovery efforts; however there are no discretionary funds available to the Town for the implementation phase of this plan.

A final draft of the **Lyons Flood Recovery Land Use and Management Plan for Acquired Properties** shall include:

- **Conceptual Use Plan** including site specifications, design elements, user information, etc.
- **Conceptual Designs** including a variety of illustrations for alternative and preferred uses
- **Management Plan** including Fiscal-Impact Analysis

An RFP for this project was written by Town Staff and vetted by members of the Town's Finance Dept. Parks & Rec. Dept, and Town Administration in addition to DOLA staff members and residents of the Confluence community. The RFP was posted on August 16, 2016 via the Rocky Mountain E-bids System (Cover Letter Attachment A). Additionally, small, women- and minority-owned businesses were solicited by the Town on a firm-by-firm basis by utilizing the Colorado Diverse Business Directory (Cover Letter Attachment B).
On Thursday September 15, 2016, the Town received five (5) proposals for the project, one from each of the following firms:

- Consilium Design
- Design Concepts
- DHM Design
- Kimley-Horn
- Studio CPG

A selection team comprised of 3 staff members, 2 confluence neighborhood residents, 1 ecology board member, 1 parks and recreation board member and 1 member of the Lyons Volunteers was comprised to review the submissions, select finalists, interview finalists and recommend a preferred consultant team to the Board of Trustees. Members of the selection committee included:

Matt Manley – Flood Recovery Planner
Dave Cosgrove – Director of Parks & Recreation
Toby Russell – Sustainability Coordinator
Greg Lowell – Ecology Board
Rick Disalvo – Lyons Vols/Confluence resident
Pam Barnes – Parks & Rec Board/Confluence

Each selection team member received one copy of the five proposals on Friday, September 16, 2016. The selection team members had one week to review and score the proposals before meeting as a group on Friday, September 23, 2016. During this meeting, 5 team members (Dave Cosgrove could not meet) discussed their perspectives of the various proposals. Each team member submitted their weighted scores for each firm's submission. The scores were averaged and the team members were comfortable inviting the firms with the top 3 highest average scores to participate in an interview. The 3 finalist were: Consilium Design (83.9) | Design Concepts (80.9) | DHM Design (82.9)

Interviews were held on the afternoon of Wednesday, September 28, 2016 (DHM Design and Consilium Design) and the morning of Thursday, September 29, 2016 (Design Concepts). The selection team could not be joined by Greg Lowell, but Sally Truitt from the Town Finance Dept participated along with the other 5 selection team members. Each team was given one hour to present and answer questions. After the final interview took place, the selection team convened to discuss the results. The group unanimously selected the Design Concepts team to be the recommendation for the Land Use & Management Plan for Newly Acquired Properties. Design Concepts references were then called. All references gave very favorable feedback.

Each firm that participated in the interview process received a phone call and a debriefing interview from Matt Manley. Kimley-Horn also requested and received a debriefing phone call though they were not selected as finalist.

Design Concepts' financial solvency was also check by staff as part of this process. Form A305 was requested and received from the firm. This form provided some background information and financial references. Additionally the firm provided the Town with an Income Statement and a Balance Sheet. The firm appears to be a financially viable chose for this project.

Design Concepts has proposed a budget of $147,600 for this project (the lowest of the 5 bidders). The overall budget for the grant is $165,000. This will allow some room for additional expenses related to the planning of these properties.

**<u>Staff Recommendation:</u> Award of contract to Design Concepts for the Town of Lyons Land Use & Management Plan for Newly Acquired Properties**

Attachments:

A – Rocky Mountain E-bid Summary

B – Affirmative Steps Taken

# Bid Library - Solicitation Notice

The information below is a summary of solicitation number **RFP-MM-PNAP** posted by Town of Lyons. To view all attachments related to this document use the links under the "Attachments" section.

CLOSED

## Land Use & Management Plan for Newly Acquired Properties

**Date Issued:**08/16/2016

**Deadline:**09/15/2016 prior to 4:00 PM M.D.T.
**Requisition Number:**
**Delivery Point:**Lyons, CO
**Delivery Date:**November 30, 2017
**Type of Purchase:**One Time
**Construction Related:**No
**Type of Response Allowed:**Online or Hardcopy
**Issuing Agency:**Town of Lyons
**Using Department:**Planning
**Special Notices:**All or None Award
Disadvantaged Business Enterprise (DBE)
FOB Destination
Local Service Required
Minority Business Participation
No Brand Name Specified
Small Business Participation
Women-Owned Business Participation
Onsite Visit Recommended on 08/24/2016 03:00 PM at Town of Lyons Town Hall Board Room

## ACCEPTING VENDOR QUESTIONS:

**Due Date:**8/26/2016 5:00:00 PM M.D.T.

**Primary Contact Name:**Mr. Matt Manley
**Title:**Flood Recovery Planner
**Email:**mmanley@townoflyons.com
**Secondary Contact Name:**Mr.DaveCosgrove
**Title:**Director of Department of Parks & Recreation
**Email:**davec@townoflyons.com

## SUMMARY OF SPECIFICATIONS:

The Town of Lyons is inviting proposals from highly qualified teams with experience in: parks, recreation, trails and open space planning; community engagement; fiscal-impact analysis; community development; urban design; and site planning to provide professional services in an effort to make recommendations for future use of the 28 residential properties along the St. Vrain River within the Town of Lyons city limits that have been/will be acquired by the Town as the result of being substantially damaged or destroyed by the 2013 flood. The Town has received funding from FEMA's HMGP and HUD's CDBG-DR programs to acquire the properties, which upon closing will carry perpetual open space use restrictions. This solicitation has been developed specifically for a Request for Proposals intended to solicit competitive responses from planning consultants. All teams are urged to thoroughly review this solicitation prior to submitting.

**FEMA CFR 13.36**

**Affirmative Steps Taken**

**Project Name and Number:** Land Use & Management Plan for Newly Acquired Properties

**Contractors:** Vecchi & Associates
Urban Play Studio
Studio CPG

1. Place 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.

Yes, through the Diverse Business Directory (see attached). I was able to evaluate their scope of work, location and certification types and quickly identify firms I was interested in approaching about this opportunity. I then looked at their websites to confirm their skill sets before contacting them with the attached email. I then added these contacts to those who had previously shown interest in the RFP (see attached) so that we could continue to update them through the selection process. – 8/30/16

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.

See Q1 (See Attached) - 8/30/16

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.

We feel as though the tasks associated with this project are feasible for any size business 8-30/16

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.

The Town of Lyons has over 15 months to complete this project. We feel as though that is sufficient time for any size business to submit the deliverables associated with this project – 8/30/16

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.

These sites were utilized in addition to the Diverse Business Directory - 8/26/16 and 8/30/16

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: 8/30/16

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

DENVER PUBLIC SCHOOLS

Discover a World of Opportunity™

# Diverse Business Directory

## OCTOBER, 2014

rrently reviewing the certification and status of vendors/contractors listed in this directory.

This directory is a guide only; vendors/contractors should not be construed as the only diverse businesses to be utilized.

The directory will be updated on a quarterly basis, please call Sharon Gonzales, Manager, Business Diversity Outreach Program at (720) 423-4227 or Ruben Chavez, Business Diversity Outreach Program Coordinator, 720-423-4190

Please check the websites for bidding opportunities:

Construction: http://fm.dpsk12.org Goods & Services: http://purchasing.dpsk12.org

BDOP Information: http://businessdiversity.dpsk12.org

## Directory Legend

### Certification Types

- Disadvantaged Business Enterprise
- Small Business Enterprise
- Woman Business Enterprise
- Certification through Small Business Administration
- Emerging Small Business
- Veteran Owned Business
- Minority Business Enterpirse
- Asian Male
- Asian Female
- Black Male
- Black Female
- Hispanic Male
- Hispanic Female
- Native American Male
- Native American Female
- Minority/Woman Business Enterpirse

### Certification Agencies

| | |
|---|---|
| CDOT | Colorado Department of Transportation |
| CITY | Division of Small Business Opportunity (Denver) |
| RTD | Regional Transportation District |
| WCOE | Women Construction Owners & Executives |
| MPMSDC | Mountain Plains Minority Supplier Development Council |
| SBA | Small Business Administration |
| OTHER | National Certification Organizations |
| WBENC | Women Business Enterprise National Council |

| CSI CODE * | NAICS CODE * | Scope | COMPANY NAME | CERT TYPE | CERT AGENCY | ADDRESS | CITY | STATE | ZIP CODE | PHONE # | FAX # | EMAIL ADDRESS |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| N/A | 541320 | LANDSCAPE ARCHITECT | K DAKIN DESIGN, INC | DBE/MWBE /SBE | UCP/CITY/ RTD | 1240 LAFARGE AVE | LOUISVILLE | CO | 80027 | 303-604-2988 | | KARLA@KDAKINDESIGN.COM |
| N/A | 541320 | LANDSCAPE ARCHITECT | K M BAILEY CONSULTING | DBE/MWBE /SBE | UCP/CITY | 2650 PERRY ST | DENVER | CO | 80212 | 303-895-1883 | 303-993-5226 | KMBAILEY1015@GMAIL.COM |
| N/A | 541320 | LANDSCAPE ARCHITECT | LATITUDE 39 ENG. DEVELOPMENT | DBE/MWBE /SBE | UCP/CITY | 2150 WEST 29TH AVE # 335 | DENVER | CO | 80211 | 720-214-2115 | | CJOHNSON@LATITUDE39.NET |
| N/A | 541320 | LANDSCAPE ARCHITECT | MATTHEWS LANDSCAPE | DBE/MWBE /SBE | UCP/CITY | 17994 E. PROGRESS PL | CENTENNIAL | CO | 80015 | 303-693-1904 | 303-680-4588 | MATTHLANDDESIGN@AOL.COM |
| N/A | 541320 | LANDSCAPE ARCHITECT | MUNDUS BISHOP DESIGN | DBE/MWBE /SBE | UCP/CITY | 333 W COLFAX AVE #350 | DENVER | CO | 80204 | 303-477-5244 | 303-477-5148 | TINA@MUNDUSBISHOP.COM |
| N/A | 541320 | LANDSCAPE ARCHITECT | OUTSIDE L A | DBE/MWBE /SBE | UCP/CITY | 2623 BURGESS CREED RD | STEAMBOAT SPRINGS | CO | 80487 | 970-871-9629 | 970-879-6133 | OSLA@ME.COM |
| * N/A | 541320 | LANDSCAPE ARCHITECT | PARKS & GARDENS Studio CPG | DBE/MWBE /SBE | UCP/CITY/ RTD | 4309 W 44TH AVE | DENVER | CO | 80212 | 303-455-3779 | 303-455-1706 | HEATHER@PARKSANDGARDENS.COM * |
| N/A | 541320 | LANDSCAPE ARCHITECT | POITRA VISUAL COMMUNICATIONS | DBE | UCP | 206 S LOOKOUT MOUNTAIN RD | GOLDEN | CO | 80401 | 303-526-4433 | 303-526-4433 | POITRA@POITRA.COM |
| N/A | 541320 | LANDSCAPE ARCHITECT | RIPLEY DESIGN | DBE/MWBE /SBE | UCP/CITY | 401 W MOUNTAIN AVE STE 100 | FORT COLLINS | CO | 80521 | 970-224-5828 | 970-224-1662 | LINDA.RIPLEY@RIPLEYDESIGNINC.COM |
| N/A | 541320 | LANDSCAPE ARCHITECT | RMA GROUP, INC | SBE | CITY | 1226 S KALAMATH ST | DENVER | CO | 80223 | 303-377-6511 | 303-377-3315 | RACHEL@RMAGROUP.COM |
| N/A | 541320 | LANDSCAPE ARCHITECT | SITEWORKS SERVICES, INC. | SBE | RTD | 1700 BASSETT ST #615 | DENVER | CO | 80202 | 720-260-8331 | | CATALANOSITEWORKS@COMCAST.NET |
| N/A | 541320 | LANDSCAPE ARCHITECT | STAN CLAUSON ASSOCIATES | SBE | CITY | 412 NORTH MILL ST | ASPEN | CO | 81611 | 970-925-2323 | 970-920-1628 | LARISA@SCAPLANNING.COM |
| N/A | 541320 | LANDSCAPE ARCHITECT | STUDIOINSITE LLC | SBE | CITY | 3457 RINGSBY CT UNIT #223 | DENVER | CO | 80216 | 303-433-7100 | 303-433-4301 | DRUBBA@STUDIO-INSITE.COM |
| N/A | 541320 | LANDSCAPE ARCHITECT | STUDIO TERRA INC | DBE/MWBE /SBE | UCP/CITY | 756 CLUB CIR | LOUISVILLE | CO | 80027 | 303-494-9138 | 303-664-1575 | CAROL@STUDIOTERRA.NET |
| N/A | 541320 | LANDSCAPE ARCHITECT | TERRACINA DESIGN LLC | DBE/MWBE /SBE/EBE | UCP/CITY | 10200 E GIRARD AVE STE 314 | DENVER | CO | 80231 | 720-263-4866 | | LROSALES@TERRACINADESIGN.COM |
| N/A | 541320 | LANDSCAPE ARCHITECT | THREE SIXTY DESIGN | DBE/MWBE /SBE | UCP/CITY | 1553 PLATTE ST STE 303 | DENVER | CO | 80202 | 303-534-0325 | 303-534-0325 | COURTNEY@SITEDRIVENDESIGN.COM |
| N/A | 541320 | LANDSCAPE ARCHITECT | URBAN TRANS CONSULTANTS, INC. | DBE/SBE | UCP/RTD | 730 17TH ST STE 400 | DENVER | CO | 80202 | 720-570-3343 | 720-570-3363 | HINDMANJ@URBANTRANS.COM |
| * N/A | 541320 | LANDSCAPE ARCHITECT | URBAN PLAY STUDIO LLC | DBE/MWBE /SBE | UCP/CITY | 310 29TH ST | BOULDER | CO | 80305 | 720-212-8392 | 303-494-9124 | KERRY@URBANPLAYSTUDIO.COM * |
| * N/A | 541320 | LANDSCAPE ARCHITECT | VECCHI & ASSOCIATES LLC | DBE/MWBE /SBE | UCP/CITY | PO BOX 1175 | LONGMONT | CO | 80502 | 303-774-0174 | 303-774-0174 | VECCHIASSOCIATES@COMCAST.NET * |
| 02900 | 561730 | LANDSCAPING SERVICES | AMERICAN TREE | SBE | RTD | 17355 W. 57TH AVENUE | GOLDEN | CO | 80403 | 456-6898 | 303-456-8338 | TROY@AMERICANTREECOLORADO.COM |
| 02900 | 561730 | LANDSCAPING SERVICES | ASCEND LANDSCAPING & IRRIGATION | DBE/MWBE /SBE/EBE | UCP/CITY/ RTD | 19150 E 115TH AVE | COMMERCE CITY | CO | 80022 | 720-685-3000 | 720-685-3047 | JEVARDHITCH@ASCENDLANDSCAPING.NET |
| 02900 | 561730 | LANDSCAPING SERVICES | BMB LANDSCAPING, INC | DBE/MWBE /SBE | UCP/CITY | 19628 E LINVALE DR | AURORA | CO | 80013 | 303-371-9120 | 720-870-4531 | BACKYARDMAKERBEYOND@COMCAST.NET |
| 02900 | 561730 | LANDSCAPING SERVICES | CREATIVE HARDSCAPE CO. | DBE/MWBE /SBE | UCP/CITY/ RTD | 2435 S CODY CT | LAKEWOOD | CO | 80227 | 303-914-8525 | 303-988-8239 | FRAND@CREATIVEHARDSCAPE.COM |
| 02900 | 561730 | LANDSCAPING SERVICES | CTM | DBE/MWBE /SBE | UCP/CITY | 2240 S KALAMATH ST | DENVER | CO | 80223 | 303-975-9399 | 303-975-1323 | SHANNON@COLORADOTOTAL.COM |
| 02900 | 561730 | LANDSCAPING SERVICES | DAN STORJOHANN TRUCKING | SBE | CITY | 4695 W 116TH CT | WESTMINSTER | CO | 80031 | 303-324-2263 | 303-350-1403 | DANSMROCK@AOL.COM |
| 02900 | 561730 | LANDSCAPING SERVICES | DAVEY CONCEPTS, INC. | SBE | RTD | PO BOX 1240 | EASTLAKE | CO | 80614 | 303-922-9207 | 303-922-2228 | PHIL.DAVEY@COMCAST.NET |
| 02900 | 561730 | LANDSCAPING SERVICES | DOWN TO EARTH LANDSCAPES | SBE | CITY | 10730 E BETHANY DR #185 | AURORA | CO | 80014 | 303-745-4070 | 303-745-5600 | DOWNTOEARTHLANDSCAPES@G.COM |
| 02900 | 561730 | LANDSCAPING SERVICES | ENVIRONMENTAL LOGISTICS, INC. | DBE/MWBE /SBE | UCP/CITY/ RTD | 1101 EAST 64TH AVE | DENVER | CO | 80433 | 303-275-0661 | 303-716-7940 | JENNIFER@ENVLOGISTICS.COM |
| 02900 | 561730 | LANDSCAPING SERVICES | EROSION DONE RIGHT | SBE | RTD | PO BOX 735 | KITTREDGE | CO | 80457 | 720-839-8698 | 303-670-0340 | OFFICE@EROSIONDR.COM |
| 02900 | 561730 | LANDSCAPING SERVICES | FRONT RANGE SERVICES INC. | SBE | RTD | 6660 E 54TH PLACE | COMMERCE CITY | CO | 80022 | 303-591-7197 | 303-399-4313 | FRONTRANGESERVICES@COMCAST.NET |

Sign In for Acquired Properties Pre-Proposal Meeting

| | | | |
|---|---|---|---|
| 1) | Eric Bartels | Consilium Design | ebartels@consiliumdesign.com |
| 2) | Mark Wilcox | DHM | mwilcox@dhmdesign.com |
| 3) | Axel Bishop | Design Concepts | axel@dcla.net |
| 4) | Chris Hice | Kimley-Horn | chris.hice@kimley-horn.com |
| 5) | Nathan Werner | S20 Design | Nathan@S20design.com |

Small and Minority Businesses & Womens' Business Enterprises

| | | | |
|---|---|---|---|
| 1) | Heather Noyes | Studio CPG | heather@studiocpg.com |
| 2) | Kerry White | Urban Play Studios | kerry@urbanplaystudio.com |
| 3) | Jennifer Vecchi | Vecchi & Associates | VecchiAssociates@comcast.net |

## Matt Manley

**From:** Matt Manley
**Sent:** Tuesday, August 30, 2016 3:02 PM
**To:** 'VecchiAssociates@comcast.net'
**Cc:** Sally Truitt
**Subject:** Lyons Land Use & Management Plan for Newly Acquired Lots
**Attachments:** Acquired Lots Pre-Proposal.pptx; Land Use & Management Plan for Newly Acquired Lots.pdf; Pre-proposal SignIn.pdf

Hi Jennifer,
I received your information from the Diverse Business Directory and I wanted to contact you to see if your firm may be interested in submitting a proposal for a unique opportunity in the Town of Lyons. I believe that this RFP would be a nice fit for your firm based on the information that I found on your website. Though the pre-proposal meeting has passed, attendance was not required in order to submit a proposal. Please review the attached RFP and Pre-proposal meeting presentation for more information. I have also attached a list of those firms who attended the pre-proposal meeting. Please let me know if you have any additional questions.

Warm Regards,

Matt

LYONS
MATTHEW MANLEY, AICP
FLOOD RECOVERY PLANNER
mmanley@townoflyons.com • 303 823 6622 x42

## Matt Manley

**From:** Matt Manley
**Sent:** Tuesday, August 30, 2016 3:00 PM
**To:** 'heather@studiocpg.com'
**Cc:** Sally Truitt
**Subject:** Lyons Land Use & Management Plan for Newly Acquired Lots
**Attachments:** Acquired Lots Pre-Proposal.pptx; Land Use & Management Plan for Newly Acquired Lots.pdf; Pre-proposal SignIn.pdf

Hi Heather,
I received your information from the Diverse Business Directory and I wanted to contact you to see if your firm may be interested in submitting a proposal for a unique opportunity in Lyons. I believe that this RFP would be a nice fit for your firm based on the information that I found on your website. Though the pre-proposal meeting has passed, attendance was not required in order to submit a proposal. Please review the attached RFP and Pre-proposal meeting presentation for more information. I have also attached a list of those firms who attended the pre-proposal meeting.
Please let me know if you have any additional questions.

Warm Regards,

Matt

LYONS
MATTHEW MANLEY, AICP
FLOOD RECOVERY PLANNER

## Matt Manley

**From:** Matt Manley
**Sent:** Tuesday, August 30, 2016 3:01 PM
**To:** 'kerry@urbanplaystudio.com'
**Cc:** Sally Truitt
**Subject:** Lyons Land Use & Management Plan for Newly Acquired Lots
**Attachments:** Acquired Lots Pre-Proposal.pptx; Land Use & Management Plan for Newly Acquired Lots.pdf; Pre-proposal SignIn.pdf

Hi Kerry,
I received your information from the Diverse Business Directory and I wanted to contact you to see if your firm may be interested in submitting a proposal for a unique opportunity in the Town of Lyons. I believe that this RFP would be a nice fit for your firm based on the information that I found on your website. Though the pre-proposal meeting has passed, attendance was not required in order to submit a proposal. Please review the attached RFP and Pre-proposal meeting presentation for more information. I have also attached a list of those firms who attended the pre-proposal meeting. Please let me know if you have any additional questions.

Warm Regards,

Matt

LYONS
MATTHEW MANLEY, AICP
FLOOD RECOVERY PLANNER

**TOWN OF LYONS, COLORADO**
**RESOLUTION 2016-94**

**A RESOLUTION AWARDING THE CONTRACT AND APPROVING AN AGREEMENT WITH BISHOP AND LAYTON DESIGN, INC. TO PREPARE A LAND USE AND MANAGEMENT PLAN FOR PROPERTIES ACQUIRED BY THE TOWN PURSUANT TO THE FEDERAL BUY-OUT PROGRAM**

**WHEREAS**, many properties in the Town of Lyons ("Town") suffered substantial damage in the September 2013 flood; and

**WHEREAS**, twenty-six (26) properties in the Town of Lyons and one (1) property in Boulder County, but adjacent to the Town of Lyons boundaries, have participated, or are anticipated to participate, in the federal buy-out program; and

**WHEREAS**, these twenty-seven (27) properties are now owned, or are anticipated to be owned, by the Town of Lyons as a result of participation in the federal buy-out program; and

**WHEREAS**, the Town of Lyons received a Community Development Block Grant – Disaster Relief planning grant through the Colorado Department of Local Affairs to create a Land Use and Management Plan for these newly acquired properties; and

**WHEREAS**, in accordance with the Town's purchasing policies, the Town solicited proposals on August 16, 2016 for the Town of Lyons Land Use and Management Plan for Newly Acquired Properties; and

**WHEREAS**, the full request for proposal was posted via the Rocky Mountain E-Bids system, and the companies receiving the request for proposal included landscape architects/design firms, planning firms, recreation management firms, and flood mitigation engineers; and

**WHEREAS,** the Town received five (5) proposals on or before on the deadline of September 15, 2016 from qualified firms or entities, and those proposals were reviewed by Town staff; and

**WHEREAS**, after reviewing all proposals, Town staff has determined that the proposal submitted by Bishop and Layton Design, Inc., dba Design Concepts CLA Inc. ("Proposal") qualifies that company as the lowest responsible bidder; and

**WHEREAS**, the Proposal has been incorporated into a proposed disaster recovery services agreement between the Town and Bishop and Layton Design, Inc., a copy of which is attached to this Resolution ("Agreement"); and

**WHEREAS**, the Agreement establishes a not-to-exceed fee of One Hundred Forty-Seven Thousand Six Hundred Dollars and No Cents ($147,600.00); and

**WHEREAS**, the Town of Lyons Board of Trustees desires to award the bid to and approve the Disaster Recovery Services Agreement with Bishop and Layton Design, Inc., and authorize the Mayor to execute such Agreement on behalf of the Town.

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

Section 1. The Town Board of Trustees hereby (a) awards the bid for 2016 Town of Lyons Land Use and Management Plan for Newly Acquired Properties to Bishop and Layton Design, Inc., dba Design Concepts CLA Inc.; (b) approves the Professional Services Agreement with Bishop and Layton Design, Inc. in substantially the form attached hereto; (c) authorizes the Town Administrator and the Town Attorney, in consultation with the Mayor, to make such changes as

may be necessary to correct any non-material errors or language in the Agreement that does not increase the obligations of the Town; and (d) authorizes the Mayor to execute the Agreement and the Town Clerk to attest the Agreement when in final form.

Section 2. This Resolution shall take effect immediately upon adoption.

**ADOPTED this 7th Day of November 2016.**

TOWN OF LYONS

By:_____
Connie Sullivan, Mayor

ATTEST:

_____
Debra K. Anthony, Town Clerk

**Town of Lyons**
**DISASTER RECOVERY SERVICES AGREEMENT**

This DISASTER RECOVERY SERVICES AGREEMENT ("Agreement") is made and entered into this 7th day of November 2016 by and between the TOWN OF LYONS, COLORADO, a municipal corporation of the State of Colorado, with offices at 432 5th Avenue, Lyons, Colorado 80540 (the "**Town**"), and Bishop and Layton Design, Inc., a Colorado corporation, doing business as Design Concepts CLA Inc., with business offices at 211 North Public Road, Suite 200, Lafayette, CO 80026 (the "**Contractor**").

**WITNESSETH**

WHEREAS, the Town requires certain professional services as more fully described in **Exhibit A**;

WHEREAS, the Town issued a Request for Proposals for the services which are the subject of this Agreement; and

WHEREAS, the time for submittal of proposals has passed, and the Town has evaluated the proposals submitted against previously established criteria; and

WHEREAS, the Town has identified the Contractor as the most qualified responsible bidder; and

WHEREAS, the Contractor represents that it possesses the necessary qualifications to perform these services; and

WHEREAS, the Town desires to contract with the Contractor subject to the terms of this Agreement.

NOW, THEREFORE, for the consideration herein expressed, it is agreed as follows by and between the Town and the Contractor that the Contractor shall perform the following:

**1.0 SERVICES AND PURPOSE OF AGREEMENT**

1.1 Services. The Town desires to achieve, secure, receive, or obtain certain service(s) or work product(s) as more specifically described in **Exhibit A** (the "Services"). **Exhibit A** describes the requirements and deliverables required by this Agreement and is incorporated herein by reference. As an independent contractor, the Contractor offers and agrees to perform and/or deliver the Services in accordance with the terms and conditions of this Agreement. The Parties recognize and acknowledge that, although the Town has requested certain general services to be performed or certain work product to be produced, the Contractor has offered to the Town the process, procedures, terms, and conditions under which the Contractor plans and proposes to achieve or produce the services and/or work product(s) and the Town, through this Agreement, has accepted such process, procedures, terms, and conditions as binding on the Parties.

1.2 Town Representative. The Town assigns Matt Manley as the Town Representative for this Agreement. The Town Representative will monitor the Contractor's progress and performance under this Agreement and shall be available to the Contractor to respond to questions, assist in understanding Town policies, procedures, and

practices, and supervise the performance of any Town obligations under this Agreement.

1.3 Changes to Services. Any changes to the Services that are mutually agreed upon between the Town and the Contractor shall be made in a formal writing referencing this Agreement and approved and executed with the same formality with which this Agreement is approved and executed, and only upon execution by both Parties of such formal writing, shall become an amendment to the Services described in this Agreement. To be effective, any written change must be signed by the Contractor and by the Town or by a person expressly authorized in writing to sign on behalf of the Town. Changes to the Services or to this Agreement shall not be made through oral agreement or electronic mail messages.

1.4 Meeting Attendance. The Contractor shall attend such meetings of the Town relative to the Scope of Work set forth in **Exhibit A** as may be requested by the Town. Any requirement made by the named representative of the Town shall be given with reasonable notice to the Contractor so that a representative may attend.

1.5 Agreement to Comply with Requisite Provisions Based On Funding Source. If checked below, the Town will pay in whole or in part for the Services rendered hereunder with federal or State-based grant funding. Contractor agrees to comply with all provisions set forth in any Attachment as noted and if checked.

☐ Attachment__, Federal Emergency Management Agency's ("FEMA") Grant Program Requirements for Procurement Contracts if FEMA funding is used for the Work.

☒ Attachment C, Colorado Community Development Block Grant Disaster Recovery Program funds (hereinafter referred to as CDBG-DR funds) Requirements for Contracts if CDBG-DR funding is used for the Work.

☐ Attachment__, Department Of Commerce Economic Development Administration ("EDA") Requirements for Procurement Contracts if EDA funding is used for the Work.

1.6 Lawful Performance. It is further agreed that no party to this Agreement will perform contrary to any state, federal, or county law, or any of the ordinances of the Town of Lyons, Colorado.

## 2.0 COMPENSATION

2.1 Commencement of and Compensation for Services. Following execution of this Agreement by the Town, the Contractor shall be authorized to and shall commence performance of the Services as described in **Exhibit A**, subject to the requirements and limitations on compensation as provided by this Section 2.0 and its subsections. Compensation to be paid hereunder shall not exceed **One Hundred Forty-Seven Thousand Six Hundred Dollars and No Cents ($147,600.00)** unless a larger amount is agreed to by and between the Parties in accordance with the amendment requirements of this Agreement.

A. Method of Compensation. The Contractor shall perform the Services and shall invoice the Town for work performed based on the rates and/or compensation methodology and amounts described in **Exhibit B** subject to the not to exceed amount set forth in this Section. Monthly, partial, progress payments shall be

made by the Town to the Contractor for the percentage of the Scope of Work completed. Progress payments shall not constitute a waiver of the right of the Town to require the fulfillment of all material terms of this Agreement and the delivery of all improvements embraced in this Agreement.

B. Final payment may be requested by the Contractor upon completion and acceptance, by the Town, of all work or Services as set forth in **Exhibit A**. The total amount of final payment shall consist of the compensation set forth in paragraph 2.1, as adjusted in accordance with approved change orders, if applicable, less all previous payments to the Contractor.

C. Should work beyond that described in **Exhibit A** be required, it will be paid for as extra work at a cost to be agreed upon in separate written agreement by the Town and the Contractor prior to commencement of the additional work. Such additional agreements shall be executed and approved by all persons required by Town purchasing ordinances or policies.

D. The Town, before making any payment, may require the Contractor to furnish at no additional charge releases or receipts from any or all persons performing work under this Agreement and/or supplying material or services to the Contractor, or any subcontractor if this is deemed necessary to protect the Town's interest. The Town, however, may in its discretion make payment in part or full to the Contractor without requiring the furnishing of such releases or receipts.

2.2 Reimbursable Expenses. If this Agreement is for lump sum compensation, there shall be no reimbursable expenses. If the Agreement is for compensation based on a time and materials methodology, the following shall be considered "reimbursable expenses" for purposes of this Agreement and may be billed to the Town without administrative mark-up but which must be accounted for by the Contractor and proof of payment shall be provided by the Contractor with the Contractor's monthly invoices:

- ☒ None
- ☐ Vehicle Mileage (billed at not more than the prevailing per mile charge permitted by the IRS as a tax-deductible business expense)
- ☐ Printing and Photocopying Related to the Services (billed at actual cost)
- ☐ Long Distance Telephone Charges Related to the Services
- ☐ Postage and Delivery Services
- ☐ Lodging and Meals (but only with prior written approval of the Town as to dates and maximum amount)

Any fee, cost, charge, or expense incurred by the Contractor not otherwise specifically authorized by this Agreement shall be deemed a non-reimbursable cost that shall be borne by the Contractor and shall not be billed or invoiced to the Town and shall not be paid by the Town.

2.3 Increases in Compensation or Reimbursable Expenses. Any increases or modification to the compensation or reimbursable expenses shall be subject to the approval of the Town and shall be made only by written amendment of this Agreement executed by both Parties.

2.4 Payment Processing. The Contractor shall submit invoices and requests for payment in a form acceptable to the Town. Invoices shall not be submitted more often than once each month unless otherwise approved by this Agreement or in writing by the Town in accordance with the amendment requirements of this Agreement. Unless otherwise directed or accepted by the Town, all invoices shall contain sufficient information to account for all appropriate measure(s) of Contractor work effort (e.g., task completion, work product delivery, or time) and all authorized reimbursable expenses for the Services during the stated period of the invoice. Following receipt of a Contractor's invoice, the Town shall promptly review the Contractor's invoice. All Town payments for Services rendered pursuant to this Agreement shall be issued in the business name of Contractor only, and in no event shall any such payments be issued to an individual. In no event shall any Town payments to Contractor be in the form of or based upon a salary or an hourly wage rate.

2.5 Town Dispute of Invoice or Invoiced Item(s). The Town may dispute any Contractor compensation and/or reimbursable expense requested by the Contractor described in any invoice and may request additional information from the Contractor substantiating any and all compensation sought by the Contractor before accepting the invoice. When additional information is requested by the Town, the Town shall advise the Contractor in writing, identifying the specific item(s) that are in dispute and giving specific reasons for any request for information. The Town shall pay the Contractor within forty-five (45) days of the receipt of an invoice for any undisputed charges or, if the Town disputes an item or invoice and additional information is requested, within thirty (30) days of acceptance of the item or invoice by the Town following receipt of the information requested and resolution of the dispute. To the extent possible, undisputed charges within the same invoice as disputed charges shall be timely paid in accordance with this Agreement. Payment by the Town shall be deemed made and completed upon hand delivery to the Contractor or designee of the Contractor or upon deposit of such payment or notice in the U.S. Mail, postage pre-paid, addressed to the Contractor.

**3.0 CONTRACTOR'S REPRESENTATIONS AND OFFERED PERFORMANCE**

The Contractor offers to perform the Services in accordance with the following Contractor-elected practices and procedures. By this Agreement, the Town accepts such offer and the following are hereby made part of the terms and conditions of this Agreement:

3.1 General. The Contractor shall become fully acquainted with the available information related to the Services. The Contractor shall affirmatively request from the Town Representative and the Town such information that the Contractor, based on the Contractor's professional experience, should reasonably expect is available and which would be relevant to the performance of the Services. The Contractor shall promptly inform the Town concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Agreement. The Contractor shall provide all of the Services in a timely and professional manner. The Contractor shall comply with all applicable federal, state and local laws, ordinances, regulations, and resolutions.

3.2 Independent Contractor. The Contractor shall perform the Services as an independent contractor and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship

with the Town. This Agreement does not require the Contractor to work exclusively for the Town. This Agreement shall not be interpreted as the Town dictating or directing the Contractor's performance or the time of performance beyond a completion schedule and a range of mutually agreeable work hours, but shall be interpreted as the Contractor's offer and Town acceptance of terms and conditions for performance. The Contractor's business operations shall not be combined with the Town by virtue of this Agreement, and the Town will not provide any training to Contractor, its agents, or employees beyond that minimal level required for performance of the Services. The Parties acknowledge that the Contractor may require some assistance or direction from the Town in order for the Services to meet the Town's contractual expectations. Any provisions in this Agreement that may appear to grant the Town the right to direct or control Contractor or the Services shall be construed as Town plans or specifications regarding the Services.

3.3 Liability for Employment-Related Rights and Compensation. The Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Contractor, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. The Contractor will comply with all laws, regulations, municipal codes, and ordinances and other requirements and standards applicable to the Contractor's employees, including, without limitation, federal and state laws governing wages and overtime, equal employment, safety and health, employees' citizenship, withholdings, reports and record keeping. **CONTRACTOR ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS CONTRACTOR OR SOME ENTITY OTHER THAN THE TOWN PROVIDES SUCH BENEFITS. CONTRACTOR FURTHER ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO WORKERS' COMPENSATION BENEFITS. CONTRACTOR ALSO ACKNOWLEDGES THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED OR PAID PURSUANT TO THIS AGREEMENT.** To the maximum extent permitted by law, Contractor waives all claims against the Town for any Employee Benefits; the Contractor will defend the Town from any claim and will indemnify the Town against any liability for any Employee Benefits for the Contractor imposed on the Town; and the Contractor will reimburse the Town for any award, judgment, or fine against the Town based on the position the Contractor was ever the Town 's employee, and all attorneys' fees and costs the Town reasonably incurs defending itself against any such liability.

3.4 Interaction with Public. The Contractor recognizes that its conduct during the performance of the Services hereunder reflects upon its reputation in the community as well as upon the public perception of the Town. Therefore, the Contractor offers and warrants to the Town that the Contractor, its agents and employees will conduct all of their interactions with the citizens and the public relating to the performance of the Services hereunder in such a manner as to provide customer service that reflects positively upon its reputation and the Town's public image.

3.5 Subcontractors. The Parties recognize and agree that subcontractors may be utilized by the Contractor for the performance of certain Services if and as described

more particularly in **Exhibit A**; however, the engagement or use of subcontractors will not relieve or excuse the Contractor from performance of any obligations imposed in accordance with this Agreement and Contractor shall remain solely responsible for ensuring that any subcontractors engaged to perform Services hereunder shall perform such Services in accordance with all terms and conditions of this Agreement.

3.6 Standard of Performance. In performing the Services, the Contractor warrants that it shall use that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by highly competent members of the same profession practicing in the State of Colorado. The Contractor represents to the Town that the Contractor is, and its employees or sub-contractors performing such Services are, properly licensed and/or registered within the State of Colorado for the performance of the Services (if licensure and/or registration is required by applicable law) and that the Contractor and employees possess the skills, knowledge, and abilities to perform the Services competently, timely, and professionally in accordance with this Agreement. In addition, the Contractor warrants and represents that it will provide the Services in accordance with more specific standards of performance as are included within **Exhibit A**. The Contractor represents, covenants and agrees that the Services will be provided to the Town free from any material errors. The Contractor's failure to meet or exceed any of the foregoing standards and warranties may be considered a material breach of this Agreement and may be grounds for termination of the Agreement pursuant to Section 4.0 below, in addition to any other remedies as provided in Section 9.0 below.

3.7 Review of Books and Records. The Contractor shall promptly comply with any written Town request for the Town or any of its duly authorized representatives to reasonably access and review any books, documents, papers, and records of the Contractor that are pertinent to the Contractor's performance under this Agreement for the purpose of the Town performing an audit, examination, or other review of the Services.

3.8 Licenses and Permits. The Contractor shall be responsible at the Contractor's expense for obtaining, and maintaining in a valid and effective status, all licenses and permits necessary to perform the Services unless specifically stated otherwise in this Agreement.

3.9 Affirmative Action. The Contractor warrants that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor warrants that it will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

3.10 Employment of or Contracts with Illegal Aliens. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Contractor shall not contract with a subcontractor that fails to certify that the subcontractor does not knowingly employ or contract with any illegal aliens. By entering into this Agreement, the Contractor certifies as of the date of this

Agreement that it does not knowingly employ or contract with an illegal alien who will perform work under this contract for Services and that the Contractor will participate in the e-verify program or department program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services. The Contractor is prohibited from using either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed. If the Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to notify the subcontractor and the Town within three (3) days that the Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien. The Contractor shall terminate the subcontract if the subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice regarding Contractor's actual knowledge. The Contractor shall not terminate the subcontract if, during such three (3) days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor is required to comply with any reasonable request made by the Department of Labor and Employment made in the course of an investigation undertaken to determine compliance with this provision and applicable state law. If the Contractor violates this provision, the Town may terminate this Agreement, and the Contractor may be liable for actual and/or consequential damages incurred by the Town, notwithstanding any limitation on such damages provided by such Agreement.

3.11 Duty to Warn. The Contractor agrees to call to the Town's attention errors in any drawings, plans, sketches, instructions, information, requirements, procedures, and/or other data supplied to the Contractor (by the Town or by any other party) that it becomes aware of and believes may be unsuitable, improper, or inaccurate in a material way. However, the Contractor shall not independently verify the validity, completeness or accuracy of such information unless included in the Services or otherwise expressly engaged to do so by the Town.

## 4.0 TERM AND TERMINATION

4.1 Term. This Agreement shall be effective on the **November 7, 2016 at 12:01 a.m.**, (the "Effective Date") and shall terminate at the earlier of the date on which all obligations of the parties have been met (to include all Services have been completed) or **11:59 p.m. on December 31, 2017**, or on a prior date of termination as may be permitted by this Agreement; provided, however, that the Parties may mutually agree in writing to extend the term of this Agreement, subject to annual appropriation. Those provisions that survive termination, to include the indemnification obligations and any warranty obligations, shall remain in effect past termination.

4.2 Continuing Services Required. The Contractor shall perform the Services in accordance with this Agreement commencing on the Effective Date until such Services are terminated or suspended in accordance with this Agreement. The Contractor shall not temporarily delay, postpone, or suspend the performance of the Services without the written consent of the Town Board of Trustees, Town Administrator, the Town Representative, or other Town employee expressly authorized in writing to direct the Contractor's services.

4.3 Town Unilateral Termination. This Agreement may be terminated by the Town for any or no reason upon written notice delivered to the Contractor at least ten (10) days prior to termination. In the event of the Town's exercise of the right of unilateral termination as provided by this paragraph:

A. Unless otherwise provided in any notice of termination, the Contractor shall provide no further services in connection with this Agreement after receipt of a notice of termination; and

B. All finished or unfinished documents, data, studies and reports prepared by the Contractor pursuant to this Agreement shall be delivered by the Contractor to the Town and shall become the property of the Town; and

C. The Contractor shall submit to the Town a final accounting and final invoice of charges for all outstanding and unpaid Services and reimbursable expenses performed prior to the Contractor's receipt of notice of termination and for any services authorized to be performed by the notice of termination as provided by Section 4.3(A) above. Such final accounting and final invoice shall be delivered to the Town within thirty (30) days of the date of termination; thereafter, no other invoice, bill, or other form of statement of charges owing to the Contractor shall be submitted to or accepted by the Town.

4.4 Termination for Non-Performance. Should a party to this Agreement fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing party if the performing party first provides written notice to the non-performing party which notice shall specify the non-performance, provide both a demand to cure the non-performance and reasonable time to cure the non-performance, and state a date upon which the Agreement shall be terminated if there is a failure to timely cure the non-performance. For purpose of this Section 4.4, "reasonable time" shall be not less than five (5) business days. In the event of a failure to timely cure a non-performance and upon the date of the resulting termination for non-performance, the Contractor shall prepare a final accounting and final invoice of charges for all performed but unpaid Services and authorized reimbursable expenses. Such final accounting and final invoice shall be delivered to the Town within fifteen (15) days of the date of termination; thereafter, no other invoice, bill, or other form of statement of charges owing to the Contractor shall be submitted to or accepted by the Town. Provided that notice of non-performance is provided in accordance with this Section 4.4, nothing in this Section 4.4 shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party.

4.5 Unilateral Suspension of Services. The Town may suspend the Contractor's performance of the Services at the Town's discretion and for any reason by delivery of written notice of suspension to the Contractor which notice shall state a specific date of suspension. Upon receipt of such notice of suspension, the Contractor shall immediately cease performance of the Services on the date of suspension except: (1) as may be specifically authorized by the notice of suspension (e.g., to secure the work area from damage due to weather or to complete a specific report or study); or (2) for the submission of an invoice for Services performed prior to the date of suspension in accordance with this Agreement.

4.6 Delivery of Notice of Termination. Any notice of termination permitted by this Section 4.0 and its subsections shall be addressed to the person signing this Agreement on behalf of either Town or Contractor at the address shown below or such other address as either party may notify the other of and shall be deemed given upon delivery if personally delivered, or forty-eight (48) hours after deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

## 5.0 INSURANCE

5.1 Insurance Generally. During the term of this Agreement, the Contractor shall obtain and shall continuously maintain, at the Contractor's expense, insurance of the kind and in the minimum amounts specified as follows by checking the appropriate boxes:

☐ The Contractor shall obtain and maintain the types, forms, and coverage(s) of insurance deemed by the Contractor to be sufficient to meet or exceed the Contractor's minimum statutory and legal obligations arising under this Agreement ("Contractor Insurance"); or

☒ The Contractor shall secure and maintain the following ("Required Insurance"):

☒ Worker's Compensation Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by law. Such policy of insurance shall be endorsed to include the Town as a Certificate Holder.

☒ Comprehensive General Liability insurance with minimum combined single limits of One Million Dollars ($1,000,000.00) each occurrence and of Two Million Dollars ($2,000,000.00) aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the Town as Certificate Holder and name the Town, and its elected officials, officers, employees and agents as additional insured parties.

☒ Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars ($1,000,000.00) each occurrence with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Agreement, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the Town as Certificate Holder and name the Town, and its elected officials, officers, employees and agents as additional insured parties.

☒ Professional Liability (errors and omissions) Insurance with a minimum limit of coverage of One Million Dollars ($1,000,000.00) per claim and Two Million Dollars ($2,000,000.00) annual aggregate. Such policy of insurance shall be obtained and maintained for one (1) year following completion of all Services under this Agreement. Such policy of insurance shall be endorsed to include the Town as a Certificate Holder.

The Required Insurance shall be procured and maintained with insurers with an A- or better rating as determined by Best's Key Rating Guide. All Required Insurance shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor.

5.2 Additional Requirements for All Policies. In addition to specific requirements imposed on insurance by this Section 5.0 and its subsections, insurance shall conform to all of the following:

A. For both Contractor Insurance and Required Insurance, all policies of insurance shall be primary insurance, and any insurance carried by the Town, its officers, or its employees shall be excess and not contributory insurance to that provided by the Contractor; provided, however, that the Town shall not be obligated to obtain or maintain any insurance whatsoever for any claim, damage, or purpose arising from or related to this Agreement and the Services. The Contractor shall not be an insured party for any Town-obtained insurance policy or coverage.

B. For both Contractor Insurance and Required Insurance, the Contractor shall be solely responsible for any deductible losses.

C. For Required Insurance, no policy of insurance shall contain any exclusion for bodily injury or property damage arising from completed operations.

D. For Required Insurance, every policy of insurance shall provide that the Town will receive notice no less than thirty (30) days prior to any cancellation, termination, or a material change in such policy or in the alternative, the Contractor shall provide such notice as soon as reasonably practicable and in no event less than thirty (30) days prior to any cancellation, termination, or a material change in such policy.

5.3 Failure to Obtain or Maintain Insurance. The Contractor's failure to obtain and continuously maintain policies of insurance in accordance with this Section 5.0 and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the Town may immediately terminate this Agreement, or, at its discretion, the Town may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Town shall be repaid by Contractor to the Town immediately upon demand by the Town, or at the Town's sole discretion, the Town may offset the cost of the premiums against any monies due to the Contractor from the Town pursuant to this Agreement.

5.4 Insurance Certificates. Prior to commencement of the Services, the Contractor shall submit to the Town certificates of insurance for all Required Insurance. Insurance limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this Section 5.0 and its subsections shall be indicated on each certificate of insurance. Certificates of insurance shall reference the Project Name as identified on the first page of this Agreement. The Town may request and the Contractor shall provide within three (3) business days of such request a current certified copy of any policy of Required Insurance and any endorsement of such policy. The Town may, at its election, withhold payment for Services until the requested insurance policies are received and found to be in accordance with the Agreement.

## 6.0 CLAIMS, INDEMNIFICATION, HOLD HARMLESS AND DEFENSE

6.1 Notices of Claim. A Party shall notify the other Party immediately and in writing in the event that a Party learns of a third-party claim or an allegation of a third-party claim arising or resulting from the Parties' performance or failure to perform pursuant to this Agreement. The Parties shall reasonably cooperate in sharing information concerning potential claims.

6.2 Claims Challenging Town Law, Ordinance, Rule, or Policy/Procedure. In the event any claim is asserted by a third-party against the Town and/or the Contractor alleging that any law, statute, ordinance, rule or approved Town policy or procedure is unlawful, unconstitutional or otherwise improper, then:

A. The Contractor shall not be entitled to and shall not defend such claim; and

B. The Town may, at its sole discretion, elect to defend, not defend, settle, confess, compromise, or otherwise direct the manner in which such claim is addressed; and

C. The Contractor shall reasonably cooperate with the Town in any Town defense of such claim although the Contractor shall bear any cost or expense incurred by the Contractor in such cooperation, including but not limited to the Contractor's cost and expense incurred in consultation with its own legal counsel; and

D. Only if authorized by law and without waiving the provisions of the Colorado Constitution or the Colorado Governmental Immunity Act, the Town shall indemnify and hold Contractor harmless for any damages, liability, expenses, or court awards, including costs and attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by any third-party, including but not limited to, any person, firm, partnership, or corporation, in connection with or arising out of such claim.

6.3 Indemnification for Certain Claims. For any claim not within the scope of Section 6.2 above, Contractor expressly agrees to indemnify and hold harmless the Town, and any of its council members, board members, commissioners, officials, officers, agents, Contractors, attorneys, or employees from any and all damages, liability, expenses, or court awards, including costs and attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by any third-party, including but not limited to, any person, firm,

partnership, or corporation, in connection with or arising out of any intentional, reckless, negligent or tortious conduct, error, omission, or act of commission by Contractor or any of its employees, agents, or others acting on Contractor's behalf in performance of the Services. Nothing in this Agreement shall be construed as constituting a covenant, promise, or agreement by the Contractor to indemnify or hold the Town, its elected officials, board members, commissioners, officials, officers, agents, contractors, attorneys, or employees harmless for any negligence solely attributable to the Town, its elected officials, boards, commissions, officials, officers, agents, Contractors, attorneys, or employees. The Contractor's obligation to indemnify pursuant to this Section shall survive the completion of the Services and shall survive the termination of this Agreement.

6.4 Defense of Claims.

A. Claims Against Both the Town and Contractor. In the event any claim is asserted by a third-party against both the Town and Contractor arising out of any Party's performance of the Services which claim is not within the scope of Section 6.2 above, the Town shall be entitled to elect to defend such claim on behalf of both the Town and Contractor subject to the provisions governing indemnification set forth in this Section. In the event that the Town elects to defend such claim, the Town shall consult with Contractor in such defense but the Town is entitled to exercise its independent discretion in the manner of defense, including but not limited to the selection of litigation counsel and the discretion to settle, confess, compromise, or otherwise direct and dispose of any claim. In the event that the Town elects to defend such claim, Contractor may at its own cost and expense elect to assume the defense of Contractor, in which case Contractor shall bear its own attorneys' fees, costs, and expenses in such defense and such fees, costs, and expenses shall not be subject to indemnification pursuant to this Section.

B. Claims Against Only One Party. In the event of any claim asserted by a third-party against only one Party to this Agreement arising out of any Party's performance of the Services which claim is not within the scope of Section 6.2 above, the Party shall be entitled to elect to defend such claim on behalf of such Party subject to the provisions governing indemnification set forth in this Section. Where appropriate, the defending Party may also elect to join the other Party through third-party practice or otherwise in accordance with the Colorado Rules of Civil Procedure or other applicable rules, in which case the joined Party may defend such claim subject to indemnification pursuant to this Section. In the event that a Party elects to intervene voluntarily in any claim asserted against the other Party arising out of any Party's performance of the Services or any claim that any law, statute, ordinance, rule or approved Town policy or procedure is unlawful, unconstitutional or otherwise improper, the intervening Party shall bear its own attorneys' fees, costs, and expenses in such intervention and such fees, costs, and expenses shall not be subject to indemnification pursuant to this Section.

## 7.0 RECORDS AND OWNERSHIP OF DOCUMENTS

7.1 Retention and Open Records Act Compliance. All records of the Contractor related to the provision of Services hereunder, including public records as defined in the Colorado Open Records Act ("CORA"), and records produced or maintained in accordance with this Agreement, are to be retained and stored in

accordance with the Town 's records retention and disposal policies. Those records which constitute "public records" under CORA are to be at the Town offices or accessible and opened for public inspection in accordance with CORA and Town policies. Public records requests for such records shall be processed in accordance with Town policies. Contractor agrees to allow access by the Town and the public to all documents subject to disclosure under applicable law. Contractor's willful failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Agreement by the Town. For purposes of CORA, the Town Clerk is the custodian of all records produced or created as a result of this Agreement. Nothing contained herein shall limit the Contractor's right to defend against disclosure of records alleged to be public.

7.2 Town's Right of Inspection. The Town shall have the right to request that the Contractor provide to the Town a list of all records of the Contractor related to the provision of Services hereunder retained by the Contractor in accordance with this subsection and the storage location and method. Contractor agrees to allow inspection at reasonable times by the Town of all documents and records produced or maintained in accordance with this Agreement.

7.3 Ownership. Any work product, materials, and documents produced by the Contractor pursuant to this Agreement shall become property of the Town of Lyons upon delivery and shall not be made subject to any copyright unless authorized by the Town. Other materials, methodology and proprietary work used or provided by the Contractor to the Town not specifically created and delivered pursuant to the Services outlined in this Agreement may be protected by a copyright held by the Contractor and the Contractor reserves all rights granted to it by any copyright. The Town shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by Town staff and/or Town contractors; or (2) pursuant to a request under the Colorado Open Records Act, C.R.S. § 24-72-203, to the extent that such statute applies; or (3) pursuant to law, regulation, or court order. The Contractor waives any right to prevent its name from being used in connection with the Services.

7.4 Return of Records to Town. At the Town's request, upon expiration or termination of this Agreement, all records of the Contractor related to the provision of Services hereunder, including public records as defined in the Colorado Open Records Act ("CORA"), and records produced or maintained in accordance with this Agreement, are to be returned to the Town in a reasonable format and with an index as determined and requested by the Town.

**8.0 FORCE MAJEURE**

Neither the Contractor nor the Town shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by "force majeure." As used in this Agreement, "force majeure" means acts of God, acts of the public enemy, acts of terrorism, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

## 9.0 REMEDIES

In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, the Town may exercise the following remedial actions if the Contractor substantially fails to perform the duties and obligations of this Agreement. Substantial failure to perform the duties and obligations of this Agreement shall mean a significant, insufficient, incorrect, or improper performance, activities or inactions by the Contractor. The remedial actions include:

A. Suspend the Contractor's performance pending necessary corrective action as specified by the Town without the Contractor's entitlement to an adjustment in any charge, fee, rate, price, cost, or schedule; and/or

B. Withhold payment to the Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or

C. Deny payment for those services which have not been satisfactorily performed, and which, due to circumstances caused by the Contractor, cannot be performed, or if performed would be of no value to the Town; and/or

D. Terminate this Agreement in accordance with this Agreement; and/or

E. ☐ Other remedies as may be provided by attached addendum or addenda.

The foregoing remedies are cumulative and the Town, in its sole discretion, may exercise any or all of the remedies individually or simultaneously.

## 10.0 MISCELLANEOUS PROVISIONS

10.1 No Waiver of Rights. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party. The Town's approval or acceptance of, or payment for, services shall not be construed to operate as a waiver of any rights or benefits to be provided under this Agreement. No covenant or term of this Agreement shall be deemed to be waived by the Town except in writing signed by the Town Council or by a person expressly authorized to sign such waiver, and any written waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver unless specifically stated.

10.2 No Waiver of Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the Town, its officials, employees, contractors, or agents, or any other person acting on behalf of the Town and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10 of the Colorado Revised Statutes.

10.3 Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section 10.3 shall not authorize assignment.

10.4 No Third-party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third-party, including any agent, sub-consultant or sub-contractor of Contractor. Absolutely no third-party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

10.5 Article X, Section 20/TABOR. The Parties understand and acknowledge that the Town is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the Town are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the Town's current fiscal period ending upon the next succeeding December 31. Financial obligations of the Town payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of Town of Centennial, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.

10.6 Governing Law, Venue, and Enforcement. This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Boulder County, Colorado. To reduce the cost of dispute resolution and to expedite the resolution of disputes under this Agreement, the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement. The Parties agree that the rule that ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement. If there is any conflict between the language of this Agreement and any exhibit or attachment, the language of this Agreement shall govern.

10.7 Survival of Terms and Conditions. The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

10.8 Assignment and Release. All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by the Contractor without the express written consent of the Town. Any written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by the Town through the authorizing agent executing this Agreement. No assignment shall release the Contractor from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment.

10.9 Interpretation and Mutual Negotiation. It is the intent of the Parties that this Agreement shall in all instances be interpreted to reflect the Contractor's status as an independent contractor with the Town and that in no event shall this Agreement be interpreted as establishing an employment relationship between the Town and either Contractor or Contractor's employees, agents, or representatives. The Parties agree that this Agreement is the result of mutual negotiation between the Parties and that the Agreement shall not be construed against the Town on grounds relating to drafting, revision, review, or recommendation by any agent or representative of the Town. The Parties further agree that all warranties in this Agreement are made by the Contractor to induce the Town to accept the Contractor's offer to enter into this Agreement and have been incorporated into the Agreement at the Contractor's request.

10.10 Paragraph Captions. The captions of the paragraphs and sections are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

10.11 Agreement Controls. In the event a conflict exists between this Agreement and any term in any exhibit attached or incorporated into this Agreement, the terms in this Agreement shall supersede the terms in such exhibit.

10.12 Integration and Amendment. This Agreement represents the entire and integrated agreement between the Town and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this Agreement must be in writing and approved and executed with the same formality with which this Agreement is approved and executed by both the Town and the Contractor.

10.13 Severability. Invalidation of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

10.14 Incorporation of Exhibits. Unless otherwise stated in this Agreement, exhibits, applications, or documents referenced in this Agreement shall be incorporated into this Agreement for all purposes. In the event of a conflict between any incorporated exhibit and this Agreement, the provisions of this Agreement shall govern and control.

10.15 Notices. Unless otherwise specifically required by a provision of this Agreement, any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States Mail properly addressed to the intended recipient.

| **If to the Town** : | **If to Contractor**: |
|---|---|
| Town Administrator<br>Lyons Town Hall<br>PO Box 49<br>432 5th Ave,<br>Lyons, CO 80540 | Axel Bishop, Principal-in-Charge<br>Design Concepts<br>211 North Public Road<br>Suite 200<br>Lafayette, CO 80026 |
| With Copy to:<br>Town Attorney<br>Michow Cox & McAskin LLP<br>6530 S. Yosemite Street, Suite 200<br>Greenwood Village, Colorado 80111 | With Copy to: |

10.16 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

**11.0 ATTACHMENTS**

The following are attached to and incorporated into this Agreement for reference:
☒ SCOPE OF WORK – Exhibit A
☒ COMPENSATION – Exhibit B
☒ CONTRACTOR'S CERTIFICATE(S) OF INSURANCE – Attachment A
☒ CONTRACTOR PROOF OF PROFESSIONAL LICENSING – Attachment B
☒ COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY ("CDBG-DR") FUNDS PROGRAM REQUIREMENTS – Attachment C
☒ PATENT RIGHTS – Attachment D

**12.0 AUTHORITY**

The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of Town of Lyons and the Contractor and bind their respective entities.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK-SIGNATURE PAGE FOLLOWS

**THIS AGREEMENT is executed and made effective as provided above.**

**TOWN OF LYONS, COLORADO**:

Approval by Town Board of Trustees
☐ Not Required
By: _____
Mayor or Mayor Pro Tem

Approval by Town Administrator
☒ Not Required
By: _____
Victoria Simonsen, Town Administrator

ATTEST:

_____
Deb Anthony, Town Clerk

APPROVED AS TO FORM (*Excluding Exhibits*)
☐ Not Required
_____
For Town Attorney's Office

**BISHOP AND LAYTON DESIGN, INC., dba DESIGN CONCEPTS CLA, INC:**

By: _____

Printed name: _____

Its: _____

---

STATE OF )
COUNTY OF ) ss.
The foregoing Professional Services Agreement was acknowledged before me this ____ day of _____, 2016, by _____ as _____ of _____, a _____.

Witness my hand and official seal.

My commission expires: _____.

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

*EXHIBIT A*

**SCOPE OF SERVICES**

# Flood Recovery Land Use & Management Plan

## Town of Lyons, Colorado

## Scope of Services

## Design Concepts

October 27, 2016

### Project Approach

Design Concepts ("DC") understands that the Town of Lyons has identified the following as critical project success factors:

1. An appropriate mix of passive and active recreational uses
2. Improved connectivity
3. Safe access to the St. Vrain River corridor
4. Resiliency to future flood events
5. Potential revenue sources
6. Universal access for all abilities
7. Ecologically sustainable, low-impact planning solutions

DC will seek the community vision and then develop a plan to reach it. We will gather input from stakeholders that may include: neighborhood residents, local youth, community members at-large, local business owners, event organizers, Town policy makers, advisors, and/or Town staff. Based on this input we will focus on a program that:

- improves livability
- strengthens sense of place and community identity
- allows for individual expression
- ensures safety for residents and visitors
- is dependably maintainable

Scope of Work will address three critical project elements:

1. The St. Vrain River confluence properties, a contiguous swath of land where rivers merge
1. Individual vacant parcels within and around the confluence area
2. Connectivity between the newly acquired property sites and the greater community

### Public Process

Design Concepts will work to build a common vision with all stakeholders and guide the Lyons community through the process.

Neighborhood meetings for residents of the confluence area will be the first priority. These may be neighborhood wide or small group. The greater community will also be invited to provide input throughout the process, including a charrette workshop. Additional stakeholders will be interviewed on an individual basis, if needed, or in groups if suitable. Town of Lyons Boards and Commissions will also be engaged in an efficient and effective manner.
DC will engage and gather input from:

1. Residents and property owners of the Confluence Area ("Neighborhood")
2. Residents of the greater Lyons community ("Community")
3. Town of Lyons Boards and Commissions ("Boards/Commissions") that may include:
   Board of Trustees

Planning and Community Development Commission
Sustainable Futures Commission
Ecology Board
Economic Development Commission
Parks, Recreation and Culture Board

4. Additional Stakeholders ("Other Stakeholders") that may include:
   Business Owners
   Lyons Area Chamber of Commerce
   St. Vrain Creek Coalition
   State of Colorado Department of Local Affairs
5. Local youth
6. Town of Lyons Staff ("Staff")

## Planning and Policy Review

Town of Lyons policies, ordinances, and planning documents will be reviewed by the Design Concepts team as background context. DC will align this project with the direction, guidance, and values these resources provide.

## Project Control

Design Concepts is the prime consultant and contracting entity. The project will be managed from our office in Lafayette, Colorado. Primary points of contact are Axel Bishop, Principal and Carter Marshall, Project Manager, and Sarah Morse, Project Designer, as the dedicated "in-house" team.

DC will:

- work with the Town of Lyons to accommodate unforeseen issues such as scheduling conflicts, weather events, or unexpected delays
- coordinate sub-consultants GreenPlay and Amec Foster Wheeler to ensure good communication, a streamlined process, quality-controlled output, and a realized project scope
- communicate with Town's Flood Recovery Planner, Director of Parks & Recreation, and Steering Committee via email, phone, screen share, or in person meetings on a monthly basis

## Timeline / Meetings / Milestones

The project will track along a 10-month schedule to completion in August 2017:

### *November*

- (1) Staff / Steering Committee Kick-off
- (3) Neighborhood Meetings as small group and/or neighborhood wide
- Planning and Policy Review begins
- Preliminary Site Feasibility Assessment conducted
- Site Analysis / Base Mapping begins
- Small Lot Neighborhood Development Guidelines begins

***Deliverables**: Meeting Notes*

### *December*

- (1) Community Project Kick-off Meeting
- (2) Boards and Commissions Meetings: 1-2 selected representatives from each panel
- Stakeholder Interviews: 30-60 minutes each for 6 total hours
- Planning and Policy Review complete
- Small Lot Neighborhood Development Guidelines developed
- Monthly Staff/Steering Committee Meeting

***Deliverables**: Meeting Notes, Stakeholder Interview Notes*

### *January*

- Community Visioning Charrette Workshop
- Site Analysis / Base Mapping complete
- Preliminary Program developed
- Small Lot Neighborhood Development Guidelines developed
- Monthly Staff/Steering Committee Meeting

***Deliverables**: Workshop Notes / Sketch Plans, Site Analysis / Base Mapping*

### *February*

- Final Program developed
- Open Spaces Network Concept Alternatives developed
- Small Lot Neighborhood Development Guidelines developed
- Monthly Staff / Steering Committee Meeting

***Deliverables**: Final Site Program*

### *March*

- (1) Staff / Steering Committee Meeting to review Open Spaces Network Concept Alternatives
- Small Lot Neighborhood Development Guidelines submitted
- Draft Management Plan development begins

***Deliverables**: Small Lot Neighborhood Development Guidelines, Draft Open Spaces Network Concept Alternatives, Meeting Notes*

### *April*

- (1) Community Presentation of Open Spaces Network Concept Alternatives
- Draft Management Plan developed
- Preferred Open Spaces Network Concept Alternatives developed Draft Management Plan developed
- Draft Management Plan submitted to Staff / Steering Committee for review
- (1) Staff / Steering Committee Meeting to review Draft Management Plan

***Deliverables**: Open Spaces Network Concept Alternatives, Meeting Notes*

### May

- Draft Management Plan submitted to Board of Trustees for review
- (1) Board of Trustees workshop to review / discuss Draft Management Plan

***Deliverables**: Draft Management Plan, Meeting Notes*

### June

- Preferred Open Spaces Network Concept developed
- Final Draft Management Plan developed
- Final Draft Management Plan submitted to Staff / Steering Committee for review
- (1) Staff / Steering Committee Meeting to review Draft Final Management Plan
- (1) Presentation of Draft Final Management Plan to Board of Trustees
- Final Management Plan developed
- Final Management Plan submitted to Town
- Contract completed

***Deliverables**: Preferred Open Spaces Network Concept, Final Management Plan, Meeting Notes*

Please refer to Proposed Schedule table for additional information.

## Deliverables

A final version of the *Lyons Flood Recovery Land Use and Management Plan for Acquired Properties* ("Final Plan") will be submitted by the end of June 2017. The Final Plan will include:

1. **Small Lot Neighborhood Development Guidelines** including site specifications, design elements, resident's use and maintenance licensing and user information for preferred Neighborhood site concepts
2. **Open Spaces Network Conceptual Design** including a rendering, illustrations and imagery for the preferred concept
3. **Management Plan** including fiscal-impact analysis, operations and maintenance discussion, and estimate of probable costs

Design Concepts will provide the following final deliverables:

- 5 paper copies of the Final Plan
- Digital PDF version of the Final Plan
- Meeting notes from all Staff / Steering Committee, Neighborhood, Community, and Board of Trustees meetings
-

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

# Project Schedule

**ToL** = Town of Lyons **DC** = Design Concepts **AFW** = Amec Foster Wheeler **GP** = Greenplay **ALL** = Entire Team

Staff/Steering Committee Meeting | Public Meeting | Board of Trustees Meeting

| PROJECT COMPONENT | ASSIGNED TEAM MEMBERS | NOVEMBER | | | | | DECEMBER | | | | JANUARY | | | | FEBRUARY | | | | MARCH | | | | | APRIL | | | | MAY | | | | | JUNE | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 |
| **Project Kick-off / Background** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Planning and Policy Review | DC | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Site Feasability Preliminary Assessment | DC,AFW | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Team Kick-Off Meeting | ALL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Public Engagement** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Neighborhood Meetings | DC | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Project Kick-off Meeting | ALL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Board and Commision Meetings | DC | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Stakeholder Interviews | DC | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Community Visioning Charrette | ALL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Draft Management Plan** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Site Analysis/Base Mapping/Site Feasibility Assessment | DC,AFW | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Preliminary Program Development | ALL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Final Program Development | ALL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Small Lot Neighborhood Development Guidelines | DC, ToL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Open Spaces Network Concept Alternatives Development | DC,AFW | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Presentation of Site Design Alternatives | DC | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Draft Management Plan Development | ALL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Draft Management Plan Submittal / Review | ALL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Final Management Plan** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Preferred Open Spaces Network Concept Development | DC,AFW | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Final Draft Management Plan Development | ALL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Final Draft Management Plan Submittal / Review | DC, ToL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Presentation of Final Draft Management Plan | DC | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Final Management Plan Development | ALL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Final Management Plan Submittal | DC, ToL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

*EXHBIT B*

## COMPENSATION

| | |
|---|---|
| **Project Kick-off/Initial Coordination** | |
| Planning and Policy Review | $11,000.00 |
| Site Feasibility Preliminary Assessment | $5,600.00 |
| Preliminary Team Kick-Off Meeting | $3,200.00 |
| Project Kick-off Meeting | $5,000.00 |
| | **Subtotal $24,800.00** |
| **Public Engagement** | |
| Neighborhood Meetings | $9,600.00 |
| Stakeholder Interviews | $4,800.00 |
| Board and Commission Meetings | $4,000.00 |
| Community Visioning Charrette | $8,000.00 |
| | **Subtotal $26,400.00** |
| **Preliminary Management Plan** | |
| Site Analysis/Base Mapping/Site Feasibility Assessment | $14,000.00 |
| Preliminary Program Development | $5,600.00 |
| Final Program Development | $2,800.00 |
| Design Alternatives Development | $20,000.00 |
| Presentation of Design Alternatives | $5,000.00 |
| Management Plan Development | $10,000.00 |
| Presentation of Management Plan | $2,800.00 |
| | **Subtotal $60,200.00** |
| **Final Management Plan** | |
| Preferred Alternatives Development | $20,000.00 |
| Final Recommendations Development | $5,600.00 |
| Presentation of Preferred Alternatives / Recommendations | $2,800.00 |
| Final Plan Submittal | $2,800.00 |
| Reimbursables | $5,000.00 |
| | **Subtotal $36,200.00** |
| | **Grand Total Fee $147,600.00** |

Client#: 1086825 DESIGCON12

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 10/12/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
USI Colorado, LLC Prof Liab
P.O. Box 7050
Englewood, CO 80155
800 873-8500

CONTACT NAME:
PHONE (A/C, No, Ext): 800 873-8500 FAX (A/C, No):
E-MAIL ADDRESS:

| INSURER(S) AFFORDING COVERAGE | NAIC # |
|---|---|
| INSURER A : Hartford Casualty Insurance Com | 29424 |
| INSURER B : Hartford Ins Co of the Midwest | 37478 |
| INSURER C : Travelers Casualty and Surety C | 19038 |
| INSURER D : | |
| INSURER E : | |
| INSURER F : | |

INSURED
Design Concepts CLA, Inc.
Bishop & Layton Design, Inc. dba:
211 N. Public Rd., Suite 200
Lafayette, CO 80026

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSR | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | |
|---|---|---|---|---|---|---|---|---|
| A | X COMMERCIAL GENERAL LIABILITY | | | 34SBWNO0643 | 09/11/2016 | 09/11/2017 | EACH OCCURRENCE | $1,000,000 |
| | CLAIMS-MADE X OCCUR | | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) | $1,000,000 |
| | | | | | | | MED EXP (Any one person) | $10,000 |
| | | | | | | | PERSONAL & ADV INJURY | $1,000,000 |
| | GEN'L AGGREGATE LIMIT APPLIES PER: | | | | | | GENERAL AGGREGATE | $2,000,000 |
| | POLICY X PRO-JECT LOC | | | | | | PRODUCTS - COMP/OP AGG | $2,000,000 |
| | OTHER: | | | | | | | $ |
| A | AUTOMOBILE LIABILITY | | | 34SBWNO0643 | 09/11/2016 | 09/11/2017 | COMBINED SINGLE LIMIT (Ea accident) | $1,000,000 |
| | ANY AUTO | | | | | | BODILY INJURY (Per person) | $ |
| | ALL OWNED AUTOS / SCHEDULED AUTOS | | | | | | BODILY INJURY (Per accident) | $ |
| | X HIRED AUTOS / X NON-OWNED AUTOS | | | | | | PROPERTY DAMAGE (Per accident) | $ |
| | | | | | | | | $ |
| A | X UMBRELLA LIAB X OCCUR | | | 34SBWNO0643 | 09/11/2016 | 09/11/2017 | EACH OCCURRENCE | $1,000,000 |
| | EXCESS LIAB CLAIMS-MADE | | | | | | AGGREGATE | $1,000,000 |
| | DED X RETENTION $10000 | | | | | | | $ |
| B | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | | | 34WEGRO2711 | 09/11/2016 | 09/11/2017 | X PER STATUTE / OTH-ER | |
| | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N: N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below | N / A | | | | | E.L. EACH ACCIDENT | $1,000,000 |
| | | | | | | | E.L. DISEASE - EA EMPLOYEE | $1,000,000 |
| | | | | | | | E.L. DISEASE - POLICY LIMIT | $1,000,000 |
| C | Professional Liability Claims Made | | | 106152106 | 09/11/2016 | 09/11/2017 | $1,000,000 per claim $2,000,000 annl aggr. | |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

As required by written contract or written agreement, the following provisions apply subject to the policy terms, conditions, limitations and exclusions: The Certificate Holder and owner are included as Automatic Additional Insured's for ongoing and completed operations under General Liability; Designated Insured under Automobile Liability; and Additional Insureds under Umbrella/Excess Liability but only with respect to liability arising out of the Named Insured work performed on behalf of the certificate holder and owner.
(See Attached Descriptions)

CERTIFICATE HOLDER

Town of Lyons, Colorado
Attn: Matthew Manley, Flood Recovery Planner
432 5th Avenue
Lyons, CO 80540

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Valeria Howard

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# DESCRIPTIONS (Continued from Page 1)

**The General Liability, Automobile Liability, Umbrella/Excess insurance applies on a primary and non contributory basis. A Blanket Waiver of Subrogation applies for General Liability, Automobile Liability, Umbrella/Excess Liability and Workers Compensation. The Umbrella/Excess Liability policy provides excess coverage over the General Liability, Automobile Liability and Employers Liability.**

**Please note that Additional Insured status does not apply to Professional Liability or Workers' Compensation.**

**Colorado Department of Regulatory Agencies**
**Division of Professions and Occupations**

Colorado State Board of Landscape Architects

# Axel Wenner-Gren Bishop

Landscape Architect

| | |
|---|---|
| LA.0000297 | 02/01/2015 |
| **Number** | **Issue Date** |
| Active | 12/31/2016 |
| **Credential Status** | **Expire Date** |

Verify this credential at: www.dora.colorado.gov/professions

Division Director: Lauren Larson  Credential Holder Signature

# My APA

## Axel Bishop, AICP

Please upload a photo that shows you at your professional best. The photo can be a jpg, jpeg, or png file.

Browse...

Upload

**Profile Status:** Visible only to other members

**Membership ID:** 112068

**Primary Chapter:** CO

**Membership Expires:** 06/30/2017

Edit

**Badges**

AICP APA CO

*ATTACHMENT C*

**COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY ("CDBG-DR") FUNDS PROGRAM REQUIREMENTS**

The work or services under the contract with the Town of Lyons ("Town") to which this Attachment B is attached ("Agreement") is/are funded in whole or in part through State of Colorado Community Development Block Grant Disaster Recovery Program ("CDBG-DR") funds, which require compliance with all the provisions contained in this Attachment B to the Agreement and all other applicable Federal and State laws and regulations. The provisions below are incorporated into and made part of the Agreement. If the Agreement is between the Town and the "Consultant," the term "Contractor" as used herein shall mean the "Consultant."

**1.0 PROVISIONS REQUIRED BY LAW DEEMED INSERTED:** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any provision is not inserted, or is not correctly inserted, then upon the application of either party the Agreement shall forthwith be physically amended to make such insertion or correction.

**2.0 AGREEMENT TO EXECUTE OTHER REQUIRED DOCUMENTS:** Contractor and all subcontractors, by entering into the Agreement, understand and agree that funding for the Work is provided under federal and/or state programs with specific contracting requirements. To the extent any such requirement is not otherwise set forth herein, Contractor agrees to execute such amendments or further agreements as may be necessary to ensure that the Town funding for the Work is provided.

**3.0 NOTICE OF STATE AND FEDERAL REPORTING REQUIREMENTS AND REGULATIONS:** The work or services funded under the Agreement are funded in whole or in part through State of Colorado Community Development Block Grant Disaster Recovery Program ("CDBG-DR") funds, which require compliance with certain financial, payroll, employment and performance reporting provisions, to include without limitation the regulations set forth in 24 CFR Part 570, the Community Development Block Grant (CDBG) Program Regulations. It is important that the Contractor is aware of these reporting requirements, as the Town may require and the Contractor agrees to provide all information, documentation, and other reporting in order to satisfy reporting requirements to the State of Colorado which, in turn, will enable the State of Colorado to satisfy federal reporting requirements. Failure of Contractor or any subcontractor or subconsultant to provide required data or information to ensure compliance with these reporting requirements is a material breach of the Agreement.

**4.0 RECORDS AND RETENTION:** The Contractor agrees to maintain such records and follow such procedures as may be required under the CDBG-DR Program and any such procedures as the Town may prescribe. In general, such records will include information pertaining to the Agreement, obligations and unobligated balances, assets and liabilities, outlays, equal opportunity, labor standards (as appropriate), and performance.

All such records and all other records pertinent to the Agreement and work or services performed thereunder shall be retained by the Contractor for a period of three years after final audit of the Town's CDBG-DR project, unless a longer period is required to resolve audit findings or litigation. In such cases, the Town shall request a longer period of record retention.

**5.0 ACCESS TO RECORDS AND SITE WHERE APPROPRIATE:** The Town and other authorized representatives of the state and federal government shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to the Agreement for the purpose of making audit, examination, excerpts, and transcriptions. The Contractor agrees to provide the Town, the State of Colorado, the federal agencies with interest in the Agreement or any of the activities undertaken pursuant thereto, or their authorized representatives access to construction or other work sites, if any, pertaining to the work being completed under this Agreement.

**6.0 AUDIT:** The Town, the State Auditor, and HUD or their delegates shall have the right to review and monitor the financial and other components of the work and services provided and undertaken as part of the CDBG-DR project and the Agreement, by whatever legal and reasonable means are deemed expedient by the Town, the State Auditor and HUD.

**7.0 COMPLIANCE WITH LAWS AND INDEMNIFICATION:** The Agreement is funded in whole or in part with CDBG funds through the Town's Community Development Block Grant Program as administered by the Colorado Division of Local Government, Department of Local Affairs and/or with funds administered by the Division of Homeland Security and Emergency Management in the Department of Public Safety. Contractor shall comply with those regulations and restrictions normally associated with federally-funded programs and any other requirements that the state may prescribe, whether or not herein recited. The Contractor shall comply with all applicable laws, ordinances and codes of the state and local government. Contractor shall indemnify and hold the Town, its officials, agents, and employees, harmless with respect to any damages arising or alleged to arise from any act performed by Contractor or which should have been performed by Contractor tort in performing any of the obligations under the Agreement.

**8.0 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964:** Contractor shall comply with Title VI of the Civil Rights Act of 1964, which provides that no person shall, on the grounds of race, color, creed, religion, sex or national origin, be excluded

from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

**9.0 SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974:** Contractor shall comply with Section 109 of the Housing and Community Development Act of 1974, which provides that no person in the United States shall on the grounds of race, color, creed, religion, sex or national origin be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

**10.0 AGE DISCRIMINATION ACT OF 1975, AS AMENDED:** Contractor shall comply with the Age Discrimination Act of 1975, as amended, which provides that no person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving federal funding assistance. (42 U.S.C. 610 et. seq.)

**11.0 SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED:** Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that No otherwise qualified individual shall, solely by reason or his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal funds. (29 U.S.C. 794)

**12.0 AMERICANS WITH DISABILITIES ACT OF 1990:** Contractor or Consultant shall comply with Public Law 101-336, Americans with Disabilities Act of 1990 which provides, subject to such Act, that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

**13.0 SECTION 3 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1968 COMPLIANCE:**

1. The work or services to be performed or provided under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, which requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area; and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part, by persons residing in the area of the project.

2. Contractor shall comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in 24 CFR 135, and all applicable rules and orders of HUD and CTED issued thereunder prior to the execution of this Agreement. Both the Town and the Contractor certify and agree that they are under no contractual or other disability that would prevent them from complying with these provisions.

3. Contractor will send to each labor organization or representative of workers with which they have a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of their commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

4. Contractor will include this Section 3 clause in every subcontract for work in connection with the Agreement and will, at the direction of the Town, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR Part 135. Contractor or Consultant will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract, unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of HUD and CTED issued hereunder prior to the execution of the Agreement, shall be a condition of the federal financial assistance provided to the project contemplated by the Agreement. Failure to fulfill these requirements may subject the Town, its consultants and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

**14.0 PROTECTION OF LIVES AND HEALTH:** The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of his prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume No. 75, Saturday, April 17, 1971.

Title 29 - LABOR, shall be observed and the Contractor shall take or cause to be taken, such additional safety and health measures as the Town may determine to be reasonably necessary.

**15.0 INTEREST OF MEMBERS OF OR DELEGATE TO CONGRESS:** No members of or Delegate to Congress shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.

**16.0 OTHER PROHIBITED INTERESTS:** No official of the Town who is authorized in such capacity and on behalf of the Town to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, if for construction, shall become directly or indirectly interested personally in the Agreement or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of or for the Town who is authorized in such capacity and on behalf of the Town to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, if for construction, shall become directly or indirectly interested personally in the Agreement or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

**17.0 ARCHITECTURAL BARRIERS**:. All design specifications for the construction of any building or residence shall provide access to the physically handicapped in accordance with the Architectural Barriers Act of 1968; the American with Disabilities Act of 1990 (28 CRF Part 36), and Colorado Revise Statue, CRS 9-5-101 to 112.

**18.0 GOVERNMENT-WIDE RESTRICTION ON LOBBYING:** CDBG funds shall not be used to influence or attempt to influence federal officials. Disclosure forms must be filed when non-CDBG funds are used for such purposes. Certification of compliance by the state to include the certification language in grant awards it makes to units of general local government is required at all tiers and the Town and Contractor, if required, shall certify accordingly as imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to civil penalty of not less than $10,000 and not more than $100,000 for each failure.

**19.0 EMPLOYMENT OF CERTAIN PERSONS PROHIBITED:** No person under the age of sixteen years and no person who, at the time, is serving sentence in a penal or correctional institution shall be employed on the work covered in this Agreement.

**20.0 COPELAND ANTI-KICKBACK ACT:**

(a) Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(b) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause in subparagraph (1) above and such other clauses as the Town, or the State may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these Contract clauses.

(c) Breach. A breach of the subparagraph contract clauses (1) or (2) above may be grounds for termination of the Contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

**21.0 PUBLIC CONTRACT FOR SERVICES – EMPLOYMENT ELIGIBILITY VERIFICATION:** In accordance with C.R.S. 8-17.5-101 and 102, the Contractor certifies through execution of this Agreement that it will not knowingly employ or contract with an illegal alien who will perform work under this Agreement .

(a) The Contractor will participate in the E-Verify Program, the employment verification program established by the Colorado Department of Labor and Employment, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(b) The Contractor shall notify the owner and the Colorado Department of Labor and Employment of its participation in the employment verification program.

(c) The Contractor shall not enter into a contract with a subcontractor that fails to certify to the contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or use either the E-Verify Program or Colorado Department of Labor and Employment verification program procedures to undertake pre-employment screening of job applicants while the Agreement is being performed.

(d) If the Contractor obtains actual knowledge that a subcontractor knowingly employs or contracts with an illegal alien, the Contractor is required to:

(1) Notify the subcontractor and the Department of Local Affairs within three days of obtaining actual knowledge of the employment or contract with an illegal alien.

(2) Terminate the subcontract if within three days of receiving the notice the subcontractor does not stop employing or contracting with the illegal alien unless, during such three days, the subcontractor provides information that it did not knowingly employ or contract with an illegal alien.

(3) Comply with any reasonable request by the Colorado Department of Labor and Employment in the course of an investigation pursuant to authority established pursuant to C.R.S. §8-17.5-102(5)(a).

(e) The Department of Local Affairs or the Owner may terminate this Agreement for any violation of this provision and the Contractor shall be liable for actual and consequential damages to the Department of Local Affairs and the Owner.

**22.0 <u>QUESTIONS CONCERNING CERTAIN FEDERAL STATUTES AND REGULATIONS</u>:** All questions arising under this Agreement which relate to the application or interpretation of (a) the Copeland Anti-Kickback Act, (b) the Contract Work Hours and Safety Standards Act, (c) the Davis-Bacon Act, (d) the regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to said Acts, or (e) the labor standards provisions of any other pertinent Federal statute, shall be referred through the Town and to the Secretary of Labor, United States Department of Labor, for said Secretary's appropriate ruling or interpretation which shall be authoritative and may be relied upon for the purposes of this Agreement .

**23.0 <u>SUBCONTRACTS</u>:** The Contractor will insert or cause to be included in any subcontract covering any of the work or services covered by this Agreement the Federal Labor Standards Provisions contained herein and such other clauses as the Department of Housing and Urban Development or Colorado Department of Local Affairs may, by instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

**24.0 <u>CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS</u>:** (Applicable to Federally assisted construction contracts and related subcontracts exceeding $150,000). During the performance of this Agreement, the Contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR 15, as amended. In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the Town, the following:

(a) A stipulation by the contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.

(b) Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

(c) A stipulation that as a condition for the award of the Agreement, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the Agreement, is under consideration to be listed on the EPA List of Violating Facilities.

(d) Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in Paragraph (a) through (d) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

**25.0 <u>EMPLOYMENT PRACTICES</u>:** The Contractor (1) shall, to the greatest extent practicable, follow hiring and employment practices for work on the project which will provide new job opportunities for the unemployed and underemployed, and (2) shall insert or cause to be inserted the same provision in each construction subcontract.

**26.0 <u>EQUAL EMPLOYMENT OPPORTUNITY</u>:** During the performance of this Agreement, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action

shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the portion of the sentence immediately preceding subparagraph (1) and the provisions of subparagraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States."

**27.0 SUBCONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISE, AND LABOR SURPLUS AREA FIRMS:** The Contractor shall take the following steps to ensure that, whenever possible, subcontracts are awarded to small business firms, minority firms, women's business enterprises, and labor surplus area firms:

(a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(b) Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;

(c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;

(d) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises; and

(e) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

**28.0 BREACH OF FEDERAL LABOR STANDARDS PROVISIONS; CONTRACT TERMINATION; DEBARMENT:** Contractor shall comply with the Federal Labor Standards provisions contained in Section 35.0. A breach of Section 23.0, this Section and/or any of the Federal Labor Standards Provisions attached hereto or as may be in effect, may be grounds for termination of the Agreement , and for debarment as provided in 29 CFR 5.6. In addition to the causes for termination of this Agreement as herein elsewhere set forth, the Town reserves the right to terminate this Agreement if the Contractor or any

subcontractor whose subcontract covers any of the work covered by this Agreement shall breach any of the Federal Labor Standards Provisions.

**29.0 CLAIMS AND DISPUTES PERTAINING TO WAGE RATES:** Claims and disputes pertaining to wage rates or to classifications of laborers and mechanics employed upon the work covered by this Agreement shall be promptly reported by the Contractor in writing to the Town for referral to the Secretary of Labor, United States Department of Labor, whose decision shall be final with respect thereto.

**30.0 PAYROLLS AND BASIC PAYROLL RECORDS OF CONTRACTOR AND SUBCONTRACTORS:** In accordance with the Federal Labor Standards Act set forth in Section 35 hereof, Contractor and each subcontractor shall prepare his payrolls on forms satisfactory to and in accordance with instructions to be furnished by the Town. The Contractor shall submit weekly to the Town certified copies of all payrolls of the Contractor and of the subcontractors, it being understood that the Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. Each such payroll shall contain the "Weekly Statement of Compliance" set forth in Section 3.3 of Title 29, Code of Federal Regulations and all other requirements of the Federal Labor Standards Provisions set forth in Section 35.0 of this Attachment. The Town requires that payrolls and basic payroll records of the Contractor and each subcontractor covering all laborers and mechanics employed upon the work covered by this Agreement shall be maintained during the course of the work and preserved for a period of 5 years thereafter. Such payrolls and basic payroll records shall contain the information required by Federal Labor Standards provisions.

**31.0 SPECIFIC COVERAGE OF CERTAIN TYPES OF WORK BY EMPLOYEES:** The transporting of materials and supplies to or from the site of the Project or Program to which this Agreement pertains by the employees of the Contractor or of any subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the Project or Program to which this Agreement pertains by persons employed by the Contractor or by any subcontractor, shall, for the purposes of this Agreement , and without limiting the generality of the foregoing provisions of this Agreement , be deemed to be work to which the Federal Labor Standards Provisions are applicable.

**32.0 DAVIS BACON/PREVAILING WAGES:** Contractor/Subcontractor is responsible for determining the applicable prevailing wage requirements pertaining to Contractor/Subcontractor's Work and will strictly comply with the requirements. Contractor/Subcontractor will keep complete and accurate records containing the name, address, the occupational title or titles for the work performed, the rate of pay, daily and weekly hours worked for each occupational title, deductions made, and actual wages paid for work performed by each worker. Unless provided with specific documentations, Subcontractor will submit a Statement of Compliance, and a reasonable number of certified copies of current payroll records on the forms required with each request for payment. Receipt of the information will be a condition precedent to making any payments to the Subcontractor.

**33.0 UNDERPAYMENT OF WAGES OR SALARIES:** In case of underpayment of wages by the Contractor or by any subcontractor to laborers or mechanics employed by the Contractor or subcontractor upon the work covered by this Agreement, the Town, in addition to such other rights as may be afforded it under the Agreement shall withhold from the Contractor, out of any payments due the Contractor, so much thereof as the Town may consider necessary to pay such laborers or mechanics the full amount of ages required by this Agreement. The amount so withheld may be disbursed by the Town for and on account of the Contractor or the subcontractor (as may be appropriate), to the respective laborers or mechanics to whom the same is due or on their behalf to plans, funds, or programs for any type of fringe benefit prescribed in the applicable wage determination.

**34.0 SUSPENSION AND DEBARMENT:** This Section applies if this Agreement/Contract or any subcontract awarded hereunder is for a "covered transaction" to include:

(a) This Contract or any subcontract awarded hereunder is awarded in the amount of at least $25,000, or

(b) This Contract or any subcontract awarded hereunder requires the approval of a federal agency, regardless of amount.

A. If this Contract or any subcontract awarded hereunder is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000, the Contractor is required to verify that none of the Contractor or any subcontractor as the case may be, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). By signing this Agreement, the Contractor certifies, to the best of its knowledge and belief, that it and its principals:

(1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency;
(2) have not within a five-year period preceding this Agreement had one or more public transactions (federal, State or local) terminated for cause or default; and
(3) have not within a five-year period preceding this proposal been convicted of or had a civil judgment rendered against them for (a) the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State or local) transaction or contract under public transaction, or (b)

violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property

B. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

C. This certification is a material representation of fact relied upon by the Town. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Colorado and the Town), the Federal Government may pursue, including but not limited to suspension and/or debarment.

D. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of this Contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions."

## 35.0 FEDERAL LABOR STANDARDS PROVISIONS

### U.S. Department of Housing and Urban Development

**Applicability**
The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

**A. 1. (i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section l(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

**(ii) (a)** Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
**(1)** The work to be performed by the classification requested is not performed by a classification in the wage determination; and
**(2)** The classification is utilized in the area by the construction industry; and
**(3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
**b)** If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)
**(c)** In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)
**(d)** The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in

the classification.
**(iii)** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
**(iv)** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)
**2. Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.
**3. (i) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section l(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section l(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)
**(ii) (a)** The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at *http://www.dol.gov/esa/whd/forms/wh347instr.htm* or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)
**(b)** Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
**(1)** That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;
Previous editions are obsolete
**(2)** That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;
**(3)** That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
**(c)** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).
**(d)** The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.
**(iii)** The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor,

applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**4. Apprentices and Trainees.**

**(i) Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(ii) Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant ',to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by Previous editions are obsolete
the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(iii) Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

**6. Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

**7. Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**10. (i) Certification of Eligibility.** By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(ii)** No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(iii)** The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false.....

shall be fined not more than $5,000 or imprisoned not more than two years, or both."

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**B. Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable where the amount of the prime contract exceeds $100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

**(1) Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

**(3) Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

**(4) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety.** The provisions of this paragraph C are applicable where the amount of the prime contract exceeds $100,000.

**(1)** No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

**(2)** The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

**36.0** **COPYRIGHTS:** The Contractor acknowledges and agrees that the federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes: (a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

**37.0** **BYRD ANTI-LOBBYING AMENDMENT:** If this Contract is for compensation in excess of $100,000.00 (Contract Price > $100,000), the following shall apply: FEMA funds shall not be used to influence or attempt to influence federal officials. Disclosure forms must be filed when non-FEMA funds are used for such purposes. Certification of compliance by the state to include the certification language in grant awards it makes to units of general local government is required at all tiers and the Town and Contractor, if required, shall certify accordingly as imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to civil penalty of not less than $10,000 and not more than $100,000 for each failure.

**38.0** **PROCUREMENT OF RECOVERED MATERIALS:** If the Town constitutes "a political subdivision of a state" as defined in 2 C.F.R. §200.322, Contractor agrees to comply with the requirements of Section 6003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In accordance with Section 6002, Contractor must:

(1) Procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired in the preceding fiscal year exceeded $10,000;

(2) Procure solid waste management services in a manner that maximizes energy and resource recovery; and

(3) Must have established an affirmative procurement program for the procurement of recovered materials identified in the EPA guidelines.

**39.** **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT:** **Check the Applicable Provision Below:**

☒ **[If checked, Attachment D is incorporated into this Agreement by reference.]** The federal award meets the definition of "funding agreement" under 37 C.F.R. §401.2(a) and this contract is between the Town and a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work under such funding agreement, the Town shall comply with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperating Agreements," and any implementing regulations issued by the awarding agency.

☐ The federal award does not qualify as a "funding agreement" and/or is not a contract with small business firm or nonprofit organization for the purpose of the substitution of parties, assignment, or performance of experimental, developmental, or research work under such funding agreement.

| | |
|---|---|
| Accepted by Contractor on<br>_____, 20__ | Accepted by Town of Lyons on<br>_____, 20__ |
| By:_____ | By:_____ |
| _____<br>Title | _____<br>Title |

*Attachment D*

## PATENT RIGHTS (SMALL BUSINESS FIRMS AND NONPROFIT ORGANIZATIONS)

### (a) Definitions

(1) **Invention** means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(2) **Subject invention** means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(3) **Practical Application** means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(4) **Made** when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) **Small Business Firm** means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) **Nonprofit Organization** means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

### (b) Allocation of Principal Rights

The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

### (c) Invention Disclosure, Election of Title and Filing of Patent Application by Contractor

(1) The Contractor will disclose each subject invention to the Federal Agency within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the

agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the contractor.

(2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of the agency, be granted.

**(d) Conditions When the Government May Obtain Title**

The Contractor will convey to the Federal agency, upon written request, title to any subject invention -

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the agency may only request title within 60 days after learning of the failure of the contractor to disclose or elect within the specified times.

(2) In those countries in which the Contractor fails to file patent applications within the times specified in (c) above; provided, however, that if the Contractor has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e**) Minimum Rights to Contractor and Protection of the Contractor Right to File**

(1) The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in (c), above. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency except when transferred to the successor of that party of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the

geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

**(f) Contractor Action to Protect the Government's Interest**

(1) The Contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor will notify the Federal agency of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, “This invention was made with government support under (identify the contract) awarded by (identify the Federal agency). The government has certain rights in the invention.”

(g) Subcontracts

(1) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The Contractor will include in all other subcontracts, regardless of tier, for experimental developmental or research work the appropriate patent rights clause required by HUD .

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

**(h) Reporting on Utilization of Subject Inventions**

The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the government without permission of the Contractor.

**(i) Preference for United States Industry**

Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

**(j) March-in Rights**

The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that:

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

**(k) Special Provisions for Contracts with Nonprofit Organizations**

If the Contractor is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Contractor;

(2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Secretary may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that the Contractor could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

**(l) Communication**

(Complete According to Instructions at 37 C.F.R. §401.5(b)).

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party’s principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

State Contact:

Chantal Unfug, Division Director | Division of Local Government | Colorado Department of Local Affair

1313 Sherman Street, Room 521 | Denver, CO 80203 | chantal.unfug@state.co.us

(b) When the Department of Energy (DOE) determines to use alternative provisions under § 401.3(a)(4), the standard clause at § 401.14(a), of this section, shall be used with the following modifications unless a substitute clause is drafted by DOE:

(1) The title of the clause shall be changed to read as follows: Patent Rights to Nonprofit DOE Facility Operators

(2) Add an “(A)” after “(1)” in paragraph (c)(1) and add subparagraphs (B) and (C) to paragraph (c)(1) as follows:

(B) If the subject invention occurred under activities funded by the naval nuclear propulsion or weapons related programs of DOE, then the provisions of this subparagraph (c)(1)(B) will apply in lieu of paragraphs (c)(2) and (3). In such cases the contractor agrees to assign the government the entire right, title, and interest thereto throughout the world in and to the subject invention except to the extent that rights are retained by the contractor through a greater rights determination or under paragraph (e), below. The contractor, or an employee-inventor, with authorization of the contractor, may submit a request for greater rights at the time the invention is disclosed or within a reasonable time thereafter. DOE will process such a request in accordance with procedures at 37 CFR 401.15. Each determination of greater rights will be subject to paragraphs (h)-(k) of this clause and such additional conditions, if any, deemed to be appropriate by the Department of Energy.

(C) At the time an invention is disclosed in accordance with (c)(1)(A) above, or within 90 days thereafter, the contractor will submit a written statement as to whether or not the invention occurred under a naval nuclear propulsion or weapons-related program of the Department of Energy. If this statement is not filed within this time, subparagraph (c)(1)(B) will apply in lieu of paragraphs (c)(2) and (3). The contractor statement will be deemed conclusive unless, within 60 days thereafter, the Contracting Officer disagrees in writing, in which case the determination of the Contracting Officer will be deemed conclusive unless the contractor files a claim under the Contract Disputes Act within 60 days after the Contracting Officer's determination. Pending resolution of the matter, the invention will be subject to subparagraph (c)(1)(B).

(3) Paragraph (k)(3) of the clause will be modified as prescribed at § 401.5(g).

(c) As prescribed in § 401.3, replace (b) of the basic clause with the following paragraphs (1) and (2):

(b) Allocation of principal rights. (1) The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause, including (2) below, and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(2) If the Contractor performs services at a Government owned and operated laboratory or at a Government owned and contractor operated laboratory directed by the Government to fulfill the Government's obligations under a Cooperative Research and Development Agreement (CRADA) authorized by 15 U.S.C. 3710a, the Government may require the Contractor to negotiate an agreement with the CRADA collaborating party or parties regarding the allocation of rights to any subject invention the Contractor makes, solely or jointly, under the CRADA. The agreement shall be negotiated prior to the Contractor undertaking the CRADA work or, with the permission of the Government, upon the identification of a subject invention. In the absence of such an agreement, the Contractor agrees to grant the collaborating party or parties an option for a license in its inventions of the same scope and terms set forth in the CRADA for inventions made by the Government.

**Agenda Item No: VIII-3**
**Meeting Date: November 7, 2016**

**Subject:** **Resolution to approve Intergovernmental Agreement between the Town of Lyons and the Lyons Regional Library District concerning the proposed site for future construction of new library**

**Presenter:** **Kathie Guckenberger, Town Attorney**

**Background:** On September 6, 2016, the Board of Trustees approved a Second Intergovernmental Agreement Between and Among the Town of Lyons, the Lyons Regional Library District, Larimer County and Boulder County via Resolution 2016-81. The Town then routed the approved agreement to Larimer and Boulder Counties for signature. Legal counsel for the Counties then informed the Town Attorney that their clients' participation in matters relating to the operation of the District's library is no longer required. The Town Attorney worked with the Lyons Regional Library District to remove the Counties from the agreement, and is presenting the revised agreement to the Board of Trustees for approval. The Library District Board will consider the revised agreement, which its counsel has also approved, at its meeting on November 15, 2016.

*Other than removing the Counties from the agreement, there have been no other substantive changes to the agreement that this Board approved on September 6, 2016. However, for the Board's information, the Town Attorney is providing the following background on this revised intergovernmental agreement*.

The Lyons Regional Library District was formed in September 2013, pursuant to resolutions adopted by the Town of Lyons, Boulder County and Larimer County, the three jurisdictions in which any part of the District's territory lies, as authorized by §24-90-107, C.R.S. Within 90 days after District formation, the District and the three governmental entities entered into a mandatory intergovernmental agreement governing interim library operations leading up to the funding of the District. By separate intergovernmental agreement (the "Property Availability IGA"), the Town and the District agreed that the site of the Town's Depot building would be made available as the new site for the library. Of course, the Depot had housed the library up until the 2013 flood.

As the District evolved over time and developed operationally, some responsibilities, assumptions and other items set forth in the First IGA were resolved or are no longer valid. In addition, now that the District is an independent governmental entity, legal counsel to the two Counties have indicated that the participation of the Counties, Boulder and Larimer, in matters relating to the operation of the District's library is no longer required. Moreover, after operating the library at a temporary location this past year, and completing a full functional analysis of library needs and building costs, the District determined that the "Depot Library" site was no longer a viable site for building the new library, and the Town has since completed repairs to the building and proceeded to use it for expanded office space. The District asked the Town if, in lieu of using the Depot building, the Town would provide alternative land in the vicinity of the Depot to construct a new library from the ground up, and the Town agreed to consider such an arrangement. As a result of the change in the location for a new library, the District and the Town agreed to negotiate a new IGA in accordance with C.R.S. §24-90-107(2)(e) in an effort to better reflect the current needs of the Town and the District.

The Parties acknowledge that it will be necessary to develop a legal description for the proposed new library site, and that the legal description will be created through a subsequent

plat or plat amendment process. Until such a process can be undertaken, the Parties agree to proceed in good faith based on the general description and location of the proposed new library site, and to amend or supplement the new IGA when a legal description has been created. The Parties further agree that once the proposed new library site can be properly described, the Town will enter into a leasehold agreement with the District for the use of the new library site in exchange for One Dollar ($1.00) per year for fifty (50) years, subject to adoption of an ordinance by the Board of Trustees in accordance with C.R.S. Section 31-15-713.

This new IGA will be referred to as the Second IGA, and once approved by the Town and the District, it will fully supersede and replace the First IGA and the Property Availability IGA. The Second IGA will also supersede and replace, to the extent necessary, the previous version of this Agreement that was approved by the Lyons Board of Trustees in September 2016, before the Counties notified the District and the Town that the Counties no longer had to participate in such agreements.

**Staff Recommendation: Approve Resolution approving IGA with Library District.**

**TOWN OF LYONS, COLORADO**
**RESOLUTION 2016-95**

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF LYONS (THE "TOWN") AND THE LYONS REGIONAL LIBRARY DISTRICT (THE "DISTRICT")**

WHEREAS, the District was formed on September 3, 2013, pursuant to resolutions adopted by Boulder County, Larimer County and the Town, as authorized by §24-90-107, C.R.S.; and

WHEREAS, pursuant to C.R.S. §24-90-107(2)(e), within 90 days of District formation, an intergovernmental agreement ("**First IGA**") was to be entered into by the Town, the District and the two Counties to govern interim library operations prior to funding of the District and other issues. All four parties did in fact formalize and execute a First IGA dated December 30, 2014. An interim IGA was also executed to extend the 90-day deadline, dated November 19, 2013; and

WHEREAS, as the District evolved over time and developed operationally, some responsibilities, assumptions and other items set forth in the First IGA have been resolved or are no longer valid; and

WHEREAS, in addition, now that the District is an independent governmental entity, legal counsel to the two Counties have indicated that the participation of the Counties, Boulder and Larimer, in matters relating to the operation of the District's library is no longer required; and

WHEREAS, by separate intergovernmental agreement dated July 16, 2014 (the "**Property Availability IGA**"), the Town and the District originally agreed that the site of the Town's "**Depot Library**" would be made available to the District for operating a library if the District was successful in obtaining voter approval to fund the District. The Property Availability IGA also provided for parking lot availability and other matters relating to the possible use of the Depot building for library operations by the District. The District was in fact successful in obtaining voter approval; and

WHEREAS, after operating the library at a temporary location this past year, and completing a full functional analysis of library needs and building costs, the District determined that the "Depot Library" site was no longer a viable site for building the new library, and the Town has since proceeded to use the Depot building for expanded office space; and

WHEREAS, the District asked the Town if, in lieu of using the Depot building, the Town would provide alternative land in the vicinity of the Depot Library, to construct a new library from the ground up and the Town agreed to consider such an arrangement; and

WHEREAS, as a result of the change in the location for a new library, the District and the Town have agreed to negotiate a new IGA in accordance with C.R.S. §24-90-107(2)(e) in an effort to better reflect the current needs of the Town and the District (**"Second IGA"**); and

WHEREAS, the Parties acknowledge and agree that it will be necessary to develop a legal description for the proposed new library site, and that the legal description will be created through a subsequent plat or plat amendment process; and

WHEREAS, until such a process can be undertaken, the Parties agree to proceed in good faith based on the general description and location of the proposed new library site, and to amend or supplement the Second IGA when a legal description has been created; and

WHEREAS, the Parties further agree that once the proposed new library site can be properly described, the Town will enter into a leasehold agreement with the District, in a form satisfactory to the Town Attorney, for the use of the new library site in exchange for One Dollar ($1.00) per year for fifty (50) years and other good and valuable consideration, subject to adoption of an ordinance by the Town of Lyons Board of Trustees in accordance with C.R.S. Section 31-15-713; and

WHEREAS, the Second IGA shall be referred to as the Second IGA, or alternatively, the First Town/District IGA, which, upon approval by the Town and the District, will fully supersede and replace the First IGA and the Property Availability IGA; and

WHEREAS, the Second IGA will also supersede and replace, to the extent necessary, the previous version of this Agreement, which was approved by the Lyons Board of Trustees in September 2016, before the Counties notified the District and the Town that the Counties no longer had to participate in such agreements; and

WHEREAS, the Town's Board of Trustees desires to approve the Second IGA with the District, in a form satisfactory to the Town Attorney.

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

Section 1. The Board approves the Intergovernmental Agreement Between the Town of Lyons, Colorado, and the Lyons Regional Library District, also known as the Second IGA, attached hereto as Exhibit 1 in a form satisfactory to the Town Attorney, and authorizes the Mayor to sign the Second IGA and authorizes the Town Clerk to attest to the Mayor's signature upon the approval of the Second IGA by the Town Attorney.

Section 3. This Second IGA shall supersede and replace the First IGA, the Property Availability IGA, and the previous version of this Second IGA, which included all four parties and was approved by the Lyons Town Board in September 2016.

Section 2. This Resolution shall take effect immediately.

ADOPTED THIS 7th DAY OF NOVEMBER 2016.

TOWN OF LYONS, COLORADO

_____

Connie Sullivan, Mayor

_____

Deb Anthony, MMC -Town Clerk

Exhibit 1

Intergovernmental Agreement Between
the Town of Lyons, Colorado, and the Lyons Regional Library District

# INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF LYONS, COLORADO, AND THE LYONS REGIONAL LIBRARY DISTRICT

The Board of Trustees of the Town of Lyons (the "**Town**") and the Board of Trustees of the Lyons Regional Library District (the "**District**") (collectively, the "**Parties**") enter into this Agreement regarding operations of the District, pursuant to C.R.S. §24-90-107(2)(e).

## RECITALS

A. The District was formed on September 3, 2013, pursuant to resolutions adopted by Boulder County, Larimer County and the Town, as authorized by §24-90-107, C.R.S.; and

B. Pursuant to C.R.S. §24-90-107(2)(e), within 90 days of District formation, an intergovernmental agreement ("**First IGA**") was to be entered into by the Town, the District and the two Counties to govern interim library operations prior to funding of the District and other issues. All four parties did in fact formalize and execute a First IGA dated December 30, 2014. An interim IGA was also executed to extend the 90-day deadline, dated November 19, 2013; and

C. As the District evolved over time and developed operationally, some responsibilities, assumptions and other items set forth in the First IGA have been resolved or are no longer valid; and

D. In addition, now that the District is an independent governmental entity, the participation of the Counties, Boulder and Larimer, in matters relating to the operation of the District's library is no longer required; and

E. By separate intergovernmental agreement dated July 16, 2014 (the "**Property Availability IGA**"), the Town and the District originally agreed that the site of the Town's "**Depot Library**" would be made available to the District for operating a library if the District was successful in obtaining voter approval to fund the District. The Property Availability IGA also provided for parking lot availability and other matters relating to the possible use of the Depot building for library operations by the District. The District was in fact successful in obtaining voter approval; and

F. After operating the library at a temporary location this past year, and completing a full functional analysis of library needs and building costs, the District determined that the "Depot Library" site was no longer a viable site for building the new library, and the Town has since proceeded to use the Depot building for expanded office space; and

G. The District asked the Town if, in lieu of using the Depot building, the Town would provide alternative land in the vicinity of the Depot Library, to construct a new library from the ground up and the Town agreed to consider such an arrangement; and

As a result of the change in the location for a new library, the District and the Town have agreed to negotiate a new IGA in accordance with C.R.S. §24-90-107(2)(e) in an effort to better reflect the current needs of the Town and the District; and

H. This document shall be referred to as the Second IGA, or alternatively, the First Town/District IGA, which, upon approval by the Town and the District, will fully supersede and replace both the First IGA and the Property Availability IGA.

**NOW, THEREFORE,** the Town and the District agree as follows:

**1. Leasehold Agreement for Library Building Site.** The Parties have identified a general location where several Town-owned parcels could be combined to form a suitable site for a new library building. The land, which is bounded approximately by Broadway, 4th Avenue, Railroad Avenue and the Depot property, is depicted in the attached **Exhibit A** (the "New Library Site"). The Parties acknowledge and agree that it will be necessary to develop a legal description for the proposed New Library Site, and that the legal description will be created through a subsequent plat or plat amendment process. Until such a process can be undertaken, the Town and the District agree to proceed in good faith based on the general description and location of the proposed new library site, and to amend or supplement this Agreement when a legal description has been created.

Once the proposed New Library Site can be properly described, the Town agrees that it will enter into a leasehold agreement with the District, in a form satisfactory to the Town Attorney, for the use of the New Library Site in exchange for One Dollar ($1.00) per year for fifty (50) years and other good and valuable consideration, subject to adoption of an ordinance by the Town of Lyons Board of Trustees in accordance with C.R.S. § 31-15-713. The effective date of such lease shall be the date on which ground is broken for construction of the library building. In the event the District is unable to obtain necessary financing to construct the new library facility before January 1, 2020, the Town will be relieved of any obligation to lease the subject property to the District. The Parties acknowledge and agree that the Town may negotiate a new agreement with the District under those circumstances, but will not be obligated to do so. Beginning no later than the forty-ninth (49th) anniversary of the effective date of the lease, the Town and the District shall commence good faith negotiations regarding the extension of the lease, termination of the lease, or other matters relating to the continuation of library and resource center services for residents of the Lyons area.

**2. Operations Transfer**. The District assumed operational responsibility for the Lyons Regional Library on July 1, 2015, at which time the Town transferred to the District all materials previously

housed in the library or stored for library use. The Town hereby agrees to allow the District to store library materials in a storage shed on Town property until the new building is complete.

3. **Facilities Transfer**. As a result of flood damage to the Depot Library site in September 2013 as well as some pre-existing conditions that required repair, the Lyons municipal library continues to be operated in a temporary leased facility on Main Street in Lyons. The First IGA contemplated the District moving into the Depot building upon completion of repairs to that building, but, as noted herein, the District decided to construct a new facility elsewhere in Lyons to better serve future library patrons, and to remain at the Main Street location until a new building is complete, while the Town has occupied the Depot building for other municipal purposes.

4. **Land & Title.** The Town has agreed to make the New Library Site available to the District to construct the new library facility. The Town will continue to own the New Library Site and will lease it to the District in accordance with the terms set forth in this IGA. The Parties agree that the lease arrangement would not typically require a title insurance commitment, but the Town and the District previously obtained one effective April 1, 2016, covering several parcels, and the Town wishes to receive an updated title commitment for just the new library site, and will bear any costs associated therewith. The Town further agrees to take such reasonable steps as may be necessary to confirm its ownership of the New Library Site, including but not limited to seeking to obtain appropriate deeds or other forms of documentation as to such property, and, if necessary, bringing a quiet title action or other legal proceeding to resolve any possible title disputes. In addition, the Town may also elect to obtain a title insurance policy for the new library site in a reasonable amount as determined by the Town. If the Town applies for and obtains a title insurance policy, the Parties agree to share the cost of the policy evenly. If the District is required to obtain a title insurance policy as a condition of securing financing for the lease and the project, the District shall be responsible for all costs associated with that title insurance policy.

5. **Municipal Campus.**

The Town is currently exploring the feasibility, including funding possibilities, of a "Municipal Campus" plan for the general area that includes the proposed library site and also includes the current Town Hall, the Depot site, the "RTD" parking lot, skate park, and RV dump station. The Town acknowledges the District's intention to proceed without delay with designing and constructing a new library, and the Town remains committed to act in good faith to assist the District in such efforts, where appropriate. Both the District and the Town, however, acknowledge the possible benefits of coordinating efforts to use most efficiently tax revenue, grants, donations and other funding sources to provide enhanced civic and cultural opportunities for citizens. The District and Town agree to cooperate in good faith in such planning efforts with the mutual goal of enhancing the desirability of any such "Municipal Campus" for their mutual benefit and the benefit of Lyons-area citizens. In any event, the District's opportunity to construct a new library

on the New Library Site shall not be affected by any decision regarding the building of a municipal campus.

## 6. Zoning.

The Municipal Campus site is currently zoned "M" for municipal use, and the Town agrees that Municipal zoning is appropriate for constructing and operating a library facility on the New Library Site.

## 7. Town's Remedies in the Event of Default by District or Dissolution of District

The Parties agree that the Lease Agreement, when negotiated, will include language that will address the interests of the Parties should the District dissolve or default upon any financing, subject to approval by the Parties and their respective counsel. Such language shall include the following provisions, unless the Parties agree in writing to different provisions:

- At any time, the District may notify the Town that it intends to obtain lease purchase financing of improvements to the New Library Site. Such notice shall identify the prospective lessor under the financing lease and the proposed term of such lease purchase financing.

- The District may assign or sublet its leasehold interest in the New Library Site to the lessor under a financing lease, and such assignee or subtenant shall be permitted to encumber such leasehold interest, provided that no party to such financing lease transaction shall take any action that results in an encumbrance upon the fee ownership of the Town in the New Library Site other than permitted encumbrances or improvements.

## 8. Site Development, Permitting, and Fees.

Development of the New Library Site and design and construction of the library facility shall be subject to site plan/development plan review and approval by the Town's Planning and Community Development Commission, in accordance with all applicable procedures set forth in Article 17 of Chapter 16 of the Lyons Municipal Code ("Site Plan and Development Plan Review Process"). Although the Town agrees to waive permitting fees and inspection fees on new construction when possible, the District agrees to bear all other costs related to the Site Plan and Development Plan Review Process, which may include the cost of replatting the property, consolidating lots, or other land use processes. Nothing in this provision shall be deemed to authorize the waiver of fees imposed by other entities and collected by the Town, including but not limited to fees payable to Safebuilt, the St. Vrain Valley School District, or the Lyons Fire Protection District.

## 9. Parking.

The Town and the District agree to work together in good faith to meet the parking needs of the library, town hall, and downtown business district through the use of shared and "library only" reserved parking spaces.

## 10. Irrigation.

The Town agrees to make available to the District sufficient water to irrigate landscaping on the New Library Site. The District agrees to pay a proportionate share based on irrigated area of the Town's annual Lyons Ditch water share cost and to assume the costs of equipment maintenance, repair or replacement for the irrigation system on the New Library Site as defined by the leasehold agreement.

## 11. Utility Taps.

The Town agrees to make water, wastewater and electrical taps available to the District at rates and fees to be determined by the Town. The tap fees and utility rates to be paid by the District shall be commensurate with the fees and rates that would be charged to a new Town-owned building on the same site.

## 12. Skate Park, RTD lot, Recycle Center, and RV Dump Station.

In order to accommodate the new library facility on the New Library Site, certain existing Town-owned improvements will have to be relocated or abandoned and disposed of prior to the groundbreaking of the new building. These items include the Skate Park, the RTD parking lot, Recycling center, and RV Dump Station.

a. Skate Park – The Town is in the process of planning a new skate park, the timing of which has yet to be determined. Ideally, the existing skate park can be abandoned in place and not be relocated to the future skate park location. If the new skate park is approved for construction, the Town will allow the existing skate park to be demolished at the same time construction commences on the New Library Site. If that is the case, the District agrees to be responsible for the demolition and disposal of the materials from the existing skate park and for all related costs. If the new skate park is not yet available at the time when library construction commences, the District will pay fifty percent (50%) of the cost, up to a maximum of Five Thousand Dollars ($5,000.00), of moving the current skate park equipment to another site.

b. Recycle Center – The Town agrees to relocate the Recycling Center, and to act in good faith to pursue all the necessary funds for the relocation, including anticipated grant funds to relocate the recycling center. In the event the Town does not receive full funding to relocate the recycling center, the District agrees to contribute a maximum of Two Thousand Dollars ($2,000.00) toward the relocation of the recycling center.

c. RTD Lot - The Town agrees to relocate the RTD lot before the groundbreaking for the new library building.

d. RV Dump Station: There is currently an RV sewage dump station located close to the intersection of 4th Avenue and Railroad Avenue. The Parties have agreed that it is in the best interests of the Town and the District to relocate the RV dump station. The District agrees to obtain and pay for the engineering costs required to develop a set of construction drawings to relocate the RV sewage dump station. The Town has agreed to pay for the construction costs associated with the relocation of the RV dump station, including the removal of the existing RV dump station.

**13. Town Meeting Room Use and Space.**

In recognition of the considerable organizational and financial assistance provided by the Town to the District, the District agrees to make available to the Town on a to-be-determined preferential basis, use of meeting rooms in any facility constructed by the District. The length and frequency of such use shall be structured so as not to interfere with library functions or to unreasonably interfere with meeting room use by community groups and area businesses. Meeting room policy and procedures will be determined by the District after the new facility is designed and will include designating a small meeting area for use by Town Boards and Commissions and access to the larger community room for occasional Town Hall-style public meetings.

Additionally, should the Town desire to fund and build dedicated Board Chambers as part of the new facility, the District and Town agree to cooperate in the planning, design, and construction of such space. The District agrees to consider this possible expansion of the library in the initial design phase of the new facility so as to accommodate a potential future addition.

The Town and District agree to meet and confer near the time of Certification of Occupancy issuance to develop a building use agreement.

**14. Annual Financial Statements and Report.**

Pursuant to C.R.S. § 24-90-109(2), the District is required to make an annual report to the Town, Boulder County, and Larimer County, showing the condition of its trust during the year, the sums of money expended, the purposes of the expenditures and such other statistics and information as the District board of trustees deems to be of public interest. The District shall provide a representative to present such report at a meeting of the Town Board of Trustees on or before October 31 of each year and to answer any questions or provide such additional information as the Town Board of Trustees may reasonably request. The District also agrees to provide such an in-person annual presentation to the Board of Commissioners of Boulder County and the Board of Commissioners of Larimer County, if requested to do so.

## 15. Negotiation of Remaining Issues

The Parties agree that as additional issues or conflicts arise between execution of this Agreement and the effective date of the Lease Agreement, the Parties will negotiate with each other in good faith.

## 16. Integration.

This Agreement, together with those prior Intergovernmental Agreements among the Four Parties that survive the execution of this Agreement, contains the entire understanding of the parties and neither it, nor the rights and obligations hereunder, may be changed, modified, or waived except by an instrument in writing signed by the parties. To the extent that a conflict exists between this Agreement and any prior agreement between the Parties, the terms of this Agreement shall control.

## 17. Severability.

If any provision of this Agreement is determined to be unenforceable or invalid for any reason, the remainder of this Agreement shall not be void, but shall remain in full force and effect.

## 18. Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one and the same Agreement.

## 19. Governing Law and Venue.

It is the intention of the Parties that all questions of construction and interpretation of this Agreement and the rights and obligations of the Parties hereunder shall be determined in accordance with the laws of the State of Colorado. Venue shall be in the District Court of Boulder County, Colorado.

**IN WITNESS WHEREOF,** the Town and the District have signed this Agreement to be effective on the date last written below.

*[Remainder of Page Left Blank Intentionally, Signature Pages Follow]*

*Signature Page to Intergovernmental Agreement Between the Town of Lyons and the Lyons Regional Library District*

TOWN OF LYONS, COLORADO

_____ _____

Connie Sullivan, Mayor Date

ATTEST:

**APPROVED AS TO FORM (excluding exhibits):**

Kathrin B. Gruchenberger

**Michow Cox & McAskin, LLP**

_____

Debra Anthony, Town Clerk

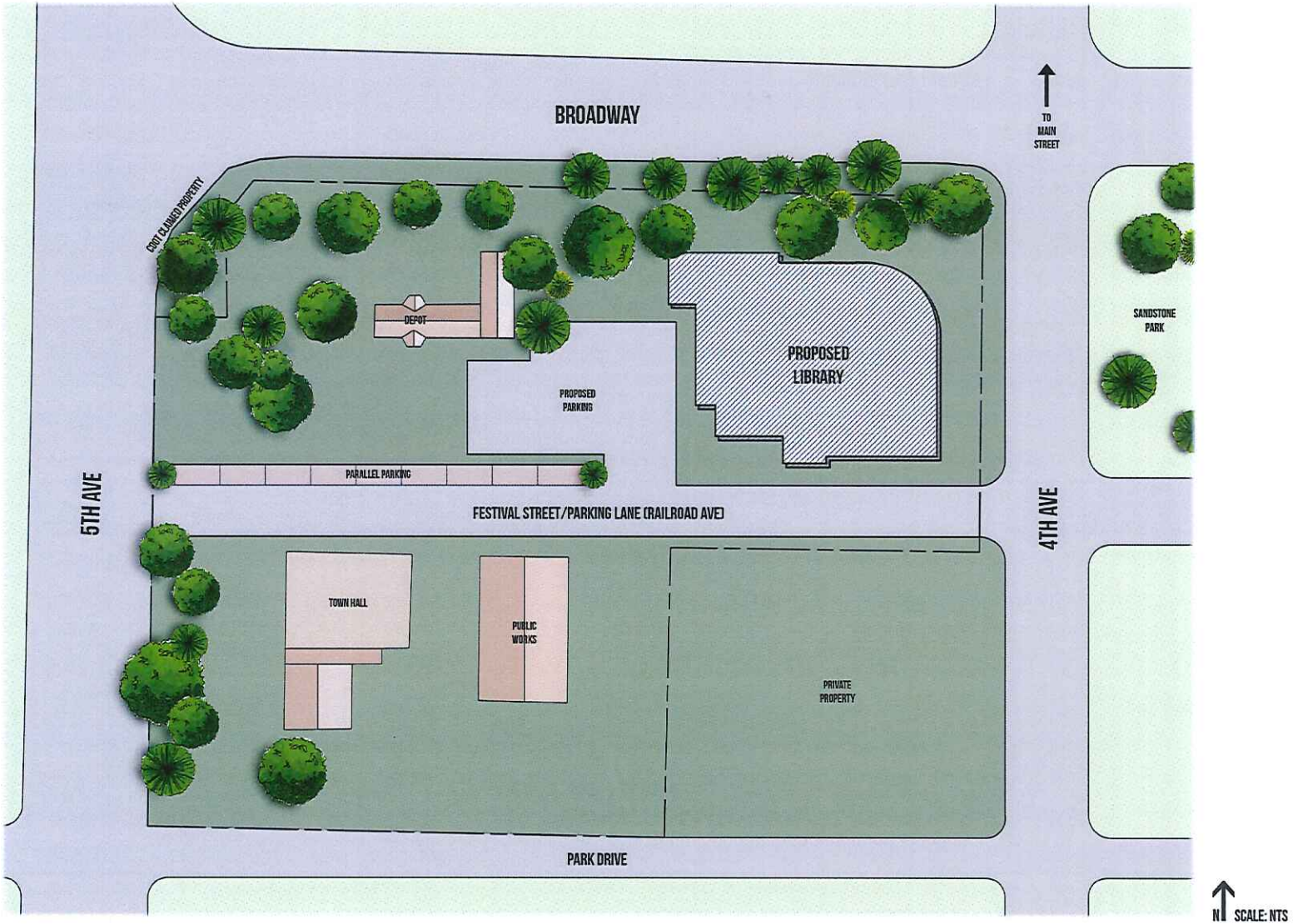
LYONS REGIONAL LIBRARY DISTRICT

_____ _____

President, Board of Trustees Date

ATTEST:_____

Secretary, Board of Trustees


BROADWAY
TO MAIN STREET
CDOT CLAIMED PROPERTY
DEPOT
PROPOSED PARKING
PROPOSED LIBRARY
SANDSTONE PARK
PARALLEL PARKING
5TH AVE
FESTIVAL STREET/PARKING LANE (RAILROAD AVE)
4TH AVE
TOWN HALL
PUBLIC WORKS
PRIVATE PROPERTY
PARK DRIVE
N
SCALE: NTS

# EXHIBIT A

**Agenda Item No: VIII - 4**

**Meeting Date: 11.07.2016**

**Subject: Resolution 2016-96,** a Resolution Approving an Amendment to the Services Agreements with Industrial Automation Gurus, LLC to Provide and Install Water and Sewer SCADA Upgrades

Cover Letter

**Amendment to Services Agreement with International Automation Gurus, LLC for installing water and sewer upgrades for the Town's water and wastewater systems**

The Town entered into a services agreement with International Automation Gurus, LLC ("IAG") to install water and sewer upgrades for the Town's water and wastewater systems ("Agreement"). The term of this agreement began on August 1, 2016, and concludes on November 30, 2016. The Town Engineer has identified some additional minor work that is necessary to complete the services set forth in the Agreement ("Services"), which work will necessitate an increase to the not-to-exceed fee in the Agreement. Consequently, Town staff is recommending that the Board of Trustees amend the Agreement to create a force account of Ten Thousand Dollars and to authorize the Town Engineer to approve such minor changes to the work as necessary to complete the Services up to, but not exceeding, that amount.

Initially, Town, Town Staff recommended the contract be awarded to IAG in the amount of $135,171 with a contingency of $25,000 for unknown conditions, force account minor revisions and costs for the Town to support the work.

The $25,000 dollar amount included two elements that should be divided up between the contract for the services with IAG and the budget allocation for the Town. Town Staff recommends Agreement be amended to include a force account for minor additional work up to an amount of $10,000, which would revise the not-to-exceed amount in the Agreement to $145,171. This force account is at the discretion of Town Staff to utilize on the project as the contractor works through the upgrades to the system and potentially uncovers systems or operations that may require alternative resources or minor amendments to basic scope activities contemplated in the original Request for Quotes (RFQ) and ensuing proposal. Any force account will be utilized within the overall scope of the systems and contract, to function in the best manner for the Town. This force account is not for changes in the scope of work. The scope of work is identified on Exhibit A of the Agreement remains unchanged.

The remaining $15,000 in the project budget is a budget allocation for Public Works to complete work items related to the SCADA update that are typically performed by the entity who has ownership of the systems, such as routing power and conduits from the public power system to the system installation locations.

The total overall budget for the project remains at $160,171 as contemplated in the resolution and previously approved by the Board.

**TOWN OF LYONS,**
**COLORADO**

**RESOLUTION NO. 2016-64**

**A RESOLUTION APPROVING A SERVICES AGREEMENT WITH INDUSTRIAL AUTOMATION GURUS, LLC TO PROVIDE AND INSTALL WATER AND SEWER SCADA SYSTEM UPGRADES**

WHEREAS, the Town of Lyons ("Town") operates two separate, limited Supervisory Control and Data Acquisition (SCADA) systems for the potable water system and the wastewater plant;

WHEREAS, the Town has performed some updates, upgrades and improvements to the water SCADA system over the last ten years, but that system has exhibited signs of degradation that has negatively affected operations over the last six months; and

WHEREAS, the Town has recently constructed and operated a replacement wastewater treatment plant that includes a limited SCADA system that monitors the internal workings of the facility; and

WHEREAS, the Town also owns and operates three remote sanitary sewer lifts stations that are not connected to the SCADA wastewater system, which presents several issues with monitoring and operations of the facility; and

WHEREAS, Town Staff prepared and issued a Request for Proposals ("RFP") for Water and Sewer SCADA System upgrades on May 23, 2016; and

WHEREAS, the Town received seven proposals from qualified firms or entities, and those proposals were reviewed by Town Staff; and

WHEREAS, after that review and checking references for the most qualified and cost-effective bidders, Town Staff selected the proposal submitted by Industrial Automation Gurus, LLC in the amount of $135,171 ($95,194 for the water system and $39,977 for the sewer system) as the lowest responsible bid; and

WHEREAS, Town Staff recommends that the budget for this contract include a contingency amount of $25,000 to account for unknown conditions, force account minor revisions, and costs for the Town to support the work as identified in the RFP and proposals and as recognized by Public Works staff, bringing the total budget for this contract to $160,171; and

WHEREAS, the Town's Board of Trustees desires to award the bid and approve the Services Agreement with Industrial Automation Gurus, LLC for Water and Sewer SCADA System upgrades.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF LYONS, COLORADO, as follows:

Section 1. The Board hereby awards the bid for Water and Sewer SCADA System upgrades to Industrial Automation Gurus, LLC and authorizes the Town to enter into a Services Agreement in the amount of $160,171 with Industrial Automation Gurus, LLC in a form satisfactory to the Town Attorney.

Section 2. The Board authorizes the Town Administrator to sign the Services Agreement and the Town Clerk to attest the Administrator's signature.

Section 3. Severability. If any provision of this Resolution should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Resolution that can be given effect without the invalid portion, provided that such remaining portions or applications of this Resolution are not determined by the court to be inoperable. The Board of Trustees declares that it would have adopted this Resolution and each section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion would be declared invalid or unconstitutional.

Section 4. Effective Date. This Resolution shall become effective immediately upon signing by the mayor.

APPROVED THIS 1st DAY OF AUGUST 2016.

TOWN OF LYONS

By:_____
Connie Sullivan, Mayor

ATTEST:

By:_____
Debra Anthony, Town Clerk

**Town of Lyons**
**SERVICES AGREEMENT**

This SERVICE AGREEMENT ("Agreement") is made and entered into this 1st day of August 2016, by and between the TOWN OF LYONS, COLORADO, a municipal corporation of the State of Colorado, with offices at 432 5th Avenue, Lyons, Colorado 80540 (the "**Town**"), and Industrial Automation Guru's, LLC with offices at 10227 W Roxbury Place, Littleton, CO 80127 (the "**Contractor**").

**WITNESSETH**

WHEREAS, the Town requires certain professional services as more fully described in Exhibit A;

WHEREAS, the Town issued a Request for Proposals for the services which are the subject of this Agreement; and

WHEREAS, the time for submittal of proposals has passed, and the Town has evaluated the proposals submitted against previously established criteria; and

WHEREAS, the Town has identified the Contractor as the most qualified responsible bidder; and

WHEREAS, the Contractor represents that it possesses the necessary qualifications to perform these services; and

WHEREAS, the Town desires to contract with the Contractor subject to the terms of this Agreement.

NOW, THEREFORE, for the consideration herein expressed, it is agreed as follows by and between the Town and the Contractor that the Contractor shall perform the following:

**1.0 SERVICES AND PURPOSE OF AGREEMENT**

1.1 Services. The Town desires to achieve, secure, receive, or obtain certain service(s) or work product(s) as more specifically described in **Exhibit A** (the "Services"). Exhibit A describes the requirements and deliverables required by this Agreement and is incorporated herein by reference. As an independent contractor, the Contractor offers and agrees to perform and/or deliver the Services in accordance with the terms and conditions of this Agreement. The Parties recognize and acknowledge that, although the Town has requested certain general services to be performed or certain work product to be produced, the Contractor has offered to the Town the process, procedures, terms, and conditions under which the Contractor plans and proposes to achieve or produce the services and/or work product(s) and the Town, through this Agreement, has accepted such process, procedures, terms, and conditions as binding on the Parties.

1.2 Town Representative. The Town assigns [Representative's Name] as the Town Representative for this Agreement. The Town Representative will monitor the Contractor's progress and performance under this Agreement and shall be available to the Contractor to respond to questions, assist in understanding Town policies, procedures, and practices, and supervise the performance of any Town obligations under this Agreement.

1.3 Changes to Services. Any changes to the Services that are mutually agreed upon between the Town and the Contractor shall be made in a formal writing referencing this Agreement and, only upon execution by both Parties of such formal writing, shall become an amendment to the Services described in this Agreement. To be effective, any written change must be signed by the Contractor and by the Town or by a person expressly authorized in writing to sign on behalf of the Town. Changes to the Services or to this Agreement shall not be made through oral agreement or electronic mail messages.

1.4 Meeting Attendance. The Contractor shall attend such meetings of the Town relative to the Scope of Work set forth in Exhibit A as may be requested by the Town. Any requirement made by the named representatives of the Town shall be given with reasonable notice to the Contractor so that a representative may attend.

1.5 Agreement to Comply with Requisite Provisions Based On Funding Source. If checked below, the Town will pay in whole or in part for the Services rendered hereunder with federal or State based grant funding. Contractor agrees to comply with all provisions set forth in any Attachment as noted and **if checked**)

☐ Attachment A, Federal Emergency Management Agency's ("FEMA") Grant Program Requirements for Procurement Contracts if FEMA funding is used for the Work

☐ Attachment B, Colorado Community Development Block Grant Disaster Recovery Program funds (hereinafter referred to as CDBG-DR funds) Requirements for Contracts if CDBG-DR funding is used for the Work

1.6 Lawful Performance. It is further agreed that no party to this Agreement will perform contrary to any state, federal, or county law, or any of the ordinances of the Town of Lyons, Colorado.

## 2.0 COMPENSATION

2.1 Commencement of and Compensation for Services. Following execution of this Agreement by the Town, the Contractor shall be authorized to and shall commence performance of the Services as described in **Exhibit A**, subject to the requirements and limitations on compensation as provided by this Section 2.0 and its subsections. Compensation to be paid hereunder shall not exceed ONE HUNDRED THIRTY FIVE THOUSAND ONE HUNDRED SEVENTY ONE AND NO/100 Dollars ($135,171.00) unless a larger amount is agreed to by and between the Parties in accordance with the amendment requirements of this Agreement.

A. Method of Compensation. The Contractor shall perform the Services and shall

invoice the Town for work performed based on the rates and/or compensation methodology and amounts described in **Exhibit B** subject to the not to exceed amount set forth in this Section. Monthly, partial, progress payments shall be made by the Town to the Contractor for the percentage of the Scope of Work completed. Progress payments shall not constitute a waiver of the right of the Town to require the fulfillment of all material terms of this Agreement and the delivery of all improvements embraced in this Agreement.

B. Final payment may be requested by the Contractor upon completion and acceptance, by the Town, of all work or Services as set forth in Exhibit A. The total amount of final payment shall consist of the compensation set forth in paragraph 2.1, as adjusted in accordance with approved change orders, if applicable, less all previous payments to the Contractor.

C. Should work beyond that described in Exhibit A be required, it will be paid for as extra work at a cost to be agreed upon in separate written agreement by the Town and the Contractor prior to commencement of the additional work. Such additional agreements shall be executed and approved by all persons required by Town purchasing ordinances or policies.

D. The Town, before making any payment, may require the Contractor to furnish releases or receipts from any or all persons performing work under this Agreement and/or supplying material or services to the Contractor, or any subcontractor if this is deemed necessary to protect the Town's interest. The Town, however, may in its discretion make payment in part or full to the Contractor without requiring the furnishing of such releases or receipts.

2.2 Reimbursable Expenses. If this Agreement is for lump sum compensation, there shall be no reimbursable expenses. If the Agreement is for compensation based on a time and materials methodology, the following shall be considered "reimbursable expenses" for purposes of this Agreement and may be billed to the Town without administrative mark-up but which must be accounted for by the Contractor and proof of payment shall be provided by the Contractor with the Contractor's monthly invoices:

- ☒ None
- ☐ Vehicle Mileage (billed at not more than the prevailing per mile charge permitted by the IRS as a tax deductible business expense)
- ☐ Printing and Photocopying Related to the Services (billed at actual cost)
- ☐ Long Distance Telephone Charges Related to the Services
- ☐ Postage and Delivery Services
- ☐ Lodging and Meals (but only with prior written approval of the Town as to dates and maximum amount)

Any fee, cost, charge, or expense incurred by the Contractor not otherwise specifically authorized by this Agreement shall be deemed a non-reimbursable cost

that shall be borne by the Contractor and shall not be billed or invoiced to the Town and shall not be paid by the Town.

2.3 Increases in Compensation or Reimbursable Expenses. Any increases or modification to the compensation or reimbursable expenses shall be subject to the approval of the Town and shall be made only by written amendment of this Agreement executed by both Parties.

2.4 Payment Processing. The Contractor shall submit invoices and requests for payment in a form acceptable to the Town. Invoices shall not be submitted more often than once each month unless otherwise approved by this Agreement or in writing by the Town in accordance with the amendment requirements of this Agreement. Unless otherwise directed or accepted by the Town, all invoices shall contain sufficient information to account for all appropriate measure(s) of Contractor work effort (e.g., task completion, work product delivery, or time) and all authorized reimbursable expenses for the Services during the stated period of the invoice. Following receipt of a Contractor's invoice, the Town shall promptly review the Contractor's invoice. All Town payments for Services rendered pursuant to this Agreement shall be issued in the business name of Contractor only, and in no event shall any such payments be issued to an individual. In no event shall any Town payments to Contractor be in the form of or based upon a salary or an hourly wage rate.

2.5 Town Dispute of Invoice or Invoiced Item(s). The Town may dispute any Contractor compensation and/or reimbursable expense requested by the Contractor described in any invoice and may request additional information from the Contractor substantiating any and all compensation sought by the Contractor before accepting the invoice. When additional information is requested by the Town, the Town shall advise the Contractor in writing, identifying the specific item(s) that are in dispute and giving specific reasons for any request for information. The Town shall pay the Contractor within forty-five (45) days of the receipt of an invoice for any undisputed charges or, if the Town disputes an item or invoice and additional information is requested, within thirty (30) days of acceptance of the item or invoice by the Town following receipt of the information requested and resolution of the dispute. To the extent possible, undisputed charges within the same invoice as disputed charges shall be timely paid in accordance with this Agreement. Payment by the Town shall be deemed made and completed upon hand delivery to the Contractor or designee of the Contractor or upon deposit of such payment or notice in the U.S. Mail, postage pre-paid, addressed to the Contractor.

**3.0 CONTRACTOR'S REPRESENTATIONS AND OFFERED PERFORMANCE**

The Contractor offers to perform the Services in accordance with the following Contractor-elected practices and procedures. By this Agreement, the Town accepts such offer and the following are hereby made part of the terms and conditions of this Agreement:

3.1 General. The Contractor shall become fully acquainted with the available information related to the Services. The Contractor shall affirmatively request from the Town Representative and the Town such information that the Contractor, based on the

Contractor's professional experience, should reasonably expect is available and which would be relevant to the performance of the Services. The Contractor shall promptly inform the Town concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Agreement. The Contractor shall provide all of the Services in a timely and professional manner. The Contractor shall comply with all applicable federal, state and local laws, ordinances, regulations, and resolutions.

3.2 Independent Contractor. The Contractor shall perform the Services as an independent contractor and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with the Town. This Agreement does not require the Contractor to work exclusively for the Town. This Agreement shall not be interpreted as the Town dictating or directing the Contractor's performance or the time of performance beyond a completion schedule and a range of mutually agreeable work hours, but shall be interpreted as the Contractor's offer and Town acceptance of terms and conditions for performance. The Contractor's business operations shall not be combined with the Town by virtue of this Agreement, and the Town will not provide any training to Contractor, its agents, or employees beyond that minimal level required for performance of the Services. The Parties acknowledge that the Contractor may require some assistance or direction from the Town in order for the Services to meet the Town's contractual expectations. Any provisions in this Agreement that may appear to grant the Town the right to direct or control Contractor or the Services shall be construed as Town plans or specifications regarding the Services.

3.3 Liability for Employment-Related Rights and Compensation. The Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Contractor, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. The Contractor will comply with all laws, regulations, municipal codes, and ordinances and other requirements and standards applicable to the Contractor's employees, including, without limitation, federal and state laws governing wages and overtime, equal employment, safety and health, employees' citizenship, withholdings, reports and record keeping. **CONTRACTOR ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS CONTRACTOR OR SOME ENTITY OTHER THAN THE TOWN PROVIDES SUCH BENEFITS. CONTRACTOR FURTHER ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO WORKERS' COMPENSATION BENEFITS. CONTRACTOR ALSO ACKNOWLEDGES THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED OR PAID PURSUANT TO THIS AGREEMENT.** To the maximum extent permitted by law, Contractor waives all claims against the Town for any Employee Benefits; the Contractor will defend the Town from any claim and will indemnify the Town against any liability for any Employee Benefits for the Contractor imposed on

the Town ; and the Contractor will reimburse the Town for any award, judgment, or fine against the Town based on the position the Contractor was ever the Town s employee, and all attorneys' fees and costs the Town reasonably incurs defending itself against any such liability.

3.4 Interaction with Public. The Contractor recognizes that its conduct during the performance of the Services hereunder reflects upon its reputation in the community as well as upon the public perception of the Town. Therefore, the Contractor offers and warrants to the Town that the Contractor, its agents and employees will conduct all of their interactions with the citizens and the public relating to the performance of the Services hereunder in such a manner as to provide customer service that reflects positively upon its reputation and the Town's public image.

3.5 Subcontractors. The Parties recognize and agree that subcontractors may be utilized by the Contractor for the performance of certain Services if and as described more particularly in **Exhibit A**; however, the engagement or use of subcontractors will not relieve or excuse the Contractor from performance of any obligations imposed in accordance with this Agreement and Contractor shall remain solely responsible for ensuring that any subcontractors engaged to perform Services hereunder shall perform such Services in accordance with all terms and conditions of this Agreement.

3.6 Standard of Performance. In performing the Services, the Contractor warrants that it shall use that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by highly competent members of the same profession practicing in the State of Colorado. The Contractor represents to the Town that the Contractor is, and its employees or sub-contractors performing such Services are, properly licensed and/or registered within the State of Colorado for the performance of the Services (if licensure and/or registration is required by applicable law) and that the Contractor and employees possess the skills, knowledge, and abilities to perform the Services competently, timely, and professionally in accordance with this Agreement. In addition, the Contractor warrants and represents that it will provide the Services in accordance with more specific standards of performance as are included within **Exhibit A**. The Contractor represents, covenants and agrees that the Services will be provided to the Town free from any material errors. The Contractor's failure to meet or exceed any of the foregoing standards and warranties may be considered a material breach of this Agreement and may be grounds for termination of the Agreement pursuant to Section 4.0 below, in addition to any other remedies as provided in Section 9.0 below.

3.7 Review of Books and Records. The Contractor shall promptly comply with any written Town request for the Town or any of its duly authorized representatives to reasonably access and review any books, documents, papers, and records of the Contractor that are pertinent to the Contractor's performance under this Agreement for the purpose of the Town performing an audit, examination, or other review of the Services.

3.8 Licenses and Permits. The Contractor shall be responsible at the Contractor's expense for obtaining, and maintaining in a valid and effective status, all licenses and permits necessary to perform the Services unless specifically stated otherwise in this Agreement.

3.9 Affirmative Action. The Contractor warrants that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor warrants that it will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

3.10 Employment of or Contracts with Illegal Aliens. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Contractor shall not contract with a subcontractor that fails to certify that the subcontractor does not knowingly employ or contract with any illegal aliens. By entering into this Agreement, the Contractor certifies as of the date of this Agreement that it does not knowingly employ or contract with an illegal alien who will perform work under this contract for Services and that the Contractor will participate in the e-verify program or department program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services. The Contractor is prohibited from using either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed. If the Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to notify the subcontractor and the Town within three (3) days that the Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien. The Contractor shall terminate the subcontract if the subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice regarding Contractor's actual knowledge. The Contractor shall not terminate the subcontract if, during such three (3) days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor is required to comply with any reasonable request made by the Department of Labor and Employment made in the course of an investigation undertaken to determine compliance with this provision and applicable state law. If the Contractor violates this provision, the Town may terminate this Agreement, and the Contractor may be liable for actual and/or consequential damages incurred by the Town, notwithstanding any limitation on such damages provided by such Agreement.

3.11 Duty to Warn. The Contractor agrees to call to the Town's attention errors in any drawings, plans, sketches, instructions, information, requirements, procedures, and/or other data supplied to the Contractor (by the Town or by any other party) that it becomes aware of and believes may be unsuitable, improper, or inaccurate in a

material way. However, the Contractor shall not independently verify the validity, completeness or accuracy of such information unless included in the Services or otherwise expressly engaged to do so by the Town.

## 4.0 TERM AND TERMINATION

4.1 Term. This Agreement shall be effective on the **1st Day of August of 2016 at 12:01 a.m.**, (the "Effective Date") and shall terminate at the earlier of the date on which all obligations of the parties have been met (to include all Services have been completed) or **11:59 p.m. on 30th day of November, 2016**, or on a prior date of termination as may be permitted by this Agreement; provided, however, that the Parties may mutually agree in writing to extend the term of this Agreement, subject to annual appropriation. Those provisions that survive termination, to include the indemnification obligations and any warranty obligations, shall remain in effect past termination.

4.2 Continuing Services Required. The Contractor shall perform the Services in accordance with this Agreement commencing on the Effective Date until such Services are terminated or suspended in accordance with this Agreement. The Contractor shall not temporarily delay, postpone, or suspend the performance of the Services without the written consent of the Town Council, Town Manager, the Town Representative, or other Town employee expressly authorized in writing to direct the Contractor's services.

4.3 Town Unilateral Termination. This Agreement may be terminated by the Town for any or no reason upon written notice delivered to the Contractor at least ten (10) days prior to termination. In the event of the Town's exercise of the right of unilateral termination as provided by this paragraph:

A. Unless otherwise provided in any notice of termination, the Contractor shall provide no further services in connection with this Agreement after receipt of a notice of termination; and

B. All finished or unfinished documents, data, studies and reports prepared by the Contractor pursuant to this Agreement shall be delivered by the Contractor to the Town and shall become the property of the Town; and

C. The Contractor shall submit to the Town a final accounting and final invoice of charges for all outstanding and unpaid Services and reimbursable expenses performed prior to the Contractor's receipt of notice of termination and for any services authorized to be performed by the notice of termination as provided by Section 4.3(A) above. Such final accounting and final invoice shall be delivered to the Town within thirty (30) days of the date of termination; thereafter, no other invoice, bill, or other form of statement of charges owing to the Contractor shall be submitted to or accepted by the Town.

4.4 Termination for Non-Performance. Should a party to this Agreement fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing party if the performing party first provides written notice to the non-performing party which notice shall specify the non-performance, provide both a demand to cure the non-performance and reasonable time to cure the non-performance, and state a date upon which the Agreement shall be terminated if there is a failure to timely cure the non-performance. For purpose of this Section 4.4, "reasonable time" shall be not less than five (5) business days. In the event of a failure to timely cure a non-performance and upon the date of the resulting termination for non-performance, the Contractor shall prepare a final accounting and final invoice of charges for all performed but unpaid Services and authorized reimbursable expenses. Such final accounting and final invoice shall be delivered to the Town within fifteen (15) days of the date of termination; thereafter, no other invoice, bill, or other form of statement of charges owing to the Contractor shall be submitted to or accepted by the Town. Provided that notice of non-performance is provided in accordance with this Section 4.4, nothing in this Section 4.4 shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party.

4.5 Unilateral Suspension of Services. The Town may suspend the Contractor's performance of the Services at the Town's discretion and for any reason by delivery of written notice of suspension to the Contractor which notice shall state a specific date of suspension. Upon receipt of such notice of suspension, the Contractor shall immediately cease performance of the Services on the date of suspension except: (1) as may be specifically authorized by the notice of suspension (e.g., to secure the work area from damage due to weather or to complete a specific report or study); or (2) for the submission of an invoice for Services performed prior to the date of suspension in accordance with this Agreement.

4.6 Delivery of Notice of Termination. Any notice of termination permitted by this Section 4.0 and its subsections shall be addressed to the person signing this Agreement on behalf of either Town or Contractor at the address shown below or such other address as either party may notify the other of and shall be deemed given upon delivery if personally delivered, or forty-eight (48) hours after deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

## 5.0 INSURANCE

5.1 Insurance Generally. During the term of this Agreement, the Contractor shall obtain and shall continuously maintain, at the Contractor's expense, insurance of the kind and in the minimum amounts specified as follows by checking the appropriate boxes:

☐ The Contractor shall obtain and maintain the types, forms, and coverage(s) of insurance deemed by the Contractor to be sufficient to meet or exceed the Contractor's minimum statutory and legal obligations arising under this Agreement ("Contractor Insurance"); or

☒ The Contractor shall secure and maintain the following ("Required Insurance"):

☒ Worker's Compensation Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by law. Such policy of insurance shall be endorsed to include the Town as a Certificate Holder.

☒ Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION Dollars ($1,000,000.00) each occurrence and of TWO MILLION Dollars ($2,000,000) aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the Town as Certificate Holder and name the Town, and its elected officials, officers, employees and agents as additional insured parties.

☒ Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than FIVE HUNDRED THOUSAND Dollars ($500,000) each occurrence with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Agreement, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the Town as Certificate Holder and name the Town, and its elected officials, officers, employees and agents as additional insured parties.

☒ Professional Liability (errors and omissions) Insurance with a minimum limit of coverage of ONE MILLION Dollars ($1,000,000.00) per claim and annual aggregate. Such policy of insurance shall be obtained and maintained for one (1) year following completion of all Services under this Agreement. Such policy of insurance shall be endorsed to include the Town as a Certificate Holder.

The Required Insurance shall be procured and maintained with insurers with an A- or better rating as determined by Best's Key Rating Guide. All Required Insurance shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor.

5.2 Additional Requirements for All Policies. In addition to specific requirements imposed on insurance by this Section 5.0 and its subsections, insurance shall conform to all of the following:

A. For both Contractor Insurance and Required Insurance, all policies of insurance shall be primary insurance, and any insurance carried by the Town, its officers, or its employees shall be excess and not contributory insurance to that provided by the Contractor; provided, however, that the Town shall not be obligated to obtain or maintain any insurance whatsoever for any claim, damage, or purpose arising from or related to this Agreement and the Services. The Contractor shall not be an insured party for any Town-obtained insurance policy or coverage.

B. For both Contractor Insurance and Required Insurance, the Contractor shall be solely responsible for any deductible losses.

C. For Required Insurance, no policy of insurance shall contain any exclusion for bodily injury or property damage arising from completed operations.

D. For Required Insurance, every policy of insurance shall provide that the Town will receive notice no less than thirty (30) days prior to any cancellation, termination, or a material change in such policy or in the alternative, the Contractor shall provide such notice as soon as reasonably practicable and in no event less than thirty (30) days prior to any cancellation, termination, or a material change in such policy.

5.3 Failure to Obtain or Maintain Insurance. The Contractor's failure to obtain and continuously maintain policies of insurance in accordance with this Section 5.0 and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the Town may immediately terminate this Agreement, or, at its discretion, the Town may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Town shall be repaid by Contractor to the Town immediately upon demand by the Town, or at the Town's sole discretion, the Town may offset the cost of the premiums against any monies due to the Contractor from the Town pursuant to this Agreement.

5.4 Insurance Certificates. Prior to commencement of the Services, the Contractor shall submit to the Town certificates of insurance for all Required Insurance. Insurance limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this Section 5.0 and its subsections shall be indicated on each certificate of insurance. Certificates of insurance shall reference the Project Name as identified on the first page of this Agreement. The Town may request and the Contractor shall provide within three (3) business days of such request a current certified copy of any policy of Required Insurance and any endorsement of such

policy. The Town may, at its election, withhold payment for Services until the requested insurance policies are received and found to be in accordance with the Agreement.

## 6.0 CLAIMS, INDEMNIFICATION, HOLD HARMLESS AND DEFENSE

6.1 Notices of Claim. A Party shall notify the other Party immediately and in writing in the event that a Party learns of a third-party claim or an allegation of a third-party claim arising or resulting from the Parties' performance or failure to perform pursuant to this Agreement. The Parties shall reasonably cooperate in sharing information concerning potential claims.

6.2 Claims Challenging Town Law, Ordinance, Rule, or Policy/Procedure. In the event any claim is asserted by a third-party against the Town and/or the Contractor alleging that any law, statute, ordinance, rule or approved Town policy or procedure is unlawful, unconstitutional or otherwise improper, then:

A. The Contractor shall not be entitled to and shall not defend such claim; and

B. The Town may, at its sole discretion, elect to defend, not defend, settle, confess, compromise, or otherwise direct the manner in which such claim is addressed; and

C. The Contractor shall reasonably cooperate with the Town in any Town defense of such claim although the Contractor shall bear any cost or expense incurred by the Contractor in such cooperation, including but not limited to the Contractor's cost and expense incurred in consultation with its own legal counsel; and

D. Only if authorized by law and without waiving the provisions of the Colorado Constitution or the Colorado Governmental Immunity Act, the Town shall indemnify and hold Contractor harmless for any damages, liability, expenses, or court awards, including costs and attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by any third-party, including but not limited to, any person, firm, partnership, or corporation, in connection with or arising out of such claim.

6.3 Indemnification for Certain Claims. For any claim not within the scope of Section 6.2 above, Contractor expressly agrees to indemnify and hold harmless the Town, and any of its council members, board members, commissioners, officials, officers, agents, Contractors, attorneys, or employees from any and all damages, liability, expenses, or court awards, including costs and attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by any third-party, including but not limited to, any person, firm, partnership, or corporation, in connection with or arising out of any intentional, reckless, negligent or tortious conduct, error, omission, or act of commission by Contractor or any of its employees, agents, or others acting on Contractor's behalf in performance of the Services. Nothing in this Agreement shall be construed as constituting a covenant, promise, or agreement by the Contractor to indemnify or

hold the Town, its elected officials, board members, commissioners, officials, officers, agents, contractors, attorneys, or employees harmless for any negligence solely attributable to the Town, its elected officials, boards, commissions, officials, officers, agents, Contractors, attorneys, or employees. The Contractor's obligation to indemnify pursuant to this Section shall survive the completion of the Services and shall survive the termination of this Agreement.

6.4 Defense of Claims.

A. Claims Against Both the Town and Contractor. In the event any claim is asserted by a third-party against both the Town and Contractor arising out of any Party's performance of the Services which claim is not within the scope of Section 6.2 above, the Town shall be entitled to elect to defend such claim on behalf of both the Town and Contractor subject to the provisions governing indemnification set forth in this Section. In the event that the Town elects to defend such claim, the Town shall consult with Contractor in such defense but the Town is entitled to exercise its independent discretion in the manner of defense, including but not limited to the selection of litigation counsel and the discretion to settle, confess, compromise, or otherwise direct and dispose of any claim. In the event that the Town elects to defend such claim, Contractor may at its own cost and expense elect to assume the defense of Contractor, in which case Contractor shall bear its own attorneys' fees, costs, and expenses in such defense and such fees, costs, and expenses shall not be subject to indemnification pursuant to this Section.

B. Claims Against Only One Party. In the event of any claim asserted by a third-party against only one Party to this Agreement arising out of any Party's performance of the Services which claim is not within the scope of Section 6.2 above, the Party shall be entitled to elect to defend such claim on behalf of such Party subject to the provisions governing indemnification set forth in this Section. Where appropriate, the defending Party may also elect to join the other Party through third-party practice or otherwise in accordance with the Colorado Rules of Civil Procedure or other applicable rules, in which case the joined Party may defend such claim subject to indemnification pursuant to this Section. In the event that a Party elects to intervene voluntarily in any claim asserted against the other Party arising out of any Party's performance of the Services or any claim that any law, statute, ordinance, rule or approved Town policy or procedure is unlawful, unconstitutional or otherwise improper, the intervening Party shall bear its own attorneys' fees, costs, and expenses in such intervention and such fees, costs, and expenses shall not be subject to indemnification pursuant to this Section.

## 7.0 RECORDS AND OWNERSHIP OF DOCUMENTS

7.1 Retention and Open Records Act Compliance. All records of the Contractor related to the provision of Services hereunder, including public records as defined in the Colorado Open Records Act ("CORA"), and records produced or maintained in accordance with this Agreement, are to be retained and stored in accordance with the Town 's records retention and disposal policies. Those

records which constitute "public records" under CORA are to be at the Town offices or accessible and opened for public inspection in accordance with CORA and Town policies. Public records requests for such records shall be processed in accordance with Town policies. Contractor agrees to allow access by the Town and the public to all documents subject to disclosure under applicable law. Contractor's willful failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Agreement by the Town . For purposes of CORA, the Town Clerk is the custodian of all records produced or created as a result of this Agreement. Nothing contained herein shall limit the Contractor's right to defend against disclosure of records alleged to be public.

7.2 Town's Right of Inspection. The Town shall have the right to request that the Contractor provide to the Town a list of all records of the Contractor related to the provision of Services hereunder retained by the Contractor in accordance with this subsection and the storage location and method. Contractor agrees to allow inspection at reasonable times by the Town of all documents and records produced or maintained in accordance with this Agreement.

7.3 Ownership. Any work product, materials, and documents produced by the Contractor pursuant to this Agreement shall become property of the Town of Lyons upon delivery and shall not be made subject to any copyright unless authorized by the Town. Other materials, methodology and proprietary work used or provided by the Contractor to the Town not specifically created and delivered pursuant to the Services outlined in this Agreement may be protected by a copyright held by the Contractor and the Contractor reserves all rights granted to it by any copyright. The Town shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by Town staff and/or Town contractors; or (2) pursuant to a request under the Colorado Open Records Act, C.R.S. § 24-72-203, to the extent that such statute applies; or (3) pursuant to law, regulation, or court order. The Contractor waives any right to prevent its name from being used in connection with the Services.

7.4 Return of Records to Town. At the Town's request, upon expiration or termination of this Agreement, all records of the Contractor related to the provision of Services hereunder, including public records as defined in the Colorado Open Records Act ("CORA"), and records produced or maintained in accordance with this Agreement, are to be returned to the Town in a reasonable format and with an index as determined and requested by the Town.

**8.0 FORCE MAJEURE**

Neither the Contractor nor the Town shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by "force majeure." As used in this Agreement, "force majeure" means acts of God, acts of the public enemy, acts of terrorism, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not

the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

## 9.0 REMEDIES

In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, the Town may exercise the following remedial actions if the Contractor substantially fails to perform the duties and obligations of this Agreement. Substantial failure to perform the duties and obligations of this Agreement shall mean a significant, insufficient, incorrect, or improper performance, activities or inactions by the Contractor. The remedial actions include:

A. Suspend the Contractor's performance pending necessary corrective action as specified by the Town without the Contractor's entitlement to an adjustment in any charge, fee, rate, price, cost, or schedule; and/or

B. Withhold payment to the Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or

C. Deny payment for those services which have not been satisfactorily performed, and which, due to circumstances caused by the Contractor, cannot be performed, or if performed would be of no value to the Town ; and/or

D. Terminate this Agreement in accordance with this Agreement; and/or

E. ☐ Other remedies as may be provided by attached addendum or addenda.

The foregoing remedies are cumulative and the Town, in its sole discretion, may exercise any or all of the remedies individually or simultaneously.

## 10.0 MISCELLANEOUS PROVISIONS

10.1 No Waiver of Rights. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party. The Town's approval or acceptance of, or payment for, services shall not be construed to operate as a waiver of any rights or benefits to be provided under this Agreement. No covenant or term of this Agreement shall be deemed to be waived by the Town except in writing signed by the Town Council or by a person expressly authorized to sign such waiver, and any written waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver unless specifically stated.

10.2 No Waiver of Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the Town, its officials, employees, contractors, or agents, or any other person acting on behalf of the Town and, in particular, governmental immunity afforded or available pursuant to the Colorado

Governmental Immunity Act, Title 24, Article 10 of the Colorado Revised Statutes.

10.3 Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section 10.3 shall not authorize assignment.

10.4 No Third-party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third-party, including any agent, sub-consultant or sub-contractor of Contractor. Absolutely no third-party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

10.5 Article X, Section 20/TABOR. The Parties understand and acknowledge that the Town is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the Town are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the Town's current fiscal period ending upon the next succeeding December 31. Financial obligations of the Town payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of Town of Centennial, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.

10.6 Governing Law, Venue, and Enforcement. This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Boulder County, Colorado. To reduce the cost of dispute resolution and to expedite the resolution of disputes under this Agreement, the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement. The Parties agree that the rule that ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement. If there is any conflict between the language of this Agreement and any exhibit or attachment, the language of this Agreement shall govern.

10.7 Survival of Terms and Conditions. The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

10.8 Assignment and Release. All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by the Contractor without the express written consent of the Town. Any written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by the Town through the authorizing agent executing this Agreement. No assignment shall release the Contractor from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment.

10.9 Interpretation and Mutual Negotiation. It is the intent of the Parties that this Agreement shall in all instances be interpreted to reflect the Contractor's status as an independent contractor with the Town and that in no event shall this Agreement be interpreted as establishing an employment relationship between the Town and either Contractor or Contractor's employees, agents, or representatives. The Parties agree that this Agreement is the result of mutual negotiation between the Parties and that the Agreement shall not be construed against the Town on grounds relating to drafting, revision, review, or recommendation by any agent or representative of the Town . The Parties further agree that all warranties in this Agreement are made by the Contractor to induce the Town to accept the Contractor's offer to enter into this Agreement and have been incorporated into the Agreement at the Contractor's request.

10.10 Paragraph Captions. The captions of the paragraphs and sections are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

10.11 Agreement Controls. In the event a conflict exists between this Agreement and any term in any exhibit attached or incorporated into this Agreement, the terms in this Agreement shall supersede the terms in such exhibit.

10.12 Integration and Amendment. This Agreement represents the entire and integrated agreement between the Town and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this Agreement must be in writing and be signed by both the Town and the Contractor.

10.13 Severability. Invalidation of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

10.14 Incorporation of Exhibits. Unless otherwise stated in this Agreement, exhibits, applications, or documents referenced in this Agreement shall be incorporated into this Agreement for all purposes. In the event of a conflict between any incorporated exhibit and this Agreement, the provisions of this Agreement shall govern and control.

10.15 Notices. Unless otherwise specifically required by a provision of this Agreement, any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States Mail properly addressed to the intended recipient.

| **If to the Town**: | **If to Contractor**: |
|---|---|
| Town Administrator<br>Lyons Town Hall<br>PO Box 49<br>432 5th Ave,<br>Lyons, CO 80540 | Industrial Automation Guru's, LLC<br>10227 W Roxbury Pl<br>Littleton, CO 80127 |
| With Copy to:<br>Town Attorney<br>Michow Cox & McAskin, LLP<br>6530 S. Yosemite St., Suite 200<br>Greenwood Village, CO 80111 | With Copy to: |

10.16 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

## 11.0 ATTACHMENTS

The following are attached to this Agreement for reference:

- ☒ Contractor's Certificate(s) of Insurance
- ☐ Contractor Proof of Professional Licensing
- ☐ Other

## 12.0 AUTHORITY

The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of Town of Lyons and the Contractor and bind their respective entities.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK-SIGNATURE PAGE FOLLOWS

**THIS AGREEMENT is executed and made effective as provided above.**

**TOWN OF LYONS, COLORADO:**

Approval by Town Board of Trustees
☐ Not Required
By: _____
Mayor or Mayor Pro Tem

Approval by Town Administrator
☐ Not Required
By: _____
Victoria Simonsen, Town Administrator

ATTEST:

_____
Debra K. Anthony Town Clerk

APPROVED AS TO FORM (*Excluding Exhibits*)
☐ Not Required

_____
For Town Attorney's Office

**CONTRACTOR:**

By: _____

Printed name: KEVIN PETRASEK

Its: _____

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STATE OF )
COUNTY OF ) ss.
The foregoing Disaster Recovery Services Agreement was acknowledged before me this ____ day of _____, 2015, by _____ as _____ of _____, a _____.

Witness my hand and official seal.

My commission expires: _____.

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

EXHIBIT A – SCOPE OF WORK

SCADA UPGRADE

**SCOPE**

The following is the scope of work as identified by the Town and based on existing conditions. This scope of work should be verified by the proposer in the field. Adjustments may be needed as the project progresses through the initial design phase, however the proposer should only quote based on the listed scope and adjustments would be made after the proposer is selected.

The Town of Lyons expects that the existing process control logic for the water system will remain the same as current and there will be no changes to the HMI screen graphics or page layout.

The Town of Lyons will provide satellite internet service at the AVT as per specifications provided by successful proposer, will provide cellular data service at PRV's 1 to 5 and the lift stations as per the specifications provided by successful proposer and will provide 120VAC power to all PRV's and Lift Stations. The Town of Lyons will provide Operations and Maintenance manual for the Wastewater Treatment Plant system and provide access to that system for the successful proposer.

High Service Pump Station (HSPS)

- Remove Existing Bristol PLC and Serial Radio
- Provide/Install Allen-Bradley PLC with Ethernet Communications
- Convert Existing PLC Program from Bristol to Allen-Bradley
- Configure VPN Connection from HSPS to Remote Sites
- Maintain Communications with Longmont WTP
- Verify HSPS Operation and Communications to Remote Sites
- Provide Updated PLC Wiring Diagrams

Apple Valley Tank (AVT)

- Remove Existing Bristol PLC and Serial Radio
- Provide/Install Allen-Bradley PLC, or equal, with Ethernet Communications
- Convert Existing PLC Program from Bristol to Allen-Bradley, or equal
- Provide/Install VPN Router
- Configure VPN Connection from AVT to HSPS
- Connect recently replaced Tank Level Transmitter
- Provide Updated PLC Wiring Diagrams

PRV-1 at High Street

- Remove Existing Bristol PLC and Serial Radio
- Provide/Install Allen-Bradley, or equal, PLC with Ethernet Communications
- Convert Existing PLC Program from Bristol to Allen-Bradley, or equal
- Provide/Install Cellular VPN Router
- Configure VPN Connection from PRV to HSPS
- Provide Updated PLC Wiring Diagrams

PRV-2 at Meadow Park

- Provide/Install Allen-Bradley, or equal, PLC with Ethernet Communications
- Provide Allen-Bradley, or equal, PLC Program
- Provide/Install Cellular VPN Router
- Configure VPN Connection from PRV to HSPS
- Provide PLC Wiring Diagrams

PRV-3 at 4th and Railroad Ave

- Provide/Install Allen-Bradley, or equal, PLC with Ethernet Communications
- Provide Allen-Bradley, or equal PLC Program
- Provide/Install Cellular VPN Router
- Configure VPN Connection from PRV to HSPS
- Provide PLC Wiring Diagrams

PRV-4 at 2nd and Railroad Ave

- Remove Existing Bristol, or equal PLC and Serial Radio
- Provide/Install Allen-Bradley, or equal, PLC with Ethernet Communications
- Convert Existing PLC Program from Bristol to Allen-Bradley
- Provide/Install Cellular VPN Router
- Configure VPN Connection from PRV to HSPS
- Provide Updated PLC Wiring Diagrams

PRV-05 at Clark's Hardware

- Provide/Install Allen-Bradley, or equal, PLC with Ethernet Communications
- Provide Allen-Bradley, or equal, PLC Program
- Provide/Install Cellular VPN Router
- Configure VPN Connection from PRV to HSPS
- Provide PLC Wiring Diagrams

SCADA Computer

- Provide/Install New Workstation and Monitor with MS Office
- Provide/Install Latest Version Iconics Genesis-32 HMI Software
- Provide/Install OPC Server for Allen-Bradley, or equal, PLC
- Convert Existing Screens from Bristol to Allen-Bradley, or equal PLC Tags

Auto-dialer

- Provide/Install Win911 Software Auto-dialer on SCADA Computer
- Configure Alarm List per Owner Requirements
- Configure Auto-dialer to Send Text Message Alarm Notifications

BID ALTERNATE

Stone Canyon Lift Station (SC)

- Provide/Install Allen-Bradley PLC with Ethernet Communications
- Provide Allen-Bradley PLC Program
- Provide/Install Cellular VPN Router

- Configure VPN Connection from PRV to WWTP
- Provide PLC Wiring Diagrams

Eagle Canyon Lift Station (EC)

- Provide/Install Allen-Bradley PLC with Ethernet Communications
- Provide Allen-Bradley PLC Program
- Provide/Install Cellular VPN Router
- Configure VPN Connection from PRV to WWTP
- Provide PLC Wiring Diagrams

Lyons Valley Park Lift Station (LVP)

- Provide/Install Allen-Bradley PLC with Ethernet Communications
- Provide Allen-Bradley PLC Program
- Provide/Install Cellular VPN Router
- Configure VPN Connection from PRV to WWTP
- Provide PLC Wiring Diagrams

EXHIBIT B - COMPENSATION

SCOPE FOR SCADA UPGRADE

**Fee Schedule**

| | |
|---|---|
| **Water System SCADA** | **$95,194.00** |
| **Sewer System SCADA** | **$39,977.00** |

ACORD

[redacted]

DATE (MM/DD/YYYY) 05/26/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Phone: 720-962-8700 Fax: 720-962-8800
CENTENNIAL INSURANCE GROUP
6901 S PIERCE STREET, #233
LITTLETON CO 80128

Agency Lic#: 125454

CONTACT NAME: Centennial Insurance Group
PHONE (A/C, No, Ext): 720-962-8700 FAX (A/C, No): 720-962-8800
E-MAIL ADDRESS:

| INSURER(S) AFFORDING COVERAGE | NAIC # |
|---|---|
| INSURER A: Underwriters at Lloyds of London | |
| INSURER B: Pinnacol Assurance | 41190 |
| INSURER C: | |
| INSURER D: | |
| INSURER E: | |
| INSURER F: | |

INSURED
INDUSTRIAL AUTOMATION GURUS LLC
10227 W ROXBURY PL
LITTLETON CO 80127

**COVERAGES** **CERTIFICATE NUMBER:** 53715 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADD'L INSR | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | | |
|---|---|---|---|---|---|---|---|---|---|
| A | GENERAL LIABILITY | | | PSE00189341 | 05/25/16 | 05/25/17 | EACH OCCURRENCE | $ | 1,000,000 |
| | X COMMERCIAL GENERAL LIABILITY | | | | | | DAMAGE TO RENTED PREMISES (Ea occurence) | $ | 250,000 |
| | CLAIMS-MADE X OCCUR | | | | | | MED. EXP (Any one person) | $ | 5,000 |
| | X Cyber Liability $250,000 | | | | | | PERSONAL & ADV INJURY | $ | 1,000,000 |
| | | | | | | | GENERAL AGGREGATE | $ | 2,000,000 |
| | GEN'L AGGREGATE LIMIT APPLIES PER: | | | | | | PRODUCTS - COMP/OP AGG | $ | 1,000,000 |
| | POLICY PRO-JECT LOC | | | | | | Errors and Omissions | $ | 1,000,000 |
| | AUTOMOBILE LIABILITY | | | PSE00189341 | 05/25/16 | 05/25/17 | COMBINED SINGLE LIMIT (Ea accident) | $ | 1,000,000 |
| | ANY AUTO | | | | | | BODILY INJURY (Per person) | $ | |
| | ALL OWNED AUTOS / SCHEDULED AUTOS | | | | | | BODILY INJURY (Per accident) | $ | |
| | X HIRED AUTOS / X NON-OWNED AUTOS | | | | | | PROPERTY DAMAGE (per accident) | $ | |
| | X Hired Auto Physical Damage $50,000 | | | | | | | $ | |
| | UMBRELLA LIAB / OCCUR | | | | | | EACH OCCURRENCE | $ | |
| | EXCESS LIAB / CLAIMS-MADE | | | | | | AGGREGATE | $ | |
| | DED / RETENTION $ | | | | | | | $ | |
| B | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | | | 4192517 | 05/26/16 | 06/01/17 | X WC STATU-TORY LIMITS / OTH-ER | $ | |
| | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N N/A | | | | | | E.L. EACH ACCIDENT | $ | 500,000 |
| | If yes, describe under DESCRIPTION OF OPERATIONS below | | | | | | E.L. DISEASE-EA EMPLOYEE | $ | 500,000 |
| | | | | | | | E.L. DISEASE-POLICY LIMIT | $ | 500,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Certificate Holder is included as Additional Insured as respects General Liability Insurance if required by written contract. Coverage for the additional insured is primary and non-contributory but only if contract provisions require this. Waiver of Subrogation in favor of Certificate Holder applies to General Liability Insurance if required by contract.

**CERTIFICATE HOLDER**

Attention: INSURANCE COMPLIANCE

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Robert L. Jellum


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**TOWN OF LYONS, COLORADO**
**RESOLUTION NO. 2016- 96**

**A RESOLUTION APPROVING A FIRST AMENDMENT TO THE SERVICES AGREEMENT WITH INDUSTRIAL AUTOMATION GURUS, LLC TO PROVIDE AND INSTALL WATER AND SEWER SCADA SYSTEM UPGRADES**

**WHEREAS**, the Town of Lyons ("Town") possesses the authority to contract for lawful purposes; and

**WHEREAS**, the Town previously entered into a services agreement ("Agreement") with Industrial Automation Gurus, LLC ("Contractor") to provide and install water and sewer SCADA system upgrades for a not-to-exceed amount of One Hundred Thirty-Five Thousand One Hundred Seventy-One Dollars and No Cents ($135,171.00); and

**WHEREAS**, Town staff also recommended that the budget for this contract include a contingency amount of Twenty-Five Thousand Dollars and No Cents ($25,000.00) to account for unknown conditions, force account minor revisions, and costs for the Town to support the work as identified in the request for proposals and submitted proposals and as recognized by Town Public Works staff, bringing the total budget for the project to $160,171, which recommendation was approved by the Board of Trustees; and

**WHEREAS**, the total budget for the project included funds to pay the Contractor the contract price of $135,171.00, as well as funds for expenditures of an additional $25,000 for additional work performed either by Town Public Works staff or the Contractor, as required ("Additional Project Funds"); and

**WHEREAS**, the Agreement did not specify how the Additional Project Funds would be allocated between the Contractor and Town Public Works staff; and

**WHEREAS**, the Town Engineer has identified a need for additional work to complete the services being provided under the Agreement ("Services"), which additional work will cost approximately Three Thousand Dollars ($3,000.00) in addition to the compensation stated in the Agreement; and

**WHEREAS**, the Town Engineer also anticipates a potential need for the Contractor to perform additional minor work as required to complete the Services, but anticipates that the cost of all additional work, including the $3,000.00 already identified, will not exceed a total of Ten Thousand Dollars ($10,000.00); and

**WHEREAS**, a force account will permit the Town Engineer compensate to the Contractor for any additional work that may be necessary to complete the Services; and

**WHEREAS**, the Town Engineer recommends amending the Agreement to add a force account in the amount of Ten Thousand Dollars and No Cents ($10,000.00) for minor changes to the work to be performed by Contractor, which will increase the not-to-exceed amount in the Agreement to One Hundred Forty-Five Thousand One Hundred Seventy-One Dollars and No Cents ($145,171.00); and

**WHEREAS**, pursuant to Section 4-3-40(c) of the Lyons Municipal Code, the Board of Trustees possesses the sole authority to approve all contract modifications for services valued at over two thousand five hundred dollars ($2,500.00); and

**WHEREAS**, the Town of Lyons Board of Trustees desires to approve the First Amendment to Services Agreement ("Amendment"), a copy of which is attached hereto, and to authorize the Mayor to execute the Amendment on behalf of the Town; and

**WHEREAS**, this Amendment will promote administrative efficiency and completion of the Services within the term of the Agreement by delegating to the Town Engineer the authority to approve minor changes to the work necessary to complete the Services up to, but not exceeding, the ten thousand dollar force account.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Trustees of the Town of Lyons that:

Section 1. The foregoing recitals are incorporated herein by reference.

Section 2. The Board of Trustees hereby approves the First Amendment to the Services Agreement between Industrial Automation Gurus, LLC ("Amendment") and further authorizes the Mayor to execute and the Town Clerk to attest the Amendment.

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

ADOPTED by a vote of ___ in favor and ___ against this _____ day of November, 2016.

TOWN OF LYONS, COLORADO

_____
Connie Sullivan, Mayor

ATTEST:

_____
Deb Anthony, MMC – Town Clerk

**TOWN OF LYONS**
**FIRST AMENDMENT TO SERVICES AGREEMENT**

**INDEPENDENT CONTRACTOR**

Project/Services Name: Water and Sewer SCADA System Upgrades

**THIS FIRST AMENDMENT TO SERVICES AGREEMENT** ("Amendment") is entered into by and between the Town of Lyons, Colorado, a statutory town of the State of Colorado, with offices at 432 5th Avenue, Lyons, Colorado, 80540 (the "**Town**"), and Industrial Automation Gurus, LLC, a Colorado limited liability company, whose business address is 10227 W Roxbury Place, Littleton, CO 80127, United States (the "**Contractor**"). The Town and the Contractor may be collectively referred to herein as the "Parties."

**RECITALS AND REPRESENTATIONS**

**WHEREAS**, the Parties entered into a Services Agreement for the Contractor to provide and install water and sewer SCADA system upgrades for the Town's water and wastewater systems effective August 1, 2016 ("Agreement"); and

**WHEREAS**, the purpose of this Amendment is to delegate to the Town Engineer the authority to approve minor additional work necessary to complete the Services without further amendment to the Agreement; and

**WHEREAS**, the Parties desire to modify the Agreement to increase the not-to-exceed amount of the Agreement from One Hundred Thirty-Five Thousand One Hundred Seventy-One Dollars ($135,171.00) to One Hundred Forty-Five Thousand One Hundred Seventy-One Dollars, to establish a force account, and to make additional minor modifications; and

**WHEREAS**, the Parties also desire to amend **Exhibit "B"** of the Agreement, a copy of which is attached and incorporated into this Amendment, to reflect the establishment of a force account in the amount of Ten Thousand Dollars ($10,000.00), which will provide a means for the Town to compensate the Contractor for minor additional work without changing the overall scope of work as defined in **Exhibit A**, which remains unchanged; and

**WHEREAS**, Section 10.12 of the Agreement requires that amendments to the Agreement be in writing and signed by both Parties; and

**WHEREAS**, this Amendment will promote administrative efficiency and completion of the Services within the term of the Agreement by delegating to the Town Engineer the authority to approve minor changes to the work necessary to complete the Services up to, but not exceeding, the ten thousand dollar force account.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements of the Parties hereto, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

**1.0 RECITALS**. The foregoing recitals are true and correct and are incorporated herein by this reference as though set forth in full.

**2.0 DESIGNATION OF TOWN REPRESENTATIVE.** The first sentence of Section 2.1 of the Agreement is hereby amended to read as follows:

> "The Town assigns Jim Blankenship, the Town Engineer, as the Town Representative for this Agreement."

**3.0 MODIFICATION OF CONTRACT AMOUNT; FORCE ACCOUNT**. Section 2.1 of the Agreement is hereby amended as follows:

(a) The second sentence of Section 2.1 is amended to read as follows:

> "Compensation to be paid hereunder shall not exceed **One Hundred Forty-Five Thousand One Hundred Seventy-One Dollars and No Cents ($145,171.00)**, as defined in **Exhibit "B,"** unless a larger amount is agreed to by and between the Parties in accordance with the amendment requirements of this Agreement."

(b) The second sentence of Subsection B. of Section 2.1 is hereby deleted.

(c) Subsection C. of Section 2.1 is amended to add the following sentences at the end of such subsection:

> "The Town Engineer shall have the sole discretion to determine whether any work must be performed on a force account basis as set forth in **"Exhibit B"** ("Force Account Work"). The Parties shall mutually agree on any Force Account Work as may be required to complete the Services, and the Contractor shall not perform any Force Account Work without advance written approval by the Town Engineer. The Contractor shall submit an invoice with all required supporting documentation for the costs related to the approved Force Account Work to the Town on a monthly basis in accordance with this Section 2.0."

**4.0 MODIFICATION TO EXHIBIT "B" CONCERNING CONTRACTOR COMPENSATION**. The Agreement is amended by substituting a revised **Exhibit "B,"** a copy of which is attached and incorporated into the Agreement by this Amendment. The Parties acknowledge and agree that **Exhibit "B"** has been modified to identify a ten thousand dollar force account. Nothing in this Agreement shall require the Town to expend the force account funds unless such expenditure is approved by the Town Engineer in accordance with Subsection C. of Section 2.1 of this Agreement, as amended by this Amendment.

**5.0 FORCE AND EFFECT OF AMENDMENT.** Notwithstanding anything in the Agreement to the contrary, the Agreement shall be amended such that all references in the Agreement to the "Agreement" shall refer to the Agreement, as amended by this Amendment. Except as set forth in this Amendment, the terms and conditions of the Agreement shall remain unchanged and in full force and effect

**6.0 CONFLICT.** This Amendment is and shall be construed as a part of the Agreement. In case of any inconsistency between this Amendment and the Agreement, the provisions containing such inconsistency shall first be reconciled with one another to the maximum extent possible, and

then to the extent of any remaining inconsistency, the terms of this Amendment shall be controlling.

**7.0 COUNTERPARTS; FACSIMILE OR ELECTRONIC SIGNATURE; AUTHORITY.** The parties hereto agree that this Amendment may be executed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. The parties further agree that this Amendment may be executed by facsimile or electronic signature, and that any facsimile or electronic signature shall be binding upon the party providing such signature as if it were the party's original signature.

**8.0 NO FURTHER AMENDMENTS.** No other terms or conditions of the Agreement are amended hereby, including, without limitation, the rates for services as set forth in Exhibit B of the Agreement.

***Remainder of page left intentionally blank***
***Signature page follows***

TOWN OF LYONS, COLORADO

By: _____
Mayor

ATTEST:

_____
Town Clerk

APPROVED AS TO FORM (*Excluding Exhibits*)

_____
For Town Attorney's Office

---

**Industrial Automation Gurus, LLC**

By: _____

Printed name: _____

Its: _____

STATE OF )

COUNTY OF ) ss.

The foregoing First Amendment to Services Agreement was acknowledged before me this____day of _____, 2016,

by_____as_____

of _____, a _____.

Witness my hand and official seal.

My commission expires: _____.

_____
Notary Public
**(Required for all contracts pursuant to C.R.S. § 8-40-202(2)(b)(IV))**

---

EXHIBIT B - COMPENSATION

SCOPE FOR SCADA UPGRADE

**Fee Schedule**

| | |
|---|---|
| **Water System SCADA** | **$95,194.00** |
| **Sewer System SCADA** | **$39,977.00** |
| **Force Account – Minor Contract Revisions** | **$10,000** |

**Town of Lyons**
**A/P Summary Bi-Monthly**
**11/7/16**

| Date & Check # | Handchecks | Description | Amount |
|---|---|---|---|
| American Funds Service Co | $ 1,988.34 | | |
| | | **Total Handchecks** | **$ -** |
| | | | |
| | | **Payroll 10/21/16** | **$ 46,612.77** |

| Unpaid Invoices - Vendor | Amount | Grant Funds | Grant Name |
|---|---|---|---|
| American Funds Service Co | $ 1,988.34 | | |
| Boulder County Finance: | $ 89,317.44 | $ 89,317.44 | HMGP |
| Brownstein Hyatt Farber, LLP: | $ 2,918.58 | | |
| Colorado Analytical Lab: | $ 845.10 | | |
| Colorado Department of Rev | $ 2,247.00 | | |
| Deep Rock Water: | $ 230.72 | | |
| Defalco: | $ 436,983.19 | $436,983.19 | FEMA/CDOT/BOCO |
| DHM Design: | $ 62,632.82 | $62,632.82 | FEMA |
| Electric Fund: | $ 5,620.72 | | |
| ESRI: | $ 3,300.00 | | |
| Federal Payroll Taxes: | $ 16,923.78 | | |
| Front Range Appraisals: | $ 3,500.00 | $3,500.00 | DEF Unmet Needs |
| Harris, Mike: | $ 148.98 | | |
| Hatrock Excavating: | $ 500.00 | $500.00 | FEMA |
| Hill Petroleum: | $ 188.35 | | |
| Home Depot: | $ 878.76 | | |
| Humana: | $ 1,471.56 | | |
| ICON Engineering, Inc.: | $ 13,200.00 | $13,200.00 | CDBG |
| Innovative Computer: | $ 3,700.00 | | |
| J & S Contractors Supply, Co.: | $ 545.73 | | |
| Kerr, James F.: | $ 234.82 | | |
| Krische Construction, Inc.: | $ 178,355.16 | $178,355.16 | FEMA |
| Kristin Nordeck Brown, PC: | $ 1,000.00 | | |
| Kruger, Megan: | $ 4,200.00 | $4,200.00 | CDBG/HMGP |
| LEAF: | $ 2,000.00 | | |
| Lewan & Associates: | $ 61.83 | | |
| Liberty Waste Management, Inc.: | $ 221.85 | | |
| Loris and Associates: | $ 2,941.25 | $2,941.25 | FEMA |
| Lyons Middle High School: | $ 180.00 | | |
| Lyons Recorder: | $ 81.20 | | |
| Lyons Volunteers: | $ 330.00 | | |
| McDonald Farms Enterprises Inc: | $ 970.13 | | |
| Michow Cox & McAskin LLP: | $ 18,140.72 | | |
| Miller, Kyle: | $ 167.94 | | |
| Mountain View Welding, LLC: | $ 466.20 | | |
| N Line Electric, LLC: | $ 55,545.70 | | |
| Old Stone Church: | $ 100.00 | | |
| Petty Cash - Office: | $ 144.84 | | |
| Quill: | $ 20.97 | | |
| Reserve Account: | $ 500.00 | | |
| Smith, Gene: | $ 200.00 | | |
| Treatment Technology: | $ 559.22 | | |
| UMB Bank, NA: | $ 98,943.75 | | |
| United Healthcare: | $ 24,100.00 | | |
| US Bank: | $ 9,164.06 | | |
| Verdek, LLC: | $ 11,718.50 | $11,718.50 | BOCO Econ Dev & RAQC |
| Verizon Wireless: | $ 352.92 | | |
| Western Disposal Services, Inc: | $ 589.00 | | |
| Xcel Energy: | $ 287.61 | | |
| **Unpaid Invoices as of 11/2/16** | **$ 1,058,718.74** | | |
| **Totah (Hand checks, unpaid invoices & payroll)** | **$ 1,105,331.51** | **$ 803,348.36** | **Grant Expenditures** |

Town of Lyons
A/P Summary Bi-Monthly Update
11/7/16

| Date & Check # | Handchecks | Description | Amount |
|---|---|---|---|
| n/a | | | |
| **Total Handchecks** | | | **$0.00** |

| Unpaid Invoices - Vendor | Amount | Grant Funds | Grant Name |
|---|---|---|---|
| American Waterworks Assoc | $ 79.00 | | |
| Birch Communications | $ 637.17 | | |
| Gatherings | $ 5.00 | | |
| Green Spot | $ 2,968.25 | | |
| Hendrickson, August | $ 36.87 | | |
| Hill Petroleoum | $ 1,110.00 | | |
| MEAN | $ 154,508.69 | | |
| | | | |
| **Unpaid Invoices as of 11/7/16** | **$159,344.98** | **$0.00** | **Grant Expenditures** |
| **Previously Reported on 11/2/16** | **$1,015,331.51** | | |

| | |
|---|---|
| **Total (hand checks, unpaid invoices & payroll)** | **$1,174,676.49** |

# PRC Fund for Budget
# Workshop 5:30 pm – 6:55 pm

DRAFT AGENDA

TOWN OF LYONS

## ***MONDAY, OCTOBER 3, 2016 at 7:00 PM***

## ***BOARD OF TRUSTEES MEETING***

SHIRLEY F. JOHNSON COUNCIL CHAMBER

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

I. Roll Call and Pledge of Allegiance

**Roll Call. Present:** Mayor Connie Sullivan, Mayor Pro Tem Dan Greenberg, Trustee Mike Karavas, Trustee Juli Waugh, Trustee Barney Dreistadt.

**Absent:** Trustee Jim Kerr, Trustee Wendy Miller.

II. A Reflective Moment of Silence

III. Approve Agenda

1. **Motion:** Mayor Pro Tem Greenberg moved to move Resolution 2016-84, a Resolution Supporting the Saint Vrain Valley School District Bond Initiative to the Consent Agenda and to add an Executive Session under CRS Sections 24-6-24-6-402(4)(e) and 24-6-402(4)(b) and Resolution 2016-85, a Resolution for Change Order #'s 46, 48, 49, 52, 53, 54, 67, 73, 74, 76, 78, 82, 83, 84, 85, 86, 87, 97, 98, 101 and 102 to the Contract with Krische Construction Phase II Construction of LaVern M. Johnson Park, formerly known as Meadow Park to the Consent Agenda. Project Manager Nystrom will be presenting the back up to this item under staff reports.

**Action:** Approve, **Moved by** Mayor Pro Tem Dan Greenberg, **Seconded by** Trustee Barney Dreistadt. Motion passed unanimously.

IV. Boulder County Sheriff's Report, Sgt Bill Crist

Sgt Crist reported on the following;

- ✓ Code Enforcement and officers met to make sure that everyone is on the same page regarding working with the community.
- ✓ Lyons Community BBQ was held last Friday before the Lyons High School Homecoming Football Game against Estes Park, there were approximately 500 people in attendance.
- ✓ The new striping on Main Street created some traffic flow issues and traffic was backed up over the weekend.
- ✓ Sherriff's Dept is gearing up for the Town's Halloween parade, the parade route may change due to Main Street medians.

Mayor Pro Tem Greenberg stated he had received and email concerning erratic driving on Park Street between 3rd and 4th and asked if Keep Kids Alive signs could be placed in that area. Sgt Crist stated he is hoping that when construction stops it will help, we have been putting an officer out there in that area and they all stop once they see the officer. Sgt Crist stated he spoke with Ms. Wickum and is going to look at the ideas that she has and will report back to the BOT. The BOT directed Staff to put up the Keep Kids Alive signs in the area.

V. Staff Reports

1. Acquired properties Boulder County

Town Administrator Simonsen updated the BOT on the acquired properties in Boulder County. If the town is interested in any of the properties Boulder County has acquired that are within our Planning Area, they will help us acquire the property.

2. Bohn Park Phasing Options

Town Administrator Simonsen reported while putting the bids together another option surfaced. Town Administrator Simonsen reported instead of improving the parking area at the new WWTP, improve the parking on the north side of 2nd Ave, this would double the parking and then you would need a restroom. If opening the recreation along the river a restroom or porta potties will be needed. Both options are cued up but wanted the BOT to have this discussion before the base bid goes out. Parks Director Cosgrove reported this could easily add an additional 150 parking spaces and you could walk the trail from the end of Bohn Park (4th Ave) to Stone Canyon. BOT discussion concerning the river/trail corridor, parking.
After discussion the BOT agreed to move forward with the new Option 2.

3. Highland Ditch
Town Administrator Simonsen reported the deadline for Highland Ditch was Friday to either appeal or to submit to FEMA the plans for the new drop structure, with the condition that the town would receive a signed copy before it was sent to FEMA. Town Administrator Simonsen stated she has not yet received a copy. Town Administrator Simonsen reported she would keep the BOT informed. BOT discussion concerning the extension of the permit with FEMA and the drop to the slope at the structure.

4. Change Orders for LaVern M Johnson Park (Meadow Park) for Krische/Ripley
(this is General Business Item #1)
Project Manager Sloane Nystrom reported, in September of 2015 Krische Construction began flood recovery work in Lavern Johnson (formerly known as Meadow Park) to complete phase II construction of the park. Like any large construction project we have incurred some add services/change orders to the original contract. Some of these changes have triggered credits due to value engineering or design modifications during the construction process. Others have lead to additional charges for items that were added for various reasons to help make the park more functional or user friendly, reduce operation/maintenance costs, enhance appearance, and solve public safety concerns. The most recent series of change orders are outlined below along with attached supporting documentation for each (change orders are received in sequential order but not all are processed as some are rejected or voided).
The Meadow Park Phase II contract was approved for a not to exceed amount of $6,172,760. The Meadow Park project has the available funding to cover the above change orders within the PW budget. Change orders 1-7 totaled an additional $11,707, change orders 8-22A/B totaled $21,404, change orders 14,17,19,24,25 and 34 were an additional $8,193, change order 50 was an additional $21,336, change orders 18,21,23,28,31,36A,38.39,44,45,47,61,68,69,82 ,and 100 were a credit to the town of $7,940, change orders 46,48,49,52-54,67,73-76,78,83-87,97,98,101,102 totaled $41,504 the current change orders are $44,651 which to date brings the total of change orders for the entire project to $140,852.
This brings the contract total to date to $6,313,612. Typical construction contracts allow for a 10% contingency. Currently the Meadow Park Phase II Project has used 2.2% contingency which is well below the budgeted amount. Below is the recap of Meadow Park funding.

| Meadow Park Funding Sources | Amount |
|---|---|
| FEMA | 7,920,804.12 |
| GOCO | 1,120,282.47 |
| CWCB | 39,125.60 |
| CIRSA | 849,222.98 |
| LCF | 10,000.00 |

Total Flood Recovery Funding for Meadow Park is $9,939,435.17

The Meadow Park Project is in final closeout with punch list items being completed this month. There will be additional change orders coming to the board as the project is completed but some of the items will be credits for changes or deletions to the scope of work.
BOT/Staff discussion concerning the remaining change orders, contingency, FEMA reimbursements, final insurance payments to be reconciled, utility main, river issues, anticipation of a delay in cost from s20, amount reimbursed so far, reimbursements in the balance, FEMA turn around on reimbursements is 3-4 months, allocating the left over funds to another project – possibly the Lyons River Park ask if they will be short of funds, the two road projects that will be completed by the end of the month, WWTP will be wrapped up by the end of the year, any funds that are left would go to the parks projects. Trustee Dreistadt thanked Parks Project Manager Nystrom for her clear and

concise reporting of the change orders. Mayor Sullivan stated Parks Project Manager Nystrom has put her heart in to this project, we thank you for it.

VI. Audience Business

1. Resolution 2016-84, a Resolution Supporting the Saint Vrain Valley School District Bond Initiative
Don Haddad, Superintendent, St Vrain Valley School District gave the BOT an overview of the $260, 000,000 Bond Initiative the St Vrain Valley School District is asking for on the November Ballot. This would cost homeowners $1.82 per month per $100,000 on property taxes for the Bond. Mr. Haddad reported 68% of the Bond is for growth: schools, innovation center and 29 school expansions, renovation and safety, renovation of classrooms for science lab. Mr. Haddad reported the last Bond Initiative was in 2008, the bond was refinanced six times with a savings of $37,000,000, we will continue to do this to generate savings. We have 32,000 children and will build out to 85,000; the growth will continue we don't want to defer maintenance for so long that it takes more money to fix it. We will send out mailings and postcards to support the Bond Initiative.
BOT discussion concerning supporting the Bond Initiative, to fund maintenance of buildings, staffing. The BOT thanked Dr. Haddad and staff for coming to the BOT meeting.

2. Lyons Lions Club Proclamation
Mark Browning, member of the Lyons Lions stated the Lyons Lions was formed in 1946. The Lyons Lions formed the LEO club for younger children. The Lyons Lions has given eye glasses to those who can't afford them and were the instigators in getting the 9 Who Cares, they have received grants for tree replanting. This October 16- 24th is the 70th Anniversary of the Lyons Lions. The Lyons Lions is now accepting women and has one woman member.
Mayor Sullivan read the proclamation into the public record.

3. Lyons High School Football Presentation – Mr. Blue and the Lyons Football Team presented the BOT and Staff with tickets to the Homecoming Game. Lyons will be playing Estes Park this weekend and are in hopes of getting the hammer back, it is a tradition of Lyons and Estes Park whoever wins the hammer owns it until the other team wins.

VII. Boards and Commissions

1. Ecology Board
Steve Simms, Chair of the Lyons Ecology Advisory Board reported their goals, strategies and funding to the BOT.
Goal 1: Provide opportunities for the Lyons community to learn about ecological issues relevant for the town and its natural resources.
Strategy I: Hold regular ecology focused hands-on learning opportunities
Strategy II: Develop formal arboretum with town recognition and map Strategy III: Write monthly ecology article in local newspaper
Goal 2: Provide valuable guidance to BOT and town employees to help maintain ecological value in Town of Lyons.
*Strategy I: Review all development design documents to ensure holistic ecological design and incorporation of the Lyons' Sustainable River Corridor Action Plan (2013).*
Strategy II: Develop principles for protecting high value conservation areas & develop map of high value conservation areas in Town of Lyons.
Strategy III: Provide Eco-Tourism, guidance, and vision statements for the restoration of the St. Vrain watershed, including the South St. Vrain riparian vegetation corridor (Bohn Park to Andesite Mine) for habitat and bird watching.
Sec. 2-8-190. Ecology Advisory Board.

(a) Board established. There is hereby established an Ecology Advisory Board to act as an advisory commission to the Board of Trustees on all matters pertaining to the establishment of provisions for the proper utilization and protection of the natural resources and for the protection of watershed resources for the Town.
    1) The Ecology Advisory Board shall conduct research into its local land and water areas
        i. It shall seek to coordinate the activities of unofficial bodies organized for similar purposes, and may advertise, prepare, print and distribute books, maps, charts, plans and pamphlets which, in its judgment, it deems necessary for its work.
            1. Publish arboretum walking guide $200 (By Botanical Gardens Subcommittee)
            2. Promote birding and fishing (catch and release) walking guides $200

3. Promote give-a-way of invasive weed guide $100

ii. It shall keep an index of all open space and natural, aesthetic or ecological areas within the Town, as the case may be, with the plan of obtaining information pertinent to proper utilization of such areas, including lands owned by the State or lands owned bythe Town.

1. Contract mapping/GPS Surveyor firm $500 (By Tree Subcommittee)

iii. It shall also keep an index of all wetlands and riparian areas in a like manner, and may recommend to the Board of Trustees a program for the protection, development or better utilization of all such areas.

1. Contract mapping/GPS Surveyor firm $500 (By Tree Subcommittee)

iv. It shall keep accurate records of its meetings and actions and shall file an annual report.

1. Use shared electronic storage via Cloud google drive $50

(b) Responsibilities. The responsibilities of the Ecology Advisory Board shall be as follows:

1) Advocate for a balanced ecosystem that preserves the hydrologic and environmental integrity of the environmental systems present, including but not limited to parks and open space and the St. Vrain River Corridor.

i. Attend eco-tourism related river restoration or bird watching workshop $500

2) Study, investigate, advise and develop and/or update annually a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of vegetated areas within the Town community including trees, shrubs, bushes and native perennials and other woody vegetation in parks, along streets and in other publicareas.

i. Contract arborist services $1000

3) The Ecology Advisory Board shall review site designs for all ecologically important parcels of land in order to provide findings, report and make recommendations that uphold the integrity of the environment in the Town, while balancing the desire for development, recreation and economic vitality.

i. Continue 14th year of Upper 5th Ave community gateway beautification & weed restoration providing access to around 200 homes. Utilize Ecology Board's prior years remaining budgets $5000, Utilize LCF's 2016 grant $2500, Request TOL's 2017 $2500 funding.

4) Advise, assist and consult with the Parks and Recreation Director, the Public Works Director or any Town employees who may impact the natural environments in the Town.

i. Provide additional salary to existing Parks Project Manager and Sustainability Coordinator positions to add Natural Resource focus. Estimated 6 hrs / week. $10,000.

5) With the assistance and direction of the Parks and Recreation Director or Public Works Director, may conduct or assist in the conduct of fundraising activities, preservation programs or public or private engagement opportunities, including but not limited to ecology-focused workshops or classes, monitoring programs, volunteer projects and social gatherings.

i. Present biannual community outreach movie and discussion $150 (rental space and food)

ii. Partner with the Center for ReSource Conservation focus is on water conservation spring offering of the "Gardens in a Box." Program $1100

iii. Contract Elementary School birds and raptors outreach program $500

6) Act as liaison for local residents, public officials and Town employees to assist in managing, controlling and/or elimination and disposal of local and state noxious weeds. Prepare a sustainable weed management plan that may include approved and recommended measures and practices for the management, control, elimination and disposal of local and state noxious weeds, as well as appropriate fertilization of nonweed species. Such management plan may be adopted by the Board of Trustees and, once adopted, shall govern the management, control, elimination and disposal of local and state noxious weeds by landowners and public employees within the Town.

i. Contract Landscape Designer/Advisor with herbicide / pesticide specialization $2000
ii. Boulder County Community Weed Identification Book Give-A-Way Noxious Weed Reduction and Native Plant Restoration $500

7) Assist and advise the Board of Trustees on policy and operations pertaining but not limited to community gardens, a continuous multi-use pathway along the St. Vrain River, equal access to valuable conservation areas, a local monitoring program, arboretum and botanical gardens.
   i. Contract Natural Resource advisor on best practices policy $1000
8) Maintain the Town's Tree City USA status and promote the growth and viability of the Town's urban forests. Retain the focus that a healthy, vibrant ecosystem is a fundamental foundation to maintaining a vibrant economy through ecotourism. (Ord. 951 §2, 2014; Ord.956 §1, 2014)
   i. Annual tree give-away $300 plants/vegetation/trees) Total funds request: $11,900

For the upper 5th Ave weed cleanup/experimentation project, The Department of Landscape Architecture at the University of Colorado Denver has been providing free design services. For 2017, the proposed project's total expense will be $10,000 ($5,000 LCF + $5,000 from the Ecology Board's re-purposed reserves from prior years). We wish to continue design work with Matt Manley. Application and Design available upon request. Repurposed budget summary detailing existing funds in Ecology Board's account: 2013 LCF Ecology Board Reseeding Project $10,000 + $12,000 WRV Match
Spent $7,000 reseeding; 2013
$500 tree Give-a-way; 2015 Funds remaining in 2017: $2,500
2013 LCF Ecology Board Upper 5th Ave
Restoration Work $1,200 Spent $0; 2013
Funds remaining in 2017: $1,200
2014 LCF Ecology Board Main St. Phase I - $5k Spent $532.75; 2014
Funds remaining in 2016: $3167.25; 2015 Earmarked to upper 5th project in 2017: $1,300
Total funding currently available for 2017 upper 5th ave project: $5000

Mayor Sullivan reported the Ecology Board provided a packet with the goals strategies and sustainable river, provided to a lot of contractors coming in to the town, as a board feel there is an economical drive by ecology and outdoor venues, our environments instrumental. Chair Simms stated we want to be a proactive board. Chair Simms listed the board members and what they have done for the Ecology Board. Chair Simms read the vision of the Ecology Board in to the record. Chair Simms spoke of the concerns for storm water, Bohn Park to take on a more natural design, low flow issues for spawning to talk place, revegetation for the eco system of the river, trail to Estes Park, South St Vrain Corridor, conservation lands and goal strategies.
BOT discussion concerning the arborist services, preservation of areas in town, funds that could already be allocated through Parks, community outreach movies, Chair Simms request for a Natural Resource Director to be on staff, if the number of dead trees and trees that need to be trimmed warrants the town to start chipping again.
Mayor Sullivan stated she loves the idea of a botanic garden and that possibly there might be a way to put one in one of the buyout properties. Town Administrator Simonsen asked Chair Simms if the Ecology Board was keeping an eye on the Recovery Action Plan. Chair Simms stated yes, this document has helped LRAP.
Mayor Sullivan stated the Boards and Commission Reports will help the BOT make decisions during the budget process.

**Motion:** Trustee Karavas moved to close the BOT meeting and open as the Lyons Liquor Authority.
**Action:** Approve, **Moved by** Trustee Mike Karavas, **Seconded by** Trustee Juli Waugh.
Motion passed unanimously.

VIII. Lyons Liquor Authority Consent Agenda
1. Special Event Permit – LCF Gala

Town Administrator Simonsen reported the appropriate postings to the newspaper and the property were made, no comments for or against have been received. LCF is asking the BOT to waive security for this event as it has been in the past.

**Motion:** Trustee Waugh moved to approve the Special Event Permit for the LCF Gala and waiving the security for this event.
**Action:** Approve, **Moved by** Trustee Juli Waugh, **Seconded by** Mayor Pro Tem Dan Greenberg. Motion passed unanimously.

2. Special Event Permit - Boulder County Arts Alliance

Town Administrator Simonsen stated the appropriate postings to the newspaper and on the property were made, no comments for or against have been received. The event will take place October 22, 2016 at the Lyons Farmette. Boulder County Arts Alliance is asking the BOT to waive security for this event.

**Motion:** Mayor Pro Tem Greenberg moved to approve the Special Events Permit for the Boulder Count Arts Alliance and waiving officer presence at the event.

**Action:** Approve, **Moved by** Mayor Pro Tem Dan Greenberg, **Seconded by** Trustee Juli Waugh. Motion passed unanimously.

**Motion:** Trustee Karavas moved to close as the Lyons Liquor Authority and reopen as the BOT
**Action:** Approve, **Moved by** Trustee Mike Karavas, **Seconded by** Mayor Pro Tem Dan Greenberg. Motion passed unanimously.

IX. Consent Agenda

1. October 2016 Accounts Payable
2. September 19, 2016 BOT Meeting Minutes
3. Resolution 2016 - 83, a Resolution Approving a Lease Agreement between the Town of Lyons and St Vrain Valley School District for the Red Stone Museum
4. Resolution 2016 - 82, a Resolution Approving a Contract for Animal Services with the Longmont Humane Society, Inc for 2017
5. Resolution 2016-86, a Resolution Issuing a Notice of Award and Notice to Proceed and Approving a Contract with FEI Engineers to Provide Electrical Design Services at the Wastewater Treatment Plant for Flood Recovery Project
6. Resolution 2016-84, a Resolution Supporting the Saint Vrain Valley School District Bond Initiative
7. Resolution 2016-85, a Resolution for Change Order #'s 46, 48, 49, 52, 53, 54, 67, 73, 74, 76, 78, 82, 83, 84, 85, 86, 87, 97, 98, 101 and 102 to the Contract with Krische Construction Phase II Construction of LaVern M. Johnson Park, formerly known as Meadow Park

Town Clerk Anthony read the Consent Agenda into the record.
**Motion:** Trustee Waugh moved to approve the Consent Agenda.
**Action:** Approve, **Moved by** Trustee Juli Waugh, **Seconded by** Trustee Barney Dreistadt.

X. General Business

8. Resolution 2016-85, a Resolution for Change Order #'s 46, 48, 49, 52, 53, 54, 67, 73, 74, 76, 78, 82, 83, 84, 85, 86, 87, 97, 98, 101 and 102 to the Contract with Kirsche Construction Phase II Construction of LaVern M. Johnson Park, formerly known as Meadow Park
(Including a Wrap Up Report for LaVern M. Johnson Park/Meadow Park)
This item was discussed during Staff Reports and moved to the Consent Agenda

9. Discussion/Direction to Staff - Land Purchase Agreement/Annexation Plan of Longmont Water Plant Property

Administrator Simonsen reported City of Longmont would like to know if the BOT would like to pursue this option, if so the town would need to come back to City of Longmont with a formal offer, otherwise the town would need to find the money to purchase all the tracts upfront.

BOT discussion included the restrictions that come with grant money, housing, obligations for economic development, greater flexibility once the water and wastewater lines are in the Eastern Corridor, appraisals for the 4 tracts being less than the appraisal in 2009, negotiating a purchase price (the 2009 appraisal was based on the water and wastewater lines being in place), Longmont will draft the lease/purchase agreement for Lyons to review, with purchasing each tract separately it would not

have to go to an election, obligation to buy all 4 tracts, once annexed the town could sell the other parcels and or subdivide the parcels to sell, what would happen if the town couldn't purchase the remaining tracts, default clause, structured arrangement it is a high probability that each parcel will have a mechanism for funding, using the tract on the south side for Public Works (area is currently in the flood plain, it would take up to 2 years to contest the flood plain with FEMA), the south side would be great for little shops with the river running behind them, build into our financial planning, possibility of using URA with the right zoning, possibility of having a election for the annexation of the property up front, putting out a survey to get the thoughts of the residents.
After discussion the BOT agreed to staff continuing conversations with the City of Longmont, this would create jobs and sales tax that would be critical to the town.

XI. Items Removed from Consent Agenda – no items were removed from the Consent Agenda

XII. Trustee Reports (5 minutes per person)
Mayor Sullivan asked the BOT to submit their reports by email to the Town Clerk.

XIII. Summary of Action Items
1. Installation of the Keep Kids Alive signs on Park Street between 3rd and 4th.
2. Staff and BOT to attend the Homecoming Game
3. Review the Ecology Board Budget for 2017
4. Negotiations with City of Longmont for the property east of Lyons.

XIV. Executive Session
**Motion:** Mayor Pro Tem Greenberg moved to in to Executive Session pursuant to C.R.S. Sections 24-6-24-6-402(4)(e) and 24-6-402(4)(b) for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators; and receiving legal advice from attorneys representing the Town on specific legal questions, and specifically, determining positions relative to matters that may be subject to negotiations and instructing negotiators regarding access to Town records, and obtaining advice as needed from the Town Attorney and special counsel to the Town on related legal issues and to adjourn the BOT meeting at the conclusion of the Executive Session
**Action:** Approve the Executive Session and to Adjourn after the conclusion of the Executive Session
**Moved by** Mayor Pro Tem Dan Greenberg, **Seconded by** Trustee Barney Dreistadt.
**Motion:** Trustee Karavas moved to take a 5 minute break before the Executive Session going into Executive Session and to adjourn the BOT meeting at the conclusion of the Executive Session.
**Action:** Approve **Moved by** Trustee Mike Karavas, **Seconded by** Mayor Pro Tem Dan Greenberg.

XV. 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."

Respectfully submitted by;

_____ _____

Deb Anthony, MMC – Town Clerk Mayor Connie Sullivan

TOWN OF LYONS

**Wednesday OCTOBER 5, 2016 7:00 pm**

**Board of Trustee Meeting Minutes**

SHIRLEY F. JOHNSON COUNCIL CHAMBER

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

I. Roll Call and Pledge of Allegiance
**Trustee Karavas** – present
**Trustee Waugh** – present
**Trustee Kerr** – absent
**Mayor Sullivan** – present
**Mayor Pro Tem Greenberg** – present
**Trustee Dreistadt** – present
**Trustee Miller** - present

II. A Reflective Moment of Silence

III. Approval of Agenda
**Trustee Greenberg** made a motion to approve the agenda.
**Trustee Dreistadt** seconded, with all voting in favor, 6-0.

IV. General Business

1. Summary of response to investigation related to flood recovery procurement procedures. Summary follows, as read by **Mayor Sullivan:**

"On Monday evening, the Board was made aware of an investigation being conducted by The Department of Housing and Urban Development (HUD) and the Federal Bureau of Investigation (FBI). After consulting with legal counsel, the Board has made the conscious choice to cooperate with the investigation so that a full and thorough evaluation can be made by those agencies. I, along with the Mayor Pro Tem and our legal counsel have been communicating with these agencies on behalf of the Town.

Tuesday morning, agents from HUD and the FBI arrived at Town Hall and presented a consent form enabling them to search Town computers and also served a subpoena describing the documents to be obtained relative to flood recovery procurement procedures. Contents of the subpoena describing the scope of the investigation are not being made public as the Town is still in the process of responding. During the search, non-essential staff was allowed to leave for the day to facilitate the gathering of documents without disruption of work being done by the agents or employees. Town hall did remain open and operational during this time and citizens were able to access Town services as usual.

Agents also conducted interviews with various staff members and those employees were placed on temporary, paid leave status. I want to reiterate that this decision should in not in any way be

construed as a suspicion of wrong doing by these employees; rather this was done to demonstrate the Board's intentions of fully cooperating with the investigation and nothing more.
I would also like to add my sincere thanks to the staff for how they have conducted themselves during the past few days. You have all been extremely cooperative and professional and you have once again demonstrated what a competent and capable team you are. You are once again exceeding expectations with your ability to respond professionally under pressure. Thank you for your continued efforts to serve the residents of Lyons."

**Mayor Sullivan** asked the Board of Trustees to ratify the decision to place the employees on leave, with a verbal vote of consensus. The six trustees in attendance unanimously approved the decision.

2. Discussion of interim plans for maintaining Town operations during the investigation.
   Mayor Sullivan said that normally, appointing an interim administrator to act in her absence, is a duty of the administrator. In her absence, the Board of Trustees is required to do so. At this time, the BOT will vote to appoint Tony Cavalier as interim administrator as an initial step. They will assess ongoing needs and bring in additional help, if needed, as the investigation continues.

3. RESOLUTION 2016-87 Appointing an Acting Administrator for the Town.
   **Trustee Greenberg** motioned to approve Resolution 2016-87, appointing Tony Cavalier as acting administrator for the Town.
   **Trustee Dreistadt** seconded the motion, will all voting in favor thereof.

V. Adjournment
**Trustee Greenberg** motioned to adjourn the meeting at 7:10 p.m.
**Trustee Waugh** seconded the motion, with all voting in favor thereof.

Respectfully Submitted by

| | |
|---|---|
| Jacquelyn Watson, CMC | Connie Sullivan |
| Town Clerk Pro Tem | Mayor |

"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

MINUTES

7:15 p.m.

***MONDAY, OCTOBER 10, 2016***

SHIRLEY F. JOHNSON COUNCIL CHAMBER

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

I. Roll Call and Pledge of Allegiance

**Trustee Karavas** -present
Trustee Waugh -absent
Trustee Kerr -absent
**Mayor Sullivan** -present
**Mayor Pro Tem Greenberg** -present
**Trustee Dreistadt** -present
**Trustee Miller** -present

II. A Reflective Moment of Silence

III. Approve Agenda

**Trustee Greenberg** made a motion to remove the second staff report line item, as it was an error, and to add the Lyons Urban Renewal Authority budget approval to the Board of Trustees agenda.
**Trustee Miller** seconded, with all voting in favor thereof (5-0)

IV. **LURA**

**Trustee Dreistadt** moved that the trustees close as the Board of Trustees and open as the Lyons Urban Renewal Authority.
**Trustee Miller** seconded, with all voting in favor thereof (5-0).
**Trustee Dreistadt** asked of this was the only time they would consider the LURA budget.
**Finance Director Tony Cavalier** said no, this is just to direct staff to publish the public hearing notice for the final budget, similar to what the BOT will do for the 2017 budget.
**Mayor Sullivan** said it is likely the budget will be reduced to something like $10,000 and not the $45,000 that was budgeted for 2016.
**Trustee Greenberg** made a motion to accept the 2017 Draft Budget and to direct staff to prepare a public notice of budget.
**Trustee Dreistadt** seconded the motion, with all voting in favor thereof (5-0).
**Trustee Dreistadt** moved to close as Lyons Urban Renewal Authority and open as the Board of Trustees.
**Trustee Miller** seconded the motion, with all voting in favor thereof (5-0).

V. Staff Reports- October Cash Flow Projection from Finance Director Tony Cavalier

The Finance Department reached out to DOLA about any project hold ups due to the investigation and was told by director Don Sandoval that none would be affected, that he was aware of. They will meet with Department of Homeland Security and Emergency Management on Oct. 12 regarding cash flow issues and updates. He said it is getting tight with cash on hand and reimbursement turn-around and that any approval of future contracts needs to be based on cash on hand, not obligated funds only.

VI. Audience Business- none

VII. General Business

1. 2017 Draft Budget Acceptance and Direct Staff to Prepare Public Notice of Budget

   **Finance Director Tony Cavalier** stated the budget needs to be accepted by the Town Board in order to publish public hearing dates for final approval in December.

   **Trustee Greenberg** made a motion to accept the 2017 draft budget and to direct staff to prepare a public notice of budget.

   **Trustee Dreistadt** seconded the motion, with all voting in favor thereof (5-0).

2. Resolution 2016-88: A Resolution Terminating Any and All Contracts with Front Range Land Solutions

   **Deputy Town Clerk Watson** read the resolution out loud for the record:

   Town Of Lyons, Colorado, Resolution 2016-88, A Resolution Terminating Any And All Agreements With Front Range Land Solutions.

   WHEREAS, the Town of Lyons ("Town") possesses the authority to contract for lawful purposes; and

   WHEREAS, pursuant to Section 4-3-40 of the Lyons MunicipalCode, contracts for services over five thousand dollars ($5,000.00), as well as the authority to terminate such contracts, are subject to the approval of the Board of Trustees; and

   WHEREAS, in October 2014, a document entitled "Town of Lyons, Colorado Flood Recovery Services Agreement" ("Document") was executed between the Town and Rosi Dennett, doing business as Front Range Land Solutions ("Contractor"),for the performance of Buyout Coordinator Services; and

   WHEREAS, the Document contains a provision permitting the Town to terminate the performance of the work at any time for its convenience; and

   WHEREAS, the Board of Trustees has determined that it desires to terminate the Document in accordance with its authority to do so and in accordance with the terms of the Document, in addition to any and all agreements or contracts with Rosi Dennett or Front Range Land Solutions, without waiving any of the Town's rights or remedies there under or any provisions that survive such termination, including, but not limited to, insurance coverage and indemnification.

   Now,therefore, beit resolved by the board of trustees of the Town Of Lyons that:

   Section1. The Board of Trustees hereby terminates the Flood Recovery Services Document with Rosi Dennett, Front Range Land Solutions effective immediately, and any and all other contracts or agreements with that individual or entity.

   Section2. The Board of Trustees further directs the Acting Town Administrator promptly to deliver an executed copy of this Resolution to Rosi Dennett, Front Range Land Solutions, which shall serve as notice that the performance of work under the Document is terminated and that such termination is effective immediately."

   **Attorney Guckenberger** stated that this is the subject of the investigation; it is the option of the Town to cancel contracts it feels necessary to.

   **Mayor Sullivan** said it is erroneous to conclude that this company has does something wrong. The Board of Trustees does not want to impede this investigation, and the only way to ensure this is to terminate the contract.

   **Trustee Dreistadt** made a motion to approve Resolution 2016-88

   **Trustee Miller** seconded, with all voting in favor thereof (5-0).

   **Mayor Sullivan** said at this time the Board is going to go into executive session.

   **Trustee Greenberg** made a motion to go into executive session pursuant to C.R.S. Section 24-6-402(4)(b) for the purpose of receiving legal advice from attorneys representing the Town on

specific legal questions, and specifically, obtaining advice as needed from the Town Attorney and special counsel to the Town regarding the ongoing investigation of procurement of services in connection with the Community Development Block Grant - Disaster Recovery Program and the Hazardous Mitigation Grant Program.

**Trustee Dreistadt** seconded the motion, with all voting in favor thereof (5-0).

**The Board of Trustees** reconvened after its executive session.

**Trustee Greenberg** moved to direct staff to act in accordance with the direction discussed during the executive session.

**Trustee Dreistadt** seconded, with all voting in favor thereof (5-0).

VIII. Meeting Adjourned.

Respectfully submitted by:

| | |
|---|---|
| _____ | _____ |
| Jacquelyn Watson, CMC | Connie Sullivan |
| Town Clerk Pro Tem | Mayor |

# Parks Budget
# Workshop 5:00 pm – 6:30 pm

# SPECIAL MEETING MINUTES

TOWN OF LYONS

***MONDAY, OCTOBER 24, 2016 at 6:30 PM***

SHIRLEY F. JOHNSON COUNCIL CHAMBER

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

I. Roll Call and Pledge of Allegiance

**Roll Call.**

**Present:** Mayor Connie Sullivan, Mayor Pro Tem Greenberg, Trustee Juli Waugh, Trustee Jim Kerr, Trustee Barney Dreistadt, Trustee Wendy Miller.

**Absent:** Trustee Mike Karavas.

II. Consent Agenda

1. Resolution 2016-92, a Resolution Extending the Contract between Ricker Cunningham and the Town of Lyons.
2. Resolution 2016 – 86, a Resolution Issuing a Notice of Award and Notice to Proceed and Approving a Contract with FEI Engineers to Provide Electrical Design Services at the Wastewater Treatment Plant for Flood Recovery Project

Mayor Sullivan stated she would like to pull Item #1, Resolution 2016-92.

**Motion:** Mayor Pro Tem Greenberg moved to pull item #1, Resolution 2016-92 and approving Resolution 2016-86 on the Consent Agenda.

Trustee Dreistadt asked if one would assume that if the contract says not to exceed an amount that you would assume that the contingency would be within the not to exceed amount and not above that amount. Town Administrator Simonsen stated in general it would depend on if it was a construction contract, standard construction contingencies are built in to the bid/contract, if it is not then staff might add a slight contingency to the contract. Trustee Dreistadt stated he wants the BOT to understand if there is a potential of an amount beyond that amount that there be an estimate included in the staff report to the BOT. Mayor Sullivan stated the town cannot pay anyone over the not to exceed amount. Town Administrator Simonsen stated she would relate this to staff to make sure it is included on the contracts. Mayor Sullivan stated staff will be working to standardize all contracts and how they are approved. Trustee Dreistadt stated generally this is a requirement for a federal grant.

**Action:** Approve, **Moved by** Mayor Pro Tem Greenberg, **Seconded by** Trustee Barney Dreistadt.

Motion passed unanimously.

III. Items Removed from the Consent Agenda

1. Resolution 2016-92, a Resolution Extending the Contract between Ricker Cunningham and the Town of Lyons.

Mayor Sullivan stated the presentation given last Thursday for the Lyons Primary Planning Area (LPPA) was done really well and there was plenty of discussion. Mayor Sullivan stated items not being turned in on time have generated this contract amendment, there have been some red flags concerning deadlines, they have also been flexible in adding things to the eastern corridor, how are we doing to hold their feet to the fire for the final deliverables. Mayor Sullivan asked if the deliverables in the contract had been met. Project Manager Manley stated they were met on October 18, 2016, the tenth meeting was optional and they did perform the meeting, the main thing is to push the contract end date out to get the final documents. Project Manager Manley stated according to the grant the document needs to be submitted to the BOT by November

30th, I was trying to be strategic by saying November 20th so we would have an additional 10 days if needed. Town Administrator Simonsen stated the grant end date is November 30, 2016 and then the town has 90 days to complete and close out the grant in order to be reimbursed. Town Administrator stated if everything is not complete by November 30, 2016; the town would have to pay Ricker Cunningham.
BOT discussion concerning contract end dates and meeting schedules.

**Motion:** Trustee Dreistadt moved to approve Resolution 2016-92 with documentation being submitted to the town by November 15, 2016 and be presented to the BOT at the regular BOT meeting on November 21, 2016, I further move that the contract be extended to November 30, 2016.
**Action:** Approve, Moved by Trustee Barney Dreistadt, Seconded by Trustee Jim Kerr. Motion passed unanimously.

2. Adjournment - Mayor Pro Tem Greenberg moved to adjourn, Trustee Miller seconded the meeting adjourned at 7:00 pm

Respectfully submitted by;

_____ _____

Deb Anthony, MMC – Town Clerk Mayor Connie Sullivan

"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
WASTEWATER TREATMENT PLANT
Total Contract Costs, Paid to Date, and Funding

MAM
11/3/2016

## Contract Costs

| | |
|---|---|
| Original Contract | 5,866,976.00 |
| Amendment #1<br>(Buy American Iron and Steel) | 221,548.00 |
| Amendment #2 | 443,041.00 |
| (UV Building and Influent Pumps) | |
| Amendment #5 | 246,813.00 |
| Amendment #6 | 290,846.00 |
| (Increased costs due to delay caused by flood) | |
| Unused Contingency Credit | (78,344.62) |
| **TOTAL REVISED CONTRACT** | **6,990,879.38** |

## FUNDING

| | |
|---|---|
| **SRF Loan** | 5,200,000.00 |
| **DOLA Grant** | 1,000,000.00 |
| Less Adjustments | ($96,416.52) |
| INSURANCE | 443,041.00 |
| ESTIMATED CDBG DR RD 2 | 537,659.00 |
| INFRASTRUCTURE FUNDING<br>(Reduction to equal final contract) | (93,404.10) |
| **TOTAL FUNDING ALL SOURCES** | **6,990,879.38** |

| | |
|---|---|
| **Total Amount Paid to Date** | **6,437,262.35** |
| **Amount Remaining to be Paid** | **553,617.03** |

**TOWN OF LYONS, COLORADO**
**RESOLUTION 2016-97**

**A RESOLUTION ACCEPTING THE STATE MONITORING SITE VISIT REPORT AND TOWN RESPONSE DATED OCTOBER 20, 2016**

**WHEREAS**, the Town of Lyons (the "Town") has the authority under Colorado law to apply for, receive, and administer grants; and

**WHEREAS**, the Colorado Department of Public Safety, Division of Homeland Security and Emergency Management ("DHSEM") is a pass-through entity for federally funded grant programs; and

**WHEREAS**, the Town is a sub-recipient of federally funded grant programs that DHSEM administers; and

**WHEREAS**, federal regulations, including 2 C.F.R. § 200.331(e), require that DHSEM monitor the activities of the Town to ensure that the grant funds are used for authorized purposes and to ensure proper accountability and compliance with program requirements and achievement of performance goals; and

**WHEREAS**, DHSEM conducted a monitoring visit of the Town on June 1, 2016 to review (1) the federally funded grant programs that it administers; (2) related processes and procedures; and (3) the quality of the documentation that the Town maintains to support program activities; and

**WHEREAS**, DHSEM provided the Town with a Site Visit Letter dated August 16, 2016 that contained recommendations for Town action that will improve the Town's compliance with regulations governing the federal grants that it has received through DHSEM; and

**WHEREAS**, the Town submitted a response and corrective action plan to DHSEM ("Corrective Action Plan"); and

**WHEREAS**, DHSEM advised the Town that the Corrective Action Plan appropriately addressed its recommendations via a letter and report dated October 20, 2016 ("State Monitoring Site Visit Report and Town Response Dated October 20, 2016"); and

**WHEREAS**, the Board of Trustees desires to accept the State Monitoring Site Visit Report and Town Response Dated October 20, 2016.

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

Section 1. The Board of Trustees hereby accepts the State Monitoring Site Visit Report and Town Response Dated October 20, 2016.

Section 2. This resolution shall become effective immediately upon adoption.

**ADOPTED this 7th DAY OF NOVEMBER, 2016.**

TOWN OF LYONS

By:_____
Connie Sullivan, Mayor

ATTEST:

_____
Debra K. Anthony, MMC - Town Clerk

COLORADO

Division of Homeland Security & Emergency Management

Department of Public Safety

**October 20, 2016**

Subject: DHSEM Monitoring Site Visit Initial Results – State Response – NO FOLLOW UP ACTION REQUIRED

Dear **Town of Lyons**,

On behalf of the Colorado Department of Public Safety, Division of Homeland Security & Emergency Management (DHSEM), we would like to thank you for your cooperation with the monitoring visit on **June 1, 2016.** The reason for the site visit was not to perform an audit, but rather to conduct a monitoring review of your federally funded grant programs (administered by DHSEM), the related processes/procedures, and the quality of documentation being maintained to support program activities. Our goal of this review was to help you prepare for and respond to future audits and/or reviews.

Our monitoring visit was required by the Office of Management and Budget (OMB) Circular A-133 and/or Title 2 of the Code of Federal Regulations § *200.331(e*), as applicable, which states that DHSEM, as a pass-through entity of federal funding, is responsible for performing on-site reviews of your program operations to ensure proper accountability and compliance with program requirements and achievement of performance goals.

We have reviewed your response to the recommendation(s) specified in the *Site Visit Letter* sent on **August 16, 2016**. The results of our review indicate your corrective action plan appropriately addresses the recommendation(s).

If you should have any questions regarding this letter, please contact the Subrecipient Monitoring Team at CDPS_SRM@state.co.us or contact Justine Willman at 720.852.6712.

We thank you again for your cooperation and will continue to provide assistance to ensure that your entity and the State continue to comply with all federal grant requirements. Please keep a copy of this letter with your grant documentation.

Sincerely,

M. Justine Willman
Grant Compliance Manager
justine.willman@state.co.us
720.595.6119 Mobile | 720.852.6712 Desk | 720.852.6750 Fax

COLORADO
Division of Homeland Security & Emergency Management
Department of Public Safety

## *Attachment 1: Scope Activities Performed*

The objective of the Subrecipient Monitoring visit was to assess your organizations ability to maintain compliance with the regulations governing the federal grants you have received through DHSEM. The following categories and general scope were reviewed during our on-site monitoring visit as applicable:

| Category | Scope |
|---|---|
| Control Environment | Our assessment of your organizations control environment included a review of the following:<br>✓ Overall internal control structure (e.g. policies and procedures, reporting lines, etc.)<br>✓ Code of ethics, Conflict of interest certifications<br>✓ Prior experience with management of grant programs and Federal funding<br>✓ Familiarity with DHSEM points of contact<br>✓ Implementation of corrective action resulting from audits and other monitoring activities<br>✓ Segregation of duties for grant management functions |
| Allowable Activities / Costs / Expenditures | Our assessment of your organizations expenditures included a review of the following:<br>✓ Procedures for ensuring expenditures comply with cost principles<br>✓ Process for valuing in-kind contributions and donated resources<br>✓ Allowability and review of travel and per-diem expenses<br>✓ Proper controls in the expenditure cycle (e.g. approval processes for expenditures) |
| Accounting | Our assessment of your organizations grant accounting included a review of the following:<br>✓ Validating use of cost centers for grant projects<br>✓ Maintenance of a chart of accounts for federal, state, and insurance funding<br>✓ Review of reconciliation practices and procedures<br>✓ Process for reconciling budget overruns and variances |
| Reporting | Our assessment of your organizations reporting practices included a review of the following:<br>✓ Policies and procedures governing reporting practices<br>✓ Supporting documentation for reported milestones and expenditures<br>✓ Communication of passed through funding to DHSEM and Federal agencies |
| Cash Management And Advances | Our assessment of your organizations cash management practices included a review of the following:<br>✓ Processes established to manage cash advances in accordance with regulations<br>✓ Policies or procedures for timely payment of vendors<br>✓ Verifying that in-kind contributions are used only for local match amounts |
| Equipment & Inventory | Our assessment of your organizations equipment management practicies included a review of the following:<br>✓ Policies and procedures in place to manage equipment purchased with grant funding<br>✓ Maintenance of property records that reflect required data points<br>✓ Controls to protect equipment from theft, loss, or damage<br>✓ Tagging of assets<br>✓ Validation of proper disposition practices and policies<br>✓ Inventory practices<br>✓ Depreciation of assets in line with organizational depreciation schedules<br>✓ Documentation of maintenance procedures |

| | |
|---|---|
| Labor & Time Accounting | Our assessment of your organizations labor and time accounting practices included a review of the following:<br>✓ Documentation of Job descriptions for employees splitting time between grant and non-grant activities<br>✓ Review of salary and fringe benefit allocations to grant projects<br>✓ Support for administrative time and force account labor (timesheets)<br>✓ Compliance with Davis Bacon (as applicable) |
| Procurement & Contracts | Our assessment of your organizations procurement practices included a review of the following:<br>✓ Documentation of policies and procedures for procurement<br>✓ Review of contract types used under Federal grants<br>✓ Review of supporting procurement documentation and bid tabulations<br>✓ Review of contracts with vendors for proper flow down provisions<br>✓ Verification of use of debarment and suspension lists<br>✓ Utilization of minority and women owned businesses<br>✓ Use of geographical preference in bid criteria<br>✓ Use of contract management systems for managing vendors |
| Subrecipient Monitoring (Subaward) | Our assessment of your organizations subrecipient monitoring included a review of the following:<br>✓ Determination of contract vs. subaward<br>✓ Proper documentation of pass through funding<br>✓ Compliance with FFATA, Single audit reporting<br>✓ Review of single audit results<br>✓ Follow up on subrecipient's corrective action plans<br>✓ Verification of subrecipient's use of grant flow down provisions |
| Project Progress | Our assessment of your organizations project progress monitoring included a review of the following:<br>✓ Processes for accuratley reporting project progress<br>✓ Documentation of why established goals were not met<br>✓ Comparison of actual project progress vs. reported progress |
| Record Retention | Our assessment of your organizations record retention practices included a review of the following:<br>✓ Documented record retention policies and procedures<br>✓ Backup and secure storage of documentation<br>✓ Organization of supporting files |
| Other | In addition to the reviews listed, the following may have been reviewed or discussed:<br>✓ Follow up on variances from quarterly reports<br>✓ Feedback for DHSEM related to program administration<br>✓ Technical training on EMGrants Pro platform<br>✓ Need for in person training or guidance for grant programs |

# *Attachment 2: Summary of Guidance Observations*

Observations related to required guidance require your organization's response. Please note this response in the "Subrecipient's Response & Corrective Action Plan."

*Note: During our on-site monitoring visit, we provided initial results during our exit meeting based on the documentation reviewed and interviews conducted. Since that time, it is possible that observations below were made during the final review of documentation that were not discussed during the exit meeting.*

| **Guidance Observation #1** | |
|---|---|
| **Area of Review:** | Contracts and Procurement – Procurement Requirements |
| **Applicable Programs:** | All Programs |
| **Observations:** | Per our review of the Town's Administrative Purchasing Policy, it was noted that key policies and procedures related to procurement under Federal Grants were not included. The missing policies include avoiding duplicative items, consideration of use of geographical preference in vendor selection, consideration of women and minority owned business, and avoiding cost plus percentage contracting vehicles. |
| **Compliance Requirement:** | PA 4145, CDBG-DR, and HMGP 2015:<br>*44 CFR 13.36(b)(4) Avoiding Unnecessary and Duplicative Items*<br>*Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.*<br><br>*44 CFR 13.36(c)(2) Geographical Preference*<br>*Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences*<br><br>*44 CFR 13.36(c)(3) Procurement Procedures*<br>*Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:*<br>*(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and*<br>*(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.* |

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|---|---|
| | *44 CFR 13.36(e) Small, Minority, and Women Owned Businesses*<br>*(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.*<br>*(2) Affirmative steps shall include:*<br>*(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;*<br>*(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;*<br>*(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;*<br>*(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;*<br>*(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and*<br>*(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.*<br><br>*44 CFR 13.36(f)(4) Cost Plus Percentage Contracts*<br>*The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.*<br><u>Future Grant Programs:</u><br>*2 CFR 200.318(d) Avoiding Unnecessary and Duplicative Items*<br>*The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.*<br><br>*2 CFR 200.319(c) Procurement Procedures*<br>*The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:*<br>*(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.*<br>*(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.*<br><br>*2 CFR 200.321(a) Small, Women, and Minority Owned Businesses*<br>*(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.*<br>*(2) Affirmative steps shall include:*<br>*(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;*<br>*(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;* |

| | |
|---|---|
| | *(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;*<br>*(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;*<br>*(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and*<br>*(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.*<br><br>*2 CFR 200.323(d) Cost Plus Percentage Contracts*<br>*The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.* |
| **Risks:** | Failure to document procurement policies outlined for grant activities in the Code of Federal Regulations could result in ineligible procurement actions for grant related activities. Improper procurement can lead to deobligation of costs associated with the procurement action, and/or additional administrative costs in performing a cost analysis to validate vendor selection. |
| **Recommendations:** | It is recommended that the procurement policies be updated and referenced in the Grant Management Guidelines. This includes the legacy OMB circulars for grants issues prior to 12/26/2014 and the Uniform Guidance for grants issued after that period. Additionally, the Town should follow these guidelines for any further procurement required during their current federal grant cycle. |
| **Subrecipient's Response & Corrective Action Plan:** | The Town of Lyons is adding these policies to our procurement policy as well as referencing them in our Grant Management Guidelines. We plan to have our policies and guidelines completed by the end of October 2016. These updated documents will also be presented to our Board of Trustees for acceptance. The Town will also implement the procedures prior to completing the documents. Training of all staff associated with procurement will take place at our quarterly meetings. |
| **Follow Up Required:** | **Management Corrective Action Plan Accepted – No Action Required**<br>If, however, the executed action plan does not adequately address the finding(s), you are required to notify DHSEM of further corrective action plans. Through future monitoring activities, DHSEM may perform a follow-up review to test the implementation and/or operating effectiveness of the corrective action(s) outlined in the management response above. |

| Guidance Observation #2 | |
|---|---|
| **Area of Review:** | Procurement and Contracts – Contract Type and Provisions |
| **Applicable Programs:** | Public Assistance |
| **Observations:** | Per our review of the contract (10/10/13) and contract amendment (10/13/13) for Project 30 with Triple R Excavation, it was noted that the contract type used for the works (time and materials without a "sum not to exceed clause") is unallowable and the contractor was not registered in SAM.gov. Additionally, the contract did not contain the flow down provision for the equal opportunity clause as outlined in 44 CFR. |
| **Compliance Requirement:** | *FEMA Public Assistance FAQ - Time and materials contracts should be avoided but may be allowed for work that is necessary immediately after the disaster has occurred. If used, you must carefully document contractor expenses. A cost ceiling or "not to exceed" provision also should be included in the contract.*<br><br>*44 CFR 13.36(i) Contract provisions.*<br>*A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.*<br>*(1) Compliance 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 chapter 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)* |
| **Risks:** | Failure to include key flow-down provisions in contracts as required in 44 CFR can expose subrecipients to financial and operational risks associated with non-compliance. This can result in deobligation of funds during the closeout process if activities performed under the aforementioned contracts are noncompliant with federal regulations. Additionally, the use of improper contracting vehicles may result in deobligation of associated costs if the costs are determined to be unreasonable. |
| **Recommendations:** | It is recommended that the Town include the contract provisions outlined in 44 CFR13.36(i) in all future contracts for federal grant-related work and that an effort is made to adjust the existing contracts in violation, where possible, to ensure that these regulations are followed. Additionally, the Town should avoid the use of time and materials contracts without a sum not to exceed clause. |
| **Subrecipient's Response & Corrective Action Plan:** | The Town of Lyons will add the above referenced contract provisions to our contracts. In addition, the Town will not enter into any time and materials contracts without a sum not to exceed clause. |
| **Follow Up Required:** | **Management Corrective Action Plan Accepted – No Action Required**<br>If, however, the executed action plan does not adequately address the finding(s), you are required to notify DHSEM of further corrective action plans. Through future monitoring activities, DHSEM may perform a follow-up review to test the implementation and/or operating effectiveness of the corrective action(s) outlined in the management response above. |

| Guidance Observation #3 | |
|---|---|
| **Area of Review:** | Record Retention – Procurement Documentation |
| **Applicable Programs:** | All Programs |
| **Observations:** | Per our review of procurement transactions for Triple R Excavation (PA-30), Loris & Associates (PA-613), Land & Title (HMGP–45, CDBGDR-160022), and Naranjo Civil Constructors (CDBGDR-160022), it was noted that the Town has not maintained documentation evidencing consideration of Women & Minority owned businesses during procurement. |
| **Compliance Requirement:** | *44 CFR 13.36 (e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms.*<br>*(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*<br>*(2) Affirmative steps shall include:*<br>*(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;*<br>*(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;*<br>*(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;*<br>*(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;*<br>*(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and*<br>*(1) (vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.* |
| **Risks:** | Inclusion of small, minority, and women-owned firms in the procurement process is required under Federal grants. Failure to consider these organizations for grant-funded projects may result in disallowed costs or deobligation of funding for any procurement transactions that may have been made without proper consideration for future grants. |
| **Recommendations:** | When soliciting contractors for grant-funded projects, the Town should ensure that affirmative steps are taken to assure small, minority-owned, women-owned, and labor area surplus firms are used when possible by adding language to their procurement policy and detailing how consideration was given in practice to these firms for each procurement opportunity as detailed in the Code of Federal Regulations. Additionally, the Town should document their consideration of these respective entities in the federal grant file to evidence compliance with the regulation. |
| **Subrecipient's Response & Corrective Action Plan:** | The Town will add the above referenced steps to the Procurement Policy to include the documentation of steps taken to be in compliance. . We plan to have our policies and guidelines completed by the end of October 2016. These updated documents will also be presented to our Board of Trustees for acceptance. The Town will also implement the procedures prior to completing the documents. Training of all staff associated with procurement will take place at our quarterly meetings. |

| | |
|---|---|
| **Follow Up Required:** | **Management Corrective Action Plan Accepted – No Action Required**<br>If, however, the executed action plan does not adequately address the finding(s), you are required to notify DHSEM of further corrective action plans. Through future monitoring activities, DHSEM may perform a follow-up review to test the implementation and/or operating effectiveness of the corrective action(s) outlined in the management response above. |

# *Attachment 3: Summary of Leading Practice Observations*

Responses to observations related to Leading Practices are optional. These recommendations are derived from leading practices rather than from federal guidance and are provided for your consideration.

| Leading Practice Observation #1 | |
|---|---|
| **Area of Review:** | General Control Environment – Grants Management |
| **Applicable Programs:** | All Programs |
| **Observations:** | Per our interview with the Town Finance Director and our review of documented policies and procedures, it was noted that the Town does not maintain policies governing the administrative requirements, cost principles, and audit requirements of their grant programs as required by the Federal guidance. |
| **Guidance:** | PA 4145, CDBG-DR, and HMGP:<br>*Allowable Costs: 44 CFR 13.22*<br>*Cash Management & Advances: 44 CFR 13.20*<br>*Equipment & Inventory: 44 CFR 13.32*<br>*Subrecipient Monitoring: 44 CFR 13.37*<br>*Procurement & Contracts: 44 CFR 13.36*<br><br>Future Grant Programs:<br>*Safeguarding Personally Identifiable Information: 2 CFR §200.303(e)*<br>*Allowable Costs: 2 CFR §200.302(b)(7)*<br>*Cash Management & Advances: 2 CFR 200.302(b)(6) and 2 CFR 200.305*<br>*Equipment & Inventory: 2 CFR 200.313*<br>*Subrecipient Monitoring: 2 CFR 200.330-332*<br>*Procurement & Contracts: 2 CFR 200.319 and Appendix II* |
| **Risks:** | Failure to document policies and procedures could lead to inconsistent application of Federal grant management practices, raising the risk of non-compliance with program requirements. |
| **Recommendations:** | A consolidated grant management policy should include detailed steps to be taken during each phase of the federal grant management lifecycle from application through closeout, including but not limited to vendor procurement, expenditure allowability determination, and reporting. The County can use the DHSEM Management Guide as a basis for developing their own grant policy and procedures, which can be found on the DHSEM website at http://dhsem.state.co.us/sites/default/files/attachments/2014%20Grants%20Management%20Guide.pdf. |
| **Subrecipient's Response & Corrective Action Plan (Optional):** | The Town will add these grant management steps to its Grant Management Guidelines. . We plan to have our policies and guidelines completed by the end of October 2016. These updated documents will also be presented to our Board of Trustees for acceptance. The Town will also implement the procedures prior to completing the documents. Training of all staff associated with procurement will take place at our quarterly meetings. |
| **Follow Up:** | **Management Corrective Action Plan Acknowledged – No Action Required**<br>Through future monitoring activities, DHSEM may perform a follow-up review to test the implementation and/or operating effectiveness of the corrective action(s) outlined in the management response above. |

| Leading Practice Observation #2 | |
|---|---|
| **Area of Review:** | General Control Environment – Organizational Chart |
| **Applicable Programs:** | All Programs |
| **Observations:** | Per our review of the Town's grant management guidelines and administrative policies, it was noted that organizational hierarchies and responsibilities have not been clearly defined, documented, and communicated as prescribed in the GAO Greenbook. |
| **Guidance:** | *2 CFR 200.303(a) Internal Controls*<br>*Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).*<br><br>*GAO Greenbook – Control Environment – Principle 3.01 Management should establish an organizational structure, assign responsibility, and delegate authority to achieve the entity's objectives.* |
| **Risks:** | A lack of clearly defined and communicated organizational responsibilities could result in duplicative efforts and improper expenditure approval. |
| **Recommendations:** | It is recommended that the Town create a flowchart listing the organizational hierarchy of the staff and communicate these responsibilities to all current employees. |
| **Subrecipient's Response & Corrective Action Plan (Optional):** | The Town has already created a flowchart of the organizational hierarchy. Town supervisors will notify staff of authorities and responsibilities. Supervisors and staff will be made aware of any changes quarterly. |
| **Follow Up:** | **Management Corrective Action Plan Acknowledged – No Action Required**<br>Through future monitoring activities, DHSEM may perform a follow-up review to test the implementation and/or operating effectiveness of the corrective action(s) outlined in the management response above. |

| Leading Practice Observation #3 | |
|---|---|
| **Area of Review:** | Cash Management and Advances – Advance Payments |
| **Applicable Programs:** | Public Assistance |
| **Observations:** | Per our interview with the Town Finance Director, it was noted that while the Town did receive a sizeable advance payment, the payment was made from the State Disaster Emergency Fund and is not technically Federal Funding. While this advance payment is not governed under Federal regulations, the Town does not have any policies in place in the case that they do receive a Federal advance in the future. |
| **Guidance:** | *2 CFR 200.305 Advance Payments*<br>*(b)(1) The non-Federal entity must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability*<br>*(b)(7)(ii) Advance payments of Federal funds must be deposited &maintained in insured accounts when possible*<br>*(b)(8) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply. (see guidance)*<br>*(b)(9) Interest earned amounts up to $500 per year may be retained by the non-Federal entity for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System* |
| **Risks:** | Failure to document policies for handling advance funding could result in improper use, accounting, and management of Federal funds. |
| **Recommendations:** | It is recommended that the Town add the above cited CFR guidance into their Grant Management Guidelines to ensure awareness of all requirements in the event that a federally funded advance is received in the future. |
| **Subrecipient's Response & Corrective Action Plan (Optional):** | The Town will add the CFR guidance to our Grant Management Guidelines. . We plan to have our policies and guidelines completed by the end of October 2016. These updated documents will also be presented to our Board of Trustees for acceptance. The Town will also implement the procedures prior to completing the documents. Training of all staff associated with procurement will take place at our quarterly meetings. |
| **Follow Up:** | **Management Corrective Action Plan Acknowledged – No Action Required**<br>Through future monitoring activities, DHSEM may perform a follow-up review to test the implementation and/or operating effectiveness of the corrective action(s) outlined in the management response above. |

| Leading Practice Observation #4 | |
|---|---|
| **Area of Review:** | Expenditures – Cost Reasonableness |
| **Applicable Programs:** | Public Assistance |
| **Observations:** | As outlined in the OIG Audit (16-67-D), extenuating circumstances caused costs associated with idle equipment to increase beyond a reasonable amount to be charged to the grant. While the Town has provided a response detailing the resolution for this issue, it was noted that the Town has not established a process for consideration of the circumstances in which future costs are incurred as outlined in 2 CFR. |
| **Guidance:** | *2 CFR 200.404 Reasonable Costs*<br>*A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally-funded. In determining reasonableness of a given cost, consideration must be given to:*<br>*(a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award.*<br>*(b) The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state and other laws and regulations; and terms and conditions of the Federal award.*<br>*(c) Market prices for comparable goods or services for the geographic area.*<br>*(d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal government.*<br>*(e) Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.* |
| **Risks:** | Without a documented process for determining cost reasonableness, as prescribed by the CFR, the Town runs the risk of incurring costs that may not be covered under the Federal award. |
| **Recommendations:** | The Town should establish a process for analyzing cost reasonableness to ensure that all expenditures to be submitted for reimbursement are eligible under the Federal awards. |
| **Subrecipient's Response & Corrective Action Plan (Optional):** | The Town will document the process to analyze cost reasonableness in all federal reimbursements and put this guidance in the Grant Management Guidelines. . We plan to have our policies and guidelines completed by the end of October 2016. These updated documents will also be presented to our Board of Trustees for acceptance. The Town will also implement the procedures prior to completing the documents. Training of all staff associated with procurement will take place at our quarterly meetings. |
| **Follow Up:** | **Management Corrective Action Plan Acknowledged – No Action Required**<br>Through future monitoring activities, DHSEM may perform a follow-up review to test the implementation and/or operating effectiveness of the corrective action(s) outlined in the management response above. |

| Leading Practice Observation #5 | |
|---|---|
| **Area of Review:** | Equipment and Inventory – Equipment Management |
| **Applicable Programs:** | All Programs |
| **Observations:** | Per our review of the Town's grant management guidelines and our interview with the Finance director, it was noted that while no equipment has been purchased with grant funding, the agency has not documented practices for managing federally funded assets. |
| **Guidance:** | *2 CFR 200.313 (d) Management Requirements*<br>*Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:*<br>*(1)Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.*<br>*(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.*<br>*(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.*<br>*(4) Adequate maintenance procedures must be developed to keep the property in good condition.*<br>*(5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.* |
| **Risks:** | Without formal policies for equipment management, any equipment purchased with future grant funding may be improperly maintained or disposed of and could result in a deobligation of funding to cover the equipment costs. |
| **Recommendations:** | It is recommended that the Town establish guidelines for inventory, property records, control systems, maintenance, and disposition of equipment and add them to their Grant Management Guidelines as a mitigating measure for any future purchases. |
| **Subrecipient's Response & Corrective Action Plan (Optional):** | The Town will add the guidelines referenced above to its policies regarding procurement, grant management and auditing. . We plan to have our policies and guidelines completed by the end of October 2016. These updated documents will also be presented to our Board of Trustees for acceptance. The Town will also implement the procedures prior to completing the documents. Training of all staff associated with procurement will take place at our quarterly meetings. |
| **Follow Up:** | **Management Corrective Action Plan Acknowledged – No Action Required**<br>Through future monitoring activities, DHSEM may perform a follow-up review to test the implementation and/or operating effectiveness of the corrective action(s) outlined in the management response above. |

| Leading Practice Observation #6 | |
|---|---|
| **Area of Review:** | Subrecipient Monitoring |
| **Applicable Programs:** | All Programs |
| **Observations:** | Per our interview with the Town Finance Director, it was noted that the town has not passed through federal funding to date and they are not familiar with the guidelines established for contractor vs. subrecipient determinations as outlined in guidance. |
| **Guidance:** | *2 CFR 200.330 Subrecipient and Contractor Determinations*<br>*The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.*<br><br>*(continued in Attachment 4 Exhibit B below)* |
| **Risks:** | Failure to differentiate between a contracting or subrecipient relationship could result in improper disbursement or pass-through of funds. |
| **Recommendations:** | It is recommended that the Town add the above guidance related to the determination of a contractor vs a subrecipient into their Grant Management Guidelines and what to do in the case that there is a pass through of Federal funding. |
| **Subrecipient's Response & Corrective Action Plan (Optional):** | The Town will add the guidance to its Grant Management Guidelines. . We plan to have our policies and guidelines completed by the end of October 2016. These updated documents will also be presented to our Board of Trustees for acceptance. The Town will also implement the procedures prior to completing the documents. Training of all staff associated with procurement will take place at our quarterly meetings. |
| **Follow Up:** | **Management Corrective Action Plan Acknowledged – No Action Required**<br>Through future monitoring activities, DHSEM may perform a follow-up review to test the implementation and/or operating effectiveness of the corrective action(s) outlined in the management response above. |

| Leading Practice Observation #7 | |
|---|---|
| **Area of Review:** | Procurement and Contracts – Contract Provisions |
| **Applicable Programs:** | All Programs |
| **Observations:** | Per our review of the Town's grant management guidelines and Administrative Purchasing policy, it was noted that required flow down provisions for contracts under Federal Awards are not currently documented for inclusion in purchasing activities. |
| **Guidance:** | *2 CFR Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards*<br>*In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following*<br>*(A) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.*<br>*(B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.*<br>*(C) Equal Employment Opportunity.*<br>*(D) Davis-Bacon Act,*<br>*(E) Contract Work Hours and Safety Standards Act*<br>*(F) Rights to Inventions Made Under a Contract or Agreement*<br>*(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387),*<br>*(H) Debarment and Suspension*<br>*(I) Byrd Anti-Lobbying Amendment*<br><br>*(continued in Attachment 4 Exhibit C below)* |
| **Risks:** | Failure to include all contract provisions as listed by the CFR could lead to improper practices by contractors and may ultimately lead to disallowed costs associated with the contract in question. |
| **Recommendations:** | It is recommended that flow down provisions are documented in the Town's procurement policy to ensure proper inclusion in future contracts. |
| **Subrecipient's Response & Corrective Action Plan (Optional):** | The Town will add the flow down provisions to its procurement policy. . We plan to have our policies and guidelines completed by the end of October 2016. These updated documents will also be presented to our Board of Trustees for acceptance. The Town will also implement the procedures prior to completing the documents. Training of all staff associated with procurement will take place at our quarterly meetings. |
| **Follow Up:** | **Management Corrective Action Plan Acknowledged – No Action Required**<br>Through future monitoring activities, DHSEM may perform a follow-up review to test the implementation and/or operating effectiveness of the corrective action(s) outlined in the management response above. |

# *Attachment 4: Guidance for Observations*

**Exhibit A – Site Visit Results reconciled to OIG Audit (OIG-16-67-D):**

| OIG Findings | Observation Guidance | Leading Practice Guidance |
|---|---|---|
| **A. Procurement** | **Observation 1** - Missing Policies<br>**Observation 2** - Contract Types<br>**Observation 2** - Suspension & Debarment<br>**Observation 2-** Equal Opportunity Clause<br>**Observation 3-** Documentation of MBWBE | **Leading Practice 7** - Flow down provisions |
| **B. Equipment Costs** | N/A | **Leading Practice 1** - Procedure for allowability<br>**Leading Practice 4** – Reasonable Costs<br>**Leading Practice 5** - Equipment MGMT procedures |
| **C. Relocation of Critical Facility** | N/A – See OIG Audit | **Leading Practice 2** – Internal Control (Responsibilities) |
| **D. Environmental Compliance** | N/A – See OIG Audit | **Leading Practice 2** – Internal Control (Responsibilities) |

**Exhibit B – Subrecipient Monitoring Requirements**

Contractor and Subrecipient Determination Guidance (2 CFR 200.330)

The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.
(a) *Subrecipients*. A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See §200.92 Subaward. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:
(1) Determines who is eligible to receive what Federal assistance;
(2) Has its performance measured in relation to whether objectives of a Federal program were met;
(3) Has responsibility for programmatic decision making;
(4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
(5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.
(b) *Contractors*. A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See §200.22 Contract. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor:

(1) Provides the goods and services within normal business operations;
(2) Provides similar goods or services to many different purchasers;
(3) Normally operates in a competitive environment;
(4) Provides goods or services that are ancillary to the operation of the Federal program; and
(5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.
(c) *Use of judgment in making determination.* In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

Contractor and Subrecipient Determination Example

The following example shows the difference in classification of subrecipient vs. contractor. The substance of the agreement is what defines if it is a subrecipient or a contractor.

Scenario 1

Subrecipient A received $1,000,000 of FEMA Public Assistance funding to reconstruct a school district affected by flooding. Following the scoping of the projects, Subrecipient A procured vendors and then managed the construction through completion. During this time, Subrecipient A managed all activities related to the completion of the project, procured all goods and services needed, submitted expenditures for reimbursement, and procured a single audit. In this scenario Subrecipient A's relationship with the contractors was a contracting relationship.

Scenario 2

Subrecipient B also received $1,000,000 of FEMA Public Assistance funding to reconstruct a school district affected by flooding. Following the scoping of the projects, Subrecipient A procured a single vendor who would manage all project sites through completion. This vendor managed procurement for completion of the schools, maintained their own documentation of project efforts, and reported the status of all projects to subrecipient B. In this scenario Subrecipient B's relationship with the vendor was a subrecipient relationship, where Subrecipient B was a pass through.

**Exhibit C – Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient

wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) 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 (42 U.S.C. 6201).

(I) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of $100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(K) See § 200.322 Procurement of recovered materials.