

RNSS
CTGG1 NLAA 202200003259

SUMMARY OF GRANT AWARD TERMS AND CONDITIONS

State Agency Department of Local Affairs (DOLA)	DLG Number RNSS-22-004	CMS Number 174048
Grantee Town of Lyons	Grant Award Amount \$1,000,000.00	Retainage Amount \$50,000.00
Project Number and Name RNSS 004 - Lyons Solar Farm and Battery Storage	Performance Start Date The later of the Effective Date or February 25, 2022	Grant Expiration Date February 28, 2024
Project Description The Project consists of the procurement of consulting services for the establishment of a Solar Power Purchase Agreement.	Program Name Renewable and Clean Energy Initiative (HB 21-1253) (RNSS)	
	Funding Source STATE FUNDS	
	Catalog of Federal Domestic Assistance (CFDA) Number N/A	
DOLA Regional Manager <u>Chris La May, (970) 679-7679,</u> <u>(chris.la.may@state.co.us)</u>	Funding Account Codes	
DOLA Regional Assistant <u>Robert Thompson, (970) 290-2381,</u> <u>(robert.thompson@state.co.us)</u>	VCUST# 69503	Address Code AD002 EFT

THE SIGNATORIES LISTED BELOW AUTHORIZE THIS GRANT

<p>DEPARTMENT OF LOCAL AFFAIRS PROGRAM REVIEWER</p> <p>DocuSigned by: <u>Tim Katers</u> 1D0B4F9ADC0A49C...</p> <p>By: Tim Katers, RNSS Program Manager</p> <p>Date: <u>4/4/2022 7:38 AM MDT</u></p>	<p>STATE OF COLORADO Jared S. Polis, Governor DEPARTMENT OF LOCAL AFFAIRS Rick M. Garcia, Executive Director</p> <p>DocuSigned by: <u>Rick M. Garcia - DOLA</u> 8139CF536BC34AC...</p> <p>By: Rick M. Garcia, Executive Director</p> <p>Date: <u>4/4/2022 7:43 AM MDT</u></p>
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In accordance with §24-30-202 C.R.S., this Grant is not valid until signed and dated below by the State Controller or an authorized delegate (the "Effective Date").

<p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>DocuSigned by: <u>Beulah Messick - DOLA</u> 090ACD88A721474...</p> <p>By: Beulah Messick, Controller Delegate Department of Local Affairs</p> <p>Effective Date: <u>4/7/2022 5:38 PM MDT</u></p>

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TERMS AND CONDITIONS

1. GRANT

As of the Performance Start Date, the State Agency shown on the Summary of Grant Award Terms and Conditions page of this Grant Award Letter (the "State") hereby obligates and awards to Grantee shown on the Summary of Grant Award Terms and Conditions page of this Grant Award Letter (the "Grantee") an award of Grant Funds in the amount shown on the Summary of Grant Award Terms and Conditions page of this Grant Award Letter. By accepting the Grant Funds provided under this Grant Award Letter, Grantee agrees to comply with the terms and conditions of this Grant Award Letter and requirements and provisions of all Exhibits to this Grant Award Letter.

2. TERM

A. Initial Grant Term and Extension

The Parties' respective performances under this Grant Award Letter shall commence on the Performance Start Date and shall terminate on the Grant Expiration Date unless sooner terminated or further extended in accordance with the terms of this Grant Award Letter. Upon request of Grantee, the State may, in its sole discretion, extend the term of this Grant Award Letter by providing Grantee with an updated Grant Award Letter or an executed Option Letter showing the new Grant Expiration Date.

B. Early Termination in the Public Interest

The State is entering into this Grant Award Letter to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Grant Award Letter ceases to further the public interest of the State or if State, Federal or other funds used for this Grant Award Letter are not appropriated, or otherwise become unavailable to fund this Grant Award Letter, the State, in its discretion, may terminate this Grant Award Letter in whole or in part by providing written notice to Grantee. If the State terminates this Grant Award Letter in the public interest, the State shall pay Grantee an amount equal to the percentage of the total reimbursement payable under this Grant Award Letter that corresponds to the percentage of Work satisfactorily completed, as determined by the State, less payments previously made. Additionally, the State, in its discretion, may reimburse Grantee for a portion of actual, out-of-pocket expenses not otherwise reimbursed under this Grant Award Letter that are incurred by Grantee and are directly attributable to the uncompleted portion of Grantee's obligations, provided that the sum of any and all reimbursements shall not exceed the maximum amount payable to Grantee hereunder. This subsection shall not apply to a termination of this Grant Award Letter by the State for breach by Grantee.

C. *Reserved.*

3. AUTHORITY

Authority to enter into this Grant Award Letter exists in the law as follows:

A. State Authority

Authority to enter into this Grant exists in C.R.S. 24-32-106 and 29-3.5-101 and funds have been budgeted, appropriated and otherwise made available pursuant to C.R.S. 39-29-110 (Local Government Severance Tax Fund) and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been

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accomplished from and with appropriate agencies. This Grant Award Letter is funded, in whole or in part, with State funds.

B. *Reserved.*

4. DEFINITIONS

The following terms shall be construed and interpreted as follows:

A. *Reserved.*

B. *Reserved.*

C. “**CORA**” means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.

D. “**Exhibits**” means the following exhibits attached to this Grant Award Letter:

i. **Exhibit B**, Scope of Project

ii. **Exhibit G**, Form of Option Letter

E. “**Extension Term**” means the period of time by which the Grant Expiration Date is extended by the State through delivery of an updated Grant Award Letter, an amendment, or an Option Letter.

F. *Reserved.*

G. *Reserved.*

H. “**Goods**” means any movable material acquired, produced, or delivered by Grantee as set forth in this Grant Award Letter and shall include any movable material acquired, produced, or delivered by Grantee in connection with the Services.

I. “**Grant Award Letter**” or “**Grant**” means this letter which offers Grant Funds to Grantee, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future updates thereto.

J. “**Grant Expiration Date**” means the Grant Expiration Date shown on the Summary of Grant Award Terms and Conditions page of this Grant Award Letter. Work performed after the Grant Expiration Date is not eligible for reimbursement from Grant Funds.

K. “**Grant Funds**” or “**Grant Award Amount**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Grant Award Letter.

L. “**Incident**” means any accidental or deliberate event that results in, or constitutes an imminent threat of, the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.

M. “**Initial Term**” means the time period between the Performance Start Date and the initial Grant Expiration Date.

N. *Reserved.*

O. “**Other Funds**” means all funds necessary to complete the Project, excluding Grant Funds. Grantee is solely responsible for securing all Other Funds.

P. “**Party**” means the State or Grantee, and “**Parties**” means both the State and Grantee.

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- Q.** “**Performance Start Date**” means the later of the Performance Start Date or the Execution Date shown on the Summary of Grant Award Terms and Conditions page of this Grant Award Letter.
- R.** *Reserved.*
- S.** *Reserved.*
- T.** *Reserved.*
- U.** “**Project**” means the overall project described in **Exhibit B**, which includes the Work.
- V.** “**Project Budget**” means the amounts detailed in **§6.2** of **Exhibit B**.
- W.** *Reserved.*
- X.** *Reserved.*
- Y.** “**Services**” means the services performed by Grantee as set forth in this Grant Award Letter, and shall include any services rendered by Grantee in connection with the Goods.
- Z.** “**State Confidential Information**” means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to State personnel records not subject to disclosure under CORA.
- AA.** “**State Fiscal Rules**” means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a) C.R.S.
- BB.** “**State Fiscal Year**” means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- CC.** “**State Records**” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- DD.** *Reserved.*
- EE.** “**Subcontractor**” means third-parties, if any, engaged by Grantee to aid in performance of the Work. “Subcontractor” also includes sub-grantees.
- FF.** *Reserved.*
- GG.** *Reserved.*
- HH.** *Reserved.*
- II.** “**Work**” means the delivery of the Goods and performance of the Services described in this Grant Award Letter.
- JJ.** “**Work Product**” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Performance Start Date that is used, without modification, in the performance of the Work.

Any other term used in this Grant Award Letter that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

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5. PURPOSE

The purpose of the Renewable and Clean Energy Initiative (HB21-1253) Program is to assist political subdivisions by providing funding for infrastructure implementation projects in the renewable and clean energy field. The purpose of this Grant is described in **Exhibit B**.

6. SCOPE OF PROJECT

Grantee shall complete the Work as described in this Grant Award Letter and in accordance with the provisions of **Exhibit B**. The State shall have no liability to compensate or reimburse Grantee for the delivery of any goods or the performance of any services that are not specifically set forth in this Grant Award Letter.

7. PAYMENTS TO GRANTEE

A. Maximum Amount

Payments to Grantee are limited to the unpaid, obligated balance of the Grant Funds. The State shall not pay Grantee any amount under this Grant that exceeds the Grant Award Amount shown on the Summary of Grant Award Terms and Conditions page of this Grant Award Letter.

- i. The State may increase or decrease the Grant Award Amount by providing Grantee with an updated Grant Award Letter or an executed Option Letter showing the new Grant Award Amount.
- ii. The State shall not be liable to pay or reimburse Grantee for any Work performed or expense incurred before the Performance Start Date or after the Grant Expiration Date.
- iii. Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

B. Erroneous Payments

The State may recover, at the State's discretion, payments made to Grantee in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Grantee. The State may recover such payments by deduction from subsequent payments under this Grant Award Letter, deduction from any payment due under any other contracts, grants or agreements between the State and Grantee, or by any other appropriate method for collecting debts owed to the State.

C. Matching Funds.

Grantee shall provide the Other Funds amount shown on the Project Budget in **Exhibit B** (the "Local Match Amount"). Grantee shall appropriate and allocate all Local Match Amounts to the purpose of this Grant Award Letter each fiscal year prior to accepting any Grant Funds for that fiscal year. Grantee does not by accepting this Grant Award Letter irrevocably pledge present cash reserves for payments in future fiscal years, and this Grant Award Letter is not intended to create a multiple-fiscal year debt of Grantee. Grantee shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Grantee's laws or policies.

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D. Reimbursement of Grantee Costs

The State shall reimburse Grantee's allowable costs, not exceeding the maximum total amount described in this Grant Award Letter for all allowable costs described in this Grant Award Letter and shown in the Project Budget in **Exhibit B**.

- i.** Upon request of the Grantee, the State may, without changing the maximum total amount of Grant Funds, adjust or otherwise reallocate Grant Funds among or between each line of the Project Budget by providing Grantee with an executed Option Letter or formal amendment.

E. Close-Out and De-obligation of Grant Funds

Grantee shall close out this Grant no later than 90 days after the Grant Expiration Date. To complete close out, Grantee shall submit to the State all deliverables (including documentation) as defined in this Grant Award Letter and Grantee's final reimbursement request or invoice. Any Grant Funds remaining after submission and payment of Grantee's final reimbursement request are subject to de-obligation by the State.

8. REPORTING – NOTIFICATION

A. Performance and Final Status

Grantee shall submit all financial, performance and other reports to the State no later than the end of the close out period described in **§7.E**.

B. Violations Reporting

Grantee shall disclose, in a timely manner, in writing to the State, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting this Award.

9. GRANTEE RECORDS

A. Maintenance and Inspection

Grantee shall make, keep, and maintain, all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to this Grant for a period of three years following the completion of the close out of this Grant. Grantee shall permit the State to audit, inspect, examine, excerpt, copy and transcribe all such records during normal business hours at Grantee's office or place of business, unless the State determines that an audit or inspection is required without notice at a different time to protect the interests of the State.

B. Monitoring

The State will monitor Grantee's performance of its obligations under this Grant Award Letter using procedures as determined by the State. The State shall monitor Grantee's performance in a manner that does not unduly interfere with Grantee's performance of the Work.

C. Audits

Grantee shall comply with all State and federal audit requirements.

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10. CONFIDENTIAL INFORMATION-STATE RECORDS**A. Confidentiality**

Grantee shall hold and maintain, and cause all Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Grantee for the sole and exclusive benefit of the State, unless those State Records are otherwise publically available at the time of disclosure or are subject to disclosure by Grantee under CORA. Grantee shall not, without prior written approval of the State, use for Grantee's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Grant Award Letter. Grantee shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security (<http://oit.state.co.us/ois>) and all applicable laws, rules, policies, publications, and guidelines. Grantee shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Grantee may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Grant Award Letter. Grantee shall ensure all such agents, employees, assigns, and Subcontractors sign nondisclosure agreements with provisions at least as protective as those in this Grant, and that the nondisclosure agreements are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Grantee shall provide copies of those signed nondisclosure restrictions to the State upon request.

C. Use, Security, and Retention

Grantee shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Grantee shall provide the State with access, subject to Grantee's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Grant, Grantee shall return State Records provided to Grantee or destroy such State Records and certify to the State that it has done so, as directed by the State. If Grantee is prevented by law or regulation from returning or destroying State Confidential Information, Grantee warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Grantee becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. After an Incident, Grantee shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State.

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11. CONFLICTS OF INTEREST

Grantee shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Grantee under this Grant. Grantee acknowledges that, with respect to this Grant, even the appearance of a conflict of interest shall be harmful to the State's interests and absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations under this Grant. If a conflict or the appearance of a conflict arises, or if Grantee is uncertain whether a conflict or the appearance of a conflict has arisen, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration.

12. INSURANCE

Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"). Grantee shall ensure that any Subcontractors maintain all insurance customary for the completion of the Work done by that Subcontractor and as required by the State or the GIA.

13. REMEDIES

In addition to any remedies available under any Exhibit to this Grant Award Letter, if Grantee fails to comply with any term or condition of this Grant, the State may terminate some or all of this Grant and require Grantee to repay any or all Grant Funds to the State in the State's sole discretion. The State may also terminate this Grant Award Letter at any time if the State has determined, in its sole discretion, that Grantee has ceased performing the Work without intent to resume performance, prior to the completion of the Work.

14. DISPUTE RESOLUTION

Except as herein specifically provided otherwise, disputes concerning the performance of this Grant that cannot be resolved by the designated Party representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager or official designated by Grantee for resolution.

15. NOTICES AND REPRESENTATIVES

Each Party shall identify an individual to be the principal representative of the designating Party and shall provide this information to the other Party. All notices required or permitted to be given under this Grant Award Letter shall be in writing, and shall be delivered either in hard copy or by email to the representative of the other Party. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §15.

16. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

Grantee hereby grants to the State a perpetual, irrevocable, non-exclusive, royalty free license, with the right to sublicense, to make, use, reproduce, distribute, perform, display, create derivatives of and otherwise exploit all intellectual property created by Grantee or any Subcontractors or Subgrantees and paid for with Grant Funds provided by the State pursuant to this Grant.

17. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the Parties, their departments, boards, commissions, committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the GIA; the Federal Tort Claims Act, 28 U.S.C.

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Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S. No term or condition of this Grant Award Letter shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, or protections of any of these provisions.

18. GENERAL PROVISIONS

A. Assignment

Grantee's rights and obligations under this Grant are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Grantee's rights and obligations approved by the State shall be subject to the provisions of this Grant Award Letter.

B. Captions and References

The captions and headings in this Grant Award Letter are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Grant Award Letter to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

C. Entire Understanding

This Grant Award Letter represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Grant Award Letter. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

D. Modification

The State may modify the terms and conditions of this Grant by issuance of an updated Grant Award Letter, which shall be effective if Grantee accepts Grant Funds following receipt of the updated letter. The Parties may also agree to modification of the terms and conditions of the Grant in either an option letter or a formal amendment to this Grant, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules.

E. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Grant Award Letter to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Performance Start Date. Grantee shall strictly comply with all applicable Federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use

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digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.

G. Order of Precedence

In the event of a conflict or inconsistency between this Grant Award Letter and any Exhibits or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

- i.** Any executed Option Letter
- ii.** The provisions of this Grant Award Letter.
- iii.** The provisions of any exhibits to this Grant Award Letter.

H. Severability

The invalidity or unenforceability of any provision of this Grant Award Letter shall not affect the validity or enforceability of any other provision of this Grant Award Letter, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under the Grant in accordance with the intent of the Grant.

I. Survival of Certain Grant Award Letter Terms

Any provision of this Grant Award Letter that imposes an obligation on a Party after termination or expiration of the Grant shall survive the termination or expiration of the Grant and shall be enforceable by the other Party.

J. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described above, this Grant Award Letter does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

K. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Grant Award Letter, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

L. Accessibility

Grantee shall comply with and adhere to Section 508 of the U.S. Rehabilitation Act of 1973, as amended, and §§24-85-101, *et seq.*, C.R.S. Grantee shall comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards and available at <https://www.w3.org/TR/WCAG21/>.

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