

REQUEST FOR QUOTE

**CONFLUENCE TREE TRIMMING AND FIRE
MITIGATION SERVICES**

**TOWN OF LYONS, CO
October 11, 2022**

**Town of Lyons
432 5th Avenue
P.O. Box 49
Lyons, CO 80540
PH: (303) 823-6622
www.townoflyons.com**

Project Number: 22-CONFL FIRE MIT-01

PROPOSALS DUE: Friday, October 28, 2022 by 2:00 P.M.

REQUEST FOR QUOTE FOR CONFLUENCE TREE TRIMMING & FIRE MITIGATION

TOWN OF LYONS, CO

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EXHIBITS

<u>EXHIBIT</u>	<u>TITLE</u>
A	SCOPE OF WORK
B	STANDARD PROFESSIONAL SERVICES CONTRACT
C	PROPOSAL ACKNOWLEDGMENT
D	CONSULTANT QUALIFICATIONS
E	CONSULTANT CERTIFICATION OF COMPLIANCE – ILLEGAL ALIENS
F	FEE SCHEDULE/BID FORM

ATTACHMENTS

<u>ATTACHMENT</u>	<u>TITLE</u>
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I. INTRODUCTION

REQUEST FOR QUOTE

Town Contact: Dave Cosgrove
Email Address: DaveC@townoflyons.com
Telephone Number: 303-823-6622 x20

A. Pre-Proposal Conference

A **mandatory** Pre-Quote Conference, and will be held on Wednesday, October 19, 2020, at 11:00 am. at the Lyons Town Hall, 432 5th Avenue. The purpose of this conference is to discuss this Request for Quote for any terms and conditions contained herein as well as to review the project sites.

B. Proposals must be received no later than:

Friday October 28, 2022, at or before 2:00 p.m.

Proposals received after this date and time will not be considered for award.

The TOWN will only accept quotes in bound hard copy format, accompanied by submittal on CD-ROM or external flash drive, and does not accept proposals submitted via fax, email, or other electronic means. Quotes are to be submitted in a sealed Package with the following on the outside of the envelope:

Company Name
RFP Title
RFP Number
Due Date and Time

C. Package must include

1. One (1) Original Submittal, identified as "Original"
2. One Copy of Submittal on a CD-ROM or external flash drive.
3. Include both original and public viewing versions, if applicable.

D. Americans with Disabilities Act

If you need special assistance or services to be provided under the provisions of the Americans with Disabilities Act (ADA), please contact the Town of Lyons at (303) 823-6622 at least 48 hours in advance of any scheduled event.

E. Hand deliver proposals to (preferred method):

Town of Lyons
Attention: Philip Strom
432 5th Avenue
Lyons, CO 80540

Or mail proposals to:

US Postal Service Only:
Town of Lyons
Attention: Tracy Sanders
PO Box 49
Lyons, CO 80540

F. This RFQ was advertised in the following publications and web bases services:

- BidNet Direct (www.bidnetdirect.com)

II. SCHEDULE OF EVENTS

(Subject to change) All times are given in local Colorado time:

Date	Day of Week	Time of Day	Description
10/11/22	Tuesday		RFP Advertised
10/19/22	Wednesday	11:00 AM	Pre-Proposal Conference
10/21/22	Wednesday	4:00 PM	Deadline for Questions
10/24/22	Monday	4:00 PM	Question & Answer Posted
10/28/22	Friday	2:00 PM	Quotes Due
11/8/2022	Tuesday		Anticipated Award

III. PROJECT BACKGROUND, UNDERSTANDING AND GOALS

A. Background

1. Overview of Project

The Town of Lyons staff has identified town owned lots and property that would benefit from clean up and removal of dead material and debris. The scope of work lists specific addresses and identified clean up and marked trees for removal. The Town like any dead woody material removed for the identified lots, in addition hazard reduction for any tree limbs of 4" and greater on all remaining trees not marked for removal.

IV. GENERAL INSTRUCTIONS TO PROPOSERS

Proposals will be received by the Town at 432 5th Avenue, Lyons, Colorado 80540 as specified on the RFQ. Proposers shall not directly contact other personnel regarding matters concerning this RFQ or to arrange meetings related to such. Proposals to be entitled to consideration shall be submitted in accordance with the following instructions:

A. The Work

The work for which proposals will be submitted is generally described in the RFQ. All work must be completed in accordance with the plans and specifications and any approved and agreed upon amendments thereto.

B. Examination of Site and Documents

Each proposer shall visit the site of the proposed work and shall completely inform themselves relative to construction procedure, labor, and all other conditions and factors, local and otherwise, which would affect prosecution and completion of the work and its cost. All such factors shall be properly investigated and considered in the preparation of the proposal. Each proposer shall so fully examine RFQ documents and acquaint himself/herself with their requirements and with the conditions surrounding the site that he/she shall be fully familiar with and informed of all difficulties, and problems attendant on prosecution of the work. It shall be the responsibility of the proposer to direct to the attention of the Owner in writing and at least four (4) business days prior to the time set for the opening of the proposals, any seeming inconsistencies, ambiguous requirements, omissions, or any other matter which seems to require explanation, and to request clarification. The submission of a quote shall be taken as prima facie evidence of compliance with this requirement and as an acknowledgement that the proposer has received all the required documents and has visited the site. There will be no subsequent financial adjustment for lack of such prior information.

C. Interpretation

No oral interpretation will be made by anyone to any proposer as to the true meaning of requirements of any part of the RFQ Documents. Every request for such interpretation shall be made in writing and addressed and forwarded to the Owner not later than four (4) business days before the date fixed for opening of proposals. The person submitting the request shall be responsible for its prompt delivery. Every interpretation made to a proposer will be in the form of an addendum to the Documents, which will be sent as promptly as practicable to all persons to whom the Documents have been issued. All such addenda shall become part of the Contract Documents and their receipt shall be acknowledged in the Proposal. The Owner will not be responsible for any other explanations or interpretations of the proposed Contract Documents.

D. Preparation of Proposal Forms

All proposal forms must be prepared in single copy and in conformity with and be based upon and submitted subject to all requirements of the Contract Documents. They must be fully completed with all blanks appropriately filled in. Each proposal shall be legibly written, printed in ink or typed. No alterations in proposals, or in the printed forms therefore, by erasures, interpolations or otherwise will be acceptable unless each such alteration is signed or initialed by the proposer. If initialed, the Owner may require the proposer to identify any alteration so initialed. No alteration in any proposal, or in the form on which it is submitted, shall be made after the proposal has been submitted. It will be the proposer's responsibility to secure any and all addenda from the Owner. The proposer will be required to

acknowledge receipt of all addenda. Owner reserves the right to reject any propose which is received which has not been based upon all addenda issued by the Owner. No proposer may submit more than one proposal. Multiple proposals under different names will not be accepted from one firm or association.

E. Signature of Proposers

Each proposer shall sign the proposal form using his/her usual signature and giving his/her full business address. If the proposer is an individual, he/she must sign in individual capacity. Proposals by partnerships shall be signed with the partnership name followed by the signature and designation of one of the partners or other authorized representatives. Proposals by a corporation shall be signed with the name of the corporation followed by the signature and designation of the president or other person authorized to bind the corporation and attested to by the secretary with corporate seal. Proposals by joint ventures shall be signed by each participant in the joint venture or by an authorized agent of each participant. The names of all persons signing should also be typed or printed below the signature. A propose by a person who affixes to his/her signature the word "president" "secretary" "agent" or other designation without disclosing his/her principal may be held to be the propose of the individual signing. When requested by the Owner, evidence of the authority of the person signing shall be furnished.

F. Submission of Proposals

Proposal documents shall be enclosed in an opaque envelope, each of which shall be sealed and clearly labeled, and identified as described in the RFQ. No responsibility shall attach to any employee of the Owner for the premature opening of any propose not prominently identified. The proposer shall be responsible for placing his/her firm name on the outside of such propose envelope. The Proposal Documents shall be submitted by the time and at the location as noted in the RFQ and these instructions. Proposals received after the specified time of closing will be returned unopened. The submission shall include documents described in the RFQ.

G. Withdrawal of Proposals

Any proposer may withdraw their proposal if written request for withdrawal signed in the same manner and by the same person who signed the proposal form is received by the individual of the Town requesting the proposals prior to the time established for the opening of the proposals. No proposer may withdraw his/her propose for forty-five (45) calendar days after the scheduled time set for the opening thereof, or before the award of the Contract, unless said award is delayed for a period exceeding forty-five (45) calendar days.

H. Modifications to Proposals

No oral or telephone modifications will be considered. Any proposer may modify his/her propose at any time prior to the scheduled proposal opening time, provided such modification is in written form, signed by the same person who signed the proposal documents and submitted in a sealed envelope in accordance with the instructions set forth in this document.

I. Acceptance of Proposals

The Owner reserves the right to accept the proposal which in its judgment is the most qualified proposal or to reject any and all proposals and alternatives and to waive or disregard irregularities or informalities in any propose as it may deem to be in the best interest of the Town. The Board may consider as irregular any propose on which there is an alteration of, or departure from, the proposal form hereto attached. Final determination of compliance with the proposal requirements will rest with the Owner.

J. Insurance

Throughout the life of the Contract, the consultant will be required to carry the types and amounts of insurance set forth in the Contract Documents and to keep on file with the Owner current certificates evidencing such coverage's. Insurance certificate shall be on Owner's forms.

K. Required Forms

Successful proposer will be required to submit within ten (10) calendar days of Notice of Award the documents specified in the RFQ, all on Town forms or approved alternates.

L. Taxes

The Owner is exempt from the collection and payment of state sales and use taxes on any materials, supplies or other equipment used or installed in the work. The contract propose amount and any agreed upon variations thereof shall not include the cost of any such taxes. It shall be the responsibility of the consultant to complete and file an "Application for Exemption Certificate" with the Colorado Department of Revenue and submit copies of such Certificate to the Owner upon award of the Contract and prior to commencing any work.

M. Equal Opportunity Employment

The Town is an equal opportunity employer. Businesses owned and operated by minorities or women are encouraged to submit proposals. Proposers to whom a contract is awarded are encouraged to solicit proposals for subconsultants from businesses owned and operated by minorities and women. Proposers to whom a contract is awarded shall not discriminate on the basis of race, color, national origin, sex, religion, age or disability in the award or performance of subconsultants, including the procurement of materials. The required proposal document Prime Contractor's MBE/WBE and Labor Surplus Area Outreach Form documents such outreach during the proposal process.

N. Applicable Laws and Regulations

Each proposer shall familiarize himself/herself with all state and local laws, codes, ordinances, and regulations which might in any manner affect the work to be done. A plea of misunderstanding or ignorance on the part of any successful proposer will not in any way excuse such proposer from the necessity of full compliance with every such law, code, ordinance, or regulation. All state and local laws, codes and ordinances and regulations which are applicable shall be complied with including but not limited to those specified in these documents.

V. SPECIFIC INSTRUCTIONS TO PROPOSERS

A. Inquiries

Prospective proposers may make written inquiries by e-mail prior to the deadline for questions date listed above in *Section II. Schedule of Events* concerning this RFQ to obtain clarification of requirements. There will also be opportunity to make inquiries during the pre-quote conference. No inquiries will be accepted after the deadline. Inquiries regarding this RFQ (be sure to reference RFQ number) should be referred to:

E-Mail: tsanders@townoflyons.com or davec@townoflyons.com
Subject Line: 22-CONFL FIRE MIT-01 – (Consultant Name) – (Date) – Questions on RFQ

Response to proposers' inquiries will be posted in a timely manner. Proposers cannot rely on any other statements that clarify or alter any specification or other term or condition of the RFQ.

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

B. Protested Solicitations and Awards

When to File: Protests must be submitted in writing (via email, U.S. Mail or courier) and received by the Town Administration at 423 5th Avenue/ PO Box 49, Lyons CO 80540 prior to award of a contract. This can be submitted before or during a Board of Trustees meeting in which a contract will be approved.

Protests based upon restrictive specifications or alleged improprieties in any type of solicitation, which are apparent prior to either the proposal or proposed due date must be filed no later than three (3) working days prior to the propose opening date or proposal closing date.

Process: The protest must include, at a minimum, the following:

- 1) The name and address of the protestor
- 2) Appropriate identification of the procurement by RFQ Number
- 3) A statement of the reasons for the protest
- 4) Any available exhibits, evidence or documents substantiating the protest

Decision: The Town Administrator shall make a decision, in writing, on a protest within seven (7) working days after receiving all relevant, requested information. This decision shall be based on and limited to a review of the issues raised by the protesting proposer, proposer, or contractor, and shall set forth each factor taken into account in reaching the decision. The decision of the Town Administrator is final.

Withholding of Award: When a protest has been filed before an award, the Town Board shall not make an award before it has resolved the protest. If a protest has been filed before the opening of proposals or closing of request for proposals, the Town will resolve the protest prior to closing the solicitation, unless the Town determines that:

- 1) The items to be procured are urgently required; or
- 2) Delivery or performance will be unduly delayed by failure to make the award promptly; or
- 3) Failure to make prompt award will otherwise cause undue harm to the Town

C. Negotiation of Award

The Town reserves the right to negotiate the award for the services with the proposer submitting the proposal in lieu of accepting the proposal as is.

D. RFQ Response/Material Ownership

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

E. Incurring Costs

The Town is not liable for any cost incurred prior to issuance of a legally executed contract.

F. Assignment and Delegation

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

G. Availability of Funds

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 the event funds are not appropriated, any resulting contract will become null and void, without penalty to the Town.

H. Unlawful Employees, Contractors and Subconsultants

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

I. Verification Regarding Illegal Aliens

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

VI. RESPONSE FORMAT

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

Proposers shall submit in a sealed package:

- The award will be based on the lowest responsible bidder
- One (1) Original Proposal, identified as "Original"
- One Copy of Proposal on a CD-ROM or external storage device – Include both original and public viewing versions, if applicable.

To facilitate the evaluation, proposer shall submit and organize all responses in the same order as listed in the section below. Proposals that are determined to be at a variance with this requirement may not be accepted. The Town only accepts proposals in hard copy format and does not accept proposals submitted via fax, email, or other electronic means. Late proposals will not be accepted. It is the responsibility of the proposer to ensure that the proposal is received at the Town of Lyons, Town Hall, on or before the proposal opening date and time.

The outside of the package will include the following information:

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

The following items are to be included in your proposal, in the order listed. Deviation may render your proposal non-responsive.

A. Cover Letter

Include a cover letter introducing your company, summarizing your qualifications, and detailing any exceptions to this RFQ. This letter should also provide principal contact information for this RFQ, including address, telephone number, e-mail, and website (if applicable).

B. Use of Subconsultants/Partners

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

C. Company Information

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

D. Required Documents

1. Registration with the System of Award Management. www.sam.gov
2. Proposal Acknowledgement. This required form is included as Exhibit C.
3. Consultant Qualifications. This required form is included as Exhibit
4. Illegal Alien Certificate. This required form is included as Exhibit E.

Determination of Responsibility of the Proposer

The Town awards contracts to the lowest responsible and responsive consultants only. The Town reserves the right to make its proposer responsibility determination at any time in this RFQ process and may not make a responsibility determination for every proposer. A “Responsible Proposer” is defined by this proposal as one who has “the capability in all respects to perform fully the contract requirements, presents, perseverance, experience, integrity, reliability, capabilities, facilities, equipment, and credit which will assure good faith performance.” The Town reserves the right to request information as it deems necessary to determine a proposer’s responsibility. If the proposer fails to supply the requested information, the Town shall base the determination of responsibility upon any available information or may find the proposer non-responsible if such failure is unreasonable.

Town of Lyons



2022 Confluence Buyout Parcel Tree Removal
and Fire Mitigation Invitation to Bid

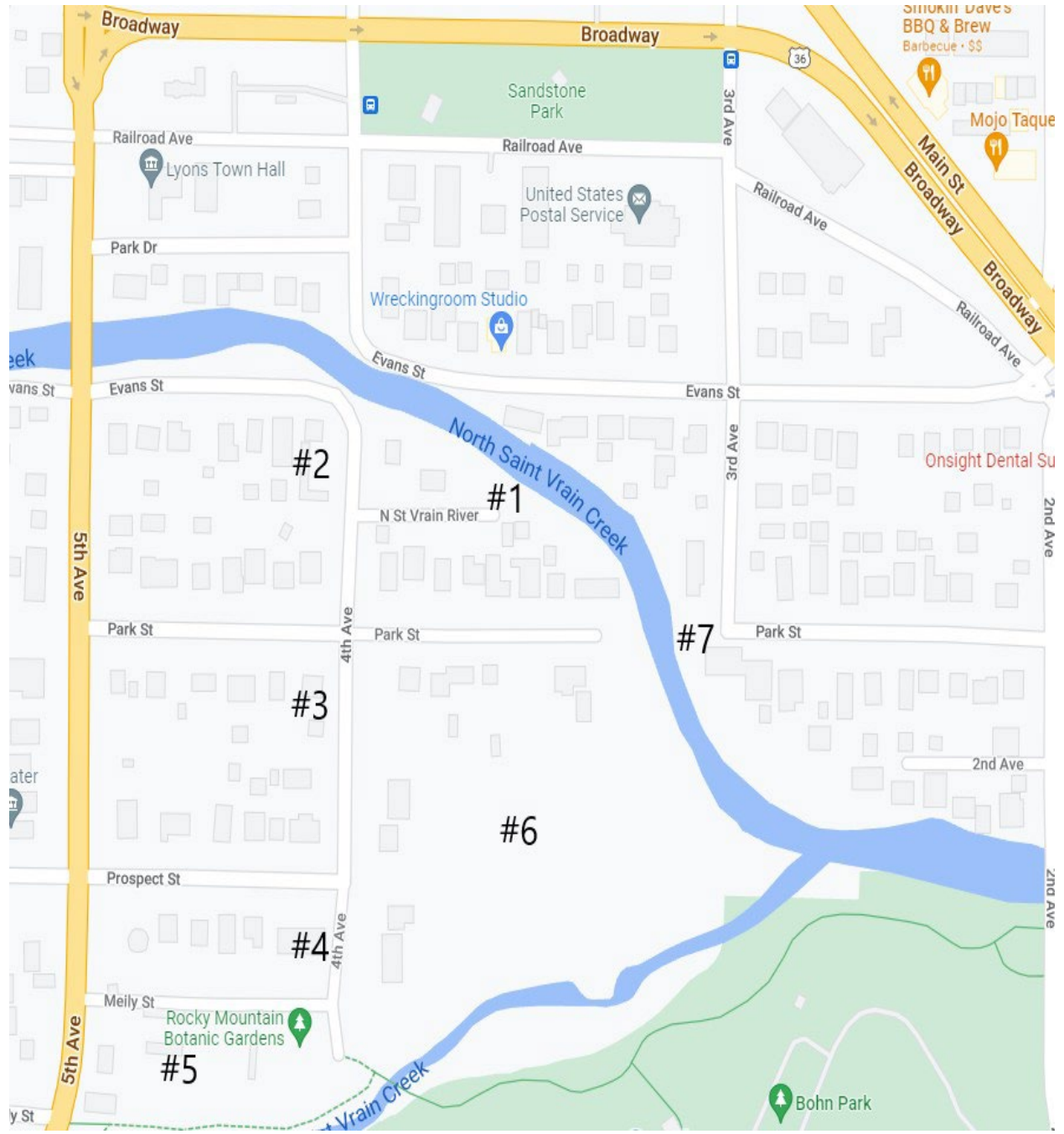
Request for:

*Pre-marked full tree removal, dead fall removal, and tree
hazard reductions*

Property/ Parcel Addresses

- 1). 0 4th Ave.
- 2). 405 Evans St.
- 3). 411 & 403 Park St.
- 4). 405 & 415 Prospect Ave.
- 5). 104 5th St.
- 6). 341 Park St.
- 7). 233 Park St.

Area Map



Project Area Parcel Map



Parcel scope/photos:

1). 0 4th Ave

Property information: Dead fall removal and evident hazard



reduction.



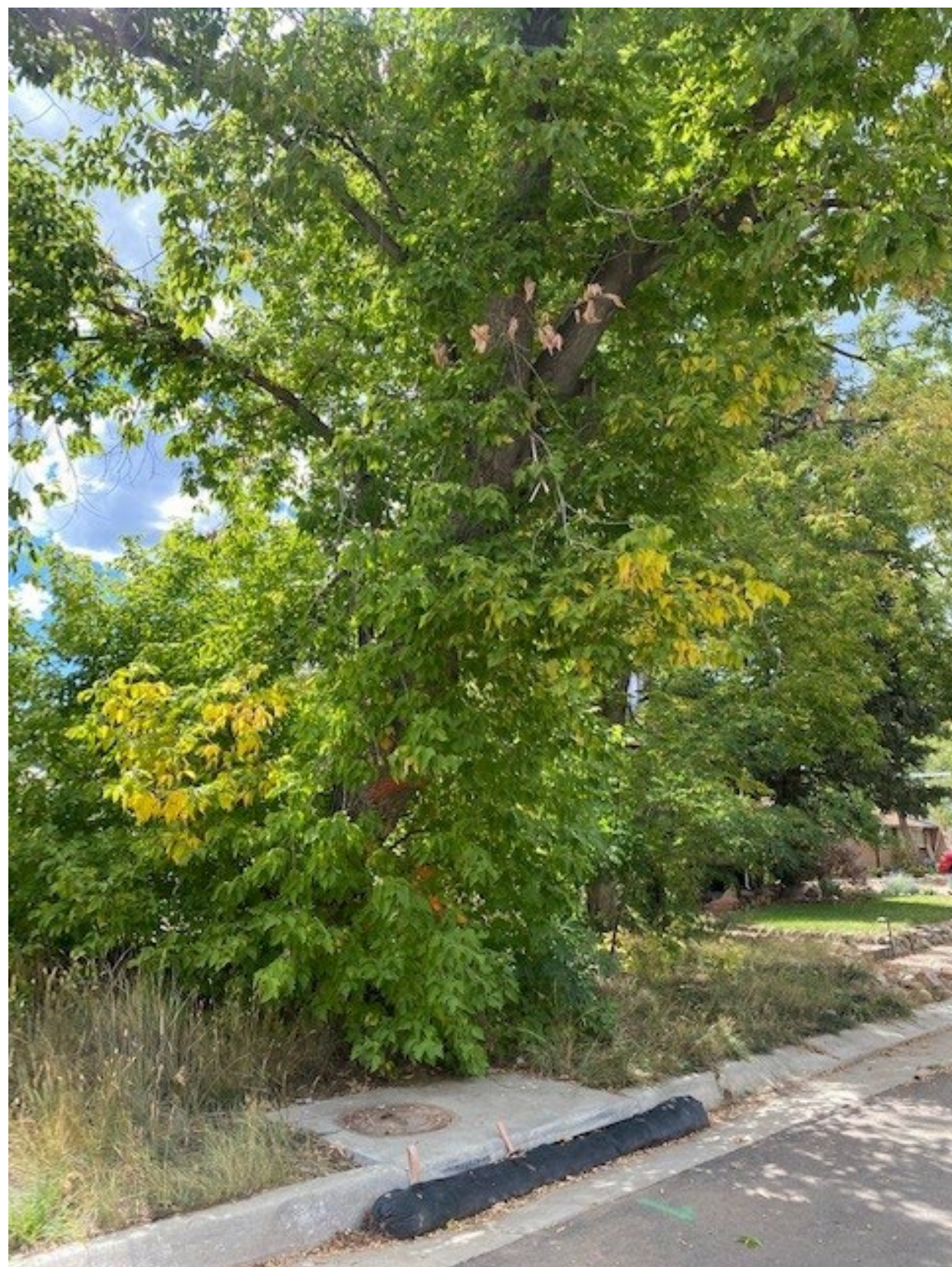
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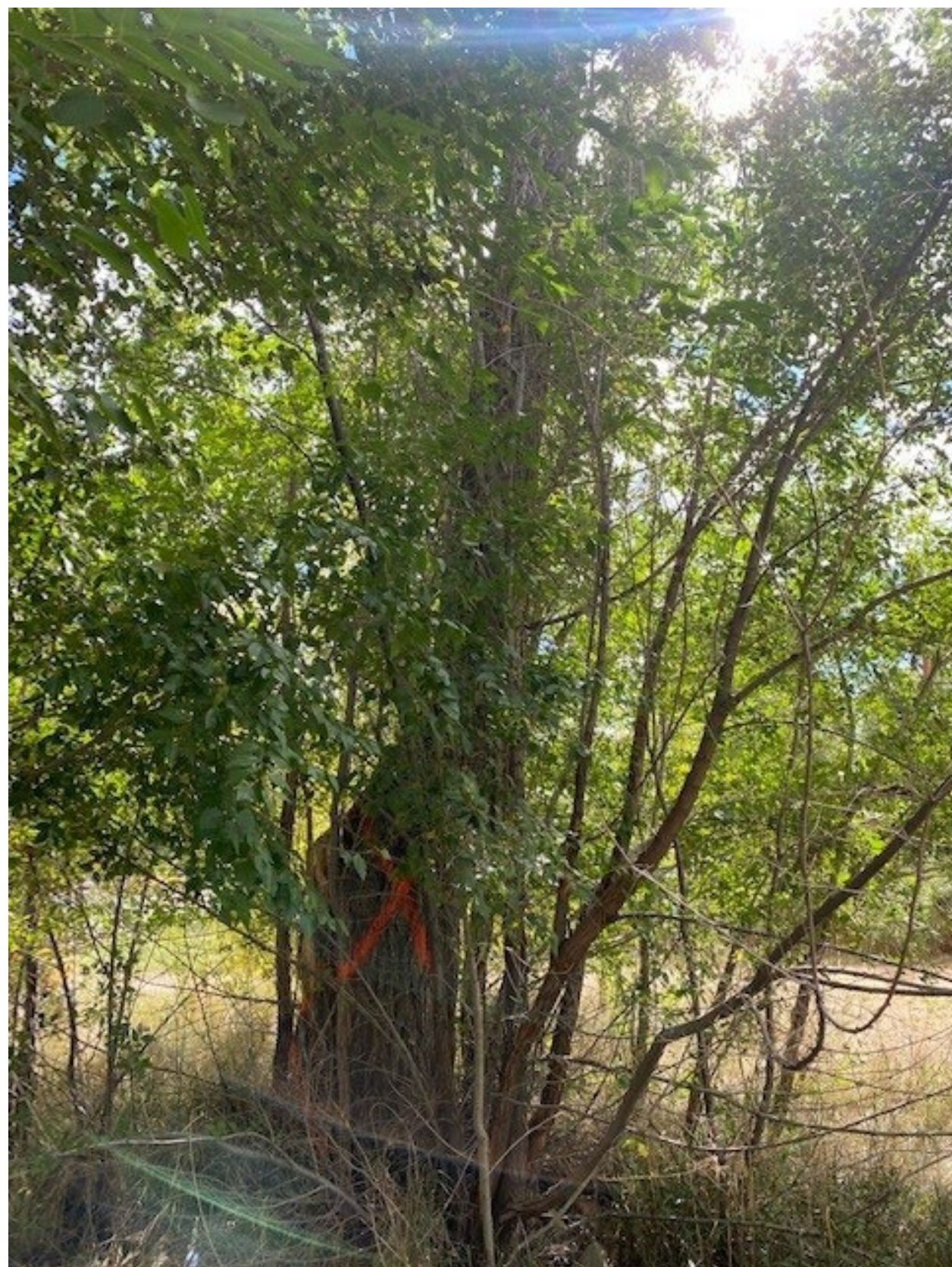
2). 405 Evans St.

Property information:

Dead fall removal, evident hazard reductions, and full removal of (3) orange marked trees.









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3). 411 & 403 Park St.

Property information:

Hazard reduction



Blank

4). 405 & 415 Prospect Ave.

Property information:

Dead fall removal, evident hazard reductions, and full removal of (19) orange mark trees.









































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5). 104 5th St.

Property information:

Full removal (2) orange marked trees.







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6). 341 Park St.

Property information:

Dead fall removal, evident hazard reductions, and full removal of (5) orange marked trees.

















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7). 233 Park St.

Property information:

Dead fall removal, evident hazard reductions, and full removal of (6) orange marked trees.



















Town of Lyons
PROFESSIONAL SERVICES AGREEMENT

Project/Services Name: Parks Construction Management for Flood Recovery

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this ____ day of _____ 20__, 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 _____ with offices at _____ (the "**Contractor**"). The Town and Contractor may be referred to collectively as the "Parties" or each individually as "Party".

RECITALS

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 all proposals; 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 attached hereto and 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 _____, 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 in Section 11.0 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.
- 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 **[Written Not to Exceed Amount] \$ _____**) 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. **These invoices for payment should be emailed to ap@townoflyons.com or mailed to Town of Lyons, P.O. Box 49, Lyons, CO 80540.** 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. 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 amendments approved per Section 2.3 of this Agreement, if applicable, less all previous payments to the Contractor.

- C. Extra Work. 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. Receipts. 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 subcontractors 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 date of mutual execution** (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 ____ day of _____, 202X**, 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

Insurance Generally. Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all obligations assumed by the Contractor pursuant to this Agreement. Contractor shall not commence work under this Agreement until it has obtained all said insurance required by the Contract Documents and such insurance has been approved by the Town. The Contractor shall not allow any subcontractor to commence work on this project until all similar insurance required of the subcontractor has been obtained and approved. For the duration of this Agreement, the Contractor must continuously maintain the insurance coverage required in this section, with the minimum insurance coverage listed below:

- ☒ Worker's Compensation in accordance with the Worker's Compensation Act of the State of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract.
- ☒ 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, plus an additional amount sufficient to pay related attorneys' fees and defense costs. The policy shall be applicable to all premises and operations. 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 include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.
- ☒ 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) 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.

5.1 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.

5.2 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.

- 5.3 Insurance Certificates. **Prior to commencement of the Services, the Contractor shall submit to the Town certificates of insurance for all Required Insurance and all necessary endorsements.** 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/Services 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 Board of Trustees 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 subcontractor 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 Lyons, 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. Invalidity 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 Lyons Town Hall PO Box 49 432 5th Ave, Lyons, CO 80540	NAME ADDRESS
With Copy to: Attn: Town of Lyons Town Attorney Kissinger & Fellman, P.C. Ptarmigan Place, Suite 900 3773 Cherry Creek North Drive Denver, CO 80209	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

- 11.1 Attachments. The following are attached to and incorporated into this Agreement by reference:

- ☒ Scope of Work (**Exhibit A**)
- ☒ Compensation (**Exhibit B**)
- ☐ Federal Emergency Management Agency ("FEMA") Grant Program Requirements for Procurement Contracts (**Attachment C**)
- ☐ Colorado Community Development Block Grant Disaster Recovery Program ("CDBG-DR") Requirements for Contracts (**Attachment [redacted]**)
- ☐ Economic Development Administration ("EDA") Requirements for Procurement Contracts (**Attachment [redacted]**)
- ☐ Patent Rights for Small Business Firms and Non-Profit Organizations (**Attachment [redacted]**)

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

11.2 Applicability of Davis-Bacon Act and Other Terms in Attachments. If the Town is receiving CDBG-DR Funds and/or funding from the EDA for the Project that is the subject of this Agreement, then both funding sources require certain terms and conditions to be integrated into this Agreement through the Attachments. However, certain terms of the required Attachments apply to construction contracts only.

- A. ☒ If this box is checked, this Agreement is a contract for professional services for the Town of Lyons and certain terms or provisions in the required Attachments to this Agreement do not apply because this Agreement is not a construction contract. Terms and provisions in the Attachments setting forth requirements for the following do not apply to this Agreement:
- The Davis-Bacon Act, § 40 U.S.C. 3141 – 3148, as supplemented by U.S. Department of Labor regulations (29 CFR, Part 5); and
 - Any other term or provision applicable only to construction contracts.
- B. 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.
- C. Agreement to Execute Other Required Documents. Contractor and all subcontractors, by entering into the Agreement, understand and agree that funding for the Project 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
- D. Compliance with Laws. If 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, then 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.

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: _____
Hollie Rogin, Mayor

Approval by Town Administrator

☐ Not Required

ATTEST:

Dolores M. Vasquez, CMC, Town Clerk

By: _____
Victoria Simonsen, Town Administrator

Date Executed by the Town of Lyons

APPROVED AS TO FORM (*Excluding Exhibits*)

☐ Not Required

For Town Attorney's Office

CONTRACTOR:

By: _____

Printed name: _____

Its: _____

STATE OF _____)
COUNTY OF _____) ss.

The foregoing Professional Services Agreement was acknowledged before me this ____ day of _____, 20____, by _____ as _____ of _____, a _____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

TOWN OF LYONS

PROPOSAL FOR UNIT PRICE CONTRACT

FOR: _____

DATE: _____

PLACE: Lyons, Colorado

PROJECT:

Proposal for _____
hereinafter called "**Bidder**" *a corporation organized and existing under the laws of the State of _____, *a partnership, or *an individual as _____
(*Strike out inapplicable phrases.)

To: **THE TOWN OF LYONS**
PO Box 49
Lyons, Colorado 80540

The Bidder in compliance with your specifications and project manual dated November 14, 2016 for bids for the _____, submits this proposal for a Not To Exceed price contract based on quantities and unit prices.

The Bidder, having examined the plans and specifications with related documents, and the site of the proposed work, and being familiar with all of the conditions surrounding the construction of the proposed project, including the availability of materials and labor, hereby proposes to furnish all labor, materials and supplies, and to construct the project in accordance with the Contract Documents, within the time set forth therein, and at the prices stated below. These prices are to cover all expenses incurred in performing the work required under the Contract Documents, of which the Proposal is a part.

Bidder hereby agrees to commence work under this Contract on a date to be specified in a written "Notice to Proceed" by the Owner and to fully complete the project within the construction period stated herein.

Construction Time: Bidder understands that the work must be fully completed by _____ as set forth in the "Instruction to Bidders" with interim milestones as set forth in the contract documents.

Bidder acknowledges receipt of the following addenda: No. 1 _____; No. 2 _____; No. 3 _____

BASE PROPOSAL:

As set forth in the Specifications and Drawings, Bidder agrees to fully complete the project for the sum of (written) _____ Dollars

PROPOSAL FOR UNIT PRICE CONTRACT

(\$ _____)

(Amount shall be shown in both written form and figures. In case of discrepancy between the written amount and the figures, the written amount will govern. Bid number will be confirmed by summation of Summary of Quantities Sheet)

ALTERNATES: (Itemize alternates and indicate whether the alternate is an additive or deductive alternate.)

See Bid Sheet Form.

SPECIAL PROVISIONS:

Bidder acknowledges reading and understands special provisions. _____
(Initial)

Bidder understands that the Town Board reserves the right to reject any or all bids and to waive any informality in the bidding.

The Bidder agrees that this bid shall be good and may not be withdrawn for a period of forty-five (45) calendar days after the scheduled closing time for receiving bids.

It is understood that this bid becomes a part of the Contract Documents upon the signing of the Contract, and failing to comply with any part of this bid will be taken as failure to comply with said Contract and will be just cause for rejection of the work.

Upon receipt of Notice of Award of this Bid, Bidder will execute the formal contract within ten (10) days and deliver Certificates of Insurance and a surety bond or bonds as required by the General Conditions for the faithful performance of this Contract.

SIGNATURE PAGE FOLLOWS

TOWN OF LYONS

PROPOSAL FOR UNIT PRICE CONTRACT

Respectfully submitted,

(Bidder)

By: _____

Title: _____

(Business Address)

(SEAL) if bid is by a
Corporation

Town of Lyons, Colorado
PROJECT NAME

CONTRACTOR QUALIFICATIONS

		Yes	No
1	Has the Contractor completed similar types of projects in existing neighborhoods within the last 5 years?		
2	Can the Contractor provide references for each of the projects in response to no. 1 above?		
3	Can the Contractor provide the required Insurance and Bonding Requirements listed in the General Conditions of the Contract?		
4	Can the Contractor commit the necessary manpower and equipment to provide the services within the required time frames?		

Contractor Shall Provide References Here:

R1	
R2	
R3	
R4	
R5	

EXHIBIT I
CONTRACTOR'S CERTIFICATION OF COMPLIANCE

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

C.R.S. § 8-17.5-101, et seq., in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the attached contract for services.

CONTRACTOR:

Company Name

Name (Print or Type)

Signature

Title

Note: Registration for the E-Verify Program can be completed at: <https://e-verify.uscis.gov/enroll/>

**CONFLUENCE TREE TRIMMING AND FIRE MITIGATION
BASE BID**

Item #	Description	Units	#	Unit Price	Total
	LOCATION A - CONFLUENCE				
1	0 4TH AVENUE				
2	HAZARD REDUCTIONS-PERIMETER/INTERIOR TREES-LIMBS 4" OR GREATER	LS	1		\$0.00
3	DEAD FALL/DEAD WOOD REMOVAL	LS	1		\$0.00
	405 EVANS ST				
4	TREE REMOVAL	PER	3		\$0.00
5	HAZARD REDUCTIONS-PERIMETER/INTERIOR TREES-LIMBS 4" OR GREATER	LS	1		\$0.00
6	DEAD FALL/DEAD WOOD REMOVAL	LS	1		\$0.00
	411 & 403 PARK STREET				
7	HAZARD REDUCTIONS-PERIMETER/INTERIOR TREES-LIMBS 4" OR GREATER	LS	1		\$0.00
	405 & 415 PROSPECT AVENUE				
8	TREE REMOVAL	PER	19		\$0.00
9	HAZARD REDUCTIONS-PERIMETER/INTERIOR TREES-LIMBS 4" OR GREATER	LS	1		\$0.00
10	DEAD FALL/DEAD WOOD REMOVAL	LS	1		\$0.00
	104 5TH AVENUE				\$0.00
11	TREE REMOVAL	PER	2		\$0.00
	341 PARK STREET				\$0.00
12	TREE REMOVAL	PER	5		\$0.00
13	HAZARD REDUCTIONS-PERIMETER/INTERIOR TREES-LIMBS 4" OR GREATER	LS	1		\$0.00
14	DEAD FALL/DEAD WOOD REMOVAL	LS	1		\$0.00
	233 PARK STREET				\$0.00
15	TREE REMOVAL	PER	6		\$0.00
16	HAZARD REDUCTIONS-PERIMETER/INTERIOR TREES-LIMBS 4" OR GREATER	LS	1		\$0.00
17	DEAD FALL/DEAD WOOD REMOVAL	LS	1		\$0.00
				LOCATION A TOTAL:	\$0.00

BASE UNIT PRICING FOR POTENTIAL ADDITIONAL WORK

UNIT PRICING

B1	CHIPPING	HR			\$0.00
B2	HAULING	HR			\$0.00
B3	LABOR	HR			\$0.00
B4	BUCKET TRUCK	HR			\$0.00
					\$0.00

**CONFLUENCE TREE TRIMMING AND FIRE MITIGATION
BASE BID**

Item #	Description	Units	#	Unit Price	Total
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LOCATION C - 500 WEST MAIN

C1	Mobilization and Bonding (Complete for this location)	LS	1		\$0.00
C2	Contractor to locate exist water lines and connect in with 12"x12"x12" Tee with kickblock and restraints, and sleeve, including de-watering	EA	1		\$0.00
C3	Furnish and Install 12" AWWA C900 PVC, DR14, Fully restrained	LF	9		\$0.00
C4	Remove existing blow off	EA	1		\$0.00
C5	Temporary 6' Chain Link Fence during construction	WEEKS	2		\$0.00
C6	Restore existing surfacing disturbed including seeding	SY	120		\$0.00
C7	Restore existing gravel drive in kind, 8" minimum depth	SY	15		\$0.00

LOCATION C TOTAL:	\$0.00
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TOTAL:	\$0.00
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