

TOWN OF LYONS, COLORADO
CONSTRUCTION AGREEMENT FOR DEMOLITION
Project Number: #FEMA-HMGP-Phase-02-01 (“Project”)

This CONSTRUCTION AGREEMENT FOR DEMOLITION (“Agreement”) is made and entered into this 2nd day of April, 2018, 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” or “Owner”), and L4 CONSTRUCTION LLC, whose address is 13 Dos Rios, Greeley, CO 80634 (the “Contractor”).

WITNESSETH

WHEREAS, the Town desires to obtain all necessary components to complete the scope of work for Invitation for Bids No. #FEMA-HMGP-Phase-02-01 (“Bid Pack”) issued by the Town; and

WHEREAS, in response to the Bid Pack, the Town received bids or proposals, including one from the Contractor (“Bid Proposal”); and

WHEREAS, the Contractor operates under the trade name L4 Environmental and has offices at 304 Main Street, Unit C, Lyons, CO 80540; and

WHEREAS, the Town has reviewed the Bid Proposal from the Contractor for the completion of said work, and the Town finds said Bid Proposal acceptable and deems it the lowest responsible and responsive Bid Proposal received; and

WHEREAS, the Town desires to contract with the Contractor subject to the terms of this Agreement and all other Contract Documents.

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:

THE PARTIES AGREE AS FOLLOWS:

1.00 SCOPE OF WORK: The Contractor will furnish all tools, equipment, machinery, materials, supplies, superintendence, insurance, transportation, other construction accessories, and services specified or required to be incorporated in and form a permanent part of the construction and completion of the work proposed to be done under this Agreement (“Work” or “Scope of Work”). In addition, the Contractor shall provide and perform all necessary labor in a first-class and workmanlike manner and in accordance with the conditions and prices stated in the Bid Proposal and the requirements, stipulations, provisions, and conditions of the Contract Documents and Design Documents, including Plans and Specifications, as defined in the attached General Conditions. The Contractor shall further perform, execute, construct, and complete all things mentioned to be done by the Contractor and all work covered by the Owner’s official award of this contract to the Contractor, such award being based on the acceptance by the Owner of the Contractor’s bid, or part thereof.

2.00 THE CONTRACT DOCUMENTS: This Agreement incorporates all the Contract Documents, which together represent the entire and integrated agreement between the parties hereto and supersede prior negotiations, written or oral representations, and agreements. The Contract Documents consist of this Construction Agreement, which Agreement also incorporates by this reference all of the instruments set forth in the Project Manual and Bid Documents as fully as if they were set forth in this Agreement in full. The documents consist of without limitation, the following documents:

1. Invitation to Bid and Instructions to Bidders
2. Contractor’s Bid Form (with Unit Pricing as indicated; see Attachment B)

3. This Construction Agreement and any Addendums or Attachments thereto including (if checked):
 - Attachment A, Scope of Work
 - Attachment B, Bid Schedule
 - Attachment C, Standard Demolition Specifications
 - Attachment D, Federal Emergency Management Agency's ("FEMA") Grant Program Requirements for Procurement Contracts if FEMA funding is used for the Work
 - Attachment E, Patent Rights for Small Business Firms and Non-Profit Organizations
 - Addendum to the Invitation for Bids issued March 16, 2018 (Questions Received for the Lyons IFB #FEMA-HMGP-Phase-02-01)
4. Performance and Payment Bond
5. Bid Proposal
6. Notice of Award
7. Notice to Proceed
8. Bid Bond (Minimum 5% equivalent of the Bid Proposal price or as otherwise set forth in the Bid Bond form provided as part of the Bid Pack)
9. General Conditions
10. The Following Documents if the Box is Checked:
 - Special Provisions
 - Design Documents, including all Drawings and Plans
 - Specifications (see Attachment C)
 - Addendums to Specifications and Standards
 - Town of Lyons Manual of Design Criteria and Standard Specifications
 - Change Orders, Field Orders or other similar revisions properly authorized after the execution of this Agreement
 - Others: _____

3.00 TIME AND COMMENCEMENT OF COMPLETION: This Agreement shall commence as of the date the Agreement is fully executed by both parties and shall continue through **July 31, 2018** or until the Scope of Work is completed.

4.00 LIQUIDATED DAMAGES: All time limits stated in this Agreement and the Contract Documents are of the essence of the Agreement. The Town and Contractor recognize the completion of the work as shown in the contractual time frame, or as extended, is important to the ongoing operations of the Town and its citizens. They also recognize that delays include expenses to the Town for extended manpower commitments, outside consultant commitments, and potentially other legal fees to extend the project beyond the expected time period.

If this box is checked, in lieu of requiring any such proof and backup for such expenses, Contractor agrees that liquidated damages (not penalties) may be assessed by the Owner in the sum of **\$1,000.00 per day** for each day after the contract time frame expires.

If this box is checked, in addition to or in lieu of the daily damages (if checked above), Contractor agrees that lump sum liquidated damages (not penalties) may be assessed by the Town in a *lump sum payment* of \$ _____ .00 if the work is not completed by _____, 20__.

5.00 CONTRACT SUM AND PAYMENT: The Owner shall pay to the Contractor for performance of the Work encompassed by this Agreement, and the Contractor will accept as full compensation therefore the sum of: **Twenty-Two Thousand Six Hundred Thirty-Five Dollars and Eight Cents (\$22,635.08)** subject to adjustment as provided by the Contract Documents ("Contract Price"). The Town has appropriated sufficient funds for completion of this Work.

- a. Monthly, partial, progress payments shall be made by the Town to the Contractor for the percentage of the Work completed, subject to inspection by Town staff to verify percentage of completion. The

Town alone shall determine when work has been completed and progress payments shall not constitute a waiver of the right of the Town to require the fulfillment of all terms of this Agreement and the delivery of all improvements embraced in this Agreement in a complete and satisfactory manner to the Town in all details. The Town, before making any payment, may require the Contractor to furnish releases or receipts from any or all persons performing work under this Agreement and/or supplying material or services to the Contractor, or any subcontractor if this is deemed necessary to protect the Town's interest. The Town, however, may in its discretion make payment in part or full to the Contractor without requiring the furnishing of such releases or receipts.

- b. By the 10th day of each month, Contractor shall submit to the Town for review and approval, an application for payment fully completed and signed by Contractor covering the work completed through the last day of the prior month and accompanied by such supporting documentation as is required by these Contract Documents, including without limitation, time sheets, invoices, receipts, bills of lading, and all other documents the Town may require. **These invoices for payment should be emailed to ap@townoflyons.com or mailed to Town of Lyons, P.O. Box 49, Lyons, CO 80540.** Materials on hand but not complete in place may or may not be included for payment at the discretion of the Town. Each subsequent application for payment shall include an affidavit of Contractor providing that all previous progress payments received on account of the work have been applied to discharge in full all of Contractor's obligations reflected in prior applications for payment. Notwithstanding the progress payments, it is the intent and purpose of the Town to withhold at least five percent (5%) of payments to Contractor for any contract exceeding One Hundred Fifty Thousand Dollars (\$150,000.00) in accordance with Article 91, Title 24, C.R.S.

6.00 ACCEPTANCE AND FINAL PAYMENT: Final payment may be requested by the Contractor upon completion and acceptance, by the Town, of all work as set forth in the Contract Documents. The total amount of final payment shall consist of the Contract Price, as adjusted in accordance with approved change orders, if applicable, less all previous payments to the Contractor.

7.00 MODIFICATIONS AND AMENDMENTS: Any amendments to this Agreement must be in writing and be signed by both the Town and the Contractor. Should work beyond that described in the Contract Documents 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. Unless specifically excluded, such written agreements shall be considered part of the Contract Documents.

8.00 CONTRACTOR'S REPRESENTATIONS: In order to induce the Town to enter into this Agreement, the Contractor makes the following representations:

- a. The Contractor has familiarized itself with the nature and the extent of the Contract Documents, Scope of Work, the locality, all physical characteristics of the area of the work within the Scope of Work, including without limitation, improvements, soil conditions, drainage, topography, and all other features of the terrain, and with the local conditions and federal, state, and local laws, ordinances, rules, and regulations that in any manner may affect cost, progress, or performance of the work, or apply in any manner whatsoever to the work.
- b. Contractor has carefully considered all physical conditions at the site and existing facilities affecting cost, progress, or performance of the work.
- c. Contractor has given the Town written notice of all conflicts, errors, or discrepancies that it has discovered in the Contract Documents and such documents are acceptable to the Contractor.
- d. Contractor shall not extend the credit or faith of the Owner to any other persons or organizations.

9.00 INSURANCE: 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:

a. 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.

b. Comprehensive General liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000) per each occurrence, and TWO MILLION DOLLARS (\$2,000,000) 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.

c. Comprehensive Automobile Liability insurance with minimum limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) per each occurrence, plus an additional amount sufficient to pay related attorneys' fees and defense costs, with respect to each of the Contractor's owned, hired or non owned vehicles assigned to or used in performance of this contract.

d. Builder's Risk insurance with minimum limits of not less than the insurable value of the work to be performed under this contract at completion less the value of the materials and equipment insured under installation floater insurance. The policy shall be written in completed value form and shall protect the Contractor and the Town against risks of damage to buildings, structures, and materials and equipment not otherwise covered under Installation Floater insurance, from the perils of fire and lightning, the perils included in the standard coverage endorsement, and the perils of vandalism and malicious mischief. Equipment such as pumps, engine-generators, compressors, motors, switch-gear, transformers, panel-boards, control equipment, and other similar equipment shall be insured under Installation Floater insurance when the aggregate value of the equipment exceeds \$10,000. The policy shall provide for losses to be payable to the Contractor and the Town as their interests may appear. The policy shall contain a provision that in the event of payment for any loss under the coverage provided, the insurance company shall have no rights of recovery against the Contractor or the Town.

e. If this box is checked, Professional Liability/Errors and Omission in an amount not less than _____ MILLION DOLLARS (\$____,000,000).

Certificates of insurance shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the Town. The policies required above shall be endorsed to include the Town and the Town's officers and employees as additional insureds. Every policy required above shall be primary insurance and any insurance carried by the Town, its officers, or its employees, or carried by or provided through any self-insurance pool of the Town, shall be excess and not contributory insurance to that provided by the Contractor. Contractor shall be solely responsible for paying any and all deductibles.

Each certificate of insurance shall identify this Agreement or the project set forth in the Scope of Work and shall provide that the coverage afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the Town. If the words "endeavor to" appear in the portion of the certificate of insurance addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

10.00 BONDS: Contractor shall furnish a performance bond, payment bond, and warranty bond in an amount determined by the Town, but in any event at least equal to the Contract Price, as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents, including but not limited to the guaranty period. These bonds shall remain in effect at least until one year after the date of final payment. All bonds shall be in the forms prescribed by the Contract Documents and be executed by such sureties as (i) are licensed to conduct business in the State of Colorado and (ii) are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570, amended, by the Audit Staff, Bureau of Account, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act. If the surety on any bond furnished by the Contractor is declared bankrupt or becomes insolvent, or its right to do business in Colorado is terminated, or it ceases to meet the requirements of clauses (i) and (ii) of this section, Contractor shall, within five (5) days thereafter, substitute another bond and surety, both of which shall be acceptable to the Town.

11.00 NO WAIVER OF GOVERNMENTAL IMMUNITY: The parties hereto understand and agree that the parties are relying on, and do not waive or intend to waive by any provision of this Agreement or the remainder of the Contract Documents, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §24-10-101 et seq., 10 C.R.S., as from time to time amended, or otherwise available to the parties, their officers, agents or their employees.

12.00 INDEMNIFICATION: The Contractor agrees, to the fullest extent permitted by law, to indemnify, defend and hold the Town, the United States Government, FEMA (if FEMA funding is part of the funding for the Work), the State of Colorado, their agencies, employees, officials and agents ("Indemnitees") harmless from any and all claims, settlements, judgments, damages and costs, including reasonable attorney fees, of every kind and nature made, to include all costs associated with the investigation and defense of any claim, rendered or incurred by or on behalf of the Indemnitees, that may arise, occur, or grow out of any errors, omissions, or negligent acts, done by the Contractor, its employees, subcontractors or any independent consultants working under the direction of either the Contractor or any subcontractor in the performance of this Contract.. The Contractor is not obligated to indemnify the Town for the Town's own negligence.

13.00 TERMINATION FOR CONVENIENCE: This Agreement and the performance of the Scope of Work hereunder may be terminated at any time in whole, or from time to time in part, by the Town for its convenience. Any such termination shall be effected by delivery to the Contractor of a written notice ("**Notice of Termination**") specifying the extent to which performance of the Scope of Work is terminated and the date upon which termination becomes effective. If the Agreement is terminated, the Contractor shall be paid on a pro-rated basis of work status satisfactorily completed, under the detailed Scope of Work. The portion of the Scope of Work satisfactorily completed but not yet accepted by the Town shall be determined by the Town.

14.00 EVENTS OF AND TERMINATION FOR DEFAULT:

- (1) The Town may serve written notice upon the Contractor of its intention to terminate this Agreement in the presence of one of the following events of default:
 - a. Contractor should fail to initiate the Scope of Work at the agreed upon time;
 - b. The performance of the Scope of Work is being unnecessarily or unreasonably delayed;
 - c. The Scope of Work is not completed within the time specified or within the time to which completion of the Scope of Work has been extended;
 - d. Contractor should fail to make prompt payments for labor, materials or to subcontractors;
 - e. Contractor shall willfully violate this Agreement or disregard laws, ordinances or instructions of the Town;

- f. Contractor shall abandon performance of the Scope of Work;
 - g. The Contract or any part thereof has been assigned, transferred or sublet without Town approval;
 - h. Contractor shall become insolvent or adjudged bankrupt; or
 - i. Contractor shall refuse to remove materials or perform any work within the Scope of Work as shall have been rejected as defective or unsuitable.
- (2) Such written notice shall contain the reasons for the intention to terminate this Agreement and provide a five (5) business day period during which the Contractor may cure the event of default. A failure to timely cure the event of default shall authorize the Town to immediately terminate this Agreement and take whatever steps it deems necessary to complete the Scope of Work, if so desired by the Town in its sole discretion. The costs and charges incurred by the Town, together with the costs of completion of the Scope of Work shall be deducted from any monies owed to Contractor. If the expense incurred by the Town is greater than the sums payable under this Agreement, the Contractor shall pay the Town, within sixty (60) days of demand therefor the amount of such excess cost suffered by the Town.

15.00 LIABILITY FOR EMPLOYMENT-RELATED RIGHTS AND COMPENSATION: 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. Accordingly, the Town shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds, insurance premiums or payments, workers' compensation benefits or any other amenities of employment to any of the Contractor's employees or any other liabilities whatsoever, unless otherwise specifically provided herein.

The Town will not include the Contractor as an insured under any policy the Town has for itself. The Town shall not be obligated to secure nor provide any insurance coverage or employment benefits of any kind or type to or for the Contractor or the Contractor's employees, sub-consultants, subcontractors, agents, or representatives, including but not limited to coverage or benefits related to: local, state, or federal income or other tax contributions, FICA, workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension or retirement account contributions, profit sharing, professional liability insurance, or errors and omissions insurance. The following disclosure is provided in accordance with Colorado law:

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, the 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.

16.00 GOVERNING LAW AND VENUE: Venue for any and all legal matters regarding or arising out of the transactions covered herein shall be solely in the District Court in and for Boulder County, State of Colorado. This transaction shall be governed by the laws of the State of Colorado.

17.00 ASSIGNMENT: The Contractor shall not assign any of his rights or obligations under this Agreement without the prior written consent of the Town. Upon any assignment, even though consented to by the Owner, the Contractor shall remain liable for the performance of the work under this agreement.

18.00 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.

19.00 INVALID SECTIONS: Should any section of this Agreement be found to be invalid, it is agreed that all other sections shall remain in full force and effect as though severable from the invalid part.

20.00 NOTICE: 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 delivery of same in person to the addressee or by courier delivery via Federal Express or other nationally recognized overnight air courier service, by electronically-confirmed facsimile or email transmission, or by depositing same in the United States mail, postage prepaid, addressed as follows:

The Town:	Town of Lyons Attention: Town Administrator 432 5 th Avenue P O Box 49 Lyons, CO 80540
With copies to:	Michow Cox & McAskin, LLP Attn: Town of Lyons Town Attorney 6530 S. Yosemite Street, Suite 200 Greenwood Village, CO 80111
Contractor:	L4 Environmental Attn: Matt Lamar 304 Main Street, Unit C Lyons, CO 80540

SIGNATURE PAGE FOLLOWS

THIS AGREEMENT is executed and made effective as provided above.

TOWN OF LYONS

Board of Trustees approval required per § 4-3-40 of the Municipal Code

ATTEST:

By: _____
Debra K. Anthony, Town Clerk

By: _____
Connie Sullivan, Mayor

APPROVED AS TO FORM (*Excluding Exhibits*)

CONTRACTOR

For Town Attorney's Office

By: _____

Printed Name: _____

Its: _____

STATE OF)
) ss.
COUNTY OF)

The foregoing Construction Agreement for Demolition was acknowledged before me this ____ day of _____, 2018, by _____ as _____ of L4 Construction LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: _____.

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

Attachment A – Scope of Work

Town of Lyons

Demolition, Site Grading, and Erosion Control of Properties

I. Property Address: 329 5th Avenue, Lyons, CO

Work to be performed shall consist of:

II. Survey and Staking of Property Boundaries

Prior to initiating work, the Contractor shall survey and stake boundaries of all six properties. All survey work must be completed under the supervision of a Colorado Registered Professional Land Surveyor. The Contractor, to the satisfaction of the Town Project Manager and Construction Inspector, shall designate all trees, plants, shrubs, fencing, and other items to remain undisturbed. The Contractor shall protect and preserve all items designated to remain.

III. Utility Disconnects

All utilities shall be disconnected and removed if not connected to a currently functioning utility system. All utilities connected to a currently functioning utility system shall be capped. The Contractor shall coordinate with Town and Utility Companies to ensure that all utilities are properly disconnected and capped in accordance with each individual utility company's requirements. Where it is necessary to maintain any power, water, gas or electric lines during demolition, such lines shall be relocated or protected with substantial coverings as to protect them from injury and to afford safety to the workers.

IV. Demolition

Except for features designated to be protected in place, demolish all structures, foundations and basement walls to at least 1 foot below the finish grade, paved or gravel driveways, improvements, and remove demolition debris. All voids and below grade areas resulting from the demolition operations shall be cleared of trash and debris and then filled with imported fill, as approved by the Construction Inspector.

If required by the Construction Inspector prior to commencing work, the Contractor shall submit to the Town a proposed method of operation for demolition.

1. Mechanical Method of Demolition:

The use of a swinging weight, clamshell bucket, power shovel, bulldozer or other mechanical contrivance for the purpose of demolishing walls shall be in accordance

with the following requirements:

- a) Where mechanical contrivances are being used to effectuate total or partial collapse, there shall be maintained in the area into which the affected portion may fall a zone of demolition at least 1 1/2 times the height of the structure or remaining portion thereof.
- b) No person other than workers essential to the operation of the equipment shall be required or permitted to enter a zone of demolition.
- c) Substantial barricades shall be erected wherever there is likelihood of persons other than essential workers entering the zone of demolition.
- d) The controls of mechanical devices used in such method of demolition shall be located and operated a safe and reasonable distance from the point of demolition.
- e) Where a swinging weight is used the supporting cables shall be of such length or shall be so restrained that it is not possible for the weight to swing against any structure other than the structure being demolished.

2. Demolition of Walls, Partitions, etc.:

Demolition of walls and partitions shall proceed in a systematic manner and all work above each tier of floor beams shall be completed before the safety of its supports is impaired. Masonry shall neither be loosened nor permitted to fall in such masses as to endanger the structural stability of any floor or structural support. No wall, chimney or other structure or part of a structure shall be left unguarded in such condition that it may fall, collapse or weaken due to wind pressure or vibration. No employer shall require or permit any employee to work on top of a wall. In the demolition by hand of exterior walls, safe footing for the workers shall be provided in the form of sound flooring or scaffolds.

3. Methods of Operation:

The Contractor shall not be permitted to use any form of explosive devices or dispose of the materials by burning at the site.

4. Inspection:

During demolition, the Contractor shall continually inspect the work to detect any hazards to workers resulting from weakened or deteriorated floors or walls or loosened material. No employee shall be required or permitted to work where such hazards exist unless they are corrected by shoring, bracing, or other effective means.

5. Protective Apparel:

All personnel onsite shall wear personal protective equipment appropriate for the work being performed.

6. Protection of Adjacent Structures and Facilities:

No demolition shall be performed that may damage other structures on adjacent properties. If deemed necessary and reasonable by the Construction Inspector, the Contractor shall provide sheet-piling, shoring, plywood, bracing or other such means as may be necessary to ensure protection of structures on adjoining properties and to prevent injury to the people living on the adjoining property.

The Contractor shall conduct the demolition operations to ensure minimal interference with roads, sidewalks, or other adjacent facilities. Any damages caused by the demolition operations to adjacent structures, personal property, roads, sidewalks, and other facilities shall be repaired or otherwise compensated for by the Contractor at no expense to the Town or additional change orders to the contract.

7. Construction Fencing:

Along every road, sidewalk or other access point bordering demolition operations construction fencing not less than 6 feet in height shall be erected to prevent unauthorized persons from entering the site of such operations.

8. Hazardous Substances:

If asbestos or other hazardous materials are present, as determined by the Town's Hazardous Materials Inspector, the Contractor will separate and separately measure and haul the asbestos-containing or other hazardous materials debris in accordance with the demolition and disposal plan provided by the Hazardous Materials Inspector. The Contractor will handle the material according to the guidelines set forth by the Colorado Department of Public Health and Environment, "2013 Floods – Guidance: Management and Disposal of Flood Debris"

(https://www.colorado.gov/pacific/sites/default/files/OEPR_Flood-debris-guidance.pdf) as well as all applicable Local, State and Federal Laws.

V. Property Access

Each property has been purchased by the Town. No access permissions from any private property owners will be required.

No roads, bridges, sidewalks, or driveways of other properties shall be closed or otherwise obstructed for any length of time without written permission from the Town Project Manager prior to the Contractor commencing work. The Contractor shall notify the Town Project Manager and Construction Inspector no less than 48 hours prior to commencing work.

The Contractor is responsible for all temporary access needed to access structures on subject properties.

VI. Waste Hauling & Disposal

Hauling and paying disposal costs for all demolition debris to a permitted landfill facility. Copies of load tickets for this activity shall be submitted with the final invoice and will be subject to review by the Town Project Manager.

Hauling and paying for drop off of all Household Hazardous Waste to the Boulder County

Hazardous Materials Management Facility (HMMF) at 1901 63rd St., Boulder. Appointments are required for delivery of this waste to the facility. 720-564-2251. Copies of receipts for this activity shall be submitted with the final invoice. All Household Hazardous Waste consists of all materials defined as such by the HMMF in their guidelines, which can be found at the following website: <http://www.bouldercounty.org/env/hazwaste/pages/hazwastesaccepted.aspx>. The Contractor shall handle the material according to guidelines set forth by the HMMF.

VII. Site Grading

After completing trash and debris removal and any fill placement, the Contractor shall field fit each property for proper drainage. Care shall be taken to prevent excess drainage onto adjacent property beyond that amount normally draining across the property prior to demolition. The Contractor shall scrape and level the surface to meet adjacent contours and return the property to a natural state. Final grade shall to be to the satisfaction of the Town Project Manager. No site plan or grading plan will be required.

VIII. Erosion Control

1. Soil Conditioning

For those properties that have no existing topsoil, only loose fines and gravel, the Contractor shall apply imported topsoil. Imported topsoil shall be prepared with organic amendments at the rate of 3 cubic yards per 1,000 square feet. The prepared topsoil shall be spread over all disturbed areas that do not currently have topsoil present with a minimum thickness of 6 inches. The prepared topsoil shall not include any minerals or elements detrimental to plant growth. Soil conditioning and fertilizing requirements:

Biological nutrient organic based fertilizer (lbs/acre)*	Humate (lbs/acre)	Compost (cys/acre) (1/2 inch depth)
600	200	65

*Biological nutrient shall not exceed 8-8-8 (N-P-K).

2. Seeding Application:

All seed shall be furnished in bags or containers clearly labeled to show the name and address of the supplier, the seed name, the lot number, net weight, origin, the percent of weed seed content, the guaranteed percentage of purity and germination, pounds of pure live seed (PLS) of each seed species, and the total pounds of PLS in the container. All seeds shall be free from noxious weed seeds in accordance with current state and local lists. The Contractor shall furnish to the Engineer a signed statement certifying that the seed is from a lot that has been tested by a recognized laboratory for seed testing within thirteen months prior to the date of seeding. The Engineer may obtain seed samples from the seed equipment, furnished bags or containers to test seed for species identification, purity and germination. Seed tested and found to be less than 10 percent of the labeled certified PLS and different than the specified species will not be accepted. Seed which has become wet, moldy, or damaged in transit or in storage will not be accepted.

The following seed mix and rates shall be used:

Common Name	Botanical Name	LBS. PLS PER ACRE
Blue grama	Bouteloua gracilis	0.8
Canada wildrye	Elymus Canadensis	3.0
Sand dropseed	Sporobolis cryptandrus	4.0
Sideoats grama	Bouteloua curtependula	2.0
Slender wheatgrass	Elymus trachycaulus	3.0
Switchgrass	Panicum virgatum	1.5
Western wheatgrass	Pascopyron smithii	3.0
TOTAL		17.3

Drill seed 0.25 inch to 0.5 inch into the soil. In small areas not accessible to a drill, hand broadcast at double the rate and rake 0.25 inch to 0.5 inch into the soil. Erosion control mat for seeded areas:

- a) Erosion control mat shall be type SC 150 as manufactured by North American Green, or approved equal. The Contractor shall install erosion control mat in accordance with the following procedure:
 - Prepare soil as directed in the Contract.
 - Apply topsoil or soil conditioning as directed in the Contract to prepare seed bed.
 - Place seed in accordance with the Contract.
 - Unroll the mat parallel to the primary direction of flow.
 - Ensure that the mat maintains direct contact with the soil surface over the entirety of the installation area.
 - Do not stretch the material or allow it to bridge over surface inconsistencies.
 - Bio-degradable earth anchors or stakes shall be used to the cover to the soil such that each earth anchor is flush with the underlying soil.
 - Ensure that earth anchors are installed full depth to resist pull out. No bent over earth anchors will be allowed.

The Contractor shall maintain the erosion control mats until all work has been completed and accepted. Maintenance shall consist of the repair of areas where damage is due to the Contractor's operations. Maintenance shall be performed at the Contractor's expense. Repair of those areas damaged by causes not attributable to the Contractor's operations shall be repaired by the Contractor and will be paid for at the contract unit price. Areas shall be repaired to reestablish the condition and grade of the soil and seeding prior to application of the covering.

IX. Permits, Licenses, and Reports

If required for the project, the Contractor shall obtain a Colorado Storm Water Discharge Permit from the State of Colorado Water Quality Control Division and follow the requirements of the permit.

If required for the project, the Contractor shall obtain a Clean Water Act Section 404 Nationwide Permit from the U.S. Army Corps of Engineers for any work in waters of the U.S., including temporary access if such access will result in a discharge of fill material to waters of the U.S.

The Contractor shall obtain a State of Colorado Demolition Permit from the Colorado Department of Public Health and Environment for each property, as required. The Contractor shall coordinate with the Town's Asbestos Inspector to complete the applications.

The Contractor shall obtain a Boulder County Land Use demolition permit for each property, as required.

X. Special Provisions

1. Cultural Resources

If cultural materials are inadvertently discovered during demolition, the Contractor must cease work and notify the Town Project Manager immediately.

2. Threatened and Endangered Species

The Contractor will notify the Town Project Manager immediately if a Preble's Meadow Jumping Mouse is found alive, dead, injured, or hibernating within the project area. Please also notify the Town Project Manager if any other listed species are found within the project area. The Town Project Manager shall be responsible for all contact with the United States Fish and Wildlife Service or Colorado Parks and Wildlife.

The Contractor shall:

- a) To the maximum extent practicable, limit disturbing (e.g., crushing, trampling) or removing (e.g., cutting, clearing) all vegetation, such as willows, trees, shrubs, and grasses within riparian and adjacent upland habitats.
- b) Minimize soil compaction. If possible, temporarily line access routes with geotextiles or other materials, especially in wet, unstable soils to protect roots and the seed bank.
- c) Locate, store, stage, operate, and refuel equipment outside of riparian or adjacent upland habitats.
- d) Operate equipment from previously disturbed or modified roadbeds or road shoulders above the riparian habitats.
- e) Limit the number of entrance and exit points leading into the project area.
- f) Stockpile topsoil and debris outside the riparian corridor and protect from stream flows or runoff.
- g) Use best management practices (BMPs) to limit construction-related disturbance, such as soil compaction, erosion, and sedimentation, and to prevent the spread of invasive weeds.

XI. Performance Schedule

The Contractor shall commence Work within 7 days of the Notice to Proceed. The Contractor

shall meet with the Town's Representative at the project site, once a Notice to Proceed is issued and prior to beginning of work, to confirm how each site will be accessed, where staging will be located, how traffic control will be accomplished and the general methodology which will be used to complete the work.

Maximum allowable time for the completion for each site will be 15 calendar days from the Notice to Proceed issue date.

Working days are Monday through Friday. Work hours shall be 7:00 AM and 7:00 PM. Work outside these days and hours shall be specifically requested at least 48 hours in advance and will be approved by the Town on a case-by-case basis. Under no circumstances shall work be allowed on Sundays.

XII. Other Considerations

The Contractor must be duly licensed in accordance with the state's statutory requirements to perform the work. The Contractor shall obtain all permits necessary to complete the work. Copies of all required permits shall be submitted to the Town Project Manager.

The Contractor shall supervise and direct the work, using skillful labor and proper equipment for all tasks. Safety of the Contractor's personnel and equipment is the responsibility of the Contractor. Additionally, the Contractor shall pay for all materials, personnel, taxes, and fees necessary to perform under the terms of this contract.

Equipment used under this contract shall be sized properly to fit loading and access conditions. Any truck used to haul debris must be equipped with a tailgate that will effectively contain the debris during transport. Sideboards or other extensions to the bed are allowable, provided they meet all applicable rules and regulations, cover the front and sides, and are constructed in a manner to withstand severe operating conditions. The Town's representative must approve excessively sized equipment.

The Contractor shall be responsible for taking corrective action in response to any notices of violations issued as a result of the Contractors or any subcontractor's actions or operations during the performance of this contract. Corrections for any such violations shall be at no additional cost to the Town.

The Contractor shall be responsible for control of pedestrian and vehicular traffic in the work area. The Contractor shall provide all flag persons, signs, equipment, and other devices necessary to meet Federal, State, and local and contractual requirements. The traffic control personnel and equipment shall be in addition to the personnel and equipment required in other

parts of this contract. Work shall be accomplished in a safe manner in accordance with Federal, State, and local requirements.

Contractor will be responsible for all repairs to structures or facilities that are damaged during scope of work operations including but not limited to signs, light poles, gas meters, fire hydrants, well heads and so forth. Contractor will be responsible for all repairs to private property, including, but not limited to repairing access ways created or utilized to access work location and to haul material.

Attachment B: Bid Schedule

Note: This will also be Attachment B of the Construction Agreement

Item No	Description	Quantity	Units	Unit Price	Total
5	Demolish Residential Structure	600	Sq.Ft.	\$11.54	\$6,924.00
20	Demolish Detached Garage	200	Sq.Ft.	\$11.54	\$2,308.00
40	Demolish Shed	220	Sq.Ft.	\$11.54	\$2,538.80
8	Embankment (Compacted In Place)	20	C.Y.	\$25.00	\$500.00
55	Supply & install topsoil on lots	50	C.Y.	\$67.50	\$3,375.00
60	Erosion Control per Lot	1	Each	\$1,968.75	\$1,968.75
65	Seeding	0.1	Acre	\$3,750.00	\$375.00
70	Mulching	0.1	Acre	\$12,312.50	\$1,231.25
75	Asbestos Materials - Remove texture	72	Sq.Ft.	\$7.49	\$539.28
80	Asbestos Materials - Remove blown on acoustical	50	Sq.Ft.	\$10.75	\$537.50
100	Asbestos Materials - Remove Transite	50	Sq.Ft.	\$10.75	\$537.50
110	Mobilization	1	Lump Sum	\$1,800.00	\$1,800.00
Total Base Bid					\$22,635.08

ATTACHMENT C: STANDARD DEMOLITION SPECIFICATIONS

PART 1- GENERAL

1.1 RELATED DOCUMENTS

A. DRAWINGS AND GENERAL PROVISIONS OF THE CONTRACT, INCLUDING GENERAL AND SUPPLEMENTARY CONDITION AND DIVISION 1 SPECIFICATIONS SECTIONS, APPLY TO THIS SECTION.

1.2 SUMMARY

A. THIS SECTION INCLUDES THE FOLLOWING:

- 1. DEMOLITION AND REMOVAL OF BUILDING, BASEMENTS, AND FOUNDATIONS.**
- 2. DEMOLITION AND REMOVAL OF SITE IMPROVEMENTS, INCLUDING BUT NOT LIMITED TO RETAINING WALLS, PAVING AND FOUNDATION LANDSCAPING. EXISTING TREES 4" IN DIAMETER, LOCATED OUTSIDE OF 5 FEET FROM THE STRUCTURE SHALL REMAIN AND BE PROTECTED DURING DEMOLITION.**

B. RELATED SECTIONS: THE FOLLOWING CONTAIN REQUIREMENTS THAT RELATE TO THIS SECTION.

- 1. DIVISION 1 SECTION "SOIL EROSION-SEDIMENTATION CONTROL".**
- 2. DIVISION 2 SECTION "EXCAVATING, FILLING AND GRADING" FOR SOIL MATERIALS, EXCAVATING, BACKFILLING, AND SITE GRADING.**

1.3 DEFINITIONS

A. REMOVE: REMOVE AND LEGALLY DISPOSE OF ITEMS EXCEPT THOSE INDICATED TO BE REINSTALLED, SALVAGED, OR TO REMAIN THE AUTHORITY'S PROPERTY.

B. EXISTING TO REMAIN: PROTECT ITEMS INDICATED TO REMAIN AGAINST DAMAGE DURING DEMOLITION.

1.4 MATERIALS OWNERSHIP

A. EXCEPT FOR ITEMS OR MATERIALS INDICATED TO BE REUSED, SALVAGED, OR OTHERWISE INDICATED TO REMAIN THE AUTHORITY'S PROPERTY, DEMOLISHED MATERIALS SHALL BECOME THE CONTRACTOR'S PROPERTY AND SHALL BE REMOVED FROM THE SITE WITH FURTHER DISPOSITION AT THE CONTRACTOR'S OPTION.

1.5 SUBMITTALS

A. GENERAL: SUBMIT EACH ITEM IN THIS ARTICLE ACCORDING TO THE CONDITIONS OF THE CONTRACT AND DIVISION I SPECIFICATIONS SECTIONS, FOR INFORMATION ONLY, UNLESS OTHERWISE INDICATED.

B. PROPOSED DUST-CONTROL MEASURES.

C. PROPOSED NOISE CONTROL MEASURES.

D. SCHEDULE OF DEMOLITION ACTIVITIES INDICATING THE FOLLOWING:

1. DETAILED SEQUENCE OF DEMOLITION AND REMOVAL WORK, WITH STARTING AND ENDING DATES FOR EACH ACTIVITY.

E. INVENTORY OF ITEMS TO BE REMOVED AND SALVAGED.

F. LANDFILL RECORDS FOR RECORD PURPOSES INDICATING RECEIPT AND ACCEPTANCE OF HAZARDOUS WASTES BY A LANDFILL FACILITY LICENSED TO ACCEPT HAZARDOUS WASTES.

1.6 QUALITY ASSURANCE

- A. DEMOLITION FIRM REQUIREMENTS: CONTRACTOR SHALL HAVE SUCCESSFULLY COMPLETED DEMOLITION WORK SIMILAR TO THAT INDICATED FOR THIS PROJECT.**
- B. REGULATORY REQUIREMENTS: COMPLY WITH GOVERNING EPA, STATE AND LOCAL NOTIFICATION REGULATIONS BEFORE STARTING DEMOLITION. COMPLY WITH HAULING AND DISPOSAL REGULATIONS OF AUTHORITIES HAVING JURISDICTION.**

1.7 PROJECT CONDITIONS

- A. CONTRACTOR IS RESPONSIBLE TO COMPLY WITH ANY/ALL REQUIRED DEMOLITION PERMITS REQUIRED BY LOCAL AUTHORITIES AND ORDINANCES.**
- B. BUILDINGS TO BE DEMOLISHED WILL BE VACATED AND THEIR USE DISCONTINUED BEFORE START OF WORK.**
- C. AUTHORITY ASSUMES NO RESPONSIBILITY FOR ACTUAL CONDITION OF PARKING LOT TO BE DEMOLISHED.**

1. CONDITIONS EXISTING AT TIME OF INSPECTION FOR BIDDING PURPOSE WILL BE MAINTAINED BY AUTHORITY AS FAR AS PRACTICAL.

D. STORAGE OR SALE OF REMOVED ITEMS OR MATERIALS ON-SITE WILL NOT BE PERMITTED.

E. LANDFILL DISPOSAL:

1. CONTRACTOR SHALL SUPPLY AUTHORITY WITH A COPY OF LANDFILL AND DISPOSAL RECEIPTS.

PART 2- PRODUCTS (NOT APPLICABLE)

PART 3- EXECUTION

3.1 EXAMINATION

A. SURVEY EXISTING CONDITIONS AND CORRELATE WITH REQUIREMENTS INDICATED TO DETERMINE EXTENT OF DEMOLITION REQUIRED.

B. SURVEY THE CONDITION OF THE BUILDINGS TO DETERMINE WHETHER REMOVING ANY ELEMENT MIGHT RESULT IN A STRUCTURAL DEFICIENCY OR UNPLANNED COLLAPSE OF ANY PORTION OF THE STRUCTURE OR ADJACENT STRUCTURES DURING DEMOLITION.

C. PERFORM SURVEYS AS THE WORK PROGRESS TO DETECT HAZARDS RESULTING FROM DEMOLITION ACTIVITIES.

3.2 PREPARATION

A. DRAIN, PURGE, OR OTHERWISE REMOVE, COLLECT, AND DISPOSE OF CHEMICALS, GASES, EXPLOSIVES, ACIDS, FLAMMABLES, OR OTHER DANGEROUS MATERIALS BEFORE PROCEEDING WITH DEMOLITION OPERATIONS.

B. EMPLOY A CERTIFIED, LICENSED EXTERMINATOR TO TREAT BUILDING AND TO CONTROL RODENTS AND VERMIN BEFORE AND DURING DEMOLITION OPERATIONS.

C. CONDUCT DEMOLITION OPERATIONS AND REMOVE DEBRIS TO ENSURE MINIMUM INTERFERENCE WITH ROADS, STREETS, WALKS, AND OTHER ADJACENT OCCUPIED AND USED FACILITIES.

1. DO NOT CLOSE OR OBSTRUCT STREETS, WALKS, OR OTHER ADJACENT OCCUPIED OR USED FACILITIES WITHOUT PERMISSION FROM THE AUTHORITY AND AUTHORITIES HAVING JURISDICTION. PROVIDE ALTERNATE ROUTES AROUND CLOSED OR OBSTRUCTED TRAFFIC WAYS IF REQUIRED BY GOVERNING REGULATIONS.

D. CONDUCT DEMOLITION OPERATIONS TO PREVENT INJURY TO PEOPLE AND DAMAGE TO ADJACENT BUILDINGS AND FACILITIES TO REMAIN. ENSURE SAFE PASSAGE OF PEOPLE AROUND DEMOLITION AREA.

1. ERECT TEMPORARY PROTECTION SUCH AS WALKS, FENCES, RAILINGS, CANOPIES, AND COVERED PASSAGeways, WHERE REQUIRED BY AUTHORITIES HAVING JURISDICTION.

2. PROTECT EXISTING SITE IMPROVEMENTS, APPURTENANCES, AND LANDSCAPING TO REMAIN.

3. ERECT A PLAINLY VISIBLE FENCE AROUND DRIP LINE OF INDIVIDUAL TREES OR AROUND PERIMETER DRIP LINE OF GROUPS OF TREES TO REMAIN.

3.3 EXPLOSIVES

A. USE OF EXPLOSIVES WILL NOT BE PERMITTED.

3.4 POLLUTION CONTROLS

A. UNDER THE AUTHORITY OF SECTION 112 OF THE CLEAN AIR ACT, AS AMENDED, 42 U.S. C. 1857 (C-7), THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (EPA) PROMULGATED NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS ON APRIL 6, 1973, (38 F.R. 8820) ASBESTOS WAS DESIGNATED A HAZARDOUS AIR POLLUTANT, AND STANDARDS WERE SET FOR ITS USE, AND TO CONTROL ASBESTOS EMISSIONS. IT WAS DETERMINED THAT ONE SIGNIFICANT SOURCE OF ASBESTOS EMISSIONS WAS THE DEMOLITION OF CERTAIN BUILDINGS AND STRUCTURES.

ADDITIONALLY, CONTRACTORS ARE REQUIRED UNDER AUTHORITY OF SECTION 114 (A) TO FOLLOW EPA PERSONNEL TO FREELY ENTER ANY OF YOUR FACILITIES OR DEMOLITION SITES, TO REVIEW ANY RECORDS, INSPECT ANY DEMOLITION METHOD, AND SAMPLE OR OBSERVE ANY OMISSIONS.

ALL DEMOLITION OPERATIONS CONDUCTED BY DEMOLITION CONTRACTOR ARE TO BE IN COMPLIANCE WITH APPLICABLE PROVISIONS OF SECTION 112 OF THE ACT AND 40 C.F.R. SECTION 61.22(D).

IN ADDITION, SECTION 113(C)(1) OF THE ACT (42 U.S.C. 1857 C-8(C)(1)), PROVIDES THAT ANY PERSON WHO KNOWINGLY FAILS OR REFUSES TO COMPLY WITH ANY SUCH ORDER SHALL BE PUNISHED BY A FINE OF NOT MORE THAN \$25,000 PER DAY OF VIOLATION, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH.

FINALLY, SECTION 113(C)(2) OF THE ACT (42 U.S.C. 1857 C-8(C)(2)), PROVIDES THAT ANY PERSON WHO KNOWINGLY MAKES ANY FALSE STATEMENT IN ANY REPORT REQUIRED UNDER THE ACT SHALL BE PUNISHED, UPON CONVICTION, BY A FINE OF NOT MORE THAN \$10,000 OR BY IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR BY BOTH.

B. USE WATER MIST, TEMPORARY ENCLOSURES, AND OTHER SUITABLE METHODS TO LIMIT THE SPREAD OF DUST AND DIRT. COMPLY WITH GOVERNING ENVIRONMENTAL PROTECTION REGULATIONS.

1. DO NOT CREATE HAZARDOUS OR OBJECTIONABLE CONDITIONS, SUCH AS ICE, FLOODING, AND POLLUTION, WHEN USING WATER.

C. REMOVE AND TRANSPORT DEBRIS IN A MANNER THAT WILL PREVENT SPILLAGE ON ADJACENT SURFACES AND AREAS.

D. CLEAN ADJACENT BUILDINGS AND IMPROVEMENTS OF DUST, DIRT AND DEBRIS CAUSED BY DEMOLITION OPERATIONS. RETURN ADJACENT AREAS TO CONDITION EXISTING BEFORE START OF DEMOLITION.

E. CONTRACTOR SHALL LIMIT HOURS OF OPERATION TO MONDAY THROUGH FRIDAY DURING THE HOURS OF 7:00 A.M. TO 6:00 P.M. SPECIAL HOURS OF OPERATION OUTSIDE THE NORMAL HOURS MUST BE APPROVED BY THE AUTHORITY. CONTRACTOR SHALL LIMIT NOISE POLLUTION AT ALL TIMES TO PREVENT OBJECTIONABLE CONDITIONS.

3.5 DEMOLITION

C. BUILDING DEMOLITION: DEMOLISH BUILDINGS, STRUCTURES, FACILITIES, AND OTHER DEBRIS INCLUDING BRUSH AND TREES OR LOGS, AND COMPLETELY REMOVE FROM THE SITE. USE METHODS REQUIRED TO COMPLETE WORK WITHIN LIMITATIONS OF GOVERNING REGULATIONS AND AS FOLLOWS:

- 1. LOCATE DEMOLITION EQUIPMENT THROUGHOUT THE BUILDING AND REMOVE DEBRIS AND MATERIALS SO AS NOT TO IMPOSE EXCESSIVE LOADS ON SUPPORTING WALLS, FLOORS, OR FRAMING.**
- 2. DISPOSE OF DEMOLISHED ITEMS AND MATERIALS PROMPTLY. ON-SITE STORAGE OR SALE OF REMOVED ITEMS IS PROHIBITED.**
- 3. SMALL BUILDINGS MAY BE REMOVED INTACT WHEN PERMITTED BY THE AUTHORITY'S REPRESENTATIVE AND APPROVED BY AUTHORITIES HAVING JURISDICTION.**
- 4. BREAK UP AND REMOVE CONCRETE SLABS ON GRADE, UNLESS OTHERWISE SHOWN TO REMAIN.**
- 5. REMOVE AIR-CONDITIONING EQUIPMENT WITHOUT RELEASING REFRIGERANTS.**
- 6. REMOVE STRUCTURAL FRAMING MEMBERS TO GROUND TO AVOID FREE FALL AND TO PREVENT GROUND IMPACT AND DUST GENERATION.**

B. BELOW-GRADE CONSTRUCTION: DEMOLISH FOUNDATION WALLS AND OTHER BELOW- GRADE CONSTRUCTION, AS FOLLOWS:

1. BASEMENT EXCAVATION

A. BELOW GRADE STRUCTURES FOUNDATION/BASEMENT FLOOR SHALL BE TOTALLY REMOVED.

C. FILLING BELOW-GRADE AREAS: COMPLETELY FILL BELOW-GRADE AREAS AND VOIDS RESULTING FROM DEMOLITION OF BUILDINGS AND PAVEMENTS WITH SOIL MATERIALS ACCORDING TO REQUIREMENTS OF COLORADO DEPARTMENT OF TRANSPORTATION STANDARD SPECIFICATIONS FOR EMBANKMENT. MATERIAL IS AVAILABLE FROM A STOCKPILE AT THE OLD LONGMONT WATER TREATMENT PLANT. HE OLD LONGMONT WATER TREATMENT PLANT.

D. DAMAGES: PROMPTLY REPAIR DAMAGES TO ADJACENT FACILITIES CAUSED BY DEMOLITION OPERATIONS.

E. SPECIAL CONDITIONS

1. THE CONTRACTOR SHALL PRESERVE ALL SURROUNDING BUILDINGS AND PROPERTY. CONTRACTOR SHOULD NOTE THE PROXIMITY OF SURROUNDING BUILDINGS. ANY DAMAGE TO SURROUNDING BUILDINGS OR PROPERTY WILL BE REPAIRED BY THE CONTRACTOR AT HIS EXPENSE.

3.6 DISPOSAL OF DEMOLISHED MATERIALS

A. GENERAL: PROMPTLY DISPOSE OF DEMOLISHED MATERIALS. DO NOT ALLOW DEMOLISHED MATERIALS TO ACCUMULATE ON-SITE.

B. BURNING: DO NOT BURN DEMOLISHED MATERIALS.

C. DISPOSAL: TRANSPORT DEMOLISHED MATERIALS OF AUTHORITY'S PROPERTY AND LEGALLY DISPOSE OF THEM.

D. CONTRACTOR SHALL SUPPLY TOWN WITH A COPY OF ALL LANDFILL AND DISPOSAL RECEIPTS.

3.7 MEASUREMENT & PAYMENT

A. BUILDING AREAS INCLUDING , DETACHED GARAGE, AND SHED SHALL BE MEASURED AND PAID FOR BY ACTUAL FIELD MEASUREMENTS AT 4 FT ABOVE GROUND LEVEL.

B. PATIO AREA, SIDEWALKS, DRIVES, AND ANY OTHER FLATWORK SHALL BE PAID BY PROPERTY.

C. EROSION CONTROL, SEEDING AND MULCHING SHALL BE PAID BY PROPERTY. EROSION CONTROL, FOUNDATION FILLING, SHALL BE PAID FOR BY PROPERTY.

D. SEEDING AND MULCHING SHALL BE PAID FOR BY ACRE.

E. DECKS WILL NOT BE MEASURED OR PAID FOR SEPARATELY BUT SHALL BE INCLUDED IN THE COST OF THE 1ST FLOOR AREA.

ATTACHMENT D

**FEDERAL EMERGENCY MANAGEMENT AGENCY'S ("FEMA")
GRANT PROGRAM REQUIREMENTS FOR PROCUREMENT CONTRACTS**

The work or services under the contract to which this Attachment A is attached ("Agreement") are funded in whole or in part through a grant from the Federal Emergency Management Agency's Grant Program which requires compliance with all the provisions contained in this Attachment to the Agreement and all other applicable Federal and State laws and regulations. If the Agreement is between the Town and the "Consultant," the term "Contractor" as used herein shall mean the "Consultant." The provisions below are incorporated into and made part of the Agreement.

1.0 PERFORMANCE AND PAYMENT BONDS (44 C.F.R. § 13.36(H)(2) AND (3)): Contractor must provide both a performance bond and a payment bond acceptable to the Town, each for one hundred percent (100%) of the Contract Price.

2.0 EQUAL EMPLOYMENT OPPORTUNITY: If this Agreement is for compensation in excess of \$10,000.00 (Contract Price > \$10,000), during the performance of this Agreement, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- C. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- F. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted

construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

3.0 COPELAND ANTI-KICKBACK ACT (44 C.F.R. SECTION 13.36(i)(4)):

- A. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- B. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause in subparagraph (1) above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these Contract clauses.
- C. Breach. A breach of the subparagraph contract clauses (1) or (2) above may be grounds for termination of the Contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

4.0 COMPLIANCE WITH CONTRACT WORK HOURS AND SAFETY STANDARDS ACT: If this Agreement is for compensation in an amount greater than \$100,000.00 (Contract Price > \$100,000), the following shall apply:

- A. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

- C. Withholding for unpaid wages and liquidated damages. The Town shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- D. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this section.

5.0 NOTICE OF STATE AND FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) REPORTING REQUIREMENTS AND REGULATIONS:

- A. General. The Town is using Public Assistance grant funding awarded by FEMA to the State of Colorado and/or the Town to pay, in whole or in part, for the costs incurred under this Agreement. As a condition of Public Assistance funding under major disaster declaration FEMA-DR-4145, FEMA requires the State and thus the Town to provide various financial and performance reporting.
 - (1) It is important that the Contractor is aware of these reporting requirements, as the Town may require and the Contractor agrees to provide certain information, documentation, and other reporting in order to satisfy reporting requirements to the State of Colorado which, in turn, will enable the State of Colorado to satisfy reporting requirements to FEMA.
 - (2) Failure of the State of Colorado to satisfy reporting requirements to FEMA is a material breach of the FEMA-State Agreement, and could result in loss of federal financial assistance awarded to fund this Contract.
- B. Applicable Regulations and Policy. The applicable regulations, FEMA policy, and other sources setting forth these reporting requirements are as follows:
 - (1) 44 C.F.R. § 13.40 (Monitoring and Reporting Program Performance)
 - (2) 44 C.F.R. § 13.41 (Financial Reporting)
 - (3) 44 C.F.R. § 13.50(b) (Reports)
 - (4) 44 C.F.R. § 206.204(f) (Progress Reports)
 - (5) FEMA Standard Operating Procedure No. 9570.14, Public Assistance Program Management and Grant Closeout Standard Operating Procedure (Dec. 2013)
 - (6) FEMA-State (or Tribal) Agreement

- C. Financial Reporting. The State of Colorado is required to submit to the following financial reports to FEMA:
- (1) Initial Report. An initial Federal Financial Report (SF 425) no later than 30 days after FEMA has approved the first Public Assistance project under FEMA-DR-4145.
 - (2) Quarterly Reports. Following submission of the initial report, quarterly Federal Financial Reports until submission of the final report described in the following subparagraph. Reports are due on January 30, April 30, July 30, and October 30.
 - (3) Final Report. A final Federal Financial Report within 90 days of the end of the period of performance for the Public Assistance grant.
- D. Performance Reporting. The State of Colorado is required to submit to the following financial reports to FEMA:
- (1) Initial Report. An initial performance report no later than 30 days after FEMA has approved the first Public Assistance project under FEMA-DR-4145.
 - (2) Quarterly Reports. Following submission of the initial report, quarterly performance reports until submission of the final report described in the following subparagraph. Reports are due on January 30, April 30, July 30, and October 30.
 - (3) Final Report. A final performance report within 90 days of the end of the period of performance for the Public Assistance grant.

6.0 ACCESS TO RECORDS: The following access to records requirements apply to this Agreement:

- A. The Contractor agrees to provide the Town, the State of Colorado, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The Contractor agrees to provide the Town, the State, the FEMA Administrator or their authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement.

7.0 RETENTION OF RECORDS: The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until the Town, the State of Colorado, the FEMA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related to the litigation or settlement of claims.

8.0 CLEAN AIR ACT: If this Agreement is for compensation in excess of \$150,000.00 (Contract Price > \$150,000):

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- B. The Contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the State of Colorado, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- C. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

9.0 FEDERAL WATER POLLUTION CONTROL ACT: If this Contract is for compensation in excess of \$150,000.00 (Contract Price > \$150,000):

- A. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- B. Contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the State of Colorado, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- C. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

10.0 ENERGY CONSERVATION: The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

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

- (a) This Contract or any subcontract awarded hereunder is awarded in the amount of at least \$25,000, or
 - (b) This Contract or any subcontract awarded hereunder requires the approval of FEMA, regardless of amount.
- A. If this Contract or any subcontract awarded hereunder is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000, the Contractor is required to verify that none of the Contractor or any subcontractor as the case may be, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). By signing this Agreement, the Contractor certifies, to the best of its knowledge and belief, that it and its principals:
- (1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency;
 - (2) have not within a five-year period preceding this Agreement had one or more public transactions (federal, State or local) terminated for cause or default; and

(3) have not within a five-year period preceding this proposal been convicted of or had a civil judgment rendered against them for (a) the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State or local) transaction or contract under public transaction, or (b) violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property

- B. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. This certification is a material representation of fact relied upon by the Town. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Colorado and the Town), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- D. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of this Contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

12.0 AMERICANS WITH DISABILITIES ACT: The Contractor shall be in compliance with the appropriate areas of the Americans with Disabilities Act of 1990 as enacted and from time to time amended and any other applicable federal regulation. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the life of any purchase order or contract and with any new purchase order or contract issued by the Town.

13.0 DAVIS BACON/PREVAILING WAGES: Check the Applicable Provision Below:

Contractor/subcontractor is responsible for complying with the Davis Bacon Act (40 U.S.C. §§276a to 276a-7) as supplemented by Department of Labor regulations at 29 CFR pt.5, determining the applicable prevailing wage requirements pertaining to Contractor/Subcontractor’s Work, and will strictly comply with the requirements. Contractor/Subcontractor will keep complete and accurate records containing the name, address, the occupational title or titles for the work performed, the rate of pay, daily and weekly hours worked for each occupational title, deductions made, and actual wages paid for work performed by each worker. Subcontractor will submit the required compliance form and a reasonable number of certified copies of current payroll records on the proper form. Receipt of the information will be a condition precedent to making any payments to the Contractor/Subcontractor.

OR

Davis-Bacon Act wage rates as determined by the U.S. Department of Labor shall not apply for the construction of this project. (Stafford Act does not require Davis-Bacon Wage Act compliance if the Work is funded only with FEMA emergency funding.)

14.0 PROVISIONS REQUIRED BY LAW DEEMED INSERTED: Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any provision is not

inserted, or is not correctly inserted, then upon the application of either party the Agreement shall forthwith be physically amended to make such insertion or correction.

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

16.0 CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISE AND LABOR SURPLUS: The Contractor and subcontractors will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible including, but not limited to, the following:

- (a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (b) Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- (d) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises; and
- (e) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

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

18.0 BYRD ANTI-LOBBYING AMENDMENT: If this Contract is for compensation in excess of \$100,000.00 (Contract Price > \$100,000), the following shall apply:

- A. Contractor represents and acknowledges that it has filed the required certification that it has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. 1352.
- B. The Contractor or subcontractor shall obtain the certification set forth in subparagraph (A) of this section from any subcontractors and will insert in any subcontracts a clause requiring the subcontractors to obtain this certification from any lower tier subcontractors.

C. The prime Contractor shall be responsible for compliance with the clauses set forth in subparagraphs (1) and (2) of this section by any subcontractor or lower tier subcontractor.

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

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

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

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

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

- [If checked, Attachment D is incorporated into this Agreement by reference.] The federal award meets the definition of “funding agreement” under 37 C.F.R. §401.2(a) and this contract is between the Town and a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work under such funding agreement, the Town shall comply with the requirements of 37 C.F.R. Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperating Agreements,” and any implementing regulations issued by the awarding agency.
- The federal award does not qualify as a “funding agreement” and/or is not a contract with small business firm or nonprofit organization for the purpose of the substitution of parties, assignment, or performance of experimental, developmental, or research work under such funding agreement.

Accepted by Contractor on

_____, 20__

By: _____

Title

Accepted by Town of Lyons on

_____, 20__

By: _____

Title

Attachment E

PATENT RIGHTS (SMALL BUSINESS FIRMS AND NONPROFIT ORGANIZATIONS)

(a) Definitions

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

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

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

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

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

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

(b) Allocation of Principal Rights

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

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

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

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

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

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

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

(d) Conditions When the Government May Obtain Title

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) Subcontracts

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

(2) The Contractor will include in all other subcontracts, regardless of tier, for experimental developmental or research work the appropriate patent rights clause required by CDBG-DR (cite section of agency implementing regulations or FAR).

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

(h) Reporting on Utilization of Subject Inventions

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

(i) Preference for United States Industry

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

(j) March-in Rights

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

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

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

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

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

(k) Special Provisions for Contracts with Nonprofit Organizations

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

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

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

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

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

(l) Communication

(Complete According to Instructions at 37 C.F.R. §401.5(b)). Molly O'Donnell, City of Longmont Resiliency Environmental Planner, Project Manager, CDBG-DR Infrastructure Program, Molly.O'Donnell@longmontcolorado.gov

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

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

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

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

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

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

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

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

(2) If the Contractor performs services at a Government owned and operated laboratory or at a Government owned and contractor operated laboratory directed by the Government to fulfill the Government's obligations under a Cooperative Research and Development Agreement (CRADA) authorized by 15 U.S.C. 3710a, the Government may require the Contractor to negotiate an agreement

with the CRADA collaborating party or parties regarding the allocation of rights to any subject invention the Contractor makes, solely or jointly, under the CRADA. The agreement shall be negotiated prior to the Contractor undertaking the CRADA work or, with the permission of the Government, upon the identification of a subject invention. In the absence of such an agreement, the Contractor agrees to grant the collaborating party or parties an option for a license in its inventions of the same scope and terms set forth in the CRADA for inventions made by the Government.