

Date: March 30, 2018

*pls put in
address file
401 2nd Ave
LYONS CO*

Ana Canada, Finance Director

Re: Bonita Yoder Refund of Deposit for the Elevation Match

Dear Ana,

Please refund the deposit of \$21,875 to Bonita Yoder for the Elevations project match she submitted on 10/20/2017. Bonita requested a refund of her deposit because she needs to use the funds for other uses. I developed a letter terminating her contract, in our sole discretion, to accommodate her request. She signed the letter of termination in person on 3/19/2018. (See attached).

Please note: our attorney has advised that the verbiage in the contract is written to require a full refund without deduction for the expenses incurred at this time, since we do not have an executed contract for construction.

Bonita is still eligible for the Elevations Program even though we were not able to get a contract for the elevation of her home. If we are able to get a viable bid on her project, or if Bonita decides to pursue a single level elevation project as an alternative, we will execute a new contract and collect a new deposit at that time.

I fully expect that a new contract would be written to require full reimbursement for all expenses incurred to date, on top of any further expenses incurred.

Sincerely,

Richard Markovich
Flood Recovery Manager
Town of Lyons

*wire sent
by D Anthony
4/3/2018
Ref# 20180403-
00008086*

DOUBLE GATEWAY
TO THE ROCKIES

TELEPHONE

303.823.6622

FACSIMILE

303.823.8257

432 5TH AVENUE • P.O. BOX 10
LYONS • COLORADO 80540

TOWNOFLYONS.CO

Date 3-19-18

To: Bonita Yoder
401 2nd Avenue
Lyons, Colorado 80540


LYONS
COLORADO

Dear Bonita,

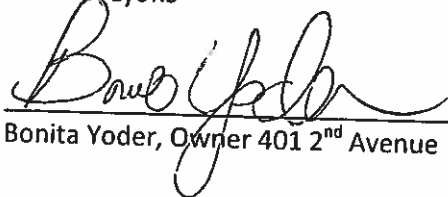
We regret to inform you that the Town of Lyons has determined, in its sole discretion that it cannot proceed with the Project to elevate your home and will terminate the Property Owner Cost Share and Contribution Agreement for the Elevation of Home located at 401 2nd Avenue in Lyons, Colorado. Therefore, the agreement is terminated per section 4.2, as of the date this letter is signed.

The Town will determine the amount of the refund of your cost share deposit that is applicable and refund the funds per section 4.2 of the contract.

Sincerely,


Richard Markovich, Flood Recovery Manager
Town of Lyons

3/19/18
Date


Bonita Yoder, Owner 401 2nd Avenue

03/19/2018
Date

DOUBLE GATEWAY
TO THE ROCKIES

cc: Victoria Simonsen, Town Administrator
Ana Canada, Finance Director
Philip Strom, Project Manager

TELEPHONE

303.823.6622

FACSIMILE

303.823.8257

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

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**TOWN OF LYONS
PROPERTY OWNER COST SHARE AND CONTRIBUTION AGREEMENT**

PROJECT: ELEVATION OF HOME LOCATED AT 401 2ND AVENUE

THIS AGREEMENT, is made and entered into by and between the **TOWN OF LYONS, COLORADO**, a Colorado statutory municipal corporation, ("Town") and **BONITA YODER**, owner of the property located at 401 2nd Avenue, Lyons, CO, 80540, hereinafter referred to as the "Owner." The Owner and the Town shall collectively be referred to as the "Parties." This Agreement shall be effective following execution by the Owner and immediately upon the date of the authorized execution of this Agreement by the Town Administrator.

RECITALS AND REPRESENTATIONS

WHEREAS, the Owner is the owner of certain property situated in the Town of Lyons, Boulder County, State of Colorado, (the "Property") which is either legally described as or commonly known as:

401 2nd Avenue, Lyons, Colorado, 80540

WHEREAS, in 2016, the Town received a grant from the State of Colorado's Division of Homeland Security and Emergency Managements ("DHSEM") identified as DHSEM Grant MG4145052214 ("Grant"), pursuant to FEMA Hazard Mitigation Grant Program ("HMGP") Grant 4145 Project 52-R, to assist in paying for the cost to elevate Owner's flood-damaged home located on the Property ("Project"), as well as one other home within the Town; and

WHEREAS, the Grant permits a maximum reimbursement of \$350,000 to the Town for the combined costs to elevate Owner's flood-damaged home and one other home within the Town; and

WHEREAS, the Town will pay all Project costs, and will be reimbursed by Grant funds and other funds for seventy-five percent (75%) of the Project costs ("Federal Share"), provided that the total cost for elevating both homes does not exceed \$350,000; and

WHEREAS, the other twenty-five percent (25%) of the Project costs must be paid from sources other than federal funds ("Local Share"), and the State of Colorado will reimburse the Town for one-half of that Local Share in an amount equal to twelve and one-half percent (12.5%) of the Project costs; and

WHEREAS, the remaining 12.5% of the Project costs must be paid by the Owner ("Owner Share") because there are no other funding sources available to the Town or the Owner as a result of the Property being located in the floodway; and

WHEREAS, the Town, with the assistance of the Boulder County Collaborative, has procured and obtained designs and plans for the Project, and plans to issue an Invitation for Bid to obtain proposals from potential contractors for the Project as well as the elevation of other eligible homes ("IFB"), and further plans to enter into a contract with the selected contractor to complete the Project and the elevation of such other homes ("Elevation Contract"); and

WHEREAS, upon entering into an Elevation Contract, the Town will incur significant expense; and

1.4 "Estimated Additional Elevation Costs" means Five Thousand Dollars and No Cents (\$5,000.00).

2.0 OWNER PAYS OWNER SHARE AND ADDITIONAL ELEVATION COSTS

- 2.1 Owner agrees to bear and pay the Town in full for the Owner Share and the Additional Elevation Costs in accordance with this Agreement.
- 2.2 Owner agrees to pay to the Town the Estimated Owner Share on or before October __, 2017. Owner shall make such payment in the form of a certified check made out to the Town of Lyons delivered to Ana Cañada, Finance Director for the Town of Lyons, or through a wire transfer of funds to the Town as instructed by a representative of the Town.
- 2.3 Owner agrees to pay to the Town the Estimated Additional Elevation Costs by a date to be specified by the Town. This date shall be after the Town has received bids in response to the IFB and before the Town executes a contract for construction of the Project. Owner shall make such payment in the form of a certified check made out to the Town of Lyons delivered to Ana Cañada, Finance Director for the Town of Lyons, or through a wire transfer of funds to the Town as instructed by a representative of the Town.
- 2.4 It is the express intent of this Agreement that the Owner shall bear and pay in full the Owner Share of the Project costs and all Additional Elevation Costs.

3.0 ACCOUNTING FOR OWNER SHARE AND ADDITIONAL ELEVATION COSTS

3.1 Separate Account and Accounting of Owner Payments and Town Payments. The Town shall maintain separate accounts for the Estimated Owner Share and Estimated Additional Elevation Costs that the Owner pays the Town. A current statement of payments received and expenses incurred or paid by the Town for the Project and the Additional Elevation Costs will be made available to the Owner within a reasonable time following the Owner's request. The Parties understand that a current statement may only include expenses billed to the Town as of the date of the Owner's request.

3.2 Deductions for Payment of Owner Share. The Town shall only charge expenses related to the Owner Share against the Estimated Owner Share held by the Town and shall deduct for payment of such expenses from the Estimated Owner Share. The Town shall only make such charges and deductions after it has entered into a duly executed agreement for construction of the Project and pursuant to invoices pertaining to the Owner Share that are received and approved by the Town pursuant to that construction agreement.

3.3 Deposit Account; Deductions for Payment of Additional Elevation Costs. The Town shall maintain the Estimated Additional Elevation Costs in a deposit account with the Town ("Deposit Account"). The Town shall only charge expenses related to the Additional Elevation Costs against the Deposit Account and shall deduct for payment of such expenses from the Deposit Account. The Town shall only make such charges and deductions after it has entered into a duly executed agreement for construction of the Project and pursuant to invoices pertaining to the Additional Elevation Costs that are received and approved by the Town pursuant to that construction agreement. If at any time the expenses charged against the Deposit Account exceed ninety percent (90%) or more of the Deposit Account, and within ten (10) days of a notice sent by the Town, the Owner shall supplement the Deposit Account by making an additional deposit with the Town Finance Director in an amount determined by the

5.0 LIEN AGAINST PROPERTY

To the extent permitted by law, expenses incurred by the Owner in accordance with this Agreement but not paid to the Town, together with an amount equal to ten percent (10%) of the total expenses for the cost of collection, shall constitute a lien against the Property described in this Agreement. By this Agreement, the Owner consents to the imposition of a lien and the cost of collection against the property and represents that the Owner is authorized to so consent as the owner of the Property. The Town may seek enforcement of the lien in the same manner as real estate taxes against the Property.

6.0 ENFORCEMENT AND COLLECTION

In the event of the Owner's breach of this Agreement, all amounts owing shall be due and payable immediately. In such event, the Town shall be entitled to and may invoke one (1) or more of the following remedies following the Town's transmission of a letter in accordance with the provisions of 7.14 of this Agreement or via email demanding payment in full to the Owner:

6.1 Imposition of a condition that the Owner pay all costs due and owing under the terms of this Agreement prior to issuance of further approvals, including building permits, for all or any portion of the Property;

6.2 Withholding, postponing and/or denying: (1) any building permits for any part or portion of the Property or for any improvement which serves or will provide service to the Property; (2) construction documentation review or approval; (3) grading or other construction or permit approval; and/or (4) the submission, receipt, processing or approval of any application or request by the Owner or the Owner's affiliates for any form of land use or construction application related in any way to the Property;

6.3 Refusal or denial of the acceptance of any other application for land use approval or development of any kind for the Property submitted by the Owner or any other person;

6.4 Commencement of any remedy provided by law or equity, including an action for declaratory judgment, injunction and/or damages; and/or

6.5 Certification of the lien for collection to the appropriate officials for Boulder County.

7.0 MISCELLANEOUS PROVISIONS

7.1 **No Waiver:** A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

7.2 **No Waiver of Governmental Immunity:** Nothing in this Agreement shall be construed to waive, limit or otherwise modify any governmental immunity that may be available by law to the Town, its officials, employees, contractors or agents, or any other person acting on behalf of the Town and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

7.3 **Binding Effect:** The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives and assigns thereof and shall constitute covenants running with the described Property. To the extent permitted by law, the Owner and all future successors, heirs, legal representatives and assigns of the Owner shall be jointly and severally responsible for all terms, conditions and obligations set forth in this Agreement. The Town may, at its discretion, record this Agreement with the Clerk and Recorder for Boulder County.

7.13 Owner Includes Agents: For purposes of incurring expenses, such as but not limited to requesting meetings and submitting reports and studies for Town review, the term "Owner" shall include any authorized agent, consultant or other person acting on behalf of the Owner.

7.14 Notices: Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth below, or at such other address as has been previously furnished in writing to the other party or parties. Such notice shall be deemed to have been given when deposited in the United States Mail.

If to the Town:

Town of Lyons
Attn: Town Administrator
432 Fifth Avenue
P O Box 49
Lyons, CO 80540

If to Owner:

Bonita Yoder
608 Kentucky Street
Lawrence, KS 66044

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

IN WITNESS WHEREOF, the Town and the Owner have caused this Agreement to be duly executed and effective following execution by the Owner and immediately upon the date of the authorized execution of this Agreement by the Town Administrator.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

SIGNATURE PAGE FOLLOWS

EXHIBIT A



Date: September 1, 2017

To: Bonita Yoder
401 2nd Avenue
Lyons, CO 80540

Re: Home Elevations Town Request for Local Share of the Funding Match

Dear Ms. Yoder,

Following up to our meeting on August 31, 2017 at the Lyons Depot, this letter requests a commitment from you to provide the local share of the funding match (Local Share) required as part of the FEMA Hazard Mitigation Grant Program (HMGP) Grant 4145 Project 52-R, which is a home elevation program. The FEMA grant provides 75% of the funding for the program costs (Federal Share), the State of Colorado provides 12.5% for the program costs (State Share), and the remaining 12.5% is then required from a Local Share:

Federal Share (75%)	State Share (12.5%)	Local Share (12.5%)	Total Budget (100%)
\$ 131,250.00	\$ 21,875.00	\$ 21,875.00	\$ 175,000.00

DOUBLE GATEWAY
TO THE ROCKIES

The previous source of the Local Share has been determined as ineligible for your home at 401 2nd Avenue in Lyons, CO because the home is located in the applicable designated floodway. This Local Share was provided through the Boulder County Collaborative from a HUD Community Development Block Grant Disaster Recovery (CDBG-DR) funds, however HUD funds are restricted from use in the floodway. There is not a funding source available to the Town to meet the Local Share. In order to continue your participation in the home elevation program, you will need to provide the Local Share of \$21,875.00 shown in the table above.

Currently the design is scheduled for completion on September 7, 2017, with an invitation for bid (IFB) for construction scheduled to be released September 21, 2017. The entire amount of the Local Share will be required prior to the release of the IFB.

Time is of the essence for this project with the expiration of the grant approaching on September 29, 2017, and while the Town is confident in FEMA granting an extension of the grant, the Town must show progress and a good faith effort in advancing the project.

Should you choose to commit to fund the Local Share of the program, we will continue the design to completion next week and inform you of the required documentation for the funding agreement. At that point a legal

TELEPHONE

303.823.6622

FACSIMILE

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