

Town of Lyons
PROFESSIONAL SERVICES AGREEMENT
Project/Services Name: Boulder County/zTrip Voucher Program for Lyons

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into this 7th day of February, 2022 by and between the TOWN OF LYONS, COLORADO, a municipal corporation of the State of Colorado, with offices at 432 5th Avenue, Lyons, Colorado 80540 (the “Town”), and WHC COS, LLC; WHC FTC, LLC d/b/a zTrip (“zTrip”) with offices at: 1341 Sherman Dr. Longmont, CO 80501 (the “Contractor”).

RECITALS

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

WHEREAS, the Town has executed an intergovernmental agreement (“IGA”) with Boulder County for the payment of services pursuant to this PSA attached hereto as **Exhibit B**; and

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

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

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

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

1.0 SERVICES AND PURPOSE OF AGREEMENT

- 1.1 Services. The Town desires to achieve, secure, receive, or obtain certain service(s) or work product(s) as more specifically described in **Exhibit A** (the “Services”). **Exhibit A** describes the requirements and deliverables required by this Agreement and is attached hereto and incorporated herein by reference. As an independent contractor, the Contractor offers and agrees to perform and/or deliver the Services in accordance with the terms and conditions of this Agreement. The Parties recognize and acknowledge that, although the Town has requested certain general services to be performed or a certain work product to be produced, the Contractor has offered to the Town the process, procedures, terms, and conditions under which the Contractor plans and proposes to achieve or produce the services and/or work product(s) and the Town, through this Agreement, has accepted such process, procedures, terms, and conditions as binding on the Parties.
- 1.2 Town Representative. The Town assigns the Town Administrator or his/her designee as the Town Representative for this Agreement. The Town Representative will monitor the Contractor’s progress and performance under this Agreement and shall be available to the Contractor to respond to questions, assist in understanding Town policies, procedures, and practices, and supervise the performance of any Town obligations under this Agreement.
- 1.3 Changes to Services. Any changes to the Services that are mutually agreed upon between the Town and the Contractor shall be made in a formal writing referencing this Agreement and, only upon execution by both Parties of such formal writing, shall become an amendment to the Services described in this Agreement. To be effective, any written change must be signed by the Contractor and by the Town or by a person expressly authorized in writing to sign on behalf

of the Town. Changes to the Services or to this Agreement shall not be made through oral agreement or electronic mail messages.

- 1.4 Meeting Attendance. The Contractor shall attend such meetings of the Town relative to the Scope of Work set forth in **Exhibit A** as may be requested by the Town. Any requirement made by the named representatives of the Town shall be given with reasonable notice to the Contractor so that a representative may attend.
- 1.5 Agreement to Comply with Requisite Provisions Based On Funding Source. If checked in Section 11.0 below, the Town will pay in whole or in part for the Services rendered hereunder with federal or State based grant funding. Contractor agrees to comply with all provisions set forth in any Attachment as noted and if checked.
- 1.6 Lawful Performance. It is further agreed that no party to this Agreement will perform contrary to any state, federal, or county law, or any of the ordinances of the Town of Lyons, Colorado.

2.0 COMPENSATION

- 2.1 Commencement of and Compensation for Services. Following execution of this Agreement by the Town, the Contractor shall be authorized to and shall commence performance of the Services as described in **Exhibit A**, subject to the requirements and limitations on compensation as provided by this Section 2.0 and its subsections. Compensation to be paid hereunder shall not exceed the budgeted amount of \$40,000 unless a larger amount is agreed to by and between the Parties in accordance with the amendment requirements of this agreement.
 - A. Method of Compensation. The Contractor shall perform the Services and shall invoice the Town for work performed based on the rates and/or compensation methodology and amounts described in **Exhibit A**. **These invoices for payment should be emailed to ap@townoflyons.com, or mailed to: Town of Lyons, PO Box 49, Lyons, CO 80540.** Monthly, partial, progress payments shall be made by the Town to the Contractor for the work completed. Progress payments shall not constitute a waiver of the right of the Town to require the fulfillment of all material terms of this Agreement.
 - B. Final Payment. Final payment may be requested by the Contractor upon completion and acceptance, by the Town, of all work or Services as set forth in **Exhibit A**.
 - C. Extra Work. Should work beyond that described in **Exhibit A** be required, it will be paid for as extra work at a cost to be agreed upon in separate written agreement by the Town and the Contractor prior to commencement of the additional work. Such additional agreements shall be executed and approved by all persons required by Town purchasing ordinances or policies
 - D. Releases or Receipts. The Town, before making any payment, may require the Contractor to furnish at no additional charge releases or receipts from any or all persons performing work under this Agreement and/or supplying material or services to the Contractor, or any subcontractor if this is deemed necessary to protect the Town's interest. The Town, however, may in its discretion make payment in part or full to the Contractor without requiring the furnishing of such releases or receipts

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

None

Vehicle Mileage (billed at not more than the prevailing per mile charge permitted by the IRS as a tax deductible business expense)

Printing and Photocopying Related to the Services (billed at actual cost)

Long Distance Telephone Charges Related to the Services

Postage and Delivery Services

Lodging and Meals (but only with prior written approval of the Town as to dates and maximum amount)

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

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

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

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

3.0 CONTRACTOR'S REPRESENTATIONS AND OFFERED PERFORMANCE

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

- 3.1 General. The Contractor shall become fully acquainted with the available information related to the Services. The Contractor shall affirmatively request from the Town Representative and the Town such information that the Contractor, based on the Contractor's professional experience, should reasonably expect is available and which would be relevant to the performance of the Services. The Contractor shall promptly inform the Town concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Agreement. The Contractor shall provide all of the Services in a timely and professional manner. The Contractor shall comply with all applicable federal, state and local laws, ordinances, regulations, and resolutions.
- 3.2 Independent Contractor. The Contractor shall perform the Services as an independent contractor and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with the Town. This Agreement does not require the Contractor to work exclusively for the Town. This Agreement shall not be interpreted as the Town dictating or directing the Contractor's performance or the time of performance beyond a completion schedule and a range of mutually agreeable work hours, but shall be interpreted as the Contractor's offer and Town acceptance of terms and conditions for performance. The Contractor's business operations shall not be combined with the Town by virtue of this Agreement, and the Town will not provide any training to Contractor, its agents, or employees beyond that minimal level required for performance of the Services. The Parties acknowledge that the Contractor may require some assistance or direction from the Town in order for the Services to meet the Town's contractual expectations. Any provisions in this Agreement that may appear to grant the Town the right to direct or control Contractor or the Services shall be construed as Town plans or specifications regarding the Services.
- 3.3 Liability for Employment-Related Rights and Compensation. The Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Contractor, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. The Contractor will comply with all laws, regulations, municipal codes, and ordinances and other requirements and standards applicable to the Contractor's employees, including, without limitation, federal and state laws governing wages and overtime, equal employment, safety and health, employees' citizenship, withholdings, reports and record keeping. **CONTRACTOR ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS CONTRACTOR OR SOME ENTITY OTHER THAN THE TOWN PROVIDES SUCH BENEFITS. CONTRACTOR FURTHER ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO WORKERS' COMPENSATION BENEFITS. CONTRACTOR ALSO ACKNOWLEDGES THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED OR PAID PURSUANT TO THIS AGREEMENT.** To the maximum extent permitted by law, Contractor waives all claims against the Town for any Employee Benefits; the Contractor will defend the Town from any claim and will indemnify the Town against any liability for any

Employee Benefits for the Contractor imposed on the Town ; and the Contractor will reimburse the Town for any award, judgment, or fine against the Town based on the position the Contractor was ever the Town 's employee, and all attorneys' fees and costs the Town reasonably incurs defending itself against any such liability.

- 3.4 Interaction with Public. The Contractor recognizes that its conduct during the performance of the Services hereunder reflects upon its reputation in the community as well as upon the public perception of the Town. Therefore, the Contractor offers and warrants to the Town that the Contractor, its agents and employees will conduct all of their interactions with the citizens and the public relating to the performance of the Services hereunder in such a manner as to provide customer service that reflects positively upon its reputation and the Town's public image.
- 3.5 Subcontractors. The Parties recognize and agree that subcontractors may be utilized by the Contractor for the performance of certain Services if and as described more particularly in **Exhibit A**; however, the engagement or use of subcontractors will not relieve or excuse the Contractor from performance of any obligations imposed in accordance with this Agreement and Contractor shall remain solely responsible for ensuring that any subcontractors engaged to perform Services hereunder shall perform such Services in accordance with all terms and conditions of this Agreement.
- 3.6 Standard of Performance. In performing the Services, the Contractor warrants that it shall use that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by highly competent members of the same profession practicing in the State of Colorado. The Contractor represents to the Town that the Contractor is, and its employees or sub-contractors performing such Services are, properly licensed and/or registered within the State of Colorado for the performance of the Services (if licensure and/or registration is required by applicable law) and that the Contractor and employees possess the skills, knowledge, and abilities to perform the Services competently, timely, and professionally in accordance with this Agreement. In addition, the Contractor warrants and represents that it will provide the Services in accordance with more specific standards of performance as are included within **Exhibit A**. The Contractor represents, covenants and agrees that the Services will be provided to the Town free from any material errors. The Contractor's failure to meet or exceed any of the foregoing standards and warranties may be considered a material breach of this Agreement and may be grounds for termination of the Agreement pursuant to Section 4.0 below, in addition to any other remedies as provided in Section 9.0 below.
- 3.7 Review of Books and Records. The Contractor shall promptly comply with any written Town request for the Town or any of its duly authorized representatives to reasonably access and review any books, documents, papers, and records of the Contractor that are pertinent to the Contractor's performance under this Agreement for the purpose of the Town performing an audit, examination, or other review of the Services.
- 3.8 Licenses and Permits. The Contractor shall be responsible at the Contractor's expense for obtaining, and maintaining in a valid and effective status, all licenses and permits necessary to perform the Services unless specifically stated otherwise in this Agreement.
- 3.9 Affirmative Action. The Contractor warrants that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor warrants that it will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex or national origin.

Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

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

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

4.0 TERM AND TERMINATION

- 4.1 Term. This Agreement shall be effective on the **1st of January at 12:01 a.m.**, (the "Effective Date"), and shall terminate at the earlier of the date on which all obligations of the parties have been met (to include all Services have been completed) or **11:59 p.m. on 31st day of December, 2022**, or on a prior date of termination permitted by this Agreement; provided, however, that the Parties may mutually agree in writing to extend the term of this Agreement, subject to annual appropriation. Those provisions that survive termination, to include the indemnification obligations and any warranty obligations, shall remain in effect past termination.
- 4.2 Continuing Services Required. The Contractor shall perform the Services in accordance with this Agreement commencing on the Effective Date until such Services are terminated or suspended in accordance with this Agreement. The Contractor shall not temporarily delay, postpone, or suspend the performance of the Services without the written consent of the Town Board of Trustees, Town Administrator, the Town Representative, or other Town employee expressly authorized in writing to direct the Contractor's services.
- 4.3 Town Unilateral Termination. This Agreement may be terminated by the Town for any or no reason upon written notice delivered to the Contractor at least ten (10) days prior to termination. In the event of the Town's exercise of the right of unilateral termination as provided by this paragraph:
- A. Unless otherwise provided in any notice of termination, the Contractor shall provide no further services in connection with this Agreement after receipt of a notice of termination; and
 - B. All finished or unfinished documents, data, studies and reports prepared by the Contractor pursuant to this Agreement shall be delivered by the Contractor to the Town and shall become the property of the Town; and
 - C. The Contractor shall submit to the Town a final accounting and final invoice of charges for all outstanding and unpaid Services and reimbursable expenses performed prior to the Contractor's receipt of notice of termination and for any services authorized to be performed by the notice of termination as provided by Section 4.3(A) above. Such final accounting and final invoice shall be delivered to the Town within thirty (30) days of the date of termination; thereafter, no other invoice, bill, or other form of statement of charges owing to the Contractor shall be submitted to or accepted by the Town.
- 4.4 Termination for Non-Performance. Should a party to this Agreement fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing party if the performing party first provides written notice to the non-performing party which notice shall specify the non-performance, provide both a demand to cure the non-performance and reasonable time to cure the non-performance, and state a date upon which the Agreement shall be terminated if there is a failure to timely cure the non-performance. For purpose of this Section 4.4, "reasonable time" shall be not less than five (5) business days. In the event of a failure to timely cure a non-performance and upon the date of the resulting termination for non-performance, the Contractor shall prepare a final accounting and final invoice of charges for all performed but unpaid Services and authorized reimbursable expenses. Such final accounting and final invoice shall be delivered to the Town within fifteen (15) days of the date of termination; thereafter, no other invoice, bill, or other form of statement of charges owing

to the Contractor shall be submitted to or accepted by the Town. Provided that notice of non-performance is provided in accordance with this Section 4.4, nothing in this Section 4.4 shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party.

- 4.5 Unilateral Suspension of Services. The Town may suspend the Contractor's performance of the Services at the Town's discretion and for any reason by delivery of written notice of suspension to the Contractor which notice shall state a specific date of suspension. Upon receipt of such notice of suspension, the Contractor shall immediately cease performance of the Services on the date of suspension except: (1) as may be specifically authorized by the notice of suspension (e.g., to secure the work area from damage due to weather or to complete a specific report or study); or (2) for the submission of an invoice for Services performed prior to the date of suspension in accordance with this Agreement.
- 4.6 Delivery of Notice of Termination. Any notice of termination permitted by this Section 4.0 and its subsections shall be addressed to the person signing this Agreement on behalf of either Town or Contractor at the address shown below or such other address as either party may notify the other of and shall be deemed given upon delivery if personally delivered, or forty-eight (48) hours after deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

5.0 INSURANCE

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

- The Contractor shall obtain and maintain the types, forms, and coverage(s) of insurance deemed by the Contractor to be sufficient to meet or exceed the Contractor's minimum statutory and legal obligations arising under this Agreement ("Contractor Insurance"); or
- The Contractor shall secure and maintain the following ("Required Insurance"):
- Worker's Compensation Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by law. Such policy of insurance shall be endorsed to include the Town as a Certificate Holder.
 - Comprehensive General Liability insurance with a minimum combined coverage of Five Hundred Thousand Dollars (\$500,000) General Aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the Town as Certificate Holder and name the Town, and its elected officials, officers, employees and agents as additional insured parties.

- Comprehensive Automobile Liability insurance with minimum combined coverage of not less than Five Hundred Thousand dollars (\$500,000) General Aggregate, with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Agreement, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. **Such insurance shall be endorsed to name the Town as Certificate Holder and name the Town, and its elected officials, officers, employees and agents as additional insured parties.**
- Professional Liability (errors and omissions) Insurance with a minimum limit of coverage of One Million Dollars (\$1,000,000.00) per claim and annual aggregate. Such policy of insurance shall be obtained and maintained for one (1) year following completion of all Services under this Agreement. Such policy of insurance shall be endorsed to include the Town as a Certificate Holder.

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

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

- A. For both Contractor Insurance and Required Insurance, all policies of insurance shall be primary insurance, and any insurance carried by the Town, its officers, or its employees shall be excess and not contributory insurance to that provided by the Contractor; provided, however, that the Town shall not be obligated to obtain or maintain any insurance whatsoever for any claim, damage, or purpose arising from or related to this Agreement and the Services. The Contractor shall not be an insured party for any Town-obtained insurance policy or coverage.
- B. For both Contractor Insurance and Required Insurance, the Contractor shall be solely responsible for any deductible losses.
- C. For Required Insurance, no policy of insurance shall contain any exclusion for bodily injury or property damage arising from completed operations.
- D. For Required Insurance, every policy of insurance shall provide that the Town will receive notice no less than thirty (30) days prior to any cancellation, termination, or a material change in such policy or in the alternative, the Contractor shall provide such notice as soon as reasonably practicable and in no event less than thirty (30) days prior to any cancellation, termination, or a material change in such policy.
- E. The Required Insurance shall be so written or endorsed to include waivers of all subrogation rights of the insurers against the Town.

- 5.3 Failure to Obtain or Maintain Insurance. The Contractor's failure to obtain and continuously maintain policies of insurance in accordance with this Section 5.0 and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the Town may immediately terminate this Agreement, or, at its discretion, the Town may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Town shall be repaid by Contractor to the Town immediately upon demand by the Town, or at the Town's sole discretion, the Town may offset the cost of the premiums against any monies due to the Contractor from the Town pursuant to this Agreement.
- 5.4 Insurance Certificates. **Prior to commencement of the Services, the Contractor shall submit to the Town certificates of insurance for all Required Insurance and all necessary endorsements.** Insurance limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this Section 5.0 and its subsections shall be indicated on each certificate of insurance. **Certificates of insurance shall reference the Project/Services Name as identified on the first page of this Agreement.** The Town may request and the Contractor shall provide within three (3) business days of such request a current certified copy of any policy of Required Insurance and any endorsement of such policy. The Town may, at its election, withhold payment for Services until the requested insurance policies are received and found to be in accordance with the Agreement.

6.0 CLAIMS, INDEMNIFICATION, HOLD HARMLESS AND DEFENSE

- 6.1 Notices of Claim. A Party shall notify the other Party immediately and in writing in the event that a Party learns of a third-party claim or an allegation of a third-party claim arising or resulting from the Parties' performance or failure to perform pursuant to this Agreement. The Parties shall reasonably cooperate in sharing information concerning potential claims.
- 6.2 Claims Challenging Town Law, Ordinance, Rule, or Policy/Procedure. In the event any claim is asserted by a third-party against the Town and/or the Contractor alleging that any law, statute, ordinance, rule or approved Town policy or procedure is unlawful, unconstitutional or otherwise improper, then:
- A. The Contractor shall not be entitled to and shall not defend such claim; and
 - B. The Town may, at its sole discretion, elect to defend, not defend, settle, confess, compromise, or otherwise direct the manner in which such claim is addressed; and
 - C. The Contractor shall reasonably cooperate with the Town in any Town defense of such claim although the Contractor shall bear any cost or expense incurred by the Contractor in such cooperation, including but not limited to the Contractor's cost and expense incurred in consultation with its own legal counsel; and
 - D. Only if authorized by law and without waiving the provisions of the Colorado Constitution or the Colorado Governmental Immunity Act, the Town shall indemnify and hold Contractor harmless for any damages, liability, expenses, or court awards, including costs and

attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by any third-party, including but not limited to, any person, firm, partnership, or corporation, in connection with or arising out of such claim.

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

6.4 Defense of Claims.

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

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

expenses in such intervention and such fees, costs, and expenses shall not be subject to indemnification pursuant to this Section.

7.0 RECORDS AND OWNERSHIP OF DOCUMENTS

- 7.1 Retention and Open Records Act Compliance. All records of the Contractor related to the provision of Services hereunder, including public records as defined in the Colorado Open Records Act (“CORA”), and records produced or maintained in accordance with this Agreement, are to be retained and stored in accordance with the Town’s records retention and disposal policies. Those records which constitute “public records” under CORA are to be at the Town offices or accessible and opened for public inspection in accordance with CORA and Town policies. Public records requests for such records shall be processed in accordance with Town policies. Contractor agrees to allow access by the Town and the public to all documents subject to disclosure under applicable law. Contractor’s willful failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Agreement by the Town. For purposes of CORA, the Town Clerk is the custodian of all records produced or created as a result of this Agreement. Nothing contained herein shall limit the Contractor’s right to defend against disclosure of records alleged to be public.
- 7.2 Town’s Right of Inspection. The Town shall have the right to request that the Contractor provide to the Town a list of all records of the Contractor related to the provision of Services hereunder retained by the Contractor in accordance with this subsection and the storage location and method. Contractor agrees to allow inspection at reasonable times by the Town of all documents and records produced or maintained in accordance with this Agreement.
- 7.3 Ownership. Any work product, materials, and documents produced by the Contractor pursuant to this Agreement shall become property of the Town of Lyons upon delivery and shall not be made subject to any copyright unless authorized by the Town. Other materials, methodology and proprietary work used or provided by the Contractor to the Town not specifically created and delivered pursuant to the Services outlined in this Agreement may be protected by a copyright held by the Contractor and the Contractor reserves all rights granted to it by any copyright. The Town shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by Town staff and/or Town contractors; or (2) pursuant to a request under the Colorado Open Records Act, C.R.S. § 24-72-203, to the extent that such statute applies; or (3) pursuant to law, regulation, or court order. The Contractor waives any right to prevent its name from being used in connection with the Services.
- 7.4 Return of Records to Town. At the Town’s request, upon expiration or termination of this Agreement, all records of the Contractor related to the provision of Services hereunder, including public records as defined in CORA, and records produced or maintained in accordance with this Agreement, are to be returned to the Town in a reasonable format and with an index as determined and requested by the Town.

8.0 FORCE MAJEURE

Neither the Contractor nor the Town shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by “force majeure.”

As used in this Agreement, "force majeure" means acts of God, acts of the public enemy, acts of terrorism, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

9.0 REMEDIES

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

- A. Suspend the Contractor's performance pending necessary corrective action as specified by the Town without the Contractor's entitlement to an adjustment in any charge, fee, rate, price, cost, or schedule; and/or
- B. Withhold payment to the Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or
- C. Deny payment for those services which have not been satisfactorily performed, and which, due to circumstances caused by the Contractor, cannot be performed, or if performed would be of no value to the Town; and/or
- D. Terminate this Agreement in accordance with this Agreement; and/or
- E. Other remedies as may be provided by attached addendum or addenda.

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

10.0 MISCELLANEOUS PROVISIONS

- 10.1 No Waiver of Rights. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party. The Town's approval or acceptance of, or payment for, services shall not be construed to operate as a waiver of any rights or benefits to be provided under this Agreement. No covenant or term of this Agreement shall be deemed to be waived by the Town except in writing signed by the Town Council or by a person expressly authorized to sign such waiver, and any written waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver unless specifically stated.
- 10.2 No Waiver of Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the Town, its officials, employees, contractors, or agents, or any other person acting on behalf of the Town and, in particular, governmental immunity afforded or available pursuant

to the Colorado Governmental Immunity Act, Title 24, Article 10 of the Colorado Revised Statutes.

- 10.3 Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section 10.3 shall not authorize assignment.
- 10.4 No Third-party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third-party, including any agent, sub-consultant or sub-contractor of Contractor. Absolutely no third-party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.
- 10.5 Article X, Section 20/TABOR. The Parties understand and acknowledge that the Town is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the Town are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the Town's current fiscal period ending upon the next succeeding December 31. Financial obligations of the Town payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of Town of Lyons, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.
- 10.6 Governing Law, Venue, and Enforcement. This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Boulder County, Colorado. To reduce the cost of dispute resolution and to expedite the resolution of disputes under this Agreement, the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement. The Parties agree that the rule that ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement. If there is any conflict between the language of this Agreement and any exhibit or attachment, the language of this Agreement shall govern.
- 10.7 Survival of Terms and Conditions. The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.
- 10.8 Assignment and Release. All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by the Contractor without the express written consent of the Town. Any written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by the Town through the authorizing agent executing this Agreement. No assignment shall release the Contractor from

performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment.

- 10.9 Interpretation and Mutual Negotiation. It is the intent of the Parties that this Agreement shall in all instances be interpreted to reflect the Contractor's status as an independent contractor with the Town and that in no event shall this Agreement be interpreted as establishing an employment relationship between the Town and either Contractor or Contractor's employees, agents, or representatives. The Parties agree that this Agreement is the result of mutual negotiation between the Parties and that the Agreement shall not be construed against the Town on grounds relating to drafting, revision, review, or recommendation by any agent or representative of the Town. The Parties further agree that all warranties in this Agreement are made by the Contractor to induce the Town to accept the Contractor's offer to enter into this Agreement and have been incorporated into the Agreement at the Contractor's request.
- 10.10 Paragraph Captions. The captions of the paragraphs and sections are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.
- 10.11 Agreement Controls. In the event a conflict exists between this Agreement and any term in any exhibit attached or incorporated into this Agreement, the terms in this Agreement shall supersede the terms in such exhibit.
- 10.12 Integration and Amendment. This Agreement represents the entire and integrated agreement between the Town and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this Agreement must be in writing and be signed by both the Town and the Contractor.
- 10.13 Severability. Invalidation of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.
- 10.14 Incorporation of Exhibits. Unless otherwise stated in this Agreement, exhibits, applications, or documents referenced in this Agreement shall be incorporated into this Agreement for all purposes. In the event of a conflict between any incorporated exhibit and this Agreement, the provisions of this Agreement shall govern and control.
- 10.15 Notices. Unless otherwise specifically required by a provision of this Agreement, any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the

other Party. Such notice shall be deemed to have been given when deposited in the United States Mail properly addressed to the intended recipient.

If to the Town :

If to Contractor:

Town Administrator Lyons Town Hall PO Box 49 432 5th Ave, Lyons, CO 80540	zTrip 1341 Sherman Dr. Longmont, CO 80501
With Copy to: Lyons Town Attorney KISSINGER & FELLMAN, P.C. PTARMIGAN PLACE, SUITE 900 3773 CHERRY CREEK NORTH DRIVE DENVER, COLORADO 80209	With Copy to:

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

11.0 ATTACHMENTS

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

Scope of Work (**Exhibit A**)

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

A. If this box is checked, this Agreement is a contract for professional services for the Town of Lyons and certain terms or provisions in the required Attachments

to this Agreement do not apply because this Agreement is not a construction contract. Terms and provisions in the Attachments setting forth requirements for the following do not apply to this Agreement:

- The Davis-Bacon Act, § 40 U.S.C. 3141 – 3148, as supplemented by U.S. Department of Labor regulations (29 CFR, Part 5); and
 - Any other term or provision applicable only to construction contracts.
- B. Provisions Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any provision is not inserted, or is not correctly inserted, then upon the application of either Party the Agreement shall forthwith be physically amended to make such insertion or correction.
- C. Agreement to Execute Other Required Documents. Contractor and all subcontractors, by entering into the Agreement, understand and agree that funding for the Project is provided under federal and/or state programs with specific contracting requirements. To the extent any such requirement is not otherwise set forth herein, Contractor agrees to execute such amendments or further agreements as may be necessary to ensure that the Town funding for the Work is provided
- D. Compliance with Laws. If the Agreement is funded in whole or in part with CDBG funds through the Town's Community Development Block Grant Program as administered by the Colorado Division of Local Government, Department of Local Affairs and/or with funds administered by the Division of Homeland Security and Emergency Management in the Department of Public Safety, then Contractor shall comply with those regulations and restrictions normally associated with federally-funded programs and any other requirements that the state may prescribe, whether or not herein recited. The Contractor shall comply with all applicable laws, ordinances and codes of the state and local government.

12.0 AUTHORITY

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

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

SIGNATURE PAGE FOLLOWS

THIS AGREEMENT is executed and made effective as provided above.

TOWN OF LYONS, COLORADO:

Approval by Town Board of Trustees

By: _____
Mayor or Mayor Pro Tem

Approval by Town Administrator

By: _____
Victoria Simonsen, Town Administrator

ATTEST:

Dolores Vasquez, Town Clerk

APPROVED AS TO FORM (*Excluding Exhibits*)

Not Required

For Town Attorney's Office

CONTRACTOR:

By: _____

Printed name: _____

Its: _____

STATE OF _____)
COUNTY OF _____) ss.

The foregoing Professional Services Agreement was acknowledged before me this ____ day of _____, 2022, by _____ as _____ of _____, a _____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

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

EXHIBIT A

SCOPE OF SERVICES

1. Contractor shall provide taxi services to provide transportation for the general public within the Town of Lyons to and from points in Boulder County, Colorado, in accordance with the terms of this Agreement and as more fully described in Section 2 below (the "Transportation Services"). The Town of Lyons ("Lyons") shall pay for these taxi trips by distributing vouchers within Lyons to the general public as described below. Passengers will then provide their vouchers to their taxi driver as payment, and the Contractor shall invoice the Town of Lyons for payment.
2. Contactor shall provide the following Transportation Services:
 - a. Travel between the Town of Lyons (within town limits) and the City of Boulder (city limits), in either direction, for trips beginning between 5:00 am and 7:00 pm, seven days per week.
 - b. Travel between the Town of Lyons (town limits) and the City of Longmont (city limits), in either direction, for trips beginning between 5:00 am and 7:00pm, seven days per week.
 - c. Vouchers are not valid for travel outside of the geographic and time limits stated above. Vouchers may state this exception.
 - d. If fixed route service during AM and PM peak hours is restored between Lyons and Boulder, vouchers may only be used for travel between Lyons (within town limits) and Boulder (city limits) between 8:30am and 4:00pm Monday-Fridays. In this event, weekend limits would remain as described above in Section 2a and 2b.
3. Contractor shall provide sufficient vehicles and drivers necessary to provide the Transportation Services described in Section 2 above.
 - a. Driver's shall maintain current licensure necessary to provide the Transportation Services
 - b. Vehicles shall be fully licensed and safety inspected and be equipped with the following amenities: full climate-control, computer dispatch. Each vehicle will be expertly maintained and detailed.
 - c. All vehicles and drivers will be designated as "Non-Smoking" as per the Colorado Clean Air Act.
 - d. Contractor shall maintain all necessary permits and certificates required by the Colorado Public Utilities Commission ("PUC")
4. Each voucher distributed as part of this program be printed with the following restrictions detailed on the voucher:
 - a. Vouchers may be used for travel between the Town of Lyons (within town limits) and the City of Boulder (city limits), in either direction, for trips beginning between 5:00 am and 7:00 pm, seven days per week.
 - b. Vouchers may be used for travel between the Town of Lyons (town limits) and the City of Longmont (city limits), in either direction, for trips beginning between 5:00am and 7:00pm, seven days per week.
 - c. If fixed route service during AM and PM peak hours is restored between Lyons and Boulder, vouchers may only be used for travel between Lyons (within town limits) and Boulder (city limits) between 8:30am and 4:00pm Monday-Fridays. In this event, weekend limits would remain as described above in Section 2a and 2b.
 - d. Vouchers are not valid for travel outside of the geographic and time limits stated above.
 - e. Vouchers cover a taxi fare up to \$45.00 per trip. If the fare for an individual trip is more than \$45.00, the passenger will need to cover any additional amount.
 - f. The vouchers shall have no monetary value until redeemed.

5. Each voucher distributed as part of this program contain blank fields for passenger name, redeemed amount, start location (Lyons, Boulder or Longmont), end location (Lyons, Boulder or Longmont) and trip time.
6. Lyons shall distribute these vouchers to Lyons area residents. Vouchers shall be distributed at the following locations: Lyons Town Hall, the Area Agency on Aging office at the Walt Self center, and the LEAF food pantry, and other locations as determined by the Town.
 - a. Lyons may determine additional criteria to guide distribution of the vouchers, which may include, but not limited to, prioritizing distribution based on need (income and/or transportation needs)
 - b. Prioritizing Lyons residents
 - c. Monthly limits on the number of vouchers per resident
7. At the end of each taxi trip paid for with a program voucher, the taxi driver shall record the passenger name, start location of the trip, end location of the trip, trip time and amount redeemed, based on the fare shown on the meter. For example, if a passenger used a voucher for an eligible ride that cost \$38.45, the driver would record \$38.45 as the amount redeemed. If a passenger used a voucher for an eligible ride that cost \$47.23, the driver would record \$45.00 as the amount redeemed (the maximum voucher fare).
8. Contractor will provide to Lyons a monthly ridership list with names, number of trips and cost per trip to the Town of Lyons (the "Data"). Client is permitted to share the Data with Boulder County and to use the Data in anyway necessary to manage its transportation needs. Data is subject to the open records requirements of Section 7 of the Professional Services Agreement between the Town of Lyons and WHC COS, LLC; WHC FTC, LLC d/b/a zTrip.

EXHIBIT B

IGA BETWEEN THE TOWN OF LYONS AND BOULDER COUNTY INTERGOVERNMENTAL AGREEMENT FOR TRANSPORTATION SERVICES BETWEEN THE TOWN OF LYONS AND BOULDER COUNTY

This Agreement is made this _____ day of _____, 2022, between the **Town of Lyons**, Colorado, a municipal corporation (hereinafter “Lyons”), and the **County of Boulder**, a public body corporate and politic (hereinafter “Boulder County”) (collectively the “Parties” or singularly the “Party”).

RECITALS

WHEREAS, the Colorado Constitution Article XIV, Section 18(2)(a), and C.R.S. §§ 29-1-201, et seq., provide that political subdivisions of the State of Colorado may contract with one another to provide any function, service, or facility lawfully authorized to each other.

WHEREAS, the Parties desire to support public transit ridership by residents of the Town of Lyons; and

WHEREAS, the Parties desire to provide public transit services for travel between Lyons and the City of Boulder (“Boulder”), and Lyons and the City of Longmont (“Longmont”); and

WHEREAS, the Parties desire to provide alternate transit options in light of the 2020 transit service cuts to the Regional Transportation District (hereinafter “RTD”)’ routes Y and YL which served the Town of Lyons; and

WHEREAS, the Parties have determined that significant economic and efficiency benefits will result for each Party through the contracting of taxi service by Lyons to serve travelers going to and from Lyons from Boulder and Longmont; and

WHEREAS, the Parties desire to continue providing an EcoPass to all residents of the Town of Lyons.

NOW, THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, receipt and adequacy of which is acknowledged, the Parties agree as follows:

1. Lyons shall contract with a third-party contractor or contractors for taxi services to provide transportation for the general public, in accordance with the terms of this Agreement and for the term of this Agreement. Lyons shall pay for these taxi trips by distributing vouchers within Lyons to the general public as described below. Passengers will then provide their vouchers to their taxi drivers as payment, and the taxi company shall invoice Lyons for payment.
 - a. Lyons shall select a third-party contractor(s) for taxi services of their choosing and require that contractor to possess insurance coverage per industry best practices, but shall impose the following requirements:
 - i. Contractor(s) shall maintain insurance liability at least meeting current minimums set forth by the Colorado Public Utilities Commission (PUC).
 - ii. Contractor shall be able to provide Americans with Disabilities Act as Amended (ADAA)-accessible vehicles when requested by a passenger.

- iii. If the Contractor(s) selected is(are) also a contracted transportation provider for the Regional Transportation District (RTD), Contractor shall also meet current RTD insurance minimums.
2. Lyons shall require that each voucher distributed as part of this program be printed with the following restrictions detailed on the vouchers:
 - a. Vouchers may be used for travel between Lyons (within town limits) and Boulder (city limits), in either direction, for trips beginning between 5:00am and 7:00pm, seven days per week.
 - b. Vouchers may be used for travel between Lyons (town limits) and Longmont (city limits), in either direction, for trips beginning between 5:00am and 7:00pm, seven days per week.
 - c. Vouchers are not valid for travel outside of the geographic and time limits stated above.
 - d. Vouchers cover a taxi fare up to \$45.00 per trip. If the fare for an individual trip is more than \$45.00, the passenger will need to cover any additional amount.
 - e. The vouchers shall have no monetary value until redeemed.
3. Upon restoration of fixed route transit service during AM and PM peak hours between Lyons and Boulder, the voucher time limits as described in Section 2a shall be replaced with the following:
 - a. Vouchers may only be used for travel between Lyons (within town limits) and Boulder (city limits), for trips beginning between 8:30am and 4:00pm Monday-Fridays, and for trips beginning between 5:00am and 7:00pm on Saturdays and Sundays.
4. Lyons shall require that each voucher distributed as part of this program contain blank fields for passenger name, redeemed amount, pick-up address (within Lyons, Boulder, or Longmont), drop-off address (within Lyons, Boulder, or Longmont), and pick-up time.
5. The Town of Lyons shall distribute vouchers to Lyons area residents, employees and visitors. Vouchers shall be distributed at the following locations: Lyons Town Hall, the Area Agency on Aging office at the Walt Self center, the LEAF food pantry, and other locations as determined by the Town.
6. The Town of Lyons may determine additional criteria to guide distribution of the vouchers, which may include, but are not limited to:
 - a. Prioritizing distribution based on need (income and/or transportation needs);
 - b. Prioritizing Lyons residents; and/or
 - c. Monthly limits on the number of vouchers per person.
7. Lyons shall require that, at the end of each taxi trip paid for with a program voucher, the taxi driver shall record the passenger name, start location of the trip, end location of the trip, trip time, and amount redeemed, based on the fare shown on the meter. For example, if a passenger used a voucher for an eligible ride that cost \$38.45, the driver would record \$38.45 as the amount redeemed. If a passenger used a voucher for an eligible ride that cost \$47.23, the driver would record \$45.00 as the amount redeemed (the maximum voucher fare).
8. Lyons shall keep a running list of how many vouchers have been distributed to each resident, which shall be made available to Boulder County upon request.

9. This Agreement shall commence on January 1, 2022 and shall continue in full force and effect until December 31, 2022, unless extended or sooner terminated as herein provided.
10. The Parties shall work collaboratively to periodically review the usage of vouchers and prevent misuse, such as usage outside of the geographic and time limits or usage above the maximum voucher amount.
11. Lyons shall contract with the Regional Transportation District (RTD), to provide an EcoPass program for all residents of the Town of Lyons. In 2022, this contract amount is anticipated to be \$14,530.00, the price that has been set by RTD. Lyons shall pay this amount to RTD prior to January 31, 2022.
12. Lyons shall administer the EcoPass program, including the issuing and printing of cards for Town of Lyons residents, maintaining the RTD EcoPass webportal, and, to the best of its ability, deactivating the EcoPasses of people who have moved who have moved out of the Town of Lyons. Lyons may charge residents up to \$50 each per year to pick up or maintain access to their EcoPass.
13. In consideration of the services provided by Lyons under this Agreement, and the mutual financial commitments herein made, Boulder County agrees to pay to the Town of Lyons an amount of up to \$22,530 for the year 2022. On a monthly basis, Lyons shall invoice Boulder County for an amount equal to 75.1% of the preceding month's direct expenses for the taxi voucher program. In no event shall Boulder County contribute to an amount greater than 75.1% of the total direct operating costs of the taxi voucher program for the calendar year 2022.
14. Each Party shall designate a representative, who shall be responsible for managing such Party's performance of the terms of this Agreement, and shall provide the other Party with written notice thereof, along with address, telephone, and email information. All notices to be provided under this Agreement shall be provided to such designated representatives. Any notice pursuant to this Agreement shall be hand-delivered or sent by certified mail, return receipt requested, and addressed to the designated representative. Any such notice shall be deemed given upon hand-delivery to the designated representative or to the representative's address three (3) days after mailing.
15. The Parties agree to cooperate in good faith in the development and implementation of any surveys or studies undertaken by the other Party to evaluate demand, usage, cost, effectiveness, efficiency, or any other factor relating to the success or performance of the taxi voucher program or the need for such service. However, such cooperation shall not require the expenditure of funds more than the specific amounts set forth in this Agreement unless approved and appropriated by the Parties.
16. In the event a Party has been declared in default, such defaulting Party shall be allowed notice thereof from the Party declaring default and a period of thirty (30) days within which to cure said default. In the event the default remains uncorrected, the Party declaring default may elect to terminate the Agreement and so notify the defaulting Party in writing. Any amounts due to the other Party shall be paid within fifteen (15) days of the date the notice of termination is received.
17. Liability of the Parties shall be apportioned as follows:

- a. Lyons shall be responsible for all claims, damages, liability and court awards, including costs, expenses, and attorney fees incurred, as a result of any action or omission of Lyons or its officers, employees, and agents, in connection with the performance of this Agreement.
 - b. Boulder County shall be responsible for all claims, damages, liability and court awards, including costs, expenses, and attorney fees incurred, as a result of any action or omission of Boulder County or its officers, employees, and agents, in connection with the performance of this Agreement.
 - c. Nothing in this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities, and limitations the Parties may have under the Colorado Governmental Immunity Act (§§ 24-10-101, C.R.S. *et seq.*) or any other defenses, immunities, or limitations of liability available to any Party by law.
18. This Agreement embodies the entire agreement of the Parties about the taxi voucher program. The Parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein.
 19. No changes, amendments or modifications of any of the terms or conditions of this Agreement shall be valid unless reduced to writing and signed by the Parties, except as provided herein.
 20. The laws of the State of Colorado shall be applied to the interpretation, execution and enforcement of this Agreement.
 21. Any provision rendered null and void by operation of law shall not invalidate the remainder of this Agreement to the extent that this Agreement is capable of execution.
 22. Either Party's failure to enforce any provision of this Agreement shall not in any way be construed as a waiver of any such provision or prevent that Party thereafter from enforcing each and every other provision of this Agreement.
 23. This Agreement does not and is not intended to confer any rights or remedies upon any entity or person other than the Parties.
 24. This Agreement may be executed in two counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Parties approve the use of electronic signatures for execution of this Agreement. Only the following two forms of electronic signatures shall be permitted to bind the Parties to this Contract: (1) Electronic or facsimile delivery of a fully executed copy of a signature page; (2) The image of the signature of an authorized signer inserted onto PDF format documents. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, C.R.S. §§ 24-71.3-101 to 121.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

TOWN OF LYONS, COLORADO
a municipal corporation

By: _____
Nicholas Angelo, Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

THE COUNTY OF BOULDER,
a body corporate and politic

By: _____ Dale Case, Director
Boulder County Community Planning & Permitting Dept.