



Lone Tree City Council Amended Agenda Tuesday, March 18, 2014

Meeting Location: City Council Meeting Room, Lone Tree Civic Center, 8527 Lone Tree Parkway.
Meeting Procedure: The Lone Tree City Council and staff will meet in a public Study Session at 4:30 p.m. At 6:00 p.m. and following the meeting, if necessary, the Council Meeting will adjourn and convene in Executive Session. If an Executive Session is not necessary, Council will recess for dinner. The Regular Session will be convened at 7:00 p.m. Study Sessions and Regular Sessions are open to the public, Executive Sessions are not. Comments from the public are welcome at these occasions: 1. Public Comment (brief comments on items not scheduled for a public hearing) 2. Public Hearings. Contact the City Clerk if special arrangements are needed to attend (at least 24 hours in advance).

4:30 pm Study Session Agenda

1. Review of New Accounting Format
 2. Approval of Contract for Lincoln Avenue/I-25 Bridge Surface Repairs (Agenda Item)
 3. Approval of Thoutt Bros Concrete Contractors Inc. Contract for 2014 Concrete Replacement (Agenda Item)
 4. Circulator Shuttle Update (Torie Brazitis)
 5. 2014/2015 Douglas County Art Encounters Proposal
 6. Commissioners' Choice Selection – Rita Derjue (FAI 4/1/14)
 7. Approval of Agreement w/Starkey Theatrix re: Big River Production (Agenda Item)
-

6:00pm Executive Session Agenda

1. Roll Call
 2. Executive Session
-

7:00pm Regular Session Agenda

3. Opening of Regular Meeting/Pledge of Allegiance
 4. Amendments to the Agenda and Adoption of the Agenda
 5. Conflict of Interest Inquiry
 6. Public Comment
 7. Announcements
 8. Consent Agenda
 - a. Minutes of the March 4, 2014 Regular Meeting
 - b. Claims for the Period of February 24 – March 10, 2014
 - c. Treasurer's Report for January 2014
 - d. Approval of Amendments to CAP #09-06, City Commissions, Boards and Committees Appointment and Procedure Policy
 9. Public Works
 - a. Approval of Contract for Lincoln Avenue/I-25 Bridge Surface Repairs
 - b. Approval of Thoutt Bros Concrete Contractors Inc. Contract for 2014 Concrete Replacement
 10. Administrative Matters
 - a. Approval of Agreement w/Starkey Theatrix re: Big River Production
 - b. **Ordinance 14-03, AMENDING THE MUNICIPAL CODE TO MODIFY THE DISTANCE RESTRICTION ON APPLICATIONS FOR CERTAIN NEW LIQUOR LICENSES, PURSUANT TO THE COLORADO LIQUOR CODE (First Reading)**
 11. Council Comments
 12. Adjournment
-

**MINUTES OF A REGULAR MEETING
OF THE COUNCIL OF THE
CITY OF LONE TREE
HELD
March 4, 2014**

A regular meeting of the Council of the City of Lone Tree was held on Tuesday, March 4, 2014, at 7:00 p.m., at the Lone Tree City Council Chambers located at 8527 Lone Tree Parkway, Lone Tree, Colorado 80124.

Attendance

In attendance were:

James D. Gunning, Mayor
Jacqueline Millet, Mayor Pro Tem
Harold Anderson, Council Member
Kim Monson, Council Member
Susan Squyer, Council Member

Also in attendance were:

Seth Hoffman, City Manager
Jennifer Pettinger, City Clerk
Chief Jeffery Streeter, Lone Tree Police Department
Steve Hebert, Community Development Director
Neil Rutledge, Assistant City Attorney, White, Bear and Ankele, P.C.
John Cotten, Public Works Director, TST, Inc.
Kristin Baumgartner, Finance Director

Call to Order

Mayor Gunning called the meeting to order at 7:04 p.m., and observed that a quorum was present.

Pledge of Allegiance

Mayor Gunning led those assembled in reciting the Pledge of Allegiance.

Amendments to the Agenda

There were no amendments to the agenda.

Conflict of Interest

There was no conflict of interest.

Public Comment

There was no public comment.

Announcements

Sophia Kenny, Youth Commissioner, gave Council an update on the Youth Commission.

Mayor Gunning announced upcoming events.

Consent Agenda

Mayor Gunning noted the following items on the Consent Agenda, which consisted of:

- § *Minutes of the February 18, 2014 Regular Meeting*
- § *Claims for the period of February 10-24, 2014*

Council Member Squyer moved, Mayor Pro Tem Millet seconded, to approve the Consent Agenda. The motion passed unanimously.

Community Development

Approval of Commonwealth Heights Multi Family SIP #SP13-52R

Jennifer Drybread, Senior Planner, introduced the item. Darryl Jones, Coventry Development, Lisa Evans, Arcadia Holdings, Rich Miller, architect, and John Olsen, landscape architect, spoke about the project and answered questions from Council.

Council Member Monson moved, Council Member Anderson, seconded, to approve the Commonwealth Heights Multi Family SIP #SP13-52R, subject to final approval by Public Works. The motion passed unanimously.

Adjournment

There being no further business, Mayor Gunning adjourned the meeting at 7:57 p.m.

Respectfully submitted,

Jennifer Pettinger, CMC, City Clerk



CITY OF LONE TREE
FINAL STAFF REPORT

To: Mayor Gunning and City Council

From: Steve Hebert, Director of Community Development
Jennifer Drybread, Senior Planner

Date: March 6, 2014

SUBJECT: RidgeGate Section 15, Filing 11, 2nd Amendment
Site Improvement Plan (Commonwealth Heights)
Project #SP13-52R

Owner:
Arcadia Holdings at RidgeGate, LLC
Lisa Evans
8390 E Crescent Parkway #650
Greenwood Village, CO 80111

Planning Commission Meeting Date:	February 11, 2014
City Council Meeting Date:	March 4, 2014

The City Council unanimously approved the Site Improvement Plan subject to final City of Lone Tree Public Works approval. The applicant will correct the parking table prior to final approval.

END



CITY OF LONE TREE
STAFF REPORT

TO: Mayor Gunning and City Council

FROM: Jennifer Pettinger, CMC, City Clerk

DATE: March 10, 2014

FOR: March 18, 2014 City Council Consent Agenda Item

SUBJECT: Approval of Amendments to CAP #09-06, City Commissions, Boards & Committees (CBC) Appointment and Procedures Policy

Summary

Staff had been directed to research alternate schedules for the Commissions, Boards & Committees (CBC) appointment process. Kristen Knoll, Youth Commission Liaison, has also requested terms to coincide with the school year, if possible. During the March 4th Study Session, City Council directed staff to make the proposed changes outlined below.

Staff is recommending changing the terms served for all CBCs, except the Youth Commission, to January 1-December 31. This schedule will have advertisement and application submittal during September/October, which will not conflict with budget meetings or summer vacations.

Staff is also recommending changing the terms served, for the Youth Commission, to September 1-August 31. This schedule will align with the school year and allow for the current Commissioners to participate in the summer special event.

Both schedules will not conflict with the election process, during even years, or the annual budget process.

Current Schedule:

Interview Committee Appointed: *last meeting of July*

Current Members Contacted (re: interest in reappointment): *July*

Advertisement: *July*

Application Submittal: *by August 31*

Interviews Conducted: *by September 30*

Appointments on City Council Agenda: *no later than the 2nd meeting in October*

Term dates: *November 1-October 31*

Suggested Schedule for all CBCs except Youth Commission:

Interview Committee Appointed: *last meeting of August*

Current Members Contacted (re: interest in reappointment): *August*

Advertisement: *September*

Application Submittal: *by September 30*

Interviews Conducted: *by October 30*

Appointments on City Council Agenda: *no later than the 1st meeting in December*

Term dates: *January 1-December 31*

Suggested Schedule for Youth Commission Vacancies:

Interview Committee Appointed: *last meeting of May*

Current Members Contacted (re: interest in reappointment): *May*

Advertisement: *May*

Application Submittal: *by June 30*

Interviews Conducted: *by July 31*

Appointments on City Council Agenda: *no later than the 2nd meeting in August*

Term dates: *September 1- August 31*

The proposed amendments would be effective on March 18, 2014. Once Council has approved the amendments, Staff will present resolutions amending any terms necessary.

Cost

No direct cost for this change.

Motion

I move to approve the amendments as presented to CAP #09-06.

Attachments

Proposed Amendments to CAP #09-06 (red-line)

Proposed Amendments to CAP #09-06 (final version)

**CITY COUNCIL ADOPTED POLICY
CITY OF LONE TREE**

SUBJECT: City Commissions, Boards and Committees Appointment and Procedure Policy

CAP#: 09-06

ISSUE DATE
December 15, 2009

EFFECTIVE DATE
March 18, 2014

INTENT:

The purpose of this policy is to standardize procedures for the selection, appointment, membership, and dismissal process for City Council appointed Commissions, Boards and Committees.

POLICY:

Members of the City Council have sought to standardize procedures among the various City Commissions, Boards and Committees (CBC). Several CBCs, including the Planning Commission, the Board of Adjustment, and the Board of Appeals were established by the City Charter, which sets forth many of their organizational procedures. However, these groups – and those others that do not appear in the Charter – have also created supplemental operational procedures.

City Council has been concerned that advertising and recruitment for each CBC has varied, and interested residents are not given proper notice about upcoming vacancies. The City Council desires standardization with procedures for membership, appointments, dismissal and code of conduct.

PROCEDURES:

- I. Committees, Boards and Commissions
 1. The guidelines contained in this policy shall apply to all Commissions, Boards and Committees (CBC) created by the City Charter or formed by resolution of the Lone Tree City Council:
 - a. Planning Commission
 - b. Arts Commission
 - c. Board of Adjustment
 - d. Board of Appeals
 - e. Citizens' Recreation Advisory Committee
 - f. Audit Committee
 - g. Youth Commission

2. All applicants must be residents of the City of Lone Tree.
3. A person serving on one CBC is not eligible to serve on another CBC simultaneously.

II. Appointments

1. No person shall serve more than two (2) consecutive full terms on the same CBC. An exception to this are members of the Youth Commission who shall not serve for more than one (1) full term, unless there is an insufficient pool of applicants. Current CBC members that wish to be reappointed and are in good standing, under unanimous consent of the City Council, may be reappointed for a second full term. Current CBC members who do not receive a unanimous consent for reappointment must complete an interview process for a second full term.

Good Standing - A member in good standing must maintain a good attendance record, be present throughout the entire meeting, contribute to the goals of the CBC, and represent the City of Lone Tree in a positive manner.

2. The terms of office of CBC members shall be three (3) years, unless the member is appointed to fill a vacancy for an unexpired term. An exception to this is the Youth Commission whose terms are for two years. Terms will be from January 1 – December 31, except for the Youth Commission which will be September 1 – August 31.
3. In the event that a CBC member in good standing is unable to complete a term, the member may reapply in the next appointment process.
4. A person appointed to fill a vacancy on a CBC that occurs prior to the scheduled expiration of the incumbent member's term (by reason of, for example but without limitation, resignation or illness) shall serve for the remainder of the incumbent member's term. For the purpose of reappointments, the term is not considered a full term.
5. Term limited members wishing to apply to a different CBC may apply during the next appointment process.
6. Term limited members shall wait a full term before seeking reappointment to the CBC he/she previously served on.
7. All CBC terms shall be staggered, with the terms of approximately one-third (1/3), and in the case of the Youth Commission approximately on-half (1/2), of the membership expiring each year, to ensure that, as much as possible, there shall be one (1) or more members with experience on each CBC.

III. Application, Interview Process and Terms – Youth Commission

1. Prior to advertising, all Youth Commission members whose term is expiring will be contacted in May on their intention to seek reappointment.
2. Vacancies without unanimous consent to reappoint, whether they result from a member resigning or term expiration, shall be advertised. Vacancies will be advertised to the community via news media, the City website and the City newsletter when possible. Advertising for vacancies will begin in May of each year after current CBC members have been contacted or on an as-needed basis.
3. Anyone interested in a CBC vacancy must submit a written application on a form prescribed by the City Manager to the City Manager's Office. Applications will be due to the City by June 30 of each year.
4. A subcommittee of two Council Members shall be appointed by a majority vote of City Council by May 31 to interview any applicants. Youth Commission Chair may request a meeting with the Council subcommittee prior to the interview process to share their vision and needs.
5. The subcommittee will interview the applicants and bring its recommendations to City Council for appointment by resolution of the City Council. Any City Council Member may independently interview any applicant. All interviews must be completed by July 31 of each year.
6. In the event of a vacancy within six (6) months of appointments being made, the City Council may utilize the list of applicants from the previous advertisement and interview process for the vacancy.
7. City Council will make appointments no later than the 2nd council meeting in August.

IV. Application, Interview Process and Terms – All Other Commissions, Boards and Committees

1. Prior to advertising, all CBC members (except Youth Commission) whose term is expiring will be contacted in August on their intention to seek reappointment.
2. Vacancies without unanimous consent to reappoint, whether they result from a member resigning or term expiration, shall be advertised. Vacancies will be advertised to the community via news media, the City website and the City

newsletter when possible. Advertising for vacancies will begin no later than September 1 of each year after current CBC members (except Youth Commission) have been contacted or on an as-needed basis.

3. Anyone interested in a CBC (except Youth Commission) vacancy must submit a written application on a form prescribed by the City Manager to the City Manager's Office. Applications will be due to the City by September 30 of each year.
4. A subcommittee of two Council Members shall be appointed by a majority vote of City Council by August 31 to interview any applicants. CBC Chairs (except Youth Commission) may request a meeting with the Council subcommittee prior to the interview process to share their CBC vision and needs.
5. The subcommittee will interview the applicants and bring its recommendations to City Council for appointment by resolution of the City Council. Any City Council Member may independently interview any applicant. All interviews must be completed by October 31 of each year.
6. In the event of a vacancy within six (6) months of appointments being made, the City Council may utilize the list of applicants from the previous advertisement and interview process for the vacancy.
7. City Council will make appointments no later than the 1st council meeting in December.

V. Member Conduct and Removal

1. CBC members are expected to conduct themselves at CBC meetings in a fair, courteous and understanding manner. Members of all CBCs serve at the pleasure of the City Council and are subject to removal by a majority vote and at the discretion of the City Council. Reasons for removal may include, but are not limited to:
 - a. Excessive absences from CBC meetings. It is expected that CBC members do not incur absences of more than 20% of regularly scheduled meetings in a 12 month period. Member absences in excess of 20% must be reported to the City Council by the Chair at the time it occurs.
 - b. Non-performance or other misconduct.
 - c. Conviction of any felony will result in the member's immediate dismissal.
2. The City staff shall maintain an attendance matrix of all CBCs, which will be made available for Council's review in August of each year.

3. Members are required to contact the CBC Chair 24 hours prior to any meeting at which they expect to be absent or late. At the discretion of the Chair and Vice Chair/Secretary, a member can be considered absent if not present for the entire meeting.
4. A CBC member who has a personal or private interest in any matter proposed or pending before the CBC shall disclose such interest to the CBC, shall not vote on the matter, and shall refrain from attempting to influence the decisions of the other members of the CBC in voting on the matter.

A CBC member having a personal interest in the outcome of the business of CBC, whether or not disclosed, can give the appearance of impropriety, hamper the objectivity of all members of CBC, and, if a member needed to recuse himself or herself from a vote due to a conflict, lessens the value of the member to the CBC. Consequently, CBC members must agree that neither they, nor members of their family, will personally profit, or otherwise reap a financial benefit, from the activities of the CBC to which they have been appointed. A member who has ongoing, reoccurring recusals may be asked to step down from a CBC.

A CBC member shall notify the staff liaison of any conflict of interest related to his or her service as an appointee as soon as practicable.

VI. Election of Chair and Vice Chair/Secretary

1. The election of a Chair and Vice Chair/Secretary shall be held at the first regular meeting after the new appointments are made each year. Nominations are made from the floor during the regular meeting and the election shall be held thereafter. The CBC member receiving a majority of the votes of those members present shall be declared elected and shall have a term of one year. Vacancies in the Chair or Vice Chair/Secretary position shall be filled immediately by regular election procedures. No member of a CBC shall hold the same office for more than two consecutive years.

VII. Chair and Vice Chair/Secretary Duties and Expectations

1. The Chair shall preside at all meetings and will have the duties normally conferred by parliamentary procedure on the Chair.
2. The Vice Chair/Secretary shall act for the Chair in the Chair's absence.
3. The Chair and Vice Chair/Secretary shall attend an annual orientation meeting with the City Council.

4. The Chair and Vice Chair/Secretary shall attend an annual Robert's Rules of Order training meeting.
5. The Chair and Vice Chair/Secretary shall utilize the Robert's Rules of Order principles at all meetings.
6. The Chair shall be prepared at meetings and have general knowledge of each item on the agenda.
7. The Chair shall facilitate open and fair discussions at all meetings.
8. The Chair shall work with the Staff Liaison in developing the meeting agenda.
9. The Chair shall report member absences in excess of 20% to the City Council at the time it occurs.
10. The Chair shall annually present a budget priorities report to the City Council.
11. The Chair shall serve as official representative of the CBC.

VIII. Operations of Commissions, Boards and Committees

1. Each CBC (excluding the Audit Committee) shall present a semi-annual report to the City Council. The report may be in the form of a written report.
2. A quorum shall consist of a majority of the members.
3. All CBC meetings shall be open to the public in accordance with the State of Colorado Open Meetings Act, C.R.S. § 24-6-401, *et seq.* CBCs must comply with the open meetings statutes and may not make decisions via e-mail or other private means. Notices of CBC meetings are publicly posted.
4. Parliamentary procedure in CBC meetings shall be governed by Robert's Rules of Order, as amended from time-to-time.
5. Minutes are required for all regular and special meetings of the CBCs. The CBC shall maintain minutes which adequately and appropriately reflect the CBC's consideration and actions. Minutes shall be taken at each CBC meeting and approved at the following meeting. The Chair will review the minutes prior to distribution to the members. The approved minutes shall be available at the City Offices for public review during normal business hours. All CBC minutes shall be posted on the City's website.
6. The CBC operating and fiscal year shall correspond to the calendar year.

7. The City Manager will assign staff members to act as liaisons to each CBC. The staff liaison will assist with preparation of agenda packets, meeting minutes, and advise on matters of City policy and procedures.

James D. Gunning
Mayor

Attest: Jennifer Pettinger
City Clerk

**CITY COUNCIL ADOPTED POLICY
CITY OF LONE TREE**

SUBJECT: City Commissions, Boards and Committees Appointment and Procedure Policy

CAP#: 09-06

ISSUE DATE

December 15, 2009

EFFECTIVE DATE

March 18, 2014

Deleted: July 19, 2011

INTENT:

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 - g. Youth Commission

Adopted on July 3, 2007 CAP# 07-01A
Revised and Adopted December 15, 2009 as CAP # 09-06
Amended on July 19, 2011, March 18, 2014

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Comment [JP2]: Previously July

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Comment [JP3]: Previously August 31

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Comment [JP4]: Previously July

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Comment [JP5]: Previously September 30

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| VI. Election of Chair and Vice Chair/Secretary

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3. The Chair and Vice Chair/Secretary shall attend an annual orientation meeting with the City Council.

4. The Chair and Vice Chair/Secretary shall attend an annual Robert's Rules of Order training meeting.
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11. The Chair shall serve as official representative of the CBC.

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5. Minutes are required for all regular and special meetings of the CBCs. The CBC shall maintain minutes which adequately and appropriately reflect the CBC's consideration and actions. Minutes shall be taken at each CBC meeting and approved at the following meeting. The Chair will review the minutes prior to distribution to the members. The approved minutes shall be available at the City Offices for public review during normal business hours. All CBC minutes shall be posted on the City's website.
6. The CBC operating and fiscal year shall correspond to the calendar year.

7. The City Manager will assign staff members to act as liaisons to each CBC. The staff liaison will assist with preparation of agenda packets, meeting minutes, and advise on matters of City policy and procedures.

James D. Gunning
Mayor

Attest: Jennifer Pettinger
City Clerk



CITY OF LONE TREE
STAFF REPORT

TO: Mayor Gunning and City Council

FROM: John P. Cotten, P.E.

DATE: March 12, 2014

FOR: March 18, 2014 Council Meeting

SUBJECT: Approval of Contract for Lincoln Avenue/I-25 Bridge Surface Repairs

Summary

The attached design services contract from Wilson & Company is for the 2nd phase of repairs to the surface and interfaces at the bridge over Lincoln Avenue over I-25.

The Agreement includes design services, assistance in obtaining CDOT concurrence, bidding assistance and construction assistance services.

Cost

The contract amount is \$24,000.00 for construction documents, CDOT approval and construction services

Suggested Motion or Recommended Action

I move that the City award the contract with Wilson & Company for engineering services related to Lincoln Avenue/I-25 Bridge Surface Repairs in the amount of \$24,000.00.

Background

Public Works requested a proposal from Wilson and Company for the 2nd phase final design plans principally to repair the interface between the Lincoln Avenue paving and the approach slabs on the I-25 bridge, generally known as the Lincoln 'bump'. Also included is replacement of the concrete barrier between the driving lanes and the sidewalk on the northwest side of the bridge, replacement of areas of broken concrete paving panels and repair of portions of sidewalk on or adjacent to the bridge.

In 2013 the eastbound lanes of the bridge and adjacent sidewalk and barrier were repaired. This 2nd phase is for repair of the same items in the westbound lanes of the bridge.

In accordance with the IGA with CDOT regarding maintenance of Lincoln Avenue within the I-25 right-of-way, these items are the responsibility of the City. This work was included in the 2014 capital budget for Lincoln Avenue panel replacement.

OWNER-ENGINEER AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 20____, by and between the City of Lone Tree, Lone Tree, Colorado (hereafter "Owner"), and Wilson & Company, Inc., Engineers & Architects (hereafter "Engineer"), to perform professional engineering services as described herein. Therefore, for valuable consideration as set forth herein, the Owner and Engineer agree as set forth below.

PROJECT: Lincoln Avenue pavement repairs at I-25 Interchange.

ENGINEER'S SCOPE OF SERVICES: (hereafter referred to as "Services") are generally described as follows, as more fully set out in Engineer's Proposal dated February 28, 2014, attached hereto as **Exhibit C** and incorporated herein by reference:

The existing Lincoln Avenue Bridge over Interstate 25, Colorado Department of Transportation (CDOT) structure number F-17-JM, was designed in 1988, with construction concluding on, or about February 1, 1991 (based on as-constructed documents provided by CDOT). In the 20 years since construction, the bridge approach slabs, expansion joint, bridge rail, sidewalks, and roadway approach pavement have deteriorated and broken apart to some extent because of the transition between the roadway and the bridge, requiring frequent maintenance from the City of Lone Tree. The eastbound side of Lincoln was completed in 2013. For the westbound side of Lincoln Avenue, the scope of services in Exhibit C provides engineering design and preparation of construction plan documents to replace the bridge expansion joint and bridge rail, roadway approaches, and portions of the sidewalk. The design and construction is intended to provide a more durable solution to the transition between the roadway and bridge, reducing the frequent maintenance required by the City.

Terms and Conditions

ARTICLE 1
GENERAL

1.1 Owner employs Engineer as an independent contractor, to perform the Services described herein. The Engineer agrees to accept responsibility for the proper conduct of Engineer's Services performed under this Agreement, whether performed by Engineer's employees or sub-consultants. Engineer shall not subcontract any portion of its work without prior written approval of Owner. Owner approves of the sub-consultants identified in the attached **Exhibit A**.

1.2 To the extent required by law, all final documents prepared by Engineer or its sub-consultants shall be sealed by a professional licensed in the Project state.

1.3 The Engineer shall designate a representative authorized to act in the Engineer's behalf. Engineer reserves the right to change representatives as necessary due to availability.

1.4 The Engineer shall attend necessary meetings with Owner related to the Services. Engineer's base

fee includes 4 such meetings, not to exceed 2 hours each. Meetings in excess of those budgeted shall be Additional Services.

1.5 The Engineer shall recommend to the Owner the obtaining of such investigations, surveys, tests, analyses and reports as may be necessary for the proper execution of the Engineer's Services.

1.6 If the Scope of Services requires Engineer to provide Opinions of Probable Construction Cost, Owner acknowledges that since the Engineer has no control over the cost of labor, material or equipment, or over Contractor's methods of determining prices, or over competitive bidding or market conditions, the opinions of construction costs provided for herein are to be made on the basis of Engineer's experience and qualifications and represent Engineer's reasonable judgment as a design professional familiar with the construction industry. Engineer cannot, and does not, guarantee that the bids or the project construction costs will not vary from the Opinions of Probable Construction Cost prepared by the Engineer. If Owner desires more accurate information on Project cost, it shall retain the services of a construction estimator.

1.7 The Engineer represents that it is authorized to practice engineering in the state in which the Project is located.

**ARTICLE 2
ENGINEER'S OBLIGATIONS**

2.1 Engineer agrees to perform its Services in accordance with the standard of care set out in Article 5.1. Unless otherwise provided herein, Engineer agrees to furnish all materials, supplies, tools, equipment, supervision, labor, drawings and anything else necessary to fully perform all of the Services described herein.

2.2 The Engineer shall (a) cooperate with the Owner and all other consultants or contractors whose work may relate to the Engineer's Services; and (b) specifically note and promptly advise the Owner of any interference with the Engineer's Services.

2.3 DESIGN PHASE

2.3.1 Based on the program provided by Owner, the Engineer shall prepare a Schematic Design for approval by the Owner, followed by Design Development Documents, for approval by Owner. These shall consist of drawings, specifications and other documents to fix and describe the Project, including materials, equipment, component systems and types of construction.

2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 When authorized by the Owner, the Engineer shall prepare from the Design Development Documents approved by the Owner final Drawings and Specifications setting forth in detail the requirements for the construction of the Project, for approval by the Owner.

2.4.2 The Engineer shall assist the Owner as necessary in connection with the Owner's responsibility for filing the documents concerning the Project required for the approval of governmental authorities having jurisdiction over the Project.

2.5 BIDDING OR NEGOTIATION PHASE

2.5.1 If required by the Owner, the Engineer shall assist the Owner in obtaining and evaluating bids or negotiated proposals, and in awarding and preparing contracts for construction.

2.5.2 The Engineer shall prepare Addenda Documents, interpret Bid Documents and assist the Owner as required with questions from bidders.

Engineer shall assist Owner in conducting a pre-bid conference.

2.6 CONSTRUCTION PHASE

2.6.1 The Construction Phase will commence with the award of the Contract for Construction and, together with the Engineer's obligation to provide Basic Services under this Agreement, will terminate when final payment to the Contractor is due or, in the absence of a final Certificate for Payment or of such due date, sixty (60) days after the date Engineer certifies as Substantial Completion of the Work, whichever occurs first.

2.6.2 Unless otherwise provided in this Agreement and incorporated in the Contract Documents, the Engineer shall assist the Owner in the Administration of the Contract for Construction as set forth below and the General Conditions of the Contract for Construction, which are subject to Engineer's approval and must be consistent with this Agreement.

2.6.3 The Engineer shall at all times have access to the Work wherever it is in preparation or progress. The Engineer shall visit the site at intervals appropriate to the stage of construction, or as set out in the Scope of Services, **Exhibit C**, to become generally familiar with the progress and quality of the Work and to determine in general if such Work is proceeding in accordance with the Contract Documents. However, the Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of such on-site observations, the Engineer shall keep the Owner informed of the progress and quality of the Work and shall endeavor to guard the Owner against defects and deficiencies in such Work of the Contractor.

2.6.4 The Engineer shall not have control or charge of and shall not be responsible for, construction means, methods, techniques, sequences or procedures, for safety precautions and programs in connection with the Work, for the acts or omissions of the Contractor, Subcontractors or any other persons performing any of the Work, or for the failure of any of them to carry out the Work in accordance with the Contract Documents. Nothing in this Agreement shall be construed as making Engineer a Controlling Employer as defined by OSHA for purposes of site safety.

2.6.5 The Engineer, based on observations at the site and on evaluations of the Contractor's Applications for Payment, shall assist the Owner in

determining the amounts owing to the Contractor and shall certify such amounts to the Owner. Such certification shall not expand Engineer's duties and is made for the sole benefit of the Owner and is not intended to be relied upon by others.

2.6.6 Certification by the Engineer to the Owner of an amount owing to the Contractor shall constitute a representation by the Engineer to the Owner that, based on the Engineer's observations at the site and the data comprising the Contractor's Application for Payment, the Work has progressed to the point indicated; that to the best of the Engineer's knowledge, information and belief, the quality of such Work is in accordance with the Contract Documents (subject to an evaluation of such Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated by the Engineer); and that the Contractor is entitled to payment in the amount certified.

2.6.7 Upon written request of the Owner, the Engineer shall furnish to the Owner, with reasonable promptness, written interpretations of the Contract Documents prepared by the Engineer.

2.6.8 The Engineer shall render written recommendations, within reasonable time, on all claims, disputes and other matters in question between the Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents. The Engineer shall not be liable for decisions made in good faith in this role of neutral.

2.6.9 The Engineer shall assist the Owner in determining whether the Owner shall reject Work which does not conform to the Contract Documents or whether special inspection or testing is required.

2.6.10 The Engineer shall review and approve, or take appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.6.11 The Engineer shall assist the Owner in preparing Change Orders for the Owner's approval and execution in accordance with the Contract Documents. The Engineer shall recommend to the Owner minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.

2.6.12 The Engineer shall assist the Owner in conducting one (1) inspection to determine the date of Substantial Completion and one (1) inspection to determine the date of Final Completion and shall review and approve, or take other appropriate action on, the Contractor's list of items to be completed or corrected and shall forward the list to the Owner for final disposition.

2.6.13 The Engineer shall assist the Owner in receiving and forwarding to the Owner for the Owner's review written warranties and related documents required by the Contract Documents and assembled by the Contractor. The Engineer shall issue to the Owner a final certificate in writing with respect to final payment.

2.7 TIME

2.7.1 The Engineer shall commence its Services within five (5) working days of written Notice to Proceed from the Owner and if such Services are interrupted for any reason, the Engineer shall resume such Services within five (5) working days from the Owner's notice to do so.

2.7.2 The Engineer shall perform Basic and Additional Services as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Upon request of the Owner, the Engineer shall submit, for the Owner's approval, a schedule for the performance of the Engineer's services which shall be adjusted as required as the Project proceeds, and which shall include allowances for periods of time required for the Owner's and the Owner's review and approval of submissions and for approvals of authorities having jurisdiction over the Project.

2.7.3 The Engineer will exercise due diligence in the performance of its professional services, but due to the nature of the work, the Engineer cannot guarantee a specific timetable for completion of the Contractor's Work. The Owner waives any right to make any claims against the Engineer for any damages or expenses claims as a result of delays in the progress of the Work so long as due diligence

has been exercised by the Engineer in accordance with Paragraph 5.1, below.

**ARTICLE 3
OWNER'S OBLIGATIONS**

3.1 The Owner shall designate a representative authorized to act in the Owner's behalf. Owner reserves the right to change representatives as necessary due to availability.

3.2 The Owner shall provide the Engineer with a program outlining the scope of the Project, the budget and the schedule.

3.3 The Owner shall provide timely input and responses to Engineer with regard to approvals of designs or other inquiries. If the Owner detects any error or omission in Engineer's designs or documents, Owner shall give prompt notice to Engineer of same so that it may be corrected in a timely manner.

3.4 The Owner shall, at the written request of the Engineer, prior to commencement of Engineer's services and thereafter, furnish to the Engineer reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Engineer's services. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Engineer.

3.5 If the Owner requires that any assembly, system, product item of material, or design be included in the Project without (or against) the Engineer's recommendation, or if the Owner selects a contractor, subcontractor, or material fabricator, or any assembly, system, product or item of material, without (or against) the Engineer's recommendation, the Engineer shall have no responsibility for such decision by the Owner or for the performance of such owner-specified items or persons, nor shall the Engineer be required to issue any opinion or certificate with respect to such items or the work of such persons. To the extent permitted by law, the Owner shall indemnify and hold the Engineer harmless from all claims, damages, loss and expense, including reasonable attorney's fees and defense costs incurred as a result of any such decision by the Owner.

3.6 In the event that the Owner furnishes the Engineer with documents showing existing

conditions, or prior projects or designs for the Engineer's use in connection with the Project, the Owner represents to the Engineer that with regard to all such documents and designs, including the Architectural Works depicted therein, whether in hard copy or on computer disk format (hereafter collectively referred to as the "documents"), the Owner is the true and legal owner, licensee or assignee of the copyrights in and to all such documents and grants Engineer a royalty-free license to copy such documents. Owner recognizes that the use of such documents by Engineer will be at Owner's sole risk and without any liability, risk or legal exposure to the Engineer, and Owner therefore agrees that, to the fullest extent permitted by law, the Owner will indemnify, defend and hold harmless the Engineer, its subconsultants, and their respective officers, directors, employees and agents from and against any claim of copyright infringement, trademark infringement, unfair competition or other related claim or cause of action brought or asserted by any person or entity claiming to be the lawful owner, assignee or author of such documents, or claiming some other right that has allegedly been violated by the Engineer's use of these furnished documents on this Project.

**ARTICLE 4
PAYMENT**

~~**4.1 LUMP SUM.** If a lump sum, Owner agrees to pay to the Engineer for the performance of the Engineer's Work on a Lump Sum basis the sum of: \$ _____.~~

~~Such amount shall include all Services necessary to fulfill Engineer's scope of work. The Lump Sum shall include reimbursable expenses described in Paragraph 4.3 unless otherwise stated herein.~~

4.2 OTHER. Where the basis of compensation to Engineer is cost of work plus fee, hourly rates or other method, such terms shall be set forth in **Exhibit C**, attached hereto.

4.3 REIMBURSABLE EXPENSES. Reimbursable Expenses include expenses incurred by the Engineer in the interest of the Project, as follows.

4.3.1 Expenses of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; long-distance communications; and fees paid for securing approvals of authorities having jurisdiction over the Project.

4.3.2 Expense of reproductions, postage and handling of drawings, specifications, reports and other documents.

4.3.3 Expense of renderings, models and mock-ups requested by the Owner.

4.3.4 Expense of additional insurance coverage or limits, including professional liability insurance, in excess of the requirements of Article 8.

4.3.5 Reimbursable expenses shall be paid at the direct cost of expenses incurred by the Engineer plus a mark-up of 10%.

4.4 Lien Waivers, in a form acceptable to Engineer, shall be furnished if requested by Owner after receipt of each progress payment.

4.5 Applications for monthly progress payments shall be submitted to Owner in writing and shall state the amount of the Engineer's Services that has been performed and expenses incurred during the applicable pay period. Such Applications for Payment shall be submitted to the Owner on or before the 10th day of each month.

4.6 Payments to the Engineer shall be made within thirty (30) days after receipt by the Owner of the Application for Payment. Amounts due and not paid shall bear interest at the rate of 1.5% per month or the highest legal rate, whichever is less. Engineer shall be entitled to its attorney's fees and costs in any action to recover amounts due and unpaid.

**ARTICLE 5
STANDARD OF CARE**

5.1 Engineer will exercise reasonable skill, care, and diligence in the performance of its services and will carry out its responsibilities in accordance with customarily accepted professional engineering practices in Engineer's community.

5.2 The Engineer agrees to comply with all federal, state and local laws, ordinances and regulations applicable to the Engineer's Services and the Project, in effect at the time such Services are rendered.

**ARTICLE 6
ADDITIONAL SERVICES**

6.1 If Engineer is requested to perform services not covered by the Scope of Services under this Agreement, then the Contract Amount shall be adjusted and compensation shall be computed in

accordance with Engineer's Hourly Rate Schedule, **Exhibit B**, attached; or by lump sum as agreed by the parties.

6.1.2 If authorized in advance by the Owner, expense of overtime work, requiring higher than regular rates, shall be paid as Additional Services.

6.1.3 The following shall constitute Additional Services, which the Owner may assess to Contractor by a deductive Change Order. However, Engineer looks to Owner for payment, not to Contractor for the following:

1. Review of a Contractor's submittal out of sequence from the submittal schedule agreed to by the parties;
2. Responses to the Contractor's requests for information (RFI) where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
3. Evaluation of substitutions proposed by the Contractor and making subsequent revisions to the Contract Documents resulting therefrom;
4. Repeated shop drawing reviews of the same submittal, after the initial review and one (1) resubmittal (e.g. "Revise and Re-submit");
5. Site visits beyond the number of regularly scheduled site visits that the Engineer has contracted for when such site visits are due to Contractor defects in Work or failure to meet the schedule;
6. Substantial completion inspections beyond one (1) initial inspection;
7. Final completion inspections beyond one (1) initial inspection.

**ARTICLE 7
USE OF ENGINEER'S DOCUMENTS**

7.1 The Engineer shall be deemed the author of all documents and designs created and prepared by the Engineer and shall retain all common law, statutory and other reserved rights, including the copyrights. The Owner shall be permitted to retain copies, including reproducible copies, of the

Engineer's drawings, specifications and other documents for information and reference.

7.2 The Owner shall not use, modify or assign to others the Engineer's documents or designs on other projects without the Engineer's express written consent.

**ARTICLE 8
INSURANCE**

8.1 Engineer shall procure and maintain in force, Worker's Compensation Insurance, Comprehensive General Liability Insurance and Professional Liability Insurance. ~~Owner agrees to look to the proceeds of insurance to satisfy claims against the Engineer and Owner will not hold payment due to the Engineer for claims that are covered by Engineer's insurance.~~ The Engineer's insurance shall be written with limits of liability not less than those set forth below:

<u>TYPE</u>	<u>LIMITS</u>
Workers Compensation Comprehensive	Statutory Amount
Professional Liability	\$1,000,000. Per Claim and Annual Aggregate
General Liability:	
Bodily Injury (including death)	
Each Occurrence	\$1,000,000.
Aggregate	\$1,000,000.
Property Damage	
Each Occurrence	\$1,000,000.
Comprehensive Automobile Liability:	
Bodily Injury (including death)	
Each Occurrence	\$1,000,000.

8.2 The Engineer shall maintain in effect all insurance coverage required under this Agreement at the Engineer's sole expense. All insurance policies shall contain a provision that the coverages afforded thereunder shall not be cancelled until at least thirty (30) days prior written notice has been given to the Owner.

**ARTICLE 9
INDEMNITY**

9.1 To the fullest extent permitted by law, the Engineer shall indemnify and hold harmless the Owner from and against all damages, losses and expenses, including but not limited to reasonable

attorney's fees, but only to the extent caused by any negligent act, error or omission of the Engineer or anyone directly or indirectly employed by the Engineer or anyone for whose acts the Engineer may be liable. This obligation is limited by Paragraph 12.1, below.

9.2 Under no circumstances shall Engineer be required to defend or indemnify the Owner for claims caused or alleged to be caused in whole or in part by the acts or omissions of the Owner or other third parties for whom the Engineer is not responsible.

9.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Engineer and the its sub-consultants from and against all damages, losses and expenses, including but not limited to reasonable attorney's fees, but only to the extent caused by any negligent act, error or omission of the Owner or anyone directly or indirectly employed by the Owner or anyone for whose acts the Owner may be liable.

**ARTICLE 10
DISPUTE RESOLUTION**

10.1 In the event a dispute shall arise between the parties to this Agreement, then as a condition precedent to any legal action by either party, the parties agree to participate in at least one session of mediation, as needed, in an effort to resolve the dispute. The parties agree to split the mediator's fees equally. The mediation shall be administered by a mutually agreeable mediation service and shall be held in Douglas County, Colorado, unless another location is mutually agreed upon.

**ARTICLE 11
CONTRACT INTERPRETATION**

11.1 This Agreement shall be governed by the law of the state of Colorado.

11.2 The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The invalid provision shall be deemed stricken and the remainder of this Agreement shall remain in full force and effect.

11.3 This Agreement is solely for the benefit of the parties hereto and represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, proposals, bids, or agreements, either written or oral.

11.4 No modification or amendment of any of the terms and conditions of this Agreement shall be valid unless agreed to in writing and signed by both parties.

ARTICLE 12
LIMITATION OF LIABILITY

12.1 To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer, its officers, directors, employees, agents, and sub-consultants, and any of them, to Owner and anyone claiming by, through or under Owner, for any and all claims, losses, liabilities, costs or damages whatsoever arising out of, resulting from or in any way related to the Project or this Agreement from any cause, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, or warranty (express or implied) of Engineer, its officers, directors, employees, agents or sub-consultants or any of them, shall not exceed the total compensation actually received by Engineer from Owner under this Agreement, or the sum of \$70,000.00, whichever is greater. The Owner agrees that specific consideration has been given by the Engineer for this limitation and that it is deemed adequate.

ARTICLE 13
ADDITIONAL TERMS

TERMINATION BY OWNER FOR CONVENIENCE

1. Owner may terminate the Agreement at any time without cause, and in Owner's sole and absolute discretion. Such termination may be in whole, or in part. Any such termination shall be effected by delivery of a written Notice of Termination to Engineer specifying the extent to which performance under the Agreement is terminated and the date upon which termination becomes effective.

2. After receipt of a Notice of Termination, and except as otherwise directed by Owner, Engineer shall:

- a. Stop work under the Agreement on the date and to the extent specified in the Notice of Termination.
- b. Place no further orders or subcontracts for materials or services except as necessary to complete the portion of the services which are not terminated.
- c. Terminate all orders and subcontracts to the extent that they relate to the performance of the services terminated by the Notice of Termination. Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of Owner to the extent it may require. Its approval or ratification shall be final for all purposes of this clause.
- e. Transfer to Owner, and deliver, at the times and to the extent, if any, directed by Owner the completed or partially completed copies, including reproducible copies, of Engineer's documents, plans, drawings, information, and other property for Owner's information, reference and use in connection with the Project, as specified under Section 3.1.

3. Complete performance of such part of the services as shall not have been terminated by the Notice of Termination.
4. In case of such termination for Owner's convenience, Engineer shall be entitled to receive payment for services performed, reimbursables and expenses actually incurred.

PROHIBITION AGAINST EMPLOYING ILLEGAL ALIENS

Engineer hereby states that it does not knowingly employ or contract with illegal aliens and that Engineer will participate in the E-Verify Program or the Colorado Department of Labor and Employment Program (as defined in Sec. 8-17.5-101, C.R.S.) in order to verify that it does not employ any illegal aliens. Engineer affirmatively makes the following declarations:

- A. Engineer shall not knowingly employ or contract with an illegal alien who will perform work under the public contract for services contemplated herein and will participate in the E-Verify Program or Colorado Department of Labor and Employment 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 contemplated herein.
- B. Engineer shall not knowingly enter into a contract with a Subcontractor that fails to certify to Engineer that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform the services contemplated herein.
- C. Engineer has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-Verify Program or the Colorado Department of Labor and Employment Program.
- D. Engineer is prohibited from using either the E-Verify Program or the Colorado Department of Labor and Employment Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.
- E. If Engineer obtains actual knowledge that a Subcontractor performing the services under this Agreement knowingly employs or contracts with an illegal alien, Engineer shall be required to:
 - i. Notify the Subcontractor and Owner within three (3) days that Engineer has actual knowledge that the Subcontractor is

employing or contracting with an illegal alien.

- ii. Terminate the contract with the Subcontractor if within three (3) days of receiving the notice required above the Subcontractor does not stop employing or contracting with the illegal alien; except that Engineer shall not terminate the contract with the Subcontractor 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.

F. Engineer shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that such Department is undertaking pursuant to the authority established in Sec. 8-17.5-102, C.R.S.

G. If Engineer violates a provision of the Agreement pursuant to Sec. 8-17.5-102, C.R.S., Owner may terminate the Agreement. If the Agreement is so terminated, Engineer shall be liable for actual and consequential damages to Owner.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the day and year first above written.

Owner: _____

By: _____

Title: _____

Engineer: Wilson & Company, Inc., Engineers & Architects

By: _____

Title: _____

**EXHIBIT A
Sub-Consultants**

Owner approves of the use of the following sub-consultants by Engineer:

<u>Name</u>	<u>Discipline</u>
Aztec Consulting	Survey

**EXHIBIT B
Hourly Rate Schedule**

The following rates are subject to increase on January 1 of each year based on Engineer's annual rate adjustments.

<u>Employee Title</u>	<u>Rate</u>
Project Manager	\$194.31
Senior Project Engineer	\$186.39
Senior Bridge Engineer	\$142.58
Bridge Engineer	\$79.04
Roadway/Traffic Engineer	\$91.30
CAD Technician	\$68.89
Administrative	\$126.25

EXHIBIT C
Scope of Services and Work Hour Estimate

INTRODUCTION

The existing Lincoln Avenue Bridge over Interstate 25, Colorado Department of Transportation (CDOT) structure number F-17-JM, was designed in 1988, with construction concluding on, or about February 1, 1991 (based on as-constructed documents provided by CDOT). In the 20 years since construction, the bridge approach slabs, expansion joint, bridge rail, sidewalks, and roadway approach pavement have deteriorated and broken apart to some extent because of the transition between the roadway and the bridge, requiring frequent maintenance from the City of Lone Tree. The eastbound side of Lincoln was completed in 2013. For the westbound side of Lincoln Avenue, the scope of services described below provides engineering design and preparation of construction plan documents to replace the bridge expansion joint, roadway approaches, and portions of the sidewalk and bridge rail. The design and construction is intended to provide a more durable solution to the transition between the roadway and bridge, reducing the frequent maintenance required by the City.

1. PROJECT MANAGEMENT AND MEETINGS

- a. **Project Management** - The Consultant will provide daily management and coordination of all activities included in this scope of work, including project setup, invoicing and status reports, documentation of all design activities, meetings, and technical communications required to complete the scope.
- b. **Meetings** - The Consultant will attend an estimated four (4) coordination and technical meetings as follows:
 - i. **Meeting 1** - Review scope and draft construction cost estimate.
 - ii. **Meeting 2** - Review of Final plans and construction cost estimate.
 - iii. **Meeting 3** - Review of 100% design plans and construction cost estimate.
 - iv. **Meeting 4** - Targeted technical meeting such as CDOT Staff Bridge.

2. SURVEY - COMPLETED

3. DESIGN AND CONSTRUCTION PLANS

- a. **Roadway, Traffic, and General Plans (22 sheets assumed)**
 - i. Title Sheet (1)
 - ii. Standard Plans List (1)
 - iii. General Notes (1)
 - iv. Summary of Quantities (1)
 - v. Survey Control Drawing (1)
 - vi. Removal Plan (2)
 - vii. Roadway Plan/Profile (2)
 - viii. GESC Plans (5)
 - ix. Traffic Control Plans (8)

b. **Structure Plans (9 sheets assumed)**

- i. General Notes (1)
- ii. Summary of Quantities (1)
- iii. General Layout (1)
- iv. Construction Layout (1)
- v. Sidewalk Details (1)
- vi. Bridge Rail (Type 4) (2)
- vii. Approach Slab Details (2)

4. CONSTRUCTION RELATED

- a. **Construction Cost Estimate and Bid Schedule** - The Consultant will prepare a construction cost estimate and update at each milestone. Estimate milestones will include a draft cost estimate, preliminary estimate at completion of preliminary plans, and final estimate prior to releasing the plans for advertisement.
- b. **Construction Specifications** - The Consultant will prepare construction specifications, based on Douglas County Specifications, to be incorporated into City of Lone Tree Advertisement and Contract Documents. It is assumed City Staff will be preparing Contract/Bid documents.
- c. **Construction Assistance** - The Consultant will assist with review of construction submittals and attendance at an estimated 4 field meetings.

5. QUALITY CONTROL

The Consultant will execute documented quality control reviews prior to each deliverable being released to the City of Lone Tree. Documented quality control is a mandated policy of Wilson & Company.

	Phase 2
Description:	Lincoln Ave./ I-25 Bridge Rehab Design
Project Manager:	John Cotten - City of Lone Tree
Resident Engineer:	

Date: February 28, 20134

Exhibit C - Workhour Estimate

Time-dependent work hours estimated below are based on a 3-month estimated schedule.

	Wilson & Company							Wilson & Company Total	
	Project Manager	Senior Project Engineer	Senior Bridge Engineer	Bridge Engineer	Roadway/Traffic Engineer	Bridge Technician	Roadway Technician		Admin
TOTAL HOURS	25	36		24	51	38	42	2	218

TASK DESCRIPTION

1. PROJECT MANAGEMENT and MEETINGS

	Task Comments / Assumptions									
a. Project Management and Coordination		4	4						2	10
b. Meetings										
Scoping Meeting	Completed									
Field Meeting	Completed									
Review Meetings	2 meetings assumed	4	4							8
Technical Meetings	1 meeting assumed	2	2							4
SUBTOTAL - PROJECT MANAGEMENT and MEETINGS		10	10						2	22

2. SURVEY (no hours shown. See subconsultant backup)

3. DESIGN and CONSTRUCTION PLANS

a. Roadway, Traffic, and General										
i	Title Sheet	1 sheet				1		1		2
ii	Standard Plans List	1 sheet								
iii	Typical Sections	1 sheet				2		1		3
iv	General Notes	2 sheets				1		1		2
v	Summary of Quantities	1 sheet				3		1		4
vi	Survey Control Drawing	Completed								
vii	Removal Plan	2 sheets, quantities				8		4		12
viii	Roadway Plan/profile	2 sheets, quantities				12		4		16
ix	GESC Plans	5 sheets (2 new sheets)				8		4		12
x	Traffic Control Plans	8 sheets, quantities		4		16		20		40
b. Bridge Plans										
i	General Notes	1 sheet	2					2		4
ii	Summary of Quantities	1 sheet, all quantity take offs			20			4		24
iii	General Layout (as-built)	1 sheet						1		1
iii	Construction Layout	1 sheet			4			8		12
iii	Sidewalk Details (as-built)	1 sheet						1		1
v.	Bridge Rail (Type 4)	2 sheets (add cover plate)						2		2
iv.	Approach Slab Details	2 sheets						14		14
SUBTOTAL - DESIGN AND CONSTRUCTION PLANS			2	4		24	51	32	36	149

	Phase 2
Description:	Lincoln Ave./ I-25 Bridge Rehab Design
Project Manager:	John Cotten - City of Lone Tree
Resident Engineer:	

Date: February 28, 20134

Exhibit C - Workhour Estimate

Time-dependent work hours estimated below are based on a 3-month estimated schedule.

TASK DESCRIPTION	Wilson & Company							Wilson & Company Total	
	Project Manager	Senior Project Engineer	Senior Bridge Engineer	Bridge Engineer	Roadway/Traffic Engineer	Bridge Technician	Roadway Technician		Admin
TOTAL HOURS	25	36		24	51	38	42	2	218

4. CONSTRUCTION RELATED

a. Construction Cost Estimate and Bid Schedule	2								2
b. Construction Specifications	2								2
c. Construction Assistance	4	4							8
SUBTOTAL - CONSTRUCTION COST ESTIMATE, SPECIFICATIONS, AND SCHEDULE	8	4							12

5. QUALITY CONTROL

a. Preliminary Drawings and Estimate		4				2	2		8
b. Final Drawings and Estimate	5	12				4	4		25
c. Specifications		2							2
SUBTOTAL - CONSTRUCTION COST ESTIMATE, SPECIFICATIONS, AND SCHEDULE	5	18				6	6		35

Profit = 0% (Agreed to at beginning of project)

Wilson Labor Costs	Estimated Hours	Hourly Rate	Estimated Cost
Project Manager - Tom Melton	25	\$ 194.31	\$ 4,857.74
Senior Project Engineer - Scott Waterman	36	\$ 186.39	\$ 6,710.20
Senior Bridge Engineer - Rob Borden		\$ 142.58	\$ -
Bridge Engineer - Bobby Orsa	24	\$ 79.04	\$ 1,896.94
Roadway/Traffic Engineer - Ray Cundiff	51	\$ 91.30	\$ 4,656.41
Bridge Technician - Dan Scahill	38	\$ 68.89	\$ 2,618.00
Roadway Technician - Dan Scahill	42	\$ 68.89	\$ 2,893.57
Marlo Grabstzul - Administrative Assistant	2	\$ 126.25	\$ 252.50
Labor Subtotal	218		\$ 23,885.37
Survey - (completed)			\$ -
Miscellaneous Expenses (Mileage, copies, printing, etc)			\$ 114.63
Permits (not needed)			\$ -
Estimated Task Order Costs			\$ 24,000.00



CITY OF LONE TREE
STAFF REPORT

TO: Mayor Gunning and City Council

FROM: John P. Cotten, P.E.

DATE: March 12, 2014

FOR: March 18, 2014 Council meeting

**SUBJECT: Approval of Thoutt Bros Concrete Contractors Inc.
Contract for the 2014 Concrete Replacement**

Summary

Staff recommends that Council approve the construction Contract (attached) with Thoutt Bros Concrete Contractors Inc. in the amount of \$292,313.62 for the City of Lone Tree 2014 Concrete Replacement project and authorize the Public Works Director to execute the Contract.

Cost

The total Contract cost is \$292,313.62.

Suggested Motion or Recommended Action

I move to approve the Contract with Thoutt Bros Concrete Contractors Inc. in the amount of \$292,313.362 for the City of Lone Tree 2014 Concrete Replacement and authorize the Public Works Director to execute the Contract documents.

Background

Bids were received and opened for the 2014 Concrete Replacement on March 11, 2014 and Thoutt Bros Concrete Contractors Inc. was the apparent low bidder. Staff checked references and the bonding company for Thoutt Bros Concrete Contractors Inc. and all feedback was positive. Thoutt Bros Concrete Contractors Inc. has completed several concrete projects in and around Lone Tree including last year's concrete replacement project.

CITY OF LONE TREE BID OPENING SUMMARY

Project:	2014 Concrete Replacement
Job #	061-390
Bid Location:	Lone Tree Public Works Department
Bid Date:	Tuesday, March 11, 2014
Bid Time:	2:00 PM

CONTRACTOR	Total Bid:	5% Bid Bond Signed & Submitted?	Addenda Acknowledged (1)?
Thoutt Brothers Concrete Contractors, Inc.	\$307,440.32	YES	YES
Concrete Express, Inc.	\$385,022.25	YES	YES
Nora Concrete Construction Corp.	\$411,704.00	YES	YES
ENGINEER'S ESTIMATE	\$390,466.60	N/A	N/A

Bids opened by: **Taylor C. Goertz, P.E., City of Lone Tree Public Works**

Witnessed by: **Richard Hood, EIT, City of Lone Tree Public Works**

BID TABULATION

Client: City of Lone Tree
Project: 2014 Concrete Replacement

Job No: 061-390

Date: 3/11/2014

<i>Bid Schedule A - 2014 Concrete Replacement #1 Kimmer Drive</i>				Thoutt Brothers Conc. Cont. Inc.		Concrete Express Inc.		Engineer's Opinion		Nora Concrete Const. Corp.	
No.	Item	Quantity	Unit	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost
1	Handicap Replacement (#1-11)	2,249	S.F.	\$8.89	\$19,993.61	\$12.50	\$28,112.50	\$11.32	\$25,458.68	\$11.00	\$24,739.00
2	Crossspan Replacement	1,278	S.F.	\$8.97	\$11,463.66	\$11.00	\$14,058.00	\$11.27	\$14,403.06	\$12.00	\$15,336.00
3	Remove/Replace Existing Concrete Slab for Bench	35	S.F.	\$10.70	\$374.50	\$7.50	\$262.50	\$12.00	\$420.00	\$50.00	\$1,750.00
4	Erosion Control	1	L.S.	\$600.00	\$600.00	\$600.00	\$600.00	\$1,200.00	\$1,200.00	\$1,500.00	\$1,500.00
5	Traffic Control	1	L.S.	\$1,500.00	\$1,500.00	\$2,100.00	\$2,100.00	\$3,600.00	\$3,600.00	\$5,000.00	\$5,000.00
6	Mobilization	1	L.S.	\$850.00	\$850.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,500.00	\$2,500.00
TOTAL #1 Kimmer Drive					\$34,781.77		\$47,133.00		\$47,081.74		\$50,825.00

<i>Bid Schedule B - 2014 Concrete Replacement #2 Teddy Lane</i>				Thoutt Brothers Conc. Cont. Inc.		Concrete Express Inc.		Engineer's Opinion		Nora Concrete Const. Corp.	
No.	Item	Quantity	Unit	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost
1	Handicap Replacement (#12-21)	2,100	S.F.	\$8.89	\$18,669.00	\$12.50	\$26,250.00	\$11.32	\$23,772.00	\$11.00	\$23,100.00
2	Crossspan Replacement	1,193	S.F.	\$8.97	\$10,701.21	\$11.00	\$13,123.00	\$11.27	\$13,445.11	\$12.00	\$14,316.00
3	Erosion Control	1	L.S.	\$600.00	\$600.00	\$600.00	\$600.00	\$1,100.00	\$1,100.00	\$1,200.00	\$1,200.00
4	Traffic Control	1	L.S.	\$1,500.00	\$1,500.00	\$2,600.00	\$2,600.00	\$3,300.00	\$3,300.00	\$4,550.00	\$4,550.00
5	Mobilization	1	L.S.	\$850.00	\$850.00	\$1,700.00	\$1,700.00	\$1,900.00	\$1,900.00	\$2,200.00	\$2,200.00
TOTAL #2 Teddy Lane					\$32,320.21		\$44,273.00		\$43,517.11		\$45,366.00

<i>Bid Schedule C - 2014 Concrete Replacement #3 Rosemont Avenue</i>				Thoutt Brothers Conc. Cont. Inc.		Concrete Express Inc.		Engineer's Opinion		Nora Concrete Const. Corp.	
No.	Item	Quantity	Unit	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost
1	Handicap Replacement (#22-26)	954	S.F.	\$8.89	\$8,481.06	\$12.50	\$11,925.00	\$11.32	\$10,799.28	\$11.00	\$10,494.00
2	Crossspan Replacement	412	S.F.	\$8.97	\$3,695.64	\$11.00	\$4,532.00	\$11.27	\$4,643.24	\$12.00	\$4,944.00
3	Erosion Control	1	L.S.	\$600.00	\$600.00	\$600.00	\$600.00	\$500.00	\$500.00	\$730.00	\$730.00
4	Traffic Control	1	L.S.	\$1,500.00	\$1,500.00	\$650.00	\$650.00	\$1,400.00	\$1,400.00	\$1,800.00	\$1,800.00
5	Mobilization	1	L.S.	\$850.00	\$850.00	\$700.00	\$700.00	\$800.00	\$800.00	\$900.00	\$900.00
TOTAL #3 Rosemont Avenue					\$15,126.70		\$18,407.00		\$18,142.52		\$18,868.00

<i>Bid Schedule D - 2014 Concrete Replacement #4 Longview Drive</i>				Thoutt Brothers Conc. Cont. Inc.		Concrete Express Inc.		Engineer's Opinion		Nora Concrete Const. Corp.	
No.	Item	Quantity	Unit	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost
1	Handicap Replacement (#27-32)	1,325	S.F.	\$8.89	\$11,779.25	\$12.50	\$16,562.50	\$11.32	\$14,999.00	\$11.00	\$14,575.00
2	Erosion Control	1	L.S.	\$600.00	\$600.00	\$600.00	\$600.00	\$400.00	\$400.00	\$730.00	\$730.00
3	Traffic Control	1	L.S.	\$1,500.00	\$1,500.00	\$650.00	\$650.00	\$1,300.00	\$1,300.00	\$1,350.00	\$1,350.00
4	Mobilization	1	L.S.	\$850.00	\$850.00	\$700.00	\$700.00	\$700.00	\$700.00	\$850.00	\$850.00
TOTAL #4 Longview Drive					\$14,729.25		\$18,512.50		\$17,399.00		\$17,505.00

<i>Bid Schedule E - 2014 Concrete Replacement #5 Carriage Club Drive</i>				Thoutt Brothers Conc. Cont. Inc.		Concrete Express Inc.		Engineer's Opinion		Nora Concrete Const. Corp.	
No.	Item	Quantity	Unit	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost
1	Handicap Replacement (#33-50)	5,419	S.F.	\$8.89	\$48,174.91	\$11.00	\$59,609.00	\$11.32	\$61,343.08	\$11.00	\$59,609.00
2	Crossspan Replacement	1,189	S.F.	\$8.97	\$10,665.33	\$11.00	\$13,079.00	\$11.27	\$13,400.03	\$12.00	\$14,268.00
3	Erosion Control	1	L.S.	\$600.00	\$600.00	\$600.00	\$600.00	\$2,200.00	\$2,200.00	\$2,500.00	\$2,500.00
4	Traffic Control	1	L.S.	\$1,500.00	\$1,500.00	\$2,600.00	\$2,600.00	\$6,700.00	\$6,700.00	\$7,550.00	\$7,550.00
5	Mobilization	1	L.S.	\$850.00	\$850.00	\$3,600.00	\$3,600.00	\$3,700.00	\$3,700.00	\$4,200.00	\$4,200.00
TOTAL #5 Carriage Club Drive					\$61,790.24		\$79,488.00		\$87,343.11		\$88,127.00

BID TABULATION

Client: City of Lone Tree
Project: 2014 Concrete Replacement

Job No: 061-390

Date: 3/11/2014

<i>Bid Schedule F - 2014 Concrete Replacement #6 Dunsford Drive</i>				Thoutt Brothers Conc. Cont. Inc.		Concrete Express Inc.		Engineer's Opinion		Nora Concrete Const. Corp.	
No.	Item	Quantity	Unit	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost
1	Handicap Replacement (#54-59)	1,330	E.A.	\$8.89	\$11,823.70	\$11.00	\$14,630.00	\$11.32	\$15,055.60	\$11.00	\$14,630.00
2	Crossspan Replacement	703	S.F.	\$8.97	\$6,305.91	\$11.00	\$7,733.00	\$11.27	\$7,922.81	\$12.00	\$8,436.00
3	Erosion Control	1	L.S.	\$600.00	\$600.00	\$600.00	\$600.00	\$700.00	\$700.00	\$700.00	\$700.00
4	Traffic Control	1	L.S.	\$1,500.00	\$1,500.00	\$1,300.00	\$1,300.00	\$2,100.00	\$2,100.00	\$2,550.00	\$2,550.00
5	Mobilization	1	L.S.	\$850.00	\$850.00	\$1,200.00	\$1,200.00	\$1,100.00	\$1,100.00	\$1,300.00	\$1,300.00
TOTAL #6 Dunsford Drive					\$21,079.61		\$25,463.00		\$26,878.41		\$27,616.00

<i>Bid Schedule G - 2014 Concrete Replacement #7 Lebrun Court</i>				Thoutt Brothers Conc. Cont. Inc.		Concrete Express Inc.		Engineer's Opinion		Nora Concrete Const. Corp.	
No.	Item	Quantity	Unit	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost
1	Handicap Replacement (#51-53)	632	E.A.	\$8.89	\$5,618.48	\$11.00	\$6,952.00	\$11.32	\$7,154.24	\$11.00	\$6,952.00
2	Erosion Control	1	L.S.	\$600.00	\$600.00	\$600.00	\$600.00	\$200.00	\$200.00	\$370.00	\$370.00
3	Traffic Control	1	L.S.	\$1,500.00	\$1,500.00	\$1,000.00	\$1,000.00	\$600.00	\$600.00	\$650.00	\$650.00
4	Mobilization	1	L.S.	\$850.00	\$850.00	\$430.00	\$430.00	\$400.00	\$400.00	\$400.00	\$400.00
TOTAL #7 Lebrun Court					\$8,568.48		\$8,982.00		\$8,354.24		\$8,372.00

<i>Bid Schedule H - 2014 Concrete Replacement #8 Heritage Hills Circle</i>				Thoutt Brothers Conc. Cont. Inc.		Concrete Express Inc.		Engineer's Opinion		Nora Concrete Const. Corp.	
No.	Item	Quantity	Unit	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost
1	Handicap Replacement (#60-65)	2,197	S.F.	\$8.89	\$19,531.33	\$11.75	\$25,814.75	\$11.32	\$24,870.04	\$11.00	\$24,167.00
2	Crossspan Replacement	1,309	S.F.	\$8.97	\$11,741.73	\$11.00	\$14,399.00	\$11.27	\$14,752.43	\$12.00	\$15,708.00
3	Erosion Control	1	L.S.	\$600.00	\$600.00	\$600.00	\$600.00	\$1,200.00	\$1,200.00	\$700.00	\$700.00
4	Traffic Control	1	L.S.	\$1,500.00	\$1,500.00	\$1,950.00	\$1,950.00	\$3,600.00	\$3,600.00	\$4,500.00	\$4,500.00
5	Mobilization	1	L.S.	\$850.00	\$850.00	\$1,700.00	\$1,700.00	\$2,000.00	\$2,000.00	\$2,300.00	\$2,300.00
TOTAL #8 Heritage Hills Circle					\$34,223.06		\$44,463.75		\$46,422.47		\$47,375.00

<i>Bid Schedule I - 2014 Concrete Replacement #9 Miscellaneous Concrete</i>				Thoutt Brothers Conc. Cont. Inc.		Concrete Express Inc.		Engineer's Opinion		Nora Concrete Const. Corp.	
No.	Item	Quantity	Unit	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost
1	Curb and Gutter	1,100	L.F.	\$23.80	\$26,180.00	\$26.00	\$28,600.00	\$26.20	\$28,820.00	\$31.50	\$34,650.00
2	Curb, Gutter, and Sidewalk	1,500	S.F.	\$6.02	\$9,030.00	\$7.30	\$10,950.00	\$6.64	\$9,960.00	\$7.00	\$10,500.00
3	Sidewalk (5' Wide)	500	S.F.	\$5.93	\$2,965.00	\$7.30	\$3,650.00	\$7.27	\$3,635.00	\$6.00	\$3,000.00
4	Crossspan	1,900	S.F.	\$9.84	\$18,696.00	\$11.00	\$20,900.00	\$11.27	\$21,413.00	\$12.00	\$22,800.00
5	Erosion Control	1	L.S.	\$600.00	\$600.00	\$2,400.00	\$2,400.00	\$1,500.00	\$1,500.00	\$1,000.00	\$1,000.00
6	Traffic Control	1	L.S.	\$1,500.00	\$1,500.00	\$3,800.00	\$3,800.00	\$3,000.00	\$3,000.00	\$5,500.00	\$5,500.00
7	Mobilization	1	L.S.	\$850.00	\$850.00	\$3,000.00	\$3,000.00	\$2,000.00	\$2,000.00	\$5,200.00	\$5,200.00
8	Force Account	1	L.S.	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00
TOTAL #9 Miscellaneous Concrete					\$84,821.00		\$98,300.00		\$95,328.00		\$107,650.00

Grand Total =					\$307,440.32		\$385,022.25		\$390,466.60		\$411,704.00
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NOTICE OF AWARD

Dated 3/19/2014

TO: Thoutt Brothers Concrete Construction, Inc.

PROJECT: **CITY OF LONE TREE 2014 CONCRETE REPLACEMENT**

ENGINEER's PROJ. NO. **061-390**

OWNER: **City of Lone Tree, Colorado**

You are hereby notified that your Bid dated March 11, 2014 for the above Contract has been considered. You are the apparent successful Bidder and have been awarded the contract for Bid Schedules A, B, D, E, F, G, H, AND I.

The Contract Price of your contract is Two Hundred Ninety Two Thousand Three Hundred Thirteen Dollars and Sixty Two Cents.

(\$292,313.62)

Four (4) copies of each of the proposed Contract Documents (except Drawings) accompany this Notice of Award. Three sets of the Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within ten (10) days of the date of this Notice of Award that is by March 29, 2014.

1. You must deliver to the OWNER four (4) fully executed counterparts of the Agreement including all of the Contract Documents.
2. You must deliver with the executed Agreement the Contract Security (Bonds) as specified in the Instructions to Bidders, General Conditions (paragraph 5.01) and Supplementary Conditions.

Failure to comply with these conditions within the time specified will entitle OWNER to consider your bid abandoned, to annul this Notice of Award and to declare your Bid Security forfeited.

Within ten (10) days after you comply with those conditions, OWNER will return to you two fully signed counterparts of the Agreement with the Contract Documents attached.

City of Lone Tree, Colorado

By: _____

Title: Public Works Director

AGREEMENT

THIS AGREEMENT is dated as of the _____ day of _____, in the year ____ by and between

City of Lone Tree, Colorado
(hereinafter called OWNER)

and

Thoutt Brothers Concrete Construction, Inc.

(hereinafter called CONTRACTOR)

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

- 1.1 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

ARTICLE 2. ENGINEER

- 2.1 The Project has been designed by TST Inc. of Denver, Consulting Engineers who is hereinafter called ENGINEER will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIME

- 3.1 The Work will be substantially completed within thirty (30) days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within forty five (45) days after the date when the Contract Time commences to run.
- 3.2 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not substantially complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not substantially complete on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER three hundred fifty dollars (\$350.00) for each day that expires after the time specified in paragraph 3.1 for substantial completion until the Work is substantially complete. After Substantial Completion if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER two hundred dollars (\$200.00) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

ARTICLE 4. CONTRACT PRICE

- 4.1 OWNER shall pay CONTRACTOR for performance of the Work in accordance with the CONTRACT DOCUMENTS in current funds based on the percentage of completion of the Project.
- 4.2 This Agreement is subject to the provisions of Section 24-91-103.6, C.R.S., as amended. Owner has appropriated money equal to or in excess of the Agreement Price. This Agreement is subject to annual appropriation by Owner.

- 4.3 Owner will not issue any Change Order or other form of order or directive by Owner requiring additional compensable work to be performed by the Contractor, which work causes the aggregate amount payable under the Agreement to exceed the amount appropriated for the original Agreement Price unless the Contractor is given written assurance by Owner that lawful appropriations to cover the costs of the additional work have been made or unless such work is covered under a remedy-granting provision in this Agreement. By executing a Change Order which causes an increase in the Agreement Price, Owner represents to the Contractor that it is being given written assurance by Owner that lawful appropriations to cover the costs of the additional work have been made. Any claim for additional compensation shall be in full compliance with Section 24-91-103.6(4), C.R.S., as amended.

ARTICLE 5. PAYMENT PROCEDURES

Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

- 5.1 Progress Payments. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, on or about the thirtieth (30th) day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in paragraph 2.07 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.
- 5.1.1 Prior to Substantial Completion progress payments will be in the amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.02.B.5 of the General Conditions.
- 90% of Work completed. If Work has been 50% completed as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, OWNER on recommendation of ENGINEER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage on account of Work completed in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100% of the Work completed.
- 90% of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in paragraph 14.02 of the General Conditions).
- Nothing contained in this provision shall preclude the OWNER and CONTRACTOR from making other arrangements consistent with C.R.S. 24-91-105 prior to contract award.
- 5.1.2 Upon Substantial Completion in an amount sufficient to increase total payments to CONTRACTOR to 95% of the Contract Price, less such amounts as ENGINEER shall determine or OWNER may withhold in accordance with paragraph 14.2.B.5 of the General Conditions.
- 5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07 and in accordance with Section 38-26-107 C.R.S.

ARTICLE 6. INTEREST

All moneys not paid when due hereunder as provided in Article 14 of the General Conditions shall bear interest at the rate of 8% per annum, compounded monthly.

ARTICLE 7. CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, site, locality, and with all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance, or furnishing of the Work.
- 7.2 CONTRACTOR has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions, and accepts the determination set forth in paragraph SC-4.02 of the Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which CONTRACTOR is entitled to rely.
- 7.3 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports, and studies (in addition to or to supplement those referred to in paragraph 7.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.03 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.
- 7.4 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.04 of the General Conditions.
- 7.5 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.
- 7.6 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

ARTICLE 8. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 8.1 This Agreement (pages 1 to 6, inclusive).
- 8.2 Performance and other Bonds.
- 8.3 Notice of Award.
- 8.4 General Conditions (pages 1 to 42, inclusive).
- 8.5 Supplementary Conditions (pages 1 to 13, inclusive).
- 8.6 Specifications bearing the title Project Manual for **City of Lone Tree 2014 Concrete Replacement**.
- 8.7 Drawings, bearing the following general title: **City of Lone Tree 2014 Street Overlay (19 Sheets)**.
- 8.8 Addenda numbers 1 to 1 , inclusive.
- 8.9 CONTRACTOR's Bid (pages 1 to 10 , inclusive).
- 8.10 CONTRACTOR's construction schedule.
- 8.11 The following which may be delivered or issued after the Effective Date of the Agreement and are attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraph 3.04 of the General Conditions.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.04 of the General Conditions.

ARTICLE 9. MISCELLANEOUS

- 9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.
- 9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge that assignor from any duty or responsibility under the Contract Documents.
- 9.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

ARTICLE 10. ILLEGAL ALIENS

- 10.1 The Contractor hereby certifies that at the time of executing this Agreement it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that it will participate in either the E-Verify Program or Department Program as those terms are defined in C.R.S. §§ 8-17.5-101(3.7) and (3.3), respectively, (the “Programs”) in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
- 10.2 The Contractor shall not knowingly employ or contract with an illegal alien to perform the work under this Agreement or enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- 10.3 The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in either the E-Verify Program or the Department Program.
- 10.4 The Contractor is prohibited from using the Programs procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.
- 10.5 If the Contractor obtains actual knowledge that a subcontractor performing the work under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall: (a) notify the subcontractor and the Owner within three (3) days that the Contractor has actual knowledge that the subcontractor is knowingly employing or contracting with an illegal alien; and (b) terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required by to C.R.S. § 8-17.5-102(2)(III)(A), the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor 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.
- 10.6 The Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment (the “Department”) made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).
- 10.7 Any violation of the provisions of this Section shall be deemed to be a material breach of this Agreement and the Owner may immediately terminate this Agreement for cause based on such violation. If this Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the Owner pursuant to C.R.S. § 8-17.5-102(3) and the City shall notify the office of the Secretary of State of such violation/termination.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This Agreement will be effective on _____.

OWNER: **City of Lone Tree, Colorado**

CONTRACTOR: Thoutt Brothers Concrete Construction, Inc.

By _____

By _____

Attest _____

Attest _____

Address for giving notices:

City of Lone Tree
9220 Kimmer Drive
Lone Tree, CO 80124

Address for giving notices:

NOTICE TO PROCEED

Dated _____

TO: Thouff Brothers Concrete Construction, Inc. (CONTRACTOR)

PROJECT: **City of Lone Tree 2014 Concrete Replacement**

PROJECT NUMBER: **061-390**

AGREEMENT DATE: _____

OWNER: **City of Lone Tree, Colorado**

You are notified that the Contract Time under the above contract will commence to run on _____, _____. By that date, you are to start performing the Work and your other obligations under the Contract Documents. In accordance with Article 3 of the Agreement the dates of Substantial Completion and Final Completion are _____, _____ and _____, _____, respectively.

Before you may start any Work at the site, paragraph 2.05.C of the General Conditions provides that you must deliver to the OWNER (with copies to ENGINEER) certificates of insurance which are required in accordance with the Contract Documents.

Also, before you may start any Work at the site, you must N/A _____

Work at the site must be started by _____, as indicated in the Contract Documents.

City of Lone Tree, Colorado

By: _____

Title: _____



CITY OF LONE TREE
STAFF REPORT

TO: Mayor Gunning and City Council

FROM: Lisa Rigsby Peterson, Executive Director LTAC

DATE: March 10, 2014

FOR: March 18, 2014 City Council Study Session & Agenda

SUBJECT: Agreement w/Starkey Theatrix re: Big River Production

Summary

City accounting procedures require Council approval for expenditures over \$100,000. The upcoming production of *Big River* at the Arts Center will include \$114,151 in personnel and producer costs that are contracted through Starkey Theatrix. Attached is the draft contract with Starkey Theatrix for the production.

Cost

The contract is \$114,151. This amount is already included in the approved 2014 operating budget for the Arts Center in the *Contracted Personnel* expense line. Ticket revenue for *Big River* is budgeted at \$160,000, with additional income from ticket handling fees, and concessions and liquor sales. Contracted personnel expenses for the show, including the Starkey contract, are projected to be \$135,127. As with most of the Arts Center's programs, underwriting from donors such as our theatrical sponsors, Michael and Charlotte Min-Harris, and others help make our programming possible at affordable ticket prices.

Suggested Motion or Recommended Action

I move to approve the agreement with Starkey Theatrix regarding the production of *Big River* dated March 6, 2014 and authorize the City Manager to execute the agreement.

Background

The Arts Center has partnered with Starkey Theatrix to help produce extended run theatrical productions. These productions frequently employ between 10 – 40 actors, musicians, designers, directors, etc. It is expedient to utilize Starkey Theatrix as a paymaster for personnel costs in order to avoid adding dozens of new employees and associated costs to the City each year. Doing so also provides an external contracting party with the actors' union, Actors' Equity Association. This practice of using an outside party to contract personnel is common practice, and organizations such as the Arvada Center for the Arts and

the Colorado Shakespeare Festival have been doing so for many years. The contract with Starkey Theatrix presented this evening mirrors the same type of agreement that the City entered into with the City of Arvada in previous seasons.



CITY OF LONE TREE

9220 Kimmer Drive, Suite 100

Lone Tree, Colorado 80124

303-708-1818

www.cityoflonetree.com

This Agreement, made and entered into as of this 6th of March, 2014, is by and between Starkey Theatrix (hereinafter the “Co-Producer”), and the City of Lone Tree on behalf of the Lone Tree Arts Center (“LTAC”) with respect to the production currently titled *Big River* (“Production”).

1. **Scope of Work:**

1.1 Production: The Co-Producer will help LTAC create a fully-rehearsed production ready for immediate performances after sufficient load-in and technical rehearsal, by engaging actors, musicians, stage managers, and other production personnel as agreed upon with LTAC. LTAC will be responsible for securing and paying for other production personnel, and any production elements of the Production, including sets, lights, costumes, and props.

2.2 (a) Technical Rehearsals: Technical rehearsals for the Production at the Arts Center will take place according to the attached production schedule.

2.3 Production Personnel: Co-Producer will meet payroll, insurance, pension, and any other statutory obligations for all Production personnel listed in Paragraph 2.1 and who are either under contract with the Co-Producer or employees of the Co-Producer. LTAC will meet all obligations for the director, music director, choreographer, set designer, costume designer and sound designer (if needed), and stage crew. Further, LTAC will be responsible for arranging and paying for all travel and housing for out-of-town personnel.

2.4 House Personnel: LTAC will be responsible for supplying all house personnel, including but not limited to front of house staff and house stage crew necessary to present this production.

2.5 **Pertinent Dates:**

2.5 (a) First Rehearsal: First rehearsal will begin on or about April 1, 2014.

2.5 (b) Technical Rehearsals: Load-in and technical rehearsals will begin on or about April 17, 2014.

2.5 (c) Public Performances: Public performances shall begin on April 24, 2014 and continue through May 4, 2014.

3. **Payment:** All payments to the Co-Producer hereunder shall be made as follows:

Starkey Theatrix
Attention Ronni Gallup, Production Manager
8201 E. Pacific Place, Suite 501
Denver, CO 80231

3.1 Compensation:

3.1(a) Fee: LTAC shall pay Co-Producer a flat fee up to one hundred fourteen thousand one hundred and fifty one dollars (\$114,151). The final amount of the fee shall be determined based on the difference between the attached budget and the actual costs incurred by Co-Producer for the actors, musicians and stage managers employed by Co-Producer solely for the Production and shall be calculated subsequent to the third payment due date of April 24, 2014 as below. Actual costs shall include all listed budgeted lines, including salary as well as all federal and state statutory expenses per Production employee. Should the actual costs for the Production exceed the fee one hundred fourteen thousand one hundred and fifty one dollars (\$114,151), Co-Producer shall submit a written settlement detailing the actual amounts paid per contract and LTAC shall adjust the amount due by the amount of actual costs as detailed as well as an additional twenty percent (20%) producer fee on those additional amounts owed, subject to agreement by both parties. Should the actual costs for the Production amount to less than the fee of one hundred fourteen thousand one hundred and fifty one dollars (\$114,151), Co-Producer agrees to reimburse LTAC for the difference between incurred costs and the original fee. An estimate of the costs associated with this fee is attached to this Agreement as Exhibit B.

3.1(b) Payment Schedule: LTAC shall pay Co-Producer the fees owed above on the following schedule:

Thirty eight thousand and fifty dollars (\$38,050) on signing of this Agreement;
Thirty eight thousand and fifty dollars (\$38,050) on the date of first rehearsal, currently scheduled for April 1, 2014;
Thirty eight thousand and fifty-one dollars (\$38,051) on the date of opening, currently scheduled for April 24, 2014, with any adjustments to final fee to be determined upon receipt of written settlement.

3.1(c) Production Cancellation: If the Production is cancelled by LTAC for any reason other than force majeure, Co-Producer shall immediately refund in full all amounts paid to it theretofore by LTAC, less any amounts contractually due to contracted personnel, and less a pro-rated share of the producer's fee to be mutually agreed upon.

3.1 (e) Cancelled Performances: If a performance is cancelled by LTAC for any reason, it will remain responsible for paying all costs related to that performance and the amount due to Co-Producer will not change.

3.1 (f) Force Majeure: It is understood that this contract is binding on all parties, and that performance dates cannot be changed, except that LTAC and Co-Producer agree that either party may cancel this contract and all parties shall be released from any liability or damages hereunder, if either party is unable to fulfill the contract because of fire, flood, earthquake, natural disaster, act of God, death, illness, incapacity, labor dispute or regulations of governmental agencies or public authorities. The parties agree that in this

case each party shall use “best efforts” to reschedule performance dates as soon as is practicable.

3.1 (g) Complimentary Tickets: LTAC agrees to provide Co-Producer with eight (8) complimentary tickets during the run of the Production at LTAC, dates to be mutually agreed upon and subject to availability. LTAC will also make available professional complimentary tickets on a mutually agreed-upon basis. Provisions for discounted or complimentary tickets for cast and crew will be made by mutual agreement.

4. **Billing:** The Production shall receive billing substantially as follows:

*Lone Tree Arts Center
in conjunction with Starkey Theatrx
presents
Big River*

Such billing shall be used in all programs. In no event, however, shall LTAC have any obligation to provide billing credit in “teaser” ads, list ads, directory or information ads such as “ABC” ads, where no person receives billing

5. **Approvals:** LTAC will have approval of director, designers, actors and musicians for Production, and will retain all artistic control over the Production.
6. **Reservation of Rights:** All rights in and to the Production that are not expressly granted to LTAC in this Agreement are hereby reserved to the Co-Producer for his disposition and use. The Co-Producer may enter into agreements for the disposition of those rights not expressly granted to LTAC during the term of this Agreement. Any agreement, however, which conflicts with the rights granted to LTAC herein shall require the prior written agreement of LTAC, such agreement not to be unreasonably withheld.
7. **Definitions:** Gross weekly box office receipts, if referred to in this Agreement, shall mean the sums actually paid for tickets of admission, allocable to a particular week, after the deduction of: all applicable admission taxes and similar taxes, if any, which may be now or hereafter imposed by any governmental Authority upon admissions; and any reasonable and customary fees or commissions paid to unrelated third parties (or on an arm’s length basis to related parties) in connection with theatre parties, group sales, benefits, credit card organizations, automated ticket distribution and remote box offices.
8. **Records Audit:** LTAC agrees to keep and maintain true and accurate books and records of account in connection with the gross box office receipts of the Production in order to satisfy Co-Producer’s obligation to the Production rights holders.
9. **Compliance:** Co-Producer agrees that its Production, including Co-Producer’s employees and contractors working on the Production in Lone Tree, will comply with all local laws and safety regulations, and Co-Producer further agrees to modify its production to comply with local laws and safety regulations upon notification of violation.

10. **Termination:** This Agreement may be terminated as follows:

11.1 For Default. A party will be considered in default of its obligations under this Agreement if such party should fail to observe, to comply with, or to perform any term, condition, or covenant contained in this Contract and such failure continues for ten (10) days after the non-defaulting party gives the defaulting party written notice thereof. In the event of default, the non-defaulting party, upon written notice to the defaulting party, may terminate this Contract as of the date specified in the notice, and may seek such other and further relief as may be provided by law.

11. **Alterations - Wear & Tear:** Co-Producer shall not alter, repair, add to, deface, or change the premises in any manner whatsoever, without the prior written consent of LTAC. The premises shall be maintained and vacated, as and when required, in as good condition as it is upon entry of Co-Producer therein, depreciation for reasonable wear and tear excepted. Co-Producer shall pay on demand for all damages or injury done by Co-Producer or its agents and employees to premises.

12. **Repair of Premises:** LTAC shall not be obligated or required to replace or repair any part of the premises nor be liable to Co-Producer for any damages occurring by reason of any defect therein, or occasioned by any part thereof being or becoming out of repair, or arising from activities of whatever kind or nature that may take place in the LTAC, nor any damages arising from any act or neglect of any occupants of the LTAC or any owners or occupants of adjoining property; nor for any loss, theft, damage, injury, or other casualty to the property or persons of Co-Producer.

13. **Local Rules:** Co-Producer shall comply with rules and regulations governing the LTAC, including all rules, laws, ordinances, regulations, and orders of governmental authorities and Co-Producer further agrees to modify its production to comply with local laws and safety regulations upon notification of violation.

14. **Indemnification.** Co-Producer assumes full liability for the action of their employees, contracted personnel, agents, guests, and volunteers and agrees to hold harmless and indemnify LTAC for any acts or omissions of these persons. Co-Producer shall defend, indemnify and hold harmless LTAC and each of its elected officials, directors, officers, contractors, employees, agents, volunteers and consultants, from and against any and all claims, demands, losses, liabilities, actions, lawsuits, damages, and expenses, including reasonable legal expenses and attorneys' fees, arising directly or indirectly, in whole or in part, out of the negligence, willful misconduct, or any criminal or tortious act or omission of Artist in connection with this Agreement. The provisions of this Section shall survive termination of this Agreement.

15. **Copyrights:** Co-Producer hereby assumes all costs and liability arising from the use of patented, trademarked, franchised and copyrighted music, materials, devices, processes and dramatic rights used by or incorporated in each Event covered by this Agreement. Co-Producer shall defend, indemnify and hold harmless LTAC, and the officers, employees, contractors, representatives and agents of LTAC from and against any and all claims, suits, sanctions, liabilities and expenses (including, without limitation, reasonable attorneys' and experts' fees) arising from any unauthorized use or allegation of unauthorized use of any of the forgoing intellectual property, and LTAC shall have the right to control the defense of such claim or suit.

16. **Independent Contractor Status:** This Agreement is one for independent contractor services. Co-Producer is an independent contractor and shall not be considered an employee of LTAC for purposes of any federal or state law. LTAC shall not be obligated to secure and shall not provide any employment benefits of any kind or type to or for Co-Producer, including but not limited to worker's compensation, disability insurance, errors and omissions insurance, vacation or sick leave, retirement contributions, or other benefits. Co-Producer shall be responsible for any federal and state income tax withholding on moneys earned pursuant to this Agreement. This agreement shall not be construed as creating a partnership or other kind of joint undertaking or venture between the parties.
17. **Insurance:** Co-Producer shall carry its own general liability insurance and shall hold the LTAC harmless for any and all claims arising out of negligence of Co-Producer and its employees. Co-Producer shall, at its sole cost and expense, maintain throughout the duration of the contract insurance coverage of the types and in the amounts that are customary in the industry. If there is no custom in the industry, Co-Producer shall maintain insurance coverage for the duration of the contract in an amount sufficient to satisfy the LTAC. Co-Producer shall be responsible for all personal property, costumes, and equipment while at or in transit to and from the Lone Tree Arts Center.
18. **Fire Regulations:** All electrical equipment, scenery and property brought into the Lone Tree Arts Center by Co-Producer to be used in conjunction with Co-Producer's services shall comply with and conform to all the rules and regulations of the Lone Tree Fire Code, the local Board of Fire Underwriters, the ordinances, statutes and laws of the City of Lone Tree and State of Colorado, and to the rules and regulations and directives issued by every government bureau or agency exercising jurisdiction thereover.
19. **Entire Agreement:** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual written agreement executed by Artist and LTAC.
20. **No Assignment:** No assignment of this Agreement or the rights and obligations hereunder shall be valid without the prior written approval of the parties.
21. **No Waiver:** Any waiver by either party of any provision or condition of this Agreement shall not be construed or deemed to be a waiver of any other provisions or conditions of this Agreement, nor a waiver of a subsequent breach of the same provision or condition, unless such waiver is expressed in writing by the party to be bound.
22. **No Third Party Beneficiaries:** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement shall be strictly reserved to the parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person. It is the express intention of the parties that any person other than a party to this Agreement receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
23. **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 City, its officials, employees, contractors, or agents, or any other person acting on behalf of the

City 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.

24. **No Discrimination:** The parties agree that in the performance of this Agreement, there will be no discrimination against students, employees, or other persons related to race, color, sex, religion, creed, age, national origin, sexual orientation, or disability.
25. **Governing Law and Venue:** The laws of the State of Colorado shall govern this Agreement. Venue for any action hereunder shall be in the District Court, County of Douglas, State of Colorado and the parties waive any right to remove any action to any other court, whether state or federal.
26. **Severability:** In the event that any provision of this Agreement is held unenforceable for any reason, the remaining provisions of this Agreement shall remain in full force and effect.
27. **Entire Agreement:** This Agreement merges and supersedes all prior negotiations, representations and agreements between the parties hereto relating to the subject matter hereof and constitutes the entire agreement between the parties concerning the subject matter hereof.
28. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes, and all of which, when taken together, shall constitute one and the same Agreement.
29. **Illegal Aliens:** Artist certifies, through signature of its authorized representative executing this Agreement, that it does not knowingly employ or contract with an illegal alien and that it will participate in the E-Verify Program or the Colorado Department of Labor and Employment Program (as defined in §8-17.5-101 & 102, C.R.S.) in order to verify that it does not employ any illegal aliens. Artist affirmatively makes the following declarations:
 - A. Artist shall not knowingly employ or contract with an illegal alien who will perform work under this Agreement and will participate in the E-Verify Program or the 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 contemplated herein.
 - B. Artist shall not knowingly enter into a contract with a Subcontractor that fails to certify to Artist that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform the services contemplated herein.
 - C. Artist has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.
 - D. Artist 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.
 - E. If Artist obtains actual knowledge that a Subcontractor performing the services under this Agreement knowingly employs or contracts with an illegal alien, it shall be required to:
 - i. Notify the Subcontractor and the City within three (3) days that Artist has actual knowledge that the Subcontractor is employing or contracting with an illegal alien.
 - ii. Terminate the contract with the Subcontractor if within three (3) days of receiving the notice required above the Subcontractor does not stop employing or contracting with the illegal alien; except that Artist shall not terminate the contract with the Subcontractor 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.

F. Artist shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that such Department is undertaking pursuant to the authority established in §8-17.5-102, C.R.S.

G. If Artist violates a provision of the Agreement, pursuant to §8-17.5-102, C.R.S., the City may terminate the Agreement. If the Agreement is so terminated, Artist shall be liable for actual and consequential damages to the Owner.

- 30. Notices:** All notices given under this Agreement must be in writing and delivered personally or by certified mail, return receipt requested and postage prepaid, to all parties at the addresses written at the end of this Agreement. Notice shall be deemed given as the date and delivery in the case of personal notice; in the case of mailing by certified mail, notice shall be deemed given on the date of mailing. For the purposes of this Agreement, the specified addresses for all parties are as follows:

For LTAC:

Seth Hoffman, City Manager
City of Lone Tree
9220 Kimmer Drive, Suite 100
Lone Tree, CO 80124

For the Co-Producer:

Ronni Gallup, Production Manager
Starkey Theatrix
8201 E. Pacific Place, Suite 501
Denver, CO 80231

The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.

For the City of Lone Tree on behalf of the Lone Tree Arts Center:

By: _____ Date _____
Seth Hoffman, City Manager

For STARKEY THEATRIX:

By: _____ Date _____
Ronni Gallup, Production Manager

EXHIBIT A
Production Schedule

REHEARSAL SCHEDULE:

First rehearsal: April 1, 2014

Load-in and Technical Rehearsal April 17 - 19, 2014 time TBD

PERFORMANCE SCHEDULE:

Thursday, April 24, 2014 @ 7:30 pm

Friday, April 25, 2014 @ 8:00 pm

Saturday, April 26, 2014 @ 1:30 pm and 8:00 pm

Sunday, April 27, 2014 @ 1:30 pm

Wednesday, April 30, 2014 @ 7:30 pm

Thursday, May 1, 2014 @ 7:30 pm

Friday, May 2, 2014 @ 8:00 pm

Saturday, May 3, 2014 @ 8:00 pm

Sunday, May 4, 2014 @ 1:30 pm

STRIKE SCHEDULE:

Monday, May 5, 2014 time TBD

EXHIBIT B
Production Budget

PLEASE SEE ACCOMPANYING SPREADSHEET

DRAFT

EXHIBIT B --
 Big River Budget - Starkey Theatrix
 February 24, 2014

Big River Personnel Budget

	# Weeks	Run TOTAL
Stage Manager	6	\$ 6,899
Assistant Stage Manager	5	\$ 5,262
Actors (14)	5	\$ 69,418
Actors Total		\$ 81,578
Music Director, Rehearsal Pianist, Musicians (4) Total	5	\$ 12,047
Designer -- Lighting		\$ 1,500
TOTAL PERSONNEL - STARKEY		\$ 95,126
Starkey Producer's Fee		\$ 19,025
TOTAL PAID TO STARKEY		\$ 114,151



CITY OF LONE TREE
STAFF REPORT

TO: Mayor Gunning and City Council

FROM: Neil Rutledge, Assistant City Attorney

DATE: February 26, 2014

FOR: March 18, 2014 City Council Agenda

SUBJECT: Ordinance 14-03 AMENDING THE MUNICIPAL CODE TO MODIFY THE DISTANCE RESTRICTION ON APPLICATIONS FOR CERTAIN NEW LIQUOR LICENSES, PURSUANT TO THE COLORADO LIQUOR CODE (First Reading)

Summary

This Ordinance eliminates the distance restriction from a public elementary school for liquor licenses, but only if the school is within 500 feet of an existing licensed premises.

Cost

There is no cost to the City.

Suggested Action

I move to approve Ordinance 14-03, AMENDING THE MUNICIPAL CODE TO MODIFY THE DISTANCE RESTRICTION ON APPLICATIONS FOR CERTAIN NEW LIQUOR LICENSES, PURSUANT TO THE COLORADO LIQUOR CODE on First Reading.

Background

Under the Liquor Code, as adopted by the City, existing licensed premises within 500 feet of a new public elementary school may continue to keep and renew their liquor licenses, while new liquor licenses for other businesses and restaurants within the same area are prohibited. This Ordinance eliminates the distance restriction, which allows the issuance of new liquor licenses in the same commercial area as other existing licensed premises.

Note: The distance restrictions imposed by Section 12-47-313(1)(d)(I), C.R.S., as relate to the principal campus of any college, university or seminary, have been eliminated since 1999.

**ORDINANCE OF THE
CITY OF LONE TREE**

Series of 2014

Ordinance No. 14-03

**AN ORDINANCE AMENDING THE MUNICIPAL CODE TO MODIFY THE
DISTANCE RESTRICTION ON APPLICATIONS FOR CERTAIN NEW LIQUOR
LICENSES, PURSUANT TO THE COLORADO LIQUOR CODE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LONE TREE,
COLORADO:**

ARTICLE 1 – AUTHORITY

The City of Lone Tree (the "City") is a home rule municipality operating under the Lone Tree Home Rule Charter (the "Charter") adopted on May 5, 1998 and a Municipal Code (the "Code"), codified and adopted on December 7, 2004. Pursuant to the Charter, the Municipal Code and the authority given home rule cities, the City may adopt and amend Ordinances.

ARTICLE 2 – FINDINGS OF FACT

- A. The City has broad authority to exercise its police powers to promote and protect the health, safety and welfare of the community and its inhabitants.
- B. The City Council is the Local Liquor Licensing Authority for the City with the duty and authority to grant or deny liquor licenses, and to exercise additional powers set forth in the Colorado Liquor Code, Title 12, Articles 46, 47 and 48 C.R.S.
- C. The City Council recognizes the anomaly under the Liquor Code which allows some businesses and restaurants within the prescriptive distance of a public elementary school to have liquor licenses while prohibiting the issuance of new liquor licenses to other businesses and restaurants within the same prescriptive area.
- D. The City Council wishes to address this anomaly by eliminating the distance restriction from a public elementary school, but only if the school is located within 500 feet of an existing licensed premises. This allows the issuance of new liquor licenses in the same commercial area as other existing licensed premises in the vicinity.
- E. The City Council affirms its authority to hold hearings on applications for new liquor and beer licenses, and to approve or disapprove of such licenses as appropriate, in order to

instill in a new licensee the serious duties and obligations inherent in the sale and distribution of intoxicating beverages.

ARTICLE 3 – SAFETY CLAUSE

The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare.

ARTICLE 4 – REPEAL AND ADOPTION

Section 6-1-20(b) of the Municipal Code is hereby repealed in its entirety and re-adopted as follows:

Sec. 6-1-20. Application of state statutes.

.....

(b) The distance restriction imposed by Section 12-47-313(1)(d)(I), C.R.S., regarding the principal campus of any college, university, or seminary is hereby eliminated. Also eliminated is the distance restriction imposed regarding any public elementary school, but only if the school is located within 500 feet of an existing licensed premises.

ARTICLE 5 – CAUSES OF ACTION RETAINED

Nothing in this Ordinance hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

ARTICLE 6 – SEVERABILITY

If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision, or application shall not affect any of the remaining parts, provisions or applications of this Ordinance which can be given effect without the invalid provision, part or

application, and to this end the provisions and parts of this Ordinance are declared to be severable.

ARTICLE 7 - EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days following publication after the first reading if no changes are made on second reading, or twenty (20) days after publication following second reading if changes are made upon second reading.

INTRODUCED, READ AND ORDERED PUBLISHED THIS 18TH DAY OF MARCH, 2014.

CITY OF LONE TREE:

James D. Gunning, Mayor

ATTEST:

Jennifer Pettinger, CMC, City Clerk

(S E A L)