

**PUBLIC WORKS DEPARTMENT MEMORANDUM
#35-2020**

DATE: November 23, 2020
TO: Honorable Mayor Meredith Leighty and City Council Members
THROUGH: Heather Geyer, City Manager *hmg*
FROM: Kent Kisselman, PE – Director of Public Works *KK*
SUBJECT: CR-159 – 2021 Water Rights Engineering

PURPOSE

To approve CR-159, a resolution approving an annual contract with Lamp Rynearson & Associates, Inc. to provide engineering support and assistance with water rights.

BACKGROUND

The City has utilized Lamp Rynearson & Associates (formerly TZA Water Engineers) for engineering support and assistance in administering water rights since 1997. Lamp Rynearson is currently working on change case applications for the City's Farmers Reservoir and Irrigation Company (FRICO) shares. Lamp Rynearson's scope of services also includes providing expert testimony during any pending or future cases in the Water Division of the State of Colorado District Court that affect the City's water rights. Lamp Rynearson's extensive knowledge and experience working on the City's water rights engineering allows them to provide exceptional support on engineering matters that pertain to the City's water rights, protecting this critical City asset.

Some of Lamp Rynearson's tasks in 2021 would include:

- Giving expert witness testimony at the upcoming FRICO change case
- Finalize the engineering for the FRICO change of use case, and begin responding to objectors and provide engineering support for the City's case under the water court process
- Provide monthly support for the City's water rights accounting
- Assist with the engineering for the Croke Reservoir augmentation plan case

Utilization of Lamp Rynearson since 2010 includes:

2010	\$58,138.65
2011	\$51,997.90
2012	\$117,547.10
2013	\$70,437.36
2014	\$77,231.55
2015	\$78,322.73
2016	\$246,812
2017	\$245,788.30
2018	\$107,186.95
2019	\$88,738.40
2020 (to date)	\$26,604.85

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STAFF RECOMMENDATION

Attached to this memorandum is CR-159, a resolution that, if approved, would authorize the Mayor to execute a contract between the City and Lamp Rynearson & Associates, Inc. for specialized water engineering services in an amount not to exceed \$150,000. Staff recommends approval of CR-159.

BUDGET/TIME IMPLICATIONS

The cost to provide engineering services for 2021 is estimated at \$150,000. Funding is available in the Water Fund.

STAFF REFERENCE

If Council members have any questions they may contact Director of Public Works Kent Kisselman at 303.450.4005 or kkisselman@northglenn.org.

CR-159 – 2021 Water Rights Engineering

2021 Water Rights Engineering Professional Services Agreement

SPONSORED BY: MAYOR LEIGHTY

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-159
Series of 2020

Series of 2020

A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND LAMP RYNEARSON, INC. FOR WATER AND WATER RIGHTS ENGINEERING

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Professional Services Agreement between the City of Northglenn and Lamp Rynearson, Inc., attached hereto, in an amount not to exceed \$150,000.00 for water and water rights engineering, is hereby approved and the Mayor is authorized to execute same on behalf of the City of Northglenn.

DATED at Northglenn, Colorado, this ____ day of _____, 2020.

MEREDITH LEIGHTY
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by and between the City of Northglenn, State of Colorado (hereinafter referred to as the "City") and Lamp Rynearson Inc. (hereinafter referred to as "Consultant").

RECITALS:

A. The City requires professional services.

B. Consultant has held itself out to the City as having the requisite expertise and experience to perform the required work for the Project.

NOW, THEREFORE, it is hereby agreed for the consideration hereinafter set forth, that Consultant shall provide to the City, professional consulting services for the Project.

I. SCOPE OF SERVICES

Consultant shall furnish all labor and materials to perform the work and services required for the complete and prompt execution and performance of all duties, obligations, and responsibilities for the Project which are described or reasonably implied from **Exhibit A** which is attached hereto and incorporated herein by this reference.

II. THE CITY'S OBLIGATIONS/CONFIDENTIALITY

The City shall provide Consultant with reports and such other data as may be available to the City and reasonably required by Consultant to perform hereunder. No project information shall be disclosed by Consultant to third parties without prior written consent of the City or pursuant to a lawful court order directing such disclosure. All documents provided by the City to Consultant shall be returned to the City. Consultant is authorized by the City to retain copies of such data and materials at Consultant's expense.

III. OWNERSHIP OF WORK PRODUCT

The City acknowledges that the Consultant's work product is an instrument of professional service. Nevertheless, the products prepared under this Agreement shall become the property of the City upon completion of the work.

IV. COMPENSATION

A. In consideration for the completion of the services specified herein by Consultant, the City shall pay Consultant an amount not to exceed one hundred fifty thousand dollars and no/100(\$150,000.00). Payment shall be made in accordance with the schedule of charges in Exhibit B which is attached hereto and incorporated herein by this reference. Invoices will be itemized and include hourly breakdown for all personnel and other charges. The maximum fee specified herein shall include all fees and expenses incurred by Consultant in performing all services hereunder.

B. Consultant may submit monthly or periodic statements requesting payment. Such request shall be based upon the amount and value of the work and services performed by Consultant under this Agreement except as otherwise supplemented or accompanied by such supporting data as may be required by the City.

1. All invoices, including Consultant's verified payment request, shall be submitted by Consultant to the City no later than the twenty-fourth (24th) day of each month for payment pursuant to the terms of this Agreement. In the event Consultant fails to submit any invoice on or before the twenty-fourth (24th) day of any given month, Consultant defers its right to payment pursuant to said late invoice until the twenty-fourth (24th) day of the following month.

2. Progress payments may be claimed on a monthly basis for reimbursable costs actually incurred to date as supported by detailed statements, including hourly breakdowns for all personnel and other charges. The amounts of all such monthly payments shall be paid within thirty (30) days after the timely receipt of invoice as provided by this Agreement.

C. The City has the right to ask for clarification on any Consultant invoice after receipt of the invoice by the City.

D. In the event payment for services rendered has not been made within forty-five (45) days from the receipt of the invoice for any uncontested billing, interest will accrue at the legal rate of interest. In the event payment has not been made within ninety (90) days from the receipt of the invoice for any uncontested billing, Consultant may, after giving seven (7) days written notice and without penalty or liability of any nature, suspend all work on all authorized services specified herein. In the event payment in full is not received within thirty (30) days of giving the seven (7) days written notice, Consultant may terminate this Agreement. Upon receipt of payment in full for services rendered, Consultant will continue with all authorized services.

E. Final payment shall be made within sixty (60) calendar days after all data and reports (which are suitable for reproduction and distribution by the City) required by this Agreement have been turned over to and approved by the City and upon receipt by the City of Consultant's certification that services required herein by Consultant have been fully completed in accordance with this Agreement and all data and reports for the Project.

V. COMMENCEMENT AND COMPLETION OF WORK

Within seven (7) days of receipt from the City of a Notice to Proceed, Consultant shall commence work on all its obligations as set forth in the Scope of Services or that portion of such obligations as is specified in said Notice. Except as may be changed in writing by the City, the Project shall be complete and Consultant shall furnish the City the specified deliverables as provided in Exhibit A.

VI. CHANGES IN SCOPE OF SERVICES

A change in the Scope of Services shall constitute any material change or amendment of services or work which is different from or additional to the Scope of Services specified in Section I of this Agreement. No such change, including any additional compensation, shall be effective, or paid unless authorized by written amendment executed by the City. If Consultant proceeds without such written authorization, then Consultant shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum meruit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the City shall have the authority to enter into any changes or modifications, either directly or implied by a course of action, relating to the terms and scope of this Agreement.

VII. PROFESSIONAL RESPONSIBILITY

A. Consultant hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law.

B. The work performed by Consultant shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community.

C. Consultant shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by Consultant under this Agreement. Consultant shall, without additional compensation, correct or resolve any errors or deficiencies in his designs, drawings, specifications, reports, and other services, which fall below the standard of professional practice, and reimburse the City for construction costs caused by errors and omissions which fall below the standard of professional practice.

D. Approval by the City of drawings, designs, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve Consultant of responsibility for technical adequacy of the work. Neither the City's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Consultant shall be and remain liable in accordance with applicable performance of any of the services furnished under this Agreement.

E. The rights and remedies of the City provided for under this Agreement are in addition to any other rights and remedies provided by law.

VIII. ILLEGAL ALIENS

A. Certification. By entering into this Agreement, Consultant hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under the Agreement and that Consultant will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement.

B. Prohibited Acts. Consultant shall not:

1. Knowingly employ or contract with an illegal alien to perform work under this Agreement; or

2. Enter into a contract with a subcontractor that fails to certify to Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

1. Consultant 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.

2. Consultant shall not use the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If Consultant obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under the Agreement, Consultant shall:

a. Notify the subcontractor and the City within three (3) days that Consultant has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under the Agreement; and

b. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph (a) hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under the Agreement; except that

Consultant 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 who is performing work under the Agreement.

D. Duty to Comply with Investigations. Consultant shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Consultant is complying with the terms of this Agreement.

E. If Consultant does not currently employ any employees, Consultant shall sign the NO Employee Affidavit attached hereto.

F. If Consultant wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Consultant shall sign the Department Program Affidavit attached hereto.

IX. INDEMNIFICATION

Consultant agrees to indemnify and hold harmless the City, its officers, employees, and insurers, from and against all liability, claims, and demands, on account of injury, loss, or damage, including with out limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the negligent act, omission, error, professional error, mistake, negligence, or other fault of Consultant, any subconsultant of Consultant, or any officer, employee, representative, or agent of Consultant or of any subconsultant of Consultant, or which arise out of any workmen's compensation claim of any employee of Consultant or of any employee of any subconsultant of Consultant.

X. INSURANCE

A. Consultant agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Consultant pursuant to Section IX, above. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law. Consultant shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Section IX, above, by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

B. Consultant shall procure and maintain, and shall cause any subcontractor of Consultant to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Consultant pursuant to Section IX, above. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Workmen's compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Agreement, and Employer's Liability insurance with minimum limits of five hundred thousand dollars (\$500,000) each accident, one million dollars (\$1,000,000) disease - policy limit, and one million dollars (\$1,000,000) disease - each employee. Evidence of qualified self-insured status may be substituted for the workmen's compensation requirements of this paragraph.

2. Commercial general liability insurance with minimum combined single limits of one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision.

3. Professional liability insurance with minimum limits of six hundred thousand dollars (\$600,000) each claim and one million dollars (\$1,000,000) general aggregate.

C. The policy required by paragraph 2. above shall be endorsed to include the City and the City's officers, employees, and consultants as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the City, its officers, its employees, or its consultants shall be excess and not contributory insurance to that provided by Consultant. No additional insured endorsement to the policy required by paragraph 1. above shall contain any exclusion for bodily injury or property damage arising from completed operations. Consultant shall be solely responsible for any deductible losses under any policy required above.

D. The certificate of insurance provided for the City shall be completed by Consultant's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City prior to commencement of the Agreement. No other form of certificate shall be used. If the City is named as an additional insured on any policy which does not allow for the automatic addition of additional insureds, the Consultant's insurance agent shall also provide a copy of all accompanying endorsements recognizing the City as an additional insured. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City. The completed certificate of insurance shall be sent to:

City of Northglenn
Attn: Kathy Kvasnicka
11701 Community Center Drive
Northglenn, Colorado 80233-8061

E. Failure on the part of Consultant to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of agreement upon which the City may immediately terminate this Agreement, or at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Consultant to the City upon demand, or the City may offset the cost of the premiums against any monies due to Consultant from the City.

F. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

G. The parties hereto understand and agree that the City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently three hundred fifty thousand dollars (\$350,000) per person and nine hundred ninety thousand dollars (\$990,000) per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Colo. Rev. Stat., §§ 24-10-101, et seq., as from time to time amended, or otherwise available to the City, its officers, or its employees.

XI. NON-ASSIGNABILITY

Neither this Agreement, nor any of the rights or obligations of the parties hereto, shall be assigned by either party without the written consent of the other.

XII. TERMINATION

This Agreement shall terminate at such time as the work in Section I is completed and the requirements of this Agreement are satisfied, or upon the City's providing Consultant with seven (7) days advance written notice, whichever occurs first. In the event the Agreement is terminated by the City's issuance of said written notice of intent to terminate, the City shall pay Consultant for all work previously authorized and completed prior to the date of termination. If, however, Consultant has substantially or materially breached the standards and terms of this Agreement, the City shall have any remedy or right of set-off available at law and equity. If the Agreement is

Revised 12/17/14

terminated for any reason other than cause prior to completion of the Project, any use of documents by the City thereafter shall be at the City's sole risk, unless otherwise consented to by Consultant.

XIII. CONFLICT OF INTEREST

The Consultant shall disclose any personal or private interest related to property or business within the City. Upon disclosure of any such personal or private interest, the City shall determine if the interest constitutes a conflict of interest. If the City determines that a conflict of interest exists, the City may treat such conflict of interest as a default and terminate this Agreement.

XIV. VENUE

This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of Adams, State of Colorado.

XV. INDEPENDENT CONTRACTOR

Consultant is an independent contractor. Notwithstanding any provision appearing in this Agreement, all personnel assigned by Consultant to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Consultant for all purposes. Consultant shall make no representation that it is the employee of the City for any purposes.

XVI. NO WAIVER

Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the City shall not constitute a waiver of any of the other terms or obligation of this Agreement.

XVII. ENTIRE AGREEMENT

This Agreement and the attached Exhibits A and B is the entire Agreement between Consultant and the City, superseding all prior oral or written communications. None of the provisions of this Agreement may be amended, modified, or changed, except as specified herein.

XVIII. SUBJECT TO ANNUAL APPROPRIATION

Consistent with Article X, Section 20 of the Colorado Constitution, any financial obligations of the City not to be performed during the current fiscal year are subject to annual appropriation, and thus any obligations of the City hereunder shall extend only to monies currently appropriated.

XIX. NOTICE

Any notice or communication between Consultant and the City which may be required, or which may be given, under the terms of this Agreement shall be in writing, and shall be deemed to have been sufficiently given when directly presented or sent pre-paid, first class United States Mail, addressed as follows:

The City: City of Northglenn
11701 Community Center Drive
Northglenn, Colorado 80233-8061

Consultant: Lamp Rynearson, Inc.
12596 W. Bayard Ave., Suite 330
Lakewood, CO. 80228

IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same in duplicate.

CITY OF NORTHGLENN, COLORADO

By: _____

ATTEST:

Meredith Leighty
Print Name


Mayor
Title Date

Johanna Small, CMC
City Clerk Date


APPROVED AS TO FORM:

Corey Y. Hoffmann
City Attorney Date

CONSULTANT:

By: 
Justin J. Korkens
Print Name

ATTEST:

By: 

Robyn Korkens
Print Name

Water Resources Group Leader 11/4/2020
Title Date

_____ 11/4/2020
Title Date

City's Project Manager

EXHIBIT A – SCOPE OF SERVICES

Lamp Rynearson

Scope of Services for City of Northglenn

Conduct studies and produce reports documenting the historical consumptive use of water rights. Negotiate, testify, and provide litigation support as needed to defend Northglenn water rights from the actions of other water users and to achieve court approval of a change of water rights by Northglenn to allow use by Northglenn. Assist with water right operations and accounting of water use and augmentation. Assist due diligence regarding purchase of water rights by Northglenn. Evaluate raw water use and storage by Northglenn.

EXHIBIT B - AMOUNT OF COMPENSATION



12596 W. Bayaud Ave., Ste. 330
Lakewood, CO 80228
[P] 303.971.0030
[F] 303.971.0077
LampRynearson.com

Lamp Rynearson 2020 / 2021
Rate Schedule

Professional Services	Hourly Rate
Engineering Intern I	\$62
Administrative Assistant II	\$65
Project Engineer I	\$95
Project Engineer II	\$109
Senior Engineering Technician IV	\$125
Senior Project Engineer I	\$128
Hydrogeologist IV	\$145
Senior Project Engineer III	\$160
Senior Project Manager III	\$185
Senior Project Engineer VI	\$195
Group Leader III	\$205
Group Leader Senior III	\$262
Expert Testimony	Hourly rate plus \$35.00 per hour

Reimbursable Expenses

Mileage	\$0.575/mile
Direct costs including subsistence, telephone, transportation, equipment rental, and other miscellaneous job-related expenses	Cost + 10%
Subcontractor Expense	Cost + 10%
In-house reproduction charges	\$0.20/page

Terms

Invoices will be submitted monthly. Payment is due upon receipt. A late charge of 1 percent per month may be charged to accounts with balances overdue in excess of 30 days. Services may be discontinued if payment for any previous invoice is not received within 30 days of the invoice date, unless prior arrangements have been made.

Effective 8/01/2020

PROSPECTIVE CONSULTANT'S CERTIFICATE REGARDING EMPLOYING OR CONTRACTING WITH AN ILLEGAL ALIEN

FROM: LAMP FLYNEARSON, INC.
(Prospective Consultant)

TO: City of Northglenn
PO Box 330061
11701 Community Center Drive
Northglenn, CO 80233

Project Name Water Rights Engineering

Bid Number _____ Project No. 0414497.01

As a prospective Consultant for the above-identified bid, I (we) do hereby certify that, as of the date of this certification, I (we) do not knowingly employ or contract with an illegal alien who will perform work under the Agreement and that I (we) will confirm 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 administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment.

Executed this 3 day of November, 2020.

Prospective Consultant Lamp Flynearson, Inc.

By: [Signature]

Title: CEO