

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 6th Street, Boulder, CO 80302 (303) 441-3750	DATE FILED: March 9, 2022 3:34 PM FILING ID: 4A9B1A947728B CASE NUMBER: 2022CV30101
DEMANDING INTEGRITY IN GOVERNMENT SPENDING, a Colorado nonprofit corporation, Plaintiff, v. BOULDER COUNTY, a county of the State of Colorado; BOARD OF COUNTY COMMISSIONERS, COUNTY OF BOULDER; MATT JONES, CLAIRE LEVY, and MARTA LOACHAMIN, in their official capacity as members of the Boulder County Board of County Commissioners. Defendants.	
Attorneys for Defendants: David Hughes, Deputy County Attorney, #24425 Catherine R. Ruhland, Deputy County Attorney, #42426 BOULDER COUNTY ATTORNEY P.O. Box 471, Boulder, CO 80306 Phone No.: 303-441-3190 Fax No.: 303-441-4794 dhughes@bouldercounty.org truhland@bouldercounty.org	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case Number: 2022CV030101 Div.: COC
BOULDER COUNTY’S RESPONSE TO MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AND REQUEST FOR CONSOLIDATION OF HEARING WITH TRIAL ON THE MERITS	

Defendants Boulder County; Board of County Commissioners of Boulder County, Colorado; and, Matt Jones; Claire Levy; and Marta Loachamin, in their official capacity as members of the Boulder County Board of County Commissioners (the “County”) responds in opposition to Plaintiff’s Motion for Temporary Restraining Order and Preliminary Injunction as set forth below and requests judgment in its favor on the merits under C.R.C.P. 65(a)(2).

I. INTRODUCTION

Michael Brown, filing as the recently incorporated “Demanding Integrity in Government Spending” (“Brown”), sued the County alleging violations of the Colorado Open Meetings Law (“COML”) during a contract bidding process for Marshall Fire-related debris removal. Brown seeks an emergency order preventing the County from contracting with the winning bidder, DRC Emergency Services, LLC (“DRC”). The Court should deny the motion because Brown cannot meet the criteria for awarding an injunction. Most importantly, if the Court grants the motion, it will result in a heavy blow to more than 1,084 households whose homes were tragically burned in the Marshall Fire. In addition, because the arguments and evidence presented by the County show that Brown will fail on the merits, the Court should enter judgment in favor of the County.

II. BACKGROUND

Grass wildfires and straight-line winds of epic proportions beginning on December 30, 2021, resulted in severe damage and total loss of residential homes and commercial buildings in unincorporated Boulder County, the City of Louisville (the “City”), and Town of Superior (the “Town”), Colorado (the “Marshall Fire”). The fire destroyed 1,084 homes. The sheer amount of destruction from the Marshall Fire across the City, Town, and unincorporated County resulted in debris that must be removed so that the fire survivors can begin rebuilding their homes and their lives.

Boulder County has had the misfortune of responding to and recovering from multiple past disasters, such as the 2013 flood that resulted in extensive damage to residential and business property, roads, bridges, creeks, and open space. (*See* Boulder Cty., 2013 Flood Recovery, retrieved from <https://www.bouldercounty.org/disasters/flood/2013-flood/>.) As a result, the County has experience in disaster recovery, including working with the Federal Emergency Management Agency (FEMA) on reimbursement for disaster-related expenses. (*See*

Ex. A (Petersen Aff.)) Based on these experiences, the County knew it would need to phase its approach to both take care of immediate needs and address long-term clean-up actions related to the Marshall Fire’s aftermath. (*Id.*; *see* Boulder Cty. Marshall Fire Debris Removal Program Frequently Asked Questions (FAQs) retrieved from <https://www.bouldercounty.org/disasters/wildfires/marshall/debris-removal-program/debris-removal-program-faqs/>.) The long-term clean-up effort is described in sections II.A and II.B below, and the short-term work is described in section II.C.

A. The private property debris removal bidding process

On January 18, 2022, the County issued RFP #7301-22, Private Property Structural Debris and Hazard Tree Removal Operations, to competitively procure debris removal services on private property. (Ex. B (RFP 7301-22)) The evaluation team¹ included administrative staff from each jurisdiction – Boulder County, the City, and the Town. (RFP Analysis and Recommendation, at 1 (“Rec.”) retrieved from <https://assets.bouldercounty.org/wp-content/uploads/2022/02/RFP-Debris-Cleanup-Award-Recommendation-Memo-BOCC.pdf>.) The Team’s staff had expertise in disaster recovery, debris removal, solid and hazardous waste disposal, construction, public works, and project management. (*Id.* at 3.) RFP #7301-22 set forth evaluation criteria related to project cost, timeline for project schedule, past experience with similar projects, and references from similar project customers. (Ex. B.)

The Team met on February 1, 2022 to discuss Boulder County Purchasing (Purchasing) procedures for the evaluation process, including RFP Evaluation Guidelines requiring fairness, confidentiality, and a prohibition on conflicts of interest. (Rec. at 3; *see* Boulder Cty. Personnel & Policy Manual, § 9.1(G)(5)(a) (“Policy Manual”) retrieved from

¹ The team is also referred to in various documents and by Brown as the “evaluation committee.”

<https://assets.bouldercounty.org/wp-content/uploads/2022/02/personnel-policy-and-procedures-manual-section-9.1-purchasing-and-procurement.pdf>.) The County received eleven (11) proposals. (Rec. at 2-3; *see also* Boulder Cty. RFP #7301-22 Evaluation Process, retrieved from <https://www.bouldercounty.org/disasters/wildfires/marshall/debris-removal-program/marshall-fire-debris-cleanup-rfps/> (showing the bids with confidential information redacted)) The County sought additional information from all bidders through issuance of a Best and Final Offer. Responses were provided to team members for their consideration. (Rec. at 3.) The Team then sought additional information regarding each bidder's past performance and quality of service delivery. (*Id.* at 3.)

Team members individually reviewed the proposals, including the additional information provided by bidders, and evaluated them as a group. (Rec. at 3-4.) The Team worked collaboratively to compile, analyze, and agree upon a single Score Sheet and Rate Sheet. Team members recorded individual notes and informational calculations in addition to collectively compiling the Score Sheet and Rate Sheet. (*Id.* at 4.)

The Team held a two-hour evaluation meeting on February 2, 2022 and a one and one-half hour meeting on February 3. (*Id.*) On February 4, the Team met for four and one-half hours to evaluate the proposals. (*Id.*) During this meeting, the Team identified two finalists and determined that finalist interviews were necessary to make a recommendation decision. Team members continued to conduct independent review and analysis of proposals outside of meetings. (*Id.*)

On February 7, the Team conducted two (2) finalist interviews followed by another one and one-half hour evaluation meeting. (*Id.*) The Team reconvened on February 8 for seven additional hours of discussions, which resulted in a unanimous award recommendation in favor

of DRC. (*Id.*) All told, the Team spent more than 15 hours together reviewing the bids, plus individual review time and interview time. The County has released nearly 200 pages of notes made by the Team, with proprietary information redacted. (*See* Boulder Cty., RFP 7301-22 Evaluator Notes, retrieved from <https://assets.bouldercounty.org/wp-content/uploads/2022/02/marshall-debris-rfp-Notes.pdf>.)

B. Public Hearing on Award Recommendation

On February 10, the Board of County Commissioners (Board or BOCC) held a noticed public meeting regarding the bid award for the RFP. (Boulder County (2022, Feb. 10) Meeting of Board of Cty. Comm’rs at 2:27:15 (“Meeting”), retrieved from <https://pub-bouldercounty.escribemeetings.com/Meeting.aspx?Id=df663f8c-ae0d-420d-add4-74fcf9108f0a&lang=English>.) The meeting began with a presentation by Darla Arians, the Division Manager for Public Works Resource Conservation Division, who discussed the process outlined in section I.A, above, and the reasons the Team recommended DRC’s proposal as the best overall value for the project. (*Id.*) The Team also provided a detailed 6-page Recommendation outlining the process and the decision. (*See* Rec.) The Recommendation noted that the committee “found DRC’s proposal to be the most competitive in terms of project cost.” (Rec. at 4.) It further noted “DRC’s proposal is also highly competitive based on timeline for the project schedule.” (*Id.*) The Team also “appreciated DRC’s past experience with similar projects” and that it “received excellent references for three prior debris removal projects.” (*Id.*)

After Ms. Arians’ presentation, the commissioners asked questions and noted their appreciation for the procurement process outlined in the memorandum. One commissioner stated, among other comments, “I have not seen the contract, obviously. But . . . I shouldn’t say obviously. I haven’t. But DRC could hire subcontractors? There’s no limit on the size of the workforce they are able to bring?” (Meeting at 2:37:15.) In his Motion, Brown implies that

something was wrong with a commissioner saying she had not seen the contract. However, none of the commissioners would have seen a contract on February 3 because a contract gets negotiated *after* a bid is awarded. (See Policy Manual § 9.1.1(e)); *see also* C.R.S. § 24-202-301(2) and (9), describing the difference between an “award” which is the selection of a bid, and a “contract” which is the agreement between the governmental body and the contractor.) The Board voted to adopt the Team’s recommendation to award the bid to DRC.

C. The County’s consultation with DHSEM and FEMA for Phase 3

County staff consulted with its internal experts on FEMA grants and with state officials who possess expertise in FEMA grants across multiple jurisdictions to determine the best course for proceeding expeditiously with Phase 3, or private property debris removal (“PPDR”). (Exs. A ¶ 10; O ¶¶ 5-8 (Haney Aff.)) The County received advice from these experts, who also consulted directly with FEMA, in early January that a new procurement process would be desirable. (Exs. A ¶ 10; O ¶¶ 5-8.) The County has consulted with DHSEM and FEMA at all stages of the PPDR project and has received and incorporated their recommendations to proceed at all times in accordance with FEMA requirements. (Ex. O ¶¶ 5-11.) The County has already requested and received FEMA’s determination that the PPDR project, with specifications for certain categories of debris, is eligible for FEMA reimbursement (Exs. M; N; O ¶ 9.)

Accordingly, the County planned to use the contractor for the Phase 3 PPDR project that was chosen through its competitive procurement process, as outlined in sections A and B above, and had no preference for DRC or any other contractor. (Ex. A ¶¶ 9-10.)

D. The County’s response to immediate needs

While the Team was working on the procurement process discussed above, County staff was also working on more immediate debris removal needs that were separate from the private property debris removal requested in the RFP. (Ex. A (Petersen Aff.)) Several types of fire debris

posed an immediate threat to public health and required removal as soon as possible. (*Id.* ¶¶ 5, 7; *see also* Boulder Cty. Bd. of Health (2022, Jan. 10) Public Health Advisory Regarding Structural Fire Debris Disaster Declaration retrieved from <https://assets.bouldercounty.org/wp-content/uploads/2022/01/board-of-health-advisory-011022.pdf>.) Accordingly, the County used DRC to perform activities related to some of the immediate Phase 2 debris removal under a continuing services contract that had been in place for several years. (Ex. A ¶¶ 7-10.) These services included removing debris that posed an imminent threat on public rights-of-way and work to allow residents whose homes were not destroyed in the fire to remove smoke-affected debris that posed a threat to their health. (*Id.* ¶¶ 4-5.) The rates used by DRC were highly competitive and the work had an estimated cost of only \$250,000. (*Id.* ¶ 9.) The County sought approval for DRC’s work under the existing contract from the Colorado Department of Public Safety Division of Homeland Security & Emergency Management (“DHSEM”). (Ex. C (DHSEM Mem.)) The DHSEM approved the County’s use of DRC for these purposes. (Ex. C (DHSEM Mem.))

III. ARGUMENT

A. Brown cannot prove he meets the standards for a temporary restraining order or a preliminary injunction.

Preliminary injunctive relief is designed to protect a plaintiff from sustaining irreparable injury and to preserve the power of the district court to render a meaningful decision following a trial on the merits. *Bloom v. NCAA*, 93 P.3d 621, 623 (Colo. App. 2004). An injunction provides relief against future harmful conduct. *City of Colorado Springs v. Blanche*, 761 P.2d 212, 217 (Colo. 1988). Although the grant or denial of a preliminary injunction is a decision that lies within the sound discretion of the trial court, injunctive relief is an “extraordinary remedy” and should not be indiscriminately granted. *Rathke v. MacFarlane*,

648 P.2d 648, 651, 653 (Colo. 1982). The trial court’s power to award injunctive relief “should be exercised sparingly and cautiously and with a full conviction on the part of the trial court of its urgent necessity.” *Id.* at 653.

A party seeking a preliminary injunction must meet the standards in *Rathke*. In exercising its discretion, the trial court must find that the moving party demonstrated all of the following: (1) a reasonable probability of success on the merits; (2) a danger of real, immediate and irreparable injury which may be prevented by injunctive relief; (3) there is no plain, speedy, and adequate remedy at law; (4) the granting of a preliminary injunction will not disserve the public interest; (5) the balance of equities favors the injunction; and (6) the injunction will preserve the status quo pending a trial on the merits. *Rathke*, 648 P.2d at 653-54. Brown cannot meet his burden of proving four of the six criteria. There is no remedy at law for an alleged violation of the COML, and thus Brown meets the third factor. Regarding the last criteria, the County acknowledges that an injunction would preserve the properties where many of the 1,084 residences were destroyed as debris-filled hazards on which homeowners could not rebuild pending a trial on the merits.

1. Brown is unlikely to prevail on the merits.

Brown alleges four claims for relief, all of which are based on three alleged violations of the COML.² The third and fourth claims for relief are requests for declaratory judgment that essentially mirror the two COML claims. Specifically, Brown alleges that (1) the Team, or bid committee, was a “local public body” subject to the public meetings requirements outlined in the COML and the committee failed to follow those requirements; (2) notices of several

² Brown labels his last two remaining claims as claims for declaratory relief, but they closely mirror his COML claims. If these claims are simply COML claims under a different label, then they stand or fall based on the arguments in subsections II.A-C, above.

attorney-client executive sessions that the Board held in January and February of 2022 lacked the degree of detail required under the COML; and (3) an improper, non-legal discussion took place at the February 9, 2022 executive session in violation of the COML. As shown below, Brown is unlikely to succeed on the merits of these claims.

a. Bid evaluation team is not a local public body.

Under Brown’s theory of relief, a group of local government staff who gather for the purpose of making a subsequent recommendation to a governing body is a “public body” subject to the extensive requirements of the COML. This position is contrary to the plain definition of “public body” in the COML and would result in making it difficult if not impossible for government entities to conduct competitive procurements.

Under C.R.S. §24-6-402(1)(a)(I), a “local public body” is “any board, committee, commission, or authority, or other advisory, policy-making, rulemaking, or formally constituted body of any political subdivision of the state and any public or private entity *to which a political subdivision, or an official thereof, has delegated a governmental decision-making function but does not include persons on the administrative staff of the local public body.*” (emphasis added). Brown argues that the Team was a board or advisory committee and therefore is subject to the COML, but Brown’s interpretation ignores two key provisions of §24-6-402(1)(a)(I).

First, the terms “board” “committee” and “commission” are modified by the phrase “to which a political subdivision . . . has delegated a governmental decision-making function.” C.R.S. § 24-6-402(1)(a)(I). In interpreting the COML’s similar definition of a “state public body,” the Colorado Supreme Court rejected an interpretation of the COML that ignores the subsequent modifiers in the definition. *See Doe v. Colo. Dep’t of Public Health*, 2019 CO 92, ¶¶ 12-16 (2019). Specifically, the Court determined that “the phrase ‘of any state agency’ modifies

each of the types of bodies that proceeds it” including committees and advisory bodies. *Id.* ¶¶ 12-13. “Were this not the case, the provision would define “state body” to include any board, committee, or commission regardless of whether these bodies had any connection to the state.” *Id.* ¶ 13.

Likewise, failing to apply the modifier phrase “to which a political subdivision, or an official thereof, has delegated a governmental decision-making function,” would result in any committee, board, or advisory body becoming a “local public body” regardless of whether they had any connection to a local body or whether they had been delegated a governmental decision-making function. Thus, under C.R.S. §24-6-402(1)(a)(I), a “committee” or an advisory body of a political subdivision must have a delegated governmental decision-making function to be a “local public body” under the COML.

The Team does not meet the definition of “local public body” and therefore was not required to comply with the COML. *See Free Speed Def. Comm. v. Thomas*, 80 P.3d 935, 938 (Colo. App. 2003) (finding an advisory committee to the District Attorney was not a state or local public body.). Under Boulder County’s purchasing policies and procedures, bids for contracts over \$50,000 may be reviewed by an “evaluation team” (Policy Manual § 9.1(G).) Once a decision has been made by the team, Purchasing prepares a recommendation to the Board for its selection and award at the business meeting. Under the policy “the BOCC reserves the right to reject any or all bids and to accept any portion of a bid or all items bid, if deemed in the best interest of Boulder County.” (*Id.* at § 9.2.8.) Accordingly, the Board did not delegate governmental decision-making authority to the Team. Instead, the Team merely had the ability to make a recommendation, which the Board, exercising its governmental decision-making authority, could accept or reject.

Second, the definition of public body excludes “persons on the administrative staff of the local public body.” §24-6-402(1)(a)(I). Brown ignores this provision in his Motion. The evaluation team for #7301-22 consisted of County administrative staff, City administrative staff, and Town administrative staff. (*See Rec.* at 2-3.) Each of these members were “persons on the staff” of the County, City, or Town. Accordingly, the Team was not a “local public body” under this addition provision of the COML. *See Free Speech Def. Comm.*, 80 P.3d 935, 939 (“broad construction [of the COML] unwarranted” because “the General Assembly was very specific in defining the entities whose meetings were to be open to the public.”).

Finally, interpreting the COML to mean that the bid Team is a “public body” would lead to absurd results. *See Martinez v. People*, 2020 CO 3, ¶ 20 (the Court “avoid[s] interpreting a statute in a way that would lead to an absurd result.”). The County’s procurement process is essentially the same process followed by government entities throughout the State. (*See Ex. L*, including the bid process for various jurisdictions.) Under Brown’s interpretation, government functions related to procurement and contracts would grind to a halt, requiring revamping of bid policies to accommodate the COML requirements for small committees tasked with making bid recommendations.

Further, requiring an entirely public process would make it impossible—or at least incredibly impractical---to solicit and review relevant information from bidders. For example, RFP #7301-22 provided that bidders would be permitted to identify confidential or proprietary information to assist in preventing release of such information through the Colorado Open Records Act. (Ex. B ¶ 10.) If the public could attend evaluation team meetings, confidential information could not be reviewed or discussed because much of the information submitted in the current procurement process is proprietary trade or financial information. (*See C.R.S.* § 24-

72-204(3)(a)(IV) (denying the right to public inspection of trade secrets, privileged information, and confidential commercial and financial data); § 24-101-401 (instructing that “proposals and bids shall be opened so as to avoid disclosure of the contents of the proposal or bid to competing offerors during the review process” under the Colorado Procurement Code); *see also Food Mktg. Inst. V. Argus Leader Media*, 139 S.Ct. 2356, 2366 (2019) (“where commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of private, the information is ‘confidential’ . . . under FOIA”).

In contrast, the County’s current procurement process and the process followed by the Team resolves both confidentiality concerns and COML concerns. Accordingly, Brown is unlikely to succeed on his claim that the Team is a local public body that violated the COML.

b. The Board properly noticed its executive sessions.

Brown’s second allegation is that the Board violated the COML’s provisions related to noticing executive sessions. Under the COML, a local public body may vote to hold an executive session by announcing at a public meeting “the topic for discussion in the executive session . . . and identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized . . .” C.R.S. § 24-6-402(4)(b). Under this provision, the local public body is required to at least describe the “subject matter of an attorney client communication” without waiving the attorney-client privilege. *Guy v. Whitsitt*, 469 P.3d 546, 553 (Colo. App. 2020).

The Board complied with this requirement. The Board generally holds weekly executive sessions for legal advice with the County Attorney on Wednesdays at 11:00 a.m. and the topics for the executive session are announced at the public business meeting at 10:30 a.m. the day before. (*See e.g.*, Boulder County, Past Meetings retrieved from <https://pub-bouldercounty.escribemeetings.com/>). The topics for executive session are included in the

agenda under the heading: “Authorization for the Board of County Commissioners to go into Executive Session at 11:00 a.m. on [date] with Ben Pearlman, County Attorney, pursuant to CRS § 24-6-402(4)(b).” (*See e.g., id.*). At the business meeting, authorization and particular topics of the executive session are publicly announced. At the following business meeting, the Board confirms the topics discussed at the previously announced executive session. (*Id.*).

The topics announced at the public business meetings for the executive sessions at issue were:

January 5, 2022 (January 4, 2022 regular meeting 13:34)

- Community Planning and Permitting Docket LU-19-0035 and SPR 21-0083 Mirafloza Farm agricultural worker unit, new residential and agricultural structures and driveway earthwork
- Marshall Fire Legal issues

January 12 (January 11 regular meeting at 43:47)

- Community Planning and Permitting Docket LU-21-0009 and SPRW-21-0036 Howard Residence
- *Boulder County v. Crestone Peak Resources*, Case No. 21-SC-477
- Colorado Oil and Gas Conservation Commission Financial Assurances Rulemaking
- Marshall Fire Issues
- Collective bargaining legislation and organizing

January 19 (January 18 regular meeting at 32:29)

- Commissioner public meetings requirements
- Requirements for post-census redistricting of commissioner districts
- Marshall fire debris and rebuilding issues

January 26 (January 25 regular meeting at 37:38)

- Community Planning and Permitting Docket SU-21-0003 Smetana Partnership LLC Special Use Marijuana Store
- Marshall fire debris and rebuilding issues

February 9 (February 8 regular meeting at 31:10)

- RFP #7301-22 concerning private property structural debris and hazard tree removal operations
- Boulder Library District

As these notices show, the County carefully identified each topic and matter discussed at each executive session at issue. Brown asserts that the County's executive session notices do not comply with the COML notice requirements, citing *Guy*. In *Guy*, however, the only notice provided for the executive session was "A conference with the Town's attorney for the purpose of receiving legal advice on specific legal questions in accordance with C.R.S. § 24-6-402(4)(b)." *Guy v. Whitsitt*, 469 P.3d at 549 n.1. Unlike in *Guy*, the County provided a list of the topics of executive session advice, specifying, where possible, case numbers, docket numbers, and RFP numbers. *See, e.g. Town of Marble v. Darien*, 181 P.3d 1148, 1156 (Colo. 2008) ("Mill Site Committee Update" was sufficient notice on a business meeting agenda under the COML). Brown has presented no evidence that the County could provide more details about the individual topics, such as Marshall Fire legal issues, without compromising the purpose of the executive session. Thus, the County complied with the COML's executive session notice requirements.

c. The Board did not discuss substantive issues related to its decision on the RFP at its February 9 executive session.

Without citing a shred of evidence, and despite the 15-plus hours of work by the Team to evaluate the bids and prepare a public recommendation to the Board, Brown speculates that the Board "must have" discussed "more than legal advice" at the February 9 executive session. Brown further speculates that these discussions included the Evaluation Committee's recommendation that DRC be awarded the contract, the Evaluation Committee's process and rationale, the Board's decision about whether to follow that recommendation, and the Board's

substantive rationale to award the contract (this time after a purported process) to DRC.” (Mot. 14).

Brown fails to explain how he intends to meet his burden of proof on this issue, and the County is not required to produce evidence in response to Brown’s rank speculation. *Network Telecom. v. Boor-Crepeau*, 790 P.2d 901, 903 (Colo. App. 1990) (sound exercise of the discretion of the trial court to grant a preliminary injunction “is predicated upon its examination of substantial competent evidence presented.”). Nonetheless, as shown by the attached affidavit of County Attorney Ben Pearlman, the February 9 executive session consisted solely of legal advice related to the RFP, and DRC was not mentioned or otherwise discussed. (Ex. D ¶ 6 (Pearlman Aff.)) County Attorney Pearlman’s affidavit shows beyond question that the County will prevail on this issue.³

d. Brown lacks standing.

Brown failed to allege that he is a resident of Boulder County or that any member of his organization is a resident of Boulder County. Likewise, he has failed to allege that he or his non-profit organization has any interest in the outcome of the County’s procurement process. He does not claim he has a relationship to a bidder who was not selected or that he would benefit or suffer harm based on the outcome of the bid award. To have standing, Brown must allege a personal injury in fact, and the COML does not provide for universal standing. *See Pueblo Sch. Dist. No. 60 v. Colorado High Sch. Activities Ass’n*, 30 P.3d 752, 753 (Colo. App. 2000) (Although the COML may purport to grant a cause of action to all citizens of the State, a plaintiff must nevertheless suffer an injury in fact to demonstrate standing). Further, because Brown has not

³ Brown believes the County recorded its executive sessions. However, for attorney-client sessions that constitute privileged attorney-client communication “no record or electronic record shall be required . . .” C.R.S. § 24-6-402(4)(d.5)(II)(B).

alleged that he is a Boulder County resident, he cannot allege a particular interest in the operations or decisions of Boulder County. *See Weisfield v. City of Arvada*, 2015 COA 43, ¶ 24 (questioning whether “the expansive language of section 24-6-402(9) should be read literally to allow *any* citizen of Colorado to challenge any violation of the Open Meetings Law even if, for example, the citizen does not reside within the jurisdiction of the public body whose actions are being challenged.”) (emphasis in original).

Because Brown cannot prevail on any of the arguments on the merits he has raised, he cannot meet the first *Rathke* factor for injunctions.

2. The court should deny an injunction because Brown’s abstract interest in enforcing the COML is outweighed by the substantial damage survivors of the Marshall Fire will suffer because of a debris removal delay.

To meet the *Rathke* standards for an injunction, Brown must prove a danger of real, immediate and irreparable injury that may be prevented by injunctive relief. In addition, Brown must prove that the balance of equities favors the injunction. Among other relief,⁴ Brown requests an order that would prohibit the County from signing a debris removal contract with DRC. Brown does not claim that he will suffer any physical or monetary injury if the County completes its contract process. In fact, as discussed above, it is likely Brown has failed to identify any injury that provides him standing. Thus, the *only* allegedly real, immediate, and irreparable harm claimed by Brown is the same as the public’s general interest in any local government body’s compliance with the COML.

Brown’s purely abstract interest in strict compliance with the COML pales in comparison to the interests of the Marshall Fire of survivors in timely removing debris, rebuilding their homes and returning to their normal lives. If the County enters the debris removal contract with

⁴ Brown fails to explain why his request for production of executive session tapes or his request for a declaration that the County violated the COML require extraordinary emergency relief.

DRC, DRC can mobilize and begin the debris removal process on the 1,084 residences destroyed by the fire. DRC's initial goal was to complete debris removal in July of 2022. (Boulder County (2022, Feb. 10) County Comm'rs select recommended contractor for Marshall Fire debris cleanup program [Press Release] retrieved from <https://www.bouldercounty.org/news/county-commissioners-select-recommended-contractor-for-debris-cleanup-program/>). However, if the Court enters an order that stops the contracting process, then debris removal under the contract would not take place until the legal issues are resolved. This delay would have multiple severe impacts on fire survivors and their surrounding community.

Fire survivor Tim Hughes testifies that he carefully executed a plan to rebuild his home by the end of 2023. (Ex. E (Hughes Aff.)) "Since we are underinsured, we have to put all buckets of insurance money into building cost. We cannot buy much furniture, travel, or even buy many clothes, since we need to put all the money into the house." (*Id.*) A "delay will result in significant financial and emotional hardship. We do not have the finances to absorb a delay. . . . [I]f we lose our place in the builder's queue, it could cost us well over \$100k. We are heartbroken that we now must wait for a lawsuit to resolve before we have any hope of getting on with our lives." (*Id.*) Phyllis Hollister explains that "[w]e need to decide in a timely manner whether we are going to rebuild or sell our property. We are a retired couple and . . . significantly underinsured . . . Our future over the next several years hinges on how soon the debris and foundation can be removed . . ." (Ex. F (Hollister Aff.))

A major issue for fire survivors is the time limit on additional living expenses, or ALE, like a temporary rental apartment, provided by their insurance companies. As Cindy White explains, "we have 24 months of additional living expenses via insurance. If we are to be able to rebuild before insurance runs out, we need to begin the process as soon as possible." (Ex. G

(White Aff.)) Ms. White further states, “[i]n short, delays could cost us significant money.” (*Id.*) Similarly, Jennifer Spalding testifies that, “ALE insurance coverage is for 2 years, so any delay in this process may . . . [force us] to pay both our current mortgage and rental property out of our own money. This will break us!” (Ex. H (Spalding Aff.))

The impacts are not purely financial. Ms. White explains that “The loss of our home has been gut wrenching. To now find this process on-hold because of delays we cannot control is truly upsetting and anxiety-provoking.” (Ex. G.) Ms. Spalding explains that “[m]y family and kids are devastated to have lost our home, and this is an emotionally and mentally taxing process for us, so again, time is of the essence for us to rebuild a ‘normal’ life again in our neighborhood.” (Ex. H.)

Such impacts are not limited to those whose houses burned down. Neighbors are also bearing the impact of cleanup delays. Nathan Rini explains, “[m]y house was smoke and heat damaged. . . . Every time the wind blows, more ash collects at my house. . . . Every delay of the cleanup is a delay to our return home and we only have so much ALE time.” (Ex. I (Rini Aff.)) Likewise, Rebecca Ellis explains, “our kids can no longer walk or bike to their friends’ homes because their homes are destroyed or damaged [W]e are stuck in limbo, until debris removal is complete” (Ex. J (Ellis Aff.)) Further, Christine Burg states, “My husband and I feel it is unsafe to return to our come with the continued presence of debris from burned homes We are unable to . . . pay rent elsewhere.” (Ex. K (Burg Aff.)) The affidavits above are not isolated instances but are rather only a sample of how Marshall Fire survivors would testify regarding this matter. (*See* Ex. P (Offer of Proof))

3. A preliminary injunction will not serve the public interest.

The fourth *Rathke* factor requires that the “granting of a preliminary injunction will not

disserve the public interest”. 648 P.2d at 654. The COML supports “the policy of this state that the formation of public policy is public business and may not be conducted in secret.” C.R.S. § 24-6-401. Accordingly, the COML further provides that “[n]o resolution, rule, regulation, ordinance, or formal action of a state or local public body shall be valid unless taken or made at a meeting that meets the requirements in subsection (2) of this section.” C.R.S. § 24-4-402(8). Brown does not challenge the fact that the Board’s bid award took place at a noticed public meeting. Thus, rather than applying this remedy, the Court, if it finds a COML violation, has “jurisdiction to issue injunctions to enforce the purposes of this section . . .” of the COML. C.R.S. § 24-4-402(9)(a). “Mechanistic vacation of decisions made in nonconformity with the open meetings law may do more disservice to the public good than the violation itself.” *Colo. Off-Highway Vehicle Coalition v. Colo. Bd. of Parks & Outdoor Rec.*, 2012 COA 146, ¶ 32.

In this case, the County made a critical decision for the benefit of its impacted community, and its process was far from secret. Even if the Court determines that the Team was a public body, the Team thoroughly explained the process it used to make its recommendation at a public meeting, and its process was shown in more than 200 pages of publicly available documents. Likewise, even if the court determines the County could have provided more detailed notices related to its executive sessions, it does not mean that those meetings would have taken place in public. Executive sessions are closed to the public.

Finally, even if the Board had strayed beyond receiving legal advice at the February 9 executive session, the Board held a duly noticed public hearing where the process for awarding the bid was explained, discussed, and voted on in full view of the public, which is exactly what the COML requires even when a prior meeting was problematic. *See Colo. Off-Highway Vehicle Coalition.*, 2012 COA 146, ¶¶ 29, 31 (a local public body may “cure” a prior COML violation by

holding a subsequent complying meeting that is not a mere “rubber stamping” of an earlier decision.”). Importantly, the County’s procurement process provides disappointed bidders with the opportunity to appeal the Board’s decision, and therefore the meeting where the Board awards the bid is not the final opportunity for input. (Policy Manual § 9.1(G)(9).) In contrast, the harsh and mechanistic remedy of invalidating the DRC bid award that is of critical importance to the community will harm the public interest.

If it ultimately found a COML violation, the Court has discretion to craft a remedy that addresses its concerns without impacting Marshall Fire survivors. For example, it could declare that the notices should have been more detailed, instruct the County to provide more detail in the future, but refuse to enjoin the DRC contract. However, as shown in section III.A.1.b, above, no such remedy is necessary or warranted because the County complied with the COML.

IV. CONCLUSION

For the reasons stated above, the County requests that this Court deny Brown’s motion for a temporary restraining order and preliminary injunction and grant judgment on the merits in favor of the County.

Respectfully submitted this 9th day of March 2022.

BOULDER COUNTY ATTORNEY

By: /s/David Hughes
David Hughes,
Deputy County Attorney
Catherine R. Ruhland,
Deputy County Attorney

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that on March 9, 2022, I electronically filed the foregoing **BOULDER COUNTY'S RESPONSE TO MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AND REQUEST FOR CONSOLIDATION OF HEARING WITH TRIAL ON THE MERITS** via Colorado Courts E-Filing (CCEF), which will either serve the same via e-mail or United States mail to the following:

Chad Williams, #30917
Mark Champoux, #40480
Molly Kokesh, #51179
DAVIS GRAHAM & STUBBS LLP
1550 Seventeenth Street, Suite 500
Denver, CO 80202
chad.williams@dgsllaw.com
mark.champoux@dgsllaw.com
molly.kokesh@dgsllaw.com

Attorneys for Plaintiff

/s/Stephanie Adamson

Stephanie Adamson, Legal Assistant

EXHIBIT A

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 6th Street, Boulder, CO 80302 (303) 441-3750	
DEMANDING INTEGRITY IN GOVERNMENT SPENDING, a Colorado nonprofit corporation, Plaintiff, v. BOULDER COUNTY, a county of the State of Colorado; BOARD OF COUNTY COMMISSIONERS, COUNTY OF BOULDER; MATT JONES, CLAIRE LEVY, and MARTA LOACHAMIN, in their official capacity as members of the Boulder County Board of County Commissioners. Defendants.	
Attorneys for Defendants: David Hughes, Deputy County Attorney, #24425 Catherine R. Ruhland, Deputy County Attorney, #42426 BOULDER COUNTY ATTORNEY P.O. Box 471, Boulder, CO 80306 Phone No.: 303-441-3190 Fax No.: 303-441-4794 dhughes@bouldercounty.org truhland@bouldercounty.org	▲ COURT USE ONLY ▲ Case Number: 2022CV030101 Div.: 5
AFFIDAVIT OF JANA PETERSEN	

1. I, Jana Petersen, affirm under penalty of perjury that the following is true and correct to the best of my knowledge and information:
2. I am over 18 years of age. I make these statements based on my personal knowledge.
3. I have served as the Boulder County Administrator since January 2020.
4. As Boulder County Administrator, my duties include supervision of the Public Works Department and the Disaster Recovery team. The scope of this responsibility includes supervising procurement and project implementation for any FEMA-funded projects as part of

EXHIBIT A

the Marshall Fire recovery. For this disaster, much of the recovery work has focused on debris removal for the 1100 destroyed residential structures, as well as the hundreds of residential structures that were damaged but not destroyed throughout the burn area. Although the County is not required to undertake comprehensive debris removal activities after a disaster, they are an important service to the community for the protection of public health and safety and to allow the healing and rebuilding process to begin.

5. Because the county has had significant experience in debris removal from past disasters including other wildfires and a 500-year flood event in 2013, Boulder County Public Works offered to take the lead in organizing coordinated debris removal across the three jurisdictions impacted by the Marshall Fire: unincorporated Boulder County, the City of Louisville, and the Town of Superior. There were several phases of this work, including:

- Phase 1: Placement of roll-off dumpsters to receive spoiled food and other hazards from areas that were evacuated and lost power, had some burn damage but homes were still standing.
- Phase 2a: Removal of debris posing an imminent threat on public rights-of-way (streets, sidewalks, ditches, trails). This included removal of downed and dying trees, vehicles, and other large items to create safe passage for pedestrians and vehicles needing to access damaged areas.
- Phase 2b: Removal of smoke and water damaged material from neighborhoods where homes were damaged but not destroyed. Property owners placed this material curbside at their residences, where it was picked up for proper disposal.
- Phase 2c: The application of hydro-mulch to destroyed properties to prevent wind from disturbing ash/debris and keep this hazardous material from entering local waterways.
- Phase 3: Clean-up of ash and other material from fully destroyed homes as part of a coordinated Private Property Debris Removal program.

6. We are seeking federal reimbursement for all of these efforts through the Federal Emergency Management Agency. Phases 1 and 2 of this work are complete.

7. Based on our experience with past disasters, the county had a good understanding of the serious hazard posed by debris after disaster and we sought to be prepared to immediately begin debris removal work after any future disasters. This immediate response is necessary because the longer time passes, the more harmful debris can be, as its hazards can become airborne or leach into soil and groundwater, posing a risk to human health and to the natural environment.

8. In order to be prepared to immediately begin debris removal activity after a future disaster, Boulder County issued a request for proposals (RFP) in 2017 to identify a vendor to perform post-disaster debris removal work. DRC Environmental was awarded the bid as the only bidder to respond to the RFP in 2017, and our understanding that the bid was cost competitive

EXHIBIT A

based on experience with other disasters. The County entered into a continuing services contract with this firm with the understanding that DRC could be available immediately after a disaster to assist with debris removal.

9. For the Marshall Fire, we used DRC to perform activities related to some of the phase two debris removal tasks above, based on the 2017 procurement process and our knowledge from past disasters that their rates for this work were highly competitive. We also confirmed the competitiveness of these rates by comparing them to debris removal rates provided by FEMA. The value of this Phase 2 work is estimated at \$250,000.

10. Although the County had a debris removal contract in place with DRC, County staff consulted with our internal experts on FEMA grants and with state officials who possess expertise in FEMA grants across multiple jurisdictions to determine the best course for proceeding expeditiously with Phase 3. With the project cost of this phase in the range of \$55 million, with DRC being the sole bidder on the 2017 procurement, and with the financial responsibility resting largely with Louisville and Superior, we received advice from these experts in early January that a new procurement process would be desirable. Accordingly, the County planned to use the contractor for the phase 3 clean-up who was chosen through its competitive procurement process and had no preference for DRC or any other contractor.

[Signature Page to Follow]

EXHIBIT A

Dated: 3/8/22


Jana Petersen

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

Subscribed and affirmed before me this 8 day of March 2022, by Jana Petersen.

My Commission expires: 12-30-2025


Notary Public

**MARY C. MCKIBBEN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20134080276
MY COMMISSION EXPIRES DECEMBER 30, 2025**

EXHIBIT B
OMITTED DUE TO SIZE OF DOCUMENT

EXHIBIT C



COLORADO

Division of Homeland Security & Emergency Management

Department of Public Safety

Date: January 12, 2022

To: Courtney Gabriel, Purchasing Manager, Boulder County

From: Kevin Klein, Director, Division of Homeland Security and Emergency Management

Michael Haney, State Public Assistance Officer, Division of Homeland Security and Emergency Management

Subject: Approval of Noncompetitive Procurement for DRC Emergency Services

The Division of Homeland Security and Emergency Management (DHSEM) has received and reviewed your request dated January 11, 2022 to approve the noncompetitive procurement for DRC Emergency Services. After reviewing the request, DHSEM approves the noncompetitive procurement in accordance with 2 CFR 200.320 (c) (4) as the pass-through entity.

This approval is limited to the scope outlined in your request:

These first phases include dumpster/roll-off and curbside removal of debris from public rights of way and fire/smoke-damaged soft-good type property from private property. These first phases of debris removal to be performed by DRC do not include any ash, damaged or destroyed building materials, hazardous materials, demolition waste, and do not require entrance onto private property.

If the scope, timeline (6 weeks), or cost (\$259,517) of this work deviates in a significant manner from what is outlined in your request you must notify DHSEM and FEMA as soon as possible for reconsideration of this request.

If you have any questions about this approval, please contact Michael Haney at michael.haney@state.co.us or 303.594.0572.

Kevin R. Klein
Digitally signed by Kevin R. Klein
Date: 2022.01.12 08:13:21 -07'00'

Kevin Klein
Director, DHSEM

Michael Haney
Digitally signed by Michael Haney
Date: 2022.01.12 07:58:25 -07'00'

Michael Haney
State Public Assistance Officer, DHSEM

EXHIBIT D

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 6th Street, Boulder, CO 80302 (303) 441-3750	
DEMANDING INTEGRITY IN GOVERNMENT SPENDING, a Colorado nonprofit corporation, Plaintiff, v. BOULDER COUNTY, a county of the State of Colorado; BOARD OF COUNTY COMMISSIONERS, COUNTY OF BOULDER; MATT JONES, CLAIRE LEVY, and MARTA LOACHAMIN, in their official capacity as members of the Boulder County Board of County Commissioners. Defendants.	
Attorneys for Defendants: David Hughes, Deputy County Attorney, #24425 Catherine R. Ruhland, Deputy County Attorney, #42426 BOULDER COUNTY ATTORNEY P.O. Box 471, Boulder, CO 80306 Phone No.: 303-441-3190 Fax No.: 303-441-4794 dhughes@bouldercounty.org truhland@bouldercounty.org	▲ COURT USE ONLY ▲ Case Number: 2022CV030101 Div.:
AFFIDAVIT OF BEN PEARLMAN	

1. I, Ben Pearlman, affirm under penalty of perjury that the following is true and correct to the best of my knowledge and information:

2. I am over 18 years of age. I make these statements based on my personal knowledge and upon review of the records referenced in this affidavit.

3. I have served as the Boulder County Attorney since January of 2012.

4. My duties as the Boulder County Attorney consist primarily of providing legal advice to the Board of County Commissioners and other county departments and elected officials.

EXHIBIT D

5. On February 9, 2022, the Board of County Commissioners convened an executive session for legal advice concerning RFP #7301-22, Private Property Structural Debris and Hazard Tree Removal Operations.

6. Discussion during the February 9, 2022 executive session was limited to providing privileged attorney client legal advice regarding RFP #7301-22 concerning private property structural debris and hazard tree removal operations. The discussion was a conference with attorneys that did not include anything beyond the Board of County Commissioners receiving legal advice on this specific issue. DRC was never identified or otherwise discussed.

7. The February 9, 2022 executive session consisted only of attorney-client privileged legal advice.

[Signature Page to Follow]

EXHIBIT D

Dated: 3/8/2022

Ben Pearlman
Ben Pearlman

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

Subscribed and affirmed before me this 8th day of March 2022, by Ben Pearlman.

Nicole Leadens
Notary Public

My Commission expires: 10/31/2023

**NICOLE LEADENS
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20154042274
MY COMMISSION EXPIRES OCTOBER 31, 2023**

EXHIBIT E

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 6th Street, Boulder, CO 80302 (303) 441-3750	
DEMANDING INTEGRITY IN GOVERNMENT SPENDING, a Colorado nonprofit corporation, Plaintiff, v. BOULDER COUNTY, a county of the State of Colorado; BOARD OF COUNTY COMMISSIONERS, COUNTY OF BOULDER; MATT JONES, CLAIRE LEVY, and MARTA LOACHAMIN, in their official capacity as members of the Boulder County Board of County Commissioners. Defendants.	
Attorneys for Defendants: David Hughes, Deputy County Attorney, #24425 Catherine R. Ruhland, Deputy County Attorney, #42426 BOULDER COUNTY ATTORNEY P.O. Box 471, Boulder, CO 80306 Phone No.: 303-441-3190 Fax No.: 303-441-4794 dhughes@bouldercounty.org truhland@bouldercounty.org	▲ COURT USE ONLY ▲ Case Number: 2022CV030101 Div.: 5
AFFIDAVIT OF TIM HUGHES	

1. I, Tim Hughes, affirm under penalty of perjury that the following is true and correct to the best of my knowledge and information:
2. I am over 18 years of age. I make these statements based on my personal knowledge.
3. I own property at 1 Benchmark Drive, Boulder, Colorado, that was impacted by the Marshall Fire.
4. We have staged our rebuild process around the expected debris removal completion date of July 1. We have plans from an architect and a builder under retainer. We

EXHIBIT E

were expecting to file for permits soon after the Article 19 provisions are defined. The schedule would allow us to break ground in late summer and be in our new house by the end of 2023. We have carefully executed to this plan, working on it every day to allow us to move into our rebuild before our ALE runs out at the 2-year mark. Since we are underinsured, we have to put all buckets of insurance money into the building cost. We cannot buy much furniture, travel, or even buy many clothes, since we need to put all money into the house. Once our 2-year time limit expires, we cannot afford to rent anywhere near here if construction takes longer. This delay will result in significant financial and emotional hardship. We had a well organized plan that is now completely upended. We do not have the finances to absorb a delay. Just from a rental perspective, we will lose at least \$12k/month out of our pocket if this program is delayed. Much worse, if we lose our place in the builder's queue, it could cost us well over \$100k. I had helped convince neighbors to opt-in to the coordinated debris removal program, since we were expecting completion by July 1. Now we are all suffering. Our way of life has been devastated by this tragedy. We are heartbroken that we now must wait for a lawsuit to resolve before we have any hope of getting on with our lives. We don't get to go home and enjoy our normal life, we are all in some temporary housing that is a constant reminder we cannot enjoy the lives we once had. Please let us rebuild and come home.

[Signature Page to Follow]

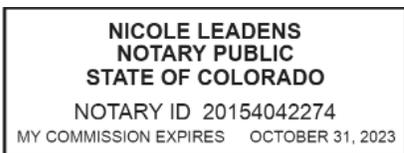
EXHIBIT E

Dated: 03/08/2022

Tim Hughes
Tim Hughes

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

Subscribed and affirmed before me this 08 day of March 2022, by Tim Hughes.



Nicole Leadens
Notary Public

My Commission expires: 10/31/2023

Electronic Notary Public

Notarized online using audio-video communication

EXHIBIT F

<p>DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 6th Street, Boulder, CO 80302 (303) 441-3750</p>	
<p>DEMANDING INTEGRITY IN GOVERNMENT SPENDING, a Colorado nonprofit corporation, Plaintiff,</p> <p>v.</p> <p>BOULDER COUNTY, a county of the State of Colorado; BOARD OF COUNTY COMMISSIONERS, COUNTY OF BOULDER; MATT JONES, CLAIRE LEVY, and MARTA LOACHAMIN, in their official capacity as members of the Boulder County Board of County Commissioners. Defendants.</p>	
<p>Attorneys for Defendants: David Hughes, Deputy County Attorney, #24425 Catherine R. Ruhland, Deputy County Attorney, #42426 BOULDER COUNTY ATTORNEY P.O. Box 471, Boulder, CO 80306 Phone No.: 303-441-3190 Fax No.: 303-441-4794 dhughes@bouldercounty.org truhland@bouldercounty.org</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p>Case Number: 2022CV030101</p> <p>Div.: 5</p>
<p>AFFIDAVIT OF PHYLLIS HOLLISTER</p>	

1. I, Phyllis Hollister, affirm under penalty of perjury that the following is true and correct to the best of my knowledge and information:
2. I am over 18 years of age. I make these statements based on my personal knowledge.
3. I own property at 7394 Spring Drive, Boulder, Colorado, that was impacted by the Marshall Fire.
4. We need to decide in a timely manner whether we are going to rebuild or sell our property. We are a retired couple and as with most families, significantly underinsured to rebuild

EXHIBIT F

our home. Our future over the next several years hinges on how soon the debris and foundation can be removed and the subsequent decisions we need to make.

[Signature Page to Follow]

EXHIBIT F

Dated: 03/08/2022

Phyllis Hollister
Phyllis Hollister

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

Subscribed and affirmed before me this 08 day of March 2022, by Phyllis Hollister.

NICOLE LEADENS
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20154042274
MY COMMISSION EXPIRES OCTOBER 31, 2023

Nicole Leadens
Notary Public

My Commission expires: 10/31/2023

Electronic Notary Public
Notarized online using audio-video communication

EXHIBIT G

<p>DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 6th Street, Boulder, CO 80302 (303) 441-3750</p>	
<p>DEMANDING INTEGRITY IN GOVERNMENT SPENDING, a Colorado nonprofit corporation, Plaintiff,</p> <p>v.</p> <p>BOULDER COUNTY, a county of the State of Colorado; BOARD OF COUNTY COMMISSIONERS, COUNTY OF BOULDER; MATT JONES, CLAIRE LEVY, and MARTA LOACHAMIN, in their official capacity as members of the Boulder County Board of County Commissioners. Defendants.</p>	
<p>Attorneys for Defendants: David Hughes, Deputy County Attorney, #24425 Catherine R. Ruhland, Deputy County Attorney, #42426 BOULDER COUNTY ATTORNEY P.O. Box 471, Boulder, CO 80306 Phone No.: 303-441-3190 Fax No.: 303-441-4794 dhughes@bouldercounty.org truhland@bouldercounty.org</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p>Case Number: 2022CV030101</p> <p>Div.: 5</p>
<p>AFFIDAVIT OF CINDY WHITE</p>	

1. I, Cindy White, affirm under penalty of perjury that the following is true and correct to the best of my knowledge and information:

2. I am over 18 years of age. I make these statements based on my personal knowledge.

3. I own property at 954 Arapahoe Cir., Louisville, CO 80027 that was impacted by the Marshall Fire.

4. A delay in debris removal will slow movement toward rebuilding. Debris removal is an essential first step in being able to move forward with rebuilding. Delays in debris removal

EXHIBIT G

will delay our ability to begin lot preparation to rebuild and also potentially drive up costs since delays mean potential increase in costs of materials for builders. Additionally, we have 24 months of additional living expenses via insurance. If we are to be able to rebuild before that money runs out, we need to begin the process as soon as possible. In short, delays could cost us significant money. It will also lead to additional emotional anguish. The loss of our home has been gut-wrenching. To now find this process on-hold because of delays we cannot control is truly upsetting and anxiety-provoking.

[Signature Page to Follow]

EXHIBIT G

Dated: 03/07/2022

Cindy White
Cindy White

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

Subscribed and affirmed before me this 03 day of March 2022, by Cindy White.

NICOLE LEADENS
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20154042274
MY COMMISSION EXPIRES OCTOBER 31, 2023

Nicole Leadens
Notary Public

My Commission expires: 10/31/2023

Electronic Notary Public

Notarized online using audio-video communication

EXHIBIT H

<p>DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 6th Street, Boulder, CO 80302 (303) 441-3750</p>	
<p>DEMANDING INTEGRITY IN GOVERNMENT SPENDING, a Colorado nonprofit corporation, Plaintiff,</p> <p>v.</p> <p>BOULDER COUNTY, a county of the State of Colorado; BOARD OF COUNTY COMMISSIONERS, COUNTY OF BOULDER; MATT JONES, CLAIRE LEVY, and MARTA LOACHAMIN, in their official capacity as members of the Boulder County Board of County Commissioners. Defendants.</p>	
<p>Attorneys for Defendants: David Hughes, Deputy County Attorney, #24425 Catherine R. Ruhland, Deputy County Attorney, #42426 BOULDER COUNTY ATTORNEY P.O. Box 471, Boulder, CO 80306 Phone No.: 303-441-3190 Fax No.: 303-441-4794 dhughes@bouldercounty.org truhland@bouldercounty.org</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p>Case Number: 2022CV030101</p> <p>Div.: 5</p>
<p>AFFIDAVIT OF JENNIFER AND RYAN SPALDING</p>	

1. We, Jennifer and Ryan Spalding, affirm under penalty of perjury that the following is true and correct to the best of my knowledge and information:
2. We are over 18 years of age. We make these statements based on our personal knowledge.
3. We own property at 918 Arapahoe Circle, Louisville, Colorado that was impacted by the Marshall Fire.
4. ALE insurance coverage is for 2 years, so any delay in this process may cause us to run over the 2 year maximum and be forced to pay both our current mortgage and rental

EXHIBIT H

property out of our own money. This will break us! Any delay will also add rebuilding costs due to inflation and market volatility. In order to receive the rest of our insurance dwelling coverage, we need to show proof that construction is happening and only receive those funds as costs are incurred, so time is of the essence. Lastly, our family and kids are devastated to have lost our home, and this is an emotionally and mentally taxing process for us, so again, time is of the essence for us to rebuild a "normal" life again in our neighborhood.

5. We would strongly support a countersuit against the entity suing Boulder County, on behalf of all Marshall Fire victims, for all damages caused by delaying the start of coordinated debris removal.

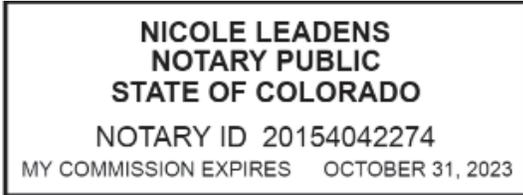
[Signature Page to Follow]

EXHIBIT H

Jennifer Spalding
Jennifer Spalding

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

Subscribed and affirmed before me this 07 day of March 2022, by Jennifer Spalding.



Nicole Leadens

Notary Public

My Commission expires: 10/31/2023

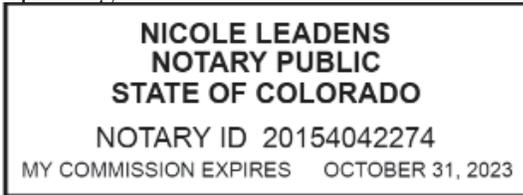
Electronic Notary Public

Notarized online using audio-video communication

Ryan Spalding
Ryan Spalding

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

Subscribed and affirmed before me this 07 day of March 2022, by Ryan Spalding.



Nicole Leadens

Notary Public

My Commission expires: 10/31/2023

Electronic Notary Public

Notarized online using audio-video communication

EXHIBIT I

<p>DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 6th Street, Boulder, CO 80302 (303) 441-3750</p>	
<p>DEMANDING INTEGRITY IN GOVERNMENT SPENDING, a Colorado nonprofit corporation, Plaintiff,</p> <p>v.</p> <p>BOULDER COUNTY, a county of the State of Colorado; BOARD OF COUNTY COMMISSIONERS, COUNTY OF BOULDER; MATT JONES, CLAIRE LEVY, and MARTA LOACHAMIN, in their official capacity as members of the Boulder County Board of County Commissioners. Defendants.</p>	
<p>Attorneys for Defendants: David Hughes, Deputy County Attorney, #24425 Catherine R. Ruhland, Deputy County Attorney, #42426 BOULDER COUNTY ATTORNEY P.O. Box 471, Boulder, CO 80306 Phone No.: 303-441-3190 Fax No.: 303-441-4794 dhughes@bouldercounty.org truhland@bouldercounty.org</p>	<p>▲ COURT USE ONLY ▲ Case Number: 2022CV030101 Div.: 5</p>
<p>AFFIDAVIT OF NATHAN RINI</p>	

1. I, Nathan Rini, affirm under penalty of perjury that the following is true and correct to the best of my knowledge and information:
2. I am over 18 years of age. I make these statements based on my personal knowledge.
3. I own property at 857 Eldorado Drive, Superior, Colorado that was impacted by the Marshall Fire.
4. Our home has heat and smoke damage sustained during the Marshall Fire. Two homes directly behind ours (one less than 40 feet away) and several homes directly across the

EXHIBIT I

street were burned down to their foundations. We were fortunate our home sustained mostly exterior damage, but it was inundated with smoke, several windows broke from the heat, our deck was compromised, and we lost most of our fence and a significant amount of landscaping. Our restoration company has determined that the cleanup needs to wait until after the lots around us have been cleared due to the risk of recontamination. Every time the wind blows, more ash collects at my house. Every delay of the cleanup is delaying our return home and we only have so much ALE time.

5. We have a seven-year-old daughter in attendance at Superior Elementary. Every day that we bring her to school she has to see our house from across the open space. That view used to be of the back of one of her friend's homes. Not only has she had to leave her beloved home and neighborhood, but she has had to move from a hotel (where we had to live for 5 weeks without her dogs), to a short-term house, and again on March 8th to a longer-term situation, all of which are about 20 minutes away from her school and our home. Our home tested positive for lead, so she has lost all of her toys, including a large stuffed animal collection, her personal library, of which she was very proud, and an assortment of puzzles and board games, not to mention all her clothes, bedding, and decor. Every second that the cleanup is delayed keeps us from getting our daughter home. It is also prolonging the potential for her school to be contaminated with windblown ash and soot. There is also concern about the release of poisonous VOCs as the daily temperatures increase. Our child has suffered too much already and deserves to be safe at home once more. The sooner we are home, the sooner our daughter can heal from this trauma.

[Signature Page to Follow]

EXHIBIT I

Dated: 3/7/22

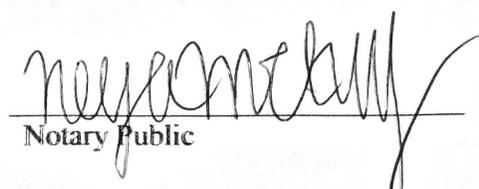


Nathan Rini

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

Subscribed and affirmed before me this 7th day of March 2022, by Nathan Rini.

NADYA MARETZKY
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20214037847
MY COMMISSION EXPIRES SEPTEMBER 27, 2025



Notary Public

My Commission expires: 09/27/2025

EXHIBIT J

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 6th Street, Boulder, CO 80302 (303) 441-3750	
DEMANDING INTEGRITY IN GOVERNMENT SPENDING, a Colorado nonprofit corporation, Plaintiff, v. BOULDER COUNTY, a county of the State of Colorado; BOARD OF COUNTY COMMISSIONERS, COUNTY OF BOULDER; MATT JONES, CLAIRE LEVY, and MARTA LOACHAMIN, in their official capacity as members of the Boulder County Board of County Commissioners. Defendants.	
Attorneys for Defendants: David Hughes, Deputy County Attorney, #24425 Catherine R. Ruhland, Deputy County Attorney, #42426 BOULDER COUNTY ATTORNEY P.O. Box 471, Boulder, CO 80306 Phone No.: 303-441-3190 Fax No.: 303-441-4794 dhughes@bouldercounty.org truhland@bouldercounty.org	▲ COURT USE ONLY ▲ Case Number: 2022CV030101 Div.: 5
AFFIDAVIT OF REBECCA ELLIS	

1. I, Rebecca Ellis, affirm under penalty of perjury that the following is true and correct to the best of my knowledge and information:
2. I am over 18 years of age. I make these statements based on my personal knowledge.
3. I own property at 533 Wildrose Court, Louisville, Colorado, that was impacted by the Marshall Fire.
4. I live just east of the fire line in Louisville. Our home is thankfully still standing but we are near hundreds of homes that burned. Our lives have been upended in so many ways,

EXHIBIT J

ranging from the trauma and community loss to the post-fire cleanup needed for our own home to the fact that our kids can no longer walk or bike to their friends' homes because those homes are destroyed or damaged. Debris removal will be a major undertaking in what is left of our neighborhood. There will be trucks coming in and out (even more than there are already), additional road blockages, more particulates in the air and coming into our soil and house, etc. On a practical level, we cannot move forward with finishing cleaning of our house and yard until the debris removal. We are living in our home, but some of our neighbors are not, and they won't come back until they can "finish" cleaning. On an emotional level, we are stuck in limbo, not knowing what will happen next in our community or what the next steps are, until debris removal is complete and the next steps can begin. The current delay in debris removal (beyond what was needed to allow time for sifting and contracting) is causing additional grief and challenges for those who have lost their homes as well as those around them. It is prolonging our trauma and delaying what is already a difficult recovery for ourselves and our community.

[Signature Page to Follow]

EXHIBIT K

<p>DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 6th Street, Boulder, CO 80302 (303) 441-3750</p>	
<p>DEMANDING INTEGRITY IN GOVERNMENT SPENDING, a Colorado nonprofit corporation, Plaintiff,</p> <p>v.</p> <p>BOULDER COUNTY, a county of the State of Colorado; BOARD OF COUNTY COMMISSIONERS, COUNTY OF BOULDER; MATT JONES, CLAIRE LEVY, and MARTA LOACHAMIN, in their official capacity as members of the Boulder County Board of County Commissioners. Defendants.</p>	
<p>Attorneys for Defendants: David Hughes, Deputy County Attorney, #24425 Catherine R. Ruhland, Deputy County Attorney, #42426 BOULDER COUNTY ATTORNEY P.O. Box 471, Boulder, CO 80306 Phone No.: 303-441-3190 Fax No.: 303-441-4794 dhughes@bouldercounty.org truhland@bouldercounty.org</p>	
<p>▲ COURT USE ONLY ▲ Case Number: 2022CV030101 Div.: 5</p>	
<p>AFFIDAVIT OF CHRISTINE BURG</p>	

1. I, Christine Burg, affirm under penalty of perjury that the following is true and correct to the best of my knowledge and information:
2. I am over 18 years of age. I make these statements based on my personal knowledge.
3. I own property at 117 Crestview Court, Louisville, Colorado that was impacted by the Marshall Fire.
4. My husband, two sons and I are incredibly fortunate that our home on Crestview Court is intact in the wake of the Marshall Fire. We back directly to Mulberry St. to the north

EXHIBIT K

and Vista Lane to the east; all of our neighbors' homes on those sides were destroyed in the fire. Our family's ability to return home in a timely manner is now indefinitely delayed as a result of the lawsuit filed by Demanding Integrity in Government Spending and the DIGS v. Boulder County case. The repairs to our home resulting from the fire will allow us to return by July 1. Our insurance provider will at that time cease paying for temporary housing. My husband and I feel it is unsafe to return to our home with the continued presence of debris from burned homes on 4+ lots directly behind us. We are unable to financially afford to pay rent elsewhere, even should we choose to put a hold on our monthly home mortgage payments, especially given the rising costs of rent in Boulder County since the fire. With the delay in debris removal resulting from this lawsuit we would need to return to our home this summer unable to have our children play in or even enter our backyard. We could not invite other family's children over to play knowing the outdoors of our home is possibly unsafe. We have learned that if we are living in our home when debris removal occurs, we will likely need to vacate the premise to avoid contact with toxins during removal. Furthermore, even should we secure any and all entry points for air into our home during debris removal, it remains likely that such toxins from the debris will still enter our home in amounts that will make it necessary to engage in interior fire remediation a second time in order to make our home safe to inhabit. Our insurance provider will not pay for a second interior or exterior cleaning. In short, the lawsuit and pending court case are devastating for our family. We will not be back in our home six months after the fire as hoped, but rather much longer and at much possibly significant financial cost to us. Our children believe we will be home by July 1. We have moved four times since the Marshall Fire, attempting each time to stay close to our children's schools. We now are worried even more so for our direct neighbors who now may not be able to rebuild as a result of this lawsuit. We are heartbroken that perhaps more of them may choose to move from Mulberry St. and Vista Lane. It is in the best interest of our community to expedite debris removal.

[Signature Page to Follow]

Localities	Public Link	Description
Adams County	https://www.adco.gov/sites/default/files/6064.pdf	The RFP evaluation process for all proposals as defined above shall be conducted as an objective process that requires a committee to evaluate all proposals on the specific criteria in the RFP. Complete confidentiality is an ethical and legal requirement, and is vital to fair and equitable evaluation. During the entire RFP process, the Purchasing Division staff serves as the sole contact for vendors and provides all RFP procedures and communication. Technical issues will be addressed by the appropriate Purchasing Division staff and relayed to vendors by the Purchasing Division staff. After proposals are submitted, all vendor contact shall be made through the Purchasing Division staff. Vendor proposal details, results and other evaluation proceedings shall be kept confidential at all times during the RFP and evaluation process. After a contract has been executed with the selected vendor, all information pertaining to the selection process (with the exception of confidential and proprietary information contained within a vendor's proposal, labeled as such by the vendor, and deemed confidential and proprietary by the Adams County Attorney's Office) shall be made available to the public for inspection in accordance with the Colorado Open Records Act (C.R.S. 24-72-203 and 24-72-204). Such information shall be provided to the requesting party upon receipt of a proper written inquiry under the act. Any inquiries under this act
Colorado Springs, City of	https://coloradosprings.gov/sites/default/files/inline-images/2019_procurement_rules_regulations_ordinance_no_19-1_rdoc.pdf	3-304.3 Evaluation Committee The Evaluation of Proposals shall be an objective process using the Evaluation criteria specified in the RFP to evaluate all Proposals. The actual Evaluation of Proposals shall be conducted by the committee, and chaired by a member of the Procurement Services Division. The committee should be made up of a diverse group of individuals from different departments or divisions of the City. In most cases, the committee should consist of at least five (5) members, with one (1) member coming from an organization that is not the user of the subject product or services. In cases when the Procurement Services Manager believes that it is not practical to have five (5) members on the committee, or when more than five (5) members would be more appropriate, the Evaluation committee may have a smaller or larger membership. All Evaluation committee members shall read and sign the "Procurement Integrity Non-Disclosure Statement," which serves as a briefing to each evaluator of the confidentiality required during Evaluation of Proposals, prior to reviewing any Proposals. To encourage honest and frank discussion during the evaluation process, evaluator names shall be
El Paso County	https://assets-admin.elpasoco.com/wp-content/uploads/2022-CONTRACTS-AND-PROCUREMENT-POLICY-MANUAL_Public.pdf	4.5.9 Evaluation Process The RFP evaluation process shall be conducted in a fair and objective manner that requires the evaluation committee to evaluate all proposals on the specific criteria in the RFP. Complete confidentiality is an ethical and legal requirement and is vital to fair and equitable evaluation. Evaluators are required to sign a non-disclosure statement prior to the review of proposals. During the entire RFP process, the Procurement Specialist serves as the sole contact for vendors and provides all RFP procedures and communication. Technical issues will be addressed by the appropriate staff and relayed to vendors by the Procurement Specialist. After proposals are submitted, all vendor contact shall be made through the Contracts and Procurement Division. Vendor information, number of proposals received, results and other evaluation proceedings shall be kept confidential until a fully executed contract is established. Requests for this information shall be made in writing and its release will be in accordance with the Colorado statute (C.R.S. 24-72-203 and 24-72-204) for access to Public Records, and with County administrative policy. Evaluation Committee members will be selected by the using department/office in coordination with the Procurement
Jefferson County		23. Evaluation Committee Procedures a. The Funding Entity shall establish a committee of responsible individuals who have knowledge of the (goods and/or) services being procured. The committee may contain individuals from outside of the county, such as stakeholders, subject matter experts, etc. when doing so might add value to the evaluation process. b. Committee members are required to sign an Evaluation Committee Confidentiality and Conflict of Interest Statement for each specific procurement prior to reviewing proposals. The forms will be provided by Purchasing. The project manager shall forward signed statements to Purchasing. No employee, officer, or agent may participate in the selection, award, or administration of a contract if he or she has a real or apparent conflict of interest.

Localities	Public Link	Description
Lairimer County		<p>b. Request for Proposal (RFP), also known as a "Proposal":</p> <ol style="list-style-type: none"> 1) Shall be publicly advertised for a minimum of four (4) weeks (unless otherwise authorized in writing by the Purchasing Director). 2) Shall be evaluated by an Evaluation Committee (as selected by the customer department) based on the Evaluation Criteria provided in the RFP. 3) Shall be awarded to the most responsible, responsive, reasonable proposal, deemed the best value, best fit, and most advantageous to Lairimer County. <p>See Section V, C, "Evaluation of Responses" for additional clarification on evaluating these factors.</p> <p>.....</p> <p>1.1.1.3: The email should contain a list of the people whom are going to be on the Evaluation Committee (RFP specific)</p> <p>.....</p> <p>3.4. Bids/Proposals to Department / Eval Cmte</p> <p>3.4.1. Provide the Bids and Proposals to the solicitation contact or evaluation committee as soon as you can. This is not a publicized meeting.</p>
Longmont, City of		<p>SELECTION COMMITTEE TEAM MEMBERS</p> <p>The Project Manager or lead for the solicitation, along with the Purchasing representative for the solicitation will determine the number and makeup of the Selection Committee. It is recommended to have a minimum of 3 and maximum of 5 evaluation team members for each solicitation.</p> <p>.....</p> <p>COMMITTEE RULES AND PROCEDURES</p> <p>All evaluators on the Evaluation Committee are required to apply sound and unbiased judgment in awarding points to the proposals for the purpose of ranking them.</p> <p>It is very important that all Selection Committee members read each solicitation thoroughly and have a clear understanding of the requirements and evaluation criteria before attempting to evaluate the proposals. All questions should be directed to the Purchasing and Contracts representative.</p> <p>The Evaluation Committee must read and agree to the guidelines and rules provided for evaluation of each proposal. Generally, these consist of the following:</p> <ol style="list-style-type: none"> a. Evaluation Committee proceedings are confidential and should not be discussed outside of the meetings. If a member of City leadership requests a member of the evaluation team to divulge information regarding proposals received, they must inform Purchasing before taking any action or discussing the proposals with anyone outside of the evaluation team meetings

EXHIBIT M

U.S. Department of Homeland Security
Virtual Joint Field Office (VJFO)
FEMA 4634-DR-CO
Region 8
Denver Federal Center, Building 710
P.O. Box 25267
Denver, CO 80225-0267



FEMA

February 9, 2022

Jana Petersen
County Administrator
Boulder County
1325 Pearl Street
Boulder, Colorado 80302

Re: Private Property Debris Removal in Boulder County, FEMA-4634-DR-CO

Dear Ms. Petersen:

This is in response to your letter dated January 31, 2022, requesting Public Assistance (PA) funding from FEMA to remove debris from private property in Boulder County under DR-4634-CO. The County reported extensive damage under this declaration, especially residences damaged by the fire. I am partially approving your request to the extent necessary to abate immediate threats to public health and safety on residential property. I am deferring a decision on other elements in your request pending a submission of additional information concerning economic recovery.

FEMA may provide federal assistance under the Stafford Act to remove “debris and wreckage” resulting from an incident. For FEMA to approve private property debris removal (PPDR), applicants must comply with all requirements of Section 407 of the Stafford Act, 44 C.F.R. Part 206, and the Public Assistance Program and Policy Guide (PAPPG). Among other things, applicants must 1) unconditionally indemnify the federal government against any claim arising from debris removal; 2) have legal authority and responsibility to remove debris from private property; and 3) demonstrate the PPDR is in the public interest. Applicants must also undertake practical measures to avoid duplications of federal assistance as required by Section 312 of the Stafford Act.

Your request letter provides an adequate indemnification, and the County previously distributed right-of-entry (ROE) forms to community residents that included provisions indemnifying the federal government. In addition, your letter describes the County’s legal authority and responsibility to perform the work, citing various provisions in state and local law. You also sufficiently demonstrated PPDR is in the public interest. Your letter asserted that ash and other debris from burned residential structures is highly toxic and that their expeditious removal is necessary to protect public health and safety. Your supporting attachments included a declaration from the Executive Director of Boulder County Public Health dated January 2, 2022, identifying examples of debris they determined posed an immediate threat and urging swift action. County attorneys separately confirmed the legal authorities for declaring the existence of a threat to public health and safety. Finally, you assured that the County will undertake measures to avoid duplications of benefits, including by assisting the federal government in recovering any insurance or other proceeds that are

EXHIBIT M

paid to any private party for PPDR for which federal aid or reimbursement was received. *See* 42 U.S.C. § 5155, 44 C.F.R. § 206.253(a), and 2 C.F.R. § 200.406.

FEMA accepts Boulder County's justification based on the threat to public health and safety. I am therefore approving PA funding to remove debris from private residential property as Category A under this declaration. Only the removal of debris necessary to eliminate or abate immediate threats to public health and safety will be eligible. Accordingly, the following types of hazardous debris on private residential property generated by the event would be considered eligible for PPDR:

- Removal of surface ash, which may include 3-6 inches of incidental soil;
- Burned debris from property remains, including burned or partially burned furniture, personal belongings, white goods, household appliances, and patio furniture;
 - This does not include burned or partially burned stone, concrete, landscaping features, or statues.
- Hazardous materials and pollutants; and
- Chimneys, trees, and unsupported walls that are hazardous to debris removal crews.

The temporary stabilization of retaining walls may be allowable if they pose an immediate threat to debris removal crews. Furthermore, hazardous trees are eligible only to the extent they pose a risk to PPDR crews or pose an imminent threat of falling on the public right-of-way (ROW) or other public improved property. FEMA will require a subject matter expert's opinion (i.e. certified arborist or professional licensed forester) to substantiate the tree was so damaged that it posed a risk. *See* PAPPG, pages 101 to 103. All hazard trees will be flush cut with the stumps left in place unless stump removal is specifically requested and FEMA reviews it for eligibility. *See* PAPPG, page 103.

To expedite the PPDR process, please provide to FEMA as soon as possible the debris removal lead, a list of affected properties, ROEs or other authority to enter affected properties for debris removal activities, and a description of the proposed scope of work and debris identified for each property. The County must identify eligible, disaster-related debris to FEMA within 60 days of the Recovery Scoping Meeting. *See* 44 C.F.R. § 206.202(d)(1)(ii).

There are several other conditions to consider with my approval. First, if a property owner receives assistance for PPDR from any third party, the state and local governments must facilitate reporting and recovering these amounts, which will be offset against PPDR expenses. Likewise, if the disaster was caused by a third party, the state and County must make reasonable efforts to pursue damages and return any duplication of funds to the federal government. *See* PAPPG, page 95; 44 C.F.R. § 206.223(e). Next, the County must monitor all contracted debris operations to ensure that quantities and work are accurate and eligible. Any contract for carrying out PPDR work must comport with the approved scope of work and allow for accurate tracking of costs. It must also comply with the requirements of 2 C.F.R. §§ 200.318-200.336, the Cost Principles at 2 C.F.R. Part 200, Subpart E, and the PAPPG. In addition, the County must comply with all laws and regulations pertaining to historic preservation and environmental protection. Finally, you are encouraged to adhere to County debris removal operations plans (DROPs) or similar constructs to avoid jeopardizing funding.

As stated above, I am deferring my decision on other debris categories in your request. Your letter expressed that state and local jurisdictions are gathering supplemental information for the County's PPDR request, particularly with regard to a public interest justification based on economic recovery.

EXHIBIT M

Because this information is pending, the following activities are not approved for federal funding at this time:

- Demolition of partially burned structures on private property if more than one wall is still standing;
- Debris removal from vacant lots, unused areas, unimproved property such as forests, or agricultural lands used for crops or livestock;
- Removal of burned vehicles on private property (normally abated through local government and law enforcement);
- Removal of topsoil or soil excavation (except where incidental to removing surface ash described above);
- Soil sampling or testing;
- Removal of structural footings, foundations, basements, concrete slabs, driveways, sidewalks, or retaining walls; and
- Debris removal from commercial properties.

If you have any questions regarding this letter, please contact me at (303) 476-1579. The conditions of this letter will be incorporated into any future approvals for PPDR for this disaster.

Sincerely,

**NANCY M
CASPER** Digitally signed by
NANCY M CASPER
Date: 2022.02.09
16:55:35 -07'00'

Nancy M. Casper
Federal Coordinating Officer
FEMA-4634-DR-CO

cc:

Nancy Dragani, Regional Administrator, FEMA Region 8
Ryan Pietramali, Acting Deputy Regional Administrator, FEMA Region 8
Jennifer Dick, Regional Counsel, FEMA Region 8
Kevin Klein, Director, Colorado DHSEM

EXHIBIT N

U.S. Department of Homeland Security
Joint Field Office (JFO)
FEMA 4634-DR-CO
6251 Greenwood Plaza Blvd
Greenwood Village, CO 80111



FEMA

March 1, 2022

Michael J. Willis
State Coordinating Officer, FEMA-4634-DR-CO
Director, Office of Emergency Management
State of Colorado
9195 E. Mineral Avenue Suite 200,
Centennial, CO 80112

Re: Private Property Debris Removal in Boulder County, FEMA-4634-DR-CO

Dear Director Willis:

FEMA has received your letter dated February 18, 2022, requesting additional consideration specific to justifying expedited economic recovery associated with Private Property Debris Removal (PPDR) in Boulder County under DR-4634-CO. Specifically, you requested that FEMA provide Public Assistance (PA) funding for debris removal efforts that are not normally eligible in the context of reducing immediate threats to public health and safety. I am partially granting your request.

I concur in part with the State's assertion that additional debris removal efforts would expedite economic recovery in the affected communities. To that end, I am adding the removal of structural footings, foundations, basements, and burned vehicles on private property to the list of debris categories for which FEMA will provide PA funding. The following is a consolidated list of the types of hazardous debris on private residential property generated by the event that are considered eligible for PPDR:

- Removal of surface ash, which may include three to six inches of incidental soil;
- Removal of burned vehicles;
- Removal of structural footings, foundations, and basements;
- Burned debris from the remains of homes that are clearly destroyed, including burned or partially burned furniture, personal belongings, household appliances, and patio furniture;
 - This does not include burned or partially burned stone, sidewalks/concrete walkways on private property, landscaping features, or statues.
- Hazardous materials and pollutants; and
- Chimneys, trees, and unsupported walls that are hazardous to debris removal crews.

FEMA will provide funding to repair publicly-used sidewalks that are unavoidably damaged during eligible debris removal efforts. Further, in accordance with my PPDR approval letter for health and safety on February 9, 2022, temporary work to shore retaining walls or alternative method of debris removal, whichever is the least costly to mitigate the threat to debris removal crews conducting eligible PPDR activities may be eligible on a case-by-case basis.

EXHIBIT N

I do not concur that other requested debris efforts are necessary to ensure economic recovery of the community at large. Removing more than a single standing wall from clearly destroyed homes will be limited to cases that otherwise pose a risk to work crews. Sites will be individually evaluated for determination of eligibility under the PPDR guidance and the PA program. Regarding your request for soil sampling (and related excavation above actionable thresholds), our understanding is there are no existing County or State standards to further support this consideration. The fire-specific guidance issued by the Colorado Department of Public Health and Environment to affected residents and commercial property owners recommends only scraping of soil to ensure all ash and debris are removed.¹ In summary, the following activities would be ineligible for federal funding:

- Demolition of partially or substantially burned structures on private property if more than one wall is still standing;
- Debris removal from vacant lots, unused areas, unimproved property such as forests, or agricultural lands used for crops or livestock;
- Soil sampling or testing;
- Removal of topsoil or soil excavation (except where incidental to removing surface ash as described above);
- Removal of nonstructural concrete slabs, driveways, sidewalks on private property, or retaining walls per the conditions above;
- Debris removal from commercial properties; and
- Backfilling voids associated with excavation of structural footings, foundations, and/or basements.

Consistent with recent communication between your office and my PA staff, we concur with including the residential condominiums on Owl Drive in Louisville and West William Street in Superior on the list of properties slated for further eligibility consideration. We will continue to consider similar requests on a case-by-case basis, provided FEMA's PA eligibility requirements are met consistent with Chapter 7 of the PA Program and Policy Guide (PAPPG).

If you have any questions regarding this letter, please contact me at (303) 476-1579. As with prior PPDR approval letters, the conditions of this letter will be incorporated into any future approvals for PPDR for this disaster.

Sincerely,

**NANCY M
CASPER**

Digitally signed by
NANCY M CASPER
Date: 2022.03.01
17:15:58 -07'00'

Nancy M. Casper
Federal Coordinating Officer
FEMA-4634-DR-CO

cc: Nancy Dragani, Regional Administrator, FEMA Region 8
Ryan Pietramali, Acting Deputy Regional Administrator, FEMA Region 8

¹ <https://cdphe.colorado.gov/indoor-air-quality/asbestos>

Michael J. Willis
March 1, 2022
Page 3 of 3

EXHIBIT N

Jennifer Dick, Regional Counsel, FEMA Region 8
Jana Petersen, Boulder County Administrator
Kevin Klein, Director, Colorado DHSEM

EXHIBIT O

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 6th Street, Boulder, CO 80302 (303) 441-3750	
DEMANDING INTEGRITY IN GOVERNMENT SPENDING, a Colorado nonprofit corporation, Plaintiff, v. BOULDER COUNTY, a county of the State of Colorado; BOARD OF COUNTY COMMISSIONERS, COUNTY OF BOULDER; MATT JONES, CLAIRE LEVY, and MARTA LOACHAMIN, in their official capacity as members of the Boulder County Board of County Commissioners. Defendants.	
Attorneys for Defendants: David Hughes, Deputy County Attorney, #24425 Catherine R. Ruhland, Deputy County Attorney, #42426 BOULDER COUNTY ATTORNEY P.O. Box 471, Boulder, CO 80306 Phone No.: 303-441-3190 Fax No.: 303-441-4794 dhughes@bouldercounty.org truhland@bouldercounty.org	▲ COURT USE ONLY ▲ Case Number: 2022CV030101 Div.:
AFFIDAVIT OF MICHAEL HANEY	

I, Michael Haney, affirm under penalty of perjury that the following is true and correct to the best of my knowledge and information:

1. I am over 18 years of age. I make these statements based on my personal knowledge and upon review of the records referenced in this affidavit.
2. I am the Recovery Grants Supervisor in the Office of Grants Management, Colorado Division of Homeland Security and Emergency Management. I have served in this role since January of 2018.

EXHIBIT O

3. My duties as the Recovery Grants Supervisor consist primarily of acting as the State's Administrative Official responsible for the day-to-day management of the FEMA Public Assistance Program (program) in the State of Colorado.

4. Boulder County is a sub-recipient of the program under the award given to the State of Colorado (DR-4634-CO). The State of Colorado is the Recipient.

5. I provide technical assistance to all sub-recipients regarding compliance with all applicable Federal Regulations. The State is responsible, as the Recipient of the award, for ensuring the compliance of all sub-recipients to the program.

6. Beginning on December 30, 2021 and continuing to the present, I have worked closely with Boulder County ("County") staff at all stages to help the County understand, request, and proceed in accordance with FEMA requirements.

7. The largest FEMA Public Assistance project for the Marshall Fire Disaster is the Private Property Debris Removal ("PPDR") project.

8. I have been in steady communication with County staff to assist them to timely submit all necessary information to FEMA relating to the PPDR project.

9. As stated in its eligibility determination letter dated March 1, 2022, FEMA has already approved of the County's PPDR project as eligible for FEMA reimbursement for the following categories of debris: Removal of surface ash, which may include three to six inches of incidental soil; Removal of burned vehicles; Removal of structural footings, foundations, and basements; Burned debris from the remains of homes that are clearly destroyed, including burned or partially burned furniture, personal belongings, household appliances, and patio furniture (excluding burned or partially burned stone, sidewalks/concrete walkways on private property, landscaping features, or statues); Hazardous materials and pollutants; and Chimneys, trees, and unsupported walls that are hazardous to debris removal crews.

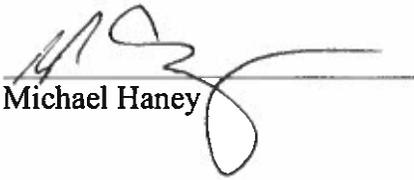
10. I have reviewed all relevant documentation up to the point of the posting of the Request for Proposals and found those documents to be compliant with Federal Guidelines.

11. I sent all documentation on the procurement up to the point of posting to the FEMA Infrastructure Branch Director for discussion on January 13, 2022. We both made comments on the proposal which Boulder County integrated. After the revisions, we both agreed it was compliant with Federal Regulations.

[Signature Page to Follow]

EXHIBIT O

Dated: 3/9/2022


Michael Haney

STATE OF COLORADO)
 Arapahoe) ss.
COUNTY OF BOULDER)

Subscribed and affirmed before me this 9th day of March 2022, by Michael Haney.


Notary Public

My Commission expires: Aug 16, 2022

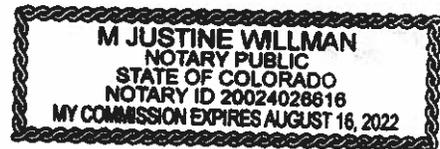


EXHIBIT P

<p>DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 6th Street, Boulder, CO 80302 (303) 441-3750</p>	
<p>DEMANDING INTEGRITY IN GOVERNMENT SPENDING, a Colorado nonprofit corporation, Plaintiff,</p> <p>v.</p> <p>BOULDER COUNTY, a county of the State of Colorado; BOARD OF COUNTY COMMISSIONERS, COUNTY OF BOULDER; MATT JONES, CLAIRE LEVY, and MARTA LOACHAMIN, in their official capacity as members of the Boulder County Board of County Commissioners. Defendants.</p>	
<p>Attorneys for Defendants: David Hughes, Deputy County Attorney, #24425 Catherine R. Ruhland, Deputy County Attorney, #42426 BOULDER COUNTY ATTORNEY P.O. Box 471, Boulder, CO 80306 Phone No.: 303-441-3190 Fax No.: 303-441-4794 dhughes@bouldercounty.org truhland@bouldercounty.org</p>	<p>▲ COURT USE ONLY ▲ Case Number: 2022CV030101 Div.: COC</p>
<p>OFFER OF PROOF</p>	

Defendants Boulder County; Board of County Commissioners of Boulder County, Colorado; and, Matt Jones; Claire Levy; and Marta Loachamin, in their official capacity as members of the Boulder County Board of County Commissioners (the “County”) submits the following Offer of Proof. The following individuals have indicated they were affected by the Marshall Fire and are willing to submit an affidavit similar to those included in exhibits E through K:

EXHIBIT P

1. Adriane Turner
2. Bob Gabriella
3. Chad Cheek
4. Craig Swift
5. Cynthia Swift
6. Edward Hollister
7. Francois Pradeau
8. Gary Chapman
9. Janet Rodina
10. Jill Ruggles
11. Laura Schmonsees
12. Lonni Pearce
13. Martin Carlstrom
14. Michael Kokes
15. Michael Marcus
16. Michael White
17. R. Alan Ferguson
18. Roberto Camacho Barranco
19. Shelagh Turner
20. Shenghong Li
21. Tamara Bodner
22. Tawnya Somauroo
23. Tim Crean
24. Wendy Kramer
25. Xiaomin Li
26. Xuan Jiang
27. Yanyan Wang
28. Zhenguo Cheng