



AGENDA
HAYDEN TOWN COUNCIL MEETING
THURSDAY, MARCH 17, 2016
7:30 P.M.
HAYDEN TOWN HALL – 178 WEST JEFFERSON AVENUE

WORK SESSION 6:00 P.M. – 7:30 P.M.

1. STAFF REPORTS

REGULAR MEETING – 7:30 P.M.

1a. CALL TO ORDER

1b. OPENING PRAYER

1c. PLEDGE OF ALLEGIANCE

1d. ROLL CALL

2. CONSIDERATION OF MINUTES

- A. Regular Meeting March 3, 2016

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3. CONSIDERATION OF BILLS

- A. Consideration of payment bill vouchers dated March 10, 2016

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4. PUBLIC COMMENTS

5. PROCLAMATIONS/PRESENTATIONS

6. CONSENT ITEMS

7. OLD BUSINESS

8. NEW BUSINESS

- A. Decision: Consideration of options for the containers for Downtown Flowers

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- B. Decision: Consideration to appoint John C. St. Pierre to vacant Alternate Seat on Hayden Planning Commission

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- C. Decision: Consideration for Lease Agreement with Brown Hill Engineering & Controls, LLC

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9. PULLED CONSENT ITEMS

10. STAFF AND COUNCILMEMBER REPORTS (CONTINUED, IF NECESSARY)

11. EXECUTIVE SESSION (IF NEEDED)

12. ADJOURNMENT

NOTICE: Agenda is subject to change. If you require special assistance in order to attend any of the Town's public meetings or events, please notify the Town of Hayden at (970) 276-3741 at least 48 hours in advance of the scheduled event so the necessary arrangements can be made.

Staff & Councilmember Reports

Sam Barnes reported Public Works Department will begin picking up the scoria in the next few weeks depending on weather; they are currently doing pot hole shoulder work to repair damage from the winter. The blowers at the sewer plant were pulled, examined and will be rebuilt. The cost will be \$25,000.00. The grinder is not working correctly and repair will run \$11,000.00. Sam will be meeting with Duckels Construction and JVA, Inc. on Tuesday regarding Seneca Hill and finalizing the project. Soil sampling on Hospital Hill was completed and the Town of Hayden has been advised to watch the corrosion. A study will be completed for the streets and potential bond issue and SGM, Inc. will consult with the Town of Hayden on what needs to be done and the cost.

Jill Delay reported the Open Gym for Toddler Tumbling is going very well. Pee Wee Camp has begun and Pee Wee Wrestling will start 4/9/16. The parent meeting was held last night with good turnout and participation. The Pee Wee Wrestling annually donates a needed item to Hayden Secondary Wrestling Program and this year it was a portable weigh-in scale. It was greatly appreciated as their scale gave out this year. The Cog Run is scheduled for the 1st Saturday in May. Hayden Daze planning has begun and is scheduled for July.

Greg Tuliszewski updated the Town Council on the training planned at the High School during Spring Break. The joint meeting with the Routt County Commissioners is being rescheduled due to conflicts. A Special Town Council meeting is scheduled for Thursday, March 31, 2016. In speaking with Routt County Commissioners and Town of Hayden we plan on setting the joint meeting annually for the 1st Town Council Meeting in March. The Harvest to Harvest Trail project began back in 2008. In January 2014, the Town of Hayden signed a contract with Drexell, Barrell & Co. to complete the project by July 2015 with a not to exceed amount of \$24,440.00. The invoice received brought the total to \$19,000.00 and the project has not been completed. Town of Hayden will be researching to see what is necessary to complete and if the grant monies are still available to complete the project. There has been a rumor floating around town that the Town of Hayden will be furloughing all its employees in May 2016; this is only rumor and there had not been any discussion regarding furloughing any employees. It will take the support of all the council and staff to minimize any such gossip if heard. The advertisement for the Town Manager has been out for about a week and potential candidates are contacting the search firm.

Tim Redmond thanked the Town Clerk for getting the agendas out on Friday.

Jim Haskins informed the Town Council of survey results from Building a Better Colorado project and I will send the information to each of the Town Council members.

Staff reports will continue at the end of the meeting.

Mayor Haskins called the regular meeting of the Hayden Town Council to order at 7:30 p.m. Mayor Haskins and Mayor Pro Tem Robinson present. Councilmembers Redmond, Folley and Hagins present. Also present were Interim Town Manager and Police Chief, Greg Tuliszewski, Public Works Director, Sam Barnes, Town Clerk, Sharon Johnson, and Recreation Coordinator, Jill Delay.

Draft minutes subject to editing and approval prior to becoming official record.

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Opening Prayer	Mayor Haskins offered the opening prayer.
Pledge of Allegiance	Mayor Haskins led the Pledge of Allegiance.
Minutes – February 18, 2016	Councilmember Hagins moved to approve the minutes of the Regular Town Council Meeting held on February 18, 2016. Councilmember Redmond seconded. Roll call vote. Councilmember Redmond – aye. Mayor Pro Tem Robinson – aye. Councilmember Folley – aye. Mayor Haskins – aye. Councilmember Hagins – aye. Motion carried.
Consideration of Bill Payment Voucher dated February 25 , 2016	Councilmember Folley moved to approve the bill payment voucher dated February 25, 2016 in the amount of \$29,417.38. Councilmember Hagins seconded. Roll call vote. Mayor Haskins –aye. Mayor Pro Tem Robinson – aye. Councilmember Hagins – aye. Councilmember Folley – aye. Councilmember Redmond – aye. Motion carried.
Proclamations/ Presentations	
Presentation on the Unity Council at Hayden Secondary School	The Unity Council at Hayden Secondary School, Gracie Wilke, Cassidy Crawford, Gracie Day, Hanna Wilke, and Faith Day presented video and slide show to the Town Council regarding the steps the students are taking to restore pride in their school and a desire for high achievement in all aspects of school and community.
Proclamation recognizing March 18- 25, 2016 as Agriculture Week and March 23, 2016 as Agriculture Day	Marsha Daughenbaugh, Executive Director Community Agriculture Alliance, Inc. presented a proclamation in appreciation of ranchers and farmers in Routt County and recognizes the importance that agriculture plays in assuring the future progress and prosperity of the County’s economy. The Town of Hayden Town Council proclaimed March 18-25, 2016 as Agriculture Week and March 23, 2016 as Agriculture Day.
Public Comments	Corey Hunter updated the Town Council on the 2016 plans for the Hayden Speedway and will be looking to sign a lease agreement with the Town of Hayden.
Consent Items	
Old Business	

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New Business

Consideration of Resolution 2016-11 A Resolution approving an engagement letter and professional services agreement with CliftonLarsonAllen, LLC for the provision of accounting and financial services for a flat fee of \$4,750 per month

Councilmember Redmond moved to approve Resolution 2016-11 A Resolution approving an engagement letter and professional services agreement with CliftonLarsonAllen, LLC for the provision of accounting and financial services for a flat fee of \$4,750 per month. Councilmember Hagins seconded. Roll call vote. Councilmember Redmond – aye. Councilmember Folley – aye. Councilmember Hagins – aye. Mayor Pro Tem Robinson –aye. Mayor Haskins – aye. Motion carried.

Letter of Request from Routt County Commissioners in Reference to Routt County Fairgrounds RV Park Planning Process

Town Council discussed the concerns of the planning process with Tom Sullivan, Routt County Manager and Greg Thompson, Hayden Planning Consultant. They discussed what was needed from the Routt County Engineers for the FEMA Flood Plan and the Land Use Permit. The county will get the additional information to Greg Thompson. The additional financial burden on the county was discussed. Town of Hayden will provide a cost share agreement and an itemized invoice of current costs.

Pulled Consent Items

None.

Staff and Councilmember Reports Continued

Executive Session

None.

Adjournment

Mayor Haskins adjourned the meeting at 9:36 p.m.

Recorded by:

Sharon Johnson, Town Clerk

APPROVED THIS 17th DAY OF March, 2016.

James M. Haskins, Mayor

***Draft minutes subject to editing and approval prior to becoming official record.
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Report Criteria:

Detail report.

Invoices with totals above \$0 included.

Paid and unpaid invoices included.

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid	Voided
5220	Advanced Mechanical Srv, Inc.	753	Sewer Outfall Pump	02/25/2016	19,024.50	.00		
Total 5220:					19,024.50	.00		
1200	Bear River Valley Co-Op	02252016	Streets Vehicle Expense - Fuel	02/25/2016	273.88	.00		
1200	Bear River Valley Co-Op	02252016	Streets Vehicle Maintenance	02/25/2016	1,708.56	.00		
1200	Bear River Valley Co-Op	02252016	Parks - Trails Vehicle Exp - Fuel	02/25/2016	53.70	.00		
1200	Bear River Valley Co-Op	02252016	Water Vehicle Expense - Fuel	02/25/2016	333.19	.00		
1200	Bear River Valley Co-Op	02252016	Water - Testing	02/25/2016	2.25	.00		
1200	Bear River Valley Co-Op	02252016	PD Vehicle Maintenance - Fuel	02/25/2016	345.42	.00		
Total 1200:					2,717.00	.00		
12157	Boston, Sandra	02262016	Travel Reimbursement	02/26/2016	48.77	.00		
Total 12157:					48.77	.00		
4460	CAMCA	2016	2016 CAMCA Membership - Erick	03/01/2016	20.00	.00		
Total 4460:					20.00	.00		
1400	Caselle Inc	71255	Increase Concurrent Licenses	02/19/2016	6,400.00	.00		
1400	Caselle Inc	71256	Utility Backflow Mgt	02/19/2016	2,950.00	.00		
1400	Caselle Inc	71256	Utility Backflow Mgt	02/19/2016	2,950.00	.00		
1400	Caselle Inc	71470	Support Contract April	03/01/2016	732.33	.00		
Total 1400:					13,032.33	.00		
1435	CASI	0042715	Asphalt	02/25/2016	1,169.00	.00		
Total 1435:					1,169.00	.00		
3770	CenturyLink	3058FEB16	Water Phones_3058	02/25/2016	52.74	.00		
3770	CenturyLink	3741FEB16	Admin Phones_3741	02/25/2016	449.42	.00		
3770	CenturyLink	4330FEB16	Sewer Phones_4330	02/25/2016	54.31	.00		
Total 3770:					556.47	.00		
12074	CliftonLarsonAllen LLP	1189978	Accounting services	02/24/2016	2,604.02	.00		
12074	CliftonLarsonAllen LLP	1189978	Accounting services	02/24/2016	1,302.01	.00		
12074	CliftonLarsonAllen LLP	1189978	Accounting services	02/24/2016	1,302.01	.00		
Total 12074:					5,208.04	.00		
1700	Colorado Municipal Judge Assn	02272016	2016 Judges Conference	02/27/2016	175.00	.00		
Total 1700:					175.00	.00		
7745	Craig Steel	18674	Parks - Groomer	02/24/2016	472.50	.00		
Total 7745:					472.50	.00		

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid	Voided
2040	Delta Rigging & Tools, Inc.	GRA_PSI0000	Streets R&M	03/01/2016	1,824.56	.00		
Total 2040:					1,824.56	.00		
9000	Dowling Land Surveyors	03032016	Streets Surveying	03/03/2016	735.00	.00		
Total 9000:					735.00	.00		
12100	Duckels Construction, Inc	PAY APP 8	Pay Application #8 - revised	02/08/2016	19,044.94	.00		
Total 12100:					19,044.94	.00		
6900	Fastenal Company	1170716	Water - Supplies	03/02/2016	42.30	.00		
Total 6900:					42.30	.00		
4890	FedEx	5-332-64059	Water Sample Shipping	02/25/2016	63.50	.00		
Total 4890:					63.50	.00		
12109	Haskins Cleaning	FEB2016	Town Hall Cleaning - February	02/28/2016	200.00	.00		
12109	Haskins Cleaning	JAN2016	Town Hall Cleaning - January	02/28/2016	200.00	.00		
Total 12109:					400.00	.00		
2580	Hayden Merc	01-294475	Admin - Supplies	02/18/2016	31.48	.00		
2580	Hayden Merc	01-297714	Streets Supplies	02/25/2016	7.98	.00		
2580	Hayden Merc	03-308320	Admin - Snacks	02/23/2016	18.37	.00		
2580	Hayden Merc	03-309818	Town Hall Lights R&M	02/26/2016	28.36	.00		
Total 2580:					86.19	.00		
2640	Holloran LLC, Michael J	02202016	Professional Services	02/20/2016	371.88	.00		
2640	Holloran LLC, Michael J	02202016	Scada Lease	02/20/2016	262.50	.00		
2640	Holloran LLC, Michael J	02202016	Seneca Hill (Brown)	02/20/2016	175.00	.00		
2640	Holloran LLC, Michael J	02202016	Outfall project	02/20/2016	36.46	.00		
Total 2640:					845.84	.00		
7095	Identity Graphics, Inc.	7759	Hayden Daze	02/22/2016	62.50	.00		
7095	Identity Graphics, Inc.	7759	Cornhole Tourney	02/22/2016	62.50	.00		
Total 7095:					125.00	.00		
2730	Jackson's Office Supply	10398070	Public Works Speaker System	02/16/2016	19.99	.00		
Total 2730:					19.99	.00		
12259	Lara, Roger	543.08	Reimbursement for overpayment	03/01/2016	65.34	.00		
Total 12259:					65.34	.00		
12091	Lee, Timothy	777.05	Termination Billing Refund	03/08/2016	23.08	.00		
Total 12091:					23.08	.00		
2960	MJK Sales & Feed Inc	16304	Water R&M	03/02/2016	92.77	.00		

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid	Voided
2960	MJK Sales & Feed Inc	198534	Water R&M	03/02/2016	221.86	.00		
Total 2960:					314.63	.00		
8640	Mountain Valley Bank	2016	2016 Safe Deposit Rent	03/01/2016	85.00	.00		
Total 8640:					85.00	.00		
8920	Murdoch's Ranch & Home Craig	432	Water R&M	03/02/2016	119.92	.00		
8920	Murdoch's Ranch & Home Craig	99948/CM	PD Uniform - CREDIT	02/10/2016	72.84	.00		
Total 8920:					47.08	.00		
10080	Neve's Uniforms Inc	LN-329799	PD Uniforms	02/19/2016	115.94	.00		
Total 10080:					115.94	.00		
3660	Peak Services	9736	HPD HVAC repair	02/25/2016	220.00	.00		
Total 3660:					220.00	.00		
1350	Pinnacol Assurance	17957430	Legislative Work Comp	02/22/2016	29.96	.00		
1350	Pinnacol Assurance	17957430	Court Work Comp	02/22/2016	14.98	.00		
1350	Pinnacol Assurance	17957430	Executive Work Comp	02/22/2016	14.98	.00		
1350	Pinnacol Assurance	17957430	Administration Work Comp	02/22/2016	119.84	.00		
1350	Pinnacol Assurance	17957430	Police Work Comp	02/22/2016	1,198.40	.00		
1350	Pinnacol Assurance	17957430	Streets Work Comp	02/22/2016	928.76	.00		
1350	Pinnacol Assurance	17957430	Rec Work Comp	02/22/2016	89.88	.00		
1350	Pinnacol Assurance	17957430	Parks Work Comp	02/22/2016	89.88	.00		
1350	Pinnacol Assurance	17957430	Mosquito Work Comp	02/22/2016	59.92	.00		
1350	Pinnacol Assurance	17957430	Water Work Comp	02/22/2016	239.68	.00		
1350	Pinnacol Assurance	17957430	Water Adm Work Comp	02/22/2016	29.96	.00		
1350	Pinnacol Assurance	17957430	Sewer Work Comp	02/22/2016	149.80	.00		
1350	Pinnacol Assurance	17957430	Sewer Adm Work Comp	02/22/2016	29.96	.00		
Total 1350:					2,996.00	.00		
3270	Quill Corporation	22976	Office Supplies	02/22/2016	91.95	.00		
3270	Quill Corporation	22976	Water Office Supplies	02/22/2016	91.95	.00		
3270	Quill Corporation	22977	Office Supplies	02/22/2016	289.99	.00		
Total 3270:					473.89	.00		
12260	Rouch, Troy	2484	Parking ticket overpayment	02/25/2016	5.00	.00		
Total 12260:					5.00	.00		
2065	Routt County Auto Parts	10065-354096	PD Vehicle Maintenance	02/08/2016	23.67	.00		
2065	Routt County Auto Parts	10065-354562	PD Vehicle Maintenance	02/19/2016	6.43	.00		
2065	Routt County Auto Parts	10065-354815	PD Vehicle Maintenance	02/27/2016	21.36	.00		
2065	Routt County Auto Parts	10109-353490	WTP - Soda Ash	01/14/2016	35.94	.00		
2065	Routt County Auto Parts	10109-353990	Water Vehicle Maintenance	02/01/2016	25.38	.00		
2065	Routt County Auto Parts	10109-354049	Shop - Linch Pin	02/02/2016	15.84	.00		
2065	Routt County Auto Parts	10109-354053	Shop - Welding Wire	02/02/2016	33.49	.00		
2065	Routt County Auto Parts	10109-354332	WWTP R&M	02/11/2016	23.65	.00		
2065	Routt County Auto Parts	10109-354444	Parks Vehicle Maint	02/16/2016	20.48	.00		
2065	Routt County Auto Parts	10109-354563	WTP - Soda Ash Machine	02/19/2016	79.98	.00		

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid	Voided
2065	Routt County Auto Parts	10109-354613	Shop R&M	02/22/2016	6.99	.00		
2065	Routt County Auto Parts	10109-354639	Streets Vehicle Maint	02/23/2016	29.48	.00		
2065	Routt County Auto Parts	10109-354681	Parks Groomer	02/24/2016	474.77	.00		
2065	Routt County Auto Parts	10109-354705	Shop R&M	02/24/2016	26.29	.00		
2065	Routt County Auto Parts	10109-354710	Parks Tools - Groomer	02/25/2016	85.91	.00		
2065	Routt County Auto Parts	10109-354714	WWTP - Grinder	02/25/2016	11.69	.00		
2065	Routt County Auto Parts	10109-354732	WWTP Tools	02/25/2016	11.68	.00		
2065	Routt County Auto Parts	10109-354827	Water - tools	02/29/2016	4.57	.00		
2065	Routt County Auto Parts	10109-354835	Shop R&M Bolt grip	02/29/2016	28.99	.00		
Total 2065:					966.59	.00		
1770	Schmueser Gordon Meyer, Inc.	2010-414.008-	Managerial Services	02/26/2016	4,740.00	.00		
Total 1770:					4,740.00	.00		
4880	Sprint	918280746-02	Sewer Cell Phone	02/29/2016	58.62	.00		
4880	Sprint	918280746-02	Streets Cell Phone	02/29/2016	107.57	.00		
4880	Sprint	918280746-02	Water Cell Phone	02/29/2016	71.07	.00		
4880	Sprint	918280746-02	Admin Cell Phone	02/29/2016	26.03	.00		
4880	Sprint	918280746-02	HPD Cell Phone	02/29/2016	354.82	.00		
4880	Sprint	918280746-02	Recreation Cell Phone	02/29/2016	52.05	.00		
4880	Sprint	918280746-02	Public Works Tablet	02/29/2016	18.99	.00		
4880	Sprint	918280746-02	Public Works Tablet	02/29/2016	19.00	.00		
Total 4880:					656.09	.00		
3530	Steamboat Pilot	10419840	Ord No. 671	02/07/2016	13.82	.00		
3530	Steamboat Pilot	10419841	Ord No. 671	02/21/2016	13.82	.00		
3530	Steamboat Pilot	10419921	Seneca Hill Notice	02/07/2016	23.04	.00		
Total 3530:					50.68	.00		
7780	Technichem, Inc.	13550-03	Greasebugs	02/26/2016	431.58	.00		
7780	Technichem, Inc.	13550-03	Greasebugs	02/26/2016	431.58	.00		
7780	Technichem, Inc.	13550-03	Greasebugs	02/26/2016	431.58	.00		
7780	Technichem, Inc.	13550-03	Greasebugs	02/26/2016	431.58	.00		
7780	Technichem, Inc.	13550-03	Greasebugs	02/26/2016	431.59	.00		
Total 7780:					2,157.91	.00		
2185	The Embroidery Shoppe LLC	5763	PD Uniforms	01/26/2016	249.00	.00		
Total 2185:					249.00	.00		
3710	Town of Hayden	1208FEB16	Parks Utilities Poplar St Park_120	02/29/2016	36.13	.00		
3710	Town of Hayden	15FEB16	Shop Utilities_15.01	02/29/2016	63.62	.00		
3710	Town of Hayden	2035FEB16	PD Utilities_2035.01	02/29/2016	59.94	.00		
3710	Town of Hayden	2036FEB16	Parks Utilities Poplar St Park_203	02/29/2016	68.10	.00		
3710	Town of Hayden	2044FEB16	Parks Utilities Vista Verde_2044.0	02/29/2016	36.13	.00		
3710	Town of Hayden	2046FEB16	Parks Utilities Lake View Rd_204	02/29/2016	36.13	.00		
3710	Town of Hayden	2066FEB16	Parks Utilities Poplar St Park_206	02/29/2016	68.10	.00		
3710	Town of Hayden	231FEB16	Parks Utilities 3rd St Park_231.01	02/29/2016	52.55	.00		
3710	Town of Hayden	232FEB16	Water Plant Utilities_232.01	02/29/2016	58.63	.00		
3710	Town of Hayden	355FEB16	Sewer Plant Utilities_355.01	02/29/2016	51.13	.00		
3710	Town of Hayden	534FEB16	Parks Utilities Chestnut St_534.01	02/29/2016	52.55	.00		
3710	Town of Hayden	761FEB16	Parks Utilities Baseball Field_761.	02/29/2016	36.13	.00		

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid	Voided
3710	Town of Hayden	92FEB16	Rec Utilities_92.01 20%	02/29/2016	14.43	.00		
3710	Town of Hayden	92FEB16	Town Hall Util_92.01 80%	02/29/2016	57.70	.00		
3710	Town of Hayden	94FEB16	Key Pump Utilities_94.01	02/29/2016	59.20	.00		
3710	Town of Hayden	96FEB16	Parks Utilities Ballfield_96.01	02/29/2016	36.13	.00		
Total 3710:					786.60	.00		
8740	Visa	03022016	WTP - Wolf Mtn Pizza	03/02/2016	89.11	.00		
8740	Visa	03022016	Norton renewal	03/02/2016	44.99	.00		
8740	Visa	03022016	Norton renewal	03/02/2016	45.00	.00		
8740	Visa	03022016	Summit Meas. - PWW portable sc	03/02/2016	858.00	.00		
8740	Visa	03022016	True Value - It's Summer Somewh	03/02/2016	37.02	.00		
8740	Visa	03022016	Cornhole Tourney	03/02/2016	50.05	.00		
8740	Visa	03022016	Cornhole Tourney	03/02/2016	6.23	.00		
8740	Visa	03022016	Cornhole Tourney	03/02/2016	19.29	.00		
8740	Visa	03022016	Cornhole Tourney	03/02/2016	49.95	.00		
8740	Visa	03022016	Protective rugs for TOH	03/02/2016	379.07	.00		
8740	Visa	03022016	Team lunch	03/02/2016	41.82	.00		
8740	Visa	03022016	Stamps.com	03/02/2016	15.99	.00		
8740	Visa	03022016	USPS - Water testing	03/02/2016	6.74	.00		
8740	Visa	03022016	Idrive 2016 charges	03/02/2016	199.50	.00		
8740	Visa	03022016	PD amazon CREDIT	03/02/2016	28.99-	.00		
8740	Visa	03022016	PD amazon CREDIT	03/02/2016	6.01-	.00		
8740	Visa	03022016	Carellis - Hayden Daze	03/02/2016	27.84	.00		
8740	Visa	03022016	Surefire - Rail mount	03/02/2016	78.15	.00		
8740	Visa	03022016	City Market - PD supplies	03/02/2016	13.01	.00		
8740	Visa	03022016	PD amazon.com Office supplies	03/02/2016	45.99	.00		
8740	Visa	03022016	Animal Control	03/02/2016	225.00	.00		
8740	Visa	03022016	IAPE Certification	03/02/2016	175.00	.00		
8740	Visa	03022016	OCPO Certification	03/02/2016	60.00	.00		
Total 8740:					2,432.75	.00		
3880	Wagner Equipment Co	P04C0287832	Streets R&M - Glass	02/24/2016	212.32	.00		
Total 3880:					212.32	.00		
7580	Wagner Rents	03032016	Streets equipment rental	03/03/2016	19,064.63	.00		
Total 7580:					19,064.63	.00		
9960	Warning, Tanya	MAR2016	Janitorial Services	03/03/2016	425.00	.00		
Total 9960:					425.00	.00		
10600	Waste Management-SBS #001-85	MAR2016	Residential Trash Service	03/01/2016	11,772.11	.00		
Total 10600:					11,772.11	.00		
12167	WEX Bank	44235276	Trails Vehicle Expense - Fuel	02/29/2016	41.67	.00		
12167	WEX Bank	44235276	Sanitary Sewer Veh Expense - Fu	02/29/2016	40.31	.00		
12167	WEX Bank	44235276	PD Vehicle Expense - Fuel	02/29/2016	261.18	.00		
Total 12167:					343.16	.00		
12133	Xylem Water Solutions USA, Inc	3556884689	WTP - R&M Bearing assembly	02/25/2016	210.28	.00		

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid	Voided
Total 12133:					210.28	.00		
12261	Yampa Valley Brewing Company	111	Cornhole Tourney	02/19/2016	120.00	.00		
Total 12261:					120.00	.00		
4010	Yampa Valley Electric	1002FEB16	Dry Creek Electric 720021002	02/19/2016	199.00	.00		
4010	Yampa Valley Electric	1802FEB16	Streets Electric 1510001802	02/26/2016	1,976.00	.00		
4010	Yampa Valley Electric	3406FEB16	Town Hall Electric 740003406 80	02/19/2016	348.00	.00		
4010	Yampa Valley Electric	3406FEB16	Rec Electric 740003406 20%	02/19/2016	87.00	.00		
4010	Yampa Valley Electric	5501FEB16	Parks Electric 720015501	02/19/2016	58.00	.00		
4010	Yampa Valley Electric	6002FEB16	Rec Electric 760016002	02/19/2016	28.00	.00		
4010	Yampa Valley Electric	6201FEB16	Streets Electric 760016201	02/19/2016	214.00	.00		
4010	Yampa Valley Electric	7702FEB16	Sewer Electric 760007702	02/19/2016	5,099.00	.00		
4010	Yampa Valley Electric	8901FEB16	Hospital Hill Electric 720008901	02/19/2016	28.00	.00		
4010	Yampa Valley Electric	9902FEB16	Crandall Pump Electric 72000990	02/19/2016	291.00	.00		
Total 4010:					8,328.00	.00		
4245	Zirkel Wireless, LLC	122257	WTP Internet Service Acct 4377	02/25/2016	46.00	.00		
4245	Zirkel Wireless, LLC	122258	Shop Internet Service Acct 4378	02/25/2016	46.00	.00		
Total 4245:					92.00	.00		
Grand Totals:					122,564.01	.00		

Report Criteria:

Detail report.

Invoices with totals above \$0 included.

Paid and unpaid invoices included.



Town Council Agenda Item

MEETING DATE: March 17, 2016

AGENDA ITEM TITLE: Consideration of options for the containers for Downtown Flowers

AGENDA SECTION: New Business

PRESENTED BY: Monica Case

CAN THIS ITEM BE RESCHEDULED: Preferably not

BACKGROUND REVIEW: The Hayden Chamber of Commerce started a Downtown Flower Project to beautify Downtown Hayden. The program allowed businesses to purchase flower containers and flowers each year and the Chamber of Commerce managed the maintenance through the summer. The Town of Hayden donated \$1500.00 a year to the Chamber for the purchase of flowers and donated the water. With the dissolution or inactivity of the Chamber of Commerce, the Town of Hayden absorbed the donation into the annual budget to continue the program. The program has changed and there have not been any additional purchases of containers by downtown businesses for which the Town maintains. The existing containers have aged and are need of replacement. Monica has formulated some options to consider for future container.

RECOMMENDATION: To select one of the options to continue the beautification of Downtown Hayden and purchase sustainable containers with a greater longevity.

MANAGER'S RECOMMENDATION/COMMENTS:



Town Council Agenda Item

MEETING DATE: March 17th, 2016

AGENDA ITEM TITLE: Appointment of Hayden Planning Commission Alternate

AGENDA SECTION: New Business

PRESENTED BY: Greg Tuliszewski

CAN THIS ITEM BE RESCHEDULED: Not Recommended

BACKGROUND REVIEW:

The Town of Hayden's Planning Commission is composed of five appointed members and two alternate members of the community who volunteer their time to help evaluate and assist the Town Council in developing the growth of the Town of Hayden. This advisory board makes recommendations to the Council for their consideration and review. Currently the five regular seats of the Planning Commission are filled and there are no alternates appointed.

John St. Pierre, a resident of the Town of Hayden has submitted a letter of interest in joining and assist the Hayden Planning Commission. He brings an extensive background in construction, land development, experience in Residential and Commercial development, Road and Utility infrastructure installation. He also has a working knowledge of Structural, Plumbing, Electrical, Fire & HVAC systems. Interpretation and field use code knowledge in UBC, ICBO, CABO, Life Safety Codes and UFC codes as well ADA & OSHA compliance. Mr St Pierre also served 3 terms on the Town of Frisco City Council, The Town of Frisco Planning and Zoning Commission, Summit County Planning and Zoning Commission and many other public interest committees and services.

MANAGER'S RECOMMENDATION/COMMENTS: Mr St. Pierre has submitted a letter of interest in filling the vacant position of Alternate for the Town of Hayden Planning Commission. Given his extensive background and knowledge I believe that he would be a very beneficial addition to our Planning Commission and recommend that the Town Council appoint him to this vacancy.

John C. St. Pierre
528 E Washington
Box 1464 Hayden, Colorado 81639
970-846-7735

March 7, 2016

RE: Planning Commission Position

To whom it may Concern,

It is my understanding that at the present time the Town is seeking an appointee as an "Alternate" to the Hayden Planning Commission.

At this time I would like to be considered for this position. I believe my background experience in land development & construction plus my service on prior Planning Commissions (Town of Frisco & Summit County) enable me to bring a wide range of knowledge to the board when needed.

Sincerely,



J St. Pierre

Jean-Claude (John) St. Pierre

528 E. Washington, Hayden, Co

Box 1464, Hayden, Co 81639

970-846-7735 JCSTPR@aol.com

BACKGROUND

Wide Ranging Intensive Hands-on background in Construction, & Land Development operations.

-Experience in Residential and Commercial development with a reputation for being very hands-on, an eye for detail, and watching the bottom line.

-Broad background that includes hands-on construction experience in single family, multifamily residential , Commercial, Retail Development & Construction, along with Road and Utility infrastructure installation. Much of it working in one of the most demanding environments in the country = Summit County, Colorado 9,500 ft. above sea level.

-Detailed working knowledge of Structural, Plumbing, Electrical, Fire & HVAC systems. Interpretation and field use code knowledge in UBC, ICBO, CABO, Life Safety Codes and UFC codes as well ADA & OSHA compliance. Functional working knowledge of a multitude of construction equipment and methods learned through years of actual hands on experience. Extremely proficient in report preparation, budgeting, purchasing and documentation, sub-contractor contract negotiations and adherence.

Present: Owner

Yampa Valley Construction Services & St. Pierre Construction Management Services:

Providing Construction Services & Developer/Builder new homes

Currently developing & building entry level homes in the Lake View subdivision in Hayden with ongoing projects for the Town of Vail (Timber ridge Apartments)

Have completed projects for the Town of Vail (Timber Ridge Apartments), Town of Breckenridge & Corum Real Estate Group): Pine Wood Apartments, Corum Real Estate Group: Mountain Village Apartments (Steamboat)

2010- August 1, 2015

Moved to a Home we purchased in Hayden in May 2015.

Relocated to Steamboat Springs in April 2010 for my wife to assume the # 2 management position at Yampa Valley Bank... was semi-retired until contacted by Reconstruction Experts in Denver to head up a \$700k project in Steamboat (Cascades) and to assist in getting a troubled 2 ½ million dollar project (Booth Creek) in Vail back in line....subsequently I was asked to remain and help manage the Mountain Region (Routt/Eagle/Summit/Grand Counties). In the 27 months as Senior Project Mgr. with RE I oversaw some 10.5 million dollars in work in Steamboat Springs, Granby, Winter Park, Frasier, Dillon, Keystone, Breckenridge, Frisco, Copper Mtn., Vail, Eagle & Avon.

St. Pierre Construction Management Services, LLC St. Louis, Mo

2000-2009

Providing project management & acting as Owners Rep I oversaw the construction of 5 homes in 2 of St. Louis County's most exclusive private neighborhoods. These homes ranged in size from 28,000 sq. ft. to 8,500 sq. ft. and hard construction costs of 9.6 million to 2.2 million.

***Peoples National Bank.* Clayton, Mo & Mt Vernon, Il. (4 branches in Mo, 9 in Illinois)**

Provided both project management and owners rep for several projects that the bank self-contracted. Projects included the \$950 rehab conversion in the historically designated *Paul Brown Building* in the center of Downtown St Louis. This project won that years *Cityscape* award. Oversaw the complete interior demolition & then renovation of their new Missouri corporate officers in Clayton, Missouri. This 29,000 sq. ft. building with underground parking had completion cost of \$5.9 million dollars. Handled the rehab and ADA updates at its branch in Murphysboro, Illinois and main corporate headquarters in Mt. Vernon, Illinois.

In addition I was charged with the cleanup sale prep, lead/mold & asbestos remediation on the Beau Arts Building in St. Louis; this 7 story structure was a bank foreclosure property listed on the National historic register that consisted of a 360,000 sq. ft. of office space with adjoining 8 story parking structure. I also handled the \$500K rehab of the Bank Owners private 12,000 sq. ft. residence in St. Louis.

***Truman Bank,* Clayton, Mo.**

Handled some 20 REO properties & foreclosures the bank had taken back. Provided construction management services to complete several of these properties, provided forensic review of many "problem" construction loans. Projects ranged from 150 slip Marina to commercial retail, to single family and six large scale unit apartment projects (75-270 units). I also was charged with taking over and completing a \$8.8 million, 30 unit, 5 building townhome project in city center. Early in my relationship with this bank it was placed under FDIC supervision, resulting in my working closely w this Federal Agency in work-outs/ project completions and legal actions against several fraudulent loans. This bank was closed in 2010 by the FDIC.

***Champion Bank,* Chesterfield, Mo.**

Due to my working relationship with Truman bank, I was asked by the then owner of both banks to handle several infrastructure projects on commercial and subdivision developments taken back by *Champion* included were: water & sewer main installs, road completions, drainage & retention ponds, but above all working with several Federal agencies including the Army Corps of Engineers to rectify some 10 acres of federal wetlands that one of the bank clients had destroyed during his ill-fated subdivision development. Oversaw some \$13 million worth of projects. *Champion* was also liquidated by the FDIC in 2010.

In 1999 my wife & partner succumb to her battle with ovarian cancer. I relocated to St Louis to be close to my parents to assist in raising our small children. Eventually closing out my business interests in Summit County, Colorado and Mystic, Conn.

2000 thru 1976

Lafayette Builders, Inc. Frisco, Co. Owned & Operated ('76 thru 2000)

Projects Owned/Developed/Built:

- 220,000 sq. ft. Mountain View Center in Frisco w tenant finishes (Retail/office)
- 105,000sq ft. Columbine Center, Frisco w tenant finishes (Retail / office)
- Frisco Mini Storage, 270 unit's 95,000sq ft. ...with 10,000sq.ft. frontage retail /commercial)
- Condominium projects Frisco: *Mountain Side* (292 units), *Frog Hollow* (42 units), *Aspen Town Homes* (26 units), *Teller Town Homes*(12 units), *Creekside* (56 units)
- Condominium projects Breckenridge: *Wildwood Lodge* (84 units).
- 26 single family,16 duplex, 4 triplex and 3- 4plex buildings (Frisco)
- GC on cost plus; Rocky Mountain Bible Church (Frisco), cost plus Construction of St. Mary's along and in conjunction with the restoration of the 100+ yr old original chapel. (Breckenridge) and the St Mary's satellite in Dillon Valley
- GC on cost plus Summit County Bank, Frisco, Colorado (presently Bank of the West)
- GC & joint venture partner 1st 6 duplexes on the Eagle Nest Golf Course, Silverthorne
- 2 Pedestrian bridges serving the Copper Mtn to Frisco Bike path across *Ten mile* creek.
- GC thru Bid 2,000+ sewer main line replacement thru center of Frisco, 1,300 ft. of road extension (Frisco Heights)

Subsidiy's Owned & Operated simultaneously

Bay Builders, Mystic, Conn. (1985 thru 1994)

- Developed, Owned/operated -*Bay Self Storage Center* (410 unit's w 15,000 sq. ft. frontal commercial retail) in Exeter, RI.
- Developed/built *Mystic Dairy Farms*, 10 acre w 9 single family homes, Mystic, Conn.
- Developed/built 50 Acre Subdivision -*Stoney Acres* w 18 single family homes, Exeter, RI
- Developed/built 35 Acre Subdivision-*Beaver River* w 15 single family homes, Mystic, Conn.

Dig-It Excavators, Frisco, Co: Excavation & snow removals services ('78 thru '86)

Lafayette Builders Property Management, Frisco, Co. ('77 thru '95)

Bighorn Realty, Frisco, Co ('79 thru '90)

Lahaina Divers, Lahaina, Maui ('80-'85)

EDUCATION / TRADE / BUSINESS / CIVIC ACTIVITIES

- Air Force Academy, Colorado Springs, Co.
- Forest Park College (St. Louis) completed Paramedic Training & Certification
(Paramedic St Louis County Emergency Medical Services '74-76)
- Former Volunteer Member Frisco Fire Dept. (Capt.) head of EMS 15 yrs.
- Former Volunteer Frisco Fire Dept. Fire Marshall/ Inspector (4 yrs.)
- Former Colorado Mtn. College EMS instructor, Breckenridge, Co (4 yrs. part time)
- Former Member Town of Frisco City Council (3 terms-12 yrs.)
- Former Member Town of Frisco Planning & Zoning Commission
- Former Member Summit County Planning & Zoning Commission
- Appointed to then Gov. Lamm's Colorado Affordable Housing Commission (2yrs)
- Founding member of Summit County chapter Habitat for Humanity
- Organizing and founding member of the Summit County chapter of the National Home Builders Association & 1st President.
- Founding Investor and Board member First Summit Savings, Breckenridge, Co.
-
- Active Member (President elect) Lions Club of Steamboat Springs
- Current serving Member Yampa Valley Housing Authority

Confidential References are available on request



Town Council Agenda Item

MEETING DATE: March 17, 2016

AGENDA ITEM TITLE: vmSCADA LEASE

AGENDA SECTION: New Business

PRESENTED BY: Sam Barnes

CAN THIS ITEM BE RESCHEDULED: No

BACKGROUND REVIEW: The Water Treatment control computer is outdated and is no longer supported by Dell, leaving the Town vulnerable to a cyber-attack, as well as, software and hardware failure. This machine is critical for the operation of the Water Plant, the distribution system, in addition to the Wastewater Plant and the collection system. By updating the computer to the vmSCADA program offered by Browns Hill Electric and Control Corporation, the control computer system will be more reliable and much more secure. As part of the lease Brown's Hill is responsible for backing-up the system on a frequent basis and will keep a copy of all of our computer programming with a cloned spare computer at their office in case our site computers crashes. They (Browns Hill) will monitor the function of the computer system remotely and if our system does crash, Browns Hill is obligated to repair the system immediately (usually within 24 hours). Once our lease has expired in 5 years, Browns Hill will provide us with a completely new system if we resign a lease, helping us to ensure that we do not fall behind the technology, like we are now. The Town Attorney along with Bryan and me have reviewed and made the necessary changes to the lease. The cost is \$1,485.00 a month for 60 months.

RECOMMENDATION: This is an important tool in the world we live in today!

MANAGER'S RECOMMENDATION/COMMENTS: I would also add my recommendation that the Council approve and enter into this lease as it will assist in the proper management of the Water Treatment Plant and assist our folks in their duties. This also provides the Town with a long term solution on efficient Water Treatment Management.

SOFTWARE AND EQUIPMENT LEASE

Parties and Contacts	
Browns Hill Engineering & Controls, LLC 8119 Shaffer Parkway, Unit C Littleton, CO 80127	<div style="border-bottom: 1px solid black; margin-bottom: 2px;">Town of Hayden</div> <div style="border-bottom: 1px solid black; margin-bottom: 2px;">Colorado</div> <div style="border-bottom: 1px solid black; margin-bottom: 2px;"></div> Attn: <u>Bryan Richards</u> E-mail: <u>bryan.richards@haydencolorado.org</u>
Attn: Lynn Jensen, Chief Financial Officer E-mail: LJensen@BrownsHillEng.com	Referred to herein as "Lessee"
Referred to herein as "Browns Hill"	

1. Lease Agreement and Term; Property Acceptance. Effective on the date set forth on the signature page of this Agreement, Browns Hill hereby leases to Lessee and Lessee hereby leases from Browns Hill, the hardware and software ("Property") described in the attached Exhibit "A" ("Property Schedule") for the period described on Exhibit "B" ("Lease Provisions Schedule"), both of which exhibits are incorporated herein by this reference. The capitalized terms defined in such exhibits shall have the same meaning in this Agreement as in such exhibits. The Lease Term shall commence on the date the Property is accepted by Lessee as evidenced by Lessee's execution of the Certificate of Acceptance attached hereto as Exhibit "C" ("Certificate of Acceptance") and delivery of the Certificate of Acceptance to Browns Hill. The Lease Term shall continue for the period set forth on the Lease Provisions Schedule. Notwithstanding that the Lease Term will begin after the effective date of this Agreement, the parties are obligated to comply with all provisions of this Agreement beginning on the effective date of this Agreement.

2. Beginning of Lease Term. The Lease Term shall commence on the date of Lessee's execution and delivery to Browns Hill of the Certificate of Acceptance, and shall continue for the period set forth on the Lease Provisions Schedule. The date of Lessee's execution of the Certificate of Acceptance shall be referred to the "Property Acceptance Date". Prior to execution of the Certificate of Acceptance, Lessee shall inspect the Property and give written notice to Browns Hill of any defect in or other objection to the Property. Upon execution of the Certificate of Acceptance by Lessee and delivery to Browns Hill, Lessee shall be conclusively presumed to: (i) have fully inspected the Property, (ii) have acknowledged that the Property is in full compliance with the terms of this Agreement, to the best of their knowledge, (iii) have acknowledged that the Property in good condition and repair and is functioning properly, to the best of their knowledge, and (iv) have acknowledged that Lessee is satisfied with and has accepted the Property in such good condition and repair.

3. Lease Payments.

a. Lessee agrees to pay Browns Hill the Total Lease Amount for the full Lease Term, in the amount of the Monthly Installments, without notice or demand.

b. Payment of the first Monthly Installment is made on execution of this Agreement, and its receipt is acknowledged by Browns Hill. The second Monthly Installment shall be due and payable thirty (30) days after the Property Acceptance Date. In the event the Property Acceptance Date is not the first day of a calendar month, Lessee shall pay a prorated amount of the Monthly Installment thirty (30) days after the Property Acceptance Date, based on the number of days in such calendar month. The succeeding Monthly Installments shall be payable in full, in advance on the 1st day of each and every succeeding calendar month during the Lease Term. The last Monthly Installment due hereunder shall be a prorated amount of the Monthly Installment equal to a full Monthly Installment amount less the prorated amount which was due thirty (30) days after the Property Acceptance Date.

c. All payments of the Monthly Installments shall be received by Browns Hill at the address set forth above, on the date due without notice or demand.

d. If Lessee fails to pay a Monthly Installment (or any other amount required to be paid to Browns Hill hereunder) within five (5) days after the due date thereof, Lessee shall pay to Browns Hill a late payment fee of ten percent (10%) of such payment amount. The late payment fee is due on the sixth (6th) day after the due date of the relevant payment. Interest on the unpaid Monthly Installment or other amount and the late payment fee shall accrue from their respective due dates until paid, at eight percent (8%) per annum, compounded annually.

4. Security Deposit. Lessee shall pay to Browns Hill on the date of execution of this Agreement, the security deposit ("Security Deposit") set forth on the Lease Provisions Schedule. The Security Deposit is paid to guarantee Lessee's full and faithful performance of all terms, conditions and provisions of this Agreement. If Lessee shall so perform, an equal sum shall be repaid without interest to Lessee after termination of this Agreement and return of the Property to Browns Hill. If Lessee fails to pay the Monthly Installments or other charges due hereunder, or otherwise is in default under this Agreement, Browns Hill may use, apply or retain all or any portion of the Security Deposit for the payment of any amount due Browns Hill or to reimburse or compensate Browns Hill for any liability, cost, expense, loss or damage (including attorneys' fees) which Browns Hill may suffer or incur by reason thereof. Lessee has no right to require Browns Hill to apply the Security Deposit in any manner; the decision whether to apply the Security Deposit to any amount due Browns Hill shall be made in the sole discretion of Browns Hill. If Browns Hill uses or applies all or any portion of the Security Deposit prior to the end of the Lease Term, Lessee shall deposit monies with Browns Hill sufficient to restore the Security Deposit to the full amount required by this Agreement within ten (10) days after written request therefore. Browns Hill shall not be required to keep all or any part of the Security Deposit separate from its general accounts. No later than ninety (90) days after (i) expiration of the Lease Term, or (ii) the date Lessee has

returned all of the Property to Browns Hill, whichever is later, Browns Hill shall return to Lessee that portion of the Security Deposit which is not applied by Browns Hill as provided hereunder. No part of the Security Deposit shall be considered to be held in trust, to bear interest or other increment for its use, or be prepayment for any monies to be paid by Lessee under this Agreement.

5. Installation and Testing. Browns Hill shall install the Property at the Location (defined on the Lease Provisions Schedule), shall conduct all testing to confirm that as of the time of installation the Property will perform the functions necessary for Lessee to use the Property for the Permitted Use (defined below), and shall conduct the training reasonably necessary to train the employees of Lessee in the use and operation of the system in order to perform normal operations. Lessee is responsible for providing security to the Location, and shall limit access to the Property to authorized and trained personnel. The Location and Lessee's use of the Property must comply with all U.S. Department of Homeland Security cyber security guidelines found in National Institute of Standards and Technology (NIST) Special Publication 800-82 revision 1 (e.g. frequent password changes, limiting access to the Location etc.) The Location must conform to International Building Code requirements for data processing server room unless agreed otherwise by Browns Hill.

6. Maintenance; Service Level Agreement. Browns Hill shall comply with the Service Level Agreement ("Service Level Agreement") which is attached hereto as Exhibit "D" and is incorporated into this Agreement. Browns Hill shall provide for the service, repair, and maintenance of the Property, at its own expense, so as to keep the Property in the same condition, repair, appearance, and working order as it was on the Property Acceptance Date, ordinary wear and tear excepted. Browns Hill shall, at its own expense, replace any and all parts, devices and software which constitute the Property and which may from time to time become unusable, except as provided in Section 14 of this Agreement. All such replacement parts, devices and software shall become part of the Property, shall be owned by Browns Hill and shall be covered by this Agreement to the same extent as the Property originally covered by this Lease. Browns Hill shall have the right at any time to enter the Location and shall be given free access thereto and afforded necessary facilities for the purpose of inspection and maintenance of the Property.

7. Permitted Use of Property.

a. Lessee shall use the Property only for the Permitted Use set forth on the Lease Provisions Schedule, and for no other purpose. Lessee shall not use or permit the use of the Property in a manner that is unlawful, creates waste or a nuisance, or that causes damage to the Property or any person or other property. Lessee will exercise due care in the use and operation of the Property and will not install, use, operate, or maintain the Property improperly, carelessly, in violation of any applicable law, or for a purpose or in a manner contrary to that contemplated by this Lease. Lessee agrees not to move the Property from the Location without prior written consent of Browns Hill, which may be withheld in the sole discretion of Browns Hill. Consent to move the Property may be granted

subject to (i) supervision of the move by Browns Hill, and (ii) payment to Browns Hill of all costs of such supervision, including, but not limited to, travel to and from the Location, lodging near the Location, car rental, the hourly rate of the employee(s) of Browns Hill deemed by Browns Hill necessary to supervise the move, and any out of pocket costs related to the foregoing.

b. The software constituting any part of the Property, including software developed and owned by Browns Hill and software developed and owned by any third party (including any and all documentation relating to such software), is leased (not sold) to Lessee for use only under the terms of this agreement, and subject to any applicable license agreement with respect to such third party software. Browns Hill and the third party owners of all software included in the Property reserve all rights not expressly granted to Lessee. The terms of this Agreement and any applicable license agreement for all third party software govern any software upgrades to such software during the Lease Term, unless such upgrade is accompanied by a separate license in which case the terms of that license will govern. Title and intellectual property rights in and to any content displayed by or accessed through the third party software belongs to the respective content owner. Such content may be protected by copyright or other intellectual property laws and treaties, and may be subject to terms of use of the third party providing such content. This Agreement does not grant Lessee any rights to use such content.

c. Lessee may not sublease, lend, redistribute or sublicense the Property. Lessee may not, and may not enable or allow others to, copy, decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify, create derivative works of the software included in the Property, or any part thereof. Any attempt to do so is a violation of the rights of Browns Hill and the third party owners of the software included in the Property, and is a default hereunder.

d. During the Lease term and on termination of this agreement for any reason, Lessee may not make or retain any copies of software included in the Property, whether full or partial, including copies stored on a computer or other storage device or any other medium.

e. Lessee shall comply with the "Operating Instructions" regarding use of the Property which are attached hereto as Exhibit "E", as such may be amended from time to time by Browns Hill and delivered to Lessee.

f. Lessee shall maintain ownership of all data collected related to the operation of the plant, including all data stored in iHistorian ("Lessee's Data"). Upon the expiration or earlier termination of this Lease, Lessor will deliver to Lessee all of Lessee's Data in a format and medium which Lessee can utilize based on its hardware and software in existence at the time of such expiration or termination.

8. Insurance. From the Property Acceptance Date until possession of the Property is returned to Browns Hill, Lessee shall maintain in effect insurance against all risk or physical loss or damage to the Property in an amount not less than One Million and No/100 Dollars (\$1,000,000.00). Such insurance shall be provided by a carrier reasonably acceptable to and preapproved by Browns Hill. All policies shall name Lessee and Browns Hill as insureds as their respective interests will appear, and such policy or policies may not be altered, amended, or canceled without thirty (30) days prior written approval by Browns Hill. Such approval may be withheld in the sole discretion of Browns Hill.

9. Taxes. The parties to this Agreement contemplate that the Property will be used for a governmental or proprietary purpose of Lessee and, therefore, the Property will be exempt from all taxes presently assessed and levied with respect to personal property. However, in the event the use, possession, or acquisition of the Property is found to be subject to taxation in any form (except for income taxes of Browns Hill or Lessee) Browns Hill will pay, as the same respectively come due, all sales taxes. The Lessee shall pay all property taxes that may at any time be lawfully assessed or levied on, against or with respect to the Property (including without limitation, taxes levied against Lessee's leasehold interest), as the same become due. Any such taxes shall be invoiced to Lessee by Browns Hill, and payment shall be made as directed on the invoice no later than thirty (30) days after the invoice date.

10. Permits. Lessee shall obtain all permits and licenses necessary for the installation, operation, possession, and use of the Property, if any, excluding software licenses which are to be obtained by Browns Hill. Lessee shall comply with all laws, rules, regulations, and ordinances applicable to the installation, use, operation of the Property, and if compliance with any such law, rule, regulation, ordinance, permit, or license requires changes or additions to be made to the Property, such changes or additions shall be made by Browns Hill at the expense of Lessee (including the costs set forth in Subsection 14.b hereof).

11. Utility Charges. Lessee shall be responsible for (i) installation of the necessary electricity, air conditioning, light, heat, or power, telephone, internet or other utility service to the Location to be used in connection with the Property, (ii) payment of all charges for installation of such services at the Location, and (iii) payment of all costs of such service at the Location. Browns Hill shall have no responsibility with respect to such services, and in the event of the interruption of any such services there shall be no abatement or reduction of the Total Lease Amount or delay in the payment of any Monthly Installment.

12. Supplemental Equipment; Alterations and Updates. Lessee may not install any additional software, update any software included in the Property, or remove, alter, or copy any of such software without the prior written consent of Browns Hill. Lessee may not attach any other equipment to the Property or modify any software or equipment included in the Property without the prior written consent of Browns Hill. Permission to do any of the foregoing may be withheld in the sole discretion of Browns Hill. Any alterations or modifications accomplished by Browns Hill shall be performed on a "time

and materials” basis, based on quoted prices provided to Lessee prior to commencement of such work. Any such equipment or software integrated with the Property shall be removed by Lessee upon termination of this Agreement as directed by Browns Hill, provided that removal will not damage the Property. Lessee shall not make any other alterations, changes, modifications, additions, or improvements to the Property.

13. Liens. Lessee shall not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or claim on or with respect to the Property, or any interest therein. If the same shall arise at any time, Lessee shall promptly, and at its own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, or claim. Failure to do so shall be a breach of this Agreement.

14. Damage to or Destruction of the Property. Beginning on the Property Acceptance Date, Lessee shall be responsible for any loss, damage or destruction of the Property from any cause at all, whether or not such loss, damage or destruction is covered by insurance. If the Property is lost, stolen, damaged or destroyed, Lessee will promptly notify Browns Hill of such event. In no event shall such loss or damage relieve Lessee of its obligation to pay the Monthly Installments and any other amounts due under this Agreement. In the event of such loss, damage or destruction, Lessee shall have the following obligations and options:

a. In the event the Property is stolen or destroyed so as to be totally unusable for the Permitted Use, Browns Hill shall promptly replace the Property to return it to good working order within forty eight (48) hours. This may include the use of temporary equipment at the sole discretion of Browns Hill. Lessee shall pay One Hundred percent (100%) of the Replacement Value as of the Date of Acceptance to Browns Hill no later than ninety (90) days after the date the Property is stolen or becomes totally unusable. Lessee shall continue to timely make all Monthly Installments required hereunder through the end of the Lease Term. Any payments made to Browns Hill by any insurance company on account of the Property being stolen or rendered unusable shall reduce the Replacement Value as of the Date of Acceptance due from Lessee. Upon payment of (i) the Replacement Value as of the Date of Acceptance to Browns Hill, (ii) payment of the amount of all Monthly Installments due after the date the Property is stolen or becomes totally unusable, and (iii) payment of all other amounts due hereunder.

b. In the event the Property is partially damaged or destroyed (or only a portion of the Property is stolen) but the Property is not totally unusable, Browns Hill shall promptly repair the Property to return it to good working order within forty eight (48) hours. This may include the use of temporary equipment at the sole discretion of Browns Hill. Lessee shall pay all costs necessary to return the Property to good working order within sixty (60) days of Lessee’s receipt of written notice of the total amount of such costs. Such costs shall include, but not be limited to: (i) all costs to replace or repair any of the Property, (ii) the hourly rate of the employee(s) of Browns Hill who repair or replace the damaged or destroyed Property, (iii) the costs of such employee(s) travel to and from the

Location, lodging near the Location, car rental, and any out of pocket costs related to the foregoing. Lessee shall continue to timely make all Monthly Installments required hereunder and comply with all other obligations hereunder through the end of the Lease Term. Any new equipment or software which replaces the portion of the Property which was partially damaged, destroyed or stolen, shall become part of the Equipment for all purposes hereunder.

c. Notwithstanding any provision of this Agreement to the contrary, Lessee shall have no responsibility or obligation to repair or replace the Property if the damage or destruction to the Property is caused by the actions or inactions of Browns Hill, its employees, or agents. In that event, Browns Hill shall replace any such damaged or destroyed equipment or software at its cost. The Monthly Installments shall abate for the period of time beginning on the date of such damage or destruction and continuing until the Property is fully functional. The Lease Term shall be extended for a like period. Any new equipment or software which replaces the portion of the Property which was damaged or destroyed, shall become part of the Equipment for all purposes hereunder.

d. For purposes of this Agreement, the Property shall be considered totally unusable if the Property can perform none of the functions which constitute the Permitted Use.

15. Liability; Indemnification.

a. To the fullest extent permitted by law, Lessee shall and does hereby agree to indemnify, protect, defend with counsel approved by Browns Hill, and hold harmless Browns Hill, and its officers, directors, employees, representatives and agents (collectively "Browns Hill Indemnitees") from and against all damages, losses, liens, causes of action, suits, judgments, expenses (including reasonable attorneys' fees, costs and expenses), and other claims of any nature, kind, or description by any person or entity, arising out of, caused by, or resulting from Lessee's use, possession and operation of the Property and which are caused in whole or in part by any negligent act, negligent omission or willful misconduct of Lessee, anyone directly or indirectly employed by Lessee or anyone for whose acts Lessee is responsible or liable. The provisions of this Section shall not be construed to eliminate or reduce any other indemnification or right which any Browns Hill Indemnitee has by law.

b. To the fullest extent permitted by law, Browns Hill shall and does hereby agree to indemnify, protect, defend with counsel approved by Lessee, and hold harmless Lessee, and its officers, directors, employees, representatives and agents (collectively "Lessee Indemnitees") from and against all damages, losses, liens, causes of action, suits, judgments, expenses (including reasonable attorneys' fees, costs and expenses), and other claims of any nature, kind, or description by any person or entity, arising out of, caused by, or resulting from any negligent act, negligent omission or willful misconduct of Browns Hill, anyone directly or indirectly employed by Browns Hill or anyone for whose acts Browns Hill may

be responsible or liable. The provisions of this Section shall not be construed to eliminate or reduce any other indemnification or right which any Lessee Indemnitee has by law.

c. To the fullest extent permitted by law, Browns Hill shall and does hereby agree to indemnify, protect, defend with counsel approved by Lessee, and hold harmless the Lessee Indemnitees from and against all damages, losses, liens, causes of action, suits, judgments, expenses (including reasonable attorneys' fees, costs and expenses), and other claims of any nature, kind, or description by any person or entity, arising out of, caused by, or resulting from a claim that the software developed by Browns Hill which is included in the Property (excluding any third party software) infringes any patent, copyright, trademark or other proprietary interest of any third party; provided that such claim arises out of Lessee's use of the Property which is in accordance with the provisions of this Agreement.

d. Each party entitled to indemnification hereunder shall serve written notice of the claim for indemnification, along with supporting documentation, on the party from whom the indemnification is sought hereunder. The indemnifying party shall have the right to defend any litigation, action, suit, demand, or claim for which indemnification may be sought unless the indemnified party elects to defend any such litigation. If the indemnifying party defends the litigation, action, suit, demand or claim, the indemnified party shall extend reasonable cooperation in connection with such defense, which shall be at the indemnifying party's sole expense. If the indemnifying party fails to defend the same within a reasonable period of time, the indemnified party shall be entitled to assume the defense thereof, and the indemnifying party shall be liable to repay the indemnified party for all expenses reasonably incurred in connection with said defense (including reasonable attorneys' fees and settlement payments) if it is determined that such request for indemnification was proper. If the indemnifying party shall not have the right to assume the defense of any litigation, action, suit, demand, or claim in accordance with either of the two preceding sentences, the indemnified parties shall have the absolute right to control the defense of such litigation, action, suit, demand, or claim; provided, however, that litigation, action, suit, demand, or claim shall not be compromised or settled without the written consent of the indemnifying party, which consent shall not be unreasonably withheld. In the event the indemnified party assumes the defense of any such litigation, action, suit, demand, or claim, the indemnified party shall keep the indemnifying party reasonably informed of the progress of any such defense (including any proposed compromise or settlement).

16. Prohibition Against Assignment or Sublease.

a. Lessee shall not assign, transfer, pledge, or hypothecate this Agreement or its rights hereunder, sublease the Property, or any part thereof, or any interest therein, permit the Property to be used for any purpose not permitted by this

Lease, without the express written permission of Browns Hill. Permission for any of the foregoing may be withheld by Browns Hill in its sole discretion.

b. Browns Hill may not assign this Agreement or any rights or obligations hereunder (except the right to receive payments hereunder) without the express written permission of Lessee. Permission for such assignment may be withheld by Lessee in its sole discretion.

c. Any assignment of Browns Hill's right to receive payments hereunder shall be in writing and Lessee shall receive prompt written notice of such assignment. Any such assignment shall in no way burden Lessee with any additional obligations other than those set forth in this Agreement, nor shall it limit any rights provided Lessee hereunder including its right to peaceful possession and use of the Property. Lessee shall not be required to execute any additional documents as a result of such assignment. If Browns Hill assigns its rights to receive payments hereunder, Lessee's duty to make payments hereunder will be fully discharged by directing such payments to the last assignee of which it has been given written notice at the address to be included in said notice, and Browns Hill hereby agrees to indemnify Lessee against any claims which may arise, over and above those obligations undertaken by Lessee in this Lease because of the failure of Browns Hill to promptly or properly accomplish any assignment (or sub-assignment) of its rights hereunder, or to promptly or properly notify Lessee thereof.

17. Default by Lessee. If any amounts due from Lessee hereunder are not paid within five (5) days after such amounts are due, Lessee shall be in default under this Agreement. In the event of Lessee's breach of any provision of this Agreement not requiring payment, Browns Hill shall give Lessee notice of such breach, and Lessee shall be in default if such breach is not cured within ten (10) days after the date of such notice. If the breach is of the type which cannot be cured within ten (10) days after notice of the breach is provided by Browns Hill, Lessee shall not be in default if it has commenced curing such default within the ten (10) day period and diligently pursues such cure until it is accomplished. In the event of a default, Browns Hill may either (i) terminate the Agreement at the end of the month in which such default occurs, or (ii) not terminate the Agreement and take such legal action as is necessary to recover the full amount due under this Agreement for the entire Lease Term. Any amounts not paid when due shall accrue interest at a rate of eight percent (8%) per annum from the date of such breach. In addition, in the event of Lessee's default, Browns Hill may pursue any one or more of the following remedies (which shall be cumulative and exercisable concurrently or separately as Browns Hill, in its sole discretion, may determine):

a. Browns Hill may retake possession of the Property without terminating this Agreement, by giving Lessee at least ten (10) days written notice of the date and time Browns Hill will retake possession of the Property. On the date and time Browns Hill is to retake possession of the Property, Lessee shall cooperate to allow Browns Hill to enter upon Lessee's premises and take possession of the Property. Lessee shall continue to be responsible for the payment of Monthly

Installments until the default is cured, at which time Browns Hill shall return the property to Lessee at Lessee's expense.

b. Browns Hill may terminate this Agreement and retake possession of the Property by giving Lessee at least ten (10) days written notice of the date and time Browns Hill will retake possession of the Property. On the date and time Browns Hill is to retake possession of the Property, Lessee shall cooperate with Browns Hill to allow Browns Hill to enter upon Lessee's premises and take possession of the Property.

c. In the event Browns Hill retakes possession of the Property, Browns Hill shall be under no obligation to make any attempts to sell or re-lease the Property, or any portion thereof, or to seek to mitigate its damages resulting from Lessee's breach of this Agreement in any manner. Lessee specifically acknowledges that this provision is reasonable because of (i) the customized nature of the Property, which makes the property mostly unusable to other potential lessees, and (ii) the time spent and costs incurred by Browns Hill to install and test the Property and train Lessee's personnel, which Browns Hill would recoup through lease payments, and which would be required to be incurred if the Property were leased to a new lessee.

18. Default by Browns Hill. Lessee's rights to terminate this agreement and/or receive credit against amounts due hereunder are set forth in the Service Level Agreement.

19. Property Return at End of Lease Term. Upon expiration or termination of this Agreement, Lessee shall release the Property to Browns Hill in the same condition, repair, appearance, and working order as when the Property was installed, less ordinary wear and tear, at the Location (as may be modified by express written consent of Browns Hill pursuant to Section 12 above). Such release shall be accomplished by Browns Hill taking possession of the Property at the original installation location, unless Browns Hill and Lessee agree to another place of delivery.

20. Personal Property. The Property is and shall at all times be and remain personal property, notwithstanding that the Property, or any part thereof, may now be or hereafter become in any manner affixed or attached to or embedded in or permanently rested upon real Property or any building thereon or attached in any manner to what is permanent by any means of cement, plaster, nails, bolts, screws, or otherwise.

21. Browns Hill's Right to Perform for Lessee. If Lessee fails to make any payment or fails to perform or comply with any of its covenants or obligations hereunder, Browns Hill may at its election make such payment or perform or comply with such covenants and obligations. In that event, the amount of such payment and the expenses incurred by Browns Hill, together with interest thereon at the maximum rate permitted by law or the rate of eight percent (8%) per annum, whichever is the lesser, shall be payable to Browns Hill by Lessee. Lessee's failure to perform or comply with any of its covenants or obligations hereunder shall be a breach of this Agreement. No election to

perform or pay by Browns Hill shall constitute waiver of any covenant or obligation of Lessee or of any future default, and Browns Hill is under no obligation to take any actions described in this Section.

22. Cancellation for Non-Appropriation of Funds. If the term of this Lease extends for more than twelve (12) months (or if it extends beyond the last day of Lessee's fiscal year in which this lease is executed, if such fiscal year ends less than twelve (12) months after the Property Acceptance Date), the obligation of Lessee to pay Monthly Installments for any period beyond the first twelve (12) months (or beyond the last day of Lessee's fiscal year in which this lease is executed, if such fiscal year ends less than twelve (12) months after the Property Acceptance Date) is expressly contingent upon appropriate funds being budgeted and appropriated therefor. The term of this Lease may be extended upon agreement of the parties, provided the extension is reduced to writing and mutually executed, and shall be extended if appropriate funds are budgeted and appropriated therefore. In the event the Lease is not extended past the first twelve (12) months (or beyond the last day of Lessee's fiscal year in which this lease is executed, if such fiscal year ends less than twelve (12) months after the Property Acceptance Date), Lessee shall cooperate with Browns Hill to retake possession of the Property, without the necessity to invoke legal proceedings to accomplish such repossession. In that event, Lessee gives up all right to possess the Property, and Browns Hill may apply the Security Deposit to pay (i) the reasonable costs and expenses incurred by Browns Hill to effect repossession, including any reasonable attorney fees and costs incurred to effect possession, (ii) the reasonable costs and expenses incurred by Browns Hill to prepare the Property for resale or re-leasing, and (iii) any other costs and expenses incurred by Browns Hill which are necessitated by the failure of Lessee to extend the lease beyond the first twelve (12) months (or beyond the last day of Lessee's fiscal year in which this lease is executed, if such fiscal year ends less than twelve (12) months after the Property Acceptance Date). The foregoing provision is intended to comply with the Colorado Taxpayers Bill of Rights (Article X of the Colorado Constitution) and shall be construed to comply with that provision of the Colorado Constitution.

23. Publicity. Browns Hill agrees that it shall not publicize the fact or details of this Agreement, or disclose, confirm, or deny any details thereof to third parties or use any photographs or video recordings of Lessee's employees or use Lessee's name in connection with any sales promotion or publicity event without the prior express written approval of Lessee.

24. Confidential Information; Non-Disclosure. Browns Hill and Lessee acknowledge that they or their employees may, in the performance of their obligations under this Agreement, come into the possession of proprietary or confidential information owned by or in the possession of the other. The proprietary or confidential information of Browns Hill includes, but is not limited to, all details of the vmSCADA system and its integration with the third party software and hardware comprising the Property, and all "Operating Instructions" regarding use of the Property which are attached hereto as Exhibit "E". Neither party shall use any such confidential information for its own benefit or make such information available to any person, firm, corporation, or other organization, whether or not directly or indirectly affiliated with Browns Hill or Lessee,

unless required by law. The confidential information of both parties shall be considered a "Trade Secret" of the party providing the information, as that term is defined in the Colorado Uniform Trade Secrets Act, Section 7-74-101, C.R. S., et seq., and shall be entitled to all protections provided in that Act. Lessee acknowledges that Browns Hill may collect, maintain, process and use diagnostic, technical, usage and related information, including but not limited to unique system or hardware identifiers, which is gathered periodically to provide and improve the utility of the Property, facilitate the provision of software updates and product support related to the Property, and to verify compliance with the terms of this Agreement. Browns Hill may use this information solely for the purposes described in this Section. Notwithstanding any provision of this Agreement to the contrary, all facility process information generated through use of the Property shall be proprietary or confidential information of the Lessee and shall be entitled to all protections set forth in this Section. Lessee shall require all employees who use the Property to execute a document acknowledging their obligation to be bound by the provisions of this Section, and shall provide copies of such documents to Browns Hill on its request.

25. Browns Hill Not Debarred. Browns Hill represents and warrants that neither it nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from the United States ("U.S.") federal government procurement or non-procurement programs, as listed on the System for Award Management website (www.sam.gov) maintained by the U.S. "Principals" means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity. Browns Hill will provide immediate written notification to Lessee if, at any time prior to award, Browns Hill learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when Lessee executes this Agreement. If it is later determined that Browns Hill knowingly rendered an erroneous certification, in addition to the other remedies available to Lessee, Lessee may terminate this Agreement for default by Browns Hill.

26. Notices and Communications. Any notice or other communication which may be required or which may be given under the terms of this Agreement, shall be deemed sufficiently given if personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid, or e-mailed (with follow up letter by 1st class, registered or certified mail which is mailed on the same date), and addressed to the parties as set forth in the "Parties and Contacts" on p. 1 of this Agreement. The date of service by mail of any notice or other communication required or which may be given under the terms of this Agreement shall be the date on which the same is received by the addressee. However, any notice sent by certified or registered mail which is unclaimed or refused by the intended recipient shall be deemed for the purposes hereof to have been served on the date of the first attempted delivery. The date of service by e-mail shall be the date the e-mail is transmitted to the intended recipient. Either party may, by prior written notice to the other party, change the address to which any notice or communication hereunder may be given to such party.

27. Dispute Resolution. In the event any dispute arises between the parties related to the subject matter of this Agreement (including its exhibits or documents executed in conjunction with this Agreement), the dispute shall be resolved by arbitration conducted through the American Arbitration Association, or its successor, by a single arbitrator selected by the parties in accordance with the rules of said organization. If the subject matter of the arbitration involves technical aspects of the Property or its implementation or use, the parties shall either agree to use an arbitrator with a technology background or allow the arbitrator to retain an expert in the subject matter of the dispute to assist the arbitrator. Pre-trial proceedings shall be governed by the Colorado Rules of Civil Procedure, Colorado Rules of Evidence and such other or modified rules as the parties may agree or the arbitrator may direct. The award of the arbitrator shall be final and binding, shall not be subject to appeal and may be entered as a final judgment in any court of competent jurisdiction. The arbitrator shall render his or her decision no later than thirty (30) days after the submission of the evidence and issues. In any action filed or commenced pursuant to this provision, the Parties further waive all objections to personal jurisdiction or venue. Nothing contained in this Agreement shall preclude either party, as appropriate, from seeking injunctive relief in a court of competent jurisdiction for breaches of this Agreement including, but not limited to the breach of any confidentiality provisions herein.

28. Miscellaneous.

a. Anti-discrimination. Browns Hill is an equal opportunity employer, and agrees not to discriminate against any employee, contractor or applicant for employment or contract labor because of race, creed, color, national origin, sex, sexual orientation, age, physical defect or disability, or any other class of person legally protected in the jurisdiction where Browns Hill is located with regard to but not limited to employment upgrading, promotion or transfer, recruitment or recruitment advertising, layoffs or termination, or selection for training.

b. Governing Law and Venue. This Agreement was executed in Jefferson County, Colorado. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado (excluding its conflicts of laws rules) and each party submits to the jurisdiction of any state or federal court in the State of Colorado. The parties agree to that venue for any proceeding or litigation, judicial or non-judicial, arising out of the subject matter of this Agreement shall lie exclusively with the courts of Routt County, Colorado.

c. Section Headings. All section headings are for convenience of reference only and are not intended to define or limit the scope of any provisions of this Agreement.

d. Severability. If one or more provisions of this Agreement, or the application of any provision to any party or circumstance, is held invalid, unenforceable, or illegal in any respect, the remainder of this Agreement and the application of the provision to other parties or circumstances shall remain valid and in full force and effect.

- e. Cumulative Remedies. No remedies or election hereunder shall be deemed exclusive, but shall, whenever possible, be cumulative with all other remedies at law or in equity.
- f. Survival of Provisions of Agreement. The obligations set forth in Sections 4 and 8 through 24, and any other right or obligation in this Contract that, by its terms, exists, is intended to be performed or may be performed after termination or Closing, shall survive Closing or termination of this Agreement.
- g. Non-Waiver of Defaults. Any failure of either party at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms and conditions of this Agreement, or to exercise a right hereunder, shall not constitute a waiver of such terms, conditions, or rights, and shall not affect or impair same, or the right of such party at any time to avail itself of same.
- h. Prior Agreements; Amendments. This Agreement and all Exhibits hereto and the Instructions described in Section 7.e of this Agreement contain all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Agreement, and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose. All such documents shall be considered one integrated agreement. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the parties hereto or his respective successors in interest. This Agreement shall not be effective or binding on any party until fully executed by all parties hereto.
- i. Independent Contractor Status. For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Browns Hill is an independent contractor and is not an employee, partner, joint venturer, or agent of Lessee.
- j. Attorney Fees, Costs and Expenses. In the event any action, proceeding or litigation, judicial or non-judicial, arises out of the subject matter of this Agreement, the substantially prevailing party shall be entitled to payment of all costs, expenses and attorney fees incurred, including those incurred on appeal and for collection of a judgment.
- k. Authority. Lessee represents and warrants that it has the power to enter into this Agreement; that all procedures required for the authorization and execution of this Agreement, including competitive bidding, if applicable, have been taken or complied with; that all payments made hereunder will be paid out of funds which are legally available for such purposes.
- l. Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same Agreement. It is also agreed that separate counterparts of this Agreement may separately be executed by the parties all with

the same force and effect as if the same counterpart had been executed by all parties.

m. Authority to Execute. The Town warrants that the individual executing this Agreement warrants to Browns Hill that such person has sufficient authority to bind Lessee. Such individual represents and warrants that he or she has the power and authority to execute and deliver this Certificate of Acceptance on behalf of Lessee.

Executed on this ____ day of _____, 2016 ____.

Browns Hill Engineering & Controls, LLC

Lessee:

Town of Hayden

By: _____

By: _____

Print Name and Title

EXHIBIT "A"
TO
SOFTWARE AND EQUIPMENT LEASE
Between
BROWNS HILL ENGINEERING & CONTROLS, LLC
and
TOWN OF HAYDEN

Execution Date: _____

PROPERTY SCHEDULE

This Property Schedule is an attachment to and is incorporated into that Software and Equipment Lease (the "Agreement") referenced above.

QTY.	SERIAL #	NAME	DESCRIPTION
1		Dell PowerEdge Tower Server	Dual 8 Core CPUs, 32GB RAM
1		Dell OptiPlex 3010	
2		Dell Touch Monitor	23"
1		8TB Seagate NAS	Backup Appliance
1		External USB HDD	1TB
1		MultiMobile USB Modem	
1		5 Port Network Switch	
1		vSphere ESXi	
2		Windows Server 2008 R2	
1		Windows 7 Professional	
2		vRanger Appliance	
1		WonderWare Dev License	
1		WonderWare Upgrade	
5		Terminal Server	
1		Rockwell TechConnect	
2		Microsoft Office	
4		Symantec Endpoint Protection	Anti-Virus
2		APC UPS	Backup Power
1		Dell Venue 11 Pro	Cellular (Verizon)
1		Dell Venue Keyboard	
1		Windows 8 Professional	

Browns Hill Engineering & Controls, LLC

Lessee:

By: _____

By: _____

 Print Name and Title

EXHIBIT "B"
TO
SOFTWARE AND EQUIPMENT LEASE
Between
BROWNS HILL ENGINEERING & CONTROLS, LLC
and
TOWN OF HAYDEN

Execution Date: _____

LEASE PROVISIONS SCHEDULE

This Exhibit is executed pursuant to that Software and Equipment Lease (the "Agreement") referenced above. Capitalized terms defined in the Agreement shall have the same meaning in this document. The provisions set forth below are incorporated into the Agreement by this reference.

Security Deposit: \$0

Location of Property: 40100 Route County Road 183, Hayden, CO 81639

Replacement Value of Property at acceptance date: \$49,975.00

Permitted Use: The Property will be used for centralized monitoring and control for field sites over long-distance communications networks, including monitoring alarms and processing status data, for local control operations (e.g. opening and closing valves and breakers, collecting data from sensor systems, and monitoring the local environment for alarm conditions) for the Water Treatment Plant system operated by Lessee.

Lease Term:	Sixty (60) months ¹
Number Of Monthly Payments:	Sixty (60)
Total Lease Amount:	\$89,100.00
Monthly Installment:	\$1,485.00
Payment method:	[check, credit card, EFT]

¹ The Lease Term shall begin on the Property Acceptance Date, and shall terminate on the day before the corresponding date in the calendar month which is the number of months in the Lease Term after the Property Acceptance Date. For example, if the Property Acceptance Date is January 15, 2014 and the Lease Term is 60 months, the Lease Term shall end on January 14, 2019.

The above is agreed to as of this ____ day of _____, 20____.

Browns Hill Engineering & Controls, LLC

Lessee:

By: _____

By: _____

Print Name and Title

EXHIBIT "C"
TO
SOFTWARE AND EQUIPMENT LEASE
Between
BROWNS HILL ENGINEERING & CONTROLS, LLC
and
TOWN OF HAYDEN

Execution Date: _____

CERTIFICATE OF ACCEPTANCE

This Certificate of Acceptance is executed and delivered pursuant to that Software and Equipment Lease (the "Agreement") referenced above. Capitalized terms defined in the Agreement shall have the same meaning in this Certificate of Acceptance.

Lessee hereby acknowledges and verifies the information set forth below as of the _____ day of _____, 20____, which shall be the Property Acceptance Date as that term is defined in the Lease Agreement.

1. Lessee acknowledges and agrees that the Property set forth on Exhibit "A" to the Agreement has been installed at the Location and as of the Property Acceptance Date, and to the best of the Lessee's knowledge:

- a. Lessee has fully inspected the Property,
- b. The Property is in full compliance with the terms of this Agreement,
- c. The Property is in good condition and repair and is functioning properly,
- d. Lessee is satisfied with and has accepted the Property in such good condition and repair, and
- e. There exist no offsets or defenses to the obligations of Lessee under the Agreement.

2. Lessee personnel who will be responsible for operating the Property have been provided adequate training on how to properly operate the Property.

3. Lessee has obtained the insurance required by Section 7.d of the Agreement, and has provided the required Certificate of Insurance to Browns Hill.

4. The Town warrants to Browns Hill that such person executing this Certificate of Acceptance has sufficient authority to bind Lessee. Such individual represents and warrants that he or she has the power and authority to execute and deliver this Certificate of Acceptance on behalf of Lessee.

(move the following line to the next page)

LESSEE: _____

By: _____

(print name)

Its: _____

(print title)

* * * * *

Receipt of the "Certificate of Acceptance" is hereby acknowledged:

Browns Hill Engineering & Controls, LLC

By: _____

**EXHIBIT “D”
TO
SOFTWARE AND EQUIPMENT LEASE
Between
BROWNS HILL ENGINEERING & CONTROLS, LLC
and
TOWN OF HAYDEN**

Execution Date: _____

SERVICE LEVEL AGREEMENT

This agreement is entered into between Browns Hill and the Town of Hayden, Colorado (“Lessee”) in conjunction with a “Software and Equipment Lease” of even date herewith (“Lease”) whereby Lessee leases the vmSCADA system developed and owned by Browns Hill Engineering & Controls, LLC (“Browns Hill”), and the integrated third party software and hardware defined as the “Property” in the Lease. This Service Level Agreement (“SLA”) is an integral part of the Lease and the terms of this Agreement are incorporated into the Lease; all capitalized terms defined in the Lease (including its exhibits) shall have the same meaning in this SLA as in the Lease. This SLA is effective on the Property Acceptance Date, continuing until the last day of the Lease Term.

1. Service. Browns Hill provides financial backing to its commitment to achieve and maintain the Service Levels described herein for the Property. If Browns Hill does not achieve and maintain the Service Levels for the Property as described in this SLA, Lessee will receive a credit towards a portion of the Monthly Installments due under the Lease. The terms of this SLA will not be modified during the Lease Term.

2. Definitions.

a. “Available” means the Property is able to provide all of the data processing, communication and other functions necessary to fulfill the Permitted Use. If the Property is not able to provide all of such functions due to any reason described in Section 8 below, the Property shall still be considered Available. If the Property is not able to provide such functions because of (i) an Incident which commenced with one of the causes set forth in Subsections 8.d to 8.h (inclusive) below, and which cause was subsequently cured, but (ii) which triggered a period of Downtime because the Property is not Available for reasons not set forth in Subsections 8.d to 8.h (inclusive) below, the Property shall be considered Available during the entire period the Property is not able to provide such functions.

b. “Downtime” means a period during which functions of the Property are not Available to authorized users of the Property. A period of Downtime begins upon receipt of a properly completed Trouble Ticket by Browns Hill. Downtime ends when Browns Hill has reasonably determined that the Property is once again Available to all authorized users. Browns Hill will provide a copy of the Trouble

Ticket, including a calculation of the Downtime with respect to the Incident reported on the Trouble Ticket, within a reasonable period of time after the Property becomes Available. All Downtime shall be classified as set forth in Section 5 below.

c. "Incident" means (i) any single event, or (ii) any set or series of events, which result in Downtime for which a Trouble Ticket is submitted to Browns Hill. An incident may also simply be the discovery by Lessee that a function of the Property is not working properly.

d. "Downtime Minutes" shall mean the total number of minutes of Downtime for each system during a calendar month. All partial minutes of Downtime shall be rounded down to the next whole minute. Downtime and credits for Downtime shall be determined on a system by system basis. For example, if Lessee has 3 systems and all 3 systems experience 30 minutes of Downtime, then Downtime credit for each system shall be considered separately as 30 minutes per system, not 90 minutes in aggregate. "Downtime Equivalent Minutes" shall mean the number of Downtime Equivalent Minutes calculated as set forth in Section 5 below.

e. "Monthly Uptime Percentage" is calculated using the following formula for each calendar month during the Term:

$$\frac{(\text{Total Available System Minutes} - \text{Downtime Equivalent Minutes}) \times 100}{\text{Total Available System Minutes}}$$

f. "Scheduled Downtime" means periods when any or all of the data processing, communication and other functions necessary to fulfill the Permitted Use cannot be used by Lessee, because of network, software or hardware maintenance or upgrades being performed by Browns Hill as set forth in Section 9 below.

g. "Service Credit" is the amount to be credited to Lessee and applied to the next Monthly Installment following a calendar month in which the Service Level Commitments set forth in Section 3 below were not met.

h. "Service Level" means the performance metric(s) with respect to the Property and set forth in Section 3 below.

i. "Trouble Ticket" shall mean either an electronic or physical document which contains the information described in Section 4 below. Electronic tickets may either be submitted electronically (i.e. through Browns Hill's website, www.vmscada.com) or verbally (either by telephone or in person). If an electronic Trouble Ticket is submitted to Browns Hill, it will be considered received by Browns Hill upon completion of its submission by Lessee. If Lessee submits the information required by Section 4 below verbally (either by telephone or in person), the Trouble Ticket will be considered received by Browns Hill upon

completion of the physical Trouble Ticket by a representative of Browns Hill after the information described in Section 4 below is provided to such representative.

j. “Total Available System Minutes” means the total number of minutes in a calendar month. For this purpose the following is the total number of minutes in a full calendar month, per user:

Number of Days in Month	Number of System Minutes in Month
28	40,320
29	41,760
30	43,200
31	44,640

3. Service Level Commitment. Browns Hill commits to the following Monthly Uptime Percentage for the Services:

- a. 99.70% for vmSCADA (the small system); and
- b. 99.90% for vmSCADA Plus (the large system).

If the Monthly Uptime Percentage falls below the referenced percentages, for any given calendar month, Lessee will receive a Service Credit to be applied to the next Monthly Installment(s) as set forth in Section 0 below.

4. Trouble Ticket. In the event of an Incident, Lessee must submit a “Trouble Ticket” to Browns Hill. The Trouble Ticket must include the following information:

- a. A detailed description of the Incident;
- b. The number and location(s) of affected users (if applicable); and
- c. Detailed descriptions of Lessee’s attempts to resolve the Incident at the time of occurrence.
- d. Priority (1-5 with 5 being the highest level of priority)

The Trouble Ticket must be submitted electronically (i.e. through Browns Hill’s website, www.vmscada.com), unless Lessee determines that the Incident requires emergency resolution. In that event, the Trouble Ticket may be submitted verbally (either by telephone or in person) to Browns Hill at the telephone number provided to Lessee. Browns Hill will evaluate all information reasonably available and make a good faith judgment on whether a Service Credit is owed. Browns Hill will use commercially reasonable efforts to process claims during the subsequent month and within forty five (45) days of receipt. Lessee must be in full compliance with the Lease during the full period of the Downtime in order to be eligible for a Service Credit. If Lessee is not in full compliance with the Lease during the full period of Downtime, such Downtime will not be included in the calculation of the Monthly Uptime Percentage for that calendar month. If Browns Hill determines that a Service Credit is owed to Lessee, the Service Credit will be applied to the next occurring Monthly Installment.

5. Calculation of Downtime Equivalent Minutes. A Service Credit shall be based on the amount of “Downtime Equivalent Minutes” for an applicable calendar month, as follows:

Class of Downtime	Calculation of Downtime Equivalent Minutes
Class A Downtime	Minutes of Downtime/1 = Downtime Equivalent Minutes
Class B Downtime	Minutes of Downtime/2 = Downtime Equivalent Minutes
Class C Downtime	Minutes of Downtime/3 = Downtime Equivalent Minutes
Class D Downtime	Minutes of Downtime/4 = Downtime Equivalent Minutes
Class E Downtime	Minutes of Downtime/5 = Downtime Equivalent Minutes

For this purpose, “Downtime” shall be classified as follows:

- a. Class A Downtime – Most Severe: The Property is completely unavailable. Examples – “blue screen of death”, no functionality, business operations significantly impaired.
- b. Class B Downtime – Major: The Property is only partially or periodically functional. Example – The Property is periodically rebooting the operating system or applications. Operation of the Property, and therefore business operations, are partially impaired.
- c. Class C Downtime – Moderate: The Property is generally available but some operational control is impaired and some data loss is occurring. Example – the historian archive is unavailable and data is lost.
- d. Class D Downtime – Minimal: The Property is available but functionality is incomplete or sluggish. Business operations are not impaired, but may be delayed or retarded. Example – setpoint changes due to system issues take 2-3 times the normal period to take effect.
- e. Class E Downtime – Minor: The Property is not operationally impaired, and only the least critical functions are not available causing inconvenience or annoyance but not operational impairment. Example – sticky keyboard keys.

Different Classes of Downtime may be applicable to different portions of a distinct period of Downtime. For example, if immediately after the occurrence of an Incident no functions of the Property are being fulfilled, the Downtime will be Class A Downtime. If different functions of the Property are subsequently restored and only the functions described in Subsection (d) of this Section are not Available, the Downtime would change to Class E Downtime from that point in time going forward. If different Classes of Downtime might be applicable to a period of Downtime, the highest Class of downtime shall be applicable to such period. For this purpose, Class A Downtime is the highest Class of Downtime, and Class E Downtime is the lowest Class of Downtime.

6. Service Credit for Downtime. In the event Lessee experiences any Downtime during a calendar month, Lessee shall receive a “Service Credit” to be applied to the Monthly Installment(s) due after the amount of the Service Credit is calculated by Browns Hill and communicated to Lessee. The amount of the Service Credit shall be determined as follows:

The maximum Service Credit available for any calendar month is equivalent to the Monthly Installment fee for that month. If the Monthly Uptime Percentage set forth in Section 3 is met for a calendar month, Lessee shall not be entitled to a Service Credit for that calendar month. If the Monthly Uptime Percentage for a calendar month is not met, the Service Credit will be 0.06944444 percent of the Monthly Installment for each Downtime Equivalent Minute which exceeds the allowable amount of monthly Downtime based on the Service Level Commitment set forth in Section 3. Service Credits against the Monthly Installments are the sole and exclusive remedy for any performance or availability issues with respect to the Property under the Lease and this SLA unless it is determined that the Service Credit exceeds the amount of the Monthly Installments remaining due from Lessee under the Lease. Lessee may not unilaterally offset the Monthly Installments or any other payment due from Lessee to Browns Hill for any performance or availability issues. Refunds of Monthly Installments will not be made unless the Service Credit exceeds the amount of the Monthly Installments remaining due from Lessee under the Lease. In that event, any Service Credit Amount which is not applied to Monthly Installments shall be promptly paid to Lessee no later than the date the Security Deposit is due to be refunded (if at all) to Lessee under the Lease.

7. Monthly Availability Report. Browns Hill will provide a monthly "Availability Report" to Lessee, with each invoice provided under the Lease. Each Availability Report will show the following information for the prior calendar month:

- a. A list of Incidents for which a Trouble Ticket was submitted to Browns Hill during the month;
- b. The duration of Downtime for each such Incident, including the date and time the Downtime commenced and ended;
- c. The number of Lessee's systems who were the subject of Downtime for each such Incident;
- d. The Monthly Uptime Percentage for the relevant month;
- e. The amount of any Service Credit to which Lessee is entitled for the month; and
- f. Any additional information determined by Browns Hill.

8. Limitations. If the Property is unable to provide the data processing, communication and other functions necessary to fulfill the Permitted Use solely for any of the reasons set forth in this Section (either a single reason or a combination of such reasons), the Property shall still be considered Available. The reasons set forth in this Section are:

- a. During all Scheduled Downtime described in Section 9 below.
- b. During pre-release, beta and trial periods for any function (as determined by Browns Hill).
- c. Any issues discovered by Browns Hill through its monitoring, maintaining or updating of the Property, which are resolved by Browns Hill through Scheduled Downtime or otherwise without a loss of function.
- d. The failure, malfunction, unavailability or inadequacy of components or services otherwise necessary for the Property to function properly, but which

components or services are not provided by Browns Hill and are not part of the Property. This includes, but is not limited to, instruments, valves, switches, gates, communications, internet service, telephone service, transport facilities, utility power, HVAC, security and the like.

e. Factors outside the control of Browns Hill and/or Lessee, including, but not limited to, natural disasters, extreme weather events, war, acts of terrorism, riots, strikes or other labor disturbance, government action or Acts of God.

f. Lessee's use of the Property in a manner not consistent with any written or verbal instructions from Browns Hill to Lessee.

g. Any Incident which results from Lessee's unauthorized action or lack of action when required, or from Lessee's employees, agents, contractors, or vendors, or anyone gaining access to the Property by means of Lessee's passwords or equipment.

h. Any Incident which results from Lessee's failure to adhere to any required configurations, use supported platforms, and follow any policies for acceptable use which are communicated from Browns Hill to Lessee.

9. Scheduled Downtime. During the Term, Scheduled Downtime will be necessary for Browns Hill to install updates to the Property, perform required or advisable maintenance to the Property or to correct situations which may affect Availability of the Property. Scheduled Downtime minutes are not eligible for Service Credit for Downtime. Notification of Scheduled Downtime shall be provided by Browns Hill to Lessee as follows:

a. Regular Scheduled Downtime. Browns Hill will notify Lessee at least ten (10) business days prior to the commencement of Scheduled Downtime. Such notification will advise Lessee of the exact date and time the Scheduled Downtime will commence, and the expected duration of the Scheduled Downtime. Browns Hill will endeavor to provide telephonic notification that the Scheduled Downtime is about to commence and confirm completion of all prerequisites to the work to be accomplished during the Scheduled Downtime. Browns Hill will also notify Lessee by telephone or e-mail when the Scheduled Downtime has ended.

b. Emergency Scheduled Downtime. The notification time period set forth in Subsection (a) of this Section will apply unless Browns Hill determines, in its sole discretion, that waiting the entire notification time period will unacceptably compromise the security or operations of the Property. In that event, Browns Hill will provide as much advance notice to Lessee as is reasonably possible under the circumstances, and will work with Lessee to cause the minimal amount of disruption to Lessee's use of the Property as is practical.

c. Lessee Requested Downtime. If lessee requires the Property to be Down for its own purposes, lessee shall notify Browns Hill via email or telephone with as much notice as possible. Lessee Requested Downtime is not eligible for Service Credit for Downtime.

10. Monitoring the Property. Browns Hill shall provide remote monitoring of the Property and its operations, using the methods determined at the discretion of Browns

Hill. Any knowledge gained through such monitoring which affects the operations of the Property (as determined in the sole discretion of Browns Hill) shall be shared with Lessee. Browns Hill shall not be responsible for monitoring the local control operations of Lessee (e.g. opening and closing valves and breakers, monitoring the local environment for alarm conditions, responding to alarms). Browns Hill shall have no liability for the effects any local control actions, failures or alarms.

11. Response Time. Browns Hill commits to the following response times to Trouble Tickets submitted by Lessee to Browns Hill:

a. Browns Hill shall respond by telephone to Lessee within sixty (60) minutes of receipt of a Trouble Ticket, to acknowledge receipt of the Trouble Ticket and advise Lessee that the Trouble Ticket has been assigned to a technician for resolution. If the Trouble Ticket is completed by Browns Hill after receipt of the necessary information verbally from Lessee, the conversation where such information is provided shall constitute the response from Browns Hill.

b. Browns Hill shall determine the steps necessary to resolve the Trouble Ticket within twenty four (24) hours of receipt of the Trouble Ticket. This determination may be made either remotely, or by on-site support. If installation of equipment or software is needed to resolve the Trouble Ticket, such equipment or software will be on-site within twenty four (24) hours of Browns Hill's determination that equipment or software is needed, and shall be installed within three (3) hours of the equipment or software arriving on site.

Browns Hill Engineering & Controls, LLC
Colorado

By: _____

Print Name and Title

Lessee: TOWN OF HAYDEN,

By: _____

Print Name and Title

EXHIBIT “E”
TO
SOFTWARE AND EQUIPMENT LEASE
Between
BROWNS HILL ENGINEERING & CONTROLS, LLC
and
TOWN OF HAYDEN

Execution Date: _____

OPERATING INSTRUCTIONS

1. The vmSCADA system is a server based computer system constructed using virtual machine technology. It is specifically built for use as a Human Machine Interface for Supervisory Control and Data Acquisition (HMI/SCADA) in Industrial Control Systems (ICS). Its use is strictly limited to this purpose.
2. The system performs real-time monitoring and control; data archival functions; control system alarm notification and communications supporting these functions. The system is designed to perform these functions without operator intervention.
3. Operator interaction with the system should be limited to control of the SCADA system and that directed specifically by Browns Hill.
4. Normal operation of the system should be consistent with the intended use as above and with systems similarly designed. Day to day operation of the system is monitored remotely by Browns Hill. System maintenance, upgrades and updates are performed by Browns Hill. Any system issues should be reported immediately to Browns Hill using the trouble ticket process at customer portal on the Browns Hill website, <http://vmscada.com>. Alternately, emergencies can be reported verbally to Browns Hill via telephone at the number provided upon system acceptance.
5. The system is constructed for full time continuous operation for its intended purpose and therefore should not be powered on and off during normal operation.
6. The software of the system is configured for its intended purpose and its use should be limited to that purpose and as typical for a system of this type. Specific directions for use of the software is contained within in the operating manuals and document provided with the system. These include both paper and paperless versions as appropriate.
7. The hardware of the system is configured for its intended purpose and its use should be limited to that purpose and as typical for a system of this type. Specific direction for use of the hardware is contained within in the operating manuals and documents provided with the system. These include both paper and paperless versions as appropriate.
8. The accessories of the system are configured for their intended purpose and their use should be limited to that purpose and as typical for a system of this type. Specific direction for use of the accessories is contained within in the operating

manuals and documents provided with the system. These include both paper and paperless versions as appropriate.

9. Use of the system is for internal purposes only. Connection to, and use as a terminal for, the internet is prohibited. All non-SCADA purposes, e.g. email, internet browsing, office correspondence, personal use, etc. is prohibited for security reasons.
10. Remote access to the system is for official use only. Remote devices accessing the system should be business use only devices. Each remote device must be configured for remote access by Browns Hill.

Received by Lessee:

LESSEE: _____

By: _____

(print name)

Its: _____

(print title)

EMPLOYEE CONFIDENTIALITY AGREEMENT

THIS EMPLOYEE CONFIDENTIALITY AGREEMENT (“Agreement”) is made this _____ day of _____, 20__ by _____ (“Employee”) for the benefit of Browns Hill Engineering & Controls, LLC (“Browns Hill”), and Town of Hayden, Colorado (“Lessee”).

1. A “Software and Equipment Lease” dated _____, 20__ (“Lease”) was executed between Browns Hill and Lessee, whereby Lessee leases the vmSCADA system defined as the “Property” in the Lease. This Agreement is an integral part of the Lease.

2. Section 24 of the Lease requires employees of Lessee who will use the Property to acknowledge that they will come into the possession of proprietary or confidential information owned by or in the possession of Browns Hill, and that such employees will not use any such information for his or her own benefit or Lessee’s benefit, or make such information available to any person, firm, corporation, or other organization, whether or not directly or indirectly affiliated with Browns Hill or Lessee, unless required by law. The proprietary or confidential information of Browns Hill includes, but is not limited to, all details of the vmSCADA system and its integration with the third party software and hardware comprising the Property, and all Operating Instructions regarding use of the Property. The confidential information shall be considered a “Trade Secret” of Browns Hill, as that term is defined in the Colorado Uniform Trade Secrets Act, Section 7-74-101, C.R. S., et seq., and shall be entitled to all protections provided in that Act. Employee agrees to be bound by the provisions of this Agreement.

3. The consideration for Employee’s execution of this Agreement is the right to have access to Browns Hill’s confidential information, and the right to use the Property as part of Employee’s employment by Lessee. The consideration for execution of this Agreement by Browns Hill and Lessee is the engagement in the business relationship between Browns Hill and Lessee as set forth in the Lease. Each party agrees that such consideration is adequate for the obligations undertaken pursuant to this Agreement.

4. This Agreement was executed in Routt County, Colorado. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado (excluding its conflicts of laws rules) and each party submits to the jurisdiction of any state or federal court in the State of Colorado. The parties agree to that venue for any proceeding or litigation, judicial or non-judicial, arising out of the subject matter of this Agreement shall lie exclusively with the courts of Routt County, Colorado. The obligations set forth in this Agreement shall survive termination of the Lease.

Browns Hill Engineering & Controls,

By: _____

Print Name and Title

Lessee: _____

By: _____

Print Name and Title

Employee