AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Memorandum of Agreement; Lotus Engineering & Susta

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

The Board previously authorized the transfer of allocated funds from the Coldharbour Institute to Lotus Engineering & Sustainability, LLC to contract for these services.

Fiscal Impact: $5,000

Submitted by: Katherine Haase **Submitter's Email Address:** khaase@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns, transaction reviewed earlier, and can be paid from existing line item in 2017 adopted budget. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 4/28/2017

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok - gs

Reveiwed by: GUNCOUNTY1\gstuhr Discharge Date: 4/28/2017 Certificate of Insurance Required Yes (●) No ( )

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 4/28/2017

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 5/2/2017

Revised April 2015

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("MOA") made effective the 2nd day of May, 2017, is by and between the Board of County Commissioners of the County of Gunnison, whose address is 200 East Virginia, Gunnison, CO 81230 ("Gunnison County") and Lotus Engineering & Sustainability, LLC, whose address is 2590 Walnut St., Denver, CO 80205 ("Lotus Engineering").

RECITALS

WHEREAS, Lotus Engineering has submitted a proposal to become the lead Colorado's Affordable Residential Energy (CARE) program developer and administrator for the Gunnison County area; and

WHEREAS, Gunnison County is supportive of the objectives of the CARE program and the development of a low-income energy efficiency assistance program for County residents; and

WHEREAS, Gunnison County feels it is in the public's interest to provide financial assistance to Lotus Engineering to develop the CARE program within Gunnison County.

AGREEMENT

NOW THEREFORE, in consideration of the Recitals and the mutual covenants and obligations hereinafter set forth, the parties agree as follows:

1. TERM.

   The term of this Agreement shall commence on the 1st day of May, 2017 and shall terminate on December 31, 2017, unless sooner terminated or replaced as provided herein.

2. COMPENSATION, BONUS AND EXPENSES.

   (a) Gunnison County agrees to provide $5,000 in funds to Lotus Engineering. It is understood and recognized that these funds must be used for purposes consistent with those within the attached Exhibit "A" and the development and administration of the CARE program within Gunnison County.

   (b) The lump sum payment will be distributed by the County upon submittal of appropriate documentation.

   (c) This Agreement is subject to Gunnison County making an annual budget appropriation in an amount sufficient to fund this Agreement. If Gunnison County fails or refuses to make such an appropriation, Gunnison County reserves the right to terminate this Agreement without penalty to Lotus Engineering pursuant to paragraph 11 of this Agreement.

(d) Gunnison County reserves the right to amend this agreement to reduce the contribution stated herein if the 2016 Gunnison County audit should result in a significantly lower fund balance than projected.

3. STRATEGIC RESULT.

Execution of this MOA will assist Gunnison County with its Protect the Environment strategy, as outlined in the Gunnison County Strategic Plan. Lotus Engineering agrees to submit a final written project report by October 1, 2017 that will include performance metrics (i.e., status of development of the CARE program, estimated number of household to be served, etc.) and other pertinent information. The County's receipt of this final project report by the October 1, 2017 deadline will serve as a condition for future funding eligibility.

4. INDEMNIFICATION.

(a) Lotus Engineering agrees to indemnify, defend and hold harmless Gunnison County, its Commissioners, agents and employees of and from any and all liability, claims, liens, demands, actions and causes of action whatsoever (including reasonable attorney's and expert's fees and costs) arising out of or related to any loss, cost, damage or injury, including death, of any person or damage to property of any kind caused by the misconduct or negligent acts, errors or omissions of Lotus Engineering or its employees, sub-contractors or agents in connection with this Agreement.

(b) This provision shall survive any termination or expiration of this Agreement with respect to any liability, injury or damage occurring prior to such termination.

5. INSURANCE.

Lotus Engineering agrees that at all times during the Term of this Agreement that Lotus Engineering shall carry and maintain, in full force and effect and at its sole cost and expense, the following insurance policies. Within thirty (30) days of the execution of this Agreement, Lotus Engineering will provide insurance certificates to Gunnison County, listing Gunnison County as an additional insured, for the coverage's required herein which shall state that such policies shall not be materially changed or cancelled without thirty (30) days prior notice to Gunnison County.

(a) Worker's Compensation Insurance in accordance with Colorado and Federal law which adequately protects all labor employed by Lotus Engineering during the term of this Agreement.

(b) Comprehensive automobile liability insurance on all vehicles used in the Services, in an amount no less than $350,000 for any injury to one person in any single occurrence and in an amount no less than $990,000 for any injury to two or more persons in any single occurrence.

6. INDEPENDENT CONTRACTOR.

(a) In carrying out its obligations and activities under this Agreement, Lotus Engineering is acting as an independent contractor and not as an agent, partner, joint venture or employee of Gunnison County. Lotus Engineering does not have any authority to bind Gunnison County in any manner whatsoever.

(b) Lotus Engineering acknowledges and agrees that Lotus Engineering is not entitled to: (i) unemployment insurance benefits; or (ii) Workers Compensation coverage, from Gunnison County. Further, Lotus Engineering is obligated to pay federal and state income tax on any moneys paid it related to the services.

7. AUTHORITY TO AUDIT RECORDS.

Gunnison County has the authority to audit the Lotus Engineering's financial records, said audit to be performed by an employee, agent or designee of Gunnison County and at the expense of the Lotus Engineering, upon seven day notice to the Lotus Engineering.

8. DELEGATION AND ASSIGNMENT.

This is a personal services contract with Lotus Engineering and, therefore, Lotus Engineering shall not delegate or assign its duties under this Agreement without the prior written consent of Gunnison County which consent Gunnison County may withhold in its discretion. Subject to the foregoing, the terms, covenants and conditions of this Agreement shall be binding on the successors and assigns of either party.

9. IMMIGRATION COMPLIANCE CERTIFICATION.

(a) Lotus Engineering certifies that Lotus Engineering does not and will not knowingly contract with or employ illegal aliens to work under this Agreement.

(b) Lotus Engineering certifies that Lotus Engineering has required its subcontractors to certify that they do not knowingly contract with or employ illegal aliens to work under this Agreement.

(c) Lotus Engineering certifies that it has attempted to verify the eligibility of its employees and subcontractors to work through the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security.

(d) Lotus Engineering agrees to comply with all reasonable requests made in the course of an investigation under C.R.S. 8-17.5-102 by the Colorado Department of Labor and Employment.

(e) Lotus Engineering agrees to comply with the provisions of C.R.S. 8-17.5-101 et seq.

10. NOTICES.

Any notice, demand or communication which either party may desire or be required to give to the other party shall be in writing and shall be deemed sufficiently given or rendered if delivered personally or sent by certified first class US mail, postage prepaid, addressed as follows:

Gunnison County: Gunnison County Board of County Commissioners
200 E. Virginia
Gunnison, Colorado 81230
Phone: 970-641-0248

Lotus Engineering: Lotus Engineering & Sustainability, LLC
2590 Walnut St.
Denver, CO 80205

Either party has the right to designate in writing, served as provided above, a different address to which any notice, demand or communication is to be mailed.

11. TERMINATION.

Either party shall have the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days prior written notice to the other.

12. MISCELLANEOUS.

(a) SEVERABILITY. If any clause or provision of this Agreement shall be held to be invalid in whole or in part, then the remaining clauses and provisions, or portions thereof, shall nevertheless be and remain in full force and effect.

(b) AMENDMENT. No amendment, alteration, modification of or addition to this Agreement shall be valid or binding unless expressed in writing and signed by the parties to be bound thereby.

(c) NO WAIVER OF GOVERNMENTAL IMMUNITY. Nothing in this Agreement is, or shall be construed to be, a waiver, in whole or part, by Gunnison County of governmental immunity provided by the Colorado Governmental Immunity Act or otherwise.

13. GOVERNING LAW.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado. Exclusive jurisdiction and venue for any legal proceedings

related to this Agreement shall be in the state District Court governing Gunnison, Colorado.

14. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes any and all prior agreements, proposals, negotiations and representations pertaining to the obligations to be performed hereunder.

15. COUNTERPARTS: FACSIMILE TRANSMISSION.

This Agreement may be executed by facsimile and/or in any number of counterparts, any or all of which my contain the signatures of less than all the parties, and all of which shall be construed together as but a single instrument and shall be binding on the parties as though originally executed on one originally executed document. All facsimile counterparts shall be promptly followed with delivery of original executed counterparts.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By: _____
Phil Chamberland, Chairperson

ATTEST:

_____
Deputy Clerk

Lotus Engineering & Sustainability, LLC

By: _____

Proposal to Develop and Administer the Colorado's Affordable Residential Energy (CARE) Program for the Gunnison Valley

March 2017

lotus
engineering & sustainability

EXHIBIT A

PROGRAM GOALS

For many of Gunnison County residents living in deep poverty (defined as living at 50% of the state poverty level), 20% or more of their income goes towards energy bills (i.e. energy burden), which far exceeds what many consider to be an acceptable energy burden of 4% to 6%. Compounded with the lack of affordable housing and rising housing costs, many County residents have a difficult time making ends meet. Gunnison County, the Gunnison Valley Regional Housing Authority (GVRHA), Coldharbour Institute, and the United Church of Christ (stakeholders) share a common vision help our most vulnerable residents by improving housing affordability.

The Energy Outreach Colorado's Affordable Residential Energy (CARE) program does just that by reducing energy costs for low-income residents and helping low-income residents maintain a long-term presence in the Gunnison Valley. In addition, the Energy Smart Colorado (ESC) program provides complementary services through energy efficiency rebates available to residents at all income levels.

In concert with the stakeholders listed above, Gunnison County is interested in providing CARE's low-income energy efficiency assistance program and ESC's non-income qualified energy efficiency assistance program throughout the Gunnison Valley.

PROPOSAL OBJECTIVE

Although GVRHA will host both CARE and ESC programs, neither program has a defined structure or administration plan to date. Lotus Engineering and Sustainability, LLC (Lotus) presents this proposal for consideration to become the lead CARE program developer and administrator. Our goal is to create and manage the Western Slope's most efficient and effective CARE program. Once the core structure for CARE is developed, we believe that the ESC program should follow suite, learning from CARE's best practices.

QUALIFICATIONS

We know how important this work is and how important that it is done well. We bring a unique balance of skills that are necessary to achieve this: a strong commitment to the advancement of efficiency, deep expertise in the energy (residential, commercial, and industrial) sectors, a passion for serving traditionally underserved and vulnerable communities, and a sound background in science and policy. We believe that this is the best approach to help the Gunnison Valley see real and lasting energy efficiency reductions in the residential sector.

Our expertise is built off real "feet in the street" experience in the public sector. We have run and managed programs and projects for the public sector as both consultants and employees. We are familiar with the labor and financial resources required of local government to develop, implement, monitor, and evaluate plan programs and projects.

The following is an overview of what we believe makes the Lotus team very qualified to develop and administer the CARE and ESC programs:

- We have **deep municipality experience.** A partial list of municipal clients include: Cities of Boulder, Denver, Lakewood, Wheat Ridge, Littleton, Westminster, Pueblo, Arvada, and Lamar; Towns of Carbondale, Basalt, Fraser, Limon, Lyons, and Snowmass Village; Highlands Ranch Community Association; and Counties of Adams, Arapahoe, Clear Creek, Garfield, Las Animas, and Rio Grande. Our municipal clients have ranged from urban to rural, from plains to Mountains, and from small (under 10,000 people) to large (over 650,000 people).
- We have experience working with organizations that provide **energy assistance to the low-income sector** including Boulder Housing Partners and the Colorado Energy Office (CEO).
- We have **significant program development experience**. We have managed and co-developed:

- The CEO's Main Street Efficiency Initiative on behalf of 5 Front Range communities with 50 small businesses.
- The CEO's Energy Management Assistance Program for 20 K-12 schools (primarily small and rural schools).
- The CEO's award-winning Energy Performance Contracting program.
- The State of Colorado's Greening Government program.
- The State of Colorado's Colorado Carbon Fund.

- We are able to **communicate technical data** and reports to a broad, non-technical audience. We know that this program will only be effective if it is well understood. We have utilized a variety of media in our work including blogs, webinars, websites, case studies, technical and non-technical reports, literature reviews, pamphlets and social media.
- We have **worked with nearly a dozen utilities** across the state, and we understand how and why utilities make decisions and work with energy programs.
- We have a **deep understanding of energy policy** and worked with the CEO under two governors: former Governor Bill Ritter and Governor Hickenlooper. We have also worked with Peter Rusin, Executive Director of ESC, and Andy Caler, Director of Utility Programs at EOC, in previous roles.
- We have **experience grant writing** including winning a $500,000 grant for the CEO's K12 energy efficiency program.
- We are **experienced project managers**. We have managed $10+ million dollars of programmatic and project funds.
- We have **performed extensive program reporting** to our clients and their funders, including the Department of Energy and CEO.
- We have **managed a carbon credit fund**, and may be able to brainstorm unique ways to apply this mechanism to the CARE and ESC programs.
- We have built energy and sustainability service **websites**.

We have a presence in Denver and Gunnison, which allows us to both manage the program in Gunnison, while maintaining close relationships with the primary funding agencies: Energy Outreach Colorado (i.e. CARE) and Energy Smart Colorado, both of which are headquartered in Denver.

PROPOSED SCOPE OF WORK

We propose to develop, in collaboration with Valley's stakeholders, a CARE program followed by an ESC program. We also propose to administer the programs in coordination with a GVRHA staff member.
Depending on the needs, resources, and available budget the County may choose to pursue both programs simultaneously; however, we recommend starting with one program to better understand the potential lessons learned and to create certain procedures and process with which may better inform the second program. We assume that once a structure has been developed for CARE, ESC can easily be developed, and at a lower overall cost. If the County decides to pursue both programs at once, Lotus will provide an updated Scope of Work.

Proposed Partner Roles

To minimize consulting costs and to take advantage of the vast resources of the Gunnison Valley, we propose that certain stakeholders take the lead on specific tasks. While partner roles are currently being developed (i.e. GVRHA is working on an organizational structure), we propose the following partner roles based on previous CARE and ESC development discussions. These are subject to agreement by each partner organization.

- **Lotus: Develop additional partnerships, lead program development and program administration**. Secondary roles: (1) Assist with fundraising. (2) Assist with outreach and marketing. Note that

we can help create customized, branded, and targeted materials (including the website) for distribution. (3) Assist with public education.

- **GVRHA**: **Lead outreach and marketing and fundraising efforts. Provide physical space for programs and provide connections with targeted clientele.** Secondary roles: (1) Provide development assistance and insight. (2) Heavily support program administration. (3) Develop additional partnerships. (4) Assist with public education.
- **Coldharbour Institute: Lead public education and program evaluation with WSU-MEM students.** Secondary roles: (1) Assist with fundraising efforts and grant writing. (2) Provide development assistance and insight. (3) Provide ongoing administration support as needed. (4) Help develop other partnerships as needed.
- **Gunnison County: No lead roles**. Secondary support: (1) Facilitate participation in other low-income assistance programs. (2) Provide funding support. (3) Provide development assistance and insight. (4) Provide ongoing administration support as needed. (5) Help develop other partnerships as needed.
- **The United Church of Christ: No lead roles**. Secondary support: (1) Assist with outreach and marketing. (2) Assist with fundraising efforts and grant writing. (3) Provide development assistance and insight. (4) Help develop other partnerships as needed.

Description of Lotus' Tasks

Lotus assumes full responsibility for developing and facilitating partnerships, developing the program structure, project management, and program administration as outlined in Tasks 1 and 2, Project Management, and Proposed Administration Tasks. Lotus will provide minimal support to fundraising, public education, program evaluation, and outreach and marketing, and assumes that the leading organization will take full ownership of these tasks.

Task 1: Facilitate and Develop Partnerships

This task includes the following actions:

- Facilitate conversations with Valley stakeholders and partners.
- Facilitate conversations with regional CARE partners.
- Facilitate conversations and program development with CARE.
- Facilitate conversations with utility companies and get support and buy-in.
- Present to regional decision-makers if necessary, including County Commissioners, City Councils, and other boards.

Deliverables: Meeting notes and PowerPoint presentations, if necessary.
Timeframe: Two months, heavily dependent on availability of stakeholders.
Labor Effort and Budget: Estimated effort of 38 hours and $2,400.
Assumptions: Assumes 8 meetings: 1-hour meetings, 0.5-hour of preparation per meeting, 1.5-hour of follow-up per meeting. Ten hours to develop a PowerPoint presentation, if necessary. Performed in concert with all stakeholders.

Task 2: Develop Program Structure

This task includes the following actions:

- Work with CARE to understand exact requirements and program layout.
- Develop partnerships with local contractors and get commitments.
- Identify assessors (preferably from within GVRHA).

- Document flow of funding and define a funding management approach; define rebates.
- Communicate program structure, including flow of funding, with all relevant stakeholders.
- Setup internal procedures for administration, including reporting.
- Create a best practices or similar "manual" of how to administer programs, contact information, key players for program administrator(s).
- Develop program FAQs for outreach and marketing.
- Explore monetizing uncertified carbon credits.
- Coordinate in-person meeting to introduce everyone to program and agree on implementation leading up to program kick-off.
- Support GVRHA with program kick-off.
- Update GVRHA website (or to be done by GVRHA).

Deliverables: Program administration manual or memos, program FAQs, and PowerPoint used to communicate program structure with stakeholders, if necessary
Timeframe: Two - three months
Labor Effort and Budget: Estimated effort of 163 hours and $9,480.
Assumptions: Performed in concert with all stakeholders.

Project Management

This task includes the following actions:

- Biweekly check-in calls.
- Monthly invoice reporting.
- Coordination and management of all stakeholders.

Deliverables: Monthly invoice reports.
Timeframe: Ongoing.
Labor Effort and Budget: Estimated effort of 15 hours and $1,200.
Assumptions: One hour call biweekly with all stakeholders.

Proposed Administration Tasks

Administration tasks are considered ongoing for the first year, at which time services may be re-evaluated. We propose, that over time (1+ year) a GVRHA staff member may learn and collaborate with Lotus, and may take over more of the administration duties while Lotus will continue to provide support, primarily through ad-hoc advising and on-going public communication and reporting.

Tasks below are suggested; once the program structure has been developed Lotus and all stakeholders will have a better idea of the required tasks and specific roles.

- Coordination with CARE
- Client management
- Contractor management
- Coordination between assessor and client
- Coordination between assessor and contractor
- Coordination with utility company
- Manage rebate funds and grant dollars

- Issue payments to contractors
- Monthly reporting to CARE
- Monthly reporting to Gunnison Valley stakeholders
- Periodic public education

It is assumed that GVRHA will support administration tasks including:

- Client management and client follow-up
- Contractor coordination
- Coordination between assessor and client
- Coordination between assessor and contractor

Deliverables: Monthly program reports to both CARE and to Gunnison Valley stakeholders.
Timeframe: Ongoing, re-evaluated at one year.
Labor Effort and Budget: Mixed rate that does not exceed $60 and estimated effort of 10 hours per week for a total monthly fee of $2,400 and an annual fee of $28,800. This budget could decrease. It is our intention that less senior level consulting will be necessary over time and an associate level consultant/GVRHA staff will eventually take over more administration responsibilities.
Assumptions: Assessments will be completed by GVRHA, and public outreach will be lead by Coldharbour.

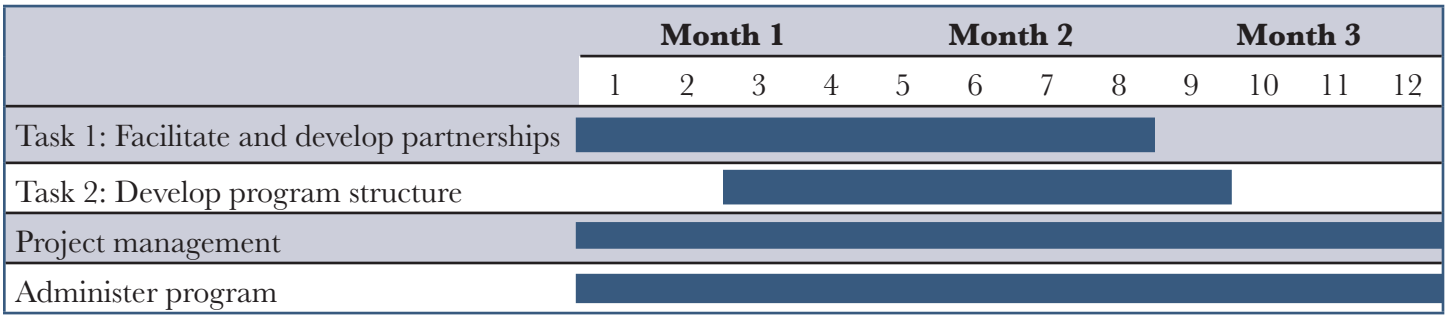
PROPOSED RATES

We understand the limited budget of this program, and we are willing to work with you on refining scope and budget to best meet your needs. We offer these rates for your consideration. Please note that these rates are significantly discounted and will only be applicable for the CARE and ESC programs.

Staff Member	Roles	Rate
Emily Artale	Lead advisor	$80
Lauren Herwehe	Program support	$40
Hillary Dobos	Backup support	$80

Task	Budget	Labor Effort (hrs)	Mixed Rate ($/hr)
Develop Program Structure			
Task 1: Facilitate and develop partnerships	$2,400	38	$63
Task 2: Develop program structure	$9,480	163	$58
Project management	$1,200	15	$80
Subtotal	$13,080	216	$61
Administer Program			
Ongoing administration @ 10 hrs/wk	$28,800	480	$60
Subtotal	$28,800	480	$60
TOTAL	**$41,880**	**696**	**$60**

PROPOSED TIMELINE



Program administration will take place over one year.

TEAM MEMBERS

This work will be implemented by the following Lotus team members:

- Emily Artale; PE, LEED AP, and CEM. Principal Engineer and Co-Owner.
- Lauren Herwehe. Associate.
- Hillary Dobos; MBA, LEED GA. Principal and Co-Owner.

Emily will be the primary contact for the CARE/ESC program. Over a decade of experience in the energy sector have led her to gain significant expertise in program development, facilitation, public education, program evaluation, proposal writing, and outreach and marketing communications. Emily spearheaded and managed the Main Street Efficiency Initiative, where she led 50 Colorado businesses in achieving an average annual energy savings of 15 percent. She also co-developed and led the Energy Management Assistance Program, an energy efficiency program that has been instrumental in improving energy management among local governments and schools in Colorado. Her facilitation experience has been further honed through seven years facilitating the CEO's Energy Performance Contracting (EPC) Program. Through this effort, she has been a key player in helping dozens of public sector clients implement successful large-scale energy efficiency and renewable energy projects. Her business, communication, and marketing skills led her to create Lotus Engineering and Sustainability in 2012, which she has grown from a small consulting firm to an established and trusted business. She received her undergraduate and graduate degrees in environmental engineering from the University of Colorado at Boulder.

Lauren will be the secondary contact for the CARE/ESC program. She has worked extensively in the environmental sector where she has developed skills in proposal writing, marketing, project management, and fundraising. Through her proposal writing expertise, she has successfully obtained large grants including a U.S. Fulbright Fellowship and a U.S. Department of Education Foreign Language and Area Studies (FLAS) Fellowship. While working at HydroBio, a water conservation startup, Lauren designed the company marketing strategy which was a key factor in obtaining a $1.5 million investment. She also wrote all press release, blog post, and social media content which brought social media followers from 0 to several hundred. Prior to that, Lauren worked at the Udall Center for Studies in Public Policy where she assisted in managing a $300K grant connecting partners in seven countries. In addition, she has spearheaded water management projects in Tajikistan and Brazil. Lauren recently co-founded the fundraising committee at the Sacred Heart House of Denver, a homeless shelter for women and children. She earned her master's degree in geography at the University of Arizona and bachelors in geosciences at Penn State University.

Hillary will provide support for the CARE/ESC program. Hillary has worked extensively in the energy and waste sectors and has developed expertise in the transportation and water sectors. Over the last 10 years, Hillary

has managed over $10 million in programmatic and project funding. None of Hillary's projects have gone over budget. Hillary brings both expertise and creative thinking to working with clients which she draws from her experience acting as a consultant, as well as being the one tasked with embedding sustainability and implementing executive orders that laid out greenhouse gas reduction goals throughout Colorado State Government as the Greening Government Program Manager. Hillary is known for her market and regulatory/policy creation and analysis; communications (internal and external); project and program management; and report writing. Hillary has served on various local and national boards focused on conservation, energy efficiency, and renewable energy. Hillary earned her B.A. in Art History and Economics from Bowdoin College and her MBA from the University of Colorado-Boulder.

Emily is in Crested Butte and both Lauren and Hillary are located in Denver. Although Emily is the only team member located in Gunnison County, both Lauren and Hillary are willing to commute to Gunnison County when needed. Likewise, Emily is willing to travel to Denver to meet with the CARE and ESC organizations when necessary. Travel expenses will not be charged to the budget.

lotus
engineering & sustainability