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October 12, 2016

Board of Trustees of the Town of Calhan
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Mayor Bryan Eurich
1350 8th St. #20
Calhan, CO 80808

Trustee Charlotte Trojanovich
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Calhan, CO 80808

Trustee Jasmine Thorpe
All Rental Center
11 5th Street
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Trustee Roger Lemesany
547 Yoder Street
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Trustee Cameron Chaussee
915 5th Street
Calhan, CO 80808

Trustee Rachelle Looper Bearman
756 Manitou Street
Calhan, CO 80808

Trustee Sue Coulson
290 7th Street
Calhan, CO 80808

Town Attorney, Jefferson Parker
511 Sixteenth Street, Suite 610
Denver, CO 80202

By Personal Courier to all recipients except for Town of Calhan Attorney, sent by Certified Mail

Re: Ethical and Legal Violations of Town Clerk / Treasurer Cindy Tompkins

Trustees, Mayor, and Town Attorney of the Town of Calhan,

This document gives notice of “wrongful acts” and violations of C.R.S. 24-18-101, et. seq. by Cindy Tompkins in her capacity as Town Clerk of the Town of Calhan, Colorado. Information obtained via Colorado’s Open Records Act (C.R.S. §24-72-201, referred to herein as “CORA”) reveal significant ethical, legal and moral infractions committed by the current Town Clerk, Cindy Tompkins. As enumerated in further detail below, Clerk Tompkins has engaged in self-dealing, failed to disclose conflicts of interest, acted outside the scope of her office, failed to keep and maintain proper records as is her duty as Town Clerk, abused the power of her office in order to favor interested parties at the expense of the Town of Calhan and misappropriated Town property and labor.

Specifically, Colorado Revised Statutes 24-18-109 requires that “a local government official or local government employee shall not:

(a) Engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties;

(b) Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(c) Accept goods or services for his or her own personal benefit offered by a person who is at the same time providing goods or services to the local government for which the official or employee serves, under a contract or other means by which the person receives payment or other compensation from the local government,…”

In addition, “[I]t shall not be a breach of fiduciary duty and the public trust for a local government official or local government employee to: (b) Accept or receive a benefit as an indirect consequence of transacting local government business”.

The wrongful acts and violations by Clerk Tompkins include but are not limited to acts of omission, negligence, or breaches of duty including misfeasance, malfeasance, and nonfeasance, negligent ministerial acts, faulty preparation or approval of bid documents, bid specifications, other specifications, or inaccuracies due to estimates of probable costs, and failure to disclose interest in contracts in violation of C.R.S. 24-18-201, as outlined in the following specific activities.

1.) Mosquito spraying in the Town of Ramah: An unauthorized use of resources, equipment and labor from the Town of Calhan was made by the Town of Ramah, under the knowledge and likely direction of the Town of Calhan Town Clerk, Cindy Tompkins, and the Town of Calhan Public Works Director, Daniel Sotomayor. It has been acknowledged by the Town of Calhan, Town Clerk, and by staff and Mayor Dennis Carpenter of the Town of Ramah (reported in Ranchland News by John Hill in August 2016) that a “good dousing” of mosquito spraying had taken place with “borrowed equipment”. See Exhibit A attached.

Previously, thirty gallons of biomist spray were purchased by the Town of Calhan through vendor Van Diest (See Exhibit B, invoice dated June 28, 2016 to Town of Calhan; 20 gallons were referenced for the Town of Calhan, and 10 gallons for the Town of Ramah). Subsequently, \$681.50 for 10 gallons of the spray was then invoiced and reimbursed by the Town of Ramah on July 11, 2016. It is believed (and was not refuted by Cindy Tompkins) that the entire Town of Ramah was sprayed at least two times. Id.

A request was made on September 27, 2016 under CORA to provide records for: “Specific approval by the Town of Calhan Board of Trustees to authorize use of Town of Calhan vehicle, labor and sprayer equipment at property located in the Town of Ramah on at least two occasions in 2016.” For which a response was received on September 28, 2016 by the Town Clerk that “no records pertaining to this request” exist, and that Kevin Miller and Daniel Sotomayor are responsible for the spray activity. See, Exhibit C. It is known that Daniel Sotomayor, and his wife Nancy who serves as a Trustee of the Town of Ramah, in addition to Cindy Tompkins, all reside in Ramah. Cindy Tompkins also serves as the Town of Ramah Town Clerk. Thus it is confirmed that the Town of Ramah likely paid for its own biomist, but there is no record of payment for the equipment or the labor supplied from the Town of Calhan. Id.

A proposal for services to spray the Town of Ramah, from Colorado Spraying, Ltd., a business located in Colorado Springs, to determine the cost for such activity was obtained. This proposal stated that cost would be \$985 for each spray, totaling \$1,970.00 for two sprays. See Proposal at Exhibit D. The proposal did not include the cost of the biomist spray. Reimbursement is owed to the Town of Calhan for such activity. This misappropriation of Town of Calhan equipment, labor and resources for the direct benefit of the Town of Ramah and Cindy Tompkins as resident and Town Clerk of the Town of Ramah constitutes a breach of fiduciary duty and the public trust as the spraying services provided a benefit to Clerk Tompkins as an indirect consequence of transacting local government business. See C.R.S. 24-18-109(4)(b).

2.) The Pavilion Project, B&N Construction and Improper Contract Bidding: Proper protocol was not followed after two “Invitations to Bid” were released in July and September, 2015, by Clerk Tompkins for the construction of a town pavilion (hereafter ‘Pavilion Project’). Despite numerous bids submitted by vendors in response to the July and September “Invitations to Bid”, Clerk Tompkins did not accept any bids. See Exhibit P. Following the second bid deadline of September 17, 2015 a proposal dated October 18, 2015 was submitted by B&N Construction, Inc. and was accepted by Clerk Tompkins in her official capacity. See Exhibit E, attached. The one page B&N Proposal dated October 18, 2015 does not reference whether the bid was for Phase I and/or Phase II that was specified in the Town’s bid documents for the Pavilion Project prepared by Tremmel Design Group. Id. The B&N Proposal did not adhere to any budget amounts included in either of the two Invitations to Bid. Id. The B&N Proposal amount was a significantly lower amount than those previously submitted by any vendors who responded to either Invitation to Bid. The B&N Proposal included a statement that the “pavilion will be built based on the original design by Tremmel Design Group”, but was not later built to those specifications, and it is believed that Clerk Tompkins improperly modified a standard form Construction Contract to enable that exception (see below).

In addition, Tremmel Design Group was prevented by Clerk Tompkins from engaging in good faith discussions with vendors who submitted bids during the formal bid process in order to grant preferential treatment to B&N Construction for the Pavilion Project. An email string dated September 18 to 24, 2015

between Sharon Allen of Tremmel Design Group and the Town Clerk, Cindy Tompkins reveals that Ms. Allen sought to contact the vendors who responded to the Invitations to Bid to see if she could work with them to get any of their bid amounts lowered for the Pavilion Project. See Exhibit F, attached. Clerk Tompkins responded to the inquiry by Ms. Allen that she and the Mayor already made that sort of effort with the sole contractor that bid on the 2nd Invitation to Bid (presumably Ransom Construction), and that vendor was only willing to come down \$25,000.00 in their bid. A few days later Ms. Tompkins emailed Ms. Allen again to inform her she has talked to another “local contractor” (that was not named in the email), and further responded to Ms. Allen about that the local contractor: “who didn’t get a bid in and he is working on getting me some numbers to get a different but cheaper and still good building for a \$100K budget.” Id. B&N Construction subsequently submitted a proposal for the Pavilion Project, outside of the formal bidding process, dated October 18, 2015, for an amount of \$123,187.58. See Exhibit E.

An apparent conflict of interest arose from the execution of the pavilion construction contract by the Town of Calhan with B&N Construction, the co-owner of which is Nancy Helton, former Assistant Town Clerk for the Town of Calhan who was actively serving as Assistant Town Clerk at the time of the contract. Section 31 of the contract that the Town of Calhan executed with B&N Construction on October 27, 2015 requires that any “personal financial interest, direct or indirect” on the part of the contractor or their employees be disclosed. See Exhibit G, attached. In response to a Colorado Open Records Act request submitted to Cindy Tompkins, the Town Clerk and Custodian of Records for the Town of Calhan on June 7, 2016, Ms. Tompkins confirmed that no disclosure had been made to the Board of Trustees before the B&N Proposal was approved at a meeting on October 27, 2015, that Nancy Helton was a co-owner of the B&N Construction business with her husband in addition to her role as Assistant Town Clerk of the Town of Calhan creating a conflict of interest pursuant to Section 31 of the B&N Contract. See Exhibit H. There was only a listing of Nancy Helton’s and her husband’s name at the top address section on the B&N Proposal with no other indication of a potential or actual conflict of interest. Exhibit E.

3.) Misrepresentation of Authority and Actions taken Outside the Official Scope of Authority as Town Clerk. Additionally, Clerk Tompkins undertook official duties outside of the scope of her capacity as Town Clerk in furtherance of the B&N Contract. Clerk Tompkins included language in the B&N Contract, section 2.c, that specifically accommodates the B&N Proposal. Section 2.c sets forth that “It is understood that B&N Construction shall not be bound by the drawings and specifications by Tremmel Design Group, nor shall they be restricted from using the original drawings and specifications from all related parties from the original plans.” See Exhibit G at page 1. In an attempt to determine who made the modification to the construction contract, and what authority was given to approve this exception to the formal bid process, an Open Records Act request was made on June 17, 2016 requesting records regarding this modification. Cindy Tompkins responded on June 27, 2016 that there were no records responsive to the request. See Exhibit K, attached.

Another CORA request was submitted to further understand Clerk Tompkins’s apparent authority, and on August 2, 2016 it was confirmed she had no records to support authority to modify construction contracts. See email attached at Exhibit L. It is presumed that Ms. Tompkins herself made the edits to the B&N Contract to include this accommodation for B&N Construction, which is likely outside the authority of her role as Town Clerk, according to Chapter 2, Article 4, subsection -030 A to F of the Town of Calhan

Code which lists the “duties” of the Town Clerk (as found on the Calhan website <http://calhan.co/resources/ordinances>).

Subsequent to contract formation and modification, the contract with B&N was not properly enforced by the Town Clerk. The B&N Contract, Section 1, requires the work of the contractor to be completed in strict accordance with the “contract specifications as set out in the Bid Documents dated 10-18-15 ...”. In the bid documents, a notice of award, a bidder qualification statement, and payment and performance bonds, are required of the selected contractor for the Pavilion Project, however, as confirmed by Cindy Tompkins in two emails in response to CORAs dated June 21, 2016, and August 2, 2016, none were obtained from B&N Construction by the Town of Calhan. See Exhibit L. Further, it is typical that the contractor obtains a construction permit, but in this case, the Town of Calhan, using its own labor and resources, obtained the permit for the project, not B&N Construction. See Exhibit I, attached. Cindy Tompkins, Town Clerk, seemingly made additional modifications to construction contracts prior to their execution by the Town of Calhan and at least two separate contractor companies, whose co-owners Nancy Helton (who served as the Assistant Town Clerk to the Town of Calhan at the time), had conflicting roles tied to the government of the Town. Examples of modifications made to construction contracts are removal of Section 17.3 of the Helton Fencing Town of Calhan Construction Contract dated 11/20/15, (see Exhibit J) and the B&N Construction Town of Calhan Construction Contract dated 10/20/15, and modification of Section 2.c of the B&N Construction Town of Calhan Construction Contract dated 10/20/15.¹ See Exhibit G. These modifications provide for more lenient contractual requirements to these vendors by the Town of Calhan than ordinarily would be required of a vendor conducting construction related services to the Town, further inflating the conflict of interest that exists. When requested to provide records of the authority vested in the Town Clerk to make the modifications to the contracts through CORA, none were provided. See Exhibit M. The Town Clerk likely exceeded her authority by making modifications to construction contracts executed by the Town of Calhan, particularly since the family who obtained benefit and favorable treatment through the modifications has at least one paid role with the government with the Town of Calhan, representing a conflict of interest and a breach of the public trust.

In addition, there is no acknowledgement that the Pavilion project or the Fencing projects have been completed, since no certificate of acceptance have been issued by the Town of Calhan, as required by Sections 12 and 13 of the Town of Calhan Construction contracts for each project. As confirmed by Cindy Tompkins in an email dated August 2, 2016 in response to CORA, certificates of acceptance of work completed were not obtained for either the Helton Fencing Project or the B&N Construction Projects. See Exhibit L. It is still not certain whether the projects have been completed. Certificates of acceptance should

¹ Section 2.c. of the B&N Construction Contract with Town of Calhan states: “B&N Construction, Inc. will be using the basic plan designs drawn by Tremmel Design Group. The materials used for this project will be decided upon by [sic] the contract and the Town to ensure good quality but more affordability. It is understood that B&N Construction shall not be bound by the drawings and specifications by Tremmel Design Group, nor shall they be restricted from using the original drawings and specifications from all related parties from the original plans. The Town of Calhan will handle all communications and any copyright issues, if any, with Tremmel Design Group.”

Section 17.3 of the Helton Fencing and the B&N Construction Contracts with the Town of Calhan are removed from the HUD form Construction Contract received upon CORA requests, as reflected in section 7.b.1) of the Helton Fencing contract which states, “The cost of the performance, payment and warranty bonds as described in Section 17.3 ...”

be requested by each vendor for each project, if in fact they have been completed. These certificates are required by the contract the Town of Calhan has entered with each vendor.

Despite the lack of certificates of completion and despite her lack of authority at the time, Clerk Tompkins issued the following checks to B&N Construction and Helton Fencing:

- a) December 14, 2015 for \$50,000 to B&N Construction, signed by Clerk Tompkins as “Clerk/Treasurer”
- b) January 14, 2016 for \$15,000 to B&N Construction, signed by Clerk Tompkins as “Clerk/Treasurer”
- c) January 28, 2016 for \$35,000 to B&N Construction, signed by Clerk Tompkins as “Clerk/Treasurer”
- d) November 20, 2015 for \$23,281.31 to Helton Fencing signed by Clerk Tompkins as “Clerk/Treasurer”

Copies of Checks Attached as Exhibit O.

Given that Clerk Tompkins has not turned over any documentation demonstrating that she was entrusted with authority to issue checks on behalf of the Town of Calhan from the period of November 20, 2015 through January 28, 2016, the issuance of these checks appear to constitute a misappropriation of Town funds as well as a fraudulent misrepresentation of the scope of Clerk Tompkins’ authority and power. See Resolution 2016-10 dated April 26, 2016 attached as Exhibit N. Such actions may constitute a violation of Chapter 2, Articles 3 & 4 of the Town Code as well as C.R.S. 24-18-201 et.seq.

Conclusion:

Due to the numerous apparent ethical and legal infractions committed by Cindy Tompkins as Town Clerk, it is recommended that the Board of Trustees take immediate action and investigate the above outlined matters. It is recommended that Clerk Tompkins’ rights, duties and privileges as Town Clerk and Treasurer be suspended pending investigation, including but not limited to her role in the appointment/hiring of the vacant Assistant Town Clerk position. These matters are matters of public concern which touch on the legitimacy of the Town government and reflect on the capacity of the Town of Calhan to manage its own affairs. The Trustees, the Mayor and all elected officials owe a duty to the Town of Calhan as fiduciaries to protect the property of the Town and the integrity of its officers. Therefore a swift, conclusive, and transparent resolution of the matter will provide the public with confidence in its local government to justly adjudicate ethical violations by those entrusted with the power of executive office.

Please feel free to contact Sanders Law Firm, LLC should you require further clarification or you have questions, concerns. We cordially request that the Board of Trustees and the Mayor keep Sanders Law Firm apprised of any determinations or actions taken in response to this matter.

Respectfully,

/s/ Justin T. Bailey
Justin T. Bailey, Esq.
Managing Attorney
Sanders Law Firm, LLC

/s/David W. Hannum
David W. Hannum, Esq.
Associate Attorney
Sanders Law Firm, LLC

Cc: