

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (“Consulting Agreement” or “Agreement”) is made and entered into this 22nd day of August, 2017, by and between Vantage Point Solutions, Inc., whose address is 2211 N. Minnesota Street Mitchell, South Dakota 57301 (hereinafter referred to as “Consultant”) and the **TOWN OF ERIE, COLORADO**, a Colorado municipal corporation, whose address is 645 Holbrook Street, P.O. Box 750, Erie, Colorado 80516 (hereinafter referred to as “Town” or “Erie”).

W I T N E S S E T H

WHEREAS, the Town desires to engage the Consultant to render the professional services described in this Consulting Agreement and the Consultant is qualified and willing to perform such services in accordance with, and subject to the provisions of this Consulting Agreement; and,

WHEREAS, legal authority exists to engage the Consultant and sufficient funds have been budgeted and are available for the work to be performed by the Consultant under this Agreement, and other necessary approvals have been obtained.

NOW, THEREFORE, in consideration of the mutual promises, covenants and obligations of the parties hereto, the terms, covenants and conditions hereof, and intending to be legally bound, the Town and the Consultant agree as follows:

1. The Project. The Consultant's services are engaged under this Consulting Agreement for the following project: **Broadband Assessment and Feasibility Study (“Project”)**.
2. Consultant’s Services. The Consultant shall, during the term of this Agreement, provide the services to the Town as set forth in Exhibit “A”, attached hereto and incorporated herein by this reference (the “Services”). The Consultant shall perform the Services competently, efficiently, and in accordance with the highest standards of its profession. The Consultant shall perform the Services meeting all industry safety standards.
3. Additional Services. The Town may request the Consultant to perform additional work or phases of the Project in addition to the Services. The Consultant agrees to perform the additional work or phases of the Project if the Town so requests, either pursuant to an amendment to this Consulting Agreement or a new agreement in which the Town and the Consultant shall define the scope of, and additional payment for, the additional work or phases of the Project.
4. Compensation. In consideration for the performance of the Services, the Town shall pay to the Consultant a fee in the amount not to exceed **\$65,000.00**, and payable in accordance with the payment schedule, as set forth in Exhibit “B”, attached hereto and incorporated herein by this reference.
5. Reimbursable Expenses. The Town agrees to reimburse the Consultant for the reimbursable expenses incurred by the Consultant in connection with the Services, such expenses to be described in detail in Exhibit “B”. Travel expenses between the Town and the Consultant's office shall not be considered reimbursable expenses. The Consultant shall maintain an accurate record of all such expenses and provide itemized records and copies of receipts when submitting such expenses to the Town for reimbursement. The maximum amount reimbursable by the Town to the Consultant under this Consulting Agreement shall be set forth on Exhibit “B”. Such expenses not described on Exhibit “B”, shall not be reimbursed by the Town.

6. Commencement and Completion of Services. The Consultant understands and agrees that time is an essential requirement of this Consulting Agreement. The term of this Consulting Agreement shall commence on August 23rd, 2017 and shall end on March 31st, 2018. The Services shall be completed as soon as good practice and due diligence will permit.

7. Termination.

A. This Consulting Agreement may be terminated by either party upon Ten (10) days prior written notice to the other party in the event of a substantial failure by the other party to fulfill its obligations under this Consulting Agreement through no fault of the terminating party.

B. This Consulting Agreement may be terminated by the Town in its sole discretion upon Ten (10) days prior written notice to the Consultant.

C. In the event of termination as provided for in this paragraph, the Town shall pay the Consultant in full for Services performed to the date of notice of termination plus any Services the Town deems necessary during the notice period. Said compensation shall be paid upon the Consultant's delivering or otherwise making available to the Town all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Consultant in performing the Services included in this Consulting Agreement, whether completed or in progress.

8. Insurance.

8.1 Consultant shall procure and maintain, and shall cause any subcontractor of Consultant to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the Town. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Consultant pursuant to paragraph 17 of this Consulting Agreement. In case of any claims made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

A. Workmen's Compensation Insurance and Employer's Liability Insurance to cover obligations imposed by applicable laws for any employee of Consultant or a subcontractor engaged in the performance of work under this Consulting Agreement.

B. General liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000) each occurrence and One Million Dollars (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employees' acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision.

C. Comprehensive Automobile Liability insurance within single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000) each occurrence and One Million Dollars (\$1,000,000) aggregate with respect to each of Consultant's owned, hired or non-owned vehicles assigned to or used in the performance of this Consulting Agreement. The policy shall contain a severability of interests provision.

D. Professional Liability insurance within minimum single limits of not less than

One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) aggregate.

8.2 The policies required by subparagraphs B and C, above shall be endorsed to include the Town and the Town's officers and employees as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, or carried by or provided through any insurance pool of the Town, shall be excess and not contributory insurance to that provided by the Consultant. The Consultant shall be solely responsible for any deductible losses under any policy require above.

8.3 A certificate of insurance shall be completed by the Consultant's insurance agent and provided to the Town as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the Town prior to commencement of the Consulting Agreement. The certificate shall identify this Consulting Agreement and shall provide that the coverages afforded under the policies shall not be cancelled until at least thirty (30) days prior written notice has been given to the Town. Consultant shall notify the Town within ten (10) days if the coverages afforded under the policies are materially changed. The completed Certificate of Insurance shall be sent to: Town Clerk, Town of Erie, PO Box 750, Erie, CO 80516

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

8.5 The parties hereto understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this Consulting Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as from time to time amended, or any other law, protection or limitation otherwise available to the Town, its officers, or its employees.

9. Payment of Subcontractors. Consultant shall contract with and pay any and all subcontractors used by Consultant in the performance of the Project. The Town shall in no event have any liability to any subconsultant, and Consultant shall hold the Town harmless with respect to any payments alleged to be due to Consultant's subcontractors.

10. Compliance with Applicable Laws. In connection with the execution of this Consulting Agreement, the Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or disability. Such actions shall include, but not be limited to the following: employment; upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant shall comply with the Americans with Disabilities Act (Public Law 101-336), and all applicable regulations and rules promulgated by the Equal Employment Opportunity Commission and the Colorado Civil Rights Commission. At all times during the performance of the Agreement, Consultant shall strictly adhere to all applicable federal, state and Town laws that have been or may hereafter be established. This shall include, without limitation, the United States Department of Labor standards. As used

in this paragraph, and hereafter, the term "laws" shall include, without limitation, all federal, state and Town codes, charters, ordinances, laws, standards, rules and regulations. The indemnification and termination provisions of this Consulting Agreement shall apply with respect to Consultant's failure to comply with all applicable laws or regulations.

11. Prohibited Interest.

A. The Consultant agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its Services hereunder. The Consultant further agrees that in the performance of the Consulting Agreement, no person having any such interest shall be employed.

B. No official or employee of the Town shall have any interest, direct or indirect, in the Consultant, this Consulting Agreement or the proceeds therefrom.

12. Independent Contractor. The Consultant shall perform all Services as an independent contractor, and nothing in this Consulting Agreement is intended to or shall create a relationship of employer-employee, joint venturers, or partners, between the parties. The Consultant shall be solely responsible for all federal and state income taxes attributable to the monies payable to the Consultant for the Services.

13. Books and Records. The Consultant's books and records with respect to the Services and reimbursable costs shall be kept in accordance with generally accepted accounting principles and practices, consistently applied, and will be made available for the Town's inspection at all reasonable times at the places where the same may be kept. The Consultant shall not be required to retain such books and records for more than three (3) years after completion of the services.

14. Obligation of Non-Disclosure. The Consultant agrees to keep confidential any and all drawings, reports, documents, memoranda, research, plans, analysis, maps, photographs, designs, information and work product either provided by the Town or generated by the Consultant pursuant to this Consulting Agreement, or provided to the Consultant by other consultants. Consultant shall make use of the information or items set forth hereinabove for any purpose, including public hearings of the Town, as expressly directed by the Town, for the Town's benefit. Consultant shall not use the information or items set forth hereinabove for its own account, or another's account, or in any manner detrimental to the Town. The Town acknowledges the need to share said information and items referred to hereinabove with the Consultant's subconsultants under this Consulting Agreement, and hereby approves such sharing and use.

15. Acknowledgement of Ownership. Consultant acknowledges that all drawings documents, information and materials relating to the Services performed and the Project for which the Services are performed, as well as those items described in paragraph 14, are or shall become, upon termination of this Consulting Agreement, the exclusive property of the Town.

16. Return of Information. Promptly upon the Town's request, and in any event upon the termination of this Consulting Agreement for any reason, all documents, materials and writings, as well as those items described in paragraph 14, and all copies thereof provided by the Town to the Consultant, directly or indirectly, shall be returned by the Consultant to the Town.

17. Professional Liability. The Consultant shall exercise in its performance of the Services hereunder the standard of care required by Colorado law. The Consultant shall be liable to the Town for any loss, damages, or costs incurred by the Town for the repair, replacement or correction of any part of the Project which is deficient or defective as a result of any failure of the Consultant to comply with this standard.

18. Communications. All communications relating to the day-to-day Services for the Project shall be exchanged between the respective Project representatives of the Town and the Consultant who will be designated by the parties promptly upon commencement of the Services.

19. Indemnification. Consultant agrees to indemnify and save harmless the Town against any and all claims, debts, demands, damages or obligations which may be asserted against the Town arising by reason of, or in connection with, any alleged act or omission of Consultant or any person claiming under, by or through Consultant, at Consultant's own expense using those attorneys that the Town deems appropriate. If, however, it becomes necessary for the Town to defend any action arising by reason of, or in connection with, any alleged act or omission of Consultant or any person claiming under, by or through Consultant seeking to impose liability for such claim or demand, Consultant shall pay all court costs, witness fees, expert witness fees, and attorney's fees, incurred by the Town in effecting such defense in addition to any other sums which the Town may be called upon to pay by reason of the entry of any judgment, assessment, bond, writ or levy against the Town in the litigation in which such claims are asserted. Consultant shall be subrogated to any and all amounts paid by it on behalf of the Town to any claims that the Town may have as a result of said payments to any person or third persons which are the reason or cause of said payments.

20. No Assignment. Consultant's duties and obligations pursuant to this Consulting Agreement require a particular expertise and skill, and may not be assigned to any third party or agency without the express written consent of the Town, which consent may be withheld at the sole discretion of the Town.

21. Notices. Any notices required or permitted hereunder shall be sufficient if personally delivered or if sent by certified mail, return receipt requested, addressed as follows:

If to the Town: Assistant to the Town Administrator
Town of Erie
P.O. Box 750
Erie, Colorado 80516

With a copy (which shall not constitute notice) to: Mark R. Shapiro
Mark R. Shapiro, P.C.
1650 38th Street, Suite 103
Boulder, Colorado 80301

If to the Consultant: _____

With a copy (which shall not constitute notice) to: _____

Notices personally delivered shall be effective upon delivery. Mailed notices shall be effective three (3) business days after mailing.

22. Agreement Subject to Annual Appropriation.

A. The parties hereto understand and agree that the amount of **\$65,000.00** has been budgeted for compensation for work done pursuant to this Consulting Agreement for the current fiscal year ending December 31, 2017. This is a full and lawful appropriation as required by appropriate statute for this project. In the event that the Town fails to appropriate sufficient funds to cover any compensation which may become due for the fiscal year beginning January 1, 2018, then, and in that event, this Consulting Agreement shall immediately terminate as of December 31, 2017, without further action of any party. The Town shall provide notice to Consultant prior to December 31, 2017, as to whether an appropriation has been made for further work anticipated following December 31, 2017.

B. The amount of money appropriated by the Town is equal to or in excess of the Consulting Agreement amounts due herein for the current fiscal year.

C. The Town shall be prohibited from issuing any change order or other form of order or directive requiring additional compensable work to be performed, which work causes the aggregate amount payable under this Consulting Agreement to exceed the amount appropriated for the original Consulting Agreement, unless Consultant is given written assurance by the Town that lawful appropriations to cover the cost of the additional work have been made or unless such work is covered under a remedy-granting provision in this Consulting Agreement.

23. Prohibition Against Employment of Illegal Aliens.

A. By its signature on this Agreement, Consultant certifies that, as of the time of its signature, it does not knowingly employ or contract with an illegal alien and that, in order to verify that it does not employ any illegal aliens, the Consultant will participate in the E-Verify Program created in Public Law 104-208, as amended, and expanded in Public Law 108-156, as amended, administered by the United States Department of Homeland Security and the Social Security Administration.

B. Consultant agrees that it shall not knowingly employ or contract with an illegal alien to perform work under this Agreement; and that it shall not enter into a contract with a subcontractor that fails to certify to the Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

C. Consultant has verified through participation in the E-Verify Program that the Consultant does not employ any illegal aliens.

D. Consultant shall not use the E-Verify Program procedures to undertake preemployment screening of job applicants while work under this Agreement is being performed.

E. If Consultant obtains actual knowledge that a subcontractor performing

work under this Agreement knowingly employs or contracts with an illegal alien, the Consultant shall: (1) notify the subcontractor and the Town within three days that the Consultant has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and (2) terminate the subcontract with the subcontractor if, within three days of receiving the notice required herein, the subcontractor does not stop employing or contracting with the illegal alien; except that the Consultant shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

F. The Consultant shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. section 8-17.5-101(5).

G. If Consultant violates a provision of this Illegal Alien section, the Town may terminate this Agreement for breach of contract. If the Agreement is so terminated, the Consultant shall be liable for actual and consequential damages to the Town. Consultant understands that, in the event of such a termination, Town is required to notify the office of the Colorado Secretary of State.

24. Attorney's Fees; Interest. In any action brought to enforce the provision(s) of this Consulting Agreement, the prevailing party shall be entitled to an award of all reasonable attorney's fees and costs, including expert witness' fees, expended or incurred, to be recovered as part of the costs therein. Any fees and expenses not paid to Consultant by the Town when due shall earn interest at the rate of twelve percent (12%) per annum.

25. Waiver. Failure to insist upon strict compliance with any of the terms, covenants, and/or conditions hereof shall not be deemed a waiver of such terms, covenants or conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one time or more times be deemed a waiver or relinquishment of such right or power at any other time or times.

26. Amendments to Agreement. No changes, alterations or modifications to any of the provisions hereof shall be effective unless contained in a written agreement signed by both parties.

27. Entire Agreement. This Consulting Agreement shall constitute the entire agreement between the parties hereto and shall supersede all prior contracts, proposals, representations, negotiations and letters of intent, whether written or oral, pertaining to the Services.

28. Situs, Venue and Severability. The laws of the State of Colorado shall govern the interpretation, validity, performance and enforcement of this Consulting Agreement. For the resolution of any dispute arising hereunder, venue shall be in the Courts of the County of Weld, State of Colorado. If any provision of this Consulting Agreement shall be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Consulting Agreement shall not be affected thereby.

29. Paragraph Headings. Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Consulting Agreement.

30. Binding Agreement. This Consulting Agreement shall be binding upon and for the benefit of the parties hereto, their successors and assigns.

TOWN:

TOWN OF ERIE,
a Colorado municipal corporation

By: _____
A.J. Krieger, Town Administrator

ATTEST:

By: _____
Nancy J. Parker, Town Clerk

CONSULTANT:

_____, INC.,
a Colorado corporation

By: _____
President

ATTEST:

By: _____
Secretary

EXHIBIT "A"

(Services to be provided by Consultant)

Philosophy and Approach

In accordance with the RFP, the goal of this project is to provide the Town with a comprehensive report that documents the current state of broadband service, availability, utilization, cost and opportunities for infrastructure development and improved service delivery. The project requires a large data collection effort followed by a comprehensive analysis and recommended next steps. Multiple members of our team will be involved in this effort.

Task 1: Conduct Needs Assessment

The VPS team will begin the engagement by conducting community and stakeholder outreach to complete Task 1.

The project will commence with a Kick-Off Meeting on-site in Town offices. The Kick-Off meeting will be critical for setting the project schedule for all of the tasks listed in the RFP scope as well as setting dates for meetings and update calls. For this Kick-Off meeting, VPS will provide (ahead of time), an agenda and a list of documents and data needed to begin the project. Additionally, at the meeting we will work together to finalize the as the list of project stakeholders that may include but will not be limited to:

- Local officials;
- Educational entities (K-12, higher education, other);
- Public safety agency representatives;
- Hospital/health care facilities;
- Chambers – business community representatives;
- Regional economic development partners;
- Local telecommunications partners;
- Homeowner Association and citizen outreach groups;
- Possible investors;
- Others.

VPS will hold on-site individual and group meetings with the approved list of stakeholder entities over a two-day period. VPS also recommends possibly holding one town hall meeting with residents to help explain the purpose of the survey and to obtain direct feedback.

In addition, although the Town has conducted surveys previously, VPS recommends conducting a residential and business market survey to determine if the community can support a new provider.

Residential Survey

This task focuses on the residential market assessment to determine if the community can support a new (municipal) provider that includes:

- Residential results that are statistically representative of the community
- A robust data set of at least 300-400 completes
- Random sampling to ensure that “self-selection” bias is eliminated

VPS will:

- Design a questionnaire to understand the demand for a more robust broadband network – and what needs to be included for customer attraction.
 - Demographic information will be collected as we work towards obtaining the most representative sample based on response rate.
- Include questionings around the following topics:
 - Assessment of current offering
 - Product/service offering evaluation
 - Community demand/need
 - Price sensitivity
 - Perception around community municipal involvement
 - Others TBD
- Design the program and host survey online
- Recruit respondents from obtained lists, include reminder emails/and or postcards.
 - Invitations will be randomly sent via postcards thousands of households. If the Town has valid email addresses for existing customer base, this could be utilized in lieu of a postcard.
 - Data collection, in the field, will need to be no less than two weeks.
 - Ten-dollar incentive will be introduced in wave two of invitations if necessary.

VPS recommends conducting an informal business survey to assess current and future business needs. This survey would be hosted online via Survey Monkey. As a part of this process, we would conduct outreach to the Chamber of Commerce and other local business groups in order to encourage participation in the survey.

Please note that all tasks and data collection efforts detailed below will provide the critical information needed to complete the assessment.

Task 2: Conduct Local Broadband and Telecommunications Market Assessment VPS will provide a high-level overview snapshot of what existing assets may be available in

the area. This information will be collected through web searches, google earth and other lists that may be publicly available and/or provided by the Town.

It should be noted that providers generally do not give information regarding the location of their infrastructure assets as they are deemed confidential and proprietary. For this reason, VPS may engage a third party to obtain information otherwise not available directly from the provider.

For these tasks, VPS will provide:

- Mapping of discovered infrastructure;
- Information on local providers and service offerings;
- A profile of the available broadband services in the Town.

Task 3: Perform Gap Analysis

Utilizing all the data obtained through this process, VPS will evaluate the current environment against the current and future needs of the Town of Erie to determine the best path forward. This analysis will include looking at the impact of competitive offerings from incumbent carriers, analyzing information provided by stakeholders and others and looking at the impact of broadband on local economic conditions.

Task 4: Evaluate the Town's Current Fiber Optic Network Capabilities

VPS technical staff will travel to Erie to provide a boots-on-the-ground technical and financial evaluation of the Town's existing fiber-optic network. As part of the process, VPS will include recommendations for long-term provision of a solution to maintain internet service and the WAN for Town facilities.

Task 5: Create a Project Map

VPS technical GIS staff will provide a project map that provides an analysis of the Town's broadband environment.

Task 6: Recommend Broadband Strategies

VPS will provide a comprehensive report of all the data gathered in the project that also includes an overview of best practices from cities and communities that have deployed networks. In addition, VPS will also discuss what has not worked in municipal networks around the country. This piece of the assessment will include but not be limited to the following information and analysis:

- Examples of municipal networks around the country
- Network models and technology types
- Wireless discussion regarding 5G and wireless technologies

- Operating models and structures
- Reliability of service issues
- Funding and financing options
- Regional Analysis – how the Town can partner with neighboring communities
- Recommended business models to the meet the community priorities

As outlined in Section 4.2 of the RFP, business model strategies to be considered will include the following: Public Policy Only, Public Services, Infrastructure, Municipal Broadband Partnership, Open Access Provider, Municipal Retail – Business Only and Municipal Retail – Residential & Business.

In addition, VPS will provide “rule of thumb” examples of cost estimates for different business models. Insights regarding future industry trends and growth will also be discussed in this portion of the Report.

The final report will focus on the meeting the needs of the Town’s 3 Primary Service Customer/Areas discussed in the RFP and includes all of the above items including:

- Residential Market Demand Survey Analysis
- Infrastructure and Technical Analysis
- Costs, Models, and Analysis including open access and PPPs
- Financial Feasibility Plan
- Timelines for options

VPS will present findings on-site.

SCHEDULE	TIMELINE
Kick off Meeting	September 1-3
Stakeholder Outreach Meetings	September 25/26
Market Survey put into the field	September 30
Market Survey Close	October 30
Existing Asset Research and Provider Availability Gap Analysis Broadband Availability Analysis Survey Analysis High Level Conceptual Network Design with costs Business Model Analysis Additional Meetings as needed	Completed by December 31
Draft Report provided for Staff review and comment	January 30
Final Report and Presentations	February 20

EXHIBIT "B"

(Payment Schedule and reimbursable expenses description and limit)

Below is a breakdown of the costs associated with all phases of the Scope of Work. All of the aspects of the scope of work discussed in the Project Approach, are included in these below deliverables.

Deliverable	Fee
Needs Assessment including Market Survey	\$20,000
Existing Asset Analysis	\$10,400
Gap Analysis	\$5,200
Technical Evaluation (including 2 technical staff on-site to Erie; travel billed separately)	\$6,000
Map	\$5,000
Recommendations	\$5,200
Draft and Final Report	\$10,400
SERVICES TOTAL	\$62,200
*Reimbursable Expenses	\$2,800.00
TOTAL	\$65,000.00

** Reimbursable expenses such as cost of postage and other printing and/or mailing costs are billed as incurred with a not to exceed rate of \$2,800.00*