

WATER-WISE LANDSCAPE SEMINARS PROGRAM AGREEMENT

THIS Water-Wise Landscape Seminars Program Agreement (“Agreement”) is made this ____ day of _____, 2017 (“Effective Date”), by and between the Boulder Energy Conservation Center d/b/a the Center for ReSource Conservation (“CRC”) and The Town of Erie (“Erie”), individually referred to as a “Party,” or collectively as “Parties.”

Recitals

1. WHEREAS many people are interested in the concept of a low-water landscape;
2. WHEREAS those interested in the concept of a low-water landscape are often overwhelmed by the plant selection and design of such a landscape;
3. WHEREAS, the Water-Wise Landscape Seminars Program will provide Erie’s residents access to important information, an opportunity to have their questions answered, and access to additional resources within the community;
4. WHEREAS in order to help its residents increase water use efficiency, adhere to best management practices, and reach conservation goals, Erie wishes to partner with CRC to organize and conduct the Water-Wise Landscape Seminars Program (“Program”) for the term specified in Section III in partnership with Erie.

NOW THEREFORE, in consideration of the terms and conditions contained herein and other good and valuable consideration, the Parties agree as follows:

I. Program Obligations:

A. CRC Obligations

CRC shall provide the services described in the Water-Wise Landscape Seminars Scope and Conditions of Work, attached hereto as Attachment A (“Services”).

B. Erie Obligations

1. Supplemental Work Order. Erie shall complete the Supplemental Work Order, attached hereto as Attachment B, no later than February 1, 2017. In the Supplemental Work Order, Erie shall identify the precise nature of services requested, including but not limited to the number of seminars it wants CRC to conduct.
2. Publicity. Erie shall be responsible for publicizing the availability of the Program to its Customers in one or more rounds of marketing. Efforts to publicize the Program to its Customers may include but are not limited to advertising mediums such as the Erie’s website, social media, bill inserts, newsletter and direct mailing. If only one round will take place, the marketing must be in the form of a water bill insert.

CRC will develop a marketing “Toolkit” containing these promotional templates and individual advertisement components for the Erie to use. Erie and CRC will create a mutually agreed upon timeline, known as the “Marketing Calendar” which will state the dates on which both Erie and CRC will disseminate the chosen advertisements. Either CRC or Erie may create advertising content; however, Erie must use the “Toolkit” components (i.e. verbiage, logos, photographs) for Program advertisements and all efforts must be approved by the CRC prior to publishing.

In the event that a sufficient number of requests exist, as determined by CRC, and all rounds of advertising have not been completed, CRC may waive the requirement that Erie conduct an additional advertising round. CRC shall provide Erie with notice of any such waiver.

II. Price, Payment Amount, and Billing Procedure

- A. Payment of Program Price. Erie shall pay CRC the Program Price, pursuant to the Water-Wise Landscape Seminars Program Payment Schedule and Terms, attached hereto as Attachment C.

III. Term

- A. Term of Agreement. The Term of this Agreement commences on the Effective Date and terminates on December 31, 2017, or on the date the Agreement is earlier terminated, as provided herein.

IV. General Provisions

- A. Record Keeping Requirements. CRC and Erie shall maintain all records, documents, communications, and other material that pertain to this Agreement (“Records”) for a period of three (3) years from the date of final payment under this Agreement, unless CRC or Erie requests that the records be retained for a longer period. CRC and Erie each shall provide access to such Records to the other during normal business hours for review and copying.
- A. No Delegation. Except as otherwise provided, the Parties’ duties and obligations shall not be assigned, delegated, or subcontracted except with the express prior written consent of the other Party. All subcontractors shall be subject to the requirements of this Agreement.
- B. Indemnification. To the extent allowed by law, Erie, on behalf of itself and its successors and assigns, agrees to indemnify, defend, and hold harmless the CRC, its officers, directors, and employees from and against losses, liabilities, expenses, and costs, including, without limitation, reasonable attorney’s fees and costs, arising out of (i) the negligent performance under this Agreement by Erie or any person employed by Erie; or (ii) any injury to persons or property to the

proportional extent caused by the negligent or intentional acts or omissions of Erie or any person employed by Erie

CRC shall hold harmless and indemnify Erie, its officers, directors, and employees from and against losses, liabilities, expenses, and costs, including, without limitation, reasonable attorney's fees and costs, arising out of (i) the negligent performance of Services under this Agreement by the CRC or any person employed by the CRC; or (ii) any injury to persons or property to the proportional extent caused by the negligent or intentional acts or omissions of CRC or any person employed by the CRC.

- D. No Third Party Rights. Except as otherwise provided, this Agreement shall inure to the benefit of, and be binding only upon, the Parties hereto and their respective successors and assigns. No third party beneficiary rights or benefits of any kind are expressly or impliedly provided herein.
- E. Designated Representatives. For the purpose of this Agreement, the persons named below are designated the representatives of the Parties. Unless otherwise provided in this Agreement, all notice required to be given by the Parties shall be given either by hand delivery or e-mail, with confirmed receipt, or by registered or certified mail to the representative named below. The Parties may designate in writing a new or substitute representative:

For the Center for ReSource Conservation: For Erie

Neal Lurie
President
Center for ReSource Conservation
2639 Spruce Street,
Boulder, CO 80302
o) 303-999-3820, ext 202
fax) 303-440-0703
E-mail: nlurie@conservationcenter.org

Bethany Peer
Administrative Assistant
Town of Erie
645 Holbrook Street
Erie, CO
Office: 303-926-2870
Fax: 303-926-2706
Email: bpeer@erieco.gov

- F. Default and Remedies. In the event either Party fails to comply with this Agreement, the other Party shall provide notice specifying the breach, and the breaching party shall be allowed thirty (30) days to cure, or such longer period if the cure will require additional time and so long as the breaching party is diligently acting to complete the cure. In the event the breaching party fails to cure the breach, within the time allowed hereunder, the non-breaching party shall have all remedies available in law or in equity.
- G. Modifications. This Agreement is intended as the complete integration of understanding between the Parties. Both Parties may make modifications to this Agreement as needed, provided that that such modification shall not be effective until it is accepted in writing by a legally authorized representative of each Party.

- H. Severability. The terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term or the same term upon subsequent breach.
- I. Exhibits. All exhibits hereto shall be deemed incorporated herein by reference.
- J. Independent Contractor. CRC shall perform the Services under this Agreement as an independent contractor and the parties do not intend, nor shall it be construed that CRC or any CRC subcontractor or employee is an employee of Erie for any purposes whatsoever.
- K. Employee Financial Interest. The Parties aver that to their knowledge, no employee of Erie has any personal or beneficial interest whatsoever in the service or property described herein.
- L. Representations and Warranties. CRC and Erie each make the following specific representations and warranties, each of which was relied on by the other in entering into this Agreement.
1. Legal Authority – Signatory. Each Party warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, by-laws, and applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement, or any part thereof, and to bind itself to its terms. If requested by the other Party, each Party shall provide the other with proof of its authority to enter into this Agreement within 15 days of receiving such request.
 3. Compliance with Laws. CRC shall at all times observe and comply with all laws, ordinances, and regulations of the state, federal, local, and city government, except as explicitly provided herein, which may, in any manner, affect the performance of the Agreement as well as the requirements of any agreements, permits, or other contracts between CRC and third parties governing the performance of the services hereunder and disclosed to CRC.
- M. Choice of Law. Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Agreement, to the extent capable of execution. Venue shall be in the District Court, Boulder County, Colorado.

N. Force Majeure. A “Force Majeure” event may make it impossible for CRC to perform its obligations under this Agreement. As used in this Agreement, Force Majeure means acts of God; acts of the public enemy; acts of any governmental entity in its sovereign or contractual capacity; fires; flood; epidemic; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather which make it impossible to perform the obligations imposed by this Agreement. If a Force Majeure event occurs that affects CRC’s ability to perform, CRC shall provide written notice to Erie within 24 hours of learning about the event. Such an event shall excuse CRC from performing its obligations under this Agreement. However, such an event shall not excuse Erie’s obligation to pay the Program Price. In no event shall Force Majeure act to extend the Term of Agreement unless otherwise agreed by the Parties in writing.

O. Intellectual Property Rights. CRC shall retain ownership of all data generated pursuant to the Program, and it may use that data to generate reports summarizing the Program to educate the public, including policy makers, green industry partners, and homeowners. This report and any data collected may also be presented to CRC partners.

P. Termination. CRC may terminate this Agreement with or without cause by providing thirty (30) days advance notice to Erie. Such termination by CRC shall not affect Erie’s obligation to compensate CRC for work completed pursuant to this Agreement, up to and including the date of termination specified in such notice.

IN WITNESS WHEREOF, each Party has executed this Memorandum of Agreement or caused it to be executed on its behalf by its duly authorized representatives.

Center for ReSource Conservation

Town of Erie

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT A
Water-Wise Landscape Seminars Program
Scope of Work

WATER-WISE LANDSCAPE SEMINARS PROGRAM
SCOPE OF WORK

I. Scope of Work

A. Seminars

1. Seminar Development. CRC shall research and choose seminar topics, which shall be related to outdoor water conservation education.
2. Seminar Speakers. CRC shall coordinate with and secure a qualified speaker to teach each seminar. Seminar speakers shall be a landscape or water conservation professional. CRC shall be responsible for paying all speaker fees.
3. Educational Materials. CRC shall prepare, print, and organize educational materials to be distributed at the seminar(s). CRC shall also be responsible for researching and updating those educational materials.
4. Registration and Attendance. The seminar(s) shall be free and open to the public. CRC shall handle Program registration, and it shall also send out reminder e-mails and/or make reminder phone calls to all registered attendees within one week of the Seminar date(s). **CRC shall make all reasonable efforts to ensure high levels of attendance at the seminar(s), but CRC cannot guarantee a certain attendance level.**
5. Event Set-Up and Break Down. CRC shall be responsible for setting-up and breaking down the seminar location(s).

B. Marketing and Customer Service

1. Marketing of Program. CRC shall design and pay for the placement of advertisements in a local newspaper, write and disseminate press releases and public service announcements publicizing the Program, submit information relating to scheduled seminar(s) to local calendar listings, advertise the seminar(s) in its monthly electronic newsletter (CRC E-news), and advertise the seminar(s) in conjunction with other CRC programs in which Erie is participating.
2. Customer Service. CRC shall handle all incoming phone-calls and e-mails regarding the Program and respond to all questions.

C. Post-Program Duties

1. Evaluation. CRC shall create and process evaluation forms.
2. Final Report. CRC shall compile the information contained in the completed Evaluations into a Final Report about the Program, which details the Program results. CRC shall provide Erie with this report by December 31, 2017.

ATTACHMENT B
Water-Wise Landscape Seminars Program
Supplemental Work Order

WATER-WISE LANDSCAPE SEMINARS PROGRAM
SUPPLEMENTAL WORK ORDER

Number of Seminars

By participating in the Water-Wise Landscape Seminars Program, Erie agrees to partner with CRC in conducting at least one seminar.

(Check One)

Erie DOES want to request _____ additional seminar(s), at the cost specified in the Water-Wise Landscape Seminars Program Schedule and Terms.

Erie DOES NOT want to request any additional seminars.

Seminar Location(s) and Date(s)

Erie shall identify below possible locations where CRC may hold the requested seminar(s). CRC shall make all reasonable efforts to accommodate Erie's request.

Erie Community Center, 450 Powers Street, Erie, CO 80516

All seminar locations must accommodate a minimum of forty (40) people, and be open to the public during the scheduled seminar hours. If reservation of the requested location(s) requires City affiliation, Erie shall assist CRC with reservation of the requested location(s).

The date(s) of each requested seminar(s) shall be on a weeknight in the month of April. The precise date(s) shall be selected at the sole discretion of CRC.

ATTACHMENT C
Water-Wise Landscape Seminars Program
Payment Schedule and Terms

WATER-WISE LANDSCAPE SEMINARS PROGRAM
PAYMENT SCHEDULE AND TERMS

I. Payment Terms

A. Program Price

1. Price Charged to Erie. Erie shall pay a fee of \$1,845 to conduct one Water-Wise Landscape Seminar. If Erie requests additional seminars on the Supplemental Work Order, it shall pay a fee of \$1,515 per each additional seminar requested.

II. Payment Schedule and Invoicing

- A. Invoicing. CRC shall bill Erie for all work completed pursuant to the Agreement. Payment shall be due within thirty (30) days of the date the invoice is issued by CRC.
- B. Payment Deadlines. For purposes of these payment deadlines, a payment shall be deemed to have been made upon the date of its actual receipt by CRC. Said invoice shall be issued upon Erie's submission to CRC of a signed version of the Agreement.