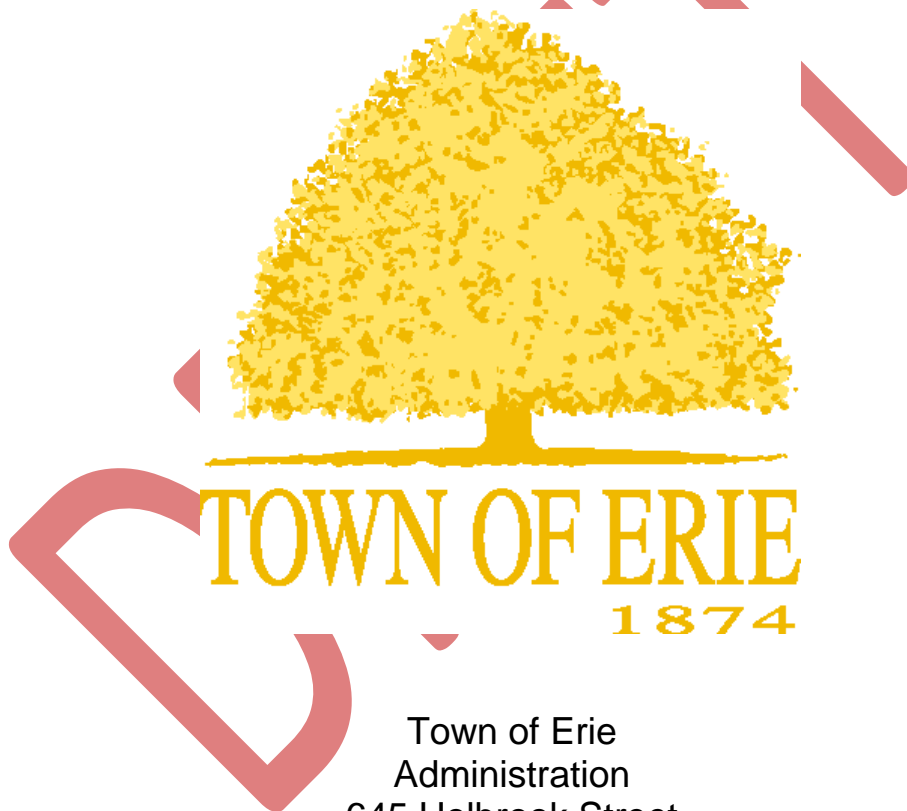


# **REQUEST FOR PROPOSALS**

Town of Erie  
Broadband Assessment and Feasibility Study

Administration  
RFP # 2017 - 01



Town of Erie  
Administration  
645 Holbrook Street  
P. O. Box 750  
Erie, Colorado 80516

Issue Date: Friday, June 23, 2017

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## I. INVITATION TO SUBMIT PROPOSALS

Section 1.1 Proposals. The Town of Erie, Colorado is soliciting proposals from Consultants qualified to complete a Broadband Assessment and Feasibility Study. The ideal Consultant(s) will have experience in the public sector, and have worked with local government entities in Colorado. Proposer's organization or principal employees must have been in business providing community broadband planning services for a minimum of 4 years.

### Section 1.2 Process Overview.

- a. Interested private parties are invited to submit their qualifications and proposal and state their interest in responding to this RFP by the deadline;
- b. All proposals will be reviewed and evaluated by Town Staff for completeness and responsiveness to the RFP;
- c. The top Consultants who submit qualified/responsive proposals addressing each point of this RFP will be invited for an interview and presentation;
- d. Based on proposal, firm qualifications, rankings and interviews, Town Staff will select a preferred Consultant to enter into an agreement with and present that recommendation to the Board of Trustees for their consideration and final determination.
- e. The Town may, in its sole discretion, choose not to proceed to a contract with any of the RFP respondents.

Section 1.3 Admonition to Consultants. All questions regarding this RFP must be presented in writing as indicated in Section 3.1. Once this RFP has been issued, Consultants are specifically directed not to contact Town officers, employees or agents for meetings, conferences, or technical discussions related to this RFP. Failure to adhere to this policy may result in disqualification of the Consultant.

Section 1.4 RFP. This Request for Proposals (RFP) is being released on **Friday, June 23, 2017**. Sealed proposals in response to this RFP shall be clearly marked as follows:

**Town of Erie Broadband Assessment and Feasibility Study  
Administration RFP # 2017 - 01**

Sealed proposals will be received until **3:00 pm, Friday, July 21, 2017 MST**, at:

**Town of Erie  
Town Clerk's Office  
645 Holbrook Street  
PO Box 750  
Erie, Colorado, 80516**

Proposals received after the date and time indicated and/or proposals which are not prepared and filed in accordance with the terms and conditions of the Request for Proposal will not be considered for evaluation and will be returned to the Proposer.

## II. PROJECT COORDINATION AND ADMINISTRATION

Section 2.1 Project Manager. The Project Manager for this project is:

Fred Diehl, Assistant to the Town Administrator  
645 Holbrook Street / PO Box 750  
Erie, CO 80516  
[fdiehl@erieco.gov](mailto:fdiehl@erieco.gov)

Section 2.2 Costs. All cost associated with the preparation and submittal of the Request for Proposal, including interviews and requests for additional information, are the responsibility of the submitter only.

## III. QUESTIONS

Section 3.1 Questions. Questions from qualified firms, in relation to this RFP, must be delivered in writing to the Project Manager identified above. Questions will only be accepted in the following manner: by email to [fdiehl@erieco.gov](mailto:fdiehl@erieco.gov); or by mail to Fred Diehl, Assistant to the Town Administrator, Town of Erie, 645 Holbrook Street, P. O. Box 750, Erie, CO 80516.

**Questions must be received no later than Noon five (5) business days prior to the proposal due date: Friday, July 14, 2017.**

## IV. PROJECT BACKGROUND AND DESCRIPTION

Section 4.1 Town of Erie. The Town of Erie is a full service community located in Boulder and Weld Counties just west of I-25. Erie's incorporated area is 20 square miles and our planning area spans 48 square miles extending from the north side of State Highway 52 south to State Highway 7, and between US 287 on the west and Interstate 25 to the east. Erie is a growing community currently comprised of approximately 8,000 residential units and a 2017 population estimate of 25,000. To learn more about our community's demographic information and commercial development activity, please visit:

<http://www.erieco.gov/235/About-Erie>

<http://www.erieco.gov/606/Economic-Development>

Section 4.2 Overview. During the July 12, 2016, Town of Erie Board of Trustees meeting, the Board considered options with regards to Colorado Senate Bill 05-152, the bill that prohibits local government supporting either directly or indirectly advanced telecom services to subscribers. It was the Board's determination to conduct a Broadband Assessment and Feasibility Study in anticipation of putting a question to opt out of the restrictions of SB 05-152 on the April 2018 Ballot.

The Town of Erie, Colorado is soliciting proposals from Consultants qualified to complete a Broadband Assessment and Feasibility Study.

Through this RFP process it is our intent to explore a variety of options to serve the Next Generation broadband services needs of the Erie community.

The Town will consider proposals from a single firm or multiple firms working as a Team. The Team approach will only be considered if a single firm is identified as the prime contractor. The ideal firm will have excellent technical and analytical depth in areas of interest to the Town as identified in this RFP; and must be highly effective communicators, particularly in translating technical concepts to non-technical audiences.

The Proposal should focus on the range of alternatives available for promoting advanced broadband services to Erie citizens, businesses and Town agencies. The Proposal must be in a format suitable to be presented to and delivered in written form to Town Staff and the Board of Trustees.

The Study will include: (1) a review of current assets and providers in the area; (2) identification of potential opportunities for partnership between the Town and these providers; and (3) a structured evaluation of business models for the Town to indirectly or directly or indirectly participate in the provisions of broadband services to the community. Business model strategies to be considered should include at a minimum the following:

1. **Public Policy Only:** Town uses policy tools and standards to streamline construction and reduce the cost of building infrastructure for broadband retailers to provide residential and business services.
2. **Public Services:** Town financed or shared financing with other public organizations. Serves only public/community organizations.
3. **Infrastructure:** Town provides conduit and/or dark fiber to businesses, broadband providers, and other public organizations. Town does not provide retail services.
4. **Municipal Broadband Partnership:** Town enters into agreement with adjacent municipal broadband provider to supply alternative option for affordable, reliable broadband services to Erie residents and businesses.
5. **Open Access Provider:** Town financed and operated. Wholesale services only to retail broadband providers. Retail providers deliver broadband services.
6. **Municipal Retail – Business Only:** Town financed and operated. Broadband services to businesses.
7. **Municipal Retail – Residential & Business:** Town financed and operated. broadband services to residents and businesses.

Section 4.3 Previous Broadband RFP. During the August 14, 2012 Board of Trustees meeting, representatives from Longmont Power and Communications delivered a Municipal Broadband presentation outlining the Utility/City's efforts and assets for their planned municipal broadband utility. Subsequently, on November 9, 2012, the Town of Erie issued a RFP for a "Broadband Telecommunications Feasibility Study." The Town received, reviewed and ranked multiple Proposals for the Board's determination. The Board subsequently directed staff to determine citizen interest in Municipal Broadband prior to committing further resources. The 2013 Citizen Survey indicated 63% of residents supported or somewhat supported those efforts.

Section 4.4 Related Public/Private Partnership. Aware that access to enhanced broadband services is desired by many in our community; understanding the restrictions included in SB-152 regarding the provision of communication services such as internet broadband by local governments; and recognizing the opportunity that new residential development in Erie brings to internet broadband providers; in the fall of 2013 Town staff met with Comcast representatives to investigate options for delivering fiber to the home (FTTH) high-speed internet services to Erie neighborhoods. Through a series of conversations, Town staff was successful in connecting Comcast with Oakwood Homes - the developer/builder of Erie Highlands to not only provide FTTH but to construct what is referred to in the industry as "homes with tails."

During the May 12, 2015 Board of Trustees meeting, the Erie Highlands Fiber to the Home Pilot Project was publicly announced. The project is a collaborative effort among the Town of Erie, Comcast and Oakwood Homes to build one of the first single-family neighborhoods in Colorado and the nation equipped with Comcast's "future-proof" broadband services to the home. Deliverables of the pilot project include: installation of an individual fiber-optic cabinet in each new home; capacity to deliver synchronous speeds (up/down) of 1 gigabit and beyond; and no need to rebuild when new technology is developed.

Based on the Town of Erie's success in working with an incumbent Internet Service Provider to provide enhanced internet services to Erie residents, special consideration of this type of service delivery option and partnership opportunities should be assessed.

## **V. SCOPE OF WORK**

Section 5.1 Overview. Recognizing that access to affordable broadband service is desirable for the long-term development and vitality of Erie businesses, and for an informed, educated, healthy and economically competitive workforce, the Board of Trustees wants to investigate options for affordable, high-speed service for data, voice and video to homes and businesses.

The Town has three primary service customers/areas to be addressed by the study:

1. Residential neighborhoods (existing and new)
2. Commercial developments (existing and new) with an emphasis on Historic Downtown Business District and Coal Creek Park
3. Town of Erie municipal facilities, including but not limited to Erie Town Hall, Erie Police Station and Municipal Court Building, Erie Community Center, Leon A. Wurl Service Center, Water Treatment Facility, North Water Reclamation Facility and Erie Municipal Airport

## **VI. REQUESTED SERVICES AND DELIVERABLES**

Section 6.1 Deliverables. Complete a Broadband Assessment and Feasibility Study that includes the items below. (Additional services may be identified during initial meetings between the respondent(s) and the Town; the proposal will be modified as needed.)

1. Conduct Needs Assessment: Gather, evaluate and analyze information on broadband-dependent high-speed needs from users within the Town of Erie service via scientific and statistically valid evaluation methods. The needs assessment should include current and future needs of these users and document the community's desire for enhanced broadband services; citizen's view on the role municipal government should take in providing that service; their willingness to pay for that service and at what price for those services.

Provide an assessment of the community benefits and risks through improved and more efficient Town services (services enhancing citizen opportunities for learning, health care, leisure, emergency services, law enforcement and community connections).

2. Conduct Local Broadband and Telecommunications Market Assessment: Identify existing broadband and telecommunication options and costs across the community. Profile Erie and provide an assessment of the telecommunications environment detailing the types of services, pricing, availability and limitations. Identify potential areas for partnership between the Town and incumbent providers.

Identify and analyze existing resources of all stakeholder entities, possible additional resources, and technological options.

Verify inventory of existing fiber-optic assets & facilities, and related broadband assets & facilities within or adjacent to Erie.

Analyze and report on current and anticipated technologies for fiber-to-the-premises delivery and propose a best option as a long-term asset to the community.

3. Perform a Gap Analysis: Evaluate the current environment against the current and future needs of Erie, including all stakeholders defined in the project. Determine what economic and community impact broadband issues are having on Erie. The analysis should include an evaluation of key issues limiting broadband expansion.
4. Evaluate the Town's Current Fiber-Optic Network Capabilities: Perform a technical and financial evaluation of the Town's existing fiber-optic network (owned and leased). Evaluation should include recommendation for long-term provision of reasonably priced solution to maintain Internet service and Wide Area Network (WAN) for Town facilities.
5. Create a Project Map: Create a comprehensive map that provides analysis of the Town's broadband environment.
6. Recommendation on Broadband Strategies: Based on consultant's analysis in steps 1-6 of this Section and feedback from the Town, conduct an analysis of business models (including funding options) for the Town to indirectly or directly improve and/or provide broadband services to the community. As outlined in Section 5.1, the Town has 3 Primary Service Customers/Areas to be addressed.



Business model strategies must be based on sound and reasonable business cases that can be demonstrated quantitatively through the development of a comprehensive financial model. Present the various business models to the Town and the potential benefits and risks of each to the Town. Business models must also provide at a minimum but not limited to the following:

- Capital investment required (amount, timeframe, responsible party, etc.)
- Assets required (alignment with inventory of assets & inventory)
- Potential services and partners

As outlined in Section 4.2 of this RFP, business model strategies to be considered should include at a minimum the following:

**Public Policy Only**

**Public Services**

**Infrastructure**

**Municipal Broadband Partnership**

**Open Access Provider**

**Municipal Retail – Business Only**

**Municipal Retail – Residential & Business**

This deliverable should include Consultant's recommended approach to implementation of preferred business model strategies.

## **VII. SUBMITTAL REQUIREMENTS AND EVALUATION CRITERIA**

Section 7.1 Requirements and Evaluation Criteria. In order to simplify the review process and obtain the maximum degree of comparability, the proposal must follow the outline described in subsections A through D of this Section 7.1 below, and at a minimum, contain the required information. Respondents are encouraged to include additional relevant information. Respondents must also include a signature page with company name, address, phone number, contact name, authorized signature and date.

### **A. Qualifications:**

1. Qualification of firm and its specific personnel. Town is seeking the following: Proposer's organization must have experience in all aspects of this RFP and have been in business providing community broadband planning services for a minimum of four (4) years.
2. Performance of work similar in character and prior similar experience. Proposer should demonstrate a satisfactory record of performance for projects similar in scope, concept and function. Provide references of three (3) public sector (local government) agencies with which Consultant has had agreements for similar



type of services within the last three (3) years. Provide agency, contact name/address, phone number, and dates services were provided.

3. Overall project timeline (Gantt chart) shall be provided showing overall project timeline.
4. Example timetable of similar work that has been completed at public sector agencies.

**B. Experience:**

1. Understanding of the project.
2. Ability to perform all aspects of the project.
3. Experience working with similar sized municipalities.
4. Project team member's biographies shall be provided to include their work as Team members on similar projects.

**C. Cost Proposal:**

1. No up-front capital costs to the Town.
2. A not-to-exceed amount for all phases of the Scope of Work.
3. Fees for items listed under "Optional Pricing."

**D. Philosophy and Approach:**

1. Philosophy and approach to project.

**VIII. SELECTION PROCESS**

**Section 8.1 Selection Process.**

- A. The Town of Erie will review all responses to this RFP that meet requirements and are received prior to the designated closing date and time.
- B. Upon review of the qualified consultant(s), the Town of Erie will select the proposal(s) which best reflects the Town's needs and requirements.
- C. Proposals will be reviewed and if necessary, the leading consultant(s) will be scheduled for interviews and presentations.
- D. Pending the outcome of the interviews and presentations, negotiations with the top Proposer may commence.
- E. If a satisfactory agreement with the Proposer cannot be reached, at a price that

is determined to be fair and reasonable, negotiations with that firm shall be formally terminated. Negotiations with the second ranked Proposer may then be initiated. Failing accord with the second ranked Proposer, the Town shall formally terminate negotiations and may then undertake negotiations with the third ranked Proposer or re-issue the RFP at their discretion.

- F. The Town will have sole determination of which proposal, if any, is in the Town's best interest.

## IX. SELECTION SCHEDULE

### Section 9.1 Selection Schedule.

Following is the anticipated schedule of events for the RFP process:

Request for Proposal Available	Friday, June 23, 2017
Last Day for Questions	Noon MST on Friday, July 14, 2017
<b>Proposals Due</b>	<b>3:00 PM MST Friday, July 21, 2017</b>
Interviews & Presentations	TBD
Anticipated Notice of Award	TBD

## X. TERMS AND CONDITIONS OF PROPOSAL

Section 10.1 Terms and Conditions. All firms interested in submitting a proposal should note the terms and conditions set forth below:

- A. An **original and six (6) copies** of the proposal must be submitted.
- B. No reimbursement will be made by the Town of Erie for any proposal preparation or delivery costs incurred.
- C. Proposals received after the date and time specified will be returned unopened. Proposals which are not prepared and filed in accordance with the terms and conditions of this Request for Proposal will not be considered for evaluation or award. Proposals may be withdrawn at any time up to the due date and time.
- D. The Town of Erie reserves the right to reject any or all proposals or any part thereof, or to accept any proposal, or any part thereof, or to withhold any award and to waive or decline to waive irregularities in any proposal when determined that it is in the Town's best interest to do so. The Town also reserves the right to hold all proposals for a period of sixty (60) days after the opening date and the right to accept a proposal not withdrawn before the scheduled proposal opening date.
- E. All information included in any proposal that is of a proprietary nature must be clearly marked as such. The Town of Erie shall be held harmless from any claims arising from the release of proprietary information not clearly designated as such by the Respondent. In general, it is not acceptable to the Town to mark information other than financial data proprietary without the Town's written authorization. Failure to adhere to this restriction could result in rejection of the entire proposal. The Town may make proposals or portions of proposals public if required under

the Colorado Open Records Act.

- F. Conditional proposals may be rejected as non-responsive.
- G. Any person, firm, corporation or association submitting a proposal shall be deemed to have read and understood all the terms, conditions, and requirements in this document. All proposals must include a signature page with the name and title of the individual printed or typed and signed by an individual authorized to issue binding proposals for that firm. Failure to include a signed signature page may cause a proposal to be rejected and returned. If said failure is believed to be an oversight and not a deliberate omission, the proposal may be evaluated, if deemed to be in the Town's best interest to do so.
- H. All responses and accompanying documentation will become the property of the Town of Erie at the time the proposals are opened. All original documents and copies will be retained by the Town and not returned to the Respondents.
- I. All questions must be sent in writing to: Fred Diehl, Assistant to the Town Administrator, email [fdiehl@erieco.gov](mailto:fdiehl@erieco.gov), or mail 645 Holbrook Street, P. O. Box 750, Erie, CO 80516. Written requests must be received **no later than five (5) calendar days prior to the proposal due date: Friday, July 14, 2017.**
- J. The successful firm shall, during the course of the contract and until completion thereof, provide and maintain the minimum coverages identified in the attached Insurance Requirements and provide Certificates of Insurance listing the Town of Erie as additional insured.
- K. No right or interest of any Agreement reached as a result of this RFP shall be assigned, or any obligation delegated, by the successful Respondent without the written permission of the Town.
- L. Any Agreement issued as a result of this RFP shall be governed by and construed in accordance with the laws of the State of Colorado.
- M. The attached Consulting Agreement will be used by the Town as the contract document for the work. By submitting a proposal, Respondents accept the terms of this Agreement as stated unless exceptions are provided in writing as part of the proposal.
- N. Any interpretation, correction or change of the RFP will be made by formal Addendum. Interpretations, corrections and changes of the RFP made in any other manner will not be binding, and a Respondent shall not rely upon such interpretations, corrections and changes. The Town's Representative will not be responsible for oral clarification.

## **XI INSURANCE REQUIREMENTS**

### Section 11.1 Insurance Requirements.

Standard Workers' Compensation &  
Employers' Liability Including

Statutory in conformance  
with the compensation

Occupations Disease Coverage	laws of the State of Colorado
Comprehensive General Liability Insurance	\$1,000,000 each occurrence; \$2,000,000 aggregate
Comprehensive Automobile	\$1,000,000 each occurrence \$1,000,000 aggregate
Professional Liability	\$1,000,000 each occurrence \$1,000,000 aggregate

The successful Respondent shall affect the insurance policies in a company or companies and in a form satisfactory to the Owner. Before commencing any performance relating to this project, successful Respondent shall deliver, to the Town, Certificates of Insurance issued by the insurance company, and/or its duly authorized agents pertaining to the aforementioned insurance, and certifying that the policies stipulated above are in full force and effect.

All policies and/or Certificates of Insurance shall include the Town of Erie and the Town of Erie's officers, volunteers, and employees as additional named insured's.

Nothing herein shall be deemed or construed as a waiver of any of the protections to which the Town may be entitled pursuant to the Colorado Governmental Immunity Act, sections 24-10-101, C.R.S., as amended.

## CONSULTING AGREEMENT

**THIS CONSULTING AGREEMENT** (“Consulting Agreement” or “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between \_\_\_\_\_, a Colorado Corporation, whose address is \_\_\_\_\_ (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 total amount of \$ \_\_\_\_\_, 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 \_\_\_\_\_, 2017 and shall end on \_\_\_\_\_, 20 \_\_\_\_\_. 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 required 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:

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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 \$\_\_\_\_\_ 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)

**EXHIBIT "B"**

(Payment Schedule and reimbursable expenses description and limit)