

WATER-WISE LANDSCAPE SEMINARS PROGRAM AGREEMENT

THIS Water-Wise Landscape Seminars Program Agreement (“Agreement”) is made this day of February, 2018 (“Effective Date”), by and between Resource Central 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 Resource Central 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. Resource Central Obligations

Resource Central 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

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.

Resource Central will develop a marketing “Toolkit” containing these promotional templates and individual advertisement components for Erie to use. Erie and Resource Central will create a mutually agreed upon timeline, known as the “Marketing Calendar” which will state the dates on which both Erie and Resource Central will disseminate the chosen advertisements. Either Resource Central 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 Resource Central prior to publishing.

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

II. Price, Payment Amount, and Billing Procedure

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

III. Term

- A. Term of Agreement. The Term of this Agreement commences on the Effective Date and terminates on December 31, 2018, or on the date the Agreement is earlier terminated, as provided herein.

IV. General Provisions

- A. Record Keeping Requirements. Resource Central 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 Resource Central or Erie requests that the records be retained for a longer period. Resource Central 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 Resource Central, 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

Resource Central 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 Resource Central or any person employed by Resource Central; or (ii) any injury to persons or property to the proportional extent caused by the negligent or intentional acts or omissions of Resource Central or any person employed by Resource Central.

- 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 Resource Central:

Neal Lurie
President
Resource Central
2639 Spruce Street,
Boulder, CO 80302
o) 303-999-3820, ext 202
fax) 303-440-0703
E-mail: nlurie@ResourceCentral.org

For Erie

Todd Fessenden
Director of Public Works
Town of Erie
645 Holbrook Street
PO Box 750
Erie, CO
Office: 303-926-2895
Email: tfessenden@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 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. Resource Central shall perform the Services under this Agreement as an independent contractor and the parties do not intend, nor shall it be construed that Resource Central or any Resource Central 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. Resource Central 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.
 1. Compliance with Laws. Resource Central 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 Resource Central and third parties governing the performance of the services hereunder and disclosed to Resource Central.
- 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 Resource Central 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 Resource Central's ability to perform, Resource Central shall provide written notice to Erie within 24 hours of learning about the event. Such an event shall excuse Resource Central 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. Resource Central 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 Resource Central partners.

P. Termination. Resource Central may terminate this Agreement with or without cause by providing thirty (30) days advance notice to Erie. Such termination by Resource Central shall not affect Erie's obligation to compensate Resource Central 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.

Resource Central

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. Resource Central shall research and choose seminar topics, which shall be related to outdoor water conservation education.
2. Seminar Speakers. Resource Central shall coordinate with and secure a qualified speaker to teach each seminar. Seminar speakers shall be a landscape or water conservation professional. Resource Central shall be responsible for paying all speaker fees.
3. Educational Materials. Resource Central shall prepare, print, and organize educational materials to be distributed at the seminar(s). Resource Central 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. Resource Central 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). **Resource Central shall make all reasonable efforts to ensure high levels of attendance at the seminar(s), but Resource Central cannot guarantee a certain attendance level.**
5. Event Set-Up and Break Down. Resource Central shall be responsible for setting-up and breaking down the seminar location(s).

B. Marketing and Customer Service

1. Marketing of Program. Resource Central 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 (Resource Central E-news), and advertise the seminar(s) in conjunction with other Resource Central programs in which Erie is participating.
2. Customer Service. Resource Central shall handle all incoming phone-calls and e-mails regarding the Program and respond to all questions.

C. Post-Program Duties

1. Evaluation. Resource Central shall create and process evaluation forms.
2. Final Report. Resource Central shall compile the information contained in the completed Evaluations into a Final Report about the Program, which details the

Program results. Resource Central shall provide Erie with this report by December 31, 2018.

ATTACHMENT B
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 \$2,000 to conduct one Water-Wise Landscape Seminar.

II. Payment Schedule and Invoicing

- A. Invoicing. Resource Central 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 Resource Central.
- 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 Resource Central. Said invoice shall be issued upon Erie's submission to Resource Central of a signed version of the Agreement.