



City of
Evans, Colorado

REQUEST FOR PROPOSALS
South Platte River Restoration Master Planning

March 6, 2014

Issued by: City of Evans
Contact: Sheryl Trent, City of Evans, 1100 37th Street, Evans Colorado 80620
strent@evanscolorado.gov 970.475.1112

PROPOSALS REQUESTED FOR MASTER PLANNING

On behalf of the South Platte River Restoration Coalition, the City of Evans is accepting proposals from qualified multi-disciplinary teams (consultant) to complete a stream corridor master plan for the South Platte River. Additionally, the selected consulting firm (consultant) will work with current exigent project efforts to coordinate short-term solutions, particularly with regard to 2014 spring run-off, into long-term planning.

BACKGROUND AND PURPOSE

In September 2013, the South Platte River through Weld County (Milliken, Evans, LaSalle and unincorporated Weld County) experienced a record flood event with estimated peak flow rates over 19,000 cfs in many areas. The high peak flow combined with the extended duration of the event resulted in significant changes in the river corridor along with infrastructure damages in the hundreds of millions of dollars. In various locations the river has migrated horizontally, experienced significant deposition and incision, ripped out berms designed to control overflow, cut new overbank channels, rerouted itself through old gravel pits, left portions of pre-flood channel dry, lost much of its riparian ecological function, and migrated or scoured to the point of destroying numerous waterlines, septic systems, roads, embankments, highways, bridges, and other infrastructure.

This master plan will include the main stem of the South Platte River from the St Vrain River to the confluence with the Cache La Poudre (Poudre) River. Physical and hydrologic data may need to be collected on other tributaries to the extent such data influences planning efforts on the main stem. The planning effort may best be served by splitting the public involvement process into two segments (*Plains*, mostly agricultural considerations; and *Urban*, mostly riverfront property owners and public transportation considerations). Master planning must include collaboration with all agencies, local governments and their respective planning to ensure continuity along the entire river corridor.

Stream Corridor Master Plans should guide communities towards prioritization and implementation of stream rehabilitation and restoration projects that reduce the risk of impacts to life and property during future flood events. The ultimate result of master planning efforts and subsequent project implementation is increased resiliency in our communities, economies, and river systems.

DESCRIPTION OF WATERSHED

The South Platte was originally called the Rio Chato (see the report of the Humano and Bonillo Expedition). In 1702, it was named the Rio Jesus Maria by Captain Jose Lopez Naranjo, the Tewa Irish scout and Captain of War of the New Mexico Indian Auxiliaries who was ordered by the Viceroy of New Spain to search the Tierra Incognita for a French incursion into New Mexico.

The **South Platte River** (Arapaho: Niinéniniicíihéhe') is one of the two principal tributaries of the Platte River and is itself a major river of the American Midwest and the American Southwest/Mountain West, located in the U.S. states of Colorado and Nebraska. Its drainage basin includes much of the eastern flank of the Rocky Mountains in Colorado; much of the populated region known as the Colorado Front Range and Eastern Plains; and a portion of southeastern Wyoming in the vicinity of the city of Cheyenne. It joins the North Platte River in western Nebraska to form the Platte, which then flows across Nebraska to the Missouri. The river serves as the principal

source of water for eastern Colorado. In its valley along the foothills in Colorado, it has permitted agriculture in an area of the Colorado Piedmont and Great Plains that is otherwise arid.

The river is formed in Park County, Colorado, southwest of Denver in the South Park grassland basin by the confluence of the South Fork and Middle Fork, approximately 15 miles (24 km) southeast of Fairplay. Both forks rise along the eastern flank of the Mosquito Range, on the western side of South Park, which is drained by the tributaries at the headwaters of the river. From South Park, it passes through 50 miles (80 km) of the Platte Canyon and its lower section, Waterton Canyon. Here, it is joined by the North Fork before emerging from the foothills southwest of the Denver suburb of Littleton. At Littleton, the river is impounded to form Chatfield Reservoir, a major source of drinking water for the Denver Metropolitan Area.

The river flows north through central Denver, which was founded along its banks at its confluence with Cherry Creek. The valley through Denver is highly industrialized, serving generally as the route for both the railroad lines, as well as Interstate 25. On the north side of Denver it is joined somewhat inconspicuously by Clear Creek, which descends from the mountains to the west in a canyon that was the cradle of the Pike's Peak Gold Rush. North of Denver it flows through the agricultural heartland of the Piedmont (a shale region that was formed through erosion by the ancestor of the river following the creation of the Rockies). It flows directly past the communities of Brighton and Fort Lupton, and is joined in succession by Saint Vrain Creek, the Big Thompson River, and the Cache la Poudre River, which it receives just east of Greeley.

East of Greeley it turns eastward, flowing across the Colorado Eastern Plains, past Fort Morgan and Brush, where it turns northeastward. It continues past Sterling, and runs into Nebraska between Julesburg, Colorado and Big Springs, Nebraska. In Nebraska, it passes south of Ogallala and joins the North Platte River near the city of North Platte.

Water resources in the eastern reaches of the South Platte River are managed by the Northern Colorado Water Conservancy District as part of the Colorado Big Thompson Project. Agriculture is a primary use on the plains areas associated with the river while recreation, residential living, and non-farm commercial activities are additional non-consumptive uses.

CONTRACTING ENTITY AND REQUIRED PRODUCTS

The South Platte River Restoration Coalition (SPRRC), with City of Evans (CoE) as its Fiscal Sponsor and contract administrator for this master plan, is issuing this Request for Proposals (RFP) to qualified consultants to provide master planning services for the South Platte River. Services are requested to complete master planning from the confluence of Saint Vrain Creek to the confluence of the Cache La Poudre.

PRODUCTS

General products and deliverables associated with this planning process include but are not limited to:

- Develop a realistic and effective master planning approach, schedule, and process that leads to the development of a conceptual river restoration master plan;

- Acquire, develop, and/or update (and analyze) hydrologic, biological, geomorphic, and other data deemed necessary to develop a conceptual river restoration master plan and support future FEMA floodplain mapping efforts;
- Facilitate multiple public meetings associated with master planning efforts;
- Prioritize restoration treatments;
- Provide a river restoration master plan and all supporting documentation to SPRRC;
- Coordinate all efforts with other key agencies and partners working on various parts of the master planning process (i.e., Milliken has a Master Plan in process as does the City of Evans);
- Provide for ongoing community engagement, including opportunities for volunteer engagement at all phases of master planning and subsequent implementation of restoration plans;
- Update hydrologic conditions in target river segments;
- Quantification of ecosystem benefits resulting from implementing various alternatives;
- Develop a master plan that can be used for any future NEPA process, where federal lands are involved.
- Provide an analysis of flood, ecosystem, and geomorphic risks;
- Provide conceptual designs and program frameworks;
- Develop an alternatives analysis and project prioritization;
- Provide conceptual level estimate of probable design and construction costs of elements within each alternative.
- Identify fiscal and material resources for use in the implementation of the plan

The master plan will be collaborative in nature, drawing on the expertise of engineers, fluvial geomorphologists, ecologists, riparian and wetland restoration specialists, fisheries biologists, and risk experts, and informed by input from impacted home and business owners and the community at large.

The master plan should be based on solid scientific and engineering understanding for river system evaluation and decision-making. In addition to standard hydrologic, hydraulic, and geomorphic analysis, it should employ qualitative and quantitative risk assessment tools that distill extensively complicated factors into information the SPRRC and its partners can use to make informed long-term and short-term recovery and planning decisions. The master plan should also characterize multiple benefit projects, those projects and management strategies with flood and geomorphic risk benefits as well as ecosystem and recreational enhancements.

THEMES

The end result will be a comprehensive master plan that successfully incorporates the following themes. Due to the significant hydrological, geomorphic, and land use differences along the entire geographic area of the river, it is recommended that the master planning effort focus on one area of the river: the confluence with the St. Vrain downriver to the confluence with the Poudre River.

Hydrologic, Physical, and Structural Themes

- Road and bridge protection;
- Channel stabilization, relocation, and/or reconfiguration;
- Strategies that include water supply diversion reconstruction and multi-objective function;

- Utility protection, including drinking and wastewater processing, and transportation corridors;

Recreation Themes

- Recreation improvements, including trail, fishing, and/or infrastructure and utility maintenance and access development on existing public properties or private properties that have a public easement in place for such uses identified here;

Biological and Environmental Themes

- Upland and bank erosion mitigation along river corridor;
- Strategies that enhance Water Quality by minimizing inflows of nutrients, chemicals and sediment into the river.
- Aquatic and terrestrial wildlife habitat improvement/restoration, including but not limited to low flow channel improvements, wetland and riparian restoration, endangered fish habitat needs, and fish passage structures, spawning bed locations, backwater areas, etc.

Flood Mitigation Themes

- Strategies that reduce the impact of future flooding on the communities along the South Platte River;
- Strategies that accomplish floodplain preservation/restoration and flood control;
- Provide strategies for reducing debris inputs into the main stem from tributaries after future flood events, especially post-fire events or other catastrophic events.

Resiliency Themes

- Develop strategies that create resilient communities and ecosystems.

Additionally, the selected team will work with current exigent project efforts to coordinate short-term solutions, particularly with regard to 2014 spring run-off, into long-term planning.

The consultant does not need to provide environmental permitting services (i.e., 404 permitting) as that work is anticipated to be performed under a future RFP for individual restoration projects.

Consultant selection will be made on the basis of a balance of qualifications and the cost of proposed services.

CONDITIONS OF REQUEST FOR PROPOSALS

All proposals shall comply with the following conditions:

1. A representative of your company who has contractual authority must sign the proposal. Only one proposal will be accepted from any one company serving as a prime consultant. Sub-consultants to the prime consultant may be included in the proposal of more than one consulting company.
2. All proposals must be complete, comprehensive, and professional, but it is not necessary to include expensive displays or excess materials. All costs incurred in the preparation and presentation of the

proposal shall be entirely borne by the prospective consultant and any sub-consultants, and shall not be reimbursable by City of Evans.

3. Prospective consultants shall submit one hard copy of their proposal in addition to an electronic copy in the form of one PDF document on a thumb drive/flash drive, to be included with the hard copy.

4. All proposals shall be received at the City of Evans, 1100 37th Street, Evans, Colorado 80620 prior to 5:00 p.m. on **Friday, April 4th, 2014**. Proposals shall be submitted in a sealed envelope marked "RFP for River Restoration Master Planning" and addressed to Sheryl Trent, City of Evans. Please also include the submitting consulting company's name and address on the sealed envelope. Any proposal arriving after the deadline will not be included in the selection process.

5. All questions and inquiries relating to this proposal should be addressed to Sheryl Trent, Economic Development Director, City of Evans, 1100 37th Street, Evans, Colorado 80620, or by phone at (970) 475-1112 or by email at strent@evanscolorado.gov.

6. A selection committee will review the proposals received and select the consultant it believes is the most qualified to furnish the desired professional services.

7. The selected consultant will be required to execute a contractual agreement with City of Evans (Appendix A for sample). If you cannot accept the agreement language as is, please include within your proposal the items you cannot accept and the language you propose for substitution. The contract term will be through the end of 2014.

8. City of Evans reserves the right to reject any or all proposals.

ANTICIPATED SCHEDULE

1. Last day for submitting proposal: April 4, 2014
2. Review proposal by selection committee: April 7 - 11, 2014
3. Consultant Interviews: April 24, 2014
4. Consultant Selection: April 25, 2014
5. Execution of Agreement: May 6, 2014

Commence Work: Immediately following execution of agreement

CONTRACT TERM

Final acceptance of the South Platte River Restoration Master Plan by City of Evans is due on or before September 1, 2014. A draft plan is due by August 5, 2014 for presentation to City Council in a work session. **See "Contract Term Note" below for contingency.**

CONTRACT TERM NOTE: If due to access, snow pack, or other environmental constraints the Consultant cannot collect necessary data to meet the deadlines listed above, the final deliverable may be pushed back to October, 2014.

PROPOSAL ELEMENTS AND FORMAT

The response to this RFP, for items A-H below, is limited to a maximum of 25 single sided pages, excluding front and back covers, using no smaller than 12-point font and no less than 0.5" margins. Each response should be complete yet concise and contain only the elements shown below. Please avoid submittal of extraneous and unnecessary information.

A. Cover Letter

A one page cover letter shall be provided that expresses the consultant's interest to be considered and identifies the consultant's primary contact person. Please provide the name, telephone number, fax number, and email address of the primary contact person. The cover letter shall be signed by a person who has contractual authority with the consulting company, such as a principal, partner, senior manager, or officer of the consulting company.

B. Project Team

Describe the consultant's team for the project. Please also list any proposed sub-consultants (i.e., surveying, ecological, etc.). For the key project team members, which as a minimum should include the consultant's Project Manager and Project Engineer(s), please include:

1. A brief description of the individual's background and experience (brief resume);
2. Each individual's years of relevant experience;
3. A description of each individual's relevant experience; and
4. The role each individual will take on the project.

C. Relevant Project Experience

Please provide relevant project experience per the guidelines given below in the general categories of river restoration master planning, analyzing and designing river channel modifications, stream stabilization improvements, river and floodplain restoration, river hydraulics, floodplain modeling and mapping, river ecology and biological assessments, fluvial geomorphology of similar river systems, fisheries habitat improvements, watershed fundraising experience and managing public involvement processes. Please do not provide more than three relevant projects for each category. Projects can be listed for multiple categories if significant work encompassed that category.

D. References

List of clients for which the consulting company performs similar work (include contact information for each client, with a maximum of ten clients listed).

E. Understanding of RFP and Approach

Provide a summary of your understanding of the requested services and your proposed approach to this project.

F. Proposed Work Schedule

Provide a proposed work schedule with milestone deliverables, and dates, with a completion date according to details listed in "Contract Term" above.

G. Fee Proposal

Provide an itemized fee proposal that coincides with the Scope of Work and the Consultant's approach to the project.

H. Workload Capacity

Due to the unique nature of flood recovery work in a natural disaster of this significance and the short time frame available to protect critical infrastructure, sufficient consultant workload capacity is

critical for this contract. Anticipated future projects may have a very short time frame for scoping, analysis and design, bidding, and construction. Some work, including construction, will need to be performed before spring runoff in 2014. The Master Plan will be used to guide much of the upcoming restoration and protection work in the river corridor. The consultant's ability and commitment to perform this work in the available time frame is essential. Therefore, please list your proposed project team's current workload capacity and commitments in addition to its anticipated capacity for March 2014, through June 2014. Please provide the percentage of time that each project team member would be committed to this project. Please state your team's commitment to accomplish this project in what's acknowledged to be a tight time frame.

INSURANCE AND LIABILITY

Before a contract will be awarded, the successful contractor must supply a copy of the consulting company's Certificates of Insurance, Workers' Compensation, Commercial General Liability Insurance, and Professional Liability Insurance.

SELECTION PROCESS

The consultant selection process is anticipated to follow the previously described schedule. Upon receipt of proposals, the selection committee will individually review and score each proposal. The scores will be compiled in order to rank the applicants from highest to lowest. The top consulting company(s) will be selected to enter into a professional services agreement with WRV, subject to the approval of the South Platte River Restoration Coalition. Interviews will be held only if the BTRRC deems it necessary to help differentiate between two or more closely scored consulting companies.

The proposals will be evaluated using the following general criteria with a maximum of 100 points available:

1. Project Team – project manager, key team members, and the consulting company's qualifications; defined responsibilities; key team member's experience working together (continuity). **35 points**
2. Relevant River Restoration and Science-based Project Experience – previous experience by the project team analyzing and designing river channel modifications, stream bank stabilization, river hydraulics, geomorphology, river restoration, floodplain restoration, floodplain modeling and mapping, ecological and biological assessments, fisheries habitat improvements, demonstrated understanding of floodplain regulations, previous flood recovery work, understanding of the unique permitting requirements of river related construction projects, and previous experience working on Colorado Front Range Rivers. **25 points**
3. Relevant Master Planning and Public Facilitation Experience – Efficiency with small and large projects alike, demonstrated responsiveness to short time frames, complex river projects, and demonstrated experience with consensus building and facilitating multiple and diverse stakeholders resulting in a cooperative planning processes and the building of strong community coalitions. **25 points**
4. Workload Capacity – Demonstrated workload capacity and commitment made to BTRRC vision and this master planning project. **15 points**

SCOPE OF WORK

Task 1: Public Engagement, Coordination, and Reporting

The selected consultant will be required to assist and coordinate with the City of Evans and its key partners to organize, facilitate, and otherwise support multiple public events, and with reporting requirements for grant funding associated with the master plan. Public events must include public notice, outreach to underserved communities and displaced stakeholders, information gathering from those attending, and the collection and inclusion of feedback into the ongoing planning process. The consultant should have a demonstrated history of a commitment to inclusive public engagement. The plans should include use of new technologies, methods of communication, and engagement forums that access, inform, and educate a large proportion of the target population. Special attention should be dedicated towards vulnerable, underserved, and displaced populations. The consultant will:

- Work with the City and its key partners to facilitate public outreach and community meetings, and solicit / submit scientific and engineering design options;
- Solicit input throughout the master planning process through group meetings, individual meetings, and surveys as appropriate;
- Coordinate with attorneys or a legal team, as instructed by the City and its key partners;
- Make presentations to the City and its key partners and community for input and approval;
- Provide technical information to support the City and its key partners with development of progress reports on a regular schedule as defined by the City and its key partners, as well as a final report, to meet grant funding requirements.

Task 2: Stream Corridor Evaluations

The selected consultant will collect and compile existing data and assessments for the South Platte River, including but not limited to rainfall data from the September 2013 flood and previous large storm events, GIS data, property boundaries, infrastructure locations, pre- and post-flood aerial photos and LiDAR data, watershed plans, ecological, riparian, or geomorphic assessments, flood studies, FEMA floodplain maps, hydrologic and hydraulic models, fire protection plans, wildlife studies, and stream restoration reports. The consultant will coordinate with CWCB, the City of Evans, Milliken, LaSalle, Greeley, Loveland, Larimer and Weld County, USGS, CPW, USFWS, NRCS, CDOT, USACE, and others to obtain and select the most appropriate current data, identify gaps, and develop strategies for augmenting the data set as necessary. We anticipate that gaps the consultant will need to fill include:

- Ecologic stream assessments;
- Verify existing hydrologic data or recommend required updates or new models;
- Use existing hydraulic models that will provide sufficient results for most of the Master Plan effort. Where required the consultant may create small, local hydraulic models to more fully understand and/or determine appropriate recommendations as needed.

Task 3 – Flood, Ecosystem, and Geomorphic Risk Assessments

The selected consultant will support the City and its key partners by performing a detailed assessment for flood and geomorphic risk. The consultant will also conduct an ecosystem risk assessment to evaluate the vulnerability of riparian ecosystems to future flooding and quantify the benefits and impacts that proposed projects have on ecosystem function. The consultant will:

- Coordinate with the City and its key partners to identify assets (banks, bridges, structures, etc.) at risk during future floods;
- Supplement the City and its key partners asset inventory with field work, as necessary;
- Conduct risk assessments using standard and published methods;
- Prioritize action areas based on the results of the flood, geomorphic, and ecosystem risk assessments.

Task 4 - Identify Strategies and Project Frameworks

The selected consulting company should show a history of commitment to innovative and ecologically focused designs in stream corridors. Each plan should incorporate best practices, including resilient design and the use of natural materials and nonstructural approaches and include partnerships with non-profit, educational, or other civil society organizations to deliver innovative solutions and potential project partners. The selected consultant will develop strategies and projects that reduce the risks and vulnerabilities identified in Task 3. The consultant will present strategies and example projects and programs at a public meeting for public input. Strategies may include:

- Channel stabilization, relocation, and/or reconfiguration
- Increase capacity of existing road crossings;
- Reconnect frequently and infrequently inundated floodplains;
- Protection and restoration of wetland and riparian areas
- Encourage low-impact development for stormwater systems within the urban and rural areas covered by the master plan;
- Remapping of the floodplain based on new hydrologic models being developed by the CWCB and CDOT. This will not be a LOMR submittal but it could certainly include a new floodplain map that can be used for a LOMR submittal.
- Low flow channel improvements and fish passage improvements
- Determine need for FEMA floodplain re-mapping;
- Strategies for water quality improvement such as filter strips on non-point source agricultural lands and debris flow mitigation from tributaries during future flood events.
- Join the National Flood Insurance Program's Community Rating System (NFIP CRS);
- Identify habitat improvement and recreation areas;
- Develop recreation corridor improvements on public lands and private lands where public easements are in place;
- Provide strategies for reducing debris inputs into the main stem from tributaries after future flood events, especially post-fire events or other catastrophic events
- Evaluate any existing plans in the area covered by the master plan and recommend revisions or additions, as needed.

Task 5: Prepare Conceptual Design Drawings and Develop Management Frameworks

For each of the strategies outlined in Task 4, conceptual project plans or management frameworks shall be developed by the selected consulting company.

Examples for structural projects may include:

- Rough locations, sizes, and capacities for improvements to bridges, channels, floodplains, and the storm drain system;
- Channel stabilization locations, typical cross sections, profiles and bank stabilization details.

Examples for non-structural, management frameworks may include:

- Guidelines for flood defensible space;
- Suggested locations of property buy outs, if applicable;
- Outline new stormwater and sewer/septic management criteria;
- Revise floodplain regulations;
- Land use planning updates.

Task 6: Prioritize Projects

The selected consulting company will perform benefit/ cost analysis of proposed improvements and management frameworks using standard methods. Assessed benefits include flood and geomorphic risk reduction, ecosystem enhancements, water quality improvements, recreation improvements and associated economic benefits. The master plan(s) must prioritize multiple benefit projects, those with flood and geomorphic risk benefits as well as ecosystem and recreation benefits. To do this the selected consultant will:

- Evaluate construction feasibility of proposed structural improvements and implementation protocols for non-structural measures;
- Perform approximate cost-benefit estimates for alternate strategies, including “green” vs. “gray” infrastructure comparisons, where appropriate;
- Identify future restoration projects and maintenance requirements;
- Identify potential funding opportunities;
- Document how structural project design will list and analyze all failure mechanisms to decrease the likelihood and consequence of structural project failures;
- Demonstrate that structural project failure will not increase risk to life and property;
- Develop final prioritized implementation plans for structural and non-structural projects and improvements;
- Develop a timeline, and estimated budget for each step of implementation of the plans.

Task 7: Draft and Final South Platte River Corridor Master Plan(s)

The selected consultant will write the final South Platte River Corridor Master Plan and should address both the restoration of key assets and actions that will make the community more resilient to future flood threats. It will include the analysis and developments outlined in Tasks 2-6 and should conclude with projects and an implementation plans that will improve the local economy and ecosystem while also enhancing the resilience of the community to flood and geomorphic risk. The consultant will work with the City and its key partners to facilitate public outreach and community meetings to present a draft and final master plans.

Consultant begins work immediately upon contract award.

CITY OF EVANS AND ITS KEY PARTNERS SUPPLIED INFORMATION

Any historical data, maps, etc. previously obtained by the City and its key partners will be provided by the City and its key partners. The selected consultant will be responsible for compiling all additional and necessary materials as a part of Task 2.

APPENDIX A: SAMPLE CONTRACT

City of Evans, Colorado **AGREEMENT FOR PROFESSIONAL SERVICES BY INDEPENDENT CONTRACTOR**

THIS AGREEMENT is made and entered into this 20th day of September, 2013, by and between the City of Evans, State of Colorado (hereinafter referred to as the "City"), and (hereinafter referred to as "Consultant").

RECITALS:

- A. The City requires professional services.
- B. Consultant has held itself out to the City as having the requisite expertise and experience to perform the required services for the Project.

NOW, THEREFORE, it is hereby agreed, for the consideration hereinafter set forth, that Consultant shall provide to the City professional consulting services for the Project.

I. SCOPE OF SERVICES

Consultant shall furnish all labor and materials to perform the services required for the complete and prompt execution and performance of all duties, obligations and responsibilities for the Project, which are described or reasonably implied from **Exhibit A**, which is attached hereto and incorporated herein by this reference.

II. THE CITY'S OBLIGATIONS/CONFIDENTIALITY

The City shall provide Consultant with reports and such other data as may be available to the City and reasonably required by Consultant to perform hereunder. No project information shall be disclosed by Consultant to third parties without prior written consent of the City or pursuant to a lawful court order directing such disclosure. All documents provided by the City to Consultant shall be returned to the City. Consultant is authorized by the City to retain copies of such data and materials at Consultant's expense.

III. OWNERSHIP OF INSTRUMENTS OF SERVICE

The City acknowledges that the Consultant's documents are an instrument of professional service. Nevertheless, the documents prepared under this Agreement shall become the property of the City upon completion of the services. Any reuse of the Consultant's documents is at the City's own risk.

IV. COMPENSATION

A. In consideration for the completion of the services specified herein by Consultant, the City shall pay Consultant \$45.00 per hour. Invoices will be itemized and include hourly breakdown for all personnel and other charges. The maximum fee specified herein shall include all fees and expenses incurred by Consultant in performing all services hereunder.

B. Consultant may submit monthly or periodic statements requesting payment. Such request shall be based upon the amount and value of the services performed by Consultant under this Agreement, except as otherwise supplemented or accompanied by such supporting data as may be required by the City.

1. All invoices, including Consultant's verified payment request, shall be submitted by Consultant to the City no later than the twenty-fourth (24th) day of each month for payment, pursuant to the terms of this Agreement. In the event Consultant fails to submit any invoice on or before the twenty-fourth (24th) day of any given month, Consultant defers its right to payment, pursuant to said late invoice, until the following month.
2. Progress payments may be claimed on a monthly basis for reimbursable costs actually incurred to date as supported by detailed statements, including hourly breakdowns for all personnel and other charges. The amounts of all such monthly payments shall be paid within thirty (30) days after the timely receipt of invoice, as provided by this Agreement.

C. The City has the right to ask for clarification on any Consultant invoice after receipt of the invoice by the City.

D. In the event payment for services rendered has not been made within forty-five (45) days from the timely receipt of the invoice for any uncontested billing, interest will accrue at the rate of twelve percent (12%) per annum compounded annually. In the event payment has not been made within ninety (90) days from the receipt of the invoice for any uncontested billing, Consultant may, after giving seven (7) days' written notice and without penalty or liability of any nature, suspend all authorized services specified herein. In the event payment in full is not received within thirty (30) days of giving the seven (7) days' written notice, Consultant may terminate this Agreement. Upon receipt of payment in full for services rendered, Consultant will continue with all authorized services.

E. Final payment shall be made within sixty (60) calendar days after all data and reports (which are suitable for reproduction and distribution by the City) required by this Agreement have been turned over to and approved by the City and upon receipt by the City of Consultant's written notification that services required herein by Consultant have been fully completed in accordance with this Agreement and all data and reports for the Project.

V. COMMENCEMENT AND COMPLETION OF SERVICES

Within seven (7) days of receipt from the City of a Notice to Proceed, Consultant shall commence services on all its obligations as set forth in the Scope of Services or that portion of such obligations as is specified in said Notice. Except as may be changed in writing by the City, the Project shall be complete and Consultant shall furnish the City the specified deliverables, as provided in **Exhibit A**.

VI. CHANGES IN SCOPE OF SERVICES

A change in the Scope of Services shall constitute any material change or amendment of services which is different from or additional to the Scope of Services specified in Section I of this Agreement. No such change, including any additional compensation, shall be effective or paid, unless authorized by written amendment executed by the City. If Consultant proceeds without such written authorization, then Consultant shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee or representative of the City shall have the authority to enter into any changes

or modifications, either directly or implied by a course of action, relating to the terms and scope of this Agreement.

VII. PROFESSIONAL RESPONSIBILITY

A. Consultant hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, as required by law.

B. The services performed by Consultant shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of services in the applicable community.

C. Consultant shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by Consultant under this Agreement. Consultant shall, without additional compensation, correct or resolve any errors or deficiencies in his designs, drawings, specifications, reports, and other services, which fall below the standard of professional practice, and reimburse the City for construction costs caused by errors and omissions which fall below the standard of professional practice.

D. Approval by the City of drawings, designs, specifications, reports and incidental services or materials furnished hereunder shall not in any way relieve Consultant of responsibility for technical adequacy of the services. Neither the City's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Consultant shall be and remain liable in accordance with applicable performance of any of the services furnished under this Agreement.

E. The rights and remedies of the City provided for under this Agreement are in addition to any other rights and remedies provided by law.

VIII. COMPLIANCE WITH LAW

The services to be performed by Consultant hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

IX. INDEMNIFICATION

A. **INDEMNIFICATION – GENERAL:** The City cannot and by this Agreement does not agree to indemnify, hold harmless, exonerate or assume the defense of the Consultant or any other person or entity whatsoever, for any purpose whatsoever. Provided that the claims, demands, suits, actions or proceedings of any kind are not the result of professional negligence, the Consultant shall defend, indemnify and hold harmless the City, its mayor and City council, officials, officers, directors, agents and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature whatsoever, including worker's compensation claims, in any way resulting from or arising from the services rendered by Consultant, its employees, agents or subconsultants, or others for whom the Consultant is legally liable, under this Agreement; provided, however, that the Consultant need not indemnify or save harmless the City, its mayor and City council, its officers, agents and employees from damages to the extent caused by the negligence of the City's mayor and City council, officials, officers, directors, agents and employees.

B. **INDEMNIFICATION FOR PROFESSIONAL NEGLIGENCE:** The Consultant shall indemnify and hold harmless the City, its mayor and City council, and any of its officials, officers, directors, and employees from and against damages, liability, losses, costs and expenses, including reasonable attorneys fees, but only to the extent caused by the negligent or intentional acts, errors or omissions of the Consultant, its employees, subconsultants, or others for whom the Consultant is legally liable, in the performance of professional services under this Agreement. The Consultant is not obligated under this subparagraph IX.B. to indemnify the City for the negligent acts of the City, its mayor or City council, or any of its officials, officers, directors, agents and employees.

C. **INDEMNIFICATION – COSTS:** Consultant agrees, to the extent provided in Paragraph A., above, to investigate, handle, respond to, and to provide defense for and defend against any such liability, claims or demands at the sole expense of Consultant or, at the option of the City, agrees to pay the City or reimburse the City for the defense costs incurred by the City in connection with any such liability, claims or demands. Consultant also agrees, to the extent provided in Paragraph A. above, to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims or demands alleged are groundless, false or fraudulent. If it is determined by the final judgment of a court of any competent jurisdiction that such injury, loss or damage was caused in whole or in part by the act, omission or other fault of the City, its mayor and City council, officials, officers, directors, agents and employees, the City shall reimburse Consultant for the portion of the judgment attributable to such act, omission or other fault of the City, its mayor and City council, officials, officers, directors, agents and employees.

X. INSURANCE

A. Consultant agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands and other obligations assumed by Consultant, pursuant to Section IX, Indemnification, above. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law. Consultant shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to Section IX, Indemnification, above, by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.

B. Consultant shall procure and maintain, and shall cause any subconsultant of Consultant to procure and maintain, the minimum insurance coverage's listed below. Such coverage's shall be procured and maintained with forms and insurers acceptable to the City. All coverage's shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Consultant, pursuant to Section IX, Indemnification, above. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Worker's compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of services under this Agreement, and Employer's Liability insurance with minimum limits of Five Hundred Thousand Dollars (\$500,000) each claim, Five Hundred Thousand Dollars (\$500,000) disease - policy limit, and Five Hundred Thousand Dollars (\$500,000) disease - each employee.
2. Commercial general liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) general 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 employee acts), blanket

contractual, products and completed operations. The policy shall contain a severability of interests provision.

3. Professional liability insurance with minimum limits of One Million Dollars (\$1,000,000) each claim and Two Million Dollars (\$2,000,000) annual aggregate, and Consultant shall maintain such coverage for at least three (3) years from the termination of this Agreement.
4. The policy required by Paragraph 2, above shall be endorsed to include the City and the City's officers, employees and consultants as additional insureds. Every policy required above shall be primary insurance, with the exception of Professional Liability and Worker's Compensation, and any insurance carried by the City, its officers, its employees or its consultants shall be excess and not contributory insurance to that provided by Consultant. No additional insured endorsement to the policy required by Paragraph 1, above shall contain any exclusion for bodily injury or property damage arising from completed operations. Consultant shall be solely responsible for any deductible losses under any policy required above.
5. The certificate of insurance provided for the City shall be completed by Consultant's insurance agent as evidence that policies providing the required coverage's, conditions and minimum limits are in full force and effect, and shall be reviewed and approved by the City prior to commencement of the Agreement. No other form of certificate shall be used. The certificate shall identify this Agreement and shall provide that the coverage's afforded under the policies shall not be cancelled or terminated until at least thirty (30) days' prior written notice has been given to the City. The completed certificate of insurance shall be sent to:

City of Evans
1100 37th Street
Evans, Colorado 80620-2036
Attn: Risk Manager

6. Failure on the part of Consultant to procure or maintain policies providing the required coverage's, conditions and minimum limits shall constitute a material breach of agreement upon which the City may immediately terminate this Agreement or, at its discretion, the City 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 monies so paid by the City shall be repaid by Consultant to the City upon demand, or the City may offset the cost of the premiums against any monies due to Consultant from the City.
7. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
8. The parties hereto understand and agree that the City, its officers and its employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently Three Hundred Fifty Thousand Dollars (\$350,000) per person and Nine Hundred Ninety Thousand Dollars (\$990,000) per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Colo. Rev. Stat. §24-10-101, et seq., as from time to time amended, or otherwise available to the City, its officers or its employees.

XI. NONASSIGNABILITY

Neither this Agreement nor any of the rights or obligations of the parties hereto shall be assigned by either party without the written consent of the other.

XII. TERMINATION

This Agreement shall terminate at such time as the services in Section I are completed and the requirements of this Agreement are satisfied, or upon the City's providing Consultant with seven (7) days' advance written notice, whichever occurs first. In the event the Agreement is terminated by the City's issuance of said written notice of intent to terminate, the City shall pay Consultant for all services previously authorized and completed prior to the date of termination. If, however, Consultant has substantially or materially breached the standards and terms of this Agreement, the City shall have any remedy or right of set-off available at law and equity. If the Agreement is terminated for any reason other than cause prior to completion of the Project, any use of documents by the City thereafter shall be at the City's sole risk, unless otherwise consented to by Consultant.

XIII. CONFLICT OF INTEREST

The Consultant shall disclose any personal or private interest related to property or business within the City. Upon disclosure of any such personal or private interest, the City shall determine if the interest constitutes a conflict of interest. If the City determines that a conflict of interest exists, the City may treat such conflict of interest as a default and terminate this Agreement.

XIV. VENUE

This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of Weld, State of Colorado.

XV. INDEPENDENT CONTRACTOR

A. Consultant is an independent contractor. Notwithstanding any provision appearing in this Agreement, all personnel assigned by Consultant to perform services under the terms of this Agreement shall be, and remain at all times, employees or agents of Consultant for all purposes. Consultant shall make no representation that it is the employee of the City for any purposes.

B. **Disclosure: Consultant is not entitled to workers' compensation benefits and Consultant is obligated to pay federal and state income tax on any moneys earned pursuant to this Agreement for Professional Services by Independent Contractor.**

XVI. NO WAIVER

Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the City shall not constitute a waiver of any of the other terms or obligations of this Agreement.

XVII. ENTIRE AGREEMENT

This Agreement and the attached Exhibit A is the entire Agreement between Consultant and the City, superseding all prior oral or written communications. None of the provisions of this Agreement may be amended, modified or changed, except as specified herein.

XVIII. NOTICE

Any notice or communication between Consultant and the City which may be required, or which may be given, under the terms of this Agreement shall be in writing, and shall be deemed to have been sufficiently given when directly presented or sent pre-paid, first class United States mail, addressed as follows:

The City: City of Evans
Attn: Aden Hogan, City Manager
1100 37th Street
Evans, Colorado 80620-2036

Consultant:

XIX. EFFECTIVE DATE AND EXECUTION

This Agreement shall become effective following execution by both Consultant and City. This Agreement may be executed in counterparts, including by facsimile or electronically, each of which shall be considered an original, but all of which together shall constitute one instrument.

CITY OF EVANS, COLORADO

By: _____
Sheryl Trent, Economic Development Director

THE FOREGOING instrument was subscribed and sworn to before me this ____ day of _____, 2014 by Sheryl Trent. Witness my hand and official seal.

Notary Public

My Commission Expires: _____

SEAL

CONSULTANT

By: _____
Title: _____

THE FOREGOING instrument was subscribed and sworn to before me this ____ day of _____, 2014 by _____. Witness my hand and official seal.

SEAL

Notary Public

My Commission Expires: _____