

Eastern Rio Blanco Metropolitan Recreation & Park District

Request for Proposal (RFP)

Date of Issue: July 15, 2011

Recreation, Parks & Trails Master Plan

Project Manager Contact Information:

Michael Weinbrecht, Operations Manager
ERBM Recreation & Park District
101 Ute Road
Meeker, CO 81641
970-878-4396
michaelw@meeckerrecdistrict.com

1.0 DEFINITIONS IN THIS RFP

- 1.1 “District” means the Eastern Rio Blanco Metropolitan Recreation & Park District.
- 1.2 “Proposal” is the response of a person, firm, or corporation proposing to provide the services sought by this RFP.
- 1.3 “Proposer” is the person, firm, or corporation that submits a response to this RFP.
- 1.4 “Consultant” is the Proposer with which the District enters into a contract to provide the services sought by this RFP.

2.0 PURPOSE OF RFP/SCOPE OF WORK

2.1 District and Project Overview

Meeker is the county seat and most populous town in Rio Blanco County, situated in the northwestern corner of Colorado at an elevation of 6,249 feet. The population is approximately 2,200 people within the town limits and 3500 within the boundaries of the District, which has an area of roughly 2,000 square miles. The Town of Meeker acts as the western gateway to the popular White River National Forest, as well as the the Flat Tops Wilderness Area. Outdoor recreational activities such as camping, hunting, and hiking abound throughout the region.

The District was formed in 1981 with the support of the Town of Meeker and the Meeker RE-1 School District in order to provide true recreational opportunities for the area’s residents. Currently, the District staff is comprised of 13 full-time, 5 part-time and approximately 15 seasonal employees. The District is governed by a five member Board of Directors that meets twice a month. Current revenue is composed from mill levy, program and user fees and other tax contributions from Rio Blanco County.

The District's goal is to hire a qualified Consultant to develop a 5-10 year comprehensive Recreation, Parks & Trails Master Plan. The services will include a review of background information, public consultation on community parks and recreation needs and facilities, and the development of a dynamic, useable Recreation, Parks & Trails Master Plan with implementation strategies. The Consultant will collect and analyze data to develop goals, policies and standards for the District’s park system, open space, trails, recreation facilities and program development. Firms submitting Proposals must have a proven track record in preparing master plans and/or community-wide strategic plans and have successfully fulfilled similar requirements and completed projects.

2.2 Project Coordination

The Consultant is expected to work closely with District Staff and the Board of Directors throughout the course of the project. Monthly status reports shall be submitted to District Staff in order to keep the project on schedule and keep all identified stakeholders apprised of the progress in preparing the Master Plan report. The meetings will be utilized to facilitate communication and allow opportunity for Board/Staff input and discussion on project issues, status, schedule, coordination and guidance.

2.3 Guiding Principles

- a. Overall District financial commitments must remain within the current financial capacity of the District.
- b. Existing and proposed facilities, to the greatest extent possible, should support multiple uses and/or joint uses, including recommendations on enhancing existing parks and recreation facilities and programs.
- c. Maintenance and upkeep.

2.4 Inventory

- a. Identify and map the District's parklands and facilities.
- b. Compile and inventory an assessment of the existing parks, trails, open space and recreation facilities. This assessment also should include regional parks and recreation facilities and programs located within a ten mile radius of the Town. The assessment will include a comparative analysis to communities of similar size and density, using regionally and nationally accepted standards. The analysis should consider the capacity of each amenity found within the system (playgrounds, ball fields, trails, natural areas, *etc.*), as well as functionality, accessibility, condition, comfort and convenience. Each amenity should be evaluated regarding its service from both a resident and visitor perspective and recommend appropriate operators of amenities. Evaluation criteria should be based on the expressed values of the community. The analysis also will include identification of best possible providers of community and recreation services and recommendations for minimizing duplication and enhancing partnerships where appropriate.

2.5 Needs/Wants Assessment

- a. Participate with District Board of Directors and Staff to review project parameters, gather available materials, identify additional information requirements, review preliminary community involvement strategy and establish project timetable and products.
- b. Identify the community's needs for active and passive recreation facilities and program development through public consultation. This project will involve significant public involvement and should include a minimum of three (3) public workshops and a minimum of two (2) focus group

meetings (participants to be determined) to keep community members informed and to solicit input from the public during the planning process.

- c. Review 2005 Recreation Master Plan Goals and Objectives.
- d. Review and interpret demographic trends and characteristics of the District using information from the Census Bureau and other regional and local sources.
- e. Identify and assess federal, state or local laws, regulations and ordinances that will impact the Master Plan and assess the impact, both in terms of design and financial impact.

2.6 Action Plan

- a. Conduct a Gap Analysis between the community's needs and existing inventory.
- b. Upgrading existing recreation facilities and programs.
- c. Identifying potential locations for future recreation facilities and programs, open spaces and trails.
- d. Provide facilities maintenance and operations analysis.
- e. Develop an action plan, which includes strategies, priorities, and an analysis of budget support and funding mechanisms, for the short term, midterm and long term, for the park system, open spaces, trails and recreation programs and services within the District.
- f. Establish land acquisition/disposition strategy.
- g. Identify and analyze federal, state or local laws, regulations and ordinances that will impact the Master Plan and analyze the impact, both in terms of design and financial impact.

2.7 Master Plan Format

The Master Plan report shall include discussions, evaluations, analysis, findings and recommendations, *etc.* of all elements necessary to meet the District's short-term, mid-term and long-term vision. This should include but may not be limited to:

- a. An Executive Summary that outlines the process taken to create the report, as well as summarizing the research and findings (a prioritized list of goals and objectives should be included here). Three (3) hard copies and an electronic version in pdf format for the District's website.
- b. Written goals, plans, objectives and policy statements that articulate a clear vision and model for the District's future.
- c. Charts, graphs, maps and other data as needed to support the Master Plan and its presentation to the appropriate audiences.
- d. A Financial Plan that ensures both the growth and fiscal stability of the District.
- e. An Action Plan.
- f. Performance Measurement Standards
- g. A final site plan document, in color, for public review and presentation.

2.8 Presentation of Draft Master Plan

- a. Provide six (6) hard copies and an electronic version in pdf format of the draft Master Plan.
- b. Prepare written and graphic materials and assist with presenting the project at a minimum of two reviews with the District Board of Directors and Staff.
- c. Present project or provide updates upon request at District Board meetings.
- d. Prepare at least two schematic design alternatives, including conceptual level line-item construction cost estimates for each alternative.
- e. Include a tentative project schedule that divides the Scope of Work into specific tasks and establishes projected completion dates for these tasks.

2.9 Development of Final Recreation, Parks & Trails Master Plan

Provide six hard copies of the final Master Plan and one electronic version in pdf format.

2.10 District and Public Participation

The approach suggested by the Consultant should include steps designed to ensure that the final product will be developed in close consultation with District staff and should allow for the Consultant to make revisions based on those consultations, as well as comments received from the public and elected bodies as described above.

2.11 District Responsibilities

The District will be responsible for:

- a. Arranging, scheduling, and providing facility space for meetings.
- b. The District, through its appointed project manager, will work closely with the Consultant to answer questions, make decisions, provide guidance and assist with coordination where needed. The District's responsibilities do not include performing research and design tasks for the Consultant.

3.0 Proposal Submission Guidelines

3.1 Transmittal Letter

A transmittal letter identifying the Proposer.

3.2 Project Approach

Outline of Scope of Work and approach with estimated timeline. The Proposer should provide a schedule of deliverables including milestones for submittal for review and approval of such items as obtaining approval for 75% and 100% completion of preliminary design and dates for public participation.

3.3 Workload Capacity

The Proposer must show current workload and capacity to perform work on a reasonable schedule. The District desires that the Consultant have sufficient resources to begin work on the project by September 1, 2011 and complete all work by June 1, 2012, for a final presentation to the District Board of Directors on the same day.

3.5 Sealed Cost Proposal

Provide a sealed cost proposal in a separate envelop. Include as a minimum:

- a. Expected method of payment with a Guaranteed Maximum Price;
- b. All direct and indirect costs for performing the outlined work;
- c. A Person/Hour breakdown by discipline and task with hourly costs;
- d. A cost breakout for attending extra meetings beyond those considered in the Consultant's Proposal Scope of Work; and
- e. Actual overhead and profit fee rates.

3.6 Sub-Consultants

Proposals contemplating the use of sub-consultants must include the information requested in this section for each sub-consultant.

3.7 Submittal Timeline

The following is the preliminary schedule and timing leading up to a contract signing. The District may change this schedule as appropriate:

RFP Issuance	July 15, 2011
Proposal Submission Deadline	5 p.m. MST, July 29, 2011
Proposal Review	Week of August 1, 2011
Interviews with Shortlist Firms	Week of August 8, 2011
Consultant Selection Approval by the District	August 23, 2011
Contract Award by the District	August 26, 2011
Commence Work	September 1, 2011

3.8 Proposer Solely Responsible for Costs

No Proposer will have any claims or rights against the District for participating in the RFP process, including without limitation submitting a Proposal. Any costs incurred by a Proposer in preparing and submitting a Proposal and participating in the RFP process shall be the Proposer's sole responsibility.

3.9 Questions

All questions must be posed via email to Mr. Michael Weinbrecht at the following email address: michaelw@meekerrecdistrit.com. Proposers are not to contact the District Board members or other District employees.

All received questions along with appropriate responses will be distributed via email to all Proposers.

Questions will be accepted until July 22, 2011 and will typically be responded to within one business day.

3.10 Submittal Deadline and Location

In order to be considered, five (5) copies of the Proposal must be received by the District on or before July 29, by 5:00 p.m. MST. All Proposals must be delivered in a sealed envelope marked: Proposal – Recreation, Parks & Trails Master Plan. All materials submitted in response to this RFP become the property of the District and may be retained, returned or destroyed at the option of the District. Any Proposals received after the deadline will not be considered.

All Proposals shall constitute public records unless at the time of submitting a Proposal a Proposer specifically identifies the portion(s) of the Proposal that contains proprietary information or trade secrets, which portion(s) shall be segregated from the other portions of the Proposal, so as to allow disclosure of the non-confidential portion(s) of the Proposal in accordance with applicable law.

Proposals may be mailed or delivered to:

Michael Weinbrecht, Operations Manager
Eastern Rio Blanco Metropolitan Recreation & Park District
101 Ute Road
Meeker, CO 81641

3.11 Discretion of the District

The District reserves the right to reject any and all Proposals or part thereof and to waive any irregularities therein, and to expand, reduce or terminate the project at any time. Notwithstanding anything to the contrary in this RFP or in any addendums to this RFP, the District reserves the right to negotiate changes of any nature with any Proposer with respect to any term, condition, or provision in this RFP and/or in any Proposal.

3.12 Insurance

The Proposer must be willing and able to provide the insurance coverage required by the District (Appendix A).

3.13 Guaranteed Maximum Price

The Proposal must contain a good faith estimated Guaranteed Maximum Price (GMP) for the total project. Prior to the parties entering into a written contract, they will mutually agree upon the final GMP to be included in the contract. If the

parties are unable to agree upon the final GMP, the District may commence discussions with any other Proposer, terminate the project or begin a new RFQ/RFP process, in its sole discretion.

3.14 Evaluation Criteria

It is the District's policy that the selection of consultants to provide professional services shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. Each Proposal will be evaluated to determine responsiveness to all administrative and technical requirements of the RFP.

The evaluation criteria are intended to be used to make a recommendation to the District Board; however, the District Board is not required to use the criteria or to make an award based on the recommendation. Further, the District reserves the right to vary from this procedure as it determines to be in the District's best interest.

3.14.1 Evaluation Method

Compliance Check: All Proposals will be reviewed to verify that minimum requirements have been met. Proposers that submit a Proposal that has not followed the requirements in this RFP or do not meet minimum content and quality standards may be eliminated from further consideration.

Analysis: The Proposal review team will consist of three (3) to six (6) District staff and/or Board members. Members of an evaluation team will independently analyze each Proposal. The evaluation team will analyze how the Proposer's qualifications, experience, professional content, and proposed methodology meet the District's needs. Points will be assigned by each committee member using the point-scoring schedule below as a guideline.

At the discretion of the District, the evaluation team may conduct interviews of a short list of Proposers.

3.14.2 Point-Scoring Schedule

Proposals will be evaluated using the following criteria (total possible points = 100):

Proposer's Qualifications and Experience: 30 points

Verifiable technical capacity, experience on similar projects and an outstanding record of successfully completed projects. Past performance on District projects may be considered.

Personnel Qualifications and Experience: 30 points

Proposer's principal(s) and key personnel show experience and educational background, certification and licensing that are deemed to meet the project requirements.

Project Approach, Methodology and Good Faith Estimated GMP: 30 points

Proposer's familiarity with and understanding of the project, and the Proposer's innovation and ability to develop and complete the work as demonstrated in the Proposal. Proposers detailed methodology for accomplishing the goal of the entire project. The Proposer's good faith estimated Guaranteed Maximum Price for the total project.

Quality of the RFP: 10 points

Overall quality of the RFP: the requirements of the RFP were addressed, the content of the Proposal was clear, concise and easily read; there is an absence of typographical errors.

Appendix A Insurance Requirements

1.0 Insurance

The Consultant shall not commence work on the project until the Consultant has obtained all insurance required, and such insurance has been approved in writing by the District. Insurance required shall remain in effect through the term of the contract. Failure to maintain the required insurance coverage shall constitute grounds for contract termination.

Insurance requirements are as follows:

1.1 Public Liability and Property Damage

The Consultant shall take out and maintain during the term of the contract such Public Liability and Property Damage Insurance as shall protect from claims for damage for personal injury, including accidental death, as well as from claims for property damages which may arise from operations under the contract, whether such operation is by the Consultant or by any sub-Consultant, or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall not be less than \$1,000,000 for injuries, subject to the same limits per person and \$1,000,000 for property damage or otherwise needed to protect the interests of the District. The District shall be named as an additional insured on all coverage.

1.2 Other Insurance

The Consultant shall furnish such additional insurance as may be required by the Colorado Revised Statutes, including motor vehicle insurance in amounts not less than statutory limits.

1.3 Workers Compensation

The Consultant shall maintain workers compensation insurance meeting the statutory requirements of the State of Colorado.

1.4 Cancellation

Each certificate of insurance shall bear the provision that the policy cannot be altered or canceled in less than ten (10) days after mailing written notice to the District of such alteration or cancellation, sent by registered mail.

1.5 Proof of Insurance

The Consultant shall furnish the District with satisfactory proof of insurance required before written approval of such insurance is granted by the District.

1.6 Sub-Designers

If any part of the services under the Project will be performed by a sub-Consultant, the sub-Consultant shall be required to meet all insurance

requirements set forth herein at a coverage level equal to the amount set forth above for such type of insurance; however, nothing contained herein shall relieve the Consultant from meeting all insurance requirements or otherwise being responsible for the sub-Consultant.

Appendix B

CONTRACT FOR CONSULTATION SERVICES RECREATION, PARKS & TRAILS MASTER PLAN

This Contract for Consultation Services ("**Agreement**"), effective [REDACTED], 2011, is entered into by and between the Eastern Rio Blanco Metropolitan Recreation and Park District, a political subdivision of the State of Colorado ("**District**"), and [REDACTED] ("**Consultant**"). The District and Consultant shall be referred to collectively as the "**Parties**" and individually as a "**Party**".

1.0 Project

The District desires to hire Consultant to develop a 5-10 year comprehensive Recreation, Parks & Trails Master Plan ("**Master Plan**"). The services will include a review of background information, public consultation on community parks and recreation needs and facilities, and the development of a dynamic, useable Master Plan with implementation strategies; the Consultant will collect and analyze data to develop goals, policies and standards for the District's park system, open space, trails, recreation facilities and program development (collectively, the "**Project**"). Consultant shall commence the Project on September 1, 2011 and shall complete the Project on or before June 1, 2012. If Consultant fails to complete the Project by June 1, 2012, the GMP (defined in Section 5.0) shall be reduced by \$500 for each day after June 1, 2012 until the Project is completed.

2.0 Services

1.1 Inventory

Consultant shall:

- a. Identify and map the District's parklands and facilities.
- b. Compile and inventory an assessment of the existing parks, trails, open space and recreation facilities. This assessment shall include regional parks and recreation facilities and programs located within a ten mile radius of the Town of Meeker. The assessment shall include a comparative analysis to communities of similar size and density, using regionally and nationally accepted standards. The analysis shall consider the capacity of each amenity found within the system (playgrounds, ball fields, trails, natural areas, etc.), as well as functionality, accessibility, condition, comfort and convenience. Each amenity shall be evaluated regarding its service from both a resident and visitor perspective, and Consultant shall recommend appropriate operators of each amenity. Evaluation criteria shall be based on the expressed values of the community. The analysis also shall include identification of best possible providers of community and recreation

services and recommendations for minimizing duplication and enhancing partnerships where appropriate.

2.2 Needs/Wants Assessment

Consultant shall:

- a. Participate with the District Board of Directors ("**Board**") and the District's senior management ("**Staff**") to review project parameters, gather available materials, identify additional information requirements, review preliminary community involvement strategy and establish a Project timetable and products.
- b. Identify the community's needs for active and passive recreation facilities and program development through public consultation. The Project shall involve significant public involvement and shall include a minimum of three (3) public workshops and a minimum of two (2) focus group meetings (participants to be determined) to keep community members informed and to solicit input from the public during the planning process.
- c. Review 2005 Recreation Master Plan Goals and Objectives.
- d. Review and interpret demographic trends and characteristics of the District using information from the Census Bureau and other regional and local sources.
- e. Identify and assess federal, state or local laws, regulations and ordinances that will impact the Master Plan and assess the impact, both in terms of design and financial impact.

2.3 Action Plan

Consultant shall:

- a. Conduct a Gap Analysis between the community's needs and existing inventory.
- b. Identify and assess upgrades to existing recreation facilities and programs.
- c. Identifying potential locations for future recreation facilities and programs, open spaces and trails.
- d. Provide facilities maintenance and operations analysis.
- e. Develop an action plan, which includes strategies, priorities, and an analysis of budget support and funding mechanisms, for the short term, midterm and long term, for the park system, open spaces, trails and recreation programs and services within the District.
- f. Establish land acquisition/disposition strategy.
- g. Identify and analyze federal, state or local laws, regulations and ordinances that will impact the Master Plan and analyze the impact, both in terms of design and financial impact.

2.4 Master Plan Format

Consultant shall develop a Master Plan that shall include discussions, evaluations, analysis, findings and recommendations, *etc.* of all elements necessary to meet the District's short-term, mid-term and long-term vision. The Master Plan shall, at a minimum, include:

- a. An Executive Summary that outlines the process taken to create the report, as well as summarizing the research and findings (a prioritized list of goals and objectives shall be included). Three (3) hard copies and an electronic version in pdf format for the District's website.
- b. Written goals, plans, objectives and policy statements that articulate a clear vision and model for the District's future.
- c. Charts, graphs, maps and other data as needed to support the Master Plan and its presentation to the appropriate audiences.
- d. A Financial Plan that ensures both the growth and fiscal stability of the District.
- e. An Action Plan.
- f. Performance Measurement Standards.
- g. A final site plan document, in color, for public review and presentation.

2.5 Presentation of Draft Master Plan

Consultant shall:

- a. Provide six (6) hard copies and an electronic version in pdf format of the draft Master Plan.
- b. Prepare written and graphic materials and assist with presenting the project at a minimum of two reviews with the District Board and Staff.
- c. Present Project or provide updates upon request at District Board meetings.
- d. Prepare at least two schematic design alternatives, including conceptual level line-item construction cost estimates for each alternative.
- e. Include a tentative Project schedule that divides the Services into specific tasks and establishes projected completion dates for these tasks.

2.6 Development of Final Master Plan

Present final Master Plan and written report to the District Board and Executive Director for final review and approval. Include all evaluations, analysis, findings and recommendations *etc.* of all elements necessary to meet the District's short, mid and long term vision. Consultant shall provide six hard copies of the final Master Plan and one electronic version in pdf format.

3.0 Project Schedule and Duration

The Consultant shall develop a proposed Project Schedule through final Master Plan approval by the District Board, which shall be completed within 30 days from the date the Parties sign this Agreement. Prior to adoption, the District may request modifications to the proposed Project Schedule. Once the Parties have mutually agreed to the terms

and conditions of the Project Schedule, they shall sign the Project Schedule and it shall become part of this Agreement as **Exhibit A**.

4.0 **Complete Services without Extra Cost**

Except to the extent otherwise specifically stated in this Agreement, the Consultant shall obtain and provide, without additional cost to the District, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Services.

5.0 **Compensation – Guaranteed Maximum Price**

The District shall pay the Consultant the actual cost of the Services, plus Consultant's reasonable profit, the total of which the Consultant guarantees shall not exceed [REDACTED] (\$ [REDACTED]) ("**GMP**"), for the Consultant's performance of the entire work and completion of the Project in conformance with this Agreement. The GMP shall be subject to adjustment for approved change orders or modification to this Agreement. The Consultant's costs of the Services, or other costs or expenses associated with the Project that are not agreed to by the District in writing through a modification or change order, and that would cause the GMP to be exceeded shall be paid by the Consultant without reimbursement by the District.

The GMP shall be paid as follows:

<u>PHASE</u>	
Site Inventory/Analysis	\$ [REDACTED]
Needs/Want Assessment	\$ [REDACTED]
Action Plan	\$ [REDACTED]
Draft Master Plan	\$ [REDACTED]
Completed Master Plan	\$ [REDACTED]

The District shall not be obligated to pay the Consultant any payments, fees, expenses or compensation other than those authorized by this section.

6.0 **Consultant's Billings to the District**

The Consultant shall submit invoices to the District at the completion of each of the Project Phases identified in Section 5.0, above. Each invoice shall document, to the reasonable satisfaction of the District, such information as may be reasonably requested by the District. Within twenty (20) days after the District receives an invoice, the District shall issue to the Consultant a check in payment for all undisputed amounts contained in the invoice.

7.0 **Insurance**

The Consultant shall not commence work under this Agreement until the Consultant has obtained all insurance required, and such insurance has been approved in writing by the District. Insurance required shall remain in effect through the term of this contract.

Failure to maintain the required insurance coverage shall constitute grounds for termination of this Agreement.

Insurance requirements are as follows:

7.1 Public Liability and Property Damage

The Consultant shall take out and maintain during the term of the contract such Public Liability and Property Damage Insurance as shall protect from claims for damage for personal injury, including accidental death, as well as from claims for property damages which may arise from operations under the contract, whether such operation is by the Consultant or by any sub-Consultant, or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall not be less than \$1,000,000 for injuries, subject to the same limits per person and \$1,000,000 for property damage or otherwise needed to protect the interests of the District. The District shall be named as an additional insured on all coverage.

7.2 Other Insurance

The Consultant shall furnish such additional insurance as may be required by the Colorado Revised Statutes, including motor vehicle insurance in amounts not less than statutory limits.

7.3 Workers Compensation

The Consultant shall maintain workers compensation insurance meeting the statutory requirements of the State of Colorado.

7.4 Cancellation

Each certificate of insurance shall bear the provision that the policy cannot be altered or canceled in less than ten (10) days after mailing written notice to the District of such alteration or cancellation, sent by registered mail.

7.5 Proof of Insurance

The Consultant shall furnish the District with satisfactory proof of insurance required before written approval of such insurance is granted by the District.sda

7.6 Sub-Consultants

If any part of the Services under the Project will be performed by a sub-consultant, the sub-consultant shall be required to meet all insurance requirements set herein at a coverage level equal to the amount set forth above for such type of insurance; however, nothing contained herein shall relieve the Consultant from meeting all insurance requirements or otherwise being responsible for the sub-consultant.

8.0 Performance of Services by the District

If the Consultant fails to perform the Services in accordance with this Agreement, the District may, in its discretion, perform or cause to be performed some or all of the Services, and doing so shall not waive any of the District's rights and remedies. Before doing so, the District shall give the Consultant notice of its intention. The Consultant shall reimburse the District for the costs and expenses the District incurs directly or through third party providers in exercising its right to perform or cause to be performed some or all of the Services pursuant to this section.

9.0 Dispute Resolution

The Parties shall in good faith attempt to resolve any dispute arising from this Agreement or the Project through non-binding mediation. A Party's request for mediation shall be filed in writing with the other Party and with the American Arbitration Association. The Parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

If the Parties are unable to resolve a dispute through mediation, either Party may commence a civil action in the District Court for Rio Blanco County. In any civil action arising from or relating to this Agreement or the Project, the prevailing Party shall be awarded its reasonable attorneys' fees, costs and expenses, including the attorneys' fees, costs and expenses incurred in collecting or executing upon any judgment, order or award.

10.0 Termination for Convenience ("TFC")

10.1 Procedure. Without limiting any Party's right to terminate for breach, the District may, without cause, and in its discretion, terminate this Agreement for convenience by giving the Consultant written notice of termination for convenience. A termination for convenience shall be effective at the time indicated in the notice. The District's Project Manager may terminate the Agreement under this section without District Board action.

10.2 Obligations. Upon termination for convenience, all rights and obligations of either Party under this Agreement are discharged, except that any right based on prior breach or performance survives. Upon receiving notice of termination for convenience, the Consultant shall promptly submit to the District all materials, data, schematics, and other work product of any type. The Consultant shall follow the District's instructions as to which subcontracts to terminate.

10.3 Payment. The District shall pay the Consultant for all costs and expenses incurred by the Consultant through the date of termination, including an equitable amount for the costs and charges associated with any subcontracts, but

excluding profit for the Consultant. Within 20 days after termination for convenience, the District shall pay the Consultant a one hundred dollar TFC fee and for all Services performed through the date of termination, except to the extent previously paid for. Services shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Services been completed except to the extent it would be inequitable to either Party. If a portion of the Services were to be paid for on a lump-sum basis, the District shall pay the part of the lump sum that reflects the percentage of completion attained for that portion of the Services. The Consultant shall not be entitled to any payment except as stated in this section because of termination for convenience, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

11.0 Notice

11.1 All notices and other communications required or permitted by this Agreement shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the ERBM Recreation & Park District:
Michael Weinbrecht
101 Ute Road
Meeker, CO 81641
The fax number is: 970.878.3214

To the Consultant:

The fax number is () _____.

11.2 Change of Address. Date Notice Deemed Given
A change of address, fax number, or person to receive notice may be made by either Party by notice given to the other Party. Any notice or other communication under this Agreement shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

12.0 Indemnification

The Consultant and its employees, agents and representatives shall indemnify, defend, and hold harmless the District and its current and former directors, officers, agents, employees, volunteers, representatives and agents from and against any loss, liability, damage, claim, cost or expense (including reasonable attorneys' fees, costs and expenses) of any kind or nature whatsoever arising from or relating to any intentional or negligent act or omission of the Consultant, or any subcontractor, vendor or supplier or other person or entity performing any portion of this Agreement or the Services. The District shall have the right to select legal counsel to represent the District, even though the Consultant is solely responsible for the payment of the defense costs. This section shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise) and termination of the Services of the Consultant under this Agreement.

13.0 Miscellaneous

13.1 Choice of Law, Jurisdiction and Venue

This Agreement shall be deemed made in Rio Blanco County, Colorado. This Agreement shall be governed by and construed in accordance with the laws of Colorado. Jurisdiction and venue for all actions arising out of this Agreement shall lie exclusively in the Rio Blanco County District Court. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered pursuant to this section.

13.2 Waiver

No action or failure to act by a Party shall constitute a waiver of any of its rights or remedies that arise out of this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

13.3 Governmental Immunity

This Agreement is not intended, and shall not be construed, as a waiver of the limitations on damages or any of the privileges, immunities, or defenses provided to, or enjoyed by, the District and its current and former directors, officers, employees, volunteers, representatives and agents under common law or pursuant to statute, including but not limited to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

13.4 Severability

If any provision of this Agreement shall be unenforceable, the remainder of this Agreement shall be enforceable to the extent permitted by law.

13.5 Assignment: Successors and Assigns

Without the District's written consent, the Consultant shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this Agreement. Unless the District otherwise agrees in writing, the Consultant and all assignees shall be subject to all of the District's defenses and shall be liable for all of the Consultant's duties that arise out of this Agreement and all of the District's claims that arise out of this Agreement.

13.6 Compliance with Law

In performing all of the Services, the Consultant shall comply with all applicable federal, state and local laws, ordinances and regulations.

13.7 Equal Employment Opportunity (EEO) Policy

The District has adopted an Equal Employment Opportunity policy, which prohibits discrimination against any employee or applicant for employment on the basis of to race, color, sexual orientation, religion, creed, national origin, ancestry, gender, marital status, military status, veteran status, membership or non-membership in a labor organization, age or disability, unless the disability precludes the employee or applicant from performing the essential functions of the job notwithstanding reasonable accommodations, or status in any other group protected by any federal, state or local law. By signing this Agreement, the Consultant hereby adopts and agrees to comply with the Equal Employment Opportunity policy.

During the performance of this Agreement the Consultant agrees as follows:

13.7.1 The Consultant shall not discriminate against any employee or applicant for employment because to race, color, sexual orientation, religion, creed, national origin, ancestry, gender, marital status, military status, veteran status, membership or non-membership in a labor organization, age or disability, unless the disability precludes the employee or applicant from performing the essential functions of the job notwithstanding reasonable accommodations, or status in any other group protected by any federal, state or local law. The Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated equally during employment, without regard to race, color, sexual orientation, religion, creed, national origin, ancestry, gender, marital status, military status, veteran status, membership or non-membership in a labor organization, age or disability, unless the disability precludes the employee or applicant from performing the essential functions of the job notwithstanding reasonable accommodations, or status in any other group protected by any Federal, State or local law. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates

of pay or other forms of compensation. The Consultant shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions.

13.7.2 The Consultant shall in all solicitations or advertisement for employees placed by or on behalf of the Consultant state that all qualified applicants will receive consideration for employment with regard to race, color, sexual orientation, religion, creed, national origin, ancestry, gender, marital status, military status, veteran status, membership or non-membership in a labor organization, age or disability, unless the disability precludes the employee or applicant from performing the essential functions of the job notwithstanding reasonable accommodations, or status in any other group protected by any federal, state or local law.

13.7.3 The Consultant shall send a copy of the EEO provisions to each labor union or representative with which it has a collective bargaining agreement or other contract or understanding.

13.7.4 In the event of the Consultant's noncompliance with these EEO provisions, the District may cancel, terminate, or suspend this Agreement, in whole or in part, and the District may declare the Consultant ineligible for further District contracts.

13.7.5 Unless exempted by the District, the Consultant shall include these EEO provisions in every purchase order for goods to be used in performing this Agreement and in every subcontract related to this Agreement so that EEO provisions will be binding upon such sub-consultant and vendors.

14.0 No Third Party Rights Created

This Agreement is intended for the benefit of the District and the Consultant and not any other person.

15.0 Principles of Interpretation and Definitions

In this Agreement, unless the Agreement requires otherwise:

15.1 The singular includes the plural and plural the singular. The pronouns "it" and "its" include the masculine and the feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," *etc.* mean include, including, *etc.* without limitation.

15.2 References to a "Section" or "section" shall mean a section of this Agreement.

- 15.3 "Agreement" whether or not capitalized refers to this instrument.
- 15.4 Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this Agreement.
- 15.5 "Duties" includes obligations.
- 15.6 The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities.
- 15.7 The word "shall" is mandatory.
- 15.8 The word "day" means calendar day.
- 16.0 Modifications: Entire Agreement
A modification of this Agreement is not valid unless signed by both Parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the District unless the District's Project Manager signs it for the District. This Agreement contains the entire agreement between the Parties pertaining to the subject matter of this Agreement. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the Parties, other than as set forth or referenced in this Agreement.
- 17.0 Illegal Aliens
- 17.1 The Consultant shall not knowingly employ or contract with an illegal alien in providing the Services; nor will it enter into a contract with a subcontractor who fails to certify that it will not knowingly employ or contract with an illegal alien to perform work in connection with the Services provided to the District.
- 17.2 The Consultant certifies it does not knowingly employ or contract with an illegal alien who will perform work in connection with the Services, and the Consultant will participate in the E-Verify Program or the State Department of Labor and Employment Program ("**State Program**") in order to confirm the employment eligibility of all employees newly hired by the Consultant for the purpose of providing its Services to the District. Under no circumstances will the Consultant use either the E-Verify Program or the State Program procedures to undertake pre-employment screening of job applicants during the course of the Consultant's providing Services to the District.
- 17.3 If, while providing Services to the District, the Consultant acquires actual knowledge that a subcontractor performing work in connection with such Services

knowingly employs or contracts with an illegal alien, the Consultant will (i) notify the subcontractor and the District within three business days that the Consultant has actual knowledge the subcontractor is employing or contracting with an illegal alien; and (ii) terminate the subcontractor's contract if within three business days of receiving the notice required in (i), above, the subcontractor does not stop employing or contracting with the illegal alien; except, the Consultant will not terminate the subcontractor's contract if during the three business days the subcontractor provides information establishing the subcontractor has not knowingly employed or contracted with an illegal alien.

17.4 The Consultant will comply with any reasonable request by the Colorado Dept. of Labor & Employment made during an investigation pursuant to C.R.S. § 8-17.5-102(5).

17.5 The Consultant agrees that, if it violates one of the foregoing provisions, the District may terminate the Services, and may seek actual and consequential damages. The Consultant acknowledges the District also will notify the Secretary of State, which may take further action against the Consultant.

18.0 Non-Appropriation

All direct and indirect financial obligations of the District under this Agreement are subject to appropriation, budgeting, and availability of funds to discharge such obligations. Nothing in this Agreement shall be deemed to pledge District's credit or faith, directly or indirectly, to the Consultant. In the event the District Board g fails to appropriate funds for the District's obligations under this Agreement for a calendar year, this Agreement shall terminate immediately upon the expiration of 30 days from the date of non-appropriation as if notice had been provided by the District to the Consultant in accordance with this Agreement, and the District shall have no further obligation to Consultant under this Agreement. No provision of this Agreement shall be construed or interpreted (i) to directly or indirectly obligate the District to make any payment in any fiscal year in excess of amounts appropriated for such fiscal year; (ii) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the District within the meaning of Article XI, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; (iii) as a delegation of governmental powers by the District; (iv) as a loan or pledge of the credit or faith of the District or as creating any responsibility by the District for any debt or liability of any person, company or corporation within the meaning of Article XI, Section 1 of the Colorado Constitution; or (v) as a donation or grant by the District to, or in aid of, any person, company or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate originals as the day and year first above written.

EASTERN RIO BLANCO METROPOLITAN
RECREATION AND PARK DISTRICT

[Name of Company or Corporation]

BY: _____
Dale Hallebach, Board President

BY: _____

TITLE: _____

ATTESTED:

BY: _____
Kris Arcolesse, Board Secretary