

**CITY OF GUSTAVUS, ALASKA
RESOLUTION CY16-10**

**A RESOLUTION APPROVING A BROADBAND PLANNING CONTRACT WITH BYTE NETWORKING
FOR FY17**

WHEREAS, Council Resolution CY16-07 approved a non-competitive contract award to update the City broadband plan to Byte Networking in the amount of \$24,162, with project management by Corvid Computing, and

WHEREAS, the original performance period was set to correspond with the original expiration date, June 30, 2016, of the State CIP grant for broadband planning; and

WHEREAS, the State of Alaska has extended the CIP grant expiration date to June 30, 2017; and

WHEREAS, allowing additional time for the planning effort will benefit quality and thoroughness in the work product; and

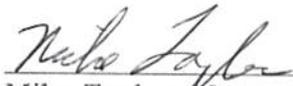
WHEREAS, a project contract, attached to this Resolution, has been negotiated with Byte Networking to extend the performance period to December 15, 2016; and

WHEREAS, Corvid Computing has agreed to review project work products at a draft submittal date of November 15, 2016, and a final product submittal date of December 15, 2016, and make recommendations to the City prior to December 31, 2016; and

NOW THEREFORE BE IT RESOLVED, that the Gustavus City Council approves award of the negotiated contract as attached to this Resolution with Byte Networking and directs the Mayor to proceed with the project as soon as the contract has been signed by the City and Byte Networking; and

BE IT FURTHER RESOLVED, that the funds expended under this Resolution shall be dispersed and billed to the State CIP Grant by June 30, 2017, representing a change from the dispersal date previously indicated in Resolution CY16-07.

PASSED and **APPROVED** by the Gustavus City Council this 8th day of August, 2016.



Mike Taylor, Mayor



Attest: Lori Ewing, City Clerk/Treasurer

CONSULTING AGREEMENT

This Consulting Agreement ("Agreement") is for August 10, 2016 through December 15, 2016

BETWEEN: **The City of Gustavus** ("Client")
PO Box 1, Gustavus, Alaska 99826

AND: **Byte Networking, LLC** ("Consultant")
8367 Old Dairy Road, Suite 205, Juneau, Alaska 99801

The parties agree as follows:

1. **TYPE OF AGREEMENT:** FIRM FIXED PRICE

2. **GENERAL TERMS AND CONDITIONS**

2.1 The general terms and conditions of this Agreement are set forth in Appendix A.

3. **SCOPE OF WORK**

3.1 Consultant shall provide the services specified in Appendix B ("Services").

4. **PERIOD OF PERFORMANCE**

4.1 The period of performance for this Agreement shall be **from August 10, 2016 through December 15, 2016.**

5. **FEES AND PAYMENT**

5.1 In consideration of Services performed, Client shall pay Consultant **\$24,162** in two equal installments, the first before work commences and the second after all deliverables are accepted by Client. However, payment will not be made until Client receives an invoice from Consultant.

6. **KEY PERSONNEL**

Client: City of Gustavus			
Administrative POC		Contractual POC	
Name:	Lori Ewing	Name:	Mike Taylor, Mayor
Phone:	907-697-2451	Phone:	907-697-2451
Fax:	907-697-2136	Fax:	907-697-2136
Email:	treasurer@gustavus-ak.gov	Email:	mayor@gustavus-ak.gov
Technical POC		Note: POC will change to the new Mayor as elected in October, 2016	
Name:	Nathan Borson		
Phone:	907-697-2810		
Email:	nate@corvid.info		
Consultant: Byte Networking, LLC			
Administrative POC		Contractual POC	
Name:	David Kunat	Name:	David Kunat
Phone:	907-790-4979	Phone:	907-790-4979
Email:	david@bytenetworking.com	Email:	david@bytenetworking.com

7. AUTHORIZED CHANGES IN SERVICES OR PAYMENT

7.1 Client's Contractual POC is the only representative of Client who is authorized to approve changes in the Services or the payment terms or amounts. Any changes made by Consultant without written authorization by Client's Contractual POC shall be performed at Consultant's sole risk and expense.

8. PAYMENT/INVOICING

8.1 Invoices and all questions concerning payment of invoices shall be referred to Client's Administrative POC.

9. NOTICE

9.1 Any notice given by either party shall be in writing and shall be deemed given, five (5) calendar days after deposit with the United States Postal Service, postage prepaid, certified return receipt requested, electronic mail, or upon actual delivery to the other party at the following addresses:

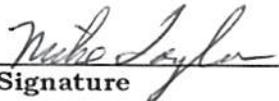
TO Client:
Mayor
City of Gustavus
PO Box 1
Gustavus, AK 99826
mayor@gustavus-ak.gov
Lori Ewing
City of Gustavus
PO Box 1
Gustavus, AK 99826
treasurer@gustavus-ak.gov

TO Consultant:
David Kunat
Byte Networking, LLC
9300 Glacier Hwy.
Juneau, Alaska 99801
david@bytenetworking.com

10. ENTIRE AGREEMENT

10.1 Both parties acknowledge that they have read and understand this Agreement, including the appendices referred to herein, and they agree to be bound by those terms. Both parties further agree that this Agreement, including its appendices, constitutes the entire agreement between the parties. This Agreement supersedes all prior written or oral agreements relating to the Services specified herein. No modification or waiver of any provision shall be binding unless in writing and signed by the party against whom the modification or waiver is sought to be enforced.

For: Client
CITY OF GUSTAVUS


Signature

Mike Taylor
Name (Typed or Printed)

Date

For: Consultant
BYTE NETWORKING, LLC

Signature

David Kunat
Name (Typed or Printed)

Date

APPENDIX A

GENERAL TERMS AND CONDITIONS

1. **WARRANTY.** Consultant shall perform the Services, as defined in the Agreement, using the standard of care normally exercised by established consultants in performing comparable services under similar conditions. Unless otherwise provided under Alaska law, warranties set forth in this section are exclusive and in lieu of all other warranties, whether express or implied, including the implied warranties of merchantability and fitness for a particular purpose.

2. **CLIENT'S RESPONSIBILITIES.** Client shall provide site access and Client data required by Consultant, and shall make timely payments, within thirty days of invoice receipt.

3. **CONFIDENTIAL INFORMATION.** Proprietary or confidential information ("confidential information") developed or disclosed by either party under this agreement shall be clearly labeled and identified as confidential information by the disclosing party at the time of disclosure. Confidential Information shall not be disclosed by the receiving party to any other person except to those individuals who need access to such Confidential Information as needed to ensure proper performance of the Services. Neither party shall be liable for disclosure or use of Confidential Information which: (1) was known by the receiving party at the time of disclosure due to circumstances unrelated to this Agreement; (2) is generally available to the public without breach of this Agreement; (3) is disclosed with the prior written approval of the disclosing party; or (4) is required to be released by applicable law or court order. Each party shall return all Confidential Information relating to this Agreement to the disclosing party upon request of the disclosing party or upon termination of this Agreement, whichever occurs first. Each party shall have the right to retain a copy of the Confidential Information for its internal records and subject to ongoing compliance with the restrictions set forth in this Section. This Section shall survive termination of this Agreement.

4. **PUBLIC RECORDS.** With the exception of Confidential Information described in the previous section, communication with Client and information delivered to Client are public records subject to disclosure in accordance with law and Client's policy and procedure.

5. **LICENSE GRANT/DELIVERABLES.** Subject to client's payment in full and to the terms of this agreement, Consultant shall license all deliverables under a Creative Commons Attribution-ShareAlike 3.0 United States License: <http://creativecommons.org/licenses/by-sa/3.0/us/>. Client shall indemnify and hold Consultant harmless against any liability arising from or related to Deliverables that have been changed without Consultant's written approval or have been used for a purpose other than intended.

6. **ACCEPTANCE.** Client shall have five (5) days to reject in writing all or part of each deliverable if it is not in conformance with the warranty stated in section 1 above. Each deliverable, to the extent not rejected in writing by client within that period, shall be deemed accepted.

7. **EXCLUSIVE REMEDY.** For any deliverable which is not accepted, client's exclusive remedy, and Consultant's entire liability, shall be the re-performance of the services, or if Consultant is unable to perform the services as warranted, client shall be entitled to recover the fees paid to icf for that portion of the services which fail to conform to the warranty.

8. **INFRINGEMENT INDEMNITY.** Consultant will defend and indemnify Client against a claim that any Deliverable infringes a copyright or U.S. patent or other intellectual property right, provided that: (a) Client notifies Consultant in writing within 30 days of the claim; (b) Consultant has sole control of the defense and all related settlement negotiations; and (c) Client provides Consultant with the assistance, information and authority necessary to defend any claim related to or arising under this Section. Consultant shall have no liability for any claim of infringement based on use of a superseded or altered release of any Deliverable.

9. **LICENSES AND INSURANCE.** Prior to commencing work under, and for the duration of, this Agreement, Consultant shall obtain and shall provide evidence satisfactory to Client of (a) local and state business licenses, (b) any necessary professional certifications and/or licenses relative to the work to be performed, as required by the appropriate licensing authority for the State of Alaska, and (c) the insurance coverages listed in *this section*.

9.1. Liability insurance covering professional errors and omissions: coverage written on an occurrence basis with limits of not less than \$1,000,000 per occurrence. During the Agreement term, Client shall be named as an additional insured in Consultant's liability policy.

9.2. Comprehensive automobile liability: \$500,000 combined single limit covering all owned, non-owned, and hired motor vehicles when Consultant is using them to do work under this Agreement.

9.3. Workers' Compensation: Every employee of Consultant must be covered by workers' compensation insurance during the term of this Agreement, in accordance with the Alaska Worker's Compensation Act ("the Act").

9.3.1. Consultant shall provide proof of workers' compensation coverage or a statement explaining why Consultant is exempt (for example, Consultant has no employees, and is a sole proprietor, partnership, or LLC, or is a corporation whose employees are all officers claiming exemption from the Act).

9.3.2. If Consultant is a corporation and its executive officer(s) claim(s) exemption from the Act, then Consultant shall provide (a) certificate(s) of waiver for such officer(s) from the Alaska Department of Labor.

10. **TERMINATION.** Either party may terminate this Agreement by giving 15 calendar days' written notice. Consultant shall be paid for Services provided up to the date of termination.

11. **ASSIGNMENT.** Consultant may sub-contract to third parties to obtain Services to be delivered under this Agreement. Consultant shall be responsible for sub-contractors' performance and services and shall assure they meet the terms of this Agreement as if they were done directly by Consultant. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns but is not otherwise intended to confer any rights or benefits on anyone other than the parties.

12. **FORCE MAJEURE.** Consultant is not liable for any delay in performance or non-performance caused by acts of god, war, civil disturbance, government action, labor dispute, computer virus, pandemic illness, inadequate access to Client site or data, or anything else beyond Consultant's reasonable control.

13. **DISPUTES.** Any dispute relating to this Agreement shall be submitted to a panel consisting of at least one representative of each party and one neutral person agreed upon by the party representatives. The party representatives shall have the authority to enter into an Agreement to resolve the dispute, subject to any state or local law requiring the approval of the Gustavus City Council to settle a dispute. The panel shall meet for a maximum of three (3) days. Should this dispute resolution be unsuccessful, or if the panel has failed to meet within thirty (30) days of a demand by either party, the matter may be submitted to arbitration. No written or oral representation made during the course of any panel proceeding or other settlement negotiations shall be deemed to be a party admission. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association, using an arbitrator mutually selected by the parties. The arbitrator need not be an AAA panel member. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction.

14. **GENERAL PROVISIONS.**

14.1. Consultant is an independent contractor and shall not be deemed to be an employee or agent of client.

14.2. No waiver of any breach of this Agreement shall operate as a waiver of any similar subsequent breach or any breach of any other provision of this Agreement. If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be severed from this Agreement and to the extent possible, this Agreement shall continue without affecting the remaining provisions.

14.3. Upon execution of this Agreement, each Party grants to the other the right to announce their relationship through a press release or other publicity. Consultant may also refer to Client in its publicity material and government filings as being a Client of Consultant.

14.4. The validity, enforceability and interpretation of this Agreement shall be determined and governed by the laws of the State of Alaska. Any legal action concerning this Agreement shall be commenced in the First Judicial District of the State of Alaska. This Agreement may be executed in counterparts, and the counterparts, taken together, shall constitute the original.

14.5. In the event of a conflict in the terms and conditions of this Agreement, the following order of precedence shall apply:

1. This Consulting Agreement
2. General Terms and Conditions (Appendix A)
3. Statement of Services (Appendix B)
4. Any other appendices or addenda to this Agreement

15. COMPLIANCE WITH APPLICABLE LAWS. The Contractor shall, in the performance of this Contract, comply with all applicable federal, state, and local laws, ordinances, rules and regulations applicable to its performance hereunder, including, without limitation, all such legal provisions pertaining to social security, income tax withholding, medical aid, industrial insurance, worker's compensation, and other employee benefit laws. The Contractor also agrees to comply with all contract provisions pertaining to grant or other funding assistance which the city may choose to utilize to perform work under this Contract.

16. INDEMNIFICATION. This contract does not create, between the Department of Commerce, Community, and Economic Development or the State of Alaska and the contractor, any contract or any relationship. The Department of Commerce, Community, and Economic Development and the State of Alaska are not liable for damages or claims from damages arising from the contractor's performance or activities under the terms of this contract.

APPENDIX B

STATEMENT OF SERVICES

Broadband Plan Update

1. Scope. Consultant shall update the October, 2012 Gustavus Broadband Plan as described in this appendix. An updated plan is the one deliverable from services rendered under this Agreement.
2. Considerations. Generally, Client seeks update the 2012 Gustavus Broadband Plan to address the following:
 - 2.1. Cost. The 2012 Gustavus Broadband plan was developed for the optimum technical solution without regard to cost, but Client has been unable to fund the proposed solution. Consultant shall deliver an updated plan that optimizes value, with the expectation that cost will be considerably lower than the \$2.4 Million project described in the 2012 plan.
 - 2.2. Currency. The 2012 Gustavus Broadband plan contains considerable and significant outdated information. Consultant shall deliver an updated plan that contains no outdated information.
 - 2.3. Viability. Consultant shall reconsider and revise both the business and technical proposals in the 2012 plan with the goal of short- and long-term organizational, fiscal, and technical achievability and sustainability.
 - 2.4. Ubiquity. The goal remains the availability of fast, reliable, and affordable Internet access at every Gustavus home, business, and other facility. The revised plan shall describe how that goal can be realistically achieved now.
3. Specific criteria. The revised plan shall
 - 3.1. Update Appendix A, Community Assessment, to correct any outdated or inaccurate information.
 - 3.2. Review Appendix B, deployment options and recommendations, and add new technology and business model options if better ones exist.
 - 3.3. Update the body of the plan to reflect the recommended technology and business model options.
4. Schedule for Deliverables.
 - 4.1. Consultant shall submit a draft report to the City for City review by November 15, 2016.
 - 4.2. City will return comments on the draft report within two weeks of receiving the draft report.
 - 4.3. Consultant shall submit final report to the City by December 15, 2016.