

RESOLUTION 2012-X

**A RESOLUTION OF THE EATONVILLE TOWN COUNCIL TO AUTHORIZE
THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH
ESA PARAGON FOR A CULTURAL RESOURCES ASSESSMENT**

WHEREAS, the Town of Eatonville is proposing to develop an approximately 2000 linear foot pedestrian trail along an existing unpaved, dirt road at 452 Lynch Creek Road East, though a Grant received from the State of Washington, and

WHEREAS, a Cultural Resources Assessment is a necessary prerequisite for such development, and ESA Paragon, an environmental science and planning firm, has proposed an acceptable scope of work and cost estimate to do said Cultural Resources Assessment,

THEREFORE, BE IT RESOLVED by the Council of the Town of Eatonville as follows:

Section 1. The Mayor is authorized to execute on behalf of the Town the attached Professional Services Agreement with the environmental firm ESA Paragon, including any subsequent amendments to the Agreement if such is in the best interests of the Town.

Passed by the Council of the Town of Eatonville at a regular meeting this _____ day of April, 2012.

Raymond Harper, Mayor

ATTEST:

Chrystal McGlone, Town Clerk

APPROVED AS TO FORM:

Town Attorney

PROFESSIONAL SERVICES AGREEMENT

This Agreement (referred to interchangeably as “Agreement” and/or “Contract”) is entered into this _____ day of _____, 2012, by and between the Town of Eatonville, a municipal corporation under the laws of the State of Washington (hereinafter “Town”), and ESA Paragon, whose address is 5309 Shilshole Avenue NW, Suite 200, Seattle, Washington 98107 (hereinafter “Consultant.”

WHEREAS, the Town desires to engage the Consultant to provide a Cultural Resources Assessment of the 452 Lynch Creek Road East Pedestrian Trail, and Consultant has agreed to offer its professional services to perform said work and has presented the Town with an acceptable Scope of Work and Cost Estimate,

WHEREAS, the Consultant has represented by entering into this Agreement that it is fully qualified to perform the work to which it will be assigned in a competent and professional manner, to the standards required by the Town,

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN TOWN AND CONSULTANT AS FOLLOWS:

The Town hereby agrees to engage the Consultant and the Consultant hereby agrees to perform, in a satisfactory and proper manner, as determined by the Town, the services hereafter set forth in connection with this Agreement:

1. Scope of Services:

Consultant agrees to provide professional services for a Cultural Resources Assessment of the 452 Lynch Creek Road East Pedestrian Trail in accordance with the attached Scope of Work, identified as “Attachment A” to the March 26, 2012, letter from Consultant to Mr. Nicholas Bond, the Town Planner, both of which are attached hereto and fully incorporated herein by reference.

This agreement is a purchase of professional services at the hourly rates described in the Cost Estimate, identified as “Attachment B” to the March 26, 2012, letter from Consultant to Mr. Nicholas Bond, the Town Planner, both of which are attached hereto and fully incorporated herein by reference. . Payment for these services shall not exceed Three Thousand Five Hundred and Nine Dollars and Zero Cents (\$3,509.00) unless authorized in writing by the Town as per paragraph 13. If additional time is needed, please refer to paragraph 4 of this Agreement. Consistent with paragraph 13, a written amendment signed by both Town and Consultant must be attached before a change is effective. With the Consultant’s approval, the Town may add other related professional services at its discretion. Payment for these services shall not exceed the amount above unless authorized in writing by the Town.

2. Relation of Parties.

The Consultant, its subcontractors, agents and employees are independent contractors. Consultants performing professional services for Town and are not employees of the Town. The Consultant, its subcontractors, agents and employees, shall not, as a result of this Agreement, accrue leave, retirement, insurance, bonding or any other benefits afforded to Town employees. The Consultant, subcontractors, agents and employees shall not have the authority to bind Town any way except as may be specifically provided herein.

3. Time of Performance

The service of the Consultant is to commence on the date of a "Notice to Proceed" issued by the Town Administrator or his/her designee. It is agreed services hereunder shall be completed as of May 31, 2012.

4. Delays and Extensions of Time

If the Consultant is delayed at any time in the progress of providing services covered by the Contract, by any causes beyond Consultant's control, the time for performance may be extended by such time as shall be mutually agreed upon by Consultant and Town, and such extension shall not take effect unless incorporated in a written Amendment to this Agreement signed by both parties as per paragraph 13. Any request for an extension of time shall be made in writing.

5. Compensation and Schedule of Payments

Town shall pay the Consultant at the rates indicated for work performed under the terms of this Contract. This is the maximum amount to be paid under this Contract and it shall not be exceeded without Town's prior written authorization in the form of a negotiated and executed supplemental agreement. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment and incidentals necessary to complete the project as set forth herein. The Consultant shall submit invoices to Town covering both professional fees and project expenses, if allowable. Payments to Consultant shall be made within thirty (30) days from submission of each invoice. The Town reserves the right to correct any invoices paid in error according to the rates set forth in this Agreement. Town and Consultant agree that any amount paid in error by Town does not constitute a rate change in the amount of the contract. The total amount listed in paragraph 1 is to be the not to exceed amount and is not to be construed as a guaranteed payout total.

6. Ownership of Records and Documents.

All materials, writings and products-produced by Consultant in the course of performing this Contract shall immediately become the property of the Town. In consideration of the compensation provided for by this Agreement, the Consultant hereby further assigns all copyright interests in such materials, writing and products to the Town. A copy may be retained by the Consultant.

7. Termination.

This Contract may be terminated by either party for any reason upon not less than fifteen (15) days written notice.

8. Evaluation and Compliance with the Law.

The Consultant shall have the authority to control and direct the performance and details of the work described herein. The Consultant agrees to comply with all relevant, federal, state and municipal laws, rules and regulations.

9. Business and Occupation License.

All work done pursuant to this Agreement is deemed to be engaging in business in the Town. Prior to performing work under set, Consultant shall secure all necessary business licenses from local, state, and federal government authorities.

10. Liability and Hold Harmless.

Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the work hereunder. All work shall be done at Consultant's risk. To the fullest extent permitted by law and subject to the following conditions, Consultant agrees to indemnify, defend, save and hold harmless the Town, its officials, employees and agents (defined in this paragraph as "Indemnified Parties") from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses, on such claims and in proving the right to indemnification, incurred in connection therewith, or whatsoever kind or nature, arising out of, or in connection with, or incident to, the acts or omissions of Consultant, its Subcontractors of any tier, their agents, and anyone directly or indirectly employed by them or anyone for whose acts they are be liable (defined in this paragraph as "Indemnitor" or "Indemnitors").

In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against Consultant, the Town retains the right to participate in said suit if any principle of public law is involved. Consultant agrees to being added by the Town as a party to any arbitration or litigation with third parties in which the Town alleges indemnification or contribution from Town, any of its Subcontractors of any tier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. Consultant agrees that all of its Subcontractors of any tier will, in their subcontracts, similarly stipulate; in the event any does not, Consultant shall be liable in place of such Subcontractor(s) of any tier.

To the fullest extent allowed by law, this indemnity and hold harmless shall include any claim made by an employee of Consultant or Subcontractor or agent of Consultant, even if Consultant is thus otherwise immune from liability pursuant to Title 51 RCW. Consultant for itself, and its Subcontractors and agents, specifically and expressly waive the right to assert against the indemnities any immunity that may be granted it under the Title 51 RCW. Consultant shall include such waiver in all agreements with Subcontractors. Consultant specifically acknowledges that the provisions contained herein have been mutually negotiated by the parties and it is the intent of the parties that Consultant provide the broadest scope of indemnity permitted by RCW 4.24.115.

Neither this paragraph nor any other part of this Agreement shall not obligate Consultant to defend or indemnify against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Indemnified Parties, their agents or employees; provided that Consultant shall be obligated to indemnify against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) an Indemnified Party or the its agents or employees, and (b) Indemnitors, to the extent of Indemnitors' negligence.

11. Insurance.

The Consultant shall obtain and keep in force during the entire term of this Contract, liability insurance against any and all claims for damages to person or property which may arise out of the performance of this Agreement whether such work shall be by the Consultant, subcontractor or anyone directly or indirectly employed by either the Consultant or a subcontractor. The amount of coverage provided by such insurance shall be not less than Five Hundred Thousand Dollars (\$500,000) combined single limit for bodily injury and property damage and not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage if working in the public right of way.

The Consultant agrees to the following requirements relating to insurance coverage:

- a. Liability Insurance. All liability insurance required herein shall be under a comprehensive or commercial general liability and business, automobile policy or policies. The Town shall be named as an additional insured with respect to all such policies and copies of all such policies shall be furnished to the Town upon request.
- b. Worker's Compensation. The Consultant shall take out and maintain during the life of the Agreement, Worker's Compensation insurance for all its employees engaged in work under or pursuant to this Contract who are required to be so covered by the laws of the State of Washington and in case any work is subcontracted, the Consultant shall require the subcontractor to provide worker's compensation insurance for all of its employees unless or to the extent that such employees are covered by the protection provided by the Consultant
- c. Employment Security. The Consultant shall comply with all employment security laws of the State of Washington, and shall timely make all required payments in connection therewith. Consultant shall provide evidence of all insurance required, at the Town's request, by submitting an insurance certificate to the Town on a standard "Acord" or comparable form.

12. Notices. All notices which are given or required to be given pursuant to this Contract shall be hand delivered or mailed postage paid as follows:

FOR THE TOWN OF EATONVILLE

Town of Eatonville
 ATTN: Raymond Harper, Mayor
 210 Center Street West
 PO Box 309
 Eatonville, WA 98328

FOR THE CONSULTANT

ESA Paragon
 ATTN: _____
 5309 Shilshole Avenue, Suite 200
 Seattle, WA 98107

13. Amendments. This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by both parties hereto. Any changes in the scope of work, compensation, time for performance, or other term of this Agreement shall be mutually agreed upon between Town and the Consultant and shall be incorporated in written revisions to this Agreement and signed by both parties before taking effect. Consultant acknowledges that pursuant to RCW 35.27.160, only the Town's mayor has the authority to sign this Agreement or any amendments thereto (including but not limited to any amendments to scope of services or payment) and that any other changes or amendments shall have no force or effect against the Town unless so signed by the mayor.

14. Contract/Order of Precedence. This Agreement incorporates all the contracts, covenants and understanding between the parties hereto and are merged into this written agreement. No prior agreement or prior understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless set forth in this contract. The Contract includes all of the documents listed below, each of which is incorporated herein by reference.

- a. Most recently issued Town/Consultant Change Order(s)
- b. Most recently issued Addendum/Addenda to Request for Proposal
- c. Town's Request for Proposal
- d. Professional Services Agreement/General Conditions
- e. Consultant's Response to the Request/Scope of Services

Where there is a conflict among or between any of these documents, the order of precedence shall be as listed above.

15. Assignment. This Contract may not be assigned in any manner or by any means by Consultant without the express prior written consent of the Town.

16. Ratification. Acts taken pursuant to this Contract but prior to its effective date are hereby ratified and affirmed.

17. Governing Law/Venue. This Contract shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to the principles of conflict of laws. Any action or suit brought in connection with this Contract shall be brought in the Superior Court of Pierce County, Washington.

18. Representations. The signatories to this Agreement certify that they have fully read and agree to the foregoing terms on behalf of the entity he/she represents. By signing this Agreement, each individual certifies that he/she is at least 18 years of age and has legal authority to enter into this Agreement on behalf of the entity he/she represents.

DATED this _____ day of April, 2012.

TOWN OF EATONVILLE, a municipal corporation

By: _____
Raymond Harper, Mayor

Attest:

By: _____
Chrystal McGlone, Clerk

DATED this _____ day of April, 2012.

ESA PARAGON

By: _____

Title: _____

Approved as to form:

Town Attorney



5309 Shilshole Avenue NW
Suite 200
Seattle, WA 98107
206.789.9658 phone
206.789.9684 fax

www.paragonresearch.net

March 26, 2012

Nicholas Bond
Town of Eatonville
via email (NBond@eatonville-wa.gov)

Subject: 452 Lynch Creek Road East Pedestrian Trail

Dear Nick:

Enclosed is ESA Paragon's Scope of Work (Attachment A) and Cost Estimate (Attachment B) for a Cultural Resources Assessment of the 452 Lynch Creek Road East Pedestrian Trail.

Based on the map you have provided, the trail appears to run along an existing dirt road, which, if older than 50 years, would need to be recorded in the state's Historic Property Inventory (HPI); recording in the HPI does not imply necessarily imply significance of a resource. Because we currently do not know the age of the road, we have scoped the preparation of the HPI as a contingency.

Please feel free to contact me with questions about this scope of work or cost estimate. Thank you for the opportunity to continue to work with you on the next phase of the trail.

Sincerely,

A handwritten signature in black ink that reads 'Paula Johnson' in a cursive script.

Paula Johnson
Director
Northwest Cultural Resources

Attachment A:
Scope of Work
452 Lynch Creek Road East Pedestrian Trail

Project Description: The Town of Eatonville is proposing to develop an approximately 2000 linear foot pedestrian trail along an existing unpaved, dirt road at 452 Lynch Creek Road East. The project will involve some limited mechanical grading, clearing of vegetation, and placement of gravel along the trail alignment. Because the project has received grant funding from the State of Washington the project must comply with Executive Order 05-05.

Scope of Work: The Scope of Work to be conducted by ESA Paragon consists of four tasks:

Task 1. Project Management. Under this task ESA Paragon will prepare monthly invoices and progress reports, as well as assist with regulatory correspondence.

Task 2. Limited Background Research. Under this task ESA Paragon will conduct limited background research augmenting the research conducted for the Town for the Bud Blancher Trail. We will utilize existing environmental and historical documents within our archives to assess the relevant background of the Project Area, especially the age and origin of the dirt road; if the age and origin of the dirt road cannot be determined from existing materials, limited additional research may be required.

Task 3. Fieldwork. ESA Paragon will conduct an integrated surface/subsurface survey (shovel probes); ESA assumes the depth of project disturbance to be 12" below ground surface and will advance shovel probes to a depth of 18" below ground surface; ESA will place up to 20 shovel probes along the trail alignment as field conditions permit. We will photograph and record surface conditions. If any cultural resources are identified we will document the find; no artifacts will be collected.

If historic maps indicate the road is older than 50 years we will document the road and prepare a Historic Property Inventory form.

Task 4. Draft & Final Report. ESA Paragon will prepare a technical report summarizing the results of the Cultural Resources Assessment. The report will rely heavily on the report prepared by ESA Paragon for the Bud Blancher Memorial Trail. The draft (as pdf) will be submitted to Town of Eatonville for review; any comments will be incorporated and a final draft will be produced. If necessary due to the age of the road, a Historic Property Inventory (HPI) will be completed and included as an appendix.

Assumptions: This cost estimate is based upon the following assumptions:

- The regulatory nexus is Executive Order 05-05 Disturbances associated with the trail development do not extend to Weyerhaeuser Road.
- The depth of disturbance from mechanical grading or vegetation removal will not extend beyond 12" below surface.
- The Town of Eatonville has prepared Executive Order 05-05 EZ-1 Form and submitted it to DAHP. The Town will provide ESA Paragon with copies of this form and any correspondence from DAHP.

Cost Proposal: ESA Paragon has estimated the cost for Cultural Resources Assessment of the 452 Lynch Creek Road East Pedestrian Trail based on the hours and rate schedule included in Attachment B. ESA Paragon estimates that a sum of \$3,509 will be required to complete Tasks 1 through 4 as described above; if an HPI is required additional labor up to \$1,000 may be required to document the dirt road and complete the HPI. Extra Services will be initiated by ESA Paragon only after agreement by both ESA Paragon and the Client concerning revisions to the scope of work and additional compensation, if necessary.

ESA Paragon COST ESTIMATE

DATE: 3/26/2012

PROJECT/STUDY: City of Eatonville - 425 Lynch Creek Road East Pedestrian Trail

LABOR COST CATEGORY	LBR RATE PER HOUR	Task 1. Project Mgmt / Agency Coord		Task 2. Limited Background Research		Task 3. Fieldwork		Task 4. Draft & Final Technical Report	
		LBR HRS	LBR COST	LBR HRS	LBR COST	LBR HRS	LBR COST	LBR HRS	LBR COST
Project Manager	\$137.00	2	\$ 274		\$ -		\$ -	1	\$ 137
Principal Investigator	\$124.00		\$ -	1	\$ 124	1	\$ 124	2	\$ 248
Senior Researcher	\$106.00		\$ -	2	\$ 212		\$ -	2	\$ 212
Archaeologist	\$92.00		\$ -		\$ -	10	\$ 920	8	\$ 736
Admin/Graphics	\$74.00		\$ -		\$ -		\$ -	6	\$ 444
SUB-TOTAL LABOR.....>		2	\$ 274	3	\$ 336	11	\$1,044	19	\$1,777

TRAVEL COST CATEGORY	TRAVEL	TRAVEL	TRAVEL	TRAVEL
Rental Vehicle	\$ -	\$ -		
Airfare	\$ -	\$ -	\$ -	\$ -
Mileage	\$ -		\$ 78	\$ -
Per Diem	\$ -	\$ -	\$ -	\$ -
MiscTravel (gas, parking, tolls)	\$ -			\$ -
SUB-TOTAL TRAVEL.....>	\$ -	\$ -	\$ 78	\$ -

OTHER DIRECT COST CATEGORY	OTHER DIRECT COSTS	OTHER DIRECT COSTS	OTHER DIRECT COSTS	OTHER DIRECT COSTS
Communication			\$ -	\$ -
Shipping/Postage				
GIS Map	\$ -	\$ -	\$ -	
Reproduction	\$ -			
Equipment/Supplies	\$ -		\$ -	\$ -
SUB-TOTAL OTHER DIRECT COSTS.....>	\$ -	\$ -	\$ -	\$ -

COST ESTIMATE TOTAL.....>	\$ 274	\$ 336	\$ 1,122	\$ 1,777
 GRAND TOTAL.....>	\$ 3,509			

CONTINGENCY: If HPL is required, additional labor up to \$1000 may be needed to document the resource and complete form.