

RESOLUTION 2012-JJJ

A RESOLUTION OF THE EATONVILLE TOWN COUNCIL TO AUTHORIZE THE EXECUTION OF A GRANT AGREEMENT WITH THE NISQUALLY RIVER FOUNDATION

WHEREAS, the Town of Eatonville has been awarded a grant to install stormwater, hardscape, and landscaping improvements at town hall totaling \$35,000, and;

WHEREAS, the Council has reviewed the attached agreement and wishes to authorize its execution, now therefore,

BE IT RESOLVED by the Council of the Town of Eatonville to authorize the Mayor to execute on behalf of the Town the attached grant agreement with the Nisqually River Foundation.

Passed by the Council of the Town of Eatonville at a regular meeting this 17th day of December, 2012.

Raymond Harper, Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

Independent Contractor Agreement

THIS AGREEMENT is between the Nisqually River Foundation, 12501 Yelm Hwy SE, Olympia WA, 98513 (hereinafter NRF) and **Town of Eatonville, 201 Center Street W, Eatonville WA 98328** (hereinafter CONTRACTOR) for services rendered in support of the Nisqually Watershed Stewardship Plan. The parties agree as follows:

1. BACKGROUND. –

The Nisqually River Foundation of behalf of the Nisqually River Council is working to implement the Nisqually Watershed Stewardship Plan. The Nisqually River Foundation is contracting with the Town of Eatonville to implement activities under the green building and low impact development portions of the plan.

2. DEFINITIONS. -- For the purposes of this Agreement, the term:

- (a) “NRF” means Nisqually River Foundation, a non-profit (501(c)3) corporation registered in Washington state, and its directors, officers, employees and agents;
- (b) “CONTRACTOR” means the Town of Eatonville.
- (c) “Contract Representative” means the persons designated in Exhibit “A”, attached hereto and incorporated by reference, to serve as the respective parties’ representatives for purposes of administration of this Agreement.

3. SERVICES. -- CONTRACTOR agrees to provide services to NRF as described in Exhibit “A”, which is incorporated herein by reference.

4. COMPENSATION. -- This contract will be on a cost reimbursement basis, the CONTRACTOR shall submit an itemized invoice for services rendered, as stipulated in Exhibit “A.” NRF agrees to pay CONTRACTOR on a monthly basis within 14 days of receipt of CONTRACTOR’s invoice. CONTRACTOR’s invoices shall indicate dates of service and time spent on date providing service under this Agreement, and any additional expenses, with receipts, as specified in Exhibit “A.” CONTRACTOR shall submit each invoice to NRF’s Contract Representative for review and approval prior to payment.

5. TRAVEL EXPENSES. -- NRF is not obligated to provide any compensation for reimbursement of travel expenses above and beyond the sum stipulated in Exhibit “A.”

6. REPORTS. -- CONTRACTOR agrees to provide quarterly written reports to NRF to describe its activities under this Agreement. CONTRACTOR’s reports shall be made in a form prescribed or approved by the Contract Representative for NRF.

7. RECORDS. -- CONTRACTOR agrees to retain and provide NRF access to all books, documents, papers, and other records of CONTRACTOR involving transactions relating to this Agreement for a period of six years after final payment.

8. TERM. -- The term of this Agreement commences on execution and continues until December 31, 2013 and under the terms set forth in Exhibit “A” or until otherwise terminated by the parties. This Agreement may be terminated by either party without cause 30 days following written notice to the other party. All rights, duties and obligations accrued under this Agreement shall survive after termination.

9. OWNERSHIP OF WORK PRODUCT. -- CONTRACTOR acknowledges that all private rights, title and interests to all materials produced under this Agreement are co-held and retained by NRF and CONTRACTOR. CONTRACTOR and NRF agree not to sell, transfer or distribute materials produced under this Agreement for any purpose other than to fulfill the responsibilities under this Agreement without prior written consent of NRF.

10. CONTRACTOR STATUS. --

- (a) CONTRACTOR shall act as an independent contractor, and in no way shall be considered an employee of NRF. CONTRACTOR shall be responsible for payment of taxes, insurance, and other obligations relating to its performance of services under this Agreement.
- (b) CONTRACTOR acknowledges the CONTRACTOR will not qualify for benefits which may be available if classified as an employee. In the event that the Internal Revenue Service (IRS) successfully asserts that CONTRACTOR is not or was not an independent contractor for any period during the term of the Agreement and reclassifies CONTRACTOR as an employee, CONTRACTOR agrees to complete, sign and deliver IRS Form 4669 (Employee Wage Statement) to NRF for any tax period affected. NRF shall then file for Form 4669 with the IRS (along with IRS Form 4670 "Request for Relief From Payment of Income Tax Withholding") to offset against NRF's withholding obligation.
- (c) CONTRACTOR is not required to report to NRF's offices at any specific time, except as requested for occasional consultations. NRF does not have the right to assign any additional projects to CONTRACTOR.
- (d) CONTRACTOR is authorized to subcontract all or part of its obligations under this Agreement.

11. NON-EXCLUSIVE CONTRACT. -- This Agreement is non-exclusive. CONTRACTOR reserves the right to perform services for others during the term of the Agreement.

12. FINANCIAL INTERESTS PROHIBITED. -- CONTRACTOR warrants and represents that it has no financial interest in the outcome of services provided under this Agreement.

13. MATERIALS AND EQUIPMENT. -- With the exception of those described in Exhibit "A", CONTRACTOR shall provide all materials and equipment necessary to perform its obligations under this Agreement. Any equipment purchased with funds provided by this Agreement shall revert to NRF at termination of the contract.

14. INDEMNIFICATION. --

- (a) CONTRACTOR hereby indemnifies and holds harmless NRF from –
 - (1) all claims and liabilities resulting from acts or omissions by CONTRACTOR under this Agreement; and
 - (2) any additional taxes, interest, and penalties due from CONTRACTOR or NRF resulting from reclassification in the event the IRS or any state or local taxing authority successfully asserts that CONTRACTOR is not or was not an independent contractor for any period during the term of the Agreement and reclassifies CONTRACTOR as an employee; and
 - (3) CONTRACTOR agrees to indemnify and hold NRF harmless from any and all liabilities or expenses CONTRACTOR, or employees and/or contractors working on its behalf, may incur by reason of bodily injury (including death) to any person, or property damage, or both, in any manner arising from or in connection with performance of work, under this

contract, except those injuries to or death of persons and damages to or loss of property arising from the negligence or willful misconduct of the company, its employees or representative(s). CONTRACTOR agrees to be responsible for its Worker's Compensation Insurance. If any direct claim for Worker's Compensation benefits or awards is asserted against NRF by any of said employees or, in the event of death, by their personal representative(s), CONTRACTOR shall indemnify and hold NRF harmless from and against any such claims.

(b) NRF hereby indemnifies and holds harmless CONTRACTOR from all claims and liabilities resulting from acts or omissions by NRF under this Agreement.

15. INSURANCE. -- NRF agrees that CONTRACTOR's liability coverage as provided by the Association of Washington Cities is sufficient to meet any insurance obligations required by this Agreement.

16. BUSINESS LICENSE AND TAXES. -- CONTRACTOR shall, at its own expense, secure and maintain in full force and effect during the term of this agreement all required licenses, permits, and similar legal authorization, and comply with all applicable Federal, State, and local regulations.

17. MODIFICATION. -- This Agreement may not be waived, discharged, or modified in any manner other than by written agreement of the parties.

18. ARBITRATION. -- The parties hereby agree to submit any disputes arising under this Agreement to arbitration under the rules of the American Arbitration Association.

19. COSTS AND ATTORNEYS' FEES. -- If either party brings any action against the other for relief, declaratory or otherwise, arising out of this Agreement, the prevailing party shall recover against the other party all costs and reasonable attorney's fees, incurred to enforce any judgment rendered pursuant to this Agreement.

20. SPECIFIC PERFORMANCE. -- The parties recognize the difficulty measuring damages resulting from default under this Agreement. Consequently, and in the event of default, the non defaulting party, in addition to any other rights or remedies, shall be entitled to restraint by injunction of a violation, or attempted or threatened violation, of any condition of provisions. In such event, the parties expressly waive the defense that a remedy in damages or at law would be adequate.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the last day written below.

FOR Nisqually River Foundation:

CONTRACTOR:

By: _____

Title: Chair _____

Date: _____

Date: _____

State UBI # _____

Federal ID # _____

EXHIBIT A

1. **CONTRACT REPRESENTATIVES:** For the purpose of this Agreement, Justin Hall shall be the contract representative for the Nisqually River Foundation; Nicholas Bond, Town Planner, Town of Eatonville shall be the contract representative for CONTRACTOR.
2. **SERVICES:** With the funds provided by this agreement, CONTRACTOR is obligated to support the efforts of a full-time equivalent Executive Director. The CONTRACTOR's duties shall include, but not be limited to the tasks indicated below. CONTRACTOR shall provide services according to the following work plan.

The Eatonville Town Hall will be disconnected from the stormwater system and reduce energy consumption. Providing an example for Town residents and visitors to learn from through tours, classes and interpretative signs, and hopefully replicate in their own homes. Disconnection from the stormwater system will be through converting existing asphalt to permeable surfaces and creating new porous sidewalks around Town Hall. Some pavement will be replaced with landscaping and a bioswale will be installed to catch and filter wash water from vehicles. The Town's electric department will install solar panels for Town Hall as a demonstration project.

The portion of the project will include, project design and engineering, site survey, parking lot pervious pavement install, sidewalk installation, bioswale installation, and interpretative signage.

The Town will on its own install solar panels on the roof of Town Hall.

Quantitative Measurements – The CONTRACTOR will provide as a part of the quarterly reporting, a direct measure of how much impervious surface was converted, a calculation of the amount of rainwater treated, a direct measurement of the amount of energy produced by the solar panels, and a list and number of volunteers and visitors to the project.

3. **COMPENSATION:** The CONTRACTOR shall be paid on a cost reimbursement basis. The total for the Agreement shall not exceed \$35,000. Additional funds may be added to the contract with the written agreement of both parties.
4. **EQUIPMENT, MATERIALS, SUPPLIES, AND TRAVEL EXPENSES:** Expenditures for equipment, materials, supplies, or travel shall be reimbursed as part of the total stipulated in Item 3.
5. **TERM:** Subject to other contract provisions, the period of performance for this Agreement shall be from its effective date through December 31st, 2013.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment effective as of the last day written below.

FOR Nisqually River Foundation:

CONTRACTOR:

By: _____

Title: Chair _____

Date: _____

Date: _____

UBI # _____

Tax ID # _____