

**RESOLUTION 2018-FF**

**A RESOLUTION OF THE TOWN OF EATONVILLE, WASHINGTON  
AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES  
AGREEMENT WITH TWISTED LIZARD COMPANIES FOR BUILDING  
INSPECTOR AND PLAN REVIEW SERVICES**

**WHEREAS**, the Town has the need for Building Inspector and Plan Review Services; and

**WHEREAS**, Twisted Lizard Companies has the required skill and experience to adequately serve the Town as a consultant in the area of Building Inspector and Plan Review services; and

**WHEREAS**, the professional services agreement requires the contractor to provide his own insurance for services performed under the agreement; now, therefore,

**THE TOWN COUNCIL OF THE TOWN OF EATONVILLE,  
WASHINGTON, HEREBY RESOLVES AS FOLLOWS:**

**THAT:** The Town Council approves, and the Mayor is authorized to execute on behalf of the Town, the attached Professional Services Agreement with Twisted Lizard Companies.

PASSED by the Town Council of Town of Eatonville and attested by the Town Clerk in authentication of such passage this 22nd day of October 8, 2018.

---

Mike Schaub, Mayor

ATTEST:

---

Kathy Linnemeyer, Town Clerk

## TOWN OF EATONVILLE PROFESSIONAL SERVICES AGREEMENT

THIS Agreement is made effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between

TOWN OF EATONVILLE, WASHINGTON (“TOWN”)

210 Center Street West

P.O. Box 309

Eatonville, WA 98328

Contact: Mayor Mike Schaub

Phone: 360.832.3361 Fax: 360.832.3977

mayor@eatonville-wa.gov

and

Twisted Lizard Companies (“CONSULTANT”)

652 169<sup>th</sup> St S

Spanaway Wa 98387

Contact: Mike Noot

Phone: 253.307.5300

Fax: 253.307.5300

Tax Id No.:474507976

for professional services in connection with the following Project:

Contract Building Inspector and Administrative Services

### TERMS AND CONDITIONS

#### 1. Services by Consultant

- A. Consultant shall perform the services described in the Scope of Work attached to this Agreement as Exhibit "A." The services performed by the Consultant shall not exceed the Scope of Work without prior written authorization from the Town.
- B. The Town may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to the Agreement.

#### 2. Schedule of Work

- A. Consultant shall perform the services described in the scope of work in accordance with the Schedule attached to this contract as Exhibit “B.” If delays beyond Consultant's reasonable control occur, the parties will negotiate in good faith to determine whether an extension is appropriate.
- B. Consultant is authorized to proceed with services upon receipt of a written Notice to Proceed.

#### 3. Compensation

As compensation, Consultant shall be paid an amount equal to seventy five percent (75%) of all fees received by the Town for the following: plan review fees; building permit fees; mechanical permit fees;

and plumbing permit fees. Additional services requested outside of the scope of work set forth in Exhibit "A" shall be compensated at the rate of \$100 per hour.

#### **4. Payment**

- A. Consultant shall maintain time and expense records and provide them to the Town on a monthly basis, along with monthly invoices in a format acceptable to the Town for work performed to the date of the invoice.
- B. All proper invoices shall be paid by Town within sixty (60) days of receipt.
- C. Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by Town representatives for three (3) years after final payment, unless a longer period is required by a third-party agreement. Copies shall be made available on request.
- D. If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. Town may withhold payment for such work until the work meets the requirements of the Agreement.

#### **5. Discrimination and Compliance with Laws**

- A. Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.
- B. Consultant shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.
- C. Consultant shall obtain a Town of Eatonville business license prior to receipt of written Notice to Proceed.
- D. Violation of this Paragraph 5 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by Town, in whole or in part, and may result in ineligibility for further work for Town.

#### **6. Suspension and Termination of Agreement**

- A. This Agreement may be terminated by the Town at any time upon the default of the Consultant or upon public convenience, in which event all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to Town, and Consultant shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination, not to exceed the total compensation set forth herein. Consultant shall not be entitled to any reallocation of cost, profit or overhead. Consultant shall not in any event be entitled to anticipated profit on work not performed because of such termination. Consultant shall use its best efforts to minimize the compensation payable under this Agreement in the event of such termination. If the Agreement is terminated for default, the Consultant shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra

cost or damage to the Town resulting from such default(s) shall be deducted from any money due or coming due to the Consultant. The Consultant shall bear any extra expenses incurred by the Town in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the Town by reason of such default.

B. The Town may suspend this Agreement, at its sole discretion, upon one week's advance notice to Consultant. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to the Consultant's reasonable expenses, and shall be subject to verification. The Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

## **7. Standard of Care**

Consultant represents and warrants that it has the requisite training, skill and experience necessary to provide the services under this agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant under this agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

## **8. Ownership of Work Product**

All data materials, reports, memoranda, and other documents developed under this Agreement whether finished or not shall become the property of Town, shall be forwarded to Town at its request and may be used by Town as it sees fit. Upon termination of this agreement pursuant to paragraph 6 above, all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to Town. Town agrees that if it uses products prepared by Consultant for purposes other than those intended in this Agreement, it does so at its sole risk and it agrees to hold Consultant harmless therefrom.

## **9. Indemnification/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 Consultant, 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 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.

## 10. Insurance

The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

### A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The Town shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the Town.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

### B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respect the Town. Any insurance, self-insurance, or insurance pool coverage maintained by the Town shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Town.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

Consultant shall furnish the Town with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

**11. Assigning or Subcontracting**

Consultant shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the Town, which consent may be withheld in the sole discretion of the Town.

**12. Independent Contractor**

Consultant is and shall be at all times during the term of this Agreement an independent contractor. 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.

**13. Notice**

Any notices required to be given by the Town to Consultant or by Consultant to the Town shall be in writing and delivered to the parties at the following addresses:

Town:

Consultant:

Mike Schaub  
Mayor  
210 Center Street West  
P.O. Box 309  
Eatonville, WA 98328  
Phone: 360.832.3361  
Fax: 360.832.3977

Mike Noot  
652 169<sup>th</sup> St S  
Spanaway Wa 98387  
Phone:253.307.5300  
Fax:253.307.5300

**14. Disputes**

Any action for claims arising out of or relating to this Agreement shall be governed by the laws of the State of Washington. Venue shall be in Pierce County Superior Court.

**15. Attorneys Fees**

In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney's fees from the other party.

**16. Extent of Agreement/Modification**

This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

TOWN OF EATONVILLE

CONSULTANT

By: \_\_\_\_\_  
Mike Schaub  
Mayor

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Kathy Linnemeyer  
Town Clerk





## Exhibit B Schedule of Work

Schedule of Work: The work for this agreement will be on an "on call" basis with at least 24 hours' advance notice for inspection services. Administrative services will also be scheduled on an "on call" basis, however the parties agree to attempt to limit administrative services to the days and times Consultant will be in the Town of Eatonville in order to avoid, to the extent possible, extra travel for Consultant. Administrative services may also be done off site, if agreed upon by both parties for particular tasks.

## Exhibit A Scope of Work

Scope of work: To act as the Town of Eatonville's Building Inspector and plan reviewer for all plan reviews, and construction which requires inspections within the Town of Eatonville. There is also administrative services agreed to with this agreement that shall not exceed a total of 20 hours per week any additional hours that have been requested by the Town, will be compensated separately at a rate of \$100 per hour.