

RESOLUTION 2018-I

**A RESOLUTION OF THE EATONVILLE TOWN COUNCIL TO AUTHORIZE
THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH
MAGNAN CONSULTING SERVICES, INC. FOR BUILDING INSPECTOR AND
PLAN REVIEW SERVICES**

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

WHEREAS, Magnan Consulting Services, Inc. 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 Magnan Consulting Services, Inc.

PASSED by the Town Council of Town of Eatonville and attested by the Town Clerk in authentication of such passage this 26th day of March 2018.

Mike Schaub, Mayor

ATTEST:

Kathy Linnemeyer, Town Clerk

TOWN OF EATONVILLE PROFESSIONAL SERVICES AGREEMENT

THIS Agreement is made effective as of the 26th day of March, 2018, 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

Magnan Consulting Services Inc. (“CONSULTANT”)

12423 151st Ave East

Puyallup WA 98374

Contact: Thomas Magnan

Phone: 253.840.4020

Cell: 253.255.3932

Tax Id No.: UBI # 602-592-971 Federal # 20-449-3681

For professional services in connection with the following Project:

Building Inspector and Plan Review 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

Compensation for these services shall be on a time and material basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit “C.”

4. Payment

- A. Consultant shall maintain time and expense records and provide them to the Town monthly, along with monthly invoices in a format acceptable to the Town for work performed to the date of the invoice.
- B. All invoices shall be paid by Town within THIRTY (30) days of receipt of a proper invoice. (RECEIVE 2% DISCOUNT IF PAID WITHIN 15 DAYS) Invoices to be submitted no less than 7 days before council meeting. If not submitted 7 days before meeting will be paid in the next month's billing cycle)
- 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
Email: mayor@eatonville-wa.gov

Magnan Consulting Services Inc.
Thomas Magnan
12423 151st Ave East
Puyallup Wa 98374
Phone: 253.840.3949
Cell: 253.255.3932
Email:
Thomas.magnan@magnanconsulting.com

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:

By:

Mike Schaub
Mayor

Name: Thomas Magnan

Date: _____

Title: CEO

Date: 3-26-18

Attest:

By:

Kathy Linnemeyer
Town Clerk

SCOPE OF WORK
Exhibit "A."

Plan Review:

Consultant will be given an electronic copy and 2 hard copies to provide review, and return one copy as the site approved copy. Retain the second copy until the project is completed and project closeout is done.

Consultant will verify the Engineer of design has complied with the current building codes and has clearly shown them on the plans and specifications. Make notation of items not clear and omitted to be included.

Consultant will discuss issues directly with Engineer to get them in compliance.

Consultant will Review permits and verify all needed permits were acquired to the specific project.

Consultant will Review final Contractor as-built drawings for completeness

Site Inspection:

Consultant will become familiar with the approved project site issued by public works department

Consultant will verify the contractor has building permit and approved plans on site before attempting an inspection.

Consultant will verify the phases of the project as Erosion Control, Grading, Foundations, Underground piping, Footing Drains, Storm tight lines, Verify L & I approval , Floor framing before cover, Shear wall nail off, Mechanical, Plumbing, Framing rough in, Insulation , Wall closure and sheet rock, structural finishes comply with approved plans.

Consultant will verify piping trueness of grade and pressure testing for water, sewer, and gas lines

Consultant will verify depth and compaction of backfill of ditches

Consultant will Notify Contractor of code violations, non-compliance to approved plans.

Consultant will Issue Notices of non-compliance and follow up when corrected

Consultant will take progress photos each time, a visit is made and include in the Inspectors report

Consultant will provide by the next day a completed report with pictures, and notices given and submit to Public works department.

This scope can be altered and added to by the city as an addendum to contract

Exhibit "B."

No schedules given

Exhibit "C."
Rates and cost related expenses

All rates are portal to portal, but **no** mileage or equipment charged

Plan reviewer \$100.00 per hour

Field Inspector \$100.00 per hour

Document Control \$60.00 per hour.

Direct cost billed at cost of invoice as postage, etc.

Optional services:

MCSI can also provide Construction Management for public works project and including the QA Inspection and Document Control. In compliance to LAG, Federal funded projects as street and road projects CM rate is \$130.00 an hour