

RESOLUTION 2018-C

**A RESOLUTION OF THE EATONVILLE TOWN COUNCIL TO AUTHORIZE
THE EXECUTION OF AN AMENDMENT TO AN INDEPENDENT
CONTRACTOR AGREEMENT WITH ROBERT WALTER FOR ANIMAL
CONTROL SERVICES AND REPEALING RESOLUTION 2013-C**

WHEREAS, the Town of Eatonville entered into an Independent Contractor Agreement with Robert Walter on or about March 28, 2011, in which Walter agreed to provide animal transport, kennel maintenance and cleaning services to the Town for a fee; and

WHEREAS, Resolution 2013-C executed an amendment to the Independent Contract Agreement to include Pet Canvassing Services; and

WHEREAS, due to the advice of the Town's insurance provider, Robert Walter is no longer performing Pet Canvassing Services; and

WHEREAS, the independent contractor agreement requires the contractor to provide his own insurance for services performed under the agreement; and

WHEREAS, due to an increase in the liability insurance premium, Robert Walter has requested an increase of \$240.00 annually to cover the increased insurance premium cost; 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 amendment to the Independent Contractor Agreement with Robert Walter.

AND FURTHER THAT: Resolution 2013-C is hereby repealed in its entirety.

PASSED by the Town Council of Town of Eatonville and attested by the Town Clerk in authentication of such passage this 12th day of February 2018.

Mike Schaub, Mayor

ATTEST:

Kathy Linnemeyer, Town Clerk

INDEPENDENT CONTRACTOR AGREEMENT

This Independent Contractor Agreement (the “*Agreement*”) is entered into as of ~~March 28, 2011~~ February 12, 2018 by and between the Town of Eatonville (“the *Town*”) and independent Contractor (Robert Walter). The Town and the Independent Contractor are referred to throughout this Agreement individually each as a Party and collectively as Parties.

RECITALS

WHEREAS, the Town is in need of assistance in the area of transporting animals to the Humane Society, and,

WHEREAS, Town has agreed to compensate Independent Contractor for these services and other services as described in this Agreement;

NOW, THEREFORE, the Parties hereby agree as follows:

SECTION ONE – ENGAGEMENT

The Town hereby engages the Independent Contractor to render the services as described in the annexed Exhibit A (collectively, the “*Services*”). In the event of any conflict between this Agreement and the annexed Exhibit A, this Agreement shall control.

SECTION TWO – COMPENSATION

- A. In full consideration for the performance of the Services hereunder, and for any rights granted or relinquished by the Independent Contractor under this Agreement, the Town shall pay the Independent Contractor as follows:
1. Twenty-five dollars (\$25.00) per trip for animal or animals transported to the Humane Society for Tacoma and Pierce County.
 2. Mileage for such trips by Independent Contractor to be compensated at the standard rate set by the Internal Revenue Service.
 3. ~~Six Hundred~~ Eight Hundred and Fourty Dollars and No Cents (~~\$600.00~~) 840.00 annually to be paid at the rate of ~~fifty-seventy~~ dollars (~~\$5070.00~~) per month for the Independent Contractors work related to maintenance and cleaning the Town’s kennels to the extent that the Town is holding animals in the kennels to be claimed by owners.
- B. All payments shall be preceded by an invoice from the Independent Contractor to be submitted monthly, which the Town shall pay in the ordinary course.

- C. Independent Contractor acknowledges and agrees that, except as provided under this Section 2 (2), Independent Contractor shall not be entitled to, and the Town shall not be obligated to pay, any monies or other compensation for the Services provided and rights granted under this Agreement.

SECTION THREE – INDEPENDENT CONTRACTOR RELATIONSHIP

- A. The Independent Contractor agrees to perform the Services hereunder solely as an Independent Contractor. The Parties to this Agreement recognize that this Agreement does not create any actual or apparent agency, partnership, franchise, or relationship of employer and employee between the Parties.
- B. The Independent Contractor shall not be entitled to participate in any of the Town's benefits, including without limitation any health or retirement plans. The Independent Contractor shall not be entitled to any remuneration, benefits, or expenses other than as specifically provided for in this Agreement.
- C. The Town shall not be liable for taxes, worker's compensation, industrial insurance, unemployment insurance employer's liability, employer's FICA, social security, withholding tax, or other taxes or withholding for or on behalf of the Independent Contractor in performing Services under this Agreement. All such costs shall be the exclusive responsibility of the Independent Contractor.

SECTION FOUR – WARRANTIES AND INDEMNIFICATION

- A. The Independent Contractor represents and warrants that:
 - 1. The Services shall be performed in accordance with, and shall not violate, applicable laws, rules or regulations, and the Independent Contractor shall obtain all permits or permissions required to comply with such laws, rules or regulations;
 - 2. The Independent Contractor will perform the Services in accordance with the specifications established by the Town.
- B. The Independent Contractor hereby indemnifies and agrees to hold harmless the Town, its officers and employees, from any damages, claims, liabilities, and costs, including reasonable attorneys' fees or losses of any kind or nature whatsoever which may in any way arise from the Services performed by the Independent Contractor hereunder, including the warranties set forth herein. Independent Contractor agrees to provide its own insurance for services performed under this Agreement in the amount of one million dollars (\$1,000,000.00) with the Town being named the co-insured of the one million dollar (\$1,000,000.00) insurance policy and expressly recognizes that the Town's insurance will not cover Independent Contractor for such services.

SECTION FIVE – TERM AND TERMINATION

- A. The term of this Agreement shall commence on the date hereof and shall continue until such time as this Agreement is terminated by any of the following provisions.
- B. This Agreement may be terminated:
 - 1. by either Party upon fifteen (15) days prior written notice if the other Party breaches or is in default of any obligation hereunder and such default has not been cured within such fifteen (15) day period; or
 - 2. by the Town at any time during the Term for any reason upon ten (10) days written notice.

SECTION SIX – DAMAGES AND REMEDIES

- A. In the event of termination of the agreement by the Town pursuant to Section 5.B(1), the Town shall have all remedies available to it at law and in equity.
- B. In the event of termination pursuant to Section 5B(2) and provided that the Independent Contractor is not in material breach of its obligations hereunder, the Independent Contractor shall be entitled to keep all monies already paid pursuant to Section 2 and the Town's sole obligation will be to pay the Independent Contractor the amount due for Services already acceptably performed and Materials already accepted, pro rata. In no event shall the Town be liable for any lost profits or consequential, incidental or special damages.

SECTION NINE- GENERAL TERMS

MISCELLANEOUS

- A. Assignment. The Town may freely assign this Agreement, in whole or in part. Except as expressly permitted by this Agreement, the Independent Contractor shall not assign, delegate, or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Town. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.
- B. No Waiver. The failure of any party to insist upon the strict observance and performance of the terms of this Agreement shall not be deemed a waiver of other obligations hereunder, nor shall it be considered a future or continuing waiver of the same terms.
- C. Notices. Any notice required or permitted by this Agreement shall be in writing and delivered as follows with notice deemed given as indicated (1) by personal delivery when delivered personally; (2) by overnight courier upon written verification of

receipt; (3) by facsimile transmission upon acknowledgment of receipt of electronic transmission, or (4) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth on the signature page of this Agreement or such other address as either party may specify in writing.

- D. Governing Law. This agreement shall be governed in all respects by Washington law without regard to conflicts of law principles thereof.
- E. Severability. Should any provisions of this Agreement be held by a court of law to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this agreement shall not be affected or impaired thereby.
- F. Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior or contemporaneous oral or written agreements concerning such subject matter. The terms of this Agreement will govern all Services undertaken by the Independent Contractor for the Town.
- G. Amendments. This Agreement may only be amended, modified or changed by an agreement signed by the Town and the Independent Contractor. The terms contained herein may not be altered, supplemented or interpreted by any course of dealing or practices.
- H. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

[Remainder of page intentionally left blank; signature pages to follow]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

TOWN OF EATONVILLE

By: _____
~~Raymond Harper~~ Mike Schaub
Mayor

INDEPENDENT CONTRACTOR

By: _____
Robert Walter
140 Antonie Avenue Eatonville, WA 98328

EXHIBIT A – INDEPENDENT CONTRACTOR SERVICES

Town engages Independent Contractor to perform the following services:

1. Independent Contractor will transport animals to the Humane Society from the Town's kennels. Independent Contractor will only do so when requested to transport an animal by the Town. As provided for in the Agreement, Town will compensate Independent Contractor \$70 for each trip Independent Contractor makes to the Humane Society at the Town's request. Town will also compensate Independent Contractor for mileage incurred in performance of these services at the standard rate set by the Internal Revenue Service.
2. Independent Contractor will only be allowed into the Town's kennels from 7.30 a.m. through 4.30 p.m. Monday through Friday.
3. Independent Contractor will clean the Town's kennels and feed the animals being held in the kennels so long as the Town is holding animals in the kennels for pick up by their respective owners. As provided for in the Agreement, Town will compensate Independent Contractor at a rate of \$25 per day for such services.