

**RESOLUTION 2021-G**

**A RESOLUTION OF THE TOWN OF EATONVILLE,  
WASHINGTON, APPROVING A CONSULTING AGREEMENT  
WITH ESCI, INC. TO PROVIDE SAFETY AND TRAINING SERVICES**

**WHEREAS**, the Town of Eatonville (“Town”) does not currently have a safety training program in place; and

**WHEREAS**, ESCI, Inc. offers safety and training services designed to allow utility departments to fully comply with all WAC regulations; and

**WHEREAS**, the monthly cost of \$1,250.00 was included in the 2021 Town of Eatonville budget; now, therefore;

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

**THAT:** The Town Council hereby approves, and the Mayor is authorized to execute on behalf of the Town, the attached Consulting Agreement with ESCI, Inc.

**PASSED** by the Town Council of Town of Eatonville and attested by the Town Clerk in authentication of such passage this 8<sup>th</sup> day of February 2021.

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Mike Schaub  
Mayor

ATTEST:

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Miranda Doll  
Town Clerk

## CONSULTING AGREEMENT

AGREEMENT dated this 1<sup>st</sup> day of March 2021, by and between ESCI Inc., a Washington Corporation (“ESCI”) and the Town of Eatonville, (the “Customer”).

WHEREAS, the Customer desires to engage ESCI to provide certain electric utility safety training and consulting services on the terms and conditions herein set forth.

WHEREAS, ESCI has expertise in providing safety training and consulting services to the electric utility industry.

WHEREAS, the Customer wishes to engage ESCI, and ESCI is willing to accept such engagement to provide electric utility safety training and consulting services to the Customer.

NOW THEREFORE the parties agree as follows:

### **1. Engagement**

The Customer agrees to engage ESCI, and ESCI agrees to provide electric and utility safety training and consulting services to the Customer on the terms and conditions set out in this Agreement.

### **2. Term**

ESCI's engagement by the Customer shall commence when the parties sign this Agreement and shall continue until March 1, 2022 (the “Term”). The Agreement shall renew for additional twelve (12) month terms unless either party gives thirty (30) days' written notice, in accordance with Section 9.

### **3. Services**

During the Term, ESCI shall perform monthly electric and utility safety training and consulting services as described in Exhibit A, attached hereto, and incorporated by reference (hereinafter referred to as the “Services”).

ESCI warrants and represents that it shall perform the Services in compliance with all applicable regulations, statutes, laws, orders, and other lawful requirements related to performance of the Services, including but not limited to Federal Occupational Safety and Health Administration Regulations and the requirements of the National Electric Safety Code. Additionally, ESCI warrants and represents that it shall perform the Services in a professional manner free of material errors and omissions.

ESCI shall be responsible for all direct and incidental costs and expenses arising out of damage caused by an error or omission in its Services. ESCI shall be held to a

standard equivalent to other professional engineering/safety companies similarly situated as ESCI. ESCI's express warranties and representations shall be in addition to, and not in lieu of any other remedies Contractor may have under this Subcontract, at law or in equity.

#### **4. Compensation**

- (a) As consideration for ESCI's carrying out the Services, the Customer shall pay ESCI as described in Exhibit A, attached hereto, and incorporated by reference (hereinafter referred to as the "Compensation").
- (b) ESCI shall invoice the Customer on the first day of each month for the services listed in Exhibit A.
- (c) (c) The Customer shall pay ESCI's invoices within 45 days as detailed in Exhibit A.
- (d) Upon the failure of the Customer to pay ESCI's invoices which are not in dispute in a timely manner, ESCI shall have the right to immediately terminate its services under this Agreement and shall be entitled to all amounts owing to ESCI as of the date of termination.

#### **5. Confidential Information**

- (a) ESCI acknowledges and understands that, while performing services hereunder, ESCI will have access to information that is or may be trade secrets and/or that is confidential and proprietary to the Customer ("Confidential Information"). ESCI shall use its best efforts to cause its employees and agents to, maintain all such Confidential Information in strictest confidence, and not use or disclose the same for any purpose not otherwise expressly contemplated hereby, without, in each case, the appropriate consent and approval of the Customer.
- (b) The Customer acknowledges and understands that, while performing services hereunder, the Customer will have access to information that is or may be trade secrets and/or that is confidential and proprietary to ESCI ("Confidential Information"). The Customer shall use its best efforts to cause its employees and agents to, maintain all such Confidential Information in strictest confidence, and not use or disclose the same for any purpose not otherwise expressly contemplated hereby. ESCI acknowledges and understands the Customer is a local government agency subject to Washington's Public Records Act, RCW 42.56. The Customer may be required by the Public Records Act to disclose documents or information considered public records. ESCI acknowledges disclosure of public records does not constitute a violation of this section.

## **6. Insurance**

ESCI shall provide insurance as required in the attached Exhibit "B."

## **7. Notice of Unauthorized Disclosure**

Either party shall promptly advise the other party in writing if it learns of any unauthorized use or disclosure of any Confidential Information by any person or organization. Disclosure of public records in accordance with RCW 42.56 shall not constitute an unauthorized disclosure.

## **8. Independent Contractor**

ESCI is an independent contractor for Customer. Nothing in this Agreement shall be construed as creating an employer-employee relationship, as a guarantee of future employment. ESCI further agrees to be responsible for all ESCI's federal and state taxes, withholding, social security, insurance, and other benefits. Upon request, ESCI shall provide Customer with satisfactory proof of independent contractor status (including a valid State of Washington business license). ESCI further warrants that in the event the Internal Revenue Service or any other state or local agency determines that ESCI is a common law employee of Customer and therefore subject to withholding and payroll taxes (e.g. federal income tax, FICA, FUTA, etc.), ESCI will fully defend and indemnify Customer for any such claim including all such withholding and payroll taxes, and associated interest and penalties, if any, assessed against Customer in connection with such determination. In the event taxes are required to be withheld on payments made hereunder by any U.S. (state or federal) or foreign government, Customer may deduct such taxes from the amount owed ESCI and pay them to the appropriate taxing authority. Customer shall in turn promptly secure and deliver to ESCI an official receipt for any taxes withheld. Customer will use reasonable efforts to minimize such taxes to the extent permissible under applicable law.

## **9. Termination**

- (a) Either party may terminate this Agreement, without penalty, and without having to give any reason for doing so, by giving the other at least thirty (30) days' written notice. ESCI shall prepare a final invoice reflecting fees and disbursements owing to it on the date the written notice of termination takes effect, and the Customer shall pay the invoice within forty-five (45) days.
- (b) Either party may terminate this Agreement on written notice at any time for cause, which shall be defined as a party's failure to comply with any of the material terms of this Agreement.

- (c) In the event of the termination of this Agreement, whether pursuant to this section, at the end of the Term or otherwise, ESCI shall have the right to be paid fees and disbursements due to it pro rated to the date of termination.

## **10. Assignment**

Neither party shall assign its rights under this Agreement, whether expressly or by operation of law, without the written consent of the other party, which shall not be unreasonably withheld.

## **11. Notices**

Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be mailed by certified mail, return receipt requested, postage prepaid, addressed to the party as follows:

To Customer:

Town of Eatonville  
PO Box 309  
Eatonville, WA 98328

To ESCI:

Brian Erga  
President ESCI  
P.O. Box 2822  
Bellingham, WA 98227  
360-676-8088

Any notice or other communication shall be deemed to be given at the expiration of the third day after the date of deposit in the United States mail. The addresses to which notices or other communications shall be mailed may be changed from time to time by giving written notice to the other party as provided in this section.

## **12. Hold Harmless**

ESCI agrees to defend, indemnify and hold harmless the Customer, its appointed and elected officials, officers, directors, employees, and agents from and against any and all liabilities, losses, claims, obligations, demands, costs, damages and expenses, including attorney's fees (collectively, a "Claim") arising out of or in any way related to ESCI's performance of this Agreement, to the extent caused by the negligent acts or omissions of ESCI, its subcontractors, agents, successors and assignees, or anyone directly or indirectly employed by ESCI or anyone for whose acts ESCI supervise or control (each a "Contractor Party"). Where a Claim arises from the concurrent fault of the parties to the Agreement, ESCI's obligations under this Section shall only apply to extent of the respective fault of ESCI and the Contractor Parties.

**13. Governing Law**

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington with venue in Pierce County, Washington.

**14. Attorneys' Fees**

If any action at law or in equity is brought to enforce or interpret provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees.

**15. Severability**

If any provisions of this Agreement are determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

**16. Entire Agreement**

This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writings and all other communications between the parties. It may not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

IN WITNESS whereof, the parties hereto have executed this Agreement as of the date set forth above.

ESCI, INCORPORATED

BY: Brian Erga, President ESCI Inc

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

Town of Eatonville

BY: Mike Schaub, Mayor

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

## **EXHIBIT A SERVICES**

ESCI shall provide the following monthly services to the Customer as requested:

- Full availability to ESCI's Safety and Training Professionals concerning electric utility safety questions and concerns
- Support interpreting and applying WAC 296 regulations, National Electric Safety Code (NESC), American Standard of Testing and Materials (ASTM) and the Institute of Electrical and Electronic Engineers (IEEE) standards, guides, rules and requirements
- Regular ESCI updates on important hot topics in the industry in real-time
- Assistance developing and maintaining your company's required written work methods, safety policies and work procedures covering fall protection, FR body protection, permit, confined and enclosed space, MSDS, trenching and shoring, personal protective grounding, switching & clearances, Lockout/Tagout, Minimum Approach Distance (MAD) and many more
- Monthly safety training at the Customer's facilities for the T & D Electric Operations group (selected by the customer). Due to weather or unforeseen circumstances safety training may need to be delayed, rescheduled or provided over the internet
- Participation at T & D Electric Operations safety meetings as requested
- Attendance and participation by other utility employees at safety training sessions when the program affects their work
- Quarterly, or as requested, safety training for office and management staff
- Safety training record keeping
- Regular jobsite and facility audits
- Review recent and future accidents and associated reports to identify contributing factors root cause.

## **COMPENSATION**

A monthly fee for the above services shall be \$1,250.00.

Other requests for ESCI assistance will be billed as detailed below:

## **EXHIBIT B INSURANCE REQUIREMENTS**

ESCI shall maintain insurance coverage as required herein with insurance companies lawfully authorized to do business in all states in which the Services are to be performed.

Within seven (7) days after the Effective Date of this Contract or prior to commencement of the Services, ESCI shall provide a Certificate of Insurance (COI) utilizing an industry standard ACORD form.

Such insurance shall be maintained with insurance carriers with a minimum AM Best rating of "A+" and who are lawfully authorized to do business in the jurisdiction in which the project work or services rendered is located.

Customer reserves the right to withhold payments to ESCI, if ESCI fails to provide evidence of compliant insurance required herein.

Workers Compensation (WC). Maintain Workers Compensation (Part One) insurance with Statutory limits in compliance with all applicable state and federal laws having jurisdiction over each employee in the state where the work is to be performed, including Employer's Liability (Part Two) insurance with limits of liability of \$500,000.

Commercial General Liability (CGL). Maintain insurance written on an occurrence form with limits of \$1,000,000 each occurrence and \$2,000,000 aggregate for bodily injury and property damage, personal and advertising injury, products/completed operations and contractual liability.

Commercial Automobile Liability (AL). Maintain insurance written on an occurrence form with limits of \$500,000 each occurrence for bodily injury, property damage or death, including coverage for medical payments and Un-insured/Under-insured motorists. Insurance shall be endorsed to include coverage for hired, borrowed, owned, non-owned, leased and rented vehicles.

Professional Liability (PL). Maintain insurance for design, engineering, architectural, accounting, technology or other common types professional services provided written on a claims made from applying to liability for errors, acts or omissions arising out of the scope of the Consultant's professional services or work with limits of \$1,000,000 each claim and aggregate.

Insured Status - ESCI's insurance shall be endorsed to include Additional Insured status for Customer and/or in favor of such other Persons or Parties as may be requested by Customer who may have flow-down requirements of Customer utilizing recognized Insurance Services Office (ISO) endorsement(s) for all coverage except workers compensation part one and professional liability.



Notice of Cancellation – ESCI shall be responsible to provide a minimum 30-day written advance notice of any cancellation or material change in coverage.

Deductibles or Self-Insured Retentions – ESCI shall be responsible for all deductibles or self-insured retention amounts with respect to losses and related investigations, claim administration and defense expenses pertaining to the requisite liability coverages, workers compensation and excess/umbrella insurance policies specified above.

Severability – ESCI shall be responsible to provide a severability of interests or cross liability clause as provided under standard ISO forms except for professional liability/errors and omissions coverage and workers compensation insurance if or where not allowed.