

RESOLUTION NO. 2017-X

A RESOLUTION OF THE EATONVILLE TOWN COUNCIL APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH PARAMETRIX, INC.

WHEREAS, Parametrix Inc. shall provide on-call professional services for the Town of Eatonville upon request; and

WHEREAS, the scope of work for each task order will be mutually determined by the Town and Parametrix, Inc. on an individual basis, upon request of services; and

WHEREAS, Parametrix, Inc. shall perform the services described in the scope of work as agreed by the parties upon the opening of each new task order; and

WHEREAS, Compensation for these services shall not exceed \$2,000.00 per month without written authorization; now therefore

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

THAT: The professional services agreement between Parametrix Inc. and the Town of Eatonville for on-call professional services in the amount not to exceed \$2,000.00 per month is hereby approved and the Mayor is authorized to sign the same. A copy of the agreement is attached hereto as Exhibit A.

PASSED by the Town Council of Town of Eatonville and attested by the Town Clerk in authentication of such passage this 14th day of August 2017.

Mike Schaub, Mayor

ATTEST:

Kathy Linnemeyer, Town Clerk

TOWN OF EATONVILLE PROFESSIONAL SERVICES AGREEMENT

THIS Agreement is made effective as of the ____ day of _____, 2017, by and between

TOWN OF EATONVILLE, WASHINGTON ("TOWN")

210 Center Street West

P.O. Box 309

Eatonville, WA 98328

Contact: Abby Gribi, Town Administrator Phone: 360.832.3361 Fax: 360.832.3977

TownAdmin@eatonville-wa.gov

and

PARAMETRIX CONSULTING, PLLC, INC. ("CONSULTANT")

1019 39th Avenue SE, Suite 100

Puyallup, WA 98374

Contact: Brian E. Bunker, PE

Phone: 253.604.6600 Fax: 1.855.542.6353

Tax Id No.: 602627445-91-0914810

for professional services in connection with the following Project:

Consultant shall provide on-call professional services upon request from the Town. The scope of work for each task order will be mutually determined by the Town and Consultant on an individual basis upon request of services.

TERMS AND CONDITIONS

1. Term and Services by Consultant

A. This Agreement shall commence upon execution of the Agreement by both parties and shall end three (3) years from the commencement date.

B. Consultant shall perform services as follows:

Consultant shall provide on-call professional services upon request from the Town. The scope of work for each task order will be mutually determined by the Town and Consultant on an individual basis upon request of services.

The services performed by the Consultant shall not exceed the Scope of Work without prior written authorization from the Town.

C. 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 as agreed by the parties upon the opening of each new task order. 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

TIME AND MATERIALS NOT TO EXCEED. Compensation for these services shall not exceed \$_____ \$2,000.00 per month without written authorization and will be based on the following:

Consultant shall charge Town rates equal to the direct wages or salaries Consultant pays to its employees for work performed directly on a project initiated pursuant to this Agreement, multiplied by 3.2.

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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 sixty (60) days of receipt of a proper invoice.
- 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 thirty (30) days' 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 negligent 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.

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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:

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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:

Abby Gribi
Town Administrator
210 Center Street West
P.O. Box 309
Eatonville, WA 98328
Phone: 360.832.3361
Fax: 360.832.3977

Consultant:

Brian E. Bunker, PE
Water Solutions Division Manager
1019 39th Avenue SE
Suite 100
Puyallup, WA 98374
Phone: 253.604.6600
Fax: 1.855.542.6353

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

Date: _____

Brian Bunker, PE
Water Solutions Division Manager

Date: _____

Attest:

By: _____
Kathy Linnemeyer
Town Clerk