

RESOLUTION 2023-MM

**A RESOLUTION OF THE TOWN OF EATONVILLE, WASHINGTON,
AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT
WITH KPG, PSOMAS INC FOR SURVEYING SERVICES**

WHEREAS, the Town of Eatonville (“Town”) is in need of a professional consulting firm to provide surveying services for various projects; and

WHEREAS, the Town selected KPG, Psomas Inc. after reviewing submittal information for surveying services from the current list of consultants under contract with the Town for other services; and

WHEREAS, funding is available in the enterprise funds as well as the general fund for professional services; and

WHEREAS, the Town wishes to utilize KPG, Psomas Inc. to provide professional services related to surveying during 2023 and 2024; 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 professional services agreement, attached hereto as Exhibit A, with KPG, Psomas Inc. for on call surveying services, not to exceed \$20,000.

PASSED by the Town Council of Town of Eatonville and attested by the Town Clerk in authentication of such passage this 23rd day of October 2023.

David Baublits, Mayor

ATTEST:

Miranda Doll, Town Clerk

RESOLUTION 2023-MM

**TOWN OF EATONVILLE
PROFESSIONAL SERVICES AGREEMENT
FOR ON CALL SURVEYING SERVICES**

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:

Phone: 360.832.3361

Fax: 360.832.3977

Email:

and

KPG Psomas Inc. (“CONSULTANT”)

2502 Jefferson Avenue

Tacoma WA 98402

Contact: Mike Bowen

Phone: 253-627-0720

Email: mike.bowen@psomas.com

Tax Id No.: 95-2863554

TERMS AND CONDITIONS

1. Purpose

The purpose of this Agreement is to provide the Town with on call services for work as described in Section 2 below. The general terms and conditions of the relationship between Consultant and the Town are specified in this Agreement.

2. Scope of Work

Consultant shall perform the services described in the Scope of Work attached as Exhibit A using Task Orders formatted as set forth in the attached Exhibit C, both which are incorporated into this Agreement. The services performed by the Consultant shall not exceed the Scope of Work without prior written authorization from the Town.

3. Term

Consultant shall not begin any work under this Agreement until an authorized Task Order is approved in writing by the Town. Written Task Orders may be issued as email documents. This Agreement shall expire on December 31, 2024, unless extended by an amendment issued by the Town.

4. Compensation

- A. The total compensation to be paid to Consultant during the term of this Agreement shall not exceed 20,000 provided, however, this Agreement does not guarantee any amount of work for the Consultant.
- B. The Consultant shall be paid by the Town for completed services rendered under each approved individual Task Order. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment and incidentals necessary to complete the work.
- C. The Consultant shall be paid by the Town based upon the negotiated cost for each individual approved Task Order. This amount will be a "not to exceed" figure based on the Fee Schedule outlined in Exhibit B for work performed under this Agreement, which is attached hereto and incorporated by this reference. Compensation shall include all approved consultant expenses including, but not limited to, overhead, profit, and direct non-salary costs and shall not exceed that amount shown on each approved individual Task Order for services under this Agreement. The Consultant will not undertake any work or otherwise financially obligate the Town in excess of the not-to-exceed amount without a duly executed Addendum issued by the Town.
- D. The Consultant shall submit an itemized bill to the Town prior to payment. All invoices shall be paid by Town within sixty (60) days of receipt of a proper invoice.
- E. The Consultant and its Subconsultants shall keep available for inspection, by the Town, for a period of three (3) years after final payment, the cost records and accounts pertaining to this Agreement. If any litigation, claim, or audit is started before the expiration of the three-year retention period, the records shall be retained until litigation, claims, or audit findings involving the records have been resolved. The three-year retention period starts when the Consultant receives final payment.
- F. 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. Non-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, gender, marital status, sexual orientation, 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

The parties reserve the right to terminate this Agreement at any time upon not less than ten (10) days' written notice to the other party in accordance with the subparagraphs below:

- A. In the event this Agreement is terminated by the Town other than for fault on the part of the Consultant, a final payment shall be made to the Consultant for cost for work completed under any current task authorizations at the time of the termination of the Agreement. In addition, the Consultant shall be paid on the same basis as above for any authorized extra work completed. No payment shall be made for any work completed after ten (10) days following receipt by the Consultant of the Notice to Terminate unless otherwise agreed. If the accumulated payment made to the Consultant prior to the Notice of Termination equals or exceeds the total amount that would be due as set forth herein above, including any and all extra work, then no final payment shall be due, and the Consultant shall immediately reimburse the Town for any excess paid.
- B. In the event the services of the Consultant are terminated by the Town for actual fault on the part of the Consultant, the above stated formula for payment shall not apply. In such an event the amount to be paid shall be determined by the parties with reasonable consideration given to: the costs incurred by the Consultant in performing the work to the date of termination; the amount of work originally required which was completed by the Consultant in accordance with the standard of care stated herein prior to the date of termination; the cost to the Town of employing another firm to complete the remaining work required and the time which may be required to do so; and other factors which affect the value of the work performed at the time of termination; provided, however, Consultant shall not in any event be entitled to anticipated profit on work not performed because of such termination. The Consultant shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Under no circumstances shall payment made under this subsection exceed the amount which would have been made if the formula set forth in subsection A had been applied.
- C. The Town may suspend this Agreement, at its sole discretion, upon not less than 5 days' written 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

- A. Except as otherwise provided herein, all data materials, reports, memoranda, and other documents developed under this Agreement shall become the property of Town, shall be forwarded to Town at its request, and may be used by Town as it sees fit, provided that payment has been made to the Consultant per the terms of this Agreement. 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.
- B. The Consultant shall provide the Town with electronic copies of the project documents, in accordance with the task authorization, in any of the following formats: Adobe Portable Document Format (PDF), AutoCAD® Drawing Web Format (DWF) or JPEG (JPG).
- C. Methodology, materials, software, logic, and systems developed outside of task authorizations, or were pre-existing to any task authorizations, remain the property of the Consultant, and may be used as the Consultant sees fit, including the right to revise or publish the same without limitation.

9. Indemnification/Hold Harmless

- A. 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, , save and hold harmless the Town, its elected and appointed officials, employees and agents (defined in this paragraph as "Indemnified Parties") from any and all liability, demands, , causes of action, suits or judgments, including costs, attorney fees and expenses, incurred in connection therewith, 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 liable (defined in this paragraph as "Indemnitor" or "Indemnitors").
- B. In the event that any suit based on such a, 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.

- C. 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 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, when applicable.
- D. 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 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, 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 mail, ten (10) days if cancellation is due to nonpayment of premium, 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. Employment; Independent Contractor

- A. The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract and that the Consultant has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the Town shall have the right to annul this Agreement without liability, or in its discretion to deduct from the Agreement price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
- B. 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. Any and all claims that may or might arise under the Workman's Compensation Act on behalf of said employees, while so engaged in the work or services provided or to be rendered herein, shall be the sole obligation and responsibility of the Consultant. The Consultant, subcontractors, agents and employees shall not have the authority to bind Town in any way except as may be specifically provided herein.
- C. The Consultant shall not engage, on a full or part-time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been at any time during the period of this contract, in the employ of the Town and who have been involved in the execution, administration, or performance of this Agreement except regularly retired employees, without written consent of the Town.

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:

Consultant:

Town: Seth Boettcher
Town Administrator
210 Center Street West
P.O. Box 309
Eatonville, WA 98328

Consultant: KPG, Psomas
Mike Bowen
2502 Jefferson Avenue
Tacoma, WA 98402

Phone: 253-627-0720

Phone: 360.832.3361

14. Disputes

The parties shall make a good faith effort to resolve disputes in connection with the work prior to initiating legal action. 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.

17. Execution and Acceptance.

This Agreement may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The parties do hereby accept the Agreement and agree to all of the terms and conditions thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, as of the day and year first written below.

TOWN OF EATONVILLE

CONSULTANT

By: _____
David Baublits, Mayor

By: _____
Mike Bowen, Vice President

Date: _____

Date: _____

Attest:

By: _____
Miranda Doll
Town Clerk