

Subject: Resolution #6835 Authorizing Execution of Consultant Services Agreement for Code Enforcement and Environmental Review with 4M Consulting LLC

Proposed Council Action:

Pass Resolution #685.

Dept. Origin: Mayor's Office
Prepared by: Jennifer Robertson
 City Attorney's Office
For Agenda of: July 17, 2018
Exhibits: Resolution #685 with attached agreement

| | |
|-------------------------------------|-------------------|
| | Initial & Date |
| Concurred by Mayor: | _____ |
| Approved/form by City Atty: | <u>JSR/6-8-18</u> |
| Approved by _____ Director: | _____ |
| Approved by Department Head: | _____ |

INFORMATION / BACKGROUND

From time-to-time the City of Ruston has the need for code enforcement services and environmental review services. The City started contracting with 4M Consulting, LLC for these services in January of 2013. The Agreement with 4M Consulting, LLC was authorized by the City Council on January 15, 2013 by adoption of Resolution No. 535. 4M Consulting, LLC has been providing both code enforcement and environmental review services on an on-call basis since that time. That contract is now expired. The Mayor recommends entering into a new agreement for these services which will not have a set expiration date but can be terminated by either party upon 60-days' written notice.

The differences between the prior agreement and the updated agreement are:

1. The prior agreement had a maximum contract price of \$100,000 for the two year period. The current agreement has a maximum contract price of \$20,000 per year. (Section II.)
2. The prior agreement was for 2 years. The current agreement does not expire but can be terminated on 60-days' notice by either party. (Sections IV and V.)
3. The prior agreement did not require use of city email or protection of public records. The current agreement contains these requirements. (Section X.)
4. The prior agreement hourly rates were \$100 per hour. The current agreement hourly rates are \$120 per hour. (Exhibit "A" – Scope of Services.)
5. The prior agreement was for two years and therefore contained no rate increase clause. The current agreement does not automatically expire and contains an annual adjustment of CPI-U to occur each June based on the April annual CPI-U rate for Seattle-Tacoma-Bremerton. (Exhibit "A" – Scope of Services.)
6. The prior agreement contained the then federal mileage rate. The current agreement establishes this rate as the "current federal rate." (Exhibit "A" – Scope of Services.)

FISCAL CONSIDERATION

The maximum contract price is \$20,000 per year. The consultant has never billed this amount and has usually been under \$15,000 per year.

RECOMMENDATION / MOTION

Pass Resolution #685.

MOTION: I move to approve Resolution No. 685 authorizing the Mayor to execute the consultant services agreement with 4M Consulting LLC for code enforcement and environmental review services in substantially the form attached as Exhibit "1".

RESOLUTION NO. 685

**A RESOLUTION OF THE CITY OF RUSTON,
WASHINGTON, AUTHORIZING MAYOR TO EXECUTE
AN AGREEMENT WITH 4M CONSULTING SERVICES
LLC FOR ON-CALL CODE ENFORCEMENT AND
ENVIRONMENTAL REVIEW SERVICES.**

WHEREAS, from time-to-time the City of Ruston has the need for code enforcement services and environmental review services; and

WHEREAS, since 2013 4M Consulting has provided these services to the City of Ruston; and

WHEREAS, the agreement for these services (authorized by the Council by passage of Resolution No. 535) has expired and needs to be updated; and

WHEREAS, the City Council finds it in the best interests of Ruston to enter into an on-call consultant services agreement with 4M Consulting LLC for these services, a copy of which is attached to this Resolution as Exhibit “1”; **NOW, THEREFORE,**

THE CITY COUNCIL OF THE CITY OF RUSTON HEREBY RESOLVES AS FOLLOWS:

Section 1. Authorization of Agreement. The City Council hereby authorizes the Mayor to execute the Consultant Services Agreement with 4M Consulting, LLC in an amount not to exceed Twenty Thousand Dollars (\$20,000.00) in any year, in the substantially form attached hereto as Exhibit “1”

RESOLVED this 17th day of July, 2018.

Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

Judy Grams, City Clerk

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
RESOLUTION NO.: 685

EXHIBIT “1”

**Consultant Services Agreement
Between
City of Ruston
and
4M Consulting, LLC**

**CONSULTANT SERVICES CONTRACT
BETWEEN
THE CITY OF RUSTON
AND
4M CONSULTING, LLC**

THIS AGREEMENT is made by and between the City of Ruston, a Washington municipal corporation (hereinafter the "City"), and 4M Consulting, LLC, an Environmental Planning Firm organized under the laws of the State of Washington located and doing business at 15127 East Main Street, Ste. 104, Sumner, WA 98390 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is interested in On-Call Code Enforcement and Environmental Planning Services; and

WHEREAS, the Consultant has agreed to perform said services;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

I. Description of Work

The Consultant shall perform all work as described in **Exhibit A**, which is attached hereto and incorporated herein by this reference.

II. Payment

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Twenty Thousand Dollars (\$20,000) in any given year of this Agreement for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount.

B. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this Agreement. The City shall pay the full amount of an invoice within forty-five (45) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the

Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

III. Relationship of Parties

The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

IV. Agreement Term

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The term of this Agreement shall be from the date this Agreement is executed by both parties, until terminated by in accordance with Section V below.

V. Termination

A. Termination of Agreement. The term of this Agreement shall be from the date this Agreement is executed by both parties, until terminated by either party pursuant to the terms hereof. Either party may terminate this Agreement with or without cause, by providing sixty (60) days written notice to the other party.

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise.

VI. Discrimination

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Consultant, its subcontractors, or any person acting on behalf of such Consultant or sub-consultant shall not, by reason of race, religion, color, sex, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

VII. Indemnification

The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the negligence of the City. The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, agents and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

The provisions of this section shall survive the expiration or termination of this Agreement.

VIII. Insurance

A. 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 Consultant's own work including the work of the Consultant's agents, representatives, employees, sub-consultants or sub-contractors.

B. Before beginning work on the project described in this Agreement, the Consultant shall provide evidence, in the form of a Certificate of Insurance, of the following insurance coverage and limits (at a minimum):

1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit, and
2. Commercial General Liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate. Coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, and employers liability, and
3. Professional Liability insurance with no less than \$1,000,000. All policies and coverage's shall be on a claims made basis.

C. The Consultant is responsible for the payment of any deductible or self-insured retention that is required by any of the Consultant's insurance. If the City is required to contribute to the deductible under any of the Consultant's insurance policies, the Contractor shall reimburse the City the full amount of the deductible within 10 working days of the City's deductible payment.

D. The City of Ruston shall be named as an additional insured on the Consultant's commercial general liability policy. This additional insured endorsement shall be included with evidence of insurance in the form of a Certificate of Insurance for coverage necessary in Section B. The City reserves the right to receive a certified and complete copy of all of the Consultant's insurance policies.

E. Under this agreement, the Consultant's insurance shall be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage with respect to defense and indemnity of the City only and no other party. Additionally, the Consultant's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

F. The Consultant shall request from his insurer a modification of the ACORD certificate to include language that prior written notification will be given to the City of Ruston at least 30-days in advance of any cancellation, suspension or material change in the Consultant's coverage.

IX. Exchange of Information

The City warrants the accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Agreement. The parties agree that the Consultant will notify the City of any inaccuracies in the information provided by the City as may be discovered in the process of performing the work, and that the City is entitled to rely upon any information supplied by the Consultant which results as a product of this Agreement.

X. Ownership and Use of Records and Documents

A. Ownership. Original documents, drawings, designs and reports developed under this Agreement shall belong to and become the property of the City. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

B. Use of City's system mandatory. The Consultant agrees to use the City email system, if offered, for all City-related email and to put all records which are created, received or used for City-related matters onto the City's drop box account. The Consultant agree that the use of the City's email and drop box will result in all city-related records in the Consultant's use or control being placed or maintained within the City's server system.

C. Records preservation. Consultant understands that this Agreement is with a government agency and thus all records created or used in the course of Consultant's work for the City are considered "public records" and are subject to disclosure under the Public Records Act, Chapter 42.56 RCW ("the Act"). Consultant agrees to safeguard and preserve records in accordance with the Act. If the City receives a public records request and asks Consultant to search his files for responsive records, Consultant agrees to make a prompt and thorough search through his files for responsive records and to promptly turn over any responsive records to the City's public records officer.

XI. City's Right of Inspection

Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

XII. Consultant to Maintain Records to Support Independent Contractor Status

On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to the Revised Code of Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties which is subject to RCW Title 51, Industrial Insurance.

XIII. Work Performed at the Consultant's Risk

The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

XIV. Non-Waiver of Breach

The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options, and the same shall be and remain in full force and effect.

XV. Resolution of Disputes and Governing Law

Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City of Ruston, who shall determine the term or provision's true intent or meaning. The City of Ruston shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the Mayor's determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

XVI. Written Notice

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified to the contrary.

Unless otherwise specified, any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

CONSULTANT:

Mr. Eric Mendenhall
4M Consulting, LLC
29723 48th Ave S

CITY:

City Clerk
City of Ruston
5117 N Winnifred St.

Auburn, WA 98001

Ruston, WA 98407-6597

A copy shall also be transmitted to the City Clerk at the above address.

XVII. Assignment

Any assignment of this Agreement by the Consultant without the written consent of the City shall be void. If the City shall give its consent to any assignment, this paragraph shall continue in full force and effect and no further assignment shall be made without the City's consent.

XVIII. Modification and Severability

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reasons held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

XIX. Entire Agreement

The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, this Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached hereto, which may or may not have been executed prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on this ____ day of July, 2018.

CONSULTANT

CITY OF RUSTON

By: _____
Eric Mendenhall, Owner

By: _____
D. Bruce Hopkins, Mayor

Notices shall be sent to:

Consultant:

Mr. Eric Mendenhall
4M Consulting LLC
29723 48th Ave S
Auburn, WA 98001

City of Ruston:

Mr. D. Bruce Hopkins, Mayor
City of Ruston
5117 Winnifred St.
Ruston, WA 98407-6597

APPROVED AS TO FORM:


Office of the City Attorney

ATTEST:

City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Mr. Eric Mendenhall is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Owner of 4M Consulting, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____ 20__

(print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing at:

My Commission expires:_____

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Mr. D. Bruce Hopkins is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Mayor of Ruston to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____ 20____

(print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing at:

My Commission expires: _____

EXHIBIT A

SCOPE OF SERVICES

ON-CALL CONSULTANT SERVICES

4M Consulting, LLC
15127 East Main Street, Ste. 104
Sumner, WA 98390

1. Scope:

Consultant shall provide consulting services to the City of Ruston on an on-call basis. Services required by the City may include, but are not limited to:

- Code Enforcement
- Environmental Review
- Other tasks as assigned by the Mayor of Ruston

2. Rates of Compensation:

Rates of compensation and related charges are as provided below:

| | |
|---|----------------------|
| ◆ Code Enforcement | \$120.00 per hour* |
| ◆ Environmental Review | \$120.00 per hour* |
| ◆ Direct Costs (such as full-size drawings) | At Cost Plus 5% |
| ◆ Sub-consultants | At Cost Plus 5% |
| ◆ Mileage | Current Federal Rate |

*Starting on July 1, 2019 and each year thereafter, the hourly rates above shall be increased by CPI-U for Seattle/Tacoma/Bremerton, using the annual rate for April of that year. Consultant shall give the City notice of the new rate by June 1st of each year.