



SQUAXIN ISLAND TRIBE

RESOLUTION NO. 06- B

of the

SQUAXIN ISLAND TRIBAL COUNCIL

WHEREAS, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises and its agencies by the authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; and

WHEREAS, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources and rights of the Tribe; and

WHEREAS, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government; and

WHEREAS, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe; and

WHEREAS, the Squaxin Island Tribal Council recognizes the continuing need to represent the Tribe in preparation for, litigation and negotiation of issues of water rights; and

WHEREAS, the Squaxin Island Tribal Council recognizes the continuing need for litigation support in the present case before the Pollution Control Hearings Board, No. 05-137, *Squaxin Island Tribe v. Department of Ecology and Miller Land and Timber LLC*; and

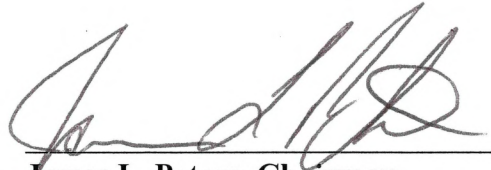
WHEREAS, the Squaxin Island Tribe wishes to enter into a contract for professional services with Joel Massmann of Keta Waters, as an expert witness for litigation support in the Pollution Control Hearings Board case; and

NOW THEREFORE BE IT RESOLVED, that the Squaxin Island Tribal Council does hereby approve the contract for the term of January 1, 2006 through September 30, 2007 (as attached);

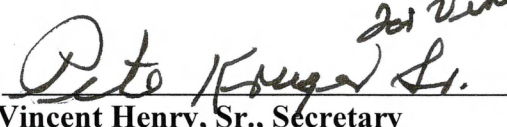
BE IT FURTHER RESOLVED, that the Squaxin Island Tribal Council authorizes the Executive Director to sign the contract.

CERTIFICATION

The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 23rd day of February, 2006, at which time a quorum was present and was passed by a vote of 3 for and 0 against, with 0 abstentions.

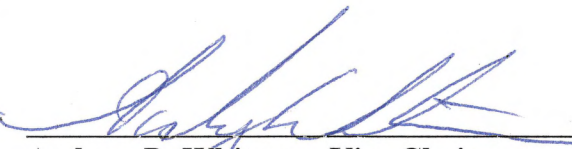


James L. Peters, Chairman

Attested by: 

Vincent Henry, Sr., Secretary

for Vincent Henry



Andrew D. Whitener, Vice Chairman

PERSONAL SERVICES CONTRACT

THIS CONTRACT, is made and entered into this ____ day of February, 2006, by and between the Squaxin Island Tribe, a federally-recognized Indian tribe, located on the Squaxin Island Reservation at Shelton, Washington, hereafter referred to as the "Tribe" whose address is 10 SE Squaxin Lane, Shelton, WA 98584, and Joel Massmann, dba Keta Waters, an engineering consulting company, hereinafter referred to as "Company" whose address is 6520 East Mercer Way, Mercer Island, WA 98040.

The Tribe desires expert engineering assistance relative to water resources and environmental impact in preparing and presenting its arguments in the matter of Squaxin Island Tribe v. Washington State Department of Ecology and Miller Land and Timber LLC, on behalf of Plaintiffs.

THEREFORE, it is mutually understood and agreed by the Tribe and Company as follows:

ARTICLE 1. THE SERVICES

A. The Company shall provide the following services: See Scope of Engineering Analysis attached as Exhibit A.

B. The Company shall make available one or more individuals to be agreed upon by the Tribe and the Company to testify and present the analysis. Availability of the Company's expert shall be subject to constraints of previous commitments. The Tribe is encouraged to work closely with the Company, as far in advance as possible, on the scheduling and rescheduling of specific the Company employees as expert witnesses.

ARTICLE 2. CONFIDENTIALITY

A. The Company recognizes that in performing services for the Tribe it may acquire knowledge concerning the Tribe and its client(s), which the Tribe may consider proprietary. The Company shall take reasonable precautions to protect such information which is confidential from unauthorized disclosure.

B. Analysis prepared by the Company in accordance with this Contract shall be confidential. The Company shall not release its analysis outside the Tribe's operations without written authorization from the Tribe unless required to do so by subpoena or by order of any court or other governmental body. If the Company is required to disclose confidential information, it will (unless legally prohibited from doing so) provide the Tribe with written notice and a copy of such order. If the Tribe should seek a protective order or other appropriate remedy, the Company will cooperate with the Tribe. If such protective order is not obtained, the Company shall disclose only such portion of the confidential information as is required to be disclosed and shall exercise reasonable efforts, consistent with this Contract, to protect all confidential information not legally required to be disclosed.

ARTICLE 3. FEE

A. Company's fees under this contract are based on an hourly rate of \$150.00 for actual time spent on the Tribe's behalf; provided, however, that no more than \$15,000.00 for the term of this contract shall be paid for such fees.

B. The Tribe shall pay the Company at the above rates for all time and expenses incurred at the Tribe's request. Such services include, but are not limited to, the scheduling of and preparation for depositions and/or testimony.

C. Any budget estimate provided to the Tribe by the Company will be based on the information available to the Company at the time the estimate is prepared. Such information includes, but is not limited to, the Tribe's initial description of the required analysis, the Tribe's representations concerning the availability of necessary supporting material or information, the Tribe's proposed schedule for making information available to the Company, and the deadlines initially proposed by the Tribe for the Company's report. Variation or change in any of these factors will materially impact the Company's actual time and expenditures. The actual time and expenditures spent on the work by the Company may be less than or greater than the figures in the Company's estimate. The Tribe acknowledges that the Company's budget estimate is not a commitment or a bid to perform the work for the amount of the estimate.

ARTICLE 4. PAYMENT

A. The Company shall provide the Tribe with the accounting of its expenditures and billings on a monthly basis. Payment shall be made within 30 days by the Tribe.

B. The Company shall assess a finance charge in the amount of one (1) percent per month on unpaid balances which are more than thirty (30) days overdue.

C. The Company may stop work at any time on the analysis if the unpaid balance is more than sixty (60) days overdue.

D. The Company shall keep records of time and expenses incurred which shall be available to the Tribe for inspection.

ARTICLE 5. INDEPENDENCE OF THE COMPANY

A. The Tribe and its representatives shall not attempt to prejudice the outcome of the analysis performed by the Company. The manner and means of conducting the work are under the control of the Company. The work is subject to the Tribe's general right of review and supervision.

B. The Tribe and the Company intend and agree that an independent contractor relationship is created by this Contract. No agent or employee of the Company shall be deemed to be the employee or agent of the Tribe.

ARTICLE 6. PROFESSIONAL STANDARDS

A. The Tribe shall provide the Company full information and shall make timely decisions to ensure orderly progress of the project. If the Tribe becomes aware of any error, fault, or defect in the project, the Tribe shall give the Company prompt written notice.

B. The Company shall provide the Tribe with timely services taking into account the Company's requirements for meeting professional standards.

C. The Company shall meet or exceed the standard of care, skill, and diligence normally provided by a professional practitioner of engineering analysis. Report results are for the Tribe's use only. Any claim of damages arising out of or related to this Contract or the performance of services under this Contract made against the Company, or any employee, contractor, or affiliate of the Company, shall be limited to actual out-of-pocket loss, shall not include consequential damages, even if the Company has been informed or should have known of circumstances which may give rise to consequential damages, and shall not exceed the amount paid by the Tribe to the Company under this Contract for services rendered by the Company. Any claim arising out of or related to this Contract or the performance of services under this Contract must be made within twelve (12) months following the first to occur of the termination of this Contract or the Company's delivery of its final report. Failure to make such a claim within twelve (12) months shall invalidate the Tribe's right to file.

D. Both the Company and the Tribe realize that the value of engineering analysis depends on the quality of the data and assumptions that go into it. The Company shall describe the sources of information, assumptions, and techniques it uses in its analysis and their limitations. The Tribe shall review the information and the Company's analysis for reasonableness.

E. The availability and quality of data can have a significant impact on the engineering analysis addressed in this Contract. These factors influence the method of analysis, its quality or rigor, and its timeliness. The Tribe agrees to provide the Company in a timely manner with the data necessary for the engineering analysis that the Company will perform. This data will be the primary source of information the Company will use to conduct the engineering analysis. The Company has not yet reviewed this data and so cannot judge the suitability of the data for the engineering analysis requested by the Tribe. Without reviewing the data the Company cannot determine the method of the analysis, its rigor or quality, or its timeliness.

F. The Company shall exercise reasonable efforts to provide its report by the deadline specified by the Tribe. Provided, however, the Company's ability to provide its report by any specific deadline depends on the quality and the timeliness of data provided by the Tribe to the Company. If the Company determines that the data provided by the Tribe is incomplete, unsuitable, or deficient in some other way, the Company may not complete the analysis requested by the Tribe by the deadline specified by the Tribe. If the Company needs additional data to supplement the data provided by the Tribe, the analysis may be delayed. The Company shall not be responsible for failure to meet timelines under this contract for reasons beyond its control, including without limitation, the failure of the Tribe to provide sufficient data for the analysis on a timely basis.

ARTICLE 7. OWNERSHIP OF MATERIALS AND PRODUCTS

A. Both the Tribe and the Company shall have the right to use all data, models, and materials used in the analysis and reports. Notwithstanding the foregoing, certain models and other material used in the analysis and reports may be proprietary to the Company or to the Tribe, even if developed for the purposes of the analysis and reports.

B. All models and materials that are proprietary to the Company shall be designated as such in the analysis and reports. The Company shall retain sole ownership of, and copyright in, its proprietary models and materials, but shall grant to the Tribe a nonexclusive license to use the same solely for the matter that is the subject of the analysis or report.

C. All data or materials that are proprietary to the Tribe shall be designated and clearly marked as such. The Tribe retains sole ownership of, and copyright in, its proprietary data or materials, but shall grant to the Company a nonexclusive license to use the same solely for the matter that is the subject of the analysis or report. The Tribe may, at its option, require the return or destruction of all copies of proprietary data or materials.

D. Except as provided in Sections 7.A through 7.C above, both the Tribe and the Company shall retain non-exclusive ownership of those data and other materials used in the analysis that are not in the public domain.

ARTICLE 8. CHANGES TO AND ENFORCEMENT OF CONTRACT

A. This Contract contains the entire agreement between the Tribe and the Company, and no previous statements, promises, or inducements made by either party which are not contained in this contract shall be valid or binding.

B. This Contract may be amended by mutual agreement of the Company and the Tribe. Any amendments shall be in writing and signed by representatives of both the Tribe and the Company.

C. Additional services requested by the Tribe but not included in Article 1 shall be invoiced on a time-and-materials basis per Article 3.

D. **ASSIGNMENT:** The Contract shall be binding upon the heirs, successors, and successor organizations of the parties, provided that neither party may assign or transfer their interest in the Contract without the express written consent of the other party.

E. **SEVERABILITY:** If any of the provisions of the Contract are held unenforceable or invalid by any court of competent jurisdiction, such holding shall not render unenforceable or invalidate any other provisions.

F. **WAIVER:** Failure of either party to enforce any provision of the Contract does not constitute a waiver of any other provision.

ARTICLE 9. TERM OF CONTRACT

A. The Contract term is January 1, 2006 through September 30, 2007, and will continue in full force and effect until terminated by the Tribe or the Company.

B. **TERMINATION FOR CAUSE:** If either the Company or the Tribe breaches this Contract, the other party shall have the right to terminate the Contract by giving at least ten (10) days written notice of intent to terminate, specifying the reason and effective termination date. The Company shall receive compensation as specified in Articles 3 and 4 for all work completed up to the effective date of the termination.

C. **TERMINATION FOR OTHER REASONS:** Either party may terminate the Contract by giving at least thirty (30) days written notice of intent to terminate, specifying the reason and effective termination date. The Company shall receive compensation as specified in Articles 3 and 4 for all work completed up to the effective date of the termination.

D. **TERMINATION DUE TO IRRECONCILABLE DIFFERENCES:** Either party may terminate this Contract immediately by delivering written notice of termination to the other party if, in the reasonable judgment of the terminating party, irreconcilable differences have developed in the professional relationship among the parties that would make continued work under this Contract untenable. The Company shall receive compensation as specified in Articles 3 and 4 for all work completed up to the effective date of the termination.

ARTICLE 10. DISPUTES

A. Any controversy or claim arising out of or related to this contract or breach thereof shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in a court in the county in which the arbitration occurs. The resolution of the disputed matter as determined by the arbitrator shall be binding on the parties.

B. In the event arbitration, suit, or action is instituted to interpret or enforce the provisions of this Contract or otherwise with respect to this Contract, the party prevailing on an issue shall be entitled to recover with respect to such issue reasonable attorney fees incurred as determined by the arbitrator or trial court, and if any appeal is taken, from such decision, reasonable attorney fees as determined on appeal.

ARTICLE 11. EQUAL OPPORTUNITY

A. The Tribe shall comply with Executive Order 11246, "Equal Opportunity" as amended by Executive Order 11375 and supplemented in Department of Labor regulations.

B. The Company shall not discriminate against any employee or applicant for employment on the grounds of to race, color, sex, sexual orientation, national origin, religion, marital status, age, prior industrial injury, or mental/physical disability unrelated to job performance.

C. The Company shall cooperate with the Tribe to meet the Tribe's commitments and goals regarding utilization of minority, disadvantaged, and women-owned business enterprises.

ARTICLE 12. GOVERNING LAW

The Company agrees to comply with all federal, state, county, and local laws, ordinances, and regulations applicable to this Contract. The Contract shall be governed by and enforced in accordance with the laws of the State of Washington.

ARTICLE 13. NO THIRD PARTY BENEFICIARIES

Nothing in this Contract, express or implied, is intended or shall be construed to confer on any person, other than the parties to this Contract, any right, remedy, or claim under it or with respect to this Contract.

ARTICLE 14. NOTICES

A. Any notice required or permitted by the terms of this Contract, including without limitation monthly statements, shall be deemed given if delivered personally to the party to be notified or sent by United States mail, postage prepaid, and addressed as follows:

If to the Tribe: Kevin R. Lyon, Director
Squaxin Island Legal Department
3711 SE Old Olympic Highway
Shelton, WA 98584
Phone: 360.432.1771
Facsimile: 360.432.3699
Email: klyon@squaxin.nsn.us

If to the Company: Joel Massmann
Keta Waters
6520 East Mercer Way
Mercer Island, WA 98040
Phone: 206.236.6225
Email: Joel@KetaWaters.com

B. Or such other addresses as may be designated by either party by written notice to the other. Except as otherwise provided in this Contract, every notice, demand, request, or other communication shall be deemed to have been given or served on actual receipt or if mailed, three (3) days after such notice is deposited in the United States Postal System.

C. Notwithstanding anything in this section to the contrary, any notice mailed to the last designated address of any person or party to which a notice may be or is required to be delivered pursuant to this Contract or this section shall not be deemed ineffective if actual delivery cannot be made due to a change of address of the person or party to which the notice is directed or the failure or refusal of such person or party to accept delivery of the notice.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the date first hereinabove written.

SQUAXIN ISLAND TRIBE

By: Raymond Peters
Title: Executive Director
Address: 10 SE Squaxin Lane
Shelton, Washington 98584
Phone: 360.426-9781
Facsimile: 360.426.6577

KETA WATERS ("Company")

By: Joel Mossmann
Title: President
Address: 6520 East Mercer Way
Mercer Island, WA 98040
Phone: 206.236.6225
Facsimile:
Taxpayer I.D.:

EXHIBIT A. SCOPE OF ENGINEERING ANALYSIS

The Company shall provide the following services to the Tribe in the matter of Squaxin Island Tribe v. Department of Ecology (Miller Land Trust):

- Evaluate hydrogeologic analyses provided in the Miller Land and Trust water right permit applications and mitigation proposals for the Carpenter Ridge and Pleasant Glade developments near Woodland Creek north of Lacey, Washington.
- Review the scientific validity of an alternative hydrogeologic model developed by the Squaxin Island Tribe for the geographic area around the Miller developments.
- Derive hydrogeologic opinions about the relationships between surface water, groundwater and water withdrawals in the area and offer expert witness testimony before the Pollution Control Hearings Board.
- Prepare disclosure conforming to Rule of Civil Procedure and, the rules of procedure before the Pollution Control Hearings Board.

ESTIMATED COST

The following represents an estimate of the time and expenses associated completing the tasks described above: approximately 100 hours for evaluation, review and expert testimony.

TOTAL \$15,000.00

The estimate represents the Company's expectation of the time and expenses associated with the project. The Company bills only for actual time spend and actual expenses incurred.