



# SQUAXIN ISLAND TRIBE

## RESOLUTION NO. 06- 28

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 Tribe desires to upgrade its existing water system to accommodate the commercial and residential growth on the Reservation; and

**WHEREAS**, Zenon Environmental Corporation has submitted a contract proposal for the engineering services for the Kamilche WRP project;

**NOW THEREFORE BE IT RESOLVED**, that the Squaxin Island Tribal Council hereby approves the Zenon Environmental Corporation contract (as attached);

**NOW THEREFORE BE IT FURTHER RESOLVED**, that the Squaxin Island Tribal Council waives its sovereign immunity as follows:

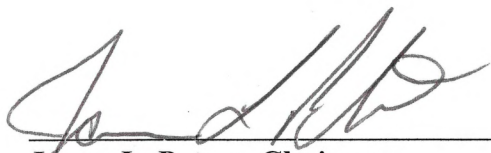
The Tribe expressly waives its sovereign immunity from suit with respect to the obligations and indebtedness that arise out of or relate to this Contract, provided that the waiver of sovereign immunity expressed herein is expressly limited as follows:

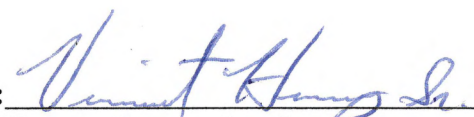
- The waiver of sovereign immunity expressed herein is limited to Consultant;
- The waiver of sovereign immunity expressed herein is limited to the contract price specified in this Contract;
- The waiver of sovereign immunity expressed herein is limited to the net unrestricted revenues of the Tribe's general fund;
- The waiver of sovereign immunity expressed herein is limited to the jurisdiction of the Squaxin Island Tribal Court, including the appellate division of that Court.

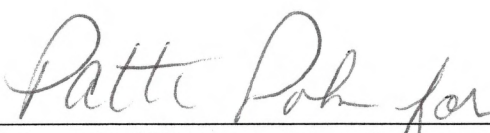
**NOW THEREFORE BE IT FINALLY RESOLVED** that the Executive Director is hereby authorized to execute the Contract on behalf of the Squaxin Island Tribe and is further authorized to do any and all acts necessary to implement and/or perform the Contract.

**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 13<sup>th</sup> day of April, 2006, at which time a quorum was present and was passed by a vote of 5 for and 0 against, with 0 abstentions.

  
\_\_\_\_\_  
**James L. Peters, Chairman**

Attested by:   
\_\_\_\_\_  
**Vincent Henry, Sr., Secretary**

  
\_\_\_\_\_  
**Andrew D. Whitener, Vice Chairman**

Initial if Tribal Council review requirement met \_\_\_\_\_  
Initial if competitive bid requirement met \_\_\_\_\_  
Initial if cost-review requirement met \_\_\_\_\_  
Initial if Finance Department/CFO review requirement met \_\_\_\_\_  
Initial if Legal Dept. review requirement met \_\_\_\_\_  
Other review: \_\_\_\_\_

## ***CONSULTING CONTRACT***

This Contract is entered into on the Squaxin Island Reservation this 10 day of March, 2006, 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", and Zenon Environmental Corporation, with a principal place of business at 5051 Commercial Circle, Ste. B Concord, CA 94520, hereafter referred to as the "Consultant".

### **1. Description of Work**

Consultant shall perform the work in accordance with this Contract and Contract Documents, including the Description of Work and Engineering Proposal included as Exhibit A to this Contract.

### **2. Contract Price**

2.1 The Consultant shall be compensated for all services rendered in carrying out the Consultant's obligations under this Contract in an amount not to exceed \$ 50,000.00. Payment shall be as set out in Section 3 of this Contract.

2.2 The Consultant shall be paid the full Contract Price only after all work under this Contract has been completed and such work has been inspected and certified as complete and in conformity with the terms of this Contract by the Contract Officer.

### **3. Method of Payment**

3.1 Payment may be made either under Option 1 or Option 2. Choose only one Option and mark the other Option "N/A" (Not Applicable).

  X   Option 1 (for all Contracts of 30 days' duration or less OR by agreement): the Tribe shall pay the total Contract Price within thirty (30) days of the date that a proper invoice requesting payment is received and accepted by the Tribe. Consultant shall provide such other documentation as is requested by the Tribe in support of the request for payment. The total amount requested shall not exceed the Contract Price amount set out in Section 2 above.

       Option 2 (for all Contracts over 30 days' duration OR by agreement): the Tribe shall pay the portion of the total Contract Price documented by monthly invoice within \_\_\_\_\_ days of the date that a proper invoice requesting payment is received and accepted by the Tribe. Consultant shall provide such other documentation as is requested by the Tribe in support of the request for payment. The sum of all monthly invoicing submitted shall not exceed the Contract Price set out in Section 2 above. Ten percent of the Contract Price will be withheld from the Contract Price until the Contract is fully performed. Final payment by the Tribe shall include all amounts previously withheld excluding amounts retained for cause. For Contracts over \$10,000.00, Section 17 of this Contract also applies.

- 3.2 Any payment to be made under either Option 1 or Option 2 above may be withheld if:
- 3.2.1 Work is found to be defective and the defect is not remedied;
  - 3.2.2 Consultant has not made all proper payments to subcontractors;
  - 3.2.3 Consultant has not made all proper payments for labor, materials or equipment furnished to the Consultant;
  - 3.2.4 Another person or entity is damaged by an act for which the Consultant is responsible;
  - 3.2.5 Claims or liens are filed on the job;
  - 3.2.6 In the opinion of the Tribe, Consultant's work is not consistent with the terms of this Contract; or
  - 3.2.7 Consultant fails to comply with any applicable law or regulation, or to pay any applicable tax, fee or license.

- 3.3 By making final payment, the Tribe waives all claims except those arising out of:
- 3.3.1 Faulty work appearing after substantial completion has occurred;
  - 3.3.2 Work that does not comply with the Contract documents;
  - 3.3.3 Outstanding claims or liens; or
  - 3.3.4 Failure of Consultant to comply with any special guarantees required by the Contract Documents.

3.4 Consultant, by accepting final payment, waives all claims except those which have been previously made in writing, and which remain unsettled at the time of acceptance.

#### **4. Starting and Completion Dates**

Work under this Contract shall begin on March 10, 2006, and shall be completed by May 31, 2006. Consultant shall pay the Tribe \$ N/A for each day after the completion date stated in this Section 4 that the work is not completed.

#### **5. Contract Documents**

- 5.1 The Contract Documents on which the Contract is based are as follows:
- 5.1.1 This Contract, together with such supplementary agreements and conditions as are attached to this Contract document, and which are labeled as Exhibits to this Contract; and
  - 5.1.2 All written Change Orders issued by the Tribe pursuant to Section 8 of this Contract.

5.2 These Contract Documents together form the Contract for the work herein described. The parties intend that the documents include provisions for all labor, materials, equipment, supplies, and other items necessary for the execution and completion of the work by the Consultant, and all terms and conditions of payment. Consultant is responsible for ensuring that the Contract Price set out in Section 2 is adequate to perform this Contract. The documents also include a requirement to perform all work and procedures not expressly indicated herein, but which are necessary for the proper execution of the project. In the event of a conflict between this Contract and any document attached to it, the terms of this Contract shall govern.

#### **6. Indemnity**

6.1 Consultant agrees to indemnify and hold harmless the Tribe and its officers, agents and employees from and against all claims, damages, losses, and expenses not to exceed the Contract Price related to or arising from Consultant's work and activities as set out in this Contract. Such expenses include reasonable attorneys' fees if it is necessary for the Tribe to commence or defend an action arising out of or associated in

any way with the Consultant's performance of this Contract. Such claims include, but are not limited to, claims for bodily injury, illness or death, property damage (including loss of use, or other damage) which are caused in whole or in part by Consultant's negligent act or omission, or that of Consultant's subcontractor, or that of anyone employed by them or for whose acts Consultant or Consultant's subcontractor may be liable.

6.2 Except as set out above, each party shall be responsible for damages to persons and property arising out of that party's actions and the actions of any subcontractor, agent or employee retained under this Contract.

## **7. Time of the Essence; Extension of Time**

All times for performance set out in the Contract Documents are deemed to be of the essence. The Consultant will schedule and perform all work under this Contract so as to complete the work within the time required by the Contract. Contract times may only be extended by a written Change Order from the Contract Officer issued to the Consultant prior to the expiration of the original date for performance of this Contract or any of its parts.

## **8. Work Changes**

8.1 The Tribe reserves its right to order work changes in the nature of additions, deletions, or modifications to this Contract, without invalidating the Contract, and agrees to make corresponding adjustments in the Contract Price and completion time for completion as are then agreed to by the parties. Any such changes will be authorized by a written Change Order, which must be signed by the Tribe's Contract Officer, designated in Section 12 below. The Change Order will include conforming changes in the Contract Price and completion time.

8.2 The scope of work shall be changed, and the Contract Price and completion time shall be modified only as set out in the written Change Order. Any adjustment in the Contract Price resulting in a credit or a charge to the Tribe shall be determined by the mutual agreement of the parties to this Contract prior to starting the work involved in the change.

## **9. Default and Termination**

9.1 This Contract may be terminated by either party without prejudice to any other remedy that the non-defaulting party may have if the other party defaults in performance of any provision of this Contract. The non-defaulting party shall give the defaulting party 3 days' written notice of the non-defaulting party's intention to terminate this Contract, within which time the defaulting party may cure the default condition to the satisfaction of the non-defaulting party. Should the defaulting party be Consultant, the Tribe may, pursuant to Section 3 of this Contract, withhold any portion of the Contract Price still owing at the time of the default.

9.2 The Tribe may also terminate this Contract for its convenience without cause. Should the Tribe elect to terminate under this subsection 9.2, the Tribe shall give the Consultant 3 days' written notice of the termination. The Tribe shall pay for all work properly completed up to the effective date of the termination. Consultant shall have no additional rights as against the Tribe except for the payment provided under this subsection 9.2.

9.3 This Contract is funded from appropriated funds or federal funds. Should those funds be reduced or eliminated, the Tribe may terminate or modify this Contract to reflect the change in funding. If this Contract is terminated under this subsection 9.3, Consultant shall be paid for all work properly completed up to the effective date of termination. Any work changes required as a result of the provisions of this subsection 9.3 shall be processed as provided under Section 8 above.

## **10. Jurisdiction and Venue; Sovereign Immunity; Governing Law**

10.1 Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against either of the parties in the Squaxin Island Tribal Court, and each of the parties consents to the jurisdiction of such court (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein, except that nothing in this Agreement shall be construed as a waiver of the Company's sovereign immunity except as explicitly stated herein. Process in any action or proceeding referred to in the previous sentence may be served on either party anywhere in the world.

10.2 The Tribe expressly waives its sovereign immunity from suit with respect to the obligations and indebtedness that arise out of or relate to this Contract, provided that the waiver of sovereign immunity expressed herein is expressly limited as follows:

- 10.2.1 The waiver of sovereign immunity expressed herein is limited to Consultant;
- 10.2.2 The waiver of sovereign immunity expressed herein is limited to the contract price specified in this Contract;
- 10.2.3 The waiver of sovereign immunity expressed herein is limited to the net unrestricted revenues of the Tribe's general fund;
- 10.2.4 The waiver of sovereign immunity expressed herein is limited to the jurisdiction of the Squaxin Island Tribal Court, including the appellate division of that Court.

10.3 The parties agree that this Contract shall be governed by the laws of the Squaxin Island Tribe.

## **11. Tribal Employment Rights Ordinance**

The Squaxin Island Tribal Employment Rights Ordinance (TERO) shall apply to this Contract to the extent any of the work to be performed under this Contract is performed on or near the Squaxin Island Reservation. No work shall take place until a TERO Utilization Plan has been signed, approved, and filed with the TERO Office.

## **12. Contract Officer**

12.1 Ray Peters is the designated Contract Officer for the purpose of this Contract. The Contract Officer shall provide specific administration of the Contract as the Tribe's representative, and shall have authority to initiate Change Orders, including approval of compensation and expense payments.

12.3 Geoff Totten is Consultant's representative for this project, and shall be responsible for the conduct of the work completed hereunder, and shall have signature authority for the Consultant for all matters related to this Contract.

## **13. Reporting**

Consultant shall report to the Contract Officer or as requested by the Contract Officer. Reports may be made in writing, or by fax, teleconference, or E-mail, as directed by the Contract Officer.

## **14. Independent Contractor**

It is understood that the Consultant is operating as an independent contractor, and as such shall comply with all applicable laws and regulations and shall pay all applicable taxes and other assessments and hold the Tribe harmless from the consequences of any act or omission of whatever kind or nature of Consultant or its employees or agents of whatever kind. Consultant shall not have any right as an employee of the Tribe, and no employee-employer relationship is established by this Contract. Further, the Consultant is responsible for

reporting this income to the applicable federal and/or state agencies. The Consultant is responsible for all taxes associated with this income.

## **15. Proprietary Rights; Confidentiality**

15.1 Consultant agrees that all proprietary rights, including patents and copy rights, contracted for or otherwise created for or on behalf of the Tribe, shall be owned by the Tribe. Provided, the improvements to, and the existing proprietary intellectual property of the Consultant shall be and remain the sole and exclusive property of the Consultant.

15.2 Consultant will not disclose or use, either during or after the term of this Contract, any proprietary or confidential information of the Tribe without the Tribe's prior written permission except to the extent necessary to perform services on the Tribe's behalf. Proprietary or confidential information includes, but is not limited to:

- 15.2.1 The written, printed, graphic or electronically recorded materials furnished by the Tribe for Consultant to use;
- 15.2.2 Business plans, customer lists, operating procedures, trade secrets, design formulas, know-how and processes, computer programs and inventories, discoveries and improvements of any kind; and
- 15.2.3 Information belonging to customers and suppliers of the Tribe about whom Consultant gained knowledge as a result of Consultant's services to the Tribe.

15.3 Consultant shall not be restricted in using any material which is publicly available, already in Consultant's possession or known to Consultant without restriction, or which is rightfully obtained by Consultant from sources other than the Tribe.

15.4 Upon termination of Consultant's services to the Tribe, or at the Tribe's request, Consultant shall immediately deliver to the Tribe all materials in Consultant's possession relating to the Tribe's business.

## **16. Records**

Consultant will maintain adequate financial records, in accordance with generally accepted accounting practices, such that the Tribe can clearly and easily identify all claimed costs and expenses and the relatedness of the those costs and expenses to this Contract.

## **17. Embezzlement**

The Consultant agrees to insert the following clause in all subcontracts:

**Any officer, director, agent, employee or other person connected in any capacity with this Contract or any subcontract hereunder who embezzles, willfully misapplies, steals or obtains by fraud any of the money, funds, assets or property provided through this Contract may be subject to federal and tribal criminal prosecution and may be fined up to \$10,000.00 or imprisoned for up to two years, or both if convicted.**

## **18. Certification of Non-Segregated Facilities**

18.1 By signing this Contract, the Consultant certifies that it does not maintain or provide for its employees any segregated facilities at any of Consultant's establishments, and that Consultant's employees are not permitted to perform their services at any location, under this Contract, where segregated facilities are maintained.

18.2 The Consultant agrees that failure to abide this certification is a breach of this Contract.

**19. Non-Discrimination**

Title VI of the Civil Rights Act of 1964, (Public Law 88-352; 42 USC 200d-1) provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

**20. Warranty of Special Expertise**

The Consultant warrants that it has the educational credentials, expertise and training required to accomplish the purposes of this Contract.

**21. Compliance with Applicable Law**

By acceptance of this Contract, the Consultant agrees that it will comply with this and all other applicable tribal, federal and state laws. The Consultant specifically agrees that this Contract shall be governed by the laws of the Squaxin Island Tribe.

**22. Tax Exemption**

The Tribe is exempt from state taxes for goods and services received in Indian Country as provided in WAC 458-20-192 including, but not limited to, state and local sales tax, certain excise taxes, and others. Consultant is eligible for an exemption from state taxes for goods and services provided to the Tribe in Indian Country, as provided in WAC 458-20-192 including, but not limited to, state and local sales tax, Business & Occupation tax, and others. Consultant shall comply with WAC 458-20-192 to perfect the exemption from state taxation.

**23. Entire Agreement; Amendments**

This Contract contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, between the parties hereto with respect to the subject matter hereof.

**24. Severability**

If any part of this Contract is held unenforceable, the rest of the Contract will continue in effect.

**25. No Partnership**

This Contract does not create a partnership relationship. Consultant does not have authority to enter into contracts on the Tribe's behalf.

**26. Assignment**

(Check applicable provision.)

\_\_\_\_\_ Either Consultant or the Tribe may assign or subcontract any rights or obligations under this Contract.

OR



\_\_\_\_ Consultant may not assign or subcontract any rights or obligations under this Contract without the Tribe's prior written approval.

X Neither party shall assign any portion or all of their rights and obligations under this Contract without the prior written consent of the other party.

**27. Execution**  
(Check applicable provision.)

X The parties agree that this Agreement will be considered signed when the signature of a party is delivered by facsimile transmission. Signatures transmitted by facsimile shall have the same effect as original signatures.

**OR**

\_\_\_\_ This Agreement shall be executed in duplicate originals, with each party retaining one fully executed duplicate original of the Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Contract at the Squaxin Island Reservation, Shelton, Washington, on the date herein indicated.

DATE: March \_\_, 2006

SQUAXIN ISLAND TRIBE

\_\_\_\_\_  
By: Raymond Peters  
Title: Executive Director  
Address: 70 SE Squaxin Lane, Shelton, WA 98584  
Phone: 360.426.9781  
Facsimile:\_\_\_\_\_

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

CONSULTANT

\_\_\_\_\_  
By:\_\_\_\_\_  
Title:\_\_\_\_\_  
Address:\_\_\_\_\_  
\_\_\_\_\_  
Phone:\_\_\_\_\_  
Facsimile:\_\_\_\_\_  
Taxpayer I.D.:\_\_\_\_\_

**EXHIBIT A**

**Engineering Proposal for ZeeWeed MBR dated February 6, 2006 as the Description of Work, to the extent not inconsistent with the Contract.  
In the event of an inconsistency the Contract controls over the Exhibit.**

**EXHIBIT B**

**FEE SCHEDULE**

N/A

