

RESOLUTION 2019-Y

**A RESOLUTION OF THE TOWN OF EATONVILLE, WASHINGTON
AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES
CONSULTANT AGREEMENT WITH RH2 ENGINEERING, INC. FOR
UPDATES TO THE EATONVILLE WATER COMP PLAN**

WHEREAS, The Town of Eatonville's Water Department has been required to update the Water Comp Plan every 6 years. New legislation allows for update every 10 years; and

WHEREAS, the Town is seeking to do a minor update of a 4 year extension to reach the new 10 year allowance; and

WHEREAS, the Town is in need of a professional consulting firm to do the necessary engineering work for the project; and

WHEREAS, the Town has negotiated a contract and a 1 phase scope of work to perform the water system plan update; and

WHEREAS, a notice of Request for Qualifications was posted on the Town of Eatonville website and advertised in the Dispatch newspaper on June 19th and June 26th, 2019; and

WHEREAS, the Town received two RFQ's and, after holding interviews with both firms, determined that RH2 Engineering, Inc. is the most qualified; 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 attached professional services agreement with RH2 Engineering, Inc., for improvements to the Eatonville Water Comp Plan not to exceed \$9,262.

PASSED by the Council of the Town of Eatonville at a regular meeting this 25th day of November, 2019.

Mike Schaub, Mayor

ATTEST:

Christina Dargan, Deputy Clerk

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this _____ day of _____, 20____, by and between the **Town of Eatonville, A MUNICIPAL CORPORATION** hereinafter called the "CLIENT," and the consulting firm RH2 Engineering, Inc., whose address is, 22722 29th Drive SE, Suite 210, Bothell, Washington 98021, at which work will be available for inspection, hereinafter called the "CONSULTANT."

PROJECT NAME: Water System Plan Extension

WHEREAS, the Client deems it advisable to engage the professional services and assistance of a qualified professional consulting firm to do the necessary engineering work for the project.

WHEREAS, the Consultant operates in compliance with the statutes of the State of Washington for registration of professional engineers, has a current valid corporate certificate from the State of Washington or has a valid assumed name filing with the Secretary of State, and that personnel to be assigned to the work required under this Agreement are qualified to perform the work to which they will be assigned, and that sufficient qualified personnel are on staff or readily available to the Consultant to staff this Agreement.

WHEREAS, the Consultant will perform the work set forth in the Agreement upon the terms and conditions set forth below and in the following Exhibits:

Exhibit A	Scope of Work
Exhibit B	Fee Estimate
Exhibit C	Schedule of Rates and Charges

NOW THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein below, the parties hereto agree as follows:

SCOPE OF WORK

The Consultant shall facilitate completion of the work described in **Exhibit A** which is attached hereto and incorporated into this Agreement. The Consultant shall make minor changes, amendments or revisions in the detail of the work as may be required by the Client. This item does not constitute an "Extra Work" item as related to the "Extra Work" section of the Agreement. The Consultant is entitled to rely on the accuracy and completeness of any data, information, or materials provided by the Client or others in relation to the work.

STANDARD OF CARE

The Consultant shall be held to the same standard of care as is ordinarily practiced by other similar design professionals in that discipline for comparable work provided in a similar locality.

DESIGN CRITERIA

The Client will designate the basic premises and criteria for the work needed. Reports and plans, to the extent feasible and reasonable, shall be developed in accordance with the latest edition and amendments of applicable local and State regulations, guidelines, and specifications.

OWNERSHIP OF PRODUCTS AND DOCUMENTS TO BE FURNISHED BY THE CONSULTANT

Ownership of the source files of any reports, data, studies, surveys, charts, maps, drawings, specifications, figures, photographs, memoranda, and any other documents which are developed, compiled, or produced by the Consultant as a result of this Agreement, whether or not completed *or furnished*, shall remain with the Client. Upon client request, the Consultant shall provide the Client with tangible copies of the project documents in accordance with **Exhibit A**.

The Client acknowledges the Consultant's plans and specifications are instruments of professional service. The Client agrees to hold harmless and indemnify Consultant against all claims made against Consultant for damage or injury, including defense costs arising out of any reuse of such plans and specifications by the Client or any third party without the written authorization of the Consultant.

Methodology, materials, software, logic, and systems developed under said Contract are 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.

TIME OF BEGINNING AND COMPLETION

The Consultant shall not begin work under the terms of this Agreement until authorized in writing by the Client. If, after receiving Notice to Proceed, the Consultant is delayed in the performance of its services by factors that are beyond its control, the Consultant shall notify the Client of the delay and shall prepare a revised estimate of the time and cost needed to complete the Project and submit the revision to the Client for its approval, which shall not be unreasonably withheld. Time schedules are subject to mutual agreement for any revision unless specifically described as otherwise herein.

PAYMENT

The Consultant shall be paid by the Client for completed work for services rendered under this Agreement as provided hereinafter and as specified in **Exhibit B** and **Exhibit C**. 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. All billings for compensation for work performed under this Agreement will list actual time (days and/or hours) and dates during which the work was performed and the compensation shall be figured using the rates in **Exhibit C**. Payment for the work shown in **Exhibit A** shall not exceed \$9,262 without a written amendment to this contract, agreed to and signed

by both parties. Payment for work stated in **Exhibit A** will be calculated based on the Consultant's hourly rates stated in **Exhibit C**.

Payment for extra work performed under this Agreement shall be paid as agreed to by the parties in writing at the time the extra work is authorized. (See "EXTRA WORK").

Finance charges, computed by a "Periodic Rate" of 1% per month, which is an annual percentage rate of 12% (applied to the previous month's balance after deducting payments and credits for the current month), will be charged on all past-due amounts unless otherwise provided by law or by contract. Invoices not paid within thirty (30) days will be considered past-due.

Acceptance of final payment by the Consultant shall constitute a release of claims related to payment under this Agreement which the Consultant may have against the Client unless such claims are specifically reserved in writing and transmitted to the Client by the Consultant prior to its acceptance.

The Consultant shall keep available for inspection by the Client, for a period of three (3) years after final payment, the cost records and accounts pertaining to this Agreement and items related to, or bearing upon, these records. If any litigation, claim or audit is started before the expiration of the three-year retention period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The three-year retention period starts when the Consultant receives final payment.

CHANGES IN WORK

The Consultant shall make revisions and changes in the completed work of this Agreement as are necessary to correct Consultant's errors, when required to do so by the Client, without additional compensation.

Should the Client find it desirable for its own purposes to have previously completed work or parts thereof revised, the Consultant shall make revisions, if requested and as directed by the Client in writing. This work shall be considered as "Extra Work" and will be paid for as provided in the Section "Extra Work."

EXTRA WORK

The Client may desire to have the Consultant perform work or render services in connection with the Agreement in addition to or other than work provided for by the expressed intent of the Scope of Work. Such work will be considered as Extra Work and will be specified in a written supplement which will set forth the nature and scope thereof. Work under a supplement shall not proceed until authorized in writing by the Client. Any dispute as to whether work is Extra Work or work already covered under this Agreement shall be mutually resolved by the parties before the work is undertaken.

EMPLOYMENT

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 he 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 Client 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.

Any and all employees of the Consultant, while engaged in the performance of any work or services required by the Consultant under this Agreement, shall be considered employees of the Consultant only and not of the Client, and 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 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 Client except regularly retired employees, without written consent of the Client.

NONDISCRIMINATION

The Consultant agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, gender, marital status, sexual orientation, age, or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment; promotions; demotion or transfer; recruitment or any recruitment advertising; layoff or terminations; rates of pay or other forms of compensation; selection for training; and rendition of services. The Consultant understands and agrees that if it violates this Non-Discrimination provision, this Agreement may be terminated by the Client and further that the Consultant shall be barred from performing any services for the Client now or in the future, unless a showing is made satisfactory to the Client that discriminatory practices have terminated and that recurrence of such action is unlikely.

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, subject to the Client's obligation to pay Consultant in accordance with the subparagraphs below.

- A. In the event this Agreement is terminated by the Client other than for fault on the part of the Consultant, a final payment shall be made to the Consultant for actual cost for the work completed 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 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 Client for any excess paid.

- B. In the event the services of the Consultant are terminated by the Client 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 actual 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 Client 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. 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 Consultant reserves the right to suspend performance of the work in the event of nonpayment by Client for invoices furnished in accordance with the Payment provisions as listed herein. In the event that Consultant suspends performance of the work, the Consultant and the Client shall make a good faith effort to resolve the matter of nonpayment. Consultant shall resume work once such resolution is reached and payment is received in full.
- D. In the event this Agreement is terminated prior to completion of the work, the Consultant shall retain ownership of the source files for all plans, reports, and documents prepared by the Consultant prior to termination. The Client shall be provided with tangible and electronic copies of the documents in accordance with the "Ownership of Products and Documents to be Furnished by the Consultant" section of the Agreement herein.

DISPUTES

The parties shall make a good faith effort to resolve disputes concerning questions of facts in connection with work prior to initiating legal action. In the event that either party institutes legal action or proceedings to enforce any of its rights in this Agreement, both parties agree that any such action shall be brought in the courts of the State of Washington, situated in Pierce County. 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.

LEGAL RELATIONS

The Consultant shall comply with all federal, state and local laws and ordinances directly applicable to the work to be done under this Agreement. This contract shall be interpreted and construed in accordance with the laws of Washington.

Consultant shall indemnify and hold the Client and all of its affiliates, officers, directors, employees, successors and assigns harmless from and against any and all claims, demands, damages, lawsuits (including professional service liens), expenses or other costs including reasonable attorney's fees (hereinafter "Claim", or collectively "Claims") incurred or sustained which arise from the Work described in Exhibit A, to the extent that any such Claims are attributable to the fault of Consultant, its employees, agents or contractors. For the purpose of this Agreement, the term "fault" shall be defined in accordance with RCW 4.22.015. Where a Claim arises from concurrent fault of the Parties, Consultant's agreement to indemnify and hold the Client harmless under this Agreement shall be valid and enforceable only to the extent of the respective fault of Consultant, as well as its employees, agents, or contractors.

The Consultant shall secure general liability, property damage, auto liability, and professional liability coverage in the amount of \$1.0 million, with a General Aggregate in the amount of \$2.0 million, unless waived or reduced by the Client. The Consultant shall submit to the Client a completed Standard ACORD Certification Form as proof of insurance. This Form shall name the Client as an additional insured for Consultant's applicable insurance policies. The Consultant's insurance coverage shall be primary insurance with respect to the Client. If any coverage is written on a "claims made" basis, then a minimum of a three (3) year extended reporting period shall be included with the policy, and proof of this extended reporting period shall be provided to the Client.

All coverages provided by the Consultant shall be in a form and underwritten by a company acceptable to the Client. The Client will normally require carriers to have a minimum A.M. Best rating of A VII. The Consultant shall keep all required coverages in full force and effect during the life of this project, and a minimum of thirty (30) days' notice shall be given to the Client prior to the cancellation of any policy.

The Consultant shall verify, when submitting the first payment invoice and annually thereafter, possession of a current business license while conducting work for the Client. The Consultant shall require, and provide verification upon request, that subconsultants participating in a Client project possess a current business license.

The Consultant's relation to the Client shall be at all times as 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 Client's employees. The Consultant, subcontractors, agents and employees shall not have the authority to bind Town any way except as may be specifically provided herein.

Any liability incurred by the Consultant as a result of this Agreement is limited to the fee amount as stipulated within the Payment terms herein, or \$2.0 million dollars, whichever is greater.

SUBLETTING OR ASSIGNING OF CONTRACTS

The Consultant shall not sublet or assign any of the work covered by this Agreement without the express consent of the Client.

ENDORSEMENT OF PLANS

The Consultant shall place their certification on plans, specifications, estimates, or other engineering works produced by them in accordance with RCW 18.43.070.

COMPLETE AGREEMENT

This document and referenced attachments contain all covenants, stipulations, and provisions agreed upon by the parties. Any supplements to this Agreement will be mutually agreed upon in writing and will become part of this Agreement. No agent or representative of either party has authority to make, and the parties shall not be bound by or liable for, any statement, representations, promise, or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment or "Extra Work" authorization to this Agreement.

The invalidity or unenforceability of any provision in this Agreement shall not affect the other provisions hereof, and this agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

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 Consultant does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the supporting materials submitted by the Consultant, and does hereby accept the Agreement and agrees 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 above.

APPROVED - SIGNATURE

Richard L. Ballard
PRINT NAME

Director
TITLE

DATE
RH2 Engineering, Inc., 22722 29th Drive SE, Suite 210, Bothell, WA 98021

APPROVED - SIGNATURE

PRINT NAME

TITLE

DATE
Town of Eatonville, PO Box 309, Eatonville, WA 98328

EXHIBIT A
Scope of Work
Town of Eatonville
Water System Plan Extension
November 2019

Background

RH2 Engineering, Inc., (RH2) assisted the Town of Eatonville (Town) with its current *Comprehensive Water System Plan* (WSP), which was approved by the Washington State Department of Health (DOH) in October 2013.

This Scope of Work includes tasks to obtain approval from DOH and Pierce County (County) to extend the approval period of the City's 2013 WSP to 2023. The 2013 WSP is currently approved through October 17, 2019.

Task 1 – Water System Plan Extension

Objective: Obtain approval from DOH and the County to extend the WSP approval period.

Approach:

- 1.1 Coordinate with the Town to confirm supply data from 2012 through 2019 for each supply station.
- 1.2 Tabulate the annual supply data and compare to demand projections contained in the Town's 2013 WSP.
- 1.3 Prepare an updated Water Rights Self-Assessment form.
- 1.4 Meet with the Town to discuss the Town's recent water system planning efforts and updates to the Capital Improvement Plan (CIP) schedule contained in the 2013 WSP.
- 1.5 Prepare an updated CIP schedule and cost estimates for inclusion in the WSP extension request.
- 1.6 Coordinate with the Town to obtain the following:
 - Signed local government consistency checklist.
 - Documentation of consumer informational meeting and Town Council approval of the WSP extension request.
 - State Environmental Policy Act (SEPA) documentation.
- 1.7 Prepare letters to DOH and the County confirming that the 2013 WSP is still valid for the requested timeframe of the limited updated WSP and to request a WSP extension.
- 1.8 Prepare letters to adjacent water systems notifying them of the WSP extension request.

Assumptions:

- *RH2 will rely upon the accuracy and completeness of information, data, and materials generated or produced by the Town or others in relation to this Scope of Work.*

Provided by the Town:

- Supply data from each supply station from 2012 through 2019.
- Signed local government consistency checklist.
- Documentation of consumer informational meeting and Town Council approval of the WSP extension request.
- SEPA documentation.

RH2 Deliverables:

- Letters to DOH, the County, and adjacent water systems in hard copy and PDF format.

EXHIBIT B

Fee Estimate

Town of Eatonville

Water System Plan Extension

Nov-19

Description		Total Hours	Total Labor	Total Expense	Total Cost
Task 1	Water System Plan Extension	50	\$ 8,944	\$ 318	\$ 9,262
PROJECT TOTAL		50	\$ 8,944	\$ 318	\$ 9,262

EXHIBIT C
RH2 ENGINEERING, INC.
2019 SCHEDULE OF RATES AND CHARGES

RATE LIST	RATE	UNIT
Professional I	\$148	\$/hr
Professional II	\$161	\$/hr
Professional III	\$175	\$/hr
Professional IV	\$185	\$/hr
Professional V	\$200	\$/hr
Professional VI	\$213	\$/hr
Professional VII	\$231	\$/hr
Professional VIII	\$240	\$/hr
Professional IX	\$240	\$/hr
Control Specialist I	\$134	\$/hr
Control Specialist II	\$145	\$/hr
Control Specialist III	\$158	\$/hr
Control Specialist IV	\$169	\$/hr
Control Specialist V	\$180	\$/hr
Control Specialist VI	\$192	\$/hr
Control Specialist VII	\$208	\$/hr
Control Specialist VIII	\$216	\$/hr
Technician I	\$110	\$/hr
Technician II	\$119	\$/hr
Technician III	\$137	\$/hr
Technician IV	\$146	\$/hr
Technician V	\$160	\$/hr
Technician VI	\$175	\$/hr
Technician VII	\$190	\$/hr
Technician VIII	\$200	\$/hr
Administrative I	\$72	\$/hr
Administrative II	\$84	\$/hr
Administrative III	\$101	\$/hr
Administrative IV	\$119	\$/hr
Administrative V	\$137	\$/hr
CAD/GIS System	\$27.50	\$/hr
CAD Plots - Half Size	\$2.50	price per plot
CAD Plots - Full Size	\$10.00	price per plot
CAD Plots - Large	\$25.00	price per plot
Copies (bw) 8.5" X 11"	\$0.09	price per copy
Copies (bw) 8.5" X 14"	\$0.14	price per copy
Copies (bw) 11" X 17"	\$0.20	price per copy
Copies (color) 8.5" X 11"	\$0.90	price per copy
Copies (color) 8.5" X 14"	\$1.20	price per copy
Copies (color) 11" X 17"	\$2.00	price per copy
Technology Charge	2.50%	% of Direct Labor
Mileage	\$0.580	price per mile (or Current IRS Rate)
Subconsultants	15%	Cost +
Outside Services	at cost	

Rates listed are adjusted annually.