

RESOLUTION 2012-YY

**A RESOLUTION OF THE EATONVILLE TOWN COUNCIL TO AUTHORIZE
THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH
EES CONSULTING FOR VALUATION OF ELECTRIC DISTRIBUTION
SYSTEM**

WHEREAS, the Town of Eatonville is looking for alternatives to determine the best course of action to remedy the Town's financial situation, and

WHEREAS, the Town has received interest from outside agencies in purchasing the Town's electrical supply, but on the condition that a proper appraisal be obtained;

WHEREAS, EES Consulting of Kirkland is capable and willing to provide such a valuation to enable the Council to determine whether selling the Town's electrical supply to a private entity would be in the best interests of the Town,

THEREFORE, BE IT RESOLVED by the Council of the Town of Eatonville as follows:

Section 1. The Mayor is authorized to execute on behalf of the Town the attached Professional Services Agreement with the consulting firm EES Consulting, including any subsequent amendments to the Agreement if such is in the best interests of the Town.

Passed by the Council of the Town of Eatonville at a regular meeting this _____ day of September, 2012.

Raymond Harper, Mayor

ATTEST:

Kathy Linnemeyer, Town Clerk

APPROVED AS TO FORM:

Daniel G. Lloyd, Town Attorney

PROFESSIONAL SERVICES AGREEMENT

This Agreement (referred to interchangeably as "Agreement" and/or "Contract") is entered into this _____ day of _____, 2012, by and between the Town of Eatonville, a municipal corporation under the laws of the State of Washington (hereinafter "Town"), and EES Consulting Inc. , whose address is 570 Kirkland Way #200, Kirkland WA 98033 (hereinafter "Consultant.")

WHEREAS, the Town desires to engage the Consultant to provide valuation of electrical distribution system, and Consultant has agreed to offer its professional services to perform said work,

WHEREAS, the Consultant has represented by entering into this Agreement that it is fully qualified to perform the work to which it will be assigned in a competent and professional manner, to the standards required by the Town,

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN TOWN AND CONSULTANT AS FOLLOWS:

The Town hereby agrees to engage the Consultant and the Consultant hereby agrees to perform, in a satisfactory and proper manner, as determined by the Town, the services hereafter set forth in connection with this Agreement:

1. Scope of Services:

Consultant agrees to provide professional services for Evaluation of the Town Electrical Services in accordance with the attached document, (Town of Eatonville proposal to provide valuation of electrical distribution system), the terms of which are incorporated herein by reference.

This agreement is a purchase of professional services at the hourly rates described in the Scope of Services. Payment for these services shall not exceed \$15,000.00 unless authorized in writing by the Town. If additional time is needed, please refer to paragraph 4 of this Agreement. Consistent with paragraph 13, a written amendment signed by both Town and Consultant must be attached before a change is effective. With the Consultant's approval, the Town may add other related professional services at its discretion. Payment for these services shall not exceed the amount above unless authorized in writing by the Town.

2. Relation of Parties.

The Consultant, its subcontractors, agents and employees are independent contractors. Consultants performing professional services for Town and are not employees of the Town. The Consultant, its subcontractors, agents and employees, shall not, as a result of this Agreement, accrue leave, retirement, insurance, bonding or any other benefits afforded to Town employees. The Consultant, subcontractors, agents and employees shall not have the authority to bind Town any way except as may be specifically provided herein.

3. Time of Performance

The service of the Contractor is to commence on the date of a "Notice to Proceed" issued by the Town Administrator or his/her designee. It is agreed services hereunder shall be completed as of 30 calendar days from Notice to Proceed.

4. Delays and Extensions of Time

If the Consultant is delayed at any time in the progress of providing services covered by the Contract, by any causes beyond Consultant's control, the time for performance may be extended by such time as shall be mutually agreed upon by Consultant and Town and shall be incorporated in a written Change Order to this Agreement signed by both parties. Any request for an extension of time shall be made in writing to the Town.

5. Compensation and Schedule of Payments

Town shall pay the Consultant at the rates indicated for work performed under the terms of this Contract. This is the maximum amount to be paid under this Contract and it shall not be exceeded without Town's prior written authorization in the form of a negotiated and executed supplemental agreement. 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 project as set forth herein. The Consultant shall submit invoices to Town covering both professional fees and project expenses, if allowable. Payments to Consultant shall be made within thirty (30) days from submission of each invoice. The Town reserves the right to correct any invoices paid in error according to the rates set forth in this Agreement. Town and Consultant agree that any amount paid in error by Town does not constitute a rate change in the amount of the contract. The total amount listed in paragraph 2 is to be the not to exceed amount and is not to be construed as a guaranteed payout total.

6. Ownership of Records and Documents.

All materials, writings and products-produced by Consultant in the course of performing this Contract shall immediately become the property of the Town. In consideration of the compensation provided for by this Agreement, the Consultant hereby further assigns all copyright interests in such materials, writing and products to the Town. A copy may be retained by the Consultant.

7. Termination.

This Contract may be terminated by either party upon not less than fifteen (15) days written notice.

8. Evaluation and Compliance with the Law.

The Consultant shall have the authority to control and direct the performance and details of the work described herein. The Consultant agrees to comply with all relevant, federal, state and municipal laws, rules and regulations.

9. Business and Occupation License.

All work done pursuant to this Agreement is deemed to be engaging in business in the Town. Prior to performing work under set, Consultant shall secure all necessary business licenses from local, state, and federal government authorities.

10. Liability and Hold Harmless.

Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the work hereunder. All work shall be done at Consultant's risk. To the fullest extent permitted by law and subject to the following conditions, Consultant agrees to indemnify, defend, save and hold harmless the Town, its officials, employees and agents (defined in this paragraph as "Indemnified Parties") from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses, on such claims and in proving the right to indemnification, incurred in connection therewith, or whatsoever kind or nature, arising out of, or in connection with, or incident to, the acts or omissions of Consultant, its Subcontractors of any tier, their agents, and anyone directly or indirectly employed by them or anyone for whose acts they are be liable (defined in this paragraph as "Indemnitor" or "Indemnitors").

In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against Consultant, the Town retains the right to participate in said suit if any principle of public law is involved. Consultant agrees to being added by the Town as a party to any arbitration or litigation with third parties in which the Town alleges indemnification or contribution from Town, any of its Subcontractors of any tier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. Consultant agrees that all of its Subcontractors of any tier will, in their subcontracts, similarly stipulate; in the event any does not, Consultant shall be liable in place of such Subcontractor(s) of any tier.

To the fullest extent allowed by law, this indemnity and hold harmless shall include any claim made by an employee of Consultant or Subcontractor or agent of Consultant, even if Consultant is thus otherwise immune from liability pursuant to Title 51 RCW. Consultant for itself, and its Subcontractors and agents, specifically and expressly waive the right to assert against the indemnities any immunity that may be granted it under the Title 51 RCW. Consultant shall include such waiver in all agreements with Subcontractors. Consultant specifically acknowledges that the provisions contained herein have been mutually negotiated by the parties and it is the intent of the parties that Contractor provide the broadest scope of indemnity permitted by RCW 4.24.115. IF THE CONSULTANT DOES NOT AGREE WITH THIS WAIVER, IT MUST PROVIDE A WRITTEN NOTICE TO THE TOWN PRIOR TO THE DATE FOR THE RECEIPT OF BIDS, OR THE CONSULTANT WILL BE DEEMED TO HAVE NEGOTIATED AND WAIVED THIS IMMUNITY.

Neither this paragraph nor any other part of this Agreement shall not obligate Consultant to defend or indemnify against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Indemnified Parties, their agents or employees; provided that Consultant shall be obligated to indemnify against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) an Indemnified Party or the its agents or employees, and (b) Indemnitors, to the extent of Indemnitors' negligence.

11. Insurance.

The Consultant shall obtain and keep in force during the entire term of this Contract, liability insurance against any and all claims for damages to person or property which may arise out of the performance of this Agreement whether such work shall be by the Consultant, subcontractor or anyone directly or indirectly employed by either the Consultant or a subcontractor. The amount of coverage provided by such insurance shall be not less than Five Hundred Thousand Dollars (\$500,000) combined single limit for bodily injury and property damage and not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage if working in the public right of way.

The Consultant agrees to the following requirements relating to insurance coverage:

- a. Liability Insurance. All liability insurance required herein shall be under a comprehensive or commercial general liability and business, automobile policy or policies. The Town shall be named as an additional insured with respect to all such policies and copies of all such policies shall be furnished to the Town upon request.
- b. Worker's Compensation. The Consultant shall take out and maintain during the life of the Agreement, Worker's Compensation insurance for all its employees engaged in work under or pursuant to this Contract who are required to be so covered by the laws of the State of Washington and in case any work is subcontracted, the Consultant shall require the subcontractor to provide worker's compensation insurance for all of its employees unless or to the extent that such employees are covered by the protection provided by the Consultant
- c. Employment Security. The Consultant shall comply with all employment security laws of the State of Washington, and shall timely make all required payments in connection therewith. Consultant shall provide evidence of all insurance required, at the Town's request, by submitting an insurance certificate to the Town on a standard "Acord" or comparable form.

12. Notices. All notices which are given or required to be given pursuant to this Contract shall be hand delivered or mailed postage paid as follows:

FOR THE TOWN OF EATONVILLE

Town of Eatonville
ATTN: Doug Beagle, Town Administrator
210 Center Street West
PO Box 309
Eatonville, WA 98328

FOR THE CONSULTANT

EES Consultant
ATTN: Gary Saleba, President
570 Kirkland Way #200
Kirkland WA 98033

13. Amendments. This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the parties hereto. Any changes in the scope of work or compensation shall be mutually agreed upon between Town and the Consultant and shall be incorporated in written revisions to this Agreement and signed by both parties before taking effect.

14. Contract/Order of Precedence. This Agreement incorporates all the contracts, covenants and understanding between the parties hereto and are merged into this written agreement. No prior agreement or prior understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless set forth in this contract. The Contract includes all of the documents listed below, each of which is incorporated herein by reference.

- a. Most recently issued Town/Consultant Change Order(s)
- b. Most recently issued Addendum/Addenda to Request for Proposal
- c. Town's Request for Proposal
- d. Professional Services Agreement/General Conditions
- e. Consultant's Response to the Request/Scope of Services

Where there is a conflict among or between any of these documents, the order of precedence shall be as listed above.

15. Assignment. This Contract may not be assigned in any manner or by any means by Consultant without the express prior written consent of the Town.

16. Ratification. Acts taken pursuant to this Contract but prior to its effective date are hereby ratified and affirmed.

17. Governing Law/Venue. This Contract shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to the principles of conflict of laws. Any action or suit brought in connection with this Contract shall be brought in the Superior Court of Pierce County, Washington.

18. Representations. The signatories to this Agreement certify that they have fully read and agree to the foregoing terms. By signing this Agreement, each individual certifies that he/she is at least 18 years of age and has legal authority to enter into this Agreement on behalf of the entity he/she represents.

DATED this _____ day of September, 2012.

TOWN OF EATONVILLE, a municipal corporation

By: _____
Raymond Harper, Mayor

Attest:

By: _____
Kathy Linnemeyer, Clerk

EES Consulting
Gary Saleba, President

By: _____

Title: _____

Approved as to form:

Town Attorney