

RESOLUTION 2024-A

A RESOLUTION OF THE TOWN OF EATONVILLE, WASHINGTON, AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH SBN PLANNING, LLC

WHEREAS, the Town of Eatonville was awarded grant funding from the Department of Commerce for funding the completion of the Comprehensive Plan update; and

WHEREAS, the Town Council approved Resolution 2023-SS on November 27, 2023, authorizing the execution of a professional services agreement with SBN Planning, LLC; and

WHEREAS, Resolution 2023-SS stated a not to exceed amount of \$23,500 rather than compensation for these services being based on time and materials according to the Rates Table attached to the contract; and

WHEREAS, the Town feels that the compensation for services in the Resolution should match what is stated in the contract; 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 professional services agreement with SBN Planning, LLC for consulting services, as outlined in the agreement attached hereto as Exhibit A.

PASSED by the Town Council of Town of Eatonville and attested by the Town Clerk in authentication of such passage this 8th day of January 2024.

David Baublits, Mayor

ATTEST:

Miranda Doll, Town Clerk

RESOLUTION 2024-A

TOWN OF EATONVILLE PROFESSIONAL SERVICES AGREEMENT

THIS Agreement is made effective as of the ____ day of November, 2023, by and between

TOWN OF EATONVILLE, WASHINGTON (“TOWN”)
210 Center Street West
P.O. Box 309
Eatonville, WA 98328
Contact: Seth Boettcher
Phone: 360.832.3361 Fax: 360.832.3977

and

SBN Planning LLC (“CONSULTANT”)
11628 2nd Ave NW
Seattle, WA 98177
Contact: Aleksandr Romanenko Phone: 206-451 7310
Tax Id No.: EIN:87-2399675

for professional services in connection with the following Project:

Development regulations update (“Project”)

TERMS AND CONDITIONS

1. Services by Consultant

- A. Consultant shall perform the services described in the Scope of Work attached to this Agreement as Exhibit A, which is attached hereto and incorporated into this Agreement. The services performed by the Consultant shall not exceed the Scope of Work without prior written authorization from the Town. The Consultant is entitled to rely on the accuracy and completeness of any data, information, or materials provided by the Town or others in relation to the work.
- B. The Town may from time to time require changes or modifications in the Scope of Work. Such work will be considered as Extra Work and will be specified in a written supplement to this Agreement which will set forth the nature and scope thereof. Work under a supplement shall not proceed until authorized in writing by the Town and the Consultant. 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.
- C. 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 Town, without additional compensation.

2. Compensation

The Consultant shall be paid by the Town for services rendered under this Agreement as follows:
TIME AND MATERIALS: Compensation for these services shall be on a time and material basis according “SBN Planning 2023 Rates Table” attached hereto as Exhibit B.

3. Payment

- A. Consultant shall maintain time and expense records and provide them to the Town monthly, along with monthly invoices in a format acceptable to the Town for work performed to the date of the invoice.
- B. All invoices shall be paid by Town within sixty (60) days of receipt of a proper invoice. 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.
- C. The Consultant and its Subconsultants shall keep available for inspection, by the Town, for a period of three (3) years after final payment, the cost records and accounts pertaining to this Agreement. If any litigation, claim, or audit is started before the expiration of the three-year retention period, the records shall be retained until litigation, claims, or audit findings involving the records have been resolved. The three-year retention period starts when the Consultant receives final payment.
- D. If the services rendered do not meet the requirements of the Agreement, the Consultant will correct or modify the work to comply with the Agreement upon written request of the Town. The Town may withhold payment for such work until the work reasonably meets the requirements of the Agreement.

4. Non-Discrimination and Compliance with Laws

- A. Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, gender, marital status, sexual orientation, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.
- B. Consultant shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.
- C. Consultant shall obtain a Town of Eatonville business license prior to beginning the services listed in the Scope of Work.
- D. Violation of this Paragraph 4 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by Town, in whole or in part, and may result in ineligibility for further work for Town.

5. Suspension and 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 in accordance with the subparagraphs below:

- A. In the event this Agreement is terminated by the Town other than for fault on the part of the Consultant, a final payment shall be made to the Consultant for actual cost for work completed under any current task authorizations in the Scope of Work 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 equals or 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 Town for any excess paid.

- B. In the event the services of the Consultant are terminated by the Town 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 Town of employing another firm to complete the remaining work required and the time which may be required to do so; and other reasonable factors which affect the value of the work performed at the time of termination; provided, however, Consultant shall not in any event be entitled to anticipated profit on work not performed because of such termination. The Consultant shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. 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 Town may suspend this Agreement, at its sole discretion, upon not less than 5 days' written notice to the Consultant. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to the Consultant's reasonable expenses and shall be subject to verification.

6. Standard of Care

Consultant represents and warrants that it has the requisite training, skill and experience necessary to provide the services under this agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant under this agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

7. Ownership of Work Product

- A. Except as otherwise provided herein, all data materials, reports, memoranda, and other documents developed under this Agreement shall become the property of Town, shall be forwarded to Town at its request, and may be used by Town as it sees fit, provided that payment has been made to the Consultant per the terms of this Agreement. Town agrees that if it uses products prepared by Consultant for purposes other than those intended in this Agreement, it does so at its sole risk and it agrees to hold Consultant harmless therefrom.
- B. Upon request the Consultant shall provide the Town with electronic copies of the project documents, in any format reasonably output by the software used to produce the project documents.
- C. Methodology, materials, software, logic, and systems developed outside of task authorizations, or were pre-existing to any task authorizations, remain 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.

8. Indemnification/Hold Harmless

- A. 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 elected and appointed 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, incurred in connection therewith, arising out of, or in connection with, or incident to, the negligent 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 liable (defined in this paragraph as "Indemnitor" or "Indemnitors").
- B. In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against the 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 Consultant, 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.
- C. 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 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 Consultant provide the broadest scope of indemnity permitted by RCW 4.24.115, when applicable.
- D. Neither this paragraph nor any other part of this Agreement shall 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 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.

9. Insurance

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 performance of the work hereunder by the Consultant, its agents, representatives, or employees.

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The Town shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the Town.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respect the Town. Any insurance, self-insurance, or insurance pool coverage maintained by the Town shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Town.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

Consultant shall furnish the Town with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

10. Assigning or Subcontracting

Except as authorized herein, the Consultant shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the Town, which consent may be withheld in the sole discretion of the Town.

Without the express prior written consent of the Town, the Consultant may use a subcontractor to perform its obligations under this Agreement; provided that the Consultant's use of a subcontractor shall not release the Consultant from any duty or liability to fulfill its obligations under this Agreement. Further, the Consultant shall remain fully responsible for the satisfactory completion of all its subcontracted work.

11. Employment; Independent Contractor

- A. 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 the Consultant 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 Town 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.
- B. Consultant is and shall be at all times during the term of this Agreement 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 Town employees. 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, subcontractors, agents and employees shall not have the authority to bind Town in any way except as may be specifically provided herein.
- C. The Consultant shall not engage, on a full or part-time basis, or other basis, during the period of the Agreement, any professional or technical personnel who are, or have been at any time during the period of this contract, in the employ of the Town except regularly retired employees, without written consent of the Town.

12. Notice

Any notices required to be given by the Town to Consultant or by Consultant to the Town shall be in writing and delivered to the parties at the following addresses:

Town:
Seth Boettcher
Town Administrator
210 Center Street West

Consultant:
Aleksandr Romanenko
Owner/Partner - SBN Planning LLC
11628 2nd Ave NW

P.O. Box 309
Eatonville, WA 98328

Seattle, WA 98177

Phone: 360.832.3361
Fax: 360.832.3977

Phone: 206-451-7310

13. Disputes

The parties shall make a good faith effort to resolve disputes in connection with the work prior to initiating legal action. Any action for claims arising out of or relating to this Agreement shall be governed by the laws of the State of Washington. Venue shall be in Pierce County Superior Court.

14. Attorneys Fees

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.

15. Extent of Agreement/Modification

This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

16. 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 parties do hereby accept the Agreement and agree 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 below.

TOWN OF EATONVILLE

CONSULTANT

By: _____
David Baublits
Mayor

By: _____
Name: Aleksandr Romanenko

Date: _____

Title: Owner- Partner of SBN Planning LLC

Date: _____

Attest:

By: _____
Miranda Doll
Town Clerk



Town of Eatonville Development Regulation Updates With SBN Planning

Scope of Work - Exhibit A

SBN Planning to provide professional planning services on an hourly as-needed basis in order to complete the following scope of work for the Town of Eatonville. Our preliminary estimate of the services to complete this scope is \$27,080 (Assumes SEPA DNS) or \$42,080 (Assumes SEPA EIS), and is based on the scope below and accounts for either a DNS or EIS SEPA scenario. Additional costs associated with SBN participating in addressing any appeals associated with the SEPA process have not been included. This estimate also assumes that the development regulations are reviewed, commented on, revised, voted on, and approved in a timely manner and that the deadlines set out by RCWs and HBs are met. Cost estimates for each category may be dependent on the desired level of SBN involvement by the Town. Not listed in the categories below are an estimated \$2,000 in travel time for 8 presumed trips to Eatonville and \$1,650 for general correspondence unaccounted for in the following categories.

Highlighted scope items including, "SEPA", "Public Engagement" and a portion of "Public Meetings and Hearings" will be performed by Town Staff. Assistance from SBN Planning in performing those scope elements will be considered "Extra Work" per the terms and conditions of the service contract.

- Review checklist as completed by Town staff and existing regulations
 - *Estimate: \$3,795.00*
 - Detail specific requirements from each section and corresponding RCW.
 - Determine specific timeframes for adoption of each new/updated regulation based on RCW and HB requirements.
 - Outline the development regulations to be updated with deadlines for each
 - Review existing development regulations.
 - Develop a detailed project scope, deliverables list, and timeline in collaboration with Town Staff to address the gaps in current regulations (SEPA Scoping done separately).

- SEPA

- *Estimate assuming no EIS: \$2,640.00*
- *Estimate assuming EIS and major SBN involvement: \$17,640*
- Review possible pathways from DNS up to EIS depending on feedback and feedback from Town Staff and Ecology, as needed.
- If EIS, then SBN involvement and budget are to be agreed upon at that time
- Scope of SEPA approach and assignment of specific timeline and tasks to SBN as mutually agreed upon.
- Prepare checklist(s)
- Prepare draft determination(s)
- Public notice of determination(s)
- File with SEPA registry
- Respond to comments
- SBN is available to assist with any appeals on an hourly basis, given that an appeal may be very time-consuming and staff may choose to proceed with this internally.

- Public Engagement

- *Estimate: \$2,640.00*
- Review existing public engagement plan and associated survey/engagement results.
- Propose possible additional engagement to understand the public's stance on specific development regulations which need to be updated.
- Develop and implement an open process for engaging the public in the development regulation updates.

- Draft Development Regulations

- *Estimate: \$8,250.00*
- Outline of code sections and chapters
- Write draft code in order of priority based on determination of timeline requirements.
- Legal review of draft regulations done by Town attorney or outside counsel as necessary and determined by Town staff.
- Finalize drafts based on legal review, staff comments, public comments, and council/planning commission feedback.

- Public Meetings and Hearings

(Identify which meetings SBN will attend and create associated schedule)

- *Estimate: \$4,785.00*
- Town Staff to work with Council to Vote to direct the Planning Commission to undertake (as part of their work plan) the update of required development regulations as part of the Periodic Comprehensive Plan update process.
- 1st Presentation (Planning Commission and Council): Outline of required development updates with timeline for completion (Include public engagement feedback and give context of state law requirements).
- 2nd Presentation (Planning Commission): Draft code sections with specific requests for feedback from commissioners.
- Possible Open House (Same day, before 3rd presentation): Council and Planning Commissioners discuss regulations with residents, staf, and consultants.
- 3rd Presentation (Planning Commission): Revised code with incorporated comments as appropriate from Commission, public, and staff.
- 4th Presentation and Public Hearing (Planning Commission): Finalized draft development regulations with incorporated feedback. (vote to recommend to Council)
- 5th Presentation Town Council: SBN and Staff present to Council the completed process, context for updates, and overview of each regulation being updated. (vote to approve)

- Department of Commerce

- *Estimate: \$1,320.00*
- Upload drafts for comment to Planview system
- Review comments from Commerce (SBN, Staff, and Town Attorney)
- Respond as appropriate or necessary to comments
- Upload adopted regulations to Planview system

- Adoption Process

- *Cost accounted for in Public Meetings & Hearings*
- First reading and Public hearing (Planning Commission)
- Second reading and Vote (Planning Commission)
- Vote (Town Council)



SBN Planning Rates - Exhibit B

SBN Planning Rates may increase on an annual basis to account for inflation and cost of living increase. Our rates may increase up to 4% or CPI whichever is greater at the beginning of each calendar year or as negotiated between parties.

Expenses incurred by SBN Planning as part of performing the work under this contract shall be included in the monthly invoice.

SBN Planning 2023 Rates Table	
Service	Hourly Rates
General Planning Services	\$165
GIS, Mapping, and Site Plans	
Plan Review and Documentation	
Meeting Coordination, Presentations, and Presenting	
Data Analysis and Dashboard development	
Reimbursable Expenses	Rates
PDF File Conversion	\$100/h minimum 1/2 hour
Driving to/from Meetings or Sites	\$100/h