

RESOLUTION NO. 497

**A RESOLUTION OF THE TOWN OF RUSTON,
WASHINGTON, AUTHORIZING THE MAYOR TO SIGN A
CONSULTANT SERVICES CONTRACT WITH JEROME
MORRISSETTE & ASSOCIATES IN AN AMOUNT NOT TO
EXCEED \$200,000 FOR ON-CALL ENGINEERING
SERVICES FOR A PERIOD OF TWO YEARS.**

WHEREAS, the Town followed the procedure in RCW 39.80.030 to obtain responses to a call for professional engineering services; and

WHEREAS, after reviewing the responses, the Town selected the firm of Jerome Morrissette & Associates to perform certain on-call professional services; and

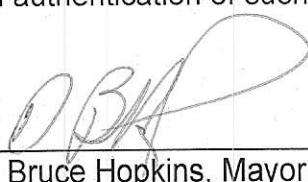
WHEREAS, on December 5, 2011, the Town Council considered the contract negotiated by staff with Jerome Morrissette;

Now, Therefore,

**THE TOWN COUNCIL OF THE TOWN OF RUSTON HEREBY RESOLVES AS
FOLLOWS:**

The Council hereby authorizes the Mayor to sign the attached Consultant Services Contract with the firm of Jerome Morrissette & Associates, in an amount not to exceed Two Hundred Thousand Dollars (\$200,000.00), which shall expire on December 31, 2013.

PASSED by the Town Council of the Town of Ruston, signed by the Mayor and attested by the Town Clerk in authentication of such passage on this 5th day of December, 2011.


Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

Judy Branns

, Town Clerk

APPROVED AS TO FORM:

Carol Morris, Town Attorney

**CONSULTANT SERVICES CONTRACT
BETWEEN THE TOWN OF RUSTON AND
JEROME W. MORRISSETTE & ASSOCIATES INC., P.S.**

THIS AGREEMENT is made by and between the Town of Ruston, a Washington municipal corporation (hereinafter the "Town"), and Jerome W. Morrissette & Associates Inc., P.S., a Civil, Municipal, and Geotechnical Engineering Firm organized under the laws of the State of Washington located and doing business at 1700 Cooper Point RD SW, B-2, Olympia, WA 98502-1110 (hereinafter the "Consultant").

RECITALS

WHEREAS, the Town is interested in On-Call Civil and Municipal Engineering Services; and

WHEREAS, the Consultant has agreed to perform said services

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

I. Description of Work

The Consultant shall perform all work as described in **Exhibit A**, which is attached hereto and incorporated herein by this reference.

II. Payment

A. The Town shall pay the Consultant an amount based on time and materials, not to exceed Two Hundred Thousand Dollars (\$200,000.00) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the Town in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the Town reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount.

B. The Consultant shall submit monthly invoices to the Town after such services have been performed, and a final bill upon completion of all the services described in this Agreement. The Town shall pay the full amount of an invoice within forty-five (45) days of receipt. If the Town objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

III. Relationship of Parties

The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the Town hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the Town. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the Town being interested only in the results obtained under this Agreement. None of the benefits provided by the Town to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the Town to the employees, agents, representatives, or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The Town may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

IV. Duration of Work

The Town and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by December 31, 2013; provided however, that additional time shall be granted by the Town for excusable days or extra work.

V. Termination

A. Termination of Agreement. The Town may terminate this Agreement, for public convenience, the Consultant's default, the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors, at any time prior to completion of the work described in **Exhibit A**. If delivered to consultant in person, termination shall be effective immediately upon the Consultant's receipt of the Town's written notice or such date stated in the Town's notice, whichever is later.

B. Rights Upon Termination. In the event of termination, the Town shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the Town. Said amount shall not exceed the amount in Section II above. After termination, the Town may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the Town without restriction. Upon termination, the Town may take over the work and prosecute the same to completion, by contract or otherwise.

VI. Discrimination

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Consultant, its subcontractors, or any person acting on behalf of such Consultant or sub-consultant shall not, by reason of race, religion, color, sex, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

VII. Indemnification

The Consultant shall defend, indemnify and hold the Town, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the Town. The Town's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the Town, its officers, officials, employees, agents and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

The provisions of this section shall survive the expiration or termination of this Agreement.

VIII. Insurance

A. 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 Consultant's own work including the work of the Consultant's agents, representatives, employees, sub-consultants or sub-contractors.

B. Before beginning work on the project described in this Agreement, the Consultant shall provide evidence, in the form of a Certificate of Insurance, of the following insurance coverage and limits (at a minimum):

1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit, and
2. Commercial General Liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate. Coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, and employers liability, and
3. Professional Liability insurance with no less than \$1,000,000. All policies and coverage's shall be on a claims made basis.

C. The Consultant is responsible for the payment of any deductible or self-insured retention that is required by any of the Consultant's insurance. If the Town is required to contribute to the deductible under any of the Consultant's insurance policies, the Contractor shall reimburse the Town the full amount of the deductible within 10 working days of the Town's deductible payment.

D. The Town of Ruston shall be named as an additional insured on the Consultant's commercial general liability policy. This additional insured endorsement shall be included with evidence of insurance in the form of a Certificate of Insurance for coverage necessary in Section B. The Town reserves the right to receive a certified and complete copy of all of the Consultant's insurance policies.

E. Under this agreement, the Consultant's insurance shall be considered primary in the event of a loss, damage or suit. The Town's own comprehensive general liability policy will be considered excess coverage with respect to defense and indemnity of the Town only and no other party. Additionally, the Consultant's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

F. The Consultant shall request from his insurer a modification of the ACORD certificate to include language that prior written notification will be given to the Town of Ruston at least 30-days in advance of any cancellation, suspension or material change in the Consultant's coverage.

IX. Exchange of Information

The Town warrants the accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Agreement. The parties agree that the Consultant will notify the Town of any inaccuracies in the information provided by the Town as may be discovered in the process of performing the work, and that the Town is entitled to rely upon any information supplied by the Consultant which results as a product of this Agreement.

X. Ownership and Use of Records and Documents

Original documents, drawings, designs and reports developed under this Agreement shall belong to and become the property of the Town. All written information submitted by the Town to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

XI. Town's Right of Inspection

Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the Town and shall be subject to the Town's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

XII. Consultant to Maintain Records to Support Independent Contractor Status

On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to the Revised Code of Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties which is subject to RCW Title 51, Industrial Insurance.

XIII. Work Performed at the Consultant's Risk

The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

XIV. Non-Waiver of Breach

The failure of the Town to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options, and the same shall be and remain in full force and effect.

XV. Resolution of Disputes and Governing Law

Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the Town of Ruston shall determine the term or provision's true intent or meaning. The Town of Ruston shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

If any dispute arises between the Town and the Consultant under any of the provisions of this Agreement which cannot be resolved by the Town Engineer or Director of Operations determination in a reasonable time, or if the Consultant does not agree with the Town's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

XVI. Written Notice

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified to the contrary.

Unless otherwise specified, any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

CONSULTANT:

Mr. Jerome W. Morrissette, P.E., Principal
Jerome W. Morrissette & Associates Inc., P.S.
1700 Cooper Point RD SW, B-2
Olympia, WA 98502-1110

TOWN:

Mr. D. Bruce Hopkins, Mayor
Town of Ruston
5117 N Winnifred St.
Ruston, WA 98407-6597

XVII. Assignment

Any assignment of this Agreement by the Consultant without the written consent of the Town shall be void. If the Town shall give its consent to any assignment, this paragraph shall continue in full force and effect and no further assignment shall be made without the Town's consent.

XVIII. Modification and Severability

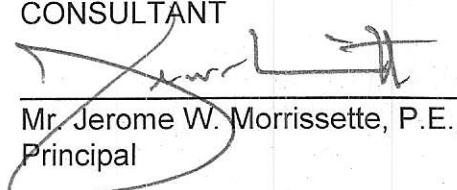
No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the Town and the Consultant.

The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reasons held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

XIX. Entire Agreement

The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the Town, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, this Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached hereto, which may or may not have been executed prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on this 5th day of December, 2011.

By: 

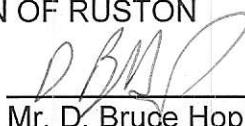
CONSULTANT

Mr. Jerome W. Morissette, P.E.,
Principal

Notices shall be sent to:

Consultant: Mr. Jerome. W. Morissette, P.E.
Jerome W. Morissette & Associates Inc., P.S.
1700 Cooper Point RD SW B-2
Olympia, WA 98502-1110

TOWN OF RUSTON

By: 

Mr. D. Bruce Hopkins, Mayor

Town: Mr. D. Bruce Hopkins, Mayor
Town of Ruston
5117 Winnifred St.
Ruston, WA 98407-6597

APPROVED AS TO FORM:

Town Attorney

ATTEST:

Andy Gramz
Town Clerk

EXHIBIT A

SCOPE OF SERVICES

ON-CALL ENGINEERING SERVICES

1. Scope:

Consultant shall provide engineering services to the Town of Ruston on an on-call basis. Services required by the Town may include, but are not limited to:

- Surveying and mapping
- Civil
- Geological/geotechnical
- Water/wastewater/stormwater/drainage
- Street and roadway
- Traffic/transportation
- Site planning/permitting/development/plan review
- Environmental documentation
- CADD
- Utility services and rate analysis
- Construction plans and specifications
- Estimating
- Construction support
- Soils and wetlands

2. Rates of Compensation:

Rates of compensation and related charges are as provided in Exhibit "A-1" herein.

JWM&A

Jerome W. Morissette & Associates Inc. P.S.

1700 Cooper Point Road SW, #B-2, Olympia, WA 98502-1110
821 W. Railroad Ave. Shelton, WA (360) 352-9456 • (360) 352-9990***Exhibit "A-1" 2013 Fee Schedule****

◆ Principal Engineer	\$123.60
◆ Sr. Project Engineer III	\$121.15
◆ Sr. Project Engineer II	\$118.00
◆ Sr. Project Engineer I	\$116.50
◆ Environmental Specialist	\$116.50
◆ Land Surveyor	\$118.00
◆ Project Engineer III	\$112.00
◆ Project Engineer II	\$100.50
◆ Project Engineer I	\$94.30
◆ Soils Scientist/Hydrologist	\$132.75
◆ Geotechnical Engineer	\$151.25
◆ Sr. Planner	\$93.65
◆ Sr. Engineering Technician II	\$88.85
◆ Sr. Engineering Technician I	\$81.60
◆ Engineering Technician IV	\$73.00
◆ Engineering Technician III	\$67.75
◆ Engineering Technician II	\$59.50
◆ Engineering Technician I	\$51.50
◆ Engineering Aide III	\$42.55
◆ Engineering Aide II	\$43.25
◆ Engineering Aide I	\$40.75
◆ Administrative Secretary	\$49.50

♦ Secretary	\$40.75
♦ Two Man Survey Crew (Fully Equipped)	\$152.00
♦ Three Man Survey Crew (Fully Equipped)	\$200.00
♦ Direct Costs (such as survey stakes and hubs)	At Cost Plus 5%
♦ Subconsultants	At Cost Plus 5%
♦ GPS/Total Station with Robotics Survey Equipment (Added to the above employees rates)	\$60.00 an hour
♦ Water Sys. Flow Monitoring Equipment (per week)	\$133.00
♦ HOBO Water Level Monitoring Equip. (per week)	\$55.00
♦ Mileage	\$0.59 per mile

* Note that the Fee Schedule shown is effective through December 31, 2013. Compensation beyond that date will increase at the approximate rate of inflation. The rates shown are based on a firm multiplier of 2.45.