

RESOLUTION 2012-KKK

**A RESOLUTION OF THE EATONVILLE TOWN COUNCIL TO AUTHORIZE
THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT TO
REPLACE THE ROOF ON THE TOWN'S WATER TOWER**

WHEREAS, the Town of Eatonville owns and operates a water tower, the roof of which needs replacing due to leakage, and

WHEREAS, Mountain View Roofing & Construction has submitted an acceptable proposal to complete the work,

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 Mountain View Roofing & Construction. The Mayor is further authorized to execute change orders within the scope of the proposal submitted by Mountain View if such work is necessary and in the best interests of the Town.

Passed by the Council of the Town of Eatonville at a regular meeting this _____ day of December, 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 10th day of December, 2012, by and between the Town of Eatonville, a municipal corporation under the laws of the State of Washington (hereinafter "Town"), and Mountain View Roofing & Construction Inc., whose address is P.O. Box 868, Eatonville, WA 98328 (hereinafter "Contractor."

WHEREAS, the Town desires to engage the Contractor to provide Larson Road Water Tower Re-Roofing, and Contractor has agreed to offer its professional services to perform said work,

WHEREAS, the Contractor 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 CONTRACTOR AS FOLLOWS:

The Town hereby agrees to engage the Contractor and the Contractor 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:

Contractor agrees to provide professional services for Tear off and replace roofing in accordance with the attached Scope of Work, 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 \$10,399.00 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 Contractor must be attached before a change is effective. With the Contractor'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 Contractor, its subcontractors, agents and employees are independent contractors. Contractors performing professional services for Town and are not employees of the Town. The Contractor, 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 Contractor, 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 January 31, 2013.

4. Delays and Extensions of Time

If the Contractor is delayed at any time in the progress of providing services covered by the Contract, by any causes beyond Contractor's control, the time for performance may be extended by such time as shall be mutually agreed upon by Contractor 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 Contractor 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 Contractor shall submit invoices to Town covering both professional fees and project expenses, if allowable. Payments to Contractor 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 Contractor 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 Contractor 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 Contractor hereby further assigns all copyright interests in such materials, writing and products to the Town. A copy may be retained by the Contractor.

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 Contractor shall have the authority to control and direct the performance and details of the work described herein. The Contractor 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, Contractor shall secure all necessary business licenses from local, state, and federal government authorities.

10. Liability and Hold Harmless.

Contractor 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 Contractor's risk. To the fullest extent permitted by law and subject to the following conditions, Contractor 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 Contractor, 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 Contractor, the Town retains the right to participate in said suit if any principle of public law is involved. Contractor 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. Contractor agrees that all of its Subcontractors of any tier will, in their subcontracts, similarly stipulate; in the event any does not, Contractor 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 Contractor or Subcontractor or agent of Contractor, even if Contractor is thus otherwise immune from liability pursuant to Title 51 RCW. Contractor 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. Contractor shall include such waiver in all agreements with Subcontractors. Contractor 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 CONTRACTOR 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 CONTRACTOR WILL BE DEEMED TO HAVE NEGOTIATED AND WAIVED THIS IMMUNITY.

Neither this paragraph nor any other part of this Agreement shall not obligate Contractor 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 Contractor 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 Contractor 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 Contractor, subcontractor or anyone directly or indirectly employed by either the Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor
- c. Employment Security. The Contractor shall comply with all employment security laws of the State of Washington, and shall timely make all required payments in connection therewith. Contractor 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 CONTRACTOR

Mountain View Roofing & Construction, Inc.
ATTN: George Best
P.O. Box 868
Eatonville, WA 98328

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 Contractor 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/Contractor 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. Contractor'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 Contractor 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 December, 2012.

TOWN OF EATONVILLE, a municipal corporation

By: _____
Raymond Harper, Mayor

Attest:

By: _____
Kathy Linnemeyer, Clerk

CONTRACTOR

By: _____
George B Best
Title: _____
PRES

Approved as to form:

Town Attorney

Roofing Proposal & Sales Agreement

Mountain View Roofing & Construction, Inc
P O Box 868
Eatonville Wa 98328
Mountvr983da

Cell #253-209-3708
Office #360-832-6147
Fax #360-832-8651

Date 12-04-2012

REF# 1119-3

Submitted To- Town of Eatonville
Attn: Doug Beagle

Re: Larson Road Water Tower

Dbeagle@eatonville-wa.gov

We hereby propose to furnish materials and perform the labor necessary to complete the following-

- Tear off existing EPDM roofing, dispose of debris properly.
 - Tear off all existing Fesco Board, and replace with in-kind.
 - Install 27lb fiberglass base sheet, using 1 ¼" simplex nails as per code.
 - Install GAF Rubberoid Smooth torch down, ensuring proper seam sealing.
 - Inspect entrance hatch and repair/replace ISO board as needed.
 - Install 2" flashing on entire perimeter, insuring proper wind protection.
 - Clean grounds with broom and magnetic sweep.
 - **Permit, if necessary, billed as additional cost.**
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- All work is guaranteed as specified, and will be performed in a professional workmanlike manner. Any alterations involving extra costs will be executed only upon mutually agreed upon verbal orders, or written orders, as enforced by owner.

Any additional work: Tear off, insulation replacement, wood replacement such as barge, fascia, trim, truss, soffit- billed additional at cost plus \$55 per hour.

Authorized Signature _____

George B Best

Sub Total	\$10,399.00
Tax	821.52
Total	\$11,220.52

Payment due 30 days from submission of final invoice.

***10 Year Material Warranty
3 Year Labor Guarantee***

The above prices and conditions are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date _____

Signature _____

Available Options/ Upgrades (Circle those chosen)

1. Install Apoc Fibered Aluminum roof coating, extending the life of roof, adding energy savings and reducing interior temperature, additional \$750.00

The above price and conditions are hereby accepted. You are authorized to do the work as specified.
Payment will be made as outlined above.

Date _____

Signature _____