

MEMORANDUM

TO: Eatonville Town Council
FROM: Nicholas Bond
SUBJECT: Water Structure Demolition
DATE: November 21, 2012

At issue

The town water utility owns two buildings adjacent to the Mill Pond which are no longer used and dilapidated. These buildings were taken offline when the new water treatment plant was constructed. The attached map shows the location of the two buildings. The buildings are on land that the town does not own and the owner has requested their removal. The town sent requests for proposals to remove these structures to three contractors on the MRSC small works roster. Two of the three contractors responded with quotes based on the same description of work. The low bidder was Boettcher and Sons, Inc. with a quote of \$14,650. The second lowest bidder was Higham Excavating with a bid of \$17,300.

The project is described further in the attached small works roster contract.

Recommendations

Town staff recommends award of the project described above to Boettcher and Sons, Inc. in an amount not to exceed \$14,650 using the towns standard small works contract as attached.

PROJECT SPECIFICATION / SCOPE OF WORK

THIS CONTRACT, effective this _____ day of _____, 2012, is entered into by and between **Boettcher and Sons, Inc.**, hereinafter referred to as the Contractor, and the Town of Eatonville, a municipal corporation of the State of Washington, hereinafter referred to as the Owner.

I. SCOPE OF WORK

The scope of work to be provided by the Contractor is delineated below:

Scope of work: Eatonville Water Utility Demolition – 2 structures
Address: 350 Madison Ave S Eatonville, W A 98328

1. Demolish and dispose of 2 water buildings adjacent to the Eatonville Mill Pond as shown on the attached map.
2. Restore site with sloped backfill (bank run gravel) to match adjacent topography.
3. Reseed site and cover with straw and/or mulch.
4. Provide temporary erosion control measures as required by the EMC.
5. Dispose of all building materials and concrete at an approved location.

Contractor shall perform such work under the terms and conditions set forth in the Small Works Contract/Public Improvements or Building Maintenance, the terms of which are incorporated herein by reference.

II. LUMP SUM PRICE TO BE PAID BY TOWN

Fourteen thousand six hundred and fifty dollar and zero cents (\$14,650.00), plus applicable sales tax.

III. PREVAILING WAGES

Per the terms set forth in the Small Works Contract, Contractor agrees to be bound by the provisions of chapter 39.12 RCW. The contractor and each subcontractor shall complete or have on file, with the Town of Eatonville, a current "Statement of Intent to Pay Prevailing Wages" before payment will be made for work performed. An "Affidavit of Wages Paid" shall be required at the end of each project. These forms are available from Washington State Department of Labor & Industries and can be filed electronically at <http://www.lni.wa.gov/prevailingwage/>.

The Contractor may be required to submit weekly/bi-weekly Certified Payrolls to the Town of Eatonville's Town Administrator (or his/her designee) upon request. The Contractor is required to keep Certified Payrolls on file for a minimum of three years.

The State of Washington prevailing wage rates applicable for this public works project, which is located in Pierce County, may be found at the following website address of the Department of Labor and Industries:

Based on the quote submittal deadline for this project, the applicable effective date for prevailing wages for this project is **November 21, 2012**.

A copy of the applicable prevailing wage rates are also available for viewing at the office of the Owner, located at 201 Center Street West, Eatonville, WA 98328. Upon request, the Owner will mail a hard copy of the applicable prevailing wages for this project. To request a copy of the applicable prevailing wage rates please call (360) 832-3361 or email dbeagle@eatonville-wa.gov.

IV. WRITTEN NOTICES

Whenever in this Contract written notices are to be given or made, they may be sent by first class mail to the following people at the addresses as shown herein unless a different address is designated in writing or delivered to the respective party hereto: The parties additionally agree that written notices may be submitted electronically through a valid email address.

OWNER

Doug Beagle
Town Administrator
Town of Eatonville
201 Center Street West
PO Box 309
Eatonville, WA 98328
dbeagle@eatonville-wa.gov

CONTRACTOR

Boettcher and Sons, Inc.
PO Box 992
186 Dow Ridge Drive
Eatonville, WA
boetsons@rainierconnect.com

V. AGREEMENT

By signing this Contract, the Contractor and Town acknowledge and agree to the terms and conditions of this Project Specification and all other documents forming this Contract, **a complete listing of which is described in paragraph 17 of the Small Works Contract**. Each of the documents listed therein are incorporated herein by reference.

Original signed in triplicate at Eatonville, Washington, on the dates listed below.

TOWN OF EATONVILLE, a municipal corporation

By: _____
Ray Harper, Mayor, Date _____

Attest:

Kathy Linnemeyer, Town Clerk
Date _____

CONTRACTOR:

Boettcher and Sons, Inc.
Boettcher and Sons, Inc.

By: Calvin Boettcher
President 11/22/12
(Title) Date

MUST BE SIGNED BY PRESIDENT,
MANAGER, OR OWNER

Approved as to form:

PATTERSON BUCHANAN FOBES
LEITCH & KALZER, INC. PS

Daniel G. Lloyd, WSBA #34221, Town Attorney, Date _____

SMALL WORKS CONTRACT

PUBLIC IMPROVEMENTS OR BUILDING MAINTENANCE

1. **Scope of Work:** When or if the Town of Eatonville (“Town” or “Owner”) decides to award a contract to a listed Small Works Contractor it shall prepare a written “Project Specification,” “Scope of Work,” or a “Purchase Order.” As used herein, the terms “Scope of Work” and “Purchase Order” shall be synonymous with “Project Specification.” The Project Specification shall describe in detail the improvement or maintenance to be performed. The terms, conditions, and requirements of the Project Specification are incorporated herein by reference. The Project Specification shall be signed and dated by the Town Administrator or his/her designee.
2. **Contractor’s Obligation:** The Contractor agrees that for each public improvements and/or building maintenance project it is awarded through the Small Works Roster, it will furnish all materials, labor, tools, machinery, and implements of every description necessary for completing such work. All work shall be done in accordance with the Project Specification and in accordance with all state, federal and local laws and regulations, including but not limited to the ordinances of the Town of Eatonville. The Contractor agrees to do the work and furnish the materials in a most substantial and workmanlike manner according to the Project Specification and within the time limits stated in the Project Specification. Unless otherwise specified in the Project Specification, all projects with the Town of Eatonville shall be governed by the most up to date published edition of the Standard Specifications for Road, Bridge and Municipal Construction as published by the Washington State Department of Transportation (hereinafter “Standard Specifications”), the terms of which are incorporated herein by reference.

It is the intent of the Town to award a contract to the responsible bidder who submits the lowest responsive bid. In accordance with RCW 39.04.350, as amended, before award, the bidder must meet the following bidder responsibility criteria to be considered a responsible bidder. The bidder may be required to provide the Town documentation

demonstrating compliance with the criteria. The bidder must:

- a. Have a current certificate of registration compliance with chapter 18.27 RCW, which must have been in effect at the time of bid submittal;
- b. Have a current Washington Unified Business Identifier (UBI) number;
- c. Before award of contract, if applicable:
 - i. Have Industrial Insurance (workers’ compensation) coverage for the bidder’s employees working in Washington, as required in Title 51 RCW;
 - ii. Have a Washington Employment Security Department number, as required in Title 50 RCW;
 - iii. Have a Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
- d. At the time of award of contract, not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).

In addition to the requirements listed above a contractor must maintain a responsible claims history and strong safety record throughout their enlistment on the roster. A Contractor may be removed from the roster if the 5 year average of their safety experience rating with Labor & Industries exceeds 1.0.

3. **Subcontractor Responsibility:** The Contractor shall include the language contained in this section detailing contractor licensing, certification and registration requirements in each of its first tier subcontracts, and shall require each of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. The requirements of this section apply to all subcontractors regardless of tier.

At the time of subcontract execution, the Contractor shall verify that each of its first tier subcontractors meets the following bidder responsibility criteria:

- a. Have a current certificate of registration in compliance with chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;
 - b. Have a current Washington Unified Business Identifier (UBI) number;
 - c. If applicable, have:
 - i. Have Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RCW;
 - ii. A Washington Employment Security Department number, as required in Title 50 RCW;
 - iii. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
 - iv. An electrical contractor license, if required by Chapter 19.28 RCW;
 - v. An elevator contractor license, if required by Chapter 70.87 RCW.
 - d. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).
4. **Town's Obligation:** In consideration of the promises and agreements of the Contractor as set forth herein, and in consideration of the faithful performance and furnishing of the work and materials required by this Contract to the satisfaction of the Town, the Town agrees to pay the Contractor in the amount provided in the Project Specification and in the manner and in the times provided in paragraph 13 below and in accordance with the ordinances of the Town of Eatonville and the laws of the State of Washington. The amount paid, however, shall be dependent upon the amount of work done and/or materials furnished pursuant to unit prices, if any, fixed in the Contractor's Proposal or as modified by any or all approved change orders.
5. **Permits:** The Contractor agrees to make all necessary arrangements and to obtain all necessary permits to do the work required and covered by this Contract, including from the Town, from the United States and any of its subdivisions or agencies, and from the State of Washington and any of its political subdivisions and/or agencies.

6. **Insurance:** The Contractor agrees to the following requirements relating to insurance coverage.

Said certificate must be provided on a standard "ACORD" form, or its equivalent, and must provide that coverage shall not be canceled or modified without 30 days prior written notice to the Town of Eatonville.

In addition, all policies shall be issued by an insurance company licensed to do business in the State of Washington. The Town of Eatonville may inspect all policies and copies shall be provided to the Town upon request.

Required insurance coverage is as follows:

- Commercial General Liability Insurance
- \$1 Million per Occurrence Limit
- \$1 Million Auto Liability Coverage
- \$2 Million General Aggregate Limit
- \$1 Million Products – Completed Operations Aggregate Limit
- Washington Stop Gap. This must be indicated on the certificate.
- Town Named as an Additional Insured. This must be indicated on the certificate.

7. **Worker's Compensation** The Contractor shall comply with the State Washington, Department of Labor and Industries Industrial Insurance program, for all of its employees 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. An active Industrial Insurance account is required for all Contractors.
8. **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.
9. **Contractor's Bond:** The Contractor agrees that for projects of \$35,000 or more, and for contracts less than \$35,000 (unless the 50 percent retainage option is chosen by the Contractor as provided in paragraph 13 below), before it undertakes performance of the Contract, it will file with the Town a Performance and Payment Bond in the full amount of the Contract price, executed by itself as a principal and one or more

surety companies authorized to do business in the State of Washington as surety. The bond shall be supplied on a Town of Eatonville approved form and be approved by the Town of Eatonville's Town Administrator.

10. **Payment of Suppliers:** The Contractor agrees to pay in a timely manner all suppliers of labor, materials, and equipment utilized in operations under the Contract.

11. **Hours of Work:** The Contractor agrees that all persons employed by it and by any of its subcontractors in work done pursuant to this Contract shall not be employed in excess of eight hours in any one day, except as in accordance with CH.49.28 RCW.

12. **Payment of Labor:** The Contractor agrees that all laborers, workers, or mechanics employed by it or by any subcontractor in the work of this Contract will be paid not less than the prevailing rate of wage for an hour's work in accordance with the provisions of Ch. 39.12, RCW and all such rules and regulations as may be promulgated thereto by the Washington Department of Labor and Industries.

In case any dispute arises as to what the prevailing rate of wage for work of a similar nature are and such dispute cannot be adjusted by the parties involved, the matter shall be referred to the Director of the Department of Labor and Industries of the State of Washington for arbitration and the director's decision therein shall be final and conclusive and binding on all parties involved in the dispute.

The Contractor and its subcontractors may be required to submit weekly/bi-weekly Certified Payrolls to the Town of Eatonville, Procurement Services upon request. The Contractor and its subcontractors are required to keep Certified Payrolls on file for a minimum of three years.

13. **Payment:** Invoices will be paid thirty (30) days after the Town's receipt and acceptance of the materials or work, provided that all required forms have been submitted. Payment periods will be computed from the acceptance of all work, or the date of receipt of a correct invoice, whichever date is later. This section is not intended to restrict partial payments that are specified in the contract documents. No payment shall be due prior to the Town's receipt

and acceptance of the items identified in the invoice thereof.

Notwithstanding the provisions above, the Town reserves the right to refuse payment, in whole or in part, until such time as the Town is satisfied that the Contractor and its subcontractors have satisfied all claims and requirements of the Washington Department of Revenue, Washington Department of Labor and Industries and Washington Department of Employment Security, as well as all claims of suppliers of labor, materials, or equipment.

For projects in excess of \$35,000 there will be reserved and retained from monies earned by the Contractor on estimates during the progress of the improvements of work, a sum equal to 5 percent of all such estimates. Said retained amount shall be held in trust in accordance with the Specifications and RCW Ch. 60.28. Every person performing labor or furnishing supplies toward the completion of said improvement of work shall have a lien upon said monies so reserved.

For contracts less than \$35,000, Contractor may, in lieu of submitting any performance bond required in paragraph 9, allow the Town to retain fifty percent (50%) of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the department of revenue and the department of labor and industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later. The Contractor will be deemed to have chosen to allow the Town to retain fifty percent as specified in this paragraph should it fail to file with the Town a Performance and Payment bond prior to undertaking performance under this Contract.

Payment of the retained percentage shall be withheld for a period of 45 days following the final completion and acceptance of all Contract work by the Town, and shall be paid the Contractor at the expiration of 60 days per RCW 39.12, subject to any claims filed in accordance with law and receipt of the submission of all required payrolls and affidavits, and releases or certificates have been obtained from the Department of Labor & Industries, Department of Employment Security and from the Department of Revenue.

14. Indemnification: Contractor agrees to indemnify, defend, save and hold harmless the Town, its officials, employees and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind or nature (including patent infringement or copyright claims) arising out of, or in connection with, or incident to, the performance of services pursuant to this Agreement, PROVIDED that this clause shall no applicability if the damages were caused by or resulted from the sole negligence of the Town, AND PROVIDED FURTHER that if the damages were caused by or resulting from the concurrent negligence of (i) the Town and/or the Town's agents or employees, and (ii) the Contractor and/or the Contractor's agents or employees, Contractor shall indemnify and defend only to the extent of Contractor's (or its agents') negligence, AND PROVIDED FURTHER, that this indemnity and hold harmless shall include any claim made against the Town by an employee of Contractor or subcontractor or agent even if Contractor is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW. 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 Chapter 4.24.115 RCW. Contractor is an independent contractor and responsible for the safety of its own employees and its subcontractors and their employees.

15. Ownership of Records and Documents – Public Disclosure: All materials, writings and products produced by the 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 Contract, the Contractor hereby further assigns all copyright interests in such materials, writings and products to the Town. A copy may be retained by the Contractor. In the event the Town receives a public record request for such materials, writings of products the Town may, in its discretion, notify the Contractor of such request and withholds disclosure of such information for not less than five (5) business days to permit the Contractor to seek judicial protection of such information, provided that the Contractor shall be responsible for attorney fees

and costs in such action and shall save and hold harmless the Town from any costs, attorney fees, or penalty assessment under Ch.42.56 RCW.

16. Assignment: This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstances, be assigned or transferred by either party without express written authorization.

17. Contract Documents/Order of Precedence: The contract documents consist of the following and any inconsistency in the parts of the contract documents shall be resolved by the following this order of precedence:

1. Addenda,
2. Request for Quotation,
3. Special Provisions,
4. Special Provisions,
5. Contract Plans
6. Small Works Contract,
7. Permits from Outside Agencies,
8. Amendments to the Standard Specifications,
9. Standard Specifications, and
10. Standard Plans

Change Orders, force accounts, supplemental agreements and approved revisions to the Drawings and Specifications will take precedence over Project Specification.

18. Withdrawal from the Small Works Roster: The Town or Contractor may terminate the Contractor's participation on the Small Works Roster upon 30 days written notice.



Eatonville
Mill Pond

Alder Site

Alder Site

Alder Site

Alder Site