

RESOLUTION NO. 07-435

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON REGARDING ITS INTENT TO ENTER INTO A CONTRACT WITH PACWEST ENGINEERING OF WASHINGTON, LLC FOR ENGINEERING SERVICES IN CONNECTION WITH THE WHOLESALE WATER AGREEMENT BETWEEN CITY OF TACOMA AND CITY OF BLACK DIAMOND

WHEREAS, the City entered into the Wholesale Water Agreement between City of Tacoma and City of Black Diamond, which agreement is dated August 1, 2003 for reference purposes (the "Agreement");

WHEREAS, the Agreement provided that the City of Black Diamond (the "City") had the option to acquire up to an additional 500,000 g.p.d. capacity upon payment of an additional System Development Charge;

WHEREAS, the City exercised this option in July 2006;

WHEREAS, the City of Tacoma has proposed an amendment to the Agreement which addresses the City's payment of the System Development Charge and which would make the City responsible for the provision of any additional contact time required for, and regulatory reporting of, disinfection compliance under WAC 246-290-692;

WHEREAS, the City intends, in carrying out the intent and purpose of the Water Supply and Facilities Funding Agreement dated August 11, 2003, the In City Water Supply and Facilities Funding Agreement dated August 11, 2003 with Palmer Coking Coal, Co., and the In City Water Supply and Facilities Funding Agreement with Plum Creek Land Company dated June 27, 2003 (which agreements are collectively referred to herein as the "Water Supply and Facilities Funding Agreements"), to incur City Costs for engineering services in order to analyze the potential impact of the amendment to the Agreement which the City of Tacoma has proposed; now, therefore

BE IT RESOLVED that the City intends, after it receives a deposit from the Property Owners pursuant to the Water Supply and Facilities Funding Agreements, to enter into a contract with PacWest Engineering of Washington, LLC ("PacWest") for engineering services analyzing the potential impact of the amendment to the Agreement which the City of Tacoma has proposed for an amount not to exceed \$10,000.00;

BE IT FURTHER RESOLVED that after the City receives such deposit from the Property Owners, the City Mayor is authorized to execute, on behalf of the City, the City of Black Diamond Professional Services Agreement with PacWest, a copy of which is attached hereto, for engineering services analyzing the potential impact of the amendment to the Agreement which the City of Tacoma has proposed for an amount not to exceed \$10,000.00; and

CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the or this "Agreement"), for reference purposes only, is dated April 5, 2007 and is entered into by and between

CITY OF BLACK DIAMOND, WASHINGTON (the "City")

25510 Lawson Street

Black Diamond, WA 98010

Contact: Rick Luther Phone: 360-886-2560 Fax : 360-886-2592

and

PacWest Engineering of Washington, LLC ("Consultant")

5009 Pacific Hwy. E., Unit 9-0

Fife, WA 98424

Contact: Leonard Smith Phone: 253-926-3400 Fax: 253-926-3402

Tax Id No.: 20-3557924

for professional services in connection with the following project:

Analysis regarding the potential impact of the amendment the City of Tacoma has proposed to the Wholesale Water Agreement between City of Tacoma and City of Black Diamond (the "Project").

TERMS AND CONDITIONS

1. Services by Consultant

1.1 Consultant shall perform the services described in the Scope of Work attached to this Agreement as Exhibit "A." The services performed by Consultant shall not exceed the Scope of Work nor shall the Consultant be entitled to a greater amount of compensation as that provided in this Agreement without the prior written authorization of the City.

1.2 The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to this Agreement.

1.3 Consultant represents and warrants that it, its staff to be assigned to the Project, and its subconsultants and their staff have the requisite training, skill, and experience necessary to provide the services required by this Agreement and are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant and its subconsultants 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.

2. Schedule of Work

2.1 Consultant shall perform the services described in the Scope of Work as expeditiously as is consistent with professional skill and care and the orderly progress of the work provided for in this Agreement.

2.2 Time is of the essence as to the work provided in the Scope of Work. Consultant will diligently proceed with the work and shall assure that it, and its subconsultants, will have adequate staffing at all times in order to complete the Scope of Work in a timely manner. If factors beyond Consultant's control that could not have been reasonably foreseen as of the date of this Agreement cause delay, then the parties will negotiate in good faith to determine whether an extension is appropriate. The Consultant shall provide the City with written notice of any delay, or potential delay, that may trigger the need for a time extension within 3 business days after the Consultant becomes aware of the delay or potential delay.

2.3 Consultant is authorized to proceed with the Project upon both parties fully executing this Agreement.

3. Compensation

- LUMP SUM. Compensation for the services provided in the Scope of Work shall be a Lump Sum of \$_____.
- TIME AND MATERIALS NOT TO EXCEED. Compensation for the services provided in the Scope of Work shall not exceed \$10,000.00 without the written authorization of the City and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit "B."
- TIME AND MATERIALS. Compensation for the services provided in the Scope of Work shall be on a time and materials basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit "B."
- OTHER. _____

4. Payment

4.1 Consultant shall maintain time and expense records and provide them to the City monthly, along with monthly invoices, in a format acceptable to the City for work performed to the date of the invoice.

4.2 All invoices shall be paid by City warrant within sixty (60) days of actual receipt by the City of an invoice conforming in all respects to the terms of this Agreement.

4.3 Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Consultant shall make copies available to the City on request.

4.4 If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

5. Discrimination and Compliance with Laws

5.1 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, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

5.2 Consultant and its subconsultants shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

5.3 Any violation of this Section 5 shall be a material breach of this Agreement and grounds for immediate cancellation, termination, or suspension of the Agreement by the City, in whole or in part, and may result in Consultant's ineligibility to conduct further work for the City.

6. Suspension and Termination of Agreement

6.1 The City reserves the right to terminate or suspend this Agreement at any time, without cause, by giving Consultant notice in writing ten (10) days prior to the termination or suspension date. In the event of termination, all finished or unfinished reports, or other material prepared by Consultant pursuant to this Agreement, shall be submitted to the City. In the event the City terminates this Agreement prior to completion without cause, Consultant may complete such analyses and records as may be necessary to place its files in order. Consultant shall be entitled to compensation for any satisfactory work completed on the Project prior to the date of suspension or termination.

6.2 Any notice from the City to Consultant regarding the suspension of this Agreement shall specify the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to Consultant's reasonable expenses and shall be subject to verification. Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

7. Standard of Care

7.1 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 Consultant provides 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.

8. Ownership of Work Product

8.1 Ownership of the originals of any reports, data, studies, surveys, charts, maps, drawings, specifications, figures, photographs, memoranda, and any other documents which are developed, compiled, or produced as a result of this Agreement, whether or not completed, shall be vested in the City and shall be submitted to the City upon termination of this Agreement. Any reuse of these materials by the City for projects or purposes other than those that fall within the scope of this Agreement and the Project to which it relates, without written concurrence by Consultant, will be at the sole risk of the City.

8.2 The City acknowledges Consultant's documents as instruments of professional service. Nevertheless, the documents prepared under this Agreement shall become the property of the City upon completion of the work. The City agrees to hold harmless and indemnify Consultant against all claims made against Consultant for damage or injury, including defense costs, arising out of the City's reuse of such documents beyond the use for which they were originally intended without the written authorization of Consultant.

8.3 Methodology, software, logic, and systems developed under this Agreement are the property of Consultant and the City, and may be used as either Consultant or the City see fit, including the right to revise or publish the same without limitation.

9. Indemnification/Hold Harmless

9.1 Consultant shall defend, indemnify, and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising directly or indirectly out of or resulting from the acts, errors, or omissions of Consultant or its subconsultants in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

10. Insurance

10.1 Consultant shall procure and maintain for the duration of the Agreement, and shall provide proof satisfactory to the City that such insurance is procured and maintained by each of its subconsultants, 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 Consultant, its agents, representatives, or employees.

10.2 Consultant shall procure and maintain the following types and amounts of insurance:

a. 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. This insurance shall have a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

b. 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, personal injury, and advertising injury. This insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

d. Professional Liability insurance appropriate to Consultant's profession, with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

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

a. Consultant's insurance coverage shall be primary insurance vis-à-vis the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess over Consultant's insurance and shall not contribute with it.

b. Consultant's insurance shall be endorsed to state that coverage shall not be cancelled, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

10.4 The City shall be named as an additional insured under Consultant's Automobile Liability and Commercial General Liability insurance policies with respect to the work to be performed for the City pursuant to this Agreement.

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

10.6 Declaration pages issued by the insurance carriers for the policies mentioned in this Section 10 showing such insurance to be in force shall be filed with the City not less than ten (10) days following both parties signing this Agreement and before commencement of the work. In addition, the City may request, in writing, a full copy from Consultant of any insurance policy Consultant must procure and maintain pursuant to this Agreement and Consultant must provide such copy to the City within ten (10) days of Consultant's receipt of the City's request. Any policy or required insurance written on a claims-made basis shall provide coverage as to all claims arising out of the services performed under this Agreement and for three (3) years following completion of the services to be performed. It shall be a material breach of this Agreement for Consultant to fail to procure and maintain the insurance required by this Section 10 or to provide the proof of such insurance to the City as provided for in this Agreement.

11. Assigning or Subcontracting

11.1 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 City, which consent may be withheld at the sole discretion of the City.

12. Independent Contractor

12.1 Consultant and its subconsultants are, and shall be at all times during the term of this Agreement, independent contractors.

13. Notice

13.1 All notices required by this Agreement shall be considered properly delivered when personally delivered, when received by facsimile, or on the third day following mailing, postage prepaid, certified mail, return receipt requested to:

City: City Administrator
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
Fax: 360-886-2592

With a copy to: Loren D. Combs and
Joseph P. Zehnder
McGavick Graves, P.S.
P.O. Box 1317
Tacoma, WA 98401-1317
Fax: 253-627-2247

Consultant: PacWest Engineering of Washington, LLC
Leonard Smith
5009 Pacific Hwy. E., Unit 9-0
Fife, WA 98424
Fax: 253-926-3402

14. Disputes

14.1 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 King County Superior Court, Kent, Washington.

15. Attorney Fees

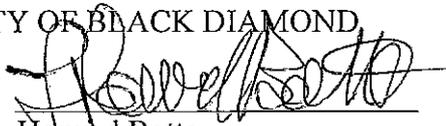
15.1 In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney fees from the other party.

16. General Administration and Management on Behalf of the City

16.1 The City Administrator for the City, or his designee, shall review and approve Consultant's invoices to the City under this Agreement and shall have primary responsibility for overseeing and approving work or services to be performed by Consultant.

17. Extent of Agreement/Modification

17.1 This Agreement, together with any 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 only be amended, modified, or added to by written instrument properly signed by both parties. The parties acknowledge the general contract rule that a clause in a contract, such as this one, prohibiting oral modifications is itself generally subject to oral modification. However, in order to ensure certainty as to the terms and conditions of this Agreement, the parties waive this general contract rule.

CITY OF BLACK DIAMOND
By: 
Howard Botts
Its: Mayor

CONSULTANT
By: _____
Printed Name: Leonard Smith
Its: _____

Date: _____

Date: _____

Attest:

By: 
Brenda Streepy
City Clerk

EXHIBIT A

PacWest Engineering of Washington, LLC will perform such consultation, research, analysis or other work as required assisting the City of Black Diamond in the resolution of the current contract renegotiations with Tacoma Water. The primary issue is whether the City agrees to assume responsibility for the quality of the water being delivered by Tacoma Water. Specifically at issue, is the concern over providing adequate chlorine contact time, as part of providing for adequate treatment of the water supply. It is understood that PacWest Engineering of Washington, LLC will serve as a resource to the City and its legal counsel as requested.

EXHIBIT B

The following is our standard schedule of rates. These rates represent standard examples. Individual rates for our staff are determined based on their training and experience. As such, individual rates will be adjusted from time to time.

STANDARD RATE SCHEDULE

Position	Hourly Rate
Principal Engineer	\$ 135.00/hr
Senior Engineer	\$ 125.00/hr
Civil Engineer	\$ 100.00/hr
Design Engineer	\$ 85.00/hr
Senior CADD Operator	\$ 75.00/hr
CADD Operator	\$ 65.00/hr
Principal Surveyor	\$ 115.00/hr
Land Surveyor	\$ 100.00/hr
Chief of Parties	\$ 80.00/hr
2 Person Survey Crew	\$ 130.00/hr
3 Person Survey Crew	\$ 160.00/hr
Reimbursable Expenses	
Printing	8½"X11" \$ 0.10ea
	11"X 17" 0.50ea
	18"X 24" 1.50ea
	24"X 36" 3.00ea
Mileage	\$0.40/mi