

RESOLUTION NO. 07-444

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE THE PROFESSIONAL SERVICES AGREEMENT BETWEEN PACWEST ENGINEERING, PC AND THE CITY OF BLACK DIAMOND

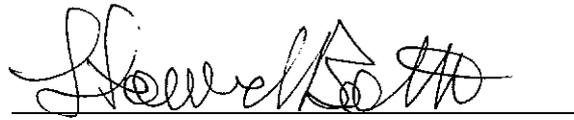
WHEREAS, the City has determined that it must update its Water System Plan; and

WHEREAS, the City desires to retain the services of a consultant skilled in the preparation of water system plans; and

WHEREAS, the City has selected the PacWest Engineering, PC team to prepare an update of its water system plan, and the Consultant is qualified, willing and able to perform the above mentioned services; now, therefore

BE IT RESOLVED that the Mayor is hereby authorized to execute the Consultant Services Agreement, substantially in the form attached as Exhibit A.

ADOPTED by the City Council at an open public meeting held on the 7th day of June, 2007.


Howard Botts, Mayor

Attest:


Brenda L. Streepy, City Clerk

CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT

THIS Agreement is made effective as of the May 13st day of 2007, by and between

CITY OF BLACK DIAMOND, WASHINGTON ("CITY")

25510 Lawson Street

Black Diamond, WA 98010

Contact: Rick Luther Phone: 360-886-2560

Fax : 360-886-2592

and

Pac West Engineering, PC

5009 Pacific Highway So.

Fife, WA 98424

for professional services in connection with the following Project:

Water System Plan Update

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." The services performed by the Consultant shall not exceed the Scope of Work without prior written authorization from the City.
- B. 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 the Agreement.

2. Schedule of Work

- A. Consultant shall perform the services described in the scope of work in accordance with the Schedule attached to this contract as Exhibit "A." Each phase shall be completed within the amount of time listed in Exhibit A, with the time to commence for Phase I upon the receipt of the Notice to Proceed. Each subsequent phase shall be commenced no later than the conclusion of the subsequent phase, but, in any event, all phases shall be completed, and the producibles delivered no later than ninety-one (91) days from the date of the Notice to Proceed.
- B. Consultant is authorized to proceed with services upon receipt of a written Notice to Proceed.

3. Compensation

TIME AND MATERIALS NOT TO EXCEED. Compensation for these services shall not exceed \$59,570 unless the scope of work is expanded in writing by the City and the dollar amount of the increase is agreed to in writing before the work is commenced. All work set forth in

Exhibit A shall be performed for no more than \$59570, regardless of the number of hours it may take the Consultant to satisfactorily complete the Scope of Work.

4. Payment

- A. 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.
- B. All invoices shall be paid by City warrant within sixty (60) days of receipt of a proper invoice.
- C. 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. Copies shall be made available on request.
- D. If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. City may withhold payment for such work until the work meets the requirements of the Agreement.

5. 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, marital status, sex, 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. Violation of this Paragraph 5 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by City, in whole or in part, and may result in ineligibility for further work for City.

6. Term and Termination of Agreement

- A. This Agreement shall remain in effect until completion of the services described in Exhibit A and final payment therefor.
- B. This Agreement may be terminated by the City at any time without cause, in which event all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City, and Consultant shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination. Consultant shall not be entitled to any reallocation of cost, profit or overhead. Consultant shall not in any event be entitled to anticipated profit on work not performed because of such termination. Consultant shall use its best efforts to minimize the compensation payable under this Contract in the event of such termination.

7. 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.

8. Ownership of Work Product

All data materials, reports, memoranda, and other documents developed under this Agreement whether finished or not shall become the property of City, shall be forwarded to City at its request and may be used by City as it sees fit. City 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 therefore.

9. Indemnification/Hold Harmless

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 out of or resulting from the acts, errors or omissions of the Consultant, its officers, employees, or subconsultants in the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

10. 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 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
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 City. Any insurance, self-insurance, or insurance pool coverage maintained by the City 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 City.

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 City 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.

11. Assigning or Subcontracting

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 can be withheld in the City's sole discretion.

12. Independent Contractor

Consultant is and shall be at all times during the term of this Agreement an independent contractor.

13. Notice

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

Rick Luther
City Administrator
25510 Lawson Street
Black Diamond, WA 98010

Phone: 360 886-2560
Fax: 360 886-2592

Pac West Engineering
5009 Pacific Highway So, Unit 9-0
Fife, WA 98424
Phone: Direct: 253-926-3400
Fax: 253-926-3402

14. Disputes

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. 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.

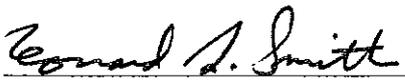
16. Extent of Agreement/Modification

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.

CITY OF BLACK DIAMOND

Pac West Engineering

By: 
HOWARD BOTTS
Mayor

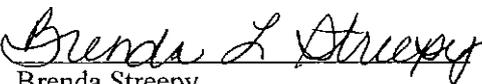
By: 
Name: LEONARD L. SMITH

Date: 5-17-07

Title: MANAGING MEMBER

Date: 6-5-07

Attest:

By: 
Brenda Streepy
City Clerk