

RESOLUTION NO. 07-450

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN RIDOLFI INC. AND THE CITY OF BLACK DIAMOND

WHEREAS, the City and Ridolfi Inc. entered into a Professional Services Agreement on March 8, 2007;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES RESOLVE AS FOLLOWS:

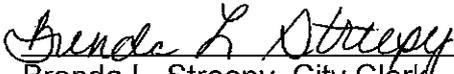
Section 1. That the City Administrator is hereby authorized to execute Amendment No. 1 to the Professional Services Agreement between Ridolfi Inc. and the City of Black Diamond, substantially in the form attached as Exhibit A.

ADOPTED by the City Council at an open public meeting held on the 21st day of June, 2007.

CITY OF BLACK DIAMOND:


Howard Botts, Mayor

Attest:


Brenda L. Streepy, City Clerk

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement is made between **City of Black Diamond** (hereinafter "Client") and **RIDOLFI Inc.** (hereinafter "Consultant"), whose place of business is located at 1011 Western Avenue, Suite 1006, Seattle, Washington 98104 for a Project generally described as **engineering and environmental consulting related to expansion of the Morgan Kame Terrance gravel mining and processing operation** in Black Diamond, Washington.

I. SCOPE OF SERVICES

Consultant will perform the services as described in Exhibit A, Scope of Services, which is attached to and hereby incorporated into this Agreement. Consultant shall perform its services in accordance with generally accepted professional practices. Consultant shall, to the best of its knowledge and belief, comply with applicable laws, ordinances, codes, rules, regulations, permits and other published requirements in effect on the date this Agreement is signed. Notwithstanding any other provision(s) herein, nothing in this Agreement shall be construed so as to raise the standard of care otherwise applicable to Consultant's services provided hereunder.

II. COMPENSATION & REIMBURSEMENT OF COSTS

Services performed and costs incurred by Consultant under this Agreement will be compensated as described below.

Consultant will submit invoices to Client on a monthly basis for work completed and reasonable expenses incurred to the date of the invoice. Each invoice will describe the services performed and the value of the services reflected in that invoice. The invoice amount will reflect the value of Consultant's services plus direct project expenses.

All invoices sent by Consultant to Client shall be paid within thirty (30) days of Client's receipt of a complete and correct invoice. If Client fails to pay any invoice within thirty (30) days and such failure continues ten (10) days after Consultant gives Client notice of such failure, Consultant shall have the right to terminate this Agreement immediately without liability to Client. The right to terminate under the terms of this section shall be in addition to all other legal, equitable, or contractual remedies available to Consultant.

Consultant shall not be required to perform any work connected with a change unless and until the parties have agreed on the amount of time and compensation associated with the change. The total amount of invoices submitted to Client will not exceed the total budget amount approved by Client. Additional amounts will be subject to negotiation between Client and Consultant and will be agreed to by both parties in a written addendum to this Agreement.

III. TERMS AND CONDITIONS

1. **Timing of Work.** Consultant shall commence work immediately upon receiving a fully executed copy of this Agreement, which will serve as notice to proceed. The Scope of Services described in Exhibit A will be completed within thirty (30) days of notice to proceed.
2. **Relationship of Parties, No Third-Party Beneficiaries.** Consultant is an independent contractor under this Agreement. This Agreement gives no rights or benefits to anyone not named as a party to this Agreement, and there are no third party beneficiaries to this Agreement.
3. **Insurance.**
 - a. **Insurance of Consultant.** Consultant will maintain throughout the performance of this Agreement the following types and amounts of insurance:
 - i. Worker's Compensation and Employer's Liability Insurance as required by applicable state or federal law.
 - ii. Comprehensive Vehicle Liability Insurance covering personal injury and property damage claims arising from the use of motor vehicles with combined single limits of \$1,000,000.
 - iii. Commercial General Liability Insurance covering claims for personal injury and property damage with combined single limits of \$1,000,000.
 - iv. Professional Liability (Errors and Omissions, on a claims-made basis) Insurance with limits of \$1,000,000.
 - b. **Interpretation.** Notwithstanding any other provision(s) in this Agreement, nothing shall be construed or enforced so as to void, negate or adversely affect any otherwise applicable insurance held by any party to this Agreement.
4. **Mutual Indemnification.** Consultant agrees to indemnify and hold harmless Client and its employees from and against any and all loss, cost, damage, or expense of any kind and nature (including, without limitation, court costs, expenses, and reasonable attorneys' fees) arising out of injury to persons or damage to property (including, without limitation, property of Client, Consultant, and their respective employees, agents, licensees, and representatives) in any manner caused by the negligent acts or omissions of Consultant in the performance of its work pursuant to or in connection with this Agreement to the extent of Consultant's proportionate negligence, if any.

Client agrees to indemnify and hold harmless Consultant and its employees from and against any and all loss, cost, damage, or expense of any kind and nature (including without limitation, court costs, expenses and reasonable attorneys' fees) arising out of injury to person(s) or damage to property (including, without limitation, property of Client, Consultant, and their respective employees, agents, licensees and representatives) in any manner caused by the negligent acts or omissions of Client or other(s) with whom Client contracts ("Client's agents") to perform work pursuant to or in connection with this Agreement, to the extent of Client's or Client's agents proportionate negligence, if any.

As part of this indemnity agreement, Client specifically agrees to assume potential liability for personal injury claims by its own employees that may arise during Consultant's performance under this agreement, and Client hereby waives its immunity from such claims under RCW Title 51.

5. **Interpretation.** Releases from, indemnifications against, limitations on, and assumptions of liability and limitations on remedies expressed in this Agreement shall apply even in the event of breach of contract or warranty, fault, or tort including negligence, strict liability, statutory or any other cause of action (except for willful or reckless disregard of obligations) of the party released or indemnified, or whose liability is limited or assumed, or against whom remedies are limited. Party, as used herein, includes the named parties, their officers, employees, agents, subcontractors, and affiliates.
6. **Limitation of Liability.** Notwithstanding any other provision in this Agreement to the contrary, Consultant's liability hereunder shall be limited as follows: (a) for insured liabilities arising out of Consultant's negligence, to the amount of insurance then available to fund any settlement, award, or verdict and (b) for uninsured liabilities to 50 percent (50%) of the fee earned by Consultant under this Agreement. In no event shall Consultant's liabilities exceed the aforementioned limits of liability.

Each party's liability for damages provided under this Agreement shall be limited to liability for direct damages and shall in no event include liability for the other party's or their respective agents or employees remote, punitive, consequential or indirect damages for lost profits, loss of use, lost opportunity, financing, interest expense, business interruption or productivity or production loss, regardless of the breach of contract, breach of warranty, tort (including negligence), strict liability, or otherwise.

7. **Delays.** Consultant will not be liable to Client for delays in performance under this Agreement or for the direct or indirect cost resulting from delays that may result from labor strikes, riots, war, acts of governmental authorities, extraordinary weather conditions, natural catastrophes or other events or occurrences beyond control of Consultant.
8. **Data, Documents, and Records.** Consultant shall be entitled to rely upon the accuracy and completeness of all data furnished by Client to Consultant that is used by Consultant in the providing of services under this Agreement. Consultant has the right to retain and use all data furnished to it and all plans, designs, specifications and other work product created by Consultant in providing services hereunder.

Client will examine studies, reports, sketches, drawings, specifications, proposals and other documents submitted by Consultant and obtain advice of other professionals whenever Client deems appropriate in a timely manner so as not to delay the work of Consultant.

Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others and may not always represent the exact location, type of various components, or exact manner in which the Project was finally constructed. Consultant is not

responsible for any errors or omissions in the information from others that are incorporated into the record drawings, and Client hereby agrees to release, defend, hold harmless and indemnify Consultant for the same.

9. **Ownership and Use of Documents and Electronic Media Deliverables.** All completed reports and other data or documents provided or prepared by Consultant in accordance with this Agreement are the property of Client, and may be used by Client. Ownership shall transfer to Client only if Consultant has been paid in full for services under the terms of this Agreement. Client shall release, defend, indemnify and hold harmless Consultant from all claims, costs, expenses, damage, or liability arising out of or resulting from the use or modification of any reports, data, documents, drawings, specifications, or other work product prepared by Consultant except use by Client on those portions of the project for which such items were prepared.

Any post-delivery changes to Consultant's electronic media or Computer-Aided Design (hereinafter cumulatively "CAD") deliverables by anyone other than Consultant shall be the responsibility of the Client. Client agrees to remove the title blocks off of Consultant's CAD files if Client alters such files and further agrees to defend, indemnify and hold Consultant harmless from all claims, costs, expenses, damages or liabilities arising out of or resulting from use of any CAD deliverables that have been altered by Client or anyone else to whom Client may have provided such CAD deliverables. Consultant's record set of CAD files shall prevail in determining whether any alterations have been made to such files.

Because data stored on electronic media can deteriorate undetected or can be modified without Consultant's knowledge, Client agrees that Consultant will not be held liable for the completeness, correctness, readability, or compatibility of the electronic media after an acceptance period of thirty (30) days after delivery of the electronic files. Consultant stands by the accuracy of the sealed drawings that accompany the electronic submittal. During the thirty (30) day acceptance period, Client may review and examine the electronic files; any errors detected during this time will be corrected by Consultant as part of the basic Agreement. Any changes requested after the acceptance period will be considered additional services to be performed on a time and materials basis, at Consultant's standard cost plus terms and conditions.

10. **Resolution of Disputes, Attorneys' Fees.** The law of the State of Washington shall govern the interpretation of and the resolution of disputes under this Agreement. If any claim, at law or otherwise, is made by either party to this Agreement, the prevailing party shall be entitled to its costs and reasonable attorneys' fees.
11. **Termination of Agreement.** Either Consultant or Client may terminate this Agreement upon thirty (30) days written notice to the other sent to the addresses listed herein.

In the event Client terminates this agreement, Client specifically agrees to pay Consultant for all services performed through the termination date.

12. **Integration, Modification and Severability.** This Agreement, including all Addenda, shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. This is the entire agreement between the parties, there are no other agreements or representations not set forth herein, and this Agreement incorporates and supersedes all prior negotiations, agreements, and representations. This Agreement may not be modified except in writing signed by an authorized representative of each party.

If any provision of this Agreement is deemed by law to be void, invalid or inoperative for any reason, or any phrase or clause within such provision is deemed by law to be void, invalid or inoperative, that phrase, clause or provision shall be deemed modified to the extent necessary to make it valid and operative, or, if it cannot be so modified, then such phrase, clause or provision shall be deemed severed from this Agreement with the remaining phrases, clauses and provisions continuing in full force and effect as if the Agreement had been signed with the void, invalid or inoperative portions so modified or eliminated. In addition, a phrase, clause or provision shall be substituted which is consistent with the intent of this Agreement and the severed phrase, clause or provision.

13. **Notices.** All notices, requests, demands, and other communications hereunder shall be deemed given only if in writing signed by an authorized representative of the sender and delivered by facsimile (with a hard copy mailed), or, when sent by a courier or express service guaranteeing overnight delivery to the receiving party.

Notices to Consultant shall be delivered to:

RIDOLFI Inc.
1011 Western Avenue
Suite 1006
Seattle, WA 98104

Attention: Bruno Ridolfi

Notices to Client shall be delivered to:

City of Black Diamond
25510 Lawson Street
P.O. Box 599
Black Diamond, WA 98101

Attention: Rick Luther

14. **Headings, Assignment, and Waiver.** The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof. Neither party to this Agreement shall assign its duties and obligations hereunder without the prior written consent of the other party. A waiver by any party of any provision or a breach of this Agreement must be provided in writing and shall not be construed as a waiver of any other provision or any succeeding breach of the same or any other provisions herein.

15. **Execution of Agreement.** The parties agree that the language in this Agreement pertaining to Indemnification, Limitations of Liability and Insurance are clear and unambiguous and were mutually negotiated by the parties.

EXHIBIT A

SCOPE OF SERVICES

ENGINEERING AND ENVIRONMENTAL CONSULTING RELATED TO EXPANSION OF THE MORGAN KAME TERRANCE GRAVEL MINING AND PROCESSING OPERATION

Consultant will perform the following services within the time and budget described below:

Task 1. Checklist Review

- Review the Environmental Checklist application relative to SEPA requirements.
- Review King County Department of Development and Environmental Services records for the site.
- Determine if all SEPA requirements are met in the application.

Task 2. CERCLIS Site Review

- Research U.S. Environmental Protection Agency (USEPA) archives for information related to the CERCLIS database listing for the site. (This may or may not require a Freedom of Information Act Request.)

Task 3. Report of Findings

- Prepare a written summary of information compiled and provide an opinion of the cumulative potential impact of the expansion and current operations, including clearing, grading, and dumping, within the whole mining property.

Task 4. Meetings and Calls

- Attend one meeting with City officials in Black Diamond.
- Complete two conference calls with City officials.
- The Ridolfi project manager will update the City's representative by telephone on a weekly basis during the term of the project.

TIME SCHEDULE

This Scope of Services will be completed within 30 days of the execution date of this Agreement. If a FOIA request is needed, and more than 10 days are required to obtain the requested information, Consultant will notify Client and request an appropriate extension of time to complete this Scope of Service. In this case, Client will approve a reasonable extension of time.

BUDGET

This Scope of Services will be completed for a fixed amount of \$10,000. The total amount of invoices submitted to Client by Consultant will not exceed this total budget amount without the written agreement of Client.