

RESOLUTION NO. 09-574

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AWARDING THE BID FOR THE WATER MAIN
REPLACEMENT IN RAILROAD AVENUE**

WHEREAS, the City of Black Diamond will be reconstructing Railroad Avenue in the near future; and

WHEREAS, the existing water main is undersized and is of substandard material; and

WHEREAS, the City wants to avoid having to dig up a new street for water main repairs or water system upgrades; and

WHEREAS, the City of Black Diamond has budgeted for replacement of the Railroad Avenue Water Main; and

WHEREAS, the City has evaluated the bids and selected the lowest qualified bidder which is Slead, LLC;

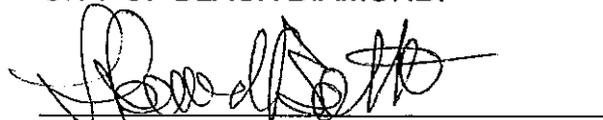
NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The Mayor is authorized to sign a contract with Slead, LLC for the replacement of the Water Main project on Railroad Avenue in the amount of \$200,890.42 including Washington State Sales Tax as contained in form attached hereto as Exhibit A.

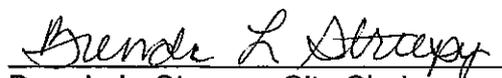
Section 2. Authorization by Council shall serve as official "Notice to Award" to the contractor and also serve as the official "Notice to Proceed" for work commencing on Tuesday, February 23, 2009 contingent on the receipt and execution of all required paperwork.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 5TH DAY OF FEBRUARY, 2009.

CITY OF BLACK DIAMOND:


Howard Botts, Mayor

Attest:


Brenda L. Streepy, City Clerk

4.0 AGREEMENT

CITY OF BLACK DIAMOND

Department of Public Works
P.O. Box 599 – 24301 Roberts Drive
Black Diamond, Washington 98010

Name of Project: RAILROAD AVENUE WATERLINE
Principal Contractor: SLEAD LLC

PUBLIC WORKS CONTRACT

- I. **Name of Project.** This Contract is for a public works project known generally as the RAILROAD AVENUE WATERLINE (the "Project").
- II. **Parties.** This Contract is voluntarily and knowingly entered into by and between the CITY OF BLACK DIAMOND, King County, Washington, a municipal corporation ("City"), and SLEAD LLC, ("Contractor"), collectively, "the Parties."
- III. **Effective date of Contract.** This Contract shall become effective and binding upon the parties, including their heirs, successors, or assigns, immediately upon the date of most recent signature of the Parties appearing on this document.
- IV. **Notices to Parties.** Contractor agrees to accept notices under this Contract via facsimile. It is the responsibility of Contractor to notify City in writing if any of the contact information appearing below should change. Any notices required to be given by the City to Contractor or by Contractor to City shall be in writing and delivered to the parties at the following addresses:

CITY:

CITY OF BLACK DIAMOND
P.O. Box 599 – 24301 Roberts Drive
Black Diamond, Washington 98010
Contact: Public Works Director
Phone: (253) 886-2560
Fax: (360) 886-2592

CONTRACTOR:

SLEAD LLC
9021 WALLER RD EAST
TALOMA, WA 98446
Tax I.D. # 51-0542441
Contact: Uinda Heng
Phone: (253) 536-7907
Fax: (253) 531-8775

V. **Obligations of Contractor.** In consideration of the mutual promises and obligations of the parties contained herein and incorporated by reference, Contractor expressly agrees to the following terms and conditions:

A. *In general.*

- (1) Responsible for all labor. Contractor agrees and understands that he shall be solely responsible for furnishing all labor necessary to complete the Project as required.
- (2) Responsible for performing all work. Contractor agrees and understands that he shall be solely responsible for performing all work necessary to complete the Project as required.
- (3) Responsible for furnishing all materials and equipment. Contractor agrees and understands that he shall be solely responsible for furnishing all materials and equipment necessary to complete the Project as required, except for any materials expressly agreed in writing to be provided by City.
- (4) Documents incorporated by reference. Contractor agrees and understands that all terms and specifications contained in any Request for Proposals (RFP) that was issued by City as part of determining the awarding of this Contract, as well as the terms and conditions contained in Attachment A ("Contract Documents and Specifications") are hereby incorporated by reference and must be complied with, unless one or more of such terms and specifications are expressly amended or waived in writing by City. Should there be a conflict between this Contract and any documents incorporated to it by reference, the more restrictive term shall control.
- (5) Laws and regulations to be followed. Contractor agrees and understands that Contractor, his employees, agents, and subcontractors, must at all times fully comply with all applicable laws, regulations, and administrative rulings in performing work for the Project.

B. *Work Performance.*

- (1) Prevailing wages. Contractor agrees and understands that prevailing wages, as that term is defined under the laws of the State of Washington, shall be paid for all work performed on this Project by Contractor and by Contractor's subcontractors and agents.
- (2) Notice to City. Minimum 24-hours prior notice shall be given to City's Department of Public Works prior to commencement of work under this Contract.

(3) Approved Plans & Specifications to be followed. Contractor agrees that all work is to be performed to the City's satisfaction and in compliance with the approved plans & Contract Specifications, including such requirements contained in the Request for Proposals (RFP) that was issued by the City prior to awarding this Contract, unless such requirements or specifications are expressly amended in writing by the City.

(4) Schedule of Work to be followed. Contractor understands and agrees that time is of the essence in performing the work needed for this Project. Contractor shall diligently proceed with the work and shall assure that it, and its subcontractors, have adequate staffing at all times in order for Contractor to comply with the Schedule of Work provided to City, and shall make all reasonable efforts to complete the work in a timely manner.

C. Non-Discrimination.

(1) Contractor agrees that it, and its subcontractors and other agents, shall not discriminate against any employee or applicant for employment or any other person in the performance of this Contract because of race, creed, color, national origin, marital status, sex, age, disability, or other condition prohibited by federal, state, or local law or ordinance, except where the condition constitutes a bona fide occupational qualification under law.

(2) Any violation of this Section shall be a material breach of this Contract and grounds for immediate cancellation, termination, or suspension of the Contract by City, in whole or in part, and may result in Contractor being ineligible to perform further work for the City.

VI. Responsibility Criteria and Verification by Contractor. Pursuant to Chapter 39.04 RCW, the following requirements must be included in any public works contract:

A. Responsibility Criteria.

(1) Eligibility to be awarded contract. To be awarded this public works contract, the Contractor hereby certifies that Contractor meets the following responsibility criteria:

- a. Contractor has a certificate of registration in compliance with chapter 18.27 RCW;
- b. Contractor has a current state unified business identifier number;
- c. If applicable, Contractor has industrial insurance coverage for Contractor's employees working in Washington as required under

Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW; and

d. Contractor is not disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).

B. Requirement to verify subcontractors. Contractor must verify the responsibility criteria contained above for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350(1) and possesses an electrical contractor license, if required by chapter 19.28 RCW, or an elevator contractor license, if required by chapter 70.87 RCW. This verification requirement must be included in every public works contract and subcontract of every tier.

VII. Insurance

A. Type of coverage required. Prior to performing any work under this Contract, Contractor shall procure and maintain insurance in the types and amounts described in Attachment "A."

B. All employees, subcontractors, agents to be covered. Contractor shall procure and maintain for the duration of the Contract, and shall provide proof satisfactory to the City that such insurance is procured and maintained by each of its subcontractors or agents who are not otherwise covered by Contractor's insurance to the amounts required herein, 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 Contractor, its agents, representatives, or employees.

C. Lack of insurance grounds for termination of contract. Failure of Contractor to procure and maintain insurance as required herein shall be grounds for immediate termination of this Contract by City.

D. Title 51 Industrial Insurance Waived. The parties have specifically negotiated as a term of this Contract that Contractor has agreed to expressly waive immunity under Title 51 RCW Industrial Insurance Law.

VIII. Claims for damages.

A. Excluded situations. City shall not be responsible for delays caused by soil conditions; underground obstructions; labor disputes; fire; delays by third parties, including public and private utilities; or reasonably foreseeable delays.

B. Liability limited to direct costs. Contractor agrees that City's liability to Contractor for payment of claims or damages of any kind whatsoever related to this Contract shall be limited to direct costs as provided under

the force account provisions of the Standard Specifications. Contractor expressly waives all claims for payment of damages that include or are computed on total costs of job performance, extended overhead, or other similar methods that are not specific as to the actual, direct costs of contract work as defined Contract Specifications.

- C. "Damages" defined. For purposes of applying RCW 4.24.115 to this Contract, Contractor and City agree that the term "damages" applies only to a finding in a judicial proceeding and is exclusive of third party claims for damage primarily thereto.
- D. Indemnification. Contractor agrees to defend, indemnify, and hold harmless the City from all claims for damages by third parties, including costs and reasonable attorneys' fees in the defense of claims for damages arising from the performance of Contractor's express or implied obligations under this Contract. It is further agreed that all third party claims for damages against the City for which Contractor's insurance carrier does not accept defense of the City may be tendered by the City to Contractor, who shall then accept and settle with the claimant or defend the claim. City retains the right to approve claims investigation and counsel assigned to said claims, and all investigation of legal work product regarding said claims shall be performed under a fiduciary relationship to the City. In the event that the City agrees or a court finds that a claim arises from the sole negligence of City, City shall be responsible for all damages to third party claimant. In the event that City and Contractor agree or a court finds that a claim arises from the combined negligence of Contractor and City, Contractor shall be responsible for all damages payable by Contractor to third party claimant under the court findings and, in addition, Contractor shall indemnify the City for all damages paid or payable by City under the court findings in an amount not to exceed the percentage of total fault attributable to Contractor.

IX. Compensation

- A. See Attachment "A". Contractor shall be compensated for work performed under this Contract according to the rates, schedules and conditions outlined in Attachment "A".
- B. Payment of Taxes. Contractor shall be solely responsible for withholding and payment of any and all taxes owed on compensation received from City under this Contract.

X. Remedies. The parties shall have all remedies available at law or equity upon a party's default or failure to perform as required under this Contract.

XI. Entire agreement. This Contract, and all attachments, exhibits, or other documents incorporated to it by reference, constitutes the entire agreement of the parties and supersedes any other understandings, verbal or written.

- XII. **Modification.** The terms and conditions of this Contract, and all attachments, exhibits, or other documents incorporated to it by reference, cannot be modified unless expressly agreed in writing by City.
- XIII. **Severability.** Should any provision of this Contract be prohibited or unenforceable in any jurisdiction, such ruling shall not invalidate the remaining provisions nor affect the validity or enforceability of the provision at issue in any other jurisdiction.
- XIV. **Governing law and venue.** This Contract will be governed by and construed in accordance with the local laws of the State of Washington, without consideration of such state's conflict of law rules. Any action brought pursuant to or arising from this Agreement must be filed in King County, Washington.
- XV. **Counterparts.** This Contract shall be executed by the parties in two (2) identical counterparts, each of which for all purposes shall be deemed an original.

BY ITS SIGNATURE BELOW, EACH PARTY ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE TERMS AND CONDITIONS OF THIS CONTRACT AND AGREES TO BE BOUND BY THEM.

CONTRACTOR:

SLERADUC

By: [Signature]

Print name: ROBERT BARRY

Title: General Manager

Date: Feb. 11, 2009

CITY OF BLACK DIAMOND
[Signature]

By: HOWARD BOTTS

Title: MAYOR

Date: 2-5-09

NOTE: MUST BE SIGNED & DATED BY ALL PARTIES

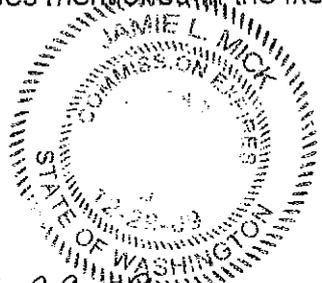
APPROVED AS TO FORM:

Loren D. Combs, City Attorney

REPRESENTATIVE ACKNOWLEDGMENT – of Contractor

STATE OF WASHINGTON)
)
) :ss.
County of King)

I certify that I know or have satisfactory evidence that Robert Barry
Is the person who appeared before me, and said person acknowledged that he or she
signed this instrument, on oath stated that he or she was authorized to execute the
instrument and acknowledged it as the (job title or authority to sign:) General Manager of
the ~~City of Black Diamond~~ SLEAD LLC to be the free and voluntary act of such party for the uses
and purposes mentioned in the instrument.



Dated: 2-11-09
Signature of _____
Notary Public: Jamie Mick
Notary (print name) Jamie Mick
Residing at Puyallup, Washington
My appointment _____

expires: 12-29-09

REPRESENTATIVE ACKNOWLEDGMENT – of City

STATE OF WASHINGTON)
)
) :ss.
County of King)

I certify that I know or have satisfactory evidence that Howard Butts
Is the person who appeared before me, and said person acknowledged that he or she
signed this instrument, on oath stated that he or she was authorized to execute the
instrument and acknowledged it as the (job title or authority to sign:) Mayor of
the City of Black Diamond to be the free and voluntary act of such party for the uses
and purposes mentioned in the instrument.



Dated: February 6, 2009
Signature of _____
Notary Public: Rachel Pitzel
Notary (print name) Rachel J. Pitzel
Residing at Black Diamond
My appointment _____

expires: Aug. 13, 2012