

RESOLUTION NO. 11-764A

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AWARDING THE LOW BID ON THE 2011 OVERLAY
PROJECT LAWSON STREET AT NEWCASTLE
INTERSECTION TO LAKERIDGE PAVING CO., LLC

WHEREAS, the City has planned and budgeted for the 2011 Overlay Project Lawson Street at Newcastle Intersection; and

WHEREAS, the City has received five bids on August 4, 2011; and

WHEREAS, Lakeridge Paving Co., LLC was the low bidder and has met all conditions of providing a responsible bid;

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

Section 1. Authorizing the Mayor to award the bid of the 2011 Overlay Project Lawson Street at Newcastle Intersection to Lakeridge Paving Co., LLC in the amount of \$27,501.55 and authorize the Mayor to execute a contract for the same.

Section 2. The City Council authorizes additional expenditures of up to \$5,500 to cover any change orders that may come up during construction.

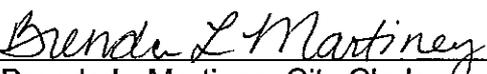
PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 18TH DAY OF AUGUST, 2011.

CITY OF BLACK DIAMOND:



Rebecca Olness, Mayor

Attest:



Brenda L. Martinez, City Clerk

CITY OF BLACK DIAMOND
SMALL WORKS CONTRACT

For 2011 Pavement Patching Project Lawson Street at Newcastle Intersection

THIS SMALL WORKS CONTRACT (the "Contract") is made and entered into this 18th day of August, 2011, by and between the City of Black Diamond, a municipal corporation operating as a non-charter, optional municipal code city (the City) and Lakeridge Paving Co., LLC (the Contractor).

WHEREAS, pursuant to the invitation of the City for bids, the Contractor did, in accordance therewith, file with the City a proposal containing an offer which was invited by said notice, and

WHEREAS, the City has heretofore determined that said offer was the lowest responsive and responsible bid submitted;

NOW, THEREFORE, in consideration of the terms and conditions contained herein, and in consideration of Contractor being included on the City's Small Works Roster and payments and agreements to be made and performed by the City in the event the City awards a Small Works Roster Project to the Contractor, the parties hereto covenant and agree as follows:

1. Contract Scope of Work; Contract Documents. The Contractor shall in a workmanlike manner do all work and furnish all tools, materials, and equipment for the 2011 Street Patching Project primarily on Lawson Street in the vicinity of the intersection with Newcastle Street, (the "Project") in accordance with and as described in the following Contract Documents (incorporated by reference in this Contract):

- A. The Contract;
- B. Supplemental Conditions;
- C. Addenda;
- D. Plans and specifications issued by the City in connection with the Invitation to Bid or request for proposal (Attachment "A");
- E. City Engineering Design Standards (except as modified by any technical specifications in the plans and specifications);
- F. Instructions for Bidders; Notice to Bidders, Bidders Checklist, and bid Proposal;

- G. The applicable sections 1-10, 5-02, 5-04, 8-01 and Division 9 of the 2010 Washington State Department of Transportation Standards Specifications for Road, Bridge, and Municipal Construction except for Division I APWA (American Public Works Association) supplement ("Standard Specifications"). Where the Specifications refer to Engineer, project manager architect, consulting engineer or Secretary, will mean the City Public Works Director or his designee. Where the Standard Specifications refer to; "State," "State of Washington" or "DOT" are replaced with "City".

In the event of a conflict or discrepancy among or in the Contract Documents, interpretation shall be governed in the priority listed and set forth above. The Contractor shall provide and bear the expense of all equipment, work and labor of any sort whatsoever they may be required for the transfer of materials and for constructing and completing the work provided for in the specifications to be furnished by the City.

City reserves the right to add or delete work or items from this Contract, subject to appropriate adjustments to the Contract price. Added items or work will be related to those on Contract, and additions or deletions will be by mutual agreement, with prices consistent with the original bid price margins, and evidenced by a written Contract change notice from the City. The execution of a change order shall constitute a waiver of Claims by the Contractor arising out of the Work to be performed or deleted pursuant to the change order, except as specifically described in the change order. General reservations of rights will be deemed waived and void.

2. Project Administration/Notice to Proceed. The City Administrator, or his or her designee, shall administer this Contract and shall have all authority provided for the City under this Contract including all project approvals. Contractor shall not commence work until Notice to Proceed has been given by the City. All work performed under this Contract will be monitored and inspected by the City Administrator or his designee, and accepted by same.

3. Contract Amount; Compensation (Fixed Sum). The City hereby promises and agrees with the Contractor to employ, and does employ the Contractor to provide materials and to do and cause to be done the above described work and to complete and finish the same according to the Exhibit A and the terms and conditions herein contained. The City hereby contracts to pay for the Contractor according to the schedule of prices committed to in the bid proposal for a total projected sum of Twenty-seven thousand five hundred one and 55/100 dollars (\$27,501.55) plus any applicable sales or use tax. Progress payments shall be made after the date set forth in the Notice to Proceed monthly upon submittal of a pay request for work performed to date as verified by the City. Failure to perform any of the obligations under the contract by Contractor may be decreed by the City to be adequate reason for withholding any payments until compliance is achieved, including withholding amounts from any payment based on substantial completion to cover the City's cost to complete any punch list items.

4. Time for Completion; Penalty. The Contractor will achieve substantial completion (as that term is defined below) to the reasonable satisfaction of the City, free of all claims, liens and charges, within fourteen (14) calendar days of a Notice to Proceed. The City and Contractor recognize that time is of the essence of this Agreement and that the City will suffer financial loss if the Work is not substantially completed within the times specified in the above paragraph, plus any extensions thereof allowed. The City may seek delay damages or may remove the Contractor from the City's small works roster for undue delay in completing this project. For purposes of this Contract, substantial completion shall mean the date that the City determines that it has full and unrestricted use and benefit of the facilities, both from the operational and safety standpoint, and only minor incidental work, replacement of temporary substitute facilities, or correction or repair remains for the physical completion of the total contract. Physical completion date is the date all of the work is physically completed on the project. All documentation required by the Contract and required by law does not necessarily need to be furnished by the Contractor by this date.

5. Prevailing Wages. The Contractor, and its subcontractors, if any, shall fully comply with all applicable provisions of RCW Chapter 39.12, concerning payment of prevailing wages, including the filing and payment of fees for all required statements and affidavits. The prevailing wages in effect at the time of proposal for the Project may be included in the Project specifications when the City makes a solicitation for quotations. The Contractor may also determine the prevailing wages in effect by contacting the Washington Department of Labor and Industries, ESAC Division, General Administration Building, Olympia, Washington 98504 (360) 902-5335.

Prevailing wage rates may also be found on the Department of Labor and Industries website:

<https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>

The Contractor shall post the prevailing rate of wage statement in a location readily visible to workers at the job site, or as allowed by RCW 39.12.020. The "Statement of Intent to Pay Prevailing Wages" shall include:

1. The Contractor's registration certificate number; and
2. The prevailing wage rate for each classification of workers entitled to prevailing wages under RCW 39.12.020 and the estimated number of workers in each classification.

Statements of intent to pay prevailing wages and affidavits of wages paid shall be on forms approved by the Department of Labor and Industries.

6. Payment & Performance Bond and Retainage Requirement. Unless waived or the Contractor elects to have the City hold retainage, as provided below, the Contractor shall provide a performance and payment bond for 100% of the bid proposal to the City prior to commencement of work guaranteeing the full and faithful performance by the Contractor of the terms and conditions of this Contract.

Projects under \$35,000 (including tax): If the total cost of this project, including Washington State sales tax, is \$35,000 or less, the contractor may, in lieu of the bond, elect to have the city retain fifty percent of the contract amount for a period of forty-five days after the date of final acceptance, or until receipt of all necessary releases from the Department of Labor and Industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later. Contractor election shall be in the form of election attached hereto as Exhibit "B".

Initial:  (Contractor)

7. Conditions of Work. By submitting a proposal in response to the City's solicitation for quotations, the Contractor represents and warrants to the City that the Contractor has fully informed himself/herself/itself of all conditions relating to the work involved for completing the Project. In prosecuting the work, the Contractor shall employ such methods or means as will not interfere with or interrupt the work of the City or its agents, employees or contractors.

8. Contractor's Responsibility. The Contractor will prosecute the work in accordance with instructions, descriptions and/or plans and specifications provided by the City. The Contractor shall carry on the work at his/her/its own risk until the same is fully completed and accepted, and shall, in case of any accident, destruction or injury to the work and/or materials before its final completion and acceptance, repair or replace forthwith the Work and/or materials so injured, damaged or destroyed, at his own expense and to the satisfaction of the City. When materials and equipment are furnished by others for installation or erection by the Contractor, the Contractor shall receive, unload, store and handle same at site and become responsible therefore as though such materials and/or equipment were being furnished by the Contractor. The Contractor shall procure all permits (unless permits are secured by the City) and licenses, pay all charges, fees and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the work. The Contractor shall be responsible for preparing working drawings and shall submit them to the City for approval prior to commencement of work. For purposes of this Contract, working drawings shall mean, shop drawings, shop plans, erection plans, falsework plans, framework plans, cofferdam, cribbing and shoring plans, or any other supplementary plans or similar data, including a schedule of submittal dates for working drawings where specified, which the Contractor will rely on for purposes of conducting the work for the Project.

9. Contractor Clean-Up. Prior to Physical Completion, all debris resulting from Contractor's work, delivery or installation of equipment shall be disposed of entirely by the Contractor in an efficient and expeditious manner as required and directed by the City.

10. Safety. The Contractor and his subcontractors shall take all safety precautions and furnish and install all guards necessary for the prevention of accidents, and shall comply with all laws and regulations with regard to the prosecution of the Work. The Contractor agrees to furnish Material Safety Data Sheets (Form OSHA-20) applicable for hazardous or potentially hazardous

products. Contractor agrees to comply with the conditions of the Washington Industrial Safety and Health Act of 1970, and standards and regulations issued thereunder, and certify that all items furnished and purchased will conform to and comply with said standards and regulations. Contractor further agrees to indemnify and hold harmless City from damages assessed against City because of Contractor's failure to comply with the Acts and the standards issued thereunder and for the failure of the items furnished under this order to so comply.

11. Insurance and Indemnity Requirements. The Contractor shall, at its expense, provide for the payment of workers compensation benefits to his/her/its employees and/or to their dependents employed on or in connection with the work covered by the Notice to Proceed, in accordance with the laws of the state of Washington. The Contractor shall also, at Contractor's expense, provide for minimum insurance coverages as follows: general liability in the amount of \$500,000, employer's liability in the amount of \$500,000. This insurance shall be in effect prior to performing any work under the Contract and shall remain in effect for the duration of the work covered by the Notice to Proceed. Additional insurance requirements or conditions may be added by addendum and the City, at its discretion, may require the Contractor to provide evidence of such insurance. These insurance requirements shall not be deemed to limit the Contractor's liability to the City or any third party. Contractor shall provide a certificate of insurance acceptable to the City with the City as an additional insured under the Contractor's comprehensive general liability policy. Such policies shall be deemed primary to the City's insurance policies and non-contributing.

12. Assumption of Liability. The Contractor will indemnify and hold harmless the City and any and all of the City's officers, principals, agents and employees, from any liability, loss, damage, cost, charge or expense, whether direct or indirect and whether occasioned by injury or loss to persons or property, to which the City or said other indemnitees may be put or subject by reason of any act, action, neglect, omission or default by the Contractor or any of the Contractor's or subcontractor's officers, principals, agents or employees, arising from or relating to the Work, specifically including any liability or alleged liability of any indemnitees that may arise from injury or loss suffered by any employee of the Contractor or any subcontractor regardless of any immunity provided by the Washington Industrial Insurance Act, RCW Title 51, or any other applicable law. This section shall not apply where such injury or loss is solely caused by the negligence of an indemnitee. With regard to any claim based on the concurrent negligence of the Contractor, and the Contractor's agents or employees, and the City, the Contractor's liability under this section shall apply to the full extent of the negligence of the Contractor, and the Contractor's agents or employees.

13. Warranty/Correction of Work. The Contractor warrants to the City the work and all component parts thereof provided for under the Contract shall perform and operate for the purpose(s) specified, shall be new and free from defects in material and workmanship, shall meet all applicable specifications, including those relating to performance contained in the Contract, and that the Work will be performed in a competent manner in accordance with accepted professional standards. The foregoing warranties shall apply to defects or deficiencies occurring within a period of one (1) year from the date of final acceptance of the Work. If within one year

after the date of final acceptance, any of the work or component parts thereof are found not to be in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after written notice to do so. If the Contractor fails to correct nonconforming work or component parts therefore within a reasonable time after notice, City may, without prejudice to other remedies it may have, correct such deficiencies, and the Contractor shall pay the reasonable cost to the City, plus 10% City administrative overhead fee. Neither the final payment, acceptance, nor partial or entire use of the Work or any component part therefore by the City, shall relieve the Contractor of liability with respect of the warranties referred to in this contract or any other warranties expressed or implied. The warranty provided herein is in addition to, and not in lieu of, any other guarantee and/or warranties, rights or remedies and shall not in any way limit the same.

14. Claims and Dispute Resolution: A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. A Claim may also include other disputes and matters in question between City and Contractor arising out of or related to the Contract. Claims must be made in writing. The responsibility to substantiate Claims shall rest with the party making the Claim. A notice of a potential or future Claim does not constitute a Claim. Any Claims of the Contractor against the City for damages, additional payment for any reason, or extension of time, whether under the Contract or otherwise, must be made in strict accordance with the applicable provisions of the Contract. No act, omissions, or knowledge, actual or constructive, of City shall in any way be deemed a waiver of the requirement for timely written notice and a timely written Claim unless City provides Contractor with an explicit, unequivocal written waiver.

a. All claims must be addressed to: The Mayor, Rebecca Olness, City of Black Diamond, at the following address:

P.O. Box 599
Black Diamond, WA 98010

b. Contractor shall submit in writing to City all Claims, within 14 days of the event giving rise to the Claim. Written Claim must specify the conditions and requested relief. The City shall consider such Claim and a representative of the City shall meet with the Contractor to confer and attempt to resolve the Claim.

c. Contractor shall diligently carry on the Work and maintain the Contractor's Construction Schedule during any dispute resolution proceedings, unless otherwise agreed by it and the City in writing.

Mediation: If the Claim is not resolved in the process provided immediately above, neither the Contractor nor any Subcontractor or Supplier of any tier may bring a claim against the City in litigation unless the Claim is first subject to nonbinding mediation before a single mediator under the Voluntary Construction Mediation Rules of the American Arbitration Association. This requirement cannot be waived except by an explicit written waiver signed by the City and Contractor.

Litigation: Contractor may bring no litigation on Claims unless such Claims have been properly raised and considered as provided above. All unresolved Claims of Contractor shall be solved and released unless Contractor complies with the time limits above, and litigation is served and filed within the earlier of (a) 120 days after the day of Substantial Completion designated in writing by the City (provided that a mediation session has occurred as provided above); or (b) 60 days after Final Acceptance. This requirement cannot be waived except by an explicit written waiver signed by City.

15. Subcontracts. The Contractor may delegate portions of the work disclosed in the bid proposal. The Contractor shall not delegate any additional portions of the Work or change subcontractors without the advanced written approval of the City.

16. Assignment. The Contractor shall not assign the rights under the Small Works Contract, or any part thereof without the advanced written approval of the City.

17. Applicable Law. Contractor shall comply with all applicable federal, state and local laws and regulations, which are deemed to be incorporated into this Contract. This Contract shall be construed, for all purposes, solely and exclusively in accordance and pursuant to the laws of the State of Washington. Venue of any action filed to enforce or interpret the provisions of this Contract shall be in King County. In the event of litigation to enforce the provisions of this Contract, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief allowed.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed the day and year first hereinabove written.

CITY OF BLACK DIAMOND:



Rebecca Olness, Mayor/City Manager

LAKERIDGE PAVING CO., LLC:



Signature

Printed: Jon Cheetham

Title: managing member

Federal Tax ID No. 91-1145365

Address: P.O. Box 8500

Covington, WA 98042

Attested:

CITY CLERK

Approved as to form:

CITY ATTORNEY