

RESOLUTION NO. 14-927

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING A PROFESSIONAL SERVICES
AGREEMENT WITH RH2 ENGINEERING, INC.**

WHEREAS, the City's 500,000 gallon water tank is in need of a recoat; and

WHEREAS, this project is on the City's approved Capital Improvement Plan 2014-2019 as W2; and

WHEREAS, this project is included in the 2014 budget; and

WHEREAS, RH2 Engineering, Inc. was selected by the City for water and sewer engineering services in March of 2010;

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

Section 1. The Mayor is hereby authorized to execute an professional services agreement, substantially in the form as approved by the City Attorney, with RH2 Engineering, Inc. for the preparation of bid documents for recoating the 0.5 MG steel water tank. Any changes to the professional services agreement, and its attachments and exhibits, will be further reviewed by the City Attorney prior to execution by the Mayor.

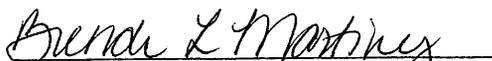
PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 6TH DAY OF FEBRUARY, 2014.

CITY OF BLACK DIAMOND:



Dave Gordon, Mayor

Attest:


Brenda L. Martinez, City Clerk

CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the or this "Agreement"), for reference purposes only, is dated February 6, 2014 and is entered into by and between

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

Physical Address: 24301 Roberts Drive

Mailing Address: PO Box 599

Black Diamond, WA 98010

Contact: Sam Bletcher Phone: 360-886-5700 Fax : 360-886-2592

and

RH2 Engineering, Inc. ("Consultant")

Physical Address: 22722 29th Drive SE

Suite 210

Bothell, WA 98021

Mailing Address: Same

Contact: Geoff Dillard Phone: 253-327-1522 Fax: 425-951-5401

Tax Id No.: 91-1108443

for professional services in connection with the following project:

Professional services for the 0.5 MG Tank Recoating (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 Task 1 of the Scope of Work (Exhibit A) within sixty (60) days of the contract authorization.

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 services upon _____.

3. Compensation

TIME AND MATERIALS NOT TO EXCEED. Compensation for the services provided in the Scope of Work shall not exceed \$30,200 as estimated in Exhibit "B" without the written authorization of the City and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit "C."

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. Provided, however, that if any such claims, injuries, damages, losses or suits result from the concurrent negligence of Consultant and the city, it is expressly agreed that Consultant's obligations and indemnity under this paragraph shall be effective only to the extent of Consultant's negligence.

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

Consultant: RH2 Engineering, Inc.
22722 29th Drive SE
Suite 210
Bothell, WA 98021
Fax: 425-951-5401

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/her 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. No third party, including the project applicant, shall have any direct control or influence over the services performed under this Contract.

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.

18. Conflict of Interest; Non-Collusion

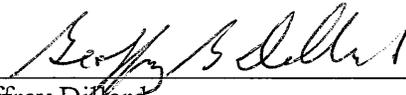
18.1 No officer, employee or agent of the City, nor any member of the immediate family of any such officer, employee or agent, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The Consultant shall comply with all federal, state, and City conflict of interest laws, statutes and regulations. The Consultant represents that the Consultant presently has no interest and shall not acquire any interest, direct or indirect, in the project to which this Contract pertains which would conflict in any manner or degree with the performance of the Consultant's services and obligations hereunder. The Contractor's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from the project applicant or any affiliate or agent of the project applicant.

18.2 The Consultant warrants and represents that the Consultant has not, nor has any other member, employee, representative, agent or officer of the Consultant, entered into or offered to enter into any combination, collusion or agreement with any person or entity to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than the consideration offered pursuant to the terms and conditions hereof.

CITY OF BLACK DIAMOND

CONSULTANT

By: 
Dave Gordon

By: 
Geoffrey Dillard

Its: Mayor

Its: Director

Date: _____

Date: 2-24-14

Attest:

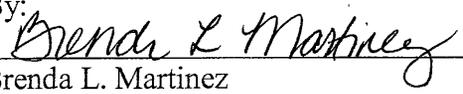
By: 
Brenda L. Martinez
City Clerk

Exhibit A
City of Black Diamond
0.5 MG Tank Recoating
Scope of Work
January 2014

BACKGROUND

The City of Black Diamond (City) owns a 0.5 million gallon (MG) steel water tank, approximately 50 feet in diameter and 35 feet high that was originally constructed in 1986. The tank has not been fully recoated since its construction other than spot repairs on the exterior of tank. The City requested RH2 Engineering, Inc., (RH2) to prepare bid documents for the recoating of the tank. In addition, since this tank is the only source capable of providing fire flow protection in the City's upper pressure zone, a plan for providing temporary fire flow will be required.

TASK 1: DEVELOP BIDDING DOCUMENTS

Objective: Prepare specifications and construction cost estimate for the City to bid the project.

Approach:

- 1.1 Prepare a subconsultant agreement with Custom Coating Consultants (CCC) to perform testing of existing coating systems. CCC will provide RH2 with a report on the existing coating systems conditions.
- 1.2 Perform site investigation to gather data for coating specification. Obtain as-built construction records of tank. Obtain and review available coating system data on original construction. Evaluate options for recoating facilities and discuss with the City.
- 1.3 Prepare specifications for the project, including bid documents, general provisions, technical specifications, and measurement and payment. Bidder qualification and responsibility language and the coating's warranty coverage requirements will be tailored as appropriate for a tank coating project. Submit draft set of specifications for City's review and comments.
- 1.4 Prepare specifications and submit to the Washington State Department of Health (DOH) for approval.
- 1.5 Address comments from the City and DOH and incorporate comments to the specifications. Finalize specifications for bidding.
- 1.6 Prepare construction cost estimate.

Assumptions: *It is assumed that lead is not present in the existing coatings. Lead will be tested for during this task, and if is found, this Scope will need to be revised to address additional lead abatement requirements.*

RH2 Deliverables

- Ten (10) sets of specifications.
- Construction cost estimate.

TASK 2: SERVICES DURING BIDDING AND AWARD

Objective: Provide engineering services during the bidding phase of the project.

Approach:

- 2.1 Assist the City in obtaining interested contractors to submit bids for this project.
- 2.2 Respond to questions from prospective bidders and suppliers.
- 2.3 Issue up to two (2) addenda when determined necessary to clarify or revise specifications or project conditions during the bidding process.
- 2.4 Assist the City with reviewing low bidders qualifications.

Assumptions: *It is assumed that the City will handle on-site meeting, bid advertisement, bid tabulation, low bidder's reference check, bid award, and contract execution.*

RH2 Deliverables

- Addendums in PDF format.
- Bid recommendation.

TASK 3: SERVICES DURING CONSTRUCTION

Objective: Provide services during construction as requested by the City, including: pre-construction meeting attendance, submittal review, on-site inspection, and other services to the level as described in this task and provided for in **Exhibit B - Fee Estimate**. Should additional support be required, RH2 can prepare a contract amendment to this Scope of Work for these additional services.

Approach:

- 3.1 Review submittals required by the technical specifications.
- 3.2 Perform one on-site inspection during the coating application. Coordinate with project inspector and coating inspector. The day-to-day inspection activities will be performed by the City.
- 3.3 Prepare change orders and supporting information, as required.
- 3.4 Provide final on-site inspection and assist the City in final acceptance upon satisfactory completion of the project.

Assumptions: *It is assumed that the City will handle the pre-construction conference, the final on-site inspection, and project completion reporting with DOH. The City will also contract with a specialty inspection firm to conduct daily inspections and administer the necessary coating tests.*

RH2 Deliverables

- Pre-construction conference administration and documentation, including pre-construction conference meeting agenda and minutes.
- Meetings and correspondence with the City and contractor, as needed, within the budgeted hours identified in **Exhibit B - Fee Estimate**.
- Letter recommending project acceptance.

TASK 4: TEMPORARY FIRE FLOW AND DOMESTIC SERVICE PLAN

Objective: Prepare a strategy and plan to provide temporary fire flow protection and domestic supply management to the City's upper pressure zone during the period that the 0.5 MG tank is out of service for the recoating project.

Approach:

- 4.1 Work with City staff to prepare a strategy for how temporary fire flow protection service will be provided.
- 4.2 Work with City staff to prepare a strategy for how domestic supply can be provided to the upper zone when the peak attenuation capacity of the tank is not available.
- 4.3 Prepare plans and specifications necessary to support the selected option. Review submittals required by the technical specifications.
- 4.4 Prepare design of single inlet/outlet piping configuration for inclusion as a bid alternative.

RH2 Deliverables

- Plans, details, and specifications to be incorporated into the bid documents.

EXHIBIT B
 City of Black Diamond
 0.5 MG Tank Recoating

Estimate of Time and Expense

Description Classification	Principal		Project Manager		Project Engineer		Word Processor		Total Hours	Total Labor	Subconsultant	Total Expense	Total Cost
	IX	Professional III	Professional IV	Professional III	Administrative III	Administrative III	Administrative III						
Task 1 DEVELOP BIDDING DOCUMENTS													
1.1 Coordinate with subconsultant			2				2		4	\$ 500	\$ 5,175	\$ 13	\$ 5,688
1.2 Perform site visit and gather available data			8				1		9	\$ 1,384		\$ 91	\$ 1,475
1.3 Prepare coating specifications	2		30		8		1		35	\$ 7,794		\$ 620	\$ 8,414
1.4 Prepare BOH submittal			4		2		2		6	\$ 824		\$ 21	\$ 845
1.5 Address review comments			4				1		5	\$ 736		\$ 18	\$ 754
1.6 Prepare construction cost estimate	1		2				1		4	\$ 615		\$ 15	\$ 630
Subtotal	3		50		8		22		83	\$ 11,853	\$ 5,175	\$ 778	\$ 17,806
Task 2 SERVICES DURING BIDDING AND AWARD													
2.1 Assist with soliciting bidders			2						2	\$ 324		\$ 8	\$ 332
2.2 Respond to bidders questions			4						5	\$ 736		\$ 19	\$ 755
2.3 Prepare addenda			4						5	\$ 736		\$ 18	\$ 754
2.4 Assist with reviewing low bidder qualification			2						2	\$ 324		\$ 8	\$ 332
Subtotal			12				2		14	\$ 2,120		\$ 53	\$ 2,173
Task 3 SERVICES DURING CONSTRUCTION													
3.1 Review submittals			4						5	\$ 736		\$ 26	\$ 762
3.2 Assist with on-site inspections	1		4						5	\$ 851		\$ 154	\$ 1,005
3.3 Assist with preparing change orders			2						3	\$ 412		\$ 14	\$ 426
Subtotal	1		10				2		13	\$ 1,999		\$ 195	\$ 2,194
Task 4 TEMPORARY FIRE FLOW AND DOMESTIC SERVICE PLAN													
4.1 Prepare temporary fire flow protection plan	4		8						15	\$ 2,498		\$ 118	\$ 2,616
4.2 Prepare temporary domestic service plan	4		8						15	\$ 2,498		\$ 62	\$ 2,560
4.3 Incorporate plans into bidding documents	1		4						11	\$ 1,631		\$ 69	\$ 1,700
4.4 Design inlet/outlet pipe			2						7	\$ 1,068		\$ 83	\$ 1,151
Subtotal	10		22		11		5		48	\$ 7,695		\$ 332	\$ 8,027
PROJECT TOTAL	14		94		19		31		158	\$ 23,667	\$ 5,175	\$ 1,358	\$ 30,200

EXHIBIT C
RH2 ENGINEERING, INC.
SCHEDULE OF RATES AND CHARGES

2014 HOURLY RATES

CLASSIFICATION		RATE	CLASSIFICATION		RATE
Professional	IX	\$203.00	Technician	IV	\$131.00
Professional	VIII	\$203.00	Technician	III	\$123.00
Professional	VII	\$195.00	Technician	II	\$92.00
			Technician	I	\$87.00
Professional	VI	\$180.00			
Professional	V	\$172.00	Administrative	V	\$122.00
Professional	IV	\$162.00	Administrative	IV	\$102.00
			Administrative	III	\$88.00
Professional	III	\$151.00	Administrative	II	\$73.00
Professional	II	\$145.00	Administrative	I	\$61.00
Professional	I	\$131.00			

IN-HOUSE SERVICES

In-house copies (each)	8.5" X 11"	\$0.09	CAD Plots	Large	\$25.00
In-house copies (each)	8.5" X 14"	\$0.14	CAD Plots	Full Size	\$10.00
In-house copies (each)	11" X 17"	\$0.20	CAD Plots	Half Size	\$2.50
In-house copies (color) (each)	8.5" X 11"	\$0.90	CAD System	Per Hour	\$27.50
In-house copies (color) (each)	8.5" X 14"	\$1.20	GIS System	Per Hour	\$27.50
In-house copies (color) (each)	11 X 17"	\$2.00	Technology Charge		2.5% of Direct Labor
			Mileage		Current IRS Rate

OUTSIDE SERVICES

Outside direct costs for permit fees, reports, maps, data, reprographics, couriers, postage, and non-mileage related travel expenses that are necessary for the execution of the project and are not specifically identified elsewhere in the contract will be invoiced at cost.

All Subconsultant services are billed at cost plus 15%.

CHANGES IN RATES

Rates listed here are adjusted annually. The current schedule of rates and charges is used for billing purposes. Payment for work accomplished shall be based on the hourly rates and expenses in effect at the time of billing as stated in this Exhibit.