

RESOLUTION NO. 14-978

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH RH2 ENGINEERING, INC. TO SERVE AS THE CIVIL ENGINEERING CONSULTANT TO THE WATER, SEWER, AND STORM WATER UTILITIES

WHEREAS, the City does not have sufficient staff resources to provide civil engineering services to meet the needs of the water, sewer, and storm water utilities; and

WHEREAS, private firms providing civil engineering services were invited to submit Statements of Qualifications for review and consideration; and

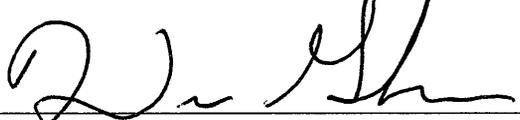
WHEREAS, a panel consisting of staff reviewed the submittals, subsequently interviewed two firms and then unanimously recommended RH2 Engineering, Inc. as the firm most capable of providing Civil Engineering Services as desired;

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 a contract with RH2 Engineering, Inc. to provide Civil Engineering Services to the Water, Sewer, and Stormwater Utilities, substantially in the form attached hereto as Exhibit A.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 18TH DAY OF SEPTEMBER, 2014.

CITY OF BLACK DIAMOND:



Dave Gordon, Mayor

Attest:



Brenda L. Martinez, City Clerk

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF BLACK DIAMOND AND
RH2 ENGINEERING**

THIS AGREEMENT is made by and between the CITY OF BLACK DIAMOND, a Washington municipal corporation (hereinafter the "City"), and RH2 ENGINEERING, INC., (hereinafter the "Consultant,") a corporation organized under the laws of the State of Washington and doing business at 22722 29th Drive SE, Suite 210, Bothell, WA 98021.

RECITALS

WHEREAS, the City does not have sufficient staff resources to provide full service water, sewer, and storm water engineering services to meet the needs of the City; and

WHEREAS, the Consultant has agreed to provide on-call water, sewer, and storm water engineering services as requested by the City as described herein; and

WHEREAS, the City advertised for engineering services and has selected RH2 Engineering, Inc. as the most qualified;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

I. Description of Work.

A. The Consultant shall be prepared to provide all work described in Exhibit A, which is attached hereto and incorporated herein by this reference.

B. The City will issue an on-call task request for each project task for which the City requires Consultant services. No work shall be commenced by Consultant under this Contract except pursuant to such an on-call task request issued by the City in the form attached hereto as Exhibit B. Consultant shall perform the services described on the on-call task request in accordance with the schedule and scope of work set forth in the on-call task request (the "Task Scope of Work").

II. Payment

A. The City shall pay the Consultant an amount based on time and materials according to the list of billing rates and reimbursable expenses attached hereto as Exhibit C. The total amount of services under this contract shall not exceed One hundred thousand Dollars (\$100,000.00) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in

Exhibit A, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount.

B. Compensation for the services provided pursuant to an on-call task request shall not exceed \$7,500 without the written authorization of the City Council. In the event that, after the commencement of the work, the Consultant anticipates that the work for an on-call task request will exceed \$7,500, Consultant shall promptly notify the City and provide the City with whatever documents or information is necessary to request approval of any amounts in excess thereof.

C. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this Agreement. The City shall pay the full amount of an invoice within sixty (60) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

III. Relationship of Parties

The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

IV. Duration of Work

A. The City and the Consultant agree that work will begin on the tasks described in Exhibit A upon execution of this Contract. The parties agree that the work described in Exhibit A shall be completed two years after execution of this contract; provided however, that additional time shall be granted by the City for any task orders which will not be completed prior to the two-year deadline, in which case the terms and

conditions of this contract shall apply. No new task orders shall be executed two years after the execution of this Contract.

This Agreement shall expire in two years from the effective date, which shall be the date that both parties sign this Agreement. The Consultant agrees that there will be a deadline for completion of the work assigned in each individual Task Order, which may or may not be different from the expiration date of this Agreement. The Consultant agrees to complete all work assigned in a Task Order on the deadline set forth in each individual Task Order, unless such deadline is amended by the City in an amended Task Order.

V. Termination

A. Termination of Agreement. The City may terminate this Agreement, for public convenience, the Consultant's default, the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors, at any time prior to completion of the work described in Exhibit A. If delivered to Consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date stated in the City's notice, whichever is later.

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise.

VI. Discrimination

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Consultant, its Subcontractors, or any person acting on behalf of such Consultant or sub-consultant shall not by reason of race, religion, color, sex, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

VII. Indemnification

The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal Costs and attorneys' fees, arising out of or in connection with the negligent performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance

of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Agreement is Subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, agents and Volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO. ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

The provisions of this section shall survive the expiration or termination of this Agreement.

VIII. Insurance

A. 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 Consultant's own work including the work of the Consultant's agents, representatives, employees, sub-consultants or sub-contractors.

B. Before beginning work on the project described in this Agreement, the Consultant shall provide evidence, in the form of a Certificate of Insurance, of the following insurance coverage and limits (at a minimum):

- 1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit, and
- 2. Commercial General Liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate. Coverage shall include, but is not limited to, products and completed operations, property damage, and employers liability, and
- 3. Professional Liability insurance with no less than \$1,000,000. All policies and coverage's shall be on a claims made basis.

C. The Consultant is responsible for the payment of any deductible or self-insured retention that is required by any of the Consultant's insurance. If the City is

required to contribute to the deductible under any of the Consultant's insurance policies, the Contractor shall reimburse the City the full amount of the deductible within 10 working days of the City's deductible payment.

D. The City of Black Diamond shall be named as an additional insured on the Consultant's commercial general liability policy. This additional insured endorsement shall be included with evidence of insurance in the form of a Certificate of Insurance for coverage necessary in Section B. The City reserves the right to receive a certified and complete copy of all of the Consultant's insurance policies.

E. Under this agreement, the Consultant's insurance shall be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage with respect to defense and indemnity of the City only and no other party. Additionally, the Consultant's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

F. The Consultant shall request from his insurer a modification of the ACORD certificate to include language that prior written notification will be given to the City of Black Diamond at least 30-days in advance of any cancellation, suspension or material change in the Consultant's coverage.

IX. Exchange of Information

The City warrants the accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Agreement. The parties agree that the Consultant will notify the City of any inaccuracies in the information provided by the City as may be discovered in the process of performing the work, and that the City is entitled to rely upon any information supplied by the Consultant which results as a product of this Agreement.

X. Ownership and Use of Records and Documents

Original documents, drawings, designs and reports developed under this Agreement shall belong to and become the property of the City. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in Consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

XI. City's Right of Inspection

Even though the Consultant is an independent contractor with the authority to control and direct the performance, and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

XII. Consultant to Maintain Records to Support Independent Contractor Status

On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to Independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to the Revised Code of Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties which is subject to RCW Title 51, Industrial Insurance.

XIII. Work Performed at the Consultant's Risk

The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

XIV. Non-Waiver of Breach

The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options and the same shall be and remain in full force and effect.

XV. Resolution of Disputes and Governing Law

Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City of Black Diamond shall determine the term or provision's true intent or meaning. The City of Black Diamond shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the Mayor or Administrator's determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in King County Superior Court, King County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

XVI. Written Notice

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified to the contrary. Unless otherwise specified, any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

CONSULTANT:

Attn: Geoff Dillard
RH2 Engineering, Inc.
22722 29th Drive SE, Suite 210
Bothell, WA 98021

CITY:

Attn: Seth Boettcher
City of Black Diamond
P.O. Box 599
24301 Roberts Drive
Black Diamond, WA 98010

With a copy to the "City Clerk" at the same address.

XVII. Assignment

Any assignment of this Agreement by the Consultant without the written consent of the City shall be void. If the City shall give its consent to any assignment, this paragraph shall continue in full force and effect and no further assignment shall be made without the City's consent.

XVIII. Modification and Severability

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reasons held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

XIX. Entire Agreement

The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, this Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached hereto, which may or may not have been executed prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

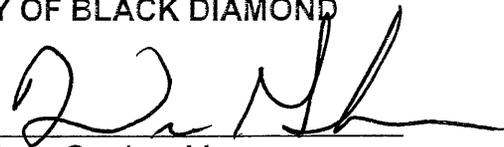
IN WITNESS WHEREOF, the parties have executed this Agreement on this ____ day of _____, 2014.

CONSULTANT

By: 
Its: DAN ERVIN
VICE PRESIDENT

Consultant: _____

CITY OF BLACK DIAMOND

By: 
Dave Gordon, Mayor

APPROVED AS TO FORM:



City Attorney's Office

ATTEST:



City Clerk

Exhibit A

Scope of Work

Background

In the course of a year and from time to time, the City will be in need of engineering assistance for the City's water, sewer and stormwater utilities as well as capital project design work for these utilities. This scope of work is intended to disclose the types of services the City may be seeking but is not intended to be all inclusive of the City's needs nor is it intended to be a complete list of all services that the City will be requesting.

The following tasks are not intended to imply chronological order, but rather serve as general categories of work that may be required by this contract.

Task 1 - Computer modeling of City Utility systems

- Review various utility system performance and constraints using computer modeling for the water, sewer and stormwater systems.
- Evaluate different utility system configurations to meet City needs or to address identified problems.

Task 2 - Agency Coordination

- Assist the City with processing projects through various state and local agencies.
- Assist the City with preparing, presenting and advocating for solutions to City utility needs before various state and local agencies.

Task 3 – Professional Assistance to Address Utility System Urgent Needs

- Provide the City with professional engineering and technical advice to deal with system operations and maintenance problems that may arise.
- Assist the City with responding to regulatory requirements, new technology, or new demands on the utility systems.

Task 4 – Capital Project Engineering

- Provide the City with early project planning engineering to define a general scope and budget.
- Provide the City with preliminary project engineering to find creative, technically sound and practical solutions to address City needs.

- Provide efficient, clear drawings and contract documents for bidding public works projects.
- Attend meeting as necessary and as directed by the City to ensure compliance with City needs.
- Provide quality control and maintain quality assurance procedures for work products.
- Maintain complete and efficient working files of project activities.
- Provide timely and accurate billing invoices and billing records.
- Provide peer-review services as requested by the City.
- Meet with other City departments and as requested by the City to share information and maintain a cooperative working environment.

Task 5 – Mapping and As-built Drawings

- Provide mapping services for the City as requested.
- Update City maps with information collected by the City or from developers.
- Assist City with GIS systems and as-built formatting.

Task 6 – Services During Construction

- Provide on-call field inspection services to assist and supplement the experience and resources of City staff.
- Assist the City with project management activities as requested.

Task 7 – Rates and Financial Analysis

- Provide the City with rate studies, capital facility charge analysis, cost benefit analysis and funding recommendations.

Task 8 – General

- Provide professional technical assistance related to the planning, review, permit requirements, capital project implementation, operations, maintenance and reporting for the City's water, sewer and storm water utilities as directed by the City.

Exhibit B

City of Black Diamond On-Call Task Request

Date: _____	City Staff Contact: _____
Task Name: _____	Phone: <u>360-886-5700</u>
Consultant Project No.: _____	Fax: <u>360-886-2592</u>
Consultant Contact Name: _____	
Consultant Phone: _____	
Consultant Fax: _____	

Scope of Task Request

Budget Estimate:

Task Request Approval:

City of Black Diamond:

Written Name	Title
Signature	Date

Consultant:

Written Name	Title
Signature	Date

*Costs are billed on a time and materials basis, the Consultant shall notify the City should additional funds be necessary to complete the task order. Additional work beyond that which is ordered by the City shall not commence until written notification is received from the City.

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

2014 HOURLY RATES

CLASSIFICATION		RATE	CLASSIFICATION		RATE
Professional	IX	\$209.00	Technician	IV	\$135.00
Professional	VIII	\$209.00	Technician	III	\$127.00
Professional	VII	\$201.00	Technician	II	\$95.00
			Technician	I	\$90.00
Professional	VI	\$186.00			
Professional	V	\$177.00	Administrative	V	\$126.00
Professional	IV	\$167.00	Administrative	IV	\$105.00
			Administrative	III	\$91.00
Professional	III	\$157.00	Administrative	II	\$75.00
Professional	II	\$147.00	Administrative	I	\$63.00
Professional	I	\$135.00			

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.