

RESOLUTION NO. 15-1016

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A CONSULTANT SERVICES CONTRACT WITH OLYMPIC ENVIRONMENTAL RESOURCES FOR THE CITY'S 2015 SPRING RECYCLING EVENT

WHEREAS, the City holds an annual spring recycling event; and

WHEREAS, the City received a Local Hazardous Waste Management Program grant from the Seattle/King County Department of Health to fund a portion of this event; and

WHEREAS, the City received a grant from the King County Solid Waste Division to fund a portion of this event;

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 consultant services contract with Olympic Environmental Resources for the City's 2015 Spring Recycling Event.

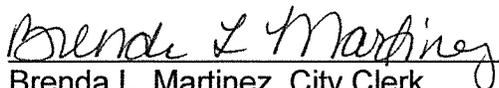
PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 19TH DAY OF FEBRUARY, 2015.

CITY OF BLACK DIAMOND:



Carol Benson, Mayor

Attest:


Brenda L. Martinez, City Clerk

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF BLACK DIAMOND AND
OLYMPIC ENVIRONMENTAL RESOURCES**

THIS AGREEMENT is made by and between the City of Black Diamond, a Washington municipal corporation (hereinafter the "City"), and Olympic Environmental Resources, (hereinafter the "Consultant,") a corporation organized under the laws of the State of Washington, located and doing business at 4715 SW Walker Street, Seattle, WA 98116.

RECITALS

WHEREAS, the City of Black Diamond has recognized the need to assist local residents with recycling hazardous waste, yard waste and difficult to recycle large items; and

WHEREAS, the City of Black Diamond has received grant funding from King County Solid Waste Division and King County Health Department and indirectly received funds from the Department of Ecology; and

WHEREAS, the Consultant has the experience to promote, manage, coordinate and provide recycling event management services as described herein;

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.

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

II. Payment

A. The City shall pay the Consultant directly a lump sum amount not to exceed fourteen thousand, nine hundred ninety dollars and forty-one cents (\$14,990.41) after the Consultant performs the services described in Section 1 (Exhibit A) herein. This is the total amount to be paid under this Agreement for the work described in Section 1 (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.

B. The Consultant shall submit one invoice to the City after such services have been performed, which shall be the final bill for all the services described in this Agreement. The City shall pay the full amount of the invoice within sixty (60) days of receipt. If the City objects to all or a portion of the 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

The City and the Consultant agree that work will begin on the tasks described in Exhibit A immediately upon execution of this Agreement. The parties agree that the work described in Section 1 (Exhibit A) shall be completed by June 30, 2015.

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 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, contractual liability, products and completed operations, property damage, and employers liability,

3. Employer's Liability each accident \$1,000,000. Employer's Liability Disease each employee \$1,000,000.

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 ten (10) working days of the City's deductible payment.

D. The City of Black Diamond shall be named by endorsement 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 Subsection 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 thirty (30) days in advance of any cancellation, suspension or material change in the Consultant's coverage.

G. The City will not waive its right to subrogation against the Consultant. The Consultant's insurance shall be endorsed acknowledging that the City will not waive its right to subrogation. The Consultant's insurance shall be endorsed to waive the right of subrogation against the City, or any self-insurance, or insurance pool coverage maintained by the City.

H. If any coverage is written on a "claims made" basis, then a minimum of three (3) year extended reporting period shall be included with the claims made policy, and proof of the extended reporting period provided to the City.

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: Paul Devine
Olympic Environmental Resources
4715 SW Walker Street
Seattle, WA 98116

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 20
day of Feb., 2015.

CONSULTANT: Olympic
Environmental Resources

By: Paul Devine
Paul Devine
Its General Manager

CITY OF BLACK DIAMOND

By: Carol Benson
Carol Benson, Mayor

Consultant: Olympic
Environmental Resources
4715 SW Walker Street
Seattle, WA 98116

APPROVED AS TO FORM:

City Attorney's Office

ATTEST:

Brenda L. Martiney
City Clerk

STATE OF WASHINGTON)

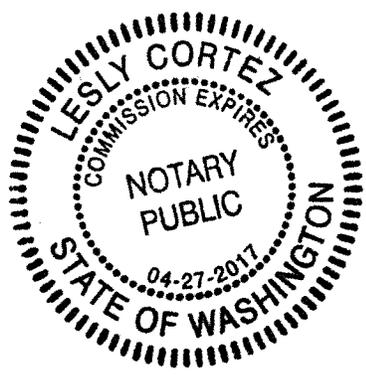
) ss.

COUNTY OF KING)

I certify that I know or have satisfactory evidence that Paul Devine is the person who appeared before me, and said person acknowledged that he was authorized to execute the instrument and acknowledged it as the Owner of Olympic Environmental Resources for the uses and purposes mentioned in this instrument.

DATED: 02/13/15

Lesly Cortez
(Signature)



NOTARY PUBLIC, State of Washington,

residing at: Seattle

My appointment expires: 04/27/17

Exhibit A

A. Objective

By hosting a Recycling Collection Event, Black Diamond can reduce the amount of recyclable material finding their way to the local landfill. In addition to diverting materials from the City waste stream, attracting residents to events provides an opportunity to distribute educational material on City and King County recycling programs. The educational materials can enhance the knowledge of residents and improve behavior in purchase, handling, and disposal of recyclable materials.

B. Scope of Work

1. Recycling Collection Event/Chipper Service

A. Schedule - Spring, 2015 (tentative date is April 18, 2015).

B. Task Activities

- Number of Recycling Collection/Chipper Service Events – One
 - Materials to be collected:
 - Appliances
 - Refrigerators and Freezers (\$15 user fee applies)
 - Air Conditioners (\$10 user fee applies)
 - Ferrous Metals
 - Non-ferrous Metals
 - Hot Water Heaters (\$5 user fee applies)
 - Tires (User fees apply)
 - Lead Acid Batteries
 - Alkaline Batteries
 - Porcelain Toilets and Sinks (\$10 user fee applies)
 - Propane Tanks (\$5 user fee applies)
 - Mattresses/Boxsprings (\$10 user fee applies)
 - Cardboard
 - Reusable Household Goods/Textiles
 - Used Motor Oil
 - Used Motor Oil Filters
 - Used Antifreeze
 - Used Petroleum Based Products
 - Bulky Yard Debris
 - Clean Scrap Wood
 - Electronic and Computer Equipment+
 - Cell Phones
- +TV sets and Computer Monitors will not be collected and residents will be referred to local E-Cycle sites.

- The following educational materials will be distributed:
 - Information on City Recycling Programs (if available).
 - Educational Materials produced by King County Department of Natural Resources and Local Hazardous Waste Management Plan (if available).
 - Other educational materials as appropriate.

- Event promotional methods
 - This event will be coordinated with King County and flyers will be sent to Black Diamond households.
 - By notices in City newsletters (whenever possible).
 - By posting a notice at City Hall and on the City cable channel and City web site (if available).
 - By publicizing the event through the King County Solid Waste Division Promotional Activities.
 - By preparing and emailing a Moderate Risk Waste Event Notification to Local Hazardous Waste Management Plan staff.

C) Recycling event evaluation. Event reports will include:

- Number of vehicles attending
- Volume of each material collected
- Event cost by budget category
- Event comments

D) Grant reporting and reimbursement requests. Grant reports include emailed grant reports for:

- The King County Solid Waste Division "WRR" Grant
- The King County Health Department "LHWMP" Grant
- The WA State Department of Ecology's "CPG" Grant (submitted through the City of Maple Valley).
- Preparing and emailing a Collection Event/Mobile Collections Report to the King County Health Department and WA State Department of Ecology after the event.

E) Promotion:

OER plans to send out approximately 1,675 promotional flyers to Black Diamond households. County sponsored events are publicized through King County promotional activities (including County websites).