

**RESOLUTION NO. 09-576**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON  
AUTHORIZING A CONTRACT WITH PACWEST FOR  
SURVEYING, PROJECT MANAGEMENT AND  
INSPECTION SERVICES FOR THE RAILROAD AVE  
WATER LINE PROJECT**

**WHEREAS**, the City is awarding the construction contract with Slead, LLC for the Railroad Avenue water line construction and project management, surveying, testing and inspection services will be needed soon; and

**WHEREAS**, PacWest is the designer of the Railroad Avenue construction project; and


**WHEREAS**, the City does not have the staffing level to handle this additional work load at this time;

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


**Section 1.** The Mayor is authorized to execute a contract with PacWest Engineering LLC, substantially in the form attached hereto as Exhibit A for project management, surveying, testing and inspection services in the amount of \$35,808 plus approximately \$6000 plus or minus for testing depending on the amount of tests needed.

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

CITY OF BLACK DIAMOND:

  
Howard Botts, Mayor

Attest:

  
Brenda L. Streepy, City Clerk

## CITY OF BLACK DIAMOND

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

### PROFESSIONAL SERVICES AGREEMENT

#### 1. Parties

This Agreement is entered into between the City of Black Diamond, King County, Washington ("City"), and PacWest Engineering, a Limited Liability Corporation ("Consultant"); collectively, the "Parties."

#### 2. Addresses of Parties for Notices

Consultant agrees to accept notices under this Agreement via facsimile. It is the responsibility of Consultant to notify City in writing if any of the contact information appearing below should change. Any notices required to be given by City to Consultant or by Consultant to City shall be in writing and delivered to the parties at the following addresses:

##### CITY:

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

##### CONSULTANT:

Pac West Engineering, LLC  
5009 Pacific Hwy E, Unit 9\_0\_  
Fife, WA 98424  
Tax I.D. # 20-3657924  
Contact: Leonard Smith  
Phone: (\_253)926-3400 ext 433  
Fax: (253)\_926-3402

### TERMS AND CONDITIONS

#### 1. Effective date

This Agreement is effective as of the 5th day of February, 2008.

#### 2. Description of services

Consultant has been retained by the City to provide Project Management, surveying, inspection and testing services for the Railroad Ave Water Line Construction Project.

#### 3. Services by Consultant

- A. 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 without prior written authorization from the City.
- B. 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.

**4. Schedule of Work**

- A. Consultant shall perform the services described in the Scope of Work in accordance with the construction schedule of the Railroad Ave Water Line Construction project. If delays beyond Consultant's reasonable control occur, the parties will negotiate in good faith to determine whether an extension is appropriate.
- B. Consultant is authorized to proceed with services upon receipt of a written Notice to Proceed.

**5. Compensation**

LUMP SUM. Compensation for these services shall be a Lump Sum of \$ \_\_\_\_\_.

TIME AND MATERIALS NOT TO EXCEED. Compensation for these services shall not exceed \$35,808 without written authorization and will be based on the proposal and list of billing rates and reimbursable expenses attached hereto as Exhibit "B."

TIME AND MATERIALS. Compensation for outsourced material and other testing shall be on a reimbursable basis plus 10% according to the billing rates and expenses of the agreed on out sourced testing company.

OTHER. \_\_\_\_\_

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**6. Payment**

- A. 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.
- B. All invoices shall be paid by City warrant within sixty (60) days of receipt of a proper invoice.
- C. 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. Copies shall be made available on request.

- D. If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. City may withhold payment for such work until the work meets the requirements of the Agreement.

## **7. Discrimination and Compliance with Laws**

- A. 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.
- B. Consultant shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.
- C. Violation of Section 7 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by City, in whole or in part, and may result in ineligibility of Consultant to do further work for City.

## **8. Suspension and Termination of Agreement**

- A. This Agreement may be terminated by the City at any time upon the default of the Consultant or upon public convenience, in which event all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City, and Consultant shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination, not to exceed the total compensation set forth herein. Consultant shall not be entitled to any reallocation of cost, profit or overhead. Consultant shall not in any event be entitled to anticipated profit on work not performed because of such termination. Consultant shall use its best efforts to minimize the compensation payable under this Agreement in the event of such termination. If the Agreement is terminated for default, the Consultant shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Consultant. The Consultant shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.
- B. The City may suspend this Agreement, at its sole discretion, upon a minimum of seven (7) days' advance notice to Consultant. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to the Consultant's reasonable expenses, and shall be subject to verification. The Consultant shall resume performance of services under this Agreement without delay when the suspension period ends

**9. Standard of Care**

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 provided by Consultant 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.

**10. Ownership of Work Product**

All data materials, reports, memoranda, and other documents developed under this Agreement whether finished or not shall become the property of City, shall be forwarded to City at its request and may be used by City as it sees fit. Upon termination of this agreement pursuant to paragraph 6 above, all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City. City agrees that if it uses products prepared by Consultant for purposes other than those intended in this Agreement, it does so at its sole risk and it agrees to hold Consultant harmless therefore.

**11. Indemnification / Hold Harmless**

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 out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

**12. Insurance**

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 performance of the work hereunder by the Consultant, its agents, representatives, or employees.

**A. Minimum Scope of Insurance**

Consultant shall obtain insurance of the types described below:

1. 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.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City

shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall at all times maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

**13. Assigning or Subcontracting**

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.

**14. Independent Contractor**

Consultant is and shall be at all times during the term of this Agreement an independent contractor.

**15. Governing Law and Venue for Disputes**

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.

**16. Attorneys' Fees**

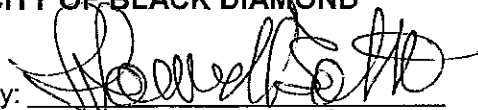
In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorneys' fees from the other party.

**17. Extent of Agreement/Modification**

This Agreement, together with any attachments incorporated by reference, represents the entire Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended or modified only by express written consent of both parties.

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

**CITY OF BLACK DIAMOND**

By: 

Print name: HOWARD SOTYS

Title: MINOR

Date: 2-5-09

**CONSULTANT**

By:   
PAC WEST ENGINEERING, LLC

Print name: LEONARD L. SMITH

Title: PRESIDENT

Date: 2-12-09

Attachments