

RESOLUTION NO. 11-763

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AWARDING THE LOW BID ON THE BOAT LAUNCH
RECONSTRUCTION PROJECT AT LAKE SAWYER TO
PIVETTA BROTHERS CONSTRUCTION, INC**

WHEREAS, the City has planned and budgeted \$49,244 in 2011 for the Boat Launch Reconstruction Project at Lake Sawyer; and

WHEREAS, the City has received a reasonable bid on July 12, 2011 for \$50,940.43; and

WHEREAS, an additional funds will be needed to cover the cost of construction; and

WHEREAS, the City has additional funds in capital reserve accounts; and


WHEREAS, Pivetta Brothers Construction, Inc. 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. To award the bid of the Boat Launch Reconstruction Project at Lake Sawyer to Pivetta Brothers Construction, Inc. in the amount of \$50,940.43 for the construction of the Boat Launch Reconstruction Project at Lake Sawyer and authorize the Mayor to execute a contract for the same, and appropriate an additional \$45,757 from REET 2 funds and Grant Matching funds to be addressed in a budget amendment before the end of 2011.

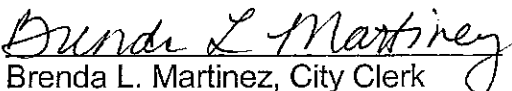
PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 21ST DAY OF JULY, 2011.

CITY OF BLACK DIAMOND:



Rebecca Olness, Mayor

Attest:


Brenda L. Martinez, City Clerk

**CITY OF BLACK DIAMOND
SMALL PUBLIC WORKS CONSTRUCTION CONTRACT**

THIS Agreement is dated the 21st day of July, 2011, and is made and entered into by CITY OF BLACK DIAMOND, WASHINGTON (“CITY”) and PIVETTA BROTHERS CONSTRUCTION INC. (“CONTRACTOR”) for the following project:

Boat Launch Reconstruction at Lake Sawyer (“PROJECT”).

The City and Contractor agree as follows:

1. Contract Documents. The Contractor shall do all work, furnish all tools, material, and equipment, and complete the construction of the Project in accordance with the Contract Documents as that term is defined in the 2010 WSDOT Standard Specifications for Road, Bridge, and Municipal Construction (the “Standard Specifications”), and more particularly in Section 1-04.2 therein.

All references in the Standard Specifications to the terms “State”, “Department of Transportation”, Washington State Transportation Commission”, “Commission”, “Secretary of Transportation”, “Secretary”, “Headquarters”, and “State Treasurer” shall be revised to read “City of Black Diamond”.

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Project by the Contractor. These Contract Documents complement each other in describing a complete work. Any requirement in one document binds as if stated in all. The Contractor shall provide any work materials clearly implied in the Contract even if the Contract does not mention it specifically. If any part of the Contract requires work that does not include a description of how the work will be performed, the work shall be performed in accordance with standard trade practices.

Notwithstanding the provisions of section 1-04.2 of the Standard Specifications, in the event of an inconsistency in the parts of the contract, this contract form shall be given precedence over all other parts of the Contract Documents.

2. Date of Commencement and Substantial Completion Date. See the Special Provisions 1-08.5. The Contractor shall submit any requests for time extensions to the City in writing no later than seven days after the delay occurs. To be considered by the City, the request shall be in sufficient detail (as determined by the Engineer) to enable the City to ascertain the basis and amount of the time requested. The request shall include an updated schedule that supports the request and demonstrates that the change or event: (1) had a specific impact on the critical path, and except in cases of concurrent delay, was the sole cause of such impact, and (2) could not have been avoided by re-sequencing of the work or by using other reasonable alternatives. The City will evaluate and respond within seven days of receiving the request. The authorized time for physical completion will be extended for a period equal to the time the Engineer determines the work was delayed because of: (1)

Adverse weather causing the time requested to be unworkable; (2) any action, neglect, or default of the City, its officers, or employees, or of any other contractor employed by the City; (3) Fire or other casualty for which the Contractor is not responsible; (4) Strikes; (5) Exceptional causes not specifically identified in items 1 through 4, provided the request letter proves the Contractor had no control over the cause of the delay and could have done nothing to avoid or shorten it.

3. Contract Sum. Subject to additions and deductions by change order, the contract sum shall include all items and services necessary for the proper execution and completion of the Project and as outlined in the Bid Proposal.

4. Liquidated Damages. Timely performance and completion of the Project is essential to the City and time limits are of the essence. In the event Contractor fails to complete the work by the completion date, plus any authorized extensions thereof, the Contractor shall pay the City liquidated damages in the amount of \$500.00 for each calendar day of delay in completion of the Project. No deduction or payment of liquidated damages will, in any degree, release the Contractor from further obligations and liabilities to complete the entire contract.

5. Changes. After execution of the Contract, changes in the Project may be accomplished by change order. The City, without invalidating the Contract, may order changes in the Project within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract completion date being adjusted accordingly. Change orders shall be in writing signed by the parties.

6. Payment. Each month after commencement of the Project, Contractor shall make a request for payment for work done during the preceding month. Failure to perform any of the obligations under the Contract by the Contractor may be decreed by the City to be adequate reason for withholding any payments until compliance is achieved. Progress payments for work performed shall not be evidence of acceptable performance or an admission by the City that any work has been satisfactorily completed. Payments received on account of work performed by a subcontractor are subject to the provisions of RCW 39.04.250.

7. Retainage. Pursuant to RCW 60.28, a sum of five (5) percent of the monies earned by the Contractor will be retained from progress payments. Such retainage shall be used as a trust fund for the protection and payment (1) to the State with respect to taxes imposed pursuant to RCW Title 82, and (2) the claims of any person arising under the Contract.

8. Termination of Contract. This Contract may be terminated by the City at any time upon the default of the Contractor or upon public convenience, in which Contractor shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination. Contractor shall not be entitled to any reallocation of cost, profit or overhead. Contractor shall not in any event be entitled to anticipated profit on work not performed because of such termination. Contractor shall not in any event be entitled to anticipated profit on work not performed because of such termination. Contractor shall use its best efforts to minimize the compensation payable under this Contract in the event of such

termination. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract 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 Contractor. The Contractor 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.

9. Warranty. Contractor warrants that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required and permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract.

10. Correction of Work. Contractor shall promptly correct Work rejected by the City as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work. In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after substantial completion, correct work not conforming to the requirements of the Contract Documents. If the Contractor fails to correct nonconforming Work within a reasonable time, the City may correct it and Contractor shall reimburse the City for the cost of the correction.

11. Indemnification/Hold Harmless. The Contractor 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 in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. 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 Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

12. Insurance. The Contractor 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 Contractor, their agents, representatives, employees or subcontractors. Contractor's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance. Contractor 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, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

B. Minimum Amounts of Insurance. Contractor shall 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 and a \$2,000,000 products-completed operations aggregate limit.

C. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Commercial General Liability and Builders Risk insurance:

1. The Contractor'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 Contractor's insurance and shall not contribute with it.

2. The Contractor'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. Contractor's Insurance for Other Losses. The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or contractors as wells as to any temporary structures, scaffolding and protective fences.

E. Waiver of Subrogation. The Contractor and the City waive all rights against each other, any of their Subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Contract or other property insurance applicable to the Work. The policies shall provide such waivers by endorsement or otherwise.

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

G. Verification of Coverage. Contractor 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 Automobile Liability and Commercial General Liability insurance of the Contractor before commencement of the work. Before any exposure to loss may occur, the Contractor shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this project.

H. Subcontractors. Contractor shall ensure that each subcontractor of every tier obtain at a minimum the same insurance coverage and limits as stated herein for the Contractor (with the exception of Builders Risk insurance). Upon request of the City, the Contractor shall provide evidence of such insurance.

13. **Prevailing Wage Requirements.** The Contractor agrees to comply with all state and federal laws relating to the employment of labor and wage rates to be paid. The hourly wages to be paid laborers, workers, or mechanics shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in King County. No payment will be made on this contract until the Contractor and each and every subcontractor has submitted a "Statement of Intent to Pay Prevailing Wages" (LI 700-29) that has been approved by the industrial statistician of the Department of Labor and Industries. No final payment or release of any retainage will be made until the Contractor and each and every subcontractor has submitted an "Affidavit of Wages Paid" (LI 700-7) that has been certified by the industrial statistician of the Department of Labor and Industries. Prevailing wage rates may 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.

14. Assigning or Subcontracting. Contractor 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.

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

16. Notice. Any notices required to be given by the City to Contractor or by Contractor to the City shall be in writing and delivered to the parties at the following addresses:

The City:

24301 Roberts Drive
P.O. Box 599
Black Diamond, WA 98010

Phone: (360) 886-2560
Fax: (360) 886-2592

Contractor: Pivetta Brothers Construction, Inc

[Contact Name] Mark Pivetta
[Company Name] Pivetta Brothers Construction, Inc
[Address] PO Box 370
[City, State, Zip] Sumner, WA 98390

Phone: 253-862-7890
Fax: 253-470-5008

17. 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.

18. 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.

19. Extent of Agreement/Modification. This Agreement, together with 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 be amended, modified or added to only by written instrument properly signed by both parties.

CITY OF BLACK DIAMOND

By: Rebecca Olness
Name: Rebecca Olness
Title: Mayor
Date: 7-22-11

CONTRACTOR
PIVETTA BROTHERS
CONSTRUCTION INC.

By: Mark Pivetta
Name: Mark Pivetta
Title: President
Date: 7-29-11

**DECLARATION OF OPTION FOR MANAGEMENT
OF STATUTORY RETAINED PERCENTAGE**

Note: This form must be submitted at the time the Contractor executes the contract. Contractor shall designate the option desired by checking the appropriate space.

Monies reserved under provisions of RCW 60.28, at the option of the Contractor, shall be:

 X (1) Retained in a fund by the City.

 (2) Deposited by the City in an interest-bearing account in a bank, mutual savings bank or savings and loan association.

 (3) Placed in escrow with a bank or trust company by the City. When the monies reserved are to be placed in escrow, the City will issue a check representing the sum of the monies reserved payable to the bank or trust company and the Contractor jointly. Such check shall be converted into bonds and securities chosen by the Contractor and approved by the City and the bonds and securities held in escrow. The Contractor in choosing option (2) or (3) agrees to assume full responsibility to pay all costs which may accrue from escrow services, brokerage charges or both, and further agrees to assume all risks in connection with the investment of the retained percentages in securities.



Contractor Signature

Mark Pivetta, President

7-29-11
Date