

RESOLUTION NO. 13-849

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
OLYMPIC ENVIRONMENTAL RESOURCES FOR THE 2013
SPECIAL RECYCLING EVENT


WHEREAS, the City of Black Diamond has identified the need for recycling services associated with resources received by the City to hold the annual spring recycling 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 Professional Services Agreement with Olympic Environmental Resources for the year 2013, spring recycling event, in an amount not to exceed \$18,709.31, said agreement to be substantially in the form attached hereto as Exhibit A and by reference incorporated herein.

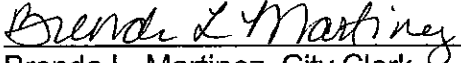
PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 7TH DAY OF FEBRUARY, 2013.

CITY OF BLACK DIAMOND:



Rebecca Olness, 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 07, 2013 and is entered into by and between

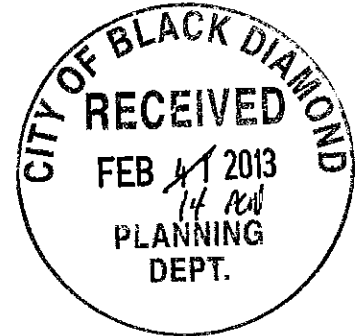
CITY OF BLACK DIAMOND, WASHINGTON (the "City")
Physical Address: 24301 Roberts Drive
Mailing Address: PO Box 599
Black Diamond, WA 98010
Contact: Aaron C. Nix Phone: 360-886-5700 Fax: 360-886-2592

and

Olympic Environmental Resources ("Consultant")
4715 SW Walker Street
Seattle, WA 98116

Contact: Paul Devine Phone: 206.938.8262 Fax: 206.938.9873

Tax Id No.: Fed ID - 91-2027892



For professional services in connection with the following project:

Recycling Grant Coordination and spring 2013 Collection Event (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 the Scope of Work in accordance with the Schedule attached to this contract as Exhibit "A."

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 February 08, 2013.

3. Compensation

- TIME AND MATERIALS NOT TO EXCEED. Compensation for the services provided in the Scope of Work shall not exceed \$18,709.31 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."
- TIME AND MATERIALS. Compensation for the services provided in the Scope of Work shall be on a time and materials basis according to 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, and its contractors, shall procure and maintain the following types and amounts of insurance:

a. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles used to provide services under this Agreement. 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. Consultant shall be responsible for ensuring that its contractors meet

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.

10.3 The Commercial General Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

a. 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 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 Certificates of the above insurance coverage shall be delivered, within ten (10) days, to the City by the Consultant's, and its contractors, insurance carrier or agent certifying the above insurance coverage items are in effect.

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. As part of the implementation of this project and consistent with past projects, the consultant will act as the general contractor and subcontract the collection of items to specialist in the industry. For example, tires will be collected by a licensed tire collector/processor in the region.

12. Independent Contractor

12.1. The Consultant, and its subcontractors, is and shall be at all times during the term of this agreement an independent contractor, and not an employee of the City.

12.2. The Consultant acknowledges that it is responsible for the payment of all charges and taxes applicable to the services performed under this agreement, and the Consultant agrees to comply with all applicable laws regarding the reporting of income, maintenance of insurance and records, and all other requirements and obligations imposed as a result of the Consultant's status as an independent contractor. If the City is assessed, liable or responsible in any manner for those charges or taxes, the Consultant agrees to hold the City harmless from those costs, including attorney's fees.

12.3. The Consultant shall provide at its sole expense all materials, office space, and other necessities to perform its duties under this agreement, unless otherwise specified in writing.

12.4. The Consultant, at its expense, shall obtain and keep in force any and all necessary licenses and permits.

12.5. This agreement shall be for the sole benefit of the parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either party hereto.

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: Chris Bacha
Kenyon Disend, PLLC
11 Front Street South
Issaquah, WA 98027
Fax: 425-392-7071

Consultant: Olympic Environmental Services
Attn: Paul Devine
4715 SW Walker Street
Fax: 206.938.9873

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.

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.

CITY OF BLACK DIAMOND

By: Rebecca Olness
Rebecca Olness

Its: Mayor

Date: 2-8-13

CONSULTANT: Olympic Environmental Resources

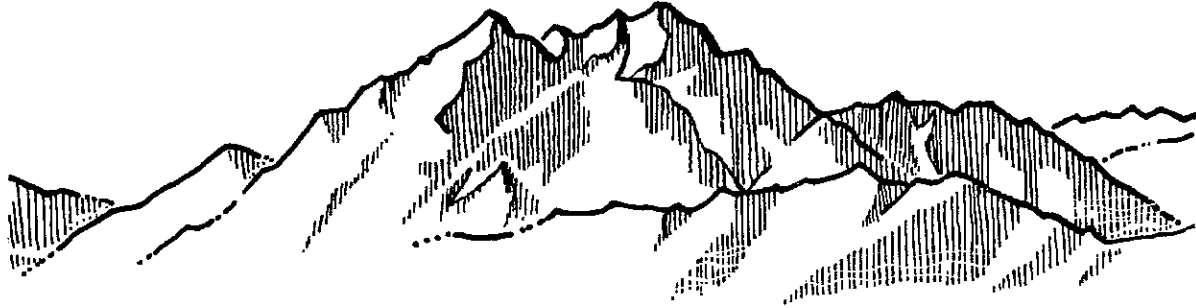
By: Paul M Devine
Printed Name: PAUL M DEVINE
Its: General Manager

Date: 2/11/13

Attest:

By: Brenda L Martinez
Brenda L. Martinez
City Clerk

Exhibit A



Olympic Environmental Resources

4715 SW Walker Street Seattle WA 98116

Tel. 206 938-8262 Fax (206) 938-9873

Email: pauldevine@msn.com

Memorandum of Understanding

To: The City of Black Diamond
From: Olympic Environmental Resources
Date: December 5, 2012
RE: City of Black Diamond/Olympic Environmental Resources Agreement for Implementing 2013 Recycling Projects

This Memorandum of Understanding is intended to detail Olympic Environmental Resources (OER) services and responsibilities in implementing City of Black Diamond Recycling 2013 Spring Recycling Collection Event.

The proposed project includes:

One Recycling Collection Event

The event is tentatively scheduled for March or April 2013 at the Black Diamond Police Department, located at 25510 Lawson Street. At the event the following materials will be collected and recycled: used tires, used anti-freeze, used petroleum-based products, used oil filters, lead acid and household batteries, used motor oil, scrap wood, electronic equipment, computer equipment, appliances (including refrigerators, freezers, household air conditioners, and other appliances), ferrous metals, nonferrous metals, textiles, reusable or recyclable household goods, porcelain toilets and sinks, propane tanks, mattresses, and other materials whenever practical. User fees will apply to the collection of some materials (Paul, could you detail the charge, which items it applies to and what the charge is for, please). See below.

At the 2013 Spring Recycling Collection Event, OER will organize a chipper/bulk yard debris collection event to be held in conjunction with the Recycling Collection Event.

OER wishes to involve the Black Diamond staff at the level most comfortable for the City. OER will meet with the City of Black Diamond staff at any time during the project for updates on activities or will pursue activities independently if desired by the City.

The project budget will incorporate the City of Black Diamond grant funds available from the Seattle-King County Health Department, King County Solid Waste Division, and the Washington State Department of Ecology. **The budget is contingent on continued grant funding from the King County Solid Waste Division, Seattle-King County Health Department and the Washington State Department of Ecology.** Total grant funds are estimated at \$18,709.31 and includes all items that will be billed to the grants directly by the City, such as City staff time, Consultant fees, etc. The specific project activities to be carried out by OER are detailed in the grant scopes of work, focusing on holding one recycling event (spring 2013) and its associated advertising, grant management, education and follow-up reporting. OER will cover project expenses as they arise, such as the costs of printing and vendor services, with prior approval by the City's City Administrator or his/her Designee. OER will then request reimbursement of staff time and expenses on a monthly basis. OER will assist the City in requesting reimbursement for these costs from the King County Solid Waste Division, Seattle-King County Health Department, and the Washington State Department of Ecology.

OER's goal is to conduct events with very limited City staff time and limited City cost. However, there are a number of "official acts" necessary for the City to bring the programs on line:

- Sign necessary grant agreements.
- Keep OER informed of any changes made to grant agreements.
- Reimburse OER for staff time and expenses from grant funding.

Recycling related programs continue on an annual basis. OER will continue to provide service to the City of Black Diamond until the City decides to no longer participate. We ask that you provide thirty-days (30) notice to discontinue services. This agreement solidifies our relationship. Please sign both copies of this agreement and return one to OER. OER looks forward to working with the City of Black Diamond in 2013.


City of Black Diamond

Olympic Environmental Resources

2013 Black Diamond Recycling Grants

The City of Black Diamond is eligible and has applied for the following grants. It is expected that no non-grant City funds will be expended on recycling projects in 2013. The City has applied for the following:

- 1) The King County Health Department Local Hazardous Waste Management Plan Grant. Grant total \$5,925.81.
 - 2) The Washington State Department of Ecology Coordinated Prevention Grant. Grant total \$2,783.50.
 - 3) The King County Waste Reduction and Recycling Grant Program. Grant total \$10,000.00.
- TOTAL: \$18,709.31

1. Task One: Recycling Collection Event Budget

Estimated Costs	2013	2013	2013	TOTAL
	LHWMP	CPG*	WRR	
City Staff Costs	\$600.00	\$0.00	\$400.00	\$1,000.00
Management/Staffing/Admin/Graphics	\$2,998.00	\$1,443.50	\$2,997.50	\$7,439.00
Event Staff Costs	\$0.00	\$440.00	\$1,402.50	\$1,842.50
Collection/Hauling Costs				
Wood Waste	\$0.00	\$0.00	\$200.00	\$200.00
Scrap Metal, Appliances, etc.	\$0.00	\$900.00	\$900.00	\$1,800.00
Tires	\$0.00	\$0.00	\$700.00	\$700.00
Used Oil/Antifreeze	\$1,100.00	\$0.00	\$0.00	\$1,100.00
Batteries	\$350.00	\$0.00	\$0.00	\$350.00
Printing/Mailing	\$225.00	\$0.00	\$300.00	\$525.00
Event Supplies	\$200.00	\$0.00	\$300.00	\$500.00
Other Expenses - rentals, etc	\$452.81	\$0.00	\$800.00	\$1,252.81
TOTALS	\$5,925.81	\$2,783.50	\$8,000.00	\$16,709.31

*Note – the CPG grant total will be billed to the City of Maple Valley per the two-City agreement with the Department of Ecology.

Note – user fees are charged to offset processing fees of some items. The fee insures proper handling and recycling of the item. In 2013, the user fees will be:

- Hot Water Heaters - \$5
- Refrigerators and Freezers/Air Conditioners -\$25
- Tires - \$1.50 for tires on rims, \$1.50 for extra tires over 6, \$5 for truck tires, and \$15 for truck tires on rims
- Porcelain Toilets and Sinks - \$10
- Propane Tanks - \$5
- Mattresses - \$10

2. Task Two: Chipper/Bulk Yard Debris Collection Event Budget

ESTIMATED COSTS	2013	Total
Program Management/Coordination/Reporting	\$550.00	\$550.00
Contractor Services	\$900.00	\$900.00
Event Staff	\$550.00	\$550.00
Supplies	\$0.00	\$0.00
Total	\$2,000.00	\$2,000.00

NOTE: Hourly rates for consultants are as follows: Project Manager - \$70.00 and Event Staff - \$55.00.