

RESOLUTION NO. 13-904

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON  
AUTHORIZING A CONTRACT WITH SALISH  
CONSTRUCTION FOR THE REPLACEMENT AND  
RESETTING OF ELECTRIC DISTRIBUTION UTILITY  
POLES

**WHEREAS**, there are five electric power poles that provide power for the water pump station near the Green River that need to be replaced and one power pole that needs to be reset, and

**WHEREAS**, the City has additional funding available from a water rate increase in 2013, and

**WHEREAS**, staff solicited estimates from four contractors to give the City competitive bids, and


**WHEREAS**, Salish Construction provided the lowest bid and has better availability to do the work than Potelco;

**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 Salish Construction for the replacement and resetting of electric distribution utility poles for \$20,610, substantially in the form attached hereto as Attachment A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 5<sup>TH</sup> DAY OF DECEMBER, 2013.**

CITY OF BLACK DIAMOND:

  
\_\_\_\_\_  
Rebecca Olness, Mayor

Attest:

  
Brenda L. Martinez, City Clerk

**CITY OF BLACK DIAMOND**

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

**SMALL PUBLIC WORKS CONTRACT**

1. **Parties.** This Contract is voluntarily and knowingly entered into by and between the CITY OF BLACK DIAMOND, King County, Washington ("City"), and **Salish Construction** ("Contractor"), collectively, "the Parties."
2. **Project.** The Parties enter into this Contract for purposes of Contractor performing work ("the Project"), generally described as:

*Replace 5 power poles and reset one power pole on the power line south east of the south end of Botts drive to the water pump station near the Green River. As described in the November 19, 2013 bid response to the City. See attached letter.*

3. **Effective date.** This Contract becomes effective and binding upon the Parties, including their heirs, successors, and assigns, immediately upon the most recent date of signature appearing on this Contract.
4. **Notices to Parties.** Contractor agrees to accept notices under this Contract via facsimile. It is the responsibility of Contractor to notify City in writing if any of the contact information appearing below should change. Any notices required shall be in writing and delivered to the following addresses:

**CITY:**

CITY OF BLACK DIAMOND  
P.O. Box 599 – 24301 Roberts Drive  
Black Diamond, Washington 98010  
Contact: Seth Boettcher  
Phone: (253) 886-5711  
sboettcher@ci.blackdiamond.wa.us

**CONTRACTOR:**

Salish Construction  
5911N. Levee Road,  
Tacoma, WA 98424  
Tax I.D. # 91-1345873  
Contact: Scott Hotsinpiller  
Phone: (253)218-8233  
shotsinpiller@salishelectric.com

5. **Obligations of Contractor.** In consideration of the mutual promises and obligations of the parties contained herein and incorporated by reference, Contractor expressly agrees to the following terms and conditions:

A. *In general.*

- (1) Responsible for all labor. Contractor agrees and understands that Contractor shall be solely responsible for furnishing all labor necessary to complete the Project as required.

- (2) Responsible for performing all work. Contractor agrees and understands that Contractor shall be solely responsible for performing all work necessary to complete the Project as required.
- (3) Responsible for furnishing all materials and equipment. Contractor agrees and understands that Contractor shall be solely responsible for furnishing all materials and equipment necessary to complete the Project as required, except for any materials expressly agreed in writing to be provided by City. Materials and equipment furnished under the Contract will be new and of good quality unless otherwise required and permitted by the City.
- (4) Documents incorporated by reference. Contractor agrees and understands that all terms and specifications contained in any Request for Proposals (RFP) that was issued by City as part of determining the awarding of this Contract are hereby incorporated by reference and must be complied with, unless one or more of such terms and specifications are expressly amended or waived in writing by City.
- (5) Laws and regulations to be followed. Contractor agrees and understands that Contractor, his employees, agents, and subcontractors, must at all times fully comply with all applicable laws, regulations, and administrative rulings in performing work for the Project.

B. *Work Performance.*

- (1) Prevailing wages. Contractor agrees and understands that prevailing wages, as that term is defined under the laws of the State of Washington, shall be paid for all work performed on this Project by Contractor and by Contractor's subcontractors and agents.  
The State of Washington prevailing wage rates applicable for this public works project, which is located in King County, may be found at the following website address of the Department of Labor and Industries: <https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>. Based on the bid submittal deadline for this project, the applicable effective date for prevailing wages for this project is \_\_\_\_\_ . A copy of the applicable prevailing wage rates are also available for viewing at the office of the Owner, located at 24301 Roberts Drive, Black Diamond, WA 98010. Upon request, the Owner will mail a hard copy of the applicable prevailing wages for this project.
- (2) Notice to City. Minimum 24-hours prior notice shall be given to City's Department of Public Works prior to commencement of work under this Contract.
- (3) Approved Plans & Specifications to be followed. Contractor agrees that all work is to be performed to the City's satisfaction and in compliance with the approved Plans & Specifications, including such requirements contained in any Request for Proposals (RFP) that was issued by the City prior to awarding this Contract, unless such requirements or specifications are expressly amended in writing by the City.
- (4) City Construction Standards to control. Contractor agrees that all work is to be performed to the City's satisfaction and in compliance with the City's Construction

Standards. Where the Construction Standards are in conflict with the approved Plans & Specifications, the City's Construction Standards shall control.

- (5) Schedule of Work to be followed. Contractor understands and agrees that time is of the essence in performing the work needed for this Project. Contractor shall diligently proceed with the work and shall assure that it, and its subcontractors, have adequate staffing at all times in order for Contractor to comply with any Schedule of Work agreed to by the Parties, and shall make all reasonable efforts to complete the work in a timely manner.
- (6) Duty to Correct. Contractor shall promptly correct work rejected by the City as failing to conform to the requirements of the Contract. The Contractor shall bear the cost of correcting such rejected work. In addition to the Contractor's other obligations under the Contract, the Contractor shall, for a period of one year after final acceptance of the Project by the City, correct work not conforming to the requirements of the Contract. 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.

*C. Non-Discrimination.*

- (1) Contractor agrees that it, and its subcontractors and other agents, shall not discriminate against any employee or applicant for employment or any other person in the performance of this Contract because of race, creed, color, national origin, marital status, sex, age, disability, or other condition prohibited by federal, state, or local law or ordinance, except where the condition constitutes a bona fide occupational qualification under law.
- (2) Any violation of this Section shall be a material breach of this Contract and grounds for immediate cancellation, termination, or suspension of the Contract by City, in whole or in part, and may result in Contractor being ineligible to perform further work for the City.

**6. Compensation**

Compensation for these services shall be a Lump Sum of \$20,610.00 dollars, plus applicable sales tax.

**7. Payment**

- A. Contractor 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. 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.

- D. Payments received on account of work performed by a subcontractor are subject to the provisions of RCW 39.04.250.
8. **Retainage.** The City waives its right to require a performance and payment bond; provided that, the City reserves a right of recovery against the Contractor for any payments it makes on behalf of the Contractor for liabilities assumed pursuant to RCW 39.08.015. Pursuant to RCW 60.28, a sum of five percent (5%) 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. No final payment or release of any retainage will be made until the contractor and each 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. Also the retainage will not be released until the City has received certification that the Department of Revenue has received due payment of applicable taxes. Once the city has received certification from appropriate departments of the state of Washington, 45 days has passed from the date of acceptance of the project and the City has not received any claims against the project, then the City will release the retainage.
9. **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.
11. **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 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.
12. **Responsibility Criteria and Verification by Contractor.** Pursuant to Chapter 39.04 RCW, the following requirements must be included in any public works contract:
- A. *Responsibility Criteria.*

(1) Eligibility to be awarded contract. To be awarded this public works contract, the Contractor hereby certifies that Contractor meets the following responsibility criteria:

- a. Contractor has a certificate of registration in compliance with chapter 18.27 RCW;
- b. Contractor has a current state unified business identifier number;
- c. If applicable, Contractor has industrial insurance coverage for Contractor's employees working in Washington as required under Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW; and
- d. Contractor is not disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).

B. *Requirement to verify subcontractors.* Contractor must verify the responsibility criteria contained above for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350(1) and possesses an electrical contractor license, if required by chapter 19.28 RCW, or an elevator contractor license, if required by chapter 70.87 RCW. This verification requirement must be included in every public works contract and subcontract of every tier.

### 13. Insurance

- A. All employees, subcontractors, agents to be covered. Contractor shall procure and maintain for the duration of the Contract, and shall provide proof satisfactory to the City, that insurance is maintained by Contractor and each of its subcontractors or agents who are not otherwise covered by Contractor's 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 Contractor, its agents, representatives, or employees.
- B. Lack of insurance grounds for termination of contract. Failure of Contractor to maintain insurance as required herein shall be grounds for immediate termination of this Contract by the City.
- C. Title 51 Industrial Insurance Waived. The parties have specifically negotiated as a term of this Contract that Contractor has agreed to expressly waive immunity under Title 51 RCW Industrial Insurance Law.
- D. 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.

4. Builders Risk insurance covering interests of the City, the Contractor, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance shall be on a all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the Contractor. Higher deductibles for flood and earthquake perils may be accepted by the City upon written request by the Contractor and written acceptance by the City. Any increased deductibles accepted by the City will remain the responsibility of the Contractor. The Builders Risk insurance shall be maintained until final acceptance of the work by the City.

E. 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.

3. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.

E. 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 respects 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.

- F. 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 well as to any temporary structures, scaffolding and protective fences.
- 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 the City, the Contractor shall provide evidence of such insurance.

#### 14. Claims for damages.

- A. Excluded situations. City shall not be responsible for delays caused by soil conditions; underground obstructions; labor disputes; fire; delays by third parties, including public and private utilities; or reasonably foreseeable delays.
- B. Liability limited to direct costs. Contractor agrees that City's liability to Contractor for payment of claims or damages of any kind whatsoever related to this Contract shall be limited to direct costs as provided under the force account provisions of the Standard Specifications. Contractor expressly waives all claims for payment of damages that include or are computed on total costs of job performance, extended overhead, or other similar methods that are not specific as to the actual, direct costs of contract work as defined in the force account provisions of the Standard Specifications.
- C. "Damages" defined. For purposes of applying RCW 4.24.115 to this Contract, Contractor and City agree that the term "damages" applies only to a finding in a judicial proceeding and is exclusive of third party claims for damage primarily thereto.
- D. Indemnification. Contractor agrees to defend, indemnify, and hold harmless the City from all claims for damages by third parties, including costs and reasonable



attorneys' fees in the defense of claims for damages arising from the performance of Contractor's express or implied obligations under this Contract. It is further agreed that all third party claims for damages against the City for which Contractor's insurance carrier does not accept defense of the City may be tendered by the City to Contractor, who shall then accept and settle with the claimant or defend the claim. City retains the right to approve claims investigation and counsel assigned to said claims, and all investigation of legal work product regarding said claims shall be performed under a fiduciary relationship to the City. In the event that the City agrees or a court finds that a claim arises from the sole negligence of City, City shall be responsible for all damages to third party claimant. In the event that City and Contractor agree or a court finds that a claim arises from the combined negligence of Contractor and City, Contractor shall be responsible for all damages payable by Contractor to third party claimant under the court findings and, in addition, Contractor shall indemnify the City for all damages paid or payable by City under the court findings in an amount not to exceed the percentage of total fault attributable to Contractor.

**15. 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.

**16. 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.

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

**18. 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.

**19. 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.

**20. 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.

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: Rebecca Olness  
Print name: Rebecca Olness  
Title: Mayor  
Date: 12-8-13

**CONSULTANT**

By: Scott Hooper  
Print name: Scott Hooper  
Title: MANAGER  
Date: 12/16/2013

Attachments