

RESOLUTION NO 10-001

A RESOLUTION OF THE CITY OF ROSLYN, WASHINGTON, RATIFYING THE EXECUTION OF A CONTRACT WITH KRETSCHMAN & SONS EXCAVATING FOR THE CRYSTAL CREEK HEADWALL REPAIRS

WHEREAS, during the flood event in January of 2007 the Crystal Creek Headwall was damaged; and

WHEREAS, the City applied for and was awarded FEMA assistance for repair of this damage; and

WHEREAS, the City solicited bids for this project and Kretschman & Sons Excavating was selected as the lowest responsive bidder; and

WHEREAS, there was a limited window of time when the damage could be repaired due to creek flows and inclement weather; and

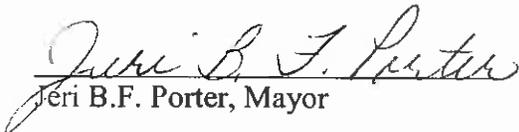
WHEREAS, if the repairs were not made during that window of opportunity there could be significant damage to the City's Infrastructure and Private Property; and

WHEREAS, in an effort to cause the repairs to be made during the window of opportunity to avoid damage to public and private property the Mayor executed a contract with Kretschman & Sons Excavating for the Crystal Creek Headwall project in an amount not to exceed \$6,912, of which 87.5% will be reimbursed by FEMA;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ROSLYN, WASHINGTON, AS FOLLOWS:

Section 1. The attached contract in an amount not to exceed \$6,912. with Kretschman & Sons Excavating for Crystal Creek Headwall Repairs is hereby authorized and ratified.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF THE 12TH DAY OF JANUARY, 2010.

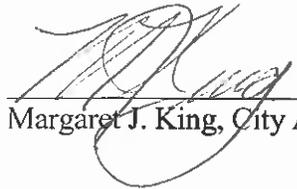

Jeri B.F. Porter, Mayor

ATTEST:



Amber Shallow, Clerk-Treasurer

Approved as to form:



Margaret J. King, City Attorney

**CITY OF ROSLYN
PUBLIC WORKS AGREEMENT**

Crystal Creek Headwall Repairs

Contractor: Kretschman & Sons Excavating

This Agreement dated this 9th day of December, 2009, is entered into by and between the CITY OF ROSLYN, WASHINGTON, a municipal corporation hereinafter referred to as "City," and Kretschman & Sons Excavating, hereinafter referred to as "Contractor."

WHEREAS, the City desires to have the trash racks and headwalls that were damaged in the flooding of January 2009 repaired for its citizens; and

WHEREAS, FEMA has approved the scope of work and will fund up to 87.5% of the costs; and

WHEREAS, the City has selected the Contractor to perform the above-mentioned services;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, to be kept, performed, and fulfilled by the respective parties hereto, and other valuable consideration, it is mutually agreed as follows:

1. **Scope of Services to be Performed by the Contractor.** The Contractor shall perform the services outlined in Exhibit "A" of this Agreement. In performing these services, the Contractor shall at all times comply with all federal, State, and local laws and regulations applicable to the performance of such services. The Contractor shall perform services diligently and completely and in accordance with professional standards of conduct and performance.

2. **Compensation.**

a. The City shall pay Contractor:

_____ According to the rates set forth in Exhibit " _____ "

X A sum not to exceed \$6,912

_____ Other (Specify) _____

b. All invoices shall be accompanied by an Invoice Transmittal Form substantially in the form set forth in Exhibit "B."

c. Vouchers are paid on the second and fourth Tuesday of each month, following City Council approval. Invoices must be received at least ten (10) days prior to approval date. The Contractor shall be paid for services rendered and allowable expenses incurred, but in no case shall the total amount paid exceed the "not to exceed" amount of \$6,912 unless the parties mutually agree to the payment of additional fees and expenses for additional services authorized by the City. The Contractor shall complete and return Exhibit "C," Taxpayer Identification Number, prior to execution of this Agreement.

d. Any change or modification to this Agreement for additional services as above referenced shall be in writing and signed by the parties to this Agreement. Any compensation due for the change or modifications shall be on the same terms and conditions as set forth in this paragraph or in a manner otherwise mutually agreed to by the parties.

3. Termination.

a. The City reserves the right to terminate or suspend this Agreement at any time, with or without cause, upon fourteen (14) days' prior written notice.

b. In the event this Agreement is terminated or suspended, the Contractor shall be entitled to payment for all services performed and reimbursable expenses incurred to the date of termination.

c. This Agreement may be canceled immediately if the Contractor's insurance coverage or financial guarantee provided to the City under section 7 of this agreement is canceled for any reason or if the Contractor is unable to perform the services called for by this Agreement.

d. The Contractor reserves the right to terminate this Agreement with not less than sixty (60) days' written notice, or in the event outstanding invoices are not paid within sixty (60) days.

e. This provision shall not prevent the City from seeking any legal remedies it may otherwise have for the violation or nonperformance of any provisions of this Agreement.

f. If the Contractor is unavailable to perform the scope of services, the City may, at its option, cancel this Agreement immediately.

4. Duration of Agreement. This Agreement shall be in full force and effect for a period commencing upon execution and ending January 30, 2009 unless sooner terminated under the provisions of this Agreement. Time is of the essence of this Agreement in each and all of its provisions in which performance is required.

5. Prevailing Wages.

a. The Contractor shall pay all workers performing services under this Agreement not less than the prevailing wage set forth in Exhibit "D" to this Agreement. The Contractor shall also comply with the prevailing wage laws codified under RCW Chapters 39.04, 39.12, and 49.28, as they now exist or are hereinafter amended, and all applicable provisions of the Washington Administrative Code relating thereto. This agreement shall not be construed as prohibiting the Contractor from taking advantage of any exemption from paying the prevailing wage rate under a special certificate issued by the Department of Labor and Industries ("L&I") for vocational handicapped workers or of any other exemption or exception authorized by law.

b. Upon execution of this agreement, the Contractor, and any subcontractors, shall file a "Statement of Intent to Pay Prevailing Wages" with L&I and file a copy of the Statement of Intent to Pay Prevailing Wages with the City. The City shall not make any payments or reimbursements under the Agreement prior to receipt of all required Intent to Pay Prevailing Wages forms.

c. The City shall hold five (5) percent retainage on each invoice. At the end of the Agreement period, and at the end of each six month period within the Agreement period, the

Contractor shall file an "Affidavit of Wages Paid" with L&I. After the filed affidavit form is received by the City, retainage shall be released.

6. Independent Contractor.

a. The Contractor and the City agree that the Contractor is an independent contractor with respect to the services provided pursuant to this Agreement. The Contractor will solely be responsible for its acts and for the acts of its agents, employees, subcontractors, or representatives during the performance of this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto.

b. The City shall not be responsible for withholding or otherwise deducting federal income tax or Social Security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to Contractor or any employee of the Contractor.

7. Indemnification/Hold Harmless.

a. The Contractor shall defend, indemnify, and hold the City and its officers, officials, agents, employees, and volunteers harmless from any and all costs, claims, injuries, damages, losses, suits, or liabilities of any nature including 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.

b. 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.

8. Bonding.

a. Upon execution of this contract, as required by RCW 39.08, the Contractor shall furnish a surety bond in the full amount of the contract price, plus State sales tax, which shall guarantee the faithful performance of the contract and the payment of all labor, mechanics, subcontractors, and materialmen and all persons who supply them with provisions and supplies for carrying out the work under this contract. This bond shall be in force until completion of the contract and also upon such period thereafter during which the law allows liens to be filed and sued upon. This performance bond shall be furnished by a corporate surety company authorized to do business in the State of Washington, in a company acceptable to the City and on the form attached hereto.

b. The Contractor agrees to maintain a bond, or other form of financial guarantee acceptable to the City, during the term of this Agreement in an amount of at least \$10,000 for each person providing services under this Agreement, protecting the City against loss or liability from theft or burglary, and to provide the City with evidence of the existence of such financial guarantee.

9. 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, its agents, representatives, or employees.

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, independent contractors, products-completed operations, stop gap liability, and 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 additional 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 and Commercial General Liability 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 in 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 canceled 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.** 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 insurance requirements of the Contractor before commencement of the work.

f. **Subcontractors.** Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the same insurance requirements as stated herein for the Contractor.

10. **Delays.** The Contractor is not responsible for delays caused by factors beyond the Contractor's reasonable control. When such delays beyond the Contractor's reasonable control occur, the City agrees the Contractor does not owe for damages, nor shall the Contractor be deemed to be in default of the Agreement.

11. **Successors and Assigns.** Neither the City nor the Contractor shall assign, transfer, or encumber any rights, duties, or interests accruing from this Agreement without the written consent of the other.

12. **Discrimination Prohibited.** The Contractor shall not discriminate against any employee or applicant for employment, or any person seeking the services of the Contractor under this Agreement because of sex, age (except minimum age and retirement provisions), race, color, religion, creed, national origin, marital status, or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification.

13. **Notices.** Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears below (as modified in writing from time to time by such party), and given personally, by registered or certified mail, return receipt requested, by facsimile or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

To the City:

Attn: Amber Shallow
City of Roslyn
100 E. Pennsylvania Ave
Roslyn, WA 98941
509-649-3105

To the Contractor:

Kretschman & Son's Excavating
Attn: Matt Kretschman
PO Box 623
Cle Elum, WA 98922
Phone: (509) 304-6179

14. **Applicable Law; Venue; Attorneys' Fees.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be exclusively in King County, Washington. The prevailing party in any such action shall be entitled to its attorneys' fees and costs of suit, which shall be fixed by the judge hearing the case, and such fees shall be included in the judgment.

15. **General Administration and Management.** The City's contract manager shall be the Director of Public Works, or his/her designee.

16. **Severability.** Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the City and the Contractor, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as reasonably possible to expressing the intention of the stricken provision.

17. **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind any of the parties hereto. Either party may request changes to the Agreement. Proposed changes which are mutually agreed upon shall be incorporated by written amendment to this Agreement.

CITY OF ROSLYN

KRETSCHMAN & SON'S EXCAVATING





By: Jeri B. F. Porter

By: Matt Kretschman

Title: Mayor

Title: OWNER

Date: Dec. 08, 2009

Date: 12-09-09

Approved as to form:



By: Margaret King

Title: City Attorney

Attachments: Exhibits "A," "B," "C," and "D"

EXHIBIT A

ROSLYN CREEK PROJECT

Project Area 1

- Remove 2 Eco blocks to be placed at city shop.
- Remove Old Railroad ties 10 – 15?
- Excavate back in bank to determine damage to pipeline about 3-4' for inspection by city
- Refill with rip rap about 2 – 3 yards
- Slope area back for placement of riprap, about 10 – 20 yards. To avoid erosion of bank & head wall, may require 2 or 3 man rock.
- Contractor may be required to divert water if present
- Remove dirt & mud out of plunge pool about 5 yards
- City will provide area for disposal of mud and rock

Project Area 2

- Rebuild damaged trash rack & head wall with concrete
- Replace riprap to avoid erosion of bank & head wall 5 – 10 yards
- Contractor may be required to divert water if present
- City of Roslyn will provide material for steel rack
- Remove dirt & mud out of plunge pool, about 5 yards
- City will provide area for disposal of mud & rock

Note

- Contractor will be required to pay Kittitas County Prevailing Wage
- Contact City of Roslyn for all necessary bonds & licenses required for work in City
- Fax #509-649-3174, Phone #509-649-3105 quotes due no later than 11/27/09
- A site walk thru will be required on 11/25/09 at 9:00am for all interested bidders
- Email quote to publicworks@inlandnet.com

EXHIBIT B

CITY OF ROSLYN INVOICE SUMMARY FORM

100 E. Pennsylvania Ave, Roslyn, WA 98941 (509)649-3105; Fax (509) 649-3174

Invoice No.: _____ Invoice Date: _____

Contractor/Contractor: _____

Mailing Address: _____

Invoice Contact Name: _____ Telephone: _____

Reporting Period: _____

Amount of Invoice: \$ _____

Attach Invoice to describe services performed this period.

BUDGET SUMMARY:

Total Contract Amount \$ _____

Previous Payments \$ _____

Current Request \$ _____

Total Requested to Date \$ _____

Balance Remaining \$ _____ (Including Retainage)

Contractor/ Contractor Signature:

By: _____ Date: _____

Print name: _____

Title: _____

Vouchers are paid on the Tuesday following the second and fourth Mondays of each Month, following City Council approval. Invoices must be received at least ten (10) days prior to approval date. The Contractor shall be paid for services rendered and allowable expenses incurred, but in no case shall the total amount to be paid exceed the "not to exceed" amount of \$6,912, unless the parties mutually agree in writing to the payment of additional fees and expenses as authorized by the City. The Contractor shall complete and return Exhibit "C," Taxpayer Identification Number, prior to execution of this Agreement.

For Department Use Only

Approved for Payment:

Vendor No.: _____

Budget No.: _____

Signature: _____

Date: _____

EXHIBIT C

CITY OF ROSLYN

100 E. Pennsylvania Ave, Roslyn, WA 98941
(509) 649-3105 ♦ Fax (509) 649-3174

TAX IDENTIFICATION NUMBER

In order for you to receive reimbursement from the City of Roslyn, we must have either a Tax Identification Number or a Social Security Number. The Internal Revenue Code requires a Form 1099 for payments to every person or organization other than a corporation for services performed in the course of trade or business. Further, the law requires us to withhold 20% on reportable amounts paid to unincorporated persons who have not supplied us with their correct Tax Identification Number or Social Security Number.

Please complete the following information request form and return it to the City of Roslyn before or along with the submittal of the first billing voucher.

Please check the appropriate category:		
<input type="checkbox"/> Corporation	<input type="checkbox"/> Partnership	<input type="checkbox"/> Government Agency
<input type="checkbox"/> Individual/Proprietor	<input type="checkbox"/> Other (please explain)	
TIN #: _____ - _____ - _____		
SS #: _____ - _____ - _____		
Print Name: _____		
Print Title: _____		
Business Name: _____		
Business Address: _____		
Business Phone: _____		
_____	_____	
Date	Authorized Signature (required)	