

**CITY OF BLAINE**  
**REQUEST FOR COUNCIL ACTION**  
**MEETING DATE:** March 27, 2006

**SUBJECT:** Professional Service Agreement – Reichhardt & Ebe Engineering Wastewater Equalization & Marine Drive Reconstruction Phase 1

**SUBMITTING DEPT:** Public Works

**PREPARED BY:** Stephen R. Banham, Director \_\_\_\_\_  
(Digital Signature)

**AGENDA LOCATION:** Comments/Communications ☐; Consent ☐; Committee Reports ☐  
Unfinished Business ☐; Council Action Items ☒; Public Hearing ☐; Standing Committees ☐

**ATTACHMENTS:** 1) Professional Service Agreement - Reichhardt & Ebe Engineering

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**ANALYSIS / SUMMARY:** The City has selected Reichhardt & Ebe from the on-call engineering roster to provide inspection services during construction of this major project based on their experience with road construction and with large civil works like the equalization tank in this project. The work to be performed by Reichhardt & Ebe consists of providing construction administration, consisting of Civil submittal review, on-site inspection, materials testing, pay estimate preparation, cost tracking, schedule tracking, and the representation necessary to administer and manage the construction contract for the project to ensure that the work is constructed in accordance with the contract plans and specifications.

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**RECOMMENDATION:** ☒; Waive 2<sup>nd</sup> Reading: (Including conditions of approval if applicable)  
Staff recommends that City Council authorize the City Manager to execute a professional services agreement with Reichhardt & Ebe Engineering in an amount not to exceed **\$193,000** for consulting engineering services as described above.

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**FISCAL ANALYSIS:** This contract will be paid from Fund 305 Marine Drive and funded by the \$5M Public Works Trust Fund Loan.

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**REVIEWED BY:**

City Manager: \_\_\_\_\_ Finance Director: \_\_\_\_\_ City Clerk: \_\_\_\_\_  
(Digital Signature) (Digital Signature) (Digital Signature)

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**COUNCIL ACTION:** Approved ☐, Denied ☐, Tabled / Deferred ☐,

Assigned to: \_\_\_\_\_

**COUNCIL ACTION:** \_\_\_\_\_

**CITY OF BLAINE**  
**PROFESSIONAL SERVICES AGREEMENT**

**Wastewater Equalization & Marine Drive Reconstruction**  
**Construction Management**

**THIS AGREEMENT** is between the City of Blaine, a municipal corporation (hereinafter referred to as "City") and Reichhardt & Ebe Engineering, Inc (hereinafter referred to as "Consultant").

**W I T N E S S E T H:**

**1. SCOPE**

Consultant agrees to provide City with "on-call" construction management services for the wastewater equalization and Marine Drive reconstruction project. A more detailed description of the scope of services is attached hereto as Exhibit "A" and incorporated herein by this reference.

**2. TERM**

This Agreement shall commence on March 28, 2006 and shall terminate on December 31, 2006, unless extended by separate amendment to this Agreement.

**3. COMPENSATION, INVOICING, PAYMENT**

A. City shall pay Consultant on a time and material basis not to exceed One Hundred Eighty Thousand Four Hundred Twenty dollars and no cents (\$180,420.00) for completed work and services rendered under this Agreement as provided in Exhibit "B" attached hereto, and by this reference made part of this Agreement. City shall not pay Consultant separately for indirect or normal business overhead costs (e.g., office rental, office supplies, postage, telephone, fax, business insurance, office utilities, routine correspondence preparation, invoicing, or payment receipt processing and accounting).

B. Consultant shall submit monthly invoice statements to Public Works Department / 1200 Yew Avenue / Blaine, WA 98230 and shall include the following information:

1. For direct professional services:
  - a. An itemized short description of the task performed and the specific time period,
  - b. The name(s) of the corresponding person(s) performing the task,
  - c. The corresponding hourly reimbursement rate(s) of the person(s) performing the task,
  - d. The corresponding hours, to the nearest quarter of an hour, spent performing each task,
  - e. Work task subtotal cost (hours x hourly rate), and
  - f. Subtotal for direct professional services.
2. For any other direct charges:
  - a. Qualified mileage charges: A short description of the trip's purpose, date, mileage for the trip, mileage reimbursement rate, and total charge (mileage x rate).
  - b. All other charges: An itemized short description explaining the charge, the reimbursable cost, and a subtotal of all such charges.
  - c. Subtotal for indirect or other charges.
3. Any past-due amounts.
4. Uninvoiced balance remaining on each work task.
5. Total amount of the invoice.

City shall review these submitted invoices and make payment based thereon for work completed to City's satisfaction. City shall pay Consultant all undisputed amounts within 30 days of receipt of Consultant's invoice. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in the Scope of Services. City shall promptly notify Consultant of any disputed invoice amounts.

#### **4. RELATIONSHIP OF PARTIES**

Consultant and its personnel shall act as independent contractors and not as employees of City. As such, they have no authority to bind City or control employees of City, contractors, or other entities. This Agreement does not create a partnership or joint venture between Consultant and City.

#### **5. PROJECT OVERSIGHT**

Within the performance of these duties, Consultant shall work under the direction of the Public Works Department Director. Consultant specifically understands that no City employee other than the Public Works Department Director is authorized to direct the work of Consultant unless the Public Works Department Director designates in writing another representative of City to provide such direction. The Public Works Department Director may, at any time, issue written directions within the general scope of this Agreement. If any such direction causes an increase or decrease in the cost of this Agreement or otherwise affects any other provision of this Agreement, then Consultant shall immediately notify the Public Works Department Director and take no further action concerning those written directions until such time as the parties have executed a written change order.

#### **6. LICENSE AND TAXES**

Consultant shall possess a current Blaine Business License and any regulatory license(s) required to fulfill its obligations under this Agreement. Furthermore, Consultant agrees to pay when due all taxes, assessments, levies or tariffs.

#### **7. INSURANCE AND HOLD HARMLESS**

Prior to and during the performance of the work covered by this Agreement, Consultant shall provide to City evidence that it has obtained and maintains in full force and effect during the term of this Agreement:

- (a) A policy of professional insurance, providing coverage of at least One Million Dollars (\$1,000,000) against professional liability for errors and omissions in connection with the work to be performed by Consultant under this Agreement;
- (b) Workers' Compensation Insurance as required by law with an all-states endorsement;
- (c) Employer's Liability Insurance (bodily injuries) with a limit of One Hundred Thousand Dollars (\$100,000) per occurrence with an insurance company authorized to write such insurance in Washington State; and
- (d) Comprehensive General Liability Insurance and Automobile Liability Insurance covering all owned and non-owned automobiles and vehicles used by or on behalf of Consultant with One Million Dollars (\$1,000,000) combined single limit for bodily injury and/or property damage per occurrence and an annual aggregate limit of One Million Dollars (\$1,000,000).

City shall be provided thirty (30) days' written notice of any cancellation of said professional liability insurance. City shall be listed as an additional insured on policies listed in (d) above.

Consultant agrees to indemnify City, its officers, council members, employees and agents for any claims, damages, losses, and costs, including, but not limited to, reasonable attorney's fees and litigation costs, arising out of claims by any third parties for property damage or bodily injury, including death, to the extent arising from the negligence or willful misconduct of Consultant, Consultant's employees, affiliated corporations, and subcontractors in connection with the project.

City agrees to indemnify Consultant from any claims, damages, losses, and costs, including, but not limited to, reasonable attorney's fees and litigation costs, arising out of claims by third parties for property damage or bodily injury, including death, to the extent arising from the negligence or willful misconduct of City, or its employees or contractors (other than Consultant) in connection with the project.

## 8. WARRANTY

Consultant warrants that their services will conform to the standard of care applicable to the services covered by this Agreement, and that they shall be performed with the degree of skill and diligence normally employed by professional consultants performing the same or similar work.

## 9. REMEDIES

In the event of a default hereunder, or in the event that Consultant fails to perform the Project work in conformance with the standard of care set forth in Section 8, Warranty, then City may, in addition to exercising all of those rights and remedies available to it in law and equity, (i) terminate the Contract, (ii) cure any defect arising from Consultant's negligence, recklessness or willful misconduct and charge the cost of such repair back to Consultant, and/or (iii) seek specific remedial performance under the Contract at no additional cost to City. The remedies provided for herein are cumulative.

## 10. GENERAL CONDITIONS

- A. **Reports and Information.** Consultant, at such times and in such forms as City may require, shall furnish City such reasonable periodic reports and documents as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection herewith, and any other matters covered by this Agreement.

Consultant will maintain accounting records in accordance with generally accepted accounting principles and practices to substantiate all invoiced amounts. All plans, drawings, reports, specifications, data, information or other documents provided to Consultant and/or prepared or assembled under this Agreement are and shall remain the sole property of City. Consultant explicitly waives all claims to propriety ownership and/or copyrights associated with any work product produced under this Agreement. Consultant shall retain all such documentation generated in conjunction with the undertaking of the Project, and Consultant shall, upon completion, termination, expiration and/or conclusion of the Project, provide same to City.

- B. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and both parties acknowledge that there are not other agreements, written or oral, that have not been fully set forth in the text of this Agreement.
- C. **Amendments.** The parties hereby further agree that this Agreement cannot be amended or modified without the written concurrence of both parties.
- D. **Notices.** 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 by certified mail, return receipt requested:

Blaine City Clerk	Reichhardt & Ebe Engineering, Inc
344 H Street	423 Front Street
Blaine, WA 98230	Suite 201
	Lynden, WA 98264

With a copy to:

Blaine Public Works Department Director  
1200 Yew Street  
Blaine, WA 98230

- E. **Waiver.** Failure to insist upon strict compliance with any terms, covenants or conditions of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach.

- F. Compliance with State, Local and Federal Laws.** Consultant agrees to comply with all applicable local, state and federal laws in performance of all services under this Agreement.
- G. Applicable Law; Venue.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington, and in the event of dispute, the venue of any action brought hereunder shall be in Whatcom County Superior Court.
- H. Attorney Fees.** The substantially prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any.
- I. No Conflict of Interest.** Consultant covenants that it presently has no interest and shall not acquire an interest, directly or indirectly, which would conflict in any manner or degree with its performance under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by any of its subcontractors or sub-consultants.
- J. Payment of Subcontractors and Sub-Consultants.** At the time of completion of the Work, Consultant agrees to certify to City that all subcontractors and sub-consultants have been paid in full. Consultant shall be responsible for the performance of any subcontractor or sub-consultant. All such subcontractors or sub-consultants shall possess all licenses and insurance as required by the laws of the State of Washington and as are required of Consultant under this Agreement. City may, in its sole discretion, withhold final payment until receipt of such certification.
- K. Confidentiality.** Any reports, documents, questionnaires, records, computer files, information and/or data given to or prepared or assembled under this Agreement shall not be made available by Consultant to any individual or organization without prior written approval of City except as may be required by law, rule, regulation, or ordered by a court of competent jurisdiction. The provisions of this section shall survive the expiration or earlier termination of this Agreement. No reports, records, questionnaires, information, data, software programs and/or computer files provided by City or other documents produced in whole or in part by Consultant under this Agreement, shall be the subject of an application for copyright by or on behalf of Consultant.
- L. Public Disclosure.** Correspondence, reports and other written work product will be generated during the course of the relationship created by this Agreement, and third parties may request such information pursuant to the Washington State Public Disclosure Act (RCW 42.17.250 *et. seq.*). Consultant agrees that in the event that such a request is filed, Consultant will promptly notify City. Consultant further agrees that it will not disclose any such requested material until at least ten (10) business days after providing notification to City. This clause shall survive the termination or expiration of this Agreement.

## **11. NONDISCRIMINATION**

Consultant shall not discriminate in employment or services to the public on the basis of sex, race, color, creed, national origin, age, marital status, physical, mental or sensory handicap except an employment action based on a bona fide occupational qualification.

## **12. ARBITRATION**

In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, City and Consultant agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation, unless the parties mutually agree otherwise.

City and Consultant further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and so on at all sublevels, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

### 13. TERMINATION

- A. **For Convenience.** City may, but is not obligated to, unilaterally terminate this Contract for convenience if funds become unavailable, or if Consultant suffers a business operation discontinuity or interruption (e.g., bankruptcy, dissolution, merger, hostile takeover), or if any of the personnel that Consultant originally proffered to perform the Scope of Services changes.
- B. **For Non-Compliance.** City or Consultant may unilaterally terminate this Contract if either party fails substantially to perform, through no fault of the other, and does not commence correction within five (5) days of written notice and diligently complete the correction thereafter. Upon such termination, City will be entitled to reports showing the status of all matters upon which Consultant was advising City as of the effective date of termination.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

<b>CONSULTANT:</b>  _____ Greg Ebe Principal, Reichhardt & Ebe Engineering, Inc	  _____ Date
<b>CITY OF BLAINE:</b>  _____ Gary R. Tomsic City Manager	  _____ Date
<b>DEPARTMENTAL APPROVAL:</b>  _____ Stephen R. Banham, PE Public Works Department Director	  _____ Date
<b>ATTEST:</b>  _____ Sheri Sanchez City Clerk	

## **EXHIBIT A**

### **SCOPE OF WORK**

#### **Blaine Wastewater Equalization Storage and Marine Drive Reconstruction**

##### **I. PROJECT DESCRIPTION**

The work to be performed by the CONSULTANT consists of providing construction administration for the above project. The work to be performed by the Consultant consists of Civil submittal review, on-site inspection, materials testing, pay estimate preparation, cost tracking, schedule tracking, and the representation necessary to administer and manage the construction contract for the PROJECT to ensure that the work is constructed in accordance with the contract plans and specifications. Construction documentation will be prepared in accordance with the Washington Department of Transportation Local Agency Guidelines (LAG) Manual.

##### ***TASK 1 – PROJECT MANAGEMENT/ADMINISTRATION***

###### **1. SPECIFIC ACTIVITIES**

- ◆ Develop PROJECT documentation system and tracking systems for submittals, RFI's, change orders, correspondence and PROJECT contacts.
- ◆ Participate in coordination meetings with the Contractor, CITY, and sub-consultants. Meetings will be scheduled in advance and shall occur on a regular basis.
- ◆ Coordinate and track Contractor transmittal of submittals and Requests for Information and report status at coordination meetings. Additional written comments to Contractor submittals and RFI's may be necessary to state the appropriate course of action to be taken.
- ◆ Any necessary design changes and review of technical submittals will be performed by the CITY's design consultant.
- ◆ Review monthly progress payments submitted by Contractor and transmit to CITY for payment.
- ◆ Prepare and maintain supporting documentation for the invoices.

###### **2. PRODUCTS**

- ◆ PROJECT documentation system and database.
- ◆ Meeting agenda and minutes of preconstruction and coordination meetings.
- ◆ Database reports of outstanding submittals, RFI's, and change orders for distribution at PROJECT meetings for discussion.

##### ***TASK 2 – CONSTRUCTION MANAGEMENT/ADMINISTRATION***

###### **1. SPECIFIC ACTIVITIES**

- ◆ Act as daily point of contact with the Contractor and monitor progress and quality of work on a daily basis.
- ◆ Assist Design Consultant with assembling all documentation required to issue changes to the contract. Prepare cost estimates, justification for change, prepare letters to Contractor issuing proposed change orders and requesting cost proposals, lead change order negotiations with the Contractor, prepare negotiation notes, prepare NTP letters and letters confirming negotiated prices. Prepare amendment to Contractor's contract for transmittal to CITY.
- ◆ Prepare progress estimates for payment to Contractor
- ◆ Review specifications and drawing requirements. Maintain an up-to-date PROJECT manual.

- ◆ Prepare and respond to all PROJECT correspondence.
- ◆ Resolve day-to-day PROJECT issues, as well as design and contract issues with the engineer, Contractor and CITY.
- ◆ Review Contractor's baseline schedules. Maintain schedule updates and review and monitor Contractor's schedule. Provide and maintain as-built schedules and record calendar days during contract work.
- ◆ Insure that environmental, property owner, and CITY commitments are addressed.
- ◆ Coordination and communication with CITY.
- ◆ Preparation of Record Drawings

## 2. **PRODUCTS**

- ◆ Written documentation pertaining to PROJECT issues
- ◆ Schedule updates

### *TASK 3 – TESTING SERVICES*

## 1. **SPECIFIC ACTIVITIES**

- ◆ Manage the performance of quality control testing. Testing will be performed on an as-needed basis by an accredited testing laboratory. Quality control testing services provided as part of the construction management contract shall include but is not limited to:
  - a) Soil materials testing
  - b) Proctor analysis and in-place density testing for backfill operations.
  - c) Concrete compression tests.

## 2. **PRODUCTS**

- ◆ Written test results for all tests conducted.

### *TASK 4 – INSPECTION SERVICES*

## 1. **SPECIFIC ACTIVITIES**

- ◆ Inspect work methods and products; verify compliance with PROJECT contract plans and specifications.
- ◆ Inspect materials; verify compliance with PROJECT contract plans and specifications.
- ◆ Monitor schedule process.
- ◆ Coordination with adjacent property owners
- ◆ Point of contact for quality control testing services.
- ◆ Verify environmental compliance.
- ◆ Coordinate construction survey requirements
- ◆ Prepare inspection correspondence, records and reports.
- ◆ Develop punch lists.

## 2. **PRODUCTS**

- ◆ Daily inspection report on quality compliance.
- ◆ Quality Control test reports
- ◆ Punch List



## *TASK 5 – PROJECT CLOSEOUT*

### **1. SPECIFIC ACTIVITIES**

- ◆ Conduct final inspection with CITY and CONSULTANT to establish final punch list.
- ◆ Monitor and verify completion of punch list items and issue substantial completion to Contractor.
- ◆ Coordinate transmittal of Contractor's and surveyor's as-built information to CITY.
- ◆ Transmit recommendation of final completion letter to CITY.

### **2. PRODUCTS**

- ◆ Issuance of Letter of Substantial Completion with final punch list.
- ◆ Issuance of one set of as-built drawings to CITY.
- ◆ Issuance of Final Completion letter to CITY.

**EXHIBIT B****Blaine Wastewater Equalization Storage and Marine Drive Reconstruction****Man-Hour and Cost Estimate****REICHHARDT & EBE ENGINEERING, INC.**

Date: February 23, 2006

**Construction Services**

Task No.	Task Description	Principal In Charge	Construction Manag/Inspect	CAD Operator	Administration Assistant
		Larry	Scott		
<b>1.0</b>	<b>Project Management/Administration</b>	370	0	0	296
			0		
<b>2.0</b>	<b>Construction Management</b>	0	555	0	0
<b>3.0</b>	<b>Inspection Services</b>	0	555	0	0
<b>4.0</b>	<b>Project Closeout</b>	0	0	0	0

TOTAL HOURS	370	1110	0	296
Hourly Rate	\$98.58	\$89.73	\$59.40	\$41.71
SUB-TOTAL	\$36,474.60	\$99,600.30	\$0.00	\$12,346.16
<b>TOTAL</b>				<b>\$148,421.06</b>

<b>5.0</b>	<b>SUBCONSULTANTS</b>	
5.1	GeoTest - Material Testing	\$30,000.00
<b>TOTAL</b>		<b>\$30,000.00</b>

<b>6.0</b>	<b>REIMBURSABLES</b>	
6.1	Reproduction	\$2,000.00
<b>TOTAL</b>		<b>\$2,000.00</b>

**GRAND TOTAL** **\$180,421.06**

**Notes:**

Project Duration = 185 working days (37 weeks + Start-up and Closeout)

Construction Manager/Inspector - 30 hrs. per week for 37 weeks

Principal-in-charge - 10 hrs. per week for 37 weeks.

Administrative Assistant 8 hrs per week 37 weeks.