

CITY OF BLAINE
REQUEST FOR COUNCIL ACTION
MEETING DATE: September 25, 2006

SUBJECT: Professional Service Agreement – Reichhardt & Ebe
Well Pumping and Distribution Facilities Design

SUBMITTING DEPT: Public Works

PREPARED BY: _____

(Digital Signature)

AGENDA LOCATION: Comments / Communications ☐, Consent ☐, Public
Meeting/Hearing ☐, Unfinished Business ☐, Council Action Item ☐, Committee Reports ☐

ATTACHMENTS: Professional Service Agreement

ANALYSIS / SUMMARY: Well No 9 is an existing well that has never been put into service. Well 5R is a well that is currently under design and will be drilled under a separate agreement. City Staff selected Reichhardt & Ebe Engineering from its list of On-call engineering firms as the most qualified to perform the design of the pumps and pipes needed to bring these two wells into service. Public Works Staff have met with Reichhardt & Ebe and reached agreement on the scope and budget for this work as shown in the attachment.

RECOMMENDATION: ☒ Waive 2nd Reading: Staff recommends that City Council authorize the City Manager to execute a professional services agreement with Reichhardt & Ebe Engineering, Inc. in an amount not to exceed \$77,911 for consulting engineering services for pumping and water distribution piping.

FISCAL ANALYSIS: This amendment is funded in Fund 329 – Water System Improvements.

REVIEWED BY:

City Manager _____ Finance Director _____ City Clerk _____
(Digital Signature) (Digital Signature) (Digital Signature)

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

Assigned to: _____

COUNCIL ACTION: _____

CITY OF BLAINE
PROFESSIONAL SERVICES AGREEMENT

Professional Engineering Design and Construction Management for Well Pumping and Distribution Facilities Design
--

Agreement No: S06-09

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 {consulting engineering/professional} services to design the pumps and associated piping to bring Well #9 and Well 5R into service and connect them to the municipal water system. 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 September 12, 2006 and will terminate on December 31, 2007 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 Seventy Seven Thousand Nine Hundred Eleven Dollars (\$77,911) 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 Director. Consultant specifically understands that no City employee other than the Public Works Director is authorized to direct the work of Consultant unless the Public Works Director designates in writing another representative of City to provide such direction. The Public Works 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 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, including professional licensing and registration with the State of Washington for design and engineering consulting services. Furthermore, Consultant agrees to pay when due all taxes, assessments, levies or tariffs.

7. INSURANCE

During the performance of this Agreement, Consultant shall provide City, within ten (10) days of execution of this Agreement, with evidence that Consultant has obtained and is maintaining the insurance listed as follows:

- (a) Workers' Compensation Insurance as required by law with an all-states endorsement.
- (b) Employers' 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 all states where the Consultant will have employees located in the performance of its work covering its common law liability to such employees.
- (c) Comprehensive General Liability Insurance and Automobile Liability Insurance covering all owned and non-owned automobiles or vehicles used by or in behalf of Consultant with a Five Hundred Thousand Dollar (\$500,000) combined single limit for bodily injury and/or property damage per occurrence and an annual aggregate limit of One Million Dollars (\$1,000,000).
- (d) Professional Liability Insurance covering Errors and Omissions of the Consultant in the amount of not less than One Million Dollars (\$1,000,000) per claim.
- (e) Except with regard to the Professional Liability Insurance, each of the policies required herein shall name the City as an additional insured. Furthermore, each policy of insurance required herein shall (i) be written as a primary policy; (ii) expressly provide that such insurance may not be materially changed, amended or canceled with respect to the City except upon forty-five (45) days' prior written notice from the insurance company to the City; (iii) contain an express waiver of any right of subrogation by the insurance company against the City and its elected officials, employees, or agent; (iv) expressly provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Consultant which might otherwise result in a forfeiture of said insurance; and (v) in regard to physical property damage coverage, expressly provide that all proceeds shall be paid jointly to Consultant and City.

(f) With regard to the Professional Liability Insurance, the Consultant shall maintain the same in full force and effect during the term of this Agreement and for a period of one year thereafter.

(g) The Consultant shall furnish the City with two (2) copies of Certificates of Insurance evidencing policies of insurance required herein and evidencing policies of insurance required above for its subcontractors within ten (10) days of contract execution or retention of sub-consultant. Except with regard to the Professional Liability Insurance, such Certificates shall specifically state that the insurance company or companies issuing such insurance policies shall give the City at least forty-five (45) days' written notice in the event of insurance company's or companies' cancellation or material changes in any of the policies. The Certificates of Insurance shall give a brief description of the work being performed under this Agreement. With regard to the Professional Liability insurance the Contractor will provide the City with certificates of insurance for the length of this Agreement and for a period of one year thereafter..

8. INDEMNIFICATION

The Consultant shall defend (with legal counsel satisfactory to the City), indemnify and hold the City, its elected officials, agents and employees harmless from and against all liabilities, obligations, fines, claims, damages, penalties, lawsuits, governmental proceedings, judgments, costs and expenses (including, without limitation, all attorneys' fees, costs and expenses of litigation):

- Arising out of any act or omission of Consultant, its directors, officers, consultants or subconsultants, agents and/or employees in connection with the services provided pursuant to this Agreement; and/or
- Arising from a breach of this Agreement by Consultant; and/or
- Arising out of or due to any failure on the part of Consultant to perform or comply with any rule, ordinance or law to be kept and performed.

The City will inform Consultant of any such claim or demand that alleges liability based in whole or in part on any act or omission of Consultant, its directors, officers, agents, or employees. Thereafter the Consultant shall (i) reasonably cooperate in the defense of such claim and (ii) pay its defense of such claim as incurred, whether or not such claim is ultimately successful. In this regard, the City will reasonably cooperate with Consultant in allowing Consultant to jointly select, with the City, attorneys to defend the City and Consultant provided that Consultant confirms its obligation to pay the City's defense costs.

9. 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.

10. 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.

11. 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.

Electronic copies of prepared reports and designs shall be provided to the City in a format compatible with existing City software. Consultants shall check with the City for software application and system compatibility. Copies of all final written reports shall be provided in both the native format and in Adobe® .pdf format. The preferred mode of file transfer to City systems is as an attachment to internet e-mail. For files larger than 5MB, a copy shall be provided on a compact disk in addition to the printed report.

- 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. The Consultant specifically understands that no City employees other than the project manager or his/her supervisors are authorized to direct the work of the Consultant.
- 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
344 H Street
Blaine, WA 98230

Reichhardt & Ebe Engineering
423 Front Street, Suite 201
Lynden, WA 98264

With a copy to:
Blaine Public Works 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.

12. NONDISCRIMINATION

In connection with the performance of this Agreement, the 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.

13. 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.

14. 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 seven (7) 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 the date and year indicated.

CONSULTANT:

Carl Reichhardt
Principal

Date

CITY OF BLAINE:

Gary R. Tomsic
City Manager

Date

DEPARTMENTAL APPROVAL:

Stephen R. Banham
Public Works Director

Date

ATTEST:

Sheri Sanchez
City Clerk

Date

Exhibit A SCOPE OF SERVICES

Professional Engineering Design and Construction Management for City Well Pumps and Piping

Project I, Well 9

PROJECT DESCRIPTION

Well Number 9 is an existing well that has never been put into service. This project consists of design of the pumping, disinfection and pipeline systems required to place the well in production. The work to be provided by the consultant includes the design, permitting, preparation of plans, specifications, cost estimates, and preparation of bidding documents as required to obtain bids for construction. Construction management will also be provided.

TASK 1 – PRELIMINARY ENGINEERING

A. SPECIFIC ACTIVITIES

- ♦ Review existing Well 9 documentation of construction and testing reports
- ♦ Develop subcontracts for surveying, electrical engineering, instrumentation and hydrogeologist.
- ♦ Conduct pre-design meeting with City and sub-consultants
- ♦ Develop design criteria

B. PRODUCTS

- ♦ Prepare design [Technical](#) Memo outlining design criteria.

TASK 2 – DESIGN ENGINEERING

A. SPECIFIC ACTIVITIES

- ♦ Topo survey of well easement and pipeline easement
- ♦ Design of well pump, structure, piping and valving system, chlorination system, electrical controls, and instrumentation
- ♦ Hold design review meetings with City and sub-consultants at approximately 60% and 90% of design completion
- ♦ Prepare final plans, specifications, cost estimates and bid documents
- ♦ Submit County permit applications, including Land Disturbance Permit. Building permit not required if structure under 120 square feet. Submit design report including new source report to Washington State Department of Health (WSDOH).

B. PRODUCTS

- ♦ Bid documents ready for advertising

TASK 3 – CONSTRUCTION

A. SPECIFIC ACTIVITIES

- ♦ Advertise for bids
- ♦ Assist in contract award
- ♦ Project surveys and layout
- ♦ Construction management, including submittal review, inspection, testing, pay estimates, change orders
- ♦ Commissioning new well and pumping system
- ♦ Project closeout, including As-Built, O&M Manuals, WSDOH Construction Completion Report
- ♦ Decommission Well 3

B. PRODUCTS

- ♦ As-built drawings, O&M manuals, construction completion certifications

Project II, Well 5R

PROJECT DESCRIPTION

Well Number 5R has been permitted, but never drilled.. The well will be constructed under a separate contract with Associated Earth Sciences, Inc. This project consists of design of the pumping, disinfection and pipeline systems required to place well 5R in production. The work to be provided by the consultant includes the design, permitting, preparation of plans, specifications, cost estimates, and preparation of bidding documents as required to obtain bids for construction. Construction management will also be provided.

TASK 1 – PRELIMINARY ENGINEERING

A. SPECIFIC ACTIVITIES

- ♦ Survey and prepare a topographic map of the proposed well site, locating the well for the driller, access points and proposed
- ♦ Review hydrogeologist reports and drillers reports after well is drilled
- ♦ Develop subcontracts for surveying, electrical engineering, instrumentation and hydrogeologist.
- ♦ Conduct pre-design meeting with City and sub-consultants
- ♦ Develop design criteria

B. PRODUCTS

- ♦ Prepare design [Technical](#) Memo outlining design criteria.
- ♦ Topography map of well site, with well staked in the field

TASK 2 – DESIGN ENGINEERING

A. SPECIFIC ACTIVITIES

- ♦ Design of well pump, structure, piping and valving system, chlorination system, electrical controls, and instrumentation
- ♦ Hold design review meetings with City and sub-consultants at approximately 60% and 90% of design completion
- ♦ Prepare final plans, specifications, cost estimates and bid documents
- ♦ Submit County permit applications, including Land Disturbance Permit. Building Permit not required if structure under 120 square feet. Submit design report including new source report to WSDOH.

B. PRODUCTS

- ♦ Bid documents ready for advertising

TASK 3 – CONSTRUCTION

A. SPECIFIC ACTIVITIES

- ♦ Advertise for bids
- ♦ Assist in contract award
- ♦ Project surveys and layout
- ♦ Construction management, including submittal review, inspection, testing, pay estimates, change orders
- ♦ Commissioning new well and pumping system
- ♦ Project closeout, including As-Built, O&M Manuals, WSDOH Construction Completion Report

B. PRODUCTS

- ♦ As-built drawings, O&M manuals, construction completion certifications

Exhibit B FEE SCHEDULE

Professional Engineering Design and Construction Management for New City Well Pumps and Piping

Man-Hour and Cost Estimate

Date: September 21, 2006

Project 1, Well 9

Element No.	Element Description	Classification and Level					
		Engr. Level VIII	Engr. Level VI	Engr. Level IV	Engr. Level III	Tech. Level V	Cler. Level IV Cler. Level II
1.0 Preliminary Engineering							
1.1	Review Existing Documentation	6					
1.2	Develop Sub-Contracts	8					6
1.3	Pre-design Meeting and Preparation	8					
1.4	Develop Design Criteria & Report	8			4		4
	Sub-Total	30	0	0	4	0	10
2.0 Design Engineering							
2.1	Design Engineering	16			30	16	4
2.2	Design Review Meetings and Preparation	8					
2.3	Administration	12					
2.4	Permit Application & Processing	20			10	12	4
	Sub-Total	56	0	0	40	28	8
3.0 Construction							
3.1	Bidding Stage	8				6	6
3.2	Construction Management	4			16		
3.3	Inspection	4			24		4
3.4	Closeout	6			8	8	6
3.5	Administration						
	Sub-Total	22	0	0	48	14	16
	TOTAL HOURS	86	0	0	44	28	18
	Hourly Rate	\$117.48	\$94.79	\$73.43	\$62.75	\$62.75	\$49.40
	Sub-Total	\$10,103.28	\$0.00	\$0.00	\$2,761.00	\$1,757.00	\$889.20
	TOTAL						\$15,510.48
4.0 Sub-consultants							
	Ken Kok Electrical Engineer						\$5,000.00
	Technical Services Inc						\$15,200.00
	Larry Steele & Associates						\$5,000.00
	Sub-Total						\$25,200.00
5.0 REIMBURSEABLES							
	Copies	1,000	@	\$0.05	/each		\$50.00
	Plotting	30	@	\$10.00	/each		\$300.00
	Bid Advertisement						\$350.00
	Reproduction Costs						\$500.00
	Sub-Total						\$1,200.00
GRAND TOTAL PROJECT 1							\$41,910.48

Exhibit B FEE SCHEDULE (Continued)

Project 2, Well 5R

Element No.	Element Description	Classification and Level						
		Engr. Level VIII	Engr. Level VI	Engr. Level IV	Engr. Level III	Tech. Level V	Cler. Level IV	Cler. Level II
1.0	Preliminary Engineering							
1.1	Review Existing Documentation	4				4		
1.2	Develop Sub-Contracts	4					6	
1.3	Pre-design Meeting and Preparation	4			4			
1.4	Develop Design Criteria & Report	6			4		4	
	Sub-Total	18	0	0	8	4	10	0
2.0	Design Engineering							
2.1	Design Engineering	8			20	16	4	
2.2	Design Review Meetings and Preparation	8						
2.3	Administration	10						
2.4	Permit Application & Processing	20			10	12	4	
	Sub-Total	46	0	0	30	28	8	0
3.0	Construction							
3.1	Bidding Stage	8				6	6	
3.2	Construction Management	4			16			
3.3	Inspection	4			24		4	
3.4	Closeout	6			8	8	6	
3.5	Administration							
	Sub-Total	22	0	0	48	14	16	0
	TOTAL HOURS	64	0	0	38	32	18	0
	Hourly Rate	\$117.48	\$94.79	\$73.43	\$62.75	\$62.75	\$49.40	\$38.72
	Sub-Total	\$7,518.72	\$0.00	\$0.00	\$2,384.50	\$2,008.00	\$889.20	\$0.00
	TOTAL							\$12,800.42
4.0	Sub-consultants							
	Ken Kok Electrical Engineer							\$4,000.00
	Technical Services Inc							\$9,000.00
	Larry Steele & Associates							\$9,000.00
	Sub-Total							\$22,000.00
5.0	REIMBURSEABLES							
	Copies		1,000	@	\$0.05	/each		\$50.00
	Plotting		30	@	\$10.00	each		\$300.00
	Bid Advertisement							\$350.00
	Reproduction Costs							\$500.00
	Sub-Total							\$1,200.00
GRAND TOTAL PROJECT 2								\$36,000.42
GRAND TOTAL PROJECT 1 & 2								\$77,910.90