

RESOLUTION 2012 - 47

**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF SUNNYSIDE, WASHINGTON, APPROVING  
SERVICE AGREEMENT WITH  
BLUE MOUNTAIN ENVIRONMENTAL CONSULTING FOR  
ENVIRONMENTAL CONSULTING SERVICES  
(Underground Fuel Storage Tank Removal)**

**WHEREAS**, the City of Sunnyside Fire Department is seeking Environmental Consulting Services for the removal of an underground fuel storage tank by a licensed UST decommissioner and soil sampling; and

**WHEREAS**, the City of Sunnyside has negotiated an agreement for consulting services with Blue Mountain Environmental Consulting, for the provision of environmental consulting services for such project; and

**WHEREAS**, the City Council finds and determines that approval of such agreement is in the best interests of residents of the City of Sunnyside and will promote the general health, safety and welfare.

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF  
THE CITY OF SUNNYSIDE, WASHINGTON, as follows:**

**SECTION 1.** That the "Service Agreement," a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, by and between the City of Sunnyside and Blue Mountain Environmental Consulting for the provision of environmental consulting services described therein, is hereby accepted; and the Interim City Manager is hereby authorized to execute and administer such agreement for and on behalf of the City of Sunnyside.

**SECTION 2.** This Resolution shall be effective upon passage, approval and signatures hereon as required by law.

**PASSED** this 25<sup>th</sup> of June, 2012.

  
\_\_\_\_\_  
MIKE FARMER, MAYOR

**ATTEST:**

  
\_\_\_\_\_  
DELILAH SAENZ, CITY CLERK

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
MENKE JACKSON BEYER EHLIS HARPER & PLANT, LLP  
Attorneys for the City of Sunnyside



## Service Agreement

Parties: This Agreement made this 14<sup>th</sup> day of June, 2012, by and between

### **City of Sunnyside**

513 S. 8<sup>th</sup> St.  
Sunnyside, WA 98944  
509-836-6400

subsequently referred to as "Client", and Blue Mountain Environmental & Consulting Company Inc., subsequently referred to as "BMEC or Consultant"

For and in consideration of the mutual promises and performances herein contained, the parties agree that BMEC shall provide consulting services to Client in accordance with the terms and conditions set forth below and the cited attachments to this agreement.

1. Term The term of this agreement shall commence on the day above stated and continue until the 31<sup>st</sup> day of July, 2012 or until sooner terminated either for the convenience of either party or for cause both as stated below in this agreement.

2. Project. Client hereby retains BMEC, Inc. to provide environmental consulting services in regard to:

**513 S. 8<sup>th</sup> St., in Sunnyside, Washington**

which may be referred to hereinafter as the "project".

3. Scope of Work. The scope work to be provided by BMEC to Client under this agreement and for the project is defined and limited to the following:

Supervision of underground fuel storage tank removal by a licensed UST decommissioner, soil sampling, and comprehensive report to include lab analysis, site map, and photographs.

4. Contract Documents. The following documents, along with this agreement, are specified as the contract documents and further describe the scope and conditions of BMEC services hereunder (these may include, without limitation, the BMEC proposal for the project, confirmation letter, plans and work schedule):

The contract documents identified above are accordingly numbered and attached hereto together as Exhibit A and by this reference made a part hereof.

Should it become necessary to interpret this agreement or to determine whether any performances under it are in conformity or nonconformity with the terms and conditions

EXHIBIT "A"

hereof, the agreement itself shall take precedent and control over exhibit A or any other attachments to it

5. Contract Price: The Client agrees to compensate BMEC for its services—labor, costs and other project related charges—hereunder on a fixed price (or lump sum) basis where the contract documents are one hundred per cent known and complete upon the signing of this agreement.

On that basis, BMEC estimates that the contract price for those services will be

**\$2,185.00**

If the project can be completed concurrent with a previously scheduled project for the City of Sunnyside the contract price for services will be

**\$1,925.00**

The estimated contract price will not be exceeded without the authorization of the Client. This fixed price quotation is conditioned upon Client authorizing BMEC to proceed within 60 days of the date BMEC delivers its proposal to Client.

If project requirements or the encountering of subsurface or other latent conditions occurs such that the scope of services covered by this Agreement and the contract price should be revised, one or more written change orders or an additional Service Agreement may be executed accordingly to encompass them. Should the Client elect not to proceed further in such instance, Client shall compensate BMEC at the rate or rates indicated in the Fee Schedule (see Exhibit A) under this agreement for the services rendered to Client up to that point.

6. Payment. The terms of payment are due upon receipt of invoice.

BMEC may require additional outside resources from time to time to assist BMEC in carrying out its obligations under this agreement and to assist in the timely completion of the work. These resources may include but not be limited to document preparation, field assistance, and services provided by other specialized technical professionals. Any additional outside resource needs will be identified by BMEC to Client along with a time and cost estimate for approval. Additional outside resources approved by client and used by BMEC will be invoiced according to terms of the attached Fee Schedule.

A 1.5% finance charge will be added monthly to past due invoices. BMEC will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts.

Except as may be provided for in individual purchase orders, the invoice price will include all applicable federal, state and local taxes.

EXHIBIT "A"

7. Authorized Representative. Client designates Aaron Markham as Client's authorized representative to act in client's behalf with respect to the services to be performed by BMEC.

8. Governing Law. This Agreement is made under and shall be governed by and construed and enforced under the laws of the State of Washington with venue for any action hereunder to be exclusively in Walla Walla County, Washington.

9. Termination.

This AGREEMENT may be terminated by either party upon receipt of written notice for either convenience or for substantial or material failure to perform in accordance with terms of the AGREEMENT through no fault of the terminating party. Except for termination because of delinquency in payment for BMEC's services, termination will not be in effect unless: (i) a minimum of 7 calendar days notice of intent to terminate has been given, (ii) the notice specifies "for convenience" or the nature of the substantial or material failure, and (iii) the notified party has had an opportunity to discuss termination "for convenience" or cure the substantial failure before expiration of the necessary minimum 7 calendar days notice.

10 Force Majeure. Neither party to this AGREEMENT will be liable to the other party for inability to perform or delays in performing the services, nor for the direct or indirect cost resulting from such inability to perform or delays, that may result from labor strikes, riots, war, acts of governmental authorities, extraordinary weather conditions or other natural catastrophe, or any other cause beyond the reasonable control or contemplation of either party.

11. Independent Contractor. BMEC is acting as an independent contractor in its capacity under this Agreement. Nothing contained in this agreement or in the relationship of Client and BMEC shall be deemed to constitute a partnership, joint venture, or any other relationship between Client and BMEC. BMEC's authority is limited to performing the services set forth here in accordance with the terms of this Agreement. BMEC does not have any authority to execute any contracts or agreements for or on behalf of Client, and is not granted any right or authority to assume or create any obligation or liability or make any representation, covenant, agreement or warranty, express or implied, on Client's behalf, or to bind Client in any manner whatsoever. Any consents, approvals or instruction which may be required of Client may only be given by Client's authorized representative, who, until written notice to the contrary, shall be Aaron Markham.

The services performed by BMEC shall be completed in accordance with the requirements contained in this agreement.

12. Miscellaneous Provisions.

A. Total Agreement.

This Agreement contains the total agreement of the parties and may not be amended except in writing signed by the parties.

B. Confidentiality.

BMEC, its officers, agents and employees agree to perform the services specified in this agreement in a confidential manner and agree not to disclose any information or materials gathered pursuant to this agreement, or discuss same with anyone, without the prior written permission of Client; provided, however, that BMEC is authorized and permitted to

EXHIBIT "A"

disclose, where relevant, any such information or materials to any third parties who are required under the terms of this agreement or by law to be contacted by BMEC. The Final Report and any additional written reports prepared by BMEC shall be marked "Business Confidential" and distribution of same by Investigator will be limited to those employees of Investigator conducting, reviewing and preparing such reports.

C. No Third-Party Beneficiary.

This Agreement is entered into for the exclusive benefit of the parties and the parties disclaim any intent to benefit anyone not a party.

D. Witness Fees.

Consultant's employees shall not be retained as expert witnesses except by separate, written agreement. Owner agrees to pay Consultant, pursuant to a reasonable fee schedule agreed upon by the parties, for any of Consultant's employees subpoenaed by any person or entity as an occurrence witness as a result of Consultant's work.

F. Mediation/Attorney's Fees. In the event a dispute between the parties, arising under or in relation to the performance or nonperformance of this agreement, the parties agree to submit that dispute to mediation promptly and prior to any court action. However, if mediation occurs and is unsuccessful and the dispute proceeds to litigation, the prevailing party shall be entitled to an award of attorneys fees and costs against the other.

It is so agreed,

Blue Mountain Environmental & Consulting Company, Inc.

By: Yancy Meyer  
(Print or type name)

Title: Environmental Professional

Date: June 14, 2012



\_\_\_\_\_  
(Signature)

Client: \_\_\_\_\_  
(Print or type name)

Fed. Tax ID# \_\_\_\_\_

\_\_\_\_\_  
(Signature)