

Status of Active Capital Improvement Projects

Springs Project: Administration, Public Works Committee, and Council @ CIP workshop agreed with the consultant's recommendation to tap the artesian spring on the north side of the Green River. Next steps

Preliminary design

- a. Negotiate scope and fee with RH2
- b. Review scope and fee with funding partners
- c. Call for funds to cover the next element of work
- d. Bring contract to the council for approval

Old Lawson Pump Station: Project Complete Will be removed from this list next time

Abrams Guard Rail: SEPA process complete; Coordination with Century Link; Preparing to go to bid.

½ Mil Tank Painting: Phase 1 report to enable the City to take the water tank off line is coming soon.

Old Sewer Lagoon Decommissioning. Soil samples taken from site where bio solids to be spread in order to determine the nitrogen level in the underlying soil. Test results coming next week. Then calculate the agronomic rate for bio-solids application.

Reflective Sign Installation: Done, will be removed from this list next time.

Downtown Water Main Project: King County will allow us to use the same consultant selection process from our last project.

Roberts Drive Reconstruction at Rock Creek Bridge: We are now moving forward with a consultant contract with Parametrix for this project. 2 bid schedules: one for the bridge and road and one for the utility work.

Lawson Street Sidewalk Project: The Public Works Committee reviewed preliminary design on May 2nd and the project is now moving forward to final design. Need to meet with an adjacent property owner over fence encroachment.

SR 169 / North Commercial Storm Pond (D2): The wetland study is complete. Survey work is nearly complete. Staff has delivered as built drawings to the engineers and have walked the project with the Parametrix project manager.

Morganville Sewer Pump Station Reconstruction: New pumps have been delivered. We are scoping the work for the panel and wiring repairs.

Council Chambers Remodel: The chairs will be delivered on June 5th.

- Sheet rock / brick wall covering in July.
- carpet late July early August.
- council bench bid July delivery September.
- Projector and video equipment installation July/August;
- New Council and administration chairs September.

Summer asphalt patching: Preparing bid documents. Bid in June, contract in July, work in August and or September.

Ginder Creek Trail/Regional Pond: Study completed by Landau Associates. Review by the Parks/Cemetery Committee will occur at their June 19th meeting.

General Administrative Activities

- Pet licenses issued: 3; 26 year-to-date; website updates 18; 137 year-to-date; business licenses issued: 3; 337 year-to-date; passports processed 52; 412 year-to-date; Lake Sawyer parking permits issued: 2 ; 10 .

Events on the Horizon

- See City calendar at <http://www.ci.blackdiamond.wa.us/calendar.html>
- See Maple Valley Black Diamond Chamber of Commerce calendar at <http://www.maplevalleychamber.org/schedule/calendar/maple-valley-featured-events>
- See Black Diamond Historical Society calendar at <http://www.blackdiamondmuseum.org/calendar.htm>
- See Black Diamond Community Center calendar at <http://www.blackdiamondcc.org/community/community.html>

Adopted Council 2013 Priorities

W2 – Reservoir Painting & Maintenance
10-year plan for asbestos pipe replacement
D2 – North Commercial & State Route 169 Stormwater Pond Design
P2 – Ginder Creek Trail Restoration
F1 & F2 – Fire Engine Replacement
T6 – Rock Creek Bridge
L3 – Police Radio Replacement



CITY OF BLACK DIAMOND
June 5, 2014 Regular Business Meeting Agenda
25510 Lawson St., Black Diamond, Washington

7:00 P.M. – CALL TO ORDER, FLAG SALUTE, ROLL CALL

PUBLIC COMMENTS: Persons wishing to address the City Council regarding items of new business are encouraged to do so at this time. When recognized by the Mayor, please come to the podium and clearly state your name and address. Please limit your comments to 3 minutes. If you desire a formal agenda placement, please contact the City Clerk at 360-886-5700. Thank you for attending.

PRESENTATIONS:

Climate Change Presentation – Matt Kuharic

Climate Change Counter View Presentation - Bob Edelman

PUBLIC HEARINGS:

1) **AB14-052** – Six Year Transportation Improvement Plan

Mr. Boettcher

APPOINTMENTS, PRESENTATIONS, ANNOUNCEMENTS:

Swearing In of Police Reserves

UNFINISHED BUSINESS: None

NEW BUSINESS:

2) **AB14-053**– Ordinance Amending Black Diamond Municipal Code Relating to Development Agreements

Ms. Welsh

3) **AB14-054** – Resolution Adopting Contract for MDRT Surveyor Consultant Parametrix

Mr. Williamson

4) **AB14-055** – Resolution Adopting Contract for MDRT Traffic Engineer Consultant Parametrix

Mr. Williamson

5) **AB14-056** – Resolution Adopting Contract for MDRT Geotechnical Consultant SubTerra

Mr. Williamson

6) **AB14-057** – Resolution Adopting Contract for MDRT Environmental Consultant Perteet

Mr. Williamson

7) **AB14-058** – Resolution Adopting Contract for MDRT Fiscal Analysis Consultant Henderson, Young & Company

Mr. Williamson

8) **AB14-059** – Resolution Adopting Contract for MDRT Civil Engineer RH2

Mr. Williamson

9) **AB14-060** – Resolution Relating to Small Contract Purchases

Ms. Morris

DEPARTMENT REPORTS:

MAYOR’S REPORT:

COUNCIL REPORTS:

A. Council Standing Committees and Regional Committees

- Councilmember Benson - Budget, Finance, Administration Committee; South County Area Transportation Board SCATBd); South East Area Transportation Solutions (SEATS) Coalition; Mental Illness and Drug Dependency Oversight Committee
- Councilmember Edelman - Planning and Community Service Committee; Public Issues Committee (PIC)
- Councilmember Dedy - Cemetery and Parks Committee; Growth Management Planning Council (GMPC)
- Councilmember Taylor, Chair - Public Works Committee; Public Safety Committee
- Councilmember Morgan - Water Resource Inventory Area Committee (WRIA 9)

ATTORNEY REPORT:

PUBLIC COMMENTS:

CONSENT AGENDA:

10) Claim Checks – June 5, 2014, No. 40949 through No. 41006 in the amount of \$86,783.20

11) Minutes – Council Minutes of May 15, 2014

EXECUTIVE SESSION: To discuss with legal counsel pending litigation pursuant to RCW 42.30.110(1)(i)

ADJOURNMENT:

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION		
SUBJECT: AB14-052 Public Hearing for the 2015-2020 Six Year Transportation Improvement Program.	Agenda Date: June 5, 2014	
	AB14-052	
	Mayor Dave Gordon	
	City Administrator	
	City Attorney Carol Morris	
	City Clerk – Brenda L. Martinez	
	Community Development – Stacey Welsh	
	Finance – May Miller	
	Economic Development – Andy Williamson	
	Parks/Natural Resources – Aaron Nix	
Cost Impact (see also Fiscal Note): Planning for various budgets	Police – Chief Kiblinger	
Fund Source: Various	Public Works – Seth Boettcher	X
Timeline: As per individual project schedules	Court Administrator – Stephanie Metcalf	
Agenda Placement: <input type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input checked="" type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: 2015-2020 Six Year Transportation Improvement Program		
<p>SUMMARY STATEMENT: The City is required to update its Six Year Transportation Improvement Program per Revised Code of Washington 35.77.010 and file the Transportation Improvement Program with the Washington State Department of Transportation.</p> <p>Most grant programs require projects to be on the City’s Six Year Transportation Improvement Program. The City is required by State law to update the Transportation Improvement Program prior to July 1st of each year.</p> <p>Resolution to adopt the 2015-2020 Six Year Transportation Improvement Program will be presented on June 19, 2014.</p> <p>FISCAL NOTE (Finance Department): Transportation Improvements are also included as part of the 2015-2020 Capital Improvement Plan, where each project shows sources of both Revenues and expenditures for each project.</p>		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: None – Public Hearing		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
June 5, 2014		

2015-2020 SIX YEAR TRANSPORTATION IMPROVEMENT PROGRAM
EXHIBIT "A"

Rank	Year	Improvement	From	To	Type of Improvement	Length in Miles	Estimated Cost	Funding
1	2015	General Street Improvement	N/A	N/A	Chip sealing, crack sealing, patch work, addressing minor safety problems	N/A	\$30,000/year; \$180,000 total	Local City Funds
2	2018	Roberts Drive/SR 169 Roundabout	N/A	N/A	Two lane Roundabout	N/A	\$ 7,070,000	Developer Mitigation and Grant
3	2015	Roberts Drive Rehabilitation	Sunny Ln.	S.R. 169	Grind, patch, replace panels, crack sealing, shoulder reinforcement	1.10	\$ 1,520,000	Pavement Preservation Grant, Local City Funds
4	2015	Grant Matching Fund	N/A	N/A	Matching funds for grants	N/A	\$40,000/year; \$240,000 total	Local City Funds
5	2015	Rock Creek Bridge	75' west of Rock Creek Bridge	Sunny Ln.	Replace barriers, add lead in guard rails, concrete surface treatment and attached pedestrian walkway	0.12	\$ 527,000	TIB Grant, Developer Mitigation, Local City Funds
6	2018	Lawson Street Sidewalk, Ph. II	6th Ave.	Newcastle Dr.	5-foot sidewalk on the north side of Lawson Street	0.19	\$ 356,000	Grant/ TIB, Grant/Safe Routes to School, Developer Mitigation
7	2015	Jones Lake Road	S.R. 169	Railroad Ave.	Patching and overlay	0.29	\$ 122,000	Grant/ TIB, Local City Funds
8	2017	228th/224th/216th Chip Seal	SE 312th St.	Covington-Sawyer Road	Patching and chip sealing (excluding in front of Kentlake Highlands & Fire Station)	1.46	\$ 129,000	Grant/ TIB, Local City Funds
9	2018	232nd Ave. SE Overlay or Chip Seal	SE 288th St.	SE 293rd St.	Patching and overlay	0.29	\$ 143,000	Grant/ TIB, Local City Funds
10	2015	Sidewalk Safety	Railroad Ave. @ Museum	Commission St. behind Museum	Install decorative sidewalk and concrete sidewalk, ADA improvements	0.04	\$ 135,000	Grant/Pedestrian, Museum In-Kind Contribution, Local City Funds

2015-2020 SIX YEAR TRANSPORTATION IMPROVEMENT PROGRAM
EXHIBIT "A"

Rank	Year	Improvement	From	To	Type of Improvement	Length in Miles	Estimated Cost	Funding
11	2019	Morgan Creek Neighborhood Roads Preservation	N/A	N/A	Seal Coat	1.19	\$ 97,000	Local City Funds
TOTAL ALL PROJECTS							\$ 10,519,000	

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION		
SUBJECT:	Agenda Date: June 5, 2014	AB14-053
AB14-053 Ordinance No. 14-1029, amending the Black Diamond Municipal Code provisions relating to Development Agreements.	Mayor Dave Gordon	
	City Administrator	
	City Attorney Carol Morris	
	City Clerk – Brenda L. Martinez	
	Community Development – Stacey Welsh	X
	Finance – May Miller	
	Economic Development – Andy Williamson	
	Parks/Natural Resources – Aaron Nix	
	Police – Chief Kiblinger	
	Public Works – Seth Boettcher	
Cost Impact (see also Fiscal Note): N/A	Court Administrator – Stephanie Metcalf	
Fund Source:	Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator	
Timeline:	Attachments: Ordinance No. 14-1029, RCW 36.70B.170, BDMC Ch. 18.66	
SUMMARY STATEMENT:		
<p>State law, RCW 36.70B.170(1), authorizes a city to enter into a development agreement with a person having ownership or control of real property within its jurisdiction. The City code contains provisions related to Development Agreements in BDMC Chapter 18.66. The City Attorney has advised that the code be amended to be more consistent with state law.</p> <p>Staff is looking for policy direction from the Council regarding the number of years as shown in placeholders “_____() years” on pages 2 and 4 of the ordinance.</p> <p>FISCAL NOTE (Finance Department): N/A</p>		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: Discussion by the Planning & Community Services Committee at their June meeting.		
RECOMMENDED ACTION: MOTION to approve Ordinance No. 14-1029, relating to land use and zoning, amending the Black Diamond Municipal Code provisions relating to development agreements, requiring consistency between existing development regulations and development agreements, identifying the elements of an application of a development agreement, describing the procedure for processing development agreements, clarifying the effect, format, requirements for public hearing, recording and appeals; amending BDMC Section 18.66.010; repealing Section 18.66.020; adding new Sections		

18.66.020, 18.66.030, 18.66.040 and 18.66.050 and establishing an effective date.

RECORD OF COUNCIL ACTION

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
June 5, 2014		

ORDINANCE NO. 14-1029

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING THE BLACK DIAMOND MUNICIPAL CODE PROVISIONS RELATING TO DEVELOPMENT AGREEMENTS, REQUIRING CONSISTENCY BETWEEN EXISTING DEVELOPMENT REGULATIONS AND DEVELOPMENT AGREEMENTS, IDENTIFYING THE ELEMENTS OF AN APPLICATION OF A DEVELOPMENT AGREEMENT, DESCRIBING THE PROCEDURE FOR PROCESSING DEVELOPMENT AGREEMENTS, CLARIFYING THE EFFECT, FORMAT, REQUIREMENTS FOR PUBLIC HEARING, RECORDING AND APPEALS; AMENDING BDMC SECTION 18.66.010; REPEALING SECTION 18.66.020; ADDING NEW SECTIONS 18.66.020, 18.66.030, 18.66.040 AND 18.66.050 AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the process in chapter 18.66 BDMC on the subject of development agreements is inconsistent with state law (RCW 36.70B.170(1)), which requires that “a development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter 36.70A RCW”; and

WHEREAS, state law does not allow the City’s development regulations to be “modified in the development agreement” (as currently provided in BCMC Section 18.66.020); and

WHEREAS, chapter 18.66 BDMC does not clearly state that development agreements are discretionary, the purpose for which such agreements should be used, the procedure for processing development agreements and the manner in which appeals of development agreement may be filed; and

WHEREAS, the SEPA Responsible Official has determined that this Ordinance is categorically exempt from SEPA as affecting only procedural and no substantive standards, pursuant to WAC 197-11-800(19); and

WHEREAS, the City Council considered this Ordinance during its regular City Council meeting on June 5, 2014;

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Amendment of Section 18.66.010. Section 18.66.010 of the Black Diamond Municipal Code is hereby amended to read as follows:

18.66.010 Intent and Discretionary Nature.

The purpose of this chapter is to authorize the use of development agreements, consistent with RCW 36.70B.170 through RCW 36.70B.210. ~~as authorized by state law, as a means to document conditions and procedures for certain types of development and to thereby provide greater certainty to the city, applicants and the public regarding how property will be developed. Development agreements may be used for any type of proposals but are anticipated to be applied most often to master planned development per chapter 18.98 and to other large, complex, phased, and/or sensitive development proposals where useful.~~

The City may, but under no circumstances is required to, enter into a development agreement with a person having ownership or control of real property within the City. The development agreement may address such project elements as those set forth in RCW 36.70B.170B(3). The development agreement shall be consistent with the applicable development regulations of the City. The consideration provided by the property owner for the City's decision to enter into the development agreement may vary, depending on the benefit the development agreement will provide to the City and/or the public in general.

Section 2. Repeal of Section 18.66.020. Section 18.66.020 of the Black Diamond Municipal Code is hereby repealed.

Section 3. Adoption of new Section 18.66.020. A new section 18.66.020 is hereby added to the Black Diamond Municipal Code:

18.66.020 Form of Agreement, Effect and General Provisions.

A. Form. All development agreements shall be on the standard form approved in advance by the City Attorney for this purpose.

B. Effect. Development agreements are not project permit applications and are not subject to the permit processing procedures in chapter 18.14 of the BDMC. A development agreement shall constitute a binding contract between the City and the property owner and the subsequent owners of any later-acquired interests in the property identified in the development agreement.

C. Limitations. Any provision of the development agreement which requires the City to: (1) refrain from exercising any authority; (2) forego adoption of any development regulations affecting the property identified in the agreement; (3) allow vesting beyond the applicable deadlines for a phased development; shall be limited to a period of ____ (__) years. The development agreement shall also contain a proviso that the City may, without incurring any liability, engage in action that would otherwise be a breach if the City makes a determination on the record that the action is necessary to avoid a serious threat to public health and safety, or if the action is required by federal or state law.

D. Developer's Compliance. The development agreement shall include a clause stating that the City's duties under the agreement are expressly conditioned upon the property owner's substantial compliance with each and every term, condition, provision and/or covenant in the development agreement, all applicable federal, state and local laws and regulations and the property owner's obligations as identified in any approval or project permit for the property identified in the development agreement.

E. No Third Party Rights. Except as otherwise provided in the development agreement, the development agreement shall create no rights enforceable by any party who/which is not a party to the development agreement.

F. Liability. The development agreement shall include clause providing that any breach of the development agreement by the City shall give right only to damages under state contract law and shall not give rise to any liability under chapter 64.40 RCW, the Fifth and Fourteenth Amendments to the U.S. Constitution or similar state constitutional provisions.

Section 4. A new Section 18.66.030 is hereby added to the Black Diamond Municipal Code, which shall read as follows:

18.66.030 Application Requirements. A complete application for a development agreement shall consist of the following:

- A. Name, address, telephone number and e-mail address (if any) of the property owner. If the applicant is not the property owner, the applicant must submit a verified statement from the property owner that the applicant has the property owner's permission to submit the application;
- B. Address, parcel number and legal description of the property proposed to be subject to the development agreement;
- C. Recent title report confirming that the property identified in the application is owned by the applicant/property owner;
- D. Identification of any application (project permit application, comprehensive plan amendment application, development regulation amendment application) that is related to the proposed development agreement;
- E. SEPA Checklist;
- F. A completed application form and the application fee established by the City for this purpose; and

G. Any other information requested by the Community Development Director relevant to the processing of the development agreement.

Section 5. A new Section 18.66.040 is hereby added to the Black Diamond Municipal Code, which shall read as follows:

18.66.040. Phasing.

A. In order to phase a project to extend the vested rights associated with an underlying project permit application, a development agreement is required. This ensures the availability of public facilities and services to all of the property in the identified individual phases, allows tracking of the available capacity of public facilities and utilities during each phase of construction, and with the extension of the vested rights associated with the project, provides certainty to the developer in the subsequent development approval process.

B. The deadlines in the City's code relating to each type of project permit application must be consulted to establish the baseline vesting period. The City is not required to extend the vesting period. If the City decides to do so through a development agreement, it must be in exchange for the property owner's provision of corresponding benefits to the City in the form of, for example, contributions to public facilities and amenities over and above what would normally be required. In any event, the City shall not allow vesting to extend beyond the established ____ (____) year period after approval of the project permit application.

C. A development agreement for a phased development (such as a subdivision) shall include (in addition to all of the information in Section 18.66.030), all of the following:

1. identification of the phasing schedule;
2. identification of the number of phases and all lots included in each phase;
3. identification of the approximate dates for construction of public streets, public utilities and other improvements in each phase;
4. identification of the approximate dates for commencement of development of each lot, lot sales and building occupancy;
5. identification of the benefits that the property owner will provide to the City in exchange for permission to phase the development according to the proposed schedule;
6. establishment of the deadline for the property owner to submit development applications, including building permit applications, for each phase;
7. a description of the manner in which each phase is designed such that all site requirements are satisfied independently of phases yet to be given final approval and constructed;

8. a description of the manner in which the property owner will ensure that adequate public facilities are available when the impact of development occurs. The property owner shall acknowledge in the development agreement that if the demand for public facilities or services needed to accommodate a subsequent development phase increases following the issuance of a development permit for a prior phase in the approval process, or if public facilities or services included in a concurrency or SEPA determination are not constructed as scheduled in the City's capital facilities plan, final development approval may have to be delayed for future phases pending the achievement of the adopted levels of service.

Section 6. A new Section 18.66.050 is hereby added to the Black Diamond Municipal Code, which shall read as follows:

18.66.050 Processing Procedures.

A. Consolidation. Whenever possible, the development agreement shall be consolidated for processing with an underlying project permit application or other application for a legislative approval. If the development agreement is consolidated with a project permit application, the property owner must agree to waive the deadline in RCW 36.70B.080 and BDMC Section 18.14.020.A for issuance of a final decision on the underlying application, as well as the prohibition on no more than one open record hearing and one closed record hearing on the underlying project permit application in RCW 36.70B.060(3) and BDMC Sections 2.30.100 and 18.08.070.

B. Public Hearing. While the Hearing Examiner may provide a recommendation on a development agreement (even if the Hearing Examiner makes the final decision on the underlying project permit application), the City Council shall make the final decision whether to approve a development agreement by ordinance or resolution after a public hearing. Modifications to a development agreement shall be in writing, signed by the duly authorized representatives of the parties, be consistent with this chapter and follow the same procedures set forth in this chapter.

C. Appeal. A development agreement associated with an underlying project permit application may be appealed in the same manner and within the same deadline as the underlying project permit application. A development agreement associated with a legislative approval, such as a comprehensive plan amendment, may be appealed in the same manner and within the same deadline as the legislative approval.

4. Recording Against the Property. The City shall record the development agreement against the property with the real property records of the King County Department of Records and Elections. During the term of the

agreement, it is binding upon the owners of the property and any successors in interest to such property.

Section 7. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 8. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 9. Effective Date. This Ordinance shall be effective five days after publication as provided by law.

PASSED by the Council and approved by the Mayor of the City of Black Diamond, this ___th day of June, 2014.

CITY OF BLACK DIAMOND

Mayor Dave Gordon

ATTEST/AUTHENTICATED:

Brenda Martinez, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Carol A. Morris, City Attorney

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:

EFFECTIVE DATE:
ORDINANCE NO:

RCW 36.70B.170

Development agreements — Authorized.

(1) A local government may enter into a development agreement with a person having ownership or control of real property within its jurisdiction. A city may enter into a development agreement for real property outside its boundaries as part of a proposed annexation or a service agreement. A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter 36.70A RCW.

(2) RCW 36.70B.170 through 36.70B.190 and section 501, chapter 347, Laws of 1995 do not affect the validity of a contract rezone, concomitant agreement, annexation agreement, or other agreement in existence on July 23, 1995, or adopted under separate authority, that includes some or all of the development standards provided in subsection (3) of this section.

(3) For the purposes of this section, "development standards" includes, but is not limited to:

(a) Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;

(b) The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;

(c) Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW;

(d) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;

(e) Affordable housing;

(f) Parks and open space preservation;

(g) Phasing;

(h) Review procedures and standards for implementing decisions;

(i) A build-out or vesting period for applicable standards; and

(j) Any other appropriate development requirement or procedure.

(4) The execution of a development agreement is a proper exercise of county and city police power and contract authority. A development agreement may obligate a party to fund or provide services, infrastructure, or other facilities. A development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

[1995 c 347 § 502.]

Notes:

Chapter 18.66

DEVELOPMENT AGREEMENTS

Sections:

18.66.010 Intent.

18.66.020 Applicability and procedures.

18.66.010 Intent.

The purpose of this chapter is to authorize the use of development agreements, as authorized by state law, as a means to document conditions and procedures for certain types of development and to thereby provide greater certainty to the city, applicants and the public regarding how property will be developed. Development agreements may be used for any type of proposals but are anticipated to be applied most often to master planned development, per Chapter 18.98, and to other large, complex, phased, and/or sensitive development proposals where useful.

(Ord. No. 909, § 2 (Exh. A), 6-18-2009)

18.66.020 Applicability and procedures.

A. The city may enter into development agreements with property owners as authorized by RCW 36.70B.170 et seq. Development agreements are intended to be used to address and establish development standards, mitigation requirements, vesting provisions and review procedures that will apply to and govern large, complex and/or phased development proposals located within the city during the term of any agreement.

B. Any development agreement shall be consistent with applicable city development regulations except as such regulations may be modified in the development agreement. For purposes of this chapter, "development standards" include but are not limited to:

1. Project elements such as uses, densities and intensities of land uses and buildings;
2. Mitigation measures, conditions and other requirements identified pursuant to SEPA (RCW 43.21 C);

3. Design standards such as maximum heights, setbacks, landscaping and other development features;

4. Road and sidewalk standards;

5. Affordable housing;

6. Water, sewer, storm drainage, water quality, and other infrastructure and utility requirements;

7. Parks and open space preservation, and recreation facilities;

8. Phasing of development and construction;

9. Development review processes, procedures and standards for implementing decisions, including methods of reimbursement to the city for review processes;

10. A build-out or vesting period for applicable development standards;

11. A process for amending the development agreement; and

12. Any other appropriate development requirement or procedure.

C. During the term specified in the development agreement, a development permit or approval issued by the city shall be consistent with the standards in such agreement. The standards contained in the development agreement shall govern during the term of the agreement and may not be subject to an amendment of city development standards or regulations adopted after the effective date of the development agreement. Provided, that the development agreement shall reserve to the city the authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

D. A development agreement shall be recorded with the real property documents of King County. During the term of the agreement, it shall be binding on the parties and their successors, including a city that assumes jurisdiction through incorporation or annexation of the area or property subject to the development agreement. Unless terminated, the agreement shall be enforceable by a party to the agreement.

E. A development agreement shall be reviewed and adopted following a public hearing pursuant to the procedures and requirements set forth in Chapter 18.08.

(Ord. No. 909, § 2 (Exh. A), 6-18-2009)

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION		
SUBJECT: AB14-054 Resolution No. 14-951, authorizing the Mayor to execute an amendment of the current contract with Parametrix, Inc. to serve as the survey consultant to the MDRT	Agenda Date: June 5, 2014	
	AB14-054	
	Mayor Dave Gordon	
	City Administrator	
	City Attorney Carol Morris	
	City Clerk – Brenda L. Martinez	
	Community Development – Stacey Welsh	
	Finance – May Miller	
	Economic Development – Andy Williamson	X
	Parks/Natural Resources – Aaron Nix	
Police – Chief Kiblinger		
Public Works – Seth Boettcher		
Court Administrator- Stephanie Metcalf		
Cost Impact: Variable		
Fund Source: Pass-through expense to Yarrow Bay		
Timeline: 3 month extension to contract		
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Resolution No. 14-951; Contract Extension; Resolution No. 12-820		
<p>SUMMARY STATEMENT: This resolution is extend the contract via Resolution 12-820, for engineering services with Parametrix, Inc. that are due to expire June 30, 2014. The city will be starting the process under chapter 39.80 RCW titled Contracts for Architectural and Engineering Services. The City has decided to extend expiration date to September 30, 2014 on the existing contract while this process is proceeding.</p> <p>FISCAL NOTE (Finance Department): Per the Funding Agreement, all cost associated will the contract will be reimbursed by the Developer.</p>		
COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: MOTION to adopt Resolution 14-951, authorizing the Mayor to execute an amendment to the contract with Parametrix, Inc. to serve as surveying consultant to the MDRT		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
June 5, 2014		

RESOLUTION NO. 14-951

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE THE FIRST ADDENDUM TO THE PARAMETRIX, INC. CONTRACT TO SERVE AS THE SURVEYING CONSULTANT TO THE MASTER DEVELOPMENT REVIEW TEAM

WHEREAS, on July 9, 2012 the Consultant and the City entered into a contract via Resolution No. 12-820 for on-going services as described in that Contract; and

WHEREAS, the Contract will soon expire, and the City would like to extend the contract while it complies with state law for the selection of consultants and the execution of new contracts with the City;

WHEREAS, the Consultant agrees to continue its performance of services under the same terms and conditions in the original Contract;

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 the first addendum to the Parametrix, Inc. contract substantially in the form attached hereto as Exhibit A.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 5TH DAY OF JUNE 2014.

CITY OF BLACK DIAMOND:

Dave Gordon, Mayor

Attest:

Brenda L. Martinez, City Clerk

**FIRST AMENDMENT TO CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF BLACK DIAMOND AND
Parametrix, Inc.**

THIS FIRST AMENDMENT is made to the Consultant Services Contract via Resolution No. 12-820 executed between the City of Black Diamond, a Washington municipal corporation (hereinafter the "City"), and Parametrix (hereinafter the "Consultant,") a corporation organized under the laws of the State of Washington, located and doing business at 1019 – 39th Avenue S.E., Suite 100, Puyallup, WA 98374.

RECITALS

WHEREAS, on **July 9, 2012**, the Consultant and the City entered into a contract for on-going services as described in that Contract; and

WHEREAS, the Contract will soon expire, and the City would like to extend the contract while it complies with state law for the selection of consultants and the execution of new contracts with the City;

WHEREAS, the Consultant agrees to continue its performance of services under the same terms and conditions in the original Contract;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

Section 1. No Change to Terms and Conditions. With the exception of the expiration date of the Contract between the City and the Consultant, all terms and conditions of the Contract shall remain the same.

Section 2. New Expiration Date. The parties agree to extend the expiration date of the Contract June 30, 2014 to **September 30, 2014**.

IN WITNESS WHEREOF, the parties have executed this Agreement on this **5th day of June, 2014**.

CONSULTANT

CITY OF BLACK DIAMOND

By: _____
Kathleen Cassou
Its: Survey Manager

By: _____
Dave Gordon, Mayor

Consultant: Parametrix Inc.

APPROVED AS TO FORM:

Carol L. Morris, City Attorney's Office

ATTEST:

Brenda Martinez, City Clerk

RESOLUTION NO. 12-820

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT
WITH PARAMETRIX TO SERVE AS THE SURVEY
CONSULTANT TO THE MASTER DEVELOPMENT REVIEW
TEAM**

WHEREAS, in 2010, the City Council approved Master Planned Development permits for The Villages and Lawson Hills MPDs; and

WHEREAS, in 2011, the City Council approved Development Agreements for The Villages and Lawson Hills MPDs; and

WHEREAS, as part of its consideration and approval of the Development Agreements, the City also entered into a new Funding Agreement with BD Village Partners and BD Lawson Partners; and

WHEREAS, the Funding Agreement calls for the establishment of a Master Development Review Team (MDRT), to consist of City staff and outside consultants; and

WHEREAS, the City does not have on sufficient staff resources nor the expertise to provide survey review services to meet the needs of the MDRT; and

WHEREAS, private firms providing survey review services were invited to submit Statements of Qualifications for review and consideration; and

WHEREAS, a panel consisting of staff and one City Council member reviewed the submittals, subsequently interviewed three firms and then recommended Parametrix as the firm most capable of providing survey review services as desired;

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 Parametrix to provide survey review services for the MDRT.

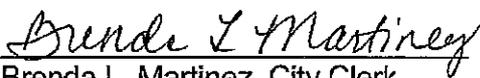
PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A SPECIAL MEETING THEREOF, THIS 9TH DAY OF JULY, 2012.

CITY OF BLACK DIAMOND:



Rebecca Olness, Mayor

Attest:



Brenda L. Martinez, City Clerk

CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the or this "Agreement"), for reference purposes only, is dated July 10, 2012 and is entered into by and between

CITY OF BLACK DIAMOND, WASHINGTON (the "City")

Physical Address: 24301 Roberts Drive

Mailing Address: PO Box 599

Black Diamond, WA 98010

Contact: _____ Phone: 360-886-5700 Fax : 360-886-2592

and

Parametrix ("Consultant")

1019 39th Avenue SE, Suite 100

Puyallup, WA 98374

Contact: Kathleen Cassou Phone: 253-604-6600 Fax: 253-604-6799

Tax Id No.: 91-0914810

for non-exclusive on-call professional services in connection with the following project:

Master Development Survey Review Services on a Task Order basis (the "Project").

TERMS AND CONDITIONS

1. Services by Consultant

1.1 Consultant has been retained by the City to provide professional survey on-call services as generally described in the Scope of Work attached to this Agreement as Exhibit "A". The services performed by Consultant shall not exceed the Scope of Work nor shall the Consultant be entitled to a greater amount of compensation as that provided in this Agreement without the prior written authorization of the City.

1.2 The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to this Agreement.

1.3 Consultant represents and warrants that it, its staff to be assigned to the Project, and its subconsultants and their staff have the requisite training, skill, and experience necessary to provide the services required by this Agreement and are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant and its subconsultants under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

2. Schedule of Work

2.1 The City will issue an on-call task request for each project task for which the City requires Consultant services. No work shall be commenced by Consultant under this Agreement except pursuant to such an on-call task request issued by the City in the form attached as Exhibit "B." Consultant shall perform the services described in the on-call task request in accordance with the schedule and scope of work set forth in the on-call task request (the "Task Scope of Work").

2.2 Consultant will work within the project schedule set forth in the on-call task request and will diligently proceed with the work and shall assure that it, and its subconsultants, will have adequate staffing at all times in order to complete the Scope of Work in a timely manner. If factors beyond Consultant's control that could not have been reasonably foreseen as of the date of this Agreement cause delay, then the parties will negotiate in good faith to determine whether an extension is appropriate. The Consultant shall provide the City with written notice of any delay, or potential delay, that may trigger the need for a time extension within 3 business days after the Consultant becomes aware of the delay or potential delay.

2.3 Consultant is authorized to proceed with services upon receipt of a signed task order.

3. Compensation

3.1 Rates. Compensation for the services provided pursuant to each on-call task request shall be on a time and materials basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit "C". Consultant may adjust the billing rates and reimbursable expenses once each calendar year on or after January 1st by providing the City with written notice of the adjusted rates and expenses no less than (30) thirty days prior to the effective date of such adjustment. The billing rates and reimbursable expenses for on-call task orders issued prior to receipt of written notice of the rate/expense adjustment by the City shall not be affected by the adjustment.

3.2 Other. In the event that after commencement of work, the Consultant anticipates that the work for an on-call task request will exceed the initial amount authorized, Consultant shall promptly notify the City and provide the City with whatever documents or information is necessary to request approval of any amounts in excess thereof.

4. Payment

4.1 Consultant 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.

4.2 All invoices shall be paid by City warrant within sixty (60) days of actual receipt by the City of an invoice conforming in all respects to the terms of this Agreement.

4.3 Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Consultant shall make copies available to the City on request.

4.4 If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

5. Discrimination and Compliance with Laws

5.1 Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

5.2 Consultant and its subconsultants shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

5.3 Any violation of this Section 5 shall be a material breach of this Agreement and grounds for immediate cancellation, termination, or suspension of the Agreement by the City, in whole or in part, and may result in Consultant's ineligibility to conduct further work for the City.

6. Suspension and Termination of Agreement

6.1 The City reserves the right to terminate or suspend this Agreement at any time, without cause, by giving Consultant notice in writing ten (10) days prior to the termination or suspension date. In the event of termination, all finished or unfinished reports, or other material prepared by Consultant pursuant to this Agreement, shall be submitted to the City. In the event the City terminates this Agreement prior to completion without cause, Consultant may complete such analyses and records as may be necessary to place its files in order. Consultant shall be entitled to compensation for any satisfactory work completed on the Project prior to the date of suspension or termination.

6.2 Any notice from the City to Consultant regarding the suspension of this Agreement shall specify the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to Consultant's reasonable expenses and shall be subject to verification. Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

7. Standard of Care

7.1 Consultant represents and warrants that it has the requisite training, skill, and experience necessary to provide the services under this Agreement and is appropriately

accredited and licensed by all applicable agencies and governmental entities. Services Consultant provides under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances. Consultant understands and agrees that the services rendered pursuant to this Agreement are for the sole exclusive benefit of the City and that no third party shall have authority to authorize, approve, direct or control any of the services rendered to the City pursuant to this Agreement.

8. Ownership of Work Product

8.1 Ownership of the originals of any reports, data, studies, surveys, charts, maps, drawings, specifications, figures, photographs, memoranda, and any other documents which are developed, compiled, or produced as a result of this Agreement, whether or not completed, shall be vested in the City and shall be submitted to the City upon termination of this Agreement. Any reuse of these materials by the City for projects or purposes other than those that fall within the scope of this Agreement and the Project to which it relates, without written concurrence by Consultant, will be at the sole risk of the City.

8.2 The City acknowledges Consultant's documents as instruments of professional service. Nevertheless, the documents prepared under this Agreement shall become the property of the City upon completion of the work. The City agrees to hold harmless and indemnify Consultant against all claims made against Consultant for damage or injury, including defense costs, arising out of the City's reuse of such documents beyond the use for which they were originally intended without the written authorization of Consultant.

8.3 Methodology, software, logic, and systems developed under this Agreement are the property of Consultant and the City, and may be used as either Consultant or the City see fit, including the right to revise or publish the same without limitation.

9. Indemnification/Hold Harmless

9.1 Consultant shall defend, indemnify, and hold the City, its officers, officials, employees and agents harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising directly or indirectly out of or resulting from the acts, errors, or omissions of Consultant or its subconsultants in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. PROVIDED, HOWEVER, THAT IF ANY SUCH CLAIMS, INJURIES, DAMAGES, LOSSES OR SUITS RESULT FROM THE CONCURRENT NEGLIGENCE OF CONSULTANT AND THE CITY, IT IS EXPRESSLY AGREED THAT CONSULTANT'S OBLIGATIONS AND INDEMNITY UNDER THIS PARAGRAPH SHALL BE EFFECTIVE ONLY TO THE EXTENT OF CONSULTANT'S NEGLIGENCE.

10. Insurance

10.1 Consultant shall procure and maintain for the duration of the Agreement, and shall provide proof satisfactory to the City that such insurance is procured and maintained by each of its subconsultants, 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 Consultant, its agents, representatives, or employees.

10.2 Consultant shall procure and maintain the following types and amounts of insurance:

a. 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. This insurance shall have a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors, personal injury, and advertising injury. This insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

d. Professional Liability insurance appropriate to Consultant's profession, with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

10.3 The Automobile Liability, Commercial General Liability, and Professional Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

a. Consultant's insurance coverage shall be primary insurance vis-à-vis the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess over Consultant's insurance and shall not contribute with it.

b. Consultant's insurance shall be endorsed to state that coverage shall not be cancelled, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

10.4 The City shall be named as an additional insured under Consultant's Automobile Liability and Commercial General Liability insurance policies with respect to the work to be performed for the City pursuant to this Agreement.

10.5 Insurance shall be placed with insurers with a current A.M. Best rating of not less than A:VII.

10.6 Declaration pages issued by the insurance carriers for the policies mentioned in this Section 10 showing such insurance to be in force shall be filed with the City not less than ten (10) days following both parties signing this Agreement and before commencement of the work. In addition, the City may request, in writing, a full copy from Consultant of any insurance policy Consultant must procure and maintain pursuant to this Agreement and Consultant must provide such copy to the City within ten (10) days of Consultant's receipt of the City's request. Any policy or required insurance written on a claims-made basis shall provide coverage as to all claims arising out of the services performed under this Agreement and for three (3) years following completion of the services to be performed. It shall be a material breach of this

Agreement for Consultant to fail to procure and maintain the insurance required by this Section 10 or to provide the proof of such insurance to the City as provided for in this Agreement.

11. Assigning or Subcontracting

11.1 Consultant 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, which consent may be withheld at the sole discretion of the City.

12. Independent Contractor

12.1 Consultant and its subconsultants are, and shall be at all times during the term of this Agreement, independent contractors.

13. Notice

13.1 All notices required by this Agreement shall be considered properly delivered when personally delivered, when received by facsimile, or on the third day following mailing, postage prepaid, certified mail, return receipt requested to:

City: City Administrator
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
Fax: 360-886-2592

With a copy to: Chris Bacha,
City Attorney
Kenyon Disend, PLLC
11 Front Street South
Issaquah, WA 98027
Fax: 425-392-7071

Consultant: Kathleen Cassou
Parametrix, Inc.
1019 39th Ave SE, Suite 100
Puyallup, WA 98374
Fax: 253-604-6799

14. Disputes

14.1 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, Kent, Washington.

15. Attorney Fees

15.1 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 attorney fees from the other party.

16. General Administration and Management on Behalf of the City

16.1 The City Administrator for the City, or his/her designee (the contract Administrator) shall review and approve Consultant's invoices to the City under this Agreement and shall have primary responsibility for overseeing and approving work or services to be performed by Consultant. Consultant understands and agrees that any and all work to be performed pursuant to this Agreement must be approved in advance by the contract Administrator. No third party, including the project applicant, shall have any direct control or influence over the services performed under this Contract.

17. Extent of Agreement/Modification

17.1 This Agreement, together with any 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. After City Council approval, this Agreement shall be in effect as of June 14, 2012, and shall remain in effect until June 30, 2014, unless sooner terminated as set forth herein. This Agreement may only be amended, modified, or added to by written instrument properly signed by both parties. The parties acknowledge the general contract rule that a clause in a contract, such as this one, prohibiting oral modifications is itself generally subject to oral modification. However, in order to ensure certainty as to the terms and conditions of this Agreement, the parties waive this general contract rule.

18. Conflict of Interest; Non-Collusion

18.1 No officer, employee or agent of the City, nor any member of the immediate family of any such officer, employee or agent, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The Consultant shall comply with all federal, state, and City conflict of interest laws, statutes and regulations. The Consultant represents that the Consultant presently has no interest and shall not acquire any interest, direct or indirect, in the project to which this Contract pertains which would conflict in any manner or degree with the performance of the Consultant's services and obligations hereunder. The contractor's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from the project applicant or any affiliate or agent of the project applicant.

18.2 The Consultant warrants and represents that the Consultant has not, nor has any other member, employee, representative, agent or officer of the Consultant, entered into or offered to enter into any combination, collusion or agreement with any person or entity to receive or pay, and that he has not received or paid, any sum of money or other consideration

for the execution of this Contract other than the consideration offered pursuant to the terms and conditions hereof.

CITY OF BLACK DIAMOND

By: Rebecca Olness
Rebecca Olness

Its: Mayor

Date: 7/10/12

CONSULTANT

By: Kathleen Cassou
Printed Name: Kathleen Cassou

Its: Survey Manager

Date: 6/12/12

Attest:

By: Brenda L. Martinez
Brenda L. Martinez
City Clerk

EXHIBIT A
Master Development Review Team
Scope of Survey Work

Primary Task Responsibilities

- Land Use Application Review – Assuring Submittals Meet State and Local Survey Related Requirements and Compliance with Master Development Agreements
 - Road Vacations and Dedications
 - Wetland Buffer Compliance
 - Boundary Line Adjustments
 - Final Plats
 - Short Plats
 - Binding Site Plans
 - Condominium Plats
 - Legal Descriptions
- MDR Team Participation, Meetings, Reports

Supplemental Task Responsibilities

- Horizontal and Vertical Control Verification
 - Establish Network
 - Benchmarks
 - Monument Preservation and Perpetuation
 - DNR Required Monument Destruction Permits
- Boundary
 - Section Subdivision
 - Deed Interpretation
 - Historical Ownership – Chain of Title
 - Riparian Rights
 - Railroad Easements and ROW
- Right of Way
 - Determination and Mapping ROW, Easements, Tracts, etc.
 - ROW Acquisition Assistance
- Construction Support
 - Review of Plans – Constructibility
- Mapping
 - Topographic Mapping and Base Map
 - High Definition – 3D Scanning
 - FEMA Elevation Certificates
 - Wetland Mapping and Buffer Establishment

**EXHIBIT C
CITY OF BLACK DIAMOND
MASTER DEVELOPMENT REVIEW TEAM
SURVEY BILLING RATE SCHEDULE**

<u>Classification</u>	<u>Hourly Billing Rate</u>
Principal	\$215.00
Survey Division Manager	\$175.00
Survey Project Manager	\$145.00
Survey Office Technician	\$85.00 - \$104.00
Survey CADD Technician	\$72.00 - \$85.00
Field Survey Party Chief	\$98.00 - \$105.00
Field Survey Crew Member	\$65.00 - \$78.00
Administrative Project Support	\$80.00
Expert Witness Testimony	\$250.00

Direct project expenses and reproduction costs are billed at cost plus 15%
Mileage expense is billed at current approved IRS mileage rate
Lodging and PerDiem costs are billed at current GSA rates
Survey equipment except laser scanner billed at \$150/day
Laser Scanner is billed at \$97.40/hour

Prevailing Wage Rates apply to construction surveying on all Public Works projects (See Washington State Prevailing Wage Schedule for each County)

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION		
SUBJECT: AB14-055 Resolution No. 14-952, authorizing the Mayor to execute an amendment of the current contract with Parametrix, Inc. to serve as the traffic engineering consultant to the MDRT Cost Impact: Variable Fund Source: Pass-through expense to Yarrow Bay Timeline: 3 month extension to contract	Agenda Date: June 5, 2014	
	AB14-055	
	Mayor Dave Gordon	
	City Administrator	
	City Attorney Carol Morris	
	City Clerk – Brenda L. Martinez	
	Community Development – Stacey Welsh	
	Finance – May Miller	
	Economic Development – Andy Williamson	X
	Parks/Natural Resources – Aaron Nix	
Police – Chief Kiblinger		
Public Works – Seth Boettcher		
Court Administrator- Stephanie Metcalf		
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Resolution No. 14-952; Resolution No. 12-791; Contract Extension		
<p>SUMMARY STATEMENT: This resolution is extend the contract via Resolution 12-791, for traffic engineering services with Parametrix, Inc. that are due to expire June 30, 2014. The city will be starting the process under chapter 39.80 RCW titled Contracts for Architectural and Engineering Services. The City has decided to extend expiration date to September 30, 2014 on the existing contract while this process is proceeding.</p> <p>FISCAL NOTE (Finance Department): Per the Funding Agreement, all cost associated will the contract will be reimbursed by the Developer.</p>		
COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: MOTION to adopt Resolution 14-952, authorizing the Mayor to execute an amendment to the contract with Parametrix, Inc. to serve as traffic engineering consultant to the MDRT.		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
June 5, 2014		

RESOLUTION NO. 14-952

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE THE FIRST ADDENDUM TO THE PARAMETRIX, INC. CONTRACT TO SERVE AS THE TRAFFIC ENGINEERING CONSULTANT TO THE MASTER DEVELOPMENT REVIEW TEAM

WHEREAS, on April 19, 2012 the Consultant and the City entered into a contract via Resolution No. 12-791 for on-going services as described in that Contract; and

WHEREAS, the Contract will soon expire, and the City would like to extend the contract while it complies with state law for the selection of consultants and the execution of new contracts with the City; and

WHEREAS, the Consultant agrees to continue its performance of services under the same terms and conditions in the original Contract;

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 the first addendum to the Paramrix, Inc. contract for Traffic Engineering to the MDRT, substantially in the form attached hereto as Exhibit A.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 5TH DAY OF JUNE 2014.

CITY OF BLACK DIAMOND:

Dave Gordon, Mayor

Attest:

Brenda L. Martinez, City Clerk

**FIRST AMENDMENT TO CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF BLACK DIAMOND AND
Parametrix, Inc.**

THIS FIRST AMENDMENT is made to the Consultant Services Contract via Resolution No.12-791 executed between the City of Black Diamond, a Washington municipal corporation (hereinafter the "City"), and Parametrix (hereinafter the "Consultant,") a corporation organized under the laws of the State of Washington, located and doing business at 1019 – 39th Avenue S.E., Suite 100, Puyallup, WA 98374.

RECITALS

WHEREAS, on **April 19, 2012**, the Consultant and the City entered into a contract for on-going services as described in that Contract; and

WHEREAS, the Contract will soon expire, and the City would like to extend the contract while it complies with state law for the selection of consultants and the execution of new contracts with the City;

WHEREAS, the Consultant agrees to continue its performance of services under the same terms and conditions in the original Contract;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

Section 1. No Change to Terms and Conditions. With the exception of the expiration date of the Contract between the City and the Consultant, all terms and conditions of the Contract shall remain the same.

Section 2. New Expiration Date. The parties agree to extend the expiration date of the Contract June 30, 2014 to **September 30, 2014**.

IN WITNESS WHEREOF, the parties have executed this Agreement on this **5th day of June, 2014**.

CONSULTANT

CITY OF BLACK DIAMOND

By: _____
Daniel L. McReynolds
Its: Principal

By: _____
Dave Gordon, Mayor

Consultant: Parametrix Inc.

APPROVED AS TO FORM:

Carol L. Morris, City Attorney's Office

ATTEST:

Brenda Martinez, City Clerk

RESOLUTION NO. 12-791

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH PARAMETRIX TO SERVE AS THE TRAFFIC ENGINEERING CONSULTANT TO THE MASTER DEVELOPMENT REVIEW TEAM.

WHEREAS, in 2010, the City Council approved Master Planned Development permits for The Villages and Lawson Hills MPDs; and

WHEREAS, in 2011, the City Council approved Development Agreements for The Villages and Lawson Hills MPDs; and

WHEREAS, as part of its consideration and approval of the Development Agreements, the City also entered into a new Funding Agreement with BD Village Partners and BD Lawson Partners; and

WHEREAS, the Funding Agreement calls for the establishment of a Master Development Review Team (MDRT), to consist of City staff and outside consultants; and

WHEREAS, the City does not have on staff the full range of expertise to provide traffic engineering to meet the needs of the MDRT; and

WHEREAS, private firms providing traffic engineering services were invited to submit Statements of Qualifications for review and consideration; and

WHEREAS, after the three firms that submitted their qualifications were interviewed by a panel consisting of staff and one City Council member, the panel unanimously recommended Parametrix as the firm most capable of providing traffic engineering services as desired;

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 Parametrix to provide traffic engineering services for the MDRT, substantially in the form attached hereto as Exhibit A.

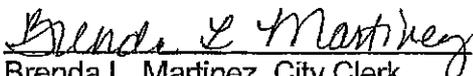
PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 19th DAY OF APRIL,
2012.

CITY OF BLACK DIAMOND:



Rebecca Olness, Mayor

Attest:



Brenda L. Martinez, City Clerk

CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the or this "Agreement"), for reference purposes only, is dated, April 11th, 2012 and is entered into by and between

CITY OF BLACK DIAMOND, WASHINGTON (the "City")
Physical Address: 24301 Roberts Drive
Mailing Address: PO Box 599
Black Diamond, WA 98010

Contact: Andrew Williamson Phone: 360-886-5700 Fax: 360-886-2592

and

Parametrix, Inc.
1019 39th Avenue SE, Suite 100
Puyallup, WA 98374
Contact: Dan McReynolds Phone: 253-604-6600 Fax: 253-604-6799

Tax ID No.: 91-0914810

For non-exclusive on-call professional services for the City of Black Diamond.

TERMS AND CONDITIONS

1. Services by Consultant

1.1 Consultant has been retained by the City to provide professional traffic analysis on-call services generally described in the Scope of Work attached to this Agreement as Exhibit "A." The services performed by Consultant shall not exceed the Scope of Work nor shall the Consultant be entitled to a greater amount of compensation as that provided in this Agreement without the prior written authorization of the City.

1.2 The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to this Agreement.

1.3 Consultant represents and warrants that it, its staff to be assigned to the Project, and its subconsultants and their staff have the requisite training, skill, and experience necessary to provide the services required by this Agreement and are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant and its subconsultants under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

2. Schedule of Work

2.1 The City will issue an on-call task request for each project task for which the City requires Consultant services. No work shall be commenced by Consultant under this Agreement except pursuant to such an on-call task request issued by the City in the form attached as Exhibit "B." Consultant shall perform the services described in the on-call task request in accordance with the schedule and scope of work set forth in the on-call task request.

2.2 Time is of the essence as to the work provided in the Scope of Work. Consultant will diligently proceed with the work and shall assure that it, and its subconsultants, will have adequate staffing at all times in order to complete the Scope of Work in a timely manner. If factors beyond Consultant's control that could not have been reasonably foreseen as of the date of this Agreement cause delay, then the parties will negotiate in good faith to determine whether an extension is appropriate. The Consultant shall provide the City with written notice of any delay, or potential delay, that may trigger the need for a time extension within 3 business days after the Consultant becomes aware of the delay or potential delay.

2.3 Consultant is authorized to proceed with services upon execution of this agreement.

3. Compensation

3.1 Rates. Compensation for the services provided pursuant to each on-call task request shall be on a time and expenses basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit "C". Consultant may adjust the billing rates and reimbursable expenses once each calendar year on or after January 1st by providing the City with written notice of the adjusted rates and expenses no less than (30) thirty days prior to the effective date of such adjustment. The billing rates and reimbursable expenses for on-call task orders authorized prior to receipt of written notice of the rate/expense adjustment by the City shall not be affected by the adjustment.

3.2 Other. In the event that after commencement of work, the Consultant anticipates that the work for an on-call task request will exceed the initial amount authorized, Consultant shall promptly notify the City and provide the City with whatever documentation or information is necessary to request approval of any amounts in excess thereof.

4. Payment

4.1 Consultant 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.

4.2 All invoices shall be paid by City warrant within sixty (60) days of actual receipt by the City of an invoice conforming in all respects to the terms of this Agreement.

4.3 Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Consultant shall make copies available to the City on request.

4.4 If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

5. Discrimination and Compliance with Laws

5.1 Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

5.2 Consultant and its subconsultants shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

5.3 Any violation of this Section 5 shall be a material breach of this Agreement and grounds for immediate cancellation, termination, or suspension of the Agreement by the City, in whole or in part, and may result in Consultant's ineligibility to conduct further work for the City.

6. Suspension and Termination of Agreement

6.1 The City reserves the right to terminate or suspend this Agreement at any time, without cause, by giving Consultant notice in writing ten (10) days prior to the termination or suspension date. In the event of termination, all finished or unfinished reports, or other material prepared by Consultant pursuant to this Agreement, shall be submitted to the City. In the event the City terminates this Agreement prior to completion without cause, Consultant may complete such analyses and records as may be necessary to place its files in order. Consultant shall be entitled to compensation for any satisfactory work completed on the Project prior to the date of suspension or termination.

6.2 Any notice from the City to Consultant regarding the suspension of this Agreement shall specify the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to Consultant's reasonable expenses and shall be subject to verification. Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

7. Standard of Care

7.1 Consultant represents and warrants that it has the requisite training, skill, and experience necessary to provide the services under this Agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services Consultant provides under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances. Consultant understands and agrees that the services rendered pursuant to this Agreement are for the sole exclusive benefit of the City and that no third party shall have authority to authorize, approve, direct or control any of the services rendered to the City pursuant to this Agreement.

8. Ownership of Work Product

8.1 Ownership of the originals of any reports, data, studies, surveys, charts, maps, drawings, specifications, figures, photographs, memoranda, and any other documents which are developed, compiled, or produced as a result of this Agreement, whether or not completed, shall be vested in the City and shall be submitted to the City upon termination of this Agreement. Any reuse of these materials by the City for projects or purposes other than those that fall within the scope of this Agreement and the Project to which it relates, without written concurrence by Consultant, will be at the sole risk of the City.

8.2 ~~The City acknowledges Consultant's documents as instruments of professional service.~~ Nevertheless, the documents prepared under this Agreement shall become the property of the City upon completion of the work. The City agrees to hold harmless and indemnify Consultant against all claims made against Consultant for damage or injury, including defense costs, arising out of the City's reuse of such documents beyond the use for which they were originally intended without the written authorization of Consultant.

8.3 Methodology, software, logic, and systems developed under this Agreement are the property of Consultant and the City, and may be used as either Consultant or the City see fit, including the right to revise or publish the same without limitation.

9. Indemnification/Hold Harmless

9.1 Consultant 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 directly or indirectly out of or resulting from the acts, errors, or omissions of Consultant or its subconsultants in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. Provided, however, that if any such claims, injuries, damages, losses or suits result from the concurrent negligence of Consultant and the city, it is expressly agreed that Consultant's obligations and indemnity under this paragraph shall be effective only to the extent of Consultant's negligence.

10. Insurance

10.1 Consultant shall procure and maintain for the duration of the Agreement, and shall provide proof satisfactory to the City that such insurance is procured and maintained by each of its subconsultants, 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 Consultant, its agents, representatives, or employees.

10.2 Consultant shall procure and maintain the following types and amounts of insurance:

a. 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. This insurance shall have a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors, personal injury, and advertising injury. This insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

d. Professional Liability insurance appropriate to Consultant's profession, with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

10.3 The Automobile Liability, Commercial General Liability, and Professional Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

a. Consultant's insurance coverage shall be primary insurance vis-à-vis the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess over Consultant's insurance and shall not contribute with it.

b. Consultant's insurance shall be endorsed to state that coverage shall not be cancelled, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

10.4 The City shall be named as an additional insured under Consultant's Automobile Liability and Commercial General Liability insurance policies with respect to the work to be performed for the City pursuant to this Agreement.

10.5 Insurance shall be placed with insurers with a current A.M. Best rating of not less than A:VII.

10.6 Declaration pages issued by the insurance carriers for the policies mentioned in this Section 10 showing such insurance to be in force shall be filed with the City not less than ten (10) days following both parties signing this Agreement and before commencement of the work. In addition, the City may request, in writing, a full copy from Consultant of any insurance policy Consultant must procure and maintain pursuant to this Agreement and Consultant must provide such copy to the City within ten (10) days of Consultant's receipt of the City's request. Any

policy or required insurance written on a claims-made basis shall provide coverage as to all claims arising out of the services performed under this Agreement and for three (3) years following completion of the services to be performed. It shall be a material breach of this Agreement for Consultant to fail to procure and maintain the insurance required by this Section 10 or to provide the proof of such insurance to the City as provided for in this Agreement.

11. Assigning or Subcontracting

11.1 Consultant 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, which consent may be withheld at the sole discretion of the City.

12. Independent Contractor

12.1 Consultant and its subconsultants are, and shall be at all times during the term of this Agreement, independent contractors.

13. Notice

13.1 All notices required by this Agreement shall be considered properly delivered ~~when personally delivered, when received by facsimile, or on the third day following mailing,~~ postage prepaid, certified mail, return receipt requested to:

City: City Administrator
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
Fax: 360-886-2592

With a copy to: Chris Bacha
Kenyon Disend, PLLC
11 Front Street South
Issaquah, WA 98027
Fax: 425-392-7071

Consultant: Daniel L. McReynolds
Parametrix, Inc.
1019 39th Ave SE, Suite 100
Puyallup, WA 98374
Fax: 253-604-6799

14. Disputes

14.1 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, Kent, Washington.

15. Attorney Fees

15.1 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 attorney fees from the other party.

16. General Administration and Management on Behalf of the City

16.1 The City Administrator for the City, or his/her designee (the contract Administrator) shall review and approve Consultant's invoices to the City under this Agreement and shall have primary responsibility for overseeing and approving work or services to be performed by Consultant. Consultant understands and agrees that any and all work to be performed pursuant to this Agreement must be approved in advance by the contract Administrator. No third party, including the project applicant, shall have any direct control or influence over the services performed under this Contract.

17. Extent of Agreement/Modification

17.1 This Agreement, together with any 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. After City Council approval, this Agreement shall be in effect as of April 20, 2012 and shall remain in effect until June 30, 2014, unless sooner terminated as set forth herein. This Agreement may only be amended, modified, or added to by written instrument properly signed by both parties. The parties acknowledge the general contract rule that a clause in a contract, such as this one, prohibiting oral modifications is itself generally subject to oral modification. However, in order to ensure certainty as to the terms and conditions of this Agreement, the parties waive this general contract rule.

18. Conflict of Interest; Non-Collusion

18.1 No officer, employee or agent of the City, nor any member of the immediate family of any such officer, employee or agent, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The Consultant shall comply with all federal, state, and City conflict of interest laws, statutes and regulations. The Consultant represents that the Consultant presently has no interest and shall not acquire any interest, direct or indirect, in the project to which this Contract pertains which would conflict in any manner or degree with the performance of the Consultant's services and obligations hereunder. The Consultant further covenants that, in performance of this Contract, no person having any such

interest shall be employed by the Consultant. The contractor's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from the project applicant or any affiliate or agent of the project applicant.

18.2 The Contractor warrants and represents that the Contractor has not, nor has any other member, employee, representative, agent or officer of the Contractor, entered into or offered to enter into any combination, collusion or agreement with any person or entity to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of this Contract other than the consideration offered pursuant to the terms and conditions hereof.

CITY OF BLACK DIAMOND

CONSULTANT

By: Rebecca Olness
Rebecca Olness

By: Daniel L. McReynolds
Printed Name: Daniel L. McReynolds

Its: Mayor

Its: Principal

Date: 4-20-12

Date: April 11th 2012

Attest:

By: Brenda L. Martinez
Brenda L. Martinez
City Clerk

EXHIBIT A

(General Scope of Work)

Traffic and Transportation Review Services General Scope of Services

- Traffic Impact Study review and findings
- Traffic Monitoring Report review and findings
- Traffic safety studies
- Travel demand forecasting and modeling
- Traffic operations modeling
- Intersection level of service analysis
- Roundabout evaluation
- Design concept review
- Sight distance evaluation
- Pedestrian and bicycle facility planning and design
- Transit facility planning and design
- Parking management and guidelines
- Code language and design standards review
- Traffic calming strategies review
- Coordination with City staff
- Attendance at City Council or public meetings or hearings

Exhibit C

Parametrix Maximum Allowable Rates through

Classification	Grade	Rate for Billing	Classification	Grade	Rate for Billing
CADD Operator I	8	\$70	Jr. Planner	8/9	\$75
CADD Operator II	9/10	\$85	Planner I	10	\$90
CADD Operator III	11	\$115	Planner II	11	\$100
CADD Tech Lead	12	\$120	Planner III	12/13	\$120
CADD Supervisor	12	\$110	Planner IV	14	\$130
CADD Services Manager	14	\$125	Sr. Planner	15	\$150
			Sr. Planner	16	\$170
			Sr. Planner	17	\$190
Designer I	10	\$100	Jr. Scientist/Biologist	8	\$75
Designer II	11	\$105	Scientist/Biologist I	10	\$85
Designer III	12	\$120	Scientist/Biologist II	11	\$110
Designer III	13	\$135	Scientist/Biologist III	12	\$115
Designer IV	14	\$145	Scientist/Biologist III	13	\$120
Sr. Designer	15	\$150	Scientist/Biologist IV	14	\$135
Sr. Designer	16/17	\$165	Sr. Scientist/Biologist	15	\$150
			Sr. Scientist/Biologist	16	\$165
			Sr. Scientist/Biologist	17	\$175
Engineering Technician I	8	\$75	Environmental Technician I	8	\$85
Engineering Technician II	9	\$85	Environmental Technician II	9	\$90
Engineer I	10	\$85	Environmental Technician III	10	\$100
Engineer II	11	\$100			
Engineer III	12	\$115	Jr. Toxicologist	8	\$75
Engineer III	13	\$125	Toxicologist I	10	\$95
Engineer IV	14	\$135	Toxicologist II	11	\$105
Sr. Engineer	15	\$150	Toxicologist III	12/13	\$115
Sr. Engineer	16	\$170	Toxicologist IV	14	\$140
Sr. Engineer	17	\$190	Sr. Toxicologist	15/16	\$185
Sr. Consultant	18	\$235	Sr. Toxicologist	17	\$210
Sr. Consultant	19	\$250			
			Hydrogeologist I	10	\$95
Jr. Surveyor	8	\$70	Hydrogeologist II	11	\$100
Surveyor I	9	\$80	Hydrogeologist III	12/13	\$115
Surveyor II	10	\$85	Hydrogeologist IV	14	\$115
Surveyor III	11	\$110	Sr. Hydrogeologist	15	\$150
Sr. Surveyor	12	\$115	Sr. Hydrogeologist	16	\$165
Sr. Surveyor	13	\$140	Sr. Hydrogeologist	17	\$170
Survey Supervisor	14	\$145			
Regional Surveyor	18	\$185	GIS Technician	9/10	\$85
			Sr. GIS Analyst	11	\$95
Construction Technician I	8/9	\$85			
Construction Technician II	10	\$90	Graphic Artist	9	\$80
Construction Technician III	11	\$120	Sr. Graphic Artist	10	\$110
Construction Technician IV	12	\$135			
Construction Manager I	11	\$110	Technical Aide	7	\$70
Construction Manager II	12	\$125	Sr. Technical Aide	8	\$75
Construction Manager III	13	\$135	Project Coordinator	9	\$90
Construction Manager IV	14	\$145	Sr. Project Coordinator	10	\$95
Sr. Construction Manager	15	\$150	Project Controls Specialist	11	\$100
Sr. Construction Manager	16	\$170	Project Coordination Supervisor	11	\$100
Sr. Construction Manager	17	\$175			
Site Construction Manager	18	\$180	Project Accountant	8	\$80
			Project Accountant	9	\$85
Operations Manager	16	\$160	Sr. Project Accountant	10	\$95
Operations Manager	17	\$170	Sr. Accounting Specialist	10	\$100
Operations Manager	18	\$180	Sr. Contract Administrator	11	\$115
Division Manager	16	\$165			
Division Manager	17	\$205	Library Specialist	9	\$80
Division Manager	18/19	\$235	Librarian	11	\$85
Regional Division Manager	18/19	\$240	Information Resource Manager	13	\$125
Program Manager	18/19	\$250	LAN Admin I	11	\$100
Program Manager	20	\$280	LAN Admin II	12	\$110
Principal Consultant	19	\$270	Sr. LAN Admin	13	\$105
Principal Consultant	20	\$295	Office Clerk	4	\$55
Project Delivery Officer	19	\$235	Receptionist	6	\$60
Principal	19/20	\$285	Admin Assistant	6/7	\$65
			Sr Admin Assistant	8	\$70
Word Processor	7	\$65	Sr Admin Assistant	9	\$90
Sr. Word Processor	8	\$75	Office Administrator	10	\$95
Word Processing Specialist	9	\$95	Sr. Office Administrator	11	\$110
Technical Editor	10	\$105	Office Administrative Manager	12-14	\$130
Word Proc Mgr/Editor	11	\$110			
Production Manager	12	\$130			
Expert Witness		\$250			
Value Engineering		\$250			

Direct project expenses and reproduction costs are billed at cost plus 15%
 Public hearing testimony services are billed at hourly rates plus 30%

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION		
SUBJECT: AB14-056 Resolution No. 14-953, authorizing the Mayor to execute an amendment of the current contract with SubTerra, Inc. to serve as the geotechnical consultant to the MDRT	Agenda Date: June 5, 2014	
	AB14-056	
	Mayor Dave Gordon	
	City Administrator	
	City Attorney Carol Morris	
	City Clerk – Brenda L. Martinez	
	Community Development – Stacey Welsh	
	Finance – May Miller	
	Economic Development – Andy Williamson	X
	Parks/Natural Resources – Aaron Nix	
Cost Impact: Variable	Police – Chief Kiblinger	
Fund Source: Pass-through expense to Yarrow Bay	Public Works – Seth Boettcher	
Timeline: 3 month extension to contract	Court Administrator- Stephanie Metcalf	
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Resolution No. 14-983; Resolution No. 12-819; Contract Extension		
<p>SUMMARY STATEMENT: This resolution is extend the contract via Resolution 12-819, for geotechnical services with SubTerra, Inc. that are due to expire June 30, 2014. The city will be starting the process under chapter 39.80 RCW titled Contracts for Architectural and Engineering Services. The City has decided to extend expiration date to September 30, 2014 on the existing contract while this process is proceeding.</p> <p>FISCAL NOTE (Finance Department): Per the Funding Agreement, all cost associated will the contract will be reimbursed by the Developer.</p>		
COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: MOTION to adopt Resolution 14-953, authorizing the Mayor to execute an amendment to the contract with SubTerra, Inc. to serve as geotechnical consultant to the MDRT		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
June 5, 2014		

RESOLUTION NO. 14-953

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE THE FIRST ADDENDUM TO THE SUBTERRA, INC. CONTRACT TO SERVE AS THE GEOTECHNICAL ENGINEERING CONSULTANT TO THE MASTER DEVELOPMENT REVIEW TEAM

WHEREAS, on July 9, 2012 the Consultant and the City entered into a contract via Resolution No. 12-819 for on-going services as described in that Contract; and

WHEREAS, the Contract will soon expire, and the City would like to extend the contract while it complies with state law for the selection of consultants and the execution of new contracts with the City; and

WHEREAS, the Consultant agrees to continue its performance of services under the same terms and conditions in the original Contract;

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 the first addendum to the SubTerra, Inc contract, substantially in the form attached hereto as Exhibit A.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 5TH DAY OF JUNE 2014.

CITY OF BLACK DIAMOND:

Dave Gordon, Mayor

Attest:

Brenda L. Martinez, City Clerk

**FIRST AMENDMENT TO CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF BLACK DIAMOND AND
SubTerra, Inc.**

THIS FIRST AMENDMENT is made to the Consultant Services Contract via Resolution No. 12-819 executed between the City of Black Diamond, a Washington municipal corporation (hereinafter the "City"), and Sub Terra, Inc. (hereinafter the "Consultant,") a corporation organized under the laws of the State of Washington, located and doing business at 218 East North Bend Way, North Bend, WA 98045.

RECITALS

WHEREAS, on **July 9, 2012**, the Consultant and the City entered into a contract for on-going services as described in that Contract; and

WHEREAS, the Contract will soon expire, and the City would like to extend the contract while it complies with state law for the selection of consultants and the execution of new contracts with the City;

WHEREAS, the Consultant agrees to continue its performance of services under the same terms and conditions in the original Contract;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

Section 1. No Change to Terms and Conditions. With the exception of the expiration date of the Contract between the City and the Consultant, all terms and conditions of the Contract shall remain the same.

Section 2. New Expiration Date. The parties agree to extend the expiration date of the Contract June 30, 2014 to **September 30, 2014**.

IN WITNESS WHEREOF, the parties have executed this Agreement on this **5th day of June, 2014**.

CONSULTANT

CITY OF BLACK DIAMOND

By: _____
Chris Breeds
Its: President

By: _____
Dave Gordon, Mayor

Consultant: SubTerra Inc.

APPROVED AS TO FORM:

Carol A. Morris, City Attorney's Office

ATTEST:

Brenda Martinez, City Clerk

RESOLUTION NO. 12-819

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH SUBTERRA, INC. TO SERVE AS THE GEOTECHNICAL ENGINEERING CONSULTANT TO THE MASTER DEVELOPMENT REVIEW TEAM.

WHEREAS, in 2010, the City Council approved Master Planned Development permits for The Villages and Lawson Hills MPDs; and

WHEREAS, in 2011, the City Council approved Development Agreements for The Villages and Lawson Hills MPDs; and

WHEREAS, as part of its consideration and approval of the Development Agreements, the City also entered into a new Funding Agreement with BD Village Partners and BD Lawson Partners; and

WHEREAS, the Funding Agreement calls for the establishment of a Master Development Review Team (MDRT), to consist of City staff and outside consultants; and

WHEREAS, the City does not have sufficient staff resources nor the expertise to provide geotechnical engineering review services to meet the needs of the MDRT; and

WHEREAS, private firms providing survey review services were invited to submit Statements of Qualifications for review and consideration; and

WHEREAS, a panel consisting of staff and one City Council member reviewed the submittals, subsequently interviewed two firms and then recommended SubTerra, Inc. as the firm most capable of providing survey review services as desired;

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 SubTerra, Inc. as attached hereto as Exhibit A to provide geotechnical engineering review services for the MDRT.

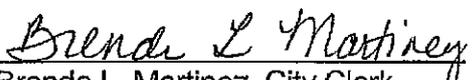
PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A SPECIAL MEETING THEREOF, THIS 9th DAY OF JULY, 2012.

CITY OF BLACK DIAMOND:



Rebecca Olness, Mayor

Attest:



Brenda L. Martinez, City Clerk

CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the or this "Agreement"), for reference purposes only, is dated July 10, 2012 and is entered into by and between

CITY OF BLACK DIAMOND, WASHINGTON (the "City")

Physical Address: 24301 Roberts Drive

Mailing Address: PO Box 599

Black Diamond, WA 98010

Contact: _____ Phone: 360-886-5700 Fax : 360-886-2592

and

SubTerra, Inc. ("Consultant")

Physical Address: 218 East North Bend Way, North Bend, WA 98045

Mailing Address: P.O. Box 520, North Bend, WA 98045

Contact: Dr. Chris Breeds Phone: 425-888-5425 Fax: 425-888-2725

Tax Id No.: 91- 152-9101

for professional services in connection with the following project:

On-call Geotechnical Consulting services on an as-needed basis to conduct third-party development reviews associated with site investigation, geologic hazards evaluation, site planning / design and construction for the Villages and Lawson Hills Master Planned Developments.

TERMS AND CONDITIONS

1. Services by Consultant

1.1 Consultant shall perform the services described in the Scope of Work attached to this Agreement as Exhibit "A." The services performed by Consultant shall not exceed the Scope of Work nor shall the Consultant be entitled to a greater amount of compensation as that provided in this Agreement without the prior written authorization of the City.

1.2 The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to this Agreement.

1.3 Consultant represents and warrants that it, its staff to be assigned to the Project, and its subconsultants and their staff have the requisite training, skill, and experience necessary to provide the services required by this Agreement and are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant and its

subconsultants under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

2. Schedule of Work

2.1 Consultant shall perform the services described in the Scope of Work in accordance with the Schedule attached to this contract as Exhibit "B."

2.2 Time is of the essence as to the work provided in the Scope of Work. Consultant will diligently proceed with the work and shall assure that it, and its subconsultants, will have adequate staffing at all times in order to complete the Scope of Work in a timely manner. If factors beyond Consultant's control that could not have been reasonably foreseen as of the date of this Agreement cause delay, then the parties will negotiate in good faith to determine whether an extension is appropriate. The Consultant shall provide the City with written notice of any delay, or potential delay, that may trigger the need for a time extension within 3 business days after the Consultant becomes aware of the delay or potential delay.

2.3 Consultant is authorized to proceed with services upon execution of this agreement.

3. Compensation

TIME AND MATERIALS. Compensation for the services provided in the Scope of Work shall be on a time and materials basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit "C."

4. Payment

4.1 Consultant 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.

4.2 All invoices shall be paid by City warrant within sixty (60) days of actual receipt by the City of an invoice conforming in all respects to the terms of this Agreement.

4.3 Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Consultant shall make copies available to the City on request.

4.4 If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

5. Discrimination and Compliance with Laws

5.1 Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

5.2 Consultant and its subconsultants shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

5.3 Any violation of this Section 5 shall be a material breach of this Agreement and grounds for immediate cancellation, termination, or suspension of the Agreement by the City, in whole or in part, and may result in Consultant's ineligibility to conduct further work for the City.

6. Suspension and Termination of Agreement

6.1 The City reserves the right to terminate or suspend this Agreement at any time, without cause, by giving Consultant notice in writing ten (10) days prior to the termination or suspension date. In the event of termination, all finished or unfinished reports, or other material prepared by Consultant pursuant to this Agreement, shall be submitted to the City. In the event the City terminates this Agreement prior to completion without cause, Consultant may complete such analyses and records as may be necessary to place its files in order. Consultant shall be entitled to compensation for any satisfactory work completed on the Project prior to the date of suspension or termination.

6.2 Any notice from the City to Consultant regarding the suspension of this Agreement shall specify the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to Consultant's reasonable expenses and shall be subject to verification. Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

7. Standard of Care

7.1 Consultant represents and warrants that it has the requisite training, skill, and experience necessary to provide the services under this Agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services Consultant provides under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances. . Consultant understands and agrees that the services rendered pursuant to this Agreement are for the sole exclusive benefit of the City and that no third party shall have authority to authorize, approve, direct or control any of the services rendered to the City pursuant to this Agreement.

8. Ownership of Work Product

8.1 Ownership of the originals of any reports, data, studies, surveys, charts, maps, drawings, specifications, figures, photographs, memoranda, and any other documents which are developed, compiled, or produced as a result of this Agreement, whether or not completed, shall be vested in the City and shall be submitted to the City upon termination of this Agreement. Any reuse of these materials by the City for projects or purposes other than those that fall within the scope of this Agreement and the Project to which it relates, without written concurrence by Consultant, will be at the sole risk of the City.

8.2 The City acknowledges Consultant's documents as instruments of professional service. Nevertheless, the documents prepared under this Agreement shall become the property of the City upon completion of the work. The City agrees to hold harmless and indemnify Consultant against all claims made against Consultant for damage or injury, including defense costs, arising out of the City's reuse of such documents beyond the use for which they were originally intended without the written authorization of Consultant.

8.3 Methodology, software, logic, and systems developed under this Agreement are the property of Consultant and the City, and may be used as either Consultant or the City see fit, including the right to revise or publish the same without limitation.

9. Indemnification/Hold Harmless

9.1 Consultant 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 directly or indirectly out of or resulting from the acts, errors, or omissions of Consultant or its subconsultants in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. Provided, however, that if any such claims, injuries, damages, losses or suits result from the concurrent negligence of Consultant and the city, it is expressly agreed that Consultant's obligations and indemnity under this paragraph shall be effective only to the extent of Consultant's negligence.

10. Insurance

10.1 Consultant shall procure and maintain for the duration of the Agreement, and shall provide proof satisfactory to the City that such insurance is procured and maintained by each of its subconsultants, 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 Consultant, its agents, representatives, or employees.

10.2 Consultant shall procure and maintain the following types and amounts of insurance:

a. 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. This insurance shall have a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors, personal injury, and advertising injury. This insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

d. Professional Liability insurance appropriate to Consultant's profession, with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

10.3 The Automobile Liability, Commercial General Liability, and Professional Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

a. Consultant's insurance coverage shall be primary insurance vis-à-vis the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess over Consultant's insurance and shall not contribute with it.

b. Consultant's insurance shall be endorsed to state that coverage shall not be cancelled, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

10.4 The City shall be named as an additional insured under Consultant's Automobile Liability and Commercial General Liability insurance policies with respect to the work to be performed for the City pursuant to this Agreement.

10.5 Insurance shall be placed with insurers with a current A.M. Best rating of not less than A:VII.

10.6 Declaration pages issued by the insurance carriers for the policies mentioned in this Section 10 showing such insurance to be in force shall be filed with the City not less than ten (10) days following both parties signing this Agreement and before commencement of the work. In addition, the City may request, in writing, a full copy from Consultant of any insurance policy Consultant must procure and maintain pursuant to this Agreement and Consultant must provide such copy to the City within ten (10) days of Consultant's receipt of the City's request. Any policy or required insurance written on a claims-made basis shall provide coverage as to all claims arising out of the services performed under this Agreement and for three (3) years following completion of the services to be performed. It shall be a material breach of this Agreement for Consultant to fail to procure and maintain the insurance required by this Section 10 or to provide the proof of such insurance to the City as provided for in this Agreement.

11. Assigning or Subcontracting

11.1 Consultant 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, which consent may be withheld at the sole discretion of the City.

12. Independent Contractor

12.1 Consultant and its subconsultants are, and shall be at all times during the term of this Agreement, independent contractors.

13. Notice

13.1 All notices required by this Agreement shall be considered properly delivered when personally delivered, when received by facsimile, or on the third day following mailing, postage prepaid, certified mail, return receipt requested to:

City: City Administrator
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
Fax: 360-886-2592

With a copy to: Chris Bacha
Kenyon Disend, PLLC
11 Front Street South
Issaquah, WA 98027
Fax: 425-392-7071

Consultant: Dr. Chris Breeds
SubTerra, Inc.
P.O. Box 520
North Bend, WA 98045
Fax: 425-888-2725

14. Disputes

14.1 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, Kent, Washington.

15. Attorney Fees

15.1 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 attorney fees from the other party.

16. General Administration and Management on Behalf of the City

16.1 The City Administrator for the City, or his/her designee(the contract Administrator) shall review and approve Consultant's invoices to the City under this Agreement and shall have primary responsibility for overseeing and approving work or services to be performed by Consultant. . Consultant understands and agrees that any and all work to be performed pursuant to this Agreement must be approved in advance by the contract Administrator. No third party, including the project applicant, shall have any direct control or influence over the services performed under this Contract.

17. Extent of Agreement/Modification

17.1 This Agreement, together with any 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. After City Council approval, this Agreement shall be in effect as of July 10, 2012 and shall remain in effect until June 30, 2014, unless sooner terminated as set forth herein. This Agreement may only be amended, modified, or added to by written instrument properly signed by both parties. The parties acknowledge the general contract rule that a clause in a contract, such as this one, prohibiting oral modifications is itself generally subject to oral modification. However, in order to ensure certainty as to the terms and conditions of this Agreement, the parties waive this general contract rule.

18. Conflict of Interest; Non-Collusion

18.1 No officer, employee or agent of the City, nor any member of the immediate family of any such officer, employee or agent, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The Consultant shall comply with all federal, state, and City conflict of interest laws, statutes and regulations. The Consultant represents that the Consultant presently has no interest and shall not acquire any interest, direct or indirect, in the project to which this Contract pertains which would conflict in any manner or degree with the performance of the Consultant's services and obligations hereunder. The Consultant further covenants that, in performance of this Contract, no person having any such interest shall be employed by the Consultant. The contractor's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from the project applicant or any affiliate or agent of the project applicant.

18.2 The Contractor warrants and represents that the Contractor has not, nor has any other member, employee, representative, agent or officer of the Contractor, entered into or offered to enter into any combination, collusion or agreement with any person or entity to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of this Contract other than the consideration offered pursuant to the terms and conditions hereof.

CITY OF BLACK DIAMOND

By: 
Rebecca Olness

Its: Mayor

Date: 7-18-12

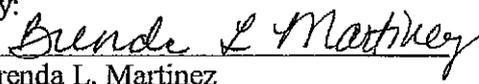
CONSULTANT

By: 
Printed Name: Chris D. Breeds

Its: President

Date: 7-16-2012

Attest:

By: 
Brenda L. Martinez
City Clerk

The City of Black Diamond will contract with SubTerra Inc. to provide on-call Geotechnical Consulting services on an as-needed basis to conduct third-party development reviews associated with site investigation, geologic hazards evaluation, site planning / design and construction for the Villages and Lawson Hills Master Planned Developments.

SubTerra, Inc. Geotechnical Consulting work will include review of geological and engineering studies and engineering designs for abandoned coal mines, steep slopes, site improvements, rockeries and retaining structures, impoundments, embankments, etc. as further described in the Black Diamond Municipal Code and provisions of the planned MPDs.

Consulting services may generally include the following tasks as requested by the City:

1. Pre-submittal consultation with applicants and city staff.
2. Participation in Preliminary Design meetings and other activities as a Member of the Master Development Review Team (MDRT).
3. Review and preparation of written comments on submitted applications, sensitive areas studies, SEPA Checklists/EISs, mitigation plans, and related documents prepared by others for the purpose of coal mine hazards areas identification, review of impacts, and mitigation evaluation.
4. Field inspections and field observations of Applicant site investigation programs to verify existing site conditions.
5. Conducting record research, locating abandoned coal mine features and workings and assembling as drawings/exhibits in support of the City's evaluation of abandoned coal mine studies submitted by Applicant.
6. Review and preparation of written comments on submitted engineering drawings, utilities plans, grading plans, stormwater management plans, stream culvert designs, geotechnical reports, and other reports, studies, and drawings for the evaluation of compliance with city codes and standards and any applicable provisions of the approved MPDs.
7. Review and preparation of written comments on exceptions, variances, or other requested deviations from Code.
8. Review and preparation of written comments on draft sensitive areas notices to be recorded on title.
9. Review and preparation of written comments on mitigation, maintenance, and monitoring costs estimates for the posting of financial guarantees, if required, by applicants.
10. Verbal and written correspondence and coordination with applicants and/or City staff.
11. Assistance with staff reports and preparation/review of meeting/hearing materials and exhibits.
12. Interagency coordination.
13. Attendance and/or testimony at city council or other public meetings or hearings.
14. Pre-construction meeting attendance and related correspondence.
15. Review and findings of demarcated boundaries and fencing limits for the protection of coal mine hazard areas by applicants prior to the commencement of construction.
16. Construction and post-construction related third-party monitoring inspections, compliance reviews and reports during construction of individual engineering projects.
17. Review of any reported violations and subsequent corrective restoration or mitigation for violations caused by applicants or their contractors.

City of Black Diamond On-Call Task Request

Date: _____	City Staff Contact: _____
Project Name: _____	Phone: 360-886-5700
Project No.: _____	Fax: 360-886-2592
Request Made To: _____	
Phone: _____	
Fax: _____	

Scope of Task Request

Budget Estimate: \$

Task Request Approval:			
Written Name		Title	
Signature		Date	

*Costs are billed on a time and materials basis, the Consultant shall notify the City should additional funds be necessary to complete the task order. Additional work beyond that which is ordered by the City shall not commence until written notification is received from the City.

SubTerra, Inc.

Payment Terms and Rate Sheet

SubTerra, Inc. is an Engineering Corporation offering engineering services in the mining, civil, and geotechnical fields. We also rent, lease, and sell equipment related to these fields including blast monitoring equipment, instrumentation, excavation profiling and surveying, and tunneling equipment

The following paragraphs and table provide a rate structure for our services and associated payment terms and conditions.

<u>Rates for Technical Professional Services</u>	Rate
Principal	155.00
Associate	135.00
Senior	125.00
Project	115.00
Staff	105.00
Senior Drafter	95.00
Drafter	85.00
Senior Independent Associate	175.00
Instrumentation Technician	95.00
CM Senior Inspector	105.00
CM Technician/Inspector	95.00
Secretarial and Administration	6% of Labor

Payment Terms for Technical Services

We invoice monthly for technical services, usually on or near the first of the month. For time and materials contracts, invoices are provided that delineate hours worked by discipline or personnel, other direct costs (e.g., subcontractors, travel, copying, telephone, etc.) that are directly attributable to the project, and a markup of 10% on other direct costs that recovers associated general and administrative costs, B&O taxes, and PI insurance. Subject to prior agreement with Client, an additional management fee may be added to subcontractors to cover associated administrative costs. These costs will have already been incurred and paid by us on your behalf. The invoice is therefore payable on receipt and is considered past due 10 days from the invoice date.

Payment Terms for Rental, Lease or Purchase of Equipment

Terms will be as noted on our Instrument and Equipment Rental Agreement, Sales Contract, or Lease Agreement.

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION		
SUBJECT: AB14-057 Resolution No. 14-954, authorizing the Mayor to execute an amendment of the current contract with Perteet, Inc. to serve as the environmental consultant to the MDRT	Agenda Date: June 5, 2014	
	AB14-057	
	Mayor Dave Gordon	
	City Administrator	
	City Attorney Carol Morris	
	City Clerk – Brenda L. Martinez	
	Community Development – Stacey Welsh	
	Finance – May Miller	
	Economic Development – Andy Williamson	X
	Parks/Natural Resources – Aaron Nix	
Cost Impact: Variable	Police – Chief Kiblinger	
Fund Source: Pass-through expense to Yarrow Bay	Public Works – Seth Boettcher	
Timeline: 3 month extension to contract	Court Administrator- Stephanie Metcalf	
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Resolution No. 14-954; Resolution No. 12-802; Contract Extension		
<p>SUMMARY STATEMENT: This resolution is extend the contract via Resolution 12-802, for environmental services with Perteet, Inc. that are due to expire June 30, 2014. The city will be starting the process under chapter 39.80 RCW titled Contracts for Architectural and Engineering Services. The City has decided to extend expiration date to September 30, 2014 on the existing contract while this process is proceeding.</p> <p>FISCAL NOTE (Finance Department): Per the Funding Agreement, all cost associated will the contract will be reimbursed by the Developer.</p>		
COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: MOTION to adopt Resolution 14-954, authorizing the Mayor to execute an amendment to the contract with Perteet, Inc. to serve as environmental consultant to the MDRT.		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
June 5, 2014		

RESOLUTION NO. 14-954

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE THE FIRST ADDENDUM TO THE PERTEET, INC. CONTRACT TO SERVE AS THE ENVIRONMENTAL CONSULTANT TO THE MASTER DEVELOPMENT REVIEW TEAM

WHEREAS, on May 17, 2012 the Consultant and the City entered into a contract via Resolution No. 12-802 for on-going services as described in that Contract; and

WHEREAS, the Contract will soon expire, and the City would like to extend the contract while it complies with state law for the selection of consultants and the execution of new contracts with the City; and

WHEREAS, the Consultant agrees to continue its performance of services under the same terms and conditions in the original Contract;

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 the first addendum to the Perteet contract, substantially in the form attached hereto as Exhibit A.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 5TH DAY OF JUNE 2014.

CITY OF BLACK DIAMOND:

Dave Gordon, Mayor

Attest:

Brenda L. Martinez, City Clerk

**FIRST AMENDMENT TO CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF BLACK DIAMOND AND
Perteet, Inc.**

THIS FIRST AMENDMENT is made to the Consultant Services Contract via Resolution 12-802 executed between the City of Black Diamond, a Washington municipal corporation (hereinafter the "City"), and Perteet, (hereinafter the "Consultant,") a corporation organized under the laws of the State of Washington, located and doing business at 2707 Colby Avenue, Suite 900, Everett, WA 98201.

RECITALS

WHEREAS, on **May 17, 2014**, the Consultant and the City entered into a contract for on-going services as described in that Contract; and

WHEREAS, the Contract will soon expire, and the City would like to extend the contract while it complies with state law for the selection of consultants and the execution of new contracts with the City;

WHEREAS, the Consultant agrees to continue its performance of services under the same terms and conditions in the original Contract;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

Section 1. No Change to Terms and Conditions. With the exception of the expiration date of the Contract between the City and the Consultant, all terms and conditions of the Contract shall remain the same.

Section 2. New Expiration Date. The parties agree to extend the expiration date of the Contract June 30, 2012 to **September 30, 2014**.

IN WITNESS WHEREOF, the parties have executed this Agreement on this **5th day of June, 2014**.

CONSULTANT

CITY OF BLACK DIAMOND

By: _____
Crystal Donner
Its: President

By: _____
Dave Gordon, Mayor

Consultant: Perteet, Inc.

APPROVED AS TO FORM:

Carol A. Morris, City Attorney's Office

ATTEST:

Brenda Martinez, City Clerk

RESOLUTION NO. 12-802

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH PERTEET INC. TO SERVE AS THE WETLAND CONSULTANT TO THE MASTER DEVELOPMENT REVIEW TEAM.

WHEREAS, in 2010, the City Council approved Master Planned Development permits for The Villages and Lawson Hills MPDs; and

WHEREAS, in 2011, the City Council approved Development Agreements for The Villages and Lawson Hills MPDs; and

WHEREAS, as part of its consideration and approval of the Development Agreements, the City also entered into a new Funding Agreement with BD Village Partners and BD Lawson Partners; and

WHEREAS, the Funding Agreement calls for the establishment of a Master Development Review Team (MDRT), to consist of City staff and outside consultants; and

WHEREAS, the City does not have sufficient staff resources to provide wetland review services to meet the needs of the MDRT; and

WHEREAS, private firms providing wetland review services were invited to submit Statements of Qualifications for review and consideration; and

WHEREAS, a panel consisting of staff and one City Councilmember reviewed the submittals, subsequently interviewed four firms and then recommended Perteet Inc. as the firm most capable of providing wetland review services as desired;

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 Perteet Inc. to provide wetland review services for the MDRT, substantially in the form attached hereto as Exhibit A.

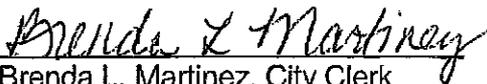
PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 17th DAY OF MAY, 2012.

CITY OF BLACK DIAMOND:



Rebecca Olness, Mayor

Attest:



Brenda L. Martinez, City Clerk

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

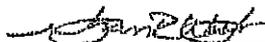
PRODUCER Kibble & Prentice, a USI Co PR 601 Union Street, Suite 1000 Seattle, WA 98101	CONTACT NAME: PHONE (A/C, No, Ex): 206 441-6300 FAX (A/C, No): 610-362-8528 E-MAIL ADDRESS: PL.Certrequest@kpc.com														
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A: Travelers Indemnity Company of</td> <td>25682</td> </tr> <tr> <td>INSURER B: XL Specialty Insurance Company</td> <td>37885</td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Travelers Indemnity Company of	25682	INSURER B: XL Specialty Insurance Company	37885	INSURER C:		INSURER D:		INSURER E:		INSURER F:
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INSURER C:															
INSURER D:															
INSURER E:															
INSURER F:															
INSURED Pertect, Inc. P.O. Box 1186 Everett, WA 98206-1186															

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY			6807251L042	12/31/2011	12/31/2012	EACH OCCURRENCE	\$1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person)	\$10,000
							PERSONAL & ADV INJURY	\$1,000,000
							GENERAL AGGREGATE	\$2,000,000
							PRODUCTS - COMP/OP AGG	\$2,000,000
								\$
GEN'L AGGREGATE LIMIT APPLIES PER:								
	<input type="checkbox"/> POLICY	<input checked="" type="checkbox"/> PROJECT	<input type="checkbox"/> LOC				\$	
A	AUTOMOBILE LIABILITY			BA6778L235	12/31/2011	12/31/2012	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS		<input type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per accident)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS		<input checked="" type="checkbox"/> NON-OWNED AUTOS				PROPERTY DAMAGE (Per accident)	\$
								\$
	UMBRELLA LIAB		<input type="checkbox"/> OCCUR				EACH OCCURRENCE	\$
	EXCESS LIAB		<input type="checkbox"/> CLAIMS-MADE				AGGREGATE	\$
	DED		RETENTION \$					\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			6807251L042 (WA Stop Gap)	12/31/2011	12/31/2012	WC STATUTORY LIMITS	<input checked="" type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				E.L. EACH ACCIDENT	\$1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$1,000,000
							E.L. DISEASE - POLICY LIMIT	\$1,000,000
B	Professional Liability			DPR9692741	06/27/2011	06/27/2012	\$2,000,000 per claim	\$2,000,000 annl aggr.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 Project Name: City of Black Diamond Environmental On-Call Services
 City of Black Diamond is included as an additional insured on the General Liability policy where required by written contract.

CERTIFICATE HOLDER City of Black Diamond Attn: Steve Pilcher 24301 Roberts Dr. Black Diamond, WA 98010	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

This page has been left blank intentionally:

CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the or this "Agreement"), for reference purposes only, is dated _____, 2012 and is entered into by and between

CITY OF BLACK DIAMOND, WASHINGTON (the "City")
Physical Address: 24301 Roberts Drive
Mailing Address: PO Box 599
Black Diamond, WA 98010

Contact: Steve Pilcher Phone: 360-886-5700 Fax : 360-886-2592

and

Perteet, Inc. ("Consultant")
2707 Colby Avenue, Suite 900
Everett, WA 98201

Contact: Jason Walker Phone: 425-252-7700 Fax: 425-339-6018

Tax Id No.: 91-1505037

For non-exclusive on-call professional services for the City of Black Diamond.

TERMS AND CONDITIONS

1. Services by Consultant

1.1 Consultant has been retained by the City to perform environmental consulting services generally described in the Scope of Work attached to this Agreement as Exhibit "A." The services performed by Consultant shall not exceed the Scope of Work nor shall the Consultant be entitled to a greater amount of compensation as that provided in this Agreement without the prior written authorization of the City.

1.2 The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to this Agreement.

1.3 Consultant represents and warrants that it, its staff to be assigned to the Project, and its subconsultants and their staff have the requisite training, skill, and experience necessary to provide the services required by this Agreement and are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant and its subconsultants under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

Professional Services Agreement with Perteet, Inc.

2. Schedule of Work

2.1 The City will issue an on-call task request for each project task for which the City requires Consultant services. No work shall be commenced by Consultant under this Agreement except pursuant to such an on-call task request issued by the City in the form attached as Exhibit "B." Consultant shall perform the services described in the on-call task request in accordance with the schedule and scope of work set forth in the on-call task request.

2.2 Time is of the essence as to the work provided in the Scope of Work. Consultant will diligently proceed with the work and shall assure that it, and its subconsultants, will have adequate staffing at all times in order to complete the Scope of Work in a timely manner. If factors beyond Consultant's control that could not have been reasonably foreseen as of the date of this Agreement cause delay, then the parties will negotiate in good faith to determine whether an extension is appropriate. The Consultant shall provide the City with written notice of any delay, or potential delay, that may trigger the need for a time extension within 3 business days after the Consultant becomes aware of the delay or potential delay.

2.3 Consultant is authorized to proceed with services upon execution of this agreement.

3. Compensation

3.1 Rates. Compensation for the services provided pursuant to each on-call task request shall be on a time and expenses basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit "C". Consultant may adjust the billing rates and reimbursable expenses once each calendar year on or after January 1st by providing the City with written notice of the adjusted rates and expenses no less than (30) thirty days prior to the effective date of such adjustment. The billing rates and reimbursable expenses for on-call task orders authorized prior to receipt of written notice of the rate/expense adjustment by the City shall not be affected by the adjustment.

3.2 Other. In the event that after commencement of work, the Consultant anticipates that the work for an on-call task request will exceed the initial amount authorized, Consultant shall promptly notify the City and provide the City with whatever documentation or information is necessary to request approval of any amounts in excess thereof.

4. Payment

4.1 Consultant 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.

4.2 All invoices shall be paid by City warrant within sixty (60) days of actual receipt by the City of an invoice conforming in all respects to the terms of this Agreement.

4.3 Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Consultant shall make copies available to the City on request.

4.4 If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

5. Discrimination and Compliance with Laws

5.1 Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

5.2 Consultant and its subconsultants shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

5.3 Any violation of this Section 5 shall be a material breach of this Agreement and grounds for immediate cancellation, termination, or suspension of the Agreement by the City, in whole or in part, and may result in Consultant's ineligibility to conduct further work for the City.

6. Suspension and Termination of Agreement

6.1 The City reserves the right to terminate or suspend this Agreement at any time, without cause, by giving Consultant notice in writing ten (10) days prior to the termination or suspension date. In the event of termination, all finished or unfinished reports, or other material prepared by Consultant pursuant to this Agreement, shall be submitted to the City. In the event the City terminates this Agreement prior to completion without cause, Consultant may complete such analyses and records as may be necessary to place its files in order. Consultant shall be entitled to compensation for any satisfactory work completed on the Project prior to the date of suspension or termination.

6.2 Any notice from the City to Consultant regarding the suspension of this Agreement shall specify the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to Consultant's reasonable expenses and shall be subject to verification. Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

7. Standard of Care

7.1 Consultant represents and warrants that it has the requisite training, skill, and experience necessary to provide the services under this Agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services

Consultant provides under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances. Consultant understands and agrees that the services rendered pursuant to this Agreement are for the sole exclusive benefit of the City and that no third party shall have authority to authorize, approve, direct or control any of the services rendered to the City pursuant to this Agreement.

8. Ownership of Work Product

8.1 Ownership of the originals of any reports, data, studies, surveys, charts, maps, drawings, specifications, figures, photographs, memoranda, and any other documents which are developed, compiled, or produced as a result of this Agreement, whether or not completed, shall be vested in the City and shall be submitted to the City upon termination of this Agreement. Any reuse of these materials by the City for projects or purposes other than those that fall within the scope of this Agreement and the Project to which it relates, without written concurrence by Consultant, will be at the sole risk of the City.

8.2 The City acknowledges Consultant's documents as instruments of professional service. Nevertheless, the documents prepared under this Agreement shall become the property of the City upon completion of the work. The City agrees to hold harmless and indemnify Consultant against all claims made against Consultant for damage or injury, including defense costs, arising out of the City's reuse of such documents beyond the use for which they were originally intended without the written authorization of Consultant.

8.3 Methodology, software, logic, and systems developed under this Agreement are the property of Consultant and the City, and may be used as either Consultant or the City see fit, including the right to revise or publish the same without limitation.

9. Indemnification/Hold Harmless

9.1 Consultant 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 directly or indirectly out of or resulting from the acts, errors, or omissions of Consultant or its subconsultants in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. Provided, however, that if any such claims, injuries, damages, losses or suits result from the concurrent negligence of Consultant and the city, it is expressly agreed that Consultant's obligations and indemnity under this paragraph shall be effective only to the extent of Consultant's negligence.

10. Insurance

10.1 Consultant shall procure and maintain for the duration of the Agreement, and shall provide proof satisfactory to the City that such insurance is procured and maintained by each of its subconsultants, 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 Consultant, its agents, representatives, or employees.

10.2 Consultant shall procure and maintain the following types and amounts of insurance:

a. 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. This insurance shall have a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors, personal injury, and advertising injury. This insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

d. Professional Liability insurance appropriate to Consultant's profession, with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

10.3 The Automobile Liability, Commercial General Liability, and Professional Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

a. Consultant's insurance coverage shall be primary insurance vis-à-vis the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess over Consultant's insurance and shall not contribute with it.

b. Consultant's insurance shall be endorsed to state that coverage shall not be cancelled, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

10.4 The City shall be named as an additional insured under Consultant's Automobile Liability and Commercial General Liability insurance policies with respect to the work to be performed for the City pursuant to this Agreement.

10.5 Insurance shall be placed with insurers with a current A.M. Best rating of not less than A:VII.

10.6 Declaration pages issued by the insurance carriers for the policies mentioned in this Section 10 showing such insurance to be in force shall be filed with the City not less than ten (10) days following both parties signing this Agreement and before commencement of the work. In addition, the City may request, in writing, a full copy from Consultant of any insurance policy Consultant must procure and maintain pursuant to this Agreement and Consultant must provide such copy to the City within ten (10) days of Consultant's receipt of the City's request. Any policy or required insurance written on a claims-made basis shall provide coverage as to all claims arising out of the services performed under this Agreement and for three (3) years following completion of the services to be performed. It shall be a material breach of this Agreement for Consultant to fail to procure and maintain the insurance required by this Section 10 or to provide the proof of such insurance to the City as provided for in this Agreement.

11. Assigning or Subcontracting

11.1 Consultant 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, which consent may be withheld at the sole discretion of the City.

12. Independent Contractor

12.1 Consultant and its subconsultants are, and shall be at all times during the term of this Agreement, independent contractors.

13. Notice

13.1 All notices required by this Agreement shall be considered properly delivered when personally delivered, when received by facsimile, or on the third day following mailing, postage prepaid, certified mail, return receipt requested to:

City: City Administrator
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
Fax: 360-886-2592

With a copy to: Chris Bacha
Kenyon Disend, PLLC
11 Front Street South
Issaquah, WA 98027
Fax: 425-392-7071

Consultant: Jason Walker, PM
Crystal Donner, President
Perteet, Inc.
2707 Colby Avenue, Suite 900
Everett, WA 98201
Fax: 425-339-6018

14. Disputes

14.1 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, Kent, Washington.

15. Attorney Fees

15.1 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 attorney fees from the other party.

16. General Administration and Management on Behalf of the City

16.1 The City Administrator for the City, or his/her designee(the contract Administrator) shall review and approve Consultant's invoices to the City under this Agreement and shall have primary responsibility for overseeing and approving work or services to be performed by Consultant. . Consultant understands and agrees that any and all work to be performed pursuant to this Agreement must be approved in advance by the contract Administrator. No third party, including the project applicant, shall have any direct control or influence over the services performed under this Contract.

17. Extent of Agreement/Modification

17.1 This Agreement, together with any 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. After City Council approval, this Agreement shall be in effect as of May 18, 2012 and shall remain in effect until June 30, 2014, unless sooner terminated as set forth herein. This Agreement may only be amended, modified, or added to by written instrument properly signed by both parties. The parties acknowledge the general contract rule that a clause in a contract, such as this one, prohibiting oral modifications is itself generally subject to oral modification. However, in order to ensure certainty as to the terms and conditions of this Agreement, the parties waive this general contract rule.

18. Conflict of Interest; Non-Collusion

18.1 No officer, employee or agent of the City, nor any member of the immediate family of any such officer, employee or agent, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The Consultant shall comply with all federal, state, and City conflict of interest laws, statutes and regulations. The Consultant represents that the Consultant presently has no interest and shall not acquire any interest, direct or indirect, in the project to which this Contract pertains which would conflict in any manner or degree with the performance of the Consultant's services and obligations hereunder. The Consultant further covenants that, in performance of this Contract, no person having any such interest shall be employed by the Consultant. The contractor's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from the project applicant or any affiliate or agent of the project applicant.

18.2 The Contractor warrants and represents that the Contractor has not, nor has any other member, employee, representative, agent or officer of the Contractor, entered into or offered to enter into any combination, collusion or agreement with any person or entity to receive or pay, and that he has not received or paid, any sum of money or other consideration

for the execution of this Contract other than the consideration offered pursuant to the terms and conditions hereof.

CITY OF BLACK DIAMOND

By: Rebecca Olness
Rebecca Olness

Its: Mayor

Date: 5/18/12

CONSULTANT

By: Crystal Donner
Crystal Donner

Its: President

Date: 05/11/12

Attest:

By: Brenda L. Martinez
Brenda L. Martinez
City Clerk

The City of Black Diamond will contract with Pertec Inc. to provide on-call environmental consulting services on an as-needed basis to conduct third-party development reviews associated with environmentally sensitive areas and related documents (i.e. wetlands, streams, and fish and wildlife conservation areas, buffers, and related resources) as described in the Black Diamond Municipal Code (Code).

Consulting services may generally include the following tasks as requested by the City:

- Pre-submittal consultation with applicants and/or city staff
- Review and findings of submitted applications, sensitive areas studies, SEPA Checklists/EISs, mitigation plans, and related documents prepared by others for the purpose of sensitive areas identification, review of impacts, and mitigation evaluation
- Field inspections and findings to verify conditions of sensitive areas relating to proposed impacts and/or mitigation
- Review and findings of utilities plans, grading plans, stormwater management plans, stream culvert designs, geotechnical reports, and other reports, studies, and drawings for the evaluation of impacts and mitigation to sensitive areas and related habitats
- Code consistency and/or related policy review and findings
- Review and findings of exceptions, variances, or other requested deviations from Code
- Review and findings of draft sensitive areas notices to be recorded on title
- Review and findings of mitigation, maintenance, and monitoring costs estimates for the posting of financial guarantees by applicants
- Verbal and written correspondence and coordination with applicants and/or City staff
- Assistance with staff reports and preparation/review of meeting/hearing materials and exhibits
- Interagency coordination
- Attendance and/or testimony at city council or other public meetings or hearings
- Pre-construction meeting attendance and related correspondence
- Review and findings of demarcated clearing limits for the protection of sensitive areas by applicants prior to the commencement of construction
- Construction and post-construction related third-party monitoring inspections, compliance reviews and findings
- Review and findings of any reported violations and subsequent corrective restoration or mitigation for violations caused by applicants or their contractors

Exhibit "C"

PERTEET, INC.
Schedule of 2012 Billing Rates

<u>Engineering, Planning and Environmental Classifications</u>	<u>2012 Hourly Rate</u>
Principal	185.00
Senior Associate	175.00
Senior Engineer/Manager	165.00
Lead Engineer/Manager	140.00
Engineer III	120.00
Engineer II	100.00
Engineer I	85.00
Senior Planner/Manager	160.00
Lead Planner/Manager	140.00
Planner III	115.00
Planner II	100.00
Planner I	80.00
Senior Ecologist/Manager	160.00
Lead Ecologist/Manager	140.00
Ecologist III	115.00
Ecologist II	100.00
Ecologist I	80.00
Lead Technician/Designer	105.00
Technician III	95.00
Technician II	80.00
Technician I	70.00
Contract Administrator	95.00
Accountant	80.00
Clerical	70.00

Expert Witness Rates:

Consulting & Preparation Time	@ standard hourly rates
Court Proceedings & Depositions (4 hour minimum)	@ 1.5 times hourly rates

PERTEET, INC.
Schedule of 2012 Billing Rates
 Page 2

Direct Expenses

	<u>Rate</u>
Living & travel expenses outside of service area	Cost plus 10 percent
Authorized Subconsultants	Cost plus 10 percent
Outside Services (printing, traffic counts, etc.)	Cost plus 10 percent
CADD Station	\$10.00 per hour
Project Controls / Primavera	\$10.00 per hour
GIS / Traffic Modeling	\$15.00 per hour
Color Copies	\$.80 each
Mileage	@ current federal rate

Survey Classifications

	<u>2012 Hourly Rate</u>
Principal Surveyor	185.00
Survey Manager	130.00
Senior Professional Land Surveyor	130.00
Professional Land Surveyor	105.00
Project Surveyor II	100.00
Project Surveyor I	95.00
Survey Technician III	85.00
Survey Technician II	75.00
Survey Technician I	65.00
One Person Survey Crew	90.00
Two Person Survey Crew	150.00
Three Person Survey Crew	215.00

Direct Survey Expenses

	<u>Rate</u>
Dual Frequency GPS Receiver	\$150.00 per day
Robotic Total Station Data Collection System	\$100.00 per day
Digital Level	\$50.00 per day
Survey monuments & cases	Cost plus 10 percent

PERTEET, INC.
Schedule of 2012 Billing Rates
Page 3

<u>Construction Classifications</u>	<u>2012 Hourly Rate</u>
Construction Engineering Supervisor	175.00
Construction Engineering Manager	165.00
Construction Manager	120.00
Assistant Construction Manager	105.00
Construction Engineer III	120.00
Construction Engineer II	100.00
Construction Engineer I	85.00
Senior Construction Observer	110.00
Construction Observer II	80.00
Construction Observer I	70.00
Senior Construction Technician	105.00
Construction Technician III	95.00
Construction Technician II	80.00
Construction Technician I	70.00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following is added to WHO IS AN INSURED (Section II):

Any person or organization that you agree in a "contract or agreement requiring insurance" to include as an additional insured on this Coverage Part, but only with respect to liability for "bodily injury", "property damage" or "personal injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations;
- b. In connection with premises owned by or rented to you; or
- c. In connection with "your work" and included within the "products-completed operations hazard".

Such person or organization does not qualify as an additional insured for "bodily injury", "property damage" or "personal injury" for which that person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- d. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.
- e. This insurance does not apply to the rendering of or failure to render any "professional services".
- f. The limits of insurance afforded to the additional insured shall be the limits which you agreed in that "contract or agreement requiring insurance" to provide for that additional insured, or the limits shown in the Declarations for this Coverage Part, whichever are less. This endorsement does not increase the limits of insurance stated in the **LIMITS OF**

INSURANCE (Section III) for this Coverage Part.

B. The following is added to Paragraph a. of 4. Other Insurance in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

However, if you specifically agree in a "contract or agreement requiring insurance" that the insurance provided to an additional insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have entered into that "contract or agreement requiring insurance". But this insurance still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured when the insured is an additional insured under any other insurance.

C. The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

We waive any rights of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, under a "contract or agreement requiring insurance" with that person or organization. We waive these rights only where you have agreed to do so as part of the "contract or agreement requiring insurance" with such person or organization entered into by you before, and in effect when, the "bodily

COMMERCIAL GENERAL LIABILITY

injury" or "property damage" occurs, or the "personal injury" offense is committed.

D. The following definition is added to DEFINITIONS (Section V):

"Contract or agreement requiring insurance" means that part of any contract or agreement under which you are required to include a person or organization as an additional insured on this Cov-

erage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed:

- a. After you have entered into that contract or agreement;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION		
SUBJECT: AB14-058 Resolution No. 14-955, authorizing the Mayor to execute an amendment of the current contract with Henderson, Young & Company Inc. to serve as the municipal fiscal analysis consultant to the MDRT Cost Impact: Variable Fund Source: Pass-through expense to Yarrow Bay Timeline: 3 month extension to contract	Agenda Date: June 5, 2014	
	AB14-058	
	Mayor Dave Gordon	
	City Administrator	
	City Attorney Carol Morris	
	City Clerk – Brenda L. Martinez	
	Community Development – Stacey Welsh	
	Finance – May Miller	
	Economic Development – Andy Williamson	X
	Parks/Natural Resources – Aaron Nix	
Police – Chief Kiblinger		
Public Works – Seth Boettcher		
Court Administrator- Stephanie Metcalf		
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Resolution No. 14-955; Resolution No. 12-793; Contract Extension		
<p>SUMMARY STATEMENT: This resolution is extend the contract via Resolution 12-793, for environmental services with Henderson, Young & Company, Inc. that are due to expire June 30, 2014. The city will be starting the process under chapter 39.80 RCW titled Contracts for Architectural and Engineering Services. The City has decided to extend expiration date to September 30, 2014 on the existing contract while this process is proceeding.</p> <p>FISCAL NOTE (Finance Department): Per the Funding Agreement, all cost associated will the contract will be reimbursed by the Developer.</p>		
COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: MOTION to adopt Resolution 14-955, authorizing the Mayor to execute an amendment to the contract with Henderson, Young & Company, Inc. to serve as municipal fiscal analysis consultant to the MDRT		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
June 5, 2014		

RESOLUTION NO. 14-955

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE THE FIRST ADDENDUM TO THE HENDERSON, YOUNG & COMPANY, INC. CONTRACT TO SERVE AS THE MUNICIPAL FISCAL ANALYSIS CONSULTANT TO THE MASTER DEVELOPMENT REVIEW TEAM

WHEREAS, on April 19, 2012 the Consultant and the City entered into a contract via Resolution No. 12-793 for on-going services as described in that Contract; and

WHEREAS, the Contract will soon expire, and the City would like to extend the contract while it complies with state law for the selection of consultants and the execution of new contracts with the City; and

WHEREAS, the Consultant agrees to continue its performance of services under the same terms and conditions in the original Contract;

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 the first addendum to the Henderson, Young & Company contract, substantially in the form attached hereto as Exhibit A.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 5TH DAY OF JUNE 2014.

CITY OF BLACK DIAMOND:

Dave Gordon, Mayor

Attest:

Brenda L. Martinez, City Clerk

**FIRST AMENDMENT TO CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF BLACK DIAMOND AND
Henderson, Young & Co.**

THIS FIRST AMENDMENT is made to the Consultant Services Contract via Resolution No.12-793 executed between the City of Black Diamond, a Washington municipal corporation (hereinafter the "City"), and Henderson Young & Co., (hereinafter the "Consultant,") a corporation organized under the laws of the State of Washington, located and doing business at 8060 – 165th Ave. N.E., Suite 220, Redmond, WA 98052.

RECITALS

WHEREAS, on **April 19, 2012**, the Consultant and the City entered into a contract for on-going services as described in that Contract; and

WHEREAS, the Contract will soon expire, and the City would like to extend the contract while it complies with state law for the selection of consultants and the execution of new contracts with the City;

WHEREAS, the Consultant agrees to continue its performance of services under the same terms and conditions in the original Contract;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

Section 1. No Change to Terms and Conditions. With the exception of the expiration date of the Contract between the City and the Consultant, all terms and conditions of the Contract shall remain the same.

Section 2. New Expiration Date. The parties agree to extend the expiration date of the Contract June 30, 2012 to **September 30, 2014**.

IN WITNESS WHEREOF, the parties have executed this Agreement on this **5th day of June, 2014**.

CONSULTANT

CITY OF BLACK DIAMOND

By: _____
Randall L. Young
Its: President

By: _____
Dave Gordon, Mayor

Consultant: Henderson, Young
& Company, Inc.

APPROVED AS TO FORM:

Carol A. Morris, City Attorney's Office

ATTEST:

Brenda Martinez, City Clerk

RESOLUTION NO. 12-793

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH HENDERSON & YOUNG TO SERVE AS THE MUNICIPAL FISCAL ANALYSIS CONSULTANT TO THE MASTER DEVELOPMENT REVIEW TEAM.

WHEREAS, in 2010, the City Council approved Master Planned Development permits for The Villages and Lawson Hills MPDs; and

WHEREAS, in 2011, the City Council approved Development Agreements for The Villages and Lawson Hills MPDs; and

WHEREAS, as part of its consideration and approval of the Development Agreements, the City also entered into a new Funding Agreement with BD Village Partners and BD Lawson Partners; and

WHEREAS, the Funding Agreement calls for the establishment of a Master Development Review Team (MDRT), to consist of City staff and outside consultants; and

WHEREAS, the City does not have on staff the full range of expertise to provide municipal fiscal analysis to meet the needs of the MDRT; and

WHEREAS, private firms providing municipal fiscal analysis services were invited to submit Statements of Qualifications for review and consideration; and

WHEREAS, a panel consisting of staff and one City Council member reviewed the submittals, subsequently interviewed three firms and then unanimously recommended Henderson & Young as the firm most capable of providing municipal fiscal analysis services as desired;

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 Henderson & Young to provide municipal fiscal analysis services for the MDRT, substantially in the form attached hereto as Exhibit A.

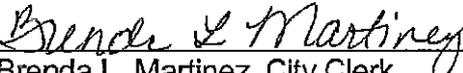
PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 19th DAY OF APRIL,
2012.

CITY OF BLACK DIAMOND:



Rebecca Olness, Mayor

Attest:



Brenda L. Martinez, City Clerk

CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the or this "Agreement"), for reference purposes only, is dated, April 11th, 2012 and is entered into by and between

CITY OF BLACK DIAMOND, WASHINGTON (the "City")
Physical Address: 24301 Roberts Drive
Mailing Address: PO Box 599
Black Diamond, WA 98010

Contact: Andrew Williamson Phone: 360-886-5700 Fax: 360-886-2592

and

Henderson, Young & Company ("the Consultant")
8060 – 165th Ave, NE, Suite 220
Redmond, WA 98052

Contact: Randall Young Phone: 425-869-1786 Fax: 425-869-5669

Tax ID No.: 84-0780133

For non-exclusive on-call professional services for the City of Black Diamond.

TERMS AND CONDITIONS

1. Services by Consultant

1.1 Consultant has been retained by the City to provide professional municipal fiscal analysis on-call services generally described in the Scope of Work attached to this Agreement as Exhibit

"A." The services performed by Consultant shall not exceed the Scope of Work nor shall the Consultant be entitled to a greater amount of compensation as that provided in this Agreement without the prior written authorization of the City.

1.2 The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to this Agreement.

1.3 Consultant represents and warrants that it, its staff to be assigned to the Project, and its subconsultants and their staff have the requisite training, skill, and experience necessary to provide the services required by this Agreement and are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant and its subconsultants under this Agreement will be performed in a manner consistent with that degree

of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

2. Schedule of Work

2.1 The City will issue an on-call task request for each project task for which the City requires Consultant services. No work shall be commenced by Consultant under this Agreement except pursuant to such an on-call task request issued by the City in the form attached as Exhibit "B." Consultant shall perform the services described in the on-call task request in accordance with the schedule and scope of work set forth in the on-call task request.

2.2 Time is of the essence as to the work provided in the Scope of Work. Consultant will diligently proceed with the work and shall assure that it, and its subconsultants, will have adequate staffing at all times in order to complete the Scope of Work in a timely manner. If factors beyond Consultant's control that could not have been reasonably foreseen as of the date of this Agreement cause delay, then the parties will negotiate in good faith to determine whether an extension is appropriate. The Consultant shall provide the City with written notice of any delay, or potential delay, that may trigger the need for a time extension within 3 business days after the Consultant becomes aware of the delay or potential delay.

2.3 Consultant is authorized to proceed with services upon execution of this agreement.

3. Compensation

3.1 Rates. Compensation for the services provided pursuant to each on-call task request shall be on a time and expenses basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit "C". Consultant may adjust the billing rates and reimbursable expenses once each calendar year on or after January 1st by providing the City with written notice of the adjusted rates and expenses no less than (30) thirty days prior to the effective date of such adjustment. The billing rates and reimbursable expenses for on-call task orders authorized prior to receipt of written notice of the rate/expense adjustment by the City shall not be affected by the adjustment.

3.2 Other. In the event that after commencement of work, the Consultant anticipates that the work for an on-call task request will exceed the initial amount authorized, Consultant shall promptly notify the City and provide the City with whatever documentation or information is necessary to request approval of any amounts in excess thereof.

4. Payment

4.1 Consultant 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.

4.2 All invoices shall be paid by City warrant within sixty (60) days of actual receipt by the City of an invoice conforming in all respects to the terms of this Agreement.

4.3 Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Consultant shall make copies available to the City on request.

4.4 If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

5. Discrimination and Compliance with Laws

5.1 Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

5.2 Consultant and its subconsultants shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

5.3 Any violation of this Section 5 shall be a material breach of this Agreement and grounds for immediate cancellation, termination, or suspension of the Agreement by the City, in whole or in part, and may result in Consultant's ineligibility to conduct further work for the City.

6. Suspension and Termination of Agreement

6.1 The City reserves the right to terminate or suspend this Agreement at any time, without cause, by giving Consultant notice in writing ten (10) days prior to the termination or suspension date. In the event of termination, all finished or unfinished reports, or other material prepared by Consultant pursuant to this Agreement, shall be submitted to the City. In the event the City terminates this Agreement prior to completion without cause, Consultant may complete such analyses and records as may be necessary to place its files in order. Consultant shall be entitled to compensation for any satisfactory work completed on the Project prior to the date of suspension or termination.

6.2 Any notice from the City to Consultant regarding the suspension of this Agreement shall specify the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to Consultant's reasonable expenses and shall be subject to verification. Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

7. Standard of Care

7.1 Consultant represents and warrants that it has the requisite training, skill, and experience necessary to provide the services under this Agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services Consultant provides under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances. Consultant understands and agrees that the services rendered pursuant to this Agreement are for the sole exclusive benefit of the City and that no third party shall have authority to authorize, approve, direct or control any of the services rendered to the City pursuant to this Agreement.

8. Ownership of Work Product

8.1 Ownership of the originals of any reports, data, studies, surveys, charts, maps, drawings, specifications, figures, photographs, memoranda, and any other documents which are developed, compiled, or produced as a result of this Agreement, whether or not completed, shall be vested in the City and shall be submitted to the City upon termination of this Agreement. Any reuse of these materials by the City for projects or purposes other than those that fall within the scope of this Agreement and the Project to which it relates, without written concurrence by Consultant, will be at the sole risk of the City.

8.2 The City acknowledges Consultant's documents as instruments of professional service. Nevertheless, the documents prepared under this Agreement shall become the property of the City upon completion of the work. The City agrees to hold harmless and indemnify Consultant against all claims made against Consultant for damage or injury, including defense costs, arising out of the City's reuse of such documents beyond the use for which they were originally intended without the written authorization of Consultant.

8.3 Methodology, software, logic, and systems developed under this Agreement are the property of Consultant and the City, and may be used as either Consultant or the City see fit, including the right to revise or publish the same without limitation.

9. Indemnification/Hold Harmless

9.1 Consultant 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 directly or indirectly out of or resulting from the acts, errors, or omissions of Consultant or its subconsultants in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. Provided, however, that if any such claims, injuries, damages, losses or suits result from the concurrent negligence of Consultant and the city, it is expressly agreed that Consultant's obligations and indemnity under this paragraph shall be effective only to the extent of Consultant's negligence.

10. Insurance

10.1 Consultant shall procure and maintain for the duration of the Agreement, and shall provide proof satisfactory to the City that such insurance is procured and maintained by each of its subconsultants, 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 Consultant, its agents, representatives, or employees.

10.2 Consultant shall procure and maintain the following types and amounts of insurance:

a. 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. This insurance shall have a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors, personal injury, and advertising injury. This insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

d. Professional Liability insurance appropriate to Consultant's profession, with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

10.3 The Automobile Liability, Commercial General Liability, and Professional Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

a. Consultant's insurance coverage shall be primary insurance vis-à-vis the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess over Consultant's insurance and shall not contribute with it.

b. Consultant's insurance shall be endorsed to state that coverage shall not be cancelled, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

10.4 The City shall be named as an additional insured under Consultant's Automobile Liability and Commercial General Liability insurance policies with respect to the work to be performed for the City pursuant to this Agreement.

10.5 Insurance shall be placed with insurers with a current A.M. Best rating of not less than A:VII.

10.6 Declaration pages issued by the insurance carriers for the policies mentioned in this Section 10 showing such insurance to be in force shall be filed with the City not less than ten (10) days following both parties signing this Agreement and before commencement of the work. In addition, the City may request, in writing, a full copy from Consultant of any insurance policy

Consultant must procure and maintain pursuant to this Agreement and Consultant must provide such copy to the City within ten (10) days of Consultant's receipt of the City's request. Any policy or required insurance written on a claims-made basis shall provide coverage as to all claims arising out of the services performed under this Agreement and for three (3) years following completion of the services to be performed. It shall be a material breach of this Agreement for Consultant to fail to procure and maintain the insurance required by this Section 10 or to provide the proof of such insurance to the City as provided for in this Agreement.

11. Assigning or Subcontracting

11.1 Consultant 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, which consent may be withheld at the sole discretion of the City.

12. Independent Contractor

12.1 Consultant and its subconsultants are, and shall be at all times during the term of this Agreement, independent contractors.

13. Notice

13.1 All notices required by this Agreement shall be considered properly delivered when personally delivered, when received by facsimile, or on the third day following mailing, postage prepaid, certified mail, return receipt requested to:

City: City Administrator
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
Fax: 360-886-2592

With a copy to: Chris Bacha
Kenyon Disend, PLLC
11 Front Street South
Issaquah, WA 98027
Fax: 425-392-7071

Consultant: Randall Young, President
Henderson, Young & Company
8060 – 165th Ave. NE Suite 220
Redmond, WA 98052
Fax: 425-869-5669

14. Disputes

14.1 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, Kent, Washington.

15. Attorney Fees

15.1 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 attorney fees from the other party.

16. General Administration and Management on Behalf of the City

16.1 The City Administrator for the City, or his/her designee(the contract Administrator) shall review and approve Consultant's invoices to the City under this Agreement and shall have primary responsibility for overseeing and approving work or services to be performed by Consultant. . Consultant understands and agrees that any and all work to be performed pursuant to this Agreement must be approved in advance by the contract Administrator. No third party, including the project applicant, shall have any direct control or influence over the services performed under this Contract.

17. Extent of Agreement/Modification

17.1 This Agreement, together with any 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. After City Council approval, this Agreement shall be in effect as of April 20, 2012 and shall remain in effect until June 30, 2014, unless sooner terminated as set forth herein. This Agreement may only be amended, modified, or added to by written instrument properly signed by both parties. The parties acknowledge the general contract rule that a clause in a contract, such as this one, prohibiting oral modifications is itself generally subject to oral modification. However, in order to ensure certainty as to the terms and conditions of this Agreement, the parties waive this general contract rule.

18. Conflict of Interest; Non-Collusion

18.1 No officer, employee or agent of the City, nor any member of the immediate family of any such officer, employee or agent, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The Consultant shall comply with all federal, state, and City conflict of interest laws, statutes and regulations. The Consultant represents that the Consultant presently has no interest and shall not acquire any interest, direct or indirect, in the project to which this Contract pertains which would conflict in any manner or degree with the performance of the Consultant's services and obligations hereunder. The Consultant further covenants that, in performance of this Contract, no person having any such

interest shall be employed by the Consultant. The contractor's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from the project applicant or any affiliate or agent of the project applicant.

18.2 The Contractor warrants and represents that the Contractor has not, nor has any other member, employee, representative, agent or officer of the Contractor, entered into or offered to enter into any combination, collusion or agreement with any person or entity to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of this Contract other than the consideration offered pursuant to the terms and conditions hereof.

CITY OF BLACK DIAMOND

By: Rebecca Olness
Rebecca Olness

Its: Mayor

Date: 4-20-12

CONSULTANT

By: Randall L. Young
Printed Name: Randall L. Young

Its: Vice President

Date: April 11th 2012

Attest:

By: Brenda L. Martinez
Brenda L. Martinez
City Clerk

EXHIBIT A

General Scope of Work

The Consultant will provide municipal fiscal analysis services to the City for the benefit of the City, including but not limited to the following services:

1. Research, analysis and recommendation of comparable cities to be used in fiscal impact analysis.
2. Review and evaluation of each fiscal impact analysis submitted by the Master Developer, including evaluation of the consistency of the Master Developer's fiscal impact analysis with the requirements of the Development Agreements, and the specific methodologies, data, assumptions, calculations, spreadsheets and conclusions provided by the Master Developer.
3. Monitor changes in municipal finance caused by new laws, voter initiatives, regulations, court decisions, and best practices and advise the City when changes effect the fiscal analysis of the City.
4. Preparation of annual review of projections of fiscal analysis compared to the City's budget.
5. Preparation of payment schedule for funding of any deficits.
6. Preparation of reports, memos, and presentations of the results of municipal fiscal analyses reviews, evaluations, and recommendations prepared by Consultant.
7. Preparation for and participation in meetings of MDRT and the Master Developer
8. Preparation for and participation in meetings of the MDRT, Planning Commission, and/or City Council.
9. Preparation for and participation in other meetings that the City authorizes Consultant to attend.
10. Provide expert testimony.
11. Other municipal fiscal analysis services requested by the City.

As provided by Section 2.1 of this Agreement, the municipal fiscal analysis services to be provided to the City by the Consultant shall be identified in on-call task requests for each project task for which the City requires Consultant services. No work shall be commenced by Consultant under this Agreement except pursuant to such an on-call task request issued by the City in the form attached as Exhibit "B." Consultant shall perform the services described in the on-call task request in accordance with the schedule and scope of work set forth in the on-call task request (the "Task Scope of Work").

EXHIBIT C

Billing Rates and Reimbursable Expenses

Henderson,
Young &
Company

**RATE SCHEDULE
2012**

<u>Category</u>	<u>Rate</u>	
Principal	\$215.00	per hour
Associate	\$165.00	per hour
Support	\$ 75.00	per hour
Mileage	\$0.50	per mile
Miscellaneous	At Cost	

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION		
SUBJECT: AB14-059 Resolution No. 14-956, authorizing the Mayor to execute an amendment of the current contract with RH2 to serve as the civil engineering consultant to the MDRT	Agenda Date: June 5, 2014	
	AB14-059	
	Mayor Dave Gordon	
	City Administrator	
	City Attorney Carol Morris	
	City Clerk – Brenda L. Martinez	
	Community Development – Stacey Welsh	
	Finance – May Miller	
	Economic Development – Andy Williamson	X
	Parks/Natural Resources – Aaron Nix	
Police – Chief Kiblinger		
Public Works – Seth Boettcher		
Court Administrator- Stephanie Metcalf		
Cost Impact: Variable		
Fund Source: Pass-through expense to Yarrow Bay		
Timeline: 3 month extension to contract		
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Resolution No. 14-956; Resolution No. 12-792; Contract Extension		
<p>SUMMARY STATEMENT: This resolution is extend the contract via Resolution 12-792, for engineering services with RH2 Engineering, Inc. that are due to expire June 30, 2014. The city will be starting the process under chapter 39.80 RCW titled Contracts for Architectural and Engineering Services. The City has decided to extend expiration date to September 30, 2014 on the existing contract while this process is proceeding.</p> <p>FISCAL NOTE (Finance Department): Per the Funding Agreement, all cost associated will the contract will be reimbursed by the Developer.</p>		
COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: MOTION to adopt Resolution 14-956, authorizing the Mayor to execute an amendment to the contract with RH2 Inc. to serve as civil engineering consultant to the MDRT		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
June 5, 2014		

RESOLUTION NO. 14-956

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE THE FIRST ADDENDUM TO THE RH2, INC. CONTRACT TO SERVE AS THE CIVIL ENGINEERING CONSULTANT TO THE MASTER DEVELOPMENT REVIEW TEAM

WHEREAS, on April 19, 2012 the Consultant and the City entered into a contract via Resolution No. 12-792 for on-going services as described in that Contract; and

WHEREAS, the Contract will soon expire, and the City would like to extend the contract while it complies with state law for the selection of consultants and the execution of new contracts with the City; and

WHEREAS, the Consultant agrees to continue its performance of services under the same terms and conditions in the original Contract;

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 the first addendum to the RH2 contract, substantially in the form attached hereto as Exhibit A.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 5TH DAY OF JUNE 2014.

CITY OF BLACK DIAMOND:

Dave Gordon, Mayor

Attest:

Brenda L. Martinez, City Clerk

**FIRST AMENDMENT TO CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF BLACK DIAMOND AND
RH2 Engineering, Inc.**

THIS FIRST AMENDMENT is made to the Consultant Services Contract via Resolution No.12-792 executed between the City of Black Diamond, a Washington municipal corporation (hereinafter the "City"), and RH2 Engineering, Inc., (hereinafter the "Consultant,") a corporation organized under the laws of the State of Washington, located and doing business at 22722 – 29th Drive S.E., Suite 210, Bothell, WA 98021.

RECITALS

WHEREAS, on **April 19, 2012** the Consultant and the City entered into a contract for on-going services as described in that Contract; and

WHEREAS, the Contract will soon expire, and the City would like to extend the contract while it complies with state law for the selection of consultants and the execution of new contracts with the City;

WHEREAS, the Consultant agrees to continue its performance of services under the same terms and conditions in the original Contract;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

Section 1. No Change to Terms and Conditions. With the exception of the expiration date of the Contract between the City and the Consultant, all terms and conditions of the Contract shall remain the same.

Section 2. New Expiration Date. The parties agree to extend the expiration date of the Contract, June 30, 2014 to **September 30, 2014**.

IN WITNESS WHEREOF, the parties have executed this Agreement on this **5th day of June, 2014**.

CONSULTANT

CITY OF BLACK DIAMOND

By: _____
Tony V. Pardi
Its: President

By: _____
Dave Gordon, Mayor

Consultant: RH2 Engineering

APPROVED AS TO FORM:

Carol A. Morris, City Attorney's Office

ATTEST:

Brenda Martinez, City Clerk

RESOLUTION NO. 12-792

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH RH2 TO SERVE AS THE CIVIL ENGINEERING CONSULTANT TO THE MASTER DEVELOPMENT REVIEW TEAM.

WHEREAS, in 2010, the City Council approved Master Planned Development permits for The Villages and Lawson Hills MPDs; and

WHEREAS, in 2011, the City Council approved Development Agreements for The Villages and Lawson Hills MPDs; and

WHEREAS, as part of its consideration and approval of the Development Agreements, the City also entered into a new Funding Agreement with BD Village Partners and BD Lawson Partners; and

WHEREAS, the Funding Agreement calls for the establishment of a Master Development Review Team (MDRT), to consist of City staff and outside consultants; and

WHEREAS, the City does not have on sufficient staff resources to provide civil engineering services to meet the needs of the MDRT; and

WHEREAS, private firms providing civil engineering services were invited to submit Statements of Qualifications for review and consideration; and

WHEREAS, a panel consisting of staff and one City Council member reviewed the submittals, subsequently interviewed four firms and then unanimously recommended RH2 as the firm most capable of providing civil engineering services as desired;

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 RH2 to provide civil engineering services for the MDRT, substantially in the form attached hereto as Exhibit A.

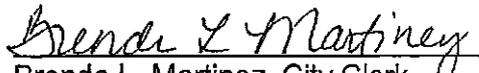
PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 19th DAY OF APRIL,
2012.

CITY OF BLACK DIAMOND:



Rebecca Olness, Mayor

Attest:



Brenda L. Martinez, City Clerk

CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the or this "Agreement"), for reference purposes only, is dated, April 11th, 2012 and is entered into by and between

CITY OF BLACK DIAMOND, WASHINGTON (the "City")
Physical Address: 24301 Roberts Drive
Mailing Address: PO Box 599
Black Diamond, WA 98010

Contact: Andrew Williamson Phone: 360-886-5700 Fax: 360-886-2592

and

RH2 ENGINEERING, INC (the "Consultant")
Physical Address: 22722 29th Drive SE, Suite 210
Bothell, WA 98021

Contact: Dan Ervin, P.E Phone: 425-951-5400 Fax: 425-951-5401

Tax ID No.: 91-11008443

For non-exclusive on-call professional services for the City of Black Diamond.

TERMS AND CONDITIONS

1. Services by Consultant

1.1 Consultant has been retained by the City to provide professional engineering on-call services generally described in the Scope of Work attached to this Agreement as Exhibit "A." The services performed by Consultant shall not exceed the Scope of Work nor shall the Consultant be entitled to a greater amount of compensation as that provided in this Agreement without the prior written authorization of the City.

1.2 The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to this Agreement.

1.3 Consultant represents and warrants that it, its staff to be assigned to the Project, and its subconsultants and their staff have the requisite training, skill, and experience necessary to provide the services required by this Agreement and are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant and its subconsultants under this Agreement will be performed in a manner consistent with that degree

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2.2 Time is of the essence as to the work provided in the Scope of Work. Consultant will diligently proceed with the work and shall assure that it, and its subconsultants, will have adequate staffing at all times in order to complete the Scope of Work in a timely manner. If factors beyond Consultant's control that could not have been reasonably foreseen as of the date of this Agreement cause delay, then the parties will negotiate in good faith to determine whether an extension is appropriate. The Consultant shall provide the City with written notice of any delay, or potential delay, that may trigger the need for a time extension within 3 business days after the Consultant becomes aware of the delay or potential delay.

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5. Discrimination and Compliance with Laws

5.1 Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

5.2 Consultant and its subconsultants shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

5.3 Any violation of this Section 5 shall be a material breach of this Agreement and grounds for immediate cancellation, termination, or suspension of the Agreement by the City, in whole or in part, and may result in Consultant's ineligibility to conduct further work for the City.

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8. Ownership of Work Product

8.1 Ownership of the originals of any reports, data, studies, surveys, charts, maps, drawings, specifications, figures, photographs, memoranda, and any other documents which are developed, compiled, or produced as a result of this Agreement, whether or not completed, shall be vested in the City and shall be submitted to the City upon termination of this Agreement. Any reuse of these materials by the City for projects or purposes other than those that fall within the scope of this Agreement and the Project to which it relates, without written concurrence by Consultant, will be at the sole risk of the City.

8.2 The City acknowledges Consultant's documents as instruments of professional service. Nevertheless, the documents prepared under this Agreement shall become the property of the City upon completion of the work. The City agrees to hold harmless and indemnify Consultant against all claims made against Consultant for damage or injury, including defense costs, arising out of the City's reuse of such documents beyond the use for which they were originally intended without the written authorization of Consultant.

8.3 Methodology, software, logic, and systems developed under this Agreement are the property of Consultant and the City, and may be used as either Consultant or the City see fit, including the right to revise or publish the same without limitation.

9. Indemnification/Hold Harmless

9.1 Consultant 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 directly or indirectly out of or resulting from the acts, errors, or omissions of Consultant or its subconsultants in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. Provided, however, that if any such claims, injuries, damages, losses or suits result from the concurrent negligence of Consultant and the city, it is expressly agreed that Consultant's obligations and indemnity under this paragraph shall be effective only to the extent of Consultant's negligence.

10. Insurance

10.1 Consultant shall procure and maintain for the duration of the Agreement, and shall provide proof satisfactory to the City that such insurance is procured and maintained by each of its subconsultants, 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 Consultant, its agents, representatives, or employees.

10.2 Consultant shall procure and maintain the following types and amounts of insurance:

a. 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. This insurance shall have a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors, personal injury, and advertising injury. This insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

d. Professional Liability insurance appropriate to Consultant's profession, with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

10.3 The Automobile Liability, Commercial General Liability, and Professional Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

a. Consultant's insurance coverage shall be primary insurance vis-à-vis the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess over Consultant's insurance and shall not contribute with it.

b. Consultant's insurance shall be endorsed to state that coverage shall not be cancelled, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

10.4 The City shall be named as an additional insured under Consultant's Automobile Liability and Commercial General Liability insurance policies with respect to the work to be performed for the City pursuant to this Agreement.

10.5 Insurance shall be placed with insurers with a current A.M. Best rating of not less than A:VII.

10.6 Declaration pages issued by the insurance carriers for the policies mentioned in this Section 10 showing such insurance to be in force shall be filed with the City not less than ten (10) days following both parties signing this Agreement and before commencement of the work. In addition, the City may request, in writing, a full copy from Consultant of any insurance policy

Consultant must procure and maintain pursuant to this Agreement and Consultant must provide such copy to the City within ten (10) days of Consultant's receipt of the City's request. Any policy or required insurance written on a claims-made basis shall provide coverage as to all claims arising out of the services performed under this Agreement and for three (3) years following completion of the services to be performed. It shall be a material breach of this Agreement for Consultant to fail to procure and maintain the insurance required by this Section 10 or to provide the proof of such insurance to the City as provided for in this Agreement.

11. Assigning or Subcontracting

11.1 Consultant 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, which consent may be withheld at the sole discretion of the City.

12. Independent Contractor

12.1 Consultant and its subconsultants are, and shall be at all times during the term of this Agreement, independent contractors.

13. Notice

13.1 All notices required by this Agreement shall be considered properly delivered when personally delivered, when received by facsimile, or on the third day following mailing, postage prepaid, certified mail, return receipt requested to:

City: City Administrator
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
Fax: 360-886-2592

With a copy to: Chris Bacha
Kenyon Disend, PLLC
11 Front Street South
Issaquah, WA 98027
Fax: 425-392-7071

Consultant: Dan Ervin, P.E.
Vice President
RH2 Engineering, Inc.
22722 29th Drive SE, Suite 210
Bothell, WA 98021
Fax: 425-951-5401

14. Disputes

14.1 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, Kent, Washington.

15. Attorney Fees

15.1 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 attorney fees from the other party.

16. General Administration and Management on Behalf of the City

16.1 The City Administrator for the City, or his/her designee(the contract Administrator) shall review and approve Consultant's invoices to the City under this Agreement and shall have primary responsibility for overseeing and approving work or services to be performed by Consultant. . Consultant understands and agrees that any and all work to be performed pursuant to this Agreement must be approved in advance by the contract Administrator. No third party, including the project applicant, shall have any direct control or influence over the services performed under this Contract.

17. Extent of Agreement/Modification

17.1 This Agreement, together with any 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. After City Council approval, this Agreement shall be in effect as of April 20, 2012 and shall remain in effect until June 30, 2014, unless sooner terminated as set forth herein. This Agreement may only be amended, modified, or added to by written instrument properly signed by both parties. The parties acknowledge the general contract rule that a clause in a contract, such as this one, prohibiting oral modifications is itself generally subject to oral modification. However, in order to ensure certainty as to the terms and conditions of this Agreement, the parties waive this general contract rule.

18. Conflict of Interest; Non-Collusion

18.1 No officer, employee or agent of the City, nor any member of the immediate family of any such officer, employee or agent, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The Consultant shall comply with all federal, state, and City conflict of interest laws, statutes and regulations. The Consultant represents that the Consultant presently has no interest and shall not acquire any interest, direct or indirect, in the project to which this Contract pertains which would conflict in any manner or degree with the performance of the Consultant's services and obligations hereunder. The Consultant further covenants that, in performance of this Contract, no person having any such

interest shall be employed by the Consultant. The contractor's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from the project applicant or any affiliate or agent of the project applicant.

18.2 The Contractor warrants and represents that the Contractor has not, nor has any other member, employee, representative, agent or officer of the Contractor, entered into or offered to enter into any combination, collusion or agreement with any person or entity to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of this Contract other than the consideration offered pursuant to the terms and conditions hereof.

CITY OF BLACK DIAMOND

By: Rebecca Olness
Rebecca Olness

Its: Mayor

Date: 4-20-12

CONSULTANT

By: Dan Ervin
Dan Ervin, P.E.

Its: Vice President

Date: April 11th 2012

Attest:

By: Brenda L. Martinez
Brenda L. Martinez
City Clerk

EXHIBIT A
Scope of Work
City of Black Diamond
Master Development Review Team

March 2012

Background

The Master Development Review Team (MDRT) is a dedicated team of personnel operating within the City of Black Diamond (City) to permit Master Planned Development projects within the City. The MDRT duties and obligations are described in the Development Agreements for the Villages and Lawson Hills, and in the MDRT Funding Agreement between Black Diamond and Yarrow Bay Communities. The MDRT is composed of City staff and contract staff.

RH2 Engineering, Inc., (RH2) is a contract member of the MDRT.

The MDRT is designed to be dynamic and flexible and evolve as needed to facilitate the City's role as a regulator in major development projects. The character and amount of work will vary, from time to time, and this Agreement implies a commitment by RH2 to maintain schedule and personnel flexibility and provide a superior level of professional service. The benchmark for performance evaluations will be established by the City, and these criteria may be subject to change as the MDRT evolves and as the development projects progress.

Some work tasks are anticipated, and those tasks are listed below. Other unanticipated tasks will emerge as the development projects mature and as the MDRT evolves. Unanticipated work will be performed under the most appropriate task listed below or authorized by letter agreement or email directive from the City.

The following tasks are not intended to imply chronological order, but rather serve as general categories of work:

Task 1 – Permit Review

- 1.1 Review permit applications and other applicant submittals in compliance with: 1) Villages and Lawson Hills Development Agreements, 2) City Municipal Code and Standards, 3) applicable state statutes and requirements, and 4) any other documents or regulations governing the work. It is anticipated that most of the permit submittals will be preliminary plats, site development permits or utility permits for water, sewer, stormwater and street work improvements. The permits and submittals will generally be reviewed for the following items, if applicable:
 - Check the general plan layout for ease of interpretation and lack of ambiguity and comment on ways to improve layout if necessary;
 - Check the completeness of the design for construction and inspection purposes;
 - Perform a check of the supporting engineering calculations;
 - Check for compliance with the governing agreement and the applicable minimum design standards, and check for compliance with the generally accepted engineering standard of care;

- Cross-check for conflicts and ambiguities in the design plans and with previous permit approvals;
 - Perform simple value engineering and identify areas for design simplification or cost reduction;
 - Cross check specifications for conflicts and ambiguities;
 - Check reference materials for validity;
 - Check record materials for completeness and the ability to retrace the design process in the future.
- 1.2 Comply with the schedules identified by the City.
- 1.3 Perform any other services as directed by the City.

Task 2 – Conceptual and Collaborative Design

- 2.1 Provide conceptual planning and design services for utilities and infrastructure in collaboration with City staff. Maintain a presence at the City's design meetings to exert a positive influence on the maintainability of the improvements and the quality of the design. Search for and implement ways to improve plans and designs.
- 2.2 Provide primary design services as directed by the City, on behalf of the City.
- 2.3 Perform any other services as directed by the City.

Task 3 – Services During Construction

- 3.1 Provide on-call field inspection services to assist and supplement the experience and resources of City staff. Make periodic site visits at City discretion to maintain a working knowledge of project constraints, requirements, and character.
- 3.2 Perform any other services as directed by the City.

Task 4 – As-Built Review

- 4.1 Facilitate delivery of as-built construction records from the appropriate design teams to Public Works. Check records for compliance with published as-built requirements and accept or reject records as appropriate. Develop new as-built requirements, from time to time, as requested by the City in accordance with City goals and objectives. Check design team compliance with any Washington State professional engineering standards.
- 4.2 Perform any other services as directed by the City.

Task 5 – Testing, Acceptance, and Bonding

- 5.1 Provide facility and utility field testing services to assure that improvements meet the requirements of applicable approved construction plans.
- 5.2 Review and recommend acceptance or rejection (as appropriate) of the permitted utilities and facilities as required in the City's Municipal Code.

- 5.3 Review and accept bonding amounts and certifications for performance bonds and maintenance bonds.
- 5.4 Perform any other services as directed by the City.

Task 6 – Compliance Tracking

- 6.1 Develop and maintain a tracking system to assure compliance with the Development Agreements. Track the following items, including but not limited to: water conservation, impervious area limitations, sewage interceptor capacity, traffic capacity and level of service, and phosphorus discharge.
- 6.2 Perform any other services as directed by the City.

Task 7 – Project Management

- 7.1 Attend meetings, as necessary and as directed by the City, to assure compliance with the Development Agreements and this Scope of Work.
- 7.2 Provide quality control and maintain quality assurance (QA/QC) procedures for RH2 work products. Meet and coordinate with MDRT members as necessary to maintain the QA/QC objectives, meet the schedule requirements and comply with the minimum design and review standards. Provide input as requested to the City regarding the work and progress of RH2 project staff.
- 7.3 Maintain complete and efficient working files of RH2's project activities.
- 7.4 Provide timely and accurate billing invoices and billing records for RH2 and for related subconsultant work.
- 7.5 Provide and maintain an administrative structure that allows efficient access to RH2's project staff members who work on MDRT projects. Maintain sufficient workload flexibility to meet the dynamic workload needs of the MPDs.
- 7.6 Perform any other services as directed by the City.

Task 8 – Engineering Report Review

- 8.1 Review reports and documents created by others for compliance with the Development Agreements and City Municipal Code.
- 8.2 Summarize the work and reports as necessary for presentation to other City departments, City staff or the public regarding reports in support of permits or other development actions.
- 8.3 Provide peer-review services through subconsultants as requested by the City.
- 8.4 Perform any other services as directed by the City.

Task 9 – Liaison with Other Departments

- 9.1 Meet with other City departments and regional agencies as requested by the City to share information and maintain a cooperative working environment.
- 9.2 Perform any other services as directed by the City.

Task 10 – Agency Coordination

- 10.1 Meet with other Agencies as directed by City and assist in developing collaborative and complimentary solutions to City/Regional issues (i.e. sewage conveyance, service area limits, sustainable permitting, etc.). Develop briefing materials for City staff as appropriate and provide data identifying lifecycle cost impacts, LOS impacts, regulatory impacts, and other pertinent data or evaluations requested by the City.

Exhibit B

City of Black Diamond On-Call Task Request

Date: _____	City Staff Contact: _____
Task Name: _____	Phone: 360-886-5700
Consultant Project No.: _____	Fax: 360-886-2592
Consultant Contact Name: _____	
Consultant Phone: _____	
Consultant Fax: _____	

Scope of Task Request

Budget Estimate:

Task Request Approval:

City of Black Diamond:

_____	_____
Written Name	Title
_____	_____
Signature	Date

Consultant:

_____	_____
Written Name	Title
_____	_____
Signature	Date

*Costs are billed on a time and materials basis, the Consultant shall notify the City should additional funds be necessary to complete the task order. Additional work beyond that which is ordered by the City shall not commence until written notification is received from the City.

EXHIBIT C
RH2 Engineering, Inc.
SCHEDULE OF RATES AND CHARGES

2012 HOURLY RATES

CLASSIFICATION		RATE	CLASSIFICATION		RATE
Professional	IX	\$199.00	Technician	IV	\$127.00
Professional	VIII	\$199.00	Technician	III	\$119.00
Professional	VII	\$191.00	Technician	II	\$88.00
			Technician	I	\$83.00
Professional	VI	\$177.00			
Professional	V	\$168.00	Administrative	V	\$118.00
Professional	IV	\$158.00	Administrative	IV	\$98.00
			Administrative	III	\$84.00
Professional	III	\$148.00	Administrative	II	\$68.00
Professional	II	\$137.00	Administrative	I	\$57.00
Professional	I	\$125.00			

IN-HOUSE SERVICES

In-house copies (each)	8.5" X 11"	\$0.09	CAD Plots	Large	\$25.00
In-house copies (each)	8.5" X 14"	\$0.14	CAD Plots	Full Size	\$10.00
In-house copies (each)	11" X 17"	\$0.20	CAD Plots	Half Size	\$2.50
In-house copies (color) (each)	8.5" X 11"	\$0.90	CAD System	Per Hour	\$27.50
In-house copies (color) (each)	8.5" X 14"	\$1.20	GIS System	Per Hour	\$27.50
In-house copies (color) (each)	11 X 17"	\$2.00	Technology Charge		2.5% of Direct Labor
			Mileage		Current IRS Rate

OUTSIDE SERVICES

Outside direct costs for permit fees, reports, maps, data, reprographics, couriers, postage, and non-mileage related travel expenses that are necessary for the execution of the project and are not specifically identified elsewhere in the contract will be invoiced at cost.

*All Subcontractor services are billed at cost plus 15%.

CHANGES IN RATES

Rates listed here are adjusted annually. The current schedule of rates and charges is used for billing purposes. Payment for work accomplished shall be based on the hourly rates and charges in effect at the time of billing as stated in this Exhibit.

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION		
SUBJECT:	Agenda Date: June 5, 2014	AB14-060
AB14-060 Resolution No. 14-957, authorizing the Mayor and one Finance Committee member to enter into contracts for goods and services	Mayor Dave Gordon	
	City Administrator	
	City Attorney Carol Morris	X
	City Clerk – Brenda L. Martinez	
	Community Development – Stacey Welsh	
	Finance – May Miller	
	Economic Development – Andy Williamson	
	Parks/Natural Resources – Aaron Nix	
	Police – Chief Kiblinger	
	Public Works – Seth Boettcher	
Cost Impact (see also Fiscal Note):	Court Administrator – Stephanie Metcalf	
Fund Source:	Agenda Placement: <input type="checkbox"/> Mayor <input checked="" type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator	
Timeline:	Attachments: Resolution No. 14-957; Resolution No. 08-559	
<p>SUMMARY STATEMENT:</p> <p>Adoption of this resolution would repeal Resolution No. 08-559 and authorize the Mayor and one Finance Committee member to enter into contracts for goods and services where the contract amount is \$7,500 or less and there is money to cover the purchase in the City’s budget, or up to \$15,000 where the purchase is for goods or services specifically included as a line item in the City’s budget.</p> <p>FISCAL NOTE (Finance Department): N/A</p>		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:		
<p>RECOMMENDED ACTION: MOTION to adopt Resolution No. 14-957, authorizing the Mayor and one member of the Finance Committee to enter into contracts for the purchase of goods and services where the contract amount is \$7,500 or less and there is money to cover the purchase in the City’s budget, or up to \$15,000 where the purchase is for goods or services specifically included as a line item in the City’s budget.</p>		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
June 5, 2014		

RESOLUTION NO. 14-957

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AUTHORIZING THE MAYOR AND ONE MEMBER OF THE FINANCE COMMITTEE TO ENTER INTO CONTRACTS FOR THE PURCHASE OF GOODS OR SERVICES WHERE THE CONTRACT AMOUNT IS \$7,500 OR LESS AND THERE IS MONEY TO COVER THE PURCHASE IN THE CITY'S BUDGET, OR UP TO \$15,000 WHERE THE PURCHASE IS FOR GOODS OR SERVICES SPECIFICALLY INCLUDED AS A LINE ITEM IN THE CITY'S BUDGET.

WHEREAS, the City adopted Resolution No. 08-559, which allowed the Mayor to enter into contracts for the purchase of goods or services where the contract amount is \$7,500.00 or less and there is money to cover the purchase in the City's budget, or where the purchase is for goods or services specifically included as a line item in the City's budget; and

WHEREAS, the City Council now wishes to amend that action such that in addition to the Mayor's signature on such contracts or purchases, a member of the Finance Committee must also sign/agree; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON DOES RESOLVE AS FOLLOWS:

Section 1. Repeal or Ineffectiveness of Resolution No. 08-559. The City Council hereby repeals or declares Resolution No. 08-559 to be ineffective from this date forward.

Section 2. Authority of Mayor and One Member of the Finance Committee to Execute Certain Contracts. The Mayor and One Member of the Finance Committee is hereby authorized to execute contracts for goods or services on behalf of the City of Black Diamond without the need of further approval from the City Council in either of the following limited circumstances:

A. Where the total cost of the contract does not exceed \$7,500.00 (Seven Thousand Five Hundred Dollars) and the money to pay for the goods or services is available in the existing City budget previously approved by the City Council; or

B. Where the particular goods or services to be purchased appear as a specific line item in the existing City budget that was previously approved by the City Council, and the total cost of the contract entered into by the Mayor for that line item is equal to or less than the amount approved in the budget for that line item and does not exceed \$15,000.00 (Fifteen Thousand Dollars); **PROVIDED:** that this subsection shall not apply to the execution of contracts for any goods or services where the contract to be executed is required by state or federal law to be determined through a public works competitive bidding process.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 5TH DAY OF JUNE,
2014.**

CITY OF BLACK DIAMOND

By: _____
Dave Gordon, Mayor

ATTEST:

By: _____
Brenda L. Martinez, City Clerk