

RESOLUTION NO. 06-409.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE THE CONSULTANT SERVICES AGREEMENT BETWEEN WEINMAN CONSULTING LLC AND THE CITY OF BLACK DIAMOND

WHEREAS, the City has determined that it must update its zoning code to comply with the Growth Management Act and to implement its Comprehensive Plan; and

WHEREAS, the City has determined that design guidelines are desirable as a tool to help achieve a desirable quality of development within the City; and

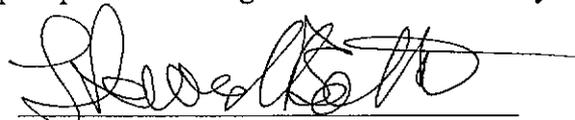
WHEREAS, the City desires to retain the services of a consultant skilled in the preparation of zoning regulations and design guidelines to prepare the same; and

WHEREAS, the City has selected the Weinman Consulting, LLC team to prepare an update of its zoning code and design guidelines, and the Consultant is qualified, willing and able to perform the above mentioned services; now, therefore

BE IT RESOLVED that the Mayor is hereby authorized to execute the Consultant Services Agreement, substantially in the form attached as Exhibit A;

BE IT FURTHER RESOLVED that the Mayor is authorized to make minor changes to said Agreement in order to take into account scrivener's corrections or administrative matters that do not affect the substance of the Agreement and are within his authority as the City's Chief Administrative Officer.

ADOPTED by the City Council at an open public meeting held on the 16th day of November, 2006.



Howard Botts, Mayor

Attest:


Brenda L. Streepy, City Clerk

CONSULTANT SERVICES AGREEMENT

This agreement is hereby entered into this 11th day of November, 2006, by and between the City of Black Diamond ("City"), a municipal corporation of the State of Washington, and Weinman Consulting LLC ("Consultant"), a Washington limited liability company.

WHEREAS, the City has determined that it must update its zoning code to comply with the Growth Management Act and to implement its Comprehensive Plan;

WHEREAS, the City has determined that design guidelines are desirable as a tool to help achieve a desirable quality of development within the City;

WHEREAS, the City desires to retain the services of a consultant skilled in the preparation of zoning regulations and design guidelines to prepare the same,

WHEREAS, the City has selected the Weinman Consulting, LLC team to prepare an update of its zoning code and design guidelines, and the Consultant is qualified, willing and able to perform the above mentioned services;

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

I. SERVICES BY CONSULTANT

A. The Consultant will perform all services and carry out all work necessary to prepare an update of the City's zoning code, and to prepare design guidelines for selected types of development. These services shall be performed pursuant to the Scope of Work attached to this Agreement as Attachment "A" and shall be prepared under the supervision and direction of the City.

B. Services authorized by the City to be performed by the Consultant prior to completion of a detailed scope of work and executed contract may include, but are not limited to, tasks or services necessary to organize and initiate the project, pursuant to the verbal or written authorization of the City.

C. Said services and all duties incidental or necessary thereto shall be performed diligently and competently, and in accordance with professional standards of performance.

II. COMPENSATION

A. The City shall pay the Consultant for the services authorized pursuant to this agreement an amount not to exceed \$70,520.00. Work shall be performed on a time and expense basis pursuant to the scope of work and budget contained in Attachment "A". The Consultant shall have the flexibility to shift authorized budgets between individual tasks, provided that costs for the project as a whole are within the not to exceed cost, and all tasks are accomplished.

affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex, age, national origin, marital status, physical or other motor handicap.

VIII. MODIFICATION

No change, alteration, modification, or addition to this agreement will be effective unless it is in writing and properly signed by all parties hereto.

IX. STANDARD OF CARE

The Consultant shall perform the consulting services which are the subject of this agreement using that degree of care and skill ordinarily exercised under similar circumstances by members of the profession practicing in the same or similar locality. The applicable standard of care shall be judged at the time services are rendered and not according to later standards.

X. HOLD HARMLESS

The Consultant shall hold the City and its officers, agents, and employees, harmless from all suits, claims or liabilities of any nature, including attorneys fees, costs and expenses, for and on account of injuries or damages sustained by any person or property directly caused by the negligent acts or omissions of the Consultant, its agents or employees pursuant to this agreement, or on account of any unpaid wages or other remuneration for services. And if a suit in respect to the above be filed, the Consultant shall appear and defend the same at its own cost and expense. And if a judgment be rendered or settlement made requiring payment of damages by the City, which damages are directly caused by the negligent acts or omissions of the Consultant, its agents or employees, the Consultant shall pay the same. However, nothing herein shall be construed to mean that the Consultant shall hold harmless and indemnify the City from claims, demands or liabilities arising out of any acts or omissions of the City and its officers, agents and employees.

XI. COMPLIANCE WITH LAWS

The Consultant shall comply with all applicable state, federal and local laws and safety regulations.

XII. ADDITIONAL SERVICES

The Consultant may be requested to perform additional services beyond the original scope of services as defined herein or by addendum to this agreement. Such additional services include those due to abnormal conditions beyond the Consultant's control, or changes in scope or requirements on the part of the City. Such work will be undertaken only upon written authorization of the City based on an agreed upon scope of services and amount of compensation.

XIII. WAIVER

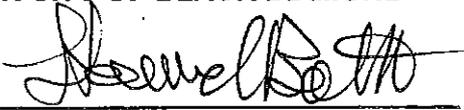
Any waiver of the parties of any term or condition of this agreement or of any breach thereof by the other party shall not be deemed as a continuing waiver and shall not operate to bar or prevent the damaged party from exercising any and all available rights or remedies for any succeeding breach.

XIV. SEVERABILITY

In the event that any provision of this agreement shall be held invalid and unenforcable by a final decision of a court of competent jurisdiction, the remaining provisions shall be valid and binding upon the parties.

IN WITNESS WHEREOF, the parties have executed this agreement on the date first above written.

FOR CITY OF BLACK DIAMOND

By: 

FOR WEINMAN CONSULTING, LLC

By: 
Richard Weinman

Approved as to form:

By: _____

ATTACHMENT "A"

Black Diamond Zoning Code & Design Guidelines Update Scope of Work and Budget (Revised September 6, 2006)

Project Description

The project consists of updating portions of the City's zoning code (BDMC Title 18) and design guidelines to accomplish the following goals:

- Achieving/maintaining compliance with the Washington State Growth Management Act (GMA);
- Implementing/achieving consistency with the City's Comprehensive Plan;
- Updating zoning district standards to reflect contemporary zoning practices, to be consistent with adopted design guidelines, and to comply with changes in State law (for example, State pre-emption of mining reclamation plans); and
- Updating portions of the City's design guidelines for Master Planned Developments (MPDs) and for development city-wide.

The update would be accomplished by Weinman Consulting, LLC (Richard Weinman) and LMN Architects (Mark Hinshaw). We will also coordinate our work with the Comprehensive Plan Update, being prepared under a separate contract.

Components of the zoning code that will be reviewed, assessed and updated include the following: definitions; zoning districts; uses/activities; development standards; parking; mobile homes; home occupations; mixed use standards; open space district; and possibly expanding the use of the hearing examiner process for some zoning decisions. Tasks related to the design guidelines include revising the MPD guidelines to address dark skies and tree preservation; evaluating the adopted city-wide design guidelines to assess whether they meet current city objectives; and implementing changes to the city-wide design guidelines based on City Council direction (note that this latter task would involve an amendment to the present scope of work).

Another consultant is currently updating the City's Comprehensive Plan Land Use Map. It is assumed that this or another consultant will also update the City's Zoning Map to achieve consistency with the Comprehensive Plan Land Use Map.

The project specifically does not include: road standards; stormwater drainage standards; the sign code (Chapter 18.92 BDMC); environmentally sensitive areas (Chapter 19.12 BDMC); the Shoreline Master Program (Chapter 19.08 BDMC); environmental performance standards (noise, emissions, etc.); and adult-oriented business regulations (Chapter 18.77 BDMC).

The scope and budget is focused on technical drafting but also includes limited time for meetings and interaction with the City Council to get direction and feedback. It does not directly include public hearings and support during the legislative adoption process. If the City is interested, we would be available to provide support for the public hearing process assistance and could augment our scope accordingly.

Consultant Services – Scope of Work

Task 1: Reconfirm Priorities and Issues; Regulatory Audit & Issue Paper

Purpose: Initiate project; discuss goals and objectives; refine scope of work; confirm direction for drafting.

- Review the existing code and summarize the current approach to development standards, permit criteria, review procedures and decision-making, format and organization. Compare the existing approach to accepted legal and planning principles, Comprehensive Plan policies and GMA requirements. Document code issues, gaps, and inconsistencies. Some potential issues identified on initial review of the code include:
 - (i) GMA -- “urban” densities and existing “rural” zones.
 - (ii) Comprehensive Plan Consistency -- several zoning districts identified in the Comprehensive Plan are not reflected in the zoning code, including Business Park, Neighborhood Retail, Mixed Use, and R-4; and
 - (iii) Legal questions – some existing standards, such as for mining reclamation, may be pre-empted by recent amendments to state law.
- Meet with City staff to identify perceptions of how the existing zoning code works -- including issues or gaps identified in administering the code, or problems with particular standards -- and to identify their thoughts for the update.
- Prepare an issue paper summarizing the findings of the regulatory audit and the code research. Where appropriate, identify alternatives and include comparisons among approaches of a range of jurisdictions.
- Review and evaluate the adopted city-wide design guidelines to identify any gaps, issues or inconsistencies. Prepare a memo to identify issues and options for City Council consideration.
- Meet with City staff to review the memo, discuss the policy and administrative implications of alternative approaches. Reconfirm issues to be addressed as “priority topics” for the project and establish the sequence for drafting and review. Refine/clarify the scope of work, budget and/or schedule as appropriate.
- Meet with the City Council in a study session to gain input and direction.

Work Product: Issue paper documenting code issues and identifying regulatory options; and memorandum addressing city-wide design guidelines.

Task 2: Background Research, Approach

Purpose: To develop a detailed approach to drafting the revised zoning code and city-wide design guidelines, and to obtain staff input and City Council concurrence with this approach.

- Review the format and organization of the code, and identify options for making it more user-friendly and less redundant (e.g., include permitted uses in a table).
- Review existing procedures; identify which can be consolidated, standardized, or eliminated. Identify opportunities for administrative decisions, or to broaden the role of the hearing examiner.
- Review use districts, permitted uses and other development standards, such as dimensions and parking. Identify those standards that need to be updated to meet recently adopted State requirements and GMA requirements, to be consistent with the City’s adopted Comprehensive Plan, or to make the code more “user friendly.” Prepare standards applicable to proposed new zoning districts, such as neighborhood retail and business park. Identify those districts where use standards should permit or encourage mixed-use development (in lieu of creating a separate “mixed use” zoning district) and develop appropriate standards (e.g., limits on particular uses, bulk, etc.). Document code issues, options and recommended approaches.
- Research, identify and compile relevant code sections/language (this task will draw on existing codes from other jurisdictions).
- Prepare a zoning conversion table that can be used as a transitional means of legalizing the new zoning districts, until a new zoning map is completed, and is formally adopted by the City. The conversion table would reference the adopted Comprehensive Plan Future Land Use Map, and the revised zoning code text, as a means to identify the locations of new zoning districts.
- Identify options for supplementing the MPD design guidelines to address dark skies and tree preservation. Identify options for updating the adopted city-wide design guidelines to address issues of concern.
- Review approach with staff, revise as necessary.
- Review revised approach at City Council study session.

Work Product: Detailed approach to drafting the revised zoning code; and options for updating the city-wide design guidelines.

Task 3: Prepare Draft Zoning Code & Supplemental MPD Design Guidelines

Purpose: To prepare a first draft of the new/updated zoning code and supplemental MPD design guidelines.

- The consultant team will prepare a first draft of the updated zoning code and MPD design guidelines.
- City staff will review the draft zoning code and design guidelines and provide comments.
- The consultants will revise the draft based on initial staff comments, and will present the draft zoning code and design guidelines at a City Council study session. (Staff will submit the draft of the zoning code to CTED to initiate that agency’s mandatory 60-day review period.)
- The consultants will revise the drafts according to City Council comments.

Work Product: Revised draft zoning code for review by the City Council and CTED, and for use in the public hearings and adoption process. Revised MPD design guidelines addressing dark skies and tree preservation. (Note: This scope includes only the MPD design guidelines update are included in this scope. Tasks and the level of effort

necessary to update the city-wide design guidelines are dependent on future City Council direction and are unknown at this time. The scope of work would be amended to include these tasks following preparation of the memo in Task 1

Task 4. SEPA Compliance

Purpose: To complete a document complying with the State Environmental Policy Act to support the Council’s action on the development regulations and design guidelines.

- An addendum to the Comprehensive Plan EIS would be appropriate to comply with the requirements of SEPA and would be efficient to prepare. It is assumed that the revised zoning code will mitigate the impacts of future growth as identified in the Comprehensive Plan. The addendum would describe the proposed regulations and would compare expected impacts to those identified in the Comprehensive Plan EIS. No new or significantly different impacts are expected.
- One round of review of a preliminary document is assumed. City printing and mailing is also assumed.
- Note that, depending on timing, this task could possibly be combined with environmental review for the Comprehensive Plan Update. A single addendum, for example, could be prepared for the Comprehensive Plan Update and the zoning code revisions. We would coordinate with the City’s Comprehensive Plan consultant to conduct environmental review as efficiently as possible.

Schedule

The schedule at this time indicates durations for major tasks. We would complete the schedule and identify target completion dates, based on conversations with staff and identification of a project start date.

Task	Duration
Task 1: Reconfirm Priorities and Issues; Write Issue Paper & Memo	3 weeks
Task 2: Background Research; Approach	3 weeks
- Study Session	1 week
Task 3: Draft Zoning Code & Design Guidelines	6 weeks
- Study Session	1 week
Task 4: SEPA Compliance/Addendum	1 week

Budget

TASK	HOURS		/COST ¹		TOTAL
	Weinman Consulting		LMN Architects		
1. (a) Reconfirm Priorities, Issues; Regulatory Audit	12	2,040	8	1,080	3,120
(b) Assess City-wide Design Guidelines (memo/scope of work)	8	1,360	28	3,780	5,140
2: Background Research; Approach ²	40	6,800	20	2,700	9,500
3: (a) Draft Zoning Code ²	60	10,200	60	8,100	18,300
(b) Draft MPD Design Guidelines ²	8	1,360	132	10,820	12,180
4. SEPA Compliance/Addendum ³	30	5,100			5,100
Project Management/Coordination ⁴	30	5,100			5,100
Meetings with Staff, & City Council ⁵	28	4,760	38	4,910	9,670
Subtotal Labor	216	36,720	280	31,390	68,110
Expenses ⁶		2,000		400	2,400
TOTAL		\$38,720		\$31,790	\$70,520

Notes:

- Costs are based on the following hourly labor rates:
 Huckell/Weinman Associates: Richard Weinman - \$170, Admin. - \$75.
 LMN Architects: Mark Hinshaw - \$135, Associate/Support - \$65.
- Task includes one round of revisions; meetings are included in a separate budget line item.
- Depending on timing, task could be combined with SEPA compliance for Comprehensive Plan update, which would result in savings.
- Assumes 2.5 hours per week x 12-week project period.
- Assumptions for Meetings:
 Zoning Code:
 - 4 meetings with staff 4 hours each (including travel). Meetings assumed to occur throughout the project
 - 3 meetings with City Council x 4 hours each (including travel). Meetings are assumed to occur in conjunction with products, work sessions.
 Design Guidelines:
 - 1 meeting with City Council (LMN) for MPD design guidelines (6 hours x 2 people, incl. travel)
 - 1 meeting with City Council (LMN) for city-wide design guidelines (1 person x 6 hrs, incl. travel)
- Expenses include travel, telecommunications, copying,, and subconsultant handling charge (5%). Printing of documents for public review (addendum, code) not included.