

RESOLUTION NO. 08-479

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT FOR BUILDING OFFICIAL AND CODE ENFORCEMENT SERVICES WITH C. BROWN CONSULTING

WHEREAS, the City has need for a building official and code enforcement services on an as needed basis; and

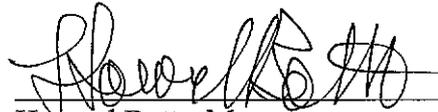
WHEREAS, C. Brown Consulting is able to provide said services to the City;

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 on behalf of the City the Professional Services Agreement for Building Official and Code Enforcement Services with C. Brown Consulting, 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 7th DAY OF FEBRUARY, 2008.

CITY OF BLACK DIAMOND:


Howard Botts, Mayor

Attest:


Brenda L. Streepy, City Clerk

**CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT
for
BUILDING OFFICIAL AND CODE ENFORCEMENT SERVICES**

This Professional Services Agreement ("Agreement"), for reference purposes only, is dated the 4th day of ~~January~~ February, 2008 and is entered into by and between:

CITY OF BLACK DIAMOND, WASHINGTON (the "City")
25510 Lawson Street
Black Diamond, WA 98010

Contact: Gwendolyn Voelpel Phone: 360-886-2560 Fax: 360-886-2592

and

C. Brown Consulting ("Consultant")
P.O. Box 128
Enumclaw, WA 98022

Contact: Cliff Brown Phone: 253-332-5056 Cell Phone: 253-332-5056
Fax: _____

Federal Tax Id No.: ⁰⁸¹ 602 653 806 1 1
City of Black Diamond Business License Number: 2253

TERMS AND CONDITIONS

1. Services by Consultant

1.1 Consultant, through and solely through, Cliff Brown, shall provide building official and code enforcement services to the City on an as need basis. Cliff Brown, so long as this Agreement is in full force and effect, shall be and hereby is, designated as a building official and code enforcement officer for the City, authorized and empowered to perform the duties of the building official and code enforcement officer, as directed by the City Administrator or her designee. The services performed by Consultant shall not exceed the directives provided by the designated City representative, nor shall the Consultant be entitled to a greater amount of compensation than is provided in this Agreement without the prior written



City



Consultant

authorization of the City Administrator. The Consultant shall also be available for cell phone communication at the cell phone number set forth above. The Consultant shall provide all transportation, tools and equipment necessary to perform the services required hereunder, except as expressly provided by the City pursuant to Agreement paragraph 1.3. For reference purposes the performance of the duties set forth in this paragraph shall be referred to as the Scope of Work.

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, if appropriate, shall be agreed to by the parties and incorporated in written amendments to this Agreement.

1.3 In order to assist the Consultant in providing the services required hereunder the City shall provide, at City facilities, access to a work station that will include a writing surface (desk or table) with computer and printer access. The City will also provide access to all City Codes, including any uniform codes that have been adopted by reference, for use at City facilities, and shall provide the forms necessary for the issuance of infraction notices for code violations.

2. Schedule of Work

2.1 Consultant shall perform the services described in the Scope of Work on an as need basis. It is contemplated that generally the Mr. Brown will perform the services during the City's regular business hours, two days per week. However, as needed, he shall perform the duties when needed, upon request by the City. All work for which compensation is to be paid, shall be performed within the City limits, either at a job site, or within City office facilities, except for the plan review, which may occur at the Consultant's office. It is contemplated that the plan review for new residential construction will take approximately 2 weeks, and new commercial construction will take a minimum of 3 weeks.

3. Compensation

The Consultant shall receive compensation of \$50.00 per hour for each hour Mr. Brown performs the inspection and code enforcement duties set forth in the scope of work. The Consultant shall receive \$70 per hour for plan review services. There shall be no additional monies paid for administrative staff, equipment, overhead, mobilization, travel, or any other expenses or personnel, except for reproduction and mailing costs for building plans and large engineer documents may be billed at actual cost. The billable time for services where work is to be performed in the City, shall commence and end from the offices of Consultant.

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.



City



Consultant

4.2 All invoices shall be paid by City warrant or check 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.

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. The Consultant may terminate the agreement at any time by giving the City notice in writing thirty (30) days prior to the termination date. Consultant shall attempt to complete all pending work during said thirty day period. 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. Consultant shall be entitled to compensation for any satisfactory work completed 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. 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



City



Consultant

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.

8. Ownership of Work Product

8.1 Ownership of the drafts and 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 request or at the Agreement termination date, whichever sooner occurs. .

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.

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.

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 is an independent contractor. The City does not and shall not control the method and manner of work performed under the Agreement. Consultant shall be responsible for the payment of all appropriate employment related taxes for its personnel performing duties and providing services under the terms of this Agreement.

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

Consultant: C. Brown Consulting
P.O. Box 128
Enumclaw, WA 98010
Fax: () _____

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

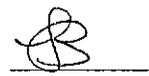
15.1 In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney fees from the other party.

16. General Administration and Management on Behalf of the City

16.1 The City Administrator for the City, or her designee, 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.

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. 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



City



Consultant

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.

CITY OF BLACK DIAMOND

CONSULTANT

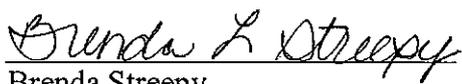
By: 
Howard Botts, Mayor

By: 
Cliff Brown, Owner

Date: 2-7-08

Date: 2-4-08

Attest:

By: 
Brenda Streepy
City Clerk

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