

RESOLUTION NO. 09-594

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN A CONTRACT WITH APEX ENGINEERING, PLLC AND PALMER COKING COAL COMPANY TO PREPARE DRAFT AND FINAL ENVIRONMENTAL IMPACT STATEMENTS FOR THE PROPOSED MORGAN KAME TERRACE MINE EXPANSION

WHEREAS, Palmer Coking Coal Company has made application to expand the existing Morgan Kame Terrace Mine by approx. 56 acres, in order to excavate approx. 1.3 million cubic yards of sand and gravel; and

WHEREAS, after review of an environmental checklist and supporting information, the City's SEPA Responsible Official issued a Determination of Significance (DS) on September 5, 2008, requiring an Environmental Impact Statement (EIS) to be prepared; and

WHEREAS, after initially filing an appeal of the DS, Palmer Coking Coal Company subsequently entered into negotiations with staff to limit the scope of an EIS; and

WHEREAS, on February 19, 2009, Palmer Coking Coal Company reached an agreement with the City Administrator, resulting in a limited scope EIS process to be pursued with due diligence; and

WHEREAS, a Request for Qualifications was published, soliciting bids from 10 potential consulting firms; and

WHEREAS, City staff has reviewed the submitted proposals, interviewed four consulting firms and concluded the team headed by Apex Engineering was best suited to complete the EIS process; and

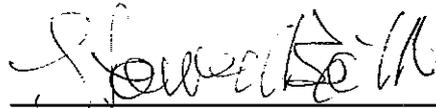
WHEREAS, funding for the EIS will be paid by Palmer Coking Coal Company

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

The Mayor is hereby authorized to sign a contract with Apex Engineering, PLLC and Palmer Coking Coal Company, to prepare Draft and Final Environmental Impact Statements for the proposed Morgan Kame Terrace Mine expansion.

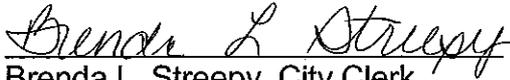
PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 23rd DAY OF APRIL
2009.

CITY OF BLACK DIAMOND:



Howard Botts, Mayor

Attest:


Brenda L. Streepy, City Clerk

CITY OF BLACK DIAMOND
PREPARATION OF SEPA DOCUMENT - CONSULTING AGREEMENT

THIS AGREEMENT is entered into this 23 day of April, 2009 by and between the CITY OF BLACK DIAMOND, hereinafter referred to as the CITY; and Apex Engineering PLLC, hereinafter referred to as the CONSULTANT; and Palmer Coking Coal Company, as an individual property owner, hereinafter referred to as the PROPONENT.

WHEREAS, the CITY has determined pursuant to Black Diamond City Code Chapter 19.04 that a Draft Environmental Impact Statement and a Final Environmental Impact Statement (hereinafter "DEIS" and "FEIS"; collectively, the "Project"), are necessary prior to action by the CITY on applications submitted by the PROPONENT relating to: the expansion of the Morgan Kame Terrace Mine. The subject property is generally located between State Route 169 and Lake Sawyer RD. E., north of Roberts Drive in the City of Black Diamond; and

WHEREAS, the CITY and PROPONENT desire that the DEIS and FEIS be prepared by an impartial party to ensure that the DEIS and FEIS provides an objective assessment of existing conditions, impacts, mitigating measures and alternatives and that it provides a credible decision-making document for review by the public, other agencies and the decision maker(s); and

WHEREAS, the CITY and PROPONENT desire to retain the services of a consultant skilled in DEIS and FEIS preparation to prepare the same; and

WHEREAS, the CITY approves and selects CONSULTANT to prepare the DEIS and FEIS; and

WHEREAS, the CONSULTANT is qualified, willing and able to perform necessary studies and prepare the DEIS and FEIS; and

WHEREAS, the services to be performed by the CONSULTANT are temporary in duration.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, performed and fulfilled by the respective parties hereto, the parties mutually agree as follows:

SECTION 1. LEGAL COMPLIANCE. This Agreement is subject to the terms and conditions of Black Diamond Municipal Code 19.04 and other applicable ordinances, statutes and regulations.

SECTION 2. SCOPE OF WORK. Subject to the requirements and limitations of SEPA and the Agreement Regarding Morgan Kame Terrace Sand & Gravel Mine Expansion EIS Preparation and Scoping dated February 19, 2009 ("Scoping Agreement"), the City shall determine the scope of study and type of methodology used to assist in the expeditious preparation, review, and release of the DEIS and FEIS addressing the issues identified in paragraph 4 of the Agreement. The CONSULTANT shall perform all services and carry out all work necessary to prepare, and shall prepare, the DEIS and FEIS and related SEPA documents for the Project, as described in the attached "Scope of Services" referred to as Attachment A, which is incorporated herein by this reference. The parties agree and understand that the CONSULTANT'S responsibility is to the CITY, not the PROPONENT, in preparing an accurate and

adequate environmental analysis. As provided in the Scoping Agreement, this analysis shall incorporate and address the Proponent's application documents and previously prepared supporting environmental reports.

SECTION 3. RESPONSIBLE OFFICIAL. The Responsible Official of the City, who shall be the Community Development Director, shall have responsibility for overseeing and directing the CONSULTANT'S preparation of SEPA documents and the DEIS and FEIS, and shall coordinate all communication with the CONSULTANT from the CITY regarding the DEIS and FEIS.

SECTION 4. PREPARATION OF DOCUMENTS. The services to be performed under this Agreement shall include preparation of a preliminary DEIS, preparation of a Draft FEIS, preparation of a Final FEIS pursuant to the provisions of WAC 197-11-560(4) or (5). The CITY shall provide the PROPONENT with copies of these documents upon receipt from CONSULTANT, and with respect to the preliminary DEIS and preliminary FEIS, shall request that the PROPONENT review and comment, and shall review and incorporate PROPONENT'S comments where appropriate prior to the printing and distribution of the documents. The CITY shall discuss with PROPONENT any comments or revisions it deems inappropriate for inclusion in the DEIS and FEIS. The CONSULTANT shall consult with the CITY and the PROPONENT during the preparation of preliminary documents for the purpose of information gathering regarding the Project, and shall discuss with the CITY and the PROPONENT the CONSULTANT'S preliminary findings regarding impacts and potential alternatives and mitigating measures. The CONSULTANT shall notify the CITY and the PROPONENT of all correspondence by copy and of substantive telephone conversations and meetings by memorandum of record where either the CITY or PROPONENT was not a participant in a communication between the CONSULTANT and the CITY or PROPONENT. The CITY shall make documents prepared by CONSULTANT under this Agreement available to the public on request when required under the Washington Public Records Act, RCW Chapter 42.17.

SECTION 5. INFORMATION PROVIDED BY PROPONENT. The PROPONENT shall provide the CONSULTANT with a legal description of the Project site, which the CONSULTANT shall be entitled to rely upon for completeness and accuracy. The PROPONENT shall provide copies of any site studies produced by other consultants relevant to the DEIS and FEIS, and such other information the PROPONENT has that is relevant to the preparation of the DEIS and FEIS. The CITY and PROPONENT shall cooperate with the CONSULTANT to facilitate the efficient and prompt preparation of the DEIS and FEIS. In its preparation of documents under this Agreement, the CONSULTANT shall use its best professional judgment in evaluating or relying on reports gathered or prepared by PROPONENT or its subconsultants. The PROPONENT shall provide to the CITY and the CONSULTANT a statement of the PROPONENT'S objective, the project description, and any proposed phasing of the project for use in preparation of the DEIS and FEIS. The PROPONENT is encouraged to submit a statement of

alternatives, including a description of reasonable alternative proposals that could feasibly attain the PROPONENT'S objective.

SECTION 6. PAYMENT. The PROPONENT shall pay CONSULTANT services and for such other costs and expenses incurred and documented in accordance with the Scope of Services, Attachment A hereto; PROVIDED, HOWEVER, that:

6.1. The total cost incurred by the CONSULTANT shall not exceed the total preparation cost and contingency amount as set forth in Attachment A hereto. The contingency amount equals potential additional tasks by GeoResources, Inc. as a contingency amount (the "Contingency Amount") to be paid to the CONSULTANT subject to parameters described in attached Attachment A. Other contingent or change order amounts are to be paid to the CONSULTANT, only if the CONSULTANT performs services or incurs expense caused by unforeseeable causes or the Scope of Services is modified as provided in Section 9, unless the Scope of Services is modified in accordance with the provisions of Section 9 of this Agreement subsequent to the date of this Agreement. The cost for printing and mailing both the Draft and the Final DEIS, FEIS shall be paid by the PROPONENT.

6.2. The total cost of preparation of the Final DEIS and FEIS is based upon the assumptions and format specified in Attachment A and WAC 197-22-560(5), consisting of an addendum with comments, responses, factual corrections, and an updated fact sheet. If a substantial revised Final DEIS and FEIS is prepared under WAC 197-11-560(1)(a)-(c) requiring additional work tasks not foreseen in the Scope of Services, a revised Scope of Services shall be prepared as provided in Section 9 of this Agreement and Attachment A.

6.3. The PROPONENT shall not be liable for payment to the CONSULTANT for services outside the Scope of Services requested of the CONSULTANT by the CITY.

SECTION 7. DEPOSIT. The PROPONENT shall deposit with the CITY funds (the "Initial Deposit"), which constitute fifty percent (50%) of the amount specified in Section 6.1, which will be placed in a non-interest bearing account, or shall deposit the Initial Deposit in an assigned account with the financial institution chosen by the PROPONENT, or shall provide the CITY a letter of credit for the amount specified in Section 6.1, except if revised as provided in Section 6.2. As the CITY disburses to the CONSULTANT amounts deposited with the CITY or in an assigned account under Section 8, the PROPONENT shall replenish such funds according to the following terms: if the CITY notifies the PROPONENT that the amount on deposit is at any time thirty percent (30%) or less of the amount specified in Section 6.1, then the PROPONENT shall deposit within five (5) business days sums adequate to increase the amount on deposit to the amount of the Initial Deposit; provided, however, that PROPONENT need not continue to replenish such funds after the aggregate amount deposited by PROPONENT has equalled or surpassed the amount specified in Section 6.1. An assigned account shall be in a form approved by the CITY and shall provide for disbursement of the amount on deposit to the CITY to pay the CONSULTANT for its services. All deposited funds shall be under the control of the CITY

until the project is completed or upon termination of the Agreement. At completion of the Project, all unspent funds shall revert to the PROPONENT. The CITY shall disburse funds to the CONSULTANT in accordance with Section 8 of this Agreement.

SECTION 8. DISBURSEMENT. The CONSULTANT agrees to submit monthly progress reports and invoices for services and costs to date as specified in the Scope of Services, which shall describe the services rendered and costs incurred. Original invoices shall be submitted to the CITY with one copy to be sent to the PROPONENT. If the CONSULTANT desires payment for a contingent expense, then on the invoice it shall describe the contingency and state whether the expense is payable from the Contingency Amount. Payment shall be authorized by the CITY on the basis of hourly costs relating to progress on specific work tasks outlined in the Scope of Work (Attachment A) or documentation of completion of a specified percentage of the work required as documented in the monthly progress report. The CITY shall disburse funds payable to the CONSULTANTS and the CONSULTANTS/subconsultants, as identified in Attachment A. If the PROPONENT objects to payment within ten (10) days of receipt of the invoice and advises the CITY, in writing, of the reasons for such objection and the CITY concurs with the objections and reasons, or if the CITY determines that adequate documentation for satisfactory completion or progress made on a work task is not provided, the CITY shall withhold payment to the CONSULTANT, notify the CONSULTANT of the reasons for withholding payment, and notify the CONSULTANT of the information or performance required for payment. The CITY shall be the final decision-maker with respect to the amount of any disputed payment. . Payment shall be mailed by the CITY within forty-five (45) calendar days of actual receipt by the CITY of a properly completed invoice. The CITY shall not be liable for payments to the CONSULTANTS or the CONSULTANTS/subconsultants beyond the deposit funds received from the PROPONENT.

SECTION 9. MODIFICATION OF SERVICES. In the course of research and preparation of the Draft DEIS and FEIS, the parties acknowledge that the CITY subject to the limitations of SEPA and WAC 197-11-600 and 197-11-620 and the Scoping Agreement, may request additional information and require additional work tasks, utilization of the alternate methodologies, or other requirements not included in the original Scope of Services as detailed in Attachment A. Any proposal initiated by the CONSULTANT for changes in the Scope of Services required to produce an adequate analysis of significant environmental impacts shall be submitted to both the CITY and PROPONENT and shall include estimates of added costs. If the CITY proposes changes in the Scope of Services in order to produce an adequate analysis of significant environmental impacts, or if the PROPONENT revises the Project in a way that changes significant environmental impacts or proposes consideration of additional alternatives, the CONSULTANT shall prepare a revised Scope of Services and cost estimate for review and approval by the CITY and PROPONENT. If the CITY finds that changes to the Scope of Services are necessary to produce an adequate analysis of significant environmental impacts pursuant to WAC 197-11-180, such amendments to the Scope of Services shall be made to Attachment A and the PROPONENT shall deposit additional

funds adequate to increase the amount deposited to fifty percent (50%) of the revised total cost amount, as required by the CITY; provided, however, that the unexpended Contingency Amount shall have first been applied to the revised total cost amount. Failure to obtain such deposit from PROPONENT shall be grounds for suspension of further administrative action and work on the DEIS, FEIS until such funds as determined by the CITY to be necessary for completion are received under the terms of this Agreement, or until other agreement is reached among the CITY and the PROPONENT.

SECTION 10. INDEPENDENT CONTRACTOR.

10.1. The parties intend that an independent consultant relationship will be created by this Agreement. No agent, employee or representative of the CONSULTANT or its subconsultants shall be deemed to be an agent, employee or representative of the CITY or the PROPONENT for any purpose under this Agreement. Employees of the CONSULTANT or of its subconsultants are not employees of the CITY and are not entitled to any of the benefits the CITY provides to CITY employees. The CONSULTANT shall be solely and entirely responsible for the acts of its employees, agents and subcontractors during the performance of this Agreement.

10.2. In the performance of the services under this Agreement, the CONSULTANT is an independent contractor with the authority over the details of the work, and the work of its subcontractors subject to the applicable SEPA regulations. However, the results of the work contemplated herein shall be subject to the CITY's general rights of review and approval as required by WAC 197-11-420.

SECTION 11. INDEMNIFICATION. The CONSULTANT shall indemnify and hold the CITY and PROPONENT and their officers, agents and employees harmless from all suits, claims (including any claims by any persons based on allegations of denial of CONSULTANT'S independent contractor status), or liabilities of any nature, including but not limited to attorneys' fees and costs and expenses, for or on account of any injuries or damages sustained by any persons or property resulting from negligence acts, errors, or omissions of the CONSULTANT or its agents or employees pursuant to this Agreement. If a lawsuit with respect to the above be filed, the CONSULTANT shall appear and defend the same at its own cost and expense, and if judgment be rendered or settlement made requiring payment of damages by the PROPONENT or CITY, which damages are based upon the negligent activities or omissions of the CONSULTANT, its agents or employees, CONSULTANT shall pay the same to the extent the same result from negligent acts, errors, or omissions of the CONSULTANT, its agents or employees pursuant to this Agreement.

SECTION 12. ANTIDISCRIMINATION. The CONSULTANT shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, age, national origin, marital status, sensory, mental or physical handicap. The CONSULTANT shall take affirmative action to ensure that applicants for employment are hired and that employees are treated during employment without regard to their race, creed, color, sex, age, national origin, marital status, sensory, mental or physical handicap.

SECTION 13. TERMINATION. The right is reserved by the CITY and the PROPONENT to suspend or terminate this Agreement at any time for due cause including, but not limited to, withdrawal of the application, failure of PROPONENT to provide deposits, inadequate or untimely performance of work by the CONSULTANT, or the CITY's withdrawal of the determination of significance. Any termination is effective upon ten (10) days written notice to the CONSULTANT and the PROPONENT by the CITY or to the CITY and the CONSULTANT by the PROPONENT. The CONSULTANT shall be entitled to receive just and equitable compensation for costs incurred prior to suspension or termination for satisfactory work completed on the Project prior to the date of suspension or termination provided that the CITY shall not be liable for payments to the CONSULTANTS or the CONSULTANTS/subconsultants beyond the deposit funds received from the PROPONENT.

SECTION 14. ASSIGNMENT. This Agreement may not be assigned or otherwise transferred by any party or parties hereto without the written consent of all the parties, which consent shall not be unreasonably withheld.

SECTION 15. PUBLIC DOMAIN. The parties hereto agree that the DEIS, FEIS and all material submitted by the CONSULTANT in the course of execution of this Agreement shall be considered in the public domain and not subject to copyright. The CONSULTANT further agrees to make research notes and other work products produced in fulfillment of this Agreement available to the CITY and PROPONENT for reproduction, upon request.

SECTION 16. CONFLICT OF INTEREST. The CONSULTANT agrees that it and its subconsultants shall not have a personal or professional bias or financial interest in the Project other than fees due under this Agreement. The CONSULTANT and PROPONENT shall disclose to the CITY on Attachment B prior contracts between the CONSULTANT and PROPONENT and prior services performed by the CONSULTANT for the PROPONENT. All parties agree that, subsequent to the effective date of this Agreement, any consultant or subconsultant described on Attachment B may perform services or contract to perform services described on Attachment A. Before the expiration of one hundred eighty (180) days after completion of services under the Agreement, the CONSULTANT shall not perform services or contract to perform services for the PROPONENT.

SECTION 17. DISPUTES. The parties to this Agreement must refer any dispute, controversy or claim arising out of or relating to this Agreement or its breach, other than disputes concerning disbursements per Section 8 of this agreement, to mediation before pursuing any other dispute remedy. Any such dispute, claim or controversy not resolved in mediation will be decided in binding arbitration in accordance with the Construction Industry Rules of the American Arbitration Association at its offices closest to the project site, unless the parties mutually agree to some other dispute resolution forum. The prevailing party in any arbitration or litigation will be entitled to recover reasonable attorneys' fees, legal costs, arbitration fees and other claim-related expenses, including reasonable fees for the time of its personnel.

SECTION 18. ENTIRE AGREEMENT. This Agreement, including attachments incorporated by reference, represents the entire agreement and understanding between the parties in relation to this DEIS, FEIS, and any negotiations, proposals, purchase orders, or oral agreements are intended to be integrated herein and to be superseded by this written Agreement.

SECTION 19 GOVERNING LAW. This Agreement is to be governed by, and construed in accordance with, the laws of the City of Black Diamond and the State of Washington.

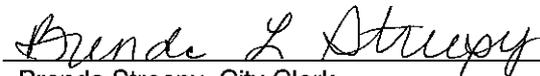
IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

CITY:

CITY OF BLACK DIAMOND

By 
Howard Botts, Mayor

ATTEST:


Brenda Streepy, City Clerk

APPROVED AS TO FORM:


Loren Combs, City Attorney

CONSULTANT:

NAME OF CONSULTANT

By Jeffrey D. Mann
Its Managing Member

PROPONENT:

NAME OF PROPONENT

By William J. Ford
Its Manager

By _____
Its _____

By _____
Its _____

Attachments:

A - Scope of Services

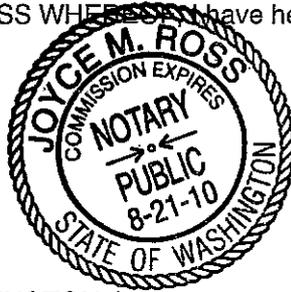
B - Disclosure of Prior Contracts or Services and Permitted Future Contracts or Services

PROPONENT

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 18 day of May, 2009, before me a Notary Public in and for the State of Washington, personally appeared William Kambel, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Manager of Palmer Co King Creek PROPONENT NAME, a (State of origin) (type of business: corporation, etc.), to be the free and voluntary act and deed of said (type of business, as above) for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



Joyce M Ross
NOTARY PUBLIC in and for the State of Washington,
residing at Auburn
My appointment expires 8/21/10

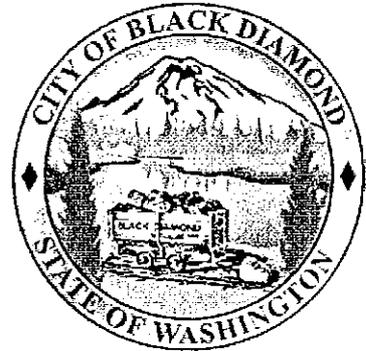
STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ____ day of _____, 20____, before me a Notary Public in and for the State of Washington, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that _____ was authorized to execute the instrument, and acknowledged it as the _____ of PROPONENT NAME, a (State of origin) (type of business: corporation, etc.), to be the free and voluntary act and deed of said (type of business, as above) for the uses and purposes mentioned in the instrument.

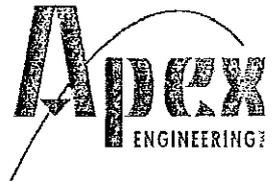
IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

NOTARY PUBLIC in and for the State of Washington,
residing at _____
My appointment expires _____

Scope of Work and Cost Proposal



Morgan Kame Terrace
Mine Expansion Draft & Final EIS



City of Black Diamond

2601 South 35th Street, Suite 200
TACOMA, WASHINGTON 98409
TEL (253) 473-4494
FAX (253) 473-0599
APEX@APEXENGINEERING.NET

"Designing your next project"

**MORGAN KAME TERRACE MINE EXPANSION
PROJECT BUDGET SUMMARY**

The following is a summary of the cost estimates for the EIS Team. Please see individual costs estimates for each Consultant and additional information.

COST ESTIMATE SUMMARY	
Apex Engineering, PLLC	
Draft & Final EIS Preparation & Project Management	\$30,000
GeoResources, LLC	**\$14,500
Raedeke Associates, Inc.	\$25,700
Transpo Group	\$18,385
Cedarock Consultants, Inc.	\$19,500
Total	\$108,085

**Contingency Amount: If monitoring wells are required for expansion areas add \$6,500.

NOTES

- Budget estimates have been made to address Screencheck EIS comments from the City and comments received from the public comment period. If additional studies or reports are required, or the number or complexity of responses exceeds the budgets, a new Scope of Work and Budget Authorization will be required for the Response to Comments.
- Cost estimate for reimbursable expenses for mileage, document copying, maps, special delivery services, photographic processing fees or other reimbursable expenses are as identified in the individual scopes of work.
- Survey of location test pit or monitoring wells would require additional authorization and budget.
- Management of fee payments to the EIS sub-consultants, by Apex Engineering will require a 10% administrative fee, which will be reflected in the billing to the City. If the City is able to pay sub-consultants directly, the fee will be deleted.
- For budgeting purposes, it is estimated the printing costs for the Draft and Final EIS documents will require approximately \$2,000 depending on the number copies requested by the City. We can also provide the EIS documents on CD and reduce the amount of printing.
- The cost estimate is based upon the anticipated number of person-hour typically required to complete a project of this size and complexity. The actual amount of time required will depend on (1) the amount of field time needed for the specific site complexity and conditions; (2) the number of meetings requested; (3) unanticipated delays in the schedule; (4) unforeseen issues requiring unanticipated expenditure of effort; (5) changes in scope from that detailed in this Agreement; (5) the completeness of technical information provided by the client and/or outside consultant for the project.

MORGAN KAME TERRACE MINE EXPANSION DRAFT & FINAL EIS OVERALL WORK PROGRAM AND SCOPE OF WORK

APEX ENGINEERING, PLLC

INTRODUCTION

This section includes a description of the Overall Work Program as well as the specific scope of work for Apex Engineering. Scope of Work and Budget documents for each consultant are found in following sections of this attachment, and are considered a part of this Attachment A to the City contract. Apex Engineering, PLLC will be the EIS Author and Project Manager for the Morgan Kame Terrace Mine Expansion.

SCOPE OF SERVICES

PHASE I – PROJECT ORGANIZATION AND DATA COLLECTION

Task 1 – Work Program Negotiations

Task 1 is the negotiations of EIS work program with the City of Black Diamond to establish final work program elements and cost estimates based on the work done in task items 1 - 6 of Phase I.

Apex Scope:

- 1) Coordinate with the City on Scope of Work discussion.
- 2) Conduct one meeting with the City.
- 3) Developed Scope of Work Document.
- 4) Coordinate final Contract approvals.

Task 2 – Project Organization

This task will include coordination between the City and Apex Engineering as the lead consultant to review the EIS and development objectives, make assignments, due dates, and operational procedures.

Apex Scope: Coordinate with City of Black Diamond, include one meeting.

Task 3 – Initial Project Coordination

Task 3 would include the entire team with the City of Diamond establishing direction for the EIS, communicating and highlighting the critical issues to be commenced in Phase I.

Apex Scope: Setup and conduct team meeting with the City of Black Diamond to establish work to be done to establish final Scope of Work.



Task 4 – Review Existing Reports and Identify Data Needs

Apex Scope: Review of engineering reports related to road and utility issues, and coordinate information which will be used for the Scope of Work negotiations.

Task 5 – Prepare the Fact Sheet and Background, Project Description, Project Setting and Summary

Apex Scope: Write Standard EIS Sections.

Task 6 – Preferred Alternative

This task would include the selected alternatives as determined and development of a final proposed project description, which would be utilized as the preferred alternative for the preparation of the Draft Environmental Impact Statement.

Apex Scope: Write the Alternatives section.

PHASE II – PREPARATION OF PRELIMINARY DRAFT EIS

The objective of this phase would be to prepare a Preliminary Draft EIS for review by the City of Black Diamond prior to publishing.

Task 1 – Incorporation of Alternative Analysis into the EIS

This task would incorporate the environmental information, which was prepared by subconsultants.

Apex Scope: Write Alternative Analysis Section for the environmental elements of the DEIS.

Task 2 – Incorporate Studies into the Environmental Elements of the EIS

Apex Scope: Write the Environmental Elements from the traffic, wildlife, fisheries and hydrological studies with the EIS format.

Task 3 – Prepare Preliminary Draft EIS

Prepare the EIS Summary in Chapter 2, and produce a document version for City Review.

Apex Scope: Prepare the Preliminary Draft EIS per SEPA requirements and submit to the City of Black Diamond for review.

PHASE III – PUBLISHING THE DRAFT EIS

The objective of Phase III would be to review the Preliminary Draft EIS with the City of Black Diamond, revise and amend as necessary, and prepare the document for publishing.

Task 1 – Client/Consultant Review

Apex Scope: Client/Consultant meeting to review City comments on the Preliminary Draft EIS.

Task 2 – Screencheck Revisions

Apex Scope: Revise, amend, and augment EIS as directed by the City of Black Diamond.

Task 3 – Draft EIS Approval to Publish

Final client/consultant review of the Draft EIS and sign-off for distribution and publishing. Final review by the City of Black Diamond. At this point, the document would be printed and distributed to parties of interest and other distribution lists as determined by the City of Black Diamond.

Apex Scope:

- 1) Meet with the City of Black Diamond to review any comments on the Preliminary DEIS.
- 2) Coordinate with EIS team for revisions.
- 3) Revise the Draft EIS.
- 4) Meet with the City for final approval for publishing.
- 5) Coordinate printing and mail out of the Draft EIS.

PHASE IV – PREPARATION/PUBLISHING OF FINAL EIS

The objective of this phase would be to receive comments from the public comment period, incorporate those comments, and address them in a Final EIS.

Task 1 – Review of Comments

Task 1 would be a client/consultant meeting to review comments received during the public comment period.

Apex Scope: 1) Meet with City of Black Diamond to review comments received during the public comment period. Include other team members, as needed.

Task 2 – Responses to Comments and Final EIS Preparation

Task 2 would be to prepare Final EIS Responses to Comments, revise exhibits and text as necessary, and submit to the City of Black Diamond for review and approval.

Apex Scope: 1) As needed, negotiate Scope of Work for Final EIS subject to the requests for additional information or studies.
2) Prepare the Final EIS Responses to Comments in concert with the EIS team.
3) Prepare the Final EIS Document for City review.

Task 3 – Final EIS Approval to Publish

Task 3 would be final review of the Final EIS with the City of Black Diamond. The Final EIS would be prepared for printing and distribution for the City of Black Diamond.

Apex Scope: 1) Meet with the City of Black Diamond for final review and sign off.
2) Coordinate the printing and distribution.

**MORGAN KAME TERRACE MINE EXPANSION DRAFT & FINAL EIS
COST ESTIMATE FOR PROPOSED SCOPE OF WORK**

APEX ENGINEERING, PLLC

Phase I - Project Organization & Data Collection

Task 1 - Negotiation of EIS Work Program and Contract with City.....	\$1,000
Task 2 - Project Organization	\$1,000
Task 3 - Initial Project Coordination	\$500
Task 4 - Review Existing Reports & Identify Additional Data Needs	\$1,000
Task 5 - Prepare Fact Sheet, Project Description, and Summary	\$1,000
Task 6 - Prepare Alternatives Descriptions	\$1,000

Phase I Total.....\$5,500

Phase II - Preparation of Screen check Draft EIS

Task 1 - Incorporate Alternatives Analysis from Studies into EIS.....	\$1,000
Task 2 - Incorporate Studies into Environmental Elements of EIS	\$5,000
Task 3 - Screencheck DEIS Report Preparation	\$3,000

Phase II Total\$9,000

Phase III - Publishing of Draft EIS

Task 1 - Client/Consultant Review	\$500
Task 2 - Revise and Amend DEIS	\$3,000
Task 3 - Draft EIS Approval to Publish.....	\$2,000

Phase III Total\$5,500

Phase IV - Preparation of FINAL EIS

Task 1 - Review Public Comments on DEIS.....	\$1,000
Task 2 - Prepare FEIS	\$5,000
Task 3 - Final Review and Preparation of FEIS to Publish	\$3,000

Phase IV Total\$9,000

Contract Administration/Accounting\$1,000

APEX PROJECT TOTAL.....\$30,000



NOTES

- Cost estimate for reimbursable expenses for mileage, document copying, maps, special delivery services, photographic processing fees or air photographic preparation fees is \$1,500.
- A budget estimate of 30 hours has been included to respond to City Screencheck EIS comments, and comments received during the Public Comment period. If additional studies or reports are required or the number of responses exceeds the budget estimates, a new Scope of Work and Budget authorization will be required.
- Management of fee payments to the EIS subconsultants by Apex Engineering will require a 10% administrative fee, which will be reflected in the billing to the City. If the City is able to pay subconsultants directly, the fee will be deleted.
- For budgeting purposes, it is estimated the printing costs for the Draft and Final EIS documents will require approximately \$2,000.

RAEDEKE ASSOCIATES, INC.
5711 NE 63RD STREET + SEATTLE, WASHINGTON
(206) 525-8122 + FAX: (206) 526-2880

Scope of Services
Black Diamond Morgan Kame Terrace Gravel Mine Expansion – EIS Studies

PROJECT SITE

The project site, approximately 203 acres in size, lies generally southeast of Lake Sawyer, between State Highway 169 on the east, the Auburn-Black Diamond Road on the south, and Lake Sawyer Road on the west, in the City of Black Diamond, Washington. The proposed mine expansion area consists of two parcels totaling 56 acres within the property. This places the site in a portion of Section 10, Township 21 North, Range 6 East, W.M.. A map showing the property and proposed mine expansion areas, prepared by Ecological Land Services, Inc., was obtained from the City of Black Diamond's files and provided by Apex Engineering in March 2009.

PROJECT SUMMARY

This document details services associated with preparation of technical analyses relating to plants and animals for a Draft and Final EIS for the City of Black Diamond for the proposed mine expansion by Palmer Coking Coal Company.

TASK 1. PROJECT INITIATION AND BACKGROUND INFORMATION

This task provides initial coordination and scoping with the project EIS team, as well as collection and review of background materials. Specifically, this task includes compilation and review of background information, including project site maps, scoping documents, previous technical documents prepared for the parcels and adjoining properties, local, state, and national resource inventories, search of state databases regarding the potential presence of endangered, threatened, sensitive, and other priority plant or animal species, and review of aerial photographs, as appropriate.

TASK 2. FIELD INVESTIGATION

This task involves conducting a site reconnaissance in order to describe existing conditions on the project site and immediate vicinity for the EIS document, including mapping upland vegetation communities and documenting wildlife use of the site. We assume that no detailed, systematic inventory of wildlife species is required for the EIS documents. Should the EIS Scope of Work require additional surveys or data collection beyond those outlined below, we would prepare a change order or other contract amendment to cover the additional work. Based on available information from the City of Black Diamond and Apex Engineering, we assume that an assessment of wetlands in the vicinity is not included in the scope of work for the EIS and that no wetland delineation is required. However, the site reconnaissance includes evaluation of habitat conditions along Rock Creek.

The cost estimate assumes up to one 10-hour day for field reconnaissance of the proposed mine expansion sites and immediate vicinity, for up to four staff (total of up to 40 staff-hours) to map vegetation communities, record wildlife observations, and collect notes regarding habitat characteristics and use. In addition, the estimate includes one 10-hour day for one staff members, as needed to complete habitat descriptions and record additional observations on the overall property.

TASK 3. PRELIMINARY DRAFT EIS SECTION

This task involves preparation of draft technical sections on plants and animals for submittal to the City of Black Diamond as part of the Preliminary Draft EIS. The report would provide a summary of existing conditions for the site and immediate vicinity, including; a habitat map, analysis of the probable impacts on plants and animals resulting from the proposed mine expansion, one mining alternative, and a No Action alternative in the EIS, and recommended mitigating activities to compensate for impacts from the preferred alternative. The information would include discussion of listed and priority species, wildlife movement patterns, and cumulative analysis required per the Scope of Work for the EIS.

This task assumes that our document will serve as drop-in text for the Draft EIS. Preparation of our report assumes timely receipt of the following: electronic base files in a suitable format for preparation of report graphics, site plans and/or descriptions of mining and No Action alternatives to enable assessment of impacts, including how the plan relates to Rock Creek, available information on logging history of the site, as well as required and proposed reclamation of mining areas. The cost estimate assumes one round of revision in response to comments from Apex Engineering or other EIS team consultants, with up to 8 staff-hours of revision and production. This cost estimate is based on analysis of the following alternatives for the EIS: a proposed mine expansion, one mining alternative, and a No Action alternative.

TASK 4. DRAFT EIS PUBLICATION

This task involves revision of our technical document regarding plants and animals based on comments from the City of Black Diamond staff and its reviewers on the Preliminary Draft EIS. It is difficult to determine the level of effort that will be required to revise documents in response to agency comments, so the estimate for this task should be considered very preliminary. However, for purposes of this cost estimate, the task includes revisions to our report in response to one round of review and comment by the project team and the City (with up to 16 staff-hours of revision and production, plus associated correspondence and coordination). If the review requires additional effort to respond to comments, or additional rounds of review are required, we would prepare a Change Order or other contract amendment to cover the additional work.

TASK 5. FINAL EIS

This task involves responses to public and agency comments on the published Draft EIS. Raedeke Associates, Inc. will coordinate response to public comments on the DEIS with the City, Apex Engineering, and the project team, and prepare written responses to the public comments on issues relating to plants and animals, and ETS and other priority species.

The scope of this task is difficult to determine prior to receipt of public comments, so the estimate for this task should be considered very preliminary. A relatively modest number of comments

from the public or reviewing agencies on the published Draft EIS is assumed. It may be necessary to amend the scope and budget for this task, depending on the number, extent, and magnitude of comments received on the published Draft EIS. The present cost estimate assumes up to 18 staff-hours of response preparation, including revisions per review by the project team and City, and does not include any additional studies that may be requested by the public or reviewing agencies based on their review of the Draft EIS.

TASK 6. MEETINGS, ADMINISTRATION, & EXPENSES

This task includes attendance at meetings with the client and project team or agencies, as may be otherwise required during the course of the tasks outlined above. The cost estimate includes up to 8 staff-hours of meetings with the City and/or the project team, including preparation and travel, plus general project administration, and project expenses.

EXCLUSIONS

Additional tasks may become necessary, depending on the findings of the scope of services described above. The following tasks are not included in this Agreement: (1) additional field studies beyond those described above, such as to delineate wetlands on the project site or adjacent properties, or to conduct additional surveys for wildlife; (2) additional studies beyond those described above as could be requested by the City or other reviewers of the Preliminary Draft EIS; (3) analysis of EIS alternatives or infrastructure alternatives beyond those described above; (4) tasks associated with additional rounds of document review and revision based on comments by Apex Engineering, the City, or other reviewers, beyond those described above for the alternative analysis or preparation of documents for the Draft EIS; (5) tasks associated with additional responses to public or agency comments on the Draft EIS in preparation for the Final EIS beyond those outlined above; (6) attendance at additional meetings beyond those described above; (7) participation in any public meetings or public hearings for the project; (8) tasks associated with any legal challenge to the EIS; (9) tasks associated with preparation of permit applications related to impacts on wetland, streams, or listed species; or, (10) preparation of any formal biological assessment or management plan regarding listed species beyond the tasks outlined above.

COST ESTIMATE

Task 1. Project Initiation	\$ 2,000.00
Task 2. Field Investigations	\$ 6,600.00
Task 3. PDEIS Document	\$10,100.00
Task 4. DEIS Document	\$ 2,700.00
Task 5. Final EIS	\$ 2,200.00
Task 6. Meetings, Administration, & Expenses	\$ 2,100.00
Total Cost Estimate	\$25,700.00

The Transpo Group

	PM	QC	PE	Graphics	Admin
Hourly Rate	\$185	\$215	\$105	\$65	\$75
Communication/Project Management	24	0	0	0	2
Black Diamond meeting (assume one)	4				
Conference calls/team coordination	8				
Coordination with City/County/WSDOT	2				
Public meeting and public hearing (assume one each)	8				
Contracting/administration	2				2
Data Review/Gap Analysis	2	0	8	0	0
Review existing documentation	2		4		
Site visit			4		
Draft EIS	22	2	54	10	0
Document existing conditions	2		8		
Estimate project trip generation/distribution			2		
Forecast and evaluate future conditions	2		16		
Identify potential mitigation measures	2				
Prepare draft technical report	12	2	24	8	
Finalize report	4		4	2	
Final EIS	10	2	8	0	0
Respond to comments	4	2			
Update technical report	6		8		
Total Hours	58	4	70	10	2
Reimbursables (mileage)	\$10,730	\$860	\$7,350	\$650	\$150
					\$19,740
					\$125
					\$19,865

Assumptions: attendance at up to two meetings and one hearing
 evaluation of up to five study intersections during one time period
 existing traffic counts available (no new counts)

Georesources, Inc

Draft and Final EIS Scope and Budget

Data review & Site Reconnaissance	\$2,500
Explorations Test Pits & Lab(owner hoe)	\$1,800
Monitor Wells (3+ to 40')	(\$7,500 if necessary)
GW Monitoring/Analyses	\$2,200
Water Budget (Expansion/Site)	\$1,200
(Cumulative)	\$1,500
Documentation/Figures	\$2,300
Draft EIS Total	\$11,500 (w/ M-wells - \$18,900)

Does not include survey control for GW

Final EIS Typically \$2,000 to \$3,000 comments/revisions

CEDAROCK CONSULTANTS, INC.

MEMORANDUM

Date: April 3, 2009
 To: Jeff Mann, Apex Engineering
 From: Carl Hadley
 Subject: **MORGAN KAME TERRACE MINE EXPANSION
 Fisheries Preliminary Scope and Budget**

Anticipated Task	Budget
<i>Existing Information:</i> Acquire and review existing information relative to site conditions, historic surface water quality and quantity monitoring, historic use of the site, and proposed specific and cumulative actions. Assumes one ½-day meeting plus travel.	\$2,000
<i>Site Visit:</i> Conduct half day site visit to qualitatively evaluate instream habitat adjacent to site, riparian buffer conditions, potential direct impacts of mine expansion/other proposed actions. Assumes one ¾-day plus travel.	\$1,000
<i>Impacts Analysis:</i> Map water flow rates, travel times, and pathways to Rock Creek and Crisp Creek based on information from applicant and GeoResources. Evaluate potential impacts to water quality in regional creeks and Lake Sawyer based on map discussed above and information on soils conditions and anticipated land uses. Evaluate potential for direct impacts to Rock Creek from future actions. Evaluate potential impacts to riparian buffer functions and values. The analyses will be quantitative where possible but because of schedule, will likely require some qualitative assessments based on use of Best Available Science resources from studies in nearby areas.	\$10,000
<i>Document Preparation:</i> Prepare draft and final technical reports for the DEIS. Reports will be provided digitally to Apex Engineering for final production. Budget assumes Apex will create and produce all graphics based on concepts provided by Cedarrock.	\$4,000
<i>Meetings:</i> Assumes no meetings in addition to those described and budgeted above. Any additional meetings can be attended on a time and materials basis.	\$0
<i>FEIS:</i> Response to comments on the DEIS and any changes to fisheries technical report as a result will be scoped and budgeted separately.	\$0
TOTAL FISHERIES BUDGET ESTIMATE:	\$17,000