

RESOLUTION NO. 09-625

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON,
AUTHORIZING A CONTRACT WITH PARAMETRIX FOR
TECHNICAL REVIEW SERVICES OF THE LAWSON HILLS
AND VILLAGES MASTER PLANNED DEVELOPMENT
APPLICATIONS

WHEREAS, the City does not have the staff level or the full range of expertise to provide comprehensive and timely review of the Lawson Hills and Villages Master Planned Development Applications; and

WHEREAS, Parametrix has been determined to be the most qualified consultant who will be able to most efficiently review the Master Planned Developments with respect to Streets, traffic and Stormwater infrastructure; and

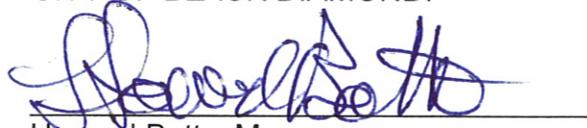
WHEREAS, The Master Planned Development codes provide for reimbursement of costs associated with the review of the applications;

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

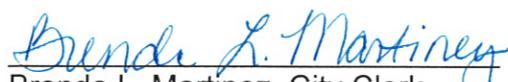
Section 1. The Mayor is authorized to execute a contract with Parametrix to provide technical review services of the Lawson Hills and Villages Master Planned Development applications with respect to Streets, and Stormwater Infrastructure as attached hereto as Exhibit A.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 6TH DAY OF AUGUST, 2009.

CITY OF BLACK DIAMOND:


Howard Botts, 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 August 6, 2009 and is entered into by and between

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

P.O. Box 599

24301 Roberts Drive

Black Diamond, WA 98010

Contact: _____ Phone: 360-886-2560 Fax : 360-886-2592

and

PARAMETRIX, INC. ("Consultant")

P.O. Box 460

1231 Fryar Avenue

Sumner, WA 98390

Contact: David Roberts Phone: 253-863-5128 Fax: 253-863-0946

Tax Id No.: 91-091-4810

for professional services in connection with the following project:

Technical Review of the streets and storm water systems as proposed in the Master Planned Development Applications for Lawson Hills and The and also referred to as the "Project" within the context of this contract.

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 an efficient and expeditious manner. An initial meeting after the first review will be expected within 3 weeks. This phase of review under this contract is expected to be complete by mid October.

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 e-mail notice and authorization to proceed.

3. Compensation

TIME AND MATERIALS NOT TO EXCEED. Compensation for the services provided in the Scope of Work shall not exceed \$ 24,225 without the written authorization of the City and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit "B."

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.

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 reasonable 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 \$2,000,000 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 \$2,000,000 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 \$2,000,000 per claim and \$2,000,000 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: Loren D. Combs and

VSI Law Group
3600 Port of Tacoma Rd. Ste. 311
Tacoma, WA 98424
Fax: 253-922-5848

Consultant: David Roberts, PE – Project Manager
Parametrix, Inc.
P.O. Box 460
Sumner, WA 98390
Fax: 253-863-0946

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 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 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

By: 

Howard Botts

Its: Mayor

Date: 8-6-09

CONSULTANT

By: 

Printed Name: Daniel McReynolds

Its: Principal

Date: 8-13-09

Attest:

By: 

Brenda L. Martinez

City Clerk

EXHIBIT A

City of Black Diamond MPD Review – Streets and Stormwater

Parametrix, Inc.

Phase 1 – Initial Review

The City of Black Diamond has received two applications for master planned developments called Lawson Hills and The Villages. The City has requested that Parametrix assist with the technical review of the application materials.

Parametrix will provide a technical review of proposed roadways and the proposed stormwater mitigation approach. Pac West will provide a technical review of the proposed water and sanitary sewer infrastructure improvements.

Parametrix will work with City Staff and Pac West Engineers as a team to determine whether or not additional technical information is necessary from the Applicant in order for the City to complete a Developer Agreement. Further, the team will provide recommendations on the form and content of the Developer Agreement to provide consistency with the City's Comprehensive Plan and the Planned Action Environmental Impact Statements prepared for both Master Planned Developments.

Task 1 – Project Management & Coordination

Goal

Maintain constant and thorough communications with the City of Black Diamond and Pac West Engineers to maximize teamwork and productivity. Maintain control of the project scope, budget, and schedule. Provide quality service and products to the client.

Approach

The approach to Task 1 includes:

- Schedule and coordinate the work of all team members and assure that work is completed accurately and within scope and budget.
- Perform a quality control review of all deliverables prior to submittal to the City.
- Coordinate with City staff and Pac West Engineers on all aspects of project to provide the City with conformed and thorough recommendations.
- Provide monthly updates to the City on the progress of the project including:
 - Prepare and submit monthly progress billings to City Administrator.
 - Provide additional identification of issues and proposed solutions if unforeseen issues arise.

Deliverables

The deliverables for Task 1 consist of the following:

- Monthly progress reports. The monthly report, addressing progress of the work, shall include as appropriate:
 - A summary of actual versus scheduled cost.
 - A summary of actual versus scheduled progress.
 - A narrative to define unanticipated issues, responsive action requirements by Parametrix.
- Meeting Agenda and Notes as applicable.

Assumptions

- The duration of the contract is August 2009 through December 2009.
- It is assumed that several meeting will be necessary to coordinate between Parametrix, Pac West Engineers and the City. We have assumed a total of three (3) meeting workshops that are 4 hours each in length for budgeting purposes.
- Delays due to unforeseen circumstances (i.e., additional meetings or extended review periods) may result in additional effort necessary for project management and coordination.

Task 2 – Review

Goal

To provide the City with a conformed set of comments and recommendations that can be used to obtain additional information from the Applicant if necessary and ultimately prepare a Developer Agreement for both MPD projects.

Parametrix will review the application materials with respect to street/roadway infrastructure and stormwater mitigation.

Approach

The streets technical review will evaluate geometric roadway design standards and roadside safety elements such as:

- Horizontal Curvature
- Cross Slope
- Vertical Grade
- Vertical Curvature
- Clear Zone

- Horizontal, Vertical and Entering Sight Distance
- ADA Compliance and Non-Motorized Use
- Access Management

The streets technical review will also include an initial assessment on whether the street and traffic improvements and the phasing of those improvements are consistent with the conclusions in the Environmental Impact Statement.

The stormwater mitigation review will include an initial assessment of:

- Consistency of the proposed mitigation approach with the 2005 Stormwater Management Manual for Western Washington or applicable current manual as approved by the City.
- Consistency of the proposed mitigation approach with the City's Comprehensive Plan, Design Guidelines and Sensitive Areas Ordinance(s).
- Consistency with the Environmental Impact Statements prepared by the City for the two Master Planned Developments.

The initial review of the Developer Agreement will primarily focus on identifying elements that are either missing or included at an inadequate level of detail to define the responsibilities for delivery of infrastructure improvements.

Deliverables

The deliverables for Task 2 consist of the following:

- A single set of conformed comments on the street and stormwater mitigation elements of the application in a format as determined by the City. Parametrix and Pac West Engineers will coordinate to combine comments prepared by both firms into a single set of comments.

Assumptions

- This review and any subsequent reviews will be limited to verification of compliance with City of Black Diamond design guidelines inclusive of all comprehensive plans, special studies and referenced design guidelines prepared by others. Neither the initial review nor subsequent reviews shall constitute a Peer Review that would preclude the Applicant from their professional diligence as licensed Professional Engineers in the State of Washington in this regard.
- Review of street geometrics will be limited to verifying that the correct standards are referenced. A detailed check on compliance with the standards will not be performed in Phase 1.
- Recommendations for transportation improvement projects will be based upon the phasing information included in the application dated May 11, 2009. The City and/or the Applicant will provide land use data for each phase necessary for determining the need for specific transportation improvement projects.

- The City will provide Parametrix with a copy of their most recent design guidelines and City staff will be available for communication regarding the use of other applicable design guidelines.

PROJECT: MPD Streets & Storm Drainage Review - Phase 1

CLIENT: City of Black Diamond

PHASE	TASK	ORG CODE	BILL RATES	STAFF						TOTAL HOURS	TOTAL COST	Subtotals
				Project Manager	Review Engineer (Engineer 2)	Traffic Engineer	Project Coordinator	Word Processing & Invoicing	Stormwater Engineer			
1	1											
	1.1		Project Management & Coord.									
	1.2		Progress Statements (5)	4			4	4			12	\$1,500.00
	2		Meetings (3)	12	12					4	28	\$4,440.00
	2.1		Review									
	2.2		Streets Review	20	40						60	\$8,200.00
	2.3		Stormwater Mitigation Review	12	40				8		60	\$7,880.00
			Consolidate Comments	4	4		4	4			16	\$1,940.00
Labor Subtotal at Current Salary Rates				52	96		8	8	8	4	176	\$23,960.00
Salary Escalation			Estimated % of project completed before next salary increase						Additional Labor Cost from salary escalation			
			Estimated % of next salary increase									
In-House Expense		Item	Quantity	Unit Cost	Unit	Direct Cost						
		Mileage	300	\$0.550	mile	\$165.00						
		Photocopies	1000	\$0.10	sheet	\$100.00						
		Check prints		\$1.00	sheet							
		Final Plots		\$20.00	sheet							
		Misc.		\$1.00	each							
Outside Expenses			Description			Direct Cost	Markup %					
<i>Other Expenses</i>							15%					
							15%					
<i>Subconsultants</i>							15%					
							15%					
							15%					
PROJECT TOTAL										\$24,225.00		

Prepared By: _____
(Project Manager)

Approved By: _____
(Division Manager)