

RESOLUTION NO. 10-687

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH RH2 ENGINEERING FOR ENGINEERING ASSISTANCE REGARDING THE CAPITAL FACILITY CHARGE ANALYSIS FOR WATER AND SEWER

WHEREAS, the Villages and Lawson Hills Master Planned Developments are moving forward to the council for review; and

WHEREAS, the City of Black Diamond Public Works Department is very limited in staff; and needs to be prepared for the greater infrastructure project details and financial issues associated with the Master Planned Developments; and

WHEREAS, there is a great deal of infrastructure research, analysis, and planning that is needed to provide the City of Black Diamond with the best decision making information for the Development Agreement negotiation; and

WHEREAS, RH2 Engineering has demonstrated relevant Master Planned Development experience, responsive service and technically leading expertise in water and sewer systems;

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

Section 1. The Mayor is hereby authorized to execute a Professional Services Agreement with RH2 Engineering for engineering assistance regarding the Capital Facility Charge Analysis for water and sewer as attached hereto as Exhibit A.

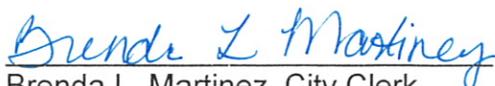
PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 3RD DAY OF JUNE, 2010.

CITY OF BLACK DIAMOND:



Rebecca Olness, Mayor

Attest:



Brenda L. Martinez, City Clerk

**CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT
Master Planned Developments - Engineering Assistance
Contract**

This Professional Services Agreement (the or this "Agreement"), for reference purposes only, is dated May 20, 2010 and is entered into by and between

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

Physical Address: 24301 Roberts Drive

Mailing Address: PO Box 599

Black Diamond, WA 98010

Contact: Seth Boettcher

Phone: 360-886-2560

Fax : 360-886-2592

and

RH2 Engineering ("Consultant")

12100 NE 195th Street Suite 100

Bothell WA 98011

Contact: Dan Ervin, P.E.

Phone: 800-720-8052

Fax: 425-591-5305

Tax Id No.: 91-1108443

For professional services in connection with the following project:

Master Planned Developments – Engineering Assistance 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 accordance with the Schedule attached to this contract as Exhibit "A."

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 receipt of Notice to Proceed that may be distributed via letter or e-mail.

3. Compensation

3.1 Compensation for the services provided in the Scope of Work shall be on a Time and expenses Basis not to exceed \$150,000 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 The City will terminate this contract if the city council does not approve the Villages and Lawson Hills Master Planned Developments.

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 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.

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

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

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

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

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

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

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

11. Assigning or Subcontracting

11.1 Consultant shall not assign, transfer, subcontract, or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld at the sole discretion of the City.

12. Independent Contractor

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

13. Notice

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

City:	City Administrator City of Black Diamond P.O. Box 599 Black Diamond, WA 98010 Fax: 360-886-2592
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Consultant:	Dan Ervin c/o RH2 Engineering 12100 NE 195 th Street Suite 200 Bothell WA 98011 Fax: 425-951-5305
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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

CONSULTANT

By: Rebecca Olness

By: Richard H. Harbert

Rebecca Olness
Its: Mayor

Printed Name: Richard H. Harbert
Its: President

Date: 6/4/10

Date: 6/10/10

Attest:

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

EXHIBIT A
Master Planned Developments - Engineering Assistance
Contract
SCOPE OF WORK

The Scope of Work is a general description of the types of services and activities where the City staff expects to need additional support to continue to process the Master Planned Development applications. This scope of work is not intended to be all inclusive and it is expected that the staff will request other technical assistance services not listed below, except that they must be related to the Master Planned Development application review process. This Scope of Work is broadly defined to allow the City's Project Managers to adapt the scope to meet the needs of the City. It is not anticipated that all of these services will be required, but they are included in the scope so that they can be assigned and completed as needed to meet the City's delivery schedules.

At all times the Scope of Work will be under the control of the City of Black Diamond. The Consultant is not at liberty to begin or complete work items unless specifically requested to do so by the City in the manner described and as authorized by the City.

1) Development Agreement (DA) Assistance

- Assist PWE and Planning with Project infrastructure planning
- Analyze the impacts of various infrastructure scenarios for constructability, maintainability, sustainability, reliability, community impacts, and capital costs
- Develop and analyze financing/equity/funding alternatives
- Develop standards consistent with the EIS and City requirements
- Write text as necessary to implement the EIS and MPD Ordinance
- Write and process amendments from time to time (as necessary) to react to the maturation of the project
- Maintain records that would allow the basis for Development Agreement decisions to be tracked and enforced.
- Prepare and print graphics as necessary to illustrate DA requirements
- Perform other tasks requested by the city to develop, approve and implement the Development Agreement

2) Infrastructure Project Identification and Funding

- Prepare a comprehensive list of improvements and projects anticipated to serve development ("projects")
- Identify the projects that the city will fund through capital facility charges
- Identify the projects that are exclusively developer extensions with no reimbursement or credit
- Identify the projects that are eligible for late comers reimbursement
- Perform a Capital Facility Charge analysis to set an appropriate CFC fee.

3) Preliminary Plat

- Review preliminary Plat submittals for compliance with DA requirements; sewer, water, stormwater, LID, streets and critical areas. Provide comments and meet with applicants as necessary to ensure compliance with DA and City codes.
- Check survey data and closure data for accuracy
- Check for compliance with County codes and recording requirements
- Prepare necessary documentation to facilitate City approval and acceptance (bond check, bond certification, staff reports, etc)

4) Preliminary Design Elements

- Attend meetings with City and applicants to reach consensus on design concepts and implement special opportunities
- Meet with design team from time to time to assist in implementing decisions and designs that meet the DA requirements

5) Technical Assistance

- Hydraulic analysis of water extension proposals and verification of fire flow needs using the City's water system hydraulic model.
- Research basin issues and line capacity issues using the City's sewer hydraulic model
- Check engineering calculations submitted by others in conjunction with planning, design and permitting.
- Perform Value Engineering Analyses when appropriate to ensure the proposed improvements are reasonable and sustainable
- Analyze rate and O&M impacts when appropriate to ensure the City is able to operate and maintain the permitted improvements
- Provide bonding, rate and financing analyses as necessary to support the City's utilities and administration
- Review codes, standards and procedures from other cities and other utilities for briefing and alternative analyses
- Prepare design plans as requested by the city

6) Construction Documents/Permitting

- Review plans submitted by project applicants for compliance with applicable codes, standards and criteria. These are likely to include; clearing and grading, mass grading, Temporary Erosion and Sedimentation Control, Traffic Control, Utilities (both wet and dry), Roadways, Intersections, Signalization, Channelization, Landscaping, Automatic Control, Reservoirs, Pump Stations, Lift Stations, Pressure Reducing Valves, Detention and Treatment Ponds, and Treatment Systems.
- Prepare comments using standard city forms and procedures or using custom forms and procedures
- Meet with City and applicants as necessary to present the comments and answer questions. Meet with applicants as necessary to optimize plans and capitalize on unique design or operation opportunities
- Maintain records of the plan submittals and the plan review comments
- Approve final permits and comply with State Standards for engineering review and approval
- Prepare reports necessary to obtain DOH and METRO approval of applicable construction projects

7) Assistance during Construction

- Prepare for and attend pre-construction conferences as requested by the City
- Review shop drawing submittals, change orders, field changes and design changes as requested
- Review and certify bond amounts and quantity take-offs as requested
- Assist inspection staff with questions, revisions and construction related questions
- Provide field inspection staff as requested to meet short-term scheduling needs
- Provide staff for on-site reconnaissance and field measurements (environmental monitoring) as requested

- Review and approve as-built drawings and markups
- Process the necessary documents to transfer ownership of the facilities to the city and ensure they are operable and complete
- Process the necessary documents to accept and own Right of Way

8) Agency coordination and communication support

- Prepare for and meet with other agencies as necessary to support the planning, design and permitting efforts of the applicants and as requested by the City.
- Represent the City as requested at regional or inter-governmental venues
- Maintain minutes and action summaries of all meetings
- Maintain a data-base of all required agency approvals and process all permits appropriately to obtain and comply with other agency approval requirements

9) Meeting attendance/consultation

- Prepare for and attend weekly meetings with staff and applicants. Maintain minutes and action items. Follow-through on action items as requested by the City
- Obtain copies of and review minutes, actions and other documents from Council and Committee meetings.
- Prepare for and attend presentations to the public, special interest groups and other agencies as requested by the City
- Attend Council Meetings, Administrative Meetings and staff meetings as requested by the City. Represent the city in a professional and rational manner in all venues.

10) Project Management

- Develop and maintain the processes necessary to work efficiently and provide timely feedback regarding progress and billing
- Maintain billing records and provide invoices in a timely and unambiguous format using methods that allow the City to track and allocate professional costs
- Maintain equipment and processes so that staff can readily and efficiently approach, communicate with and share documents with the consultants' staff
- Maintain all records in a format that supports efficiency and organization
- Provide progress and billing updates when requested by City
- Make administrative staff available to the City to assist with overflow administrative tasks or assistance with project management

