

RESOLUTION NO. 12-792

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH RH2 TO SERVE AS THE CIVIL ENGINEERING CONSULTANT TO THE MASTER DEVELOPMENT REVIEW TEAM.

WHEREAS, in 2010, the City Council approved Master Planned Development permits for The Villages and Lawson Hills MPDs; and

WHEREAS, in 2011, the City Council approved Development Agreements for The Villages and Lawson Hills MPDs; and

WHEREAS, as part of its consideration and approval of the Development Agreements, the City also entered into a new Funding Agreement with BD Village Partners and BD Lawson Partners; and

WHEREAS, the Funding Agreement calls for the establishment of a Master Development Review Team (MDRT), to consist of City staff and outside consultants; and

WHEREAS, the City does not have on sufficient staff resources to provide civil engineering services to meet the needs of the MDRT; and

WHEREAS, private firms providing civil engineering services were invited to submit Statements of Qualifications for review and consideration; and

WHEREAS, a panel consisting of staff and one City Council member reviewed the submittals, subsequently interviewed four firms and then unanimously recommended RH2 as the firm most capable of providing civil engineering services as desired;

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 contract with RH2 to provide civil engineering services for the MDRT, substantially in the form attached hereto as Exhibit A.

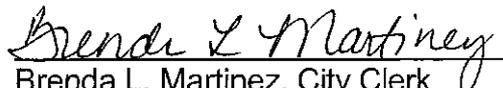
PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 19th DAY OF APRIL,
2012.

CITY OF BLACK DIAMOND:



Rebecca Olness, 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, April 11th, 2012 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: Andrew Williamson Phone: 360-886-5700 Fax: 360-886-2592

and

RH2 ENGINEERING, INC (the "Consultant")
Physical Address: 22722 29th Drive SE, Suite 210
Bothell, WA 98021

Contact: Dan Ervin, P.E Phone: 425-951-5400 Fax: 425-951-5401

Tax ID No.: 91-11008443

For non-exclusive on-call professional services for the City of Black Diamond.

TERMS AND CONDITIONS

1. Services by Consultant

1.1 Consultant has been retained by the City to provide professional engineering on-call services generally 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 The City will issue an on-call task request for each project task for which the City requires Consultant services. No work shall be commenced by Consultant under this Agreement except pursuant to such an on-call task request issued by the City in the form attached as Exhibit "B." Consultant shall perform the services described in the on-call task request in accordance with the schedule and scope of work set forth in the on-call task request.

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 execution of this agreement.

3. Compensation

□ 3.1 Rates. Compensation for the services provided pursuant to each on-call task request shall be on a time and expenses basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit "C". Consultant may adjust the billing rates and reimbursable expenses once each calendar year on or after January 1st by providing the City with written notice of the adjusted rates and expenses no less than (30) thirty days prior to the effective date of such adjustment. The billing rates and reimbursable expenses for on-call task orders authorized prior to receipt of written notice of the rate/expense adjustment by the City shall not be affected by the adjustment.

3.2 Other. In the event that after commencement of work, the Consultant anticipates that the work for an on-call task request will exceed the initial amount authorized, Consultant shall promptly notify the City and provide the City with whatever documentation or information is necessary to request approval of any amounts in excess thereof.

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. Consultant understands and agrees that the services rendered pursuant to this Agreement are for the sole exclusive benefit of the City and that no third party shall have authority to authorize, approve, direct or control any of the services rendered to the City pursuant to this Agreement.

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. 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 \$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

With a copy to: Chris Bacha
Kenyon Disend, PLLC
11 Front Street South
Issaquah, WA 98027
Fax: 425-392-7071

Consultant: Dan Ervin, P.E.
Vice President
RH2 Engineering, Inc.
22722 29th Drive SE, Suite 210
Bothell, WA 98021
Fax: 425-951-5401

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/her designee(the contract Administrator) 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. . Consultant understands and agrees that any and all work to be performed pursuant to this Agreement must be approved in advance by the contract Administrator. No third party, including the project applicant, shall have any direct control or influence over the services performed under this Contract.

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. After City Council approval, this Agreement shall be in effect as of April 20, 2012 and shall remain in effect until June 30, 2014, unless sooner terminated as set forth herein. 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.

18. Conflict of Interest; Non-Collusion

18.1 No officer, employee or agent of the City, nor any member of the immediate family of any such officer, employee or agent, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The Consultant shall comply with all federal, state, and City conflict of interest laws, statutes and regulations. The Consultant represents that the Consultant presently has no interest and shall not acquire any interest, direct or indirect, in the project to which this Contract pertains which would conflict in any manner or degree with the performance of the Consultant's services and obligations hereunder. The Consultant further covenants that, in performance of this Contract, no person having any such

interest shall be employed by the Consultant. The contractor's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from the project applicant or any affiliate or agent of the project applicant.

18.2 The Contractor warrants and represents that the Contractor has not, nor has any other member, employee, representative, agent or officer of the Contractor, entered into or offered to enter into any combination, collusion or agreement with any person or entity to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of this Contract other than the consideration offered pursuant to the terms and conditions hereof.

CITY OF BLACK DIAMOND

By: Rebecca Olness
Rebecca Olness

Its: Mayor

Date: 4-20-12

CONSULTANT

By: Dan Ervin
Dan Ervin, P.E.

Its: Vice President

Date: April 11th 2012

Attest:

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

EXHIBIT A
Scope of Work
City of Black Diamond
Master Development Review Team

March 2012

Background

The Master Development Review Team (MDRT) is a dedicated team of personnel operating within the City of Black Diamond (City) to permit Master Planned Development projects within the City. The MDRT duties and obligations are described in the Development Agreements for the Villages and Lawson Hills, and in the MDRT Funding Agreement between Black Diamond and Yarrow Bay Communities. The MDRT is composed of City staff and contract staff.

RH2 Engineering, Inc., (RH2) is a contract member of the MDRT.

The MDRT is designed to be dynamic and flexible and evolve as needed to facilitate the City's role as a regulator in major development projects. The character and amount of work will vary, from time to time, and this Agreement implies a commitment by RH2 to maintain schedule and personnel flexibility and provide a superior level of professional service. The benchmark for performance evaluations will be established by the City, and these criteria may be subject to change as the MDRT evolves and as the development projects progress.

Some work tasks are anticipated, and those tasks are listed below. Other unanticipated tasks will emerge as the development projects mature and as the MDRT evolves. Unanticipated work will be performed under the most appropriate task listed below or authorized by letter agreement or email directive from the City.

The following tasks are not intended to imply chronological order, but rather serve as general categories of work:

Task 1 – Permit Review

- 1.1 Review permit applications and other applicant submittals in compliance with: 1) Villages and Lawson Hills Development Agreements, 2) City Municipal Code and Standards, 3) applicable state statutes and requirements, and 4) any other documents or regulations governing the work. It is anticipated that most of the permit submittals will be preliminary plats, site development permits or utility permits for water, sewer, stormwater and street work improvements. The permits and submittals will generally be reviewed for the following items, if applicable:
- Check the general plan layout for ease of interpretation and lack of ambiguity and comment on ways to improve layout if necessary;
 - Check the completeness of the design for construction and inspection purposes;
 - Perform a check of the supporting engineering calculations;
 - Check for compliance with the governing agreement and the applicable minimum design standards, and check for compliance with the generally accepted engineering standard of care;

- Cross-check for conflicts and ambiguities in the design plans and with previous permit approvals;
 - Perform simple value engineering and identify areas for design simplification or cost reduction;
 - Cross check specifications for conflicts and ambiguities;
 - Check reference materials for validity;
 - Check record materials for completeness and the ability to retrace the design process in the future.
- 1.2 Comply with the schedules identified by the City.
- 1.3 Perform any other services as directed by the City.

Task 2 – Conceptual and Collaborative Design

- 2.1 Provide conceptual planning and design services for utilities and infrastructure in collaboration with City staff. Maintain a presence at the City’s design meetings to exert a positive influence on the maintainability of the improvements and the quality of the design. Search for and implement ways to improve plans and designs.
- 2.2 Provide primary design services as directed by the City, on behalf of the City.
- 2.3 Perform any other services as directed by the City.

Task 3 – Services During Construction

- 3.1 Provide on-call field inspection services to assist and supplement the experience and resources of City staff. Make periodic site visits at City discretion to maintain a working knowledge of project constraints, requirements, and character.
- 3.2 Perform any other services as directed by the City.

Task 4 – As-Built Review

- 4.1 Facilitate delivery of as-built construction records from the appropriate design teams to Public Works. Check records for compliance with published as-built requirements and accept or reject records as appropriate. Develop new as-built requirements, from time to time, as requested by the City in accordance with City goals and objectives. Check design team compliance with any Washington State professional engineering standards.
- 4.2 Perform any other services as directed by the City.

Task 5 – Testing, Acceptance, and Bonding

- 5.1 Provide facility and utility field testing services to assure that improvements meet the requirements of applicable approved construction plans.
- 5.2 Review and recommend acceptance or rejection (as appropriate) of the permitted utilities and facilities as required in the City’s Municipal Code.

- 5.3 Review and accept bonding amounts and certifications for performance bonds and maintenance bonds.
- 5.4 Perform any other services as directed by the City.

Task 6 – Compliance Tracking

- 6.1 Develop and maintain a tracking system to assure compliance with the Development Agreements. Track the following items, including but not limited to: water conservation, impervious area limitations, sewage interceptor capacity, traffic capacity and level of service, and phosphorus discharge.
- 6.2 Perform any other services as directed by the City.

Task 7 – Project Management

- 7.1 Attend meetings, as necessary and as directed by the City, to assure compliance with the Development Agreements and this Scope of Work.
- 7.2 Provide quality control and maintain quality assurance (QA/QC) procedures for RH2 work products. Meet and coordinate with MDRT members as necessary to maintain the QA/QC objectives, meet the schedule requirements and comply with the minimum design and review standards. Provide input as requested to the City regarding the work and progress of RH2 project staff.
- 7.3 Maintain complete and efficient working files of RH2's project activities.
- 7.4 Provide timely and accurate billing invoices and billing records for RH2 and for related subconsultant work.
- 7.5 Provide and maintain an administrative structure that allows efficient access to RH2's project staff members who work on MDRT projects. Maintain sufficient workload flexibility to meet the dynamic workload needs of the MPDs.
- 7.6 Perform any other services as directed by the City.

Task 8 – Engineering Report Review

- 8.1 Review reports and documents created by others for compliance with the Development Agreements and City Municipal Code.
- 8.2 Summarize the work and reports as necessary for presentation to other City departments, City staff or the public regarding reports in support of permits or other development actions.
- 8.3 Provide peer-review services through subconsultants as requested by the City.
- 8.4 Perform any other services as directed by the City.

Task 9 – Liaison with Other Departments

- 9.1 Meet with other City departments and regional agencies as requested by the City to share information and maintain a cooperative working environment.
- 9.2 Perform any other services as directed by the City.

Task 10 – Agency Coordination

- 10.1 Meet with other Agencies as directed by City and assist in developing collaborative and complimentary solutions to City/Regional issues (i.e. sewage conveyance, service area limits, sustainable permitting, etc.). Develop briefing materials for City staff as appropriate and provide data identifying lifecycle cost impacts, LOS impacts, regulatory impacts, and other pertinent data or evaluations requested by the City.

EXHIBIT C
RH2 Engineering, Inc.
SCHEDULE OF RATES AND CHARGES

2012 HOURLY RATES

CLASSIFICATION		RATE	CLASSIFICATION		RATE
Professional	IX	\$199.00	Technician	IV	\$127.00
Professional	VIII	\$199.00	Technician	III	\$119.00
Professional	VII	\$191.00	Technician	II	\$88.00
			Technician	I	\$83.00
Professional	VI	\$177.00			
Professional	V	\$168.00	Administrative	V	\$118.00
Professional	IV	\$158.00	Administrative	IV	\$98.00
			Administrative	III	\$84.00
Professional	III	\$148.00	Administrative	II	\$68.00
Professional	II	\$137.00	Administrative	I	\$57.00
Professional	I	\$125.00			

IN-HOUSE SERVICES

In-house copies (each)	8.5" X 11"	\$0.09	CAD Plots	Large	\$25.00
In-house copies (each)	8.5" X 14"	\$0.14	CAD Plots	Full Size	\$10.00
In-house copies (each)	11" X 17"	\$0.20	CAD Plots	Half Size	\$2.50
In-house copies (color) (each)	8.5" X 11"	\$0.90	CAD System	Per Hour	\$27.50
In-house copies (color) (each)	8.5" X 14"	\$1.20	GIS System	Per Hour	\$27.50
In-house copies (color) (each)	11 X 17"	\$2.00	Technology Charge		2.5% of Direct Labor
			Mileage		Current IRS Rate

OUTSIDE SERVICES

Outside direct costs for permit fees, reports, maps, data, reprographics, couriers, postage, and non-mileage related travel expenses that are necessary for the execution of the project and are not specifically identified elsewhere in the contract will be invoiced at cost.

All Subcontractor services are billed at cost plus 15%.

CHANGES IN RATES

Rates listed here are adjusted annually. The current schedule of rates and charges is used for billing purposes. Payment for work accomplished shall be based on the hourly rates and expenses in effect at the time of billing as stated in this Exhibit.