

**RESOLUTION NO. 12-819**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH SUBTERRA, INC. TO SERVE AS THE GEOTECHNICAL 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 sufficient staff resources nor the expertise to provide geotechnical engineering review services to meet the needs of the MDRT; and

**WHEREAS**, private firms providing survey review 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 two firms and then recommended SubTerra, Inc. as the firm most capable of providing survey review services as desired;

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

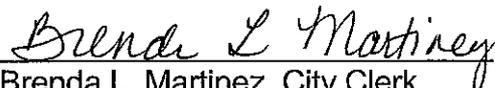
**Section 1.** The Mayor is hereby authorized to execute a contract with SubTerra, Inc. as attached hereto as Exhibit A to provide geotechnical engineering review services for the MDRT.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,  
WASHINGTON, AT A SPECIAL MEETING THEREOF, THIS 9<sup>th</sup> DAY OF JULY, 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 July 10, 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: \_\_\_\_\_ Phone: 360-886-5700 Fax : 360-886-2592

and

SubTerra, Inc. ("Consultant")

Physical Address: 218 East North Bend Way, North Bend, WA 98045

Mailing Address: P.O. Box 520, North Bend, WA 98045

Contact: Dr. Chris Breeds Phone: 425-888-5425 Fax: 425-888-2725

Tax Id No.: 91- 152-9101

for professional services in connection with the following project:

On-call Geotechnical Consulting services on an as-needed basis to conduct third-party development reviews associated with site investigation, geologic hazards evaluation, site planning / design and construction for the Villages and Lawson Hills Master Planned Developments.

**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 "B."

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**

TIME AND MATERIALS. Compensation for the services provided in the Scope of Work shall be on a time and materials basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit "C."

## **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: Dr. Chris Breeds  
SubTerra, Inc.  
P.O. Box 520  
North Bend, WA 98045  
Fax: 425-888-2725

**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 July 10, 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: 7-10-12

CONSULTANT

By: Chris D. Breeds  
Printed Name: Chris D. Breeds

Its: President

Date: 7-16-2012

Attest:

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

The City of Black Diamond will contract with SubTerra Inc. to provide on-call Geotechnical Consulting services on an as-needed basis to conduct third-party development reviews associated with site investigation, geologic hazards evaluation, site planning / design and construction for the Villages and Lawson Hills Master Planned Developments.

SubTerra, Inc. Geotechnical Consulting work will include review of geological and engineering studies and engineering designs for abandoned coal mines, steep slopes, site improvements, rockeries and retaining structures, impoundments, embankments, etc. as further described in the Black Diamond Municipal Code and provisions of the planned MPDs.

Consulting services may generally include the following tasks as requested by the City:

1. Pre-submittal consultation with applicants and city staff.
2. Participation in Preliminary Design meetings and other activities as a Member of the Master Development Review Team (MDRT).
3. Review and preparation of written comments on submitted applications, sensitive areas studies, SEPA Checklists/EISs, mitigation plans, and related documents prepared by others for the purpose of coal mine hazards areas identification, review of impacts, and mitigation evaluation.
4. Field inspections and field observations of Applicant site investigation programs to verify existing site conditions.
5. Conducting record research, locating abandoned coal mine features and workings and assembling as drawings/exhibits in support of the City's evaluation of abandoned coal mine studies submitted by Applicant.
6. Review and preparation of written comments on submitted engineering drawings, utilities plans, grading plans, stormwater management plans, stream culvert designs, geotechnical reports, and other reports, studies, and drawings for the evaluation of compliance with city codes and standards and any applicable provisions of the approved MPDs.
7. Review and preparation of written comments on exceptions, variances, or other requested deviations from Code.
8. Review and preparation of written comments on draft sensitive areas notices to be recorded on title.
9. Review and preparation of written comments on mitigation, maintenance, and monitoring costs estimates for the posting of financial guarantees, if required, by applicants.
10. Verbal and written correspondence and coordination with applicants and/or City staff.
11. Assistance with staff reports and preparation/review of meeting/hearing materials and exhibits.
12. Interagency coordination.
13. Attendance and/or testimony at city council or other public meetings or hearings.
14. Pre-construction meeting attendance and related correspondence.
15. Review and findings of demarcated boundaries and fencing limits for the protection of coal mine hazard areas by applicants prior to the commencement of construction.
16. Construction and post-construction related third-party monitoring inspections, compliance reviews and reports during construction of individual engineering projects.
17. Review of any reported violations and subsequent corrective restoration or mitigation for violations caused by applicants or their contractors.

# City of Black Diamond On-Call Task Request

Date: _____	City Staff Contact: _____
Project Name: _____	Phone: 360-886-5700
Project No.: _____	Fax: 360-886-2592
Request Made To: _____	
Phone: _____	
Fax: _____	

<b>Scope of Task Request</b>

<b>Budget Estimate: \$</b>

<b>Task Request Approval:</b>			
	Written Name		Title
	Signature		Date

\*Costs are billed on a time and materials basis, the Consultant shall notify the City should additional funds be necessary to complete the task order. Additional work beyond that which is ordered by the City shall not commence until written notification is received from the City.

# SubTerra, Inc.

## Payment Terms and Rate Sheet

SubTerra, Inc. is an Engineering Corporation offering engineering services in the mining, civil, and geotechnical fields. We also rent, lease, and sell equipment related to these fields including blast monitoring equipment, instrumentation, excavation profiling and surveying, and tunneling equipment

The following paragraphs and table provide a rate structure for our services and associated payment terms and conditions.

Rates for Technical Professional Services	Rate
Principal	155.00
Associate	135.00
Senior	125.00
Project	115.00
Staff	105.00
Senior Drafter	95.00
Drafter	85.00
Senior Independent Associate	175.00
Instrumentation Technician	95.00
CM Senior Inspector	105.00
CM Technician/Inspector	95.00
Secretarial and Administration	6% of Labor

### Payment Terms for Technical Services

We invoice monthly for technical services, usually on or near the first of the month. For time and materials contracts, invoices are provided that delineate hours worked by discipline or personnel, other direct costs (e.g., subcontractors, travel, copying, telephone, etc.) that are directly attributable to the project, and a markup of 10% on other direct costs that recovers associated general and administrative costs, B&O taxes, and PI insurance. Subject to prior agreement with Client, an additional management fee may be added to subcontractors to cover associated administrative costs. These costs will have already been incurred and paid by us on your behalf. The invoice is therefore payable on receipt and is considered past due 10 days from the invoice date.

### Payment Terms for Rental, Lease or Purchase of Equipment

Terms will be as noted on our Instrument and Equipment Rental Agreement, Sales Contract, or Lease Agreement.