

RESOLUTION NO. 14-936

**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
BERGERABAM**

WHEREAS, the City of Black Diamond is in need of consulting services for the 2015 Comprehensive Plan Update; and

WHEREAS, the City received a grant from the Washington State Department of Commerce in the amount of \$18,000 for the update work; and

WHEREAS, the City has identified the 2015 Comprehensive Plan Update project in the 2014 budget; and

WHEREAS, private firms were invited to submit Requests for Proposals for review and consideration; and

WHEREAS, a panel consisting of City staff reviewed the submittals, subsequently interviewed three firms and recommend BergerABAM to provide consulting services as desired;

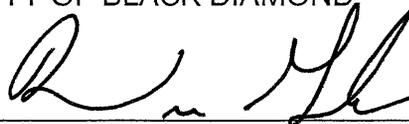
WHEREAS, BergerABAM has the expertise and experience to provide the City with the consulting services necessary for this project;

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 BergerABAM, substantially in the form as approved by the City Administrator, for an amount not to exceed \$82,506.00. Any changes to the professional services agreement reviewed by the City Council, along with its attachments and exhibits, will be further reviewed by the City Administrator and City Attorney prior to execution by the Mayor.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 6TH DAY OF MARCH, 2014.

CITY OF BLACK DIAMOND:



Dave Gordon, Mayor

Attest:

Brenda L. Martinez
Brenda L. Martinez, City Clerk O

CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the or this "Agreement"), for reference purposes only, is dated March 14, 2014 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: 360-886-5711 Fax : 360-886-2592

and

BergerABAM ("Consultant")

33301 9th Avenue South, Suite 300

Federal Way, WA 98003-2600

Contact: Don Hardy

Phone: 360/823-6115

Fax: 360/823-6101

Tax Id No.: 911422812

for professional services.

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 Exhibit "A" in a timely manner with the goal to following City review and approval. Delays due to unforeseen circumstances (i.e., additional meetings or extended review periods) may result in additional effort necessary for project management and administration.

2.2 Consultant will work within the project schedule and will 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

Compensation shall not exceed \$16,255.00 (sixteen thousand two hundred fifty five dollars and no cents).

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) calendar 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 indemnify, and hold the City, its elected officials, officers, employees, and volunteers harmless from all reasonable claims, injuries, damages, losses or suits including attorney fees, caused by the negligent acts, negligent errors, or negligent omissions of Consultant or its sub-consultants in performance of this Agreement, except for injuries and damages caused by the concurrent 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, and the City's elected officials, officers, employees, or volunteers 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, employees or subconsultants.

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) calendar 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: City Attorney
3304 Rosedale Street NW
Suite 200
Gig Harbor, WA 98335-1805
Fax: 360-850-1-00

Consultant: BergerABAM
1111 Main Street, Suite 300
Vancouver, WA 98660
Fax: 360-823-6101

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. Prior to either party initiating a suit or action in any court, the parties mutually agree to submit any dispute under this Agreement to a mediator for resolution. Mediation shall be non-binding. Each party shall be responsible for one-half the costs of mediation. Any party desiring to initiation mediation shall do so in writing, to the other

party. The parties shall proceed in good faith to schedule mediation, with a mutually agreed mediator, as soon as possible after the notice of request for mediation has been received.

16. General Administration and Management on Behalf of the City

16.1 The City Administrator, 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, shall have any direct control or influence over the services performed under this Contract.

17. Extent of Agreement/Modification

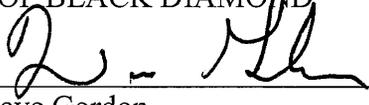
17.1 This Agreement, together with any attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may only be amended, modified, or added to by written 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 Consultant's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from any third party.

18.2 The Consultant warrants and represents that the Consultant has not, nor has any other member, employee, representative, agent or officer of the Consultant, 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.

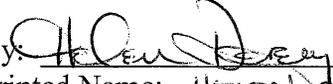
CITY OF BLACK DIAMOND

By: 
Dave Gordon

Its: Mayor

Date: 3/14/14

CONSULTANT

By: 
Printed Name: HELEN DEWRY

Its: VICE PRESIDENT

Date: 3/25/14

Attest:

By:

Brenda L. Martinez
City Clerk

Exhibit A

Scope of Work

13 March 2014

Stacey Welsh, Community Development Director
City of Black Diamond
24301 Roberts Drive
P.O. Box 599
Black Diamond, WA 98010

Subject: Proposal to Provide Consultant Services for 2015 Comprehensive Plan Update

Dear Ms. Welsh:

We are pleased to have the opportunity to submit the following proposal to provide professional planning services relating to the 2015 Black Diamond Comprehensive Plan Update.

PROJECT UNDERSTANDING

The City of Black Diamond (City) is required to update its comprehensive plan and deliver it to the Washington State Department of Commerce (DOC) by 30 June 2015. This comprehensive plan update will focus on ensuring the plan's continued consistency with the DOC Periodic Update Checklist, with special attention devoted to updates after the City's 2009 update. BergerABAM is providing a scope of services for Task 1 Kickoff for Comprehensive Plan/Development Regulations and Task 2 Public Outreach. The Task 3 Comprehensive Plan and Development Regulations Update work will be authorized under a separate scope of services, which is anticipated to include additional work related to capital facilities, transportation, and integration of separately adopted City plans and regulations.

SCOPE OF WORK

Task 1. Kickoff Meeting for Comprehensive Plan/ Development Regulations

Upon client notice to proceed, BergerABAM will develop a project schedule that defines the anticipated landmark dates for the delivery of products, public outreach, and Planning Commission and City Council hearings.

Based on the DOC checklist, BergerABAM's has completed a preliminary assessment of the updates required to the City of Black Diamond Comprehensive Plan and Black Diamond

Municipal Code to achieve compliance with current state GMA requirements. BergerABAM will prepare for and attend one 2-hour project kickoff meeting with the City to further refine the list of comprehensive plan and development regulations needing to be updated. . BergerABAM will also coordinate with City staff on additional work related to capital facilities, transportation, and integration of city plans and regulations for which scope and fee will be provided in the future under Task 3.

Following the kickoff meeting, BergerABAM will finalize the project schedule, to include a backward timeline from June 18, 2015 (date for final adoption of the 2015 Comprehensive Plan) and draft DOC periodic update checklist. The final project schedule and draft DOC periodic update checklist will be based on one round of City comments following the kickoff meeting. The final draft DOC checklist will serve as the general guide for the work tasks that will be completed and will be provided to DOC by the City to meet the 31 March 2014 DOC grant requirements.

Assumptions

- The project kickoff meeting will be held at the City's offices.
- The City will coordinate and submit grant status reports to the DOC.
- City staff will provide preliminary project update(s) to the Planning Commission and/or City Council.
- BergerABAM will not attend any Planning Commission or City Council work sessions in Task 1.
- One round of review of the DOC checklist and project schedule.

Deliverables

- Preparation for and attendance by BergerABAM planning project manager and capital facilities engineer at one 2-hour City kickoff meeting.
- Draft and final DOC periodic update checklist.
- Draft and final project schedule.

Task 2: Public Outreach

For the public participation work, BergerABAM recommends two community open houses to engage elected officials, residents and business interests. Additionally, the City will update the community using its website to inform the community of the update process. The City will place a notice in the *Voice of the Valley* newspaper, to advertise each community open house. The first open house is anticipated to be held in late March or early April 2014 and the second will be held prior to a Planning Commission meeting where draft updates will be introduced. Both public open houses will be attended by the BergerABAM project manager, capital facilities engineer, and public involvement specialist, and will be 2 to 3 hours in length. These open houses will allow the community to provide comments on the refined list of proposed amendments to the comprehensive plan and City development regulations, but are not intended to be a formal visioning process.

The first open house will introduce the project, the timeline, and will explain how the public can participate during the update process. The second open house will provide an opportunity for the public to comment on draft products that are prepared as part of Task 3. BergerABAM will be responsible for preparing a summary of the comments received at the open houses, and making the summary of comments available by the City for posting on the City's website.

BergerABAM will prepare a process explanation board to be used during the open houses. BergerABAM will complete one round of revisions to the draft explanation board based on City comments. The City will provide a map of the City and other information boards as needed. The City will prepare a list of key stakeholders (Planning Commission, City Council, landowners, business owners, state agencies, Tribes, local residents, neighboring jurisdictions, and representatives of community groups, etc.), and invite them to the open houses.. An open house format will allow a more relaxed and productive environment as opposed to a meeting that looks or feels like a "hearing." BergerABAM will design the format for approval by the City and will facilitate the open houses. The City will provide any required public and special meeting notice(s).

BergerABAM will prepare a two-page public participation plan documenting the outreach elements above, and this plan will be provided to the DOC.

Materials presented at the open houses will include, but not be limited to:

- Map of city limits (to be provided by City).
- Process explanation board.

Assumptions

- The City will respond to public and media inquiries.
- The City will be responsible for advertising and public notice for the public open houses.
- The City will be responsible for website updates and newspaper notices.
- The City will identify and reserve the venue(s) for each open house.
- The City will be responsible for meeting logistics, mailings, and associated costs.

Deliverables

- Preparation for and attendance by three BergerABAM staff at two public open houses.
- Preparation of public meeting comment summaries provided to the City for uploading to the City's website.
- Refreshments, sign-in sheets, and public comment forms.
- Process explanation board.
- Public participation plan (per DOC grant).

FEE

The following professional fees, including an estimated \$265.00 in expenses, will be billed as incurred and will not exceed \$16,255.00 without written authorization.

Task 1.0:	\$ 6,270
Task 2.0:	9,720
Expenses:	<u>265</u>
Total:	<u>\$16,255.00</u>

CLOSING

If you agree with the above, please show your acceptance by signing in the space provided below. Please return a fully executed copy of the entire proposal to me by fax or PDF and retain the original for your files. We will consider the signed date as our notice to proceed. This proposal is valid for 30 days.

We thank you for the opportunity to provide this proposal and we look forward to working with you. If you have questions, please call me at 360/823-6100.

Sincerely,



Helen Devery
Vice President

HD:DCH:ilt
Attachments
Standard Terms and Conditions

ACCEPTED BY

CITY OF BLACK DIAMOND



Signature

Dave Gordon, Mayor (Printed)

3/14/14

Date