



CITY OF BLACK DIAMOND
October 21, 2010 Meeting Agenda
25510 Lawson St., Black Diamond, Washington

7:00 P.M. – CALL TO ORDER, FLAG SALUTE, ROLL CALL

PUBLIC COMMENTS: Persons wishing to address the City Council regarding items of new business are encouraged to do so at this time. When recognized by the Mayor, please come to the podium and clearly state your name and address. Please limit your comments to 3 minutes. If you desire a formal agenda placement, please contact the City Clerk at 360-886-2560. Thank you for attending this evening.

PUBLIC HEARINGS:

APPOINTMENTS, PRESENTATIONS, ANNOUNCEMENTS:

Presentation – Ghost Brothers

UNFINISHED BUSINESS:

NEW BUSINESS:

- | | |
|--|----------------|
| 1) AB10-078 – Resolution Authorizing Assignment and Assumption Agreement with Ogden Murphy Wallace PLLC for Hearing Examiner Services | Mr. Pilcher |
| 2) AB10-079 – Resolution Authorizing Contract Amendment for the Hearing Examiner | Mr. Pilcher |
| 3) AB10-080 – Resolution Authorizing Professional Services Agreement for Fire Impact Fees with Henderson, Young & Company | Mr. Williamson |
| 4) AB10-081 – Resolution Authorizing Professional Services Agreement for Green Valley Road Traffic Calming Study with Parametrix | Mr. Boettcher |
| 5) AB10-082 – Resolution Authorizing City Attorney Contract with Kenyon Disend | Mayor Olness |

DEPARTMENT REPORTS:

MAYOR'S REPORT:

COUNCIL REPORTS:

ATTORNEY REPORT:

PUBLIC COMMENTS:

CONSENT AGENDA:

- 6) **Claim Checks** – October 21, 2010, No.36120, No. 36161 through No.36219 in the amount of \$150,486.74
- 7) **Payroll** – September 30, 2010, No.17253 through No. 17275 (voided No. 17257) and ACH Pay in the total amount of \$272,094.29
- 8) **Minutes** – Workstudy Notes of September 30, 2010 and Council Meeting of October 7, 2010

EXECUTIVE SESSION:

ADJOURNMENT:

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION			
SUBJECT: Resolution 10-711, authorizing the Mayor to execute an Assignment and Assumption Agreement with Ogden Murphy Wallace PLLC for Hearing Examiner services to Olbrechts and Associates PLLC	Agenda Date: October 21, 2010		AB10-078
	Department/Committee/Individual	Created	Reviewed
	Mayor Rebecca Olness		X
	City Administrator –		
	City Attorney – Chris Bacha		X
	City Clerk – Brenda L. Martinez		
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Cost Impact: NA	Parks/Nat. Resources – Aaron Nix		
Fund Source: Application fees	Community Develop. – Steve Pilcher	X	
Timeline: July1, 2010			
Attachments: Resolution 10-711; Resolution 08-522; Assignment and Assumption Agreement; letter of 9/28/10 from Phil Olbrechts			
SUMMARY STATEMENT: <p>In June 2008, the City entered into a contract with the law firm of Ogden Murphy Wallace for Hearing Examiner services. The contract provided for Mr. Phil Olbrechts to serve as the lead Examiner for the City. Mr. Olbrechts has subsequently served in that role and was the Examiner for the extensive Lawson Hills and The Villages FEIS appeals and Master Planned Development applications.</p> <p>Mr. Olbrechts has advised the City that in order to reduce costs and remain competitive in the hearing examiner field, he is leaving Ogden Murphy Wallace (OMW) to form his own firm (Olbrechts and Associates, PLLC), effective November 1, 2010. By letter of September 28, 2010, Mr. Olbrechts has requested the City to assign OMW's interest in the contract to his new firm. OMW has agreed to this assignment.</p> <p>Mr. Olbrechts would continue as the lead hearing examiner for the City. Back-up examiners would only be allowed to conduct a hearing with prior approval of the City.</p> <p>Approving this assignment of contract will allow Mr. Olbrechts to remain as the City's Hearing Examiner both for the upcoming Development Agreement process on the two Master Planned Developments and for other miscellaneous land use and code enforcement matters.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: None.			
RECOMMENDED ACTION: MOTION to adopt Resolution No. 10-711, authorizing the Mayor to execute an Assignment and Assumption Agreement with Ogden Murphy Wallace PLLC for Hearing Examiner services to Olbrechts and Associates PLLC.			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	
October 21, 2010			

RESOLUTION NO. 10-711

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE AN ASSIGNMENT AND ASSUMPTION AGREEMENT WITH OGDEN MURPHY WALLACE, PLLC AND OLBRECHTS AND ASSOCIATES, PLLC, TO RETAIN PHIL OLBRECHTS AS THE CITY'S HEARING EXAMINER

WHEREAS, the City Council approved Ordinance 08-857 on April 3, 2008, creating the position of Hearing Examiner; and

WHEREAS, the City Council approved Resolution 08-522 on June 19, 2008, authorizing the Mayor to execute a professional services agreement with Ogden Murphy Wallace, PLLC; and

WHEREAS, said agreement was executed and specifically identified Mr. Phil Olbrechts of Ogden Murphy Wallace, PLLC to act a lead hearing examiner for the City; and

WHEREAS, Mr. Olbrechts has served in that capacity since that time, including conducting the lengthy Lawson Hills and The Villages Master Planned Developments and Final EIS appeal hearings; and

WHEREAS, Mr. Olbrechts has notified the City that he is leaving Ogden Murphy Wallace, PLLC, to form his own firm, Olbrechts and Associates, PLLC and desires to continue to provide hearing examiner services to the City; and

WHEREAS, Ogden Murphy Wallace, PLLC has agreed to assign its interest in this contract to Olbrechts and Associates, PLLC; and

WHEREAS, the City Council desires to retain the services of Mr. Olbrechts;

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

Section 1. The City Council of the City of Black Diamond, Washington, does hereby authorize the Mayor, on behalf of the City, to execute the Assignment and Assumption Agreement substantially in the form attached as Exhibit A.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 21st DAY OF OCTOBER,
2010.

CITY OF BLACK DIAMOND:

Rebecca Olness, Mayor

Attest:

Brenda L. Martinez, City Clerk

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Assignment") by and between the City of Black Diamond, a Washington municipal corporation ("City," Ogden Murphy Wallace, PLLC, a Washington professional limited liability company ("OMW"), and Olbrechts and Associates, PLLC, a Washington professional limited liability company ("OA"), is dated and effective this November 1, 2010 (the "Effective Date").

RECITALS

OMW and City are parties to that certain agreement for services dated June 19, 2008 (the "Existing Agreement"). Phil Olbrechts is currently a member attorney at OMW but is leaving to establish his own practice, OA, as of the Effective Date. City currently receives the services of Olbrechts pursuant to the Existing Agreement. OMW, OA and City desire to have OMW assign the Existing Agreement to OA, for OA to assume all rights and obligations under the Existing Agreement, and the City to consent to the assignment and assumption of the Existing Agreement from OMW to OA.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth below, the parties hereby agree as follows:

ASSIGNMENT

1. **Assignment by OMW.** OMW hereby transfers and assigns all of its right, title and interest, and obligations under the Existing Agreement to OA.
2. **Assumption by OA.** OA hereby accepts the assignment of the Existing Agreement, and assumes all responsibility and liability for all of OMW's obligations and responsibilities thereunder.
3. **City's Consent to Assignment.** City hereby consents to OMW's assignment of its rights, title, interest, and obligations under the Existing Agreement to OA. City releases OMW from any obligations or liabilities under the Existing Agreement arising from conduct after the Effective Date.
5. **Recitals.** The recitals set forth above are hereby incorporated into this Assignment.

In WITNESS WHEREOF, the parties have duly executed and delivered this Assignment as of dates below.

OA:

Olbrechts and Associates, PLLC



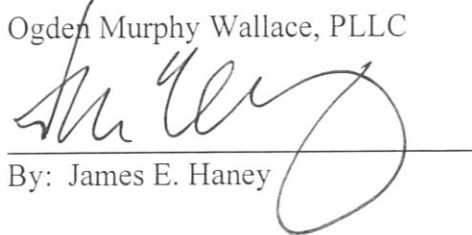
By: Phil A. Olbrechts

Its: Member/Manager

Date: 9/29/10

OMW:

Ogden Murphy Wallace, PLLC



By: James E. Haney

Date: 9/29/10

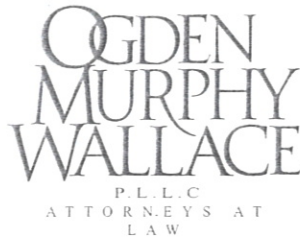
CITY:

CITY OF BLACK DIAMOND

By: _____

Its: _____

Date: _____



Phil A. Olbrechts
206.447.2251
polbrechts@omwlaw.com

September 28, 2010

Mayor Rebecca Olness
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010

Re: Hearing Examiner Contracts

Dear Mayor Olness:

In these tough economic times businesses and government have had to "think differently" and I'm no exception. In order to reduce costs and stay competitive in the hearing examiner field, I will have to change my business structure and leave Ogden Murphy Wallace, PLLC ("OMW") to operate my own firm effective November 1, 2010. You won't notice any significant change in service, except a probable reduction in charges and the use of senior attorneys instead of associates for back up. I have what I hope you will find to be a minor contract amendment and assignment to your current hearing examiner services agreement with OMW. I am requesting that the City assign OMW's interest in this contract to Olbrechts and Associates, PLLC ("OA"). OA would replace OMW and be subject to the same terms and provisions that currently apply to OMW. As with your current contract with OMW, I would do the vast majority of your hearings as Hearing Examiner.

Enclosed with this letter is a short assignment and assumption agreement, already signed by myself and OMW. This agreement transfers the existing contract dated June 19, 2008, between the City of Black Diamond (the "City") and OMW (the "Existing Contract") from OMW to OA.

I also propose the following clarifications/modifications to the Existing Contract:

1. Subject to the Assignment and Assumption Agreement and except as modified below, the terms and conditions of the Existing Contract shall remain in place between OA and the City. All back-up examiners below may only conduct a hearing with the prior permission of City staff.
2. Phil Olbrechts shall remain the lead hearing examiner.

COPY

Established 1902

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3. Millie Judge shall serve as a back-up to Phil Olbrechts. Ms. Judge currently serves as the hearing examiner for Snohomish County. She formerly headed the land use division of the Snohomish County Prosecuting Attorney's Office and also worked as an associate at OMW. Ms. Judge will subcontract with OA as needed to provide back-up services. Her subcontract will subject to all the terms and conditions of the OA contract with the City.

4. Scott Snyder, a member (similar to partner in partnerships) of OMW, shall serve as another back-up to Phil Olbrechts. Mr. Snyder has over thirty years experience as a municipal attorney. He has also served as the managing member of OMW. Mr. Snyder will subcontract with OA as needed to provide back-up services. His subcontract will be subject to all the terms and conditions of the OA contract with the City.

5. Vicki Orrico will also be available for back-up Examiner services and assist in the writing of decisions. Ms. Orrico has been practicing law since 1986 and is a former of counsel to the municipal department of OMW. Ms. Orrico has served as a pro tem Hearing Examiner and has extensive experience in representing municipalities and private individuals in land use issues. Ms. Orrico will subcontract with OA as needed to provide back-up services. Her subcontract will be subject to all the terms and conditions of the OA contract with the City.

6. Emily Terrell will also serve as a back-up Examiner and assist in the writing of decisions for nonlegal cases and issues. Ms. Terrell is the former planning director of the City of Milton and also served as an AICP certified Senior Consultant with PMC, a planning consultant firm. Prior to that she served as a transportation planner and taught graduate planning courses at Clemson University. She has a Master of City and Regional Planning from Clemson University. Ms. Terrell will subcontract with OA as needed. Her subcontract will be subject to all the terms and conditions of the OA contract with the City and will be at 70% of the rate charged for member attorneys.

7. Ms. Judge, Mr. Snyder and Ms. Orrico will be charged at the member rate under the Existing Agreement. The use of any back-up examiner for a hearing shall be subject to the prior approval of City staff.

8. OA will also continue to subcontract with law students and other qualified individuals to write testimony summaries and assist in the preparation of draft decisions. OA will maintain the current charge structure for this service: around \$35/hour for most of these services with a maximum of \$65/hour. The amount charged to the City would be 10% above that paid to the decision writer and would also include any required taxes or other expenses incurred in compensating the writer. The use of these writers has enabled me to significantly reduce charges to my clients. The writers never write a final decision.

9. All invoice payments and contract notices should be sent to:

Olbrechts and Associates, PLLC
18833 N.E. 74th St.
Granite Falls, WA 98252

10. These amendments/clarifications to the Existing Agreement shall be effective on November 1, 2010.

Thank you in advance for understanding this transition and assisting me in facilitating it. If you are agreeable to having OMW assign the Existing Agreement to me, as well as to the minor modifications set forth above, please sign both the enclosed Assignment and Assumption Agreement, as well as the copy of this letter, and return both in the enclosed self-addressed, postage prepaid envelope. As always, should you have any questions, please do not hesitate to contract me at your convenience. I look forward to continue to provide the City with high quality, efficient services.

Sincerely,

OGDEN MURPHY WALLACE, P.L.L.C.



Phil A. Olbrechts

PAO/nkr
Enclosure

cc: James E. Haney, OMW Municipal Dept. Chair
Steve Pilcher, Community Development Director

CITY OF BLACK DIAMOND

The City has reviewed and accepts and agrees to the above modifications to the Existing Agreement.

Date: _____

By: _____

Its: _____

RESOLUTION NO. 08-522

**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 OGDEN,
MURPHY, WALLACE PLLC FOR HEARING EXAMINER
SERVICES**

WHEREAS, the City Council approved Ordinance 08-857 on April 3, 2008, creating the position of hearing examiner; and

WHEREAS, thereafter the City of Black Diamond advertised for individuals and firms qualified to serve as the hearing examiner on an as-needed, contractual basis; and

WHEREAS, a panel of City staff reviewed the applications, interviewed applicants and determined Ogden, Murphy, Wallace to be the most qualified for the position; and

WHEREAS, Phil Olbrechts of Ogden Murphy Wallace, who would act as lead examiner for Black Diamond, has served as hearing examiner since 1998; and

WHEREAS, Mr. Olbrechts currently serves as the hearing examiner for Federal Way, Auburn, Jefferson County, Mason County and Port Townsend; and

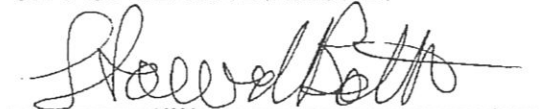
WHEREAS, the Council supports the Mayor's selection of Ogden, Murphy, Wallace, PLLC, and finds the proposed agreement to be fair and reasonable,

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

Section 1. The City Council of the City of Black Diamond, Washington, does hereby authorize the Mayor, on behalf of the City, to execute a professional services agreement substantially in the form attached as Exhibit A.


PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 19TH DAY OF JUNE, 2008.

CITY OF BLACK DIAMOND:



Howard Botts, Mayor

Attest:


Brenda L. Streepy, City Clerk

RESOLUTION NO. 08-522

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON,
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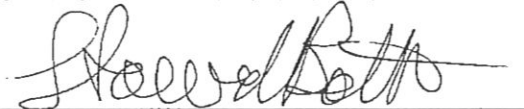
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Howard Botts, Mayor

Attest:


Brenda L. Streepy, City Clerk

CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the or this "Agreement"), for reference purposes only, is dated June 19, 2008, and is entered into by and between

CITY OF BLACK DIAMOND, WASHINGTON ("City")
24301 Roberts Drive
Black Diamond, WA 98010
Contact: Mayor Howard Botts
Phone: 360-886-2560 Fax : 360-886-2592

and

PHIL OLBRECHTS and
Ogden Murphy Wallace, P.L.L.C. ("Consultant")
1601 Fifth Avenue Suite 2100
Seattle, WA 98101-1686

Contact: Phil Olbrechts
Phone: 206-447-7000 Fax: 206-447-0215

Tax ID No.: 91-0344327

City of Black Diamond Business License No.: _____

for professional services for the City of Black Diamond to include:

- (1) To act in the capacity of Hearing Examiner for Black Diamond;
- (2) To hear, and act as authorized by the Black Diamond Municipal Code, hearings related to land use permitting actions, generally once per month or more/less frequently as determined necessary by Black Diamond. As the Hearing Examiner, the Consultant shall receive and examine all admissible evidence regarding cases to be heard; perform on-site inspections of properties; conduct public hearings; and submit written Findings, Conclusions, Recommendations, and Decisions within the time limits and as specified by the Black Diamond Municipal Code;
- (3) To conduct other public hearings not related to land use or code enforcement actions, as provided for in Black Diamond Municipal Code;
- (4) To meet with the Black Diamond City Council, as requested by the Council, to discuss matters pertinent to the conduct and practices of the Hearing Examiner;
- (5) To meet with the Black Diamond staff, or review material provided, and discuss or comment on matters pertinent to the Black Diamond land use permit process, requirements or enforcement, as requested by the Director of the City of Black

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Contact: Mayor Howard Botts

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PHIL OLBRECHTS and

Ogden Murphy Wallace, P.L.L.C. ("Consultant")

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- (3) To conduct other public hearings not related to land use or code enforcement actions, as provided for in Black Diamond Municipal Code;
- (4) To meet with the Black Diamond City Council, as requested by the Council, to discuss matters pertinent to the conduct and practices of the Hearing Examiner;
- (5) To meet with the Black Diamond staff, or review material provided, and discuss or comment on matters pertinent to the Black Diamond land use permit process, requirements or enforcement, as requested by the Director of the City of Black

Diamond Community Development Department as consistent with the appearance of fairness doctrine, conflicts of interest, professional responsibility and other applicable law; and

- (6) To prepare a citizens' guide to the hearing examiner process for distribution and posting on the City Web site.

TERMS AND CONDITIONS

1. Services by Consultant

1.1 Consultant shall perform the services above described. The services performed by Consultant shall not exceed the services as enumerated 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 professional services rendered. 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 In order to appropriately accomplish the duties specified in this agreement, it is agreed that the Consultant at his own expense shall do and provide the following: a) office and office equipment; b) an electronic copy in Microsoft Word format and at least two original reports of Findings, Conclusions and Decisions or Recommendations for each hearing by delivering the same to the City of Black Diamond Community Development Department within the time constraints imposed by law; c) any secretarial time required.

1.4 Phil Olbrechts shall be the lead attorney from Consultant to provide Hearing Examiner services and shall be responsible for supervising all others who provide service through the Consultant under this Agreement. In case Phil Olbrechts cannot conduct a hearing due to reasonable cause, he may designate another attorney from the Consultant to conduct the hearing, which designation shall be subject to the approval of the City. Phil Olbrechts may also assign the writing of decisions on an as needed basis to other attorneys from the Consultant. He may also employ the services of other independent contractors to write decisions provided that Consultant shall be fully responsible for the content of the independent contractor's decisions, supervision of the independent contractor, and invoicing.

2. Responsibilities of the City

In order to support the functions of the hearing examiner, the City of Black Diamond shall provide the following:

2.1 Written staff reports to the Hearing Examiner both electronic and hard copies, as well as, maps and such other exhibits as required; shall be responsible for the scheduling of all the hearings for the Hearing Examiner; shall provide notice of hearings and decisions as required by

Diamond Community Development Department as consistent with the appearance of fairness doctrine, conflicts of interest, professional responsibility and other applicable law; and

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law; shall make all the required copies of said decisions and correspondence, and mail to all parties of record; shall keep and maintain all official files and records of the hearings; and do all other tasks necessary to administratively process said materials.

2.2 The City shall furnish a hearing room and recording equipment; shall schedule all necessary meetings before the Black Diamond City Council; shall provide an amplification system when necessary; and shall provide a staff person who shall be present at hearings to operate the recording equipment, accept additional exhibits submitted at the hearing, and assist in the orderly conduct of the hearing. The City shall also prepare a formal list of exhibits received prior to the hearing for the final written Hearing Examiner decision or recommendation.

3. Compensation for Services

3.1 The City agrees to pay Consultant on an hourly basis at the following rates: Phil Olbrechts shall be billed at the rate of one hundred forty-five dollars (\$145.00) per hour. Should a substitute be required, and approved by the City, associates with less than five years of experience shall be billed at one hundred thirty-five dollars (\$135.00) per hour. Substitute members and associates with more than five years experience shall be billed at one hundred forty-five dollars (\$145.00) per hour.

3.2 The Consultant shall charge a flat one hour for round trip travel time.

3.3 The City agrees to pay for mileage at the current rate allowed by the Internal Revenue Service and to pay for the direct cost of related administrative expenses, including copy charges. Consultant shall not charge for long distance within Washington State.

3.4 Code enforcement decisions written by a contract decision writer working for the Consultant will be billed at thirty-five dollars (\$35.00) per hour.

3.5 Should Consultant employ the services of independent contractors to write decisions as provided in paragraph 1.4, (1) Consultant shall add on no more than 10% in administrative fees to costs of independent writer plus applicable taxes; and (2) costs of independent writer including the fees and taxes set forth above shall not exceed 75% of the hourly rate of Consultant.

3.6 Transcription of hearing tapes, if requested by the client, will be billed at thirty-five dollars (\$35.00) per hour.

4. Payment

4.1 Consultant shall invoice to Black Diamond on a monthly basis a statement that details charges for each individual case considered. Payment shall be made by the City within 60 days of receipt of invoice.

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4. Payment

4.1 Consultant shall invoice to Black Diamond on a monthly basis a statement that details charges for each individual case considered. Payment shall be made by the City within 60 days of receipt of invoice.

4.2 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.

4.3 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 This agreement may be terminated by either party upon 30 days written notice without cause. The City may immediately remove the Consultant for cause. 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.

6.3 The Phil Olbrechts shall immediately notify the City of any change in professional status.

7. Standard of Care

4.2 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.

4.3 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.

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6.3 The Phil Olbrechts shall immediately notify the City of any change in professional status.

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 decisions, 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.

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

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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

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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 subcontractors are, and shall be at all times during the term of this Agreement, independent contractors.

13. Notice

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

City: City Administrator
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
Fax: 360-886-2592

With a copy to: Loren D. Combs
VSI Law Group
3600 Port of Tacoma Rd. Ste. 311
Tacoma, WA 98424
Fax: 253-922-5848

Consultant: Phil Olbrechts
Ogden Murphy Wallace, P.L.L.C.
1601 Fifth Avenue Suite 2100
Seattle, WA 98101-1686
Fax: 206-447-0215

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.

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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.

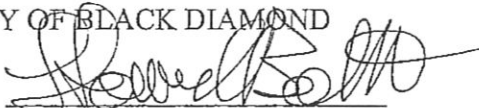
17. Extent of Agreement/Modification

17.1 The term of this agreement shall begin immediately upon passage and shall continue in full force and effect for one year. After one year, the agreement shall remain in effect on a month-to-month basis until terminated under the provisions of Section 6 above, unless an longer extension of time is agreed upon between both parties. This agreement may be amended at any time after the initial one year term, subject to the mutual agreement of both parties.

17.2 This Agreement, together with any attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may only be amended, modified, or added to by written instrument properly signed by both parties. The parties acknowledge the general contract rule that a clause in a contract, such as this one, prohibiting oral modifications is itself generally subject to oral modification. However, in order to ensure certainty as to the terms and conditions of this Agreement, the parties waive this general contract rule.

CITY OF BLACK DIAMOND

By:


Howard Botts

Its: Mayor

Date: 6-20-08

CONSULTANT

By:

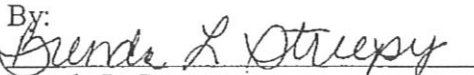

Printed Name: Phil Olbrecht

Its: Member (PLC)

Date: 6/25/08

Attest:

By:


Brenda L. Streepy
City Clerk

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CITY OF BLACK DIAMOND

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Howard Botts

Its: Mayor

Date: 6-20-08

CONSULTANT

By: 

Printed Name: Phil Olbrecht

Its: Member (PLC)

Date: 6/25/08

Attest:

By: 

Brenda L. Streepy
City Clerk

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION			
SUBJECT: Resolution No. 10-712, authorizing the Mayor to execute the First Amendment to Agreement for Hearing Examiner Services with Olbrechts and Associates, PLLC	Agenda Date: October 21, 2010		AB10-079
	Department/Committee/Individual	Created	Reviewed
	Mayor Rebecca Olness		X
	City Administrator –		
	City Attorney –Chris Bacha	X	X
	City Clerk – Brenda L. Martinez	X	
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Cost Impact:	Court – Stephanie Metcalf		
Fund Source:	Comm. Dev. – Steve Pilcher		
Timeline:			
Attachments: Resolution No. 10-712, First Amendment to Contract, letter of 9/28/10 from Phil Olbrechts; Resolution 08-522			
SUMMARY STATEMENT: <p>The City and Olbrechts and Associates, PLLC desire to amend the agreement for Hearing Examiner services as adopted by Resolution No. 08-522. This first amendment would clarify and modify the terms and conditions upon which Olbrechts and Associates, PLLC will continue to provide hearing examiner services and further to identify those persons who may serve as a substitute for Phil Olbrechts as hearing examiner for the City of Black Diamond.</p>			
COMMITTEE REVIEW AND RECOMMENDATION:			
RECOMMENDED ACTION: MOTION to Resolution No. 10-712, authorizing the Mayor to execute the First Amendment to Agreement for Hearing Examiner Services with Olbrechts and Associates, PLLC.			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	
October 21, 2010			

RESOLUTION NO. 10-712

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO EXECUTE THE FIRST
AMENDMENT TO AGREEMENT FOR HEARING
EXAMINER SERVICES BY AND BETWEEN THE CITY OF
BLACK DIAMOND AND OLBRECHTS AND ASSOCIATES,
PLLC**

WHEREAS, on June 19, 2008 the City entered into a professional services agreement with the law firm of Ogden, Murphy and Wallace, PLLC for Phil Olbrechts to provide hearing examiner services to the City; and

WHEREAS, Phil Olbrechts has left Ogden, Murphy and Wallace, PLLC and is now the managing member of Olbrechts and Associates, PLLC; and

WHEREAS, the City and the Law Firm have entered into an assignment and assumption agreement through which all rights, duties and obligations of Ogden, Murphy and Wallace, PLLC have been assigned to Olbrechts and Associates, PLLC; and

WHEREAS, the City and Olbrechts and Associates, PLLC desire to amend the Agreement to clarify and modify the terms and conditions upon which Olbrechts and Associates, PLLC will continue to provide hearing examiner services and further to identify those persons who may serve as a substitute for Phil Olbrechts as hearing examiner for the City of Black Diamond;

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 the First Amendment to Agreement for Hearing Examiner Services with Olbrechts and Associates, PLLC 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 21ST DAY OF OCTOBER, 2010.

CITY OF BLACK DIAMOND:

Rebecca Olness, Mayor

Attest:

Brenda L. Martinez, City Clerk

**FIRST AMENDMENT TO AGREEMENT FOR
HEARING EXAMINER SERVICES
BY AND BETWEEN THE CITY OF BLACK DIAMOND
AND OLBRECHTS AND ASSOCIATES, PLLC**

THIS FIRST AMENDMENT (the “First Amendment”) to that certain professional services agreement **(the “Agreement”)** entered into by and between the **CITY OF BLACK DIAMOND**, a Washington State municipal corporation (hereinafter referred to as the “City”) and **OLBRECHTS AND ASSOCIATES, PLLC** (hereinafter referred to as “**Consultant**”) for Hearing Examiner services on the 19th day of June, 2008, is entered into by and between the City and Consultant on the 1st day of November, 2010 for the purposes as described herein.

RECITALS:

WHEREAS, prior on June 19, 2008 the City entered into a professional services agreement with the law firm of Ogden, Murphy and Wallace, PLLC (the “**Law Firm**”) for Phil Olbrechts to provide hearing examiner services to the City, and

WHEREAS, Phil Olbrechts has left the Law Firm and is now the managing member of Olbrechts and Associates, PLLC (hereinafter “**OA**”), and

WHEREAS, the City and the Law Firm have entered into an assignment and assumption agreement through which all rights, duties and obligations of the Law Firm have been assigned to OE, and

WHEREAS, the City and OA desire to amend the Agreement to clarify and modify the terms and conditions upon which OA will continue to provide hearing examiner services and further to identify those persons who may serve as a substitute for Phil Olbrechts as hearing examiner for the City of Black Diamond;

NOW THEREFORE, in consideration of the foregoing recitals, and the mutual promises and covenants contained herein, the parties hereby enter into this First Amendment, amending the Agreement, as follows:

Section 1. Amendment. The Agreement is amended as provided in numbered paragraphs 1 – 10 in Exhibit “A”, attached hereto and incorporated by this reference as though fully set forth herein. All other provisions of the Agreement shall remain in full force and effect.

This First Amendment being AGREED TO THIS 21st day of October, 2010 and being effective on November 1, 2010.

CITY OF BLACK DIAMOND

OLBRECHTS AND ASSOCIATES, PLLC

Mayor

Phil Olbrechts,

Approved as to form:

Chris Bacha
Kenyon Disend, PLLC
City Attorney

EXHIBIT A

(Clarifications/Modifications)

1. Subject to the Assignment and Assumption Agreement and except as modified below, the terms and conditions of the Existing Contract shall remain in place between OA and the City. All back-up examiners below may only conduct a hearing with the prior permission of City staff.
2. Phil Olbrechts shall remain the lead hearing examiner.
3. Millie Judge shall serve as a back-up to Phil Olbrechts. Ms. Judge currently serves as the hearing examiner for Snohomish County. She formerly headed the land use division of the Snohomish County Prosecuting Attorney's Office and also worked as an associate at OMW. Ms. Judge will subcontract with OA as needed to provide back-up services. Her subcontract will be subject to all the terms and conditions of the OA contract with the City.
4. Scott Snyder, a member (similar to partner in partnerships) of OMW, shall serve as another back-up to Phil Olbrechts. Mr. Snyder has over thirty years experience as a municipal attorney. He has also served as the managing member of OMW. Mr. Snyder will subcontract with OA as needed to provide back-up services. His subcontract will be subject to all the terms and conditions of the OA contract with the City.
5. Vicki Orrico will also be available for back-up Examiner services and assist in the writing of decisions. Mr. Orrico has been practicing law since 1986 and is a former of counsel to the municipal department of OMW. Ms. Orrico has served as a pro tem Hearing Examiner and has extensive experience in representing municipalities and private individuals in land use issues. Ms. Orrico will subcontract with OA as needed to provide back-up services. Her subcontract will be subject to all the terms and conditions of the OA contract with the City.
6. Emily Terrell will also serve as a back-up Examiner and assist in the writing of decisions for nonlegal cases and issues. Ms. Terrell is the former planning director of the City of Milton and also served as an AICP certified Senior Consultant with PMC, a planning consultant firm. Prior to that she served as a transportation planner and taught graduate planning courses at Clemson University. She has a Master of City and Regional Planning from Clemson University. Ms. Terrell will subcontract with OA as needed. Her subcontract will be subject to all the terms and conditions of the OA contract with the City and will be at 70% of the rate charged for member attorneys.
7. Ms. Judge, Mr. Snyder and Ms. Orrico will be charged at the member rate under the Existing Agreement. The use of any back-up examiner for a hearing shall be subject to the prior approval of City staff.

8. OA will also continue to subcontract with law students and other qualified individuals to write testimony summaries and assist in the preparation of draft decisions. OA will maintain the current charge structure for this service: around \$35/hour for most of these services with a maximum of \$65/hour. The amount charged to the City would be 10% above that paid to the decision writer and would also include any required taxes or other expenses incurred in compensating the writer. The use of these writers has enabled me to significantly reduce charges for my clients. The writers never write a final decision.

9. All invoice payment and contract notices should be sent to:

Olbrechts and Associates, PLLC
18833 N.E. 74th St.
Granite Falls, WA 98252

10. These amendments/clarifications to the Existing Agreement shall be effective on November 1, 2010



Phil A. Olbrechts
206.447.2251
polbrechts@omwlaw.com

September 28, 2010

Mayor Rebecca Olness
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010

Re: Hearing Examiner Contracts

Dear Mayor Olness:

In these tough economic times businesses and government have had to "think differently" and I'm no exception. In order to reduce costs and stay competitive in the hearing examiner field, I will have to change my business structure and leave Ogden Murphy Wallace, PLLC ("OMW") to operate my own firm effective November 1, 2010. You won't notice any significant change in service, except a probable reduction in charges and the use of senior attorneys instead of associates for back up. I have what I hope you will find to be a minor contract amendment and assignment to your current hearing examiner services agreement with OMW. I am requesting that the City assign OMW's interest in this contract to Olbrechts and Associates, PLLC ("OA"). OA would replace OMW and be subject to the same terms and provisions that currently apply to OMW. As with your current contract with OMW, I would do the vast majority of your hearings as Hearing Examiner.

Enclosed with this letter is a short assignment and assumption agreement, already signed by myself and OMW. This agreement transfers the existing contract dated June 19, 2008, between the City of Black Diamond (the "City") and OMW (the "Existing Contract") from OMW to OA.

I also propose the following clarifications/modifications to the Existing Contract:

1. Subject to the Assignment and Assumption Agreement and except as modified below, the terms and conditions of the Existing Contract shall remain in place between OA and the City. All back-up examiners below may only conduct a hearing with the prior permission of City staff.
2. Phil Olbrechts shall remain the lead hearing examiner.

COPY

Established 1902

A Member of the International Lawyers Network with independent member law firms worldwide

3. Millie Judge shall serve as a back-up to Phil Olbrechts. Ms. Judge currently serves as the hearing examiner for Snohomish County. She formerly headed the land use division of the Snohomish County Prosecuting Attorney's Office and also worked as an associate at OMW. Ms. Judge will subcontract with OA as needed to provide back-up services. Her subcontract will subject to all the terms and conditions of the OA contract with the City.
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6. Emily Terrell will also serve as a back-up Examiner and assist in the writing of decisions for nonlegal cases and issues. Ms. Terrell is the former planning director of the City of Milton and also served as an AICP certified Senior Consultant with PMC, a planning consultant firm. Prior to that she served as a transportation planner and taught graduate planning courses at Clemson University. She has a Master of City and Regional Planning from Clemson University. Ms. Terrell will subcontract with OA as needed. Her subcontract will be subject to all the terms and conditions of the OA contract with the City and will be at 70% of the rate charged for member attorneys.
7. Ms. Judge, Mr. Snyder and Ms. Orrico will be charged at the member rate under the Existing Agreement. The use of any back-up examiner for a hearing shall be subject to the prior approval of City staff.
8. OA will also continue to subcontract with law students and other qualified individuals to write testimony summaries and assist in the preparation of draft decisions. OA will maintain the current charge structure for this service: around \$35/hour for most of these services with a maximum of \$65/hour. The amount charged to the City would be 10% above that paid to the decision writer and would also include any required taxes or other expenses incurred in compensating the writer. The use of these writers has enabled me to significantly reduce charges to my clients. The writers never write a final decision.
9. All invoice payments and contract notices should be sent to:

Olbrechts and Associates, PLLC
18833 N.E. 74th St.
Granite Falls, WA 98252

10. These amendments/clarifications to the Existing Agreement shall be effective on November 1, 2010.

Thank you in advance for understanding this transition and assisting me in facilitating it. If you are agreeable to having OMW assign the Existing Agreement to me, as well as to the minor modifications set forth above, please sign both the enclosed Assignment and Assumption Agreement, as well as the copy of this letter, and return both in the enclosed self-addressed, postage prepaid envelope. As always, should you have any questions, please do not hesitate to contract me at your convenience. I look forward to continue to provide the City with high quality, efficient services.

Sincerely,

OGDEN MURPHY WALLACE, P.L.L.C.



Phil A. Olbrechts

PAO/nkr
Enclosure

cc: James E. Haney, OMW Municipal Dept. Chair
Steve Pilcher, Community Development Director

CITY OF BLACK DIAMOND

The City has reviewed and accepts and agrees to the above modifications to the Existing Agreement.

Date: _____

By: _____

Its: _____

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Assignment") by and between the City of Black Diamond, a Washington municipal corporation ("City," Ogden Murphy Wallace, PLLC, a Washington professional limited liability company ("OMW"), and Olbrechts and Associates, PLLC, a Washington professional limited liability company ("OA"), is dated and effective this November 1, 2010 (the "Effective Date").

RECITALS

OMW and City are parties to that certain agreement for services dated June 19, 2008 (the "Existing Agreement"). Phil Olbrechts is currently a member attorney at OMW but is leaving to establish his own practice, OA, as of the Effective Date. City currently receives the services of Olbrechts pursuant to the Existing Agreement. OMW, OA and City desire to have OMW assign the Existing Agreement to OA, for OA to assume all rights and obligations under the Existing Agreement, and the City to consent to the assignment and assumption of the Existing Agreement from OMW to OA.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth below, the parties hereby agree as follows:

ASSIGNMENT

1. **Assignment by OMW.** OMW hereby transfers and assigns all of its right, title and interest, and obligations under the Existing Agreement to OA.
2. **Assumption by OA.** OA hereby accepts the assignment of the Existing Agreement, and assumes all responsibility and liability for all of OMW's obligations and responsibilities thereunder.
3. **City's Consent to Assignment.** City hereby consents to OMW's assignment of its rights, title, interest, and obligations under the Existing Agreement to OA. City releases OMW from any obligations or liabilities under the Existing Agreement arising from conduct after the Effective Date.
5. **Recitals.** The recitals set forth above are hereby incorporated into this Assignment.

In WITNESS WHEREOF, the parties have duly executed and delivered this Assignment as of dates below.

OA:

Olbrects and Associates, PLLC

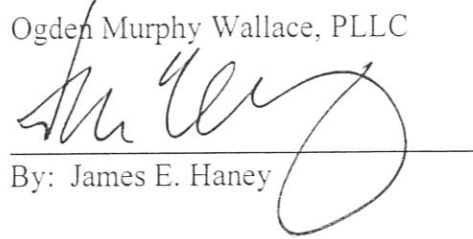


By: Phil A. Olbrects
Its: Member/Manager

Date: 9/29/10

OMW:

Ogden Murphy Wallace, PLLC



By: James E. Haney

Date: 9/29/10

CITY:

CITY OF BLACK DIAMOND

By: _____

Its: _____

Date: _____

RESOLUTION NO. 08-522

**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 OGDEN,
MURPHY, WALLACE PLLC FOR HEARING EXAMINER
SERVICES**

WHEREAS, the City Council approved Ordinance 08-857 on April 3, 2008, creating the position of hearing examiner; and

WHEREAS, thereafter the City of Black Diamond advertised for individuals and firms qualified to serve as the hearing examiner on an as-needed, contractual basis; and

WHEREAS, a panel of City staff reviewed the applications, interviewed applicants and determined Ogden, Murphy, Wallace to be the most qualified for the position; and

WHEREAS, Phil Olbrechts of Ogden Murphy Wallace, who would act as lead examiner for Black Diamond, has served as hearing examiner since 1998; and

WHEREAS, Mr. Olbrechts currently serves as the hearing examiner for Federal Way, Auburn, Jefferson County, Mason County and Port Townsend; and

WHEREAS, the Council supports the Mayor's selection of Ogden, Murphy, Wallace, PLLC, and finds the proposed agreement to be fair and reasonable,

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


Section 1. The City Council of the City of Black Diamond, Washington, does hereby authorize the Mayor, on behalf of the City, to execute a professional services agreement substantially in the form attached as Exhibit A.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 19TH DAY OF JUNE, 2008.

CITY OF BLACK DIAMOND:


Howard Botts, Mayor

Attest:


Brenda L. Streepy, City Clerk

RESOLUTION NO. 08-522

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BLACK DIAMOND, KING COUNTY, WASHINGTON,
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CITY OF BLACK DIAMOND:


Howard Botts, Mayor

Attest:


Brenda L. Streepy, City Clerk

CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the or this "Agreement"), for reference purposes only, is dated June 19, 2008, and is entered into by and between

CITY OF BLACK DIAMOND, WASHINGTON ("City")
24301 Roberts Drive
Black Diamond, WA 98010
Contact: Mayor Howard Botts
Phone: 360-886-2560 Fax : 360-886-2592

and

PHIL OLBRECHTS and
Ogden Murphy Wallace, P.L.L.C. ("Consultant")
1601 Fifth Avenue Suite 2100
Seattle, WA 98101-1686

Contact: Phil Olbrechts
Phone: 206-447-7000 Fax: 206-447-0215

Tax ID No.: 91-0344327

City of Black Diamond Business License No.: _____

for professional services for the City of Black Diamond to include:

- (1) To act in the capacity of Hearing Examiner for Black Diamond;
- (2) To hear, and act as authorized by the Black Diamond Municipal Code, hearings related to land use permitting actions, generally once per month or more/less frequently as determined necessary by Black Diamond. As the Hearing Examiner, the Consultant shall receive and examine all admissible evidence regarding cases to be heard; perform on-site inspections of properties; conduct public hearings; and submit written Findings, Conclusions, Recommendations, and Decisions within the time limits and as specified by the Black Diamond Municipal Code;
- (3) To conduct other public hearings not related to land use or code enforcement actions, as provided for in Black Diamond Municipal Code;
- (4) To meet with the Black Diamond City Council, as requested by the Council, to discuss matters pertinent to the conduct and practices of the Hearing Examiner;
- (5) To meet with the Black Diamond staff, or review material provided, and discuss or comment on matters pertinent to the Black Diamond land use permit process, requirements or enforcement, as requested by the Director of the City of Black

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Black Diamond, WA 98010
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Phone: 360-886-2560 Fax : 360-886-2592

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PHIL OLBRECHTS and
Ogden Murphy Wallace, P.L.L.C. ("Consultant")
1601 Fifth Avenue Suite 2100
Seattle, WA 98101-1686

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- (5) To meet with the Black Diamond staff, or review material provided, and discuss or comment on matters pertinent to the Black Diamond land use permit process, requirements or enforcement, as requested by the Director of the City of Black

Diamond Community Development Department as consistent with the appearance of fairness doctrine, conflicts of interest, professional responsibility and other applicable law; and

- (6) To prepare a citizens' guide to the hearing examiner process for distribution and posting on the City Web site.

TERMS AND CONDITIONS

1. Services by Consultant

1.1 Consultant shall perform the services above described. The services performed by Consultant shall not exceed the services as enumerated 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 professional services rendered. 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 In order to appropriately accomplish the duties specified in this agreement, it is agreed that the Consultant at his own expense shall do and provide the following: a) office and office equipment; b) an electronic copy in Microsoft Word format and at least two original reports of Findings, Conclusions and Decisions or Recommendations for each hearing by delivering the same to the City of Black Diamond Community Development Department within the time constraints imposed by law; c) any secretarial time required.

1.4 Phil Olbrechts shall be the lead attorney from Consultant to provide Hearing Examiner services and shall be responsible for supervising all others who provide service through the Consultant under this Agreement. In case Phil Olbrechts cannot conduct a hearing due to reasonable cause, he may designate another attorney from the Consultant to conduct the hearing, which designation shall be subject to the approval of the City. Phil Olbrechts may also assign the writing of decisions on an as needed basis to other attorneys from the Consultant. He may also employ the services of other independent contractors to write decisions provided that Consultant shall be fully responsible for the content of the independent contractor's decisions, supervision of the independent contractor, and invoicing.

2. Responsibilities of the City

In order to support the functions of the hearing examiner, the City of Black Diamond shall provide the following:

2.1 Written staff reports to the Hearing Examiner both electronic and hard copies, as well as, maps and such other exhibits as required; shall be responsible for the scheduling of all the hearings for the Hearing Examiner; shall provide notice of hearings and decisions as required by

Diamond Community Development Department as consistent with the appearance of fairness doctrine, conflicts of interest, professional responsibility and other applicable law; and

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law; shall make all the required copies of said decisions and correspondence, and mail to all parties of record; shall keep and maintain all official files and records of the hearings; and do all other tasks necessary to administratively process said materials.

2.2 The City shall furnish a hearing room and recording equipment; shall schedule all necessary meetings before the Black Diamond City Council; shall provide an amplification system when necessary; and shall provide a staff person who shall be present at hearings to operate the recording equipment, accept additional exhibits submitted at the hearing, and assist in the orderly conduct of the hearing. The City shall also prepare a formal list of exhibits received prior to the hearing for the final written Hearing Examiner decision or recommendation.

3. Compensation for Services

3.1 The City agrees to pay Consultant on an hourly basis at the following rates: Phil Olbrechts shall be billed at the rate of one hundred forty-five dollars (\$145.00) per hour. Should a substitute be required, and approved by the City, associates with less than five years of experience shall be billed at one hundred thirty-five dollars (\$135.00) per hour. Substitute members and associates with more than five years experience shall be billed at one hundred forty-five dollars (\$145.00) per hour.

3.2 The Consultant shall charge a flat one hour for round trip travel time.

3.3 The City agrees to pay for mileage at the current rate allowed by the Internal Revenue Service and to pay for the direct cost of related administrative expenses, including copy charges. Consultant shall not charge for long distance within Washington State.

3.4 Code enforcement decisions written by a contract decision writer working for the Consultant will be billed at thirty-five dollars (\$35.00) per hour.

3.5 Should Consultant employ the services of independent contractors to write decisions as provided in paragraph 1.4, (1) Consultant shall add on no more than 10% in administrative fees to costs of independent writer plus applicable taxes; and (2) costs of independent writer including the fees and taxes set forth above shall not exceed 75% of the hourly rate of Consultant.

3.6 Transcription of hearing tapes, if requested by the client, will be billed at thirty-five dollars (\$35.00) per hour.

4. Payment

4.1 Consultant shall invoice to Black Diamond on a monthly basis a statement that details charges for each individual case considered. Payment shall be made by the City within 60 days of receipt of invoice.

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4.2 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.

4.3 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 This agreement may be terminated by either party upon 30 days written notice without cause. The City may immediately remove the Consultant for cause. 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.

6.3 The Phil Olbrechts shall immediately notify the City of any change in professional status.

7. Standard of Care

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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 decisions, 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.

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

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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

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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 subcontractors are, and shall be at all times during the term of this Agreement, independent contractors.

13. Notice

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

City: City Administrator
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
Fax: 360-886-2592

With a copy to: Loren D. Combs
VSI Law Group
3600 Port of Tacoma Rd. Ste. 311
Tacoma, WA 98424
Fax: 253-922-5848

Consultant: Phil Olbrechts
Ogden Murphy Wallace, P.L.L.C.
1601 Fifth Avenue Suite 2100
Seattle, WA 98101-1686
Fax: 206-447-0215

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.

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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 The term of this agreement shall begin immediately upon passage and shall continue in full force and effect for one year. After one year, the agreement shall remain in effect on a month-to-month basis until terminated under the provisions of Section 6 above, unless an longer extension of time is agreed upon between both parties. This agreement may be amended at any time after the initial one year term, subject to the mutual agreement of both parties.

17.2 This Agreement, together with any attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may only be amended, modified, or added to by written instrument properly signed by both parties. The parties acknowledge the general contract rule that a clause in a contract, such as this one, prohibiting oral modifications is itself generally subject to oral modification. However, in order to ensure certainty as to the terms and conditions of this Agreement, the parties waive this general contract rule.

CITY OF BLACK DIAMOND

By: 

Howard Botts

Its: Mayor

Date: 6-20-08

CONSULTANT

By: 

Printed Name: Phil Olbrecht

Its: Member (PLC)

Date: 6/25/08

Attest:

By: 

Brenda L. Streepy

City Clerk

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CITY OF BLACK DIAMOND

By:

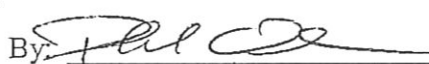

Howard Botts

Its: Mayor

Date: 6-20-08

CONSULTANT

By:

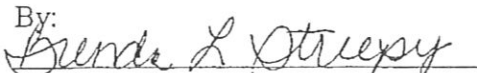

Printed Name: Phil Olbrecht

Its: Member (PLC)

Date: 6/25/08

Attest:

By:


Brenda L. Streepy
City Clerk

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION			
SUBJECT: Resolution No. 10-713, authorizing a Professional Services Agreement for Fire Impact Fees with Henderson, Young & Company	Agenda Date: October 21, 2010		AB10-080
	Department/Committee/Individual	Created	Reviewed
	Mayor Rebecca Olness		
	City Administrator –		
	City Attorney –Noel Treat		
	City Clerk – Brenda L. Martinez		
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson	X	
	Police – Jamey Kiblinger		
Cost Impact: \$40,000	Court – Stephanie Metcalf		
Fund Source: Yarrow Bay Holdings Group	Comm. Dev. – Steve Pilcher		
Timeline: November/December 2010			
Attachments: Resolution No. 10-713, Agreement, Proposal and Rates			
<p>SUMMARY STATEMENT:</p> <p>Fire Impact Fees will be necessary to fund fire protections services (stations, vehicles, etc.) for newly developed residential areas. Research is necessary in order to determine the necessary fees to serve new development.</p> <p>In this agreement, Henderson, Young & Company will provide consulting services to the City for developing Fire Impact Fees for the City of Black Diamond.</p>			
COMMITTEE REVIEW AND RECOMMENDATION:			
<p>RECOMMENDED ACTION: MOTION to adopt Resolution No. 10-713 authorizing the Mayor to execute a Professional Services Agreement with Henderson, Young & Company for \$40,000 to develop Fire Impact Fees for the City.</p>			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
October 21, 2010			

RESOLUTION NO. 10-713

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
HENDERSON, YOUNG & COMPANY FOR THE
DEVELOPMENT OF FIRE IMPACT FEES

WHEREAS, the City of Black Diamond has selected Henderson, Young & Company to provide fire impact fees related consulting services for the City; and

WHEREAS, the City needs fire impact fees to fund fire protection services for newly developed residential areas; and

WHEREAS, the City needs to determine the rate of the fire impact fees;

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 Henderson, Young & Company for the development of fire impact fees in the form substantially attached hereto as Exhibit A.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 21ST DAY OF OCTOBER, 2010.

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 October 21, 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: Andrew Williamson

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

and

HENDERSON, YOUNG & COMPANY ("Consultant")

8060 – 165th Avenue NE, Suite 220

Redmond, WA 98052-3935

Contact: Randy Young Phone: 425-869-1786 Fax: 425-869-5669

Tax Id No.: _____

for Professional Services in connection with the following project:

The Consultant will develop the Fire Impact Fees for the City of Black Diamond (the "Project").

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 included in Exhibit "A" of this contract.

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 NOT TO EXCEED. Compensation for the services provided in the Scope of Work shall not exceed \$40,000 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 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. 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.

b. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

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

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

10.5 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.

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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: Randall Young
Henderson, Young & Company
8060 – 165th Ave. NE, Suite 220
Redmond, WA 98052-3935
Fax: 425-869-5669

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.

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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.

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CITY OF BLACK DIAMOND

CONSULTANT

By: _____

Rebecca Olness

Its: Mayor

Date: _____

By: _____

Printed Name: _____

Its: _____

Date: _____

Attest:

By:

Brenda L. Martinez
City Clerk

EXHIBIT "A"

Henderson,
Young &
Company

8060 - 165th Ave. N.E., Suite 220
Redmond, Washington 98052-3935
(425) 869-1786 Fax: (425) 869-5669
E-mail: ryounghyco@aol.com

October 4, 2010

Andrew Williamson
Economic Development Director
City of Black Diamond
24301 Roberts Drive
Black Diamond, WA 98010

Henderson, Young & Company is pleased to submit our proposal to develop fire impact fees for the City of Black Diamond. The impact fees will be based on Washington's Growth Management Act, in particular RCW 82.02.050-100.

Henderson, Young & Company is a national consulting firm based in Redmond, Washington. We founded our firm in 1979 to provide services exclusively for the public sector. Our project leader for Black Diamond, Randy Young, has completed over 150 impact fees in the past 22 years. He is also the leading expert in developing capital facilities plans that are required by Washington law to be used as the basis for impact fees. He has been a featured speaker at the National Impact Fee Roundtable each of the last six years. In 1993 he and co-founder Bill Henderson authored the book on capital facilities plans for Washington's Department of Community Affairs (now Commerce) and they have completed 79 capital facilities plans for cities and counties.

Our proposal contains our qualifications (including leadership, experience, references and resumes), our proposed approach to the project, the schedule, and costs. Our contact information for phone, e-mail or surface mail is listed in the letterhead above. We look forward to answering any questions about our proposal.

Sincerely,

A handwritten signature in black ink, appearing to read 'Randy Young', is written over the printed name.

Randall L. Young
President

CONSULTING SERVICES EXCLUSIVELY FOR THE PUBLIC SECTOR

Henderson, Young & Company provides consulting services exclusively to public sector organizations. From our founding in 1979, Henderson, Young & Company has provided over 370 consulting projects for 194 government and public education organizations in 18 states. Henderson, Young & Company's project manager for Black Diamond, Randy Young, is a recognized leader and has extensive experience in Washington and nationally in the development of impact fees for public facilities.

LEADERSHIP IN IMPACT FEES

Randy Young has ...

- Prepared the first impact fees for parks, roads, fire protection and schools under Washington's Growth Management Act in 1992. The fees were upheld by the courts in the first challenge of GMA-based impact fees in the State of Washington. (Olympia, Washington).
- Given 14 presentations at the last six National Impact Fee Roundtables (2004, 2005, 2006, 2007, 2008, 2009), including the plenary session of the 2008 Roundtable.
- Pioneered the use of incident data as the basis for impact fees for:
 - EMS (1989 in Polk County, Florida)
 - fire (1991 in Naples, Florida)
 - law enforcement (1991 in Naples, Florida)
 - correctional facilities (1999 in Collier County).
- Pioneered the use of "investment per capita" level of service for parks and recreational facilities in 1988.
- Pioneered the use of improvements-driven transportation impact fees in 1986.
- Pioneered the development of multi-modal transportation system development charges based on local multi-modal trip generation data in 1997.
- Presented "A Practitioner's Perspective on Impact Fees" to the Florida Impact Fee Review Task Force (state blue-ribbon commission on impact fees) in 2005
- Presented "Multimodal Trade-offs in Traffic Impact Studies" at the Transportation Research Board's 2004 Annual Meeting.

EXPERIENCE DEVELOPING IMPACT FEES

Randy Young, Bill Henderson, and Jane Fitzpatrick, the three professional members of our firm, have developed over 150 impact fees for 60 counties, cities, school districts, and other districts. They are experts in the uses and interpretation of RCW 82.02 (Washington's impact fee law) as well as impact fee practices in other states. Listed below are the jurisdiction names (in alphabetical order) and the year we developed the fee for fire protection impact fees:

COMPLETED FIRE PROTECTION IMPACT FEES

Altamonte Springs, Florida	1994
Auburn, Washington	2005
Bay County, Florida	2005
Collier County, Florida	2004
Eastside Fire and Rescue, Washington	2006
Issaquah, Washington	1999, 2006
Lake County, Florida	2003
Maitland, Florida	1998
Marco Island, Florida	2002
Naples, Florida	1991
New Smyrna Beach, Florida	1991
North Bend, Washington	2006
North Whatcom Fire and Rescue, Washington	2009
Olympia, Washington	1992
Osceola County, Florida	2006, 2010
Parkland, Florida	2002
Polk County, Florida	2006
Seminole County, Florida	1987
Sumter County, Florida	2005
The Villages of Sumter County, Florida	2005
Thurston County, Washington	1992
Tumwater, Washington	1992
Whitefish, Montana	2007

PROJECTS IN PROGRESS: FIRE PROTECTION IMPACT FEES

Ketchum, Idaho
Manatee County, Florida
Renton, Washington

REFERENCES

EASTSIDE FIRE AND RESCUE

We developed impact fees for fire protection facilities for the city members of Eastside Fire and Rescue in 2006.

Contact: Wes Collins, Chief of Planning
(425) 313-3235 or wcollins@ESF-R.org

or Fire Chief Lee Soptich
(425) 313-3201 or lsoptich@ESF-R.org

NORTH WHATCOM FIRE AND RESCUE

WE developed the capital facilities plan and impact mitigation fees for fire protection facilities for North Whatcom Fire and Rescue in 2009.

Contact: Fire Chief Tom Fields
(360) 318-9933 or tfields@nwfrs.net

IMPACT FEE CONSULTANTS

RANDALL L. YOUNG

Randy Young has 36 years experience in government and as a consultant during which he has developed over 150 impact fees for 60 local governments and districts. Young has written numerous publications about impact fees, mitigation of impacts, costs and benefits of public services and facilities, and capital improvements programming. Relevant examples include:

Making Your Comprehensive Plan a Reality: A Capital Facilities Plan Preparation Guide, (Olympia: Washington Department of Community Development, September 1992). With Henderson.

"Impact Fees in Florida: Their Evolution, Methodology, Current Issues and Comparisons with Other States," *About Growth*, September 2005, (Tallahassee, Florida: Florida City and County Management Association). With Nicholas, Juergensmeyer, Mullen, Smith, Stewart, and Wallace.

"System Development Charges [Oregon's Impact Fees]," League of Oregon Cities Newsletter, May 1991, (Salem, Oregon: League of Oregon Cities). With Ganer, D.

Young has been the featured speaker at over 50 conferences and workshops for local governments about impact fees and capital improvements programs. Young has made 13 presentations to the National Impact Fee Roundtable: 2004 – 2008, including the plenary session at the 2008 annual conference. In January 2004, Young presented "Multimodal Trade-offs in Traffic Impact Studies" to the 83rd Annual Meeting of the Transportation Research Board.

Young co-founded Henderson, Young & Company in 1979. He began his career as an administrator and policy analyst for three government agencies in California from 1966 through 1973: the City Administrator's Office of the City of Los Angeles, the Board of Governors of the California Community Colleges, and the California Legislature. From 1973 through 1978, Young was vice president of a consulting firm based in Los Angeles that served local governments throughout the United States.

Young's B.A. is in government from the University of Redlands, and his Master of Arts degree in political science is from the Eagleton Institute at Rutgers. Young was a Coro Intern between his B.A. and M.A. degrees.

JANE A. FITZPATRICK

Jane Fitzpatrick has 29 years experience in government and as a consultant during which she has developed 37 impact fees for 18 local governments and districts.

Fitzpatrick served the State of Michigan as a systems analyst, administrative analyst, and financial analyst from 1975 through 1984. She served Collier County, Florida from 1985 through 1988, serving one year as a budget analyst, and two years as the Director of Growth Management. Fitzpatrick joined Henderson, Young & Company in 1989.

Fitzpatrick has a B.S. from Michigan State University and graduate work in computer science at Michigan State. Fitzpatrick was President of the Michigan Chapter of the American Planning Association for 2008-09.

WILLIAM P. HENDERSON, III

Bill Henderson co-founded Henderson, Young & Company in 1979. He began his career as Assistant City Administrator of Lakewood, Colorado from 1968 through 1977. He was President of Henderson & Associates, Ltd. during 1978. He has a B.A. in political science and history from the University of Colorado, and a Master of Public Administration from the University of Oklahoma.

Henderson has published articles and books on such subjects as government finance, capital facilities planning, government budgeting, financing of government capital improvements, productivity improvements, and procurement. He has developed several impact fees in Washington and Florida. Henderson now serves Henderson, Young & Company in an adjunct capacity.

APPROACH TO DEVELOPING FIRE IMPACT FEES FOR BLACK DIAMOND

Henderson, Young & Company (the Consultant) will develop the fire impact fees for the City of Black Diamond through the following six tasks.

1. Evaluate Capital Facilities Plan and Reimbursable Prior Capital Improvements

For the purpose of fire protection facilities impact fees, the term “fire protection facilities” includes fire stations and apparatus, such as engines, aerial trucks, pumpers, tankers, haz/mat vehicles, rescue squads and battalion vehicles. The Consultant will review the portion of Black Diamond’s current Capital Facilities Plan for fire protection facilities, and amendments proposed by the Fire Department to identify capital projects that may be eligible for fire impact fees.

The Consultant will review previous capital improvements by the City for fire stations and apparatus to identify costs that may be eligible for reimbursement impact fees that are authorized by RCW 82.02.060(7).

2. Methodology

The Consultant will develop the methodology for the fire protection impact fee. Based on our experience with other fire impact fees in Washington, we believe the methodology is likely to require growth to pay for the average number of emergency fire incidents and EMS incidents per dwelling unit, and average emergency fire incidents and EMS incidents per square foot of non-residential development. The number of emergency fire incidents and EMS incidents per unit would be the same for growth as for current houses and non-residential development, thus ensuring that the same level of service would be provided to new development as is provided to existing properties. If insufficient data exists to document incident rates for some types of future development, we may use incident rates from other fire protection impact fees.

The cost per emergency fire incident and EMS incident could be based on recouping the portion of prior cost of fire stations, apparatus, and equipment that can serve new development as well as the proportionate share of future fire stations, apparatus and equipment that will serve new development.

New development would be charged an impact fee for the average number of emergency fire incidents and EMS incidents that occur during the economic life of the fire station and apparatus.

We will develop the final methodology after our review of existing plans and documents in Task 1.

3. Research

The following are examples of the primary data that would be assembled by City staff and fire district staff during the research phase to support the methodology developed by the Consultant during Task 2. NOTE: ALL DATA SHOULD BE FOR THE BLACK DIAMOND PORTION OF THE FIRE DISTRICT.

- A. Inventory of existing fire apparatus and stations.
- B. Response time data, both average and fractal, by station, and other level of service information, such as response time coverage areas for each station.
- C. Current and future population, households, dwelling units, employment, and population density. "Future" should be at least 6 years, and can be as much as 20 years.
- D. Fire emergency incidents and medical incidents during the base year: (1) number of responses by each fire apparatus and station, (2) type of incident (situation found), and (3) a list of all fire responses and medical responses indicting the type of property (fixed property use) at each response.
- E. Property data for the current year that provides the number of dwelling units (by type) and the number of square feet of buildings for each type of land use. This data is typically available from County files for property taxes.
- F. List of capital expenditures for the most recent fire apparatus and stations: (1) item purchased, (2) cost, (3) source(s) of funding, (4) year purchased.
- G. Six-year plan for future capital improvements for fire apparatus and stations, including costs and funding.
- H. Any other plans for fire protection that were prepared within the past 5 years including, but not limited to the following:

- Long Range Plans
- Strategic Plans
- Station Location Analysis
- Annual Performance Report
- City Capital Facilities Plan Element of Comprehensive Plan (if it includes information about fire protection)

The preceding list of data may be revised if the final methodology is different than the one described in Task 2, and/or if the City or fire district has alternative data that will serve the same purpose as the data listed above.

4. Analysis and Preliminary Calculation of Impact Fee Rates

The Consultant will develop the cost model for calculating fire protection facilities impact fees for the City of Black Diamond. The Consultant will analyze the data from Task 3 and use the data and cost model to calculate preliminary rates for fire protection impact fees.

The Consultant will provide City staff with the data and analysis from the cost model and the preliminary rates for fire protection impact fees.

City staff will review the data, analysis and preliminary impact fee rates for fire protection. The Consultant will respond to questions, comments, suggestions and changes requested by City staff.

5. Review Draft and Final Rate Study

The Consultant will prepare a review draft rate study that documents the formulas and algorithms for calculating the fire protection impact fees. The rate study will describe each variable in each formula, document the data and assumptions used for each variable, and the calculation of the resulting fire protection impact fee rates.

City staff will review the review draft rate study for fire protection impact fees. The Consultant will respond to questions, comments, suggestions and changes requested by City staff. The Consultant will use the feedback from City staff to prepare the final rate study for fire protection impact fees.

6. Presentations

The Consultant will present the fire protection impact fee rate study to the City Council for initial review and discussion. We will respond to comments, suggestions, questions and requests for clarification.

The Consultant will present the fire protection impact fee rate study at a public meeting for the community and stakeholders. We will respond to comments and questions.

The Consultant will present the fire protection impact fee rate study at the public hearing of the City Council for action on adopting the fire protection impact fee rates.

SCHEDULE FOR DEVELOPING IMPACT FEES

The Consultant will develop the review draft of the fire protection impact fee rate study (Task 5) no later than 30 days after all data in Task 3 is provided to the Consultant.

We are able to meet this schedule because we stay in close communication with the City and fire district during the research (Task 3) so that we are ready to analyze and use the data as soon as the research is completed.

CONSULTANT COST FOR DEVELOPING IMPACT FEES

The Consultant will develop fire impact fees for the City of Black Diamond for a total cost not exceed \$40,000. The costs include all professional services and expenses.

CONCLUSION

Henderson, Young & Company uses the strongest methodologies in order to ensure that the impact fees are the most defensible yet understandable impact fees that the City can adopt.

Exhibit "B"

Henderson,
Young &
Company

**RATE SCHEDULE
2010**

<u>Category</u>	<u>Rate</u>	
Principal	\$215.00	per hour
Associate	\$165.00	per hour
Mileage	\$0.50	per mile
Miscellaneous	At Cost	

October 15, 2010

Andrew Williamson, Economic Development Director
City of Black Diamond
PO Box 599
Black Diamond, WA 98010

Via: Electronic Delivery

Re: Fire Impact Fee Study

Dear Mr. Williamson:

Thank you for the opportunity to review the responses to the request for qualifications recently published by the City for its fire impact fee study. It is our understanding that the City wishes to move forward with a contract to hire Henderson, Young & Company to prepare a study to develop City-wide fire impact fees.

As described in City of Black Diamond Ordinances Nos. 10-946 and 10-947, the immediate need for a City-wide fire impact fee study is driven by the Villages and Lawson Hills Master Planned Developments (the "MPDs"). Thus, this fire impact fee study is being prepared contemporaneously with the City's review of the MPDs' development agreements. YarrowBay will reimburse the City for the costs it incurs as a result of this fire impact fee study as part of the consulting costs attributed to The Villages and Lawson Hills development agreements.

Please don't hesitate to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan J. Kohlmann", followed by the letters "AICP" in a smaller, stylized font.

Ryan J. Kohlmann, AICP
Senior Project Manager

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION			
SUBJECT: Resolution No. 10-714, authorizing Green Valley Road Traffic Calming Study Professional Services Agreement with Parametrix	Agenda Date: October 21, 2010		AB10-081
	Department/Committee/Individual	Created	Reviewed
	Mayor Rebecca Olness		
	City Administrator –		
	City Attorney –Noel Treat		
	City Clerk – Brenda L. Martinez		
	Finance – May Miller		
	Public Works – Seth Boettcher	X	
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Cost Impact: \$19,720	Court – Stephanie Metcalf		
Fund Source: The Villages MPD	Comm. Dev. – Steve Pilcher		
Timeline: October/November 2010			
Attachments: Resolution No. 10-714, Agreement, Scope of Work and Budget Detail Report			
SUMMARY STATEMENT: <p>This Green Valley Road Traffic Calming study is required as a condition of The Villages Master Planned Development approval. The results of this study will assist the applicant in determining if any further measures should be taken to discourage Master Planned Development traffic from using Green Valley Road so that the process and timing for such actions can be incorporated into the development agreement. The applicant will be taking the lead on establishing a committee representing their interests, the City and the Green Valley Road community to engage the community on whether any additional measures to discourage traffic on Green Valley Road should be taken. The cost of this study will be covered by YarrowBay Holdings Group.</p> <p>In this agreement, Parametrix will provide consulting services to the City related to the Green Valley Road Traffic Calming Study.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: Public Works Committee is recommending approval.			
RECOMMENDED ACTION: MOTION to adopt Resolution No. 10-714, authorizing the Mayor to execute a Professional Services Agreement with Parametrix for \$19,720 to assist with the Green Valley Road Traffic Calming Study.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
October 21, 2010			

RESOLUTION NO. 10-714

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING A PROFESSIONAL SERVICES
AGREEMENT WITH PARAMETRIX FOR THE GREEN
VALLEY ROAD TRAFFIC CALMING STUDY**

WHEREAS, the City of Black Diamond has selected Parametrix to provide transportation related consulting services for the City; and

WHEREAS, the City Council, by Ordinance No. 10-946, approved The Villages, Master Planned Development and condition of approval 33 a. requires the City to commission a study to determine if there are ways to discourage or limit Master Planned Development traffic from using Green Valley Road; and

WHEREAS, The Villages Master Planned Development applicant will cover the cost of the Green Valley Road Traffic Calming Study;

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 Parametrix for the Green Valley Road Traffic Calming Study in the form substantially attached hereto as Exhibit A.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 21ST DAY OF OCTOBER, 2010.

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 October 21, 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, Public Works Director

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

and

PARAMETRIX ("Consultant")

411 108th Avenue NE, Suite 1800

Bellevue, WA 98004

Contact: John Perlic, PE

Phone: (425) 458-6343 Fax: (425) 458-6363

Tax Id No.: _____

for professional services in connection with the following project:

The Green Valley Road Traffic Calming study to determine if additional measures are necessary to discourage traffic on Green Valley Road (the "Project").

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 provide the City with a final report by November 5, 2010.

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 NOT TO EXCEED. Compensation for the services provided in the Scope of Work shall not exceed \$19,720.00 without the written authorization of the City and will be based on the Budget Detail Report of billing rates and reimbursable expenses attached hereto as Exhibit "B."

4. Payment

4.1 Consultant shall maintain time and expense records and provide them to the City monthly, along with monthly invoices, in a format acceptable to the City for work performed to the date of the invoice.

4.2 All invoices shall be paid by City warrant within sixty (60) days of actual receipt by the City of an invoice conforming in all respects to the terms of this Agreement.

4.3 Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Consultant shall make copies available to the City on request.

4.4 If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

5. Discrimination and Compliance with Laws

5.1 Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

5.2 Consultant and its subconsultants shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

5.3 Any violation of this Section 5 shall be a material breach of this Agreement and grounds for immediate cancellation, termination, or suspension of the Agreement by the City, in whole or in part, and may result in Consultant's ineligibility to conduct further work for the City.

6. Suspension and Termination of Agreement

6.1 The City reserves the right to terminate or suspend this Agreement at any time, without cause, by giving Consultant notice in writing ten (10) days prior to the termination or suspension date. In the event of termination, all finished or unfinished reports, or other material prepared by Consultant pursuant to this Agreement, shall be submitted to the City. In the event the City terminates this Agreement prior to completion without cause, Consultant may complete such analyses and records as may be necessary to place its files in order. Consultant shall be entitled to compensation for any satisfactory work completed on the Project prior to the date of suspension or termination.

6.2 Any notice from the City to Consultant regarding the suspension of this Agreement shall specify the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to Consultant's reasonable expenses and shall be subject to verification. Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

7. Standard of Care

7.1 Consultant represents and warrants that it has the requisite training, skill, and experience necessary to provide the services under this Agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services Consultant provides under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

8. Ownership of Work Product

8.1 Ownership of the originals of any reports, data, studies, surveys, charts, maps, drawings, specifications, figures, photographs, memoranda, and any other documents which are developed, compiled, or produced as a result of this Agreement, whether or not completed, shall

be vested in the City and shall be submitted to the City upon termination of this Agreement. Any reuse of these materials by the City for projects or purposes other than those that fall within the scope of this Agreement and the Project to which it relates, without written concurrence by Consultant, will be at the sole risk of the City.

8.2 The City acknowledges Consultant's documents as instruments of professional service. Nevertheless, the documents prepared under this Agreement shall become the property of the City upon completion of the work. The City agrees to hold harmless and indemnify Consultant against all claims made against Consultant for damage or injury, including defense costs, arising out of the City's reuse of such documents beyond the use for which they were originally intended without the written authorization of Consultant.

8.3 Methodology, software, logic, and systems developed under this Agreement are the property of Consultant and the City, and may be used as either Consultant or the City see fit, including the right to revise or publish the same without limitation.

9. Indemnification/Hold Harmless

9.1 Consultant shall defend, indemnify, and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including 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

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

Consultant: John Perlic
Parametrix
411 108th Avenue NE, Suite 1800
Bellevue, WA 98004
Fax: 425-458-6363

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

Its: Mayor

Date: _____

By: _____

Printed Name: _____

Its: _____

Date: _____

Attest:

By:

Brenda L. Martinez

City Clerk

EXHIBIT “A”

SCOPE OF WORK

City of Black Diamond Green Valley Road Traffic Calming

Task 1 – Project Management and Meetings

Measurable Task Objective

To provide ongoing project management support and assist City of Black Diamond staff with planning and attending meetings with the Green Valley Road Review Committee and King County

Approach

A brief project management plan documenting the project scope, schedule, budget, project team, and communication plan will be prepared. Monthly invoices will be prepared to document budget and schedule status.

The task also includes preparation and attendance at a coordination meeting with City of Black Diamond staff, and a presentation meeting for the Green Valley Road Review committee. The suggested meeting sequence and topics would be:

City of Black Diamond staff meeting to discuss existing roadway conditions and initial traffic calming concepts after the initial road inventory has been completed to refine the tasks and work product expected. Meet with the Green Valley Road Review committee to present the travel time results, road inventory, traffic calming recommendations and the expected effect of the measures recommended.

Assumptions

- Preparation and attendance at 1 meeting with the City of Black Diamond
- Preparation and attendance at 1 meeting with the Green Valley Road Review Committee

Deliverables

- Meeting agendas and notes for all meetings
- Handouts or presentation materials for all meetings
- Monthly invoices and progress reports

Task 2 – Existing Roadway Conditions Inventory

Measurable Task Objectives

To document the existing physical conditions of Green Valley Road

SCOPE OF WORK (CONTINUED)

Approach

Parametrix staff will conduct a field review of the Green Valley Road corridor and record pavement widths, tight radius curves with reduced speed warning signs, and other visible features affecting traffic speed or safety. This will include preparation of a photo inventory of locations where existing physical features have a traffic calming effect, and locations where no such features exist. This task will also include travel time surveys to document the competitive travel time of using Green Valley Road to reach Auburn compared to other routes

Deliverables

Section of the final Technical Memorandum

Task 3 – Identify and Evaluate Traffic Calming Strategies

Measurable Task Objective

To identify a wide range of traffic calming strategies to decrease travel speeds and total traffic volumes on the roadway

Approach

A list of traffic calming strategies will be developed and evaluated. Approximately 10 different strategies focusing on reducing traffic volumes from the Black Diamond Master Plan Developments (MPD's) on Green Valley Road will be evaluated. Each strategy will be described and categorized for its ability to:

- Decrease traffic volumes
- Decrease travel speeds
- Other implementation considerations
- Appropriateness for use on Green Valley Road

A summary evaluation matrix will be prepared to document the information above. Based on this information, we will work with City of Black Diamond staff to prepare a final recommendation for consideration by the Green Valley Road Review Committee.

Deliverables

Section of the final Technical Memorandum and summary evaluation matrix for use in the City Staff and Committee meetings

SCOPE OF WORK (CONTINUED)

Task 4 – Prepare Recommendation and Documentation

Measurable Task Objective

To work with City of Black Diamond staff to prepare a final recommendation to present to the Green Valley Road Review Committee

Approach

A list of final recommendations will be prepared and presented to the Green Valley Road Review Committee for review and consideration. The draft technical memorandum will be completed by November 5th, and will be finalized within one week of receiving comments from City of Black Diamond staff .

Deliverables

Draft and final technical memorandum

Budget Detail Report

Labor Detail

Expense Detail Report

Phase	Travel for meetings	120 mi @ \$0.50/mi	\$60.00
	Total		\$60.00

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION			
SUBJECT: Resolution No. 10-715, authorizing the Mayor to execute a legal services agreement with Kenyon Disend, PLLC	Agenda Date: October 21, 2010		AB10-082
	Department/Committee/Individual	Created	Reviewed
	Mayor Rebecca Olness		X
	City Administrator –		
	City Attorney –Chris Bacha		
	City Clerk – Brenda L. Martinez	X	
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Cost Impact:	Court – Stephanie Metcalf		
Fund Source:	Comm. Dev. – Steve Pilcher		
Timeline:			
Attachments: Resolution No. 10-715, Proposed Agreement, Resolution No. 10-663 w/agreement			
SUMMARY STATEMENT: <p>In January of 2010 the City entered into an agreement for Legal Services with the Issaquah Law Firm of Kenyon Disend, PLLC. This agreement is essentially the same as the one the City has been operating under with some minor alterations.</p> <p>This agreement contains an increase of \$5 to \$10 dollars in the hourly rates. These new hourly rates will not be effective until January 1, 2011. Chris Bacha will continue to serve as the City City Attorney with Mike Kenyon serving as primary backup.</p> <p>The agreement shall be in effect from October 1, 2010 to December 31, 2011 with the parties meeting 60 days prior to expiration to confer about terms renewal.</p>			
COMMITTEE REVIEW AND RECOMMENDATION:			
RECOMMENDED ACTION: MOTION to adopt Resolution No. 10-715, authorizing the Mayor to execute a legal services agreement with Kenyon Disend, PLLC.			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	
October 21, 2010			

RESOLUTION NO. 10-715

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT
FOR LEGAL SERVICES WITH KENYON DISEND, PLLC**

WHEREAS, on January 7, 2010 the City entered into a legal services agreement with Kenyon Disend, PLLC to provide legal services for the City of Black Diamond; and

WHEREAS, the City of Black Diamond and the Law Firm of Kenyon Disend, PLLC both desire to continue contracting for legal services;

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 legal services agreement with Kenyon Disend, PLLC 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 21ST DAY OF OCTOBER 2010.

CITY OF BLACK DIAMOND:

Rebecca Olness, Mayor

Attest:

Brenda L. Martinez, City Clerk

AGREEMENT FOR LEGAL SERVICES

I. PARTIES

This Agreement is made on this ____ day of _____, 2010, between the City of Black Diamond ("City") and Kenyon Disend, PLLC ("Attorneys").

II. SERVICES OF THE ATTORNEYS

The Attorneys shall provide the legal services set forth in this Agreement and shall work for the City at the pleasure of and under the direction of the Mayor. Chris Bacha will serve as the City Attorney, with primary back-up provided by Mike Kenyon, and will direct the services provided under this contract.

III. QUALITY OF SERVICES

The Attorneys shall perform all legal services covered by this Agreement in a capable and efficient manner, and in accordance with the professional standards of the Washington State Bar Association. The Attorneys shall be available at all times for consultation and advice, including on weekends and holidays if needed, directly or through telephone, e-mail, or other forms of communication.

IV. SERVICES PROVIDED

The City Attorney shall be principally responsible for performing all legal work for the City, except prosecution of criminal cases, where defense is provided through insurance coverage, matters in which a conflict of interest exists, or as may otherwise be assigned to other counsel by the Mayor. The following list of duties is illustrative, but is not necessarily inclusive, of the services to be performed by the Attorneys:

- (1) Review or draft City ordinances, agreements, resolutions, interlocal agreements, and other legal documents as requested by the City;
- (2) Represent the City in all lawsuits and other contested administrative proceedings commenced by or against the City, except where defense is provided through insurance coverage;
- (3) Consult with and advise the Mayor, City Councilmembers and staff members in person, by telephone, e-mail, or by written memo on City business; and
- (4) Attend regular City Council meetings and other meetings as requested by the Mayor.

V.
FEES AND COSTS

A. Legal Services. City shall be billed for legal services described above at the Attorneys' and paralegals' regular hourly rates as set forth in Exhibit A. The Attorneys will also charge the City fifteen cents per page for photocopying and facsimile transmissions, and shall be reimbursed for legal messenger services, computerized legal research charges, filing fees advanced on behalf of the City, and other direct expenses without markup.

B. The Attorneys shall not charge the City for mileage costs, nor for long-distance telephone charges.

C. The monthly fees and costs, exclusive of those fees and costs described in subparagraph D., below, which are to be initially paid to the City by third parties pursuant to City ordinance or other action of the City, shall not exceed \$7,000 without prior authorization from the Mayor.

D. Fees and costs for Attorneys services, initially paid to the City by land use applicants or other third parties pursuant to City ordinance or other action of the City authorizing such reimbursement ("Pass-Through Fees"), may be subject to prior review for reasonableness by such other third party. In the event that any third party challenges the reasonableness of Attorneys' Pass-Through Fees, the City shall only be responsible to pay Attorneys for such portion of the challenged fees and costs as the City in its sole discretion deems reasonable.

Attorneys' current rates expressly account for any taxes or related charges ("charges") imposed on professional service providers by the City and State of Washington. In the event that any such additional charges are imposed during the term of this Agreement, Attorneys shall be entitled to recover any such additional charges as a reimbursable cost item on Attorneys' monthly billing statements.

Attorneys shall apply for and obtain a business license with the City and shall maintain a current business license for the duration of this contract. Fees and costs associated with the application shall not be charged to the City.

VI.
PAYMENT TERMS

Fees and costs are due in full from the City upon billing by the Attorneys. A service charge shall accrue at the rate of 12% per annum, but shall only be added to any balance remaining unpaid sixty (60) days after the statement date.

**VII.
TIME RECORDS**

The Attorneys will maintain accurate time records describing the services performed and the dates upon which said services were performed, and shall provide a monthly statement to the City setting forth the time expended for such services.

**VIII.
AGREEMENT PERIOD**

After City Council approval, this Agreement shall be in effect as of October 1, 2010, and shall remain in effect until December 31, 2011, unless sooner terminated as set forth herein. The adjusted hourly rates reflected on the attached Exhibit A shall not be effective until January 1, 2011. Until then, Attorneys shall bill at the same rates as have been billed to date in 2010. The parties shall meet and confer regarding renewal terms at least sixty days before expiration of this contract. Each party shall have the right to terminate this Agreement upon sixty days written notice.

**IX.
INDEMNIFICATION/HOLD HARMLESS**

The Attorneys 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 out of or resulting from the acts, errors or omissions of the Attorneys in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

**X.
INSURANCE**

The Attorneys shall maintain for the protection of the City a professional errors and omissions insurance policy with minimum coverage of one million dollars per claim and three million dollars annual aggregate.

CITY OF BLACK DIAMOND

KENYON DISEND, PLLC

By: _____
Rebecca Olness, Mayor

By: _____
Mike Kenyon

EXHIBIT A

**KENYON DISEND, PLLC
HOURLY RATE SCHEDULE FOR YEAR 2011**

ATTORNEYS:

Partners and Senior Attorneys:

Michael R. Kenyon	\$255.00
Bruce L. Disend	\$255.00
Shelley M. Kerslake	\$225.00
Chris D. Bacha	\$225.00
Bob C. Sterbank	\$225.00
Margaret J. King	\$220.00
Kari L. Sand	\$210.00

Associate Attorneys:

Sara B. Springer	\$145.00
Rachel B. Turpin	\$130.00
Ann Marie Soto	\$125.00

PARALEGALS:

Margaret C. Starkey	\$105.00
Sheryl A. Loewen	\$ 95.00
Pam M. Odegard	\$ 90.00
Shelly Crossland	\$ 90.00
Mary Eichelberger	\$ 90.00
Terry Cox	\$ 90.00
Kathy Swoyer	\$ 90.00

LEGAL INTERNS:	\$100.00
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RESOLUTION NO. 10-663

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON,
AUTHORIZING THE MAYOR TO EXECUTE A LEGAL
SERVICES AGREEMENT WITH KENYON DISEND, PLLC

WHEREAS, the City is in need of a City Attorney to provide legal services; and

WHEREAS, the City advertised for qualified firms and individuals to fill the position of City Attorney and a selection panel including the Mayor, Mayor-elect, Councilmember, Interim City Attorney, Acting City Administrator and Community Development Director reviewed the proposals and interviewed three firms; and

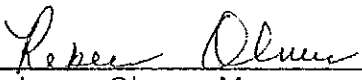
WHEREAS, the panel unanimously recommended Kenyon Disend, PLLC as a firm qualified and willing to provide the necessary services;

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 legal services agreement with Kenyon Disend, PLLC 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 7TH DAY OF JANUARY, 2010.

CITY OF BLACK DIAMOND:



Rebecca Olness, Mayor

Attest:



Brenda L. Martinez, City Clerk

AGREEMENT FOR LEGAL SERVICES

I. PARTIES

This Agreement is made on this 7th day of January, 2010, between the City of Black Diamond ("City") and Kenyon Disend, PLLC ("Attorneys").

II. SERVICES OF THE ATTORNEYS

The Attorneys shall provide the legal services set forth in this Agreement and shall work for the City at the pleasure of and under the direction of the Mayor. Noel Treat will serve as the City Attorney, with primary back-up provided by Mike Kenyon, and will direct the services provided under this contract.

III. QUALITY OF SERVICES

The Attorneys shall perform all legal services covered by this Agreement in a capable and efficient manner, and in accordance with the professional standards of the Washington State Bar Association. The Attorneys shall be available at all times for consultation and advice, including on weekends and holidays if needed, directly or through telephone, email, or other forms of communication.

IV. SERVICES PROVIDED

The City Attorney shall be principally responsible for performing all legal work for the City, except prosecution of criminal cases, where defense is provided through insurance coverage, matters in which a conflict of interest exists, or as may otherwise be assigned to other counsel by the Mayor. The following list of duties is illustrative, but is not necessarily inclusive, of the services to be performed by the Attorneys:

- (1) Review or draft City ordinances, agreements, resolutions, interlocal agreements, and other legal documents as requested by the City;
- (2) Represent the City in all lawsuits and other contested administrative proceedings commenced by or against the City, except where defense is provided through insurance coverage;
- (3) Consult with and advise the Mayor, City Councilmembers and staff members in person, by telephone, e-mail, or by written memo on City business; and
- (4) Attend regular City Council meetings and other meetings as requested by the Mayor.

V.
FEES AND COSTS

- A. Legal Services. City shall be billed for legal services described above at the Attorneys' and paralegals' regular hourly rates as set forth in Exhibit A. The Attorneys will also charge the City ten cents per page for photocopying and facsimile transmissions, and shall be reimbursed for legal messenger services, computerized legal research charges, filing fees advanced on behalf of the City, and other direct expenses without markup.
- B. The Attorneys shall not charge the City for mileage costs, nor for long-distance telephone charges.
- C. Exclusive of those fees and costs described in subparagraph D. below which are to be initially paid to the City by third parties pursuant to City ordinance or other action of the City, the monthly fees and costs shall not exceed \$7,000.00 without prior authorization from the Mayor.
- D. Fees and costs for Attorneys services, initially paid to the City by land use applicants or other third parties pursuant to City ordinance or other action of the City authorizing such reimbursement ("Pass-Through Fees"), may be subject to prior review for reasonableness by such other third party. In the event that any third party challenges the reasonableness of Attorneys' Pass-Through Fees, the City shall only be responsible to pay Attorneys for such portion of the challenged fees and costs as the City in its sole discretion deems reasonable.

Attorneys' current rates expressly account for any taxes, , or related charges ("charges") imposed on professional service providers by the City and State of Washington. In the event that any such additional charges are imposed during the term of this agreement, Attorneys shall be entitled to recover any such additional charges as a reimbursable cost item on Attorneys' monthly billing statements.

Attorneys shall apply for and obtain a business license with the City and shall maintain a current business license for the duration of this contract. Fees and costs associated with the application shall not be charged to the City.

VI.
PAYMENT TERMS

Fees and costs are due in full from the City upon billing by the Attorneys. A service charge shall accrue at the rate of 12% per annum, but shall only be added to any balance remaining unpaid sixty (60) days after the statement date.

**VII.
TIME RECORDS**

The Attorneys will maintain accurate time records describing the services performed and the dates upon which said services were performed, and shall provide a monthly statement to the City setting forth the time expended for such services.

**VIII.
AGREEMENT PERIOD**

This Agreement shall be in effect after City Council approval, and shall remain in effect for nine months. Sixty days before expiration of this contract, the parties shall meet and confer about renewal terms.

Each party shall have the right to terminate this Agreement upon sixty days written notice.

**IX.
INDEMNIFICATION/HOLD HARMLESS**

The Attorneys 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 out of or resulting from the acts, errors or omissions of the Attorneys in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

**X.
INSURANCE**

The Attorneys shall maintain for the protection of the City a professional errors and omissions insurance policy with minimum coverage of one million dollars per claim and three million dollars annual aggregate.

CITY OF BLACK DIAMOND

KENYON DISEND, PLLC

By: Rebecca Olness
Rebecca Olness, Mayor

By: Mike Kenyon
Mike Kenyon

EXHIBIT A

KENYON DISEND, PLLC
HOURLY RATE SCHEDULE FOR YEAR 2010

ATTORNEYS:

Partners and Senior Attorneys:

Michael R. Kenyon	\$245.00
Bruce L. Disend	\$245.00
Shelley M. Kerslake	\$215.00
Chris D. Bacha	\$215.00
Bob C. Sterbank	\$215.00
Noel R. Treat	\$215.00
Steve I. Victor	\$215.00
Sandra S. Meadowcroft	\$210.00
Margaret J. King	\$210.00
Kari L. Sand	\$200.00

Associate Attorneys:

Renee G. Walls	\$160.00
Sara B. Springer	\$135.00

PARALEGALS:

Margaret C. Starkey	\$100.00
Sheryl A. Loewen	\$ 90.00
Pam M. Odegard	\$ 85.00
Shelly Crossland	\$ 85.00
Mary Eichelberger	\$ 85.00
Terry Cox	\$ 85.00
Kim Obermayer	\$ 85.00
Kathy Swoyer	\$ 85.00

LEGAL INTERNS:	\$100.00
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