



CITY OF BLACK DIAMOND
February 18, 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 253-631-0351. Thank you for attending this evening.

PUBLIC HEARINGS: None

APPOINTMENTS, PRESENTATIONS, ANNOUNCEMENTS:

Presentation – XTERRA Black Diamond

UNFINISHED BUSINESS: None

NEW BUSINESS:

- | | |
|--|----------------|
| 1.) AB10-015 – Resolution Declaring Certain City Property as Surplus | Mr. Williamson |
| 2.) AB10-016 – Resolution Authorizing Amendment #5 to Parametrix Contract | Mr. Pilcher |
| 3.) AB10-017 – Ordinance Amending Chapter 18 - Appeal and Review Process | Mr. Pilcher |

DEPARTMENT REPORTS:

Police Department – Chief Kiblinger

MAYOR'S REPORT:

COUNCIL REPORTS:

ATTORNEY REPORT:

PUBLIC COMMENTS:

CONSENT AGENDA:

- 4.) Claim Checks** – February 18, 2010 No. 35134, No. 35185 through No. 35251 in the amount of \$127,435.66
- 5.) Payroll** – January 2010 No. 16820 through No. 16895 in the amount of \$257,564.86
- 6.) Minutes** – Council Meeting of February 4, 2010 and Joint City Council Meeting Minutes of September 22, 2009

EXECUTIVE SESSION:

ADJOURNMENT:

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
SUBJECT: Resolution No. 10-673, declaring certain City property as surplus	Agenda Date: February 18, 2010		AB10-015
	Department/Committee/Individual	Created	Reviewed
	Mayor Rebecca Olness		
	City Administrator –		
	City Attorney – Noel Treat		
	City Clerk – Brenda L. Martinez		X
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson	X	
Cost Impact:	Police – Chief Jamey Kiblinger		
Fund Source:	Court – Stephanie Metcalf		
Timeline:	Natural Resources – Aaron Nix		
Attachments: Resolution No. 10-673, list of items to be surplus			
SUMMARY STATEMENT: <p>Over the period of a year the City discontinues use of or has no need for certain property and it is turned over to the Capital Facilities Coordinator for surplus.</p> <p>With the authorization from the City Council surplus items are available for sale either by sealed bid, online auction or other reasonable and allowable means.</p>			
COMMITTEE REVIEW AND RECOMMENDATION:			
RECOMMENDED ACTION: MOTION to adopt Resolution No. 10-673, declaring certain City property as surplus and authorizing staff to make items available for sale either by sealed bid, online auction or other reasonable and allowable means.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
February 18, 2010			

RESOLUTION NO. 10-673

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
DECLARING CERTAIN CITY PROPERTY SURPLUS TO THE
NEEDS OF THE CITY**

WHEREAS, the City desires to dispose of personal property surplus to the needs of the City; and

WHEREAS, such property has accumulated over time in various storage areas; and

WHEREAS, all such property has been cataloged with all departments have the opportunity to review the listing; and

WHEREAS, City Council must deem the property to be surplus and authorize its disposal;

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

Section 1. The listing of certain City property is hereby declared surplus to the needs of the City of Black Diamond, as attached hereto as Exhibit A.

Section 2. City Council authorizes staff to make items available for sale either by sealed bid, online auction or other reasonable and allowable means.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON,
AT A REGULAR MEETING THEREOF, THIS 18TH DAY OF FEBRUARY, 2010.**

CITY OF BLACK DIAMOND:

Rebecca Olness, Mayor

Attest:

Brenda L. Martinez, City Clerk

February 18, 2010
City of Black Diamond Surplus Items

Exhibit A

ITEM #	DESCRIPTION	SERIAL #	\$ Rec.	CITY #	DISPOSITION	DATE	SIGNATURE
1	Dell Computer	8R3JH81					
2	Dell Computer	2FR9K21					
3	Dell Computer	CNHDY91					
4	Unknown Computer Box	None					
5	Dell Computer	HDR9K21					
6	Dell Monitor	NNOHP121					
7	Panasonic CF-28 Laptop Computer	2BKYA02351					
8	Panasonic CF-28 Laptop Computer	1KKSBO4212					
9	Panasonic CF-28 Laptop Computer	2BKUA02499					
10	Panasonic CF-28 Laptop Computer	2BKUA01992					
11	Panasonic CF-28 Laptop Computer	1GKYB03588					
12	Panasonic CF-28 Laptop Computer	1GKYB03645					
13	Panasonic CF-28 Laptop Computer	1GKYB03478					
14	Compaq Laptop Computer	V730BQH28914					
15	HP 5210 All in one printer, fax, copy	CN59JEG1NB					
16	Sears Typewriter	1087988					
17	Brother Typewriter	G4E957817					
18	HP All in one printer, fax, copy	MY98RC31HG					
19	IBM Quick Charger	1M7V0D95100					
20	Radio Shack P/A Amp.	91101321					
21	Bell Howell Overhead Projector	7104009					
22	E. F. Johnson A/C D/C Converter	60818					
23	Box of Merlin Phones & Cont. Unit	2495					
24	Panasonic CF-28 Laptop Computer	2BKYA02495					
25	Sy Quest ez Flyer	64776					
26	(LOT) Box of old VHF port. Radios						
27	2 drawer locking file cabinet						
28	(LOT) Misc. veh. Cameras & Equip.						
29	(LOT) Vehicle Laptop Mounts						
30	Push Bar from Police Crown Victoria						
31	Box Misc. Computer wiring						
32	Black File Holder						

Exhibit A

[illegible]

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
SUBJECT: Resolution 10-674, authorizing the Mayor to sign contract amendment #5 with Parametrix to authorize their participation in the upcoming appeal hearings concerning the FEISs for The Villages and Lawson Hills MPDs	Agenda Date: February 18, 2010		AB10-016
	Department/Committee/Individual	Created	Reviewed
	Mayor Rebecca Olness		
	City Administrator – Brenda Martinez		X
	City Attorney – Noel Treat		X
	City Clerk – Brenda L. Martinez		
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Timeline: Appeal hearing begins 3/6/10	Natural Resources – Aaron Nix		
	Comm. Development – Steve Pilcher	X	
Attachments: Resolution No. 10-674, Amendment #5, Scope of Work and Resolution No. 08-496 (original contract)			
SUMMARY STATEMENT: <p>On December 11, 2009, the City issued the Final Environmental Impact Statements (FEIS) for the two Master Planned Developments proposals (The Villages and Lawson Hills). On December 28, 2009, a total of six appeals of the FEIS documents were filed (3 a piece). The City's Hearing Examiner has set March 6, 2010 as the start of the appeals hearings. The City and the applicant have determined it would be beneficial to have Parametrix staff be present as technical experts.</p> <p>This contract amendment would authorize up to \$10,000; but it is unlikely to reach that amount.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: None			
RECOMMENDED ACTION: MOTION to adopt 10-674, authorizing the Mayor to execute contract Amendment #5 with Parametrix, originally authorized under Resolution 08-496, for the purposes of participating in the upcoming appeal hearings on the Final Environmental Impact Statements for The Villages and Lawson Hills Master Planned Developments.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
February 18, 2010			

RESOLUTION NO. 10-674

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, RELATING TO THE PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS FOR THE LAWSON HILLS AND THE VILLAGES MASTER PLANNED DEVELOPMENTS AND AUTHORIZING THE MAYOR TO SIGN AMENDMENT NO. 5 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN PARAMETRIX, INC. AND THE CITY OF BLACK DIAMOND

WHEREAS, the City and Parametrix entered into a Professional Services Agreement regarding Environmental Services dated April 17, 2008 (the "Agreement") for the preparation of Environmental Impact Statements (EIS) relating to the potential impacts of contemplated developments known as the Lawson Hills and The Villages Master Planned Developments (the "Project"); and

WHEREAS, various amendments to the original agreement have occurred over the course of the project to address new issues; and

WHEREAS, the Final Environmental Impact Statements (FEIS) for each proposal were issued on December 11, 2009, signifying the end of the original contract; and

WHEREAS, on December 28, 2009, three appeals of each FEIS were filed; and

WHEREAS, the City's Hearing Examiner has scheduled consideration of the FEIS appeals for early March 2010; and

WHEREAS, the City and applicant (Yarrow Bay) have determined it is desirable to have Parametrix staff available during the appeal hearings;

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

Section 1. The Mayor is hereby authorized to sign amendment #5 to the Agreement as outlined in Exhibit "A", attached.

Section 2. The Mayor is authorized to make minor changes to said Agreement in order to take into account scrivener's corrections or administrative matters that do not affect the substance of the Agreement and are within his authority as the City's Chief Administrative Officer.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 18TH DAY OF FEBRUARY, 2010.

CITY OF BLACK DIAMOND:

Rebecca Olness, Mayor

Attest:

Brenda L. Martinez, City Clerk

Amendment #5 to Professional Services Agreement Between Parametrix and the City of Black Diamond

This Professional Services Agreement Amendment is dated February 18, 2010 and is entered into by and between:

CITY OF BLACK DIAMOND, WASHINGTON (the "City")
24301 Roberts Drive
Black Diamond, WA 98010
Contact: Steve Pilcher, Community Development Director
Phone: 360-886-2560 Fax : 360-886-2592

and

PARAMETRIX, Inc. (the "Consultant")
P.O. Box 460
Sumner, WA 98390
Contact: Susan Graham
Phone: 208-898-0012 Fax: 208-947-1655

This amendment authorizes the limited participation of the consultant staff in the upcoming Final EIS appeal hearings scheduled for March 6, 8 & 9th, 2010.

Project budget not to exceed \$10,000.

CITY OF BLACK DIAMOND

CONSULTANT

By: _____
Rebecca Olness

By: _____
Susan Graham:

Its: Mayor

Its: _____

Date: _____

Date: _____

Attest:

By:

Brenda L. Martinez
City Clerk

City of Black Diamond
Villages and Lawson Hills Environmental Impact Statement
Scope of Work

February 11, 2010

This scope is in addition to the original scope, dated April 2008 and as previously updated in Amendments 1-4.

Scope changes, additional tasks and other revisions are noted as highlighted text.

TASK 1 - PROJECT MANAGEMENT

Assumptions

- The duration of contract is April 2008 through June 2009. Delays due to unforeseen circumstances (i.e. additional meetings, hearings, extended review periods) may result in additional effort necessary for project management and administration. The project deadline was extended (Amendment 4) assumed to last until December 2009.

➤ The Final EISs for The Villages and Lawson Hills have been appealed. The contract date is now extended through April 31, 2010, to allow for hearings and other support.

TASK 5 - FEIS PREPARATION

Assumptions

- No appeals or other actions are assumed as part of this scope

The Final EISs have been appealed. This scope amendment assumes 40-60 hours of appeal, hearing, and staff support.

Potential staff include:

Susan Graham (expert testimony and staff support - procedural issues)

Kristen Levandusky (project administration, support, research, documentation)

John Perlic, PE (expert testimony – transportation)

FEE ESTIMATE

All labor for this amendment will be provided on an on-call, as needed basis, using the standard Parametrix Billing Rate Schedule for 2010. The total estimate for the additional work is not to exceed \$10,000.

RESOLUTION NO. 08-496

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON,
AUTHORIZING THE MAYOR TO EXECUTE A
PROFESSIONAL SERVICES AGREEMENT BETWEEN
PARAMETRIX AND THE CITY OF BLACK DIAMOND

WHEREAS, the City Council approved a request by YarrowBay to proceed with environmental impact statement development in November 2007; and

WHEREAS, the City desires to retain the services of a consultant skilled in representing local governments in the development of environmental impact statements for master planned communities or other large projects in Western Washington; and

WHEREAS, the City of Black Diamond published a Request for Qualifications for firms to perform such work and interviewed all responsive firms in February; and


WHEREAS, a selection panel determined that Parametrix has superior qualifications and is willing and able to perform the above-mentioned services;

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

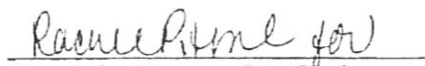
Section 1. The Mayor is authorized to execute a professional services agreement with Parametrix for the development of environmental impact statements for Lawson Hills and The Villages as contained in the form attached hereto as Exhibit A.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 17th DAY OF APRIL, 2008.

CITY OF BLACK DIAMOND:


Howard Botts, Mayor

Attest:


Brenda L. Streepy, City Clerk

PROFESSIONAL SERVICES AGREEMENT

Between
CITY OF BLACK DIAMOND
And
PARAMETRIX, INC.
Regarding
ENVIRONMENTAL SERVICES

This Professional Services Agreement ("Agreement"), for reference purposes only, is dated April 17, 2008 ("Agreement Date") and is entered into by and between

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

25510 Lawson Street

Black Diamond, WA 98010

Contact: Gwendolyn Voelpel

Phone: 360-886-2560

Fax : 360-886-2592

and

Parametrix, Inc. ("Consultant")

1231 Fryer Avenue

P.O. Box 460

Sumner, WA 98390

Contact: Susan Graham

Phone: 253-501-5139

Fax: 253-863-0946

Tax Id No.: 91-9014810

for professional services in connection with the preparation of Environmental Impact Statements (EIS's) for the Lawson Hills and the Villages developments in Black Diamond (the "Project"), and such other environmental services as may be added by addendum to the Agreement.

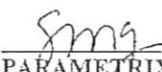
TERMS AND CONDITIONS

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. Any work performed by the Consultant outside the Scope of Work, for which there has not been written authorization from the City shall be deemed a donation to the City and there will be no charge for the same. The Consultant shall not be entitled to a greater amount of compensation as that provided in this Agreement without the prior written authorization of the City.

Professional Services Agreement


CITY


PARAMETRIX

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. It is anticipated that the City may request the environmental services of Consultant relative to preparation of the City's critical areas ordinance (CAO). The parties are currently discussing the scope, schedule and budget for Consultant's services relative to the CAO and anticipate that an amendment to the Agreement will be executed within the next 30 days.

1.3 Consultant represents and warrants that it, its staff to be assigned to the Project, and its subconsultants and their staff have the requisite training, skill, and experience necessary to provide the services required by this Agreement and are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant and its subconsultants under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

2. Schedule of Work

2.1 Consultant shall perform the services described in the Scope of Work in accordance with the schedule attached to this contract as Exhibit "C" ("Schedule").

2.2 Time is of the essence as to the performance of the work provided in the Scope of Work and thus adherence to the Schedule is a material and substantial consideration for the City entering into the Agreement. 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 as of the Agreement Date.

3. Compensation

☐ 3.1 TIME AND MATERIALS NOT TO EXCEED. Compensation for the services to be provided in the Scope of Work shall not exceed the total Budget Amount of \$578,750 as set forth in Exhibit B-1, although the line items may be exceeded, so long as the total compensation amount is not exceeded. If the City authorizes additional services not included in the Scope of Work, including the addition of other projects, such as the CAO project referenced above, then the additional fee for services shall be calculated using the rate structure set forth in Exhibit B-2, and a written amendment shall be executed by the parties. Consultant acknowledges that only the City Council has the authority to authorize additional payment for additional services.

Professional Services Agreement


CITY


PARAMETRIX

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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 the City within sixty (60) days of actual receipt by the City of an invoice conforming in all respects to the terms of this Agreement. Invoices shall have sufficient detail so that the City can determine the work performed, by whom, and upon what date, with the corresponding rate authorized by the Agreement. The City shall retain 10 % of the billed amount (not including reimburseable costs or amounts to be paid to subconsultants) until the Project is completed and the final environmental impact statements are accepted. The retainage shall be maintained by the City in an interest bearing account and upon release of the retainage the Consultant shall also receive the interest. The amount of interest shall be in addition to the earned compensation.

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.

Professional Services Agreement


CITY


PARAMETRIX

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. In the event of termination or suspension the Consultant shall not be entitled to any compensation for overhead, lost profits or other consequential expenses, except to the extent they are included in the hourly rates for work performed.

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.

Professional Services Agreement


CITY


PARAMETRIX

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.

Professional Services Agreement


CITY


PARAMETRIX

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 successfully received by facsimile, or upon receipt following mailing, postage prepaid, certified mail, return receipt requested to:

Professional Services Agreement


CITY


PARAMETRIX

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, PLLC
3600 Port of Tacoma Road, Suite 311
Tacoma, WA 98424
Fax: 253-922-5848

Consultant: Parametrix, Inc.
P.O. Box 460
Sumner, WA 98390
Fax: 253-863-0946

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

Professional Services Agreement

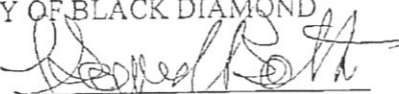

CITY


PARAMETRIX

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:



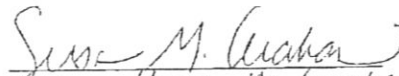
Howard Botts

Its: Mayor

Date: April 17th, 2008

CONSULTANT

By:



Printed Name: Susan M. Graham

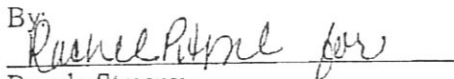
Its:

Program Manager

Date: April 17, 2008

Attest:

By:



Brenda Streepy

City Clerk

Professional Services Agreement


CITY


PARAMETRIX

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
SUBJECT: Ordinance 10-935, amending Chapter 18.08 and 18.98 of the Black Diamond Municipal Code to provide the Hearing Examiner with the ability to take additional time when rendering a decision on appeals and MPDs	Agenda Date: February 18, 2010		AB10-017
	Department/Committee/Individual	Created	Reviewed
	Mayor Rebecca Olness		
	City Administrator – Brenda Martinez		
	City Attorney – Noel Treat	X	X
	City Clerk – Brenda L. Martinez		
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Timeline:	Natural Resources – Aaron Nix		
	Comm. Dev. – Steve Pilcher	X	
Attachments: Ordinance 10-935			
SUMMARY STATEMENT: <p>At its February 4, 2010 meeting, the City Council was approached by two citizens, requesting that section 18.08.220 of the Black Diamond Municipal Code be amended to provide the Hearing Examiner with the ability to take more time to render a decision when considering an appeal matter. Currently, the code stipulates that a decision is to be made within 90 days of an appeal being filed. Concern was raised that this was insufficient time for the Examiner to consider particularly complex issues.</p> <p>Council requested the Planning Commission consider this matter at its February 9 meeting, issue a recommendation, and have the matter back on the February 18, 2010 agenda. Subsequent to the February 4 Council meeting, the City Attorney and staff worked on potential amendment language to 18.08.220 and also similar amendment language to 18.98.060.A.5 (MPD Code) to address this issue. The Planning Commission considered the proposed language at its February 9 meeting and voted unanimously (7-0) to recommend approval to the City Council.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: Planning Commission recommends approval.			
RECOMMENDED ACTION: MOTION to adopt Ordinance 10-935, regarding timelines for Hearing Examiner decisions on Appeals and Master Planned Development applications and amending sections 18.08.220 and 18.98.060 of the Black Diamond Municipal Code.			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	
February 18, 2010			

CITY OF BLACK DIAMOND, WASHINGTON

ORDINANCE NO. 10- 935

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, REGARDING TIMELINES FOR HEARING EXAMINER DECISIONS ON APPEALS AND MASTER PLANNED DEVELOPMENT APPLICATIONS AND AMENDING SECTIONS 18.08.220 and 18.98.060 OF THE BLACK DIAMOND MUNICIPAL CODE

WHEREAS, section 18.08.2220 of the current Municipal Code requires the Hearing Examiner to render a decision on an appeal within 90 days of the date the appeal was filed; and

WHEREAS, section 18.98.060.A.6 of the current Municipal Code requires the Hearing Examiner to transmit a recommendation on an MPD permit application within 14 calendar days of the close of a public hearing; and

WHEREAS, the Planning Commission considered the proposed amendments at its February 9, 2010 regular meeting and recommends the City Council approve the proposal; and

WHEREAS, the City Council finds that both appeals and MPD permit applications are likely to be complex issues for which the Hearing Examiner may benefit from additional time for rendering a decision;

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

Section 1. Section 18.08.220 of the Black Diamond Municipal Code is amended to read as follows:

18.08.220 Appeal process.

A. Within 14 calendar days following timely filing of an administrative appeal, the department shall mail notice of the date time and place for the appeal hearing to all parties who received notice of the decision.

B. Appeals shall be heard and decided within 90 days from the date the appeal is filed; unless the hearing examiner determines by written findings that a specified amount of additional time is necessary because the matter is of unusual complexity or scope or for other good cause shown. The period of time for hearing and deciding an appeal shall be excluded in calculating the 120 day period for permit issuance established pursuant to BDMC 18.08.100 or state law.

C. The hearing shall be limited to the issues included in the written appeal statement. Participation in the appeal shall be limited to the City, the applicant, and those persons or entities which have timely filed complete written appeal statements and paid the appeal fee.

D. The appellant shall carry the burden of proof in the appeal. The burden of proof shall be met by a preponderance of the evidence in order for the appellant to prevail; provided that in any appeal of a SEPA decision, the decision of the department shall be given substantial weight and may be overturned only if it is clearly erroneous.

Section 2. Section 18.98.060 of the Black Diamond Municipal Code is hereby amended to read as follows:

18.98.060 MPD permit - Review process.

A. MPD Permit – Pre-application Conference, Public Information Meeting and Planning Commission Informational Meeting Required.

1. A pre-application conference between the MPD applicant or representative and staff is required before the city will accept an MPD permit application.

a. The purpose of this conference is for the applicant to familiarize the staff with the proposed MPD, and for the staff to review with the applicant the city's submittal requirements, anticipated staffing needs, and processing procedures for MPD permit approval. The goal is to identify the city's objectives and likely issues, and to eliminate potential problems that could arise during processing of the MPD permit application prior to formal processing on the MPD permit application.

b. The applicant or representative shall present the information required as part of the MPD application. The city's intent is that the conference occurs after site inventory and analysis has been substantially completed, but prior to the completion of detailed survey, architectural or engineering work on the proposal.

c. A nonrefundable pre-application conference fee in an amount set forth in the adopted fee schedule resolution shall be paid before the pre-application conference will be scheduled.

d. If, at the pre-application conference, the city determines that it does not have adequate staff, space, or equipment, to process the application, then the applicant shall deposit with the city an amount sufficient for the city to hire the additional staff and/or consultants, and acquire the space and/or equipment necessary to process the application. The deposit must be made no less than four months or more than five months before the application is submitted. The public information meeting may not be scheduled until the deposit has been made. The city council may waive or shorten the four-month period if it is determined the necessary arrangements for staffing, space and equipment can be made in less than four months.

2. After the pre-application conference has been completed, a public information meeting shall be conducted by the applicant prior to acceptance of an MPD permit application.

a. The applicant shall schedule and conduct a public information meeting regarding the proposed application. The public information meeting shall be conducted at City Hall, or at such other public location within the city that will accommodate the anticipated attendees. The applicant shall attend the meeting and provide information to the public regarding the proposed project, its timing, and consistency with the city's MPD code, the comprehensive plan, and other applicable city codes and regulations.

b. The public information meeting shall not be a public hearing, but shall allow for an informal exchange of comments between the applicant and the general public. Notice of this meeting shall be provided in the newspaper of record at least fourteen days in advance of the meeting and shall be mailed to the property owners identified in subsection (B)(7)(c) of this section.

3. After the public information meeting has been completed, a planning commission informational meeting shall be conducted. The planning commission information meeting is required before the city will accept an application for MPD permit approval.

a. The planning commission informational meeting will take place at a regular meeting of the commission. At this meeting, the applicant shall present the overall planning and design concept of the proposed MPD, and the commission shall provide preliminary feedback to the applicant regarding the consistency of this

this concept with the city's adopted standards, goals and policies. The planning commission may bring specific issues of interest or concern to the attention of the applicant.

b. While a public meeting, the purpose of the planning commission informational meeting is not intended for the receipt of comments from the public regarding the proposed MPD.

4. MPD Permit Public Review Process.

a. Completeness Check and SEPA. Staff shall review the MPD application for completeness and, once it is determined to be complete, provide the required notice of application. Staff will then initiate the SEPA process.

b. Optional EIS Scoping Meeting. If the responsible official makes a determination of environmental significance regarding an MPD application, staff may schedule and conduct an EIS scoping meeting. The applicant shall attend the meeting and provide information regarding the proposed project, scope, planning, timing, and the results of any relevant environmental studies performed by the applicant's consultants.

c. Staff Review. At the conclusion of the SEPA process, staff will conduct its detailed review of the proposal. This review may include requesting additional information, or proposal revisions, from the applicant.

d. Staff Report. The staff will prepare a written staff report to the hearing examiner. The completed staff report shall be sent to the hearing examiner and to the applicant at least ten calendar days prior to the public hearing.

e. Hearing Examiner Public Hearing. The city's hearing examiner shall hold a public hearing on the MPD permit application,. At least fourteen calendar days prior to the public hearing, the city shall provide notice of the hearing as follows:

(a) Publication in the city's newspaper of record;

(b) Posting of the proposal site, in at least three locations visible from public streets or rights-of-way;

(c) Mailing to owners of record of properties within five hundred feet of the perimeter of the proposed MPD per 18.98.040(A)(9); and

(d) Any person(s) formally requesting notice.

5. MPD Permit Approval Criteria. The hearing examiner shall prepare recommended findings of fact, conclusions of law, and conditions of approval or a recommendation for denial for the city council's consideration, and shall transmit these to the city council within fourteen calendar days of the close of the public hearing unless the hearing examiner determines by written findings that a specified amount of additional time is necessary because the matter is of unusual complexity or scope or for other good cause. The examiner shall evaluate the MPD application and other evidence submitted into the record, to determine if the application, when appropriately conditioned, meets or exceeds the approval criteria set forth in section 18.98.080.

6. City Council. At its first regular meeting following the receipt of the hearing examiner's recommendations, the city council shall schedule a time for its consideration of the MPD. The council may:

- a. Accept the examiner's recommendation;
- b. Remand the MPD application to the examiner with direction to open the hearing and provide supplementary findings and conclusions on specific issues; or
- c. Modify the examiner's recommendation. If modifying the examiner's recommendation, the council shall enter its own modified findings and conclusions as needed.

7. Appeals. The council's decision with regard to an MPD permit shall be the city's final action for the purpose of any and all appeals. (Ord. 779 § 2 Exh. 1 (part), 2005)

Section 3. Severability. Each and every provision of this Ordinance shall be deemed severable. In the event that any portion of this Ordinance is determined by final order of a court of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the remaining provisions thereof, provided the intent of this Ordinance can still be furthered without the invalid provision.

Section 4. Effective date. This Ordinance shall be in full force and effect five (5) days after publication as required by law. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by State law.

Introduced on the 18th day of February, 2010.

Passed by the City Council on the 18th day of February, 2010.

Mayor Rebecca Olness

ATTEST:

Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:

Noel Treat, City Attorney

Published: _____

Posted: _____

Effective Date: _____