



CITY OF BLACK DIAMOND
April 5, 2012 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 360-886-5700. Thank you for attending this evening.

PUBLIC HEARINGS: None

APPOINTMENTS, PRESENTATIONS, ANNOUNCEMENTS:

Swearing in of New Councilmember Carol Benson

Mayor Olness

UNFINISHED BUSINESS: None

NEW BUSINESS:

- | | |
|---|----------------|
| 1.) AB12-018 – Resolution Authorizing Professional Services Agreement with Parametrix | Mr. Williamson |
| 2.) AB12-019 – Resolution Authorizing Professional Services Agreement with RH2 | Mr. Williamson |
| 3.) AB12-020 – Resolution Authorizing Professional Services Agreement with Henderson,
Young & Company | Mr. Williamson |

DEPARTMENT REPORTS:

MAYOR'S REPORT:

COUNCIL REPORTS:

ATTORNEY REPORT:

PUBLIC COMMENTS:

CONSENT AGENDA:

- 4.) **Claim Checks** – April 5, 2012 Check No. 38061 through No. 38135 (voided No. 38075) in the amount of \$151,673.55
- 5.) **Minutes** – Special Council Meeting Minutes of March 15, 2012 and March 26, 2012 and Council Meeting Minutes of March 15, 2012, Special Council Meeting Minutes of March 26, 2012

EXECUTIVE SESSION:

ADJOURNMENT:

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
SUBJECT: Resolution No. 12-791, authorizing the Mayor to execute a contract with Parametrix to serve as the traffic engineering consultant to the MDRT	Agenda Date: April 5, 2012		AB12 - 018
	Department/Committee/Individual	Created	Reviewed
	Mayor Rebecca Olness		
	City Administrator –		
	City Attorney –Chris Bacha		
	City Clerk – Brenda L. Martinez		
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Comm. Dev. – Steve Pilcher	X		
Cost Impact: variable			
Fund Source: pass-through expense to YB			
Timeline: Two year contract w/60 day call			
Attachments: Resolution No. 12-791; proposed contract			
SUMMARY STATEMENT: <p>The Funding Agreement approved in conjunction with the two Development Agreements (DAs) for the approved Master Planned Developments (MPDs) of Lawson Hills and The Villages assumes that consultants will be hired to augment City staff in their work as the MPDS are implemented over time. There will be significant needs for traffic engineering assistance to help with review of specific implementing projects (plats, multifamily housing, commercial projects), plus the periodic running of the new traffic model at the 850 dwelling unit and subsequent dates.</p> <p>The City advertised in the Journal of Commerce, city website and official newspaper to solicit Statements of Qualifications from firms interested in performing this work. Only three firms submitted their qualifications; all were interviewed. The interview panel consisted of Councilmember Craig Goodwin, Public Works Director Seth Boettcher, Community Development Director Steve Pilcher, Associate Planner Stacey Welsh and Executive Director of Engineering Services Andy Williamson. The unanimous choice of the interview panel was to hire Parametrix, which prepared the EIS documents for the MPDs and currently provides on-call traffic consultant work for the remainder of the City.</p> <p>Per the terms of the DAs, all costs for consultants must be paid for by the Master Developer (Yarrow Bay). This contract is for two years and a 60-day termination provision is included, should the City decide to seek a different consultant or hire its own staff at a future date.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: Councilmember Goodwin participated in the interview process; reviewed and approved by the Finance Committee on March 29, 2012 and the committee recommends adoption.			
RECOMMENDED ACTION: MOTION to adopt Resolution 12-791, authorizing the Mayor to execute a contract with Parametrix to serve as traffic engineering consultant to the MDRT			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	
April 5, 2012			

RESOLUTION NO. 12-791

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

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

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

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

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

WHEREAS, the City does not have on staff the full range of expertise to provide traffic engineering to meet the needs of the MDRT; and

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

WHEREAS, after the three firms that submitted their qualifications were interviewed by a panel consisting of staff and one City Council member, the panel unanimously recommended Parametrix as the firm most capable of providing traffic engineering services as desired;

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

Section 1. The Mayor is hereby authorized to execute a contract with Parametrix to provide traffic engineering services for the MDRT, substantially in the form attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 5th DAY OF APRIL, 2012.**

CITY OF BLACK DIAMOND:

Rebecca Olness, Mayor

Attest:

Brenda L. Martinez, City Clerk

CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the or this "Agreement"), for reference purposes only, is dated _____, 2012 and is entered into by and between

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

Physical Address: 24301 Roberts Drive

Mailing Address: PO Box 599

Black Diamond, WA 98010

Contact: Andrew Williamson

Phone: 360-886-5700

Fax : 360-886-2592

and

Parametrix ("Consultant")

1019 39th Avenue SE, Suite 100

Puyallup, WA 98374

Contact: Dan McReynolds Phone: 253-604-6600 Fax: 253-604-6799

Tax Id No.: 91-0914810

for professional services in connection with the following project:

Provide traffic engineering and transportation review services to the Master Plan Development Review Team (MDRT) (the "Project").

TERMS AND CONDITIONS

1. Services by Consultant

1.1 Consultant has been hired to provide professional traffic and transportation review services as requested by the City for the Master Development Review Team. The services to be performed are generally described in the Scope of Work attached to this Agreement as Exhibit "A." The services performed by Consultant shall not exceed the Scope of Work nor shall the Consultant be entitled to a greater amount of compensation as that provided in this Agreement without the prior written authorization of the City.

1.2 The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to this Agreement.

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

of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

2. Schedule of Work

2.1 The City will issue an on-call task request for each project task for which the City requires Consultant services. No work shall be commenced by Consultant under this Agreement except pursuant to such an on-call task request issued by the City in the form attached hereto as Exhibit "B." Consultant shall perform the services described in the on-call task request in accordance with the schedule and scope of work set forth in the on-call task request (the "Task Scope of Work").

2.2 Consultant will work within the project schedule, will proceed with the work and shall assure that it, and its subconsultants, will have adequate staffing at all times in order to complete the Scope of Work in a timely manner. If factors beyond Consultant's control that could not have been reasonably foreseen as of the date of this Agreement cause delay, then the parties will negotiate in good faith to determine whether an extension is appropriate. The Consultant shall provide the City with written notice of any delay, or potential delay, that may trigger the need for a time extension within 3 business days after the Consultant becomes aware of the delay or potential delay.

2.3 Consultant is authorized to proceed with services upon receipt of a signed task order. _____.

3. Compensation

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

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

4. Payment

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

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

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

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

5. Discrimination and Compliance with Laws

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

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

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

6. Term of Agreement

6.1 Upon City Council approval, this Agreement shall be in effect as of April 6, 2012 and shall remain in effect until April 5, 2014, unless sooner terminated as set forth herein. The City reserves the right to terminate or suspend this Agreement at any time, without cause, by giving Consultant notice in writing sixty (60) days prior to the termination or suspension date. The parties shall meet and confer regarding terms at least sixty (60) days before expiration of this contract.

6.2 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.

6.3 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, indemnify, and hold the City, its officers, officials, and employees harmless from all reasonable claims, injuries, damages, losses or suits including attorney fees, arising directly or indirectly out of or resulting from the negligent acts, errors, or omissions of Consultant or its subconsultants in performance of this Agreement, except for injuries and damages caused by the concurrent negligence of the City. *Provided, however, that if any such claims, injuries, damages, losses or suits result from the concurrent negligence of Consultant and the city, it is expressly agreed that Consultant's obligations and indemnity under this paragraph shall be effective only to the extent of Consultant's negligence.*

10. Insurance

10.1 Consultant shall procure and maintain for the duration of the Agreement, and shall provide proof satisfactory to the City that such insurance is procured and maintained by each of its subconsultants, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, or employees.

10.2 Consultant shall procure and maintain the following types and amounts of insurance:

a. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage. This insurance shall have a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors, personal injury, and advertising injury. This insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

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

d. Professional Liability insurance appropriate to Consultant's profession, with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

10.3 The Automobile Liability, Commercial General Liability, and Professional Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

a. Consultant's insurance coverage shall be primary insurance vis-à-vis the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess over Consultant's insurance and shall not contribute with it.

b. Consultant's insurance shall be endorsed to state that coverage shall not be cancelled, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

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

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

10.6 Declaration pages issued by the insurance carriers for the policies mentioned in this Section 10 showing such insurance to be in force shall be filed with the City not less than ten

(10) days following both parties signing this Agreement and before commencement of the work. In addition, the City may request, in writing, a full copy from Consultant of any insurance policy Consultant must procure and maintain pursuant to this Agreement and Consultant must provide such copy to the City within ten (10) days of Consultant's receipt of the City's request. Any policy or required insurance written on a claims-made basis shall provide coverage as to all claims arising out of the services performed under this Agreement and for three (3) years following completion of the services to be performed. It shall be a material breach of this Agreement for Consultant to fail to procure and maintain the insurance required by this Section 10 or to provide the proof of such insurance to the City as provided for in this Agreement.

11. Assigning or Subcontracting

11.1 Consultant shall not assign, transfer, subcontract, or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld at the sole discretion of the City.

12. Independent Contractor

12.1 Consultant and its subconsultants are, and shall be at all times during the term of this Agreement, independent contractors.

13. Notice

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

City: City Clerk
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: Daniel L. McReynolds
Parametrix, Inc.
1019 39th Ave SE, Suite 100
Puyallup, WA 98374
Fax: 253-604-6799

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: Daniel L. McReynolds

Its: Principal

Date: _____

Attest:

By:

Brenda L. Martinez

City Clerk

Exhibit A

Master Development Review Team

Traffic and Transportation Review Services General Scope of Services

- Traffic Impact Study review and findings
- Traffic Monitoring Report review and findings
- Traffic safety studies
- Travel demand forecasting and modeling
- Traffic operations modeling
- Intersection level of service analysis
- Roundabout evaluation
- Design concept review
- Sight distance evaluation
- Pedestrian and bicycle facility planning and design
- Transit facility planning and design
- Parking management and guidelines
- Traffic calming strategies review
- Coordination with City staff
- Attendance at Hearing Examiner or City Council public meetings or hearings

Exhibit B

City of Black Diamond On-Call Task Request

Date:	_____	City Staff Contact:	_____
Project Name:	_____	Phone:	360-886-5700
Parametrix Project No.:	_____	Fax:	_____
Request Made To:	_____		
Parametrix Phone:	253-604-6600		
Parametrix Fax:	253-604-6799		

Scope of Task Request			
Budget Estimate:			
Task Request Approval:			
	Written Name	Title	
	Signature	Date	

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

Exhibit C
Parametrix Maximum Allowable Rates through September 30, 2012

Classification	Grade	Rate for Billing	Classification	Grade	Rate for Billing
CADD Operator I	8	\$70	Jr. Planner	8/9	\$75
CADD Operator II	9/10	\$85	Planner I	10	\$90
CADD Operator III	11	\$115	Planner II	11	\$100
CADD Tech Lead	12	\$120	Planner III	12/13	\$120
CADD Supervisor	12	\$110	Planner IV	14	\$130
CADD Services Manager	14	\$125	Sr. Planner	15	\$150
			Sr. Planner	16	\$170
			Sr. Planner	17	\$190
Designer I	10	\$100			
Designer II	11	\$105	Jr. Scientist/Biologist	8	\$75
Designer III	12	\$120	Scientist/Biologist I	10	\$85
Designer III	13	\$135	Scientist/Biologist II	11	\$110
Designer IV	14	\$145	Scientist/Biologist III	12	\$115
Sr. Designer	15	\$150	Scientist/Biologist III	13	\$120
Sr. Designer	16/17	\$165	Scientist/Biologist IV	14	\$135
			Sr. Scientist/Biologist	15	\$150
Engineering Technician I	8	\$75	Sr. Scientist/Biologist	16	\$165
Engineering Technician II	9	\$85	Sr. Scientist/Biologist	17	\$175
Engineer I	10	\$95			
Engineer II	11	\$100	Environmental Technician I	8	\$85
Engineer III	12	\$115	Environmental Technician II	9	\$90
Engineer III	13	\$125	Environmental Technician III	10	\$100
Engineer IV	14	\$135			
Sr. Engineer	15	\$150	Jr. Toxicologist	8	\$75
Sr. Engineer	16	\$170	Toxicologist I	10	\$95
Sr. Engineer	17	\$190	Toxicologist II	11	\$105
Sr. Consultant	18	\$235	Toxicologist III	12/13	\$115
Sr. Consultant	19	\$250	Toxicologist IV	14	\$140
			Sr. Toxicologist	15/16	\$165
Jr. Surveyor	8	\$70	Sr. Toxicologist	17	\$210
Surveyor I	9	\$80			
Surveyor II	10	\$85	Hydrogeologist I	10	\$95
Surveyor III	11	\$110	Hydrogeologist II	11	\$100
Sr. Surveyor	12	\$115	Hydrogeologist III	12/13	\$115
Sr. Surveyor	13	\$140	Hydrogeologist IV	14	\$115
Survey Supervisor	14	\$145	Sr. Hydrogeologist	15	\$150
Regional Surveyor	18	\$185	Sr. Hydrogeologist	16	\$165
			Sr. Hydrogeologist	17	\$170
Construction Technician I	8/9	\$85			
Construction Technician II	10	\$90	GIS Technician	9/10	\$85
Construction Technician III	11	\$120	Sr. GIS Analyst	11	\$95
Construction Technician IV	12	\$135			
Construction Manager I	11	\$110	Graphic Artist	9	\$80
Construction Manager II	12	\$125	Sr. Graphic Artist	10	\$110
Construction Manager III	13	\$135			
Construction Manager IV	14	\$145	Technical Aide	7	\$70
Sr. Construction Manager	15	\$150	Sr. Technical Aide	8	\$75
Sr. Construction Manager	16	\$170	Project Coordinator	9	\$90
Sr. Construction Manager	17	\$175	Sr. Project Coordinator	10	\$95
Site Construction Manager	18	\$180	Project Controls Specialist	11	\$100
			Project Coordination Supervisor	11	\$100
Operations Manager	16	\$150			
Operations Manager	17	\$170	Project Accountant	8	\$80
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Division Manager	16	\$165	Sr. Project Accountant	10	\$95
Division Manager	17	\$205	Sr. Accounting Specialist	10	\$100
Division Manager	18/19	\$235	Sr. Contract Administrator	11	\$115
Regional Division Manager	18/19	\$240			
Program Manager	18/19	\$250	Library Specialist	9	\$80
Program Manager	20	\$260	Librarian	11	\$85
Principal Consultant	19	\$270	Information Resource Manager	13	\$125
Principal Consultant	20	\$295	LAN Admin I	11	\$100
Project Delivery Officer	19	\$235	LAN Admin II	12	\$110
Principal	19/20	\$295	Sr. LAN Admin	13	\$105
			Office Clerk	4	\$55
Word Processor	7	\$65	Receptionist	6	\$60
Sr. Word Processor	8	\$75	Admin Assistant	6/7	\$65
Word Processing Specialist	9	\$95	Sr Admin Assistant	8	\$70
Technical Editor	10	\$105	Sr Admin Assistant	9	\$90
Word Proc Mgr/Editor	11	\$110	Office Administrator	10	\$95
Production Manager	12	\$130	Sr. Office Administrator	11	\$110
			Office Administrative Manager	12-14	\$130
Expert Witness		\$250			
Value Engineering		\$250			

Direct project expenses and reproduction costs are billed at cost plus 15%
Public hearing testimony services are billed at hourly rates plus 30%

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
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COMMITTEE REVIEW AND RECOMMENDATION: Councilmember Taylor participated in the interview process; reviewed and approved by the Finance Committee on March 29, 2012 and the committee recommends adoption.			
RECOMMENDED ACTION: MOTION to adopt Resolution 12-792, authorizing the Mayor to execute a contract with RH2 to serve as civil engineering consultant to the MDRT.			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	
April 5, 2012			

RESOLUTION NO. 12-792

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

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CITY OF BLACK DIAMOND:

Rebecca Olness, Mayor

Attest:

Brenda L. Martinez, City Clerk

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

Physical Address: 24301 Roberts Drive

Mailing Address: PO Box 599

Black Diamond, WA 98010

Contact: Andrew Williamson

Phone: 360-886-5700

Fax : 360-886-2592

and

RH2 Engineering, Inc. ("Consultant")

22722 29th Drive SE, Suite 210

Bothell, WA 98021

Contact: Dan Ervin

Phone: 800-720-8052

Fax: 425-591-5401

Tax Id No.: 91-1108443

for professional services in connection with the following project:

Master Development Review Team (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 terms identified in Exhibit "A."

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 written notification.

3. Compensation

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

6.1 Upon City Council approval, this Agreement shall be in effect as of April 6, 2012 and shall remain in effect until April 5, 2014, unless sooner terminated as set forth herein. The City reserves the right to terminate or suspend this Agreement at any time, without cause, by giving Consultant notice in writing sixty (60) days prior to the termination or suspension date. The parties shall meet and confer regarding terms at least sixty (60) days before expiration of this contract.

6.2 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.

6.3 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. Provided, however, that if any such claims, injuries, damages, losses or suits result from the concurrent negligence of Consultant and the city, it is expressly agreed that Consultant's obligations and indemnity under this paragraph shall be effective only to the extent of Consultant's negligence.

10. Insurance

10.1 Consultant shall procure and maintain for the duration of the Agreement, and shall provide proof satisfactory to the City that such insurance is procured and maintained by each of its subconsultants, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, or employees.

10.2 Consultant shall procure and maintain the following types and amounts of insurance:

a. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be

endorsed to provide contractual liability coverage. This insurance shall have a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors, personal injury, and advertising injury. This insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

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

d. Professional Liability insurance appropriate to Consultant's profession, with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

10.3 The Automobile Liability, Commercial General Liability, and Professional Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

a. Consultant's insurance coverage shall be primary insurance vis-à-vis the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess over Consultant's insurance and shall not contribute with it.

b. Consultant's insurance shall be endorsed to state that coverage shall not be cancelled, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

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

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

10.6 Declaration pages issued by the insurance carriers for the policies mentioned in this Section 10 showing such insurance to be in force shall be filed with the City not less than ten (10) days following both parties signing this Agreement and before commencement of the work. In addition, the City may request, in writing, a full copy from Consultant of any insurance policy Consultant must procure and maintain pursuant to this Agreement and Consultant must provide such copy to the City within ten (10) days of Consultant's receipt of the City's request. Any policy or required insurance written on a claims-made basis shall provide coverage as to all claims arising out of the services performed under this Agreement and for three (3) years following completion of the services to be performed. It shall be a material breach of this Agreement for Consultant to fail to procure and maintain the insurance required by this Section 10 or to provide the proof of such insurance to the City as provided for in this Agreement.

11. Assigning or Subcontracting

11.1 Consultant shall not assign, transfer, subcontract, or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld at the sole discretion of the City.

12. Independent Contractor

12.1 Consultant and its subconsultants are, and shall be at all times during the term of this Agreement, independent contractors.

13. Notice

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

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

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

Consultant: RH2 Engineering, Inc.
22722 29th Drive SE
Suite 210
Bothell, WA 98021
Fax: 425-951-5401

14. Disputes

14.1 Any action for claims arising out of or relating to this Agreement shall be governed by the laws of the State of Washington. Venue shall be in King County Superior Court, Kent, Washington.

15. Attorney Fees

15.1 In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney fees from the other party.

16. General Administration and Management on Behalf of the City

16.1 The City Administrator for the City, or his 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

By: _____

Printed Name: Daniel R. Ervin

Its: Vice President

Date: _____

Date: _____

Attest:

By:

Brenda L. Martinez
City Clerk

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

March 2012

Background

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

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

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

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

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

Task 1 – Permit Review

1.1 Review permit applications and other applicant submittals in compliance with: 1) Villages and Lawson Hills Development Agreements, 2) City Municipal Code and Standards, 3) applicable state statutes and requirements, and 4) any other documents or regulations governing the work. It is anticipated that most of the permit submittals will be preliminary plats, site development permits or utility permits for water, sewer, stormwater and street work improvements. The permits and submittals will generally be reviewed for the following items, if applicable:

- Check the general plan layout for ease of interpretation and lack of ambiguity and comment on ways to improve layout if necessary;
- Check the completeness of the design for construction and inspection purposes;
- Perform a check of the supporting engineering calculations;
- Check for compliance with the governing agreement and the applicable minimum design standards, and check for compliance with the generally accepted engineering standard of care;

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

Task 2 – Conceptual and Collaborative Design

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

Task 3 – Services During Construction

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

Task 4 – As-Built Review

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

Task 5 – Testing, Acceptance, and Bonding

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

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

Task 6 – Compliance Tracking

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

Task 7 – Project Management

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

Task 8 – Engineering Report Review

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

Task 9 – Liaison with Other Departments

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

Task 10 – Agency Coordination

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

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

2012 HOURLY RATES

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

IN-HOUSE SERVICES

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

OUTSIDE SERVICES

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

All Subconsultant services are billed at cost plus 15%.

CHANGES IN RATES

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

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
SUBJECT: Resolution No. 12-793, authorizing the Mayor to execute a contract with Henderson & Young to serve as the municipal fiscal analysis consultant to the MDRT	Agenda Date: April 5, 2012		AB12 -020
	Department/Committee/Individual	Created	Reviewed
	Mayor Rebecca Olness		
	City Administrator –		
	City Attorney –Chris Bacha		
	City Clerk – Brenda L. Martinez		
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Comm. Dev. – Steve Pilcher	X		
Cost Impact: variable			
Fund Source: pass-through expense to YB			
Timeline: Two year contract w/60 day call			
Attachments: Resolution No. 12-793, proposed contract			
SUMMARY STATEMENT: <p>The Funding Agreement approved in conjunction with the two Development Agreements (DAs) for the approved Master Planned Developments (MPDs) of Lawson Hills and The Villages assumes that consultants will be hired to augment City staff in their work as the MPDS are implemented over time. Section 13.6 of the two DAs provides the basic structure of how the periodic fiscal analyses are to be performed. The first one must be completed in conjunction with the processing of The Villages Phase 1A preliminary plat.</p> <p>The City advertised in the Journal of Commerce, city website and official newspaper to solicit Statements of Qualifications from firms interested in performing this work. A total of 4 firms submitted their qualifications; three were chosen to be interviewed. The interview panel consisted of Councilmember Joe May, Finance Director May Miller, Community Development Director Steve Pilcher and Executive Director of Engineering Services Andy Williamson. The unanimous choice of the interview panel was to hire Henderson & Young, which has performed fiscal analysis work in the past for the City.</p> <p>Per the terms of the DAs, all costs for consultants must be paid for by the Master Developer (Yarrow Bay). This contract is for two years and a 60-day termination provision is included, should the City decide to seek a different consultant at a future date.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: Councilmember May participated in the interview process; reviewed by the Finance Committee on March 29, 2012 and the committee recommended adoption.			
RECOMMENDED ACTION: MOTION to adopt Resolution 12-793, authorizing the Mayor to execute a contract with Henderson & Young to serve as municipal fiscal analysis consultant to the MDRT.			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	
April 5, 2012			

RESOLUTION NO. 12-793

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT
WITH HENDERSON & YOUNG TO SERVE AS THE
MUNICIPAL FISCAL ANALYSIS CONSULTANT TO THE
MASTER DEVELOPMENT REVIEW TEAM.**

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

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

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

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

WHEREAS, the City does not have on staff the full range of expertise to provide municipal fiscal analysis to meet the needs of the MDRT; and

WHEREAS, private firms providing municipal fiscal analysis services were invited to submit Statements of Qualifications for review and consideration; and

WHEREAS, a panel consisting of staff and one City Council member reviewed the submittals, subsequently interviewed three firms and then unanimously recommended Henderson & Young as the firm most capable of providing municipal fiscal analysis services as desired;

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

Section 1. The Mayor is hereby authorized to execute a contract with Henderson & Young to provide municipal fiscal analysis services for the MDRT, substantially in the form attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 5th DAY OF APRIL, 2012.**

CITY OF BLACK DIAMOND:

Rebecca Olness, Mayor

Attest:

Brenda L. Martinez, City Clerk

CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the or this "Agreement"), for reference purposes only, is dated April 5, 2012 and is entered into by and between

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

Physical Address: 24301 Roberts Drive

Mailing Address: PO Box 599

Black Diamond, WA 98010

Contact: Andrew Williamson Phone: 360-886-5700 Fax : 360-886-2592

and

Henderson, Young & Company ("Consultant")

8060 – 165th Ave. NE, Suite 220

Redmond, WA 98052

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

Tax Id No.: 84-0780133

for professional services in connection with the following project:

Municipal Fiscal Analysis support to the MDRT (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 attached to this contract as Exhibit "B."

2.2 Time is of the essence as to the work provided in the Scope of Work. Consultant will diligently proceed with the work and shall assure that it, and its subconsultants, will have adequate staffing at all times in order to complete the Scope of Work in a timely manner. If factors beyond Consultant's control that could not have been reasonably foreseen as of the date of this Agreement cause delay, then the parties will negotiate in good faith to determine whether an extension is appropriate. The Consultant shall provide the City with written notice of any delay, or potential delay, that may trigger the need for a time extension within 3 business days after the Consultant becomes aware of the delay or potential delay.

2.3 Consultant is authorized to proceed with services upon execution of this agreement.

3. Compensation

TIME AND MATERIALS. Compensation for the services provided in the Scope of Work shall be on a time and materials basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit "C." The billing rates and reimbursable expenses may be adjusted annually. Consultant shall submit adjusted rates and costs for review by City. Adjusted rates and costs that are accepted by City become effective May 1st of each year.

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.

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8. Ownership of Work Product

8.1 Ownership of the originals of any reports, data, studies, surveys, charts, maps, drawings, specifications, figures, photographs, memoranda, and any other documents which are developed, compiled, or produced as a result of this Agreement, whether or not completed, shall be vested in the City and shall be submitted to the City upon termination of this Agreement. Any reuse of these materials by the City for projects or purposes other than those that fall within the scope of this Agreement and the Project to which it relates, without written concurrence by Consultant, will be at the sole risk of the City.

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

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

9. Indemnification/Hold Harmless

9.1 Consultant shall defend, indemnify, and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising directly or indirectly out of or resulting from the acts, errors, or omissions of Consultant or its subconsultants in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. Provided, however, that if any such claims, injuries, damages, losses or suits result from the concurrent negligence of Consultant and the city, it is expressly agreed that Consultant's obligations and indemnity under this paragraph shall be effective only to the extent of Consultant's negligence.

10. Insurance

10.1 Consultant shall procure and maintain for the duration of the Agreement, and shall provide proof satisfactory to the City that such insurance is procured and maintained by each of its subconsultants, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, or employees.

10.2 Consultant shall procure and maintain the following types and amounts of insurance:

a. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage. This insurance shall have a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors, personal injury, and advertising injury. This insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

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

d. Professional Liability insurance appropriate to Consultant's profession, with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

10.3 The Automobile Liability, Commercial General Liability, and Professional Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

a. Consultant's insurance coverage shall be primary insurance vis-à-vis the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess over Consultant's insurance and shall not contribute with it.

b. Consultant's insurance shall be endorsed to state that coverage shall not be cancelled, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

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

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

10.6 Declaration pages issued by the insurance carriers for the policies mentioned in this Section 10 showing such insurance to be in force shall be filed with the City not less than ten (10) days following both parties signing this Agreement and before commencement of the work. In addition, the City may request, in writing, a full copy from Consultant of any insurance policy Consultant must procure and maintain pursuant to this Agreement and Consultant must provide such copy to the City within ten (10) days of Consultant's receipt of the City's request. Any policy or required insurance written on a claims-made basis shall provide coverage as to all claims arising out of the services performed under this Agreement and for three (3) years following completion of the services to be performed. It shall be a material breach of this Agreement for Consultant to fail to procure and maintain the insurance required by this Section 10 or to provide the proof of such insurance to the City as provided for in this Agreement.

11. Assigning or Subcontracting

11.1 Consultant shall not assign, transfer, subcontract, or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld at the sole discretion of the City.

12. Independent Contractor

12.1 Consultant and its subconsultants are, and shall be at all times during the term of this Agreement, independent contractors.

13. Notice

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

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

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

Consultant: Randall Young, President
Henderson, Young & Company
8060 – 165th Ave. NE, Suite 220
Redmond, WA 98052
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.

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

By: _____

Printed Name: Randall Young

Its: President

Date: _____

Date: _____

Attest:

By:

Brenda L. Martinez
City Clerk

Exhibit A
Scope of Work

The Consultant will provide municipal fiscal analysis services to the City for the benefit of the City, including but not limited to the following services:

1. Research, analysis and recommendation of comparable cities to be used in fiscal impact analysis.
2. Review and evaluation of each fiscal impact analysis submitted by the Master Developer, including evaluation of the consistency of the Master Developer's fiscal impact analysis with the requirements of the Development Agreements, and the specific methodologies, data, assumptions, calculations, spreadsheets and conclusions provided by the Master Developer.
3. Monitor changes in municipal finance caused by new laws, voter initiatives, regulations, court decisions, and best practices and advise the City when changes effect the fiscal analysis of the City.
4. Preparation of annual review of projections of fiscal analysis compared to the City's budget.
5. Preparation of payment schedule for funding of any deficits.
6. Preparation of reports, memos, and presentations of the results of municipal fiscal analyses reviews, evaluations, and recommendations prepared by Consultant.
7. Preparation for and participation in meetings of MDRT and the Master Developer
8. Preparation for and participation in meetings of the MDRT, Planning Commission, and/or City Council.
9. Preparation for and participation in other meetings that the City authorizes Consultant to attend.
10. Provide expert testimony.
11. Other municipal fiscal analysis services requested by the City.

Exhibit B
Schedule

This Professional Services Agreement shall remain in effect until April 5, 2014, unless terminated sooner as set forth in Section 6.1 of the Professional Services Agreement.

Exhibit C
Billing Rates and Reimbursable Expenses

Henderson,
Young &
Company

RATE SCHEDULE
2012

Category	Rate	
Principal	\$215.00	per hour
Associate	\$165.00	per hour
Support	\$ 75.00	per hour
Mileage	\$0.50	per mile
Miscellaneous	At Cost	