

RESOLUTION NO. 09-624

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON,  
AUTHORIZING A CONTRACT WITH PACWEST FOR  
TECHNICAL REVIEW SERVICES OF THE LAWSON HILLS  
AND VILLAGES MASTER PLANNED DEVELOPMENT  
APPLICATIONS

**WHEREAS**, the City does not have the staff level or the full range of expertise to provide comprehensive and timely review of the Lawson Hills and Villages Master Planned Development Applications; and

**WHEREAS**, PacWest has been determined to be the most qualified consultant to efficiently review the Master Planned Developments with respect to water and sewer infrastructure; and

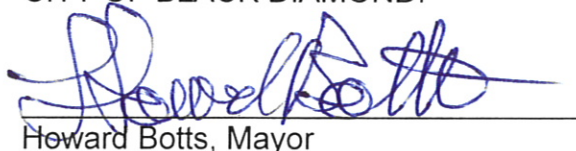
**WHEREAS**, The Master Planned Development codes provide for reimbursement of costs associated with the review of the applications;

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

**Section 1.** The Mayor is authorized to execute the a contract with PacWest to provide technical review services of the Lawson Hills and Villages Master Planned Development applications with respect to water and sewer Infrastructure as attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 6TH DAY OF AUGUST, 2009.**

CITY OF BLACK DIAMOND:

A handwritten signature in blue ink, appearing to read "Howard Botts", written over a horizontal line.

Howard Botts, Mayor

Attest:

A handwritten signature in blue ink, appearing to read "Brenda L. Martinez", written over a horizontal line.

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 August 6, 2009 and is entered into by and between

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

P.O. Box 599

24301 Roberts Drive

Black Diamond, WA 98010

Contact: \_\_\_\_\_ Phone: 360-886-2560 Fax : 360-886-2592

and

PacWest Engineering LLC ("Consultant")

5009 Pacific Highway E., Unit 9-0

Fife, WA 98424

Contact: Leonard Smith Phone: 253-926-3400 ext 433 Fax: 253-926-3402

Tax Id No.: 91-091-4810

for professional services in connection with the following project:

***Technical Review of the water and sanitary sewer systems as proposed in the Master Planned Development Applications for Lawson Hills and the Villages and also referred to as the "Project" within the context of this contract.***

### 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 an efficient and expeditious manner. An initial meeting after the first review will be expected within 3 weeks. This phase of review under this contract is expected to be complete by mid October.

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 e-mail notice and authorization to proceed.

## **3. Compensation**

TIME AND MATERIALS NOT TO EXCEED. Compensation for the services provided in the Scope of Work shall not exceed \$ 25,980 without the written authorization of the City and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit "B."

## **4. Payment**

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

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

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

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

## **5. Discrimination and Compliance with Laws**

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

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

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

## **6. Suspension and Termination of Agreement**

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

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

## **7. Standard of Care**

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

## **8. Ownership of Work Product**

8.1 Ownership of the originals of any reports, data, studies, surveys, charts, maps, drawings, specifications, figures, photographs, memoranda, and any other documents which are



developed, compiled, or produced as a result of this Agreement, whether or not completed, shall be vested in the City and shall be submitted to the City upon termination of this Agreement. Any reuse of these materials by the City for projects or purposes other than those that fall within the scope of this Agreement and the Project to which it relates, without written concurrence by Consultant, will be at the sole risk of the City.

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

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

## **9. Indemnification/Hold Harmless**

9.1 Consultant shall defend, indemnify, and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including reasonable 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 \$2,000,000 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 \$2,000,000 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 \$2,000,000 per claim and \$2,000,000 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: Loren D. Combs and  

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VSI Law Group  
3600 Port of Tacoma Rd. Ste. 311  
Tacoma, WA 98424  
Fax: 253-922-5848

Consultant: Leonard Smith, PE – Project Manager and Principal  
PacWest Engineering LLC (“Consultant”)  
5009 Pacific Highway E., Unit 9-0  
Fife, WA 98424  
Phone 253-926-3400  
Fax: 253-926-3402

**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**

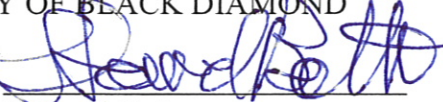
16.1 The City Administrator for the City, or his designee, shall review and approve Consultant's invoices to the City under this Agreement and shall have primary responsibility for overseeing and approving work or services to be performed by Consultant.

**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

By:



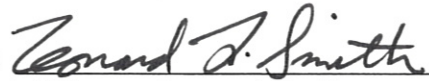
Howard Botts

Its: Mayor

Date: 8-6-09

CONSULTANT

By:



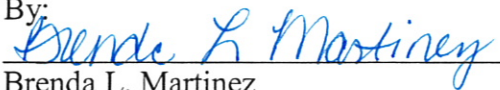
Printed Name: Leonard Smith

Its: Principal

Date: 8-12-09

Attest:

By:



Brenda L. Martinez

City Clerk



July 30, 2009



City of Black Diamond  
Seth Boettcher, PE, Public Works Director  
24301 Roberts Drive  
PO Box 599  
Black Diamond, WA 98010

RE: Proposal to Provide Initial Utility Review Services for Yarrow Bay Master Planned Developments – "Exhibit A"

Dear Seth,

Thank you for the opportunity to submit this proposal to provide the above referenced services and serve as Exhibits A & B for contract purposes. PacWest Engineering appreciates the numerous opportunities we have had to provide professional services to the City. Our familiarity with the community and the City's goals will be of benefit to the City in having PacWest Engineering provide review services of Yarrow Bay's MPD applications.

#### **Background**

We understand that Yarrow Bay has submitted Master Planned Development applications for both "Lawson Hills" and "The Villages at Black Diamond". The Villages MPD includes 1,170 acres southwest of the town center, and is proposed for mixed use development to include residential, retail, commercial, office, educational, recreational, and open space. The proposed MPD assumes 4,400 dwelling units and 775,000 square feet of employment (commercial, office and other uses). The Lawson Hills MPD includes 376 acres located to the north and east of the town center. Proposed uses are consistent with those for The Villages, with 1,250 dwelling units and 390,000 square feet of employment. The City's MPD ordinance requires 50% of the total area to be reserved for open space.

#### **Scope of Services**

PacWest Engineering will provide the following scope of services:

##### **1) Project Management, Meetings, & Coordination**

This task will include overall project management and quality control services to ensure that the review is completed on time and within budget. Coordination with city staff and with other firms providing review services for transportation and stormwater will be included in this task. This task includes attendance at up to two meetings that are four hours in duration and cover both of the developments.

## **2) Initial Review Services**

PacWest Engineering will complete an initial engineering review of the submitted proposals for utilities planning and operations. We will review the proposals that are submitted by Yarrow Bay to address sanitary sewer and water for the proposed MPD's for consistency with City comprehensive planning and the MPD ordinance and technical aspects of the utility service concepts. We understand that all other topics such as transportation, density requirements, etc. will be reviewed by others.

The initial review will include a review of the materials submitted for completeness. This review will also include the preparation of comments summarizing our initial review of the conceptual designs provided by the developer.

We have reviewed the City's Master Planned Development ordinance and will review the proposals for conformance with the standards included therein which are summarized below:

### **WATER & SEWER**

- An MPD shall be served with public water and sanitary sewer systems that:
  - Employ innovative water conservation measures to reduce and/or discourage the reliance upon potable water for nonpotable uses including outdoor watering.
  - Are designed in such a way to eliminate or reduce to the greatest degree possible the reliance upon pumps, lift stations, and other mechanical devices and their associated costs to provide service to the MPD.
- Each MPD shall develop and implement a water conservation plan that sets forth strategies for achieving water conservation at all phases of development and at full build-out, that results in water usage that is at least ten percent less the average water usage in the City for residential purposes.

PacWest Engineering will also provide professional services in support of the development of a Developer Agreement between Yarrow Bay and the City of Black Diamond. We understand that the agreement will be drafted by others, and PacWest Engineering will provide recommended conditions/comments to be included in the agreement with regard to the water and sanitary sewer improvements required by the developer.

### **Professional Staff**

**Leonard L. Smith, PE/PLS** will serve as the Principal in Charge and Project Manager for the utility reviews associated with the Lawson Hills MPD and The Villages MPD. Mr. Smith will participate in all meetings with the City and/or Yarrow Bay representatives and will serve as the primary point of contact for the City.

**Christine J. Smith, PE** will complete review of the proposed utilities for the Lawson Hills MPD and The Villages MPD. Ms. Smith has provided professional services on



numerous projects for the City of Black Diamond and is familiar with the City's goals for future utility development and operation.

### **Schedule**

PacWest Engineering anticipates that our initial review services will be completed within three months following a notice to proceed. All efforts will be made to complete the review in a timely manner.

### **Cost of Services**

PacWest Engineering will provide initial review services on an hourly basis with an estimated budget of \$25,980 as shown on the attached spreadsheet. Additional services can be provided on an hourly basis as per the following schedule of rates which may be updated periodically from time to time.

#### **Schedule of Rates**

|                                              |                   |
|----------------------------------------------|-------------------|
| Leonard L. Smith, PE/PLS, Principal Engineer | \$145 / hr        |
| Christine J. Smith, PE, Senior Engineer      | \$125 / hr        |
| Project Engineer                             | \$90 – 125 / hr   |
| Administrative Expenses                      | 5% of Labor costs |
| Reimbursable Expenses                        | Cost + 10%        |

We look forward to working with the City to provide professional services for the initial review of the utility proposals associated with the Lawson Hills MPD and The Villages MPD. If you have any questions, please feel free to contact me at [lsmith@pacweste.com](mailto:lsmith@pacweste.com) or (253) 926-3400 x433.

Sincerely,



Leonard L. Smith, PE/PLS  
President



# EXHIBIT "B"

## Yarrow Bay Master Planned Developments Utility Review Services (Water & Sanitary Sewer) Professional Services Budget

|                                              | Leonard L. Smith, PE/PLS<br>(President) | Christine Smith, PE<br>(Professional Engr.) | Hrs          | Subtotal         | Administrative Expenses | Reimbursable Expenses | Total            |
|----------------------------------------------|-----------------------------------------|---------------------------------------------|--------------|------------------|-------------------------|-----------------------|------------------|
| <b>LAWSON HILLS</b>                          | <b>Hourly Rate:</b>                     | <b>\$145</b>                                | <b>\$125</b> |                  |                         |                       |                  |
| Project Management, Meetings, & Coordination | 12                                      | 8                                           | 20           | \$ 2,740         | \$ 140                  | \$ -                  | \$ 2,880         |
| Review Services                              | 18                                      | 44                                          | 62           | \$ 8,110         | \$ 410                  | \$ 200                | \$ 8,720         |
| <b>Subtotal (Lawson Hills)</b>               | <b>30</b>                               | <b>52</b>                                   | <b>82</b>    | <b>\$ 10,850</b> | <b>\$ 550</b>           | <b>\$ 200</b>         | <b>\$ 11,600</b> |
| <b>THE VILLAGES AT BLACK DIAMOND</b>         |                                         |                                             |              |                  |                         |                       |                  |
| Project Management, Meetings, & Coordination | 14                                      | 8                                           | 22           | \$ 3,030         | \$ 150                  | \$ -                  | \$ 3,180         |
| Review Services                              | 24                                      | 56                                          | 80           | \$ 10,480        | \$ 520                  | \$ 200                | \$ 11,200        |
| <b>Subtotal (The Villages)</b>               | <b>38</b>                               | <b>64</b>                                   | <b>102</b>   | <b>\$ 13,510</b> | <b>\$ 670</b>           | <b>\$ 200</b>         | <b>\$ 14,380</b> |
| <b>TOTAL HOURS</b>                           | <b>68</b>                               | <b>116</b>                                  | <b>184</b>   |                  |                         |                       |                  |
| <b>TOTAL COST</b>                            | <b>\$ 9,860</b>                         | <b>\$14,500</b>                             |              | <b>\$ 24,360</b> | <b>\$ 1,220</b>         | <b>\$ 400</b>         | <b>\$ 25,980</b> |

\*Note: 2 meetings (4 hr duration) which cover both of the developments are assumed. (Assume 4 hrs for Lawson Hills & 4 hrs for The Villages. 8 hrs total of meetings;  
 \*Note: Administrative Expenses are calculated at 5% of the budget and include costs for Administrative staff, miscellaneous photocopies, telephone charges, printing, etc.

\*Note: This budget has been prepared for planning purposes only. Billings will be based on actual time spent and may vary from the amount listed above.