

**RESOLUTION NO. 15-1020**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHROIZING THE MAYOR TO EXECUTE A CONSULTANT SERVICES CONTRACT WITH AHBL, INC. FOR PART-TIME, INTERIM PLANNER SERVICES TO BE PROVIDED TO THE COMMUNITY DEVELOPMENT DEPARTMENT THROUGH THE END OF 2015**

**WHEREAS**, the Community Development Department does not have a on staff Planner dedicated to processing land use permit applications on no- MDRT related issues pertaining to the rest of the City of Black Diamond; and

**WHEREAS**, due to reductions in funding through the Yarrow Bay Funding Agreement, a small percentage of General Fund resources will be allocated towards general planning services in order to meet the demand for these services, with the remainder of these costs being fully absorbed through General Fund permitting fees (Revised); and

**WHEREAS**, a revised contract has been reviewed by the City and the Consultant and the City's Finance Department has dedicated sufficient funds in order to cover these services through the end of December 2015, on an interim, part-time basis; and

**WHEREAS**, AHBL. Inc. is willing and able to perform the needed work and has agreed to a revised bill processing methodology;

**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 consultant services contract with AHBL, Inc. in an amount not to exceed \$95,540 dollars, 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 19TH DAY OF MARCH, 2015.**

CITY OF BLACK DIAMOND:

  
\_\_\_\_\_  
Carol Benson, Mayor

Attest:

  
\_\_\_\_\_  
Brenda L. Martinez, City Clerk



**CONSULTANT SERVICES CONTRACT  
BETWEEN THE CITY OF BLACK DIAMOND AND  
AHBL, INC. FOR TEMPORARY PLANNING SERVICES**

THIS AGREEMENT is made by and between the City of Black Diamond, a Washington municipal corporation (hereinafter the "City"), and AHBL, Inc., (hereinafter the "Consultant,") a corporation organized under the laws of the State of Washington, located and doing business at 2215 North 30th Street, Suite 300, Tacoma, WA 98403.

**RECITALS**

WHEREAS, the City is in need of planning services on a temporary basis; and

WHEREAS, the Consultant has agreed to provide such services according to the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

**TERMS**

**I. Description of Work.**

The Consultant shall assign professional planning staff, as identified in Exhibit A, to the City to perform on-call planning services on a temporary basis for the period identified in Section IV, or until the parties execute a new Agreement, or the City hires an employee to perform planning services, whichever is sooner, Provided: this shall not obligate the City to enter into any future Agreement with the Consultant. Such planning services shall include, but not be limited to, review of applications for legislative approvals, review of project permit applications, drafting staff reports to decision-makers, attending hearings and meetings relating to same, drafting public notices and other decision-documents and ensuring that project permit applications are timely reviewed and processed according to law.

The Consultant represents and warrants that it and any staff member or subconsultant assigned to the work will have the requisite training, skill, and experience necessary to provide the services required by this Agreement and if required, are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant and its subconsultant 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.

## **II. Payment**

A. The City shall pay the Consultant an hourly rate of the Planner and Project Manager as described in the billing rates in Exhibit A. The payment made by the City to the Consultant shall not exceed Ninety-Five Thousand, Five Hundred Forty Dollars (\$95,540.00) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in Exhibit A, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount.

B. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this Agreement. The City shall pay the full amount of an invoice within sixty (60) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

## **III. Relationship of Parties**

The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

## **IV. Duration of Work**

The City and the Consultant agree that work will begin on the tasks described in Section I immediately upon execution of this Agreement. The parties agree that the individual projects assigned to the Consultant may have individual deadlines for completion that must be met. This Agreement shall terminate on December 18, 2015 as provided in Section I.

## **V. Termination**

A. Termination of Agreement. The City may terminate this Agreement, for public convenience, the Consultant's default, the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors, at any time prior to completion of the work described in Section I. If delivered to Consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date stated in the City's notice, whichever is later.

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise.

## **VI. Discrimination**

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Consultant, its Subcontractors, or any person acting on behalf of such Consultant or sub-consultant shall not by reason of race, religion, color, sex, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

## **VII. Indemnification**

The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, agents and Volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

The provisions of this section shall survive the expiration or termination of this Agreement.

### VIII. Insurance

A. The Consultant shall procure and maintain for the duration of the Agreement, 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 the Consultant, its agents, representatives, or employees.

B. Minimum Scope of Insurance. Consultant shall obtain insurance of the types described below:

1. 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.

2. 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 and personal injury and advertising injury. The City shall be named by endorsement as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.

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

4. Professional Liability insurance appropriate to the Consultant's profession.

C. Minimum Amounts of Insurance. Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

4. Employer's Liability each accident \$1,000,000; Employer's Liability Disease each employee \$1,000,000, and Employer's Liability Disease – Policy Limit \$1,000,000.

D. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

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

3. The City will not waive its right to subrogation against the Consultant. The Consultant's insurance shall be endorsed acknowledging that the City will not waive its right to subrogation. The Consultant's insurance shall be endorsed to waive the right of subrogation against the City, or any self-insurance, or insurance pool coverage maintained by the City.

4. If any coverage is written on a "claims made" basis, then a minimum of three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided to the City.

D. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage. Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

### **IX. Exchange of Information**

The City warrants the accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Agreement. The parties agree that the Consultant will notify the City of any inaccuracies in the information provided by the City as may be discovered in the process of performing the work, and that the City is entitled to rely upon any information supplied by the Consultant which results as a product of this Agreement.

## **X. Ownership and Use of Records and Documents**

Original documents, drawings, designs and reports developed under this Agreement shall belong to and become the property of the City. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in Consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

## **XI. City's Right of Inspection**

Even though the Consultant is an independent contractor with the authority to control and direct the performance, and details of the work authorized under this Agreement, the work must meet the applicable deadlines established by the City for completion, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

## **XII. Consultant to Maintain Records to Support Independent Contractor Status**

On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to Independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to the Revised Code of Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties which is subject to RCW Title 51, Industrial Insurance.

## **XIII. Work Performed at the Consultant's Risk**

The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.



#### **XIV. Non-Waiver of Breach**

The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options and the same shall be and remain in full force and effect.

#### **XV. Resolution of Disputes and Governing Law**

Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City of Black Diamond shall determine the term or provision's true intent or meaning. The City of Black Diamond shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the Mayor or Community Development Director's determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in King County Superior Court, King County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

#### **XVI. Written Notice**

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified to the contrary. Unless otherwise specified, any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

**CONSULTANT:**

Attn: Wayne Carlson  
AHBL, Inc.  
2215 N 30th Street  
Suite 300  
Tacoma, WA 98403

**CITY:**

Attn: Aaron C. Nix  
City of Black Diamond  
P.O. Box 599  
24301 Roberts Drive  
Black Diamond, WA 98010

With a copy to the "City Clerk" at the same address.

**XVII. Assignment**

Any assignment of this Agreement by the Consultant without the written consent of the City shall be void. If the City shall give its consent to any assignment, this paragraph shall continue in full force and effect and no further assignment shall be made without the City's consent.

**XVIII. Modification and Severability**

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reasons held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

**XIX. Entire Agreement**

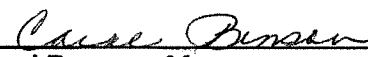
The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, this Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached hereto, which may or may not have been executed prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on this 19<sup>th</sup> day of March, 2015.

**CONSULTANT**

**CITY OF BLACK DIAMOND**

By:   
~~President~~ ASSOCIATE PRINCIPAL

By:   
Carol Benson, Mayor

**Consultant:**

**AHBL, Inc.**  
2215 North 30th Street, Suite  
300 Tacoma, WA 98403-3350

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney's Office

ATTEST:

*Brenda L. Martiney*  
\_\_\_\_\_  
City Clerk

## EXHIBIT A

This scope of work is for onsite development review assistance (Planner) for a total of eight (8) hours a week and offsite development review assistance (project specific) for total of (16) hours of week (Total work combined will not exceed 24 hours a week, unless approved by the City of Black Diamond's Community Development Director in advance to conducting the work). Work will primarily include review of land use applications for consistency with City of Black Diamond municipal standards, zoning review of building permit applications, review of land use and building permit applications under deadlines established by law (usually 120 days after the application was determined complete), and general customer assistance for planning and zoning issues. The following is AHBL's Inc. proposed scope of services:

- Provide project planner staff one-day per week at City Hall;
- Attend pre-application meetings;
- Conduct site visits;
- Conduct the review of development and building permit applications for code compliance;
- Tracking of development and building permit applications to ensure that a final decision issues within the deadlines established by law;
- Review SEPA documentation for purposes of recommending additional studies, SEPA determination, and/or mitigation measures (this would not include review of technical studies outside our area of expertise);
- Communicate and coordinate with applicants, their consultants, and other City department staff;
- Prepare staff reports and recommendations; and
- Present reports to the Hearing Examiner, Planning Commission, and City Council.
- GIS Support

Wayne Carlson will serve as project manager and principal-in-charge for AHBL to provide day-to-day oversight of our planners and will coordinate with City staff to make sure that we are meeting the City's needs (2 Hours Maximum per Week). As principal-in-charge, Wayne Carlson will be involved to ensure that AHBL, Inc. provides these services in an efficient and cost-effective manner, including bringing the appropriate additional resources to the projects as needed and/or desired by the City of Black Diamond. Wayne will bill his hours to individual projects.

Wayne Carlson will contact the City on a regular basis throughout the term of the contract to discuss staffing needs and adjust staffing levels accordingly. As principal-in-charge, Wayne will be involved to ensure that AHBL brings the appropriate additional resources to the projects as needed. AHBL understands that the City has a cost-recovery system in its fee schedule for consultant review of development applications (actual cost + 10 percent). We are accustomed to tracking our time by each project and will format our invoices in a manner consistent with the City's cost-recovery system, specific to the City's permit tracking and numbering system. The City's Permit Technician will assign these numbers as these projects come through the system and have them available for pick-up, each week. In order to keep costs at a minimum, AHBL,

Inc. will track its' time for each project and provide the City with separate monthly invoices for each application. These will be invoices will be attached to the City's bill to applicants, along with applicable City administrative fees.

Stan May would be assigned as the project planner to conduct this work. Brittany Port will also be available to cover vacations and other staffing needs as a back-up to Stan May. Other time that is not directly related to a specific project (e.g., Stan's counter time at City Hall) will be invoiced to a general project number.

AHBL's current hourly billing rates for planning staff are included below:

1. Planner Stan May (primary staff member at \$100/hour)
2. Planner Brittany Kubinski (back-up staff member at \$100/hour).
3. Principal in Charge Wayne Carlson (\$205/hour) will provide oversight and quality assurance/quality control as authorized.

