

RESOLUTION NO. 18-1205

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO EXECUTE A
PROFESSIONAL CONSULTING CONTRACT WITH AHBL,
INC. FOR PLANNING SERVICES TO BE PROVIDED TO
THE MDRT**

WHEREAS, the City's Master Development Review Team (MDRT) does not have an on-site Planner dedicated to processing the land use applications and permits for which it is responsible under state law, City code and applicable agreements; and

WHEREAS, in order to timely and effectively process the implementing land use applications and permits associated with the previously approved MPDs, and to ensure such permits comply with all applicable laws, regulations, and agreements, the City contracted with the consulting firm AHBL, Inc. in 2017 to provide these services to the MDRT; and

WHEREAS, the City's contract with AHBL, Inc. is expiring and there is a need to renew the AHBL, Inc. contract for planning services so that the City and the MDRT may continue to meet their permitting responsibilities under state and local law; and

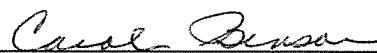
WHEREAS, AHBL, Inc. is willing and able to provide the requested services on the terms and conditions set forth in the contract attached hereto as Attachment A;

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

Section 1. The Mayor is hereby authorized to execute a professional services contract between the City and AHBL, Inc., for the provision of planning services to the MDRT in an amount not to exceed \$200,000, substantially in the form attached hereto as Attachment A.

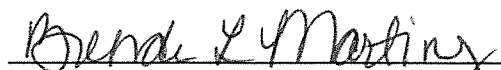
PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 4TH DAY OF JANUARY, 2018.

CITY OF BLACK DIAMOND:



Carol Benson, Mayor

Attest:



Brenda L. Martinez, City Clerk

**ON-CALL CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF BLACK DIAMOND AND
AHBL, INC. FOR MDRT PLANNING SERVICES**

THIS AGREEMENT is made effective as of January 4, 2018, 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's Master Development Review Team (MDRT) is in need of planning services to handle on-call tasks as assigned by the City; and

WHEREAS, the Consultant was previously selected to provide planning services to the City and has provided such services pursuant to previously executed contracts; and

WHEREAS, the City desires for Consultant to continue providing similar planning services and Consultant has agreed to provide such services on the terms and conditions provided in 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 for the period identified in Section IV. 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 City shall issue a written Task Order for each project assigned to the Consultant. The written Task Order shall include the following information, which may be furnished in consultation with the Consultant: (1) Task Order Title (project name); (2) technical approach to the task (if necessary); (3) specific deliverables; (4) schedule with milestones and deliverables; (5) cost/hour estimate; (6) due date of work. All of these items may be brief, but will be sufficiently detailed for the Consultant to understand the work being authorized and the amount it will cost. Written Task Orders and Notices to Proceed may be issued as e-mail documents.

The Consultant represents and warrants that it and any staff member 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(s) 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. The Consultant shall not subcontract with any subconsultant for the performance of any work under this Agreement without prior written permission of the City.

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 \$200,000 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 suspend or terminate the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount.

B. This Agreement does not guarantee any amount of work for the Consultant. Task Orders will be developed as determined by the City and as provided for in this Agreement. The Consultant shall be paid by the City for completed services rendered under each approved individual Task Order. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment and incidentals needed to complete the work.

C. The Consultant shall submit monthly invoices to the City for each Task Order after such services have been performed, and a final bill upon completion of all the services described in this supplemental 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.

D. The Consultant will not undertake any work or otherwise financially obligate the City in excess of the not-to-exceed amount in Section II(A) above, without a duly authorized amendment to this Agreement. The amount paid by the City for each invoice shall not exceed the amount in Section II(A) above and the Hourly Billing Rates set forth in Exhibit A, attached hereto.

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

This Agreement is effective as of January 4, 2018, and shall remain in effect until terminated by written notice in accordance with Section V, below. The Consultant shall not begin any work under this Agreement until an authorized Task Order has been agreed upon by the parties and the City has issued a Notice to Proceed. The parties agree that the individual projects assigned to the Consultant may have individual deadlines for completion that must be met, as described in the Task Orders.

V. Termination

A. Termination of Agreement. The City may terminate this supplemental 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. Termination shall be effective immediately upon posting or transmission of written notice by the City, or on such date as 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 this 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.

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 hereby 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 Mayor of the City of Black Diamond, who shall determine the term or provision's true intent or meaning. The Mayor of the City of Black Diamond shall also decide all questions that 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 that cannot be resolved by the Mayor's determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, then any resulting litigation must be filed in King County Superior Court, King County, Washington, which shall be the exclusive venue for disputes relating to the interpretation, performance, or enforcement of this supplemental Agreement. This supplemental Agreement is governed by and shall be construed in accordance with the laws of the State of Washington, exclusive of its choice-of-law rules. The non-prevailing party in any action brought to enforce this Agreement shall pay the other party's expenses and reasonable attorney's fees.

XVI. Written Notice

Unless otherwise specified, any written notice required by this Agreement 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: Andy Williamson
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 is void. If the City gives its consent to any assignment, this paragraph shall continue in full force and effect and no further assignment may be made without the City's consent.

XVIII. Modification and Severability

No waiver, alteration, or modification of any of the provisions of this Agreement is binding unless in writing and signed by the duly authorized representatives 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 reason 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, 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. 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 supplemental Agreement and form the Agreement 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 herein, then this Agreement controls.

AGREED TO AND EXECUTED BY:

CONSULTANT

CITY OF BLACK DIAMOND

By: _____
President

By: Carol Benson
Carol Benson, Mayor

Consultant:

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

APPROVED AS TO FORM:

City Attorney

ATTEST:

Brenda L. Martinez
City Clerk

EXHIBIT A

This scope of work is for both on-site and off-site development review and planning assistance (Planning Services) to the City of Black Diamond Master Development Review Team (MDRT). 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, and general customer assistance for planning and zoning issues. The following is AHBL's Inc. proposed scope of services:

- Provide project planner staff as needed at MDRT/Community Development Offices;
- 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 determinations, 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 in consultation with and under supervision of City staff; 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. 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 Task Orders.

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. 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 Task Order process. In order to keep costs at a minimum, we will track our time by each project and invoice the City separately for each application on a monthly basis.

Alex Campbell would be assigned as our project planner to conduct this work, with other staff assigned as appropriate. Other time that is not directly related to a specific project (e.g., Alex's counter time at City Hall) will be invoiced to a general project number.

Our current hourly billing rates for planning staff are included below:

1. Planner Alex Campbell (primary on-site staff member at \$100/hour)
2. Planner Stan May (staff member at \$120/hour)
3. Planner Brittany Kubinski (back-up staff member at \$85/hour).
4. Principle in Charge Wayne Carlson (\$185/hour) will provide oversight and quality assurance/quality control as authorized.