

**RESOLUTION NO. 18-1246**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON  
AUTHORIZING THE MAYOR TO EXECUTE A  
PROFESSIONAL SERVICES AGREEMENT WITH AHBL,  
INC., FOR SHORELINE MANAGEMENT PROGRAM  
REVIEW AND UPDATE**

**WHEREAS**, the City is required by RCW 90.58.050, RCW 90.58.070, and WAC 173-26-080 to develop and implement a Shoreline Master Program to govern uses of the shorelines of the state within the City's jurisdiction; and

**WHEREAS**, RCW 90.58.080 and WAC 173-26-090 require the City to conduct a review of its Shoreline Master Program at least once every eight years to ensure compliance with applicable state laws, Department of Ecology guidelines, and local regulations, and to make amendments deemed necessary to reflect changing local circumstances, new information, or improved data; and

**WHEREAS**, the City's next periodic review and assessment of its Shoreline Master Program must be completed by no later than June 30, 2019; and

**WHEREAS**, AHBL, Inc., was previously selected to provide planning services to the City and has provided such services pursuant to previously executed contracts; and

**WHEREAS**, the City recognizes AHBL's superior experience and expertise in this area and desires for AHBL to assist the City with the review and update of its Shoreline Management Program, and AHBL has agreed to provide these services on the terms and conditions provided in the Agreement 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 agreement with AHBL, Inc., substantially in the form attached hereto as Exhibit A, for review of, and necessary updates to, the City's Shoreline Master Program.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON,  
AT A REGULAR MEETING THEREOF, THIS 3RD DAY OF MAY 2018.**

CITY OF BLACK DIAMOND:

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

**SCOPE OF SERVICES  
BLACK DIAMOND SHORELINE MASTER PROGRAM PERIODIC UPDATE**

**AHBL JOB NO. 2180066.30**

The following is the Scope of Work between the City of Black Diamond and AHBL, Inc. for work associated with completing a periodic review of the City's Shoreline Master Program (SMP). AHBL's responsibilities include reviewing the City's adopted Shoreline Master Program using Ecology's Periodic Review Checklist; drafting revisions to the SMP or preparing a Finding of Adequacy, as needed; conducting non-project SEPA environmental review; and participating in the City and Ecology adoption process. AHBL staff will also assist with public involvement activities, as directed by City and as described in this agreement.

Some of the tasks included in this scope of work will overlap in time and may be completed simultaneously with other tasks. Some tasks are iterative and may involve various steps conducted at different times in the process before they are completed.

Please note that for all project deliverables, except as specifically noted in this scope, a maximum of two revisions is assumed.

**Task 1: Public Participation**

The purpose of Task 1 is to prepare and implement a public participation plan consistent with the Shoreline Management Act's requirements for public participation.

- A. Develop Public Participation Plan. AHBL staff will prepare a public participation plan to invite and encourage public involvement in the SMP periodic review consistent with WAC 173-26-090. The public participation plan will include applicable local requirements such as Planning Commission review and formal hearings, as well as applicable state notice requirements.
- B. Conduct public participation activities. AHBL staff will host one public open house for the purposes of describing the nature of the periodic review and the findings made by the City and consulting team.

**Task 2: Review SMP and Prepare Revisions (if needed)**

The purpose of Task 2 is to ensure that the Black Diamond SMP is consistent with the latest amendments to the Shoreline Management Act and Ecology Guidelines that may have been enacted since Ecology adopted Black Diamond's SMP in June 2014.

- A. Gap Analysis.
  - 1. AHBL staff will review amendments to Chapter 90.58 RCW and Ecology rules that have occurred since the Shoreline Master Program was last amended, and determine if local amendments are needed to maintain compliance. To facilitate this review, AHBL staff will rely on the checklist of legislative and rule amendments prepared by Ecology.

- F. Submit Locally-Adopted Draft SMP to Ecology. AHBL staff will submit the locally-adopted Draft SMP amendment or Findings of Adequacy and Periodic Review Checklist to Ecology on behalf of the City of Black Diamond as prescribed under WAC 173-26-110.

**Task 4: Project Coordination**

Task 4 involves ongoing coordination throughout the course of the project.

- A. Coordinate Throughout the SMP Review Process with Ecology. AHBL staff will assist Black Diamond with providing Ecology with opportunities to review draft deliverables at appropriate intervals. As directed by City staff, this coordination may involve providing relevant information directly to Ecology or providing it to City staff for distribution.
- B. Coordinate with Other Applicable Federal, State and Local agencies, Neighboring Jurisdictions, and Indian Tribes. AHBL staff will assist Black Diamond with coordination with other appropriate entities which may have information useful to the SMP periodic update. As directed by City staff, this coordination may involve providing relevant information directly to such entities or providing it to City staff for distribution.
- C. Quarterly Report. AHBL staff will provide the City with a written update for each of its quarterly progress report as to the significant issues, coordination activities, and participants involved in the SMP periodic review.

**Budget**

Task Description	Fee
Task 1: Public Participation	\$2,500
Task 2: Review SMP and Prepare Revisions (if needed)	\$3,500
Task 3: SEPA Environmental Review and Adoption Phase Services	\$2,500
Task 4: Project Coordination	\$1,500
<b>Grand Total</b>	<b>\$10,000</b>

**CONSULTANT SERVICES CONTRACT  
BETWEEN THE CITY OF BLACK DIAMOND AND AHBL, INC.,  
FOR REVIEW AND UPDATE OF SHORELINE MASTER PROGRAM**

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 required by RCW 90.58.050, RCW 90.58.070, and WAC 173-26-080 to develop and implement a Shoreline Master Program to govern uses of the shorelines of the state within the City's jurisdiction; and

WHEREAS, RCW 90.58.080 and WAC 173-26-090 require the City to conduct a review of its Shoreline Master Program at least once every eight years to ensure compliance with applicable state laws, Department of Ecology guidelines, and local regulations, and to make amendments deemed necessary to reflect changing local circumstances, new information, or improved data; and

WHEREAS, the City's next periodic review and assessment of its Shoreline Master Program must be completed by no later than June 30, 2019; 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 recognizes Consultant's superior experience and expertise in this area and desires for Consultant to assist the City with its periodic review and update of the Shoreline Management Program, and Consultant has agreed to provide these 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 perform the services specified in Exhibit A ("Scope of Services" for AHBL Job No. 2180066.30) attached hereto. 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

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 the date it is last signed by the parties hereto, and shall remain in effect until completion of the work described in Exhibit A, unless terminated sooner by written notice in accordance with Section V, below. The parties agree that the individual Tasks assigned to the Consultant may require completion by certain dates, to be determined by the City in consultation with Consultant. The parties agree to work cooperatively to achieve timely performance of the specified Tasks within the time limits reasonably set by the City.

#### **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. 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 work product, 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.

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

### **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 or timeliness 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 the parties agree shall be the exclusive venue for disputes relating to the interpretation, performance, or enforcement of this Agreement. This Agreement is governed by and shall be interpreted in accordance with the laws of the State of Washington, without reference to its choice-of-law rules. The non-prevailing party in any action brought to interpret or 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:

AGREED TO AND EXECUTED BY:

**CONSULTANT**

**CITY OF BLACK DIAMOND**

By: \_\_\_\_\_  
President  
**AHBL, Inc.**  
2215 North 30th Street, Suite  
300 Tacoma, WA 98403-3350

By: Carol Benson  
Carol Benson, Mayor

Date: 5/7/18

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST:

Brenda L. Martinez  
City Clerk