

**RESOLUTION NO. 21-1410**

**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 THE FALCONER GROUP FOR SERVICES IN CONNECTION WITH THE BLACK DIAMOND CITY COUNCIL'S 2021 PLANNING RETREAT**

**WHEREAS**, the City Council will be holding a 2021 Planning Retreat; and

**WHEREAS**, the City desires to retain the services of a consultant skilled in the facilitation of retreats; and

**WHEREAS**, the City has selected the Falconer Group to perform this service and finds the Consultant qualified, willing and able to perform the above mentioned services.

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

**Section 1.** The City Council of the City of Black Diamond hereby authorizes the Mayor to execute a contract with the Falconer Group to perform services in connection with the City Council's 2021 Planning Retreat; 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 18TH DAY OF FEBRUARY, 2021.**


CITY OF BLACK DIAMOND:



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Carol Benson, Mayor

Attest:



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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 February 18, 2021 and is entered into by and between

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

Physical Address: 24301 Roberts Drive

Mailing Address: PO Box 599

Black Diamond, WA 98010

Contact: Carol Benson      Phone: 360-851-4500      Fax: 360-851-4501

and

The Falconer Group ("Consultant")

1300 SW Webster Street

Seattle, Washington 98106

Contact: James Reid Phone: 206-225-4109 Email: jim@falconergroup.net

Tax Id No.: \_\_\_\_\_

for professional services in connection with the  
**Black Diamond City Council's 2021 Planning Retreat**

### 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 Exhibit "A" in a timely manner.

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

## **3. Compensation**

X LUMP SUM. Compensation for the services provided in the Scope of Work shall be a Lump Sum of \$3,870.00

## **4. Payment**

4.1 Consultant shall provide 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 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 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. Consultant understands and agrees that the services rendered pursuant to this Agreement are for the sole exclusive benefit of the City and that no third party shall have authority to authorize, approve, direct or control any of the services rendered to the City pursuant to this Agreement.

**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, without written concurrence by Consultant, will be at the sole risk of the City.

8.2 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.

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

9.1 Consultant shall indemnify, and hold the City, its officers, employees, agents and volunteers harmless from all claims, injuries, damages, losses, or suits, including attorney fees, arising directly or indirectly out of or resulting from the negligent acts, errors, or omissions of Consultant or its sub-consultants in performance of this Agreement, except for injuries and damages caused by the concurrent negligence of the City. If any such claims, injuries, damages, losses, or suits result from the concurrent negligence of Consultant and the City, and the City's officers, employees, agents or volunteers, Consultant's obligations and indemnity under this paragraph shall be effective only to the extent of Consultant's negligence.

9.2 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.

9.3 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.

9.4 The provisions of this Section 9 shall survive the expiration or termination of this Agreement.

## **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 for claims which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, employees or subconsultants.

10.2 Consultant shall procure and maintain Professional Liability Insurance with minimum limits of \$1,000,000 per occurrence. Consultant represents that he maintains such insurance with Lloyds of London and the Association of Conflict Resolution, which the City agrees is adequate for purposes of the Consultant's work under this Agreement.

- 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. Declaration pages issued by the insurance carriers for the policies mentioned in this Section 10 shall be provided to the City upon request. In addition, the City may request, in writing, a full copy from Consultant of any insurance policy. 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. 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.

12.2 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.

## **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:



16.3 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.

**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.


**18. Conflict of Interest; Non-Collusion**

18.1 No officer, employee or agent of the City, nor any member of the immediate family of any such officer, employee or agent, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The Consultant shall comply with all federal, state, and City conflict of interest laws, statutes and regulations. The Consultant represents that the Consultant presently has no interest and shall not acquire any interest, direct or indirect, in the project to which this Contract pertains which would conflict in any manner or degree with the performance of the Consultant’s services and obligations hereunder. The Consultant further covenants that, in performance of this Contract, no person having any such interest shall be employed by the Consultant. The contractor’s officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from the project applicant or any affiliate or agent of the project applicant.

18.2 The Contractor warrants and represents that the Contractor has not, nor has any other member, employee, representative, agent or officer of the Contractor, entered into or offered to enter into any combination, collusion or agreement with any person or entity to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of this Contract other than the consideration offered pursuant to the terms and conditions hereof.

CITY OF BLACK DIAMOND

CONSULTANT

By: 

By: \_\_\_\_\_

Carol Benson

Printed Name: \_\_\_\_\_

Its: Mayor

Its: \_\_\_\_\_

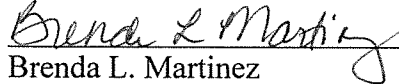
Date: 02/18/2021

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



Attest:

By:

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

Approved as to form:

By:

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



## THE FALCONER GROUP

JAMES FALCONER REID, PRINCIPAL

1300 SW Webster St., Seattle, WA 98106  
Phone: (206) 225.4109 Email: [jim@falconergroup.net](mailto:jim@falconergroup.net)  
Website: [www.falconergroup.net](http://www.falconergroup.net)

# THE BLACK DIAMOND CITY COUNCIL'S 2021 PLANNING RETREAT

March 2021

## THE FALCONER GROUP'S PROPOSED APPROACH

25 January 2021

### Phases and Tasks

### Completion Date

#### **PREPARE TO FACILITATE THE MEETING**

**Day before retreat**

#### **Jim Reid's tasks include:**

- Spoke with Mayor Carol Benson and City Clerk Brenda Martinez on 22 January 2021 to discuss retreat process and potential topics. (30 minutes)
- Conduct telephone interviews the City Council members to solicit their ideas and suggestions about topics for the agenda. Assume each call lasts 30 minutes.
- Draft the retreat agenda; submit it to Mayor Benson, Brenda, and the Council members for review and comments.
- If necessary, revise it per their comments.
- Submit the final agenda to be distributed to everyone who will attend and to be part of the retreat packet.
- Review notes from the City Council interviews.
- Review other documents that may be helpful in preparing.
- Coordinate with the Mayor and Carol as necessary.

**FACILITATE THE MEETING**

**Mid to late March**

**Jim Reid’s tasks include:**

- Facilitate the City Council’s planning retreat on a Thursday or Friday  
In mid to late March.  
*(Assume the meeting lasts 5 hours plus 15-30 minutes earlier to be on the Zoom call in time to greet the attendees as they join.)*

**PRODUCE AND FINALIZE MEETING SUMMARY**

**7-10 days after retreat**

**Jim Reid’s tasks include:**

- Draft and submit to the Mayor and Brenda the retreat draft summary within 72 hours of the meeting’s adjournment.
- After they have reviewed it, submit it to the Council members to solicit their comments.
- If necessary, make the changes, finalize the document, and send to the Mayor, Council, and Brenda.

**THE FALCONER GROUP’S PROPOSED BUDGET**

**Notes:**

- The Falconer Group’s rate for Jim Reid’s services is \$215.00 per hour.
- There will be no other expenses incurred by Jim Reid of the Falconer Group for this meeting.

<u>Phases:</u>	<u>Hours:</u>	<u>Costs:</u>
PREPARE TO FACILITATE THE RETREAT	8.0	\$ 1,720.00
FACILITATE THE MEETING	5.5	1,182.50
DRAFT AND FINALIZE MEETING SUMMARY	4.5	967.50
<b>TOTALS:</b>	<b>18.0</b>	<b>\$ 3,870.00</b>