

RESOLUTION NO. 21-1418

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH PENINSULA FINANCIAL CONSULTING FOR COMPLEX FINANCIAL MODELING AND PRESENTATION SERVICES

WHEREAS, Ashley Emery of Peninsula Financial Consulting has provided excellent financial consulting services for the City in the past, including preparation of complex computer financial models for the City’s Water, Sewer, and Stormwater Funds; and

WHEREAS, the City is experiencing rapid growth and additional needs for financial forecasting and sustainability analysis due to the expected increasing costs for fire services other growth-related capital projects that demand intelligent long range planning; and

WHEREAS, the development of new financial planning modules with a six-year time horizon for the General Fund and REET Fund will facilitate analysis of numerous “what if” scenarios proposed by City decision-makers, thereby empowering the City to make informed decisions about its expenditures and revenue needs, and improve long-range planning for the General Fund, REET Fund, and the three Utility Funds; and

WHEREAS, the Water, Sewer and Stormwater utilities are all in need of updated financial analysis in 2021 and for the next two years, given the rapid growth of the customer base and increased staffing needs, with potential impacts on utility rates; and

WHEREAS, Mr. Emery has agreed to provide such services to the City on the terms described in the contract attached hereto as Exhibit 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 with Peninsula Financial Consulting for complex financial modeling and presentation services, including the development of six-year financial planning modules for the General and REET Funds and updates to the existing financial models for the City’s utility funds, with such contract in an amount not to exceed \$50,000 over a three-year term, and being in a form substantially similar to Exhibit A attached hereto.

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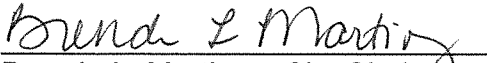
PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON,
AT A REGULAR MEETING THEREOF, THIS 6TH DAY OF MAY, 2021.

CITY OF BLACK DIAMOND:



Carol Benson, Mayor

Attest:



Brenda L. Martinez, City Clerk

**COMPUTER MODELING SERVICES CONTRACT
BETWEEN THE CITY OF BLACK DIAMOND AND
PENINSULA FINANCIAL CONSULTING FOR
SIX-YEAR FINANCIAL PLANNING MODULES**

THIS AGREEMENT is made by and between the City of Black Diamond, a Washington municipal corporation (hereinafter the "City"), and Ashley Emery of Peninsula Financial Consulting ("Consultant") for creation, presentation, and updating of complex financial planning modules for the City of Black Diamond for 2021 through 2023.

RECITALS

WHEREAS, the City is in need of more robust and flexible financial planning tools to project future revenue and expenditures for the General Fund and the Real Estate Excise Tax Funds; and

WHEREAS, the City is in need of annual updates to its existing financial planning modules for the Water, Sewer, and Stormwater utility funds; and

WHEREAS, the City Council needs access to reliable financial models to explore a variety of future capital and operational expenditures scenarios to determine the feasibility of various projects and endeavors; and

WHEREAS, the City does not have the time or expertise necessary to create complex financial computer modeling needed to explore the effects of a variety of possible future revenue and expenditure scenarios during the rapid growth of city needs; and

WHEREAS, the Consultant has several years of experience in developing and presenting complex computer modules for many cities' utility rates and has shown the ability to provide such services to the City at reasonable costs;

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.

A. General Scope for General and REET Fund Modules. Consultant shall gather two years of actual financial Revenues and Expenditure data for the General Fund and the Real Estate Excise Tax Fund, and shall develop and deliver to the City Finance Director three Six-Year Financial Planning Modules that assume (1) a low-growth level, (2) continuation of the City's current growth level, and (3) a high-growth level. These three Modules shall be suitable for use in forecasting and presenting various capital and operational program expenditures and in analyzing the financial

feasibility of proposed City Council and Administration projects, programs, and initiatives, including proposed department funding and capital expenditures. The Six-Year Financial Planning Modules shall include the following essential capabilities:

1. Enable the City to run “what if” scenarios on various fund types using various rates of inflation for City revenue and expenditure categories, yielding six-year forecasts of Revenues, Expenditures, and Ending Fund Balances;
2. Allow additions of new categories of revenues and expenditures over the six-year time horizon of the Modules.
3. Facilitate the segregation of sustainable and unsustainable revenue sources, depending on underlying economic and development conditions.
4. Facilitate the splitting of permitting revenues and permit-related expenses into low, moderate, and high growth scenarios, and demonstrate the associated effects on Ending Fund Balances and carryover expenses required to fund permitting costs associated with prior-year revenues.

B. General Scope for Utility Fund Updates. Consultant shall provide annual updates to the existing Six-Year Financial Planning Modules for the City’s Water, Sewer, and Stormwater Utility Funds.

C. Assumptions. The City will provide the Consultant with the financial data and budgets from past years in electronic format. The City will meet with the Consultant to provide necessary information and baseline assumptions, including growth rate information; revenue projections; tax rates; new revenue projections; and anticipated increases in labor costs that are needed with low, medium, and high growth rates.

D. Deliverables. Consultant shall complete the building of the new Six-Year Financial Planning Modules for the General Fund and REET Fund by no later than August 1, 2021, and shall thereafter provide annual updates to these Modules in 2022 and 2023 in time for them to be used during the City’s yearly budget preparation cycle. Likewise, Consultant shall also ensure that annual updates to the Utility Fund modules as described above are completed in time for use during the City’s yearly budget cycle in 2021, 2022, and 2023.

In addition to the Six-Year Financial Planning Modules described above, Consultant shall, upon request, prepare Power Point or other visual and graphic materials for presentation at City Council meetings in August and October of each year (or at other times, as requested) that can show the impacts of proposed City programs, initiatives, or actions on City fund balances and budgetary needs. Consultant shall work with the Finance Director to establish the appropriate content for these meeting materials. After each City Council meeting, the Consultant shall provide a summary of various scenarios presented at the meeting for future reference, in a format agreed to by Consultant and the Finance Director. Each year during the Term of this Agreement, and during any Extended Term as defined below, Consultant shall update the Six-Year Financial

Planning Modules with current actual financial date from the City so that the Modules can be used during the annual City budget preparation process.

D. Qualifications. 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. Consultant certifies, by signing this Agreement that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal or State department or agency.

II. Payment

A. The City shall pay the Consultant on a monthly basis for actual hours worked at the rate of \$135.00 per hour. The total amount payable during the Term of this Agreement shall not exceed fifty thousand dollars (\$50,000) without the prior written authorization of the City in the form of a negotiated and executed amendment. This is the maximum amount to be paid to Consultant for the scope of work described in this Agreement. 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. Monthly billing. Consultant shall submit monthly invoices to the City for hours actually worked by Consultant during the preceding month. The City shall pay the full amount of each invoice within sixty (60) days following receipt. If the City objects to all or any portion of an invoice, it shall notify the Consultant within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall then make every effort to settle the disputed portion promptly.

C. The Consultant will not undertake any work or otherwise financially obligate the City in excess of the scope or the not-to-exceed amount in Section II(A) above, without a duly authorized amendment to this Agreement.

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 may use sub-consultants but 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 takes effect on May 6, 2021, and shall remain effective through December 31, 2023 ("Term"), unless terminated earlier by written notice in accordance with Section V, below. The initial Term of this Agreement may be extended for an additional three years ("Extended Term") upon written approval of the City's Mayor and the Consultant.

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 files, records, and data within the Consultant's possession pertaining to this Agreement, including executable file copies of the Six-Year Financial Planning Modules, which files, 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. 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.

IX. Ownership and Use of Records and Documents

Original documents, drawings, designs, reports, and other work products developed under this Agreement shall belong to and become the joint property of the City and the Consultant. The City and Consultant each shall have the nonexclusive right to do or authorize any of the acts enumerated in 17 U.S.C. § 106, including without limitation reproduction, distribution, performance, or display of the work. The parties agree that there shall be no liability or accounting for profits or revenues made on account of the exercise of any of the aforementioned rights. Each party will retain exclusive interest in

and ownership of its intellectual property that was developed before this Agreement takes effect or that was developed outside the scope of this Agreement. 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.

X. 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.

XI. 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.

XII. 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.

XIII. 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.

XIV. 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 Agreement. This Agreement is governed by and shall be construed 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 enforce this Agreement shall pay the other party's expenses and reasonable attorney's fees.

XV. 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: Ashley Emery
Peninsula Financial Consulting
Address info
PO Box 354
Brennon, Wa. 98320

CITY:

Attn: May Miller, Finance Director
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.

XVI. 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.

XVII. 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.

XVIII. 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 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

By: _____

CITY OF BLACK DIAMOND

Carol Benson

By: _____
Carol Benson, Mayor

APPROVED AS TO FORM:

City Attorney

ATTEST:

Brenda L. Martiny

City Clerk