

RESOLUTION NO. 07-433

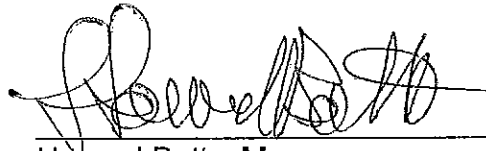
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH CATALYST AWARD BASED SERVICES FOR PROVIDING PLANNING ASSISTANCE TO THE CITY

WHEREAS, the City of Black Diamond finds it necessary to hire an experienced consultant to provide planning assistance to the City; and,

WHEREAS, the City has selected Catalyst Award Based Services to provide such services and Consultant is qualified, willing and able to perform the necessary services identified herein; now therefore

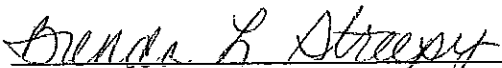
BE IT RESOLVED that the Mayor is hereby authorized to enter into a professional service agreement with Catalyst Award Based Services, said agreement to be substantially in the form attached hereto as Exhibit A and by reference incorporated herein.

ADOPTED by the City Council at an open public meeting held on the 5th day of April, 2007.



Howard Botts, Mayor

Attest:


Brenda L. Streepy, City Clerk

CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the or this "Agreement"), for reference purposes only, is dated April 11, 2007 and is entered into by and between

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

25510 Lawson Street

Black Diamond, WA 98010

Contact: Rick Luther

Phone: 360-886-2560

Fax : 360-886-2592

and

Catalyst Award Based Services

PO Box 1252

Winthrop, WA 98962

Contact: Jason Paulsen

Phone: 509-996-8160

Tax Id No: N/A

for professional services in connection with the following project:

Review of draft portions of the Comprehensive Plan currently being developed by the City. This review will include the submittal of comments including recommended edits to the plan document to ensure that the revised plan is consistent with previous planning efforts and my understanding of the City's historical land use vision.

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 as expeditiously as is consistent with professional skill and care and the orderly progress of the work provided for in this Agreement.

2.2 Time is of the essence as to the work provided in the Scope of Work. Consultant will diligently 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.

2.3 Consultant is authorized to proceed with the Project upon both parties fully executing this Agreement.

3. Compensation

- LUMP SUM. Compensation for the services provided in the Scope of Work shall be a Lump Sum of \$_____.
- TIME AND MATERIALS NOT TO EXCEED. Compensation for the services provided in the Scope of Work shall not exceed \$\$3,625 for Task 1 and 2. Task 3 shall be commenced upon review and approval by the City. None of the above tasks will be commenced without the written authorization of the City and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit "B."
- TIME AND MATERIALS. Compensation for the services provided in the Scope of Work shall be on a time and materials basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit "B."
- OTHER. _____

4. Payment

4.1 Consultant shall maintain time and expense records and provide them to the City monthly, along with 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 warrant 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 on the Project 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.

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 and the Project to which it relates, without written concurrence by Consultant, will be at the sole risk of the City.

8.2 The City acknowledges Consultant's documents as instruments of professional service. Nevertheless, 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.

8.3 Methodology, software, logic, and systems developed under this Agreement are the property of Consultant and the City, and may be used as either Consultant or the City see fit, including the right to revise or publish the same without limitation.

9. Indemnification/Hold Harmless

9.1 Consultant shall defend, indemnify, and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising directly or indirectly out of or resulting from the acts, errors, or omissions of Consultant or its subconsultants in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

10. 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.

11. Independent Contractor

12.1 Consultant and its subconsultants are, and shall be at all times during the term of this Agreement, independent contractors.

12. 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:

City: City Administrator
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
Fax: 360-886-2592

With a copy to: Loren D. Combs and
Joseph P. Zehnder
McGavick Graves, P.S.
P.O. Box 1317
Tacoma, WA 98401-1317
Fax: 253-627-2247

Consultant: Catalyst Award Based Services
Jason Paulsen
PO Box 1252
Winthrop, WA 98962

14. Disputes

14.1 Any action for claims arising out of or relating to this Agreement shall be governed by the laws of the State of Washington. Venue shall be in King County Superior Court, Kent, Washington.

15. Attorney Fees

15.1 In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney fees from the other party.

16. General Administration and Management on Behalf of the City

16.1 The City Administrator for the City, or his designee, shall review and approve Consultant's invoices to the City under this Agreement and shall have primary responsibility for overseeing and approving work or services to be performed by Consultant.

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.

CITY OF BLACK DIAMOND

By: Howard Botts
Howard Botts

Its: Mayor

Date: 4-3-07

CONSULTANT

By: Jason Paulsen
Printed Name: Jason Paulsen

Its: Principal

Date: 4/20/07

Attest:

By: Brenda L Streepy
Brenda Streepy
City Clerk

EXHIBIT A

SCOPE OF WORK and BUDGET

Task #1

Purpose: Task #1 will include detailed review of and the provision of comments for each of the draft Comprehensive Plan Chapters (#'d 1,3,4,5,6,7,8) including a review of any existing review comments incorporated by City Staff and the provision of suggested edits as necessary. This will review will be focused toward insuring internal consistency within the document, as well as historical consistency with respect to the City's previous planning under the Growth Management Act, the Black Diamond Urban Growth Area Agreement, the annexation of the Lake Sawyer area in 1998, the Black Diamond Area Open Space Protection Agreement, and subsequent annexations under the Black Diamond Urban Growth Area Agreement.

Discussion: Task #1 review comments and suggested edits will be provided within the electronic documents provided for review using "track changes". A summary memo will also be provided highlighting any global review comments or suggestions for making the plan a more effective planning document. Review of Chapter's 7 (Transportation) and 8 (Capital Facilities) will not include an independent analysis of the engineering assumptions contained therein, but will focus on consistency with the other Chapters of the Comprehensive Plan.

Estimated Time and Budget: Following is the estimated time, by Chapter, for review and the formulation of comments and suggested edits under Task #1:

Chapter	Estimated Hours for Review and Comment	Proposed "Not to Exceed" Budget By Chapter
1 – Overview	1	\$125.00
3 – Population and Employment	3	\$ 375.00
4 – Natural Environment	3	\$375.00
5 – Land Use	8	\$ 1,000.00
6 – Housing	2	\$ 250.00
7 – Transportation	5	\$ 625.00
8 – Capital Facilities	5	\$625.00
Total*	27 Hours	Not to Exceed...\$ 3,375.00

*Budget based upon hourly rate not to exceed contract budget amount.

City Responsibilities: To provide proper versions of Comprehensive Plan documents for review. Unless otherwise provided, this review will be based upon the documents transmitted on March 20, 2007 and Chapter #4 as transmitted on April 5, 2007.

Task #2

Purpose: Task #2 will provide City Staff with a summary memorandum highlighting global level comments with respect to the draft Comprehensive Plan to include time for responding to questions regarding the comments provided in Task #1 and the Task #2 memo.

Discussion: It is expected that City Staff may have questions or desire to clarify comments or suggested approaches prior to sharing review comments with the City Staff/ consultants taking the lead role in updating the City’s Comprehensive Plan. This Task will allow for that dialogue to take place as the City deems necessary, and for me to respond to specific questions that Staff may have as they interact with those developing the plan.

Estimated Time: Up to 5 Hours.

Proposed “Not to Exceed Budget for Task #2: Up to \$ 625.00 (Assumes 5 Hours)

Task #3

Purpose: Task #3 shall consist of such other planning related assistance as may be deemed necessary and approved by the Mayor with the consent of the City Council. Work shall be completed on an hourly basis and consistent with any not-to-exceed amount as established by the City.

Catalyst Award Based Services Fees Schedule (2007)

Labor Hourly Rate: \$125/ Hour

Travel Rate: \$30/ Hour plus mileage @ IRS Rate (\$0.485/Mile for 2007)

Direct Costs: At Actual Cost, *(None Anticipated)*

Black Diamond Project Budget Summary By Task

Task Number	Hours	Labor Total	Travel Total
1*	24	\$3,000.00	N/A
2**	5	\$625.00	N/A
3***	TBD	TBD	TBD
TOTAL	29	\$3,625.00	

*** NOTE:** Task #1 and #2 deliverables to be provided to City Staff on or before April 15, 2007

**** NOTE:** Task #2 Labor Total assumes no more than 5 hours.

*****NOTE:** Task #3 scope and budget to be determined as needed and authorized by the City.

EXHIBIT B

CATALYST AWARD BASED SERVICES

Mr. Rick Luther
Interim City Administrator
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010

April 5, 2007

Send via Electronic Mail

Re: Proposed Scope of Work for Planning Assistance

Dear Rick,

Pursuant to our previous discussions, attached is a Scope of Work for the review of draft portions of the Comprehensive Plan currently being developed by the City. This review will include the submittal of comments including recommended edits to the plan document to ensure that the revised plan is consistent with previous planning efforts and my understanding of the City's historical land use vision.

It is my understanding that this project will not require formal attendance at Black Diamond Planning Commission or City Council meetings, and that coordination with City Staff can be accomplished via electronic mail and/or telephone consultation. All comments will be provided in electronic format, and suggested edits will be provided within the electronic documents you provide for review. A separate memorandum providing global level feedback and suggestions for shaping the completion of the comprehensive plan will also be provided.

Please review the following Scope of Work and let me know if the proposed tasks reflects what you believe is needed to be of assistance. I welcome your suggestions in making my assistance as beneficial to the City as possible and look forward to this opportunity to assist the City in ensuring that this update of the City's Comprehensive Plan is consistent with the City's previous planning work.

Sincerely,

Jason Paulsen
Principal

Attachment: Scope of Work

CATALYST *AWARD BASED SERVICES*

Attachment “ ”

SCOPE OF WORK and BUDGET

Task #1

Purpose: Task #1 will include detailed review of and the provision of comments for each of the draft Comprehensive Plan Chapters (#'d 1,3,5,6,7,8) including a review of any existing review comments incorporated by City Staff and the provision of suggested edits as necessary. This review will be focused toward insuring internal consistency within the document, as well as historical consistency with respect to the City's previous planning under the Growth Management Act, the Black Diamond Urban Growth Area Agreement, the annexation of the Lake Sawyer area in 1998, the Black Diamond Area Open Space Protection Agreement, and subsequent annexations under the Black Diamond Urban Growth Area Agreement.

Discussion: Task #1 review comments and suggested edits will be provided within the electronic documents provided for review using "track changes". A summary memo will also be provided highlighting any global review comments or suggestions for making the plan a more effective planning document. Review of Chapter's 7 (Transportation) and 8 (Capital Facilities) will not include an independent analysis of the engineering assumptions contained therein, but will focus on consistency with the other Chapters of the Comprehensive Plan.

Estimated Time and Budget: Following is the estimated time, by Chapter, for review and the formulation of comments and suggested edits under Task #1:

Chapter	Estimated Hours for Review and Comment	Proposed "Not to Exceed" Budget By Chapter
1 – Overview	1	\$125.00
3 – Population and Employment	3	\$ 375.00
5 – Land Use	8	\$ 1,000.00
6 – Housing	2	\$ 250.00
7 – Transportation	5	\$ 625.00
8 – Capital Facilities	5	\$625.00
Total*	24 Hours	Not to Exceed...\$ 3,000.00

*Budget based upon hourly rate not to exceed contract budget amount.

City Responsibilities: To provide proper versions of Comprehensive Plan documents for review. Unless otherwise provided, this review will be based upon the documents transmitted on March 20, 2007.

CATALYST AWARD BASED SERVICES

Task #2

Purpose: Task #2 will provide City Staff with a summary memorandum highlighting global level comments with respect to the draft Comprehensive Plan to include time for responding to questions regarding the comments provided in Task #1 and the Task #2 memo.

Discussion: It is expected that City Staff may have questions or desire to clarify comments or suggested approaches prior to sharing review comments with the City Staff/ consultants taking the lead role in updating the City's Comprehensive Plan. This Task will allow for that dialogue to take place as the City deems necessary, and for me to respond to specific questions that Staff may have as they interact with those developing the plan.

Estimated Time: Up to 5 Hours.

Proposed "Not to Exceed Budget for Task #2: Up to \$ 625.00 (Assumes 5 Hours)

Catalyst Award Based Services Fees Schedule (2007)

Labor Hourly Rate: \$125/ Hour

Travel Rate: \$30/ Hour plus mileage @ IRS Rate (\$0.485/Mile)

Direct Costs: At Actual Cost, *(None Anticipated)*

Black Diamond Project Budget Summary By Task

Task Number	Hours	Labor Total	Travel Total
1*	24	\$3,000.00	N/A
2**	5	\$625.00	N/A
TOTAL	29	\$3,625.00	

* **NOTE:** Task #1 and #2 deliverables to be provided to City Staff on or before April 15, 2007

** **NOTE:** Task #2 Labor Total assumes no more than 5 hours.

CATALYST AWARD BASED SERVICES WAS FOUNDED UPON THE BELIEF THAT CLIENTS GET MORE WHEN THEIR CONSULTANT SHARES RESPONSIBILITY FOR THE OUTCOME OF A PROJECT. TO PUT THAT BELIEF TO PRACTICE, CATALYST CLIENTS ARE DIRECTED TO WITHHOLD PAYMENT FOR ANY WORK THEY ARE INVOICED FOR THAT DID NOT RESULT IN COMPLETE SATISFACTION. LIKEWISE, WORK ON GRANT OR COMPETITIVE LOAN APPLICATIONS IS ONLY SUBJECT TO COMPENSATION IF THE APPLICATION IS SUCCESSFULLY FUNDED.

*CATALYST AWARD BASED SERVICES...SPARKING SUCCESS
THROUGH INNOVATION ONE CLIENT AT A TIME*