



**CITY OF BLACK DIAMOND**  
**June 19, 2008 Meeting Agenda**  
25510 Lawson St., Black Diamond, Washington

**7:00 P.M. – CALL TO ORDER, FLAG SALUTE, ROLL CALL**

**PUBLIC COMMENTS:** Persons wishing to address the City Council regarding items of new business are encouraged to do so at this time. When recognized by the Mayor, please come to the podium and clearly state your name and address. Please limit your comments to 3 minutes. If you desire a formal agenda placement, please contact the City Clerk at 253-631-0351. Thank you for attending this evening.

**PUBLIC HEARINGS:**

- 1.) **AB08-054a** – Latecomer’s Agreement (postponed until July 17 Council meeting) Mr. Combs

**APPOINTMENTS, PRESENTATIONS, ANNOUNCEMENTS: None**  
**UNFINISHED BUSINESS: None**

**NEW BUSINESS:**

- 2.) **AB08-065** – Binding Site Plan Ordinance Mr. Combs  
3.) **AB08-066** – Resolution Authorizing Contract with Municipal Research Services Center Mr. Boettcher  
4.) **AB08-067** – Resolution Authorizing Contract with Cascade Engineering for Radar Calibration Chief Kiblinger  
5.) **AB08-068** – Resolution Authorizing Lease Agreement with Sorci Family LLC Mr. Williamson  
6.) **AB08-069** – Resolution Authorizing Hearing Examiner Professional Services Agreement Ms. Voelpel

**DEPARTMENT REPORTS:**

**Fire** – Chief Smith

**Police** – Chief Kiblinger

**MAYOR’S REPORT:**

**COUNCIL REPORTS:**

**ATTORNEY REPORT:**

**PUBLIC COMMENTS:**

**CONSENT AGENDA:**

- 7.) **Minutes** – Council Meeting of June 5, 2008  
8.) **Claim Checks** – June 19, 2008 No. 31787 through 31858 (void checks 31798, 31799, 31805, 31809) in the amount of \$809,375.60.  
9.) **Payroll Checks** – May 2008, No.14896 through 14992 (void checks 14497 through 14502, 14951 through 14982 and 14989 through 14990) in the amount of \$240,020.04

**EXECUTIVE SESSION:** Real Estate Negotiations

**ADJOURNMENT:**

# CITY COUNCIL AGENDA BILL

City of Black Diamond  
Post Office Box 599  
Black Diamond, WA 98010

ITEM INFORMATION			
<b>SUBJECT:</b> <b>Public Hearing -</b> <b>Resolution No. 08-508, authorizing</b> <b>the Mayor to enter into a</b> <b>Latecomer's Agreement with</b> <b>Black Diamond Development, LLC</b>	<b>Agenda Date: June 19, 2008</b>		<b>AB08-054a</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		
	City Attorney –Loren D. Combs	X	
	City Clerk – Brenda L. Streepy		
	Finance – May Miller		
	Public Works – Dan Dal Santo		X
	Economic Devel. – Andy Williamson		
	Police –		
Court – Kaaren Woods			
Cost Impact:			
Fund Source:			
Timeline:			
<b>Attachments: Resolution No. 08-508, Agreement, Exhibit's A,B,C,D,E</b>			
<b>SUMMARY STATEMENT:</b>  Public Hearing continued to July 17 <sup>th</sup> Council meeting.			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b>			
<b>RECOMMENDED ACTION: MOTION to adopt</b>			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
June 5, 2008	Public Hearing Continued to June 19 <sup>th</sup> Council Meeting		
June 19, 2008	Public Hearing Continued to July 17 <sup>th</sup> Council Meeting		

# CITY COUNCIL AGENDA BILL

City of Black Diamond  
Post Office Box 599  
Black Diamond, WA 98010

ITEM INFORMATION			
<b>SUBJECT:</b>  <b>Ordinance No. 08-858, adding a new chapter 17.34 to the BDMC and deleting subsection 17.04.030(C) of the BDMC regarding site plans</b>	<b>Agenda Date: June 19, 2008</b>		<b>AB08-065</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		
	City Attorney – Loren D. Combs	X	
	City Clerk – Brenda L. Streepy		
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police – Chief Kiblinger		
Court – Kaaren Woods			
Community Devel. – Steve Pilcher		X	
<b>Attachments: Ordinance No. 08-858, markup version</b>			
<b>SUMMARY STATEMENT:</b>  Attached is the Binding Site Plan Ordinance incorporating changes requested at the May 15 council meeting. Clean and mark-up versions are attached.			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b>			
<b>RECOMMENDED ACTION: MOTION to adopt Ordinance No. 08-858, adding a new chapter 17.34 to the Black Diamond Municipal Code and deleting subsection 17.04.030(c) of the Black Diamond Municipal Code regarding binding site plans.</b>			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
June 19, 2008			

**ORDINANCE NO. 08-858**

**AN ORDINANCE OF THE CITY OF BLACK DIAMOND,  
KING COUNTY, WASHINGTON, ADDING A NEW  
CHAPTER 17.34 TO THE BLACK DIAMOND MUNICIPAL  
CODE AND DELETING SUBSECTION 17.04.030(C) OF THE  
BLACK DIAMOND MUNICIPAL CODE REGARDING  
BINDING SITE PLANS**

WHEREAS, RCW 58.17 authorizes local governments to adopt a binding site plan process for commercially or industrially zoned properties as an alternative to the subdivision process; and

WHEREAS, on March 20, 2008 the City Council held a public hearing to consider the proposed binding site plan ordinance; and

WHEREAS, the Council finds that it is in the best interests of the City to adopt such a process; now therefore,

THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, ORDAINS AS FOLLOWS:

SECTION 1. Section 17.04.030 of the Black Diamond Municipal Code is hereby amended by the deletion of subsection (c) in its entirety.

SECTION 2. A new chapter 17.34 titled "Binding Site Plans" is hereby added to the Black Diamond Municipal Code.

SECTION 3. A new section 17.34.010 is hereby added to the Black Diamond Municipal Code to read as follows:

**17.34.010 Purpose and Scope**

The purpose of this chapter is to clearly delineate the procedures and criteria used by the City of Black Diamond to review and approve binding site plans. A binding site plan is intended to provide an alternative means of dividing land for commercially or industrially zoned property. This chapter shall only apply to divisions of land for sale or lease of commercially or industrially zoned property and upon which no future residential structure will be placed except as an accessory use.

SECTION 4. A new section 17.34.020 is hereby added to the Black Diamond Municipal

Code to read as follows:

### **17.34.020 Application Requirements**

An application for a binding site plan shall be submitted to the community development department on forms provided by the community development director.

Unless otherwise provided, the term “director” in this chapter shall mean the community development director. A complete application for a binding site plan shall consist of:

- A. At least one original 18 inch by 24 inch drawing, eight copies, and one eight-and-one-half-inch by 11-inch copy containing the following information:
1. The location and size of all proposed lots, tracts, and buildings;
  2. Proposed and existing structures, including elevations and floor plans as known (plans which show building envelopes rather than footprints must include postconstruction treatment of unoccupied areas of the building envelopes);
  3. All proposed or existing uses;
  4. The location of proposed or existing open space, including any required landscaped areas;
  5. The location and identification of critical areas;
  6. The layout of an internal vehicular and pedestrian circulation system, including proposed ingress and egress for vehicles;
  7. The number and location of proposed or existing parking spaces on and off the site;
  8. A drainage plan which will accommodate the maximum proposed square footage of impervious surface, including the maximum proposed square footage of impervious surface exposed to vehicular use, subject to the requirements of the city's storm water drainage design standards;
  9. The location and size of utility trunk lines serving the site;
  10. The location and size of water bodies and drainage features, both natural and manmade;
  11. A grading plan showing proposed clearing and tree retention and the existing and proposed topography, detailed to two-foot contours, unless smaller contour intervals are otherwise required by the city code or rules and regulations promulgated thereunder;
  12. A layout of sewers and the proposed water distribution system;
  13. Proposed easements and access;
  14. Proposed signage;
  15. If the proposed binding site plan is part of an approved Master Planned Development (MPD), the proposed binding site plan shall show road, trail, utility, and other connections to adjacent MPD properties, as well as adjacent

approved MPD land uses; and

16. If the proposed binding site plan is part of an approved MPD, a copy of the signed and recorded MPD development agreement.

17. Depiction of easements, deed restrictions and other encumbrances referred to in sections D and G below.

B. A completed environmental checklist, if required by the State Environmental Policy Act and implementing ordinances.

C. A downstream drainage analysis or any other requirement specified in the City's surface water design manual, site development regulations or surface water policy ordinance.

D. All covenants, easements, maintenance agreements or other documents regarding mutual use of common open space, parking and access.

E. Sanitary Sewer availability certificate from the public sanitary sewer service provider if other than the City for an area not served by or intended to be served by the City.

F. Water availability certificate from the water purveyor providing service to the property if other than the City for an area not served by or intended to be served by the City.

G. Copies of all easements, deed restrictions or other encumbrances restricting the use of the site.

H. A phasing plan and time schedule, if the site is intended to be developed in phases.

I. The payment of all applicable fees as prescribed in the City's fee schedule.

J. The director may waive specific submittal requirements determined to be unnecessary for review of the application.

SECTION 5. A new section 17.34.030 is hereby added to the Black Diamond Municipal Code to read as follows:

**17.34.030 Determination of completeness-time limitations**

A. Within twenty-eight days after receiving a binding site plan application, the director shall mail or provide in person a written determination to the applicant, stating either that the application is complete, or that the application is incomplete and what is necessary to make the application complete. An application is complete for purposes of this section when all applicable fees are paid, and the application

meets the procedural submission requirements of BDMC 17.34.020 and is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The determination of completeness shall not preclude the City from requesting additional information or studies either at the time of the notice of completeness or subsequently if new information is required or substantial changes in the proposed action occur.

B. Within 14 days after an applicant has submitted the additional information identified by the director as being necessary for a complete application, the director shall notify the applicant whether the application is complete or whether additional information is necessary.

SECTION 6. A new section 17.34.040 is hereby added to the Black Diamond Municipal Code to read as follows:

**17.34.040 Review of Binding Site Plan**

Upon receiving a complete application for binding site plan approval, the director shall transmit for review and comment a copy of the site plan, together with copies of any accompanying documents as the director deems appropriate, to the following:

A. Public Works Director, who shall review the proposed binding site plan with regard to its conformance to the general purposes of adopted traffic and utility plans; adequate provisions for storm drainage, streets, alleys, other public ways, water and sanitary sewer; and conformance to any applicable improvement standards and specifications and compliance with Chapter 58.09 RCW and Chapter 332-130 WAC;

B. City fire marshal, who shall review the proposed binding site plan with regard to adequate provisions for emergency access;

C. Any other city department, utility provider, school district or other public or private entity as the director deems appropriate.

D. If the proposed binding site plan is located adjacent to the right of way of a state highway, the director shall give written notice of the application, including a legal description of the binding site plan and a location map, to the State department of transportation.

SECTION 7. A new section 17.34.050 is hereby added to the Black Diamond Municipal Code to read as follows:

**17.34.050 Approval.**

A. A proposed binding site plan shall be considered under the zoning and other land use control ordinances in effect at the time a fully completed application is filed with the City. The director shall consider and base a decision to approve, approve with conditions, deny or return the application for modifications, based on the following criteria:

1. Appropriate provisions are made for, but not limited to, the public health, safety, and general welfare for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, and sanitary wastes;

2. The proposed binding site plan is in conformity with the underlying zoning district requirements, other land use controls, building requirements, and other applicable regulations which may exist at the time of a completed application;

3. All other relevant facts were considered, including sidewalks and other planning features that assure safe walking conditions for pedestrians;

4. The public interest is served by the binding site plan and any dedications;

5. If the proposal is in an approved MPD, the proposed binding site plan is consistent with the approved MPD, the MPD conditions of approval, the MPD design standards, and the MPD development agreement.

B. The director's decision shall include written findings and conclusions supporting the decision. The director may require, as a condition of binding site plan approval, that any required improvements be guaranteed by the method described by BDMC 17.32.070 prior to binding site plan approval or issuance of building permits for any lot within the binding site plan.

C. The director may authorize or recommend authorization of the sharing of open space, parking, access and other improvements among contiguous properties subject to the binding site plan. Conditions of use, maintenance and restrictions on redevelopment of shared open space, parking, access and other improvements shall be identified on the binding site plan and enforced by covenants, easements or other similar mechanisms.

D. The director shall specify in the findings the use and intensity assumptions that were made regarding traffic volumes, parking requirements and other such conditions that are dependent upon the anticipated volume of traffic and types of uses.

E. As an alternative procedure, where the applicant is requesting a deviation from the development regulations, or a longer vesting period due to a requested phasing plan, the applicant may request that the City Council approve a development agreement, as authorized by RCW 36.70B.170, after public hearing and review and



recommendation from the director.

SECTION 8. A new section 17.34.060 is hereby added to the Black Diamond Municipal Code to read as follows:

**17.34.060 Final binding site plan approval and recording.**

A. After a binding site plan application has received approval from the director, the applicant shall have one hundred eighty (180) days to present to the city a final binding site plan in accordance with this section.

B. The approved binding site plan shall be surveyed and a professional land surveyor, licensed in the state of Washington, shall prepare the final binding site plan for recording in accordance with Chapter 58.09 RCW and Chapter 332-130 WAC.

C. The final binding site plan shall be drawn on mylar (or similar material with prior approval of the director) and include the following information in a format prescribed by the director:

1. Lots designated by number on the binding site plan within the area of the principal lot. Tracts shall be similarly designated and each tract shall be clearly identified with the ownership and purpose;

2. Signature and stamp of the land surveyor who prepared the binding site plan;

3. Reference to the recording number of the completed survey as required by this section if the boundaries have been previously surveyed;

4. Reference to all agreements or covenants required as a condition of approval;

5. Notarized signatures of all persons having an ownership or security interest in the land being divided;

6. Certificate for approval of the public works director; and

7. Certificate for approval of the director.

D. The binding site plan shall contain applicable inscriptions or attachments setting forth limitations and conditions to which the plan is subject, including any applicable irrevocable dedications of property, and shall contain a provision requiring that any development of the site be in conformity with the approved site plan.

E. After the City has returned the duly executed final binding site plan to the applicant, the applicant shall record the approved binding site plan with King County within thirty days. Failure to present the city with a final binding site plan or to record the executed final binding site plan with the time limits set forth herein shall render the binding site plan approval null and void.

F. Lots, parcels, or tracts adjusted or created through the binding site plan procedure shall be legal lots of record. The number of lots, tracts, parcels, sites, or divisions shall not exceed the number of lots allowed by other provisions of this chapter.

G. All provisions, conditions, and requirements of the binding site plan shall be legally enforceable on the purchaser or any other person acquiring a lease or other ownership interest of any lot, parcel, or tract created pursuant to the binding site plan.

H. Any sale, transfer, or lease of any lot, tract, or parcel created pursuant to the binding site plan, that does not conform to the requirements of the binding site plan shall be illegal and considered a violation of the binding site plan approval conditions and grounds for terminating the binding site plan approval.

I. The conditions of binding site plan approval shall be vested for five (5) years from the date of approval. All subsequent development on the site will be subject to the development regulations in effect when a development application is submitted.

SECTION 9. A new section 17.34.070 is hereby added to the Black Diamond Municipal Code to read as follows:

**17.34.070 Amendments, modifications and vacations.**

Any amendment, modification or vacation of a binding site plan shall be accomplished by following the same procedure and satisfying the same laws, rules and conditions as required for a new binding site plan application, as set forth in this chapter, except that amendments that adjust lot lines only, without creating any additional lots, shall be made in accordance with BDMC Chapter 17.36. If a portion of a binding site plan is vacated, the property subject to the vacated portion shall constitute one lot unless an approved full subdivision or short subdivision subsequently divides the property. The director may revoke a binding site plan approval, after an opportunity for notice and hearing to the affected property owners of record, if he determines that there has been a violation of the conditions of approval and the violation has not been corrected after reasonable notice to the owner of record to correct the violation.

SECTION 10. A new section 17.34.080 is hereby added to the Black Diamond Municipal Code to read as follows:

**17.34.080 Administrative rules.**

The director may promulgate administrative rules and regulations consistent with this chapter to implement the provisions and requirements of this chapter.

SECTION 11. A new section 17.34.090 is hereby added to the Black Diamond Municipal Code to read as follows:

**17.34.090 Appeal procedures.**

Within fourteen calendar days following the decision of the director pursuant to BDMC 17.34.050, the applicant may appeal the decision to the hearing examiner. The appeal shall be accomplished by filing of a written request with the city clerk for a hearing accompanied by the appeal fee. The notice of appeal shall briefly specify the issues of the appeal. Decisions not timely appealed are deemed final and conclusive. Provided, however, if a development agreement has been requested by the applicant, as authorized by section 17.34.050(E), then the City Council's action on the development agreement shall be deemed final city action, and any appeal shall be to the King County Superior Court.

SECTION 12. This Ordinance shall be in full force and effect five days after its passage, approval, posting and publication as provided by law. A summary of this Ordinance may be published in lieu of publishing the Ordinance in its entirety.

SECTION 13. If any provision of this Ordinance is determined to be invalid or unenforceable for any reason, the remaining provisions of this Ordinance shall remain in force and effect.

Introduced the \_\_\_\_ day of May, 2008.

Passed by a majority of the City Council at a meeting held on the \_\_\_\_ day of May, 2008.

\_\_\_\_\_  
Mayor Howard Botts

Attest:

\_\_\_\_\_  
Brenda Streepy, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Loren D. Combs, City Attorney

Ordinance No. 08-858

Page 8 of 9

Published: \_\_\_\_\_

Posted: \_\_\_\_\_

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

ORDINANCE NO. 08-\_\_\_\_\_

**AN ORDINANCE OF THE CITY OF BLACK DIAMOND,  
KING COUNTY, WASHINGTON, ADDING A NEW  
CHAPTER 17.34 TO THE BLACK DIAMOND MUNICIPAL  
CODE AND DELETING SUBSECTION 17.04.030(C) OF THE  
BLACK DIAMOND MUNICIPAL CODE REGARDING  
BINDING SITE PLANS**

WHEREAS, RCW 58.17 authorizes local governments to adopt a binding site plan process for commercially or industrially zoned properties as an alternative to the subdivision process; and

WHEREAS, on March 20, 2008 the City Council held a public hearing to consider the proposed binding site plan ordinance; and

WHEREAS, the Council finds that it is in the best interests of the City to adopt such a process; now therefore,

THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, ORDAINS AS FOLLOWS:

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SECTION 2. A new chapter 17.34 titled "Binding Site Plans" is hereby added to the Black Diamond Municipal Code.

SECTION 3. A new section 17.34.010 is hereby added to the Black Diamond Municipal Code to read as follows:

**17.34.010 Purpose and Scope**

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SECTION 4. A new section 17.34.020 is hereby added to the Black Diamond Municipal

Code to read as follows:

**17.34.020 Application Requirements**

An application for a binding site plan shall be submitted to the community development department on forms provided by the community development director.

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A. At least one original 18 inch by 24 inch drawing, eight copies, and one eight-and-one-half-inch by 11-inch copy containing the following information:

1. The location and size of all proposed lots, tracts, and buildings;
2. Proposed and existing structures, including elevations and floor plans as known (plans which show building envelopes rather than footprints must include postconstruction treatment of unoccupied areas of the building envelopes);
3. All proposed or existing uses;
4. The location of proposed or existing open space, including any required landscaped areas;
5. The location and identification of critical areas;
6. The layout of an internal vehicular and pedestrian circulation system, including proposed ingress and egress for vehicles;
7. The number and location of proposed or existing parking spaces on and off the site;
8. A drainage plan which will accommodate the maximum proposed square footage of impervious surface, including the maximum proposed square footage of impervious surface exposed to vehicular use, subject to the requirements of the city's storm water drainage design standards;
9. The location and size of utility trunk lines serving the site;
10. The location and size of water bodies and drainage features, both natural and manmade;
11. A grading plan showing proposed clearing and tree retention and the existing and proposed topography, detailed to two-foot contours, unless smaller contour intervals are otherwise required by the city code or rules and regulations promulgated thereunder;
12. A layout of sewers and the proposed water distribution system;
13. Proposed easements and access;
14. Proposed signage;
15. If the proposed binding site plan is part of an approved Master Planned Development (MPD), the proposed binding site plan shall show road, trail, utility, and other connections to adjacent MPD properties, as well as adjacent

approved MPD land uses; and

16. If the proposed binding site plan is part of an approved MPD, a copy of the signed and recorded MPD development agreement.

17. Depiction of easements, deed restrictions and other encumbrances referred to in sections D and G below.

B. A completed environmental checklist, if required by the State Environmental Policy Act and implementing ordinances.

C. A downstream drainage analysis or any other requirement specified in the City's surface water design manual, site development regulations or surface water policy ordinance.

D. All covenants, easements, maintenance agreements or other documents regarding mutual use of common open space, parking and access.

E. Sanitary Sewer availability certificate from the public sanitary sewer service provider if other than the City for an area not served by or intended to be served by the City.

F. Water availability certificate from the water purveyor providing service to the property if other than the City for an area not served by or intended to be served by the City.

G. Copies of all easements, deed restrictions or other encumbrances restricting the use of the site.

H. A phasing plan and time schedule, if the site is intended to be developed in phases.

I. The payment of all applicable fees as prescribed in the City's fee schedule.

J. The director may waive specific submittal requirements determined to be unnecessary for review of the application.

SECTION 5. A new section 17.34.030 is hereby added to the Black Diamond Municipal Code to read as follows:

**17.34.030 Determination of completeness-time limitations**

A. Within twenty-eight days after receiving a binding site plan application, the director shall mail or provide in person a written determination to the applicant, stating either that the application is complete, or that the application is incomplete and what is necessary to make the application complete. An application is complete for purposes of this section when all applicable fees are paid, and the application

meets the procedural submission requirements of BDMC 17.34.020 and is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The determination of completeness shall not preclude the City from requesting additional information or studies either at the time of the notice of completeness or subsequently if new information is required or substantial changes in the proposed action occur.

B. Within 14 days after an applicant has submitted the additional information identified by the director as being necessary for a complete application, the director shall notify the applicant whether the application is complete or whether additional information is necessary.

SECTION 6. A new section 17.34.040 is hereby added to the Black Diamond Municipal Code to read as follows:

**17.34.040 Review of Binding Site Plan**

Upon receiving a complete application for binding site plan approval, the director shall transmit for review and comment a copy of the site plan, together with copies of any accompanying documents as the director deems appropriate, to the following:

A. Public Works Director, who shall review the proposed binding site plan with regard to its conformance to the general purposes of adopted traffic and utility plans; adequate provisions for storm drainage, streets, alleys, other public ways, water and sanitary sewer; and conformance to any applicable improvement standards and specifications and compliance with Chapter 58.09 RCW and Chapter 332-130 WAC;

B. City fire marshal, who shall review the proposed binding site plan with regard to adequate provisions for emergency access;

C. Any other city department, utility provider, school district or other public or private entity as the director deems appropriate.

D. If the proposed binding site plan is located adjacent to the right of way of a state highway, the director shall give written notice of the application, including a legal description of the binding site plan and a location map, to the State department of transportation.

SECTION 7. A new section 17.34.050 is hereby added to the Black Diamond Municipal Code to read as follows:

**17.34.050 Approval.**



A. A proposed binding site plan shall be considered under the zoning and other land use control ordinances in effect at the time a fully completed application is filed with the City. The director shall consider and base a decision to approve, approve with conditions, deny or return the application for modifications, based on the following criteria:

1. Appropriate provisions are made for, but not limited to, the public health, safety, and general welfare for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, and sanitary wastes;

2. The proposed binding site plan is in conformity with the underlying zoning district requirements, other land use controls, building requirements, and other applicable regulations which may exist at the time of a completed application;

3. All other relevant facts were considered, including sidewalks and other planning features that assure safe walking conditions for pedestrians;

4. The public interest is served by the binding site plan and any dedications;

5. If the proposal is in an approved MPD, the proposed binding site plan is consistent with the approved MPD, the MPD conditions of approval, the MPD design standards, and the MPD development agreement.

B. The director's decision shall include written findings and conclusions supporting the decision. The director may require, as a condition of binding site plan approval, that any required improvements be guaranteed by the method described by BDMC 17.32.070 prior to binding site plan approval or issuance of building permits for any lot within the binding site plan.

C. The director may authorize or recommend authorization of the sharing of open space, parking, access and other improvements among contiguous properties subject to the binding site plan. Conditions of use, maintenance and restrictions on redevelopment of shared open space, parking, access and other improvements shall be identified on the binding site plan and enforced by covenants, easements or other similar mechanisms.

D. The director shall specify in the findings, the use and intensity assumptions that were made regarding traffic volumes, parking requirements and other such conditions that are dependent upon the anticipated volume of traffic and types of uses.

Deleted:

E. As an alternative procedure, where the applicant is requesting a deviation from the development regulations, or a longer vesting period due to a requested phasing plan, the applicant may request that the City Council approve a development agreement, as authorized by RCW 36.70B.170, after public hearing and review and

recommendation from the director.

**SECTION 8.** A new section 17.34.060 is hereby added to the Black Diamond Municipal Code to read as follows:

**17.34.060 Final binding site plan approval and recording.**

A. After a binding site plan application has received approval from the director, the applicant shall have one hundred eighty (180) days to present to the city a final binding site plan in accordance with this section.

B. The approved binding site plan shall be surveyed and a professional land surveyor, licensed in the state of Washington, shall prepare the final binding site plan for recording in accordance with Chapter 58.09 RCW and Chapter 332-130 WAC.

C. The final binding site plan shall be drawn on mylar (or similar material with prior approval of the director) and include the following information in a format prescribed by the director:

1. Lots designated by number on the binding site plan within the area of the principal lot. Tracts shall be similarly designated and each tract shall be clearly identified with the ownership and purpose;

2. Signature and stamp of the land surveyor who prepared the binding site plan;

3. Reference to the recording number of the completed survey as required by this section if the boundaries have been previously surveyed;

4. Reference to all agreements or covenants required as a condition of approval;

5. Notarized signatures of all persons having an ownership or security interest in the land being divided;

6. Certificate for approval of the public works director; and

7. Certificate for approval of the director.

D. The binding site plan shall contain applicable inscriptions or attachments setting forth limitations and conditions to which the plan is subject, including any applicable irrevocable dedications of property, and shall contain a provision requiring that any development of the site be in conformity with the approved site plan.

E. After the City has returned the duly executed final binding site plan to the applicant, the applicant shall record the approved binding site plan with King County within thirty days. Failure to present the city with a final binding site plan or to record the executed final binding site plan with the time limits set forth herein shall render the binding site plan approval null and void.

F. Lots, parcels, or tracts adjusted or created through the binding site plan procedure shall be legal lots of record. The number of lots, tracts, parcels, sites, or divisions shall not exceed the number of lots allowed by other provisions of this chapter.

G. All provisions, conditions, and requirements of the binding site plan shall be legally enforceable on the purchaser or any other person acquiring a lease or other ownership interest of any lot, parcel, or tract created pursuant to the binding site plan.

H. Any sale, transfer, or lease of any lot, tract, or parcel created pursuant to the binding site plan, that does not conform to the requirements of the binding site plan shall be illegal and considered a violation of the binding site plan approval conditions and grounds for terminating the binding site plan approval.

I. The conditions of binding site plan approval shall be vested for five (5) years from the date of approval. All subsequent development on the site will be subject to the development regulations in effect when a development application is submitted.

SECTION 9. A new section 17.34.070 is hereby added to the Black Diamond Municipal Code to read as follows:

**17.34.070 Amendments, modifications and vacations.**

Any amendment, modification or vacation of a binding site plan shall be accomplished by following the same procedure and satisfying by the same laws, rules and conditions as required for a new binding site plan application, as set forth in this chapter, except that amendments that adjust lot lines only, without creating any additional lots, shall be made in accordance with BDMC Chapter 17.36. If a portion of a binding site plan is vacated, the property subject to the vacated portion shall constitute one lot unless an approved full subdivision or short subdivision subsequently divides the property. The director may revoke a binding site plan approval, after an opportunity for notice and hearing to the affected property owners of record, if he determines that there has been a violation of the conditions of approval and the violation has not been corrected after reasonable notice to the owner of record to correct the violation.

SECTION 10. A new section 17.34.080 is hereby added to the Black Diamond Municipal Code to read as follows:

**17.34.080 Administrative rules.**

The director may promulgate administrative rules and regulations consistent with this chapter to implement the provisions and requirements of this chapter.

SECTION 11. A new section 17.34.090 is hereby added to the Black Diamond Municipal Code to read as follows:

**17.34.090 Appeal procedures.**

Within fourteen calendar days following the decision of the director pursuant to BDMC 17.34.050, the applicant may appeal the decision to the hearing examiner. The appeal shall be accomplished by filing of a written request with the city clerk for a hearing accompanied by the appeal fee. The notice of appeal shall briefly specify the issues of the appeal. Decisions not timely appealed are deemed final and conclusive. Provided, however, if a development agreement has been requested by the applicant, as authorized by section 17.34.050(E), then the City Council's action on the development agreement shall be deemed final city action, and any appeal shall be to the King County Superior Court.

SECTION 12. This Ordinance shall be in full force and effect five days after its passage, approval, posting and publication as provided by law. A summary of this Ordinance may be published in lieu of publishing the Ordinance in its entirety.

SECTION 13. If any provision of this Ordinance is determined to be invalid or unenforceable for any reason, the remaining provisions of this Ordinance shall remain in force and effect.

Introduced the \_\_\_\_ day of May, 2008.

Passed by a majority of the City Council at a meeting held on the \_\_\_\_ day of May, 2008.

\_\_\_\_\_  
Mayor Howard Botts

Attest:

\_\_\_\_\_  
Brenda Streepy, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Loren D. Combs, City Attorney

Ordinance No. 08-\_\_\_\_\_  
Page 8 of 9

Published: \_\_\_\_\_

Posted: \_\_\_\_\_

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

Ordinance No. 08-\_\_\_\_\_

Page 9 of 9

# CITY COUNCIL AGENDA BILL

City of Black Diamond  
Post Office Box 599  
Black Diamond, WA 98010

ITEM INFORMATION			
<b>SUBJECT:</b>  <b>Resolution No. 08-519, contracting with Municipal Research Services Center for Small Works and Consulting databases.</b>	<b>Agenda Date: June 19, 2008</b>		<b>AB08-066</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		
	City Attorney – Loren D. Combs		
	City Clerk – Brenda L. Streepy		X
	Finance – May Miller		
	Public Works – Seth Boettcher	X	
	Economic Devel. – Andy Williamson		
	Police --		
Cost Impact: \$100			
Fund Source: Street Fund			
Timeline: ASAP			
<b>Attachments: Resolution No. 08-519, MRSC Roster Contract</b>			
<b>SUMMARY STATEMENT:</b>  <p>The City is required to maintain a small works roster according to RCW 39.04.155 and 39.8 for contracting public works services without formal advertising requirements. The administrative costs and time to advertise and maintain our own small works can be somewhat burdensome. Staff is recommending that the City sign a contract with Municipal Research Services Center, a non profit organization serving Washington Cities. MRSC is now administering a small works roster and has made it available to Washington Cities by contract. The MRSC roster is a fee based service for a participants. Our annual fee for participation is \$100.</p> <p>MRSC Rosters online database is a tool to assist us in soliciting quotes for small public works projects (projects under \$200,000) through the Contractor Roster. MRSC also maintains a consultant roster which covers a wide variety of disciplines. MRSC Rosters accepts, processes, and manages contractor and consultant information to save us time while providing us with an efficient and more extensive list of potential bidders than we could attract on our own.</p> <p>Signing this contract with MRSC will not negate the advertising and selection process that the City has already undertaken for various consultant services this year.</p>			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b>			
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 08-519, authorizing the Mayor to sign a contract to allow the City of Black Diamond to use the Small Work Roster maintained and administered by Municipal Research Services Center.</b>			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
June 19, 2008			

**RESOLUTION NO. 08-519**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, ON THE SUBJECTS OF ESTABLISHING A SMALL WORKS AND CONSULTING ROSTERS AND UTILIZING MUNICIPAL RESEARCH SERVICES CENTER FOR THE ADMINISTRATION OF THESE ROSTERS AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH MUNICIPAL RESEARCH SERVICES CENTER OF WASHINGTON**

**WHEREAS**, RCW 39.04.155 and other laws regarding contracting for public works by municipalities, allow certain contracts to be awarded by a small works roster process; and

**WHEREAS**, RCW 39.80.030 requires that an agency publish in advance that agency's requirement for professional services and that one of the ways to accomplish that notification is to announce generally to the public its projected requirements for any category or type of professional services and request qualification statements to be kept on file with the agency,

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

**Section 1.** The City of Black Diamond wishes to contract with the Municipal Research and Services Center of Washington (MRSC) to adopt for City use those state wide electronic databases for small public works roster and consulting services developed and maintained by MRSC.

**SECTION 2.** The Mayor is hereby authorized to execute a contract with Municipal Research Services Center of Washington as contained 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 19<sup>TH</sup> DAY OF JUNE, 2008.**

CITY OF BLACK DIAMOND:

---

Howard Botts, Mayor

Attest:

---

Brenda L. Streepy, City Clerk



### AGENCY REGISTRATION INSTRUCTIONS

- ❖ Fill in the information shown in the attached **MRSC Rosters Agency Contract**.
- ❖ Secure necessary approvals and/or signatures.
- ❖ Make check or online payment based on Agency Fee Structure.
- ❖ Mail check for annual membership fee with contract:

MRSC Rosters  
2601 Fourth Avenue, Suite 800  
Seattle, WA 98121-1280

- ❖ **Agency Fee Structure:** This fee is based on your agency's total capital expenditures for the most recent complete fiscal year. Compute your annual membership fee by:
  1. For your most recent complete fiscal year, find (or estimate) total capital expenditures for your agency, [Note: For cities this is the total of BARS code lines 594 and 595. Other agencies have similar BARS code lines.]
  2. Find your fee in the table above.

MRSC Rosters Agency Fee Structure	
Total Capital Expenditures Per Year (\$M)	Annual Fee
50+	\$750
25 - 50	\$500
15 - 25	\$400
10 - 15	\$300
5 - 10	\$200
less than 5	\$100



## MRSC Rosters Agency Contract

This contract (the "Contract") is made by and between Municipal Research and Services Center of Washington ("MRSC"), a Washington not-for-profit corporation, and the City of Black Diamond (the "Agency").

### Agency Information

Name of Agency	City of Black Diamond
County Location	King County
Mailing Address	P.O. Box 599 Black Diamond, WA 98010
Agency Website	<a href="http://ww.ci.blackdiamond.wa.us">ww.ci.blackdiamond.wa.us</a>

1. Purpose. The purpose of this Contract is to provide the Agency with membership in a Contractor Roster - Small Public Works ("Contractor Roster") and a Consultant Roster - Consulting Services ("Consultant Roster" and, collectively, "MRSC Rosters"). MRSC is making membership in the MRSC Rosters available to a number of local government agencies in Washington State to provide them with more efficient and cost effective services.

2. Scope of Services. MRSC shall create and maintain the MRSC Rosters as allowed to the Agency and other public agency members by RCW 39.04.155 and Chapter 39.80 RCW, respectively. MRSC shall advertise at least annually for the Small Works Roster in accordance with statutory requirements on behalf of all Agencies with which MRSC has similarly contracted ("Roster Members"), receive and review contractor applications for compliance with basic statutory eligibility requirements, and maintain lists of Contractor Roster contractors. MRSC shall advertise at least annually the Consultant Roster in accordance with statutory requirements on behalf of all Roster Members, receive and review firms' applications for completeness, and maintain lists of architects, engineers, and other consultants on the Consultant Roster.

3. Use of MRSC Rosters by Agency. The Agency may use the MRSC Rosters as it determines appropriate to identify and solicit eligible contractors and consultants. Such use is not mandatory, and no implication of mandatory use by the Agency is intended by execution of this Contract.

(a) Contractor Roster - Small Public Works. The Agency may use the Contractor Roster to select contractors for public work projects up to \$200,000 in value or as otherwise limited by statutes, ordinances, and laws applicable to the Agency. The Agency shall be independently responsible for its own and the selected contractors' compliance with all additional or varying laws and regulations governing purchases, including all selection laws, retainage and bonds, prevailing wages, and any other appropriate requirements.

The Agency shall be independently responsible, consistent with applicable laws and its own policies and practices, for the determination that the selected contractors are responsible contractors. The Agency also shall be independently responsible to conduct a quotation or bid process consistent with applicable statutes, ordinances, and the requirements of the Agency and to enter into a contract directly with the contractor thus selected.

(b) Consultant Roster - Consulting Services. The Agency may use the Consultant Roster to select engineering, architectural, or other consultants for negotiations and contracts, and will do so in accord with all applicable laws and regulations. The Agency shall be independently responsible for its own and the selected consultants' compliance with all additional or varying

laws and regulations governing services, including all selection laws, and any other requirements as appropriate.

The Agency shall be independently responsible, consistent with applicable laws and its own policies and practices, for the determination that the selected consultants or firms are responsible. The Agency also shall be independently responsible to conduct a consultant selection process consistent with applicable statutes, ordinances, and the requirements of the Agency and to enter into a contract directly with the consultant thus selected.

(c) Access to MRSC Rosters. MRSC shall make the MRSC Rosters and associated applications and qualifications for each available to the Agency by providing it with a user name and password for access to MRSC's electronic MRSC Rosters.

4. Compensation of Contractors and Consultants. The Agency shall be independently responsible for payments to any contractor that is selected as a result of its use of the Contractor Roster and to any consultant that is selected as a result of its use of the Consultant Roster. The Agency shall make all such payments directly to the contractor or consultant selected by the Agency.

5. Term. This Contract shall be effective upon its execution by both parties. It shall continue in force until cancelled by either party upon 30 days' notice and as provided in Section 10.

6. Compensation of MRSC. The Agency will pay MRSC an annual membership fee in the amount of \$100 based on the below Agency Fee Structure for services under this Contract. This amount will be paid in full, within 30 days of the execution date of this Contract (and subsequent anniversary dates of this Contract).

**MRSC Rosters Agency Fee Structure**

Annual Capital Expenditures Per Year (\$M)	Annual Fee
50+	\$750
25 - 50	\$500
15 - 25	\$400
10 - 15	\$300
5 - 10	\$200
Less than 5	\$100

Payment to be made by:

check enclosed

7. Relationship of Parties. MRSC agrees that it will perform the services under this Contract as an independent contractor and not as an agent, employee, or servant of the Agency. Nothing in this Contract shall be construed to render the parties partners or joint venturers.

8. Limitation of MRSC Liability. MRSC shall not be, directly or impliedly, a party to (i) any contract for public works construction into which the Agency may enter as a result of the Agency's use of the Contractor Roster; or (ii) any contract for engineering, architectural, or other services into which the Agency may enter as a result of the Agency's use of the Consultant Roster. MRSC does not accept responsibility or liability for the performance of any contractor or consultant used by the Agency as a result of its use of the MRSC Rosters.

9. Hold Harmless and Indemnification. Each party shall defend, indemnify, and hold the other party harmless from any and all claims, injuries, damages, losses, or suits, including attorney fees, arising from any negligent act or omission that party's officers, employees, volunteers, and agents in connection with the performance of this Contract.

10. Termination. This Contract may be terminated, with or without cause, by written notice of either party to the other. Termination shall be effective thirty (30) days after written notice.

11. Non-assignment. MRSC shall not subcontract or assign any of the rights, duties, or obligations imposed upon it by this Contract without the prior express written consent of the Agency.

12. Governing Law and Venue. This Contract shall be governed by the laws of the State of Washington.

13. Authority. Each signatory to this Contract represents that he or she has full and sufficient authority to execute this Contract on behalf of MRSC or the Agency, as the case may be, and that upon execution of this Contract it shall constitute a binding obligation of MRSC or the Agency, as the case may be.

14. Severability. Should any clause, phrase, sentence or paragraph of this Contract be declared invalid or void, the remaining provisions of this Contract shall remain in full force and effect.

15. Complete Agreement. This Contract constitutes the entire understanding of the parties. Any written or verbal agreements that are not set forth herein or incorporated herein by reference are expressly excluded.

16. Contacts. For purposes of Contract administration, the Agency designates the following contacts:

Primary Contact: Seth Boettcher  
Title: Public Works Director  
Email: [sboettcher@ci.blackdiamond.wa.us](mailto:sboettcher@ci.blackdiamond.wa.us)  
Telephone: 360-886-2560  
Facsimile: 360-886-2592

Alternative Contact: Brenda Streepy  
Title: City Clerk  
Email: [bstreepy@ci.blackdiamond.wa.us](mailto:bstreepy@ci.blackdiamond.wa.us)  
Telephone: 253-631-0351  
Facsimile: 360-886-2592

17. Signatures. By signing this Contract, the signatories below certify that they have the authority to enter into this Contract, that they agree to payment of fees in accordance with the stated Agency Fee Structure and that they agree that the Agency shall be bound by and adhere to the Terms and Conditions stated.

MRSC

AGENCY

\_\_\_\_\_  
[Name]  
[Title]  
Date\_\_\_\_\_

\_\_\_\_\_  
Howard Botts  
Mayor of Black Diamond  
Date\_\_\_\_\_



# CITY COUNCIL AGENDA BILL

City of Black Diamond  
Post Office Box 599  
Black Diamond, WA 98010

ITEM INFORMATION			
<b>SUBJECT:</b>  <b>Resolution No. 08-520, authorizing the Mayor to execute a contract with Cascade Engineering</b>	<b>Agenda Date: June 19, 2008</b>		<b>AB08-067</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		
	City Attorney – Loren D. Combs		
	City Clerk – Brenda L. Streepy		X
	Finance – May Miller		
	Public Works – Dan Dal Santo		
	Economic Devel. – Andy Williamson		
	Police – Chief Kiblinger	X	
Timeline: Three year contract	Court – Kaaren Woods		
<b>Attachments: Resolution No. 08-520, Contract</b>			
<b>SUMMARY STATEMENT:</b>  Adoption of the resolution will approve a three-year contract with Cascade Engineering to provide speed measuring device standard calibration/certification.			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b>			
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 08-520, authorizing the Mayor to execute a contract with Cascade Engineering Services, Inc. to provide speed measuring device standard calibration/certification for the police department.</b>			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	
June 19, 2008			

**RESOLUTION NO. 08-520**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH CASCADE ENGINEERING SERVICES, INC. TO PROVIDE SPEED MEASURING DEVICE STANDARD CALIBRATION/CERTIFICATION FOR THE POLICE DEPARTMENT**

**WHEREAS**, the City's police department is required to have their speed measuring devices calibrated and certified annually; and

**WHEREAS**, the City desires to retain the services of Cascade Engineering, a firm skilled and qualified in the calibration and certification of speed measuring devices;

**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 three-year contract/agreement with Cascade Engineering as contained 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 19TH DAY OF JUNE, 2008.**

CITY OF BLACK DIAMOND:

\_\_\_\_\_  
Howard Botts, Mayor

Attest:

\_\_\_\_\_  
Brenda L. Streepy, City Clerk

## SECTION 1

# SPEED MEASURING DEVICES (SMD) COMPREHENSIVE CALIBRATION AGREEMENT

This Comprehensive Speed Measuring Device (SMD) Standard Calibration / Certification Agreement is entered into as of this \_\_\_ day of \_\_\_\_\_, 2008 (the "Effective Date"), by and between the **City of Black Diamond Police Department** and **Cascade Engineering Services, Inc.** ("**Cascade**").

### 1.0 CALIBRATION / CERTIFICATION:

- 1.1 **Cascade** shall provide the **City of Black Diamond Police Department** with the Speed Measuring Device (SMD) Standard Calibration / Certification Plan", as set forth below, for all SMD's listed in "SECTION 3", traceable to the National Institute of Standards and Technology and in accordance with ISO/IEC 17025:2005. Under the "SMD Standard Calibration / Certification Plan", **Cascade** shall verify proper operation of all parameters, using the manufacturers, procedures and specifications. The SMD Standard Calibration / Certification Plan include adjustments as necessary. All calibrations / certifications shall include replacement of standard fuses. **Batteries and special fuses** will result in additional costs. SMD's calibrated / certified "In Cascades" laboratory shall be delivered within five to seven work days from date of receipt. (Excluding weekends and holidays.)
- 1.2 Additional terms and conditions regarding the calibration / certification services to be provided by **Cascade** under this agreement are set forth on "SECTION 2", and incorporated herein.
- 1.3 Upon prior written consent from the **City of Black Diamond Police Department** (including email), **Cascade** may subcontract certain repairs to the OEM. **Cascade** shall not be held responsible to meet the above stated services for turnaround times for SMD's that are subcontracted. A repair charge for equipment that is subcontracted is subject to change based upon the costs incurred by **Cascade**. **Cascade** will give notice and seek your prior approval.
- 1.4 Simultaneously with the execution of this Agreement, **Cascade** will provide the **City of Black Diamond Police Department** with a Certificate of Guarantee, the form of which is attached hereto in "SECTION 5". Such Certificate of Guarantee will provide for the representations and warranties as set forth therein.

### 2.0 SCHEDULING OF SERVICE

- 2.1 The majority of the **City of Black Diamond Police Department** equipment listed in "SECTION 3" maybe be calibrated / certified at **City of Black Diamond Police Department's** facility, by **Cascade's** laboratory service team. The minority number of the **City of Black Diamond Police Department** equipment may be required to be calibrated / certified at **Cascade's** facility. On-site calibration / certification events shall be scheduled as required.

### 3.0 CALIBRATION REPORTS & CERTIFICATES

- 3.1 **Cascade** shall provide Calibration Certificates and/or detailed Service Reports, for all repair and calibration / certification events. Reports and Summary Activity and or actual certificates shall be provided (as verification of service) at the completion of each On-Site calibration / certification event. Notarized certification documents will be mailed to the appropriate agency.

### 4.0 TRANSPORTATION

- 4.1 **Cascade** shall provide pick-up and delivery within a fifty (75) mile radius of Redmond, Washington 98052, as reasonably required at no additional charge. All other shipments are FOB Redmond, WA. Your agency may at its option elect to provide their own i.e. UPS, DHL, FED EX account number for handling and shipping costs.

### 5.0 RECALL

- 5.1 All SMD instruments calibrated shall be placed on **Cascade's** automatic recall program for interval tracking and notice generation in accordance with your calibration certification service cycles. Reports are also available on line through "**IndySoft Gage InSite**" tracking software. Recall reports shall be sent to client one (1) month prior to calibration due date.

### 6.0 CALIBRATION STICKERS

- 6.1 Calibration / certification stickers shall be affixed to each item and shall contain the following:

- |                 |                               |
|-----------------|-------------------------------|
| * Report Number | * Date Calibrated / Certified |
| * Date Due      | * Technician's Initials       |

### 7.0 MONTHLY ACTIVITY REPORTS

- 7.1 **Cascade** shall provide the **City of Black Diamond Police Department** with Monthly Activity Reports, as necessary, detailing calibration / certification and repair activity, from the prior month, upon request.

### 8.0 EVALUATIONS AND REPAIRS

- 8.1 In the event an SMD requires repair, **Cascade** shall provide the **City of Black Diamond Police Department** with an evaluation repair quote, via e-mail or Fax for agency approval. **Cascade** shall not proceed with any repairs until signed approval is received, along with a Purchase Order Number, from your agency. The standard minimum hourly evaluation fee is **\$85.00** and shall be applied to each SMD repair. The \$85.00 /hour rate is invoiced in fifteen **(15) minute increments**. If the repair is approved, the evaluation fee is waived.
- 8.2 **Cascade** will make every effort to ensure that **repair turnaround time** is Fifteen (15) work days after approval is received.
- 8.3 All repaired items shall be warranted for a period of ninety (90) days from date of service.



## 9.0 TEAM START-UP MEETING/AGENCY PROFILE

- 9.1 Upon receipt of a purchase order, **Cascade** shall create a technical and administrative profile for the **City of Black Diamond Police Department**. This profile shall include a detailed listing of service requirements relative to any compliance standards or of those unique to the **City of Black Diamond Police Department**.
- 9.2 **Cascade** shall initiate a "start-up" meeting between its service team and the respective personnel from the **City of Black Diamond Police Department**. This meeting shall provide for formal introduction of personnel; a review of location, equipment, control and identification, scheduling of service, and the agency profile.

## 10.0 SERVICE REVIEWS

- 10.1 **Cascade** encourages formal service reviews of commitments made in the initial calibration / certification service agreement. Personnel present at the start up meeting should attend. This meeting should not only be a report card of performance, but also a mechanism of control with a focus on contractual commitments.

## 11.0 ONE, TWO OR THREE YEAR PROGRAM

- 11.1 **Cascade** is pleased to offer the **City of Black Diamond Police Department** a **ONE (1), TWO (2), or THREE (3) YEAR** Standard SMD Calibration / Certification Service Program, which guarantees the list prices set forth on "**SECTION 3**" shall remain constant for the term of **TWELVE, TWENTY FOUR or THIRTY SIX** months from the Effective Date.
- 11.2 Your agency has accepted the \_\_\_\_\_ year program. Notwithstanding the foregoing, either party may terminate the agreement upon 30 days written notice to the other party. In addition, either party may terminate this Agreement immediately upon written notice to the other party in the event the other party (a) becomes subject to a voluntary or involuntary petition in bankruptcy or makes a general assignment for the benefit of creditors, or (b) commits a material breach of this Agreement which is not cured within thirty (30) days of receiving notice from the non-breaching party. Upon termination, the **City of Black Diamond Police Department**, shall be relieved of all payment obligations for the remainder of the term of the agreement (except unpaid fees relating to services provided prior to the date of termination for which the **City of Black Diamond Police Department** shall remain liable), and **Cascade** shall promptly reimburse the **City of Black Diamond Police Department** for any fees paid by the **City of Black Diamond Police Department** in advance for future services under the agreement
- 11.3 This Agreement shall be automatically renewable by the **City of Black Diamond Police Department** at its option for **TWELVE** months from the initial term, subject to (**but not necessarily imposed**) an increase to the list prices set forth on "**SECTION 3**" not to exceed seven (7) percent.

## 12.0 PROGRAM PRICE

- 12.1 **Cascade** is pleased to offer the **City of Black Diamond Police Department** Corporation the above stated Calibration / Certification Service Program for the equipment listed in SECTION 3.
- 12.2 All work performed on-site must reflect a minimum billing computation of **\$750.00** per man day, unless otherwise agreed to in writing by **Cascade**. Any substantial delays during the on-site resulting in downtime for **Cascade's** field service team shall be billed at a rate of **\$150.00** per hour unless the delays are due to conditions out of the **City of Black Diamond Police Department** reasonable control.

## 13.0 PAYMENT TERMS

- 13.1 Payment terms: **Cascade** will invoice the **City of Black Diamond Police Department** on the day services are provided. All payments shall be due within thirty (30) days of date of service. A 1.5 percent monthly fee will apply to all outstanding balances past thirty (30) days from date service is provided.

## 14.0 SOFTWARE LICENSE

- 14.1 During the term of this Agreement, the **City of Black Diamond Police Department** shall have a royalty-free license to use one (1) copy of the following software of **Cascade (Cascade Software): IndySoft Gage InSite** software. Your agency may authorize additional personnel as you designate, to access **IndySoft Gage InSite** software after notifying **Cascade**.
- 14.2 Additional terms and conditions regarding the license set forth in Section 15.1 are set forth on "**SECTION 4**", and incorporated herein. In the event of a conflict between this Agreement and "**SECTION 4**", this Agreement shall control.

## 15.0 GENERAL

- 15.1 **Solicitation of Employees.** During the term of this Agreement and for a period of one (1) year after termination of this Agreement, neither party will employ, offer employment to, or engage as a contractor, or otherwise obtain the service or skills of, any individual who is or was engaged by the other party as an employee at any time during the term of this Agreement.
- 15.2 **Entire Agreement; Modification.** This Agreement, together with the attached Exhibits, constitute the entire agreement of the parties with respect to its subject matter, supersede any and all prior proposals, agreements and understandings of the parties, whether written or oral, and may not be amended except by a writing signed by both parties. The terms and conditions of this Agreement shall prevail notwithstanding any conflict with the terms and conditions of any other instrument submitted by **Cascade** or the **City of Black Diamond Police Department**.
- 15.3 **Governing Law.** This Agreement shall in all respects be governed by the laws of the State of Washington without reference to its principles of conflicts of laws.

- 15.4 **Caption Headings.** The captions and headings used in this document are for convenience of reading only and are not to be used in the interpretation or construction of this Agreement.
- 15.5 **Severability.** If any of the provisions of this Agreement are held to be invalid under any applicable statute or rule of law, they are, to that extent, deemed omitted.
- 15.6 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.
- 15.7 **Relationship of Parties.** Each party will be and act as an independent contractor and not as an agent or partner with the other party for any purpose related to this Agreement or the transactions contemplated hereunder, and neither party will by virtue of this Agreement have any right, power or authority to act or create any obligation, expressed or implied, on behalf of the other party.

**City of Black Diamond Police Department**

Signed By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Cascade Engineering Services, Inc.**

Signed By: \_\_\_\_\_  
Print Name: Dennis G. Kringer  
Title: Director  
Date: \_\_\_\_\_

**Purchase Order #** \_\_\_\_\_

**Effective** \_\_\_\_\_ **through** \_\_\_\_\_ **Dates**

Your agency has accepted **Cascades Standard SMD Calibration / Certification** services \_\_\_\_\_ year program. Please return a signed copy of this agreement along with your \_\_\_\_\_ year term Purchase Order for the amount contracted referencing this quotation, to begin your Service Program with Cascade Engineering Services, Inc.

## SECTION 2

### 1.0 TERMS & CONDITIONS

- 1.1 For the purposes of these Terms and Conditions, "AGENCY" shall mean the **City of Black Diamond Police Department**.

### 2.0 ON-SITE TERMS

- 2.1 Completion of **Cascade's** work is contingent upon access to the **City of Black Diamond Police Department's** SMD equipment in order to perform meaningful work.

Once **Cascade** has staffed the job and commenced work, **Cascade** is to be permitted to work without interruption. Any delays caused by events not under the direct control of **Cascade** shall be chargeable to the agency at current rates at time of work. Work performed is billed according to the Agreement of which these terms and conditions are an Exhibit. If overtime becomes necessary to accelerate the work schedule per the agency request, the overtime portion shall be billable, unless agency has obtained in writing from **Cascade** agreement to other terms. Premium rate is applicable when on-site service is required on a demand basis, within 72 hours notice. Premium rate is 1.5 and/or 2.0 times the standard costs when performed during normal working hours. Overtime/Double time charges will be billed when service is performed per the agency's request according to the outline within this document. Overtime for **Cascade** employees is defined as all hours worked fewer than twelve (12) and over eight (8) on any workday. Double time for **Cascade** employees is defined as all hours worked over twelve (12) on any workday and all hours worked on the employees seventh consecutive day worked in a workweek. Work performed outside normal work hours (8:00 a.m. to 5:00 p.m.) per the agency's request as defined above will be billed the contract cost plus an overtime multiplier of 1.5 or 2.0 whichever is applicable, (i.e. unit cost times multiplier = premium rates).

### 3.0 CANCELLATION

- 3.1 When a service call, and/or pre-scheduled service date has been confirmed with your agency and is canceled by your agency with less than seven (7) days notice, **Cascade** reserves the right to invoice for non-cancelable costs, such as airline tickets, lodging agreements, etc., **Cascade** shall provide agency with receipt/s of all non-cancelable charges.

### 4.0 DELAYS IN PERFORMANCE

- 4.1 **Cascade** will not be liable for delays in performance or for non-performance due to unforeseen circumstances or causes beyond its reasonable control.

### 5.0 PAYMENT AND SECURITY TERMS

- 5.1 Should the agency fails to pay any sum when due or fail to perform any other material provision of any agreement with **Cascade**, **Cascade** will not be obligated to continue performance under any agreement with agency after 10 days from the date of written notice to agency unless full payment is received within such time.
- 5.2 Title to the equipment remains with and is retained by **Cascade** until the purchase price is paid in full. Warranty will be voided if Cascade does not receive payment by the tenth day after any previously agreed credit terms expire.

## 6.0 OFF-SETS

- 6.1 **Cascade** shall be entitled at all times to off-set any amount owing at any time from the **City of Black Diamond Police Department** or any of its affiliated companies to **Cascade**, against any amount payable at any time to **Cascade** or any of its affiliated companies.

## 7.0 WARRANTIES

- 7.1 **Cascade** warrants that the services of its On-Site/In-House personnel shall be competent. If any portion of the repair work performed by **Cascade** shall prove to have been defective within three (3) months after completion of work by **Cascade**, **Cascade** shall, upon prompt written notice from the agency, as its sole obligation, correct such defective work or repair such SMD's. After three (3) months, all such liability shall terminate. Calibration and certification services warrants the accuracy results at date of test only and does not warrant the accuracy during the entire recall period. **Cascade** will provide a second test upon request to verify a questionable accuracy when tamper seals are intact, unit has not been damaged or abused, and test is requested within 90 days.
- 7.2 **Cascade** warrants that the calibration / certification service it provides is warranted for 90 days from date of service. In the event that the agency believes to have discovered any such defect during the applicable Warranty Period, the agency may return the equipment believed to defective, freight prepaid, to **Cascade** during the Warranty Period, and if **Cascade** determines that the returned SMD in question, is defective, **Cascade** shall, at its option, repair the defective SMD and return it to the agency, freight prepaid. Call **Cascade** at 425.895.8617 for a return authorization number before returning any equipment.
- 7.3 If **Cascade** determines that the equipment is not defective or was not under warranty, it will return it to the agency, freight collect. **Cascade** shall have no responsibility or obligation with respect to any deficiency resulting from accidents, misuse, or modifications to SMD's by agency personnel. **Cascade** will only be responsible with respect to any deficiency when all tamper seals are completely intact. **Cascade's** limited warranty on equipment is exclusive and in lieu of all other warranties, and **Cascade** makes no other warranties, express or implied, and **Cascade** expressly disclaims any warranty of merchantability or fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusions may not apply.

## 8.0 ABNORMAL ABUSE

- 8.1 **Cascade** warrants the calibration / certification service under normal circumstances for 90 days from service date. If **Cascade** determines that the SMD in question has been subjected to abuse, i.e. dropping, water damage during the warranty period the warranty is null and void. **Cascade** will notify your agency of it's findings and seek further disposition of the unit.

## 9.0 ABANDONED PROPERTY

- 9.1 Any client equipment on hold pending client action, such as estimate approval, purchase order or prepayment, will be subject to a storage fee of \$150.00 per month for each month the item remains at Cascade Engineering Services Metrology Laboratories. Storage fees will be effective 30 days after initial notification by Cascade Engineering Services Metrology Laboratories. The storage fee will be assessed at \$75.00 per week. Items abandoned at Cascade Engineering Services Metrology Laboratories will be confiscated and sold to collect storage fees and reasonable legal and administrative expenses.

## 10.0 SUB-CONTRACTORS

- 10.1 **Cascade** may at times be required to send the SMD back to the OEM for repairs / updates that are beyond **Cascade's** capabilities. The prices quoted from these contractors are valid at time price is issued. **Cascade** maintains no control when price changes are put in effect.

## 11.0 SHIPMENT, RISK OF LOSS AND PACKING

**Cascade** will package for shipment and storage and will ship in accordance with standard commercial practice. Agency may specify packing or shipping instructions subject to agreement by **Cascade**. Any additional charges for shipments moving under agency instructions will be freight prepaid and added to **Cascade's** invoice. Title to products and risk of loss and damage will pass to agency at destination. However, when products are shipped under agency shipping instructions, title and risk of loss and damage will pass to agency at **Cascade's** shipping dock.

## 12.0 LIABILITY

- 12.1 **Cascade**, its successors, assigns, subcontractors and suppliers of any tier shall not be liable in contract or in tort (including negligence or strict liability) for any special, indirect, incidental, or consequential damages, including but not limited to damage or loss of adjacent property or equipment, loss of profit or revenue, loss of use of facility or equipment, cost of capital, cost of replacement equipment or claims of any third party. The remedies of the agency set forth herein are exclusive and the total cumulative liability of **Cascade** with respect to any contract, or anything done in connection therewith such as the performance or breach thereof, or from the manufacture, sale, delivery, resale, installation or technical direction of installation, repair, maintenance or any equipment covered by or furnished under a contract whether in contract, in tort (including negligence or strict liability), or otherwise, shall not exceed the price set forth herein for the work.

## 13.0 RESTRICTION OF PERFORMANCE

- 13.1 The prices set forth are conditioned on the right of Cascade to have the work performed by its service technicians or such other persons as it may choose.

#### 14.0 **SECRECY**

14.1 **Cascade** will employ diligent efforts and exercise a reasonable degree of care to maintain confidential all information furnished it by your agency and identified in writing as confidential. Such degree of care shall at least be as high as the degree of care which it would normally be expected to exercise with respect to its own proprietary information. **Cascade**, however, shall have the right to use or disclose any such information: (a) which already in its possession at the time or receipt from your agency, (b) which is generally known to the trade, (c) which is contained in any issued patent, publication or other literature from and after the date it becomes available to the public through issuance or publication, (d) which is received from a third party without restriction. Your agency and **Cascade** have signed a nondisclosure agreement which shall supplement this Secrecy section and remain effective for the duration of this Agreement.

#### 15.0 **STANDARD CONDITIONS OR SALE/CHANGES**

15.1 **Cascade** hereby gives notice of its objection to any additional or different conditions except for any such terms or conditions as may be accepted expressly by it in writing in reference to this agreement.

## SECTION 3 EQUIPMENT LIST & COST ANALYSIS



## The Calibration Costs for Calibration and Certification

<b>Doppler radar, per calibration &amp; certification event.</b>	<b>\$ 90.00 each device</b>
<b>Lidar, per calibration &amp; certification event.</b>	<b>\$ 90.00 each device</b>
<b>Expert court testimony, portal-to-portal.</b>	<b>\$120.00.00 per hour</b>

**Black Diamond Police Department**  
**25510 Lawson St/PO Box 309**  
**Black Diamond, WA 98010**  
**253-631-1012 Fax 360-886-2901**  
**Speed Measuring Device Listing May 2008**

Officer	Unit #	Make	Model	Serial	Antenna Serial #	Tuning Forks 30 mph	Tuning Forks 50 mph	Calibrated Last	Cal Cost
<b>Vehicle Units</b>									
	10	Kustom	HR-12	AA-8476				5/7/2008	\$ 90.00
Cripe	15	Kustom	Golden Eagle	DP01597	Front DE02545 Rear DE02579	24834	32046	5/7/2008	\$ 90.00
Chatterson	K9	Kustom	Golden Eagle II	XE04300	Front DE10067 Rear DE10088	28761	30584	5/7/2008	\$ 90.00
Volpone	21	Kustom	Golden Eagle II	XE04286	DE10085 DE100895	28580	30588	no	
Dunn	35	Kustom	Golden Eagle	XE04281	Front DE10046 Rear DE10081	28769	30485	5/7/2008	\$ 90.00
Richards	11	Kustom	Golden Eagle II	XE04310	Front DE10089 Rear DE10057	28801	30337	5/7/2008	\$ 90.00
Weinreich	20	Kustom	Golden Eagle II	XE04292	DE10097 DE10098	28763	30483	5/7/2008	\$ 90.00
Macdonald	34	Kustom	Golden Eagle II	XE04298	DE10019 DE10074	28764	30333	5/7/2008	\$ 90.00
<b>Handheld Units</b>									
		Kustom	Falcon	FF9590			16826	5/7/2008	\$ 90.00
		Kustom	Falcon	FF6630			16540	5/7/2008	\$ 90.00
		Kustom	Falcon	FF9040		8419	7411 - 65 mph	5/7/2008	\$ 90.00
<b>Marine Unit</b>									
		Kustom	Falcon	FF18686			16451	5/7/2008	\$ 90.00
<b>Total cost per device, per calibration &amp; certification event.</b>									<b>\$ 990.00</b>

## SECTION 4

### Software License Terms and Conditions

**1. LICENSE.** The **Cascade** Software is licensed to you by **Cascade**. You own the media on which the **Cascade** Software is recorded but **Cascade** and/or **Cascade's** licensor(s) retain title to the **Cascade** Software. The **Cascade** Software in this package and any copies, which this License authorizes, you to make are subject to this License.

**2. PERMITTED USES AND RESTRICTIONS.** This License allows you to install and use the **Cascade's IndySoft Gage InSite** at your agency. You may make one copy of the **Cascade** Software in machine-readable form for backup purposes only. The backup copy must include all copyright information contained on the original. Except as expressly permitted in this License, you may not de-compile, reverse engineer, disassemble, modify, rent, lease, loan, sublicense, distribute or create derivative works based upon the **Cascade** Software in whole. You may not transfer your rights under this License. YOUR RIGHTS UNDER THIS LICENSE WILL TERMINATE AUTOMATICALLY WITHOUT NOTICE FROM **CASCADE** IF YOU FAIL TO COMPLY WITH ANY TERM(S) OF THIS LICENSE.

**3. The Black Diamond Police Department** may authorize additional agency personnel access to agency data stored within **IndySoft Gage InSite**. software. **Cascade** to be notified of the names of those additional personnel so access authorized.

**3. LIMITED WARRANTY ON MEDIA (IF APPLICABLE).** **Cascade** warrants the media on which the **Cascade** Software is recorded to be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of original purchase. Your exclusive remedy under this paragraph shall be, at **Cascade's** option, a refund of the purchase price of the product containing the **Cascade** Software or replacement of the **Cascade** Software, which is returned to **Cascade** or a **Cascade** authorized representative with a copy of the receipt. THIS LIMITED WARRANTY AND ANY IMPLIED WARRANTIES ON THE MEDIA INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF ORIGINAL PURCHASE. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG IMPLIED WARRANTY LASTS, SO THIS LIMITATION MAY NOT APPLY TO YOU. THE LIMITED WARRANTY SET FORTH HEREIN IS EXCLUSIVE AND IN LIEU OF ALL OTHERS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED. **CASCADE** SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS, WHICH VARY BY JURISDICTION.

**4. DISCLAIMER OF WARRANTY ON CASCADE SOFTWARE.** You expressly acknowledge and agree that use of the **Cascade** Software is at your sole risk. The **Cascade** Software is provided "AS IS" and without warranty of any kind and **Cascade** and **Cascade's** licensor(s) (for the purposes of provisions 4 and 5, **Cascade** and **Cascade's** licensor(s) shall be collectively referred to as "**Cascade**") EXPRESSLY DISCLAIM ALL WARRANTIES AND/OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY OR SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS EXCEPT AS SET FORTH BELOW. **CASCADE** DOES NOT WARRANT THAT THE OPERATION OF THE **CASCADE** SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE **CASCADE** SOFTWARE WILL BE CORRECTED. HOWEVER, UPON NOTIFICATION OF ERRORS, OR MODIFICATION REQUESTS CAN AND WILL BE DECIDED BY **CASCADE ENGINEERING SERVICES, INC.** FURTHERMORE, **CASCADE** DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE

USE OF THE **CASCADE** SOFTWARE OR RELATED DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE.

ALL ATTEMPTS WILL BE MADE TO CORRECT ANY ACCURACY, CORRECTNESS ISSUES **AT CASCADE'S** SOLE DISCRETION. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY A **CASCADE** AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. MODIFICATIONS TO THIS WARRANTY CAN ONLY BE AFFECTED THROUGH THE **CASCADE ENGINEERING SERVICES** CORPORATE OFFICE. SHOULD THE **CASCADE** SOFTWARE PROVE DEFECTIVE, YOU (AND NOT **CASCADE** OR A **CASCADE'S** AUTHORIZED REPRESENTATIVE) ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THE TERMS OF THIS DISCLAIMER DO NOT AFFECT OR PREJUDICE THE STATUTORY RIGHTS OF A CONSUMER ACQUIRING **CASCADE** PRODUCTS OTHERWISE THAN IN THE COURSE OF A BUSINESS.

Notwithstanding the foregoing, Cascade agrees to defend, or at its option settle, any claim brought against you by a third party based on allegations that the Cascade Software licensed hereunder infringes any intellectual property rights, and to pay the damages and costs (including attorneys' fees) in respect of such claim; provided that you provide Cascade with: (i) prompt written notice of such claim, (ii) exclusive control over the defense and settlement of such claim, and (iii) reasonable assistance, at Cascade's request and expense, to settle or defend any such claim.

**5. LIMITATION OF LIABILITY.** UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, SHALL **CASCADE** BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS LICENSE. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THIS LIMITATION MAY NOT APPLY TO YOU. Excluding liability arising under the indemnification obligations set forth in Section 4, in no event shall **Cascade** total liability to you for all damages exceed the fees paid by you under the Contract.

**6. EXPORT LAW ASSURANCES.** You may not use or otherwise export or re-export the **Cascade** Software except as authorized by United States law and the laws of the jurisdiction in which the **Cascade** Software was obtained. In particular, but without limitation, the **Cascade** Software may not be exported or re-exported (i) into (or to a national or resident of) any U.S. embargoed country or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders. By using the **Cascade** Software, you represent and warrant that you are not located in, under control of, or a national or resident of any such country or on any such list.

**7. GOVERNMENT END USERS.** If the **Cascade** Software is supplied to the United States Government, the **Cascade** Software is classified as "restricted computer software" as defined in clause 52.227-19 of the FAR. The United States Government's rights to the **Cascade** Software are as provided in clause 52.227-19 of the FAR.

## SECTION 5

### Certificate of guarantee

This is to certify that Cascade Engineering Services, Inc. (CES) will guarantee all of the calibration/ certification services provided by us to meet the highest level of agency satisfaction or the calibration billing in question will be credited without hesitation. Furthermore, we certify that all instruments calibrated / certified or repaired at the CES Metrology Laboratory facilities are thoroughly tested, inspected and found to meet all OEM specifications in accordance with ISO/IEC 17025, ANSI/NCSL Z540-1-1994 and are traceable to the National Institute of Standards & Technology (NIST). If any questions or concerns arise, at the request of your agency, complete records to verify the above services are available for inspection.

All personnel of Cascade Engineering Services, Inc. will perform their duties in a professional and courteous manner, keeping in mind that the complete satisfaction of your agency is of the utmost importance. We will continually strive to ensure Cascade Engineering Service charter of our **Commitment, Quality, Integrity and Reliability**.

At Cascade Engineering Services, Inc. we take pride in our dedication and commitment to provide professional, reliable guaranteed (money back guarantee) calibration with certification and repair service performed by us and comparable to no other company in our industry.

WE TAKE CLIENT CARE PERSONALLY  
Cascade Engineering services, Inc.

*Reza Yasseri*

President/CEO

# CITY COUNCIL AGENDA BILL

City of Black Diamond  
Post Office Box 599  
Black Diamond, WA 98010

ITEM INFORMATION			
<b>SUBJECT:</b>  <b>Resolution No. 08-521, authorizing The Mayor to enter into a lease for Real property with the Sorci Family, LLC for the use of City office space</b>	<b>Agenda Date: June 5 2008</b>		<b>AB08-068</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		X
	City Attorney – Loren D. Combs		
	City Clerk – Brenda L. Streepy		
	Finance – May Miller		
	Public Works – Dan Dal Santo		
	Economic Devel. – Andy Williamson	X	
	Police –		
	Court – Kaaren Woods		
	Commander Kiblinger		
Cost Impact: \$2,000/ monthly			
Fund Source: funding agreement			
Timeline:			
<b>Attachments: Resolution No. 08-521, Lease agreement with attachments</b>			
<p>The City has a need for additional office space and in wanting to keep staff as close together as possible, were able to negotiate a lease agreement with Sorci Family, LLC for the old library office space. The City will lease the space for \$2,000 per month.</p>			
COMMITTEE REVIEW AND RECOMMENDATION:			
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 08-521, authorizing the Mayor to enter into a lease for real property with the Sorci Family, LLC for the use of City office space.</b>			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	
June 19, 2008			

RESOLUTION NO. 08-521

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO ENTER INTO A LEASE FOR REAL PROPERTY WITH THE SORCI FAMILY, LLC FOR THE USE OF CITY OFFICE SPACE

WHEREAS, the City has outgrown its current office space; and

WHEREAS, there is a need for temporary office space until such time as permanent facilities can be funded and constructed; and

WHEREAS, the City has determined that it is economically prudent to lease office space and place city employees temporarily in leased property; and

WHEREAS, Sorci Family, LLC has offered to lease to the City property that is zoned for office use; said property being identified as unit B in the office building on the real property located at 24301 Roberts Drive, situated in Black Diamond, King County, Washington, identified under King County Assessor's Parcel Number 1521069093 and legally described in Exhibit A attached hereto; now, therefore

BE IT RESOLVED that the Mayor is authorized to enter into a lease for the above described property in an amount not to exceed \$2000.00 per month, and for a term no longer than one year, with the right to extend the lease for successive 6 month intervals for up to 5 years. The lease shall be on a form approved by the City Attorney.

BE IT FURTHER RESOLVED that the Mayor is authorized to have such improvements made to the Property as are necessary to extend needed utility services to the temporary office location and to secure the site from unauthorized entry.

ADOPTED by the City Council on June 19, 2008 at an open public meeting.

---

Howard Botts, Mayor

Attest:

---

Brenda L. Streepy, City Clerk

**After Recording Return to:**

**Loren D. Combs  
VSI Law Group, PLLC  
3600 Port of Tacoma Road, Suite 311  
Tacoma, WA 98424**

**LEASE FOR REAL PROPERTY**

1. Date and Parties. This Lease, for reference purposes only, is dated the \_\_\_\_ day of June, 2008, and is entered into by and between Sorci Family LLC, a Washington Limited Liability Company (“Lessor”) and the City of Black Diamond, a municipal corporation of the State of Washington, (“Lessee”).

2. Subject Property and Leased Premises. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor approximately 2,000 square feet of office space (“Leased Premises”) and identified as Unit B in the office building on the real property located at 24301 Roberts Drive, situated in Black Diamond, King County, Washington, identified under King County Assessor’s number 1521069093, hereinafter referred to as the “Subject Property”, and more fully described on Exhibit “A” attached hereto. The Leased Premises are pictorially illustrated on Exhibit B.

3. Lease Term. The term of the Lease shall commence on the 23rd day of June, 2008 and end on the 31<sup>st</sup> day of May, 2009. The term may be extended for six (6) additional one (1) year terms, not more than three (3) additional five (5) year terms. Provided, the lease shall automatically terminate at the end each one (1) year term unless, by March 15<sup>th</sup> of each term the Lessee gives written notice of its intent to extend the lease term. If the notice is timely given and the Lessee is not in default under any of the Lease provisions, then the Term shall be extended for an additional one (1) year, upon the same terms and conditions, except for the adjustment of the lease amount as set forth in Paragraph 4 below.



4. Rent. The initial base rent shall be Two Thousand and no/100 U.S. dollars (\$2,000.00) per month. Lessee shall pay to Lessor the base rent monthly, the payment shall be due by the 8<sup>th</sup> day of each month. The rent shall be increased each year to reflect the increase in the Consumer Price Index for urban workers (CPI-U) for the Seattle/Tacoma/ Everett metropolitan area, as prepared by the US Department of Labor, from July to July in the preceding year. As additional rent the Lessee shall pay the leasehold tax and any lawful assessments against the subject property. In addition to the above referenced increases, the rent shall be adjusted to the fair market rental value at the beginning of each fifth lease extension term. Between the time the notice of intent to extend the lease is given and March 15<sup>th</sup> preceding the commencement of the lease extension term, the parties shall meet in an attempt to establish the fair market value. If the parties cannot agree, then the parties shall attempt to agree on a licensed appraiser to perform an appraisal. Each party shall be responsible for ½ of the appraisal cost. If the parties cannot agree on an appraiser then the parties shall each choose an appraiser and the two appraisers shall choose a third appraiser who shall then perform the appraisal.

5. Utilities. Lessee agrees to pay for all utilities charges associated with Lessee's use of the Leased Premises, except for water charges. Provided, however, Lessor shall be responsible for any utility assessment charged to the Subject Property for system wide utility improvements, such as, but not limited to LID and ULID assessments.

6. Parking.

6.1 Lessee shall be provided with a minimum of 15 parking stalls. The Parking stalls shall not be reserved stalls, but will be undesignated stalls within the common surface parking area on the Subject Property, adjacent to the office building. Lessor agrees that he will not allow further uses on the Subject Property that would require the use of any of the 15 stalls in order to meet City of Black Diamond parking requirements, nor shall the Lessor enter into other contractual arrangements for parking that would require the use of the undesignated 15 stalls to meet the contractual obligation..

6.2 Lessee shall make a one time payment to Lessor of Two Thousand Five Hundred Dollars and no/100 (\$2,500.00) to be used for parking lot improvements.

7. Indemnification and Liability. Lessee agrees to save harmless and indemnify Lessor against and from all demands, claims, causes of action, or judgments, and all reasonable expenses incurred in investigating or resisting the same for injury to person, loss of life, or damage to property occurring on the leased premises and arising out of Lessee's use and occupancy; and Lessee agrees to carry liability insurance to protect Lessor with insurance limits to be approved by Lessor.

8. Assignment and Subletting. Lessee shall not assign this Lease nor sublet the leased premises without Lessor's written consent.

9. Waivers. One or more waivers of any covenants or conditions by Lessor shall not be construed as a waiver of a subsequent breach of the same covenant or condition or agreement.

10. Use of Premises. Lessee will not make any changes or alterations to the property without Lessor's prior written consent, which consent will not be unreasonably withheld. Lessee agrees not to violate any law, ordinance, rule, or regulations of any governmental authority having jurisdiction of the leased premises. Provided, it is anticipated that the Lessee may desire to make improvements to the inside of the building in order to make it accommodate the intended purpose of using the building for City offices. The Lessor shall consent to such tenant improvements as necessary to carry out the purpose of the lease of the Leased Premises and cooperate in obtaining necessary permits, if necessary, to do so if all the following conditions are met:

- (1) Adequate assurances are provided to protect the Subject Property from any liens;
- (2) The permitting process and structure improvements are done at no expense to Lessor;
- (3) The Lessee agrees to indemnify and hold the Lessor harmless from any claims relative to the building interior modifications; and

11. Default. It is agreed that if any rent shall be due and unpaid, or if default is made of any of the covenants and agreements to be performed by Lessee as set forth herein, then the Lessor may, at his option, enter upon said premises and relet the same for such rent and upon such terms as Lessor may see fit; and if the full rental herein shall not be realized by Lessor over and above any expense to Lessor in such reletting, Lessee will pay any deficiency promptly upon demand, or the Lessor may declare this Lease terminated and forfeited and take possession of the said premises, and Lessee agrees to pay a reasonable attorney fee and the costs of any Court action should it be necessary to enforce any of Lessor's remedies in this paragraph contained if Lessor is the prevailing party. Lessor agrees to pay a reasonable attorney fee and the costs of any Court action if Lessee should be the prevailing party.

12. Right of First Refusal. Lessor hereby grants to Lessee, on the terms and conditions herein set forth, the Right of First Refusal to purchase (as that term is hereafter described) the property subject to this lease. In the event that, while this Lease is in effect, the Lessor has received an offer for the purchase of the leased property subject only to this right of First Refusal, then Lessor shall provide Lessee with a fully signed copy of that Offer. If Lessee desires to exercise this Right, then Lessee shall, within ten (10) days after delivery to it of a copy of such Offer, deliver to Lessor a written notice of exercise. Upon such notice of exercise having been delivered, the Sale to Lessee shall close upon all the terms and conditions contained in the offer, except that Lessee shall be substituted for the original purchaser. If the original proposed purchaser has deposited any earnest money, then Lessee must, in order to make his notice of exercise effective, tender to Lessor along with his notice of exercise, the same amount of earnest money in the same form. If the notice to exercise the Right of First Refusal is not timely received, then the right is automatically terminated, and the Lessor may sell the property on the terms and conditions set forth in the Offer. If the transaction is closed, then the lease shall automatically terminate on the date the conveyance document is recorded. For the purpose of this Right of First Refusal, an Offer to purchase shall mean not only an agreement for conveyance of title either immediately at closing, or upon payment in full of a real estate contract, but also any ground lease with an initial term of not less than twenty-five (25) years. Provided, however, nothing in this provision is to be construed as preventing the parties from negotiating in the future with regards to whether or not credit against the purchase price should be given for any or all of the authorized improvements Lessee may make to the Leased Premises.

13. Written Notices: All Notices required by this Agreement shall be considered properly delivered (1) when personally delivered, or (2) when transmitted by facsimile showing date and time of transmittal, or (3) on the day of receipt of a mailing, postage prepaid, certified mail, return receipt requested, or (4) one (1) day after depositing in overnight carrier, e.g. Federal Express to:

Lessor: Sorci Family LLC  
c/o Mario Sorci  
Anesthesia Equipment Supply Inc.  
24301 Roberts Drive  
Black Diamond, WA 98010  
Facsimile: (800) 568-1679

Lessee: City of Black Diamond  
Attention: City Administrator  
P.O. Box 599  
Black Diamond, WA 98010  
Facsimile: (360) 886-2592



that he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of Sorci Family LLC. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

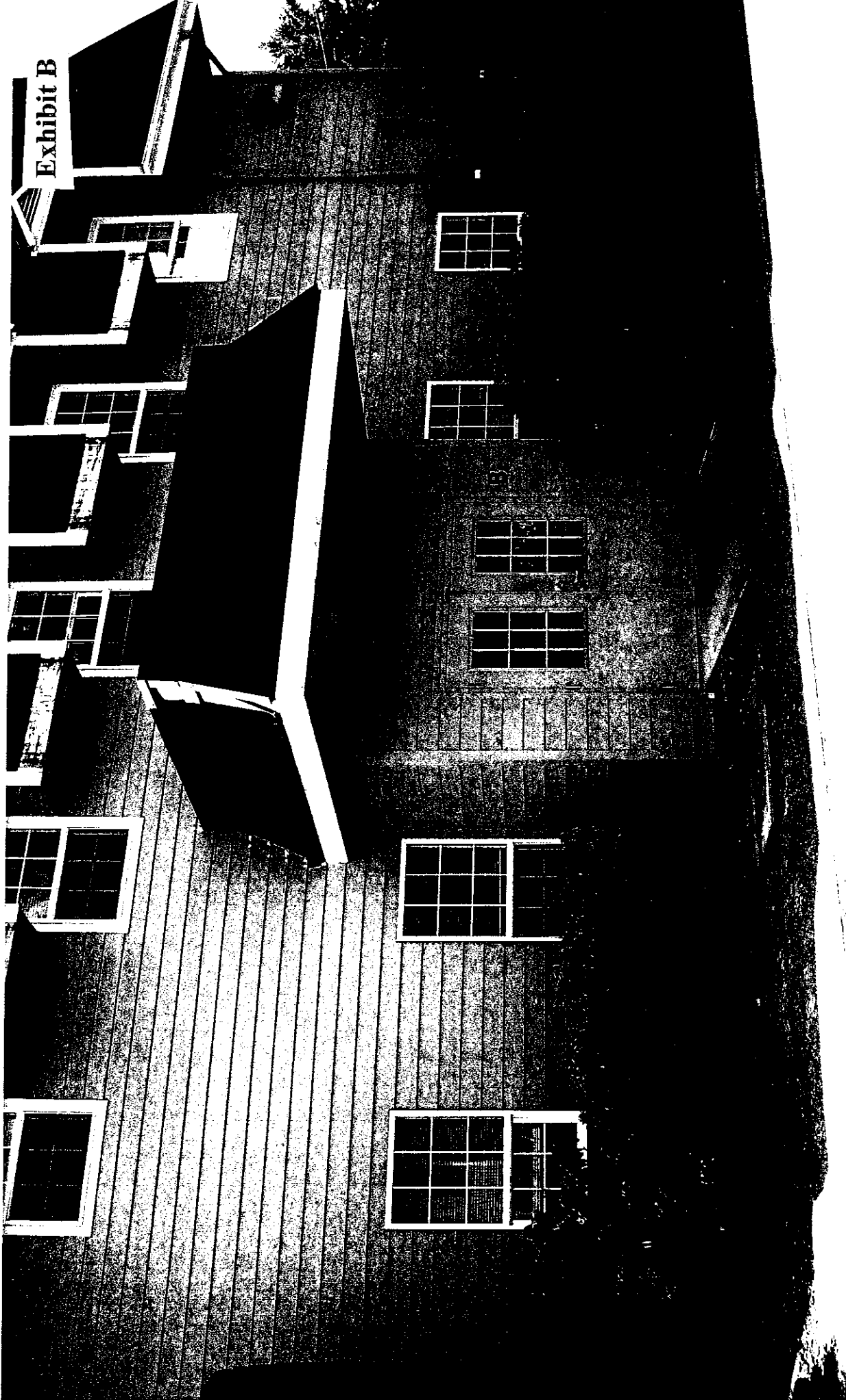
\_\_\_\_\_  
NOTARY PUBLIC  
Print Name: \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION**

**POR NE 1/4 BEG NE COR TH S ALG E LN 1296.05 FT TH S 89-51-08 W 239.34 FT TAP ON E LN TR DESC AUD # 3031570 & TPOB TH N 87-45-28 W 238.48 FT TO W LN TR DESC AUD #1645619 TH N 3-30-28 W COMMON WITH LN DESC AUD #1645619 240.81 FT TH S 87-45-28 E 180.9 FT TH S 63-12-28 E TO NE COR TR DESC AUD #3031570 TH S 0-08-52 E COMMON WITH LN DESC AUD #3031570 TO TPOB AKA POR OF PCL 1 OF BLACK DIAMOND SP NO 78-007 RECORDING NO 7811039014 TGW N 93 FT OF FOLG DESC PCL - BEG NE COR SD SEC 15 TH S ALG E LN OF SEC 1915.41 FT TH S 89-51- 08 W 440.67 FT TO SW COR OF TR CONV UNDER AUD #1645619 & TPOB TH N 03-30-28 W ALG W LN OF SD TR 630.39 FT M/L TO SW COR SD PCL 1 BD SP 78-007 REC #7811039014 TH S 87-45-28 E 178.48 FT M/L TAP 60 FT W FR TR DESC UNDER REC # 7501070376 TH S 0-08-52 E 320 FT M/L PLT W LN OF SD TR TAP 60 FT W FR SW COR THOF TH S 05-45-43 W 308 FT M/L TO SE COR OF TR DESC UNDER AUD #1656204 TH N 87-45-28 W ALG S LN OF TRS DESC UNDER AUD #1656204 & 1645619 DIST 110 FT TO TPOB - SD PCL CONTAINS ALL OF LOT B OF BLACK DIAMOND LLA #90-02 REC #9002280435**

Exhibit B



# CITY COUNCIL AGENDA BILL

City of Black Diamond  
Post Office Box 599  
Black Diamond, WA 98010

ITEM INFORMATION			
<b>SUBJECT:</b>  <b>Resolution No. 08-522, authorizing the Mayor to execute a Professional Services Agreement with Ogden Murphy Wallace for Hearing Examiner Services</b>	<b>Agenda Date: June 19, 2008</b>		<b>AB08-069</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts	X	
	City Administrator –Gwen Voelpel		
	City Attorney – Loren D. Combs		X
	City Clerk – Brenda L. Streepy		
	Finance – May Miller		
	Public Works – Dan Dal Santo		
	Police – Chief Luther		
	Court – Kaaren Woods		
Commander Kiblinger			
Cost Impact: N/A—charged back to applicant			
Fund Source: Applicant			
Timeline:			
<b>Attachments:</b> Resolution No. 08-522; Professional Services Agreement, Olbrechts proposal and résumé			
<p>On April 3, 2008, the City Council unanimously approved Ordinance 08-857 creating the position of hearing examiner and enumerating the duties of the position. The City subsequently advertised for firms and individuals interested in serving in that capacity for Black Diamond. Three firms responded. A panel of three staff members determined, after reviewing all qualifications and meeting with two applicants, that Phil Olbrechts of Ogden Murphy Wallace was the most qualified for the position. The agreement as drafted would be for one year with an option to extend on a month-by-month basis. Compensation is generally at the rate of \$145/hour. All charges for hearing examiner services are paid by the applicant.</p>			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b>			
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 08-522, authorizing the Mayor to execute a professional services agreement with Ogden Murphy Wallace for hearing examiner services.</b>			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	
June 19, 2008			



**RESOLUTION NO. 08-522**

**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 OGDEN,  
MURPHY, WALLACE PLLC FOR HEARING EXAMINER  
SERVICES**

**WHEREAS**, the City Council approved Ordinance 08-857 on April 3, 2008, creating the position of hearing examiner; and

**WHEREAS**, thereafter the City of Black Diamond advertised for individuals and firms qualified to serve as the hearing examiner on an as-needed, contractual basis; and

**WHEREAS**, a panel of City staff reviewed the applications, interviewed applicants and determined Ogden, Murphy, Wallace to be the most qualified for the position; and

**WHEREAS**, Phil Olbrechts of Ogden Murphy Wallace, who would act as lead examiner for Black Diamond, has served as hearing examiner since 1998; and

**WHEREAS**, Mr. Olbrechts currently serves as the hearing examiner for Federal Way, Auburn, Jefferson County, Mason County and Port Townsend; and

**WHEREAS**, the Council supports the Mayor's selection of Ogden, Murphy, Wallace, PLLC, and finds the proposed agreement to be fair and reasonable;

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

**Section 1.** The City Council of the City of Black Diamond, Washington, does hereby authorize the Mayor, on behalf of the City, to execute a professional services agreement substantially in the form attached as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 19TH DAY OF JUNE, 2008.**

CITY OF BLACK DIAMOND:

\_\_\_\_\_  
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 June 19, 2008, and is entered into by and between

CITY OF BLACK DIAMOND, WASHINGTON ("City")  
24301 Roberts Drive  
Black Diamond, WA 98010  
Contact: Mayor Howard Botts  
Phone: 360-886-2560 Fax : 360-886-2592

and

PHIL OLBRECHTS and  
Ogden Murphy Wallace, P.L.L.C. ("Consultant")  
1601 Fifth Avenue Suite 2100  
Seattle, WA 98101-1686

Contact: Phil Olbrechts  
Phone: 206-447-7000 Fax: 206-447-0215

Tax ID No.: 91-0344327

City of Black Diamond Business License No.: \_\_\_\_\_

for professional services for the City of Black Diamond to include:

- (1) To act in the capacity of Hearing Examiner for Black Diamond;
- (2) To hear, and act as authorized by the Black Diamond Municipal Code, hearings related to land use permitting actions, generally once per month or more/less frequently as determined necessary by Black Diamond. As the Hearing Examiner, the Consultant shall receive and examine all admissible evidence regarding cases to be heard; perform on-site inspections of properties; conduct public hearings; and submit written Findings, Conclusions, Recommendations, and Decisions within the time limits and as specified by the Black Diamond Municipal Code;
- (3) To conduct other public hearings not related to land use or code enforcement actions, as provided for in Black Diamond Municipal Code;
- (4) To meet with the Black Diamond City Council, as requested by the Council, to discuss matters pertinent to the conduct and practices of the Hearing Examiner;
- (5) To meet with the Black Diamond staff, or review material provided, and discuss or comment on matters pertinent to the Black Diamond land use permit process, requirements or enforcement, as requested by the Director of the City of Black

Diamond Community Development Department as consistent with the appearance of fairness doctrine, conflicts of interest, professional responsibility and other applicable law; and

- (6) To prepare a citizens' guide to the hearing examiner process for distribution and posting on the City Web site.

## **TERMS AND CONDITIONS**

### **1. Services by Consultant**

1.1 Consultant shall perform the services above described. The services performed by Consultant shall not exceed the services as enumerated 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 professional services rendered. 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 In order to appropriately accomplish the duties specified in this agreement, it is agreed that the Consultant at his own expense shall do and provide the following: a) office and office equipment; b) an electronic copy in Microsoft Word format and at least two original reports of Findings, Conclusions and Decisions or Recommendations for each hearing by delivering the same to the City of Black Diamond Community Development Department within the time constraints imposed by law; c) any secretarial time required.

1.4 Phil Olbrechts shall be the lead attorney from Consultant to provide Hearing Examiner services and shall be responsible for supervising all others who provide service through the Consultant under this Agreement. In case Phil Olbrechts cannot conduct a hearing due to reasonable cause, he may designate another attorney from the Consultant to conduct the hearing, which designation shall be subject to the approval of the City. Phil Olbrechts may also assign the writing of decisions on an as needed basis to other attorneys from the Consultant. He may also employ the services of other independent contractors to write decisions provided that Consultant shall be fully responsible for the content of the independent contractor's decisions, supervision of the independent contractor, and invoicing.

### **2. Responsibilities of the City**

In order to support the functions of the hearing examiner, the City of Black Diamond shall provide the following:

2.1 Written staff reports to the Hearing Examiner both electronic and hard copies, as well as, maps and such other exhibits as required; shall be responsible for the scheduling of all the hearings for the Hearing Examiner; shall provide notice of hearings and decisions as required by

law; shall make all the required copies of said decisions and correspondence, and mail to all parties of record; shall keep and maintain all official files and records of the hearings; and do all other tasks necessary to administratively process said materials.

2.2 The City shall furnish a hearing room and recording equipment; shall schedule all necessary meetings before the Black Diamond City Council; shall provide an amplification system when necessary; and shall provide a staff person who shall be present at hearings to operate the recording equipment, accept additional exhibits submitted at the hearing, and assist in the orderly conduct of the hearing. The City shall also prepare a formal list of exhibits received prior to the hearing for the final written Hearing Examiner decision or recommendation.

### **3. Compensation for Services**

3.1 The City agrees to pay Consultant on an hourly basis at the following rates: Phil Olbrechts shall be billed at the rate of one hundred forty-five dollars (\$145.00) per hour. Should a substitute be required, and approved by the City, associates with less than five years of experience shall be billed at one hundred thirty-five dollars (\$135.00) per hour. Substitute members and associates with more than five years experience shall be billed at one hundred forty-five dollars (\$145.00) per hour.

3.2 The Consultant shall charge a flat one hour for round trip travel time.

3.3 The City agrees to pay for mileage at the current rate allowed by the Internal Revenue Service and to pay for the direct cost of related administrative expenses, including copy charges. Consultant shall not charge for long distance within Washington State.

3.4 Code enforcement decisions written by a contract decision writer working for the Consultant will be billed at thirty-five dollars (\$35.00) per hour.

3.5 Should Consultant employ the services of independent contractors to write decisions as provided in paragraph 1.4, (1) Consultant shall add on no more than 10% in administrative fees to costs of independent writer plus applicable taxes; and (2) costs of independent writer including the fees and taxes set forth above shall not exceed 75% of the hourly rate of Consultant.

3.6 Transcription of hearing tapes, if requested by the client, will be billed at thirty-five dollars (\$35.00) per hour.

### **4. Payment**

4.1 Consultant shall invoice to Black Diamond on a monthly basis a statement that details charges for each individual case considered. Payment shall be made by the City within 60 days of receipt of invoice.

4.2 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.

4.3 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 This agreement may be terminated by either party upon 30 days written notice without cause. The City may immediately remove the Consultant for cause. 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.

6.3 The Phil Olbrechts shall immediately notify the City of any change in professional status.

## **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 decisions, 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.

## **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. 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 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 Consultant, its agents, representatives, or employees.

10.2 Consultant shall procure and maintain the following types and amounts of insurance:

a. 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. This insurance shall have a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

b. 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, personal injury, and advertising injury. This insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

d. Professional Liability insurance appropriate to Consultant's profession, with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

10.3 The Automobile Liability, Commercial General Liability, and Professional Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

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. Consultant's insurance shall be endorsed to state that coverage shall not be cancelled, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

10.4 The City shall be named as an additional insured under Consultant's Automobile Liability and Commercial General Liability insurance policies with respect to the work to be performed for the City pursuant to this Agreement.

10.5 Insurance shall be placed with insurers with a current A.M. Best rating of not less than A:VII.

10.6 Declaration pages issued by the insurance carriers for the policies mentioned in this Section 10 showing such insurance to be in force shall be filed with the City not less than ten (10) days following both parties signing this Agreement and before commencement of the work. In addition, the City may request, in writing, a full copy from Consultant of any insurance policy Consultant must procure and maintain pursuant to this Agreement and Consultant must provide such copy to the City within ten (10) days of Consultant's receipt of the City's request. 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 subcontractors are, and shall be at all times during the term of this Agreement, independent contractors.

**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:

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  
VSI Law Group  
3600 Port of Tacoma Rd. Ste. 311  
Tacoma, WA 98424  
Fax: 253-922-5848

Consultant: Phil Olbrechts  
Ogden Murphy Wallace, P.L.L.C.  
1601 Fifth Avenue Suite 2100  
Seattle, WA 98101-1686  
Fax: 206-447-0215

**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 The term of this agreement shall begin immediately upon passage and shall continue in full force and effect for one year. After one year, the agreement shall remain in effect on a month-to-month basis until terminated under the provisions of Section 6 above, unless an longer extension of time is agreed upon between both parties. This agreement may be amended at any time after the initial one year term, subject to the mutual agreement of both parties.

17.2 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

CONSULTANT

By: \_\_\_\_\_  
Howard Botts

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

Its: Mayor

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

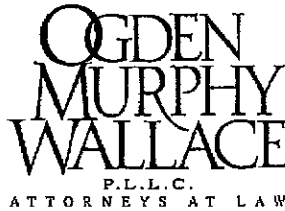
Date: \_\_\_\_\_

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

Attest:

By:

\_\_\_\_\_  
Brenda L. Streepy  
City Clerk



*Phil A. Olbrechts*  
*206.447.2251*  
*polbrechts@omwlaw.com*

April 21, 2008

Brenda L. Streepy  
City of Black Diamond  
24301 Roberts Drive  
P.O. Box 599  
Black Diamond, WA 98010

Re: City of Black Diamond Request for Proposal for Hearing Examiner

Dear Ms. Streepy:

Please consider this to be the response of Phil Olbrechts and the law firm of Ogden Murphy Wallace, P.L.L.C. ("OMW"), to the City of Black Diamond for its Request for Proposal for Hearing Examiner. I (Phil Olbrechts) propose to serve as the lead Examiner, with back-up from the forty attorneys of OMW. With the full resources of OMW and a team of writer consultants, I propose to provide Black Diamond with decisions that are fair, legally defensible, and timely.

### **EXPERIENCE AND QUALIFICATIONS OF PHIL OLBRECHTS**

As indicated in my resumé, I have served as a Hearing Examiner for several municipalities since 1998. I currently serve as the Hearing Examiner for Federal Way, Auburn, Jefferson County (Appellate Examiner), Mason County, and Port Townsend. Prior to rejoining OMW in 2000 (I left for a few years to teach), I also served as the Examiner for Mount Vernon, Shelton, and McCleary. When I rejoined OMW, I transferred those cities to Rick Sepler, my alternate examiner at the time.

I have served several other roles in the land use review process as well that have enhanced my ability to provide skilled service as an Examiner. I have served as a land use attorney, city attorney, University of Washington graduate lecturer, and planning commissioner. I have made presentations on land use law, including Appearance of Fairness and Open Public Meeting Act ("OPMA") issues, to over two hundred jurisdictions in this state, including the City of Black Diamond. I have also taught several credits of graduate level land use courses at the University of Washington College of Architecture and Urban Planning. I currently serve as one of the

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authors of the *Planning Advisor*, a publication for local officials sponsored by the Municipal Research and Services Center. My law firm represents over fifteen cities as City Attorney, ranging in size from the Town of Index to the City of Redmond. I perform land use services for many of these cities and am also called upon to serve as counsel at complicated land use hearings for cities such as Kent and Edmonds.

I have a wide range of clients that allows me to appreciate the perspective of just about everyone involved in the land use process. I represent citizen groups, developers, cities, and other types of municipalities. In my role as a City Attorney for three cities, I interact with planning staff and other land use professionals on a daily basis. This experience has been invaluable in ensuring that my decisions minimize liability to the City and maximize ease in implementation.

### **OGDEN MURPHY WALLACE SUPPORT STAFF**

OMW currently has over forty attorneys and forty-five support staff. Included is a municipal department staffed by nine attorneys who each focus in different areas of municipal law in order to provide OMW municipal clients with the best municipal expertise available. The wide range of expertise and relatively large support staff provide all the resources necessary to complete timely decisions regardless of how many novel and complicated issues may arise. Instead of spending hours researching (and charging for) a novel land use issue, chances are that someone down the hall can provide me with the information I need in a matter of minutes. When decisions and projects pile up from multiple sources, I simply assign other attorneys with the task of writing some of my decisions under my supervision. In the very rare circumstances where a conflict prevents me from attending a hearing, there are several attorneys in my department with land use experience who can substitute. OMW's talented word processing staff works late into the evenings and weekends to provide one-day turn-around on typing projects, and they are often called upon to transcribe lengthy and/or complicated land use hearings.

### **REFERENCES**

Contact information for my references is listed below. Until a few months ago Ted Gage was the coordinator of the short course on local planning I present for the Washington State Department of Community, Trade and Economic Development. I have worked with Ted on these courses since 1995. I worked with Dave Schmidt as City Attorney when he was the City Administrator for the City of Gold Bar. Dave and I rewrote the land use code for Gold Bar and worked on several land use projects together. The other references below are the persons in charge of hearing examiner contracts for their respective communities.

Ted Gage, AICP  
Planning Director  
Samish Indian Nation  
P.O. Box 217  
2918 Commercial Avenue  
Anacortes, WA 98221  
Phone: (360) 293-6404, Ext. 118

Rick Sepler  
Planning Director  
City of Port Townsend  
250 Madison Street, Suite 2  
Port Townsend, WA 98368  
Phone: (360) 379-5047

Steve Pilcher  
Development Services Coordinator  
City of Auburn  
25 West Main Street  
Auburn, WA 98001-4998  
Phone: (253) 931-3000

Barbara Robinson  
Community Development Director  
Mason County  
P.O. Box 279  
Shelton, WA 98584  
Phone: (360) 427-9670, Ext. 603

Dave Johnson  
Senior Planner  
Jefferson County  
P.O. Box 1220  
Port Townsend, WA 98368  
Phone: (360) 379-4465

Laura Hathaway  
City Clerk  
City of Federal Way  
P.O. Box 9718  
Federal Way, WA 98063-9718  
Phone: (253) 835-2540

Dave Schmidt  
City Administrator  
City of Buckley  
P.O. Box 1960  
Buckley, WA 98321  
Phone: (360) 829-1921

## PROPOSAL FOR SERVICES

I would serve as the lead Hearing Examiner, attending probably over 90% of the hearings. Scott Snyder, one of my partners, would serve as the lead alternate. In order to ensure that my decisions are issued as quickly as possible, I do occasionally enlist the assistance of other municipal attorneys in my firm to help draft decisions or do legal research. The rates for the attorneys in my firm, including myself, would be \$145/hour. Associates with less than five years experience would be billed at \$135/hour. Given the travel distance from Seattle, there would be a flat one-hour charge for round-trip travel time. Contrary to the practice of many hearing examiners, there would be no charge for secretarial time, although transcription of hearing tapes (an optional service) would be billed at \$35/hour. Copy and postage charges would also apply. There is no charge for long distance. I currently use a contract decision writer, Tom McCarthy,

Olbrechts Examiner Proposal  
April 21, 2008  
Page 4

to write code enforcement decisions at \$35 per hour. The use of Mr. McCarthy has enabled me to substantially reduce the costs of writing code enforcement decisions for my clients. I plan on using Mr. McCarthy and other contractors to write land use decisions under my supervision as well.

Please let me know if you need any additional information. Thank you for your consideration of my qualifications and those of my law firm. You can also learn more about my firm at [omwlaw.com](http://omwlaw.com).

Very truly yours,

OGDEN MURPHY WALLACE, P.L.L.C.

A handwritten signature in black ink, appearing to read "Phil A. Olbrechts", with a long horizontal flourish extending to the right.

Phil A. Olbrechts

PAO:nkr  
Enclosures

PHIL A. OLBRECHTS  
Ogden Murphy Wallace, PLLC  
1601 Fifth Avenue, Suite 2100  
Seattle, WA 98101-1686  
(206) 447-7000

## LEGAL EXPERIENCE

### Member

Ogden Murphy Wallace, P.L.L.C.  
December 2000 to present.

- Member (analogous to partner in a partnership) in a limited liability corporation of forty attorneys, which represents over fifteen cities as City Attorney. Currently serve on Board of Members.
- City Attorney for Monroe, Milton, and Index.
- Land Use Hearing Examiner for Mason County, Jefferson County, Port Townsend, Federal Way, and Auburn.
- Teach several continuing legal education courses every year.
- Provide land use services to Washington State Department of Community Trade and Economic Development, including editor of short course manual, a 200+ page overview of land use law.

### Partner

Olbrechts and Olbrechts  
February, 1998 to 2000

- City Attorney for Gold Bar and Index, Land Use Attorney for Federal Way, and Prosecuting Attorney for Woodinville and Carnation.
- Hearing Examiner for Cities of Mount Vernon, Shelton, and McCleary.
- Corporate Counsel for May Creek Mountain View Tracts Subdivision (350 lots) and Big Bend Landowners' Association.
- Hearing Officer for Seattle Parks Department.
- Make thirty or more presentations per year to cities and other municipalities across state on land use issues on behalf of Washington State Department of Community Development.
- Represent land use clients in several counties throughout Puget Sound.
- Adjunct faculty, University of Washington College of Architecture and Urban Planning, teach graduate level three quarter course on "The Land Use Permitting Process," 9.0 credits.

### Senior Associate

Ogden Murphy Wallace, P.L.L.C.  
September 1994 to February 1998

- Senior associate in municipal department of firm serving as City Attorney for fifteen cities and numerous others for individual projects.
- City Attorney for the Cities of Poulsbo and Gold Bar.
- Assistant City Attorney for the Cities of Edmonds and Mukilteo.
- Extensive trial and administrative litigation.

### Legal and Planning Consultant

March 1994 to September 1994

- Forks City Attorney and Planning Director.
- Prepared Forks Comprehensive Plan, Zoning Code, Critical Areas Ordinance, and Subdivision Code.
- Planning Director and a legal consultant for the City of Sequim.
- Legal consultant for the Quillayute Valley School District.

### Forks City Attorney and Planning Director

August 1991 to March 1994

- Performed all legal and planning services for Forks.
- Served as lead staff for preparation of comprehensive plan for western Clallam County.

### Associate

Landerholm, Memovich, Lansverk and Whitesides, P.S.  
August 1989 to August 1991

- Served in largest law firm in southwestern Washington.
- Represented major collection agency.

### EDUCATION

University of Puget Sound School of Law  
August 1986 to June 1989

- Received Juris Doctorate, cum laude, in 1989.
- Externed in Clark County Superior Court in 1988.

- Member of 1988 Jessup International Moot Court Team.
- Received merit scholarship in 1987.

University of Washington  
August 1981 to August 1986

- Bachelor of Science in Molecular biology.
- Merit Scholarship in 1982 for one of the top 100 most distinguished academic records of all resident undergraduates.

### COMMUNITY INVOLVEMENT

Member, Seattle Planning Commission, 2000 - 2002.  
Elected, Planning Assoc. of Washington Board of Directors, 1999 - 2003, 2007 to present.  
Member, Board of Trustees, Municipal League of King County, 2000 - 2001.  
Member, American Planning Assoc. Legislative Committee, 1997-1998.  
Elected, Clallam County Charter Review Commission, 1994.  
Member, Clallam County United Way Board of Directors, 1993-1994.  
Planning Commissioner, Clallam County Planning Commission, 1992-1994.  
Member, Toastmasters International, 1991 - 2003.  
Chair, 1992 Forks United Way Campaign.  
Campaign Manager, King for Clark County Sheriff Committee, 1990.  
Chair, University of Washington Student Legislature, 1985.