

RESOLUTION NO.16-1123

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 PARAMETRIX, INC. FOR TRAFFIC ENGINEERING SERVICES FOR THE MDRT

WHEREAS, in 2010, the City Council approved Master Planned Development (MPD) permits for the Villages and Lawson Hills MPDs; and

WHEREAS, in 2011 the City Council approved Development Agreements for The Villages and Lawson Hills MPDs; and

WHEREAS, as part of its consideration and approval of the Development Agreements, the City also entered into a Funding Agreement (Exhibit N) with the Master Developer previously known as Yarrow Bay and now known as CCD Villages Partners and CCD Lawson Partners and managed by Oakpointe; and

WHEREAS, the Funding Agreement call for the establishment of a Master Development Review Team (MDRT), to consist of City Staff and outside consultants; and

WHEREAS, the City does not have on sufficient staff resources to provide Surveying Services to meet the needs of the MDRT;

WHEREAS, on September 18, 2014 the Consultant and the City entered into a contract for ongoing services as described in the contract; and

WHEREAS, the contract will soon expire, and the City would like to advertise and invite firms to submit responses to a Request for Qualifications so that a variety of consultants can be reviewed and selected from; and

WHEREAS the existing contract expires before the end of September 2016 and MDRT work may be needed prior to the completion of an advertising and RFQ process; and

WHEREAS the city advertised for firms to complete the MDRT work in both 2012 and 2014 and such a process is likely to provide better service to the people of Black Diamond; and

WHEREAS the Council wishes to review the work products of the consultants' previous work for the City and review reports from the MDRT

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

Section 1. The mayor is authorized to sign the attached revised contract. The Council's intent is to extend the existing contract for a maximum of 45 days from the September expiration date and include a documentation and reporting requirement to this interim contract.

Section 2. The mayor is requested to advertise a Request for Qualifications and provide to the Council the information received from all firms that respond.

Section 3. The request for proposal shall include the following requirements:

- Extensions shall be annual and subject to revision and Council approval.
- Work scopes shall be described in sufficient detail to ensure that all work items will be accomplished in a thorough and satisfactory manner.
- Contracts shall include requirements to ensure that field conditions described in submittal documents will be verified to the satisfaction of the consultant and the City.
- Contracts shall include requirements to ensure that the highest standards that are legally authorized and warranted are considered and applied.
- Contracts shall include access by the Council and regular and frequent reporting to the public.
- Transportation related contracts shall have work scopes that are coordinated with other transportation studies conducted by the City.

Section 4. The mayor is requested to provide all work products from the past two years by the consultant to include memos, recommendations, reports, or final work product.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 6TH DAY OF OCTOBER, 2016.

CITY OF BLACK DIAMOND:

**DENIED**

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Carol Benson, Mayor *CB*

Attest:

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Brenda L. Martinez, City Clerk

CONSULTANT SERVICES CONTRACT  
BETWEEN THE CITY OF BLACK DIAMOND AND PARAMETRIX,  
INC. FOR MDRT TRAFFIC ENGINEERING SERVICES

THIS AGREEMENT is made by and between the City of Black Diamond, a Washington municipal corporation (hereinafter the "City"), and Parametrix, Inc., (hereinafter the "Consultant,") a corporation organized under the laws of the State of Washington, located and doing business at 101939th Avenue S.E., Suite 100, Puyallup, WA 98374.

RECITALS

WHEREAS, the City does not have sufficient staff resources to provide traffic engineering services to meet the needs of the MDRT; and

WHEREAS, the City has funding available from Oakpointe and an approved budget to fund the oversight, engineering review, inspections, and development agreement enforcement to assist the City with its regulatory role; and

WHEREAS, the City has previously contracted with Consultant to provide the City with the same or substantially similar services for the MDRT, and the City desires to continue working with Consultant on MDRT matters under the terms and conditions set forth herein; and

WHEREAS, the Consultant has agreed to provide the services described in Exhibit A (scope of work) under the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

I. Description of Work

The Consultant shall be prepared to assist the City with all of the work described in Exhibit A (General Scope of Work), which is attached hereto and incorporated herein by this reference. The traffic engineering services to be provided to the City by the Consultant shall be identified in on-call task requests for each project task for which the City requires Consultant services. No work shall be commenced by Consultant under this Agreement except pursuant to such an on-call task request issued by the City in the form attached as Exhibit B, which is incorporated herein by this reference. Consultant shall perform the services described in the on-call task request in accordance with the schedule and scope of work set forth in the on-call task request (Exhibit B).

Consultant shall provide to the City all work products from the past two years including memos, recommendations, correspondence and reports. Consultant shall be available to meet with the City Council within 30 days of the effective date of this extension on a date that is mutually agreed upon.

## **II. Payment**

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Fifteen Thousand Dollars ( \$15,000) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in Exhibit A, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. The progress billings for the work completed shall be compensated according to the rates and charges identified in Exhibit C, which is attached hereto and incorporated herein by this reference.

B. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this Agreement. The City shall pay the full amount of an invoice within sixty (60) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make a good faith effort to settle the disputed portion.

## **III. Relationship of Parties**

The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement." The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

## **IV. Duration of Work**

The Consultant shall perform the work according to the City's direction, as described in Section I of this Agreement. This Agreement shall be in effect for a period of thirty days ~~one (1) year~~ from the effective date of October 7.

## **V. Termination**

A. Termination of Agreement. The City may terminate this Agreement, for public convenience, the Consultant's default, the Consultant's insolvency or bankruptcy, or the

Consultant's assignment for the benefit of creditors, at any time prior to completion of the work described in Exhibit A. Termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date stated in the City's notice, whichever is later.

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise.

## VI. Discrimination

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Consultant, its Subcontractors, or any person acting on behalf of such Consultant or sub-consultant shall not by reason of race, religion, color, sex, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

## VII. Indemnification

The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 42.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, agents and Volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

The provisions of this section shall survive the expiration or termination of this Agreement.

### VIII. Insurance

A. The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Consultant's own work including the work of the Consultant's agents, representatives, employees, sub-consultants or sub-contractors.

B. Before beginning any work under this Agreement, the Consultant shall provide evidence, in the form of a Certificate of Insurance, of the following insurance coverage and limits (at a minimum):

1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit, and

2. Commercial General Liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate. Coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, and employers liability, and

3. Professional Liability insurance with no less than \$1,000,000. All policies and coverage's shall be on a claims made basis.

C. The Consultant is responsible for the payment of any deductible or self-insured retention that is required by any of the Consultant's insurance. If the City is required to contribute to the deductible under any of the Consultant's insurance policies, the Contractor shall reimburse the City the full amount of the deductible within 10 working days of the City's deductible payment.

D. The City of Black Diamond shall be named as an additional insured on the Consultant's commercial general liability policy. This additional insured endorsement shall be included with evidence of insurance in the form of a Certificate of Insurance for coverage necessary in Section B. The City reserves the right to receive a certified and complete copy of all of the Consultants insurance policies.

E. Under this agreement, the Consultant's insurance shall be considered primary in the event of a loss, damage or suit, and any insurance maintained by the City shall not contribute with it. The City's own comprehensive general liability policy will be considered excess coverage with respect to defense and indemnity of the City only and no other party. Additionally, the Consultant's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

F. The Consultant shall request from his insurer a modification of the ACORD certificate to include language that prior written notification will be given to the City of

Black Diamond at least 3 days in advance of any cancellation, suspension or material change in the Consultant's coverage.

### **IX. Exchange of Information**

The City warrants the accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Agreement. The parties agree that the Consultant will notify the City of any inaccuracies in the information provided by the City as may be discovered in the process of performing the work, and that the City is entitled to rely upon any information supplied by the Consultant which results as a product of this Agreement.

### **X. Ownership and Use of Records and Documents**

Original documents, drawings, designs and reports developed under this Agreement shall belong to and become the property of the City, and Consultant assigns to the City all of Consultant's right, title, and interest in any such drawings, designs, reports, and documents. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business, and in no event may Consultant use less than reasonable care with respect to information provided to it by the City. If such information is publicly available or is already in Consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

### **XI. City's Right of Inspection**

Even though the Consultant is an independent contractor with the authority to control and direct the performance, and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the tenets of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

### **XII. Consultant to Maintain Records to Support Independent Contractor Status**

On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to Independent contractors including, but not limited to, the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to the Revised Code of Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties, which is subject to RCW Title 51, Industrial Insurance.

### XIII. Work Performed at the Consultant's Risk

The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

### XIV. Non-Waiver of Breach

The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options and the same shall be and remain in full force and effect.

### XV. Resolution of Disputes and Governing Law

Should any dispute, misunderstanding, or conflict arise as to the interpretation of this Agreement, the matter shall first be referred to the City of Black Diamond and the City shall determine the Agreement's true intent or meaning. The City of Black Diamond shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the Mayor or Administrator's determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, then either party may file suit, the jurisdiction and venue of which lies exclusively in King County Superior Court, King County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, excluding its choice-of-law rules. The non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

### XVI. Written Notice

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified to the contrary. Unless otherwise specified, any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

CONSULTANT:

Attn: Austin R. Fisher, P.E.  
Parametrix, Inc.

CITY:

Attn: Andrew Williamson  
City of Black Diamond



1019 39th Avenue S.E., Suite 100  
Puyallup, WA 98374

P.O. Box 599  
24301 Roberts Drive  
Black Diamond, WA 98010

With a copy to "City Clerk" at same address.

### **XVII. Assignment**

Any assignment of this Agreement by the Consultant without the written consent of the City is void. If the City consents to any assignment, this paragraph shall continue in full force and effect and no further assignment shall be made without the City's consent.

### **XVIII. Modification and Severability**

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reasons held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

### **XIX. Entire Agreement**

The written provisions and terms of this Agreement, together with any Exhibits attached hereto, supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, this Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached hereto, which may or may not have been executed prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on this \_\_\_\_\_ day  
of \_\_\_\_\_, 2016.

By: \_\_\_\_\_  
John Perlic, P. E.  
Its: Senior Vice President  
CONSULTANT

CITY OF BLACK DIAMOND

By: \_\_\_\_\_  
Carol Benson, Mayor

Consultant: Parametrix, Inc.

APPROVED AS TO FORM:

\_\_\_\_\_  
David A. Linehan  
City Attorney

ATTEST:

\_\_\_\_\_  
Brenda Martinez, City Clerk

## **Exhibit A**

### **Master Development Review Team**

#### **Traffic and Transportation Review Services General Scope of Services**

- Traffic Impact Study review and findings
- Traffic Monitoring Report review and findings
- Traffic safety studies
- Travel demand forecasting and modeling
- Traffic operations modeling
- Intersection level of service analysis
- Roundabout evaluation
- Design concept review
- Sight distance evaluation
- Pedestrian and bicycle facility planning and design
- Transit facility planning and design
- Parking management and guidelines
- Code language and design standards review
- Traffic calming strategies review
- Coordination with City staff
- Attendance at City Council or public meetings or hearings

Exhibit B

# City of Black Diamond On-Call Task Request

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

City Staff Contact:

Task Name: \_\_\_\_\_

Phone: 360-886-5700

Consultant Project No.: \_\_\_\_\_

Fax: 360-886-2592

Consultant Contact Name: \_\_\_\_\_

Consultant Phone: \_\_\_\_\_

Consultant Fax: \_\_\_\_\_

## Scope of Task Request

## Budget Estimate:

## Task Request Approval:

City of Black Diamond:

\_\_\_\_\_  
Written Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Consultant:

\_\_\_\_\_  
Written Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\*Costs are billed on a time and materials basis, the Consultant shall notify the City should additional funds be necessary to complete the task order. Additional work beyond that which is ordered by the City shall not commence until written notification is received from the City.

### Exhibit C

#### Parametrix Maximum Allowable Rates through September 30, 2012

Classification	Grade	Rate for Billing	Classification	Grade	Rate for Billing
GADD Operator I	8	\$70	Jr. Planner	8/9	\$75
GADD Operator II	9/10	\$85	Planner I	10	\$90
GADD Operator III	11	\$115	Planner II	11	\$100
GADD Tech Lead	12	\$120	Planner III	12/13	\$120
GADD Supervisor	12	\$110	Planner IV	14	\$130
GADD Services Manager	14	\$125	Sr. Planner	15	\$150
			Sr. Planner	16	\$170
Designer I	10	\$100	Sr. Planner	17	\$190
Designer II	11	\$105			
Designer III	12	\$120	Jr. Scientist/Biologist	8	\$75
Designer III	13	\$135	Scientist/Biologist I	10	\$85
Designer IV	14	\$145	Scientist/Biologist II	11	\$110
Sr. Designer	15	\$150	Scientist/Biologist III	12	\$115
Sr. Designer	16/17	\$165	Scientist/Biologist III	13	\$120
			Scientist/Biologist IV	14	\$135
Engineering Technician I	8	\$75	Sr. Scientist/Biologist	15	\$150
Engineering Technician II	9	\$85	Sr. Scientist/Biologist	16	\$165
Engineer I	10	\$95	Sr. Scientist/Biologist	17	\$175
Engineer II	11	\$100			
Engineer III	12	\$115	Environmental Technician I	8	\$85
Engineer III	13	\$125	Environmental Technician II	9	\$90
Engineer IV	14	\$135	Environmental Technician III	10	\$100
Sr. Engineer	15	\$150			
Sr. Engineer	16	\$170	Jr. Toxicologist	8	\$75
Sr. Engineer	17	\$190	Toxicologist I	10	\$95
Sr. Consultant	18	\$235	Toxicologist II	11	\$105
Sr. Consultant	19	\$250	Toxicologist III	12/13	\$115
			Toxicologist IV	14	\$140
Jr. Surveyor	8	\$70	Sr. Toxicologist	15/16	\$165
Surveyor I	9	\$80	Sr. Toxicologist	17	\$210
Surveyor II	10	\$85			
Surveyor III	11	\$110	Hydrogeologist I	10	\$95
Sr. Surveyor	12	\$115	Hydrogeologist II	11	\$100
Sr. Surveyor	13	\$140	Hydrogeologist III	12/13	\$115
Survey Supervisor	14	\$145	Hydrogeologist IV	14	\$115
Regional Surveyor	18	\$185	Sr. Hydrogeologist	15	\$150
			Sr. Hydrogeologist	16	\$165
Construction Technician I	8/9	\$85	Sr. Hydrogeologist	17	\$170
Construction Technician II	10	\$90			
Construction Technician III	11	\$120	GIS Technician	9/10	\$85
Construction Technician IV	12	\$135	Sr. GIS Analyst	11	\$95
Construction Manager I	11	\$110			
Construction Manager II	12	\$125	Graphic Artist	9	\$80
Construction Manager III	13	\$135	Sr. Graphic Artist	10	\$110
Construction Manager IV	14	\$145			
Sr. Construction Manager	15	\$150	Technical Aide	7	\$70
Sr. Construction Manager	16	\$170	Sr. Technical Aide	8	\$75
Sr. Construction Manager	17	\$175	Project Coordinator	9	\$90
Site Construction Manager	18	\$180	Sr. Project Coordinator	10	\$95
			Project Controls Specialist	11	\$100
Operations Manager	16	\$150	Project Coordination Supervisor	11	\$100
Operations Manager	17	\$170			
Operations Manager	18	\$180	Project Accountant	8	\$80
Division Manager	16	\$165	Project Accountant	9	\$85
Division Manager	17	\$205	Sr. Project Accountant	10	\$95
Division Manager	18/19	\$235	Sr. Accounting Specialist	10	\$100
Regional Division Manager	18/19	\$240	Sr. Contract Administrator	11	\$115
Program Manager	18/19	\$250			
Program Manager	20	\$260	Library Specialist	9	\$80
Principal Consultant	19	\$270	Librarian	11	\$85
Principal Consultant	20	\$295	Information Resource Manager	13	\$125
Project Delivery Officer	19	\$235	LAN Admin I	11	\$100
Principal	19/20	\$295	LAN Admin II	12	\$110
			Sr. LAN Admin	13	\$105
Word Processor	7	\$65	Office Clerk	4	\$55
Sr. Word Processor	8	\$75	Receptionist	6	\$60
Word Processing Specialist	9	\$95	Admin Assistant	6/7	\$65
Technical Editor	10	\$105	Sr Admin Assistant	8	\$70
Word Proc Mgr/Editor	11	\$110	Sr Admin Assistant	9	\$90
Production Manager	12	\$130	Office Administrator	10	\$95
			Sr. Office Administrator	11	\$110
Expert Witness		\$250	Office Administrative Manager	12-14	\$130
Value Engineering		\$250			

Direct project expenses and reproduction costs are billed at cost plus 15%

Public hearing testimony services are billed at hourly rates plus 30%