

RESOLUTION NO. 24-1609

**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
FINANCIAL CONSULTING SERVICES GROUP, INC. FOR
FINANCIAL PLANNING SERVICES RELATED TO THE
CITY'S WATER SYSTEM PLAN UPDATE**

WHEREAS, the City hired RH2 to assist with the completion of the City's Water System Plan Update; and

WHEREAS, RH2 and the City are ready to look at financial aspects of the Water System Plan as it relates to capital projects, operations, and revenue; and

WHEREAS, the City needs to contract with a qualified firm to perform this financial planning as it relates to the Water System Plan Update; and

WHEREAS, Financial Consulting Services Group, Inc. has the staff and expertise to complete this work for the City;

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

Section 1. The Mayor is hereby authorized to execute a Professional Services Agreement with Financial Consulting Services Group, Inc. for Financial Planning Services related to the City's Water System Plan Update, significantly in the form attached hereto.


PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 21ST DAY OF MARCH, 2024.

CITY OF BLACK DIAMOND:



Carol Benson, Mayor

Attest:



Brenda L. Martinez, City Clerk

**CITY OF BLACK DIAMOND CONSULTANT SERVICES AGREEMENT
FOR FINANCIAL PLANNING SERVICES RELATED TO THE WATER SYSTEM
PLAN UPDATE**

This Professional Services Agreement ("Agreement") is entered into by and between:

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

Physical Address: 24301 Roberts Drive

Mailing Address: PO Box 599

Black Diamond, WA 98010

Contact: Scott Hanis Phone: 360-851-4521 Fax : 360-851-4501

and

FINANCIAL CONSULTING SERVICES GROUP, INC. ("Consultant")

Physical Address: 7525 166th Ave. NE, D-215

Redmond, WA 98052

Mailing Address: Same as above

Contact: Chris Gonzalez Phone: 425-502-6280

Tax ID No.: _____

for Financial Planning services related to the City's Water System Plan update.

WHEREAS, the City has previously contracted with Consultant to provide the City with financial consulting; 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 AND CONDITIONS

1. Services by Consultant

1.1 Consultant has been retained by the City to provide professional financial planning services related to the City's Water System Plan Update, as generally described in the Scope of Work attached to this Agreement as Exhibit "A". The services performed by Consultant shall not exceed the Scope of Work nor shall the Consultant be entitled to a greater amount of compensation as that provided in this Agreement without the prior written authorization of the City.

1.2 The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to this Agreement.

1.3 Consultant represents and warrants that it, its staff to be assigned to the Project, and its subconsultants and their staff have the requisite training, skill, and experience necessary to

provide the services required by this Agreement and are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant and its subconsultants under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

2. Schedule of Work

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

3. Compensation

3.1 Rates. Compensation for the services provided pursuant to this Agreement shall be on a time and materials basis according to the list of billing rates and reimbursable expenses included in the budget section of Exhibit "A"

3.2 The City shall pay the Consultant an amount based on time and materials, not to exceed Twenty-Six Thousand Dollars (\$26,000.00) for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amendment to this Agreement.

3.3 Other. In the event that after commencement of work, the Consultant anticipates that the work under this Agreement will exceed the initial amount authorized, Consultant shall promptly notify the City and provide the City with whatever documents or information is necessary to request approval of any amounts in excess thereof.

4. Payment

4.1 Consultant shall maintain time and expense records and provide them to the City monthly, along with monthly invoices, in a format acceptable to the City for work performed to the date of the invoice.

4.2 All invoices shall be paid by City warrant within sixty (60) days of actual receipt by the City of an invoice conforming in all respects to the terms of this Agreement.

4.3 Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Consultant shall make copies available to the City on request.

4.4 If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

5. Discrimination and Compliance with Laws

5.1 Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

5.2 Consultant and its subconsultants shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

5.3 Any violation of this Section 5 shall be a material breach of this Agreement and grounds for immediate cancellation, termination, or suspension of the Agreement by the City, in whole or in part, and may result in Consultant's ineligibility to conduct further work for the City.

6. Duration, Suspension, and Termination of Agreement

6.1 This Agreement takes effect on the date it has been signed by both parties, and it shall remain in effect until December 31, 2024, unless extended or terminated in writing pursuant to this Section 6.

6.2 The City reserves the right to terminate or suspend this Agreement at any time, with or without cause, by giving Consultant notice in writing no fewer than ten (10) days prior to the stated termination or suspension date. In the event of termination, all finished or unfinished reports, or other material prepared by Consultant pursuant to this Agreement, shall be submitted to the City. In the event the City terminates this Agreement prior to completion without cause, Consultant may complete such analyses and records as may be necessary to place its files in order. Consultant shall be entitled to compensation for any satisfactory work completed on the Project prior to the date of suspension or termination.

6.3 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.

6.4 Consultant may terminate this Agreement at any time for cause, so long as Consultant first gives the City at least 30 days' written notice of Consultant's intent to terminate and a reasonable opportunity for the City to cure the purported default. Consultant may terminate this Agreement without cause upon no fewer than 90 days' prior written notice to the City.

7. Standard of Care

7.1 Consultant represents and warrants that it has the requisite training, skill, and experience necessary to provide the services under this Agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services Consultant

provides under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances. Consultant understands and agrees that the services rendered pursuant to this Agreement are for the sole exclusive benefit of the City and that no third party shall have authority to authorize, approve, direct or control any of the services rendered to the City pursuant to this Agreement.

8. Ownership of Work Product

8.1 Original documents, drawings, designs, reports, and other work products developed under this Agreement shall belong to and become the joint property of the City and the Consultant. The City and Consultant each shall have the nonexclusive right to do or authorize any of the acts enumerated in 17 U.S.C § 106, including without limitation reproduction, distribution, performance, or display of the work. The parties agree that there shall be no liability or accounting for profits or revenues made on account of the exercise of any of the aforementioned rights. Each party will retain exclusive interest in and ownership of its intellectual property that was developed before this Agreement. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in Consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

9. Indemnification/Hold Harmless

9.1 Consultant shall defend, indemnify, and hold the City, its officers, officials, employees, volunteers, and agents 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. PROVIDED, HOWEVER, THAT IF ANY SUCH CLAIMS, INJURIES, DAMAGES, LOSSES OR SUITS RESULT FROM THE CONCURRENT NEGLIGENCE OF CONSULTANT AND THE CITY, IT IS EXPRESSLY AGREED THAT CONSULTANT'S OBLIGATIONS AND INDEMNITY UNDER THIS PARAGRAPH SHALL BE EFFECTIVE ONLY TO THE EXTENT OF CONSULTANT'S NEGLIGENCE.

9.2 The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

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

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

10. Insurance

10.1 Consultant shall procure and maintain for the duration of the Agreement, and shall provide proof satisfactory to the City that such insurance is procured and maintained by each of its subconsultants, insurance 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 \$2,000,000 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 \$2,000,000 per claim and \$2,000,000 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 more 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 subconsultants are, and shall be at all times during the term of this Agreement, independent contractors. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

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

13. Notice

13.1 All notices required by this Agreement shall be considered properly delivered when personally delivered by courier service, when received by facsimile, or on the third day following mailing, postage prepaid, certified mail, return receipt requested to:

City: Scott Hanis
City of Black Diamond
24301 Roberts Drive
P.O. Box 599
Black Diamond, WA 98010
Fax: 360-851-4501

With a copy to: City Clerk

Consultant: Chris Gonzalez
FCS Group
Redmond Town Center
7525 166th Ave. NE, Ste. D-215
Redmond, WA 98052

14. Disputes

14.1 This Agreement, and any dispute arising out of or relating to the interpretation or enforcement of this Agreement, shall be governed by and construed according to the laws of the State of Washington, excluding its choice-of-law rules. Venue and personal jurisdiction shall lie exclusively 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 Mayor of the City, or his/her designee (the contract Administrator) 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. Consultant understands and agrees that any and all work to be performed pursuant to this Agreement must be approved in advance by the contract Administrator. No third party, including the project applicant, shall have any direct control or influence over the services performed under this Contract.

16.2 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 terms 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.

16.3 The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances,

shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options and the same shall be and remain in full force and effect.

17. Extent of Agreement/Modification

17.1 This Agreement, together with any attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may only be amended, modified, or added to by written instrument properly signed by both parties. The parties acknowledge the general contract rule that a clause in a contract, such as this one, prohibiting oral modifications is itself generally subject to oral modification. However, in order to ensure certainty as to the terms and conditions of this Agreement, the parties waive this general contract rule.

18. Conflict of Interest; Non-Collusion

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

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

AGREED TO BY:

CITY OF BLACK DIAMOND

CONSULTANT

By: 
Carol Benson

Its: Mayor

Date: 3/22/24

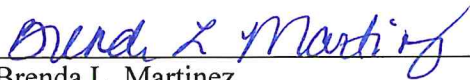
By: _____
Chris Gonzalez

Its: Principal

Date: _____

Attest:

By:



Brenda L. Martinez
City Clerk

APPROVED AS TO FORM:

David A. Linehan
City Attorney

Exhibit A

CITY OF BLACK DIAMOND

2024 WATER SYSTEM FINANCIAL PLAN

The City of Black Diamond is in the process of completing its Water System Plan (WSP), which has identified a number of capital improvements that the City will have to undertake in order to accommodate expected growth and keep its water system in compliance with applicable regulations. In recent WSP reviews, the Department of Health has placed greater emphasis on including a financial plan that supports the execution of the capital improvement plan. The task plan below outlines our proposed approach to meet the City's needs.

TASK PLAN

Task 1 | Project Initiation & Data Collection

Upon commencing the project, we will participate in a kick-off meeting with the project team to confirm the goals and objectives of the study. This meeting will include reviewing the scope of work, identifying project objectives, expectations, and deliverables, outlining the project schedule and key milestone review points, and discussing appropriate lines of communication. We have budgeted this meeting to be conducted via remote session. FCS GROUP will provide a data request outlining key information required to complete the study, working with the project team to resolve questions and obtain additional records as needed. Task 1 includes reviewing data provided for the study, identifying any potential data anomalies that could impact the integrity of the study's findings or recommendations. This task also includes the administrative efforts involved with project initiation and ongoing management.

Task 2 | Financial Plan

Task 2 includes the development of a multi-year financial plan to meet the water utility's ongoing needs. Specific work elements evaluated to determine the annual revenue requirements include:

- **Operating Forecast.** Initially based on the City's budget, the forecast of operating revenues and expenses will incorporate inflation and other cost increases (e.g. salaries and benefits) as appropriate. It will also consider anticipated changes in staffing and/or program activities.
- **Capital Forecast.** The capital funding plan involves developing a funding strategy for the water utility's CIP that considers available resources from rate revenues, capital facilities charges, developer contributions, existing reserves, and debt (if needed). We will estimate the financial impacts of debt issued as part of the capital funding strategy.

- **Revenue Sufficiency Analysis.** We will evaluate the adequacy of current revenues in meeting both cash flow needs and any applicable debt service coverage requirements, developing a multi-year strategy of annual rate adjustments.
- **Sensitivity Analysis.** In collaboration with the project team, FCS GROUP will develop up to three (3) scenarios to evaluate the impacts of changes to key variables or other factors of interest.

Task 3 | Documentation

Task 3 consists of efforts related to preparing the financial chapter of the WSP:

- Reviewing the water utility's historical financial performance, summarizing noteworthy trends
- Discussing potential funding sources for the CIP
- Documenting the financial plan completed in Task 2
- Evaluating the affordability of the City's current and proposed water rates

We will submit the draft financial chapter to the project team for review, revising it to incorporate input received from both parties.

Task 4 | Meetings & Public Process

It will be important to interact frequently with staff throughout the project to ensure that the findings and recommendations reflect the needs and goals. Task 4 includes the following meetings.

- Two (2) remote review meetings with staff (up to two attendees from FCS GROUP, meetings up to two hours each)
- One (1) onsite meeting with the City Council to present study findings and recommendations (up to two attendees from FCS GROUP, meeting up to two hours)

We are happy to attend additional meetings upon request and propose to bill for any such meetings based on time and materials expended (with the City's approval).

SCHEDULE

The timeframe for completing the analysis will depend on various factors including timeliness of receipt of requested data/information, quality of data, ability to schedule meetings in a timely manner, and the ability of the project team to provide policy direction for the study to move forward at key study milestones. We will work with the project team to develop a specific project schedule as part of the project initiation task.

BUDGET

We propose to complete the scope outlined above for \$26,000, billed according to our standard hourly rate schedule (shown below). We would be happy to negotiate the appropriate level of effort for this project if we have scaled our approach out of line with the City's needs and expectations.

LABOR¹

Principals	Standard Rate	\$260
Project Managers		
• Senior Project Manager / Practice Lead	Standard Rate	\$245
• Project Manager II	Standard Rate	\$235
• Project Manager I	Standard Rate	\$225
• Assistant Project Manager	Standard Rate	\$215
Consultants		
• Project Consultant	Standard Rate	\$200
• Senior Analyst	Standard Rate	\$180
• Analyst	Standard Rate	\$165
Administrative and Technical Support		
• Public Relations		\$180
• Technical Writer/Graphic Artist		\$155
• Administrative Support		\$105

¹Litigation rates are 150% of standard hourly rates for services in support of direct litigation, settlement negotiations, arbitration, and/or mediation processes.