Memo

To: Mayor McCarthy, City Council
From: Jeff Arango, AICP – Director of Community Planning
Date: August 15, 2013

Re: Building Code Compliance Consulting Services

The current building official has resigned effective August 14, 2013. The City of Langley has an obligation to provide continuity in building code compliance services.

Over the last two weeks staff has reviewed the qualifications of the firms that provide building code compliance services on the MRSC consultant roster. Three firms stood out as providing the types of services needed by the city: BHC Consultants, Bureau Ventas and Eagle Eye Engineering. I reviewed the statement of qualifications from each firm and have selected BHC Consultants as the most qualified and best fit to provide the building code compliance services.

A proposed contract from BHC Consultant to provide building code services is attached. The contract outlines a range of services that BHC can provide to the city and is an at-will contract that the city may cancel at anytime. To start, staff is proposing to have a representative from BHC work on-site for 10 hours per week at a rate of $75 per hour. The BHC representative will essentially perform all the functions of the building official during on-site hours.

The main purpose for the initial on-site hours is to familiarize the consultant with our existing codes and processes. The on-site hours may be adjusted during periods of low building activity. In lieu of the on-site services the city may request plan review and inspections on a fixed fee basis in which a percentage of the fees charged go to the consultant for their services as outlined in the contract. As work loads permit it is anticipated the city will move towards a more on-call based services for building code compliance in order to reduce costs to the city. Staff will monitor and manage the consultants work to ensure the most efficient services possible while maintaining a high level of customer service.

In addition, the city will assess our current building fees by the end of the year and the consultant understands any fee changes may impact their fixed fee rate and find that acceptable.

Recommendation

Staff recommends the city approve a consulting contract with BHC Consultants to provide building code services to the city.
THIS PROFESSIONAL SERVICES AGREEMENT, which is referred to hereinafter as “this Agreement”, is made and entered by and between BHC Consultants, LLC (“BHC”) and the City of Langley (“CITY”) and is effective as of the last date written below.

Scope of Services
The scope of services to be performed, and the schedule and compensation for performing those services, shall be as described on Exhibit “A”, attached, and hereby incorporated into this Agreement.

In witness whereof, the parties have made and executed this Agreement.

BHC Consultants, LLC

By: Craig Chambers
Title: President
Signature:
Date: April 19, 2013

City of Langley

(City)

By: ________________________________
Title: ________________________________
Signature: ____________________________
Date: ________________________________

GENERAL CONDITIONS

Independent Contractor: BHC is an independent contractor and is not an agent or employee of CITY.

Assignment: Neither party may assign this Agreement or any rights or responsibilities under it, whether during performance or after performance, without first obtaining the other party’s written consent.

Compliance with Laws, Permits and Licenses: BHC shall comply with responsible interpretations of applicable laws, regulations, ordinances and permits that are in effect at the time of performance.

Taxes: BHC shall comply with federal, state, and local tax laws, Social Security Acts, Unemployment Compensation and Workers’ Compensation Acts in so far as applicable to the performance of this Agreement.

Provision of Documents: CITY shall provide BHC with pertinent information concerning the City’s requirements for the Project. This includes providing drawings, specifications, schedules and other information prepared by or available to CITY pertinent to the services.

Authorization: BHC shall begin performance upon receipt of a copy of this Agreement bearing the CITY’s signature unless stated otherwise in writing.

Changes and Additional Services: CITY and BHC may agree to modify the scope of services and may agree to the performance of additional services for additional compensation. All changes shall be in writing and shall take effect only when signed by both parties.

Invoicing: BHC shall submit monthly progress billings to CITY. If services are performed on a lump sum fee basis, progress billings shall be on a percent-complete basis. If services are performed on a time-and-materials basis, progress billings shall itemize actual hours worked, equipment, outside services and a brief description of the services provided; hourly rates shall be in accordance with the current BHC Rate Schedule.

Payment: Payment to BHC for services performed and reimbursable costs incurred shall be made within 30 days of receipt of invoice. All payments shall be delivered to: BHC Consultants, LLC, 1601 Fifth Avenue Suite 500, Seattle WA 98101.
**Termination for Convenience:** CITY, for its convenience, may terminate the services of BHC in whole or in part at any time by written notice, which shall state the extent and effective date of such termination. CITY shall reimburse BHC for reasonable costs necessarily incurred by BHC following receipt of the notice of termination.

**Termination for Default:** Either party may terminate this Agreement if the other party substantially fails to meet its obligations under this Agreement. Said termination will become effective upon five (5) business days’ written notice unless the defaulting party cures the default or provides satisfactory evidence to the non-defaulting party that such default will be cured within a satisfactory time.

**Records:** BHC shall maintain all records (fiscal and other) pertaining to the Project for a period of not less than two years. These shall be available to CITY for its review upon reasonable notice.

**Confidentiality:** BHC will not disclose any documents, reports, disclosures, plans or other information that CITY identifies as proprietary or confidential to any third party except as necessary to perform services pursuant to this Agreement or except as required by law.

**Ownership of Documents:** All documents prepared by BHC pursuant to this Agreement are instruments of service intended for use solely with respect to this Project. These instruments of service shall become the property of CITY upon CITY’s performance of its payment obligations under this Agreement. Any reuse or modification of such instruments of service by CITY or others without BHC’s written consent shall be without liability on the part of BHC or its employees or sub-consultants.

**INSURANCE: BHC SHALL MAINTAIN CONTINUOUSLY DURING THE LIFE OF THIS AGREEMENT THE FOLLOWING MINIMUM INSURANCE REQUIREMENTS:**

A. Worker’s Compensation Insurance with statutory limits

B. Comprehensive General Liability with limits of not less than $1,000,000 applicable to bodily injury, sickness, or death in any one occurrence or in the aggregate and not less than $1,000,000 for loss of, or damage to, property in any one occurrence or in the aggregate. This coverage shall include the following: (1) Comprehensive form; (2) Premises operations; (3) Contractual liability; (4) Broad form property damage; (5) Personal injury.

C. Automobile Liability covering all owned, non-owned, or hired vehicles used by BHC with limits of not less than $1,000,000 applicable to bodily injury, sickness, or death of any one person per occurrence and $10,000 for loss of or damage to property in any one occurrence.

D. Professional Liability Insurance in the amount of $1,000,000 per claim and annual aggregate covering BHC’s negligent acts, errors, or omissions.

E. Additional Insured: By endorsement to the general liability insurance policy evidenced by BHC, the City of Marysville, Washington, its officers and employees shall be named as additional insured’s for all liability arising from this contract.

BHC will provide CITY with evidence of the above-stated coverages upon written request received.

Except to the extent that it impairs coverage, each party waives all claims for recovery of costs, losses and damages from the other to the extent covered by insurance carried by or for the benefit of the party incurring the costs, losses or damages.

**Construction:** Only CITY has the right to reject or stop work of its contractors or agents. BHC will notify CITY of non-conforming work performed by the CITY’s contractor(s) coming to the attention of BHC, but BHC is not responsible for inspecting the construction work or for performing exhaustive observations of the construction work. BHC is not responsible for, and does not have control or charge of, the specific means, methods, techniques, sequences or procedures employed by the CITY’s contractor(s) for or jobsite safety or jobsite safety programs. BHC is not responsible for any failure on the part of the contractor(s) to perform work in accordance with the plans and specifications.

**Laws:** This Agreement shall be governed by and interpreted in accordance with the internal laws of the State of Washington.

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**Force Majeure:** BHC shall not be liable for failure to perform when its performance is hindered or prevented by an occurrence beyond the reasonable control of BHC.

**No Third Party Rights:** All duties and responsibilities undertaken pursuant to this Agreement are for the sole and exclusive benefit of the parties hereto. There shall be no third party beneficiaries of this Agreement.

**DISPUTE RESOLUTION:** City and BHC agree that all disputes between them arising out of or related to this Agreement, or the breach or alleged breach of this Agreement, that cannot be resolved by direct discussions shall be submitted to and considered in nonbinding mediation before either party may commence litigation. Unless the parties subsequently agree otherwise, the mediation shall be administered by the American Arbitration Association in Seattle acting under its construction industry mediation rules.

**Entire Agreement:** This Agreement, including attachments incorporated herein by reference, states all of the terms of the agreement between the parties and supersedes all prior and contemporaneous written and unwritten negotiations, proposals, representations, commitments and agreements. This Agreement may be modified only by way of an instrument signed by authorized representatives of both parties.

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**ATTACHMENT - A**

**SCOPE OF SERVICES**

1. **PLAN REVIEW**

BHC will review plans submitted with building permit applications for structural and nonstructural code compliance in accordance with the currently adopted construction codes as adopted and amended by the state of Washington and City of Langley (City), except that BHC will confer with the Building Official and his/her agent on any portion of the review that specifically requires the approval of the Building Official as specified in the code(s).

A. The specified services to be performed by BHC shall be specified in a letter of Authorization issued by the City.

B. The BHC will not design for the applicant, make any structural changes on the plans, or make any changes that directly contradict other information on the plans. Significant changes must be made by or under the direction of the applicant or design professional.

C. BHC will perform plan reviews for all new single family projects, new commercial and substantial remodel and alterations at the BHC office in Seattle if the onsite building inspector cannot perform the reviews due to the technical nature or time constraints. All reviews performed for new single family and new commercial will be charged at the fixed fee rate as determined by the permit and plan reviews fees collected by the city.

D. If corrections or additions are required, the Consultant will write a review letter addressed to the applicant. This review letter will be sent to the City's agent. The City will then send the BHC review letter, along with any additional City requirements sent to the applicant. The correction letter will indicate to the applicant that they are required to submit the revisions/additions to the City per the submittal requirements for the permit type under review.
E. BHC will indicate that the drawings have been reviewed and found to be in substantial compliance with applicable construction codes and ordinances. The reviewer’s name and date of compliance will be affixed to each sheet in up to two sets of drawings including the cover sheet.

F. Complete reviews will include structural, nonstructural, accessibility, energy, and ventilation requirements. Partial reviews will be indicated as either structural or nonstructural or as mutually agreed upon.

2. PROCESS

A. The City will determine which plans are to be reviewed by the Consultant.

B. The City will intake, track, and process the permit applications and all revisions per current building and permit administration procedures.

C. For plan reviews performed at the BHC office, BHC will be responsible for the transportation and cost of returning permit review documents back to the City. The City will be responsible for the transportation and cost of delivering permit review documents to BHC.

D. BHC will complete the initial review and will have either approved the application and notified the City of approval or contacted the applicant and the City with corrections within the time frames listed below:

<table>
<thead>
<tr>
<th>Project Type</th>
<th>Initial Review</th>
<th>Re-Review</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single-Family</td>
<td>10 days (2 weeks)</td>
<td>5 days (1 week)</td>
</tr>
<tr>
<td>Multi-Family</td>
<td>15 days (3 weeks)</td>
<td>10 days (2 weeks)</td>
</tr>
<tr>
<td>Commercial</td>
<td>20 days (4 weeks)</td>
<td>15 days (3 weeks)</td>
</tr>
</tbody>
</table>

Turn-around for all other types of permit applications is to be negotiated.

E. The Consultant will review any revisions or additional information and will either indicate compliance with the code(s) against which it was checked and notify the City of compliance, or if the drawings are still not complete, contact the applicant and the City with additional revision requests within the time frames specified above.

F. The review time may be negotiated based on the number and complexity of projects to be reviewed. The Consultant will not be held responsible for delays beyond the Consultant's control. During heavy workloads or schedule delays, the Consultant shall notify the City of revisions to estimated target dates.

3. ON SITE BUILDING DEPARTMENT SERVICES

BHC will provide a certified building inspector to perform the following services:

A. Upon authorization by the CITY, the BHC staff inspector will perform building department functions for the City.

B. At the request by the CITY, the inspector shall be asked to perform one or more of the following inspection tasks:
   a. non-structural fire and life safety inspections

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b. structural inspections
c. energy code inspections
d. barrier free inspections
e. mechanical & plumbing inspections

C. Inspector will provide building inspections in accordance with the currently adopted International Codes, Washington State Building Code (WAC 51-50 and 51-51), and Energy Code (WAC 51-11), and the applicable City Building Codes, except that inspector will confer with the Building Official or his/her agent on any portion of the review that specifically requires an approval of the Building Official under the applicable Code(s), or that involves an unusual interpretation.

D. Inspections will be done in accordance codes, ordinances and regulations in effect and will be performed in a courteous and professional manner. Up-to-date records of inspection status will be maintained on the job card in the field and on the office copy of the permit.

E. Permit intake, review and processing functions as determined by the city administrative staff.

F. CITY shall guarantee a minimum of four (4) hours inspection work each day inspection services are provided.

4. ADDITIONAL SERVICES REQUIRED

A. Civil/Site plan reviews will be charged at the hourly rates shown in Labor Rate Schedule.

B. Review of deferred submittals will be charged at the hourly rates shown in Labor Rate Schedule.

C. Revisions to plans that require additional plan review after a permit has been approved will be charged at the hourly rates shown in Labor Rate Schedule.

D. Attendance at meetings outside of the normal agreed schedule when requested by the CITY will be charged at the hourly rates shown in Labor Rate Schedule.

E. Fire Code, Fire Sprinkler, Fire Alarm plan reviews when requested by the CITY will be charged at the hourly rates shown in Labor Rate Schedule.

F. Separate (not part of full review as a combination permit) mechanical and plumbing plan reviews will be charged at the hourly rates shown in Labor Rate Schedule.

ATTACHMENT - B
SCHEDULE OF RATES, CHARGES AND FEES

<table>
<thead>
<tr>
<th>Classification</th>
<th>Hourly Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building Department Services Personnel to include:</td>
<td></td>
</tr>
<tr>
<td>Building Inspector, permit intake, review and processing functions</td>
<td>$75</td>
</tr>
<tr>
<td>Same Above Services when performed by Principal Consultant</td>
<td>$85</td>
</tr>
<tr>
<td>PlanReviewer – nonstructural (when not covered by a fixed fee rate and performed at BHC Office)</td>
<td>$130</td>
</tr>
</tbody>
</table>
Structural P.E. (when approved by city for special conditions) $150
Civil/site plan review (P.E.) $130
Principal Consultant (William Hill, Building Official) $85

1. PLAN REVIEW FEES:

Residential:
Single Family Dwellings will be charged at 75% of City’s collected Plan Review fee (complete review including structural, non-structural, mechanical, plumbing, State Energy, and applicable items in the City’s Municipal Code).

At the request of the City and with concurrence by Consultant, plan review fees may be determined to be charged at the hourly rate as identified in labor rate schedule as opposed to the following “fixed fee” rates.

Non-Residential:
A. Complete Plan Review
   IBC Non-structural Fire & Life Safety + Structural, disabled accessibility and/or State Energy Code, IMC and/or UPC.
   75% of the City collected Plan Review fee.
   ($250 minimum)

B. Partial Review:
   Will consist of one of the following:
   - IBC Non-structural Fire & Life Safety including mechanical/plumbing when issued as part of a combination building permit, and State Energy and Accessibility review
   - IBC Structural ONLY
   50% of the plan review fee calculated. ($250 minimum)

C. Mechanical/Plumbing (issued as separate permit)
   When permit for such work is issued separately from a building combination permit and permit fee is based on valuation of such work separate from building permit, fee will be assessed at the partial review percentage noted above. If permit fee is based on unit fee per the IMC or UPC, fee will be charged the hourly rate.

D. IF requested, Civil/Site Plan review will be charged at the hourly civil plan review rates.
   These fees include the initial plan review plus one (1) recheck. When substantial revisions occur to previously reviewed and/or approved plans, additional fees shall be charged at the hourly rates shown in Labor Rate Schedule.

2. ADDITIONAL:

   A. The City shall provide all work station equipment, forms and communication equipment required for field services and permit processing function

   B. All other review services and fixed fee reviews in excess of two (the initial review plus one recheck) shall be paid on a time-and-expense basis using the hourly rate.
C. Valuation figures used to determine the plan review fees will be calculated based on the City's adopted Fee Schedule or Resolution.

D. Each billing statement will include the permit application number and owner or project name of the plans reviewed with the fee.

E. Billing statements will be issued for reviews that receive a complete initial review in the preceding month or other acceptable time period. A complete initial review shall constitute an earned fee for both City and Consultant.

F. The City shall have the right to withhold payment to the Consultant for any work not completed in a satisfactory manner until such time that the consultant modifies such work to the satisfaction of the City.

G. The cost of delivering plans for review to BHC will be incurred by the CITY. The cost of delivering reviewed plans back to city will be incurred by BHC.

H. Mileage travel rates shown are portal to portal from inspector’s residence or the Seattle office, whichever is less for on-call services. One hour of travel time will be charged for each day of travel to City’s location.

I. All mileage included by BHC inspector will be reimbursed at the most current IRS rate, currently .556 cents per mile. Mileage will not be assessed on travel using City supplied vehicle.

J. Consultant staff’s normal work days are Monday through Friday (8am–5pm). Office work on Saturdays, Sundays or CITY Holidays will be performed only at specific request of the City. Billing for work performed outside normal work hours are on Saturdays, Sundays, or CITY Holidays shall be at 150% of the rates shown above.

K. This Schedule of Hourly Rates is effective as of January 1, 2013. Rates are subject to annual review.