

RESOLUTION NO. 2013-01

**A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF BENTON CITY TO SIGN THE AGREEMENT FOR BUILDING INSPECTION SERVICES BETWEEN THE CITY OF BENTON CITY AND THE BUILDING DEPARTMENT**

**WHEREAS**, the City intends to regulate the process for construction and improvements within its boundaries to secure compliance with its comprehensive plan and with its pertinent ordinances, laws and regulations, and the overall operation of said enforcement; and

**WHEREAS**, The Building Department possesses knowledgeable and experienced persons familiar with the building and Fire permitting process, building codes, Fire Code, abatement procedures, and other such related activities ordinarily performed by a jurisdiction's building and Fire Code enforcement department; and

**WHEREAS**, the City wishes to assure itself of the availability of such qualified experts to assist in the administration of the City's building/Fire code enforcement activities and TBD is willing to provide such expertise to assist the City in this regard; NOW, THEREFORE,

**THE CITY COUNCIL OF THE CITY OF BENTON CITY, WASHINGTON**, hereby resolves as follows:

That the Mayor of the City of Benton City, Washington, is hereby authorized and directed to sign the original Agreement for Building Inspection Services between the City of Benton City, Washington, and The Building Department, a copy of which is attached hereto and incorporated herein by this reference as Exhibit A; and to take all necessary steps required to complete this transaction.

**ADOPTED** this 5 day of February, 2013, by the City Council of the City of Benton City, Washington, and signed in authentication of its passage this 5 day of February, 2013.

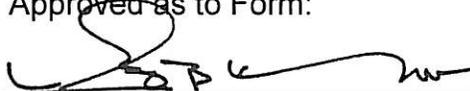
Resolution 2013-01 filed and recorded in the office of the City Clerk of the City of Benton City, Washington, this 5 day of February, 2013.

  
Lloyd R. Carnahan  
Mayor

Attest:

  
Stephanie Haug, CMC  
City Clerk/Treasurer

Approved as to Form:

  
Kerr Law Group  
City Attorney

## AGREEMENT FOR BUILDING INSPECTION SERVICES

THIS AGREEMENT is entered into this 6 day of February, 2013, by and between the City of Benton City, a Washington Municipal Corporation, (hereinafter "City"), and The Building Department Inc., a Washington Corporation (hereinafter "Contractor").

WHEREAS, the City intends to regulate the process for construction and improvements within its boundaries to secure compliance with its comprehensive plan and with its pertinent ordinances, laws and regulations, and the overall operation of said enforcement; and

WHEREAS, Contractor possesses knowledgeable and experienced persons familiar with the Building and Fire permitting process, Building Codes, Fire Code, abatement procedures, and other such related activities ordinarily performed by a jurisdiction's Building and Fire Code enforcement department; and

WHEREAS, the City wishes to assure itself of the availability of such qualified experts to assist in the administration of the City's Building/Fire code enforcement activities and Contractor is willing to provide such expertise to assist the City in this regard.

NOW, THEREFORE, in consideration of the mutual benefits accruing, it is agreed by and between the parties hereto as follows:

### 1. Scope of Services.

A. Contractor accepts the relationship of trust and confidence established between it and the City by this Agreement. Contractor covenants with the City to furnish its best skill and judgment and to cooperate with the City in furthering the interests of the City. Contractor agrees to furnish efficient business administration and superintendence and to use its best efforts to complete the review and administration of the building permit application process and administration of State laws under RCW Chapter 19.27 and the City's laws, ordinances, and regulations relating to the building code enforcement processes in an expeditious and economical manner consistent with the interests of the City. Any associate other than the owner, assigned to work for the City, must be approved by the City prior to performing such work.

B. The City will forward the initial applications, plans and specifications to Contractor via the Contractor's internet based permit portal or by fax, mail and/or e-mail.

Contractor agrees to review building plans, plumbing plans, mechanical plans, building, plumbing and mechanical inspections, fire inspections, abatement of dangerous buildings, code enforcement, and code interpretation. Inspection shall be conducted by the end of the next regular business day from the date of inspection request.

C. Contractor agrees to act as a consultant to the City's officials in matters concerning the operation of the City's Building/Fire code enforcement activities when

requested by the City. Such activities may include, but are not necessarily limited to:

- (1) Review of building plans, plumbing plans, and mechanical plans.
- (2) Abatement of dangerous buildings.
- (3) Building code enforcement.
- (4) Phone code support.
- (5) Building code interpretation.
- (6) Drafting of ordinances affecting Building/Fire codes annual fire inspections.
- (7) Fire code enforcement.
- (8) Perform required fire inspections.

D. Contractor shall provide a State certified and IFC certified fire code inspector on staff within three (3) months of the date of this Agreement. Additional time to fulfill this term may be requested if State testing is not available to meet this schedule.

E. Activities may also include working with the City Attorney in enforcing and prosecuting individuals charged with violation of the building codes and related regulations adopted by the City.

2. Payment. Contractor shall be reimbursed by the City for services as follows:

A. For code enforcement and consulting to the City for matters not covered under paragraphs (B) and (C) below. Contractor shall receive the sum of Fifty-Five Dollars (\$55.00) per hour.

B. For performing plan reviews for projects:

- (1) Plan reviews for projects with valuation up to and including \$200,000 will be charged at the rate of seventy percent (70%) of the plan reviews' fees collected.
- (2) Plan reviews for projects with valuations greater than \$200,000 will be charged at the rate of sixty-five percent (65%) of the plan reviews' fees collected.

C. For calculating valuations and finalizing building permit applications and Washington Building Code inspections for projects:

- (1) Building inspection for projects with valuation up to and including \$200,000 will be charged at the rate of sixty percent (60%) of the permit fees collected.

- (2) Building inspections for projects with valuation greater than \$200,000 will be charged at the rate of fifty-five percent (55%) of the permit fees collected.

D. Project valuations shall be calculated pursuant to "Building Valuation Data" as published in the Building Safety magazine published by the International Code Council. When this method is not practical, replacement costs, based on contractor bid documents, may be used as valuation.

3. Time for Payment. The City shall pay Contractor's invoices not later than the 30<sup>th</sup> of the month billed, provided such invoices are received by the City not later than the third business day of the month. In the event questions concerning any invoice should arise that might delay payment in a timely manner, payment of the unquestioned portion of the invoice shall be submitted to the City Council by the third Tuesday of that month for payment approval.
4. Insurance. Contractor shall secure and maintain in full force and effect during the performance of all work pursuant to this Agreement a policy of comprehensive general liability insurance providing coverage of at least \$1,000,000 per occurrence and \$2,000,000 aggregate for personal injury; \$1,000,000 per occurrence and \$2,000,000 aggregate for property damage; errors and omissions insurance in the amount of \$1,000,000; and automobile insurance as required by law. Each such insurance policy shall name the City as an additional insured and shall include a provision prohibiting cancellation of said policies, except upon thirty (30) days written notice to the City. The City shall be named as a certificate holder on each insurance policy. Certificates of coverage shall be delivered to the City within fifteen (15) days of execution of this Agreement.
5. Termination. This Agreement may be terminated by either party giving sixty (60) days' written notice to the other party. The term of this Agreement shall be for a period of one (1) year commencing on the date this Agreement is signed, and shall automatically renew each year absent notice of one party to the other of intent to cancel pursuant to this section. In the event this Agreement is terminated, Contractor's final invoice shall be paid on the regularly scheduled payment date.

In the event Contractor is in breach of any of the terms of this Agreement, the City may provide written notice of the breach to Contractor, and Contractor shall have twenty (20) days from the date of the notice to cure the breach and provide written documentation of such to the City. In the event the breach is not cured within twenty (20) days, the City may thereupon immediately terminate this Agreement.

6. Independent Contractor. It is understood and agreed that Contractor is an independent contractor and is not employed by the City. Contractor shall make no claims for benefits for employment against the City including, but not limited to, sick leave, medical insurance, coverage under the City's State Department of Labor and Industries policy, vacation benefits, retirement, or unemployment benefits.

Contractor shall be solely responsible for all acts of its agents, employees, representatives during the performance of this Agreement. Contractor shall comply with all State and

Federal laws including, but not limited to, the requirements of RCW 50.04.0140 and RCW 51.08.195.

7. Notices. Any notice required to be given under this Agreement shall be give by certified mail addressed below:

To the City:	City of Benton City PO Box 70 Benton City WA 99320 PH (509) 588-3322
To Contractor:	The Building Department Inc. PO Box 5355 West Richland, WA 99353 PH (509) 946-5481 FX (509) 946-6030 email Richard@tbdinc.net

8. Hold Harmless Agreement. In performing the work under this Agreement, Contractor agrees to defend the City, their officers, agents, servants and employees (hereinafter individually and collectively referred to as "Indemnities"), from all suits, claims, demands, actions or proceedings, and to the extent permissible by law, indemnify and hold harmless the Indemnities from:

- A. All damages or liability of any character including in part costs, expenses and attorney fees, based upon, any negligent act, error, or omission of Contractor or any person or organization for whom Contractor may be responsible, and arising out of the performance of professional services under this Agreement; and
- B. All liability, loss, damage, claims, demands, costs and expenses of whatsoever nature, including in part, court costs and attorney fees, based upon, or alleged to be based upon, any act, omission, or occurrence of Contractor or any person or organization for whom Contractor may be responsible, arising out of, in connection with, resulting from or caused by the performance or failure of performance of any work or services under this Agreement, or from conditions created by Contractor's performance or non-performance of said work or service. Contractor shall not be required to indemnify the City for injury, damages, and liabilities as shall have been occasioned by the sole negligence of the City.

9. Ownership and Use of Documents.

- A. The parties acknowledge that this Agreement shall be governed by RCW Chapter 42.56 and any other State or Federal law relating to confidentiality, intellectual properties, and public disclosure. The parties shall make a good faith effort to comply with such laws, and to the fullest extent allowed by law, comply with the provisions of this section.
- B. All research, tests, surveys, preliminary data and any and all other work product prepared or gathered by the Contractor in preparation for the services rendered

shall not be considered public records, provided, however, that:

- (1) All final reports, presentations and testimony prepared by Contractor shall become the property of the City upon their presentation to and acceptance by the City and shall at that date become public records.
- (2) The City shall have the right, upon reasonable request, to inspect, review and, subject to the approval of Contractor, copy any work product.
- (3) In the event that Contractor shall default on this Agreement, or in the event that this Agreement shall be terminated prior to its completion as herein provided, the work product of Contractor, along with a summary of work done to date of default or termination, shall become the property of the City and tender of the work product and summary shall be a prerequisite to final payment under this Agreement. The summary of work done shall be prepared at no additional cost, if the Agreement is terminated through default by Contractor. If the Agreement is terminated through convenience by the City, the City agrees to pay Contractor for the preparation of the summary of work done.
- (4) Contractor shall maintain all documents associated with work performed under this Agreement for a minimum period of three (3) years after completion of the work. This provision shall survive termination of this Agreement.
- (5) Contractor shall respond to requests by the City for records within five (5) business days by either providing the records, or by identifying in writing that additional time is necessary to provide the records with a description of the reasons why additional time is needed. Records shall be provided to the City within twenty (20) days of the date of the request. Provisions of Section 8 in this Agreement shall specifically apply to any claim arising out of Contractor's failure to properly maintain or timely produce records as described herein and as otherwise required by law.

10. Non-assignable. All of the terms, conditions and provisions hereof shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns; provided, however, that no assignment or transfer to a third party of this Agreement shall be made without written prior consent of the parties to the Agreement. Prior written consent shall not be required for assignment by Contractor of this Agreement to a business entity of which Contractor holds a majority or controlling interest.

11. Discrimination Prohibited. Contractor shall not discriminate against any employee or job applicant for work on this Agreement, and shall not discriminate any property owner or permit applicant for reasons of race, color, religion, age, sex, national origin or physical handicap.

12. Covenant Against Contingent Fees. Contractor warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement, and that they have not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gifts, or any other consideration

contingent upon or resulting from the award of making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

13. General Provisions. For the purpose of this Agreement, time is of the essence. In the event a dispute regarding the enforcement, breach, default or interpretation of this Agreement, the parties shall first meet in a good faith effort to resolve such dispute. In the event the dispute cannot be resolved by agreement of the parties, said dispute shall be resolved by arbitration pursuant to RCW 7.04A, as amended, and the Mandatory Arbitration Rules (MAR); venue shall be placed in Benton County, Washington, the laws of the State of Washington shall apply; and the prevailing party shall be entitled to its reasonable attorney fees and cost.

In the event any provision of this Agreement is deemed to be unenforceable, the other provisions of the Agreement shall remain in full force and effect.

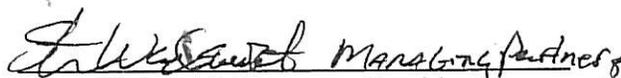
Failure of the City to enforce any terms or provisions of this Agreement shall not be deemed a waiver of said terms or provisions. Waiver of any provision of this Agreement by the City shall only be made in writing. Any such waiver shall be specific only to the provision so listed, and shall not constitute a waiver of any other provision of this Agreement.

DATED this 6 day of February, 2013.

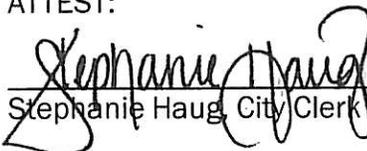
CITY OF BENTON CITY, WASHINGTON

THE BUILDING DEPARTMENT INC.

  
\_\_\_\_\_  
Lloyd R. Carnahan, Mayor

  
\_\_\_\_\_  
Richard R Mumma, President

ATTEST:

  
\_\_\_\_\_  
Stephanie Haug, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Leland B. Kerr, City Attorney