



CITY OF BLACK DIAMOND
April 23, 2009 Special Meeting Agenda
25510 Lawson St., Black Diamond, Washington

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

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

PUBLIC HEARINGS:

- 1.) **AB09-041** – Ordinance Revising Stormwater Rates and Establishing Lifeline Program Ms. Miller
(Council action may follow public hearing)
- 2.) **AB09-042** – Closed Record Hearing – Administrative Appeal of Issuance of 12 Development Rights for Parcel #1121069058 Mr. Nix

APPOINTMENTS, PRESENTATIONS, ANNOUNCEMENTS:

Presentation – Black Diamond Municipal Court Judge Rosen

UNFINISHED BUSINESS: None

- 3.) **AB09-028a** – Resolution Accepting Low Bid for Court Remodel Mr. Esping
- 4.) **AB09-040a** – Resolution Declaring Certain City Property Surplus Mr. Esping

NEW BUSINESS:

- 5.) **AB09-043** – Ordinance Authorizing Interfund Loan to Stormwater from Wastewater Fund Ms. Miller
- 6.) **AB09-044** – Resolution Establishing Identity Theft Prevention Program Ms. Miller
- 7.) **AB09-045** – Resolution Authorizing Contract with Apex for EIS regarding Morgan Kame Terrace Mine Expansion Mr. Pilcher
- 8.) **AB09-046** – Ordinance Amending Weight Restrictions on Certain City Streets Mr. Combs
- 9.) **AB09-047** – Ordinance Amending Chapter 9.96 of the Black Diamond Municipal Code Regarding Domestic Violence Chief Kiblinger
- 10.) **AB09-048** – Ordinance Adding New Section to Chapter 10.40 of the Black Diamond Municipal Code Regarding Inattentive Driving Chief Kiblinger
- 11.) **AB09-049** – Resolution Authorizing Fehr and Peers Contract for Transportation Study Mr. Pilcher

DEPARTMENT REPORTS:

Police – Chief Kiblinger

MAYOR’S REPORT:

COUNCIL REPORTS:

ATTORNEY REPORT:

PUBLIC COMMENTS:

CONSENT AGENDA:

12.)Minutes – Council Meeting of

EXECUTIVE SESSION:

ADJOURNMENT:

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
SUBJECT: Ordinance 09-901, amending rates charged for city utilities and authorizing discounted rates for low income customers, credits for businesses, time payments, and use of collection agencies	Agenda Date: April 23, 2009		AB09-041
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		X
	City Administrator –Gwen Voelpel		
	Asst City Attorney – Tom Guilfoil	X	
	City Clerk – Brenda L. Streepy		
	Finance – May Miller		X
	Public Works – Seth Boettcher		X
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Timeline: 2009-11 (stormwater rates)	Court – Kaaren Woods		
Cost Impact: See previous budget estimates	Comm Development – Steve Pilcher		
Fund Source:	Natural Resources – Aaron Nix		
Attachments: Ordinance 09-901, Exhibit A			
SUMMARY STATEMENT: The economic recession and closure of the Green River bridge have had a major impact on Black Diamond residents and businesses. Although the City needs to raise sufficient revenues to cover its financial and legal obligations, the City Council asked City staff to re-examine the utility fee structure to see what relief could be provided. As a result, staff is recommending the following changes, as reflected in this ordinance: 1) Reducing the initial stormwater fee base rate and phasing in the previously adopted fee over 3 years; 2) Providing certain credits for business against the stormwater fee; 3) Increasing the base ERU from 2,500 to 3,000 square feet; 4) Exempting gravel as an impervious surface; 5) Allowing payment plans for delinquent accounts (with interest charged as required by law); 6) Establishing a “Lifeline” rates program that reduces the city’s share of utility rates by up to 50% for low-income seniors and low-income disabled persons, and also for kidney dialysis patients; 7) Authorizing the city to use collections agencies where appropriate to collect delinquent bills.			
COMMITTEE REVIEW AND RECOMMENDATION: Recommend Council approval.			
RECOMMENDED ACTION: MOTION to adopt Ordinance 09-901, relating to city utility rates and billing.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
April 23, 2009			

ORDINANCE NO. 09- 901

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, RELATING TO CITY UTILITIES, AMENDING CHAPTERS 13.04 AND 13.24 OF THE BLACK DIAMOND MUNICIPAL CODE TO REDUCE STORMWATER ASSESSMENTS ON RESIDENTS AND CERTAIN TYPES OF BUSINESSES AND AUTHORIZE USE OF COLLECTION AGENCIES FOR DELINQUENT ACCOUNTS, AND CREATE A NEW CHAPTER 13.02 TO CREATE A UTILITY FEE DISCOUNT FOR LOW INCOME SENIOR CITIZENS AND LOW-INCOME DISABLED CUSTOMERS

WHEREAS, the City of Black Diamond recognizes that it has become increasingly difficult for low income senior citizen and low-income disabled residential customers to pay for water, sewer, and stormwater services provided by the City; and

WHEREAS, in addition, the City's recently-instituted Stormwater Utility fee went into effect at the same time that a severe economic recession has affected the incomes and financial resources of the city's residents and businesses generally; and

WHEREAS, although the City's Stormwater Utility fee was rationally-derived from an analysis of the cost of creating the storm water system, the number of utility customers, and the funding sources available to the city, the original funding formula resulted in fee amounts that significantly impacted local businesses at the same time that an emergency long-term closure of the Green River Bridge and the severe economic recession has placed many local businesses under unprecedented financial strain; and

WHEREAS, sensitive to these issues, the City Council requested the City's Finance Director, Public Works Director, and City Attorney examine the City's utility fee structures to see what adjustments could be made to provide relief to residential customers and businesses while still enabling the City to meet its financial and legal obligations; and

WHEREAS, as part of this analysis, the City also determined that in some situations, use of collection agencies as an alternative to placing a lien on property is a more effective, flexible system to deal with delinquent utility accounts.

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

Section 1. Chapter 13.04.270 of the Black Diamond Municipal Code is hereby amended to read as follows:

13.04.270 Payment of monthly water bill--Delinquent charges--Water shutoff and lien authorized.

- A. The monthly water rates established in Section 13.04.280 are due and payable in full at city hall and, if not paid within thirty days of the billing date identified on the billing notice, shall be delinquent.
- B. The city shall notify the customer in writing that their account is delinquent. If the account continues to remain delinquent for thirty (30) days or more, the city shall notify the customer in writing that their water service is scheduled to be terminated on or after a specified date. Such date shall be at least ten days after the written notice is served. Customers shall be responsible for payment of any applicable fees related to notice and shutoff of water service.
- C. The water may be cut off on the date stated pursuant to subsection B unless all delinquent water charges and associated fees are paid in full to the city, or payment arrangements have been approved by the city's Finance Director, provided, if the customer defaults on the agreed payment plan, the city may terminate water service after posting notice on the premises, via door hanger or otherwise, or serving notice in person to the customer or to a person of suitable age and discretion residing at the premises, that service shall be terminated unless payment of all outstanding amounts owed and any costs is made in full to the city within two business days.
- D. Once water service is properly terminated, it shall not be restored to the premises until all delinquent water rates and fees and a turn-on charge in the amount set forth in the city's consolidated list of fees, as authorized in Section 2.62.010, are paid in full at cityhall.
- E. All delinquent water charges shall be a lien against the property to which the water service has been furnished. The lien of a water charge delinquent for thirty (30) days or more past the billing date may be enforced by cutting off the water service to the premises. Said lien may also be enforced according to the procedures established in RCW 35.67.210 through 35.67.280, as currently enacted or hereafter amended.

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Section 2. Chapter 13.04.310 of the Black Diamond Municipal Code is hereby amended to read as follows:

13.04.310 Interest added to past due accounts—Use of collections authorized.

A. In addition to any other fees or charges authorized by law, the city is authorized to add interest to the amount of any delinquent water bill and associated fees at the rate of six percent (6%) per annum, as computed on a monthly basis.

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B. Pursuant to chapter 19.16 RCW, as currently enacted or hereafter amended, the city may assign any delinquent water charges and associated fees to a collections agency; the collections agency may add fees or charges to the original amount assigned to collections as allowed by law. No debt may be assigned to collections until at least thirty (30) calendar days have elapsed from the time that the city attempts to notify the person responsible for the debt of the existence of the debt and that the debt may be assigned to collections if the debt is not paid. Notice of potential assignment to collections shall be made by personal service or regular first class mail to the last known address of the person responsible for the debt, provided, inability to ascertain a current mailing address shall not prohibit the debt from being assigned to collections.

Section 3. Chapter 13.24.020 of the Black Diamond Municipal Code is hereby amended to read as follows:

13.24.020 Failure to pay—Delinquent bills—Liens—Water shutoff authorized.

A. The sewer rates established in Section 13.24.010 are due and payable in full at city hall and, if not paid within thirty (30) days of the billing date identified on the billing notice, shall be delinquent.

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B. All delinquent sewer charges shall be a lien against the property to which such service has been furnished or is available, which lien shall be superior to all other liens and encumbrances except general taxes and local and special assessments. Said lien may be enforced according to the procedure established in RCW 35.67.210 through 35.67.280, as currently enacted or hereafter amended.

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C. As an additional and concurrent method of enforcing the lien authorized in this section, the city may cut off water service to the premises to which the sewer service was furnished, in accordance with the procedure established in BDMC 13.04.270. Once water service is properly terminated, it shall not be restored to the premises until all delinquent sewer rates and fees and a turn-on charge in the

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amount set forth in the city's ~~official fee schedule~~, as authorized in Section 2.62.010, are paid in full ~~at city hall~~.

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Section 6. A new chapter 13.24.025 is hereby added to the Black Diamond Municipal Code, to read as follows:

13.24.025 Interest added to past due accounts—Use of collections authorized.

Interest may be added to delinquent accounts and unpaid charges and costs sent to a collections agency according to the procedures established in BDMC 13.04.310.

Section 7. Chapter 13.24.030 of the Black Diamond Municipal Code is hereby amended to read as follows:

13.24.030 Periodic review.

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The charges and fees established by this chapter shall be reviewed ~~periodically~~ by the city council. ~~As part of~~ such review, the city's ~~finance~~ department shall present to the city council ~~proposed amendments to any rates and charges necessary to enable the city to pay all costs to be incurred by the~~ city's sewer system.

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Section 8. A new Chapter 13.02 entitled, "Utilities Lifeline Rates Program," is hereby added to the Black Diamond Municipal Code, to read as described in Exhibit A, which is hereby incorporated by reference.

Section 9. Chapter 14.02 of the Black Diamond Municipal Code is hereby amended to read as described in Exhibit B, which is hereby incorporated by reference.

Section 10. Severability. Each and every provision of this Ordinance shall be deemed severable. In the event that any portion of this Ordinance is determined by final order of a court of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the remaining provisions thereof, provided the intent of this Ordinance can still be furthered without the invalid provision.

Section 12. Effective date. This Ordinance shall be in full force and effect five (5) days after publication as required by law. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by State law.

Introduced on the ____ day of _____, 2009.

Passed by the City Council on the ____ day of _____, 2009.

Mayor Howard Botts

ATTEST:

City Clerk

APPROVED AS TO FORM:

Loren D. Combs, City Attorney

Published: _____

Effective Date: _____

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EXHIBIT "A" TO ORDINANCE 09-_____

Chapter 13.02

Utilities "Lifeline" Rates Program

- 13.02.010 Purpose.**
- 13.02.020 Lifeline utility rates.**
- 13.02.030 Eligibility.**
- 13.02.040 Application and approval procedure.**
- 13.02.050 Appeals.**
- 13.02.060 Violation—Penalties.**

13.02.010 Purpose.

Pursuant to Article VIII, section 7 of the Washington State Constitution and RCW 74.38.070, the city of Black Diamond wishes to provide necessary support for the poor and infirm who would otherwise be unable to afford the standard monthly service rates of the city's water, sewer, and storm water utilities. At the same time, the city recognizes that its ability to offer special rates is limited by the financial constraints of the city and the limited revenues available to fund special rates for low-income residents. Therefore, the city has been forced to limit availability of these special rates according to the criteria described in this chapter.

13.02.020 Lifeline utility rates.

- A. The city of Black Diamond hereby authorizes a reduced monthly rate for residential low-income senior citizen and residential low-income disabled customers of the city's water, sewer, and storm water utilities. This reduced rate shall be known as the "Lifeline" rate, and shall be a reduction of up to fifty percent (50%) of the city's share of the costs for services provided under the city's water, sewer, and storm water utilities. Fees or charges collected by the city on behalf of other utilities shall be unaffected.
- B. The exact amount of the Lifeline rate reduction shall be set annually by the city council and published on the city's official fee schedule.

13.01.030 Eligibility.

- A. Lifeline utility rates shall be available to any household that meets the following criteria:

1. The residence or apartment seeking to receive the lifeline rates must be served by city of Black Diamond utilities.
2. The account must be in the name of a resident customer who is sixty-two (62) years of age or older, or who can provide verification from an attending physician or other official document, such as a Supplemental Security Income (SSI) statement, of being permanently disabled; and
3. Total household disposable income from all sources (such as Social Security; Disability payments; Veteran's benefits; pensions; rents; annuities; IRA withdrawals; etc.) must not exceed the official guidelines set annually by the federal Department of Housing and Urban Development (HUD); and
4. The customer eligible for the lifeline rate must be living at the residence or apartment receiving the discount.
5. Households in which a person resides who is receiving kidney dialysis and where the household income does not exceed the HUD guidelines may receive a discount on water rates of fifty percent (50%). The customer eligible for the lifeline rate must be living at the residence or apartment receiving the discount.

B. Lifeline utility rates shall be available for residential customers only; non-residential users shall be ineligible to receive lifeline rates.

13.02.040 Application and approval procedure.

A. Application procedures.

1. Persons wishing to apply for a lifeline rate shall file an application with the city clerk on a form approved by the city. This form shall include a statement in which the applicant attests under oath that the information provided by the applicant is true and correct to the best of applicant's knowledge.
2. The applicant shall provide a copy of applicant's most recent tax return, or other reliable official document, that verifies the applicant's income.
3. If the applicant is asserting a disability that renders them eligible for a lifeline utility rate, the applicant must provide verification of their condition from a licensed attending physician or through other official documents, such as a Supplemental Security Income (SSI) statement, that verifies that the applicant is

permanently disabled.

4. The city may require any other information from the applicant reasonably necessary to determine the applicant's eligibility.

B. Approval or denial of application.

1. Applications for lifeline utility rates shall be reviewed by the city's finance director, or his or her designee, for completeness and eligibility. An incomplete application shall not be processed.
2. The finance director, or his or her designee, shall inform the applicant in writing whether the application has been approved or denied. If the application is denied, the applicant shall be informed in writing of the reason for the denial.
3. If denial is based on misrepresentation of information by the applicant, the applicant shall be ineligible to receive a lifeline rate for a period of five years.

C. Annual application required. Applicants for a lifeline utility rate shall be reviewed for approval based on their circumstances at the time of application, *provided*, persons may apply only once in any calendar year, and persons who have previously been denied based on intentional misrepresentation to the city shall be ineligible to receive lifeline rates for a period of five years. Persons who have previously been approved for a lifeline utility rate must reapply each year and demonstrate their continued eligibility. No lifeline rate shall be renewed without an application and approval as provided in this section.

D. Revocation of lifeline rate. The city shall have the right to immediately revoke any lifeline utility rate reduction upon probable cause to believe the applicant and/or recipient of the rate is ineligible to receive it.

13.02.050 Appeals.

A person who has properly applied for and been denied a lifeline utility rate may appeal this denial by filing a request in writing within ten days of the denial to the city administrator. The appellant may provide additional information to support the appeal, if desired. A decision on the appeal shall be issued within thirty days of receipt. If the position of city administrator is vacant at the time the appeal is filed, the mayor shall consider the appeal. The decision of the city administrator or the mayor shall be final. Requests received by telephone, facsimile, or email shall not satisfy the requirements of this section.

13.02.060 Violation—Penalties.

The city shall have authority to take all measures, criminal and civil, allowed by law to seek reimbursement for any reduction in utility rates achieved based on intentional misrepresentation, fraud, or deceit, and to seek any other penalties available under the law.

EXHIBIT “B” TO ORDINANCE 09-_____

Chapter 14.02

STORMWATER UTILITY

Sections:

- 14.02.010 Purpose
- 14.02.020 Definitions
- 14.02.030 Stormwater and Surface Water Management Utility Created
- 14.02.040 Utility Administration Authority
- 14.02.050 Future Growth
- 14.02.060 Developed Properties
- 14.02.070 Calculation of Impervious Ground Cover—ERUs.
- 14.02.080 Undeveloped Real Property
- 14.02.090 Public street right-of-ways
- 14.02.100 Connection Charges
- 14.02.120 Billing—Interest added to past due accounts—Use of collections authorized.
- 14.02.130 Periodic review of charges and fees

14.02.010 Purpose

It is the finding of the City that the stormwater and surface water management utility is necessary in order to promote public health, safety, and welfare by establishing and operating a comprehensive approach to surface and stormwater problems. The purpose of the rates and charges established herein is to provide a method for payment of all or any part of the cost and expense of maintaining and operating stormwater control facilities, all or any part of the cost and expense of planning, designing, establishing, acquiring, developing, constructing, and improving any of such facilities, or to pay or secure the payment of all or any portion of any issue of general obligation or revenue bonds issued for such services. These rates and charges are necessary in order to promote the public health, safety and welfare by minimizing uncontrolled surface and stormwater, erosion, and water pollution, to preserve and utilize the many values of the City’s natural drainage system including water quality, open space, fish and wildlife habitat, recreation, education, urban separation and drainage facilities, and to provide for the comprehensive management and administration of surface and stormwater.

14.02.020 Definitions

The following definitions shall apply in the interpretation and enforcement of this chapter:

1. “City” shall mean the City of Black Diamond, Washington.
2. “Connection Charge” shall mean that fee charged by the utility to property which is developed which reflects a proportionate share of the utility’s capital costs attributable to the newly developed property.
3. “Developed” shall mean that condition of real property altered from its natural state by the addition to or construction on such property of impervious ground cover or other manmade physical improvements such that the hydrology of the property or a portion thereof is affected.
4. “Drainage Facility” shall mean the system of collecting, conveying, and storing surface and stormwater runoff. “Drainage facility” includes but is not limited to a constructed or engineered stream, pipeline, channel, ditch, swamp, lake, wetland, closed depression, infiltration facility, retention/detention facility, erosion/sedimentation control facility, and other drainage structures and appurtenances that provide for drainage.
5. “Equivalent Residential Unit” shall mean and be equal to 3,000 square feet of impervious ground cover and is the measure of impervious ground cover to be used by the utility in assessing service charges and general facility charges against each parcel of property. Deleted: 2,500
6. “Impervious ground cover” shall mean those hard surfaced areas either which prevent or retard the entry of water into the soil in the manner that such water entered the soil under natural conditions preexistent to development, or which cause water to run off the surface in greater quantities or at an increased rate of flow than that present under natural conditions preexistent to development, including without limitation such surfaces as roof tops, asphalt or concrete sidewalks, paving, driveways and parking lots, walkways, patio areas, storage areas, ~~piled macadam~~ or other surfaces which similarly affect the natural infiltration or runoff patterns existing prior to development. provided, gravel surfaces without an impervious surface underneath the gravel shall not be considered impervious ground cover for purposes of this chapter. Deleted: and gravel,
7. “Parcel” shall mean the smallest separately segregated unit or plot of land having an identified owner, boundaries and surface area which is documented for property tax purposes and given a tax lot number by the King County Assessor.
8. “Service area” means the incorporated areas of the City of Black Diamond.
9. “Service Charge” shall mean the monthly rate levied by the utility upon all developed real property within the boundaries of the utility.
10. “Surface and stormwater” shall mean water originating from rainfall and other precipitation that is found on ground surfaces and in drainage facilities, streams, springs, seeps, ponds, lakes and wetlands as well as shallow ground water.
11. “Surface and stormwater management services” shall mean the services provided by the Public Works Department, including, but not limited to, basin planning, facilities

maintenance, regulation, financial administration, public involvement, drainage investigation and enforcement, aquatic resource restoration, surface and stormwater quality and environmental monitoring, natural surface water drainage system planning, intergovernmental relations and facility design and construction.

12. “System” shall mean the entire system of storm drainage facilities owned by the utility or over which the utility has control or right of use for the movement and retention of storm and surface waters, including both naturally occurring and manmade facilities.
13. “Undeveloped” shall mean that condition of real property unaltered by the construction or addition to such property by man of impervious ground cover or physical manmade improvements of any kind which change the hydrology of the property from its natural state.
14. “Utility” shall mean the City of Black Diamond Stormwater and Surface Water Management Utility.

14.02.030 Stormwater and Surface Water Management Utility Created

The City Council creates and establishes ~~s~~ for and on behalf of the citizens of the City a stormwater and surface water management utility, in accordance with and subject to the laws of the state, including the establishment of rates and charges therefor. The City Council further establishes that the stormwater and surface water management utility boundaries shall coincide with the legally established boundaries of the City’s corporate limits.

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14.02.040 Utility Administration Authority

The City’s stormwater and surface water management utility herein created shall be administered by the City’s ~~s~~ Public Works Department in such a manner as the City Council shall provide.

14.02.050 Future Growth

It is the finding of the City ~~that effective and~~ comprehensive management of surface and stormwater runoff must include anticipation of future growth and development in ~~the city, and that this growth and development shall guide~~ the design and improvement of the surface and stormwater management system. Service charge revenue needs shall be based upon ~~both~~ the present and future requirements of the surface and stormwater management system, and these needs shall be considered when determining the rates and charges of the utility.

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14.02.060 Developed Properties

It is the finding of the City that developed properties contribute to an increase in surface and

stormwater runoff to the surface and stormwater management system. This increase in surface and stormwater runoff results in the need to establish rates and charges to finance the City's activities in stormwater and surface water management. Developed properties shall be subject to the rates and charges of the surface water management utility based on their contribution to increased runoff based on the amount of impervious surface areas.

14.02.070 Calculation of Impervious Ground Cover—ERUs.

- A. The City shall calculate the impervious ground cover of each parcel of developed real property, except single family residential, duplex, triplex, and fourplex, to determine the number of equivalent residential units contained therein; 3,000 square feet of impervious ground cover shall equal one equivalent residential unit (ERU). Each developed parcel of property shall be deemed to contain a minimum of one ERU.
- B. Classification of a given developed property shall depend on its actual use, not its zoned use, according to the following:
 1. All detached single-family homes, manufactured homes and mobile homes, when each is used only as a residence, are considered "single family residential" for purposes of this section and shall be deemed to contain one equivalent residential unit.
 2. All duplexes, triplexes and fourplexes, when each is used only as a residence, are deemed to contain one equivalent residential unit for each unit within the complex.
 3. All other developed real properties within the utility boundaries shall have the number of ERUs contained thereon determined by dividing the number of square feet of impervious ground cover on each property by 3,000 square feet/ERU; the total thus obtained will be rounded to the nearest half.
 4. Where a property is being used for both residential and non-residential purposes, the property shall be classified based on which type of use is dominant on the site. Dominant use shall be determined based on factors including, but not limited to, the amount of square footage devoted to the use, and whether the non-residential use involves customers or employees coming to the site and/or storage of commercial materials onsite.
 5. For purposes of this section, any developed property that is unoccupied shall be classified according to the use to which the property was most recently put prior to becoming unoccupied.

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14.02.080 Undeveloped Real Property

Properties remaining in an undeveloped condition are deemed not to make use of the services of the utility or of the facilities of the system beyond that used by such property in the natural state. Therefore, no service charge shall be imposed upon undeveloped real property.

14.02.090 Public street right-of-ways

City, County, and/or State roadway right-of-ways are exempt from service charges and general facility charges.

14.02.100 Connection Charges

A connection charge shall be assessed against an owner of real property at the time of issuance of a development permit for any onsite storm or surface water drainage structure or facilities which attach or connect to, or otherwise drain into, the system of drainage facilities or where any additional surface or stormwater runoff is generated and delivered or transported through either natural or person-made watercourses to the utility's system of storm and surface water facilities.

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14.02.110 Service Charge Rates

A. Service charges are hereby imposed on each parcel of real property within the City served by or to which is available for service the stormwater and surface water management utility.

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B. The following service charge rate is hereby established for all parcels of real property in the City, subject to any credits as described in subsection C, below:

1. For fiscal year 2009: The rate is amended from \$13.00 to \$10.00 per ERU per month, effective April 1, 2009; provided, customers will receive a credit from the city for the difference in cost for the months of January, February, and March 2009 between the original rate and the new rate.

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- 2. For fiscal year 2010: \$11.50 per ERU per month.
- 3. For fiscal year 2011: \$13.00 per ERU per month.

C. Credits. Where applicable, the following credits may be applied in calculating the service rate for a parcel of real property within the city of Black Diamond:

1. Dept. of Ecology Permit credit. Any customer within the city of Black Diamond that is required to obtain a general or individual wastewater permit from the Washington State Department of Ecology shall receive a credit, prorated monthly, in the amount paid each year for such permit toward the amount owed to the city of Black Diamond under this chapter. In

order to qualify for this credit, the business must provide the City with a copy of the Department of Ecology permit and proof of payments along with a letter to the city utility clerk requesting the credit.

2. Storm pond investment credit. Any customer that is assessed a stormwater utility fee under BDMC 14.02.070.B.4 and that constructs and has approved by the city a storm water detention/retention facility shall be eligible for a credit toward the storm water utility rate for the site served by the facility, subject to the following:

(a) To qualify for a credit, the detention/retention pond and associated facilities must adequately perform storm water treatment functions through the use of such methods as oil/water separators, bioswales, wet ponds, cartridge filter systems, or other means. The city may revoke any credit granted under this section upon a determination that the facilities are out of compliance with this section.

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(b) The owner of record must provide the city's public works department with a copy of the facility's "As Built" plans, stamped and signed by the owner's Engineer, to verify that the drainage system has adequate capacity to meet the design criteria for which the Owner is requesting a credit. The Engineer shall also provide a stamped and signed operations manual for the retention/detention pond. New capacity calculations, "As Built" plans, and a new operations manual shall be provided to the city if the retention/detention pond is increased or decreased in size.

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(c) Annually by January 1 of the year preceeding the year for which the credit is being requested, each Owner of Record shall provide a certified statement on a form provided by the city verifying that all required maintenance has been performed in accordance with the operations manual. Once every five years, the certified statement shall be stamped and signed by the owner's Engineer.

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(d) The Owner of Record shall provide the city with a "hold harmless" statement on a form provided by the city that indemnifies the city from any loss arising from the construction and maintenance and operation of the retention/detention pond and associated private drainage facilities for both the quantity and quality of water runoff from the owner's property. This statement shall be signed by the Owner and will be recorded with the County Auditor by the Owner of Record. The Owner of Record shall provide a copy to the city showing the County Auditor's recording number stamped on it before the credit will be given by the city.

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(e) Each Owner of Record must enter into an agreement that allows the city to

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enter upon the Owner's property to inspect the retention/detention pond and associated drainage facilities and verify all information submitted by the Owner and his or her Engineer. The agreement shall be on a form provided by the city and shall be recorded with the County Auditor by the Owner. The Owner shall provide a copy to the city showing the County Auditor's recording number stamped on it before the credit will be given by the city.

(f) Credit shall be given as follows:

(1) Retention facilities:

- a. 100-year storage: 85% credit
- b. 50-year storage: 40% credit
- c. 25-year storage: 20% credit
- d. 10-year storage: 10% credit

(2) Detention facilities:

- a. 100-year storage facility with release rate of 50% of the predevelopment discharge rate for a two-year storm: 85% credit
- b. 50-year storage facility with release rate of 50% of the predevelopment discharge rate for a two-year storm: 40% credit
- c. 25-year storage facility with release rate of 50% of the predevelopment discharge rate for a two-year storm: 20% credit
- d. 10-year storage facility with release rate of 50% of the predevelopment discharge rate for a two-year storm: 10% credit

14.02.120 Billing—Interest added to past due accounts—Use of collections authorized.

- A. Stormwater and surface water management utility charges shall be computed on a monthly basis. The amount billed shall be included on the city utility bill.
- B. In addition to any other fees or charges authorized by law, the city is authorized to add interest to the amount of any delinquent stormwater utility charges and associated fees at the rate of six percent (6%) per annum, as computed on a monthly basis.
- C. Pursuant to chapter 19.16 RCW, as currently enacted or hereafter amended, the city may assign any delinquent charges and associated fees to a collections agency; the collections agency may add fees or charges to the original amount

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assigned to collections as allowed by law. No debt may be assigned to collections until at least thirty (30) calendar days have elapsed from the time that the city attempts to notify the person responsible for the debt of the existence of the debt and that the debt may be assigned to collections if the debt is not paid. Notice of potential assignment to collections shall be made by personal service or regular first class mail to the last known address of the person responsible for the debt, *provided*, inability to ascertain a current mailing address shall not prohibit the debt from being assigned to collections.

14.02.130 Periodic review of charges and fees

The charges and fees established by this ordinance and any other ordinances of the City Council establishing charges and fees for the stormwater and surface water management utility shall be reviewed periodically by the mayor or his or her designee. As part of such review, the finance director, in conjunction with the public works director, shall present to the City Council a yearly budget for the utility and propose amendments to any rates and charges necessary to enable the city to pay all costs to be incurred by the utility.

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representing the equivalent residential units contained on such property

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All billings, collections, delinquencies, and related administrative matters shall be
handled in a manner consistent with the Black Diamond Municipal Code

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ORDINANCE NO. 09- 901

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, RELATING TO CITY UTILITIES, AMENDING CHAPTERS 13.04 AND 13.24 OF THE BLACK DIAMOND MUNICIPAL CODE TO REDUCE STORMWATER ASSESSMENTS ON RESIDENTS AND CERTAIN TYPES OF BUSINESSES AND AUTHORIZE USE OF COLLECTION AGENCIES FOR DELINQUENT ACCOUNTS, AND CREATE A NEW CHAPTER 13.02 TO CREATE A UTILITY FEE DISCOUNT FOR LOW INCOME SENIOR CITIZENS AND LOW-INCOME DISABLED CUSTOMERS

WHEREAS, the City of Black Diamond recognizes that it has become increasingly difficult for low income senior citizen and low-income disabled residential customers to pay for water, sewer, and stormwater services provided by the City; and

WHEREAS, in addition, the City's recently-instituted Stormwater Utility fee went into effect at the same time that a severe economic recession has affected the incomes and financial resources of the city's residents and businesses generally; and

WHEREAS, although the City's Stormwater Utility fee was rationally-derived from an analysis of the cost of creating the stormwater system, the number of utility customers, and the funding sources available to the city, the original funding formula resulted in fee amounts that significantly impacted local businesses at the same time that an emergency long-term closure of the Green River Bridge and the severe economic recession has placed many local businesses under unprecedented financial strain; and

WHEREAS, sensitive to these issues, the City Council requested the City's Finance Director, Public Works Director, and City Attorney examine the City's utility fee structures to see what adjustments could be made to provide relief to residential customers and businesses while still enabling the City to meet its financial and legal obligations; and

WHEREAS, as part of this analysis, the City also determined that in some situations, use of collection agencies as an alternative to placing a lien on property is a more effective, flexible system to deal with delinquent utility accounts.

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

Section 1. Chapter 13.04.270 of the Black Diamond Municipal Code is hereby amended to read as follows:

13.04.270 Payment of monthly water bill--Delinquent charges—Water shutoff and lien authorized.

- A. The monthly water rates established in Section 13.04.280 are due and payable in full at city hall and, if not paid within thirty days of the billing date identified on the billing notice, shall be delinquent.
- B. The city shall notify the customer in writing that their account is delinquent. If the account continues to remain delinquent for thirty (30) days or more, the city shall notify the customer in writing that their water service is scheduled to be terminated on or after a specified date. Such date shall be at least ten days after the written notice is served. Customers shall be responsible for payment of any applicable fees related to notice and shutoff of water service.
- C. The water may be cut off on the date stated pursuant to subsection B unless all delinquent water charges and associated fees are paid in full to the city or payment arrangements have been approved by the city's Finance Director, *provided*, if the customer defaults on the agreed payment plan, the city may terminate water service after posting notice on the premises, via door hanger or otherwise, or serving notice in person to the customer or to a person of suitable age and discretion residing at the premises, that service shall be terminated unless payment of all outstanding amounts owed and any costs is made in full to the city within two business days.
- D. Once water service is properly terminated, it shall not be restored to the premises until all delinquent water rates and fees and a turn-on charge in the amount set forth in the city's consolidated list of fees, as authorized in Section 2.62.010, are paid in full at city hall.
- E. All delinquent water charges shall be a lien against the property to which the water service has been furnished. The lien of a water charge delinquent for thirty (30) days or more past the billing date may be enforced by cutting off the water service to the premises. Said lien may also be enforced according to the procedures established in RCW 35.67.210 through 35.67.280, as currently enacted or hereafter amended.

Section 2. Chapter 13.04.310 of the Black Diamond Municipal Code is hereby amended to read as follows:

13.04.310 Interest added to past due accounts—Use of collections authorized.

- A. In addition to any other fees or charges authorized by law, the city is authorized to add interest to the amount of any delinquent water bill and associated fees at the rate of six percent (6%) per annum, as computed on a monthly basis.
- B. Pursuant to chapter 19.16 RCW, as currently enacted or hereafter amended, the city may assign any delinquent water charges and associated fees to a collections agency; the collections agency may add fees or charges to the original amount assigned to collections as allowed by law. No debt may be assigned to collections until at least thirty (30) calendar days have elapsed from the time that the city attempts to notify the person responsible for the debt of the existence of the debt and that the debt may be assigned to collections if the debt is not paid. Notice of potential assignment to collections shall be made by personal service or regular first class mail to the last known address of the person responsible for the debt, *provided*, inability to ascertain a current mailing address shall not prohibit the debt from being assigned to collections.

Section 3. Chapter 13.24.020 of the Black Diamond Municipal Code is hereby amended to read as follows:

13.24.020 Failure to pay—Delinquent bills—Liens—Water shutoff authorized.

- A. The sewer rates established in Section 13.24.010 are due and payable in full at city hall and, if not paid within thirty (30) days of the billing date identified on the billing notice, shall be delinquent.
- B. All delinquent sewer charges shall be a lien against the property to which such service has been furnished or is available, which lien shall be superior to all other liens and encumbrances except general taxes and local and special assessments. Said lien may be enforced according to the procedure established in RCW 35.67.210 through 35.67.280, as currently enacted or hereafter amended.
- C. As an additional and concurrent method of enforcing the lien authorized in this section, the city may cut off water service to the premises to which the sewer service was furnished, in accordance with the procedure established in BDMC 13.04.270. Once water service is properly terminated, it shall not be restored to the premises until all delinquent sewer rates and fees and a turn-on charge in the

amount set forth in the city's official fee schedule, as authorized in Section 2.62.010, are paid in full at city hall.

Section 6. A new chapter 13.24.025 is hereby added to the Black Diamond Municipal Code, to read as follows:

13.24.025 Interest added to past due accounts—Use of collections authorized.

Interest may be added to delinquent accounts and unpaid charges and costs sent to a collections agency according to the procedures established in BDMC 13.04.310.

Section 7. Chapter 13.24.030 of the Black Diamond Municipal Code is hereby amended to read as follows:

13.24.030 Periodic review.

The charges and fees established by this chapter shall be reviewed periodically by the city council. As part of such review, the city's finance department shall present to the city council proposed amendments to any rates and charges necessary to enable the city to pay all costs to be incurred by the city's sewer system.

Section 8. A new Chapter 13.02 entitled, "Utilities Lifeline Rates Program," is hereby added to the Black Diamond Municipal Code, to read as described in Exhibit A, which is hereby incorporated by reference.

Section 9. Chapter 14.02 of the Black Diamond Municipal Code is hereby amended to read as described in Exhibit B, which is hereby incorporated by reference.

Section 10. Severability. Each and every provision of this Ordinance shall be deemed severable. In the event that any portion of this Ordinance is determined by final order of a court of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the remaining provisions thereof, provided the intent of this Ordinance can still be furthered without the invalid provision.

Section 12. Effective date. This Ordinance shall be in full force and effect five (5) days after publication as required by law. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by State law.

Introduced on the ____ day of _____, 2009.

Passed by the City Council on the ____ day of _____, 2009.

Mayor Howard Botts

ATTEST:

City Clerk

APPROVED AS TO FORM:

Loren D. Combs, City Attorney

Published: _____

Effective Date: _____

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EXHIBIT “A” TO ORDINANCE 09-_____

Chapter 13.02

Utilities “Lifeline” Rates Program

- 13.02.010 Purpose.**
- 13.02.020 Lifeline utility rates.**
- 13.02.030 Eligibility.**
- 13.02.040 Application and approval procedure.**
- 13.02.050 Appeals.**
- 13.02.060 Violation—Penalties.**

13.02.010 Purpose.

Pursuant to Article VIII, section 7 of the Washington State Constitution and RCW 74.38.070, the city of Black Diamond wishes to provide necessary support for the poor and infirm who would otherwise be unable to afford the standard monthly service rates of the city’s water, sewer, and storm water utilities. At the same time, the city recognizes that its ability to offer special rates is limited by the financial constraints of the city and the limited revenues available to fund special rates for low-income residents. Therefore, the city has been forced to limit availability of these special rates according to the criteria described in this chapter.

13.02.020 Lifeline utility rates.

- A. The city of Black Diamond hereby authorizes a reduced monthly rate for residential low-income senior citizen and residential low-income disabled customers of the city’s water, sewer, and storm water utilities. This reduced rate shall be known as the “Lifeline” rate, and shall be a reduction of up to fifty percent (50%) of the city’s share of the costs for services provided under the city’s water, sewer, and storm water utilities. Fees or charges collected by the city on behalf of other utilities shall be unaffected.
- B. The exact amount of the Lifeline rate reduction shall be set annually by the city council and published on the city’s official fee schedule.

13.01.030 Eligibility.

- A. Lifeline utility rates shall be available to any household that meets the following criteria:

1. The residence or apartment seeking to receive the lifeline rates must be served by city of Black Diamond utilities.
2. The account must be in the name of a resident customer who is sixty-two (62) years of age or older, or who can provide verification from an attending physician or other official document, such as a Supplemental Security Income (SSI) statement, of being permanently disabled; and
3. Total household disposable income from all sources (such as Social Security; Disability payments; Veteran's benefits; pensions; rents; annuities; IRA withdrawals; etc.) must not exceed the official guidelines set annually by the federal Department of Housing and Urban Development (HUD); and
4. The customer eligible for the lifeline rate must be living at the residence or apartment receiving the discount.
5. Households in which a person resides who is receiving kidney dialysis and where the household income does not exceed the HUD guidelines may receive a discount on water rates of fifty percent (50%). The customer eligible for the lifeline rate must be living at the residence or apartment receiving the discount.

B. Lifeline utility rates shall be available for residential customers only; non-residential users shall be ineligible to receive lifeline rates.

13.02.040 Application and approval procedure.

A. Application procedures.

1. Persons wishing to apply for a lifeline rate shall file an application with the city clerk on a form approved by the city. This form shall include a statement in which the applicant attests under oath that the information provided by the applicant is true and correct to the best of applicant's knowledge.
2. The applicant shall provide a copy of applicant's most recent tax return, or other reliable official document, that verifies the applicant's income.
3. If the applicant is asserting a disability that renders them eligible for a lifeline utility rate, the applicant must provide verification of their condition from a licensed attending physician or through other official documents, such as a Supplemental Security Income (SSI) statement, that verifies that the applicant is

permanently disabled.

4. The city may require any other information from the applicant reasonably necessary to determine the applicant's eligibility.

B. Approval or denial of application.

1. Applications for lifeline utility rates shall be reviewed by the city's finance director, or his or her designee, for completeness and eligibility. An incomplete application shall not be processed.
2. The finance director, or his or her designee, shall inform the applicant in writing whether the application has been approved or denied. If the application is denied, the applicant shall be informed in writing of the reason for the denial.
3. If denial is based on misrepresentation of information by the applicant, the applicant shall be ineligible to receive a lifeline rate for a period of five years.

C. Annual application required. Applicants for a lifeline utility rate shall be reviewed for approval based on their circumstances at the time of application, *provided*, persons may apply only once in any calendar year, and persons who have previously been denied based on intentional misrepresentation to the city shall be ineligible to receive lifeline rates for a period of five years. Persons who have previously been approved for a lifeline utility rate must reapply each year and demonstrate their continued eligibility. No lifeline rate shall be renewed without an application and approval as provided in this section.

D. Revocation of lifeline rate. The city shall have the right to immediately revoke any lifeline utility rate reduction upon probable cause to believe the applicant and/or recipient of the rate is ineligible to receive it.

13.02.050 Appeals.

A person who has properly applied for and been denied a lifeline utility rate may appeal this denial by filing a request in writing within ten days of the denial to the city administrator. The appellant may provide additional information to support the appeal, if desired. A decision on the appeal shall be issued within thirty days of receipt. If the position of city administrator is vacant at the time the appeal is filed, the mayor shall consider the appeal. The decision of the city administrator or the mayor shall be final. Requests received by telephone, facsimile, or email shall not satisfy the requirements of this section.

13.02.060 Violation—Penalties.

The city shall have authority to take all measures, criminal and civil, allowed by law to seek reimbursement for any reduction in utility rates achieved based on intentional misrepresentation, fraud, or deceit, and to seek any other penalties available under the law.

EXHIBIT “B” TO ORDINANCE 09-_____

Chapter 14.02

STORMWATER UTILITY

Sections:

- 14.02.010 Purpose**
- 14.02.020 Definitions**
- 14.02.030 Stormwater and Surface Water Management Utility Created**
- 14.02.040 Utility Administration Authority**
- 14.02.050 Future Growth**
- 14.02.060 Developed Properties**
- 14.02.070 Calculation of Impervious Ground Cover--ERUs.**
- 14.02.080 Undeveloped Real Property**
- 14.02.090 Public street right-of-ways**
- 14.02.100 Connection Charges**
- 14.02.110 Service Charge Rates**
- 14.02.120 Billing—Interest added to past due accounts--Collections authorized**
- 14.02.130 Periodic review of charges and fees**

14.02.010 Purpose

It is the finding of the City that the stormwater and surface water management utility is necessary in order to promote public health, safety, and welfare by establishing and operating a comprehensive approach to surface and stormwater problems. The purpose of the rates and charges established herein is to provide a method for payment of all or any part of the cost and expense of maintaining and operating stormwater control facilities, all or any part of the cost and expense of planning, designing, establishing, acquiring, developing, constructing, and improving any of such facilities, or to pay or secure the payment of all or any portion of any issue of general obligation or revenue bonds issued for such services. These rates and charges are necessary in order to promote the public health, safety and welfare by minimizing uncontrolled surface and stormwater, erosion, and water pollution, to preserve and utilize the many values of the City’s natural drainage system including water quality, open space, fish and wildlife habitat, recreation, education, urban separation and drainage facilities, and to provide for the comprehensive management and administration of surface and stormwater.

14.02.020 Definitions

The following definitions shall apply in the interpretation and enforcement of this chapter:

1. “*City*” shall mean the City of Black Diamond, Washington.
2. “*Connection Charge*” shall mean that fee charged by the utility to property which is developed which reflects a proportionate share of the utility’s capital costs attributable to the newly developed property.
3. “*Developed*” shall mean that condition of real property altered from its natural state by the addition to or construction on such property of impervious ground cover or other manmade physical improvements such that the hydrology of the property or a portion thereof is affected.
4. “*Drainage Facility*” shall mean the system of collecting, conveying, and storing surface and stormwater runoff. “*Drainage facility*” includes but is not limited to a constructed or engineered stream, pipeline, channel, ditch, swamp, lake, wetland, closed depression, infiltration facility, retention/detention facility, erosion/sedimentation control facility, and other drainage structures and appurtenances that provide for drainage.
5. “*Equivalent Residential Unit*” shall mean and be equal to 3,000 square feet of impervious ground cover and is the measure of impervious ground cover to be used by the utility in assessing service charges and general facility charges against each parcel of property.
6. “*Impervious ground cover*” shall mean those hard surfaced areas either which prevent or retard the entry of water into the soil in the manner that such water entered the soil under natural conditions preexistent to development, or which cause water to run off the surface in greater quantities or at an increased rate of flow than that present under natural conditions preexistent to development, including without limitation such surfaces as roof tops, asphalt or concrete sidewalks, paving, driveways and parking lots, walkways, patio areas, storage areas, oiled macadam or other surfaces which similarly affect the natural infiltration or runoff patterns existing prior to development, *provided*, gravel surfaces without an impervious surface underneath the gravel shall not be considered impervious ground cover for purposes of this chapter.
7. “*Parcel*” shall mean the smallest separately segregated unit or plot of land having an identified owner, boundaries and surface area which is documented for property tax purposes and given a tax lot number by the King County Assessor.
8. “*Service area*” means the incorporated areas of the City of Black Diamond.
9. “*Service Charge*” shall mean the monthly rate levied by the utility upon all developed real property within the boundaries of the utility.
10. “*Surface and stormwater*” shall mean water originating from rainfall and other precipitation that is found on ground surfaces and in drainage facilities, streams, springs, seeps, ponds, lakes and wetlands as well as shallow ground water.
11. “*Surface and stormwater management services*” shall mean the services provided by the Public Works Department, including, but not limited to, basin planning, facilities

maintenance, regulation, financial administration, public involvement, drainage investigation and enforcement, aquatic resource restoration, surface and stormwater quality and environmental monitoring, natural surface water drainage system planning, intergovernmental relations and facility design and construction.

12. “*System*” shall mean the entire system of storm drainage facilities owned by the utility or over which the utility has control or right of use for the movement and retention of storm and surface waters, including both naturally occurring and manmade facilities.
13. “*Undeveloped*” shall mean that condition of real property unaltered by the construction or addition to such property by man of impervious ground cover or physical manmade improvements of any kind which change the hydrology of the property from its natural state.
14. “*Utility*” shall mean the City of Black Diamond Stormwater and Surface Water Management Utility.

14.02.030 Stormwater and Surface Water Management Utility Created

The City Council creates and establishes for and on behalf of the citizens of the City a stormwater and surface water management utility, in accordance with and subject to the laws of the state, including the establishment of rates and charges therefor. The City Council further establishes that the stormwater and surface water management utility boundaries shall coincide with the legally established boundaries of the City’s corporate limits.

14.02.040 Utility Administration Authority

The City’s stormwater and surface water management utility herein created shall be administered by the City’s Public Works Department in such a manner as the City Council shall provide.

14.02.050 Future Growth

It is the finding of the City that effective and comprehensive management of surface and stormwater runoff must include anticipation of future growth and development in the city, and that this growth and development shall guide the design and improvement of the surface and stormwater management system. Service charge revenue needs shall be based upon both the present and future requirements of the surface and stormwater management system, and these needs shall be considered when determining the rates and charges of the utility.

14.02.060 Developed Properties

It is the finding of the City that developed properties contribute to an increase in surface and

stormwater runoff to the surface and stormwater management system. This increase in surface and stormwater runoff results in the need to establish rates and charges to finance the City's activities in stormwater and surface water management. Developed properties shall be subject to the rates and charges of the surface water management utility based on their contribution to increased runoff based on the amount of impervious surface areas.

14.02.070 Calculation of Impervious Ground Cover—ERUs.

- A. The City shall calculate the impervious ground cover of each parcel of developed real property, except single family residential, duplex, triplex, and fourplex, to determine the number of equivalent residential units contained therein; 3,000 square feet of impervious ground cover shall equal one equivalent residential unit (ERU). Each developed parcel of property shall be deemed to contain a minimum of one ERU.
- B. Classification of a given developed property shall depend on its actual use, not its zoned use, according to the following:
 1. All detached single-family homes, manufactured homes and mobile homes, when each is used only as a residence, are considered "single family residential" for purposes of this section and shall be deemed to contain one equivalent residential unit.
 2. All duplexes, triplexes and fourplexes, when each is used only as a residence, are deemed to contain one equivalent residential unit for each unit within the complex.
 3. All other developed real properties within the utility boundaries shall have the number of ERUs contained thereon determined by dividing the number of square feet of impervious ground cover on each property by 3,000 square feet/ERU; the total thus obtained will be rounded to the nearest half.
 4. Where a property is being used for both residential and non-residential purposes, the property shall be classified based on which type of use is dominant on the site. Dominant use shall be determined based on factors including, but not limited to, the amount of square footage devoted to the use, and whether the non-residential use involves customers or employees coming to the site and/or storage of commercial materials onsite.
 5. For purposes of this section, any developed property that is unoccupied shall be classified according to the use to which the property was most recently put prior to becoming unoccupied.

14.02.080 Undeveloped Real Property

Properties remaining in an undeveloped condition are deemed not to make use of the services of the utility or of the facilities of the system beyond that used by such property in the natural state. Therefore, no service charge shall be imposed upon undeveloped real property.

14.02.090 Public street right-of-ways

City, County, and/or State roadway right-of-ways are exempt from service charges and general facility charges.

14.02.100 Connection Charges

A connection charge shall be assessed against an owner of real property at the time of issuance of a development permit for any onsite storm or surface water drainage structure or facilities which attach or connect to, or otherwise drain into, the system of drainage facilities or where any additional surface or stormwater runoff is generated and delivered or transported through either natural or person-made watercourses to the utility's system of storm and surface water facilities.

14.02.110 Service Charge Rates

A. Service charges are hereby imposed on each parcel of real property within the City served by or to which is available for service the stormwater and surface water management utility.

B. The following service charge rate is hereby established for all parcels of real property in the City, subject to any credits as described in subsection C, below:

1. For fiscal year 2009: The rate is amended from \$13.00 to \$10.00 per ERU per month, effective April 1, 2009; *provided*, customers will receive a credit from the city for the difference in cost for the months of January, February, and March 2009 between the original rate and the new rate.

2. For fiscal year 2010: \$11.50 per ERU per month.

3. For fiscal year 2011: \$13.00 per ERU per month.

C. *Credits*. Where applicable, the following credits may be applied in calculating the service rate for a parcel of real property within the city of Black Diamond:

1. *Dept. of Ecology Permit credit*. Any customer within the city of Black Diamond that is required to obtain a general or individual wastewater permit from the Washington State Department of Ecology shall receive a credit, prorated monthly, in the amount paid each year for such permit toward the amount owed to the city of Black Diamond under this chapter. In

order to qualify for this credit, the business must provide the City with a copy of the Department of Ecology permit and proof of payments along with a letter to the city utility clerk requesting the credit.

2. *Storm pond investment credit.* Any customer that is assessed a stormwater utility fee under BDMC 14.02.070.B.4 and that constructs and has approved by the city a storm water detention/retention facility shall be eligible for a credit toward the storm water utility rate for the site served by the facility, subject to the following:

- (a) To qualify for a credit, the detention/retention pond and associated facilities must adequately perform storm water treatment functions through the use of such methods as oil/water separators, bioswales, wet ponds, cartridge filter systems, or other means. The city may revoke any credit granted under this section upon a determination that the facilities are out of compliance with this section.
- (b) The owner of record must provide the city's public works department with a copy of the facility's "As Built" plans, stamped and signed by the owner's Engineer, to verify that the drainage system has adequate capacity to meet the design criteria for which the Owner is requesting a credit. The Engineer shall also provide a stamped and signed operations manual for the retention/detention pond. New capacity calculations, "As Built" plans, and a new operations manual shall be provided to the city if the retention/detention pond is increased or decreased in size.
- (c) Annually by January 1 of the year preceeding the year for which the credit is being requested, each Owner of Record shall provide a certified statement on a form provided by the city verifying that all required maintenance has been performed in accordance with the operations manual. Once every five years, the certified statement shall be stamped and signed by the owner's Engineer.
- (d) The Owner of Record shall provide the city with a "hold harmless" statement on a form provided by the city that indemnifies the city from any loss arising from the construction and maintenance and operation of the retention/detention pond and associated private drainage facilities for both the quantity and quality of water runoff from the owner's property. This statement shall be signed by the Owner and will be recorded with the County Auditor by the Owner of Record. The Owner of Record shall provide a copy to the city showing the County Auditor's recording number stamped on it before the credit will be given by the city.
- (e) Each Owner of Record must enter into an agreement that allows the city to

enter upon the Owner's property to inspect the retention/detention pond and associated drainage facilities and verify all information submitted by the Owner and his or her Engineer. The agreement shall be on a form provided by the city and shall be recorded with the County Auditor by the Owner. The Owner shall provide a copy to the city showing the County Auditor's recording number stamped on it before the credit will be given by the city.

(f) Credit shall be given as follows:

(1) Retention facilities:

- a. 100-year storage: 85% credit
- b. 50-year storage: 40% credit
- c. 25-year storage: 20% credit
- d. 10-year storage: 10% credit

(2) Detention facilities:

- a. 100-year storage facility with release rate of 50% of the predevelopment discharge rate for a two-year storm: 85% credit
- b. 50-year storage facility with release rate of 50% of the predevelopment discharge rate for a two-year storm: 40% credit
- c. 25-year storage facility with release rate of 50% of the predevelopment discharge rate for a two-year storm: 20% credit
- d. 10-year storage facility with release rate of 50% of the predevelopment discharge rate for a two-year storm: 10% credit

14.02.120 Billing—Interest added to past due accounts—Use of collections authorized.

- A. Stormwater and surface water management utility charges shall be computed on a monthly basis. The amount billed shall be included on the city utility bill.
- B. In addition to any other fees or charges authorized by law, the city is authorized to add interest to the amount of any delinquent stormwater utility charges and associated fees at the rate of six percent (6%) per annum, as computed on a monthly basis.
- C. Pursuant to chapter 19.16 RCW, as currently enacted or hereafter amended, the city may assign any delinquent charges and associated fees to a collections agency; the collections agency may add fees or charges to the original amount

assigned to collections as allowed by law. No debt may be assigned to collections until at least thirty (30) calendar days have elapsed from the time that the city attempts to notify the person responsible for the debt of the existence of the debt and that the debt may be assigned to collections if the debt is not paid. Notice of potential assignment to collections shall be made by personal service or regular first class mail to the last known address of the person responsible for the debt, *provided*, inability to ascertain a current mailing address shall not prohibit the debt from being assigned to collections.

14.02.130 Periodic review of charges and fees

The charges and fees established by this ordinance and any other ordinances of the City Council establishing charges and fees for the stormwater and surface water management utility shall be reviewed periodically by the mayor or his or her designee. As part of such review, the finance director, in conjunction with the public works director, shall present to the City Council a yearly budget for the utility and propose amendments to any rates and charges necessary to enable the city to pay all costs to be incurred by the utility.

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
SUBJECT: Appeal of City Administrator's issuance of 12 development rights associated with King County parcel #1121069058.	Agenda Date: April 23, 2009		AB09-042
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		
	City Attorney – Loren D. Combs		
	City Clerk – Brenda L. Streepy		
	Finance – May Miller		
	Public Works – Dan Dal Santo		
	Economic Devel. – Andy Williamson		
	Police –		
Timeline: N/A	Court – Kaaren Woods		
Cost Impact: N/A	Parks/Natural Resources - Nix	X	
Fund Source: N/A	Attachments: Appeal paperwork		
SUMMARY STATEMENT: The City Administrator issued a Development Right Certificate in the amount of 12 development rights to Benchmark Real Estate Group, LLC on March 23, 2009. Shortly thereafter, Benchmark Real Estate Group, LLC issued an appeal to this decision to increase the base Development Rights from 12 to 39 based on a wetland delineation that showed that more wetland and buffer existed on this parcel. In accordance with Black Diamond Municipal Code, section 19.24.070, this appeal is being brought forth to the City Council in order to hold a closed record hearing, as required under the code, and make a final decision in order to guide staff on this matter.			
COMMITTEE REVIEW AND RECOMMENDATION: N/A			
RECOMMENDED ACTION: MOTION to			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
April 23, 2009			



**CITY OF BLACK DIAMOND
APPEAL OF AN ADMINISTRATIVE DECISION**



Decision being appealed: Issuance of Certificate for availability of 12 TDR's per letter from City of Black Diamond dated 3/23/2009, that was based on FLN Letter issued by City dated 9/15/2004.
 King County Tax Parcel # 1121069058. 10.667 acres.

Name of Appellant: <u>Benchmark Real Estate Group LLC</u>		Case #: <u>PLN09-0008</u>	
Address: <u>809 North J St.</u>			
City: <u>Tacoma</u>		State: <u>Washington</u>	Zip: <u>98403</u>
Phone: <u>206-856-9501</u>		Email: <u>flyhab@earthlink.net</u>	

1. What is your relation to the decision being appealed? Owner of property.

2. What error(s) do you believe were made by the decision? How does the decision fail to meet the applicable decision criteria?

The original decision by the City via the FLN that designated 3 acres of the property as sensitive area, when there was in fact 8.70 acres of sensitive areas including: 1) a Class 2 salmon stream, and 2) pristine undisturbed open water and forested wetlands, plus .83 acres of buffer area for those sensitive areas, for an actual TDR designation area of 9.53 acres. A formal wetland and stream delineation was surveyed and completed in 2007 and is on file with the City.

A copy of the delineation map and survey are included as an exhibit to this appeal. The prior FLN and DRC issuance fail to give the property the appropriate potential development credits available under the TDR Ordinance.

3. What relief are you requesting (i.e, overturn the decision, modify the decision, etc.)?

We are requesting the issuance of an amended FLN that would designate an additional 6.53 acres of the property as qualifying for sensitive/protected areas under the TDR Ordinance. The total additional development rights would equal 27 - (6.53 rounded up to 6.75 per the Ordinance x 4 TDR's per acre = 27), for a new total of 39 potential base TDR's for the property, including the 12 DRC's that were issued on 3/23/2009.

4. Any other information you wish to have considered (attach additional page).

See the attached wetland/stream delineation and survey, maps.

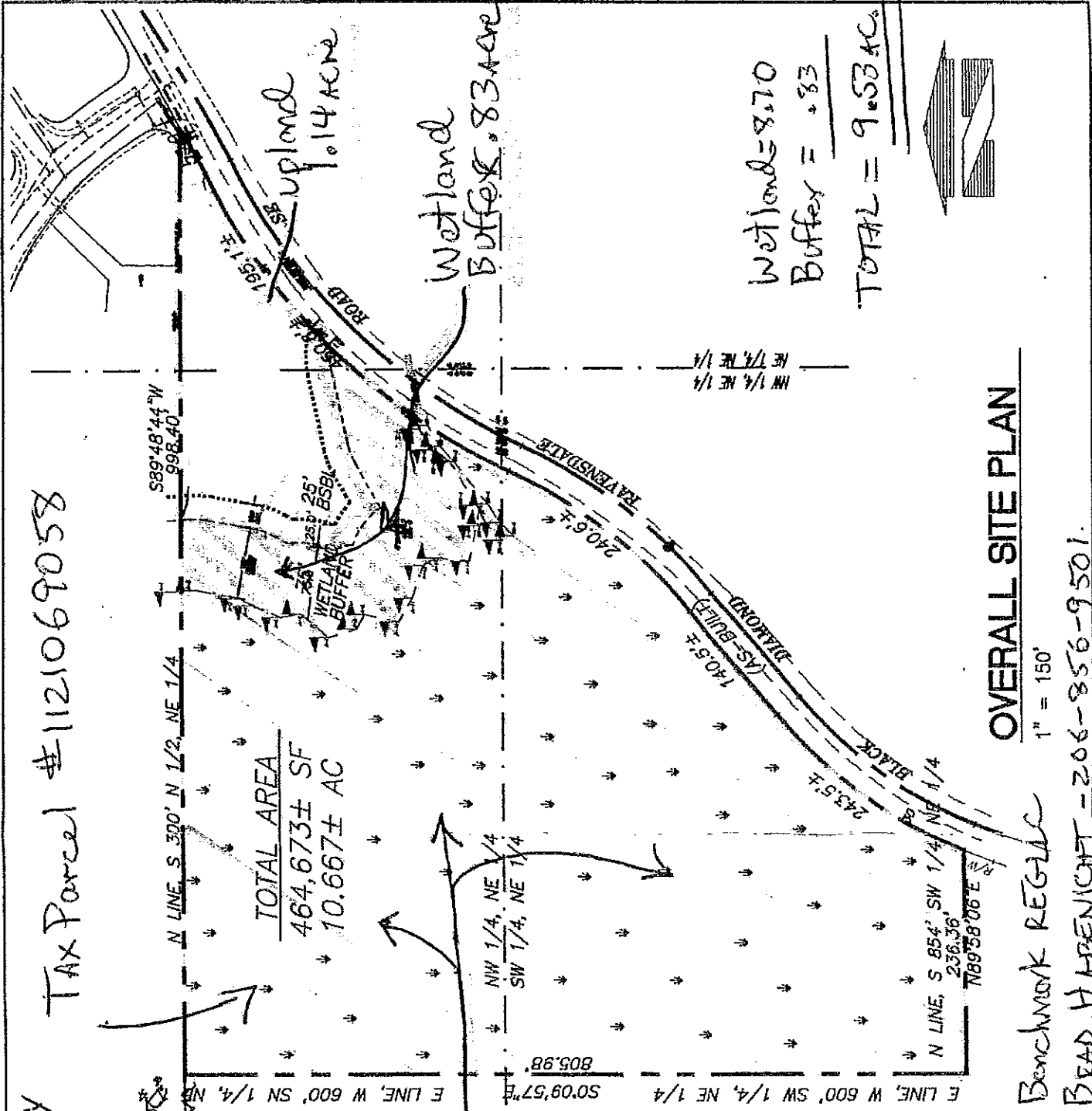
Signature: <u><i>Brad Halen</i></u> PROTECT MANAGER <u>BMREG LLC</u>	Date: <u>3/30/2009</u>
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CRONE'S SURVEY
11/15/07

B-Twelve Assoc
Wetland Delineation
9/30/2007

Wetland
8.70 ACRES

Tax Parcel # 1121069058

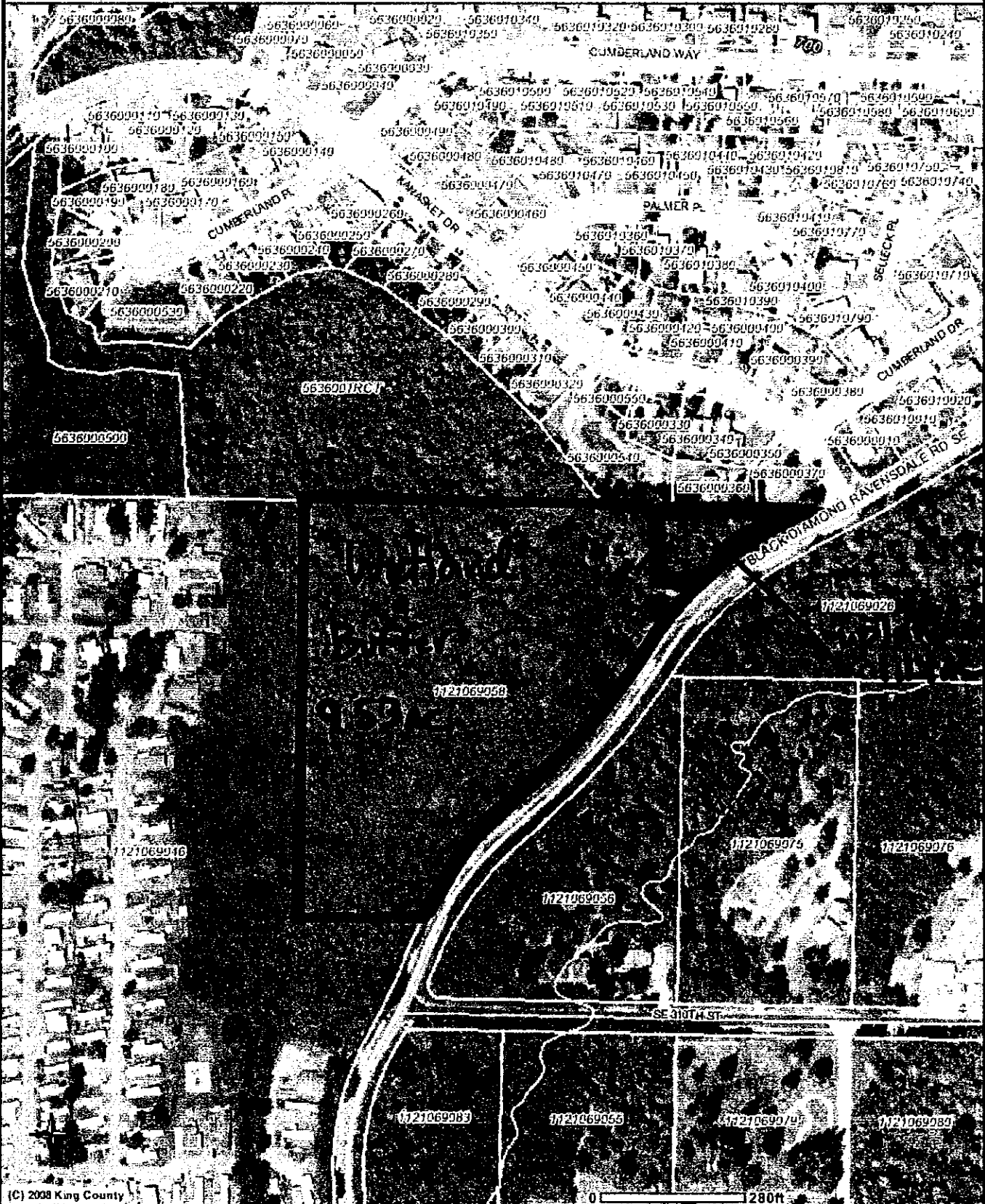


TOTAL AREA
464,673 ± SF
10.667 ± AC

OVERALL SITE PLAN

Property Owner: Benchmark REGAL
PROJECT MGR: BRAD HAGENBRIGHT - 206-856-9501

iMAP



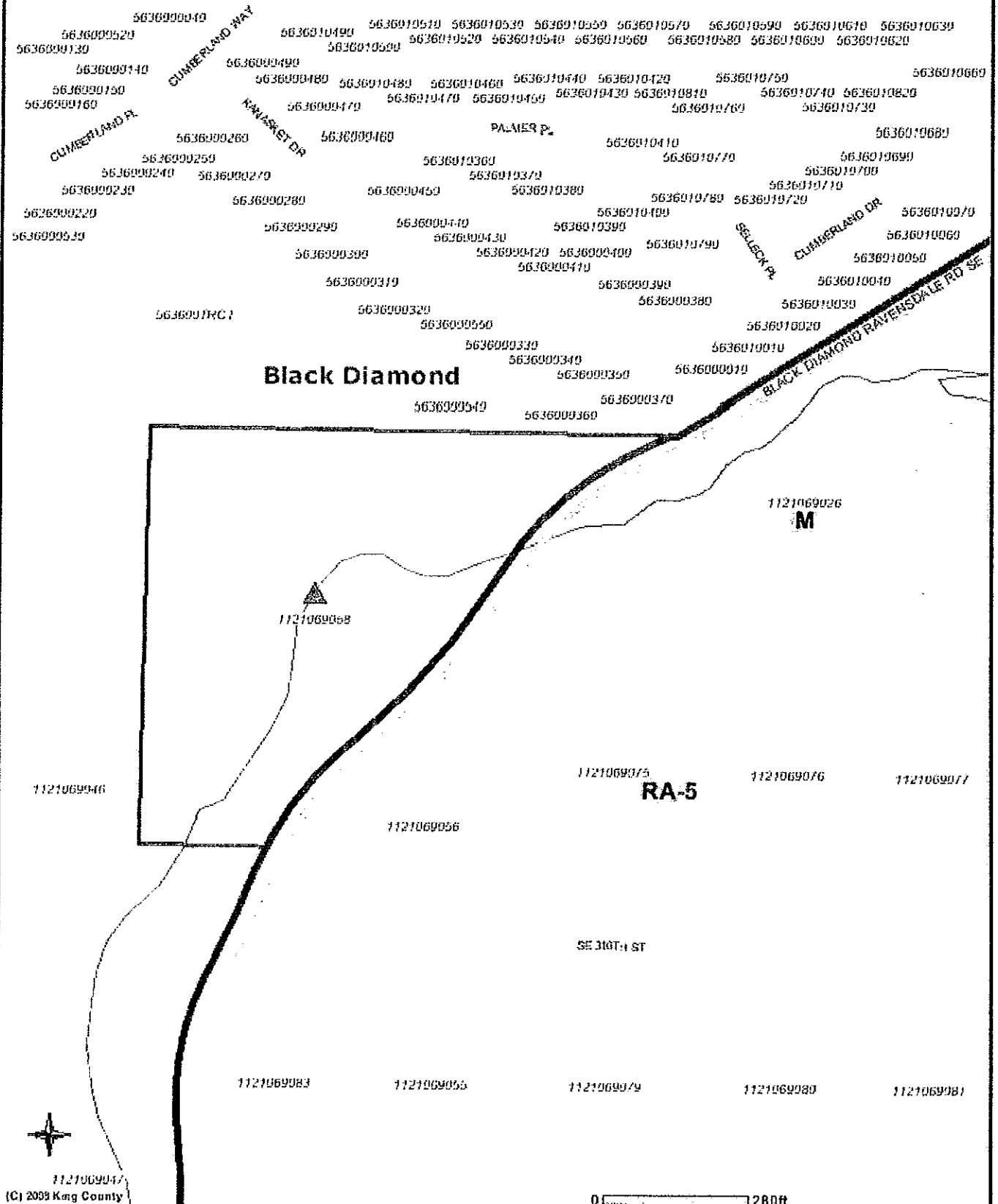
(C) 2008 King County

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Date: 3/30/2009 Source: King County iMAP - Property Information (<http://www.metrokc.gov/GIS/iMAP>)

iMAP



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Data: 3/30/2009 Source: King County iMAP - Property Information (<http://www.metrokc.gov/GIS/iMAP>)



CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
SUBJECT: Resolution No. 09-586, authorizing the Mayor to accept STM Construction Company as the lowest bidder and to authorize the Court remodel project	Agenda Date: April 23, 2009		AB09-028a
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		X
	City Attorney – Loren D. Combs		
	City Clerk – Brenda L. Streepy		
	Finance – May Miller		
	Public Works – Seth Boettcher	X	
	Economic Devel. – Andy Williamson		
	Police – Chief Kiblinger		
Court – Kaaren Woods			
Natural Resources – Aaron Nix			
Attachments: Resolution No. 09-586, Contract, Copy of bids			
PROJECT DESCRIPTION:			
<p>We are removing a wall in the court office and replacing it six feet into the jury room to create more office space. We are removing north entry and police squad room entry and enlarging the court office. We will frame new door entry at NE corner of court office and build a new wall and walk-up counter. Existing window will be moved to new counter area. Jury room needs sheetrock on upper south wall to bring it up to code. Two solid core doors will be installed at both entries to jury room for added privacy. South wall in court office has wallpaper. A ¼ inch cover of sheetrock will be added to cover that. New lights will be installed in jury room. North wall in jury room will be stripped and new sheetrock added. A trap door or pull down stairs will be installed above jury room for access and storage. There will also be some trim work and painting. This project is included in the City’s 2008-2013 Capital Improvement Plan.</p>			
<p>BID PROCESS: This work comes under the category of Limited Public Works Project Process. RCW 39.04.155(3) BDMC 2.90.030 (G). Staff solicited bids from local contractors on our small works roster. We received three bids and are recommending the award go to the low bidder, STM Construction located in Black Diamond for \$9,927.75.</p>			
COMMITTEE REVIEW AND RECOMMENDATION:			
<p>RECOMMENDED ACTION: MOTION to adopt Resolution No. 09-586, authorizing the Mayor to accept STM Construction Company as lowest bidder and execute a contract for the court remodel work and not to exceed \$9,927.75.</p>			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
March 19, 2009	Postponed to a future meeting		
April 23, 2009			

RESOLUTION NO. 09-586

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
ACCEPTING LOWEST BID AND AUTHORIZING SERVICES
FOR COURT REMODEL WITH STM CONSTRUCTION
COMPANY**

WHEREAS, the City has identified the need to remodel the Court room for additional office space; and

WHEREAS, staff solicited bids from local contractors on the small works roster; and

WHEREAS, the City received three bids from local businesses with STM Construction Company turning in the lowest bid;

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

Section 1. To accept STM Construction as the lowest bidder and authorize the Mayor to execute a contract for the court remodel work not to exceed \$9,927.75 as attached hereto Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 23RD DAY OF APRIL,
2009.**

CITY OF BLACK DIAMOND:

Howard Botts, Mayor

Attest:

Brenda L. Streepy, City Clerk

**CITY OF BLACK DIAMOND
SMALL PUBLIC WORKS CONSTRUCTION CONTRACT**

THIS Agreement is dated the 12 day of April, 2008⁹, and is made and entered into by CITY OF BLACK DIAMOND, WASHINGTON ("CITY") and STM Construction ("CONTRACTOR") for the following project:

Court Remodel ("PROJECT") See attached scope of work.

The City and Contractor agree as follows:

1. **Contract Documents.** The Contractor shall do all work, furnish all tools, material, and equipment, and complete the construction of the Project described in the attached scope of work. in accordance with the Contract Documents. The Contract Documents consist of the following:
 - a. attached scope of work
 - b. terms of the building permit as soon to be issued
 - c. This Agreement signed by the City and Contractor;

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Project by the Contractor. These Contract Documents complement each other in describing a complete work. Any requirement in one document binds as if stated in all. The Contractor shall provide any work or materials clearly implied in the Contract even if the Contract does not mention it specifically. If any part of the Contract requires work that does not include a description of how the work will be performed, the work shall be performed in accordance with standard trade practices.

2. **Date of Commencement and Substantial Completion Date.** The date of commencement shall be immediately after receipt of the notice to proceed. The Contractor shall complete the Project not later than sixty (60) calendar days after the date the Notice to Proceed is issued but also as soon a practicable. The Contractor shall submit any requests for time extensions to the City in writing no later than seven days after the delay occurs. To be considered by the City, the request shall be in sufficient detail (as determined by the Engineer) to enable the City to ascertain the basis and amount of the time requested. The request shall include an updated schedule that supports the request and demonstrates that the change or event: (1) had a specific impact on the critical path, and except in cases of concurrent delay, was the sole cause of such impact, and (2) could not have been avoided by resequencing of the work or by using other reasonable alternatives. The City will evaluate and respond within seven days of receiving the request. The authorized time for physical completion will be extended for a period equal to the time the Engineer determines the work was delayed because of: (1) Adverse weather causing the time requested to be unworkable; (2) any action, neglect, or default of the City its officers, or employees, or of any other contractor employed by the City; (3) Fire or other casualty for which the Contractor is not responsible; (4) Strikes; (5) Exceptional causes not specifically identified in items 1 through 4, provided the request letter proves the Contractor had no control over the cause of the delay and could have done nothing to avoid or shorten it.

3. **Contract Sum.** Subject to additions and deductions by change order, the contract sum is the bid amount of \$9927.75 including sales tax. The contract sum shall include all items and services necessary for the proper execution and completion of the Project.

4. **Liquidated Damages.** Timely performance and completion of the Project is essential to the City and time limits are of the essence. In the event Contractor fails to complete the work by the completion date, plus any authorized extensions thereof, the Contractor shall pay the City liquidated damages in the amount of \$00.00 for each calendar day of delay in completion of the Project.. No deduction or payment of liquidated damages will, in any degree, release the Contractor from further obligations and liabilities to complete the entire contract.
5. **Changes.** After execution of the Contract, changes in the Project may be accomplished by change order. The City, without invalidating the Contract, may order changes in the Project within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract completion date being adjusted accordingly. Change orders shall be in writing signed by the parties.
6. **Payment.** Payment will be made in full within 30 days upon receipt of a bill after completion of the work.
7. **Retainage.** Pursuant to RCW 60.28, a sum of 5 percent of the monies earned by the Contractor will be retained from progress payments. Such retainage shall be used as a trust fund for the protection and payment (1) to the State with respect to taxes imposed pursuant to RCW Title 82, and (2) the claims of any person arising under the Contract.
8. **Termination of Contract.** This Contract may be terminated by the City at any time upon the default of the Contractor or upon public convenience, in which Contractor shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination. Contractor shall not be entitled to any reallocation of cost, profit or overhead. Contractor shall not in any event be entitled to anticipated profit on work not performed because of such termination. Contractor shall use its best efforts to minimize the compensation payable under this Contract in the event of such termination. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.
9. **Warranty.** Contractor warrants that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required and permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract.
10. **Correction of Work.** Contractor shall promptly correct Work rejected by the City as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work. In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after substantial completion, correct work not conforming to the requirements of the Contract Documents. If the Contractor fails to correct nonconforming Work within a reasonable time, the City may correct it and Contractor shall reimburse the City for the cost of the correction.
11. **Indemnification/Hold Harmless.** The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses

or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, 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 Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

12. Insurance. The Contractor 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 performance of the work hereunder by the Contractor, their agents, representatives, employees or subcontractors. Contractor's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit The City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance. Contractor shall obtain insurance of the types described below:

1. 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.

2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for The City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.

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

4. Builders Risk insurance covering interests of the City, the Contractor, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance shall be on a all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the Contractor. Higher deductibles for flood and earthquake perils may be accepted by the City upon written request by the Contractor and written acceptance by the City. Any increased deductibles

accepted by the City will remain the responsibility of the Contractor. The Builders Risk insurance shall be maintained until final acceptance of the work by the City.

B. Minimum Amounts of Insurance. Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

3. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.

C. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Commercial General Liability and Builders Risk insurance:

1. The Contractor's insurance coverage shall be primary insurance as respect The City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

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

D. Contractor's Insurance for Other Losses. The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

E. Waiver of Subrogation. The Contractor and the City waive all rights against each other, any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Contract or other property insurance applicable to the Work. The policies shall provide such waivers by endorsement or otherwise.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

G. Verification of Coverage. Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the Automobile Liability and Commercial General Liability insurance of the Contractor before commencement of the work. Before any exposure to loss may occur, the Contractor shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this project.

H. Subcontractors. Contractor shall ensure that each subcontractor of every tier obtain at a minimum the same insurance coverage and limits as stated herein for the Contractor (with the exception of Builders Risk insurance). Upon request the City, the Contractor shall provide evidence of such insurance.

13. Prevailing Wage Requirements. The Contractor agrees to comply with all state and federal laws relating to the employment of labor and wage rates to be paid. The hourly wages to be paid laborers, workers, or mechanics shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in King County. No payment will be made on this contract until the contractor and each and every subcontractor has submitted a "Statement of Intent to Pay Prevailing Wages" (LI 700-29) that has been approved by the industrial statistician of the Department of Labor and Industries. No final payment or release of any retainage will be made until the contractor and each and every subcontractor has submitted an "Affidavit of Wages Paid" (LI 700-7) that has been certified by the industrial statistician of the Department of Labor and Industries.

The contractor shall post the prevailing rate of wage statement in a location readily visible to workers at the job site, or as allowed by RCW 39.12.020. The "Statement of Intent to Pay Prevailing Wages" shall include:

1. The contractor's registration certificate number; and
2. The prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW 39.12.020 and the estimated number of workers in each classification.

Statements of intent to pay prevailing wages and affidavits of wages paid shall be on forms approved by the Department of Labor and Industries.

14. Assigning or Subcontracting. Contractor 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.

15. Independent Contractor. Contractor is and shall be at all times during the term of this Agreement an independent contractor.

16. Notice. Any notices required to be given by the City to Contractor or by Contractor to the City shall be in writing and delivered to the parties at the following addresses:

The City:

Seth Boettcher
Public Works Director
24301 Roberts Drive
P.O. Box 599
Black Diamond, WA 98010

Phone: 360-886-2560
Fax: 360-886-2592

Contractor:

STM Construction, Inc.
Scott Kyle
President
PO Box 8922
Covington, WA 98042

Phone: 253-261-7865
Fax: 360-886-0505

17. **Disputes.** Any action for claims arising out of or relating to this Agreement shall be governed by the laws of the State of Washington. Venue shall be in King County Superior Court.

18. **Attorneys Fees.** 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 attorneys fees from the other party.

19. **Extent of Agreement/Modification.** This Agreement, together with 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 be amended, modified or added to only by written instrument properly signed by both parties.

CITY OF BLACK DIAMOND

CONTRACTOR

By: _____

By: 

Name: _____

Name: Scott Kyle

Title: _____


Title: President

Date: _____

Date: 04/12/09

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, Scott Kyle (Corporate Officer (Not Contract Signer)) certify that I am the President (Corporate Title) of the corporation named as Contractor in the Agreement attached hereto; that Scott Kyle, (Contract Signer) who signed said Agreement on behalf of the Contractor, was then President (Corporate Title) of said corporation; that said Agreement was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.



Corp. officer signature (not contract signer)
Scott Kyle

Printed
President

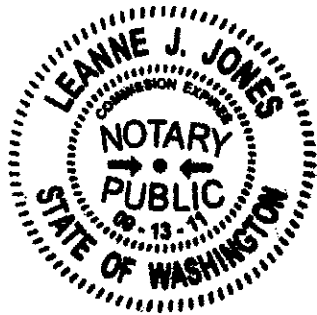
Title

State of Washington

County of King

Scott Kyle, (corporate officer (not contract signer)) being duly sworn, deposes and says that he/she is President (Corporate Title) of STM Construction Inc (Name of Corporation)

Subscribed and sworn to before me this 12 day of April, 2009



Leanne Jones

Notary Public (Signature)

Leanne J. Jones

Notary Public (Print)

My commission expires 9/13/11

**DECLARATION OF OPTION FOR MANAGEMENT
OF STATUTORY RETAINED PERCENTAGE**


Note: This form must be submitted at the time the Contractor executes the contract. Contractor shall designate the option desired by checking the appropriate space.

Monies reserved under provisions of RCW 60.28, at the option of the Contractor, shall be:

 X (1) Retained in a fund by the City.

 (2) Deposited by the City in an interest-bearing account in a bank, mutual savings bank or savings and loan association.

 (3) Placed in escrow with a bank or trust company by the City. When the monies reserved are to be placed in escrow, the City will issue a check representing the sum of the monies reserved payable to the bank or trust company and the Contractor jointly. Such check shall be converted into bonds and securities chosen by the Contractor and approved by the City and the bonds and securities held in escrow. The Contractor in choosing option (2) or (3) agrees to assume full responsibility to pay all costs which may accrue from escrow services, brokerage charges or both, and further agrees to assume all risks in connection with the investment of the retained percentages in securities.



Contractor Signature

04/13/09
Date



STM CONSTRUCTION INC.

Estimate

PO Box 8922
Covington WA 98042

Date	Estimate #
2/25/2009	1270

Name / Address
City of Black Diamond

Ship To
City of Black Diamond Courthouse Remodel

P.O. No.	Terms	Project
		Courthouse remodel

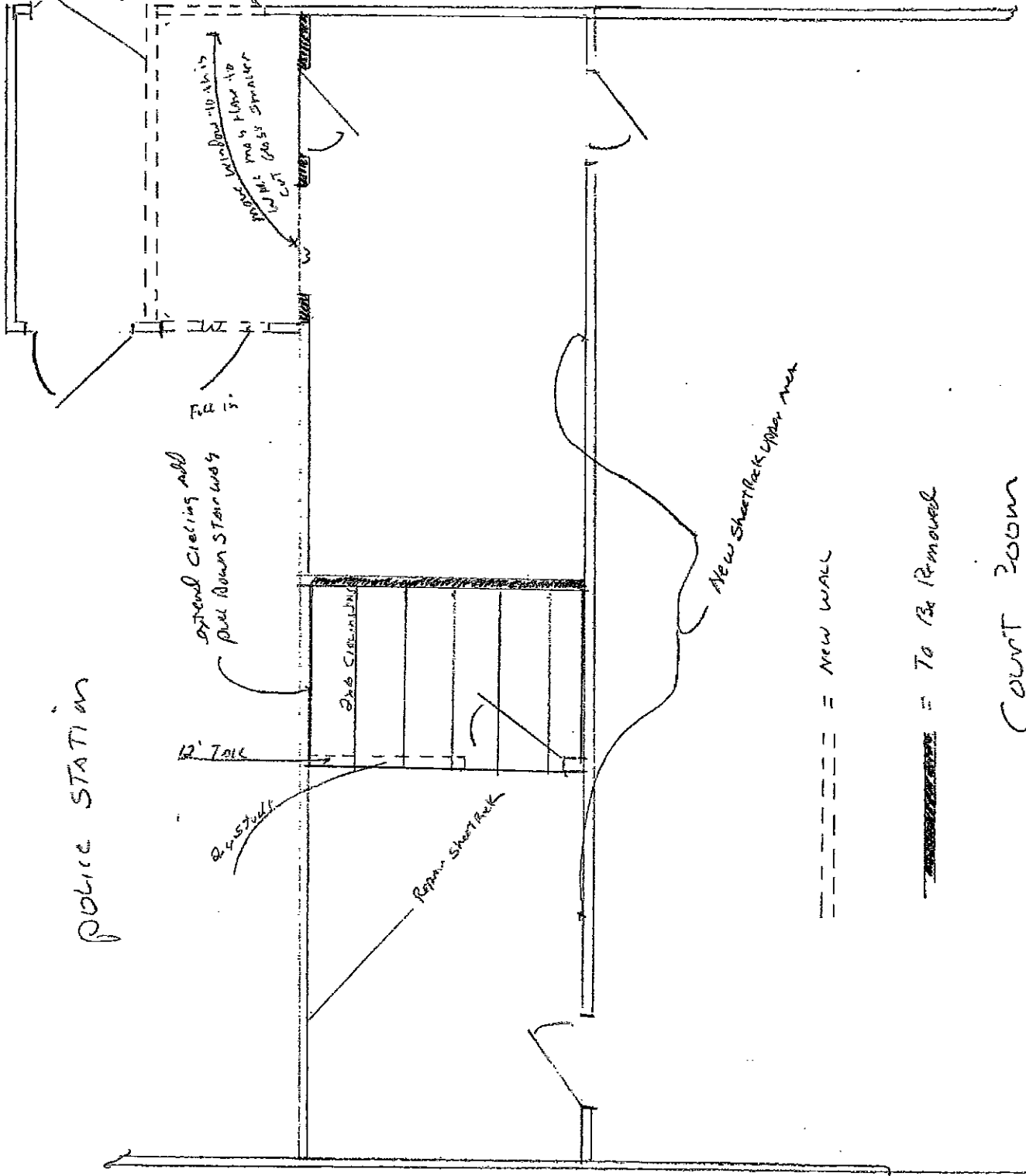
Item	Description	Total
Per Contract	Scope of work per attached copy provided by the City of Black Diamond	9,150.00T
Subtotal		\$9,150.00
Sales Tax (8.5%)		\$777.75
Total		\$9,927.75

Signature _____

Phone #	Fax #	E-mail	Web Site
253-261-7865	360-886-0505	scottkyle@stmconst.com	stmconst.com

SPRINKLER

FLOOR WAY



POLICE STATION

Extend ceiling and pull down stairways 24" 3"

12' Tall

2x4 studs

2x6 ceiling

Repair Sheetrock

New Sheetrock upper men

--- = NEW WALL

==== To Be Removed

COURT ROOM

SCOPE OF WORK	COST
Jury Room	
Demo wall between Jury Room and Court Office.	
Remove old sheetrock on North Jury Room wall	
Frame up new wall five feet further into jury room, floor to ceiling with doorway and window above for natural lighting	
Re-locate heating vent into new ceiling.	
Add three electrical receptacles in new wall	
Add ceiling light in new ceiling	
5/8" Sheetrock north wall in Jury Room. 1/2" sheetrock above jury room and court office. (currently un-finished)	
5/8" sheetrock both sides of new wall between Jury Room and Court Office	
Tape, texture and paint Jury Room.	
Install solid core six panel mahogany door at SW corner entrance to Jury Room. (Use existing hardware)	
Install pull down stair case in jury room ceiling for attic access.	

IMPACT BUILDERS, INC.

RICK HAIGHT, PRESIDENT

Estimate Proposal

Proposal Date 3/31/2009

Estimate

From	
Company	Impact Builders, Inc.
Address	P.O. Box 509
City, State, Zip	Maple Valley, WA 98038
Phone	(425) 432-4512
Fax	(866) 217-0109

Project Information	
Project #	REM/BD
Title	REMODEL BLACK DIAMOND OFFICE
Address	
City, State, Zip	
Phone	
Fax	
Plans Dated	Est. Start Date

We are pleased to quote the following labor, equipment, and materials in accordance with the plans and specifications listed above. This proposal is subject to exclusions that may be listed below.

Scope of work for the project to be constructed as depicted in the plans and details as described herein :

Estimate Total= **\$17,363.00**

Estimate Scope Information

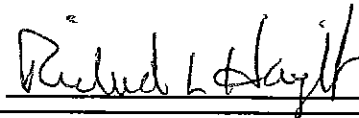
FOR OFFICE BUILDING PREPARATION

Inclusions

1. Price includes sales tax.
2. Bid as per items sent by e:mail dated 3/27/09.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, flood, earthquake, and other necessary insurance. We are fully covered by Workmen's Compensation Insurance.

Authorized
Signature:



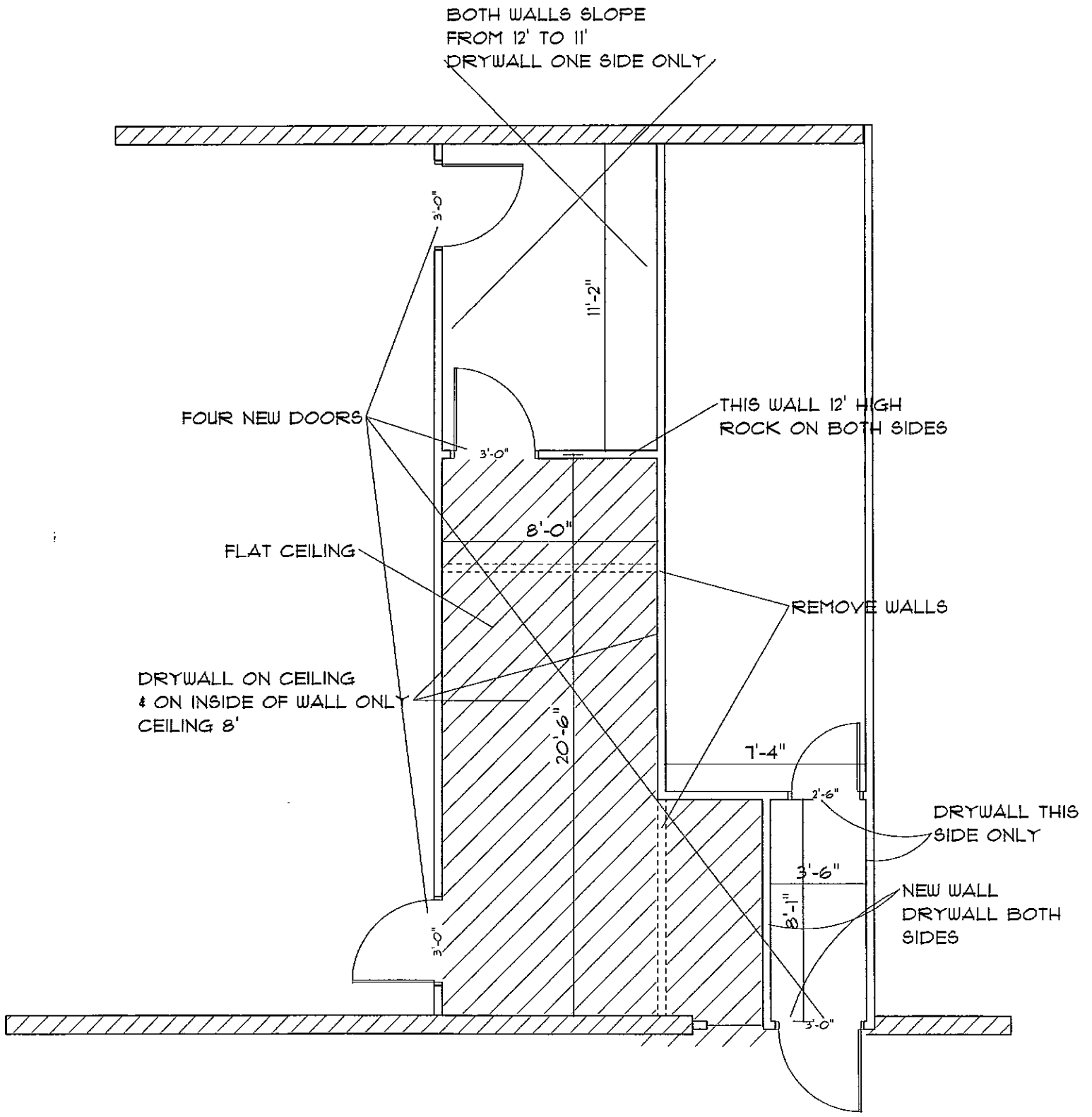
Acceptance of Proposal:

The above prices, specifications and conditions are satisfactory and hereby accepted. You are authorized to do the work as specified.

Signature: _____

Date of Acceptance: _____

Print Name: _____



BOTH WALLS SLOPE
FROM 12' TO 11'
DRYWALL ONE SIDE ONLY

FOUR NEW DOORS

THIS WALL 12' HIGH
ROCK ON BOTH SIDES

FLAT CEILING

REMOVE WALLS

DRYWALL ON CEILING
& ON INSIDE OF WALL ONLY
CEILING 8'

DRYWALL THIS
SIDE ONLY

NEW WALL
DRYWALL BOTH
SIDES

3'-0"

11'-2"

3'-0"

8'-0"

20'-6"

7'-4"

2'-6"

3'-6"

8'-1"

3'-0"

RMJ Construction

Estimate

Robert Jacobs
 PO Box 237
 Black Diamond, WA 98010

(206) 391-5208 * (360) 886-0851 FAX

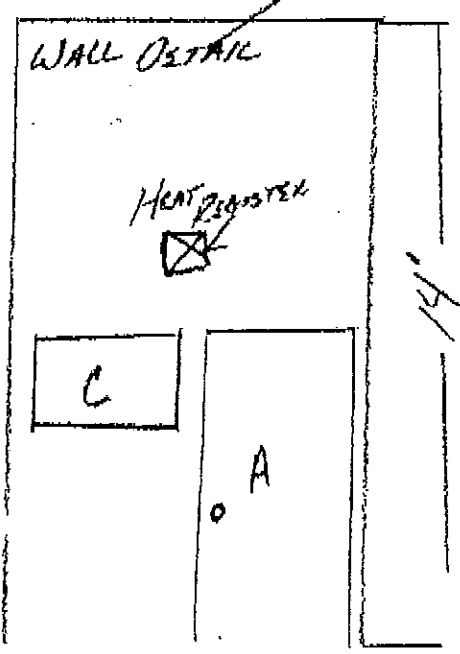
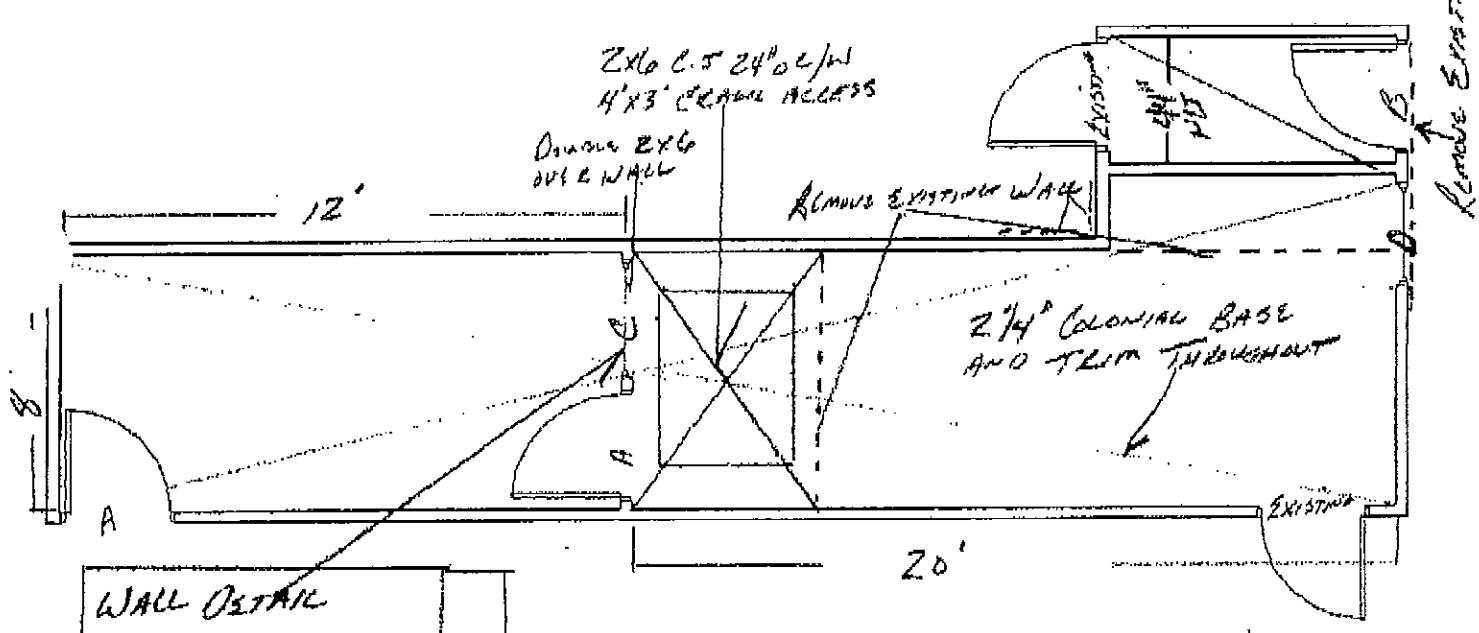
Date	Estimate #
3/23/2009	41
Project	
BLACK DIAMOND COURTHOUSE	

Name / Address
City Of Black Diamond PO Box 599 24301 Roberts Dr Black Diamond, Wa. 98010

Description	Rate	Total
Remodel jury room and office in North section of courtroom assembly area Scope of work includes, but not limited to: Remove existing walls, and add new walls as specified on plan. Add (3) ea. new 3'x6'8" solid core 6 panel prehung doors with hardware, to match existing door at NE corner of courtroom Straighten existing walls Add 4'x2' tempered window for natural light between jury room and new office Add (3) outlets in Jury room Add Light in ceiling Jury room Install folding wood attic ladder in court office Center light in squad entry hall Remove existing squad room door and case & trim opening Add 1/4" sheetrock to South wall of court office Approx. 160 sq ft Add window between office and lobby. Size to be determined on site Skim coat existing sheetrock for new texture and paint Hang 5/8" fire rated sheetrock on new framing and ceiling Tearout existing 6' double door and frame in for door and window Add texture and paint Trim Base and doors with 2.25" colonial, to match existing trim Debris will be removed from building and placed in customer provided dumpsite Work will conform to courtroom schedule All labor and materials will be provided by RMJ Construction Bid excludes: Building permit, floor covering This bid specifically references, and is based upon scope of work form provided by Facilities Coordinator	11,550.00	11,550.00T
Subtotal		\$11,550.00
Sales Tax (8.6%)		\$993.30
Total		\$12,543.30

Page 2

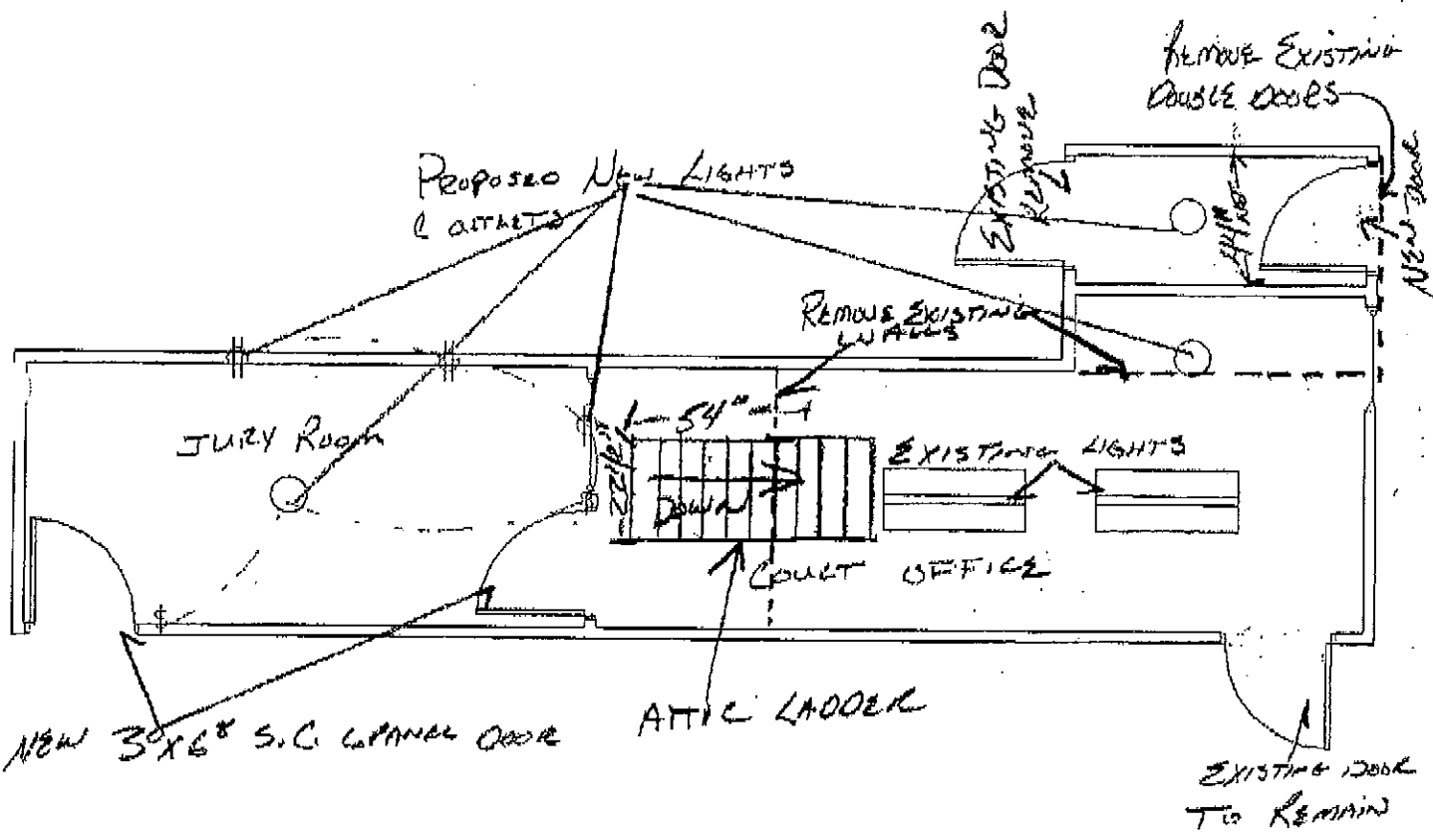
- A) 3'x6' Solid Core Door LH Swing ZEA
- L 3'x6' Solid Core Door RH Swing 1EA
- C) 3'x2' Tempered windows
- D) Professor Windows Size To Be Verified



NOT TO SCALE

Remove Existing Double Door

RMT CONSTRUCTION
NOT TO SCALE



Page 4

SCOPE OF WORK	COST
Jury Room	
Demo wall between Jury Room and Court Office.	
Remove old sheetrock on North Jury Room wall	
Frame up new wall five feet further into jury room, floor to ceiling with doorway and window above for natural lighting	
Re-locate heating vent into new ceiling.	
Add three electrical receptacles in new wall X	
Add ceiling light in new ceiling X	
5/8" Sheetrock north wall in Jury Room. 1/2" sheetrock above jury room and court office. (currently un-finished) X 2	
5/8" sheetrock both sides of new wall between Jury Room and Court Office	
Tape, texture and paint Jury Room.	
Install solid core six panel mahogany door at SW corner entrance to Jury Room. (Use existing hardware)	
Install pull down stair case in jury room ceiling for attic access. X	
COURT OFFICE	
Demo NE corner wall between currently entry way and squad room entrance	
Remove double entry doors, NE corner	
Remove glass at squad room entrance and frame in	
Frame new wall in court office 3 feet into current entrance with new walk up window on east side.	
Use existing glass for new walk up window in court office.	
Move troffer light from squad room entry to court office X	
Install new light in hall entrance to squad room X	
Remove current entry door to squad room and trim out. X	
5/8" sheetrock new walls in court office	
1/4" sheetrock south wall of court over existing wallpaper X	
Tape, texture and paint court office and entry hall to squad room	
Install new 36x80 solid core 6 panel mahogany door between court office and jury room, with hardware.	
Install new 36x80 solid core white 6 panel door at entry for squad room (Use existing hardware)	
Project costs including all materials and labor.	\$ 11,550.00
Sub Total	\$ 1,993.30
Sales Tax	
Grand Total	\$ 13,543.30
	<p><i>[Signature]</i></p> <p><i>Robert J. Jacobs</i></p> <p><i>ART Construction</i></p>

Mar 3

P. 003

FAX No. 360 886 2592

City of BlackDiamond

MAR/24/2009/TUE 03:29 PM

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
SUBJECT: Resolution No. 09-592, declaring certain City property surplus	Agenda Date: April 23, 2009		AB09-040a
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		
	City Attorney – Loren D. Combs		
	City Clerk – Brenda L. Streepy		
	Finance – May Miller		
	Public Works – Seth Boettcher		X
	Capital Facilities – Kevin Esping	X	
	Police – Jamey Kiblinger		
Court – Kaaren Woods			
Comm. Dev. – Steve Pilcher			
Cost Impact:			
Fund Source:			
Timeline:			
Attachments: Resolution No. 09-592, Attachment A (Surplus List)			
SUMMARY STATEMENT: The attached list of property is no longer of use to the operation of the City and needs to be declared surplus. Property will be disposed of by sale or auction to get the best possible dollar return.			
COMMITTEE REVIEW AND RECOMMENDATION: 			
RECOMMENDED ACTION: MOTION to adopt Resolution No. 09-592, declaring certain City property surplus to the needs of the City.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
April 16, 2009	Postponed to April 23 Council Meeting		
April 23, 2009			

RESOLUTION NO. 09-592

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON,
DECLARING CERTAIN CITY PROPERTY SURPLUS TO
THE NEEDS OF THE CITY**

WHEREAS, the City desires to dispose of personal property surplus to the needs of the City; and

WHEREAS, such property has accumulated over time in various storage areas; and

WHEREAS, all such property has been cataloged with all departments having the opportunity to review the listing; and

WHEREAS, City Council must deem the property to be surplus and authorize its disposal;

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

Section 1. The listing of certain City property is hereby declared surplus to the needs of the City of Black Diamond, as attached hereto as Exhibit A.

Section 2. City Council authorizes staff to make items available for sale either by sealed bid, online auction or other reasonable and allowable means.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 23RD DAY OF APRIL,
2009.**

CITY OF BLACK DIAMOND:

Howard Botts, Mayor

Attest:

Brenda L. Streepy, City Clerk

Item Number	Serial #	Description	\$ Rec.	City #	Disposition	Date	Signature
1	2FALP71W4VX116496	1997 Ford Crown Victoria					
2		14 Lockers					
3	HDR9K21	Dell Computer		00536			
4		Logitek Keyboard		00599			
5	646957817	Brother Typewriter					
6	THG151435Y	HP Desk Jet Printer					
7	2ECN03PA24Z4	HP Scanner					
8	1FDKE30L9GHA48898	1986 Ford Aid Car					
9	364KFL300V	Motorola i560 Cell Phone					
10	354VFEM3Y9	Motorola i530 Cell Phone					
11	364VJLK2BV	Motorola i570					
12	364VEL9R70	Motorola i730					
13	831TBS5ZVL	Motorola i1000 plus					
14	364VEWF7GQ	Motorola i530					
15	364VGA84W5	Motorola i530					
16	364VEL9S0B	Motorola i730					
17	364TGC2CT7	Motorola i560					
18	364VHYF2WD	Motorola i580					
19	364YEGBM53	Motorola i530					
20	364VFC847Y	Motorola i710					
21	07606753161	Blackberry					
22	7607021531	Blackberry					
23	07615409637	Blackberry					
24	7612220499	Blackberry					

Item #	Serial #	Description	\$ Rec.	City#	Disposition	Date	Signature
25	7607382313	Blackberry					
26		White Map Holder					
27		Maroon Filing Cabinet			Destroyed		
28	V730BQH28914	Compaq Preserio Laptop					
29	T0824ZA	Panasonic Toughbook					
30	T0824Z4	Panasonic Toughbook					
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CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
SUBJECT: Ordinance No. 09-902, authorizing a short term interfund loan from the Wastewater Capital Reserve Fund to the Stormwater Utility for start-up operating costs	Agenda Date: April 23, 2009		AB09-043
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		
	City Attorney – Loren D. Combs		
	City Clerk – Brenda L. Streepy	X	
	Finance – May Miller		X
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Cost Impact: \$50,000	Court – Kaaren Woods		
Fund Source: Wastewater Capital Fund	Community Devel. – Steve Pilcher		
Timeline:	Natural Resources – Aaron Nix		
Attachments: Ordinance No 09-902			
SUMMARY STATEMENT: This ordinance approves a loan from the Wastewater Capital Fund to the Stormwater Utility Fund for \$50,000 to cover start-up operating costs and have sufficient reserves for unplanned expenses until the stormwater utility fees generate sufficient revenues. The Wastewater Capital Fund has sufficient funds to cover this loan and the ongoing wastewater expenditures. The loan will be repaid from the Stormwater Utility Fund in five annual payments due each December 1 st . The first payment will be due on December 1, 2010 and interest rates will be calculated based on the Local Government Investment Pool’s annual average rate.			
COMMITTEE REVIEW AND RECOMMENDATION:			
RECOMMENDED ACTION: MOTION to adopt Ordinance No. 09-902 approving an interfund loan from the Wastewater Capital Fund to the Stormwater Utility Fund to cover start-up operating costs.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
April 23, 2009			

ORDINANCE NO. 09-902

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AUTHORIZING A SHORT TERM INTERFUND LOAN FROM THE WASTEWATER CAPITAL RESERVE FUND TO THE STORMWATER UTILITY FUND TO COVER THE START-UP OPERATING COSTS OF THE STORMWATER UTILITY UNTIL SUFFICIENT REVENUES HAVE BEEN RECEIVED THROUGH THE STORMWATER UTILITY FEE TO COVER OPERATING COSTS.

WHEREAS, the City Council of the City of Black Diamond authorized the creation of a Stormwater Utility to meet the city's legal obligations to effectively manage stormwater and surface water runoff; and

WHEREAS, creating this utility requires incurring start-up operating costs prior to generating sufficient revenue from the stormwater utility fees to cover these costs; and

WHEREAS, the City's Finance Director has determined that the Stormwater Utility needs a sum of \$50,000 to cover start-up operating costs and have sufficient reserves for unplanned expenses until the stormwater utility fees generate sufficient revenues; and

WHEREAS, it is more cost effective to cover these initial costs through a loan to the Stormwater Utility from the Wastewater Capital Fund as there are sufficient reserve monies in that fund to provide a loan of \$50,000 to the Stormwater Utility without jeopardizing the ability of the Wastewater Fund to meet the needs for which that fund was created; and

WHEREAS, the interfund loan shall be for a period of five years with five annual payments due on December 1st of each year, with the first payment due on December 1, 2010. Interest shall be calculated at the State Local Government Investment Pool interest rate.

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

Section 1. The sum of fifty thousand dollars (\$50,000) is hereby authorized to be transferred from the Wastewater Capital Fund to the Stormwater Utility Fund as an interfund loan for funding the start-up operating costs of the stormwater utility, as well as provide a reserve for any unplanned expenses.

Section 2. The five year interfund loan will be paid back to the Wastewater Capital Fund General Government Capital Fund in five annual payments, with each payment due on December 1st. The first payment shall be due on December 1, 2010.

The loan may be paid off early if the City chooses to do so. Interest shall be calculated using the annual average State Local Government Investment Pool (LGIP) interest rate on the annual declining balance until the loan is fully paid.

Section 3. Each and every provision of this Ordinance shall be deemed severable. In the event that any portion of the Ordinance is determined by final order of a court of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the remaining provisions thereof provided in the intent of this Ordinance can still be furthered without the invalid provision.

Section 4. This Ordinance shall be in full force and effect five (5) days after publication as required by law. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by State law.

Introduced the 23rd day of April, 2009.

Passed by a majority of the City Council at a meeting held on the 23rd day of April, 2009.

Mayor Howard Botts

Attest:

Brenda L. Streepy, City Clerk

APPROVED AS TO FORM:

Loren D. Combs, City Attorney

Published: _____

Posted: _____

Effective Date: _____

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
SUBJECT: Resolution No. 09-593, authorizing creation and adoption of an identity theft prevention program as required by the Fair and Accurate Credit Transactions Act of 2003	Agenda Date: April 23, 2009		AB09-044
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		
	Asst. City Attorney – Tom Guilfoil	X	
	City Clerk – Brenda L. Streepy		
	Finance – May Miller		X
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Fund Source:	Court – Kaaren Woods		
Timeline: 2009	Community Devel. – Steve Pilcher		
	Natural Resources – Aaron Nix		
Attachments: Resolution No. 09-593 ; Identity Theft Prevention Program			
SUMMARY STATEMENT: Effective January 1, 2008 the Fair and Accurate Credit Transactions Act (FACTA) requires cities that operate a utility or otherwise maintain certain types of billing accounts to develop and implement a program to protect the sensitive financial information of its customers and identify and respond to possible identity theft by May 1, 2009. Most of the requirements of the law are commonsensical (such as not revealing a customer’s bank account numbers), but the main new change is that City employees who work in billing are required to be proactive in watching for possible ID theft and, if they observe something suspicious, take action to verify whether it is occurring or not. City staff developed the proposed “Identity Theft Prevention Program” to implement the law. The program will be overseen by the city’s Finance Director.			
COMMITTEE REVIEW AND RECOMMENDATION:			
RECOMMENDED ACTION: MOTION to adopt Resolution No. 09-593, authorizing and adopting an Identity Theft Prevention Program (known as the “Red Flag Program”) to comply with the Fair and Accurate Credit Transactions Act of 2003.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
April 23, 2009			

Resolution No. 09-593

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AUTHORIZING AND ADOPTING AN IDENTITY THEFT PREVENTION PROGRAM (KNOWN AS THE “RED FLAG PROGRAM”) TO COMPLY WITH THE FAIR & ACCURATE CREDIT TRANSACTIONS ACT OF 2003

WHEREAS, the City of Black Diamond operates water, sewer, and storm water utilities; and

WHEREAS, the Fair and Accurate Credit Transactions Act of 2003, Pub. L.108-159, ("Red Flags Rule"), requires creditors who maintain "covered accounts" to prepare, adopt, and implement an identity theft prevention program to identify, detect, respond to and mitigate patterns, practices or specific activities which could indicate identity theft; and

WHEREAS, the City maintains certain continuing accounts with utility service customers and accounts for other purposes which involve multiple payments or transactions, and such accounts are "covered accounts" within the meaning of the Red Flags Rule; and

WHEREAS, to comply with the Red Flags Rule, City staff have prepared the attached Identity Theft Prevention Program which staff recommends be approved and adopted by the City Council for implementation.

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

Section 1. The City of Black Diamond hereby authorizes and adopts an Identity Theft Prevention Program as described in Exhibit “A” to this Resolution and which is hereby incorporated to this Resolution by reference.

Section 2. The city’s Identity Theft Program shall be administered by the City Finance Director, or his or her designee, and shall go into effect upon passage of this Resolution. The Finance Director shall periodically review the program and, in consultation with the City Administrator, update and amend the program as needed to enhance its continuing effectiveness. Such updates and amendments need not be reviewed and approved by the City Council, provided, the written policies and procedures being adopted by this Resolution must be updated whenever any future changes are made to the Program.

RESOLVED this 23rd day of April, 2009.

CITY OF BLACK DIAMOND

Mayor Howard Botts

ATTESTED BY:

Brenda L. Streepy, City Clerk

DATE OF PASSAGE BY THE CITY COUNCIL: _____

DATE OF FILING WITH THE CITY CLERK: _____

City of Black Diamond Identity Theft Prevention Program

May 2009

CITY OF BLACK DIAMOND IDENTITY THEFT PREVENTION PROGRAM

Effective: May 2009
Policy Applies To: This policy applies to any account the City offers or maintains that involves multiple payments or transactions

I. PROGRAM ADOPTION

The City of Black Diamond has developed this Identity Theft Prevention Program pursuant to the Federal Trade Commission's Red Flags Rule, which implements Section 114 of the Fair and Accurate Credit Transactions Act (FACTA) of 2003. 16 C. F. R., section 681.2.

"Red Flags" shall mean any fact, behavior, or activity related to a customer's covered utility account that would cause a reasonable city employee to believe possible improper activity may be occurring. Although this policy gives examples of typical "red flags," city employees should not feel they are limited to only these types of occurrences and should use their training, experience, and common sense in bringing suspicious activity to the attention of the Finance Director.

II. CONFIDENTIALITY OF SPECIFIC PROGRAM PRACTICES

To promote effective Identity Theft prevention programs, the Red Flag Rule envisions a degree of confidentiality regarding the City's specific practices relating to Identity Theft detection, prevention and mitigation. Therefore, under this Program, knowledge of such specific practices is to be limited to Management and those employees who need to know them for purposes of preventing Identity Theft. Because this Program is to be adopted by a public body and thus publicly available, it would be counterproductive to list these specific practices here. Therefore, only the Program's general red flag detection, implementation, and prevention practices are listed in this document.

III. THE CITY IS A "CREDITOR" UNDER THE LAW

Under the Red Flag Rule, every financial institution and creditor is required to establish an "Identity Theft Prevention Program" tailored to the organization's size, complexity and the nature of its operation. According to the Rule, a municipal utility is a creditor subject to the Rule requirements. The Rule defines creditors "to include finance companies, automobile dealers, mortgage brokers, utility companies, and telecommunications companies. Where non-profit and government entities defer payment for goods or services, they, too, are to be considered creditors." In addition, the City of Black Diamond also falls under the Rule because the City maintains certain continuing accounts with utility service customers and accounts for other purposes which involve multiple payments or transactions.

IV. GOALS OF THE PROGRAM

The City's ID Theft Prevention Program must contain reasonable policies and procedures to:

1. Identify relevant Red Flags for new and existing covered accounts and incorporate those Red Flags into the Program;
2. Detect Red Flags that have been incorporated into the Program;
3. Respond appropriately to any Red Flags that are detected to prevent and mitigate identity theft; and
4. Ensure the Program is updated periodically, to reflect changes in risks to customers or to the safety and soundness of the creditor from identity theft.

V. DEFINITIONS

"Covered account" means any individual utility service accounts held by customers of one or more of the City's utilities, whether residential, commercial, or industrial, including:

1. Any account the City offers or maintains primarily for personal, family or household purposes, that involves multiple payments or transactions; and
2. Any other account the City offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the City from identity theft.

"Identifying information" means "any name or number that may be used, alone or in conjunction with any other information, to identify a specific person," including: name, address, telephone number, social security number, date of birth, government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, unique electronic identification number, computer Internet Protocol address, or routing code.

VI. IDENTIFICATION OF RED FLAGS

In order to identify relevant Red Flags, the City shall consider the types of accounts that it offers and maintains, the methods it provides to open its accounts, the methods it provides to access its accounts, and its previous experiences with Identity Theft. The City identifies the following Red Flags, in each of the listed categories:

A. Notifications and Warnings From Credit Reporting Agencies

Red Flags:

- 1) Report of fraud accompanying a credit report;
- 2) Notice or report from a credit agency of a credit freeze on a customer or applicant;
- 3) Notice or report from a credit agency of an active duty alert for an applicant;
- 4) Notice or report from a credit agency of an address discrepancy; and

- 5) Indication from a credit report of activity that is inconsistent with a customer's usual pattern or activity.

B. Suspicious Documents

Red Flags:

- 1) Identification document or card that appears to be forged, altered or inauthentic;
- 2) Identification document or card on which a person's photograph or physical description is not consistent with the person presenting the document;
- 3) Other document with information that is not consistent with existing customer information (such as if a person's signature on a check appears forged); and
- 4) Application for service that appears to have been altered or forged.

C. Suspicious Personal Identifying Information

Red Flags:

1. Identifying information presented that is inconsistent with other information the customer provides (example: inconsistent birth dates);
2. Identifying information presented that is inconsistent with other sources of information (for instance, an address not matching an address on a credit report);
3. Identifying information presented that is the same as information shown on other applications that were found to be fraudulent;
4. Identifying information presented that is consistent with fraudulent activity (such as an invalid phone number or fictitious billing address);
5. Social security number presented that is the same as one given by another customer;
6. An address or phone number presented that is the same as that of another person;
7. A person fails to provide complete personal identifying information on an application when reminded to do so (however, by law social security numbers must not be required); and
8. A person's identifying information is not consistent with the information that is on file for the customer.

D. Suspicious Account Activity or Unusual Use of Account

Red Flags:

1. Change of address for an account followed by a request to change the account holder's name;
2. Payments stop on an otherwise consistently up-to-date account;
3. Account used in a way that is not consistent with prior use (example: very high activity);
4. Mail sent to the account holder is repeatedly returned as undeliverable;
5. Notice to the City that a customer is not receiving mail sent by the City;
6. Notice to the City that an account has unauthorized activity;
7. Breach in the City's computer system security; and
8. Unauthorized access to or use of customer account information.

E. Alerts from Others

Red Flags:

- I. Notice to the City from a customer, identity theft victim, law enforcement or other person that it has opened or is maintaining a fraudulent account for a person engaged in Identity Theft.

VII. DETECTING RED FLAGS.

A. New Accounts

In order to detect any of the Red Flags identified above associated with the opening of a new account, City staff shall take the following steps to obtain and verify the identity of the person opening the account:

1. Require certain identifying information such as name, date of birth, residential or business address, principal place of business for an entity, driver's license or other identification;
2. Verify the customer's identity (for instance, review a driver's license or other identification card);
3. Review documentation showing the existence of a business entity; and
4. Independently contact the customer.

B. Existing Accounts

In order to detect any of the Red Flags identified above for an existing account, City staff shall take the following steps to monitor transactions with an account:

1. Verify the identity of customers if they request information (in person, via telephone, via facsimile, via email);
2. Verify the validity of requests to change billing addresses; and
3. Verify changes in banking information given for billing and payment purposes.

VIII. PREVENTING AND MITIGATING IDENTITY THEFT

In the event Utility personnel detect any identified Red Flags, such personnel shall take one or more of the following steps, depending on the degree of risk posed by the Red Flag:

Prevent and Mitigate:

1. Continue to monitor an account for evidence of Identity Theft;

2. Contact the customer;
3. Change any passwords or other security devices that permit access to accounts;
4. Not open a new account;
5. Close an existing account;
6. Reopen an account with a new number;
7. Notify the Program Administrator for determination of the appropriate step(s) to take;
8. Notify law enforcement; or
9. Determine that no response is warranted under the particular circumstances.

Protect customer identifying information:

In order to prevent the likelihood of identity theft occurring with respect to City accounts, the City shall take the following steps with respect to its internal operating procedures to protect customer identifying information:

1. Ensure that its website is secure or provide clear notice that the website is not secure;
2. Ensure complete and secure destruction of paper documents and computer files containing customer information;
3. Ensure that office computers are password protected and that computer screens lock after a set period of time;
4. Keep offices clear of papers containing customer information;
5. Not use social security numbers as a customer ID #
6. Ensure computer virus protection is up to date; and
7. Require and keep only the kinds of customer information that are necessary for City purposes.

IX. PROGRAM UPDATES.

This Program will be periodically reviewed and updated to reflect changes in risks to customers and to improve the effectiveness of the program in preventing Identity Theft. The Finance Director, in consultation with the City Administrator, shall consider the City's experiences with Identity Theft situations, changes in Identity Theft methods, changes in Identity Theft detection and prevention methods, changes in the types of accounts the City maintains, and changes in the City's business arrangements with other entities. After considering these factors, the Finance Director shall determine whether changes to the Program, including the listing of Red Flags, are warranted. If warranted, the Finance Director shall update these written Policies and Procedures to reflect any changes and implement the revised Program.

X. PROGRAM ADMINISTRATION.

A. Oversight

Responsibility for implementing and updating this Program lies with the Finance Director. The Finance Director will be responsible for the following: administering the program; developing procedures to implement the Program policies; ensuring appropriate training of City staff on the Program; reviewing staff reports regarding the detection of Red Flags and the steps for

preventing and mitigating Identity Theft; determining which steps of prevention and mitigation should be taken in particular circumstances; considering periodic changes to the Program.

B. Staff Training and Reports

City staff handling processing of utility accounts shall be trained either by or under the direction of the Finance Director in the detection of Red Flags, and about the steps to be taken when a Red Flag is detected. City staff shall prepare a report at least annually for the Finance Director, including an evaluation of the effectiveness of the Program with respect to opening accounts, existing covered accounts, service provider arrangements, any incidents involving identity theft and responses, and any recommendations for changes to the Program.

C. Service Provider Arrangements

In the event the Utility engages a service provider to perform an activity in connection with one or more accounts, the Utility will take the following steps to ensure the service provider performs its activity in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of Identity Theft, including:

1. Require, by contract, that service providers have such policies and procedures in place; and
2. Require, by contract, that service providers review the City's Program and report any Red Flags to the Program Administrator.

XI. SPECIFIC DUTY TO KEEP FINANCIAL ACCESS NUMBERS CONFIDENTIAL

The identifying information of the City customers with covered accounts shall be kept confidential and shall be exempt from public disclosure to the maximum extent authorized by law, including RCW 42.56.230(4). Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, shall not be released except when disclosure is expressly required by or governed by law.

City of Black Diamond Identity Theft Prevention Program

May 2009

CITY OF BLACK DIAMOND IDENTITY THEFT PREVENTION PROGRAM

Effective: May 2009
Policy Applies To: This policy applies to any account the City offers or maintains that involves multiple payments or transactions

I. PROGRAM ADOPTION

The City of Black Diamond has developed this Identity Theft Prevention Program pursuant to the Federal Trade Commission's Red Flags Rule, which implements Section 114 of the Fair and Accurate Credit Transactions Act (FACTA) of 2003. 16 C. F. R., section 681.2.

"Red Flags" shall mean any fact, behavior, or activity related to a customer's covered utility account that would cause a reasonable city employee to believe possible improper activity may be occurring. Although this policy gives examples of typical "red flags," city employees should not feel they are limited to only these types of occurrences and should use their training, experience, and common sense in bringing suspicious activity to the attention of the Finance Director.

II. CONFIDENTIALITY OF SPECIFIC PROGRAM PRACTICES

To promote effective Identity Theft prevention programs, the Red Flag Rule envisions a degree of confidentiality regarding the City's specific practices relating to Identity Theft detection, prevention and mitigation. Therefore, under this Program, knowledge of such specific practices is to be limited to Management and those employees who need to know them for purposes of preventing Identity Theft. Because this Program is to be adopted by a public body and thus publicly available, it would be counterproductive to list these specific practices here. Therefore, only the Program's general red flag detection, implementation, and prevention practices are listed in this document.

III. THE CITY IS A "CREDITOR" UNDER THE LAW

Under the Red Flag Rule, every financial institution and creditor is required to establish an "Identity Theft Prevention Program" tailored to the organization's size, complexity and the nature of its operation. According to the Rule, a municipal utility is a creditor subject to the Rule requirements. The Rule defines creditors "to include finance companies, automobile dealers, mortgage brokers, utility companies, and telecommunications companies. Where non-profit and government entities defer payment for goods or services, they, too, are to be considered creditors." In addition, the City of Black Diamond also falls under the Rule because the City maintains certain continuing accounts with utility service customers and accounts for other purposes which involve multiple payments or transactions.

IV. GOALS OF THE PROGRAM

The City's ID Theft Prevention Program must contain reasonable policies and procedures to:

1. Identify relevant Red Flags for new and existing covered accounts and incorporate those Red Flags into the Program;
2. Detect Red Flags that have been incorporated into the Program;
3. Respond appropriately to any Red Flags that are detected to prevent and mitigate identity theft; and
4. Ensure the Program is updated periodically, to reflect changes in risks to customers or to the safety and soundness of the creditor from identity theft.

V. DEFINITIONS

"Covered account" means any individual utility service accounts held by customers of one or more of the City's utilities, whether residential, commercial, or industrial, including:

1. Any account the City offers or maintains primarily for personal, family or household purposes, that involves multiple payments or transactions; and
2. Any other account the City offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the City from identity theft.

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CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
SUBJECT: Resolution 09-594, authorizing the Mayor to sign a contract with Apex Engineering, PLLC and Palmer Coking Coal Company, to prepare Draft and Final Environmental Impact Statements for the Morgan Kame Terrace Mine Expansion	Agenda Date: April 23, 2009		AB09-045
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		
	City Attorney – Loren D. Combs		X
	City Clerk – Brenda L. Streepy		
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Timeline: approx. 90 days to issue Draft EIS	Natural Resource – Aaron Nix		X
Cost Impact: ~ \$107,000	Comm. Development – Steve Pilcher	X	
Fund Source: applicant (Palmer)	Attachments: Resolution No. 09-594, proposed contract and Scope of Work		
SUMMARY STATEMENT: Palmer Coking Coal Company (PCCC) filed a request to expand the existing Morgan Kame Terrace Mine by 56 acres to allow additional mining operations over the upcoming 10-15 years. After review of the environmental checklist and supplemental materials, staff concluded preparation of an Environmental Impact Statement (EIS) was necessary and issued a Determination of Significance (DS) in August 2008. PCCC subsequently filed an appeal of the DS. Shortly thereafter, discussions began between the City Attorney’s office and PCCC. The result was an agreement to enter into a limited scope EIS process, which this contract will fulfill. Staff advertised a Request for Qualifications and 10 firms submitted. Four firms were invited to make formal presentations and the consultant team headed up by Apex Engineering of Tacoma was selected. Staff has negotiated with the consultant to trim costs and will work diligently with the consultant to ensure the project is completed on time and within budget.			
COMMITTEE REVIEW AND RECOMMENDATION: None.			
RECOMMENDED ACTION: MOTION to approve Resolution 09-594, authorizing the Mayor to enter into a contract with Apex Engineering, PLLC, for the purposes of completing Draft and Final Environmental Impact Statements for Morgan Kame Terrace Mine expansion.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
April 23, 2009			

RESOLUTION NO. 09-594

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN A CONTRACT WITH APEX ENGINEERING, PLLC AND PALMER COKING COAL COMPANY TO PREPARE DRAFT AND FINAL ENVIRONMENTAL IMPACT STATEMENTS FOR THE PROPOSED MORGAN KAME TERRACE MINE EXPANSION

WHEREAS, Palmer Coking Coal Company has made application to expand the existing Morgan Kame Terrace Mine by approx. 56 acres, in order to excavate approx. 1.3 million cubic yards of sand and gravel; and

WHEREAS, after review of an environmental checklist and supporting information, the City's SEPA Responsible Official issued a Determination of Significance (DS) on September 5, 2008, requiring an Environmental Impact Statement (EIS) to be prepared; and

WHEREAS, after initially filing an appeal of the DS, Palmer Coking Coal Company subsequently entered into negotiations with staff to limit the scope of an EIS; and

WHEREAS, on February 19, 2009, Palmer Coking Coal Company reached an agreement with the City Administrator, resulting in a limited scope EIS process to be pursued with due diligence; and

WHEREAS, a Request for Qualifications was published, soliciting bids from 10 potential consulting firms; and

WHEREAS, City staff has reviewed the submitted proposals, interviewed four consulting firms and concluded the team headed by Apex Engineering was best suited to complete the EIS process; and

WHEREAS, funding for the EIS will be paid by Palmer Coking Coal Company

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

The Mayor is hereby authorized to sign a contract with Apex Engineering, PLLC and Palmer Coking Coal Company, to prepare Draft and Final Environmental Impact Statements for the proposed Morgan Kame Terrace Mine expansion.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 23rd DAY OF APRIL
2009.**

CITY OF BLACK DIAMOND:

Howard Botts, Mayor

Attest:

Brenda L. Streepy, City Clerk

CITY OF BLACK DIAMOND
PREPARATION OF SEPA DOCUMENT - CONSULTING AGREEMENT

THIS AGREEMENT is entered into this _____ day of _____, 2009 by and between the CITY OF BLACK DIAMOND, hereinafter referred to as the CITY; and Apex Engineering PLLC _____, hereinafter referred to as the CONSULTANT; and Palmer Coking Coal Company, as an individual property owner, hereinafter referred to as the PROPONENT.

WHEREAS, the CITY has determined pursuant to Black Diamond City Code Chapter 19.04 that a Draft Environmental Impact Statement and a Final Environmental Impact Statement (hereinafter "DEIS" and "FEIS"; collectively, the "Project"), are necessary prior to action by the CITY on applications submitted by the PROPONENT relating to: the expansion of the Morgan Kame Terrace Mine. The subject property is generally located between State Route 168 and Lake Sawyer RD. E., north of Roberts Drive in the City of Black Diamond; and

WHEREAS, the CITY and PROPONENT desire that the DEIS and FEIS be prepared by an impartial party to ensure that the DEIS and FEIS provides an objective assessment of existing conditions, impacts, mitigating measures and alternatives and that it provides a credible decision-making document for review by the public, other agencies and the decision maker(s); and

WHEREAS, the CITY and PROPONENT desire to retain the services of a consultant skilled in DEIS and FEIS preparation to prepare the same; and

WHEREAS, the CITY approves and selects CONSULTANT to prepare the DEIS and FEIS; and

WHEREAS, the CONSULTANT is qualified, willing and able to perform necessary studies and prepare the DEIS and FEIS; and

WHEREAS, the services to be performed by the CONSULTANT are temporary in duration.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, performed and fulfilled by the respective parties hereto, the parties mutually agree as follows:

SECTION 1. LEGAL COMPLIANCE. This Agreement is subject to the terms and conditions of Black Diamond Municipal Code 19.04 and other applicable ordinances, statutes and regulations.

SECTION 2. SCOPE OF WORK. Subject to the requirements and limitations of SEPA, the City shall determine the scope of study and type of methodology used to assist in the expeditious preparation, review, and release of the DEIS and FEIS. The CONSULTANT shall perform all services and carry out all work necessary to prepare, and shall prepare, the DEIS and FEIS and related SEPA documents for the Project, as described in the attached "Scope of Services" referred to as Attachment A, which is incorporated herein by this reference. The parties agree and understand that the CONSULTANT'S responsibility is to the CITY, not the PROPONENT, in preparing an accurate and adequate environmental analysis.

SECTION 3. RESPONSIBLE OFFICIAL. The Responsible Official of the City, who shall be the Community Development Director, shall have responsibility for overseeing and directing the CONSULTANT'S preparation of SEPA documents and the DEIS and FEIS, and shall coordinate all communication with the CONSULTANT from the CITY regarding the DEIS and FEIS.

SECTION 4. PREPARATION OF DOCUMENTS. The services to be performed under this Agreement shall include preparation of a preliminary DEIS, preparation of a Draft FEIS, preparation of a Final DEIS, and preparation of a Final FEIS pursuant to the provisions of WAC 197-11-560(4) or (5). The CITY shall provide the PROPONENT with copies of these documents upon receipt from CONSULTANT, and with respect to the preliminary Draft and the preliminary Final DEIS and FEIS, shall request that the PROPONENT review and comment, and shall review and incorporate PROPONENT'S comments where appropriate prior to the printing and distribution of the documents. The CITY shall discuss with PROPONENT any comments or revisions it deems inappropriate for inclusion in the DEIS and FEIS. The CONSULTANT shall consult with the CITY and the PROPONENT during the preparation of preliminary documents for the purpose of information gathering regarding the Project, and shall discuss with the CITY and the PROPONENT the CONSULTANT'S preliminary findings regarding impacts and potential alternatives and mitigating measures. The CONSULTANT shall notify the CITY and the PROPONENT of all correspondence by copy and of substantive telephone conversations and meetings by memorandum of record where either the CITY or PROPONENT was not a participant in a communication between the CONSULTANT and the CITY or PROPONENT. The CITY shall make documents prepared by CONSULTANT under this Agreement available to the public on request when required under the Washington Public Records Act, RCW Chapter 42.17.

SECTION 5. INFORMATION PROVIDED BY PROPONENT. The PROPONENT shall provide the CONSULTANT with a legal description of the Project site, which the CONSULTANT shall be entitled to rely upon for completeness and accuracy. The PROPONENT shall provide copies of any site studies produced by other consultants relevant to the DEIS and FEIS, and such other information the PROPONENT has that is relevant to the preparation of the DEIS and FEIS. The CITY and PROPONENT shall cooperate with the CONSULTANT to facilitate the efficient and prompt preparation of the DEIS and FEIS. In its preparation of documents under this Agreement, the CONSULTANT shall use its best professional judgment in evaluating or relying on reports gathered or prepared by PROPONENT or its subconsultants. The PROPONENT shall provide to the CITY and the CONSULTANT a statement of the PROPONENT'S objective, the project description, and any proposed phasing of the project for use in preparation of the DEIS, FEIS. The PROPONENT is encouraged to submit a statement of alternatives, including a description of reasonable alternative proposals that could feasibly attain the PROPONENT'S objective.

SECTION 6. PAYMENT. The PROPONENT shall pay CONSULTANT services and for such other costs and expenses incurred and documented in accordance with the Scope of Services, Attachment A hereto; PROVIDED, HOWEVER, that:

6.1. The total cost incurred by the CONSULTANT shall not exceed (total preparation cost and contingency amount) as set forth in Attachment A hereto. The contingency amount equals potential additional tasks by GeoEngineers, Inc. as a contingency amount (the "Contingency Amount") to be paid to the CONSULTANT subject to parameters described in attached Attachment A. Other contingent or change order amounts to be paid to the CONSULTANT, only if the CONSULTANT performs services or incurs expense caused by chance or unforeseeable causes or the Scope of Services is modified as provided in Section 9, unless the Scope of Services is modified in accordance with the provisions of Section 9 of this Agreement subsequent to the date of this Agreement. The cost for printing and mailing both the Draft and the Final DEIS, FEIS shall be paid by the PROPONENT.

6.2. The total cost of preparation of the Final DEIS and FEIS is based upon the assumptions and format specified in Attachment A and WAC 197-22-560(5), consisting of an addendum with comments, responses, factual corrections, and an updated fact sheet. If a substantial revised Final DEIS and FEIS is prepared under WAC 197-11-560(1)(a)-(c) requiring additional work tasks not foreseen in the Scope of Services, a revised Scope of Services shall be prepared as provided in Section 9 of this Agreement and Attachment A.

6.3. The PROPONENT shall not be liable for payment to the CONSULTANT for services outside the Scope of Services requested of the CONSULTANT by the CITY.

SECTION 7. DEPOSIT. The PROPONENT shall deposit with the CITY funds (the "Initial Deposit"), which constitute fifty percent (50%) of the amount specified in Section 6.1, which will be placed in a non-interest bearing account, or shall deposit the Initial Deposit in an assigned account with the financial institution chosen by the PROPONENT, or shall provide the CITY a letter of credit for the amount specified in Section 6.1, except if revised as provided in Section 6.2. As the CITY disburses to the CONSULTANT amounts deposited with the CITY or in an assigned account under Section 8, the PROPONENT shall replenish such funds according to the following terms: if the CITY notifies the PROPONENT that the amount on deposit is at any time thirty percent (30%) or less of the amount specified in Section 6.1, then the PROPONENT shall deposit within five (5) business days sums adequate to increase the amount on deposit to the amount of the Initial Deposit; provided, however, that PROPONENT need not continue to replenish such funds after the aggregate amount deposited by PROPONENT has equalled or surpassed the amount specified in Section 6.1. An assigned account shall be in a form approved by the CITY and shall provide for disbursement of the amount on deposit to the CITY to pay the CONSULTANT for its services. All deposited funds shall be under the control of the CITY until the project is completed or upon termination of the Agreement. At completion of the Project, all

unspent funds shall revert to the PROPONENT. The CITY shall disburse funds to the CONSULTANT in accordance with Section 8 of this Agreement.

SECTION 8. DISBURSEMENT. The CONSULTANT agrees to submit progress reports and invoices for services and costs to date as specified in the Scope of Services, which shall describe the services rendered and costs incurred. Original invoices shall be submitted to the CITY with one copy to be sent to the PROPONENT. If the CONSULTANT desires payment for a contingent expense, then on the invoice it shall describe the contingency and state whether the expense is payable from the Contingency Amount. Payment shall be authorized by the CITY on the basis of hourly costs relating to progress on specific work tasks outlined in the Scope of Work (Attachment A) or documentation of completion of a specified percentage of the work required as documented in the monthly progress report. The CITY shall disburse funds payable to the CONSULTANTS and the CONSULTANTS/subconsultants, as identified in Attachment A. If the PROPONENT objects to payment within ten (10) days of receipt of the invoice and advises the CITY, in writing, of the reasons for such objection and the CITY concurs with the objections and reasons, or if the CITY determines that adequate documentation for satisfactory completion or progress made on a work task is not provided, the CITY shall withhold payment to the CONSULTANT, notify the CONSULTANT of the reasons for withholding payment, and notify the CONSULTANT of the information or performance required for payment. The CITY shall be the final decision-maker with respect to the amount of any disputed payment. . Payment shall be mailed by the CITY within forty-five (45) calendar days of actual receipt by the CITY of a properly completed invoice. The CITY shall not be liable for payments to the CONSULTANTS or the CONSULTANTS/subconsultants beyond the deposit funds received from the PROPONENT.

SECTION 9. MODIFICATION OF SERVICES. In the course of research and preparation of the Draft DEIS and FEIS, the parties acknowledge that the CITY--subject to the limitations of SEPA and WAC 197-11-600 and 197-11-620--may request additional information and require additional work tasks, utilization of the alternate methodologies, or other requirements not included in the original Scope of Services as detailed in Attachment A. Any proposal initiated by the CONSULTANT for changes in the Scope of Services required to produce an adequate analysis of significant environmental impacts shall be submitted to both the CITY and PROPONENT and shall include estimates of added costs. If the CITY proposes changes in the Scope of Services in order to produce an adequate analysis of significant environmental impacts, or if the PROPONENT revises the Project in a way that changes significant environmental impacts or proposes consideration of additional alternatives, the CONSULTANT shall prepare a revised Scope of Services and cost estimate for review and approval by the CITY and PROPONENT. If the CITY finds that changes to the Scope of Services are necessary to produce an adequate analysis of significant environmental impacts pursuant to WAC 197-11-180, such amendments to the Scope of Services shall be made to Attachment A and the PROPONENT shall deposit additional funds adequate to increase the amount deposited to fifty percent (50%) of the revised total cost amount,

as required by the CITY; provided, however, that the unexpended Contingency Amount shall have first been applied to the revised total cost amount. Failure to obtain such deposit from PROPONENT shall be grounds for suspension of further administrative action and work on the DEIS, FEIS until such funds as determined by the CITY to be necessary for completion are received under the terms of this Agreement, or until other agreement is reached among the CITY and the PROPONENT.

SECTION 10. INDEPENDENT CONTRACTOR.

10.1. The parties intend that an independent consultant relationship will be created by this Agreement. No agent, employee or representative of the CONSULTANT or its subconsultants shall be deemed to be an agent, employee or representative of the CITY or the PROPONENT for any purpose under this Agreement. Employees of the CONSULTANT or of its subconsultants are not employees of the CITY and are not entitled to any of the benefits the CITY provides to CITY employees. The CONSULTANT shall be solely and entirely responsible for the acts of its employees, agents and subcontractors during the performance of this Agreement.

10.2. In the performance of the services under this Agreement, the CONSULTANT is an independent contractor with the authority over the details of the work, and the work of its subcontractors subject to the applicable SEPA regulations. However, the results of the work contemplated herein shall be subject to the CITY's general rights of review and approval as required by WAC 197-11-420.

SECTION 11. INDEMNIFICATION. The CONSULTANT shall indemnify and hold the CITY and PROPONENT and their officers, agents and employees harmless from all suits, claims (including any claims by any persons based on allegations of denial of CONSULTANT'S independent contractor status), or liabilities of any nature, including but not limited to attorneys' fees and costs and expenses, for or on account of any injuries or damages sustained by any persons or property resulting from negligence acts, errors, or omissions of the CONSULTANT or its agents or employees pursuant to this Agreement. If a lawsuit with respect to the above be filed, the CONSULTANT shall appear and defend the same at its own cost and expense, and if judgment be rendered or settlement made requiring payment of damages by the PROPONENT or CITY, which damages are based upon the negligent activities or omissions of the CONSULTANT, its agents or employees, CONSULTANT shall pay the same to the extent the same result from negligent acts, errors, or omissions of the CONSULTANT, its agents or employees pursuant to this Agreement.

SECTION 12. ANTIDISCRIMINATION. The CONSULTANT shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, age, national origin, marital status, sensory, mental or physical handicap. The CONSULTANT shall take affirmative action to ensure that applicants for employment are hired and that employees are treated during employment without regard to their race, creed, color, sex, age, national origin, marital status, sensory, mental or physical handicap.

SECTION 13. TERMINATION. The right is reserved by the CITY and the PROPONENT to suspend or terminate this Agreement at any time for due cause including, but not limited to, withdrawal of the application, failure of PROPONENT to provide deposits, inadequate or untimely performance of work by the CONSULTANT, or the CITY's withdrawal of the determination of significance. Any termination is effective upon ten (10) days written notice of the CONSULTANT and the PROPONENT by the CITY or of the CITY and the CONSULTANT by the PROPONENT. The CONSULTANT shall be entitled to receive just and equitable compensation for costs incurred prior to suspension or termination for satisfactory work completed on the Project prior to the date of suspension or termination provided that the CITY shall not be liable for payments to the CONSULTANTS or the CONSULTANTS/subconsultants beyond the deposit funds received from the PROPONENT.

SECTION 14. ASSIGNMENT. This Agreement may not be assigned or otherwise transferred by any party or parties hereto without the written consent of all the parties, which consent shall not be unreasonably withheld.

SECTION 15. PUBLIC DOMAIN. The parties hereto agree that the DEIS, FEIS and all material submitted by the CONSULTANT in the course of execution of this Agreement shall be considered in the public domain and not subject to copyright. The CONSULTANT further agrees to make research notes and other work products produced in fulfillment of this Agreement available to the CITY and PROPONENT for reproduction, upon request.

SECTION 16. CONFLICT OF INTEREST. The CONSULTANT agrees that it and its subconsultants shall not have a personal or professional bias or financial interest in the Project other than fees due under this Agreement. The CONSULTANT and PROPONENT shall disclose to the CITY on Attachment B prior contracts between the CONSULTANT and PROPONENT and prior services performed by the CONSULTANT for the PROPONENT. All parties agree that, subsequent to the effective date of this Agreement, any consultant or subconsultant described on Attachment B may perform services or contract to perform services described on Attachment A. Before the expiration of one hundred eighty (180) days after completion of services under the Agreement, the CONSULTANT shall not perform services or contract to perform services for the PROPONENT.

SECTION 17. DISPUTES. The parties to this Agreement must refer any dispute, controversy or claim arising out of or relating to this Agreement or its breach, other than disputes concerning disbursements per Section 8 of this agreement, to mediation before pursuing any other dispute remedy. Any such dispute, claim or controversy not resolved in mediation will be decided in binding arbitration in accordance with the Construction Industry Rules of the American Arbitration Association at its offices closest to the project site, unless the parties mutually agree to some other dispute resolution forum. The prevailing party in any arbitration or litigation will be entitled to recover reasonable attorneys' fees, legal costs, arbitration fees and other claim-related expenses, including reasonable fees for the time of its personnel.

SECTION 18. TIMING OF ENVIRONMENTAL REVIEW. This Agreement shall take effect upon the occurrence of the following events: (1) the application by the PROPONENT for a rezone, administrative use permit, conditional use permit, or other development permit relating to the Project; (2) the submission by the PROPONENT of a completed site plan relating to the Project; or (3) the CITY's commencement of early environmental review relating to the Project under WAC 197-11-055 and 197-11-406.

SECTION 19. ENTIRE AGREEMENT. This Agreement, including attachments incorporated by reference, represents the entire agreement and understanding between the parties in relation to this DEIS, FEIS, and any negotiations, proposals, purchase orders, or oral agreements are intended to be integrated herein and to be superseded by this written Agreement.

SECTION 20. GOVERNING LAW. This Agreement is to be governed by, and construed in accordance with, the laws of the City of Black Diamond and the State of Washington.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

CITY:

CITY OF BLACK DIAMOND

By _____
Howard Botts, Mayor

ATTEST:

, City Clerk

APPROVED AS TO FORM:

, City Attorney

CONSULTANT:

NAME OF CONSULTANT

By _____
Jeffrey D. Mann
Its Managing Member

PROPONENT:

NAME OF PROPONENT

By _____
Its _____

By _____
Its _____

By _____
Its _____

Attachments:

- A - Scope of Services
- B - Disclosure of Prior Contracts or Services and Permitted Future Contracts or Services

PROPONENT

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ____ day of _____, 20____, before me a Notary Public in and for the State of Washington, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that ____ was authorized to execute the instrument, and acknowledged it as the _____ of PROPONENT' NAME, a (State of origin) (type of business: corporation, etc.), to be the free and voluntary act and deed of said (type of business, as above) for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

NOTARY PUBLIC in and for the State of Washington,
residing at _____.
My appointment expires _____.

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ____ day of _____, 20____, before me a Notary Public in and for the State of Washington, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that ____ was authorized to execute the instrument, and acknowledged it as the _____ of PROPONENT' NAME, a (State of origin) (type of business: corporation, etc.), to be the free and voluntary act and deed of said (type of business, as above) for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

NOTARY PUBLIC in and for the State of Washington,
residing at _____.
My appointment expires _____.

CITY

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ____ day of _____, 20____, before me a Notary Public in and for the State of Washington, personally appeared Howard Botts, _____ and _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed this instrument, on oath stated that they were authorized to execute the instrument, and acknowledged it as the Mayor, City Clerk, and City Attorney, respectively, of the CITY OF BLACK DIAMOND, to be the free and voluntary act and deed of said CITY for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

NOTARY PUBLIC in and for the State of Washington,
residing at _____.
My appointment expires _____.

Scope of Work and Cost Proposal



**Morgan Kame Terrace
Mine Expansion Draft & Final EIS**



City of Black Diamond

2601 SOUTH 35TH STREET, SUITE 200
TACOMA, WASHINGTON 98409
(253) 473-4494
FAX (253) 473-0599
APEX@APEXENGINEERING.NET

"Designing your next project"

MORGAN KAME TERRACE MINE EXPANSION PROJECT BUDGET SUMMARY

The following is a summary of the cost estimates for the EIS Team. Please see individual costs estimates for each Consultant and additional information.

COST ESTIMATE SUMMARY	
Apex Engineering, PLLC	
Draft & Final EIS Preparation & Project Management	\$30,000
GeoResources, LLC	**\$14,500
Raedeke Associates, Inc.	\$25,700
Transpo Group	\$19,865
Cedarock Consultants, Inc.	\$17,000
Total	\$107,065

**Base fee, if monitoring wells are required for expansion areas add \$6,500.

NOTES

- Budget estimates have been made to address Screencheck EIS comments from the City and comments received from the public comment period. If additional studies or reports are required, or the number of responses exceeds the budgets, a new Scope of Work and Budget Authorization will be required for the Response to Comments.
- Cost estimate for reimbursable expenses for mileage, document copying, maps, special delivery services, photographic processing fees or other reimbursable expenses are as identified in the individual scopes of work.
- Survey of location test pit or monitoring wells would require additional authorization and budget.
- Management of fee payments to the EIS sub-consultants, by Apex Engineering will require a 10% administrative fee, which will be reflected in the billing to the City. If the City is able to pay sub-consultants directly, the fee will be deleted.
- For budgeting purposes, it is estimated the printing costs for the Draft and Final EIS documents will require approximately \$2,000 depending on the number copies requested by the City. We can also provide the EIS documents on CD and reduce the amount of printing.
- The cost estimate is based upon the anticipated number of person-hour typically required to complete a project of this size and complexity. The actual amount of time required will depend on (1) the amount of field time needed for the specific site complexity and conditions; (2) the number of meetings requested; (3) unanticipated delays in the schedule; (4) unforeseen issues requiring unanticipated expenditure of effort; (5) changes in scope from that detailed in this Agreement; (5) the completeness of technical information provided by the client and/or outside consultant for the project.

MORGAN KAME TERRACE MINE EXPANSION DRAFT & FINAL EIS OVERALL WORK PROGRAM AND SCOPE OF WORK

APEX ENGINEERING, PLLC

INTRODUCTION

This section includes a description of the Overall Work Program as well as the specific scope of work for Apex Engineering. Scope of Work and Budget documents for each consultant are found in following sections of this attachment, and are considered a part of this Attachment A to the City contract. Apex Engineering, PLLC will be the EIS Author and Project Manager for the Morgan Kame Terrace Mine Expansion.

SCOPE OF SERVICES

PHASE I – PROJECT ORGANIZATION AND DATA COLLECTION

Task 1 – Work Program Negotiations

Task 1 is the negotiations of EIS work program with the City of Black Diamond to establish final work program elements and cost estimates based on the work done in task items 1 - 6 of Phase I.

Apex Scope:

- 1) Coordinate with the City on Scope of Work discussion.
- 2) Conduct one meeting with the City.
- 3) Developed Scope of Work Document.
- 4) Coordinate final Contract approvals.

Task 2 – Project Organization

This task will include coordination between the City and Apex Engineering as the lead consultant to review the EIS and development objectives, make assignments, due dates, and operational procedures.

Apex Scope: Coordinate with City of Black Diamond, include one meeting.

Task 3 – Initial Project Coordination

Task 3 would include the entire team with the City of Diamond establishing direction for the EIS, communicating and highlighting the critical issues to be commenced in Phase I.

Apex Scope: Setup and conduct team meeting with the City of Black Diamond to establish work to be done to establish final Scope of Work.

Task 4 – Review Existing Reports and Identify Data Needs

Apex Scope: Review of engineering reports related to road and utility issues, and coordinate information which will be used for the Scope of Work negotiations.

Task 5 – Prepare the Fact Sheet and Background, Project Description, Project Setting and Summary

Apex Scope: Write Standard EIS Sections.

Task 6 – Preferred Alternative

This task would include the selected alternatives as determined and development of a final proposed project description, which would be utilized as the preferred alternative for the preparation of the Draft Environmental Impact Statement.

Apex Scope: Write the Alternatives section.

PHASE II – PREPARATION OF PRELIMINARY DRAFT EIS

The objective of this phase would be to prepare a Preliminary Draft EIS for review by the City of Black Diamond prior to publishing.

Task 1 – Incorporation of Alternative Analysis into the EIS

This task would incorporate the environmental information, which was prepared by subconsultants.

Apex Scope: Write Alternative Analysis Section for the environmental elements of the DEIS.

Task 2 – Incorporate Studies into the Environmental Elements of the EIS

Apex Scope: Write the Environmental Elements from the traffic, wildlife, fisheries and hydrological studies with the EIS format.

Task 3 – Prepare Preliminary Draft EIS

Prepare the EIS Summary in Chapter 2, and produce a document version for City Review.

Apex Scope: Prepare the Preliminary Draft EIS per SEPA requirements and submit to the City of Black Diamond for review.

PHASE III – PUBLISHING THE DRAFT EIS

The objective of Phase III would be to review the Preliminary Draft EIS with the City of Black Diamond, revise and amend as necessary, and prepare the document for publishing.

Task 1 – Client/Consultant Review

Apex Scope: Client/Consultant meeting to review City comments on the Preliminary Draft EIS.

Task 2 – Screencheck Revisions

Apex Scope: Revise, amend, and augment EIS as directed by the City of Black Diamond.

Task 3 – Draft EIS Approval to Publish

Final client/consultant review of the Draft EIS and sign-off for distribution and publishing. Final review by the City of Black Diamond. At this point, the document would be printed and distributed to parties of interest and other distribution lists as determined by the City of Black Diamond.

Apex Scope:

- 1) Meet with the City of Black Diamond to review any comments on the Preliminary DEIS.
- 2) Coordinate with EIS team for revisions.
- 3) Revise the Draft EIS.
- 4) Meet with the City for final approval for publishing.
- 5) Coordinate printing and mail out of the Draft EIS.

PHASE IV – PREPARATION/PUBLISHING OF FINAL EIS

The objective of this phase would be to receive comments from the public comment period, incorporate those comments, and address them in a Final EIS.

Task 1 – Review of Comments

Task 1 would be a client/consultant meeting to review comments received during the public comment period.

Apex Scope: 1) Meet with City of Black Diamond to review comments received during the public comment period. Include other team members, as needed.

Task 2 – Responses to Comments and Final EIS Preparation

Task 2 would be to prepare Final EIS Responses to Comments, revise exhibits and text as necessary, and submit to the City of Black Diamond for review and approval.

Apex Scope: 1) As needed, negotiate Scope of Work for Final EIS subject to the requests for additional information or studies.
2) Prepare the Final EIS Responses to Comments in concert with the EIS team.
3) Prepare the Final EIS Document for City review.

Task 3 – Final EIS Approval to Publish

Task 3 would be final review of the Final EIS with the City of Black Diamond. The Final EIS would be prepared for printing and distribution for the City of Black Diamond.

Apex Scope: 1) Meet with the City of Black Diamond for final review and sign off.
2) Coordinate the printing and distribution.

**MORGAN KAME TERRACE MINE EXPANSION DRAFT & FINAL EIS
COST ESTIMATE FOR PROPOSED SCOPE OF WORK**

APEX ENGINEERING, PLLC

Phase I - Project Organization & Data Collection

Task 1 - Negotiation of EIS Work Program and Contract with City	\$1,000
Task 2 - Project Organization	\$1,000
Task 3 - Initial Project Coordination	\$500
Task 4 - Review Existing Reports & Identify Additional Data Needs	\$1,000
Task 5 - Prepare Fact Sheet, Project Description, and Summary	\$1,000
Task 6 - Prepare Alternatives Descriptions	\$1,000

Phase I Total.....\$5,500

Phase II - Preparation of Screen check Draft EIS

Task 1 - Incorporate Alternatives Analysis from Studies into EIS.....	\$1,000
Task 2 - Incorporate Studies into Environmental Elements of EIS	\$5,000
Task 3 - Screencheck DEIS Report Preparation	\$3,000

Phase II Total\$9,000

Phase III - Publishing of Draft EIS

Task 1 - Client/Consultant Review	\$500
Task 2 - Revise and Amend DEIS	\$3,000
Task 3 - Draft EIS Approval to Publish.....	\$2,000

Phase III Total\$5,500

Phase IV - Preparation of FINAL EIS

Task 1 - Review Public Comments on DEIS.....	\$1,000
Task 2 - Prepare FEIS	\$5,000
Task 3 - Final Review and Preparation of FEIS to Publish	\$3,000

Phase IV Total\$9,000

Contract Administration/Accounting\$1,000

APEX PROJECT TOTAL.....\$30,000



NOTES

- Cost estimate for reimbursable expenses for mileage, document copying, maps, special delivery services, photographic processing fees or air photographic preparation fees is \$1,500.
- A budget estimate of 30 hours has been included to respond to City Screencheck EIS comments, and comments received during the Public Comment period. If additional studies or reports are required or the number of responses exceeds the budget estimates, a new Scope of Work and Budget authorization will be required.
- Management of fee payments to the EIS subconsultants by Apex Engineering will require a 10% administrative fee, which will be reflected in the billing to the City. If the City is able to pay subconsultants directly, the fee will be deleted.
- For budgeting purposes, it is estimated the printing costs for the Draft and Final EIS documents will require approximately \$2,000.

RAEDEKE ASSOCIATES, INC.
5711 NE 63RD STREET + SEATTLE, WASHINGTON
(206) 525-8122 + FAX: (206) 526-2880

Scope of Services
Black Diamond Morgan Kame Terrace Gravel Mine Expansion – EIS Studies

PROJECT SITE

The project site, approximately 203 acres in size, lies generally southeast of Lake Sawyer, between State Highway 169 on the east, the Auburn-Black Diamond Road on the south, and Lake Sawyer Road on the west, in the City of Black Diamond, Washington. The proposed mine expansion area consists of two parcels totaling 56 acres within the property. This places the site in a portion of Section 10, Township 21 North, Range 6 East, W.M.. A map showing the property and proposed mine expansion areas, prepared by Ecological Land Services, Inc., was obtained from the City of Black Diamond's files and provided by Apex Engineering in March 2009.

PROJECT SUMMARY

This document details services associated with preparation of technical analyses relating to plants and animals for a Draft and Final EIS for the City of Black Diamond for the proposed mine expansion by Palmer Coking Coal Company.

TASK 1. PROJECT INITIATION AND BACKGROUND INFORMATION

This task provides initial coordination and scoping with the project EIS team, as well as collection and review of background materials. Specifically, this task includes compilation and review of background information, including project site maps, scoping documents, previous technical documents prepared for the parcels and adjoining properties, local, state, and national resource inventories, search of state databases regarding the potential presence of endangered, threatened, sensitive, and other priority plant or animal species, and review of aerial photographs, as appropriate.

TASK 2. FIELD INVESTIGATION

This task involves conducting a site reconnaissance in order to describe existing conditions on the project site and immediate vicinity for the EIS document, including mapping upland vegetation communities and documenting wildlife use of the site. We assume that no detailed, systematic inventory of wildlife species is required for the EIS documents. Should the EIS Scope of Work require additional surveys or data collection beyond those outlined below, we would prepare a change order or other contract amendment to cover the additional work. Based on available information from the City of Black Diamond and Apex Engineering, we assume that an assessment of wetlands in the vicinity is not included in the scope of work for the EIS and that no wetland delineation is required. However, the site reconnaissance includes evaluation of habitat conditions along Rock Creek.

The cost estimate assumes up to one 10-hour day for field reconnaissance of the proposed mine expansion sites and immediate vicinity, for up to four staff (total of up to 40 staff-hours) to map vegetation communities, record wildlife observations, and collect notes regarding habitat characteristics and use. In addition, the estimate includes one 10-hour day for one staff member, as needed to complete habitat descriptions and record additional observations on the overall property.

TASK 3. PRELIMINARY DRAFT EIS SECTION

This task involves preparation of draft technical sections on plants and animals for submittal to the City of Black Diamond as part of the Preliminary Draft EIS. The report would provide a summary of existing conditions for the site and immediate vicinity, including; a habitat map, analysis of the probable impacts on plants and animals resulting from the proposed mine expansion, one mining alternative, and a No Action alternative in the EIS, and recommended mitigating activities to compensate for impacts from the preferred alternative. The information would include discussion of listed and priority species, wildlife movement patterns, and cumulative analysis required per the Scope of Work for the EIS.

This task assumes that our document will serve as drop-in text for the Draft EIS. Preparation of our report assumes timely receipt of the following: electronic base files in a suitable format for preparation of report graphics, site plans and/or descriptions of mining and No Action alternatives to enable assessment of impacts, including how the plan relates to Rock Creek, available information on logging history of the site, as well as required and proposed reclamation of mining areas. The cost estimate assumes one round of revision in response to comments from Apex Engineering or other EIS team consultants, with up to 8 staff-hours of revision and production. This cost estimate is based on analysis of the following alternatives for the EIS: a proposed mine expansion, one mining alternative, and a No Action alternative.

TASK 4. DRAFT EIS PUBLICATION

This task involves revision of our technical document regarding plants and animals based on comments from the City of Black Diamond staff and its reviewers on the Preliminary Draft EIS. It is difficult to determine the level of effort that will be required to revise documents in response to agency comments, so the estimate for this task should be considered very preliminary. However, for purposes of this cost estimate, the task includes revisions to our report in response to one round of review and comment by the project team and the City (with up to 16 staff-hours of revision and production, plus associated correspondence and coordination). If the review requires additional effort to respond to comments, or additional rounds of review are required, we would prepare a Change Order or other contract amendment to cover the additional work.

TASK 5. FINAL EIS

This task involves responses to public and agency comments on the published Draft EIS. Raedeke Associates, Inc. will coordinate response to public comments on the DEIS with the City, Apex Engineering, and the project team, and prepare written responses to the public comments on issues relating to plants and animals, and ETS and other priority species.

The scope of this task is difficult to determine prior to receipt of public comments, so the estimate for this task should be considered very preliminary. A relatively modest number of comments

from the public or reviewing agencies on the published Draft EIS is assumed. It may be necessary to amend the scope and budget for this task, depending on the number, extent, and magnitude of comments received on the published Draft EIS. The present cost estimate assumes up to 18 staff-hours of response preparation, including revisions per review by the project team and City, and does not include any additional studies that may be requested by the public or reviewing agencies based on their review of the Draft EIS.

TASK 6. MEETINGS, ADMINISTRATION, & EXPENSES

This task includes attendance at meetings with the client and project team or agencies, as may be otherwise required during the course of the tasks outlined above. The cost estimate includes up to 8 staff-hours of meetings with the City and/or the project team, including preparation and travel, plus general project administration, and project expenses.

EXCLUSIONS

Additional tasks may become necessary, depending on the findings of the scope of services described above. The following tasks are not included in this Agreement: (1) additional field studies beyond those described above, such as to delineate wetlands on the project site or adjacent properties, or to conduct additional surveys for wildlife; (2) additional studies beyond those described above as could be requested by the City or other reviewers of the Preliminary Draft EIS; (3) analysis of EIS alternatives or infrastructure alternatives beyond those described above; (4) tasks associated with additional rounds of document review and revision based on comments by Apex Engineering, the City, or other reviewers, beyond those described above for the alternative analysis or preparation of documents for the Draft EIS; (5) tasks associated with additional responses to public or agency comments on the Draft EIS in preparation for the Final EIS beyond those outlined above; (6) attendance at additional meetings beyond those described above; (7) participation in any public meetings or public hearings for the project; (8) tasks associated with any legal challenge to the EIS; (9) tasks associated with preparation of permit applications related to impacts on wetland, streams, or listed species; or, (10) preparation of any formal biological assessment or management plan regarding listed species beyond the tasks outlined above.

COST ESTIMATE

Task 1. Project Initiation	\$ 2,000.00
Task 2. Field Investigations	\$ 6,600.00
Task 3. PDEIS Document	\$10,100.00
Task 4. DEIS Document	\$ 2,700.00
Task 5. Final EIS	\$ 2,200.00
Task 6. Meetings, Administration, & Expenses	\$ 2,100.00
Total Cost Estimate	\$25,700.00

The Transpo Group

	PM	QC	PE	Graphics	Admin	
Hourly Rate	\$185	\$215	\$105	\$65	\$75	
Communication/Project Management	24	0	0	0	2	
Black Diamond meeting (assume one)	4					
Conference calls/team coordination	8					
Coordination with City/County/WSDOT	2					
Public meeting and public hearing (assume one each)	8					
Contracting/administration	2				2	
Data Review/Gap Analysis	2	0	8	0	0	
Review existing documentation	2		4			
Site visit			4			
Draft EIS	22	2	54	10	0	
Document existing conditions	2		8			
Estimate project trip generation/distribution			2			
Forecast and evaluate future conditions	2		16			
Identify potential mitigation measures	2					
Prepare draft technical report	12	2	24	8		
Finalize report	4		4	2		
Final EIS	10	2	8	0	0	
Respond to comments	4	2				
Update technical report	6		8			
Total Hours	58	4	70	10	2	
	\$10,730	\$860	\$7,350	\$650	\$150	\$19,740
Reimburseables (mileage)						\$125
						<u>\$19,865</u>

Assumptions: attendance at up to two meetings and one hearing
 evaluation of up to five study intersections during one time period
 existing traffic counts available (no new counts)

Georesources, Inc

Draft and Final EIS Scope and Budget

Data review & Site Reconnaissance	\$2,500
Explorations Test Pits & Lab(owner hoe)	\$1,800
Monitor Wells (3+ to 40') (\$7,500 if necessary)	
GW Monitoring/Analyses	\$2,200
Water Budget (Expansion/Site)	\$1,200
(Cumulative)	\$1,500
Documentation/Figures	\$2,300
Draft EIS Total	\$11,500 (w/ M-wells - \$18,900)

Does not include survey control for GW

Final EIS Typically \$2,000 to \$3,000 comments/revisions

MEMORANDUM

Date: April 3, 2009
 To: Jeff Mann, Apex Engineering
 From: Carl Hadley
 Subject: **MORGAN KAME TERRACE MINE EXPANSION
 Fisheries Preliminary Scope and Budget**

Anticipated Task	Budget
<i>Existing Information:</i> Acquire and review existing information relative to site conditions, historic surface water quality and quantity monitoring, historic use of the site, and proposed specific and cumulative actions. Assumes one ½-day meeting plus travel.	\$2,000
<i>Site Visit:</i> Conduct half day site visit to qualitatively evaluate instream habitat adjacent to site, riparian buffer conditions, potential direct impacts of mine expansion/other proposed actions. Assumes one ¾-day plus travel.	\$1,000
<i>Impacts Analysis:</i> Map water flow rates, travel times, and pathways to Rock Creek and Crisp Creek based on information from applicant and GeoResources. Evaluate potential impacts to water quality in regional creeks and Lake Sawyer based on map discussed above and information on soils conditions and anticipated land uses. Evaluate potential for direct impacts to Rock Creek from future actions. Evaluate potential impacts to riparian buffer functions and values. The analyses will be quantitative where possible but because of schedule, will likely require some qualitative assessments based on use of Best Available Science resources from studies in nearby areas.	\$10,000
<i>Document Preparation:</i> Prepare draft and final technical reports for the DEIS. Reports will be provided digitally to Apex Engineering for final production. Budget assumes Apex will create and produce all graphics based on concepts provided by Cedarrock.	\$4,000
<i>Meetings:</i> Assumes no meetings in addition to those described and budgeted above. Any additional meetings can be attended on a time and materials basis.	\$0
<i>FEIS:</i> Response to comments on the DEIS and any changes to fisheries technical report as a result will be scoped and budgeted separately.	\$0
TOTAL FISHERIES BUDGET ESTIMATE:	\$17,000

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
SUBJECT: Emergency Ordinance No. 09-903, exempting Roberts Drive and Lawson Street from the vehicle weight restrictions imposed by BDMC 10.12.020	Agenda Date: April 23, 2009		AB09-046
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		X
	City Administrator –Gwen Voelpel		
	Asst. City Attorney – Tom Guilfoil	X	
	City Clerk – Brenda L. Streepy		
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Fund Source:	Court – Kaaren Woods		
Timeline: 2009	Community Devel. – Steve Pilcher		
	Natural Resources – Aaron Nix		
Attachments: Emergency Ordinance No. 09-903			
SUMMARY STATEMENT: Chapter 10.12.010 was adopted in 1996 and limits gross vehicle weight to ten tons, except on Third Avenue (SR 169). Due to the emergency closure of the Green River bridge, some local businesses that utilize heavy commercial trucks have lost their usual way of accessing their business, and cannot use Roberts Drive or Lawson Street because of the existing weight restriction. This ordinance would enable Roberts and Lawson to be used by heavy trucks. When the bridge reopens, the Council could consider at that time whether to reimpose the weight limits on Lawson and Roberts. Nothing in this ordinance exempts commercial trucks and other vehicles from maximum weight limits imposed under state and federal law. <i>Note:</i> BDMC 10.12.020 already allows certain types of vehicles (city vehicles; emergency vehicles; garbage trucks; etc.) to operate on all city streets even if their weight is in excess of ten tons.			
COMMITTEE REVIEW AND RECOMMENDATION:			
RECOMMENDED ACTION: MOTION to adopt Ordinance No. 09-903, amending Black Diamond Municipal Code section 10.12.010 to exempt Lawson Street and Roberts Drive from the gross vehicle weight limits established under 10.12.020.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
April 23, 2009			

CITY OF BLACK DIAMOND, WASHINGTON

Ordinance No. 09-903

AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AMENDING BLACK DIAMOND MUNICIPAL CODE SECTION 10.12.010 TO EXEMPT LAWSON STREET & ROBERTS DRIVE FROM THE GROSS VEHICLE WEIGHT LIMITS ESTABLISHED UNDER 10.12.020.

WHEREAS, the emergency closure of the Green River Bridge on State Route 169 has reduced the routes available to heavy truck commercial traffic; and

WHEREAS, the closure of the bridge also resulted in the City of Black Diamond limiting use of certain streets by heavy trucks in order to prevent significant and costly damage to streets and roads that were not designed to handle such traffic; and

WHEREAS, the weight restriction on certain streets is now preventing long-established businesses that utilize heavy commercial trucks from accessing their property, causing an immediate and drastic impact on the ability of these businesses to operate profitably at a time when the serious economic recession has already placed local business under severe strain; and

WHEREAS, since local business and the jobs and taxes they generate make most public services possible, the City and its residents will benefit more overall from allowing heavy trucks to use Lawson Street and Roberts Drive during this period that other means of access are unavailable due to the emergency closure of the Green River Bridge.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Black Diamond Municipal Code Section 10.12.010 is hereby amended to read as follows:

10.12.010 Maximum gross weight.

Except as permitted in Section 10.12.020, it is unlawful for any person to operate upon a city street, road, or alley other than Third Avenue (State Route 169), Lawson Street, or Roberts Drive a vehicle whose gross weight, including load, exceeds ten tons.

EMERGENCY ORDINANCE

Section 2. This Ordinance is hereby designated as a Public Emergency Ordinance necessary for the protection of the public health, safety, public property or the public peace and shall be effective upon its adoption. A summary of this Ordinance may be published in lieu of publishing the Ordinance in its entirety.

Section 3. If any provision of this Ordinance is determined to be invalid or unenforceable for any reason, the remaining provisions of this Ordinance shall remain in force and effect.

Introduced the 23rd day of April, 2009.

Passed by _____ yes votes and _____ no votes by the City Council at a meeting held on the 23rd day of April, 2009.

CITY OF BLACK DIAMOND

Mayor Howard Botts

ATTESTED BY:

Brenda L. Streepy, City Clerk

APPROVED AS TO FORM:

Loren D. Combs, City Attorney

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
SUBJECT: Ordinance No. 09-904, amending Chapter 9.96 of the Criminal Code regarding domestic violence	Agenda Date: April 23, 2009		AB09-047
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		X
	City Administrator –Gwen Voelpel		X
	Asst. City Attorney – Tom Guifoil		X
	City Clerk – Brenda L. Streepy		X
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police –Chief Kiblinger	X	
Timeline:	Court – Kaaren Woods		
Cost Impact: 0			
Fund Source: General Fund			
Attachments: Ordinance No. 09-904			
SUMMARY STATEMENT: Crimes of domestic violence are pervasive with long term consequences suffered by not just the direct victims, but also the child witnesses. Child witnesses are frequently involved in crimes of domestic violence. Studies also show that strangulation domestic violence crimes are some of the most lethal, with the perpetrators using strangulation as a form of power and control, and studies show that perpetrators who have used strangulation in the past are far more likely to commit homicide.			
COMMITTEE REVIEW AND RECOMMENDATION: 			
RECOMMENDED ACTION: MOTION to adopt Ordinance No. 09-904, amending chapter 9.96 of the criminal code of the City of Black Diamond to criminalize domestic violence in the presence of children and domestic violence strangulation.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
April 23, 2009			

ORDINANCE NO. 09-904

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF BLACK DIAMOND, WASHINGTON,
AMENDING CHAPTER 9.96, OF THE CRIMINAL CODE
OF THE CITY OF BLACK DIAMOND TO CRIMINALIZE
DOMESTIC VIOLENCE IN THE PRESENCE OF
CHILDREN AND DOMESTIC VIOLENCE
STRANGULATION**

WHEREAS, Article XI, Section 11 of the Washington State Constitution authorizes the City Council to establish additional crimes as long as said crimes do not conflict with State Law; and

WHEREAS, the City Council has enacted the City's law as set forth in the Black Diamond City Code; and

WHEREAS, Chapter 9 of the Black Diamond City Code identifies certain criminal violations designed to provide for public peace, morals, and welfare within the City; and,

WHEREAS, crimes of domestic violence are pervasive with long term consequences suffered by not just the direct victims, but also the child witnesses; and

WHEREAS, studies show that strangulation domestic violence crimes are some of the most lethal, with the perpetrators using strangulation as a form of power and control, and studies show that perpetrators who have used strangulation in the past are far more likely to commit homicide; and

WHEREAS, the City Council finds it is the best interest of the citizens to add the crime of domestic violence involving children witnesses and the crime domestic violence involving strangulation,

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

SECTION 1. Chapter 9.96 of the Black Diamond City Code is hereby amended to read as follows:

Crimes occurring between family or household members – Domestic violence.

~~RCW 26.09.300, 26.26.138, 26.44.063, 26.44.067, and Chapters 10.99 and 26.50 RCW as currently codified or as hereafter amended, are hereby adopted by reference.~~

~~RCW 9A.36.150 and 26.10.220, as currently codified or as hereafter amended, are hereby adopted by reference.~~

(1) Domestic violence anti-merger clause- Every person who, in the commission of a crime of domestic violence shall commit any other crime, may be punished therefore as well as for the crime of domestic violence, and may be prosecuted for each crime separately.

(2) Strangulation

(a) A person is guilty of Strangulation if, under circumstances not amounting to a felony, he or she assaults another by means of strangulation.

(b) Strangulation shall mean intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by obstructing the nose or mouth of another person.

(c) Strangulation is a gross misdemeanor with a maximum penalty of 365 days in jail and a \$5,000 fine, provided, any person convicted of this crime shall be punished by a mandatory minimum imprisonment of not less than 30 days.

(3) Exposing children to domestic violence

(a) A person commits the crime of exposing children to domestic violence when he or she:

(i) Commits a crime of domestic violence, as defined in RCW 10.99.020, as currently enacted or hereafter amended; and

(ii) The crime is committed in the immediate presence of, or is witnessed by, the person's or the victim's minor child, minor stepchild, or any minor child residing within the household of the person or victim.

(b) For the purposes of this section, "minor" shall mean a person younger than 18 years; "witnessed" shall mean if the crime is seen or directly perceived in any other manner by the child.

(c) Exposing children to domestic violence is a gross misdemeanor with a maximum penalty of 365 days in jail and a \$5,000 fine, provided, any person convicted of this crime shall be punished by a mandatory minimum imprisonment of not less than 30 days. If the person is sentenced to less than the maximum statutory sentence, the court shall place the defendant on probation and the court shall impose conditions of probation that include attendance at a certified domestic violence perpetrator treatment program as well as a treatment program that addresses the effects of domestic violence on children, unless it is shown to the satisfaction of the court that a single program adequately addresses in a comprehensive fashion both domestic violence generally and the specific impacts of domestic violence on minor children.

(4) The following state statutes, including all future amendments, additions or deletions, are adopted by reference:

(a) RCW 26.09.300, Restraining orders — Notice — Refusal to comply — Arrest — Penalty — Defense — Peace officers, immunity.

(b) RCW 26.26.138, Restraining order — Knowing violation — Penalty — Law enforcement immunity.

(c) RCW 26.44.063, Temporary restraining order or preliminary injunction — Enforcement — Notice of modification or termination of restraining order.

(d) RCW 26.44.067, Temporary restraining order or preliminary injunction — Contents — Notice — Noncompliance — Defense — Penalty.

(e) Chapter 10.99 RCW, Domestic violence — official response

(f) Chapter 26.50 RCW, Domestic violence prevention

(g) RCW 9A.36.150, Interfering with the reporting of domestic violence.

(h) RCW 26.10.220, Restraining orders — Notice — Refusal to comply — Arrest — Penalty — Defense — Peace officers, immunity.

SECTION 2. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to

other persons or circumstances.

SECTION 3. Ratification. Any and all acts consistent with the authority and prior to the effective date of this ordinance are hereby ratified and affirmed.

SECTION 4. Effective Date. This ordinance shall take effect and be in force five days from its passage, approval and publication, as provided by law.

PASSED by the City Council of the City of Black Diamond this ____ day of _____, 2009.

CITY OF BLACK DIAMOND

MAYOR, Howard Botts

ATTEST:

BRENDA STREEPY, CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY, LOREN COMBS

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO.: _____

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CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
SUBJECT: Ordinance No. 09-905, creating the traffic offense of inattentive driving	Agenda Date: April 23, 2009		AB09-048
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		X
	City Administrator –Gwen Voelpel		X
	City Attorney – Loren D. Combs	X	
	City Clerk – Brenda L. Streepy		X
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police – Chief Kiblinger		
Court – Kaaren Woods			
Cost Impact: 0			
Fund Source: General Fund			
Timeline:			
Attachments: Ordinance No. 09-905			
SUMMARY STATEMENT: This new offense of “inattentive driving” will fill the need for situations where a driver has not been driving recklessly but who nevertheless fails to exercise due care and thereby cause minor accidents or create a reasonable likelihood of one. The offense of “inattentive driving” shall be a creation of local ordinance and not a state statute, certain fees that would otherwise need to be paid to the state from any fines collected do not apply.			
COMMITTEE REVIEW AND RECOMMENDATION:			
RECOMMENDED ACTION: MOTION to adopt Ordinance No. 09-905, amending chapter 10.40 of the Black Diamond Municipal Code to add new section 10.40.060, which makes inattentive driving a violation of the City’s traffic code.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
April 23, 2009			

ORDINANCE NO. 09-905

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AMENDING CHAPTER 10.40 OF THE BLACK DIAMOND MUNICIPAL CODE TO ADD NEW SECTION 10.40.060, WHICH MAKES INATTENTIVE DRIVING A VIOLATION OF THE CITY'S TRAFFIC CODE

WHEREAS, thousands of drivers and pedestrians are injured each year because of drivers who are not paying attention while operating a motor vehicle on public roads; and

WHEREAS, the new offense of "inattentive driving" will fill the need for situations where the driver has not been driving recklessly but nevertheless fails to exercise due care and thereby causes minor accidents or creates a reasonable likelihood of one; and

WHEREAS, because this new offense of "inattentive driving" shall be a creation of local ordinance and not a state statute, certain fees that would otherwise need to be paid to the state from any fines collected do not apply.

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

Section 1. Chapter 10.40 of the Black Diamond Municipal Code is hereby amended by the addition of a new Chapter 10.40.060 to read as follows:

10.40.060 Inattentive driving.

- A. It is unlawful for any person to operate a motor vehicle in an inattentive manner over the streets, roads, and highways of the city.
- B. For the purpose of this section, "inattentive" means the operation of a vehicle upon the streets, roads, and highways of the city in a lax or slack manner.
- C. The offense of operating a vehicle in an inattentive manner shall be considered to be a lesser offense than, but included in the offense of, operating a vehicle in a negligent manner.
- D. A violation of this section shall be a traffic infraction punishable by a monetary penalty of two hundred and fifty dollars (\$250).

Section 2. Severability. Each and every provision of this Ordinance shall be deemed severable. In the event that any portion of this Ordinance is determined by final order of a court of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the remaining provisions thereof, provided the intent of this Ordinance can still be furthered without the invalid provision.

Section 3. Effective date. This Ordinance shall be in full force and effect five (5) days after publication as required by law. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by State law.

Introduced on the 23rd day of April, 2009.

Passed by the City Council on the 23rd day of April, 2009.

Mayor Howard Botts

ATTEST:

Brenda L. Streepy, City Clerk

APPROVED AS TO FORM:

Loren D. Combs, City Attorney

Published: _____

Effective Date: _____

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
SUBJECT: Resolution No. 09-595, authorizing the Mayor to sign a contract with Fehr & Peers, Transportation Consultants to prepare updates to Chapter 7, Transportation Element of the Draft Comprehensive Plan	Agenda Date: April 23, 2009		AB09-049
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		X
	City Administrator –Gwen Voelpel		X
	City Attorney – Loren D. Combs		
	City Clerk – Brenda L. Streepy		
	Finance – May Miller		
	Public Works – Seth Boettcher		X
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Timeline: approx. 90 days to issue Draft EIS	Natural Resource – Aaron Nix		
	Comm. Development – Steve Pilcher	X	
Attachments: Resolution No. 09-595; proposed contract and Scope of Work			
SUMMARY STATEMENT: <p>The original work on the Transportation Element of the Comp Plan was begun about 3 years ago by Mirai (John Davies). Mirai has since joined forces with Fehr & Peers. The information upon which the transportation model was based has subsequently been changed by the two proposed Master Planned Developments. The draft transportation analysis for the two Environmental Impact Statements (EISs) shows greater traffic impacts to various arterial routes (SR-169 in particular) and thus constitutes “updated” information. Since the Transportation Plan has not been adopted, it needs to be updated to ensure there is consistency between the information it contains and the analysis contained in the pending EISs.</p> <p>The proposed Scope of Work is to perform the technical analysis only. Any necessary modifications to the Transportation Plan will be drafted by staff and brought back to Council for its consideration.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: None.			
RECOMMENDED ACTION: MOTION to approve Resolution No. 09-595, authorizing the Mayor to enter into a contract with Fehr & Peers to perform additional transportation analysis in support of the Transportation Element of the Draft Comprehensive Plan.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
April 23, 2009			

RESOLUTION NO. 09-595

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN A CONTRACT WITH FEHR & PEERS TO CONDUCT ADDITIONAL TRANSPORTATION ANALYSIS REGARDING THE TRANSPORTATION ELEMENT OF THE DRAFT COMPREHENSIVE PLAN

WHEREAS, staff at Fehr & Peers conducted transportation modeling and analysis and drafted Chapter 7 Transportation of the Draft Comprehensive Plan; and

WHEREAS, the Transportation Element has yet to be formally adopted by the City Council; and

WHEREAS, additional transportation modeling has been conducted in preparation of the Environmental Impact Statements for The Villages and Lawson Hills Master Planned Developments; and

WHEREAS, the two analyses provide differing information regarding traffic impacts to the City's arterial system; and

WHEREAS, it is important to have the Transportation Element of the Comprehensive Plan be consistent with the information contained in the EIS's; and

WHEREAS, Fehr & Peers is best suited to conduct this work on behalf of 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 contract with Fehr & Peers to conduct additional transportation analysis on behalf of the City for use in its Draft Comprehensive Plan as contained in form attached hereto as Exhibit A.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 23RD DAY OF APRIL, 2009.

CITY OF BLACK DIAMOND:

Howard Botts, Mayor

Attest:

Brenda L. Streepy, City Clerk



April 13, 2009

Mr. Steve Pilcher
City of Black Diamond
25510 Lawson Street
Black Diamond, WA 98101-0559

Re: City of Black Diamond – Additional Services

Dear Steve:

We are pleased to submit this proposal to provide traffic engineering consulting services for providing trip generation and assignments for the Lawson and Villages developments. Our proposed analysis will update the land uses in the affected TAZ to match the level of development identified in the Lawson and Villages EIS documents.

This proposal is based on our conversations with you and our review of the EIS land use data provided by Parametrix. We anticipate that additional funds may be required for an update the City's transportation element or for additional model analysis. For your convenience, we have structured this as a time and expense contract with a maximum (not to exceed) budget of Six Thousand and Four Hundred Dollars (\$6,400.00). This estimate reflects our best estimate of the level of effort to complete the tasks and to provide flexibility to meet your analysis needs.

We recognize the short time frame on this project and will devote the staff resources to meet your needs. We anticipate providing the draft letter to you within 7 days after receipt of authorization; however, we will make every effort to meet a shorter schedule if necessary. This schedule, however, may be subject to extension if there are delays beyond the control of Fehr & Peers / Mirai.

Your signature indicates your acceptance of the fee, the Standard Terms and Conditions (Attachment A), the Scope of Work (Attachment B) and 2008-09 Billing Rates (Attachment C). Notification by fax or e-mail would be appreciated.

Sincerely,
FEHR & PEERS

John Davies AICP, PTP
Associate

ACCEPTED BY:

Signature _____

Name _____

Title _____

ATTACHMENT A: STANDARD TERMS AND CONDITIONS

These STANDARD TERMS AND CONDITIONS apply to, and are made part of, the attached letter agreement ("Agreement") by and between FEHR & PEERS, a California corporation, ("Consultant"), and the "Client" referenced in the signature block on the Agreement.

WITNESSETH THAT, in consideration of the premises and covenants hereinafter set forth, the parties agree as follows:

1. **Data To Be Furnished.** All information, data, reports, records and maps with respect to the Project which are available to Client and which Client deems reasonably necessary for the performance of work set forth in the Agreement, shall be furnished to Consultant without charge by Client.

2. **Personnel.** Consultant agrees that it will employ, at its own expense, all personnel necessary to perform the services required by this Agreement and in no event shall such personnel be the employees of Client. All of the services required hereunder shall be performed by Consultant and all personnel engaged therein shall be fully qualified under applicable federal, state and local law to undertake the work performed by them. Consultant assumes full and sole responsibility for the payment of all compensation and expenses of such personnel and for all state and federal income tax, unemployment insurance, Social Security, disability insurance and other applicable withholdings.

3. **Compensation.** Client shall pay Consultant an amount not to exceed the sum noted in the Agreement as consideration for the services described. Consultant shall submit invoices to the Client monthly. Client agrees to pay the invoices within 30 days of receipt. If payment is not received within 60 days, Consultant may, at its sole discretion, elect to stop work until payments are received. In that case, Consultant will notify Client that work has ceased. Client also agrees to pay all costs, including attorney's fees and court costs, incurred by Consultant to collect on past due invoices.

4. **Ownership of Documents.** The work papers, drawings, photographs and any other written or graphic material, including AutoCad files, hereinafter materials, prepared by Consultant for this Project are instruments of the Consultant's service for use solely with respect to this Project and, unless otherwise provided, the Consultant shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights. The Client shall be permitted to retain copies, including reproducible copies of Consultant's materials for information and reference in connection with the Client's use on the Project. Submission, use, editing, copying or distribution of documents to meet official regulatory requirements, official City use, or for similar purposes in connection with the Project is not to be construed as publication or violation of copyright. The consultant shall deliver a final version of the City's traffic model in the software that operates the model for the City's future use.

5. **Attorneys' Fees/Arbitration.** In the event that either party brings an action or claim arising out of or in connection with this Agreement, the prevailing party shall be entitled to reasonable and actual attorneys' fees incurred, as well as costs incurred, as well as expert witness fees. Any and all disputes shall be resolved by way of binding Arbitration, which shall take place in San Francisco, California utilizing a single Arbitrator. Arbitration shall take place under the auspices of either the American Arbitration Association or JAMS, at the election of the party commencing Arbitration. The prevailing party shall also be entitled to be reimbursed for any and all Arbitration expenses incurred.

6. **Modification/Termination.** No waiver, alteration, modification or termination of this Agreement shall be valid unless made in writing. This agreement may be terminated for convenience and without cause by either party upon seven days' written notice.

7. **Governing Law.** This Agreement shall be governed by and constructed in accordance with the laws of the State of California.

8. **Entire Agreement.** This Agreement sets forth the entire understanding between the parties as to the subject matter of this Agreement and merges all prior discussions, negotiations, letters of understanding or other promises, whether oral or in writing.

ATTACHMENT B: SCOPE OF WORK

City of Black Diamond Additional Work

WORK TASKS

The following tasks are included in the budget. The purpose is to update the land uses for the MPD sites and to show the model's assignment of the trips to the roadway network.

- A. **Project Coordination and Meetings.** Coordinate with the Client throughout the project. Budget has been included for one meeting.
- B. **Update of Transportation Model Land Use.** Update the transportation model land use to include the cumulative development of the Lawson and Villages land uses. To save time and effort, we will assume that growth other areas of the city remains the same as calculated within the Comprehensive Plan and will be added into and be taken into account with the cumulative MPDs. Future work under a separate scope of work will be needed to adjust the model's land uses to meet 2025 population and employment forecasts and to revise the Transportation Section of the Comprehensive Plan. Products for this task are: (1) trip generation table for each of the combined MPDs as estimated by the model and (2) model plots showing the trip assignment results for the combined buildout of each MPDs sites for review by the City.
- C. **Rerun the Transportation Model.** Fehr & Peers will rerun the model with the updated land use data. Using the model, we will prepare the trip assignment for each study location.
- D. **Summary of Findings.** Prepare a short memorandum summarizing the analysis and describing our findings. Editable files of the transportation model, and other documents will be provided for future use by the City.



ATTACHMENT C:

2008-2009

Hourly Billing Rates

Classification	Hourly Rate
Principal	\$185.00 - \$355.00
Senior Associate	\$165.00 - \$225.00
Associate	\$125.00 - \$195.00
Senior Engineer/Planner	\$120.00 - \$175.00
Engineer/Planner	\$90.00 - \$140.00
Senior Technical Support	\$100.00 - \$155.00
Administrative Support	\$60.00 - \$125.00
Technician	\$75.00 - \$115.00
Intern	\$60.00 - \$90.00

- *Other Direct Costs / Reimbursable expenses are invoiced at cost plus 10% for handling.*
- *Personal auto mileage is reimbursed at the then current IRS approved rate (58.5 cents per mile as of July 08).*
- *Reproduction and Communication Expenses (Telephone, fax, computer, e-mail, etc.) are invoiced at cost as a percentage of project labor.*

effective 6/28/2008

Fehr & Peers reserves the right to change these rates at any time with or without advance notice.