



**CITY OF BLACK DIAMOND**  
**August 6, 2009 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.) **AB09-090** – Ordinance Adopting Stormwater Illicit Discharge, Detection and Elimination Program

Mr. Boettcher

**(Council Action May Follow Public Hearing)**

**APPOINTMENTS, PRESENTATIONS, ANNOUNCEMENTS: None**

**UNFINISHED BUSINESS: None**

**NEW BUSINESS:**

- 2.) **AB09-091** – Ordinance Adopting New Park Rules  
3.) **AB09-092** – Ordinance Approving Public Safety Levy Ballot Measure  
4.) **AB09-093** – Resolution Authorizing Jail Advisory Group Property Proceeds Agreement  
5.) **AB09-094** – Resolution Authorizing Grant Agreement with King County for Morgan Street Sidewalk Project  
6.) **AB09-095** – Resolution Authorizing Gray & Osborne Contract for the Morgan Street Sidewalk Project  
7.) **AB09-096** – Resolution Authorizing All Purpose Structures Contract for Warehouse Roof Replacement  
8.) **AB09-097** – Resolution Authorizing PacWest Contract for MPD Review Assistance  
9.) **AB09-098** – Resolution Authorizing Parametrix Contract for MPD Review Assistance

Mr. Nix  
Ms. Miller  
Ms. Voelpel  
Mr. Boettcher  
Mr. Boettcher  
Mr. Boettcher  
Mr. Boettcher  
Mr. Boettcher  
Mr. Boettcher

**DEPARTMENT REPORTS:**

**MAYOR'S REPORT:**

**COUNCIL REPORTS:**

**ATTORNEY REPORT:**

**PUBLIC COMMENTS:**

**CONSENT AGENDA:**

- 10.) **Claim Checks** – August 6, 2009, No. 33830 through 33897 in the amount of \$778,644.38  
11.) **Minutes** – Council Meeting of July 16, 2009 and Workstudy of July 16, 2009

**EXECUTIVE SESSION:** Personnel Matter

**ADJOURNMENT:**

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
<b>SUBJECT:</b>  <b>Ordinance No. 09-917, amending Black Diamond Municipal Code Chapter 14 related to Illicit Discharge, Detection and Elimination</b>	<b>Agenda Date: August 6, 2009</b>		<b>AB09-090</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		
	City Attorney – Loren D. Combs		<b>X</b>
	City Clerk – Brenda L. Martinez		
	Finance – May Miller		
	Public Works – Seth Boettcher	<b>X</b>	
	Economic Devel. – Andy Williamson		
	Police –Jamey Kiblinger		
Cost Impact: \$88,300	Court – Kaaren Woods		
Fund Source: CIP, Grants and in kind City Services			
Timeline: project complete by May 2010			
<b>Attachments: Ordinance No. 09-917 clean and markup version</b>			
<b>SUMMARY STATEMENT:</b> <p>The City’s Municipal Stormwater Permit requires that the City have an Illicit Discharge Detection and Elimination Ordinance that meets Department of Ecology requirements by August 15<sup>th</sup>, 2009. The City already has the major portion of this code prohibiting various pollutant discharges into the stormwater system with accompanying penalties. This ordinance adds further definition, expands list of contaminants, prohibits certain type of connections and clarifies what discharges are acceptable.</p> <p>Further, this ordinance amendment requires the first step of enforcement to be a notice to cease and desist. This will give the businesses and citizens a chance to learn and change before they are fined. The fine levels are fairly small to start with and the City may want to increase the fine level at some point in the future once the general public becomes more aware and educated.</p> <p>Additional requirement related to this ordinance is the requirement to begin the enforcement of this program. Accordingly Seth Boettcher, Ken Blakely, Jason Pittam and Kris Chatterson have received training in what to look for and how to follow-up and track down illicit discharges. Dan Dal Santo has had training in this area previously.</p>			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b> Forward to Council as recommended by Public Works Committee (Councilmembers Bowie and Hanson).			
<b>RECOMMENDED ACTION: MOTION to adopt Ordinance 09-917, amending Black Diamond Municipal Code Chapter 14 related to Illicit Discharge Detection and Elimination.</b>			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	
August 6, 2009			

ORDINANCE NO. 09-917

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON  
REGARDING ILLICIT DISCHARGES INTO THE CITY'S  
STORMWATER DRAINAGE SYSTEM OR CREEKS, LAKES,  
WETLANDS AND WATERWAYS, AND AMENDING BLACK  
DIAMOND MUNICIPAL CODE SECTION 14.04.390 AND  
ADDING A NEW SECTION 14.04.005

WHEREAS, Washington State's Municipal Stormwater General Permits require cities and counties to adopt regulations to prohibit non-stormwater, illicit discharges and connections, and dumping into the permittee's municipal separate storm sewer system; and

WHEREAS, the Department of Ecology has provided sample illicit discharge regulations that cities and counties may incorporate into their existing stormwater drainage regulations in order to comply with the requirements of the General Permits; and

WHEREAS, the following revisions to the City's stormwater drainage regulations incorporate Ecology's proposed regulations and satisfy the City's General Permit requirements regarding illicit discharge;

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

Section 1. A new Section 14.04.005 is hereby added to the Black Diamond Municipal code to read as follows:

**14.04.005 Definitions.**

As used in this chapter, unless the context or subject matter clearing requires otherwise, the works or phrases defined in this section shall have the indicated meanings:

"AKART" means All Known, Available, and Reasonable methods of prevention, control, and Treatment. See also the State Water Pollution Control Act, sections 90.48.010 RCW and 90.48.520 RCW.

"Black Diamond Waterway" means a lake, wetland, creek, stream and secondary channels leading to these water features.

"Hazardous materials" means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

"Hyperchlorinated" means water that contains more than 10mg/Liter chlorine.

“Illicit connection” means any man-made conveyance that is connected to a municipal separate storm sewer without a permit, excluding roof drains and other similar type connections. Examples include sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the municipal separate storm sewer system.

“Illicit discharge” means any discharge to a municipal separate storm sewer or Black Diamond Waterway that is not composed entirely of stormwater except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

“Municipal separate storm sewer system” (MS4) means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

- a. Owned and operated by the City of Black Diamond;
- b. Designed or used for collecting or conveying stormwater;
- c. Which is not part of a Publicly Owned Treatment Works (POTW).

“POTW” means any device or system used in treatment of municipal sewage or industrial wastes of a liquid nature which is publicly owned; and

d. Which is not a combined sewer. “Combined sewer” means a system that collects sanitary sewage and stormwater in a single sewer system.

“Non-stormwater discharge” means any discharge to the storm drain system that is not composed entirely of stormwater.

“Pollutant” means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter or any kind.

“Premises” means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

“Storm drainage system” means publicly owned facilities, including the city’s municipal separate storm sewer system, by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention or detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

“Stormwater pollution prevention plan” means a document which describes the best management practices and activities to be implemented by a person to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

Section 2. Section 14.04.390 of the Black Diamond Municipal Code is amended to read as follows:

**14.04.390 Protection of storm drainage systems.**

A. Damage or Obstruction. It shall be considered a violation of this chapter to:

1. Cause or permit damage to public or private storm drainage facilities;
2. Cause or permit horses, cattle or other domestic animals to enter drainage systems or waters of the United States;
3. Cause or permit grading, clearing, grubbing, filling or any other land surface changes such as traversing in a motor vehicle to take place in such a way as to allow sediment from the property to directly or indirectly enter into a drainage system or waters of the United States;
4. Cause or permit work that would transmit sediment from one part of a drainage system to another;
5. Unless approved by the administrator, cause or permit the placement of any obstructions, in waters of the United States, which would prohibit free fish passage under all flow conditions; or
6. Unless approved by the administrator, cause or permit the removal from waters of the United States, except under emergency conditions, of any naturally occurring woody debris. Emergency conditions may consist of flow blockage which, in the discretion of the administrator, threatens life or property.

B. Illicit Discharges

1. Prohibited discharges. Prohibition of illegal discharges. No person shall throw, drain, or otherwise discharge, cause or allow others under its control to throw, drain or otherwise discharge into the municipal storm drain system and/or surface and ground waters any materials other than stormwater. Examples of prohibited contaminants include but are not limited to the following:

- a. Trash or debris.
- b. Construction materials.
- c. Petroleum products including but not limited to oil, gasoline, grease, fuel oil and heating oil.
- d. Antifreeze and other automotive products.
- e. Metals in either particulate or dissolved form.
- f. Flammable or explosive materials.
- g. Radioactive material.
- h. Batteries.
- i. Acids, alkalis, or bases.
- j. Paints, stains, resins, lacquers, or varnishes.
- k. Degreasers and/or solvents.
- l. Drain cleaners.
- m. Pesticides, herbicides, or fertilizers.
- n. Steam cleaning wastes.
- o. Soaps, detergents, or ammonia.

- p. Swimming pool or spa filter backwash.
- q. Chlorine, bromine, or other disinfectants.
- r. Heated water.
- s. Domestic animal wastes.
- t. Sewage.
- u. Recreational vehicle waste.
- v. Animal carcasses.
- w. Food wastes.
- x. Bark and other fibrous materials.
- y. Lawn clippings, leaves, or branches.
- z. Silt, sediment, concrete, cement or gravel.
- aa. Dyes.
- bb. Chemicals not normally found in uncontaminated water.
- cc. Any other process-associated discharge except as otherwise allowed in this section.
- dd. Any hazardous material or waste not listed above.

2. Allowable discharges. The following types of discharges shall not be considered illegal discharges for the purposes of this chapter unless the director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater:

- a. Diverted stream flows.
- b. Rising ground waters.
- c. Uncontaminated ground water infiltration –as defined in 40 CFR 35.2005(20).
- d. Uncontaminated pumped ground water.
- e. Foundation drains.
- f. Air conditioning condensation.
- g. Irrigation water from agricultural sources that is commingled with urban stormwater.
- h. Springs.
- i. Water from crawl space pumps.
- j. Footing drains.
- k. Flows from riparian habitats and wetlands.
- l. Discharges from emergency fire fighting activities.

3. Conditional Discharges. The following types of discharges shall not be considered illegal discharges for the purposes of this chapter if they meet the stated conditions, or unless the director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater:

- a. Potable water, including water from water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if necessary and in volumes and velocities controlled to prevent re-suspension of sediments in the stormwater system;

- b. Lawn watering and other irrigation runoff are permitted but shall be minimized;
- c. De-chlorinated swimming pool discharges. These discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if necessary and in volumes and velocities controlled to prevent re-suspension of sediments in the stormwater system;
- d. Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents are permitted if the amount of street wash and dust control water used is minimized. At active construction sites, street sweeping must be performed prior to washing the street;
- e. Non-stormwater discharges covered by another NPDES permit, provided, that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations; and provided, that written approval has been granted for any discharge to the storm drain system;
- f. Other non-stormwater discharges. The discharges shall be in compliance with the requirements of a stormwater pollution prevention plan (SWPPP) reviewed and approved by the city, which addresses control of such discharges by applying AKART to prevent contaminants from entering surface or ground water.

C. Prohibition of Illicit Connections.

- 1. The construction, use, maintenance, or continued existence of illicit connections to the storm drain system is prohibited.
- 2. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- 3. A person is considered to be in violation of this section if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

D. Enforcement. In addition to any other remedies set forth in this chapter or available at law, the City shall have the remedies set forth in this subsection for any violation of the provisions of this section. The choice of enforcement action and the severity of any penalty shall be based on the nature of the violation, the damage or risk to the public or to public resources, and/or the degree of bad faith of the person subject to the enforcement action.

1. Notice of Violation/Cease and Desist Order. The Director shall have the authority to serve a person a Notice of Violation/Cease and Desist Order if an action is being undertaken or a condition exists in violation of this section.

a. Content of Notice and Order. The Notice and Order shall contain:

- 1. A description of the specific nature, extent, and time of violation and the damage or potential damage; and

2. A notice that the violation or the potential violation cease and desist, and, in appropriate cases, the specific corrective action to be taken within a given time. A civil penalty under subsection (D)(2) of this section may be issued with the order.

b. Notice. The order shall be posted at the subject property and a letter containing the Notice and Order sent by certified mail, return receipt requested, to the property owner and any other person violating this chapter.

c. Effective Date. The Order issued under this section shall become effective immediately upon posting of the stop work order on the premises.

d. Compliance. Failure to comply with the terms of a Notice of Violation/Cease and Desist Order shall result in enforcement actions including, but not limited to, the issuance of a civil penalty.

2. Civil Penalty. Any violation of the provisions of this section shall subject the offender to a civil penalty of up to \$50.00 for each of the first five days that a violation exists and up to \$100.00 for each subsequent day of violation from the sixth day of the violation. The civil penalty constitutes a personal obligation of the person to whom the civil penalty is directed. The debt shall be collectible in the same manner as any other civil debt owing to the city. The city shall be entitled to recover its attorneys' fees and costs if litigation is necessary to collect the civil penalty. Payment of any monetary penalty in accordance with this chapter shall not relieve any person of the duty to correct the violation as set forth in the applicable Notice of Violation/Cease and Desist Order.

E. In addition to the enforcement provisions set forth in this chapter, a violation of this section shall constitute a nuisance and shall be subject to the procedures of BDMC Chapter 8.16. Notwithstanding any other provisions of this chapter, whenever it appears to the director that unsafe conditions exist causing pollution in the surface water system which can be immediately identified and which requires emergency action to protect the public health or safety, the director is authorized to enter at all reasonable times in or upon any property, public or private, for the purpose of inspecting and investigating such unsafe conditions.

Section 3. 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 4. 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 the 6<sup>th</sup> day of August, 2009.

Passed by the City Council on the 6<sup>th</sup> day of August, 2009.

Approved by the Mayor on the 6th day of August, 2009.

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Howard Botts, Mayor

ATTEST:

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Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:

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Loren Combs, City Attorney

ORDINANCE NO. 09-917

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON  
REGARDING ILLICIT DISCHARGES INTO THE CITY'S  
STORM WATER DRAINAGE SYSTEM OR CREEKS, LAKES,  
WETLANDS AND WATERWAYS, AND AMENDING BLACK  
DIAMOND MUNICIPAL CODE SECTION 14.04.390 AND  
ADDING A NEW SECTION 14.04.005

WHEREAS, Washington State's Municipal Stormwater General Permits require cities and counties to adopt regulations to prohibit non-stormwater, illicit discharges and connections, and dumping into the permittee's municipal separate storm sewer system; and

WHEREAS, the Department of Ecology has provided sample illicit discharge regulations that cities and counties may incorporate into their existing storm water drainage regulations in order to comply with the requirements of the General Permits; and

WHEREAS, the following revisions to the City's storm water drainage regulations incorporate Ecology's proposed regulations and satisfy the City's General Permit requirements regarding illicit discharge;

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

Section 1. A new Section 14.04.005 is hereby added to the Black Diamond Municipal code to read as follows:

**14.04.005 Definitions.**

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"Black Diamond Waterway" means a lake, wetland, creek, stream and secondary channels leading to these water features.

"Hazardous materials" means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

"Hyperchlorinated" means water that contains more than 10mg/Liter chlorine.

“Illicit connection” means any man-made conveyance that is connected to a municipal separate storm sewer without a permit, excluding roof drains and other similar type connections. Examples include sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the municipal separate storm sewer system.

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a. Owned and operated by the City of Black Diamond;

b. Designed or used for collecting or conveying stormwater;

c. Which is not part of a Publicly Owned Treatment Works (POTW). “POTW” means any device or system used in treatment of municipal sewage or industrial wastes of a liquid nature which is publicly owned; and

d. Which is not a combined sewer. “Combined sewer” means a system that collects sanitary sewage and stormwater in a single sewer system.

“Non-stormwater discharge” means any discharge to the storm drain system that is not composed entirely of stormwater.

“Pollutant” means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter or any kind.

“Premises” means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

“Storm drainage system” means publicly owned facilities, including the city’s municipal separate storm sewer system, by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention or detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

“Stormwater pollution prevention plan” means a document which describes the best management practices and activities to be implemented by a person to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

Section 2. Section 14.04.390 of the Black Diamond Municipal Code is amended to read as follows:

**14.04.390 ~~Waste discharge into~~Protection of storm drainage systems.**

A. Damage or Obstruction. It shall be considered a violation of this chapter to:

~~A. Cause or permit trash, rubbish, litter, vegetative matter or any form of debris directly or indirectly to enter a storm drainage system or to discard such matter on surfaces which drain to conveyance systems;~~

~~— B. Cause or permit to directly or indirectly enter a storm drainage system any pollutants including but not limited to sewage, septage, oils, petroleum products, ethylene glycol, paints, paint thinners, pesticides, fertilizers, soaps, detergents, washdown wastes, and materials on lists of pollutants in the following regulations as amended:~~

- ~~— 1. Discarded Chemicals List 173-303-9903 WAC~~
- ~~— 2. Toxic Dangerous Waste List 173-303-101 WAC~~
- ~~— 3. Dangerous Waste Sources List 173-303-9904 WAC~~
- ~~— 4. Dangerous Waste Constituents List 173-303-9905 WAC~~
- ~~— 5. Dangerous Waste Mixtures List 173-303-084 WAC~~
- ~~— 6. Persistent Dangerous Waste List 173-303-102 WAC~~

1C. Cause or permit damage to public or private storm drainage facilities;

2D. Cause or permit horses, cattle or other domestic animals to enter drainage systems or waters of the United States;

~~E. Cause or permit untreated runoff from stables, pastures, paddocks, corrals, kennels or other animal enclosures to directly or indirectly enter into drainage systems or waters of the United States;~~

3F. Cause or permit grading, clearing, grubbing, filling or any other land surface changes such as traversing in a motor vehicle to take place in such a way as to allow sediment from the property to directly or indirectly enter into a drainage system or waters of the United States;

4G. Cause or permit work that would transmit sediment from one part of a drainage system to another;

~~H. Cause or permit the discharge into a drainage system or waters of the United States of materials that would cause the temperature of the receiving water to increase one degree Fahrenheit or more;~~

~~I. Cause or permit a discharge into a drainage system or waters of the United States of a material that would cause the water quality of the receiving water to degrade below the state of Washington water quality standard for that water body;~~

5J. Unless approved by the administrator, cause or permit the placement of any obstructions, in waters of the United States, which would prohibit free fish passage under all flow conditions; or

6K. Unless approved by the administrator, cause or permit the removal from waters of the United States, except under emergency conditions, of any

naturally occurring woody debris. Emergency conditions may consist of flow blockage which, in the discretion of the administrator, threatens life or property.

## B. Illicit Discharges

1. Prohibited discharges. Prohibition of illegal discharges. No person shall throw, drain, or otherwise discharge, cause or allow others under its control to throw, drain or otherwise discharge into the municipal storm drain system and/or surface and ground waters any materials other than stormwater. Examples of prohibited contaminants include but are not limited to the following:

- a. Trash or debris.
- b. Construction materials.
- c. Petroleum products including but not limited to oil, gasoline, grease, fuel oil and heating oil.
- d. Antifreeze and other automotive products.
- e. Metals in either particulate or dissolved form.
- f. Flammable or explosive materials.
- g. Radioactive material.
- h. Batteries.
- i. Acids, alkalis, or bases.
- j. Paints, stains, resins, lacquers, or varnishes.
- k. Degreasers and/or solvents.
- l. Drain cleaners.
- m. Pesticides, herbicides, or fertilizers.
- n. Steam cleaning wastes.
- o. Soaps, detergents, or ammonia.
- p. Swimming pool or spa filter backwash.
- q. Chlorine, bromine, or other disinfectants.
- r. Heated water.
- s. Domestic animal wastes.
- t. Sewage.
- u. Recreational vehicle waste.
- v. Animal carcasses.
- w. Food wastes.
- x. Bark and other fibrous materials.
- y. Lawn clippings, leaves, or branches.
- z. Silt, sediment, concrete, cement or gravel.
- aa. Dyes.
- bb. Chemicals not normally found in uncontaminated water.
- cc. Any other process-associated discharge except as otherwise allowed in this section.
- dd. Any hazardous material or waste not listed above.

2. Allowable discharges. The following types of discharges shall not be considered illegal discharges for the purposes of this chapter unless the director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater:

- a. Diverted stream flows.
- b. Rising ground waters.
- c. Uncontaminated ground water infiltration –as defined in 40 CFR 35.2005(20).
- d. Uncontaminated pumped ground water.
- e. Foundation drains.
- f. Air conditioning condensation.
- g. Irrigation water from agricultural sources that is commingled with urban stormwater.
- h. Springs.
- i. Water from crawl space pumps.
- j. Footing drains.
- k. Flows from riparian habitats and wetlands.
- l. Discharges from emergency fire fighting activities.

3. Conditional Discharges. The following types of discharges shall not be considered illegal discharges for the purposes of this chapter if they meet the stated conditions, or unless the director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater:

- a. Potable water, including water from water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if necessary and in volumes and velocities controlled to prevent re-suspension of sediments in the stormwater system;
- b. Lawn watering and other irrigation runoff are permitted but shall be minimized;
- c. De-chlorinated swimming pool discharges. These discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if necessary and in volumes and velocities controlled to prevent re-suspension of sediments in the stormwater system;
- d. Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents are permitted if the amount of street wash and dust control water used is minimized. At active construction sites, street sweeping must be performed prior to washing the street;
- e. Non-stormwater discharges covered by another NPDES permit, provided, that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations; and provided, that written approval has been granted for any discharge to the storm drain system;
- f. Other non-stormwater discharges. The discharges shall be in compliance with the requirements of a stormwater pollution prevention plan (SWPPP) reviewed and approved by the city,

which addresses control of such discharges by applying AKART to prevent contaminants from entering surface or ground water.

C. Prohibition of Illicit Connections.

1. The construction, use, maintenance, or continued existence of illicit connections to the storm drain system is prohibited.
2. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
3. A person is considered to be in violation of this section if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

D. Enforcement. In addition to any other remedies set forth in this chapter or available at law, the City shall have the remedies set forth in this subsection for any violation of the provisions of this section. The choice of enforcement action and the severity of any penalty shall be based on the nature of the violation, the damage or risk to the public or to public resources, and/or the degree of bad faith of the person subject to the enforcement action.

1. Notice of Violation/Cease and Desist Order. The Director shall have the authority to serve a person a Notice of Violation/Cease and Desist Order if an action is being undertaken or a condition exists in violation of this section.

a. Content of Notice and Order. The Notice and Order shall contain:

1. A description of the specific nature, extent, and time of violation and the damage or potential damage; and

2. A notice that the violation or the potential violation cease and desist, and, in appropriate cases, the specific corrective action to be taken within a given time. A civil penalty under subsection (D)(2) of this section may be issued with the order.

b. Notice. The order shall be posted at the subject property and a letter containing the Notice and Order sent by certified mail, return receipt requested, to the property owner and any other person violating this chapter.

c. Effective Date. The Order issued under this section shall become effective immediately upon posting of the stop work order on the premises.

d. Compliance. Failure to comply with the terms of a Notice of Violation/Cease and Desist Order shall result in enforcement actions including, but not limited to, the issuance of a civil penalty.

2. Civil Penalty. Any violation of the provisions of this section shall subject the offender to a civil penalty of up to \$50.00 for each of the first five days that a violation exists and up to \$100.00 for each subsequent day of violation from the sixth day of the violation. The civil penalty constitutes a personal obligation of the person to whom the civil penalty is directed. The debt shall be collectible in the same manner as any other civil debt owing to the city. The city

shall be entitled to recover its attorneys' fees and costs if litigation is necessary to collect the civil penalty. Payment of any monetary penalty in accordance with this chapter shall not relieve any person of the duty to correct the violation as set forth in the applicable Notice of Violation/Cease and Desist Order.

E. ~~From the day such damage is sustained or materials are discharged as described in this section until they are removed or damage repaired, each day shall count as a separate offense and shall be subject to the penalties described in Section 14.04.400.~~ In addition to the enforcement provisions set forth in this chapter, a violation of this section shall constitute a nuisance and shall be subject to the procedures of BDMC Chapter 8.16. Notwithstanding any other provisions of this chapter, whenever it appears to the director that unsafe conditions exist causing pollution in the surface water system which can be immediately identified and which requires emergency action to protect the public health or safety, the director is authorized to enter at all reasonable times in or upon any property, public or private, for the purpose of inspecting and investigating such unsafe conditions.

Section 3. 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 4. 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 the 6<sup>th</sup> day of August, 2009.

Passed by the City Council on the \_\_\_\_ day of \_\_\_\_\_, 2009.

Approved by the Mayor on the \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Howard Botts, Mayor

ATTEST:

\_\_\_\_\_  
Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:

Ordinance No. 09-917  
073009 draft  
Page 7 of 8

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Loren Combs, City Attorney

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
<b>SUBJECT:</b>  <b>Ordinance No. 09-918, amending Chapter 9.86 of the Black Diamond Municipal Code to update the provisions dealing with prohibited conduct in City parks</b>	<b>Agenda Date: August 6, 2009</b>		<b>AB09-091</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		<b>X</b>
	City Attorney – Loren D. Combs	<b>X</b>	
	City Clerk – Brenda L. Martinez		
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police –		
Timeline: N/A	Court – Kaaren Woods		
	Parks/Natural Resources – Aaron Nix		
<b>Attachments: Ordinance No. 09-918, Memo</b>			
<b>SUMMARY STATEMENT:</b>  <p>Rules within Black Diamond’s parks facilities were last updated in 1989. An update to these rules was badly needed as the City’s park facilities have changed and uses have become different and more diverse. Staff feels that this new set of park rules brings our facilities current to modern day uses and helps ensure the safety of our residents and the people that utilize our parks system.</p>			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b> Bring forward for full Council adoption per recommendation of Parks Committee (Councilmembers Boston and Olness).			
<b>RECOMMENDED ACTION:</b> <b>MOTION to adopt Ordinance No. 09-918, amending Chapter 9.86 of the Black Diamond Municipal Code to update the provisions dealing with prohibited conduct in City parks.</b>			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
August 6, 2009			

ORDINANCE NO. 09-918

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF BLACK DIAMOND, KING COUNTY, WASHINGTON,  
AMENDING CHAPTER 9.86 OF THE BLACK DIAMOND  
MUNICIPAL CODE TO UPDATE THE PROVISIONS  
DEALING WITH PROHIBITED CONDUCT IN CITY  
PARKS**

WHEREAS, City parks perform a vital social function by providing a place for individuals and families to enjoy a natural setting and escape many of the sounds and activities that are otherwise part of city life; and

WHEREAS, this social function shall become even more important in the future as population growth brings increased density and commercial development occurs within our City; and

WHEREAS, the cost of maintaining the City's parks has made it necessary for the City to authorize the imposition of permit fees and user fees to help generate revenue to cover maintenance costs; and

WHEREAS, the Black Diamond Municipal Code is currently silent about many nuisance behaviors that detract from the public's ability to enjoy our City parks.

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

Section 1. The Black Diamond Municipal Code is hereby amended by the addition of a new section 9.86.015 to read as follows:

**9.86.015 Permit and user fees authorized.**

The City may require permits to be issued and user fees to be assessed prior to allowing certain activities to be conducted in city parks. The types of activities subject to permits and user fees, as well as the cost for such permits and fees, shall be established by the City's official fee schedule.

Section 2. Section 9.86.030 of the Black Diamond Municipal Code is hereby amended to read as follows:

**9.86.030 Motor vehicle restrictions.**

- a. motorized wheelchairs and other motorized mobility assistance devices necessary for disabled or handicapped persons or others with restricted mobility to access areas of the park are exempt from these restrictions unless noted otherwise.
- b. No unauthorized motor vehicles, including automobiles, trucks, buses, motorcycles, motor bikes, all terrain vehicles, camp trailers, campers or trailers shall be operated in any park except as allowed on designated roadways and parking areas.
- c. It is unlawful to speed in excess of the posted speed limit or in excess of fifteen miles per hour where no speed limit is posted in any park. In addition, no motorized vehicle, including motorized wheelchairs or other motorized mobility assistance devices, shall be operated in a negligent or reckless manner.
- d. It is unlawful for any person in any park to engage in, conduct or hold any trials or competitions for speed, endurance or hill climbing involving any vehicle, boat, aircraft or animal, except at specified places and times designated for such activities by the City Council upon determination that:
  - (1) Reasonable provision has been made to insure that the health and safety of participants and spectators will be protected and not be subject to undue hazard, provided, the city shall not be liable for any injuries to participants and may require participants to expressly waive any potential claims against the city as a condition of participation in any event or activity;
  - (2) Such activities will be conducted in such a manner as to minimize potential damage to public or private property;
  - (3) Such activities will not constitute a public nuisance; and
  - (4) Such activities will not unduly interfere with the use of park facilities by the general public.
- e. No operator of any vehicle shall park or put such vehicle in any Black Diamond park area, except where the operator is using the area for an allowed recreational purpose and the vehicle is parked either in a designated parking area, or in another area with the permission of a park employee. For purposes of this section, "vehicle" shall mean an automobile, recreational vehicle, trailer of any kind, tent trailer, boat, camper, or other motorized conveyance not otherwise exempted under this chapter. No person shall park, leave standing, or abandon a vehicle in any Black Diamond park area after closing time. Any vehicle found parked in violation of this section may be towed away at the owner's or operator's expense.
- f. It is unlawful to park a motor vehicle in a designated handicapped parking space without the officially recognized symbol on the vehicle license plate. All improperly parked vehicles are subject to being towed away at the owner's or operator's expense.

Section 3. Section 9.86.040 of the Black Diamond Municipal Code is hereby amended to read as follows:

**9.86.040 Liquor.**

The possession and/or consumption of intoxicants are prohibited in all parks in the City without a permit.

Section 4. Section 9.86.050 of the Black Diamond Municipal Code is hereby amended to read as follows:

**9.86.050 Animals.**

No animal shall be allowed in any park without a permit except for police animals, service animals or domesticated animal under restraint by a person able to properly control the animal or while the animal is within a designated off-leash area. All horses shall be confined to those areas designated as roadways and parking areas. The person who has brought the animal into the park shall be responsible for depositing all of the animal's solid wastes in a designated waste receptacle. No animal shall be abandoned or left to remain unattended in a city park.

Section 5. The Black Diamond Municipal Code is hereby amended to read as follows:

**9.86.060 Camping.**

It is unlawful for any person to camp overnight in any park except by permit of the Black Diamond Parks/Natural Resource's Director.

Section 6. The Black Diamond Municipal Code is hereby amended by the addition of a new section 9.86.070 to read as follows:

**9.86.070 Team sports and group athletic activities.**

Team sports and other group athletic activities, including but not limited to softball, baseball, football, soccer, volleyball, and frisbee football, shall be allowed only in designated areas or by permit.

Section 7. The Black Diamond Municipal Code is hereby amended by the addition of a new section 9.86.080 to read as follows:

**9.86.080 Damaging uses prohibited.**

It is unlawful for any person to remove, destroy, mutilate or deface any structure, or any part of any structure, or any fixture therein, or attached thereto, or any monument, statue, vase, fountain, wall, fence, railing, vehicle, bench, shrub, tree, fern, plant, flower, lighting system or sprinkling system, or any other property lawfully located within a City of Black Diamond park area, *provided*, insignificant damage to sod or playfield surfaces as a result of permitted activities is exempt.

Section 8. The Black Diamond Municipal Code is hereby amended by the addition of a new section 9.86.090 to read as follows:

**9.86.090 Harassing wildlife or disturbing wildlife habitat prohibited.**

- a. The intentional harassment of wildlife or intentional disturbing of wildlife habitat is prohibited within city parks.
- b. Disturbance by animals. It is unlawful for any person to permit any dog or other pet, whether on or off a leash, to disturb or harass any park personnel, users, neighboring property owners, farm animals, wildlife or other pets.

Section 9. The Black Diamond Municipal Code is hereby amended by the addition of a new section 9.86.100 to read as follows:

**9.86.100 Erecting poles or signs prohibited.**

- a. It is unlawful for any person, without prior written permission of the City Council, to attach any notice, bill, banner, poster, sign, wire, rod, or cord to any tree, shrub, railing, post or structure within any park; provided that the director may permit the erection of temporary directional signs or decorations on occasions of public celebration and picnics.
- b. It is unlawful for any person, without prior written permission of the City Council, to use, place or erect any signboard, sign, banner, billboard, bulletin board, post, pole, or device of any kind for advertising in any park, or to place or erect in any park a permanent or temporary structure of any kind; provided, that before granting any such permit, the city council shall establish general rules and regulations pertaining hereto, including provisions pertaining to removal, protection of the City Parks/Natural Resources Department and its employees, protection of the interests of the general public, and of persons using said park.

Section 10. The Black Diamond Municipal Code is hereby amended by the addition of

a new section 9.86.110 to read as follows:

**9.86.110 Soliciting and commercial activity prohibited.**

No person may engage in soliciting or commercial activity in any City park without a permit.

Section 11. The Black Diamond Municipal Code is hereby amended by the addition of a new section 9.86.120 to read as follows:

**9.86.120 Aggressive begging—Misdemeanor.**

No person may engage in aggressive begging in a City park. “Aggressive begging” shall be defined as using threats, profane language, blocking passage or engaging in intentionally intimidating behavior combined with a request for money or other assistance, or making continued requests for money or other assistance from the same person after that person has clearly indicated that they decline to assist. Engaging in aggressive begging shall be a misdemeanor.

Section 12. The Black Diamond Municipal Code is hereby amended by the addition of a new section 9.86.130 to read as follows:

**9.86.130 Firearms and Explosives.**

It is unlawful to shoot, fire, or explode any firearms, rockets, fireworks, firecrackers, torpedo or explosive of any kind or to shoot or fire any air gun, bows and arrows, BB gun, or use any slingshot or other propelling device wherein the applied human energy or force is artificially aided, directed or added to in any park, except in such designated recreational areas as may be permitted by the City Council and/or law enforcement officials acting in their official capacity.

Section 13. The Black Diamond Municipal Code is hereby amended by the addition of a new section 9.86.140 to read as follows:

**9.86.140 Open Fires—Fires prohibited.**

- a. It is unlawful for any person to build a fire in any park.

- b. The City may prohibit barbecues, or other sources of flame within any City park whenever, in the opinion of the Fire Chief, allowing such activities would create risk of fire.
- c. Nothing in this section shall prohibit commissioned members of the Fire Department from enforcing any other rules or regulations related to open fires and any flame-related cooking activities.
- d. Recreational fires may be permitted in City parks, for special events, with prior approval of the Fire Chief or designee. A special permit as approved by the Fire Department must be obtained, prior to any recreational fires in City parks.
- e. Barbeques, charcoal grills, hibachis and gas fired cooking grills must be raised at least two feet above the ground. Disposal of barbeque coals directly onto the ground or in to park garbage receptacles is forbidden and shall be disposed of in approved receptacles provided by the City.

Section 14. The Black Diamond Municipal Code is hereby amended by the addition of a new section 9.86.150 to read as follows:

**9.86.150 Overnight Moorage Prohibited.**

It is unlawful for any person to moor a watercraft overnight in any park, except by permit of the City Parks/Natural Resource's Director.

Section 15. The Black Diamond Municipal Code is hereby amended by the addition of a new section 9.86.160 to read as follows:

**9.86.160 Amplified music and public address systems.**

It is unlawful to operate a powered public address system or amplified music speaker system or other means of amplifying sound at any park areas without a written permit from the director. Battery-operated portable radios and tape players are permitted, provided they shall not be operated at a volume or in any manner which unreasonably disturbs the peace of others.

Section 16. The Black Diamond Municipal Code is hereby amended by the addition of a new section 9.86.170 to read as follows:

**9.86.170 Littering**

a. No person shall throw or deposit litter on any park property, except in public receptacles and in such a manner that the litter will be prevented from being carried or deposited by animals or the elements upon any part of the park, or upon any street or other public place. Where public receptacles are not provided, all litter shall be carried away and properly disposed of.

b. No person shall use the Parks/Natural Resources Department litter receptacles in the following manner:

1. No person shall damage, deface, abuse, or misuse any litter receptacle so as to interfere with its proper function or detract from its proper appearance.
2. No person shall deposit leaves, clippings, prunings, or gardening refuse in any litter receptacle.
3. No person shall deposit household garbage in any litter receptacle; provided that this subsection shall not be construed to mean that wastes of food consumed on park property may not be deposited in litter receptacles.

c. For purposes of this section, "litter" means garbage, refuse, rubbish, or any other waste material which, if thrown or deposited as prohibited in this section tends to create a nuisance which annoys, injures, or endangers the health, safety, or comfort of the public.

d. Any person littering in an amount less than or equal to one cubic foot the maximum penalty and the default amount shall be \$50, not including statutory assessments; any person littering in an amount greater than one cubic foot the maximum penalty and the default amount shall be \$250, not including statutory assessments. Unless suspended or modified by a court, the person shall also pay a litter cleanup fee of \$25 per cubic foot of litter. The court may, in addition to or in lieu of part or the entire cleanup fee, order the person to pick up and remove litter from the property.

Section 17. The Black Diamond Municipal Code is hereby amended by the addition of a new section 9.86.180 to read as follows:

**9.86.180 Smoking in City Parks**

Smoking in City of Black Diamond Parks shall be prohibited, unless done within designated smoking areas.

Section 18. The Black Diamond Municipal Code is hereby amended by the addition of a new section 9.86.190 to read as follows:

**9.86.190 Interference with Employees**

No person, firm or corporation shall prevent, delay or interfere with the employees of the

City in the lawful performance of their duties, including but not limited to planting, pruning, spraying or removing of trees, plants, or shrubs in a public park or a public place.

Section 19. The Black Diamond Municipal Code is hereby amended by the addition of a new section 9.86.200 to read as follows:

**9.86.200 Feeding Waterfowl Prohibited**

No person, other than authorized personnel, shall feed waterfowl on public property. Nor shall any person supervising a minor and having the ability to control the minor allow the minor to feed waterfowl on public property.

Section 20. The Black Diamond Municipal Code is hereby amended by the addition of a new section 9.86.210 to read as follows:

**9.86.210 Park Hours**

City parks shall be open from dawn until dusk each day. No unauthorized person shall go upon any City park except during open hours.

Section 21. The Black Diamond Municipal Code is hereby amended by the addition of a new section 9.86.220 to read as follows:

**9.86.220 Violations – Penalties**

- a. The acts or conditions enumerated in this chapter are proclaimed to be public nuisances. Those persons responsible for maintaining with knowledge such nuisances shall be subject to immediate ejection from the City park area and served with a no trespass order by the police department. Unless otherwise specifically set forth herein, a violation of any of the provisions of this chapter is an infraction. Unless otherwise specified, the penalty for the infraction, not including statutory assessments, shall be as follows:

1 <sup>st</sup> offense within one year	\$45.00
2 <sup>nd</sup> offense within one year	\$150.00
3 <sup>rd</sup> offense within one year	\$200.00

- b. Persons charged with infractions shall be processed by the municipal court in the same manner as persons charged with traffic infractions. Persons failing to appear for hearings for violations of this chapter shall be subject to the penalties set forth with Black Diamond Municipal Code.

- c. Nothing in this section shall limit or prohibit the ability of the City to pursue additional civil penalties for violations of this chapter, or to seek criminal penalties for behavior that constitutes a crime under any ordinance, law, or regulation adopted under the City Municipal Code.

Section 22. The Black Diamond Municipal Code is hereby amended by the addition of a new section 9.86.230 to read as follows:

**9.86.230 Adoption of Rules and Regulations by Director**

The Black Diamond Parks/Natural Resource's Director shall have the power to promulgate and adopt reasonable rules and regulations pertaining to the operation, management and use of the parks, and shall post the same in conspicuous places in the parks. Such rules and regulations shall include a procedure for granting blanket permits encompassing any particulars of this chapter to locally and nationally recognized organizations or associations. Such rules and regulations may include the establishment of hours during which any park or portion thereof as designated by signs located within the designated portion, shall be closed to the general public; such closures may be for reasons of public safety, welfare and convenience, or for reasons of park maintenance. It is unlawful for any person to violate or fail to comply with any park rule or regulation duly adopted and posted by the department.

Section 23. 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 24. 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 6th day of August, 2009.

Passed by the City Council on the 6<sup>th</sup> day of August, 2009.

Mayor Howard Botts

ATTEST:

\_\_\_\_\_  
Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Loren D. Combs, City Attorney

Published: \_\_\_\_\_

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



## INTEROFFICE MEMORANDUM

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**TO:** BLACK DIAMOND CITY COUNCIL  
**FROM:** AARON NIX, PARKS/NATURAL RESOURCES DIRECTOR  
**SUBJECT:** UPDATED PARKS RULES  
**DATE:** 7/31/2009  
**CC:** HOWARD BOTTS, MAYOR, GWENDOLYN VOELPEL, CITY ADMINISTRATOR

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**HONORABLE COUNCIL MEMBERS,**

It's been sometime (1987) since the council had an opportunity to look over and review expectations and rules within City park facilities. This language is currently captured within BDMC section 9.86 and includes these elements:

### **9.86.010 Hours of operation.**

- A. The hours of operation of city parks shall be dawn to dusk.
- B. The foregoing hours shall not apply to individuals participating in activities established and sponsored by authorized groups and/or the city, nor for any activity for which written permission has been granted by the city council.
- C. Any group wishing to use parks or park facilities for political or religious gatherings, concerns or festivals, must obtain prior consent from the city council and must demonstrate to the council's satisfaction adequate policing and management of the event. (Ord. 569 § 1, 1995; Ord. 360 § 7 (part), 1987)

### **9.86.020 Fire restrictions.**

No fire shall be allowed in parks other than in approved fireplaces. (Ord. 360 § 7 (part), 1987)

### **9.86.030 Motor vehicle restrictions.**

No motor vehicles, including automobiles, trucks, buses, motorcycles and motor bikes, camp trailers, campers or trailers shall be operated in any park except on designated roadways and parking areas. (Ord. 360 § 7 (part), 1987)

#### **9.86.040 Liquor.**

The consumption of intoxicants is prohibited in all parks in the city. (Ord. 360 § 7 (part), 1987)

#### **9.86.050 Animals.**

No animal shall be allowed in any park other than dogs, cats and horses under restraint. All horses shall be confined to those areas designated as roadways and parking areas. (Ord. 360 § 7 (part), 1987)

#### **9.86.060 Camping.**

No overnight camping shall be allowed in any park, whether in camper, camp trailer, tent, or otherwise. (Ord. 360 § 7 (part), 1987)

Now that we've completed the public hearing and we've made some minor corrections to the **Open Fires—Fires prohibited** section, staff feels ready to adopt the revised code. I've included the new language along with the additions made to the open fires section for your review.

Aaron C. Nix  
City of Black Diamond  
Parks/Natural Resources Director  
[anix@ci.blackdiamond.wa.us](mailto:anix@ci.blackdiamond.wa.us)

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
<b>SUBJECT:</b> <b>Ordinance No. 09-919, approving replacement of an existing Public Safety Property Tax Levy.</b>	<b>Agenda Date: August 6, 2009</b>		<b>AB09-092</b>
	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	X	
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Cost Impact:	Court – Kaaren Woods		
Fund Source: various	Community Devel. – Steve Pilcher		
Timeline: ASAP	Natural Resources – Aaron Nix		
<b>Attachments: Ordinance 09-919 and Supplemental Information</b>			
<p>Voters approved a property tax lid lift in 2004 to fund public safety, including Fire, Police and Emergency Services. Since that time the property tax mil rate (taxes per \$1,000 assessed value) has decreased 25% from \$2.03 per thousand in 2005 to \$1.52 in 2009. The ordinance proposes taking a replacement Public Safety Lid Lift for a continuation of the Property Tax funds to the citizens of Black Diamond for a vote at the November 3, 2009, General Election.</p> <p>Since it requires all of the City’s property tax, sales tax, utility tax and some other revenue sources to continue funding of Black Diamonds Public Safety cost, the proposed Ordinance repeals the last year of the existing levy (2010) and replaces the levy with a six year levy with a beginning \$2.15 mil rate. The intent is to replace the dollar amount of the levy, but legal has advised that cities by law may not levy a dollar amount, but must set a mil rate for the first year of collection (2010).</p> <p>This was a difficult year to set a replacement rate, as that is determined each year in December by King County once they set an assessed valuation and divide that by the dollars needed. Since property values have decreased per sales records noted on the King County website and in the attached emails, rates could actually increase this year and the City could lose property tax dollars if the rate is not calculated taking a decrease into consideration. The proposed 2010 replacement rate was calculated based on King County information, but verified by using the \$2.03 mils 2005 beginning rate, then adding 1 percent per year for 6 years (allowed increase) and adding \$.06 per \$1, 000 for the value of new construction (new owners pay this portion).</p> <p>To continue to provide the needed public safety funds, the proposed levy includes using the Consumer Price Index for Western Washington (June) as the annual limit factor because that is the same limit factor used in the Fire Department contract and Police Department collective bargaining agreement. The levy also proposes to set the last year of the levy (2015) for computing the limitations for future levies.</p>			

COMMITTEE REVIEW AND RECOMMENDATION: Council has reviewed the options and proposal at the July 2 and 16, 2009, Council workstudies and at subsequent briefings and have recommended taking a replacement Public Safety Lid Lift to the Black Diamond voters at the November 3, 2009, General Election.

RECOMMENDED ACTION: **MOTION to adopt Ordinance No. 09-919, approving placing the replacement Public Safety Lid Lift before the Black Diamond voters at the November 3, 2009, General Election.**

### RECORD OF COUNCIL ACTION

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
August 6, 2009		

## **ORDINANCE NO. 09-919**

**AN ORDINANCE OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, PROVIDING FOR THE SUBMISSION OF A PROPOSITION TO THE QUALIFIED ELECTORS OF THE CITY OF BLACK DIAMOND AT AN ELECTION TO BE HELD ON NOVEMBER 3, 2009 AUTHORIZING REPEAL OF THE EXISTING EXCESS GENERAL PROPERTY TAX LEVY AND BEGINNING IN 2010 AUTHORIZING A SIX YEAR INCREASE OF THE CITY'S GENERAL PROPERTY TAX LEVY IN EXCESS OF THE LIMIT ESTABLISHED IN RCW 84.55.010 IN ORDER TO PROVIDE CONTINUED FUNDING FOR PUBLIC SAFETY SERVICES, AND USING THE 2015 LEVY DOLLAR AMOUNT FOR COMPUTING THE LIMITATIONS FOR SUBSEQUENT LEVIES, AND DECLARING THIS ORDINANCE A PUBLIC EMERGENCY ORDINANCE AND THUS EFFECTIVE IMMEDIATELY**

WHEREAS, the current City of Black Diamond excess general property tax levy for fire police and emergency services, adopted by the voters in 2004 authorized a six-year temporary rate increase, through 2010; and

WHEREAS, the City's total general property tax levy was \$2.03/\$1000 in 2005, but with changes in property values and the addition of new construction, the levy rate has decreased to \$1.52/\$1000 in 2009; and

WHEREAS, the City Council has determined that the level of service for public safety services, including, but not limited to fire, police, and emergency services that the City wishes to continue to provide to its citizens cannot be met at the current levy rate; and

WHEREAS, the citizens of the City should be allowed to determine if they wish to replace the prior funding level for public safety services, including police, fire and emergency services; and

WHEREAS, RCW 84.55.050(2) authorizes the voters of the City to permit the annual levy of taxes in excess of the levy limitations established in RCW 84.55.010 up to six consecutive years; and

WHEREAS, without the lifting of the levy limit as authorized by state statute the City will not be able to continue to provide the existing level of service for public safety during this period; and

WHEREAS, the proposed levy lid lift uses the CPI-W (June) as the limit factor because it is used as the limit factor in the City's police and fire department collective bargaining agreements; and

WHEREAS, the conditions here and before set forth create an emergency which requires the holding of a special election in the City; now, therefore

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

Section 1. It is hereby found and declared that an emergency exists requiring the submission to the qualified electors of the City the proposition of whether the City shall levy regular property taxes in excess of the limitation established in RCW 84.55.010 for their ratification or rejection at a special election to be held on November 3, 2009, in conjunction with the State general election to be held on the same date. The purpose of the election shall be to provide continued funding for public safety services, including fire, police, and emergency services operations. The King County Records and Elections Division as ex officio supervisor of elections in King County, Washington, is hereby requested to find the existence of such an emergency and to call and conduct such special election to be held within the City on such day and submit to the qualified electors of the City for their approval or rejection a proposition to repeal the existing excess general property tax levy and authorize the City's regular property tax levy to be lifted to \$2.15 per \$1,000.00 of assessed valuation for collection in 2010, and authorize the City to increase its regular property tax levy in each of the succeeding five years at a limit factor of 100% of the previous year's collections plus the percentage change in consumer price index for urban wage earners and clerical workers (CPI-W) in the Seattle-Tacoma-Bremerton area for June of the previous year (CPI-W for June 2010 will be used to determine 2011 levy), and to use the total dollar amount of the 2015 levy for computing the limitations for subsequent levies provided for in RCW 84.55.

Section 2. Upon approval of the voters of the proposition herein set forth the City may use the proceeds of such levy to provide funding for public safety services, including fire, police, and emergency services operations, maintenance, equipment and facilities, at the desired level of service

Section 3. If approved, it is the intent of the City Council that this levy would replace the previously approved special levy for fire, police, and emergency services operations adopted by the voters in 2004 and would constitute the total general property tax levy of the City.

Section 4. The City Clerk is hereby authorized and directed, not less than 84 days prior to such election date, to certify the proposition to the King County Department of Records and Elections in substantially the following form:

**CITY OF BLACK DIAMOND**

**PROPOSITION NO. 1**

**PUBLIC SAFETY SERVICES  
REPLACEMENT LEVY**

The City Council of the City of Black Diamond adopted Ordinance No. 09-919, concerning a proposition to fund public safety services. This proposition repeals the existing excess levy and authorizes a lid lift of the regular property tax levy to \$2.15/\$1,000.00 of assessed valuation, for collection in 2010, and annual increases for each of the succeeding five years equal to the percentage change in CPI-W (June) for the Seattle-Tacoma-Bremerton area, and the 2015 levy dollar amount shall be used for computing the limitations for subsequent levies. If approved, this proposition would fund public safety services. Should this proposition be approved?

YES                    [     ]

NO                    [     ]

Section 5.     Severability. 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.

Section 6.     Effective Date. 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 adoption. A summary of this ordinance may be published in lieu of publishing the Ordinance in its entirety.

Introduced the 6<sup>th</sup> day of August, 2009.

Passed by the City Council on the 6<sup>th</sup> day of August, 2009.

Approved by the Mayor on the 6<sup>th</sup> day of August, 2009.

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Howard Botts, Mayor

ATTEST:

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Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:

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Loren Combs, City Attorney

# **City of Black Diamond, Washington**

## **Public Safety Replacement Property Tax Lid Lift**

Setting the replacement 2010 Public Safety Lid Lift Mil rate	1
Comparison of proposed 2010 rate to 2009 rate of surrounding cities	2
Public Safety Cost, Revenues and shortfall	3
How Property Tax is calculated, and how it affects a home owners property tax bill	4
Property Tax rate decline of 25% from 2005 to 2009	5
Example of home owner's total Property Tax bill and how it is distributed	6
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City of Black Diamond, Washington

Public Safety Lid Lift Levy Rate Analysis

	2009 Tax Dollars	Allowed 1% Increase	New Construction	2010 Tax Dollars
Regular Levy	\$570,895	\$5,709	\$10,000	\$586,604
Public Safety Levy	\$407,224	\$4,072	\$10,000	\$421,296
<b>Total Levy</b>	<b>\$978,119</b>	<b>\$9,781</b>	<b>\$20,000</b>	<b>\$1,007,900</b>

Minimum levy rate of 2.15 would need to be adopted in 2010 to continue the Public Safety levy replacement.

Assumes Assessed Valuation decreases by 27% in 2010 with rate rounded to 2.15 mils.

	Assessed Value per \$1,000	2009 Levy Rate	2010 Assessed Value reduced by 27%, Per \$1,000	Replacement Levy Rate	2010 Tax Dollars
2009					
Regular Levy		0.88			
Public Safety Lid Lift		0.64			
	<b>\$643,595</b>	<b>1.52</b>	<b>\$469,824</b>	<b>2.15 (1)</b>	<b>\$1,010,122 (1)</b>

NOTE: The proposed levy mil rate for 2010 is calculated by dividing the property tax **replacement dollars for 2010** by the King County assessed valuation for 2010 (\$1,007,900/\$469,824). The assessed valuations are established each year for King County. The 2010 amount includes a 27% estimated decrease provided by King County based on current rural sale values compared to last year. The AV is unknown until King County notifies the City in December of each year. It is very difficult to predict a rate with valuations changing and King county not setting the assessed valuations until December.

- (1) Exact property tax dollars are higher than replacement dollars because the mil rate was rounded to an even 2.15.

## Black Diamond WA 2009 Tax Levy Comparison

<b>2009 Levy Rates</b>	City Levy	Avg School Levy	Avg EMS, County, Hospital, Library, etc	Total Average
<b>Black Diamond Total (includes Fire costs)</b>	<b>1.52</b>	3.73	4.09	<b>9.34</b>
<b>Enumclaw (includes fire costs &amp; .11 bond issue)</b>	<b>1.92</b>	4.19	4.64	<b>10.75</b>
<b>Algona</b>	1.38	4.32	5.07	10.77
Fire District	1.11			1.11
<b>Algona Total</b>	<b>2.49</b>			<b>11.88</b>
<b>Covington</b>	0.98	4.07	6.06	11.11
Fire District	1.45			1.45
<b>Covington Total</b>	<b>2.43</b>			<b>12.56</b>
<b>Maple Valley</b>	1.08	3.80	5.83	10.71
Fire District	1.50			1.50
<b>Maple Valley Total</b>	<b>2.58</b>			<b>12.21</b>

### Black Diamond Estimated 2010 Tax Rate with Replacement Levy

2010 Black Diamond	City Levy	Avg School Levy	Avg EMS, County, Hospital, Library, etc	Total Average
2010 Levy dollars if levy remained	\$1,007,900			
2010 Public Safety Replacement Levy Dollars	\$1,010,122			
Note: Difference is due to even rounding of the mil rate				
2010 Public Safety Replacement Mil Rate	2.15	3.73	4.09	9.98
Not Proposed or Included:				
Additional Public Safety 2010 Shortfall (not included)	\$326,244	0.69		
Total Levy if shortfall was included:	2.84	3.73	4.09	10.66

If the lid lift replacement levy is not passed, Black Diamond will lose approximately \$411,296 in property taxes beginning in 2011 (current voted levy ends in 2010). This could result in the loss of five to six Police or Fire positions in Black Diamond. The intent of this lid lift levy is to continue funding at the 2005 level. Not included is approximately \$326,244 of additional shortfall in 2010 that may be partially offset if we receive a three year federal COPS grant. If not, we could lose an additional three to four public safety positions that have been funded by cash reserves, which are nearly depleted.

# Public Safety is a Priority in Black Diamond

Did you know that 81% or \$2.27 million is devoted to Public Safety in the 2009 adjusted General Fund Budget? This money is dedicated to ensure our citizens and visitors are safe in Black Diamond. This budget covers the cost of the Police Department, the contract with Fire District 44 and includes emergency services. Marine patrol costs are budgeted at \$28,505 with \$24,000 covered by a King County Boat Vessel Grant and \$460 in Marine Safety Revenue for a net cost of \$3,413. The 2009 budgeted expenditures for Public Safety are as follows:

## EXPENDITURES

	2009 Adjusted Budget	2010 Estimated Budget @3% increase
Police	\$1,789,360	\$1,843,040
Police salary reduction (in lieu of furlough)	-\$31,360	
Fire	\$459,540	\$473,326
<b>Total Public Safety Expenditures</b>	<b>\$2,217,540</b>	<b>\$2,316,366</b>

## How is Public Safety Funded in Black Diamond?

With Public Safety costing approximately \$2.27 million, it takes literally all of our tax money, as well as some dedicated and miscellaneous revenue. Even then we still had to use \$331,467 in cash reserves. The following lists the expected public safety revenue sources for 2009. Even with the levy lid lift in 2010 early budget projections still show a 2010 \$326,244 shortfall.

## REVENUE

	2009 Adjusted Budget	2010 Estimated Budget	
<b>DEDICATED AND MISC. REV</b>			
Police Boat Safety Grant	\$20,127		
Police traffic School fees	73,000		
Gun permits & Fin Perm	1,000		
KC EMS Contract	53,104		
Transfer from Criminal Justice	102,223		
<b>Total Dedicated and Misc. Revenue</b>	<b>249,454</b>	<b>\$250,000</b>	
<b>TAXES</b>			
Regular Property Taxes 2009	570,895		
**Voted Public Safety Levy 2009	407,224		
<b>Total Property taxes</b>	<b>978,119</b>	<b>1,010,122</b>	<b>Replacement Levy</b>
Sales Tax	224,000	230,000	
Utility Taxes	492,500	500,000	
<b>Total Taxes</b>	<b>1,694,619</b>	<b>1,740,122</b>	
<b>Total Public Safety Revenue</b>	<b>1,944,073</b>	<b>1,990,122</b>	
Short fall (cash reserves used in 2009)	331,467	326,244	
<b>Total P.S. Sources of Revenue</b>	<b>\$2,275,540</b>	<b>\$2,316,366</b>	

## Black Diamond WA Homeowner Tax Bill Comparison

2009	Base AV	Base Tax \$	Levy Rate	Home Value	Annual Tax	Monthly Tax
Base	\$643,196	\$978,119	1.52	\$300,000	\$456	\$38

2010

decrease AV* by 27%	(173,663)			(81,000)		
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2010

New Values	\$469,533			\$219,000		
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Taxes Allowed \$978,119

1% Additional Allowed 9,781

Existing Taxpayer Amount	\$987,900	2.10	\$219,000	\$460 <sup>1</sup>	\$38
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New Construction Taxpayers \$20,000 .05<sup>2</sup>

Total Taxpayers \$1,007,900 2.15

1) Home decreased value by 27% to \$219,000 X 2.10 = \$460 in taxes or \$38 per month. Increase due to allowed 1% (\$9,781) divided among all existing new taxpayers.

2) As new homes are completed, value for new construction is added to the allowed dollars and is a portion of the new mil levy calculated by King County. New rate payers pay .05 of the levy mil rate.

\* AV = assessed value

4.



# City of Black Diamond Final Budget 2009

## 2009 General Fund Revenue Sources

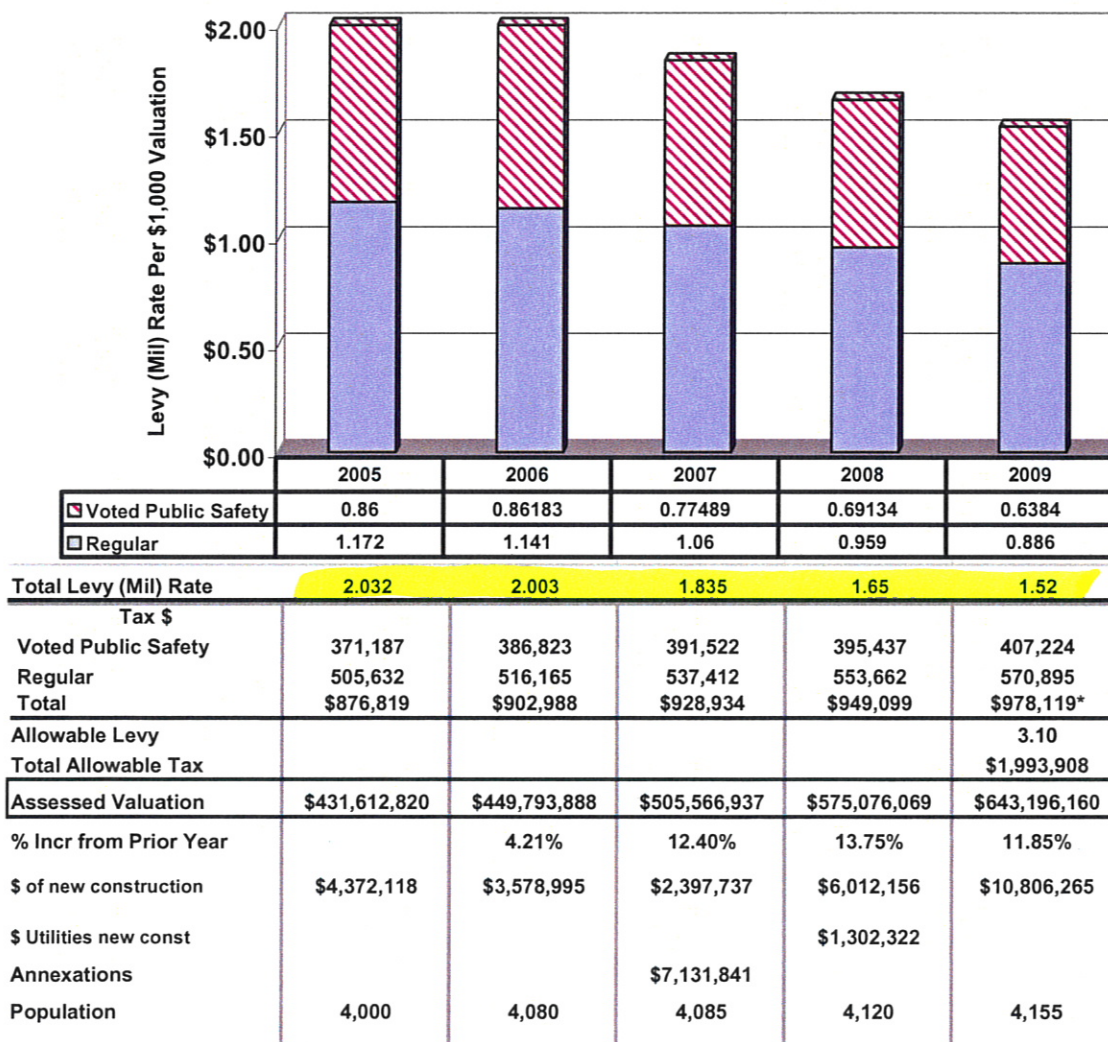
### Property Tax

Property taxes are 55.5% of General Fund tax revenue and expected to generate \$978,661 in revenue for the City in 2009. This includes a 1% tax levy increase of \$9,514 and \$20,921 in new construction taxes and other adjustments.

All revenues from property tax go directly to the General Fund in support of services such as police and fire protection. In 2009, 42% of property taxes or \$411,037 comes from a voted public safety levy due to expire in 2010.

The total mil property tax rate for the City has decreased from 2.032 per \$1,000 assessed valuation in 2005 to 1.52 per \$1,000 in 2009. That equals an approximate 25% decrease in four years, due to Referendum 747 limiting the increase in property taxes to 1% above the previous year.

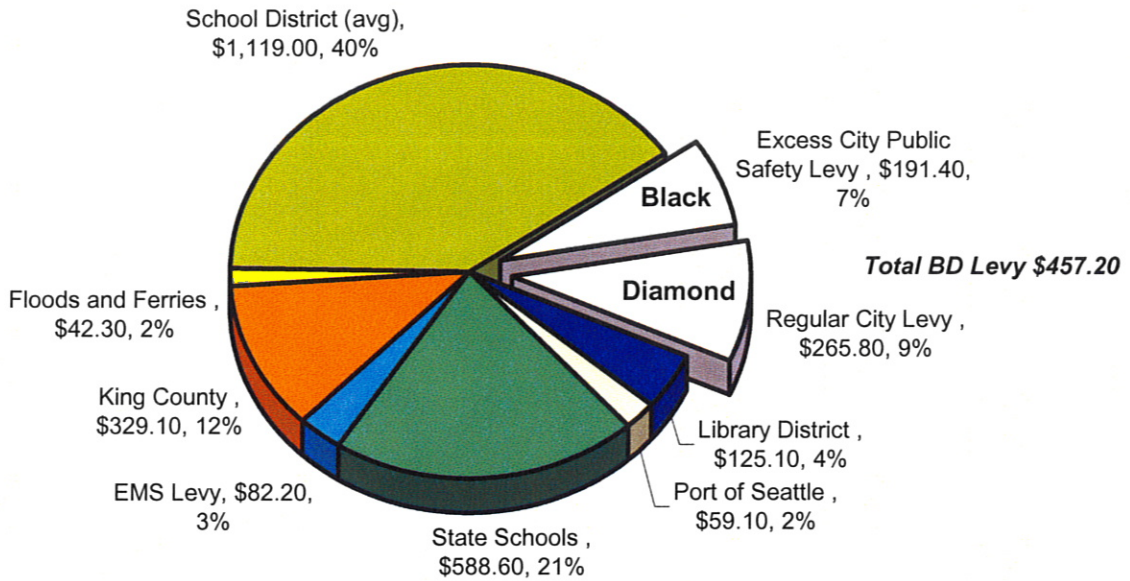
City of Black Diamond  
Property Tax Levy History



\* King County error adjustment after property tax levy was adopted; budgeted at \$978,661.

## City of Black Diamond 2009 Property Tax Distribution

**Total Taxed amount on a \$300,000 property  
in Black Diamond = \$2,802.60**



King County Taxing District	Levy Rate per \$1,000 in value	Annual Tax on a \$300,000 home	Monthly Tax on a \$300,000 home
Port of Seattle	0.20	\$59.10	\$4.93
State Schools	1.96	\$588.60	\$49.05
EMS Levy	0.27	\$82.20	\$6.85
King County	1.10	\$329.10	\$27.43
Floods and Ferries	0.14	\$42.30	\$3.53
School District (avg)	3.73	\$1,119.00	\$93.25
Library District	0.42	\$125.10	\$10.43
<b>Subtotal</b>	<b>7.82</b>	<b>\$2,345.40</b>	<b>\$195.45</b>
Black Diamond Regular	0.89	\$265.80	\$22.15
Black Diamond Public Safety (voted)	0.64	\$191.40	\$15.95
<b>Black Diamond Total Levy (rounded)</b>	<b>1.52</b>	<b>\$457.20</b>	<b>\$38.10</b>
<b>Grand Total</b>	<b>9.34</b>	<b>\$2,802.60</b>	<b>\$233.55</b>

## May Miller

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**From:** Gantz, Hazel [Hazel.Gantz@kingcounty.gov]  
**Sent:** Monday, July 27, 2009 4:33 PM  
**To:** May Miller  
**Subject:** RE: Revised Levy Ordinance

*May, sorry it took so long to reply. It looks good to me, it is just so dependent on the assessed value. Lid lift to \$2.18 first year, next five years use the June CPI-w as a limit factor, then after the 6<sup>th</sup> year, use the final levy as the levy basis for future years. It seems pretty clear to me.*

*Hazel J. Gantz  
Business and Finance Officer II  
Levy Administration  
(206) 296-5145*

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**From:** May Miller [mailto:mmiller@ci.blackdiamond.wa.us]  
**Sent:** Friday, July 24, 2009 3:59 PM  
**To:** Gantz, Hazel  
**Subject:** FW: Revised Levy Ordinance

Hazel,  
This is our latest lid lift ordinance. We will be meeting with council Monday and Tuesday and have ready for council packets to go out on Thursday. Thanks again for helping us out on our lid lift. They are a bit complicated, and I have never done one before.  
Thanks May

---

**From:** Greg Amann [mailto:gfa@vsilawgroup.com]  
**Sent:** Friday, July 24, 2009 2:23 PM  
**To:** May Miller  
**Cc:** Gwen Voelpel; Brenda Martinez; Dawn Ketter; Loren Combs  
**Subject:** Revised Levy Ordinance

May, here is the latest version of the levy ordinance with the changes we discussed.

Greg

Gregory F. Amann  
VSI Law Group, PLLC  
3600 Port of Tacoma Road, Suite 311  
Tacoma, WA 98424  
phone: 253.922.5464  
direct line: 253 441.6874  
fax: 253.922.5848  
gfa@vsilawgroup.com

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7/28/2009

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**Brenda Martinez**

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**From:** May Miller  
**Sent:** Monday, July 13, 2009 1:32 PM  
**To:** Brenda Martinez  
**Subject:** FW: Levy lid lift

Brenda this is the letter to include with the workstudy pages.  
 Thanks May

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**From:** Gantz, Hazel [mailto:Hazel.Gantz@kingcounty.gov]  
**Sent:** Tuesday, July 07, 2009 4:52 PM  
**To:** May Miller  
**Subject:** RE: Levy lid lift

May, below is the reply I got back from DOR:

2SSB 5433 will take effect July 26, 2009 concerning levy lid lifts.

The City of Black Diamond can ask the voters to approve a multi year levy lid lift, up to six years, under RCW 84.55.050(2)(a). The ballot proposition must state the dollar rate proposed for the first year of the levy and the limit factor, or a specified index to be used to determine the limit factor. The ballot measure must also state the limited purposes for which the proposed increases will be used for. The city must request the levy lid during a primary or general election.

The new bill allows taxing districts to supplant funds that had been used for the specific purpose of the lid lift, when the lid lift is approved by the voters in calendar years 2009 (after July 26) , 2010 and 2011 in a county with a population of 1.5 million or more. Voter approved levy lid lifts approved after 2011 will not be able to supplant funds in a county with a population of 1.5 million or more.

*What all this means is if you want to do a six year lid lift, use a specific rate for the 'entire' regular levy that will include what you will need for public safety. Specify what limit factor you want to use for the next five years (CPI-w or whatever) and then state that the last year of the levy is the basis for future levies, meaning do not recalculate the levy as if the lid lift never existed.*

*All properties are revalued every year. One sixth of the properties have physical inspections each year, so that within a six year period all properties have had a physical inspection, but all properties DO get revalued each year. Any decrease or increase in values will be reflected in the next year's levy. There is no more that I can tell you regarding the values at this stage of the game, not on a district-wide basis.. Individual property values get reflected in the district's taxable value, but you cannot determine if the district-wide value will decrease or increase by an individual property value.*

*Hopefully this all makes sense to you, but if not, let me know and I will try to clarify.*

Hazel J. Gantz  
 Business and Finance Officer II  
 Levy Administration  
 (206) 296-5145

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**From:** May Miller [mailto:mmiller@ci.blackdiamond.wa.us]



7/13/2009

May Miller

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From: Gantz, Hazel [Hazel.Gantz@kingcounty.gov]  
 Sent: Monday, June 29, 2009 9:53 AM  
 To: May Miller  
 Subject: RE: Public Safety Lid lift for Black Diamond

Hi May,

*The city can ask for a multi year lid lift up to 6 consecutive years. A simple majority is needed for it to pass. A rate or dollar amount can only be used for the first year of the lid lift, afterwards a limit factor has to be used as in the CPI-W June that you have stated. You must specify after the end of the lid lift what is to be done - recalculate the levy as if it never existed or use the final year of the levy as the levy basis for subsequent years.*

*As far as I can tell the values throughout the county are going down. Check our website at [www.kingcounty.gov/assessor/reports](http://www.kingcounty.gov/assessor/reports) and look at our 2009 Area Reports to get an indication on how much they are going down. We do not have a good estimate on how much each district's value is going down, but looking at the reports will give you some info. You are right that if you request a rate and the value goes down, the city may not get the amount of funds needed, but specify a dollar amount the first year will at least get the city to the amount they will need for the first year and subsequent years using a limit factor. So, if the city requested \$350,000 for the first year, then the following year the limit factor from the CPI-w June is 3.9%, then for the 2011 tax year the city would get \$362,250, thereby increasing the amount each year for the lid. Keep in mind the city will have no control over the rate of the lid if it is done in that manner.*

*If you would like once the city decides to place the lid on the ballot, send the ballot title to me to review and I will be able to inform you better on if what you are requesting can be done. Anything I can do to assist you, I will be more than happy to do.*

*I am attaching a copy of the RCW relating to lid lifts for your use. If you have further questions, let me know.*

RCW 84.55.050

## **Election to authorize increase in regular property tax levy — Limited propositions — Procedure.**

\*\*\* CHANGE IN 2009 \*\*\* (SEE 5433-S2.SL) \*\*\*

(1) Subject to any otherwise applicable statutory dollar rate limitations, regular property taxes may be levied by or for a taxing district in an amount exceeding the limitations provided for in this chapter if such levy is authorized by a proposition approved by a majority of the voters of the taxing district voting on the proposition at a general election held within the district or at a special election within the taxing district called by the district for the purpose of submitting such proposition to the voters. Any election held pursuant to this section shall be held not more than twelve months prior to the date on which the proposed levy is to be made, except as provided in subsection (2) of this section. The ballot of the proposition shall state the dollar rate proposed and shall clearly state the conditions, if any, which are applicable under subsection (4) of this section.

(2) Subject to statutory dollar limitations, a proposition placed before the voters under this section may authorize annual increases in levies for multiple consecutive years, up to six consecutive years, during which period each year's authorized maximum legal levy shall be used as the base upon which an increased levy limit for the succeeding year is computed, but the ballot proposition must state the dollar rate proposed only for the first year of the consecutive years and must state the limit factor, or a specified index to be used for determining a limit factor, such as the consumer price index, which need not be the

# Executive Summary Report

## Characteristics-Based Market Adjustment for 2009 Assessment Roll

Area Name / Number: Alpentel/Skykomish Environs / 90  
 Previous Physical Inspection: 2008

### Improved Sales:

Number of Sales: 18  
 Range of Sale Dates: 1/2007 - 12/2008

### Sales - Average Improved Valuation Change Summary

	Land	Imps	Total	Sale Price**	Ratio	COV*
2008 Value	\$56,400	\$239,400	\$295,800			
2009 Value	\$47,500	\$168,200	\$215,700	\$255,000	84.6%	18.24%
Change	-\$8,900	-\$71,200	-\$80,100			
% Change	-15.8%	-29.7%	-27.1%			

\*COV is a measure of uniformity; the lower the number the better the uniformity.

\*\* Sales adjusted to 1/1/09.

Sales used in this analysis: All sales of one to three unit residences on residential lots which were verified as, or appeared to be market sales were considered for the analysis. Sales along with values were market adjusted to 1/1/09. Individual sales that were excluded are listed later in this report. Multi-parcel sales, multi-building sales, mobile home sales, and sales of new construction where less than a 100% complete house was assessed for 2008 or any existing residence where the data for 2008 is significantly different from the data for 2009 due to remodeling were also excluded. In addition, the summary above excludes sales of parcels that had improvement value of \$25,000 or less posted for the 2008 Assessment Roll. This also excludes previously vacant and destroyed property partial value accounts.

### Population - Improved Parcel Summary:

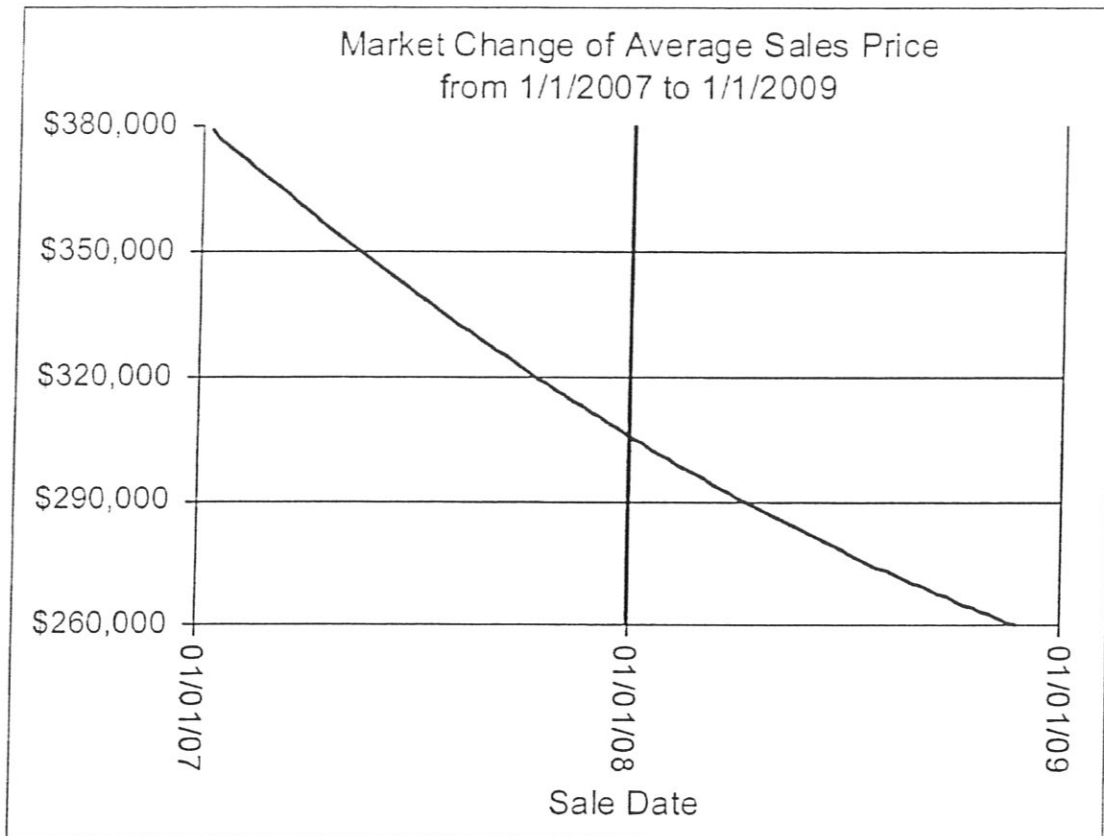
	Land	Imps	Total
2008 Value	\$56,400	\$189,500	\$245,900
2009 Value	\$47,400	\$131,700	\$179,100
Percent Change	-16.0%	-30.5%	-27.2%

Number of one to three unit residences in the Population: 686

**Summary of Findings:** The analysis for this area consisted of a general review of applicable characteristics. As described in the model validation section of this report, sales and values were adjusted to 1/1/09 with an additional adjustment of .85 made to all properties. Exceptions may be found in the Improved Parcel Update section. Overall, the area received a single standard area adjustment.

The Annual Update Values described in this report improve uniformity and equity. We recommend posting these values for the 2009 assessment roll.

*Market Change of Average Sale Price in Area 90  
From 1/1/07 to 1/1/09*



**Brenda Martinez**

**From:** May Miller  
**Sent:** Monday, July 13, 2009 1:57 PM  
**To:** Brenda Martinez  
**Subject:** FW: Levy lid lift

Brenda,  
 Here is Hazel other email. I think we should include both in the supplemental information.  
 May

---

**From:** Gantz, Hazel [mailto:Hazel.Gantz@kingcounty.gov]  
**Sent:** Wednesday, July 01, 2009 4:08 PM  
**To:** May Miller  
**Subject:** RE: Levy lid lift

*May, I do not have an answer for your right now. I need to do some research in order to answer your question, so I will not be able to get back to you until next week (Tuesday). Our furlough day is Monday and tomorrow is our day off for the holiday since we do not ordinarily work on Fridays.*

*Hazel J. Gantz  
 Business and Finance Officer II  
 Levy Administration  
 (206) 296-5145*

---

**From:** May Miller [mailto:mmiller@ci.blackdiamond.wa.us]  
**Sent:** Wednesday, July 01, 2009 3:01 PM  
**To:** Gantz, Hazel  
**Subject:** Levy lid lift

Thanks so much, Hazel, for your answers. I did click on the link you sent regarding the decrease in property sales. The only close ones I found were Fairwood, near Renton and the Skykomish rural area. The report for Fairwood shows an 18.9% decrease and the rural area 27.1% decrease. How will the county use this information in determining our Assessed valuation? I read that they only do one sixth of the properties each year, but I don't know if they then use the trend of that one sixth to update all the assessed valuations, or if they only change the one sixth. Also I have already received personal tax value information from the county and it was showing an increase. Will that be what they will use for the 2010 Taxes. When do you think any decreased will effect our Black Diamond Assessed Valuations, 2010? 2011?

I think we are going to do a multi year lid lift for 6 years with the CPI-W (June) inflation factor and setting the amount at the end. Is there any way we can replace our total dollar levy, (both the Public safety piece and the regular piece) with one dollar levy? All of our Property Taxes are used for Public Safety, even then it only pays for less that half the cost. If we only state a dollar amount and only do the public safety piece, the regular levy will continue to decline as it will have no inflation factor to safe guard the decline. Would it be possible to set a total dollar replacement amount specifically for public safety? That way the entire levy would increase or decline in the same way and it would be a lot less confusing for our council and tax payers. They just struggle with the levy ups and downs.

We are going to our council workstudy tomorrow night at 6 pm, so any help is greatly appreciated.

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7/13/2009

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
<b>SUBJECT:</b>  <b>Resolution No. 09-620, authorizing the Mayor to execute a Proceeds Distribution and Hold Harmless Agreement between the City of Bellevue and the City of Black Diamond</b>	<b>Agenda Date: August 6, 2009</b>		<b>AB09-093</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		<b>X</b>
	City Attorney – Loren D. Combs		<b>X</b>
	City Clerk – Brenda L. Martinez	<b>X</b>	
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Cost Impact:	Court – Kaaren Woods		
Fund Source:	Comm. Dev. – Steve Pilcher		
Timeline:			
<b>Attachments: Resolution No. 09-620, Agreement</b>			
<b>SUMMARY STATEMENT:</b>  The City of Black Diamond is a Jail Administration Group (JAG) City, along with thirty-six King County cities, which includes an oversight committee composed of elected officials from each city. JAG was formed after the renegotiation of the Jail Services Agreement (JSA) which calls for a phased reduction in cities’ misdemeanor prisoners. The current agreement ends on December 31, 2012, which is the date that all city misdemeanants must be housed in alternate facilities unless other arraignments are made with King County. The JAG provides an organizational structure for coordinating the contract for jail beds with Yakima and King Counties and to plan for new local jail beds that would be needed when the King County contract expires.  At the time cities entered into the current JSA with King County, the County transferred ownership of property within the Bellevue city limits to Bellevue to hold on behalf of King County contract cities. The property, or proceeds from sale of the property was to be used to help provide funding to cities for new misdemeanor jail capacity.  Based on the anticipated sale of the jail property, on March 26, 2008, the Jail Oversight Assembly authorized distribution of the sales of proceeds based on a formula of an average of each King County city’s AV (assessed value) and ADP (inmate average daily population). Distribution of the funds would allow cities to utilize the funds to meet the intent of the property transfer.  In March 2009, the City of Bellevue completed the sale of the jail property to Children’s Hospital. Bellevue is holding the proceeds in a designated account pending the completion of the Agreement with each city to receive their share of the proceeds and is also responsible to return proceeds to King County should one of more cities misspend their proceeds.			

As caretaker of the property, Bellevue is allowed to recover costs incurred to manage and sell the properties, which totaled approximately \$100,000. This amount will be deducted from the total proceeds prior to distribution to the cities in order reimburse Bellevue for incurred expenses. Based upon the Oversight Assembly's approved methodology, the City of Black Diamond's estimated share of the remaining proceeds is approximately \$13,296.20. In accordance with JSA with King County, the proceeds must be used for the purpose of providing or contracting for secure jail beds. The City, however, maintains discretion over the specific use of its share of the proceeds, provided the funds are used in a manner consistent with the JSA.

COMMITTEE REVIEW AND RECOMMENDATION:

RECOMMENDED ACTION: **MOTION to adopt Resolution No. 09-620, authorizing the Mayor to execute a Proceeds Distribution and Hold Harmless Agreement between the City of Black Diamond and the City of Bellevue to receive an apportionment of the jail property proceeds.**

**RECORD OF COUNCIL ACTION**

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
August 6, 2009		

## **RESOLUTION NO. 09-620**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON THE MAYOR IS AUTHORIZED TO EXECUTE A PROCEEDS DISTRIBUTION AND HOLD HARMLESS AGREEMENT BETWEEN THE CITY OF BLACK DIAMOND AND THE CITY OF BELLEVUE FOR AN APPORTIONMENT OF THE JAIL PROPERTY PROCEEDS**

**WHEREAS**, the City of Black Diamond is a Jail Advisory Group (JAG) City; and

**WHEREAS**, as a JAG City the City of Black Diamond along with other Contract Cities in King County entered into a Jail Services Agreement (JSA) with King County to house and provide jail services for Contract Cities misdemeanants; and

**WHEREAS**, the JSA provides for the transfer of real property located in Bellevue with tax parcel numbers 2825059291, 2825059292, and 2825059015 (jail property) to the City of Bellevue on behalf of the JAG Cities to facilitate the Contract Cities reducing jail population housed by King County as provided in Section 11 of said JSA; and

**WHEREAS**, Section 12 of the JSA provides that the jail property or proceeds from its sale will be used to contribute to the cost of building secure capacity, or contracting for secure capacity, and at the sole discretion of the Contract Cities, building or contracting for alternative corrections facilities, sufficient to enable the Contract Cities to meet the final step of the population reduction schedule in the JSA; and

**WHEREAS**, should Contract Cities not meet the objectives set forth in Section 12 of the JSA, King County would be entitled to return of proceeds; and

**WHEREAS**, on October 31, 2002, the City of Bellevue and King County entered into a Land Transfer Agreement conveying the Jail Property to the City of Bellevue on behalf of all JAG Cities in King County for the purposes described in Section 12 of the JSA; and

**WHEREAS**, on March 16, 2009, the City of Bellevue sold the Jail Property to Seattle Children's Hospital for \$13 million;

**WHEREAS**, on March 26, 2008, the Assembly created by the Interlocal Agreement entered into by JAG Cities, except Kent and Enumclaw approved the distribution of Jail Proceeds;

**WHEREAS**, the City of Black Diamonds estimated apportionment of the Jail Property proceeds is approximately \$13,296.20;

**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 Proceeds Distribution and Hold Harmless Agreement between the City of Bellevue and the City of Black Diamond for an apportionment of the jail property proceeds.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 6<sup>TH</sup> DAY OF AUGUST, 2009.**

CITY OF BLACK DIAMOND:

\_\_\_\_\_  
Howard Botts, Mayor

Attest:

\_\_\_\_\_  
Brenda L. Martinez, City Clerk

## PROCEEDS DISTRIBUTION AND HOLD HARMLESS AGREEMENT

This Proceeds Distribution and Hold Harmless Agreement (Agreement) is entered into between Black Diamond (JAG City) and the City of Bellevue and is effective upon the date of the last signature below.

### RECITALS

- A. Whereas, King County entered into a Jail Services Agreement (JSA) with many of the cities located in King County (Contract Cities) to house and provide jail services for Contract Cities' misdemeanants;
- B. Whereas, the JSA provides for the transfer of real property located in Bellevue with tax parcel numbers 2825059291, 2825059292, and 2825059015 (Jail Property) to the City of Bellevue on behalf of the JAG Cities to facilitate the Contract Cities reducing their jail population housed by King County as provided in Section 11 of said JSA;
- C. Whereas, Section 12 of the JSA provides that the Jail Property (or the proceeds from its sale [Proceeds]) will be used to contribute to the cost of building secure capacity, or contracting for secure capacity, and at the sole discretion of the Contract Cities, building or contracting for alternative corrections facilities, sufficient to enable the Contract Cities to meet the final step of the population reduction schedule in the JSA;
- D. Whereas, Section 12 of the JSA further provides that in the event the Contract Cities do not meet the objectives set forth in said section, King County would be entitled to return of Proceeds;
- E. Whereas, on October 31, 2002, the City of Bellevue and King County entered into a Land Transfer Agreement [City of Bellevue Clerk's Receiving # 33014] conveying the Jail Property to the City of Bellevue on behalf of all cities in King County (JAG Cities) for the purposes described in Section 12 of the JSA;
- F. Whereas, JAG Cities, except Kent and Enumclaw, entered into an Interlocal Agreement for Jail Administration (Interlocal Agreement) in part to create rules for administering the obligations related to Sections 11 and 12 of the JSA;
- G. Whereas, the obligations of Section 12 of the JSA are incorporated into Section 7.1 of the Interlocal Agreement including its application to all King County Cities;
- H. Whereas, on March 16, 2009, the City of Bellevue (Bellevue) sold the Jail Property to Seattle Children's Hospital for \$13 million;
- I. Whereas, on March 26, 2008, the Assembly created by the Interlocal Agreement approved the distribution of Jail Proceeds;

- J. Whereas, some Cities have acted to designate their portion of the Proceeds towards fulfilling their obligations under the JSA through undertakings such as the SCORE facility;
- K. Whereas, it is the intent of this Agreement that Bellevue stand in no worse (or better) position than any other JAG City with respect to liability or costs associated with the distribution of and/or possible return of Proceeds to King County because of its unique obligations to King County in Section 12 of the JSA as incorporated into the Interlocal Agreement (unique Section 12 obligations);
- L. Now therefore, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and as a precondition for receipt of said Proceeds, the JAG City and Bellevue agree:

### **AGREEMENT**

- 1. Per the Jail Oversight Assembly approved formula noted in the city-by-city proceeds distribution (Attachment A), Bellevue shall pay JAG City, \$ 13,296.20 (representing \$ 13,398.08 - its proportionate share of the Proceeds/Interest minus \$ 101.88 its proportionate share of the expenses Bellevue may recoup as provided in Section 7.2 of the Interlocal Agreement) within 30 days of the execution of this Agreement.
- 2. Upon receipt of said Proceeds, JAG City acknowledges and agrees that Bellevue has lawfully discharged all obligations and duties of Bellevue to that JAG City under the first paragraph of Section 7.2 of the Interlocal Agreement, and that Bellevue is discharged from all of its obligations and duties to that JAG City under the second paragraph of Section 7.2 of the Interlocal Agreement.
- 3. JAG City will abide by all requirements regarding the use of and goals related to the proceeds as provided in Section 7.1 of the Interlocal Agreement (whether a party to a JSA or not). JAG City will only leave or place a City Inmate in King County Jail after December 31, 2012 (post 2012 inmate housing) if King County confirms in writing that this post 2012 inmate housing does not violate the population reduction schedule referenced in Section 12 of the JSA and incorporated into Section 7.1 of the Interlocal Agreement.
- 4. Should there be a determination that a JAG City failed to abide by the requirements of Section 7.1 (at-fault JAG City) triggering an obligation for Bellevue to return all or part of the at-fault JAG City's Proceeds and any required interest to King County, said Proceeds shall be paid to Bellevue within 10 working days of written notice unless the at-fault JAG City makes other acceptable arrangements with Bellevue and/or King County or the at-fault JAG City obtains injunctive or other legal relief against King County that absolves Bellevue of any legal obligation to return said Proceeds and interest prior to the expiration of the 10 working day period.

5. Bellevue and JAG Cities maintain that King County may only require return of Proceeds from an at-fault JAG City. However, if there is a determination that there is an obligation to return to King County Proceeds in an amount in excess of the amount distributed to an at-fault JAG City(s) then each non at-fault JAG City shall pay up to the full amount of its Proceeds and any required interest to Bellevue within 10 working days of written notice unless the non at-fault JAG City makes other acceptable arrangements with Bellevue and/or King County or the non at-fault JAG City obtains injunctive or other legal relief against King County that confirms Bellevue has no legal obligation to return said Proceeds and interest prior to the expiration of the 10 working day period. If the obligation to return Proceeds is in excess of the at-fault JAG City's distribution, but less than each JAG City's full Proceeds, the amount due King County from the non at-fault JAG Cities shall be a prorated amount based on the percent of Proceeds received to the total Proceeds minus the amount representing the at-fault JAG City's share. The same prorated formula shall apply to required interest due from non at-fault JAG Cities.
6. Should Bellevue be sued for return of proceeds solely because of its unique Section 12 obligations, the alleged at-fault JAG City(s) shall immediately undertake the defense of Bellevue and pay all expenses and costs (including attorney's fees) associated with said defense whether or not said JAG City maintains it is or is ultimately determined to be not at-fault. Should King County be entitled to its attorney's fees in the suit, the at-fault JAG City shall hold Bellevue harmless and indemnify Bellevue from any liability or costs associated with the obligation to pay King County's attorney's fees.
7. Should Bellevue be the only party sued based on the alleged fault of other JAG Cities, those alleged at-fault JAG Cities agree to stipulate to being named as defendants with the concurrence of Plaintiff and/or not oppose Bellevue's motion to be included in the suit as an indispensable party. The obligations of Paragraph 6 shall apply whether or not the alleged at-fault JAG City is named in the litigation.
8. If King County sues Bellevue for return of proceeds because of Bellevue's alleged violation of Section 12 of the JSA regarding use of proceeds or the reduction in jail population along with other JAG Cities for their violations, each party will undertake its own defense at its own cost.
9. At-fault JAG Cities shall be responsible for costs of whatever form or nature associated with Bellevue's unique Section 12 obligations, including but not limited to staff costs in coordinating and collecting proceeds or attorneys fees, and including administrative costs Bellevue incurs even where timely payment of Proceeds is made. Said costs shall be prorated among at-fault JAG Cities as appropriate.
10. In the event Bellevue incurs liability or costs associated with its unique Section 12 obligations and said liability or costs are not addressed in any other provision of this Agreement, each JAG City shall indemnify, hold harmless and defend Bellevue and

its elected officials, employees agents and representatives from and against any and all claims, demands, causes of action, liabilities, judgments, settlements, damages or costs, including reasonable attorney's fees of whatever form related to Bellevue's unique Section 12 obligations in proportion to its share of the proceeds.

11. Each JAG City shall keep its Proceeds in a segregated fund and keep records sufficient to demonstrate that all expenditures of the Proceeds comply with Section 7.1 of the Interlocal Agreement. Said records shall be kept for at least 6 years from the date of the expenditure of the last Proceeds of the JAG City.
12. The JAG City representative who will be responsible for management and expenditure of the fund and for receiving notices related to the obligations under 7.1 of the Interlocal Agreement is (include name, title, address & phone #):
  - a. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

JAG City shall notify Bellevue of any change in this designated representative or contact information.

13. The City of Bellevue as a recipient of \$ 971,638.82 (representing \$ 979,083.98 - its proportionate share of the Proceeds/Interest minus \$ 7,445.16 its proportionate share of the expenses) is also a JAG City and in that capacity shall be bound by the same terms under this Agreement as any other JAG City.
14. This Agreement shall be authorized by each JAG City's legislative body or other authorizing authority if not within authority of legislative body.
15. General Provisions:
  - A. Governing Law; Forum. The Agreement will be governed by the laws of Washington and its choice of law rules. The JAG City consents to the exclusive personal jurisdiction and venue of the federal and state courts located in King County, Washington, with respect to any dispute arising out of or in connection with the Agreement, and agrees not to commence or prosecute any action or proceeding arising out of or in connection with the Agreement other than in the aforementioned courts.
  - B. Severability. If any provision of the Agreement is held to be invalid or unenforceable for any reason, the remaining provision will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

- C. Nonwaiver. Any failure by a party to enforce strict performance of any provision of the Agreement will not constitute a waiver of that party's right to subsequently enforce such provision or any other provision of the Agreement.
- D. No Assignment. Neither the Agreement nor any of the rights or obligations of the JAG City arising under the Agreement may be assigned without Bellevue's prior written consent. Subject to the foregoing, the Agreement will be binding upon, enforceable by, and inure to the benefit of, the parties and their successors and assigns.
- E. Notices. All notices and other communications under the Agreement must be in writing, and must be given by registered or certified mail, postage prepaid, or delivered by hand to the party to whom the communication is to be given, at its address set forth in this agreement.
- F. Legal Fees. In any lawsuit between the parties with respect to the matters covered by the Agreement, the prevailing party will be entitled to receive its reasonable attorney's fees and costs incurred in the lawsuit, in addition to any other relief it may be awarded.
- G. Counterparts. The Agreement may be signed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall be deemed one and the same document.

In witness whereof, the parties have executed this Agreement and it shall be effective as of the last date written below.

CITY OF BLACK DIAMOND

By: \_\_\_\_\_  
Title: \_\_\_\_\_

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

CITY OF BELLEVUE

By: \_\_\_\_\_  
Title: \_\_\_\_\_

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

# JAG Property Proceeds Distribution, Methodology Approved by the Jail Oversight Assembly on

**March 26, 2008**

	Sale Price/Proceeds	Interest/Revenue	Proceeds & Interest/Revenue	Admin/Other costs	Cities' Distribution
	\$12,986,694.50	\$113,034.78		\$99,613.08	\$13,000,116.20
Cities	Proportionate distribution based on Avg. of AV & ADP (1)	Proportionate Share of Revenues (2)	Proportionate Share of Proceeds & Interest/Revenues	Proportionate Share of Costs (3)	Final City-by-City Proceeds Distribution
Algona	\$23,168.33	\$201.65	\$23,369.99	\$177.71	\$23,192.28
Auburn	\$801,366.31	\$6,975.01	\$808,341.32	\$6,146.80	\$802,194.52
Beaux Arts	\$2,520.18	\$21.94	\$2,542.11	\$19.33	\$2,522.78
Bellevue	\$970,635.68	\$8,448.31	\$979,083.98	\$7,445.16	\$971,638.82
Black Diamond	\$13,282.47	\$115.61	\$13,398.08	\$101.88	\$13,296.20
Bothell	\$126,754.71	\$1,103.26	\$127,857.97	\$972.26	\$126,885.71
Burien	\$152,631.47	\$1,328.49	\$153,959.95	\$1,170.74	\$152,789.21
Carnation	\$6,301.24	\$54.85	\$6,356.08	\$48.33	\$6,307.75
Clyde Hill	\$42,491.88	\$369.84	\$42,861.73	\$325.93	\$42,535.80
Covington	\$66,049.99	\$574.89	\$66,624.88	\$506.63	\$66,118.25
Des Moines	\$177,128.08	\$1,541.70	\$178,669.78	\$1,358.64	\$177,311.14
Duvall	\$27,973.08	\$243.47	\$28,216.56	\$214.56	\$28,001.99
Enumclaw	\$90,688.23	\$789.34	\$91,477.57	\$695.61	\$90,781.96
Federal Way	\$591,788.18	\$5,150.86	\$596,939.04	\$4,539.25	\$592,399.79
Hunts Point	\$18,431.60	\$160.43	\$18,592.03	\$141.38	\$18,450.65
Issaquah	\$219,690.57	\$1,912.16	\$221,602.73	\$1,685.11	\$219,917.62
Kenmore	\$124,016.44	\$1,079.43	\$125,095.86	\$991.26	\$124,144.61
Kent	\$1,166,452.48	\$10,152.68	\$1,176,605.16	\$8,947.15	\$1,167,658.01
Kirkland	\$425,046.74	\$3,699.56	\$428,746.30	\$3,260.28	\$425,486.02
Lake Forest Park	\$80,748.97	\$702.83	\$81,451.80	\$619.38	\$80,832.42
Maple Valley	\$55,716.09	\$484.95	\$56,201.04	\$427.36	\$55,773.68
Medina	\$76,614.51	\$666.84	\$77,281.36	\$587.66	\$76,693.70
Mercer Island	\$215,059.90	\$1,871.86	\$216,931.76	\$1,649.59	\$215,282.16
Milton	\$1,943.87	\$16.92	\$1,960.79	\$14.91	\$1,945.88
Newcastle	\$53,960.39	\$469.67	\$54,430.06	\$413.90	\$54,016.16
Normandy Park	\$34,419.82	\$299.59	\$34,719.40	\$264.01	\$34,455.39
North Bend	\$26,466.09	\$230.36	\$26,696.45	\$203.01	\$26,493.44
Pacific	\$14,058.03	\$122.36	\$14,180.39	\$107.83	\$14,072.56
Redmond	\$454,343.94	\$3,954.56	\$458,298.50	\$3,485.00	\$454,813.50
Renton	\$1,002,868.14	\$8,728.86	\$1,011,597.00	\$7,692.40	\$1,003,904.60
Sammamish	\$208,156.50	\$1,811.77	\$209,968.27	\$1,596.64	\$208,371.63
SeaTac	\$163,329.98	\$1,412.61	\$164,751.58	\$1,252.81	\$163,498.78
Seattle	\$4,707,346.10	\$40,972.23	\$4,748,318.33	\$36,107.21	\$4,712,211.12
Shoreline	\$385,405.07	\$3,354.52	\$388,759.59	\$2,956.21	\$385,803.38
Skykomish	\$1,617.92	\$14.08	\$1,632.00	\$12.41	\$1,619.59
Snoqualmie	\$67,185.14	\$584.77	\$67,769.91	\$515.34	\$67,254.57
Tukwila	\$287,414.71	\$2,501.63	\$289,916.33	\$2,204.58	\$287,711.75
Woodinville	\$86,231.67	\$750.55	\$86,982.22	\$661.43	\$86,320.79
Yarrow Point	\$17,390.02	\$151.36	\$17,541.38	\$133.39	\$17,407.99
	\$12,986,694.50	\$113,034.78	\$13,099,729.28	\$99,613.08	\$13,000,116.20

## NOTES:

(1) The proceeds formula is an average of each city's AV and ADP. Assessed Value (AV) was derived from the King County Assessors Office estimates for 2007. Average Daily Population (ADP) was based on 2005-2007 data provided by each city. The methodology was approved at the March 26, 2008 Jail Oversight Assembly Meeting.

(2) This column includes all interest generated to-date in the account holding the sale property proceeds.

(3) The costs were incurred by the City of Bellevue on behalf of the rest of the cities and are recoupable as provided in Paragraph 7.2 of the Interlocal Agreement.

**Final Version:  
July 7, 2009**

**Interlocal Agreement Between  
King County and the City of Bellevue  
for Jail Services**

REC NO. 33013  
CITY OF BELLEVUE  
DATE 10/31/02  
11/10/02  
CITY CLERK'S OFFICE  
CCO FILE# 02-659

THIS INTERLOCAL AGREEMENT ("Agreement") is dated effective the 1<sup>st</sup> day of November, 2002. *Res 6756*  
The Parties to this Agreement are King County, a Washington municipal corporation and legal subdivision of the State of Washington (the "County") and the City of Bellevue, a Washington municipal corporation (the "City").

This Agreement is made in accordance with the Interlocal Cooperation Act (RCW Chapter 39.34) and the City and County Jails Act (RCW Chapter 70.48).

In consideration of the promises, payments, covenants and agreements contained in this Agreement, the parties agree as follows:

1. Definitions: Unless the context clearly shows another usage is intended, the following terms shall have these meanings in this Agreement:

- 1.1. "Booking" means registering, screening and examining inmates for confinement in the Jail; inventorying and safekeeping inmates' personal property; maintaining all computerized records of arrest; performing warrant checks; and all other activities associated with processing an inmate.
- 1.2. "Business Day" means Monday through Friday, 8:00 a.m. until 5:00 p.m., except holidays.
- 1.3. "City Inmate" means a person booked into or housed in the Jail when a City charge is the principal basis for booking or confining that person. A City charge is the principal basis for booking or confining a person where one or more of the following applies, whether pre-trial or post-trial:
  - 1.3.1. The person is booked or confined by reason of committing or allegedly committing a misdemeanor or gross misdemeanor offense within the City's jurisdiction, whether filed under state law or city ordinance;
  - 1.3.2. The person is booked or confined by reason of a Court warrant issued either by the City's Municipal Court or other court when acting as the City's Municipal Court;
  - 1.3.3. The person is booked or confined by reason of a Court order issued either by the City's Municipal Court or other court when acting as the City's Municipal Court; or,
  - 1.3.4. The person is booked or confined by reason of subsections 1.3.1 through 1.3.3 above, in combination with charges, investigation of charges, and/or warrants of other governments, and the booking or confinement by reason of subsections 1.3.1 through 1.3.3 above is determined to be the most serious charge in accordance with Exhibit I.
  - 1.3.5. A City charge is not the principal basis for confining a person where the person is booked or confined exclusively or in combination with other charges by reason of a felony charge or felony investigation.

A City charge is not the principal basis for confining a person where the person is confined exclusively or in combination with other charges by reason of a felony charge or felony investigation that has been reduced to a State misdemeanor or gross misdemeanor.

- 1.3.5. A City charge is not the principal basis for confining a person where the person is booked or confined exclusively or in combination with other charges by reason of a felony charge or felony investigation.
- 1.3.6. A City charge is not the principal basis for confining a person where the person is confined exclusively or in combination with other charges by reason of a felony charge or felony investigation that has been reduced to a State misdemeanor or gross misdemeanor.
- 1.4 "Contract Cities" means cities that are signatory to this Agreement.
- 1.5 "Continuity of Care Records" means an inmate's diagnosis, list of current medications, treatments, PPD results and scheduled appointments or follow-ups.
- 1.6 "County Inmate" means any inmate that is not a City Inmate.
- 1.7 "Force Majeure" means war, civil unrest, and any natural event outside of the party's reasonable control, including fire, storm, flood, earthquake or other act of nature.
- 1.8 The first "Inmate Day" means confinement for more than six (6) hours measured from the time such inmate is first presented to and accepted by the Jail until the inmate is released, provided that an arrival on or after six (6) o'clock p.m. and continuing into the succeeding day shall be considered one day. The second and each subsequent Inmate Day means confinement for any portion of a calendar day after the first Inmate Day. For persons confined to the Jail for the purpose of mandatory DUI sentences, "Inmate Day" means confinement in accordance with Exhibit II.
- 1.9 "JAG" means the Jail Agreement Administration Group created pursuant to Section 10 of this Agreement.
- 1.10 "Jail" means a place primarily designed, staffed, and used for the housing of adults charged or convicted of a criminal offense; for the punishment, correction, and rehabilitation of offenders charged or convicted of a criminal offense; or for confinement during a criminal investigation or for civil detention to enforce a court order. Upon the date of the execution of this Agreement, Jail includes the King County Correctional Facility, the detention facility at the Regional Justice Center, the North Rehabilitation Facility; and any Community Corrections Facility and/or Program, such as Work Release, Electronic Home Detention, Work Crews, Day Reporting, and Evening Reporting operated by the County directly or pursuant to contract.
- 1.11 "Medical Inmate" means a City Inmate or County Inmate clinically determined by the Seattle-King County Department of Public Health, or its successor charged with the same duties, as needing the level of services provided in the Jail's infirmary or other medical facility that the County may choose to send a Medical Inmate. If an inmate is moved to the general population then the inmate is no longer considered a Medical Inmate.

- 1.12 "Official Daily Population Count" is an official count of inmates in the custody of the Jail made at a point in time in a 24-hour period for, among other purposes, security and population management. It is not used for billing purposes.
- 1.13 "PARP" means the Population Alert and Reduction Plan attached as Exhibit IV.
- 1.14 "Psychiatric Inmate" means a City Inmate or County Inmate clinically determined by the Seattle-King County Department of Public Health, or its successor charged with the same duties, as needing the level of services provided in the Jail's psychiatric housing units or other medical facility that the County may choose to send a Psychiatric Inmate. If an inmate is moved to the general population then the inmate is no longer considered a Psychiatric Inmate.
2. Jail and Health Services. The County shall accept City Inmates for confinement in the Jail, except as provided in Sections 4.5 and 11 of this Agreement. The County shall also furnish the City with Jail facilities, booking, transportation among County facilities, as determined necessary in the County's sole discretion, including the various Jail facilities, Harborview Medical Center and Western State Hospital, and custodial services, and personnel for the confinement of City Inmates at least equal to those the County provides for confinement of County Inmates. However, the County reserves the right to operate specific programs and/or facilities exclusively for County Inmates. The County shall furnish to City Inmates all Jail medical, dental and other health care services required to be provided pursuant to federal or state law. Also, the County shall make every reasonable effort to release a City Inmate as expeditiously as possible after the County has received notification of a court order to release.
3. City Compensation. The City will pay the County a booking fee and a maintenance charge as follows:
- 3.1 Booking Fee. The booking fee shall be assessed for the booking of City Inmates by or on behalf of the City into the Jail. The booking fee shall be as provided in Exhibit III. The effective date of each annual adjustment will be January 1<sup>st</sup>. The County will maintain its program of contacting the City after booking a City Inmate in order to give notice that the City Inmate has been booked and to provide the opportunity for release to the City if the City so desires. Such action will take place as soon as reasonably possible but no later than the next business day after booking and will result in no maintenance charges if the City Inmate is released to the City within six hours of booking. The parties agree that the issue of providing earlier notice to the Contract Cities of booking of City Inmates shall be immediately referred to JAG for resolution. The County will maintain its program to notify the City of the status of its inmates in cases where confinement is the result of multiple warrants from two or more jurisdictions. This program will allow the City to take custody of a City Inmate if it so desires after the other jurisdictional warrants are resolved and thereby prevent unnecessary maintenance charges.
- 3.2 Maintenance Charge. The maintenance charge shall be assessed for a City Inmate for each Inmate Day. The maintenance charge shall be as provided in Exhibit III. The effective date of each annual adjustment will be January 1<sup>st</sup>. The City will be billed the daily maintenance charge for Medical and Psychiatric Inmates, except as provided for in Section 11.7 of this Agreement.

3.3 Proportional Billing. The parties intend to develop a system of proportional billing which will divide the costs of incarceration between two or more jurisdictions where multiple jurisdictions have a hold on a City Inmate. The parties agree to negotiate, in good faith, in an attempt to develop such a system.

4. Billing and Dispute Resolution Procedures.

4.1 The County shall transmit billings to the City monthly. Within forty-five (45) days after receipt, the City shall pay the full amount billed or withhold a portion thereof and provide the County written notice specifying the total amount withheld and the grounds for withholding such amount, together with payment of the remainder of the amount billed (if any amount remains).

4.2 Withholding of any amount billed or alleging that any party is in violation of any provision of this Agreement shall constitute a dispute, which shall be resolved as follows:

4.2.1 The County and the City shall attempt to resolve the dispute by negotiation. If such negotiation is unsuccessful, either party may refer the dispute to JAG for resolution. In the event JAG is unable to resolve the dispute within 30-days of referral, either party may appeal. All appeals shall be referred to the Chief Executive Officer of the City, or designee, and the County Executive, or designee, for settlement. If not resolved by them within thirty (30) days of the referral, the Chief Executive Officer and the County Executive by mutual written consent may seek arbitration or mediation of the matter. Each party shall pay one-half of the arbitrator's or mediator's fees and expenses. If mutual written consent to apply for the appointment of an arbitrator or mediator is not reached, or the dispute is not resolved through arbitration or mediation, either party may seek court action to decide the dispute. If either party prevails in a court action to enforce any provision of this Agreement, it shall be awarded reasonable attorney's fees to be based on hourly rates for attorneys of comparable experience in the community.

4.3 Any amount withheld from a billing, which is determined to be owed to the County pursuant to the dispute resolution procedure described herein, shall be paid by the City within thirty (30) days of the date of the negotiated resolution or appeal determination.

4.4 Any undisputed billing amount not paid by the City within sixty (60) days of receipt of the billing, and any amounts found to be owing to the County as a result of the billing dispute resolution procedure that are not paid within thirty (30) days of resolution, shall be conclusively established as a lawful debt owed to the County by the City, shall be binding on the parties and shall not be subject to legal question either directly or collaterally. This provision shall not limit a City's ability to challenge or dispute any billings that have been paid by the City.

4.5 If the City fails to pay a billing within 45-days of receipt, the County will notify the City of its failure to pay and the City shall have ten (10) days to cure non-payment. In the event the City fails to cure its nonpayment, the City shall be deemed to have voluntarily waived its right to house City Inmates in the Jail and, at the County's request, will remove City Inmates already housed in the Jail within thirty (30) days. Thereafter, the County, at its sole discretion, may accept no further City Inmates until all outstanding bills are paid.

- 4.6 The County may charge an interest rate equal to the interest rate on the monthly County investment earnings on any undisputed billing amount not paid by the City within forty-five (45) days of receipt of the billing, and any amounts found to be owing to the County as a result of the billing dispute resolution procedure.
- 4.7 Each party may examine the other's books and records to verify charges. If an examination reveals an improper charge, the next billing statement will be adjusted appropriately. Disputes on matters related to this Agreement which are revealed by an audit shall be resolved pursuant to Section 4.2.
5. Term. This Agreement shall commence on November 1, 2002 and shall supersede all previous contracts and agreements between the parties relating to the Jail and jail services. This Agreement shall extend to December 31, 2012 and may be renewed annually by the agreement of the parties.
6. Termination. Neither party may terminate this Agreement prior to January 1, 2004. Thereafter, either party may initiate a process to terminate this Agreement as follows:
- 6.1 Ten-Day Notice of Intent to Terminate. Any party wishing to terminate this Agreement shall issue a written notice of intent to terminate, not less than ten (10) days prior to issuing a ninety (90) day termination notice under Section 6.2 of this Agreement. Upon receipt of the written notice of intent to terminate, the parties will meet to confer on whether there are steps that the non-terminating party can take in order to avoid a ninety (90) day termination notice under section 6.2 of this Agreement.
- 6.2 Ninety-Day Termination Notice. After the ten (10) day period has run under Section 6.1 of this Agreement, the party desiring to terminate this Agreement may provide the other party ninety (90) days written termination notice, as provided in RCW 70.48.090.
7. Limited Re-Opener. The County or the Cities may request (a) during the year 2006, and during the year 2009, that the parties meet to negotiate a change to the charges being paid under Exhibit III; or (b) at any time prior to December 31, 2006, that the parties meet to negotiate a change to any operations covering Medical or Psychiatric Inmates. In the event such a request is made, the parties agree to meet and negotiate in good faith on the issue. However, if no agreement is reached, the terms of this Agreement will continue to apply.
8. Indemnification.
- 8.1 The County shall indemnify and hold harmless the City and its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any negligent action or omission of the County, its officers, agents, and employees, or any of them. In the event that any suit based upon such a claim, action, loss, or damage is brought against the City, the County shall defend the same at its sole cost and expense; provided, that, the City retains the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against the City and its officers, agents, and employees, or any of them, or

jointly against the City and the County and their respective officers, agents, and employees, or any of them, the County shall satisfy the same.

8.2 The City shall indemnify and hold harmless the County and its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any negligent act or omission of the City, its officers, agents, and employees, or any of them. In the event that any suit based upon such a claim, action, loss, or damage is brought against the County, the City shall defend the same at its sole cost and expense; provided that the County retains the right to participate in said suite if any principle of governmental or public laws is involved; and if final judgment be rendered against the County, and its officers, agents, and employees, or any of them, or jointly against the County and the City and their respective officers, agents, and employees, or any of them, the City shall satisfy the same.

8.3 In executing this agreement, the County does not assume liability or responsibility for or in any way release the City from any liability or responsibility, which arises in whole or in part from the existence or effect of City ordinances, rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance, rule or regulation is at issue, the City shall defend the same at its sole expense and if judgment is entered or damages are awarded against the City, the County, or both, the City shall satisfy the same, including all chargeable costs and attorney's fees.

8.4 The terms of Section 8 "Indemnification" shall survive the termination or expiration of this Agreement.

9. Most Favored Treatment. The County represents and assures the City that no other city or town has or will receive more favored treatment under a contract with the County covering the Jail or jail services. If advantages are provided inmates of another city or town, like advantages shall be extended to City Inmates; and if lower rates are provided in any contract with another city or town, such reduced charges shall be extended to the City under this Agreement. This Section shall not apply to a) temporary service contracts twelve months' or less in duration; provided that such temporary service contracts shall not cause the City to pay more in maintenance charges and booking fees than the City would have paid without such a temporary service contract; b) reciprocal bed use agreements; c) any agreement among the County and any city or town related to additional jail capacity at a new or expanded Jail; and d) any agreements for services among the County and any city or town for additional services not provided for in this Agreement.
10. Jail Agreement Administration Group (JAG). JAG is hereby established to work together to assure the effective implementation of this Agreement and resolve any Agreement or PARP administration, implementation or interpretation issues including, without limitation, issues related to inmate transportation, alternative and community correction programs, coordination with the courts and law enforcement, mental health, drug and alcohol treatment, Agreement interpretation, any capital expenditure charge or budget included in the maintenance fee, referrals of disputes under Section 4 and issues related to the expedient transfer of City Inmates into or out of alternative facilities within or outside of King County. JAG shall also negotiate any reopener of the provisions described in Section 7 of this Agreement. JAG shall be initially established by November 1, 2002.

The committee shall be composed of eight persons as follows:

County Executive Representative	(1)
City of Seattle Representative	(1)
City of Bellevue Representative	(1)
Director of the Department of Adult and Juvenile Detention	(1)
Suburban Cities Representatives	(4)

The City of Seattle representative will be appointed by the Mayor of Seattle. The City of Bellevue representative will be appointed by the City Manager. The Suburban Cities Association (SCA) shall select four (4) representatives through a process defined by the SCA. The Mayor of Mayor/Council cities or the City Manager of Council/Manager cities shall appoint the representative of each city selected by the SCA. Notice of the city representatives and any changes thereto shall be provided to the County Executive. The Committee shall meet at least quarterly. A Chair shall be selected from among the members.

11. Jail Capacity. The parties understand that the number of beds available in King County may not meet the demands for those beds in the future. The following items attempt to address the needs of the local criminal justice system for adequate secure bed space and the County's ability to prevent excessive and unmanageable crowding conditions within capacity.
  - 11.1 PARP. The parties agree to make a good-faith effort to cooperatively implement all provisions of the PARP. Additionally, King County agrees to be bound to the Population Alert Notification section of the PARP with the caveat that King County will not be held to the Population Alert Notification section of the PARP in the event of force majeure or computer or telecommunications failure. The parties have also prepared a Table set forth in Exhibit V. This Exhibit represents a good faith effort by the parties to estimate Jail bed demand and supply for the years 2002 through 2005. However, the King County supply scenarios contained in Exhibit V are not binding on the County.
  - 11.2 Capacity for City Inmates. When necessary, King County will double bunk the Regional Justice Center up to 65% to accommodate City Inmates. The parties understand that the County's commitment to double bunk up to 65% at the Regional Justice Center to accommodate City Inmates means that the County will not set a budgetary constraint that will prevent the County from performing under the terms of this Agreement.
  - 11.3 The Contract Cities agree to the following population reduction schedule for the aggregate number of City Inmates.
    - A) By December 31, 2003, at the time of the Jail's Official Daily Population Count the Contract Cities agree to reduce the aggregate number of City Inmates in the Jail to 380.

- B) By December 31, 2004, at the time of the Jail's Official Daily Population Count, the Contract Cities agree to reduce the aggregate number of City Inmates in the Jail to 250.
- C) By July 1, 2005, at the time of the Jail's Official Daily Population Count, the Contract Cities agree to reduce the aggregate number of City Inmates in the Jail to 220.
- D) By December 31, 2012, at the time of the Jail's Official Daily Population Count, the Contract Cities agree to reduce the aggregate number of City Inmates in the Jail to 0, with the exception that inmates whose status has changed to City Inmate will not be included in the calculation of the aggregate number of City Inmates if the inmate is removed from the Jail within 72-hours of such change in status.

For the purpose of determining the aggregate number of City Inmates only, and not for billing purposes, inmates held on multiple warrants by the County which include one or more city warrants in addition to a County and/or state warrant and City Inmates that have been booked into the Jail and the Contract Cities have not been notified of such booking shall not be considered a City Inmate. Also, City Inmates housed in the Jail pursuant to a reciprocal bed-use agreement will not be considered City Inmates for the purpose of determining the aggregate number of City Inmates.

- 11.4 The City agrees to be bound by the population reduction schedule listed in Section 11.3. Accordingly, in the event the aggregate City Inmate population:

- A) Exceeds 380 on any given day from December 31, 2003, through December 31, 2004; or
- B) Exceeds 250 on any given day from December 31, 2004, through June 30, 2005; or
- C) Exceeds 220 on any given day from July 1, 2005 to December 31, 2012; or
- D) Exceeds 0 on any given day after January 1, 2013, except as provided in Section 11.3;

then the County will have the right to take the actions outlined in Section 11.5.

- 11.5 The County will notify the Contract Cities by phone or electronic mail, if the Contract Cities have exceeded the population reduction schedule described in Sections 11.3 and 11.4. The County may then decide to continue to house City Inmates in excess of the population reduction schedule listed in Sections 11.3 and 11.4. Alternatively, the County may refuse to accept bookings from the City until such time as the aggregate number of City Inmates is reduced below the population reduction schedule listed in Sections 11.3 and 11.4. If the aggregate number of City Inmates is reduced below the population reduction schedule listed in Sections 11.3 and 11.4, through removal of City Inmates from the Jail, then the County will be obligated to accept new City bookings. The notification required by the first sentence of this Section, will be made to the person

designated in Section 13.10 of this Agreement, and will inform the City whether the County intends to continue to house City Inmates in excess of the population reduction schedule listed in Sections 11.3 and 11.4, or whether the County will refuse to accept bookings from the City until such time as the aggregate number of City Inmates is reduced below the population reduction schedule listed in Sections 11.3 and 11.4.

- 11.6 The Jail's capacity limit for Medical Inmates is twenty-six (26). The Jail's capacity limit for Psychiatric Inmates is one hundred fifty one (151). For the purpose of this Section the Medical and Psychiatric Inmate population will be determined following the definitions in Sections 1.11 and 1.14 at the time of the Jail's Official Daily Population Count.
- 11.7 When the Jail has reached its capacity limit for either Medical or Psychiatric Inmates as set forth in Section 11.6, the County will notify the City by phone or electronic mail. Such notification will be made to the person designated in Section 13.10 of this Agreement. At the time this notification is made the County may request that the City take custody of a sufficient number of its Medical or Psychiatric Inmates to reduce the number of Medical or Psychiatric Inmates to the capacity limits detailed in Section 11.6, or the County may inform the City that it is willing to continue to house these inmates at the premium maintenance day charge as detailed in Exhibit III. The premium maintenance day charge in Exhibit III may only be charged when 1) the capacity limit is exceeded, 2) additional staff are assigned and compensated to serve these excess Medical or Psychiatric Inmates, 3) additional medical or psychiatric bed capacity is created, and 4) notice is provided as detailed above in this Section.
- 11.8 County requests under Section 11.7 will be made as follows. The billable City with the most recent City Inmate admitted as Medical or Psychiatric Inmate will be asked to take custody of that inmate. This process will be repeated until such time as the Medical and Psychiatric populations are reduced below capacity limits, or the Jail is willing to continue to house these inmates at the premium maintenance day charge as detailed in Exhibit III.
- 11.9 If the County, pursuant to Sections 11.7 and 11.8, requests that the City take custody of Medical or Psychiatric Inmates, the City shall comply with the County's request. The City may take custody of its<sup>1</sup> Medical or Psychiatric Inmates by picking them up within 24-hours of the County's request, or by notifying the County, within 24-hours of the County's request, that the City would like the County to deliver the inmates to the City's

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<sup>1</sup> Within eight (8)-hours of the County's request, the City may provide the County with the names of other Medical Inmates to substitute for the Medical Inmates identified for pick-up by the County. In the event the City identifies substitute Medical Inmates that are City Inmates, the provisions of Section 11 will continue to apply. In the event the City identifies substitute Medical Inmates that are the responsibility of a different City (Substitute City), the Substitute City will be responsible for picking-up the substitute Medical Inmates within 24-hours of the initial request for pick-up. In the event the Substitute City fails to pick-up its Medical Inmates within 24-hours of initial notification to the City, the County will deliver the Medical Inmates named in the original notification to the City's designated drop-off location or backup location. The substitution procedures outlined in this footnote will also apply to Psychiatric Inmates.

designated drop-off location or a backup location previously provided to the County<sup>2</sup>. If the City has not picked-up the Medical or Psychiatric Inmate within 24-hours of the County's request, or the City has requested that the County take the Medical or Psychiatric Inmate to the designated drop-off location or backup location, the County will deliver the Medical or Psychiatric Inmate to the City's designated drop-off location or backup location. In either case, the City's designated drop-off location or backup location must accept delivery from the County, and must be available to do so seven days a week, twenty-four hours a day. In all cases, the County shall provide the receiving entity with Continuity of Care Records, in a sealed envelope, at the time custody is transferred. The City will ensure that the City and the receiving entity comply with all applicable confidentiality laws and rules. Similarly, the City will ensure that Continuity of Care Records are provided to the County at the time custody of a City Inmate receiving the level of care consistent with a Medical or Psychiatric Inmate is transferred to the County.

- 11.10 The County will transport Medical or Psychiatric Inmates to a designated drop-off location or backup location within King County, Washington without charge. The City will pay all transportation costs for Medical or Psychiatric Inmates taken to a designated drop off location or backup location outside of King County, Washington. In no case will the County be obligated to transport a Medical or Psychiatric Inmate out-of-state.
12. Transfer of Property. The parties agree that prior to July 1, 2004 the County will convey, pursuant to the terms of the Land Transfer Agreement attached as Exhibit VI, to the City of Bellevue, Washington, to hold on behalf of all Contract Cities, as third party beneficiaries, certain real property located at 1440 116<sup>th</sup> Avenue N.E. and 1412 116<sup>th</sup> Avenue N.E., Bellevue, Washington (Property). The Contract Cities may at their sole discretion enter into an agreement with other King County cities for the purpose of providing for the disposition of the Property. The Property will be used to contribute to the cost of building secure capacity, or contracting for secure capacity, and, at the sole discretion of the Contract Cities, building or contracting for alternative corrections facilities, sufficient to enable the Contract Cities to meet the final step (occurring on December 31, 2012) of the population reduction schedule as detailed in Sections 11.3 and 11.4 of this Agreement. The parties understand that the Property may be sold or traded and the proceeds and/or land acquired from such sale or trade used for the purposes detailed in the preceding sentence. The parties further agree that in the event the cities do not build secure capacity, or contract for secure capacity, and, at the sole discretion of the Contract Cities build or contract for alternative corrections facilities, sufficient to enable the Contract Cities to meet the final step (occurring on December 31, 2012) of the population reduction schedule as detailed in Sections 11.3 and 11.4 of this Agreement the City of Bellevue shall transfer title to the Property back to the County if such Property has not been sold; or if such Property has been sold, pay the County an amount equal to the net sale price of the Property, plus investment interest earned; or if the Property has been traded, pay the County the appraised value of the Property at the time of the trade, as determined by an MIA appraiser selected by mutual agreement of King County and

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<sup>2</sup> The City's designated drop off location and backup location must be either a facility in the direct control of the City or a facility that is contractually obligated, consistent with the terms of this Agreement, to act as the City's designated drop-off location or backup location. The City may change their designated drop off location or backup location by notifying the County, in writing, of the change.

the City of Bellevue, plus investment interest earned. This section shall survive any termination of this Agreement prior to December 31, 2012.

### 13. General Provisions

- 13.1 Other Facilities. This Agreement reserves in each party the power to establish a temporary holding facility during a riot or civil disobedience, to establish group homes or other care or rehabilitation facilities in furtherance of a social service program, and to comply with a final order of a federal court or a state court of record for the care and treatment of inmates.
- 13.2 Grants. Both parties shall cooperate and assist each other toward procuring grants or financial assistance from the United States, the State of Washington, and private benefactors for the Jail, the care and rehabilitation of inmates, and the reduction of costs of operating and maintaining Jail facilities.
- 13.3 Harborview Costs. Should the County be charged for hospitalization costs for City Inmates, excluding costs reimbursable from another jurisdiction, both parties agree to reopen negotiations on this specific point. If an impasse is reached then the process outlined in Section 4 of this Agreement will be followed.
- 13.4 Severability. If any provision of this Agreement shall be held invalid, the remainder of this Agreement shall not be affected thereby.
- 13.5 Remedies. No waiver of any right under this Agreement shall be effective unless made in writing by the authorized representative of the party to be bound thereby. Failure to insist upon full performance of any one or several occasions does not constitute consent to or waiver of any later non-performance nor does payment of a billing or continued performance after notice of a deficiency in performance constitute an acquiescence thereto. The parties are entitled to all remedies in law or equity.
- 13.6 Exhibits. This Agreement consists of several pages plus the following attached exhibits, which are incorporated herein by reference as fully set forth:
- |             |  |
|-------------|--|
| Exhibit I   | Method of Determining Billable Charge and Agency                                     |
| Exhibit II  | Exception to Billing Procedure   |
| Exhibit III | Maintenance Charge, Premium Maintenance Charge and Booking Fee                       |
| Exhibit IV  | Population Alert and Reduction Plan  |
| Exhibit V   | Comparison of Estimated King County Jail Bed Demand and Supply<br>2002 to 2005 Table |
| Exhibit VI  | Land Transfer Agreement  |
| Exhibit VII | List of Cities   |
- 13.7 Entire Agreement. This Agreement represents the entire understanding of the parties and supersedes any oral representations that are inconsistent with or modify its terms and conditions.

- 13.8 Modifications. All provisions of this Agreement may be modified and amended with the mutual written consent of the parties hereto.
- 13.9 Force Majeure. In the event either party's performance of any of the provisions of this Agreement become impossible due to Force Majeure, that party will be excused from performing such obligations until such time as the Force Majeure event has ended and all facilities and operations have been repaired and/or restored.
- 13.10 Notices. Except as otherwise provided in this Agreement, any notice required to be provided under the terms of this Agreement, shall be delivered by certified mail, return receipt requested or by personal service to the following person:

For the City:

Steve Sarkozy, City Manager  
City of Bellevue  
PO Box 98009  
11511 Main Street  
Bellevue, WA 98009

For the County:

Steve Thompson, Director  
King County Department of Adult and Juvenile Detention  
500 5<sup>th</sup> Avenue, MS KCF-AD-0600  
Seattle, WA 98104

- 13.11 Agreement Offered. The County will offer this Agreement to the cities listed in Exhibit VII. Such offer is open to those cities until October 31, 2002, or such later date as may be approved by King County and all of the Contract Cities. Additionally, King County and all of the Contract Cities, by mutual agreement, may offer this Agreement to cities not listed on Exhibit VII.
- 13.12 Council Approval. The parties' obligations under this Agreement are subject to official City or County Council approval.
- 13.13 Information. The parties further agree to share data and information for the purpose of assisting the Contract Cities in the planning and construction of secure capacity, contracting for secure capacity or alternative correction facilities.

King County



King County Executive

8-27-2002

Date

Approved as to Form

City of Bellevue:

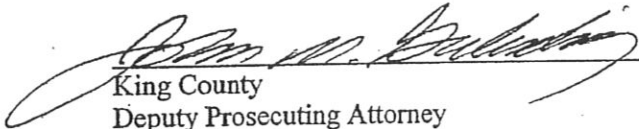


Title City Manager

10/31/02

Date

Approved as to Form

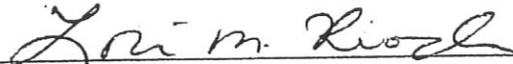


King County

Deputy Prosecuting Attorney

8/27/02

Date



City Attorney

10-30-02

Date

## **EXHIBITS**

Exhibit I	Method of Determining Billable Charge and Agency
Exhibit II	Exception to Billing Procedure
Exhibit III	Maintenance Charge, Premium Maintenance Charge and Booking Fee
Exhibit IV	Population Alert and Reduction Plan
Exhibit V	Comparison of Estimated King County Jail Bed Demand and Supply 2002 to 2005 Table
Exhibit VI	Land Transfer Agreement
Exhibit VII	List of Cities

**EXHIBIT I**  
**Method of Determining Billable Charge and Agency**

Daily the billing program examines the open charges for each active booking and applies a uniform set of rules to select the billable charge. Then the billable agency is determined from the billable charge. Under these rules, the most serious charge, as determined by type of charge (felony, investigation, misdemeanor), pretrial or sentenced status and bail amount, is considered the principal basis for incarceration, pursuant to Section 1 of this Agreement.

The procedure for selecting the billable charge is as follows. The program will proceed in sequence through the series of procedures only as far as needed to isolate one charge as billable.

1. Select the only felony or investigation of felony charge. If there are more than one, go to Rule 2. If there are no felony or investigation of felony charges, proceed to Rule 3.
2. Select the charge with charge status other than Federal or Immigration. If there are no other charge statuses, determine if the charge is Federal or Immigration and bill accordingly.
3. Select the only misdemeanor charge. If there are more than one, continue to Rule 4.
4. Select the sentenced charge. Find the agency with the longest sentence. If there are no sentenced charges, go to Rule 6.
5. If there is no longest sentence, or if all are sentences of equal length, select the charge with the earliest sentence date.
6. Select the charge for the arresting agency. If there is no arresting agency or charges, select the earliest charge entered and set the billable agency of that charge.
7. If there are no sentenced charges, and if the arresting agency has no charge, then find the agency having the highest total accumulated bail amount and select the first charge entered for that agency.
8. If bail is equal among jurisdictions and no charges are sentenced, or if all charges are sentences of equal length, select the charge having the earliest charge number.

**EXHIBIT II**  
**Exception to Billing Procedure between King County**  
**and Cities Signing the Agreement for Jail Services**

For persons serving the one and two day commitments pursuant to the mandatory DUI sentence grid who report directly from the community to the Jail for incarceration, inmate day shall not be defined according to Section 1.8 of the Agreement. Instead, inmate day shall be defined as a twenty-four hour period beginning at the time of booking. Any portion of a twenty-four hour period shall be counted as a full inmate day. The number of days billed for each sentence shall not exceed the sentence lengths specified on the court commitment.

Two examples are provided for illustration:

Two-day sentence served on consecutive days:

John Doe	Booked 7/1/90 0700	Released 7/3/90 0700
	Number of inmate days = 2	

Two-day sentence served on non-consecutive days:

John Doe	Booked 7/1/90 0700	Temporary Release 7/2/90 0700
	Return to Jail 7/8/90 0700	Released 7/9/90 0700
	Number of Inmate days = 2	

The Department of Adult and Juvenile Detention will apply this definition of inmate day to the City's direct DUI one and two-day inmates by adjusting the City's monthly bill before it is sent to the City. If the changes are not made for some reason, the City will notify the Department of Adult and Juvenile Detention, which will make the necessary adjustments.

**EXHIBIT III**  
**Maintenance Charge, Premium Maintenance Charge & Booking Fee**

**1. MAINTENANCE CHARGE.**

The maintenance charge for 2002 is \$77.37. For each calendar year thereafter the maintenance charge will be increased by 5.8 percent.

In addition to the 5.8 percent increase, King County will increase the maintenance charge to capture the cost of capital expenditures. Capital expenditures are defined as the cost of repairing and renovating current jail capacity and support and administrative facilities that benefit Jail operations. Capital expenditures include the Integrated Security Project (ISP) and the Courthouse Seismic Stabilization Project (CSSP). Additional capital expenditures will be included in the maintenance charge if such expenditures benefit City Inmates. Any capital expenditure that solely benefits County Inmates will not be charged to the City.

Capital expenditures will be calculated in proportion to the square footage that benefits adult detention. Cities will be billed their proportionate share based on the total number of inmate days. DAJD will estimate the total number of inmate days for a given year. By April 30<sup>th</sup> of the following year DAJD will reconcile this capital expenditure number and adjust the City's next billing accordingly.

The County shall provide its 6-year CIP and its 6-year major maintenance plan to the City on an annual basis. The County will provide a detailed line item budget of each capital expenditure. If the City disputes that the capital expenditure benefits City Inmates or otherwise disputes the inclusion of the capital expenditure or any portion of the capital expenditures' budget in the maintenance fee, the matter will be referred to JAG as described in Section 4 of this Agreement. Capital expenditures will not be charged to the City to the extent such capital expenditures are covered by federal grants, state grants, insurance proceeds, capital maintenance reserves or voter approved capital funding for jail related improvements. King County will provide the City with a sample calculation of the maintenance charge for the years 2002-2005, which will include a rough estimate of capital expenditures.

Capital expenditure charges shall begin, if debt financed, when debt service payments begin for the permanent financing of the capital expenditure and shall continue until the end of the debt amortization unless the debt amortization is less than fifteen (15) years, in which case the charges to the cities will be amortized over fifteen (15) years. If the capital expenditure is not debt financed, capital expenditure charges shall be based on actual expenditures. The County will make available documentation evidencing such expenditures.

**2. PREMIUM MAINTENANCE CHARGE.**

The premium maintenance charge for 2002 for Medical and Psychiatric Inmates is \$205.35 and may only be charged consistent with the conditions in Section 11.7 of the Agreement. For each calendar year thereafter, the premium maintenance charge will be increased by 5.8 percent.

**3. BOOKING FEE.**

The booking charge for 2002 is \$148.78. For each calendar year thereafter the booking charge will be increased by 5.8 percent.

## **EXHIBIT IV**

### **Population Alert and Reduction Plan**

This Population Alert and Reduction Plan (PARP) attempts to balance the needs of the local criminal justice system for adequate secure bed space and the County's ability to prevent excessive and unmanageable crowding conditions. Periodic reports (at least quarterly) will be provided by the County and the Cities to the Jail Agreement Administration Group established in the Agreement on PARP implementation efforts.

#### **I. Reduction Plan: Initial Steps**

It is the goal of King County and the Contract Cities to avoid reaching population levels that trigger population alerts. To this end the parties will examine current practices and to the extent available use population reduction strategies and alternatives to secure detention programs to reduce reliance on secure jail beds.

In addition, during 2002 and 2003 the following actions will be undertaken to prepare for the possibility of a mismatch between capacity and demand for secure jail beds.

1. Development and implementation of the notification system outlined below by November 15, 2002.
2. The Contract Cities will sign a contract to be effective no later than third quarter 2003 with Yakima County or another jurisdiction to achieve the population reduction schedule listed in Sections 11.3 and 11.4 of the Agreement.
3. King County Executive will make best efforts to obtain funding and implement community corrections pilot programs (Day Reporting and Work Crews) which are expected to reduce the utilization of secure capacity by 60 beds.
4. The County agrees to seek participation by the King County Prosecutor, Superior Court and District Court to develop a plan for reducing the use of secure beds. The goal would be to reduce the use of non-city secure beds based on seriousness of offense and risk to public safety, and/or risk of flight to avoid prosecution. The County agrees to make a good-faith effort to implement court approved plans for which funding has been approved.
5. The Contract Cities agree to seek participation by City prosecutors and courts to develop a plan incorporating the elements described below for reducing the use of secure beds. The goal would be to reduce the use of secure beds based on seriousness of offense and risk to public safety, and/or risk of flight to avoid prosecution. The City agrees to make a good-faith effort to implement court approved plans for which funding has been approved.
6. The JAG will discuss and provide advice on an implementation plan for all reduction plans.

#### **II. Definitions**

"Operational capacity" is the number of secure jail beds that can be operated by DAJD within annual adopted budget appropriation and within legal limitations including, but not limited to, limitations outlined in the *Hammer* settlement agreement and the Agreement with the Contract Cities. Vacancy rates at 5% for the Regional Justice Center and 2½% for the King County Correctional Facility will also be factored into operational capacity. In the event the County changes such vacancy rates, the County agrees to notify JAG.

### **III. County Population Alert Notifications**

The County will provide the Contract Cities with a Population Alert Notification covering three categories: total population, Medical Inmates, and Psychiatric Inmates (PAN-TMP), and a Population Alert Notification for City Inmates (PAN-CI)

#### **A. Timing**

The PAN-TMP will be updated daily.

The PAN-CI will be updated monthly with a lag time of two weeks until such time as the County is able to provide more frequent notice to the Contract Cities.

#### **B. Format**

The County will develop a format for the PAN-TMP and PAN-CI that has an easily understood visual element. A visual "meter" type notice graphic will be developed that will be sent to Contract Cities by automated e-mail and/or appear on the County's web site.

#### **C. Contents**

1) The PAN-TMP will provide a snap shot of short-term secure bed population status by the following status groups:

Total secure population  
Medical Inmates  
Psychiatric Inmates

The PAN-TMP will have three levels.

**Alert Level I/Yellow** - Greater than or equal to 95 percent operational capacity by category at the daily official count.

**Alert Level II/Orange** - The jail population is between 95 percent and 100 percent of operational capacity and has maintained that level for three consecutive days.

**Alert Level III/Red** - The jail population exceeds total operational capacity.

The PAN-TMP will contain a "notes" section where the County can inform the cities of events that may affect jail population.

2) The PAN-CI will be a count of the number of City Inmates.

### **V. Other General Notification Requirements**

Notice or information will be provided to the other party through the County or cities representative on the JAG as soon as it is available as follows:

- ISP -- County
  - Transmittal of project budget to the King County Council
  - Council approval of funding
  - Project schedule
  - Bid notice
  - Notice to proceed
  - Construction schedule and inmate transfer schedule
- Status of contracting for secure jail beds in other jurisdictions - Cities
  - ⊖ Signature of contracts
  - Financing approval
  - Bid notice
  - Notice to proceed
  - Construction schedule
  - Prisoner transfer schedule
- Alternatives to Secure Detention Programs – County
  - The County will provide to the JAG a description of all alternative programs to secure detention (including program capacity) either directly operated by the County or operated by another entity under contract.
  - Notice of plans to initiate or expand alternatives and notice that plans have been implemented, including program capacity.
  - Copies of program placement criteria and operating protocols, including any agreements with courts.
- Alternatives to secure detention programs – Cities
  - The City will provide to the JAG a description of all alternative programs to secure detention (including program capacity) either directly operated by the City or operated by another entity under contract.
  - Notice of plans to initiate or expand alternatives and notice that plans have been implemented, including program capacity.
  - Copies of program placement criteria and operating protocols, including any agreements with courts.

## EXHIBIT V

## COMPARISON OF ESTIMATED KING COUNTY JAIL BED DEMAND AND SUPPLY 2002 TO 2005

Year		Jail and Alternatives Misdemeanant Space Demand				King County Supply Scenarios				
		Cities Beds	State/Co Misd Beds	Felony Beds	Total Beds	Types of Beds	Status Quo	Close NRF & ISP	Close NRF only	ISP only
2000	Pre Sentence	227				Secure Beds	2973			
	Post Sentence	492				NRF Beds	291			
	Total	719	296			Work Release	191			
						Total	3455			
2002	Projected	477	300	2009	2786	Secure Beds	2973	2973	2973	2973
					0	NRF Beds	191	0	0	191
						Addn'l Alternatives	60	60	60	60
						Work Release	190	190	190	190
						Total	3414	3223	3223	3414
2003	Projected		320	2094	2414	Secure Beds	2973	2430	2782	2621
	Maximum	380			380	NRF Beds	191	0	0	191
						Addn'l Alternatives	60	60	60	60
						Work Release	190	190	190	190
						Total	3414	2680	3032	3062
2004	Projected		340	2191	2531	Secure Beds	2973	2430	2782	2621
	Maximum	250			250	NRF Beds	191	0	0	191
						Addn'l Alternatives	60	60	60	60
						Work Release	190	190	190	190
						Total	3414	2680	3032	3062
Mid 2005+	Projected		350	2270	2620	Secure Beds	2973	2973	2973	2973
	Maximum	220				NRF Beds	0	0	0	0
						Addn'l Alternatives	60	60	60	60
2012+	Maximum	0				Work Release	190	190	190	190
						Total	3223	3223	3223	3223

**NOTES:**

- |  |  |  |  |
|--|--|--|--|
| 1) Assumes a 3% growth rate per year for felony bed demand   |  |  |  |
| 2) Assumes no impact from DWLS diversion programs by District Court  |  |  |  |
| 3) Assumes cities will reduce jail bed use by Dec 31 of year unless noted.   |  |  |  |
| 4) Assumes cities are able to occupy 530 beds in Yakima County and/or Benton County Jail by December 2003  |  |  |  |
| 5) The County is pursuing policies to reduce the use of secure beds beginning in 2002 that are not reflected in these numbers. Also, capacity restrictions could begin as soon as 2003 depending on County policy decisions. |  |  |  |
| 6) The number of secure beds listed include double bunking the RJC up to 65% (492 beds). Utilization Of these beds requires that funding be sought and approved by the County Council.                                       |  |  |  |
| 7) Assumes ISP begins 3rd Qtr. 2003.   |  |  |  |
| 8) Assumes additional alternative beds available 4 <sup>th</sup> Qtr of 2002.  |  |  |  |
| 9) Fifteen days per quarter there is a peak at 5% over average.  |  |  |  |

**EXHIBIT VI**  
**Land Transfer Agreement**

**Intergovernmental Land Transfer Agreement Between  
King County and the City of Bellevue**

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
<b>SUBJECT:</b>  <b>Resolution No. 09-621, authorizing the Mayor to execute a contract with King County Community and Human Services Department for the Morgan Street Sidewalk project</b>	<b>Agenda Date: August 6, 2009</b>		<b>AB09-094</b>
	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	
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Cost Impact: \$363,600 Revenue	Court – Kaaren Woods		
Fund Source: Revenue for Morgan Street Sidewalk Project			
Timeline: Completion by May 2010			
<b>Attachments: Resolution No. 09-621, Contract</b>			
<b>SUMMARY STATEMENT:</b>  <p>This Community Development Block Grant is Federal funds that will be administered by King County Community and Human Services/Housing and Community Development. Page 7 of 8 of the Exhibit II provides most of the specifics of our project and the rest of the contract is mostly boiler plate language required by King County.</p> <p>The City originally applied for \$580,000 for the phase II project and later reduced the request to \$363,600 to have a better chance of getting funded. Currently the budget is proposed as follows:</p> <p>CDBG Grant.....\$363,600  Transportation Improvement Board.....\$170,000  Black Diamond in kind match.....\$46,400  <b>Total .....\$580,000</b></p>			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b> Briefly reviewed by Councilmembers Bowie and Hanson.			
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 09-621, authorizing the Mayor to execute the attached King County Housing and Community Development Contract for the administration oversight of a \$363,600 Community Development Block Grant for Phase II of the Morgan Street Sidewalk Project.</b>			
<b>RECORD OF COUNCIL ACTION</b>			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
August 6, 2009			

**RESOLUTION NO. 09-621**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON  
AUTHORIZING A GRANT AGREEMENT WITH KING  
COUNTY COMMUNITY AND HUMAN SERVICE  
DEPARTMENT FOR MORGAN STREET SIDEWALK**

**WHEREAS**, the City applied for and was awarded a \$363,600 Community Development Block Grant; and

**WHEREAS**, King County has been established as the agency to administer the Community Development Block Grant program; and

**WHEREAS**, the Morgan Street Sidewalk is on the City's Capital Improvement Plan;

**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 grant agreement with King County Housing and Community Development for the administration and oversight of the \$363,600 Community Development Block Grant for the Morgan Street Sidewalk Project as attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 6TH DAY OF AUGUST, 2009.**

CITY OF BLACK DIAMOND:

\_\_\_\_\_  
Howard Botts, Mayor

Attest:

\_\_\_\_\_  
Brenda L. Martinez, City Clerk



# Capital Improvement Program 2008 - 2013

**Project for the** **Street** **Department** **# T6**

## PROJECT TITLE

## Morgan Street Sidewalk Extension Phase II

### DESCRIPTION

Install Sidewalk, curb, gutter on the north side of Morgan Street from Abrams to Roberts Drive.

### BACKGROUND

The need for sidewalks along Morgan Street is increasing because pedestrian traffic is growing. The staff has applied for two grants and is suggesting that the City provide inspections and project management in house.

### COMMENTS

If the grants are not received this project should be put on hold. Over a long period of time the sidewalks could be installed as frontage improvements along with redevelopment along the corridor.

### CAPITAL PROJECT COSTS

	Total \$ Requested	2008	2009	2010	2011	2012	2013
Land/Right of Way							
Building Improvements							
Preliminary Engineering							
Construction Engineering	60,000		60,000				
Design Engineering	60,000		60,000				
Construction Costs	413,600			413,600			
Capital Outlay							
Other (Specify)							
<b>TOTAL COSTS</b>	<b>\$533,600</b>		<b>\$120,000</b>	<b>\$413,600</b>			

### REQUESTED FUNDING

	Total \$ Project	2008	2009	2010	2011	2012	2013
Grants	533,600		120,000	413,600			
Water Utility Fund							
Wastewater Utility Fund							
Stormwater Utility Fund							
Street Funds							
Impact Fees							
Real Estate Excise Tax 1							
Real Estate Excise Tax 2							
PW Trust Fund							
Other							
<b>TOTAL SOURCES</b>	<b>\$533,600</b>		<b>\$120,000</b>	<b>\$413,600</b>			

### NON CAPITAL OPERATING COSTS

	Total \$ Requested	2008	2009	2010	2011	2012	2013
Salaries, Benefits and Other							
Debt Repayment							
<b>TOTAL OPERATING</b>							

King County Contract No. D38804D  
Federal Taxpayer ID No. 91-6016204

Department/Division: Community and Human Services/Housing and Community Development

Agency: City of Black Diamond

Project Title: Black Diamond Morgan Street Sidewalk Phase II

Contract Amount: \$363,600

Fund Code: 2460

Contract Start Date: June 1, 2009

Contract End Date: May 31, 2010

Termination Date (where applicable): \_\_\_\_\_

### **KING COUNTY HOUSING AND COMMUNITY DEVELOPMENT CONTRACT— 2009**

THIS CONTRACT is entered into by KING COUNTY, a political subdivision of the State of Washington (the "County"), and City of Black Diamond, (the "Agency"), whose address is PO Box 599, Black Diamond, WA, 98288. This Agency is a Municipal corporation.

WHEREAS, the County is an Urban County recipient of Community Development Block Grant Program (CDBG) funds under the Housing and Community Development Act of 1974, Public Law 93-383 as amended (the "HCD Act"); HOME Investment Partnership Program (HOME) funds under the National Affordable Housing Act of 1990 Public Law 101-625 as amended (the "NAHA"). The County allocates Housing Opportunity Funds (HOF), Regional Affordable Housing Program (RAHP) funds, and Homeless Housing and Services Funds (2163), Veterans and Human Service Levy funds and Mental Illness and Drug Dependency (MIDD) funds to low-income housing development capital and/or service projects and Current Expense ("CX") funds to housing and community development projects in accordance with adopted County ordinances. The County uses CDBG, HOME, HOF, RAHP, Veterans and Human Services Levy funds and/or CX funds for the purpose of carrying out eligible community development and housing activities under the HCD Act, the NAHA, regulations promulgated by the U.S. Department of Housing and Urban Development (HUD) at 24 Code of Federal Regulations (CFR) Part 570, 24 CFR Part 92, 24 CFR Part 576, and adopted County Ordinances. (All CFR references can be found at <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>. All King County code references can be found at [http://www.kingcounty.gov/council/legislation/kc\\_code.aspx](http://www.kingcounty.gov/council/legislation/kc_code.aspx));

WHEREAS, an Urban County CDBG Consortium has been established by CDBG interlocal cooperation agreements ("CDBG ICAs") or joint agreements between the County and certain municipal corporations (Consortium Cities) within the County covering program years 2009-2011. The CDBG ICAs specify allocation of CDBG funds by the County to those participating jurisdictions for use in accordance with the County Consolidated Housing and Community Development Plan ("HCD Plan"). The HCD Plan has been adopted by the King County Council, accepted by participating jurisdictions and approved by HUD;

**This form is available in alternate formats upon  
request for persons with disabilities.**

RECEIVED  
JUL 28 2009

BY: ---2009 Contract-----

WHEREAS, a HOME Consortium has been established by HOME ICAs between the County and certain HOME Consortium Cities covering 2009-2011, the terms of which specify allocation of HOME funds by the County for use in accordance with the HCD Plan which has been adopted by the King County Council, accepted by participating jurisdictions and approved by HUD;

WHEREAS, the County desires to award certain funds to the Agency for use as described in this Contract and as authorized by County ordinance, for the purpose of implementing eligible activities as applicable under the HCD Act, the NAHA, HUD regulations, State laws and/or adopted County ordinances;

WHEREAS, it is appropriate and mutually desirable that the Agency be designated by the County to undertake such eligible activities, so long as the requirements of the HCD Act, NAHA, HUD Regulations, State law and County ordinances are adhered to, as provided for herein;

WHEREAS, the purpose of this Contract is to provide for cooperation between the County and the Agency, as the parties in this Contract, in implementing such eligible activities under the laws and regulations that pertain to the funds awarded in this Contract;

WHEREAS, the parties are authorized and empowered to enter into this Contract by one or more of the following: County ordinance, the HCD Act, the NAHA, Revised Code of Washington (RCW) Chapter 39.34, RCW Chapter 35.21.730 et seq., by the Constitution and the enabling laws of the State of Washington;

NOW, THEREFORE, for and in consideration of payments, covenants, and agreements hereinafter mentioned, to be made and performed by the parties hereto, the parties mutually covenant and agree to abide by the provisions of this Contract.

**KING COUNTY:**

**CITY OF BLACK DIAMOND:**

FOR

\_\_\_\_\_  
King County Executive

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
NAME (Please type or print)

\_\_\_\_\_  
Date

Approved by DCHS Director

Approved as to Form: December 19, 2008

OFFICE OF THE KING COUNTY  
PROSECUTING ATTORNEY

## INDEX TO CONTRACT

<ul style="list-style-type: none"> <li>I. Scope of Contract and Incorporation of Exhibits</li> <li>II. Duration of Contract</li> <li>III. Term of Compliance for Capital Projects</li> <li>IV. Compensation and Method of Payment</li> <li>V. Budget</li> <li>VI. Internal Control and Accounting System</li> <li>VII. Maintenance of Records</li> <li>VIII. Audits</li> <li>IX. Evaluations and Inspections</li> <li>X. Property Management</li> <li>XI. Taxes and Licenses</li> <li>XII. Procedure in the Event of Casualty/Condemnation</li> <li>XIII. Corrective Action</li> <li>XIV. Assignment</li> <li>XV. Termination</li> <li>XVI. Future Support</li> <li>XVII. Hold Harmless and Indemnification</li> <li>XVIII. Insurance Requirements</li> <li>XIX. Nondiscrimination and Equal Employment Opportunity</li> <li>XX. Affirmative Marketing</li> <li>XXI. Nondiscrimination in Subcontracting Practices</li> <li>XXII. Section 504 and Americans with Disabilities Act</li> <li>XXIII. Accessibility</li> <li>XXIV. Subcontracts and Purchases</li> <li>XXV. Labor Standards</li> <li>XXVI. Employment Opportunities on Assisted Construction Projects</li> </ul>	<ul style="list-style-type: none"> <li>XXVII. Conflict of Interest</li> <li>XXVIII. No Benefit to Owners and Developers of Assisted Housing</li> <li>XXIX. Political Activity Prohibited</li> <li>XXX. Board of Directors</li> <li>XXXI. Equipment Purchase, Maintenance, and Ownership</li> <li>XXXII. Notices</li> <li>XXXIII. Proprietary Rights</li> <li>XXXIV. Contract Amendments</li> <li>XXXV. King County Recycled Product Procurement Policy</li> <li>XXXVI. Entire Contract/Waiver of Default</li> <li>XXXVII. Services Provided in Accordance with Law and Rule and Regulation</li> <li>XXXVIII. Supplanting</li> <li>XXXIX. Drug-Free Workplace Certification and Other Federal Requirements</li> <li>XL. Constitutional Prohibition</li> <li>XLI. Confidentiality</li> <li>XLII. Compliance with Health Insurance Portability Accountability Act of 1996 (HIPAA)</li> <li>XLIII. Promissory Note, Deed of Trust and Covenant</li> <li>XLIV. Anti-Displacement and Relocation Assistance</li> <li>XLV. Miscellaneous Provisions</li> <li>XLVI. Emergency Response</li> <li>XLVII. Personal Information – Notice of Security Breach</li> </ul>
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### EXHIBITS ATTACHED HERETO

I.	Certificate of Insurance			
II.	Black Diamond Morgan Street Sidewalk Phase II	D38804D	\$363,600	CDBG

## I. SCOPE OF CONTRACT AND INCORPORATION OF EXHIBITS

### A. Scope

The Contract between the parties shall consist of the signature page, each Program/Project Exhibit incorporated into the Contract, all matters and laws incorporated by reference herein, and any written amendments made in accordance with the provisions contained herein. The exhibits attached to this Contract as Exhibits I through II are hereby incorporated by this reference. This Contract supersedes any and all former agreements regarding projects described in the attached Project/Program Exhibit(s). If there is a conflict between any of the language contained in this Contract and any of the language contained in any Project/Program Exhibit in this Contract, the language in this Contract shall control, unless the parties affirmatively agree to the contrary in a writing that has been reviewed and approved by the King County Prosecuting Attorney's Office. This Contract shall govern both:

1. Service Projects (human service, planning, program administration and micro-enterprise or supportive services for the homeless); and
2. Capital Projects (acquisition, improvement, and rehabilitation of real property and construction or reconstruction of public infrastructure).

The two types of activities may be included in one Contract as separate Project/Program Exhibit(s) of Services.

### B. Mandatory Certifications

The Agency certifies that it shall comply with the provisions of Sections XIX, XXII, XXVII and XXIX of this Contract. If the Agency is a municipal corporation (other than King County), or agency of the State of Washington, King County Code (KCC) chapters 12.16, 12.17 and 12.18 do not apply to the Agency, but would apply to any subcontractor of the Agency.

### C. Contact Person

King County and the Agency shall each designate a contact person for each Project/Program Exhibit incorporated in this Contract. All correspondence, reports and invoices shall be directed to the designated contact person. This provision does not, however, supplant or override Section XXXII Notices.

### D. Federal Funds

The term "federal funds" as used herein means CDBG funds and/or HOME funds. The specific types of funds provided under this Contract are specified in the attached Project/Program Exhibit(s).

### E. Environmental Review

This section applies to all projects using federal funds that are not exempt under 24 CFR Part 58. Notwithstanding any provision of this contract, the parties hereto agree and acknowledge that this contract does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt of a release of funds from HUD under 24 CFR Part 58. The parties further agree that the provision of any funds

to the project is conditioned upon King County's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review. The agency shall not spend any funds on physical or choice-limiting actions, including property acquisition, demolition, movement, rehabilitation, conversion, repair or construction prior to the environmental clearance. Violation of this provision shall result in the denial of any funds under this contract.

Capital Projects using federal funds shall also comply with subsections F, G, H and I.

F. Environmental Policy Act

The County retains environmental review responsibility for purposes of fulfilling requirements of the National Environmental Policy Act as implemented by HUD Environmental Review Procedures (24 CFR Part 58) and the Federal laws and authorities identified therein. The Agency shall be solely responsible for the cost of compliance with all such Federal laws and authorities including the cost of preparing plans, studies, reports and the publication of notices that may be required. The Agency and its contractors shall not take any actions inconsistent with 24 CFR Part 58.

G. National Flood Insurance

The use of CDBG and HOME funds for acquisition or construction purposes in identified special flood hazard areas shall be subject to Agency mandatory purchase of flood insurance as required by Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub L. 93-237).

H. Lead Based Paint

The Agency shall comply with the Lead-Based Paint Poisoning Prevention Act (42 United States Code (USC) 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 USC 4851-4856), and implementing regulations at 24 CFR Part 35, subparts A, B, J, K, and R. Generally, these laws prohibit the use of lead-based paint (whenever funds under this Contract are used directly or indirectly for construction, rehabilitation, or modernization of residential structures); require elimination of immediate lead-based paint hazards in residential structures; and require notification of the hazards of lead-based paint poisoning to purchasers and tenants of residential structures constructed prior to 1978.

I. Environmental Justice

The Agency shall comply with Presidential Executive Order 12898 requiring identification and mitigation, as appropriate, of disproportionately high and adverse human health or environmental impacts of programs, policies and activities on minority and/or low-income populations.

II. **DURATION OF CONTRACT**

The terms of this Contract shall be in effect from the Start Date (as defined in the Project/Program Exhibit(s)) or the date of execution of this Contract, whichever is earlier, and shall terminate on the Termination Date specified in each Project/Program Exhibit, unless extended to a later date or terminated earlier, pursuant to the terms and conditions of the Contract.

### III. TERM OF COMPLIANCE FOR CAPITAL PROJECTS

The Agency shall own and operate the project during the Compliance Period as defined in the Program/Project Exhibit.

### IV. COMPENSATION AND METHOD OF PAYMENT

The County shall reimburse the Agency only for the approved activities specified in each Project/Program Exhibit and the reimbursement amount shall not exceed the amount specified in each Project/Program Exhibit. Reimbursements will be payable in the following manner.

#### A. Start Date and End Date

Start Dates and End Dates for individual projects shall be specified in each Project/Program Exhibit. Costs incurred before the Start Date will not be reimbursed. Costs incurred after the End Date will not be reimbursed.

#### B. Submission of Invoices, Supporting Documentation and Reports

The Agency shall submit an invoice, supporting documentation for costs claimed in the invoice and all reports as specified in each Project/Program Exhibit or the County may not process the invoice. Supporting documentation for costs claimed in the invoice includes, but is not limited to, purchase orders and bills. The County shall initiate authorization for payment to the Agency not more than 30 days following the County's approval of a complete and correct invoice, supporting documentation and reports.

#### C. Final Invoice for Service Projects

The Agency shall submit its final invoice for each Project/Program Exhibit providing funding for Service Projects within seven business days after the End Date. The Agency shall submit all outstanding reports for each Project/Program Exhibit providing funding for Service Projects within 30 business days after the End Date.

If the Agency's final invoices, supporting documentation, and reports are not submitted by the last date specified in this subsection, the County shall be relieved of all liability for payment to the Agency of the amounts set forth in said invoice or any subsequent invoice; provided, however, the County may elect to pay any invoice that is not submitted in a timely manner.

#### D. Final Invoice for Capital Projects

Unless provided otherwise in the Project/Program Exhibit(s), the Agency shall submit its final invoice, supporting documentation, and all outstanding reports for each Project/Program Exhibit providing funding for Capital Projects before the End Date specified in the Project/Program Exhibit(s).

If the Agency's final invoices, supporting documentation, and reports are not submitted by the date specified in this subsection, the County shall be relieved of all liability for payment to the Agency of the amounts set forth in said invoice or any subsequent invoice; provided, however, the County may elect to pay any invoice that is not submitted in a timely manner.

E. Unspent County Funds

1. After the End Date specified in each Project/Program Exhibit, for individual projects covered by this Contract, the County shall recapture any unexpended funds encumbered under this contract.
2. During the term of the contract, the County may, upon agreement with the Agency, recapture any unexpended funds for reallocation to other Project/Program activities.

Projects using federal funds shall also comply with the following subsections F, G, H and I.

F. Municipal Corporations or State Public Agencies

If the Agency is a municipal corporation or an agency of the State of Washington, costs for which the Agency requests reimbursement shall comply with the policies, guidelines, and requirements of the Office of Management and Budget (OMB) Circular No. A-87, "Cost Principles For State, Local and Indian Tribal Governments" and the sections of 24 CFR Part 85 "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments" identified at 24 CFR § 570.502(a) Applicability of Uniform Administrative Requirements, unless otherwise provided in the Project/Program Exhibit(s).

G. Not-for-profit Corporations

If the Agency is a not-for-profit corporation, costs for which the Agency requests reimbursement shall comply with, unless otherwise provided in the Project/Program Exhibit(s), the policies, guidelines and requirements of OMB Circular No. A-122, "Cost Principles for Non-Profit Organizations," and the sections of 24 CFR Part 84, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, identified at 24 CFR § 570.502 (b), Applicability of Uniform Administrative Requirements.

H. Excess Federal Funds

CDBG and/or HOME funds on hand shall not exceed \$5,000 if retained beyond three days unless written approval is received from the County. Any reimbursement in excess of the amount required shall be promptly returned to the County.

I. Program Income

The Agency shall report all CDBG and HOME Program Income, as defined in 24 CFR §§ 92.2, 92.503 and 570.504(c) and in the ICAs, generated under this Contract for the purposes specified herein or generated through the project(s) funded under this Contract. Program Income is to be reported to the County. Program income shall be returned to the County unless the County specifies that it may be retained by the Agency. If the County authorizes the Agency to retain the Program Income to continue or benefit a project(s), the Agency shall comply with all provisions of this Contract in expending the funds. This duty to repay the County shall not be diminished or extinguished by the prior termination of the Contract pursuant to Section II or Section XV.

**V. BUDGET**

The Agency shall apply the funds received from the County under this Contract in accordance with each Project/Program Exhibit including a line item budget, if applicable, set forth in each Project/Program Exhibit. The Agency shall request in writing prior approval from the County to revise the line item budget when the cumulative amount of transfers from a line item in any Project/Program Exhibit is expected to exceed ten percent of that line item. Supporting documents are necessary to fully explain the nature and purpose of the revision, and must accompany each request. All budget revision requests in excess of ten percent of a line item amount shall be reviewed and approved or denied by the County in writing.

**VI. INTERNAL CONTROL AND ACCOUNTING SYSTEM**

The Agency shall establish and maintain a system of accounting and internal controls that comply with applicable, generally accepted accounting principles, financial and governmental reporting standards as prescribed by the appropriate accounting standards board.

**VII. MAINTENANCE OF RECORDS**

**A. Scope of Records**

The Agency shall maintain accounts and records, including personnel, property, financial, and programmatic records and other such records specified in each Project/Program Exhibit or otherwise deemed necessary by the County to ensure proper accounting for all Contract funds and compliance with this Contract.

**B. Time for Retention of Records**

Records required to be maintained in subsection A above shall be maintained for a period of six years after the termination date, unless a different period for records retention is specified in the Project/Program Exhibit.

**C. Location of Records/Notice to County**

The Agency shall inform the County in writing of the location, if different from the Agency address listed on page one of this Contract, of the aforesaid books, records, documents, and other evidence and shall notify the County in writing of any changes in location within ten working days of any such relocation.

Projects using federal funds shall also comply with subsections D, E, F, G, H, I, J, K and L.

**D. Federal Exceptions to Retention Requirements**

Exceptions to the six year retention period are as follows: (1) Records that are the subject of audit findings, litigation, or claims shall be retained until such findings, litigation or claims have been resolved; and (2) The retention period for real property and equipment records starts from the date of the disposition, replacement or transfer at the direction of the County.

E. Financial Management Records

Financial records shall identify adequately the source and application of funds for activities within this Contract, in accordance with the provisions of 24 CFR § 85.20 and the OMB Circular A-87 for governmental agencies, 24 CFR § 84.21 and OMB Circular A-122 for Nonprofit Corporations. These records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays and income.

F. Tenant Notification and Relocation Records

If the Agency is acquiring property with existing tenants, Agency record keeping for tenant notification and relocation must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (The "Uniform Relocation Act"), and regulations at 49 CFR Part 24. Indication of the overall status of the relocation workload and a separate relocation record for each person, business, organization and farm operation displaced or in the relocation workload must be kept.

G. Acquisition Records

If the Agency is using funds under this Contract for property acquisition, the Agency must maintain a separate acquisition file for each acquisition process documenting compliance with Uniform Relocation Act regulations at 49 CFR Part 24, including a notice of voluntary sale.

H. Beneficiary Records

The Agency agrees to maintain racial, ethnic, disability status, single head of household, household income, and gender data showing the extent to which these categories of persons have participated in, or benefited from, the activities carried out under this Contract if required in a Project/Program Exhibit.

I. Labor Standards

If the Agency is using funds under this Contract for construction work, the Agency shall maintain records documenting compliance by all construction contractors with the labor standards as required under 24 CFR § 570.603 for CDBG funds and 24 CFR § 92.354 for HOME funds.

J. Other Construction Records

The Agency and all of its contractors shall maintain records and information necessary to document the level of utilization of state certified small, minority, and women-owned businesses, and other businesses as subcontractors and suppliers under this Contract. The Agency shall also maintain all written quotes, bids, estimates or proposals submitted by the contractor and any and all businesses seeking to participate in this Contract. The Agency shall make such documents available to the County for inspection and copying upon request.

K. Employment Records

If the Agency is a municipal corporation or an agency of the State of Washington, it agrees to maintain the following data for each of the Agency's operating units funded in whole or in part with CDBG funds provided under this Contract:

1. Employment data with such data maintained in the categories prescribed on the Equal Employment Opportunity Commission's EEO-4 form; and
2. Documentation of any actions undertaken to assure equal employment opportunities to all persons regardless of race, color, national origin, sex or handicap.

L. Records Regarding Remedy of Past Discrimination

The Agency shall maintain documentation of the affirmative action measures the Agency has taken to overcome prior discrimination if a court or HUD has found that the Agency has previously discriminated against persons on the grounds of race, color, national origin or sex in administering a program or activity funded in whole or in part with CDBG funds pursuant to 24 CFR Part 121.

**VIII. AUDITS**

A. Not-for-Profit Corporations

1. The Agency shall provide to the County a copy of its IRS Form 990 (Return of Organization Exempt from Tax) when requested.
2. The Agency shall have an independent audit conducted of its financial statement(s) and condition, which shall comply with the requirements of generally accepted auditing standards; Government Accountability Office Standards for Audits of Governmental Organizations, Programs, Activities, and Functions; and OMB Circulars A-21, A-87, A-102, A-122 and A-133 as amended and as applicable. The County in its sole discretion may waive some or all of these requirements upon the written request of the agency. The Agency shall provide to the County a copy of the audit report including any management letter or official correspondence submitted by the auditor, its response and corrective action plan for all findings and reportable conditions contained in its audit. These documents shall be submitted not later than six months subsequent to the end of the Agency's fiscal year.

B. Municipal Corporations

If the Agency is a municipal corporation in the state of Washington, it shall submit to the County a copy of its annual report of examination/audit, conducted by the Washington State Auditor, within 30 days of receipt, which submittal shall constitute compliance with Section VIII.

C. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) number for the CDBG Program is 14.218. The CFDA number for the HOME Program is 14.239. Additional federal and/or state audit or review requirements may be imposed on the County, and the Agency shall be required to comply with any such requirements.

**IX. EVALUATIONS AND INSPECTIONS**

A. Right of Access to Facilities for Inspection of Records

The Agency shall provide right of access to its facilities, including those of any subcontractor, to the County, the state, and/or federal agencies or officials at all

reasonable times in order to monitor and evaluate the activities funded under this Contract. The County shall give advance notice to the Agency in the case of fiscal audits to be conducted by the County.

B. Time for Inspection and Retention

The records and documents with respect to all matters covered by this Contract shall be subject at all times to inspection, review, or audit by the County and/or federal/state officials so authorized by law during the performance of this Contract and six years after the termination date, unless a different period is specified in the Project/Program Exhibit or a longer retention period is required by law.

C. Agreement to Cooperate

The Agency agrees to cooperate with the County or its agent in the evaluation of the Agency's performance under this Contract and to make available all information reasonably required by any such evaluation process. The results and records of said evaluations shall be maintained and disclosed in accordance with RCW Chapter 42.17.

**X. PROPERTY MANAGEMENT FOR CAPITAL PROJECTS**

The Agency shall engage in sound property and program management practices and at all times operate and maintain the Premises in a manner which fully complies with all applicable federal, state, and local laws, statutes, rules and regulations covering health and safety issues in order to provide decent, safe and sanitary housing, as now in effect or as may be hereafter amended. The Agency specifically agrees to comply and pay all costs associated with achieving such compliance without any notice of requirement or requirements from the County, and that the County does not waive this section by giving notice of demand for compliance in any instance.

The Agency shall throughout the term of this Contract, without cost or expense to the County, keep and maintain the Premises and all improvements, landscaping, fixtures and equipment which may now or hereafter exist thereon, in a neat, clean and sanitary condition, and shall, except for reasonable wear and tear, at all times preserve the Premises in good and safe repair.

If, after 30 days notice from the County, the Agency fails to maintain or repair any part of the Premises or any improvement, landscaping, fixtures or equipment thereon, the County may, but shall not be obligated to, enter upon Premises and perform such maintenance or repair and the Agency agrees to pay the costs thereof to the County upon receipt of a written demand.

**XI. TAXES AND LICENSES**

The Agency shall pay throughout the term of this Contract, all applicable taxes, and all licenses and excise fees covering the ownership and operations of the Premises.

**XII. PROCEDURE IN THE EVENT OF CASUALTY/CONDEMNATION FOR CAPITAL PROJECTS**

- A. In the event that all or any portion of the Premises is taken or conveyed as a result of any condemnation proceeding or damaged as a result of any casualty, the County and the Agency agree that the proceeds of any condemnation or casualty affecting the Premises shall be made available for the repair or restoration of the real property if the County and the Agency in their reasonable judgment agree that:

1. Repair or restoration of the real property is feasible and that sufficient funds are available to complete such work;
  2. After the completion of work, the real property can be feasibly operated within the restrictions and requirements of the Project/Program Exhibit; and
  3. More than two years remain after the completion of the work until the end of this Contract.
- B. The County and the Agency shall meet as necessary to discuss in good faith the rebuilding or repair of the real property and reach a decision with respect thereto within 60 days after the occurrence of the casualty or condemnation. If the parties cannot in good faith agree to repair or restore the real property as provided above, then any proceeds of the casualty or condemnation, within 60 days of demand, shall be paid first to satisfy the County's lien. The balance of the proceeds shall be paid to the Agency.

### **XIII. CORRECTIVE ACTION**

#### **A. Default by Agency**

If the County determines that a breach of contract has occurred because the Agency failed to comply with any material terms or conditions of this Contract or the Agency has failed to provide in any manner the work or services agreed to in any Project/Program Exhibit attached hereto, and if the County deems said breach to warrant corrective action, the following sequential procedure shall apply.

1. The County shall notify the Agency in writing of the nature of the breach.
2. The Agency shall submit a plan describing the specific steps being taken to correct the specified deficiencies (the "corrective action plan"). The corrective action plan shall be submitted to the County within ten business days from the Agency's receipt of the County's notice under this Section. The corrective action plan shall specify the proposed completion date for bringing the Contract into compliance, which completion date shall not be more than 30 days from the date the County receives the Agency's corrective action plan, unless the County, in its sole discretion, specifies in writing an extension in the number of days to complete the corrective actions.
3. The County shall notify the Agency, in writing of the County's determination as to the sufficiency of the Plan. The County shall have sole discretion in determining the sufficiency of the Agency's corrective action plan.

#### **B. Termination of Contract**

In the event that the Agency does not respond within the appropriate time with a corrective action plan, or the Agency's corrective action plan is determined by the County to be insufficient, the County may commence termination of this Contract in whole or in part pursuant to Section XV.B.

#### **C. County Withholding of Payment**

In addition, the County may withhold any payment owed the Agency or prohibit the Agency from incurring additional obligations of funds until the County is satisfied that corrective action has been taken or completed.

D. No Waiver of Other Remedies

Nothing herein shall be deemed to affect or waive any rights the parties may have pursuant to Section XV or other remedies authorized by law.

**XIV. ASSIGNMENT**

The Agency shall not assign, transfer or subcontract any portion of this Contract or transfer or assign any claim arising pursuant to this Contract without the prior written consent of the County. Additional terms for County consent to such assignment, transfer or subcontract may be described in a Project/Program Exhibit. Said consent must be sought in writing by the Agency not less than 15 business days prior to the date of any proposed assignment, transfer or subcontract. The Agency shall deliver to the County with its request for consent, such information regarding the proposed assignee, transferee or subcontractee, including its proposed mission, legal status, and financial and management capabilities as is reasonably available to the Agency. Within 15 days after such request for consent, King County may reasonably request additional available information on the proposed assignee, subcontractee or transferee. If the County shall give its consent, this Section shall nevertheless continue in full force and effect. Any assignment, transfer or subcontract without prior County consent shall be void.

**XV. TERMINATION**

A. Termination for Convenience

1. This Contract may be terminated by the County without cause, in whole or in part, prior to the termination date specified in the Project/Program Exhibit, by providing the Agency 30 days advance written notice of the termination.
2. In addition to the foregoing, if expected or actual funding is withdrawn, reduced, or limited in any way prior to the termination date set forth in the Project/Program Exhibit, the County may, upon written notification to the Agency, terminate this Contract in whole or in part.
3. If the Contract is terminated as provided above:
  - a. The County shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination; and
  - b. The Agency shall be released from any obligation to provide such further services pursuant to the Contract as are affected by the termination.

B. Termination for Cause

1. The County may terminate this Contract, in whole or in part, upon seven days advance written notice to the Agency in the event:
  - a. The Agency materially breaches any duty, obligation, or service required pursuant to this Contract and such breach has not been cured by a corrective action plan acceptable to the County; or
  - b. The duties, obligations, or services required herein become impossible, illegal or not feasible.

2. If the County terminates the Contract pursuant to this section, the Agency shall be liable for damages, including any additional costs of procurement of similar services from another source.
3. If the termination results from acts or omissions of the Agency, including but not limited to misappropriation, nonperformance of required services, or fiscal mismanagement, the Agency shall return to the County immediately any funds, misappropriated or unexpended, which have been paid to the Agency by the County.
4. If County or other expected or actual funding is withdrawn, reduced, or limited in any way prior to the termination date set forth above in Section II, the County may, upon written notification to the Agency, terminate this Contract in whole or in part.
5. If the Contract is terminated as provided in this Subsection:
  - a. The County shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination; and
  - b. The Agency shall be released from any obligation to provide such further services pursuant to the Contract as are affected by the termination.
6. Funding or obligation under this Contract beyond the current appropriation year is conditional upon appropriation by the County Council of sufficient funds to support the activities described in the Contract. Should such appropriation not be approved, this Contract shall terminate at the close of the current appropriation year.

C. Waiver

Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Contract at law or in equity that either party may have in the event that the obligations, terms and conditions set forth in this Contract are breached by the other party.

**XVI. FUTURE SUPPORT**

The County makes no commitment to support the services contracted for herein and assumes no obligation for future support of the activity contracted herein except as expressly set forth in this Contract.

**XVII. HOLD HARMLESS AND INDEMNIFICATION**

A. Agency is an Independent Contractor

In providing services under this Contract, the Agency is an Independent contractor and neither it, nor its officers, agents or employees, are employees of the County for any purpose. The Agency shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law.

The County assumes no responsibility for the payment of any compensation, wages, benefits or taxes by, or on behalf of, the Agency, its employees, and/or others by

reason of this Contract. The Agency shall protect, indemnify, and hold harmless the County, its officers, agents and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from:

1. The Agency's failure to pay any such compensation, wages, benefits or taxes; and/or
2. The supplying to the Agency of work, services, materials or supplies by Agency employees or other suppliers in connection with or support of the performance of this Contract.

B. Agency Agreement to Repay

The Agency further agrees that it is financially responsible for and shall repay the County all indicated amounts following an audit exception that occurs due to the negligence, intentional act, and/or failure, for any reason, to comply with the terms of this Contract by the Agency, its officers, employees, agents, and/or representatives. This duty to repay the County shall not be diminished or extinguished by the prior termination of the Contract pursuant to the Duration of Contract or the Termination Sections.

C. Agency Indemnification of County

1. The Agency shall protect, defend, indemnify and hold harmless the County, their officers, employees and agents from any and all costs, claims, judgments and/or awards of damages, arising out of, or in any way resulting from, the negligent acts or omissions of the Agency, its officers, employees, contractors, subcontractors and/or agents, in its performance and/or non-performance of its obligations under this contract. The Agency agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the Agency, by mutual negotiation, hereby waives, as respects to the County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of RCW, Title 51. In the event the County incurs any judgment, award and/or cost arising there from including attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the Agency. To the extent that an Agency subcontractor fails to satisfy its obligation to defend and indemnify King County, as detailed in Section XXIV, the Agency shall protect, defend, indemnify and hold harmless King County, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards or damages arising out of, or in any way resulting from the negligent act or omissions of the Agency's contractor/subcontractor, its officers, employees, and/or agents in connection with or in support of this Contract.
2. Claims shall include, but not be limited to, assertions that use or transfer of software, book, document, report, film, tape, or sound reproduction, or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name and/or otherwise results in unfair trade practice.
3. The Agency agrees not to perform any acts that include use or transfer of software, book, document, report, film, tape, or sound reproduction, or material of any kind, delivered hereunder, that constitutes an infringement of any copyright, patent, trademark, trade name and/or otherwise results in unfair trade practice.

The Agency agrees to indemnify the County for any harm resulting from unfair trade practices.

4. The provisions in this section shall survive the termination and/or duration of the contract term.
5. Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Contract.

#### **XVIII. INSURANCE REQUIREMENTS—GENERAL**

##### **A. Insurance Required**

By the date of execution of this Contract, the Agency shall procure and maintain for the duration of this Contract, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of work hereunder by the Agency, its agents, representatives, employees and/or contractor/subcontractors. The Agency or contractor/subcontractor shall pay the costs of such insurance. The Agency shall furnish separate certificates of insurance and policy endorsements from each contractor/subcontractor as evidence of compliance with the insurance requirements of this Contract.

The Agency is responsible for ensuring compliance with all of the insurance requirements stated herein. Failure by the Agency, its agents, employees, officers, contractor/subcontractors, providers and/or provider subcontractors to comply with the insurance requirements stated herein shall constitute a material breach of this Contract.

Each insurance policy shall be written on an "occurrence" form; except that insurance on a "claims made" form may be acceptable with prior County approval. If coverage is approved and purchased on a "claims made" basis, the Agency warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of Contract termination, and/or conversion from a "claims made" form to an "occurrence" coverage form.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded by said policies, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained in this provision shall affect and/or alter the application of any other provision contained within this Contract.

##### **B. Risk Assessment by Agency**

By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Agency under this Contract, nor shall such minimum limits be construed to limit the limits available under any insurance coverage obtained by the Agency. The Agency shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

##### **C. Minimum Scope of Insurance. Coverage shall be at least as broad as the following:**

###### **1. General Liability**

Insurance Services Office form number (CG 00 01) covering **COMMERCIAL GENERAL LIABILITY**.

2. Professional Liability, Errors and Omissions Coverage

In the event that services delivered pursuant to this Contract either directly or indirectly involve or require professional services, Professional Liability, Errors and Omissions coverage shall be provided. "Professional Services", for the purpose of this Contract section, shall mean any services provided by a licensed professional or those services that require a professional standard of care.

3. Automobile Liability

Insurance Services Office form number (CA 00 01) covering **BUSINESS AUTO COVERAGE**, symbol 1 "any auto"; or the appropriate coverage provided by symbols 2, 7, 8, or 9.

4. Workers' Compensation

Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable federal or "Other States" state law.

5. Stop Gap/Employers Liability

Coverage shall be at least as broad as the protection provided by the Workers' Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.

6. Property Insurance

Insurance Services Office form number (CP 00 10) covering **BUILDING AND PERSONAL PROPERTY COVERAGE** and Insurance Services Office form number (CP 10 30) **CAUSES OF LOSS – SPECIAL FORM** or project appropriate equivalent.

7. National Flood Insurance

The use of CDBG and HOME funds for acquisition or construction purposes in identified special flood hazard areas shall be subject to Agency mandatory purchase of flood insurance as required by Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub L. 93-237).

8. Builder's Risk/Installation Floater

The Contractor shall procure and maintain during the life of the Contract, or until acceptance of the project by King County, whichever is longer, "All Risk" Builders Risk Insurance at least as broad as ISO form number CP0020 (Builders Risk Coverage Form) with ISO form number CP0030 (Causes of Loss—Special Form) including coverage for collapse, theft and property in transit. The coverage shall insure for direct physical loss to property of the entire construction project, for one hundred percent of the replacement value thereof. The policy shall be endorsed to cover the interests, as they may appear, of King County, Owner, Contractor and subcontractors of all tiers with King County listed as a loss payee.

D. Minimum Limits of Insurance—Capital Projects

The Agency shall maintain limits no less than the following:

1. Commercial General Liability: \$1,000,000 combined single limit per occurrence by bodily injury, personal injury, and property damage; and for those policies with aggregate limits, a \$2,000,000 aggregate limit.
2. Professional Liability, Errors, and Omissions: \$1,000,000, Per Claim and in the Aggregate.
3. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage if the use of motor vehicles is contemplated.
4. Workers' Compensation: Statutory requirements of the state of residency.
5. Stop Gap /Employers Liability: \$1,000,000.
6. Property Insurance: One hundred percent replacement value of funded structure.

E. Minimum Limits of Insurance—Building Construction Period

Prior to commencement of building construction and until construction is complete and approved by the Agency, the Agency shall cause the construction contractor and related professionals to procure and maintain insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the activities related to this Contract. The Agency and County shall be named as additional insureds on liability policies except Workers Compensation and Professional Liability, and as Named Insureds on Builders Risk policies. The cost of such insurance shall be paid by the Agency and/or any of the Agency's contractors/ subcontractors. The Agency shall maintain limits no less than the following:

1. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage and \$2,000,000 in the aggregate.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Professional Liability, Errors & Omissions: \$1,000,000, Per Claim and in the Aggregate.
4. Builder's Risk Insurance: One hundred percent replacement cost value.
5. Workers Compensation: Statutory requirements of the State of residency.
6. Stop Gap or Employers Liability Coverage: \$1,000,000.

F. Minimum Limits of Insurance—Services Agreements: The Agency shall maintain limits no less than the following:

1. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage and \$2,000,000 in the aggregate.

2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Professional Liability, Errors & Omissions: \$1,000,000, Per Claim and in the Aggregate.
4. Workers Compensation: Statutory requirements of the State of Residency.
5. Stop Gap or Employers Liability Coverage: \$1,000,000.

Paragraphs G, H, I, J, K and L below apply to Capital Projects, Construction Projects and Services Contracts.

#### G. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not apply to the Agency's liability to the County and shall be the sole responsibility of the Agency.

#### H. Other Insurance Provisions

The insurance policies required in this Contract are to contain, or be endorsed to contain, the following provisions:

1. All Liability Policies except Professional and Workers Compensation.
  - a. The County, its officers, officials, employees, and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Agency/Contractor in connection with this Contract. Such coverage shall include Products-Completed Operations.
  - b. To the extent of the Agency's/Contractor's negligence, the Agency's/Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees, or agents shall not contribute with the Agency's insurance or benefit the Agency in any way.
  - c. The Agency's insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
2. Property Coverage Policies
  - a. The County shall be added to all Property Coverage Policies as a loss payee as its interests may appear.
  - b. The County shall be added as a Named Insured as their interests may appear to all Builders Risk policies.
3. All Policies

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after 45 days prior written notice has been given to the County.

I. Acceptability of Insurers

Unless otherwise approved by the County, insurance is to be placed with insurers with a Bests' rating of no less than A: VIII, or, if not rated with Bests, with minimum surpluses the equivalent of Bests' surplus size VIII.

Professional Liability, Errors, and Omissions insurance may be placed with insurers with a Bests' rating of B+VII. Any exception must be approved by the County.

If, at any time, the foregoing policies shall fail to meet the above requirements, the Agency shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with appropriate certificates and endorsements, for approval.

J. Verification of Coverage

The Agency shall furnish the County with certificates of insurance and endorsements required by this Contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by the County prior to the commencement of activities associated with the Contract. The County reserves the right to require complete, certified copies of all required insurance policies at any time.

K. Subcontractors

The Agency shall include all subcontractors as insureds under its policies or shall require separate certificates of insurance and policy endorsements from each subcontractor. If the Agency is relying on the insurance coverages provided by subcontractors as evidence of compliance with the insurance requirements of this Contract, then such requirements and documentation shall be subject to all of the requirements stated herein.

L. Municipal or State Agency Provisions

If the Agency is a municipal corporation or an agency of the state of Washington and is self-insured for any of the above insurance requirements, a certification of self-insurance shall be provided for the self-insured requirements and attached hereto and be incorporated by reference and shall constitute compliance with this Section. If the certificate of self-insurance does not cover all mandatory requirements, the Agency shall provide separate certificates and endorsements that document coverage.

**XIX. NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY**

A. Equal Benefits to Employees with Domestic Partners)

Pursuant to Ordinance 14823, King County's "Equal Benefits" (EB) ordinance, and related administrative rules adopted by the County Executive, as a condition of award of a contract valued at \$25,000 or more, non-public Contractors agree not to discriminate in the provision of employee benefits between an employee with a spouse, an employee with a domestic partner or an employee who resides with a legally domiciled member of household during the performance of this Contract. Failure to comply with this provision shall be considered a material breach of this Contract, and may subject the Contractor to administrative sanctions and remedies for breach.

When the contract is valued at \$25,000 or more, the Contractor shall complete a Worksheet and Declaration form for County review and acceptance prior to Contract execution. The EB Compliance forms, Ordinance 14823 (which is codified at KCC Chapter 12.19), and related administrative rules are incorporated herein by reference. They are also available online at:  
<http://www.kingcounty.gov/operations/procurement/Services.aspx>

B. Nondiscrimination in Employment Provision of Services

During the performance of this Contract, neither the Agency nor any party subcontracting under the authority of this Contract shall discriminate or tolerate harassment on the basis of race, color, sex, religion, national origin, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits under this Contract. King County Code Chapters 12.16 and 12.17 are incorporated herein by reference, and to the extent applicable such requirements shall apply to this Contract.

C. Nondiscrimination in Subcontracting Practices

During the solicitation, award and term of this Contract, the Agency shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Agency shall not discriminate against any person on the basis of race, color, religion, sex, age, national origin, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

D. Compliance with Laws and Regulations

The Agency shall comply fully with all applicable federal, state and local laws, ordinances, Presidential Executive Orders and regulations that prohibit discrimination to the extent applicable. These laws include, but are not limited to, KCC Chapter 12.17; RCW Chapter 49.60; Titles VI and VII of the Civil Rights Act of 1964, 42 USC 2000(a) et seq.; the Americans with Disabilities Act, 42 USC 12101 et seq.; and the Restoration Act of 1987. The Agency shall further comply fully with any affirmative action requirements set forth in any federal regulations, statutes or rules included or referenced in the contract documents.

E. Small Business and Minority and Women Business Enterprise Opportunities

King County encourages the Agency to utilize small businesses, including Minority-owned and Women-owned Business Enterprises ("M/WBEs") in County contracts. The County encourages the Agency to use the following voluntary practices to promote open competitive opportunities for small businesses, including M/WBEs.

1. Attending a pre-bid or pre-solicitation conference, if scheduled by the County, to provide project information and to inform small businesses and other firms of contracting and subcontracting opportunities.

2. Placing all qualified small businesses, attempting to do business in King County, including M/WBEs, on solicitation lists, and providing written notice of subcontracting opportunities to these firms capable of performing the work, including without limitation all businesses on any list provided by the County, in sufficient time to allow such businesses to respond to the written solicitations.
3. Breaking down total requirements into smaller tasks or quantities, where economically feasible, in order to permit maximum participation by small businesses, including M/WBEs.
4. Establishing delivery schedules, where the requirements of this Contract permit, that encourages participation by small businesses, including M/WBEs.
5. Providing small businesses, including M/WBEs that express interest with adequate and timely information about plans, specifications and requirements of the Contract.
6. Using the services of available community organizations, contractor groups, local assistance offices, the County, and other organizations that provide assistance in the recruitment and placement of small businesses, including M/WBEs.
7. The Washington State Office of Minority and Women's Business Enterprises (OMWBE) can provide a list of certified M/WBEs. Contact OMWBE office at 360-866-208-1064 or on-line through the web site at <http://www.omwbe.wa.gov/>.

F. Equal Employment Opportunity

The Agency shall implement and carry out the obligations in its Affidavit and Certificate of Compliance regarding equal employment opportunity, and all other requirements as set forth in the Affidavit and Certificate of Compliance.

G. Fair Employment Practices

1. King County Code Chapter 12.18 is incorporated by reference as if fully set forth herein and, to the extent applicable, such requirements apply to this Contract. In particular, these requirements specify that during the performance of this Contract, neither the Agency nor any party subcontracting under the authority of this Contract shall engage in unfair employment practices. It is an unfair employment practice for any:
  - a. Employer or labor organization to discriminate against any person with respect to referral, hiring, tenure, promotion, terms, conditions, wages or other privileges of employment;
  - b. Employment agency or labor organization to discriminate against any person with respect to membership rights and privileges, admission to or participation in any guidance program, apprenticeship training program, or other occupational training program;
  - c. Employer, employment agency, or labor organization to print, circulate, or cause to be printed, published or circulated, any statement, advertisement, or publication relating to employment or membership, or to use any form of application therefore, which indicates any discrimination unless based upon a bona fide occupation qualification;

- d. Employment agency to discriminate against any person with respect to any reference for employment or assignment to a particular job classification;
- e. Employer, employment agency or a labor organization to retaliate against any person because that person has opposed any practice forbidden by KCC Chapter 12.18 or because that person has made a charge, testified or assisted in any manner in any investigation, proceeding or hearing initiated under the provisions of KCC Chapter 12.18;
- f. publisher, firm, corporation, organization or association printing, publishing or circulating any newspaper, magazine or other written publication to print or cause to be printed or circulated any advertisement with knowledge that the same is in violation of KCC 12.18.030(C), or to segregate and separately designate advertisements as applying only to men or women unless such discrimination is reasonably necessary to the normal operation of the particular business, enterprise or employment, unless based upon a bona fide occupational qualification;
- g. Employer to prohibit any person from speaking in a language other than English in the workplace unless:
  - i. The employer can show that requiring that employees speak English at certain times is justified by business necessity; and
  - ii. The employer informs employees of the requirement and the consequences of violating the rule.
- 2. If the Agency engages in unfair employment practices as defined above, remedies as set forth in KCC Chapter 12.18 may be applied, in addition to those remedies specified in the Contract or otherwise available at law or equity.

#### H. Record-Keeping Requirements and Site Visits

The Agency shall maintain, for at least six years after completion of all work under this Contract, the following:

- 1. Records of employment, employment advertisements, application forms, and other pertinent data, records and information related to employment, applications for employment or the administration or delivery of services or any other benefits under this Contract; and
- 2. Records, including written quotes, bids, estimates or proposals submitted to the Agency by all businesses seeking to participate on this Contract, and any other information necessary to document the actual use of and payments to subcontractors and suppliers in this Contract, including employment records.

The County may visit, at any time, the site of the work and the Agency's office to review the foregoing records. The Agency shall provide every assistance requested by the County during such visits. In all other respects, the Agency shall make the foregoing records available to the County for inspection and copying upon request. If this Contract involves federal funds, the Agency shall comply with all record keeping requirements set forth in any federal rules, regulations or statutes included or referenced in the contract documents.

I. Sanctions for Violations

Any violation of the mandatory requirements of the provisions of this Section shall be a material breach of contract for which the Agency may be subject to damages, withholding payment and any other sanctions provided for by the Contract and by applicable law.

J. Reporting

Unless the Agency is a public entity, the following applies:

1. The Agency entering into a contract or agreement with King County valued at \$25,000 or more shall submit with this Contract a Personnel Inventory Report providing employment data for minorities, females and persons with disabilities.

Subject to the provisions of KCC 12.16.060, the Agency's Personnel Inventory Report shall be effective for two years after the date on which the report was submitted.

2. The Agency entering into a contract with King County valued at more than \$25,000, or contracts that in the aggregate have a value to the Agency of more than \$25,000 should submit an Affidavit of Compliance in the form provided by the County, demonstrating commitment to comply with the provisions of KCC Chapter 12.16 in accordance with paragraph B of this Section XIX.

The Agency shall complete the Affidavit of Compliance provided by the County and attach the original, notarized, completed form to this Contract. Subject to the provisions of KCC 12.16.060, the Agency's Affidavit of Compliance shall be effective for two years after the date on which the report was submitted.

K. Fair Housing Protections

The Agency shall comply with the federal Fair Housing Act, Public Law 90-284 (42 USC 3601 et seq.). The Agency shall take necessary and appropriate actions to prevent discrimination in any housing-related project under this Contract, which includes rental housing projects and/or projects that include residential real estate-related transactions, as required by the Federal Fair Housing Act as amended (42 USC 3601) and the Washington State Law Against Discrimination (RCW Chapter 49.60). Residential real estate-related transactions include the making or purchasing of loans or the provision of financial assistance secured by real estate, or the making or purchasing of loans or financial assistance for the purchasing, constructing, improving, repairing or maintaining of a dwelling. Rental housing includes any dwelling that is intended for occupancy as a residence for one or more families by lease, sublease or by grant for a consideration of the right to occupy Premises not owned by the occupant. In addition, except for projects located in incorporated jurisdictions, the Agency shall comply with the applicable provisions of the King County Open Housing Ordinance, codified at Chapter 12.20 of the King County Code, which prohibits practices of housing discrimination against any person on the basis of age, ancestry, color, disability, marital status, national origin, parental status, possession of Section 8 housing assistance, race, religion, retaliation, sex, and sexual orientation.

Projects using federal funds shall also comply with subsections L, M, and N below.

L. Additional Federal Nondiscrimination Requirements

The Agency shall comply with all applicable federal laws prohibiting discrimination, including the following:

1. Presidential Executive Order 11063 as amended and implementing regulations at 24 CFR Part 107;
2. Section 109 of the HCD Act of 1974, as amended (42 USC 5301);
3. The Americans with Disabilities Act (42 USC 1213; 47 USC 155, 201, 218 and 225); and
4. Section 504 of the Rehabilitation Act of 1973 and regulations at 24 CFR Part 8.

M. Prohibited Discriminatory Actions

1. Except where expressly authorized by federal law, the Agency may not, under any program or activity to which this Contract applies, directly or through contractual or other arrangements, discriminate on the grounds of age, color, creed, familial status, marital status, nationality, religion, race, sex, sexual orientation, or the presence of any, physical, mental or sensory disability. Discriminatory actions may include but are not limited to the following:
  - a. Denying any person access to facilities, services, financial aid or other benefits provided under the program or activity;
  - b. Denying any person services due to limited English proficiency;
  - c. Providing any person with facilities, services, financial aid or other benefits, which are different, or are provided in a different form from that provided to others under the program or activity;
  - d. Subjecting any person to segregated or separate treatment in any facility or in any matter or process related to receipt of any service or benefit under the program or activity;
  - e. Restricting in any way access to or in the enjoyment of any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity;
  - f. Treating any person differently from others in determining whether the person satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any facilities, services or other benefit provided under the program or activity;
  - g. Denying any person any opportunity to participate in a program or activity as an employee; and
  - h. Failing to design and construct facilities for first occupancy after January 26, 1993 that are readily accessible to and usable by individuals with disabilities and failure to remove architectural and communication barriers that are structural in nature in existing facilities, where such removal can be accomplished without difficulty and expense.

2. The Agency shall not utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination on the basis of age, color, familial status, nationality, race, religion, sex, or sexual orientation; or mental, physical, or sensory disability; or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular age, color, familial status, nationality, race, religion, sex, or sexual orientation; or the presence of any mental, physical, or sensory disability.
3. The Agency, in determining the site or location of housing or facilities provided in whole or in part with funds under this Contract, may not make selections of such site or location which have the effect of excluding individuals, denying them benefits, or subjecting them to discrimination on the grounds of age, sex, marital status, familial status, religion, race, creed, color, sexual orientation, nationality, or the presence of any sensory, mental or physical disability; or which have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the HCD Act or of the HUD Regulations.

N. Employment Projections

In all solicitations under this Contract, the Agency shall state that all qualified applicants will be considered for employment. The words "equal opportunity employer" in advertisements shall constitute compliance with this Section.

O. No Conflict with Federal Requirements.

As indicated by HUD Notice CPD 04-10, a faith-based organization's exemption from the federal prohibition on employment discrimination on the basis of religion, set forth in 42 USC 2000e-1(a), is not forfeited when the organization receives HUD funding. Faith-based organizations, like any other entity participating in a HUD-funded program, must, however, comply with all the statutory requirements of that particular HUD-funded program. Both the CDBG and HOME Programs contain statutory provisions imposing non-discrimination requirements on all subrecipients, subgrantees or contractors. Religious organizations that believe that certain non-discrimination statutory requirements are substantially burdensome may be entitled to protection under the Religious Freedom Restoration Act [42 USC 4000bb-3, 4000bb-2(1)] which applies to all federal law and its implementation. Subrecipients, subgrantees, or contractors should be aware that anti-discrimination provisions of Section 109 of the Housing and Community Development Act of 1974, Section 282 of the HOME Investment partnership Act may pose questions of conformance with Title VII of the Civil Rights Act of 1964 and future court rulings could define more specifically the application of these laws to faith-based organizations. In the event that a provision of this Contract is deemed to be in actual conflict with federal law, the conflicting provision in this Contract shall not apply.

**XX. AFFIRMATIVE MARKETING**

A. Federal Marketing Requirements

Each Agency must adopt affirmative marketing procedures and requirements for projects containing five or more housing units funded with CDBG and/or HOME funds. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons from all racial, ethnic, and gender groups in the housing market area to the available housing. (The affirmative marketing procedures do not apply to

families with housing assistance provided by the Public Housing Authority or families with tenant based rental assistance provided with HOME funds.) The County shall annually assess the Agency's affirmative marketing program to determine the success of affirmative marketing actions and any necessary corrective actions.

B. The affirmative marketing requirements and procedures adopted must include:

1. Methods for informing the public, owners, and potential tenants about federal fair housing laws and the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups;
2. Requirements and practices the Agency must adhere to in order to carry out the participating jurisdiction's affirmative marketing procedures and requirement (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster);
3. Procedures to be used by the Agency to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing without special outreach (e.g., use of community organizations, language interpreters, places of worship, employment centers, fair housing groups, or housing counseling agencies);
4. Records must be kept describing actions taken by the Agency to affirmatively market units and records to assess the result of these actions; and
5. A description of how the Agency shall assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

**XXI. NONDISCRIMINATION IN SUBCONTRACTING PRACTICES**

Projects using federal funds shall comply with the following requirements:

A. Federal Requirements

In soliciting subcontractors to supply goods or services for the activities under this Contract, the Agency shall comply with 24 CFR § 85.36(e) as amended if the Agency is a municipal corporation or an agency of the State of Washington, and 24 CFR § 84.44(b)(1)-(5) if the Agency is a nonprofit corporation. In accordance with these regulations, the Agency shall take all necessary affirmative steps to assure M/WBEs and labor surplus area firms are used as subcontractors when possible. Affirmative steps shall include those actions specified above in this Section of the Contract.

B. Nondiscrimination in Federally Assisted Construction

The Agency shall also require compliance with Presidential Executive Order 11246 as amended and 41 CFR Part 60 regarding nondiscrimination in bid conditions for construction projects over \$10,000.

**XXII. SECTION 504 AND AMERICANS WITH DISABILITIES ACT (ADA)**

The Agency has completed a 504/ADA Self-Evaluation Questionnaire for all programs and services offered by the Agency (including any services not subject to this Contract) and has evaluated its services, programs and employment practices for compliance with Section

504 of the Rehabilitation Act of 1973, 29 USC 701 et seq.; and the ADA, 42 USC 12101 et seq. The Agency has completed a 504/ADA Assurance of Compliance. Such Assurance of Compliance is attached to this Contract and is incorporated herein by this reference.

**XXIII. ACCESSIBILITY FOR CAPITAL PROJECTS**

Any buildings or other facilities designed, constructed, or altered with federal funds pursuant to this Contract are subject to the requirements of the Architectural Barriers Act of 1968 (42 USC 4151 - 4157) and shall comply with the Uniform Federal Accessibility Standards (Appendix A to 24 CFR Part 40 for residential structures, and Appendix A to 41 CFR Parts 101-19 and subpart 101-19.6 for general type building). When applicable, certain multi-family housing units designed and constructed for first occupancy after March 13, 1991, with assistance provided under this Contract must comply with the Fair Housing Accessibility Guidelines, 24 CFR Part 100 as amended.

**XXIV. SUBCONTRACTS AND PURCHASES**

**A. Subcontract Defined**

"Subcontract" shall mean any agreement between the Agency and a subcontractor or between subcontractors that is based on this Contract, provided that the term "subcontract" does not include the purchase of (1) support services not related to the subject matter of this Contract, or (2) supplies.

**B. Writing Required**

Any work or services assigned or subcontracted hereunder shall be in writing and must be approved by the County as provided in Section XIV. The Agency agrees that it is as fully responsible to the County for the acts and omissions of its subcontractors and their employees and agents, as it is for the acts and omissions of its own employees and agents, as defined in Section XVII.C.

**C. Required Contract Terms**

The Agency shall include the applicable provisions of Sections XVIII, XIX.A-G, XXI and XXII in every subcontract or purchase order for goods or services which are paid for in whole or in part with funds provided under this Contract. The Agency agrees to include the following language verbatim in every subcontract, provider agreement, or purchase agreement for services, which relate to the subject matter of this Contract:

"Subcontractor shall protect, defend, indemnify, and hold harmless King County, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages arising out of, or in any way resulting from the negligent act or omissions of subcontractor, its officers, employee, and/or agents in connection with or in support of this Contract. Subcontractor expressly agrees and understands that King County is a third party beneficiary to this Contract and shall have the right to bring an action against subcontractor to enforce the provisions of this paragraph."

Projects using federal funds must also comply with subsections D, E, F, G and H.

**D. Debarred Contractors**

The Agency shall not make any award at any time to any contractor, which is debarred, suspended or excluded, from participation in federal assistance programs under Presidential Executive Order 12549, "Debarment and Suspension".

E. Subcontracting Requirements

An Agency which receives federal funds under this Contract also shall include the following Sections in every subcontract or purchase order for goods and services which are paid in whole or in part with funds provided under this Contract: Sections XVII.B, XVIII.J, XIX.H-I, and XXVII.B; and, if the subcontract is for construction, Sections XXV and XXVI.

F. Federal Procurement Requirements

If the Agency is a municipal corporation or an agency of the State of Washington, it agrees to comply with procurement requirements specified in 24 CFR § 85.36(b) through (g). If the Agency is a nonprofit corporation, it agrees to comply with procurement requirements specified in 24 CFR §§ 84.40 through 84.48 or as otherwise provided in the Project/Program Exhibit. The regulations at 24 CFR § 85.36 (b) through (g) and 24 CFR §§ 84.40 through 84.48, require that all goods and services, irrespective of cost, be procured using a competitive process.

G. Federal Bid Guarantee and Bond Requirements

If the Agency is subcontracting construction work under this Contract, the subcontract shall require for any construction contracts exceeding \$100,000:

1. A bid guarantee from each bidder equivalent to five percent of the bid price;
2. A performance bond from the contractor for one hundred percent of the contract price; and
3. A payment bond from the contractor for one hundred percent of the contract price. The Agency may, at its discretion, require any of these requirements on construction contracts of less than \$100,000. The specific requirements for bid guarantees and bonds are at 24 CFR § 84.48(c) for nonprofit corporations and 24 CFR § 85.36(h) for municipal corporations and agencies of the State of Washington.

H. Failure to Comply is Default

Failure by the Agency to require compliance with the above terms and conditions in subcontracts shall constitute a breach of this Contract.

**XXV. LABOR STANDARDS**

For projects using HOF, RAHP or Veterans and Human Services Levy funds or MIDD funds, Agencies shall comply with the following:

A. State Prevailing Wages

Unless projects have federal funds, all construction work must be paid at the state prevailing wage levels.

For projects using CDBG and/or HOME funds, Agencies shall comply with Subsections B and C.

B. Davis-Bacon Requirements

All construction work funded in whole or in part under this Contract must be performed in accordance with the Davis-Bacon Act, as amended (40 USC sections 276(a)-276(a)(5)), the Copeland "Anti-Kickback" Act, as amended (40 USC 276(c)) and the Contract Work Hours and Safety Standards Act (40 USC 327 et seq.) as further prescribed at 29 CFR Parts 1, 3, 5, 6 and 7.

For projects assisted with CDBG funds, this section shall not apply to construction or rehabilitation of residential property designed for residential use by fewer than eight units. For projects assisted with HOME funds, this Section shall not apply to rehabilitation of rental property consisting of less than 12 units. A copy of the current Davis-Bacon wages must be included in all construction bid specifications, contracts, and/or subcontracts over \$2,000.

C. Use of Volunteers

The Agency shall obtain the written approval of the County prior to allowing any volunteers to perform construction work on a project assisted under this Contract.

**XXVI. EMPLOYMENT OPPORTUNITIES ON ASSISTED CONSTRUCTION PROJECTS**

A. Section 3 Requirements

The work to be performed under this Contract may be subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u ("Section 3"). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. Section 3 Criteria for Capital Projects

As set forth in the HCD Plan, Section 3 regulations found at 24 CFR § 135.38 apply to all Project/Program Exhibits which meet all three of the following criteria:

1. The Project/Program Exhibit must include \$200,000 or more in total HUD funds from one or more program years;
2. The Project/Program Exhibit must include construction or rehabilitation work as a task that will be funded in full or in part with the HUD funds; and
3. The construction or rehabilitation work that will be funded must have a contract value, which exceeds \$100,000. Actual contract value of construction or rehabilitation work is the determining factor, not a cost estimate.

Additionally, Section 3 regulations are applicable to Project/Program Exhibit(s), which do not initially meet the above criteria but which are amended so as to add funds or change the activities for which the funds are used. Section 3 regulations do not apply to projects that include \$200,000 or more in HUD funds when the funds are being used for acquisition and/or professional services only and not for construction or rehabilitation work.

## **XXVII. CONFLICT OF INTEREST**

### **A. King County Code Chapter 3.04 Compliance.**

The Agency shall comply with the provisions of KCC Chapter 3.04. Failure to comply with any requirement of KCC Chapter 3.04 shall be a material breach of Contract and may result in termination of this Contract pursuant to Section XI and subject the Agency to remedies stated therein or otherwise available to the County at law or in equity. This section shall not apply to an Agency that is a municipal corporation which has adopted an employee code of ethics; provided that nothing in this section is intended to contract away such an Agency's obligation to comply with any KCC Chapter 3.04 provision that applies independent of this Contract.

### **B. No Preferential Treatment**

The Agency agrees that it will not attempt to secure preferential treatment in dealings with the County by offering any valuable consideration, thing of value, or gift, whether in the form of services, loan, thing, or promise, in any form, to any County official or employee. The Agency acknowledges that if it is found to have violated the prohibition found in this paragraph its current contracts with the County shall be cancelled and it shall not be able to bid on any County contract for a period of two years.

### **C. Current and Former County Employees**

The Agency acknowledges that, for one year after leaving County employment, a former County employee may not have a financial or beneficial interest in a contract or a grant that was planned, authorized or funded by a County action in which the former County employee participated during County employment. The Agency shall identify, at the time of offer, current or former County employees involved in the preparation of proposals or the anticipated performance of work if awarded the Contract. Failure to identify current or former County employees involved in the transaction may result in the County's denying or terminating the Contract. After Contract award, the Agency is responsible for notifying the County's project manager of current or former County employees who may become involved in the Contract any time during the term of the Contract.

All Projects using federal funds shall also comply with the following subsection:

### **D. No Conflict of Interest**

The agency agrees to abide by the provision of 24 CFR §§ 84.42 and 570.611, which include (but are not limited to) the following:

1. The Agency shall maintain a written code or standards of conduct that shall govern the performance of its officer, employees or agents engaged in the award and administration of contracts supported by Federal funds; and
2. No employee, officer or agent of the Agency shall participate in the selection or in the award, or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
3. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to

such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the County, the Agency or any designated public agency.

E. Copyright

If this contract results in any copyrightable material or inventions, the County reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

**XXVIII. NO BENEFIT TO OWNERS AND DEVELOPERS OF ASSISTED HOUSING**

No agency, developer or sponsor (or officer, employee, agent or consultant of the owner, developer or sponsor) whether private, for profit or nonprofit (including a Community Housing Development Organization when acting as an owner, developer or sponsor) may occupy a CDBG, HOME, HOF, RAHP, Veterans and Human Services Levy, MIDD or CX-assisted affordable housing unit in a project. This provision does not apply to an owner-occupant of single family housing or to an employee or agent of the owner or developer of a rental housing project who occupies a CDBG, HOME, HOF, RAHP, Veterans and Human Services Levy or CX-assisted unit as the project manager or maintenance worker.

**XXIX. POLITICAL ACTIVITY PROHIBITED**

A. No Partisan Activity

None of the funds, materials, property or services provided directly or indirectly under this Contract shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

All Projects using federal funds shall also comply with the following subsection:

B. Certification Regarding Lobbying

The Agency certifies, to the best of its knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Agency, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Agency shall complete and submit Standard

Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Agency shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 USC 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**XXX. BOARD OF DIRECTORS**

- A. If the Agency is incorporated, it must have an active, legally constituted board of directors in accordance with the requirements of RCW Chapters 23B or 24, to the extent applicable.
- B. The requirements of this Section that follow apply only to the agencies that qualify as non-profit organizations under USC, Title 26, Subtitle A, Chapter 1, Subchapter F, Part 1, Section 501(C)(3).
  - 1. The Agency shall have a Board of Directors that shall be comprised of neither employees nor relatives of employees, officers or directors of the Agency. For the purposes of this Section, a relative is defined as husband, wife, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, son, son-in-law, daughter, daughter-in-law, niece, nephew, grandparent, grandchild, uncle, aunt, domestic partner and child of domestic partner. In addition, the relatives of a domestic partner shall be considered relatives to the same extent such relatives would be included in this Section, as if the employee and domestic partner were married.
  - 2. The Board of Directors shall meet regularly.
  - 3. The Board of Directors shall cause to be adopted a formal conflict of interest policy for Board members that complies with the applicable provisions of the Internal Revenue Code and its 501(C)(3) status, and addresses issues regarding gifts, financial gain, and improper use of position.

**XXXI. EQUIPMENT PURCHASE, MAINTENANCE, AND OWNERSHIP**

**A. Equipment Purchase**

The Agency agrees that equipment purchased with Contract funds at a cost of \$5,000 per item or more and identified in an exhibit as reimbursable, is upon its purchase or receipt the property of the Agency, County, and/or federal, and/or state government, as specified in the exhibit.

**B. Maintenance of Equipment**

The Agency shall be responsible for all such equipment, including the proper care and maintenance.

C. Equipment Returned

The Agency shall ensure that all such equipment shall be returned to the appropriate government agency, whether federal, state or County, upon written request of the County.

D. Right of Access

The Agency shall admit the County's Property Management Officer to the Agency's premises for the purpose of marking such property with appropriate government property tags.

E. Maintenance of Records

The Agency shall establish and maintain inventory records and transaction documents (purchase requisitions, packing slips, invoices, receipts) of equipment purchased with Contract identified funds.

F. Disposition of Equipment

Projects using federal funds shall also comply with the following requirement. If the Agency ceases to use equipment purchased in whole or in part with CDBG funds for the purpose described in this Contract, or if the Agency wishes to dispose of such equipment, the disposition shall be determined under the provisions of 24 CFR § 570.502(b)(3)(vi), if the Agency is a nonprofit corporation and 24 CFR § 570.502(a) and 24 CFR § 85.32(e) if the Agency is a municipal corporation or an agency of the state of Washington. The Agency agrees that it will contact the County for instructions prior to disposing of, surplus, encumbering or transferring ownership, of any equipment purchased in whole or in part with federal funds.

**XXXII. NOTICES**

Whenever this Contract provides for notice to be provided by one party to another, such notice shall be in writing; and directed to the Chief Executive Officer of the Agency and the Director of the County Department of Community and Human Services. Any time within which a party must take some action shall be computed from the date that said party receives the notice.

**XXXIII. PROPRIETARY RIGHTS**

- A. The parties to this Contract hereby mutually agree that if any patentable or copyrightable material or article should result from the work described herein, all rights accruing from such material or article shall be the sole property of the Agency. The Agency agrees to and does hereby grant to the County, irrevocable, nonexclusive, and royalty-free license to use, according to law, any material or article and use any method that may be developed as part of the work under this Contract.
- B. The foregoing products license shall not apply to existing training materials, consulting aids, checklists, and other materials and documents of the Agency, which are modified for use in the performance of this Contract.
- C. The foregoing provisions of this section shall not apply to existing training materials, consulting aids, checklists, and other materials and documents of the Agency that are not modified for use in the performance of this Contract.

**XXXIV. CONTRACT AMENDMENTS**

Either party may request changes to this Contract. Proposed changes, which are mutually agreed upon, shall be incorporated by written amendments to this Contract. Budget revisions approved by the County pursuant to Section V are not required to be incorporated by written amendment.

**XXXV. KING COUNTY RECYCLED PRODUCT PROCUREMENT POLICY**

The Agency shall use recycled paper for the production of all printed and photocopied documents related to the fulfillment of this Contract and shall ensure that, whenever possible, the cover page of each document printed on recycled paper bears an imprint identifying it as recycled paper.

If the cost of recycled paper is more than 15 percent higher than the cost of non-recycled paper, the Agency may notify the County, which may waive the recycled paper requirement. The Agency shall use both sides of paper sheets for copying and printing and shall use recycled/recyclable products wherever practical at the fulfillment of this Contract.

**XXXVI. ENTIRE CONTRACT/WAIVER OF DEFAULT**

The parties agree that this Contract is the complete expression of the terms hereto and any oral or written representations or understandings not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of the provisions of this Contract. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Contract unless stated to be such through written approval by the County, which shall be attached to the original Contract.

**XXXVII. SERVICES PROVIDED IN ACCORDANCE WITH LAW AND RULE AND REGULATION**

The Agency and any subcontractor agree, when applicable, to abide by the terms of Chapters 26.44, 69.54, 70.02, 70.96A, 71.05, 71A.10, 71A.14, 71A.18, 71.20, 71.24, and 71.34 of the Revised Code of Washington, rules and regulations promulgated thereunder, the Basic Interagency Contract between the Department of Social and Health Services and King County, as amended, and regulations of the state and federal governments, as applicable, which control disposition of funds granted under this Contract, all of which are incorporated herein by reference.

**XXXVIII. SUPPLANTING**

Any federal CDBG or Homeless Housing and Services (2163) Funds made available under this Contract to provide public (human) services shall not be utilized by the Agency to reduce or replace the local financial support currently being provided to public (human) service programs. Homeless Housing and Services funds cannot be used in the place of existing housing operations or services funds.

**XXXIX. DRUG FREE WORKPLACE CERTIFICATION AND OTHER FEDERAL REQUIREMENTS**

**A. Drug-Free Workplace Certification**

The Agency certifies that it is in compliance with the Drug-Free Workplace Act of 1988 (42 USC 701) and regulations set forth at 24 CFR part 24, subpart F.

## B. Other Federal Requirements

The absence of mention in this Contract of any other federal requirements that apply to the award and/or expenditure of the federal funds made available by this Contract is not intended to indicate that those federal requirements are not applicable to Agency activities. The Agency shall comply with all other federal requirements relating to the expenditure of federal funds, including but not limited to, the Hatch Act (5 USC.

Chapter 15) regarding political activities.

## **XL. CONSTITUTIONAL PROHIBITION**

Funds Not Used for Religious Purposes. In accordance with the First Amendment of the United States Constitution, Article 1, Section 11 of the Washington State Constitution, and separation of church and state principles, as a general rule, funds received under this Contract may not be used for religious activities. Except where otherwise allowed by federal law, the following restrictions and limitations apply to the use of CDBG and HOME funds:

- A. An Agency may not engage in inherently religious activities, such as worship, religious instruction or proselytization, as part of the assistance funded under this Contract. If the Agency conducts religious activities, the activities must be offered separately, in time and location, from the assistance funded under this Contract, and participation must be voluntary for the beneficiaries of the assistance;
- B. In performing under this Contract, the Agency shall not discriminate a program beneficiary or prospective program beneficiary on the basis of religion or religious belief; and
- C. CDBG and HOME funds may be used to rehabilitate or construct facilities and housing owned by primarily religious organizations only to the extent those structures are used for conducting eligible activities consistent with 24 CFR § 570.200, 24 CFR § 92.257, and 24 CFR § 576.23.

## **XLI. CONFIDENTIALITY**

The Agency agrees that all information, records, and data collected in connection with this Contract shall be protected from unauthorized disclosure in accordance with applicable state and federal law.

## **XLII. COMPLIANCE WITH THE HEALTH INSURANCE PORTABILITY ACCOUNTABILITY ACT OF 1996 (HIPAA)**

Terms used in this Section shall have the same meaning as those terms in the Privacy Rule, 45 CFR Parts 160 and 164.

- A. Obligations and Activities of the Agency
  - 1. The Agency agrees not to use or disclose protected health information other than as permitted or required by law.
  - 2. Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the protected health information that it creates, receives, maintains or transmits on behalf of the covered entity as required by 45 CFR Part 164, Subpart C.

3. The Agency agrees to mitigate, to the extent practicable, any harmful effect that is known to the Agency of a use or disclosure of protected health information by the Agency in violation of the requirements of this Contract.
4. The Agency agrees to report in writing to King County any use or disclosure of protected health information not allowed under this contract, or security incident, within two days of the agency's knowledge of such event.
5. The Agency agrees to ensure that any agent, including a subcontractor, to whom it provides protected health information received from, or created or received by the Agency on behalf of King County, agrees to the same restrictions and conditions that apply through this Contract to the Agency with respect to such information.
6. The Agency agrees to make available protected health information in accordance with 45 CFR § 164.524.
7. The Agency agrees to make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR § 164.526.
8. The Agency agrees to make internal practices, books, and records, including policies and procedures and protected health information, relating to the use and disclosure of protected health information received from, or created or received by the Agency on behalf of King County, available to the Secretary, in a reasonable time and manner for purposes of the Secretary determining King County's compliance with the privacy rule.
9. The Agency agrees to make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528.

**B. Permitted Uses and Disclosures by Business Associate**

The Agency may use or disclose protected health information to perform functions, activities, or services for, or on behalf of, King County as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by King County or the minimum necessary policies and procedures of King County.

**C. Effect of Termination**

1. Except as provided in paragraph C.2 of this Section, upon termination of this Contract, for any reason, the Agency shall return or destroy all protected health information received from King County, or created or received by the Agency on behalf of King County. This provision shall apply to protected health information that is in the possession of subcontractors or agents of the Agency. The Agency shall retain no copies of the protected health information.
2. In the event the Agency determines that returning or destroying the protected health information is infeasible, the Agency shall provide to King County notification of the conditions that make return or destruction infeasible. Upon notification that return or destruction of protected health information is infeasible, the Agency shall extend the protections of the Contract to such protected health information and limit further uses and disclosure of such protected health information to those purposes that make the return or destruction infeasible, for so long as the Agency maintains such protected health information.

**XLIII. PROMISSORY NOTE, DEED OF TRUST AND COVENANT**

The Agency agrees that funding provided under this Contract for the acquisition, construction, improvement and/or rehabilitation of real property (Premises) owned by the Agency is a loan from the County to the Agency. The Agency agrees to promptly execute a promissory note, deed of trust and covenant (if applicable), in a format approved by the County, if required in a Project/Program Exhibit. The Agency agrees that for real property, which is leased by the Agency and assisted under this Contract, the Agency shall obtain a covenant from the owner of the real property in a form approved by the County, if required in any Project/Program Exhibit.

**XLIV. ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE FOR CAPITAL PROJECTS**

The Agency shall at all times comply with all applicable federal, state, and local laws, statutes, rules and regulations relating to relocation of those persons and households residing at the Premises prior to occupancy by tenants. The Agency shall be solely responsible for the cost of all relocation benefits required by law.

Capital Projects using federal funds shall also comply with the following subsection.

**A. Local Funds Only --- Local Relocation Guidelines**

Projects that include or will include only local county funds (HOF-CX, Veterans and Human Services Levy, RAHP, Mental Health, or HIPDD Developmental Disabilities Funds) for the acquisition, demolition, and or rehabilitation of property that has existing residential tenants who may be displaced shall provide relocation benefits to all displaced households. Effective October 1, 2005, the benefit amount for each displaced household will be \$2,462 per household; provided that, if the Joint Recommendations Committee (JRC) of the King County Consortium adjusts the benefit amount in accordance with King County Consortium Supplemental Relocation Guidelines based on changes in the consumer price index, the increased benefit amount shall apply. All tenants selected for relocation shall be given formal notification regarding the need to relocate with a minimum of ninety (90) days notice of the date they must relocate, along with information about why they were selected. Consideration of a longer notice period may be required if the tenant demonstrates a special circumstance (for instance, health reasons) which would be alleviated by extending the notice period. A list of all displaced households, including name, unit number, household size, ethnicity, and monthly gross income shall be provided to the King County Relocation Specialist along with documentation of all the payments made to displaced tenants. All relocation costs shall be included in the project development budget.

**B. Federal Acquisition and Relocation Requirements:**

Implementation of any project provided for in this Contract will be undertaken so as to minimize involuntary displacement of persons, businesses, nonprofit organizations, or farms to the greatest extent feasible.

The Agency shall comply with the following:

1. Any acquisition of real property by the agency for any activity assisted under this Contract shall comply with the Uniform Relocation Act and 49 CFR Part 24;

2. Any displacement of persons, businesses, nonprofit organizations, or farms occurring as the result of acquisition of real property assisted under this Contract shall comply with the Uniform Relocation Act, at 24 CFR Part 42 and 49 CFR Part 24 as amended, and the County's Residential Anti-displacement and Relocation Assistance Plan required by federal regulations at 24 CFR § 570.606(c), and adopted by the County Council as part of the HCD Plan. The Agency shall comply with the Regulations pertaining to costs of relocation and written policies, as specified by the King County Residential Anti-displacement and Relocation Assistance Plan; and
3. When any lower-income dwelling units are demolished or converted to a use other than a lower-income dwelling unit, in connection with an activity assisted under this Contract with federal funds, the units must be replaced on a one-for-one basis. Lower-income dwelling units are defined as a dwelling unit with a market rent (including utility costs) that does not exceed the applicable Fair Market Rent for existing housing as established by HUD and published annually, pursuant to 24 CFR Part 888. The Agency must comply with the one-for-one replacement of housing requirements of Section 104(d) of the HCD Act, as amended. The implementing regulations are found at 24 CFR Part 42, and for CDBG funds at 24 CFR § 570.606.

#### **XLV. MISCELLANEOUS PROVISIONS**

##### **A. Severability**

If any term or provision of this Contract or an application of any term or provision to any person or circumstance is invalid or unenforceable, the other terms or provisions of this Contract, or the application of the term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and will continue in full force.

##### **B. Cumulative Remedies**

No provision of this Contract precludes the County from pursuing any other remedies for the Agency's failure to perform its obligations.

##### **C. No Third Party Beneficiaries**

This Contract is for the benefit of the named parties only, and no third party shall have any rights hereunder.

#### **XLVI. EMERGENCY RESPONSE**

- A. The Agency shall prepare and submit within six months of the execution of the Contract the necessary plans, procedures and protocols to:
  1. Respond to and recover from a natural disaster or major disruption to agency operations such as a work stoppage; and
  2. Continue operations during a prolonged event such as a pandemic.
- B. The Agency shall conduct exercises or drills to test the effectiveness of its plans at least once a year and document the results of the exercise or drill.

- C. The Agency shall prepare plans in a format approved by the County. The explanation of the format will include the specific content of the agency's plans. The County will specify areas that must be addressed in the agency's plan.

Public entities shall notify the County if they have prepared an emergency management plan. This notification will constitute compliance with the intent of this section.

#### **XLVII. PERSONAL INFORMATION – NOTICE OF SECURITY BREACH**

- A. If the Agency maintains computerized or other forms of data that includes personal information owned by the County, the Agency shall notify the County of any breach of the security of the data immediately following discovery if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person in accordance with RCW 42.56.590 (2).
- B. The Agency shall provide all information requested by the County including the following in accordance with RCW 42.56.590, KCC 2.14.030, the King County Information Privacy Policy and any other applicable federal, state and local statute:
1. Circumstances associated with the breach;
  2. Actions taken by the Agency to respond to the breach ; and
  3. Steps the Agency shall take to prevent a similar occurrence.

This information shall be provided in a format requested by the County.

- C. The County may at its sole discretion, require the Agency to contact the appropriate law enforcement agency and to provide the County a copy of the report of the investigation conducted by the law enforcement agency. The Agency shall also provide the County with any information it has regarding the security breach.
- D. The Agency shall conspicuously display King County's Privacy Notice and provide a printed copy upon request.
- E. The Agency shall be responsible for notifying individuals whose personal information may have become available to unauthorized users through a security breach. The Agency shall also be responsible for any cost associated with notifying the affected individuals. This notification may be by written notice or electronic notice in accordance with RCW 42.56.590 (7).
- F. If the Agency demonstrates that the cost of providing notice would exceed \$250,000, or that the potentially affected persons exceeds 500,000, or the Agency does not have sufficient contact information, substitute notice shall consist of the following in accordance with RCW 42.56.590 (7), (c).
1. E-mail notice when the Agency has an e-mail address for the subject persons;
  2. Conspicuous posting of the notice on the Agency's web site page, if the Agency maintains one; and
  3. Notification to major County-wide media.
- G. For purpose of this section, "personal information" means the same as defined in RCW 42.56.590:

1. An individual's first name or first initial and last name in combination with any one of the following data elements, when either the name or the data elements are not encrypted: social security number; driver's license number or Washington identification card number; or
2. Account number or credit or debit card number, in combination with any required security code; access code, or password that would permit access to an individual's financial account.

# Cities Insurance Association of Washington

## CERTIFICATE OF INSURANCE

ISSUE DATE: 18-JUN-2009

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

PRODUCER	COMPANIES AFFORDING COVERAGE
PUBLIC RISK UNDERWRITERS OF THE NORTHWEST, INC. 18106 140TH AVENUE N.E. WOODINVILLE, WASHINGTON 98072-6874 PHONE (425) 482-6767 FAX (425) 482-2777	GENERAL LIABILITY St. Paul Fire and Marine Insurance Company  AUTOMOBILE LIABILITY St. Paul Fire and Marine Insurance Company
INSURED	PROPERTY St. Paul Fire and Marine Insurance Company
City of Black Diamond P.O. Box 599 Black Diamond, WA 98010	CRIME / PUBLIC EMPLOYEE DISHONESTY

### COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOT WITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

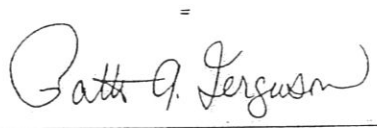
TYPE OF INSURANCE	POLICY NUMBER	POLICY EFF DATE	POLICY EXP DATE	DESCRIPTION	LIMITS
<b>GENERAL LIABILITY</b>					
COMMERCIAL GENERAL LIABILITY OCCURRENCE FORM INCLUDES STOP GAP	GP06302090	09/01/2008	09/01/2009	GENERAL AGGREGATE PRODUCT-COMP/OP AGG PERSONAL & ADV. INJURY EACH OCCURRENCE ANNUAL POOL AGGREGATE	\$20,000,000 \$20,000,000 \$10,000,000 \$10,000,000 \$50,000,000
(LIABILITY IS SUBJECT TO A \$100,000 SIR PAYABLE FROM POOL FUNDS)					
<b>AUTOMOBILE LIABILITY</b>					
ANY AUTO	GP06302090	09/01/2008	09/01/2009	COMBINED SINGLE LIMIT ANNUAL POOL AGGREGATE	\$10,000,000 \$50,000,000
(LIABILITY IS SUBJECT TO A \$100,000 SIR PAYABLE FROM POOL FUNDS)					
<b>PROPERTY</b>					
	GP06302090	09/01/2008	09/01/2009	ALL RISK PER OCC EXCL EQ & FL EARTHQUAKE PER OCC FLOOD PER OCC ANNUAL POOL AGGREGATE	\$100,000,000 \$15,000,000 \$15,000,000 \$500,000,000
(PROPERTY IS SUBJECT TO A \$10,000 SIR PAYABLE FROM POOL FUNDS)					
<b>CRIME/PUBLIC EMPLOYEE DISHONESTY</b>					

### DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / SPECIAL ITEMS

WITH REGARD TO THE MORGAN STREET IMPROVEMENTS PHASE II PROJECT SCHEDULED TO BE COMPLETED IN THE SPRING/SUMMER 2010, KING COUNTY, IT'S OFFICERS, OFFICIALS, EMPLOYEES AND AGENTS ARE NAMED AS ADDITIONAL INSURED, WITH RESPECT TO THE ABOVE REFERENCED PROJECT ONLY, SUBJECT TO POLICY TERMS, CONDITIONS AND EXCLUSIONS. ADDITIONAL INSURED ENDORSEMENT ATTACHED. POLICY WILL RENEW ON 9-1-09.

### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED BELOW, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO LIABILITY OR OBLIGATION OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

CERTIFICATE HOLDER	AUTHORIZED REPRESENTATIVE
Eric Jensen King Co Community Development Block Grant - 821 2nd Ave., Suite 500 Seattle, WA 98104-1598	

PUBLIC ENTITY LIABILITY PROTECTION POOLING GROUPS  
ADDITIONAL PROTECTED PERSONS ENDORSEMENT PERSONS  
OR ORGANIZATIONS REQUIRED BY WRITTEN CONTRACT FOR  
INSURANCE.

This endorsement changes your Public Entity Liability Protection  
Pooling Groups Excess of Self-Insured Retention.

How Coverage is Changed

The following is added to the Who Is Protected Under This Agreement section. This change adds certain protected persons and limits their protection.

Additional protected person when required by a written contract for insurance. Any person or organization that you agree in a written contract for insurance to add as an additional protected person under this agreement is a protected person. But only for covered injury or damage arising out of:

- premises you own, lease or borrow; or
- your work for that person or organization.

Any person or organization that you agree in a written contract of insurance to add as an additional protected person under this agreement is also a protected person for covered injury or damage arising out of your completed work for that person or organization. But only if the written contract for insurance specifically requires such completed work coverage for that person or organization and only for the period of time such completed work is required in the written contract for insurance

However, no person or organization that you agree in a written contract for insurance to add as an additional protected person under this agreement is a protected person for injury or damage arising out of its sole negligence.

In addition, any person or organization that you agree in a written contract for insurance to add as an additional protected person under this agreement is a protected person only for the lessor of:

- the limits of coverage required by the written contract for insurance; or
- the limits of coverage available for this agreement.

*Written contract for insurance* means that part of any written contract or agreement in which you agree to add a person or organization as an additional protected person under this agreement that:

- was made before; and
- is in effect when;

Cities Insurance Association of Washington  
Policy Number: GP06302090

Effective Date: 09/01/2008 Expiration Date: 09/01/2009  
Processing Date: 06/18/2009

40502 Ed. 1-80 Printed in U.S.A  
St. Paul Fire and Marine Insurance Co. 1980

Customized Form  
Page 1 of 2

PUBLIC ENTITY LIABILITY PROTECTION POOLING GROUPS  
ADDITIONAL PROTECTED PERSONS ENDORSEMENT PERSONS  
OR ORGANIZATIONS REQUIRED BY WRITTEN CONTRACT FOR  
INSURANCE.

This endorsement changes your Public Entity Liability Protection  
Pooling Groups Excess of Self-Insured Retention.

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the bodily injury or property damage happens, or the personal injury or advertising injury  
offense in committed.

*Additional protected person* may also be called an additional insured in the written contract  
for insurance.

We explain the term your work and your completed work in the Products and completed  
work total limit section.

#### Other Terms

All other terms of your policy remain the same.

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Cities Insurance Association of Washington  
Policy Number: GP06302090

Effective Date: 09/01/2008 Expiration Date: 09/01/2009  
Processing Date: 06/18/2009

40502 Ed. 1-80 Printed in U.S.A  
St. Paul Fire and Marine Insurance Co. 1980

Customized Form  
Page 2 of 2

**EXHIBIT II  
CITY OF BLACK DIAMOND  
BLACK DIAMOND MORGAN STREET SIDEWALK PHASE II (C09122)**

Contract No.: D38804D	Project No.: C09122
King County Project Manager: Eric Jensen	City Contact Person: Seth Boettcher, P.E.
Start Date: June 1, 2009	Telephone: 360-886-2560; Fax: 360-866-2592
End Date: May 31, 2010	Email: sboettcher@ci.blackdiamond.wa.us

**I. WORK STATEMENT**

The City known as City of Black Diamond (hereinafter referred to as "the City") agrees to perform all those activities described in this Exhibit beginning on June 1, 2009, and completing on May 31, 2010. All such activities shall be provided in a manner which fully complies with all applicable federal, state and local laws, statutes, rules and regulations, as are now in effect or hereafter may be amended. The total amount of reimbursement pursuant to this Exhibit shall not exceed \$363,600 in King County Community Development Block Grant (CDBG) funds.

**II. PROGRAM DESCRIPTION**

**A. Goal**

Develop and implement stronger prevention measures to avoid or prevent homelessness, and create or preserve supportive housing for those who are homeless or at risk of homelessness to achieve the goal of ending homelessness by improving the living environment in low- and moderate-income neighborhoods/communities in accordance with jurisdictions' adopted Comprehensive Plans and the Countywide Planning Policies.

**B. Outcome**

The community is a healthier and/or safer place to live, and/or has more amenities, including improved pedestrian accessibility. Upon completion of project, the City will have a newly extended sidewalk to serve its residents.

**C. Indicators**

Completion of new sidewalk extension to link the Black Diamond Elementary School with the Morgan Street residential neighborhood. Funds will be used to construct 1,000 square yards of new sidewalks, 1,500 lineal feet of curbs and 1,250 lineal feet of storm drainage along Morgan Street.

**D. Program Requirements**

The City shall utilize King County CDBG funds to pay for a new sidewalk extension to link the Black Diamond Elementary School and new King County library with the Morgan Street residential neighborhood.

1. The City shall obtain all necessary and appropriate land use permits, zoning approvals, and any other permits and approvals required by local, County, state, and federal law.

2. The City and the County agree to facilitate the completion of the project.

The scope of the services to be performed under this Contract consists of the items listed in the Community Development Block Grant Application submitted for this funding.

3. Compliance with Federal Environmental Review

- a. Endangered Species Act (ESA)

- i. The project shall not involve any in-water work or alteration of wetlands (including the wetland north of Roberts Drive near Morgan Street), streams or other sensitive habitats during or after construction.
- ii. The project shall not add new structures, other than sidewalk and accompanying conveyance and stormwater features.
- iii. The project shall include construction Best Management Practices including:
  - a. spill prevention, control and containment measures;
  - b. installing an oil/water separator that results in cleaner stormwater runoff than currently exists; and
  - c. proper staging of construction equipment and materials; temporary erosion and sediment control (TESC) measures; native vegetation plantings; and TESC adaptive management plan to inspect, monitor and remedy problems during construction.

- b. Archaeology

- i. A King County Unanticipated Discovery Plan shall be in place for the duration of the project.
- ii. The project shall not begin until King County has provided pertinent Black Diamond staff with written materials relating to archaeological precautions at a pre-construction meeting.
- iii. If any archaeological materials are uncovered during construction, all work in the area shall halt immediately and shall not commence until King County staff and appropriate Tribes have been notified and a resolution agreed upon.
- iv. Particular care regarding any digging activities shall be taken in the vicinity of the Black Diamond Cemetery.

- c. Coastal Zone Management Act (CZMA)

The project shall comply with all pertinent CZMA policies, including state water quality requirements, State Environmental Policy Act, etc., as needed.

4. Public Information

- a. In all news releases and other public notices related to projects funded under this Agreement, the City shall include information identifying the source of funds as the King County Community Development Block Grant Program.
- b. During construction projects, the City shall erect a durable and adequately visible sign at the construction site, identifying the source of funds, such as: "Funding for this project was provided by King County's Community Development Block Grant Program."
- c. The City shall notify Housing and Community Development Staff of ground breaking ceremonies or other ceremonial events related to the project to allow the County the ability to contact key partners of the community development program (i.e. local Housing and Urban Development representatives and legislative representatives) and the opportunity to attend such events.

5. County Review and Approval of Procurement Documents

- a. The City shall prepare all necessary plans, specifications and bid documents for the project. All specifications and drawings shall be in conformance with current standards and general specifications set forth in the CDBG application for this project.
  - b. The City shall submit a draft of the following procurement documents to the County for review and approval at least 15 days prior to preparing the final version and advertising or soliciting responses for any type of good or service including, but not limited to, professional services and construction services:
    - i. Construction bid specifications;
    - ii. Invitation to bid;
    - iii. Request for proposals; and
    - iv. Request for qualifications.
6. The draft procurement documents shall include provisions required in the contract. The City shall specify the location in the draft procurement document of each of the required provisions.
7. The City shall not prepare a final version of any of the above documents and advertise or solicit responses without the written approval of the County.
8. The City shall obtain all necessary and appropriate land use permits, zoning approvals, and any other permits and approvals required by local, county, state, and federal law.
- a. The City shall appropriately bid, award the contract, and contract for construction of the project. In such a contract the City shall assume the rights and responsibilities of owners of the project, except that the

County shall provide funds for the improvement generally described below.

- b. In the event not all improvements can be made within the project funds, the City and the County shall jointly determine the priority of the improvements to be made.
- c. Prior to entering into any subcontract under this Contract, the City shall forward to the County copies of all Contract documents.
- d. The City shall designate a person or persons to provide project management during construction. The construction manager shall make periodic visits to the construction site during construction to observe the progress and quality of the construction work and to determine if the results of the construction work are in accordance with this agreement and the drawings and specifications of the Construction Documents. On the basis of on-site observations, the construction manager shall endeavor to guard the County and City against apparent defects and deficiencies in the construction work.
- e. The City shall provide documentation to the County at project completion showing that the project activities were completed in accordance with this Contract. The City shall provide the County with one set of final record documents ("As-Built" plans) which are stamped, certified, and signed.

9. Fixed Price Procurement

In accordance with Section XXIV.F. of this Contract, the City agrees to use a more restrictive procurement procedure than that specified in 24 Code of Federal Regulations (CFR) Part 84.40 through 48. The City agrees to use only lump sum fixed price contract for all goods and services procured with funds provided under this Contract.

10. Construction Project Requirements

- a. The City shall not authorize any work under a construction contract assisted in whole or in part under this Contract to proceed until and unless King County Housing and Community Development Program staff have presented each prime contractor with detailed information regarding compliance with CDBG Program Regulations including, but not limited to, federal labor standards, at a preconstruction conference.
- b. The City shall include in construction bid specifications and construction contracts assisted in whole or in part under this Contract, provisions requiring each prime construction contractor to submit a completed King County Final Affidavit of Amounts Paid to the County. The form, to be provided by the County, shall be submitted by the City to the County prior to the City's release of retainage to each prime contractor.
- c. The County shall retain ten percent of the value of funds provided under this Exhibit. The County shall disburse the retained amount upon the

County's verification that the City has complied with the provisions of this Contract that are applicable to construction contracts.

- d. The City shall implement the project within the program year and submit both vouchers and required reports to the County in a complete and timely manner.
- e. Prior to any payment on the project, pre-approval must be received from County staff that federal labor requirements have been met. If the City pays before the County approves, the City shall be responsible for any compliance problems.
- f. The first weekly payroll of construction activity and supporting documents for labor compliance shall be submitted to: King County Housing and Community Development, Attn.: Davis Bacon Compliance Specialist, 401 Fifth Avenue, Suite 510, Seattle, WA 98104 prior to any payment of CDBG funds. Upon review and approval of said documents, the City shall be advised by the County that payment can be made.
- g. The City shall provide documentation to the County at project completion showing that the project activities were completed in accordance with this Exhibit.

11. Section 3 Requirements

The City shall comply with Section 3 requirements set forth at 24 CFR Part 135. Compliance with Section 3 requirements includes, but is not limited to, incorporating the Section 3 Clause set forth at 24 CFR Part 135.38 and Section 3 Requirements provided by the County into construction bid specifications, invitations to bid and/or requests for proposals as well as construction contracts with a contract value which exceeds \$100,000.

12. The City shall place a plaque permanently in the highest foot traffic area readily visible to the public. The size should be at a minimum 12" by 12". The plaque should contain the following:

FUNDING FOR BLACK DIAMOND MORGAN STREET SIDEWALKS PHASE II  
PROVIDED BY  
THE KING COUNTY COMMUNITY DEVELOPMENT  
BLOCK GRANT PROGRAM  
THROUGH THE U.S. DEPARTMENT  
OF HOUSING AND URBAN DEVELOPMENT  
[DATE]

E. Records and Reports

The City shall maintain files for this project containing the following items:

- 1. Notice of Grant Award;
- 2. Motions, resolutions, or minutes documenting Board or Council actions;
- 3. A copy of this Exhibit and the County's notice to proceed on this project;

4. Correspondence regarding budget revision requests;
5. Copies of all invoices and reports submitted to the County for this project;
6. Bills for payment;
7. Copies of approved invoices and warrants;
8. Payroll time sheets for actual salary and fringe benefit costs, time sheets signed by a supervisor and annotated to document percent of time charged against this project if less than full time;
9. Documentation, such as log sheets, of copy machine use, postage, telephone use, and office supplies when these costs are shared with other programs and no invoice is available, or alternative, annotated invoices may be used to document charges as appropriate;
10. Documentation of mileage charges for private auto use;
11. Documentation of the solicitation process used to select vendors and subcontractors with original purchase orders and subcontracts;
12. The City shall submit project status information on a Program Accomplishment form; and/or
13. The City shall submit detailed project funding information at the completion of the project on a Completed Project Funding Report form.

### **III. COMPENSATION AND METHOD OF PAYMENT**

#### **A. Billing Invoice Requirements**

1. The City shall submit invoices to the County within ten business days after the end of each quarter in which the City incurs costs reimbursed under this Exhibit. The final invoice shall be submitted prior to May 1, 2010.
2. The City shall submit invoices to the County in the form of a CDBG Program Voucher Reimbursement Request form. Such forms shall be signed by an authorized representative of the City and shall be accompanied by copies of supporting documents.
3. The County shall retain ten percent of the value of funds provided under this project Exhibit until all construction activities are completed and labor standards are met. The County shall disburse the retained amount with the final invoice upon the County's verification that the City has complied with the provisions of this Exhibit that are applicable to construction contracts.
4. Voucher reimbursement shall be paid upon the joint approval of the Project Manager and Davis Bacon Compliance Officer, each verifying that supporting documentation meets compliance requirements.

#### **B. Method of Payment**

The City shall be reimbursed for satisfactory completion of the requirements specified in this Exhibit in a sum not to exceed \$363,600.

- C. The City shall apply the following CDBG funds to the project in accordance with the Line Item Budget Summary below.

1. CDBG Funds

King County Community Development Block Grant South Sub-Region Funds	\$363,600
Total CDBG Funds:	\$363,600

2. Line Item Budget

Item	CDBG funds	Other Funds	Total Funds
*Environmental Review (King County Set-aside)	\$ 4,000	\$ 0	\$ 4,000
Construction Contract	\$ 256,100	\$ 0	\$ 256,100
Consultant Design Services	\$ 67,900		
Sales Tax	\$ 35,600	\$ 0	\$ 35,600
Sub-Total* (Less Environmental Review Cost)	\$ 359,600	\$ 0	\$ 359,600
Total Project Budget:	\$ 363,600	\$ 0	\$ 363,600

\*Environmental Review (King County Cost Set-aside): This amount is set-aside until final environmental review costs are determined. Any balance remaining shall be available for expenditure by Budget Revision Request from the City, not to exceed total CDBG funds of \$363,600.

D. Project Milestones

- Proof of meeting accomplishments or milestones shall be submitted with each voucher for reimbursement. Milestones may be amended from time to time with the prior approval of the County through a Contract amendment.
- The City shall implement the project in accordance with the following schedule.

Task	Projected Completion Date
Environmental Review Complete	May 2009
Design Begun	June 2009
Design Complete	November 2009
Bid Specs Submitted to County	October 2009
Bid Opening	December 2009
Preconstruction Conference	January 2010
Construction 50% Complete	March 2010
Construction Complete	April 2010
Closing Documentation Submitted	May 2010
Labor Standards Reviewed and Accepted Release Retainage	May 2010
Project Closeout Completed	May 2010

IV. **REPORTING REQUIREMENTS**

- A. The City shall submit a Program Accomplishment form in a format provided by the County within ten business days after the end of each quarter.
- B. The City shall submit a Completed Project Funding Report form in a format provided by the County with the final invoice.

Authorized Signatures for Invoices  
Submitted to King County Community Services Division

I authorize the following individual(s) to sign invoices in 2009 on behalf of:

Black Diamond Morgan Street Sidewalk Phase II

For the following contract(s):

Project Number	Project Title	Contract No.	Amount	Fund Source
C09122	Black Diamond Morgan Street Sidewalk Phase II	D38804D	\$363,600	CDBG

*Authorizing  
Signature:*

*(must be signed by  
person who signs the  
contract, generally,  
Executive Director)*

Howard Botts  
(Printed Name)

Mayor  
(Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

*Additional Authorized  
Signature:*

May Miller  
(Printed Name)

Finance Director  
(Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

*Additional Authorized  
Signature:*

Seth Boettcher  
(Printed Name)

Public Works Director  
(Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

**Note: It is the responsibility of the contractor to inform King County if they wish to add name to or delete names from this list.**

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
<b>SUBJECT:</b>  <b>Resolution No. 09-622, authorizing the Mayor to execute a contract with Gray &amp; Osborne for the design and preparation of the Morgan Street Sidewalk Project</b>	<b>Agenda Date: August 6, 2009</b>		<b>AB09-095</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		
	City Attorney – Loren D. Combs		
	City Clerk – Brenda L. Martinez		
	Finance – May Miller		
	Public Works – Seth Boettcher	X	
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Cost Impact: \$88,300	Court – Kaaren Woods		
Fund Source: CIP, Grants, in kind City Services			
Timeline: Project complete by May 2010			
<b>Attachments: Resolution No. 09-622, Contract, Capital Improvement page</b>			
<b>SUMMARY STATEMENT:</b>  <p>The City screened the available consultants off of our 2008 – 2009 consultant list. After reviewing specific project proposals, presentations and interviews, the selection panel chose Gray and Osborne as the best fit for Black Diamond on this project. The selection process was reviewed with Eric Jensen of King County and has given the City approval to move forward.</p> <p>The design effort will need to start right away in order to complete the project by the end of May. The Railroad Avenue Project and the sidewalk project will be under construction at the same time.</p> <p>The Public Works Committee requested that the survey scope of work be increased to make sure that we do not have right-of-way surprises. This was done at minimal cost as Gray and Osborne did not add more to their survey costs, but just passed on the costs of the additional title reports.</p> <p><b>Project Budget:</b>  CDBG Grant.....\$363,600  Transportation Improvement Board.....\$170,000  Black Diamond in kind match.....\$46,400  <b>Total .....\$580,000</b></p>			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b> Bring forward to Council for adoption per Public Works Committee (Councilmembers Bowie and Hanson).			
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 09-622, authorizing the Mayor to sign a \$88,300 contract with Gray and Osborne for the design and preparation of contract documents for the Morgan Street Sidewalk Phase II project.</b>			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	
August 6, 2009			

**RESOLUTION NO. 09-622**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON  
AUTHORIZING A CONTRACT WITH GRAY & OSBORNE  
FOR THE DESIGN OF THE MORGAN STREET SIDEWALK  
PHASE II PROJECT**

**WHEREAS**, the City applied for and was awarded a \$363,600 Community Development Block Grant, and A \$170,000 grant from the Transportation Improvement Board; and

**WHEREAS**, the Morgan Street Sidewalk is on the City's Capital Improvement Plan; and

**WHEREAS**, the City has advertised and has followed procedure in selecting the best qualified engineer for this project;

**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 Gray & Osborne in the amount of \$88,300 for the design and preparation of the project documents for the Morgan Street Sidewalk Project as attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 6TH DAY OF AUGUST, 2009.**

CITY OF BLACK DIAMOND:

\_\_\_\_\_  
Howard Botts, Mayor

Attest:

\_\_\_\_\_  
Brenda L. Martinez, City Clerk



# Capital Improvement Program 2008 - 2013

Project for the **Street** Department # **T6**

## PROJECT TITLE **Morgan Street Sidewalk Extension Phase II**

### DESCRIPTION

Install Sidewalk, curb, gutter on the north side of Morgan Street from Abrams to Roberts Drive.

### BACKGROUND

The need for sidewalks along Morgan Street is increasing because pedestrian traffic is growing. The staff has applied for two grants and is suggesting that the City provide inspections and project management in house.

### COMMENTS

If the grants are not received this project should be put on hold. Over a long period of time the sidewalks could be installed as frontage improvements along with redevelopment along the corridor.

### CAPITAL PROJECT COSTS

	Total \$ Requested	2008	2009	2010	2011	2012	2013
Land/Right of Way							
Building Improvements							
Preliminary Engineering							
Construction Engineering	60,000		60,000				
Design Engineering	60,000		60,000				
Construction Costs	413,600			413,600			
Capital Outlay							
Other (Specify)							
<b>TOTAL COSTS</b>	<b>\$533,600</b>		<b>\$120,000</b>	<b>\$413,600</b>			

### REQUESTED FUNDING

	Total \$ Project	2008	2009	2010	2011	2012	2013
Grants	533,600		120,000	413,600			
Water Utility Fund							
Wastewater Utility Fund							
Stormwater Utility Fund							
Street Funds							
Impact Fees							
Real Estate Excise Tax 1							
Real Estate Excise Tax 2							
PW Trust Fund							
Other							
<b>TOTAL SOURCES</b>	<b>\$533,600</b>		<b>\$120,000</b>	<b>\$413,600</b>			

### NON CAPITAL OPERATING COSTS

	Total \$ Requested	2008	2009	2010	2011	2012	2013
Salaries, Benefits and Other							
Debt Repayment							
<b>TOTAL OPERATING</b>							

## **CITY OF BLACK DIAMOND**

Department of Public Works  
P.O. Box 599 – 24301 Roberts Drive  
Black Diamond, Washington 98010

### **PROFESSIONAL SERVICES AGREEMENT**

#### **1. Parties**

This Agreement is entered into between the City of Black Diamond, King County, Washington ("City"), and **Gray & Osborne, Inc.** ("Consultant"); collectively, the "Parties."

#### **2. Addresses of Parties for Notices**

Consultant agrees to accept notices under this Agreement via facsimile. It is the responsibility of Consultant to notify City in writing if any of the contact information appearing below should change. Any notices required to be given by City to Consultant or by Consultant to City shall be in writing and delivered to the parties at the following addresses:

##### **CITY:**

CITY OF BLACK DIAMOND  
P.O. Box 599 – 24301 Roberts Drive  
Black Diamond, Washington 98010  
Contact: SETH BOETTCHER  
Phone: (360) 886-2560  
Fax: (360) 886-2592

##### **CONSULTANT:**

GRAY & OSBORNE, INC.  
701 Dexter Avenue North, #701  
Seattle, WA 98109  
Tax I.D. # 91-0890718  
Contact: TIM OSBORNE  
Phone: (206) 284-0860 / [tosborne@g-o.com](mailto:tosborne@g-o.com)  
Fax: (206) 283-3206

### **TERMS AND CONDITIONS**

#### **1. Effective date**

This Agreement is effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

#### **2. Description of services**

Consultant has been retained by the City to provide professional services in connection with the following Project: **MORGAN STREET & ROBERTS DRIVE SIDEWALKS**. Develop and provide plans, specifications, and cost estimates resulting in bid and construction documents for installation of sidewalks.

3. **Services by Consultant**

- A. Consultant shall perform the services described in the Scope of Services attached to this Agreement as Exhibit "A." The services performed by Consultant shall not exceed the Scope of Services without prior written authorization from the City.
- B. The City may from time to time require changes or modifications in the Scope of Services. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to this Agreement.

4. **Schedule of Work**

- A. Consultant shall perform the services described in the Scope of Services in accordance with the Project Schedule attached to this contract as Exhibit "C," with final design and bid documents completed to the satisfaction of the City **no later than October 6, 2009**, and bid review and remaining tasks completed to the satisfaction of the City **no later than January 31, 2010**. If delays beyond Consultant's reasonable control occur, the parties will negotiate in good faith to determine whether an extension is appropriate.
- B. Consultant is authorized to proceed with services upon receipt of a written Notice to Proceed.

5. **Compensation**

- ☐ LUMP SUM. Compensation for these services shall be a Lump Sum of \$\_\_\_\_\_.
- ☒ TIME AND MATERIALS NOT TO EXCEED. Compensation for these services shall not exceed eighty-eight thousand three hundred dollars (\$88,300), as indicated on Exhibit B ("Fee Summary"), without written authorization by the City and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit B.
- ☐ TIME AND MATERIALS. Compensation for these services shall be on a time and material basis according to the list of billing rates and reimbursable expenses attached hereto as Attachment "C."
- ☐ OTHER. \_\_\_\_\_

6. **Payment**

- A. Consultant shall maintain time and expense records and provide them to the City monthly, along with monthly invoices in a format acceptable to the City for work performed to the date of the invoice.
- B. All invoices shall be paid by City warrant within sixty (60) days of receipt of a proper invoice.

- C. Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Copies shall be made available on request.
  - D. If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. City may withhold payment for such work until the work meets the requirements of the Agreement.
- 7. Discrimination and Compliance with Laws**
- A. Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.
  - B. Consultant shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.
  - C. Violation of Section 7 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by City, in whole or in part, and may result in ineligibility of Consultant to do further work for City.

**8. Suspension and Termination of Agreement**

- A. This Agreement may be terminated by the City at any time upon the default of the Consultant or upon public convenience, in which event all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City, and Consultant shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination, not to exceed the total compensation set forth herein. Consultant shall not be entitled to any reallocation of cost, profit or overhead. Consultant shall not in any event be entitled to anticipated profit on work not performed because of such termination. Consultant shall use its best efforts to minimize the compensation payable under this Agreement in the event of such termination. If the Agreement is terminated for default, the Consultant shall not be entitled to receive any further payments under the Agreement 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 Consultant. The Consultant 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.
- B. The City may suspend this Agreement, at its sole discretion, upon a minimum of seven (7) days' advance notice to Consultant. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to the Consultant's reasonable expenses, and shall

be subject to verification. The Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

**9. Standard of Care**

Consultant represents and warrants that it has the requisite training, skill and experience necessary to provide the services under this agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant under this agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

**10. Ownership of Work Product**

All data materials, reports, memoranda, and other documents developed under this Agreement whether finished or not shall become the property of City, shall be forwarded to City at its request and may be used by City as it sees fit. Upon termination of this agreement pursuant to paragraph 6 above, all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City. City agrees that if it uses products prepared by Consultant for purposes other than those intended in this Agreement, it does so at its sole risk and it agrees to hold Consultant harmless therefore.

**11. Indemnification / Hold Harmless**

Consultant 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 resulting from the acts, errors or omissions of the Consultant in defective or negligent performance of this Agreement, except for injuries and damages caused by the primary negligence of the City.

**12. Insurance**

The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

**A. Minimum Scope of Insurance**

Consultant 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, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall at all times 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.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant'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 Consultant's insurance and shall not contribute with it.
2. The Consultant'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. Acceptability of Insurers

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

E. Verification of Coverage

Consultant 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 insurance requirements of the Consultant before commencement of the work.

**13. Assigning or Subcontracting**

Consultant shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City.

**14. Independent Contractor**

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

**15. Governing Law and Venue for 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.

**16. 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.

**17. Extent of Agreement/Modification**

This Agreement, together with any attachments incorporated by reference, represents the entire Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended or modified only by express written consent of both parties.

BY ITS SIGNATURE BELOW, EACH PARTY ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE TERMS AND CONDITIONS OF THIS AGREEMENT AND AGREES TO BE BOUND BY THEM.

**CITY OF BLACK DIAMOND**

By: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**CONSULTANT**

By:  \_\_\_\_\_

Print name: Tim OSBORNE

Title: PRINCIPAL / VICE PRESIDENT

Date: 4/29/09

Attachments

## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

#### **CITY OF BLACK DIAMOND**

#### **SCHEDULE A: MORGAN STREET SIDEWALK PROJECT – PHASE II (ABRAMS STREET TO ROBERTS DRIVE)**

#### **SCHEDULE B: ROBERTS DRIVE SIDEWALK PROJECT (MORGAN STREET TO CITY HALL)**

### **INTRODUCTION**

The purpose of this Contract is for Gray & Osborne, Inc. (G&O) and its subconsultants to provide engineering and related services necessary to develop preliminary and final plans, specifications, and cost estimates (PS&E) resulting in the preparation of bid/construction documents for the bid, award, and construction of:

- Pedestrian walkway (6-foot-wide concrete sidewalks) improvements (including curb and gutter) in and along the northerly side of the Morgan Street corridor (approximately 0.33 mile), more particularly from Abrams Street (termination point of Phase I improvements) to Roberts Drive. Additionally, 6-foot-wide concrete sidewalks will be extended in and along the southerly side of Roberts Drive to City Hall (approximately 0.04 mile).
- Project improvements will be designed and structured under two schedules of work (Schedule A and B) due to funding sources (ability to audit grant expenses). Schedule A work will be for pedestrian improvements in and along Morgan Street and is funded in part with TIB and CDBG funds. Schedule B work will be for pedestrian improvements in and along Roberts Drive and is funded in part with CDBG funds.

The engineering and related services contemplated under this contract scope of work will generally include a planning level analysis regarding the development and construction of the proposed improvements, to include survey and mapping, limited geotechnical assessment and investigation, limited environmental (SEPA) documentation, identifying right-of-way and right-of-way constraints, developing conceptual drawings, conducting a public involvement process, and developing detailed project cost estimates. After the preferred concept is approved by the City, development of final PS&E products and bid/construction documents will be completed, in compliance with City Standards/direction including compliance with applicable TIB and CDBG requirements. No right-of-way acquisition is contemplated. The attached Exhibit A-1 is a location map identifying the approximate location of the facilities. The attached Exhibit A-2 identifies Typical Cross Sections of the proposed improvements as currently contemplated.

Our detailed scope of work is as follows:

### **Task 1 – Project Management**

**Objective:** To provide overall project management of G&O resources, provide subconsultant management, monitor and manage budget, manage and oversee the schedule of deliverables, manage quality assurance/quality control (QA/QC) program, provide client contact, and ensure proper allocation of engineering costs to the various funding agency and/or City.

### **Task Work**

1. Contract execution, internal accounting, and auditing.
2. Internal resource management and prioritization of resources.
3. Oversee QA/QC review(s) of engineering products to include constructability review, risk management assessment, and identification and pursuit of critical path items.
4. Subconsultant coordination and their contract administration.
5. Preparation of monthly progress reports (to be submitted with monthly invoices).
6. Manage and oversee the “schedule of deliverables.”
7. Provide project coordination with utility purveyors known to provide service in the area as well as City Project Manager.
8. Conduct two staff meetings at City Public Works Department. The first will be a kickoff meeting to take place after the survey and geotechnical work have been computed. The second staff meeting will take place at the conceptual (20% to 30%) design level. Conduct a third meeting at CDBG to review the 90 percent plans, specifications, and cost estimates and to review bid procedures/strategy.
9. Ensure engineering product comply with City Standards and funding agency (CDBG and TIB) requirements.

### **Assumptions**

1. G&O will provide standard “G&O” formatted invoices identifying personnel, hours, direct and indirect labor rates/costs, fees, subconsultant costs (with itemized bills), and direct costs (mileage, printing, etc.). Invoices will be provided on a monthly basis, provided costs are incurred.

2. G&O will prepare a transmittal letter with each invoice identifying major task work completed during the period.
3. QA/QC will occur at 30 percent (conceptual), 60 percent (preliminary), and 90 percent (semifinal) levels (see Tasks 5 and 9). City staff will be invited to participate.

#### **City Responsibilities**

1. Review and process monthly invoices in a timely fashion.
2. Participate in QA/QC process as desired.

#### **Deliverables**

1. Monthly reports of major work completed during invoice period, percentage of major tasks completed to date, and identification of impacts to schedules of deliverables, scope, and budget.
2. Monthly invoices.
3. Original and/or courtesy copies of electronic email, letters, photos, etc., applicable to the development of the Project.

#### **Task 2 – Geotechnical**

**Objective:** To provide the services of a qualified geotechnical engineer(s) to provide limited geotechnical services to aid in the development of design products.

#### **Task Work**

##### **A. G&O Work**

1. G&O will coordinate work with subconsultant.
2. G&O will review and comment on DRAFT report.
3. G&O will incorporate geotechnical recommendations as warranted.

##### **B. Subconsultant (PanGEO, Inc.) Work**

1. Site Reconnaissance/Utility Locate

PanGEO, Inc. will visit the site to conduct a reconnaissance, select and mark boring locations, and coordinate utility clearance prior to our

subsurface exploration program (see Item 2). PanGEO understands that a fiber optic line is located in the vicinity of the project area, and will stay sufficiently away from the fiber optic line based on utility locate markings in the field.

## 2. Subsurface Exploration

PanGEO will drill five test borings to explore the subsurface conditions in the vicinity of the Roberts Drive and Morgan Street intersection, as distributed below:

- Boring BH-1 will be located at the intersection of Roberts Drive and Morgan Street, within the existing painted traffic island;
- Boring BH-2 will be located east of BH-1, between the intersection and the City Hall;
- Borings BH-3 through BH-5 will be located along Morgan Street, approximately evenly spaced along the alignment.

Borings BH-1 and BH-2 are for design of an infiltration system, and will be drilled to depths of about 15 feet. The remaining three borings will be drilled to a depth of about 5 feet, to provide subsurface data for the design of a porous concrete sidewalk. Soil samples will be obtained using standard penetration test (SPT) at 2-1/2-foot depth intervals in the test borings, or a 3-1/4-inch-diameter split spoon will be used if gravelly soils are present. The test results will be used to correlate the engineering properties of the site soils. Where the borings will be drilled through the existing pavement, the test borings will be patched with concrete once the borings are completed.

## 3. Laboratory Testing

Representative soil samples will be collected for laboratory testing. PanGEO's testing will include assessment of natural moisture content and grain size distribution. The results of the grain size data will be used to estimate the infiltration rates of the site soils for stormwater design, using the method outlined in the Department of Ecology Stormwater Manual.

## 4. Report

PanGEO will prepare a draft geotechnical report and submit it to the project team. The report will summarize the results of our geotechnical study, including a site map with approximate test boring locations, description of surface and subsurface conditions (soil and groundwater), feasibility of site soils for infiltration, and the infiltration rates of the site

soils for stormwater design. The draft report will be finalized once PanGEO receives review comments from the project team.

5. Project Meeting/Post Report Consultation

PanGEO will attend one project meeting at the G&O Seattle office to discuss our findings and recommendations. PanGEO will also provide post-report technical support on an as-needed basis.

**Assumptions**

1. G&O/City will provide PanGEO, Inc. with appropriate digital base maps for use in presenting the results of their investigation.
2. PanGEO will coordinate all field investigation activities with the City and G&O's project staff, including traffic control.
3. PanGEO will coordinate utility locate activities.

**City Responsibilities**

1. The City will provide Right of Entry and Street Use Permits, as applicable.
2. The City will review and comment on the DRAFT geotechnical report in a timely manner so the subconsultant can prepare Final report.

**Deliverables**

1. Geotechnical letter report will be included in work product – see Task 5.

**Task 3 – Right-of-Way and Topographical Survey and Mapping**

**Objective:** Establish vertical and horizontal control and acquire pertinent topographical features suitable to support preliminary/conceptual design (Task 5) and develop mapping of project corridor. Work shall also identify existing right-of-way lines of Morgan Street and Roberts Drive (within project limits) and all intersecting public rights-of-way (streets).

**Task Work**

1. Research and acquire public records of survey, plat maps, assessor maps, and related survey data as may be available from public agencies (County and City). Acquire title reports for properties abutting the northerly side of Morgan Street, in the intersection of Morgan Street/Roberts Drive and abutting the south side of Morgan Street/Roberts Drive from the Cemetery Road to the City Hall driveway (for a total of 18 reports).

2. Establish vertical and horizontal control for survey and mapping at a scale of 1"=20' horizontal and 1"=5' vertical. Datum will be per City of Black Diamond standards/requirements.
3. Perform topographical survey of project corridor to include profiling (to 50 feet) of adjacent northerly driveways on Morgan Street and southerly driveways on Roberts Drive. Acquire topographical data within right-of-way and approximately 10 feet northerly beyond right-of-way for mapping and design purposes. Incorporate pertinent topographical information and intersection "legs." Topographical data shall include establishing surface grades, pavement edges, obvious utilities, utility structures, hydrants, valves, fences, major trees and significant landscaping, walkways, major grade breaks, etc.
4. Map survey data and show pertinent topographical features and existing rights-of-way (within project limits).

#### **Assumptions**

1. City may elect to notify abutting property owners within project corridor and alert them of our survey work.
2. Access onto private properties will not be prevented in order to acquire the data described above. Where access is denied, this data shall not be acquired nor mapped. G&O assumes survey can be performed on a continuous basis and not "piecemealed" due to multiple site visits caused by property owners preventing access. City may, at its discretion, provide notification to abutting property owners regarding site survey access.
3. The development and/or recording of a "Record of Survey" is not required or included in this scope of work.
4. City-approved horizontal and vertical control/datum is available and accessible within 1/4 mile of the project site.

#### **City Responsibilities**

1. City will support survey efforts regarding notification to and inquiries from private property owners.
2. City will provide to Consultant any pertinent survey "control information" they may have in their possession.
3. City will specify survey datum to be used for the project. If not specified by the City, an "assumed" datum will be used.

## **Deliverables**

1. Copy of electronic field data collected for project, as well as copy of any survey notes, calculations, plat maps, assessor maps, etc., pertinent to the project.
2. Hard copy and electronic file of survey mapping product(s).

## **Task 4 – Utility Data Acquisition/Hydraulic Analysis (Storm)**

**Objective:** Acquire record drawings and/or “as-built” information from utility purveyors known to provide service in the project corridor. Conduct a “mini” stormwater analysis (T.I.R.) of the tributary area and size storm facilities (detention/treatment), and/or infiltration sizing for this project.

## **Task Work**

1. Provide written requests for all utility purveyors known to provide utility service in the project area.
2. Review data provided by utility purveyors and incorporate into design products generated in Task 5 and future phases of the Project as may be applicable.
3. Conduct a “limited” hydraulic analysis (T.I.R.) based on review of survey data acquired for this project, and contour maps and surface water comprehensive maps and plans provided by City of Black Diamond. This analysis shall be used to develop hydraulic data to determine pipe size and slope recommendations for collection, treatment, and/or detention of surface flows tributary to the proposed improvements (within project area).

## **Assumptions**

1. Utility purveyors will provide requested information in a timely manner.
2. Information provided by utility purveyors is suitable for this phase of the Project and shall be relied on by the Consultant in developing products delivered in Task 5.
3. G&O can rely on information provided by City as being accurate for the purposes so intended.

## **City Responsibilities**

1. City to provide maps and pertinent information on existing infrastructure and contour mapping as may be available. City to provide copy of contract documents from previous project (Phase I contract documents) as well as any other pertinent information regarding storm system, previous storm modeling, and other information as may be available on City-owned utilities.

## **Deliverables**

1. Upon City request, Consultant will provide copy of any utility infrastructure record drawings or “as-built” drawings received from non-City-owned utility purveyors.

## **Task 5 – Conceptual Plan Development/Pre-design Report**

**Objective:** To use information generated in Tasks 1 through 4 to develop a conceptual layout for pedestrian improvements for the City’s evaluation, review, and comment. Prepare “mini” Pre-design Report which identifies design parameters and includes conceptual design.

## **Task Work**

1. Coordinate with adjacent property owners/developers (in particular, Berke property) regarding development of City project to include coordinating project development with property owner(s) as required and directed by the City. City staff to help facilitate this coordination.
2. Develop a “strip map” of the project corridor to include survey data and pertinent utility information. Mapping products will be used in development of conceptual design for proposed new impacts to include curb, gutter, and sidewalks, and storm drainage.
3. Develop two alternatives for extending and constructing the pedestrian facilities in the project corridor. Concepts will consider construction of a uniform cross section in and along this corridor. The second concept will consider meandering the sidewalk to avoid major and/or significant landscaping, private improvements, and geometric or environmentally sensitive areas. Design products will evaluate both pervious and non-pervious surfacing materials.
4. Develop construction cost estimates of the two concepts for City review and comment.

5. Prepare both a draft and final predesign report of the concepts including photographs, computer renderings (see Task 6), typical cross sections, and strip map(s). Report will include identification of right-of-way, right-of-way or easement "needs" caused by proposed construction of improvements, discuss construction methods and materials, include geotechnical "letter report" (see Task 3), identify storm drainage enhancements (water garden to be designed at/near intersection of Morgan/Roberts Drive as approved by City Public Works Director), identify obvious utility conflicts/impacts, include detailed construction cost estimates for various alternatives, include applicable public involvement elements (see Task 6) as may be desired by the City Public Works Director, and provide an engineer's recommendation based on City input. The City will be provided the draft report for review and comment. Applicable City review comments will be incorporated into the final report.
6. Perform QA/QC reviews at this 30 percent (conceptual) level. Review will be conducted with key design team members, City staff (if available), and oversight provided by Principal-in-Charge (see Task 1). QA/QC will include review/input regarding alignment, constructability issues, proposed design/construction elements, risk management issues, utility impacts, right-of-way/easement issues, schedule, budget, and quality of deliverables.

#### **Assumptions**

1. Strip maps will be prepared at 1"=20' full size and at scale suitable for inclusion in reports.
2. Reports (two copies) will be in 8-1/2" x 11" format (exhibits may be 11" x 17") and prepared under the direction of the Consultant Project Manager/Engineer.
3. Plan and profile sheets (two copies) will be at a scale of 1"=20' horizontal and 1"=5' vertical.

#### **City Responsibilities**

1. Assist in coordination with adjacent property owners.
2. Provide timely review (and comment) of products generated for this task.
3. Review final report and provide recommendation and direction regarding ongoing design.

## **Deliverables**

1. Two each draft Predesign Report.
2. Two full-size (1"=20') and two half-size strip maps with alternative analysis concepts shown thereon.
3. Two copies of plan and profile sheets of project corridor with plan view "concepts" only (not profile).
4. Two each final Predesign Report.

## **Task 6 – Public Involvement Process**

**Objective:** To solicit input from abutting property owners on project for City evaluation in developing project. To assist City Public Works Director in Public Involvement Process.

## **Task Work**

1. Develop two generic computer renderings (enhanced photographs with proposed features imposed thereon) of proposed improvements (concepts) for City Council meetings.
2. Coordinate with City Public Works Director for public involvement process which will consist of contacting individual property owners on the north side of Morgan Street by letter and setting up on-site meetings with them. Draft a letter for this purpose for City review. Review handouts, exhibits, renderings, schedule, etc. (Consultant-generated products), for use in meetings.
3. Stake back of proposed sidewalk along the north side of Morgan Street, approximately one stake every 50 feet and a minimum of one per property. Property corners will not be staked.
4. Conduct 11 on-site meetings with individual property owners during the course of two evenings. Answer questions, and prepare and provide information and handouts.
5. Prepare "memo" to City Public Works Director summarizing Consultant Project Manager's notes from individual property owner meetings.

## **Assumptions**

1. Letter to property owners will be mailed out by the City. Letter will be drafted by G&O.

2. Two computer renderings and exhibits will be prepared for display only (not handouts).
3. The individual meetings will take place during two evenings.

#### **City Responsibilities**

1. City will provide timely comments on "draft" information, exhibits, etc., generated by Consultant to be used in property owner meetings.
2. City will notify property owners by letter and set up meeting times during the course of two alternative evenings.
3. City will participate in property owner meetings.

#### **Deliverables**

1. Computer renderings (full size, 24" x 36"), strip maps with concepts at 1"=20' scale, and individual plan sheets showing the proposed frontage improvements for each parcel on the north side of Morgan Street.

#### **Task 7 – Complete Preliminary (60%) and Semifinal Design Document Preparation (90%)**

**Objective:** Develop preliminary design/bid/construction documents (60% level) based on conceptual design documents (30% complete). Project documents will be segregated into separate schedules of work for auditing purposes as required/desired by the City. City to develop and process all permits required for the development of this project. Develop semifinal (90%) design/bid/construction documents of same.

#### **Task Work**

1. Prepare and submit 60 and 90 percent project specifications (two copies) to include proposal, contract, and bonding forms (some of these documents may be furnished by City as "City Standard"). This work assumes project specifications (including Special Provisions) will be based on the Washington State Department of Transportation Standard Specifications for Road, Bridge and Municipal Construction (2008). Prepare and submit updated and detailed engineering construction cost estimate at interval listed above for City review.
2. Prepare and submit DRAFT SEPA Checklist for City review and comment.

3. Prepare and transmit two copies of 60 and 90 percent plans/drawings (to include special details). The plans will incorporate applicable City Design Standards, WSDOT Design Standards, MUTCD Standards, ADA Standards, and AASHTO Manual Guidelines.

#### **Assumptions**

1. CDBG to perform all environmental services required for the project with the exception of SEPA documentation.

#### **City Responsibilities**

1. City to perform timely review of all consultant submittals.

#### **Deliverables**

1. Three sets of plans, specifications, and cost estimates for the 60 and 90 percent submittals.

#### **Task 8 – Final Design Document Preparation (PS&E)**

**Objective:** Prepare final project plans, specifications and cost estimates sufficient for bidding and constructing the project. Project documents will be segregated into separate schedules of work for auditing purposes as required/desired by the City.

#### **Task Work**

1. Prepare and submit final project plans (two copies) to City to include incorporation of all previous applicable and relevant City comments. Revise “contract documents” to incorporate final City comments (as applicable).
2. Prepare and submit final project specifications (two copies) to include contract, proposal, bonds, and insurance requirements, per City review and direction. Incorporate revisions or all previous applicable and relevant City comments. Prepare final and detailed engineer’s construction cost estimate (estimate of probable cost).
3. Prepare and submit FINAL SEPA Checklist for City threshold determination and participate.

#### **Assumptions**

1. CDBG to perform all environmental services required for the project with the exception of SEPA documentation.

### **City Responsibilities**

1. City to perform timely review of all consultant submittals.

### **Deliverables**

1. Three sets of plans and specifications.

### **Task 9 – Quality Assurance/Quality Control (QA/QC)**

**Objective:** Provide QA/QC reviews of engineering products to enhance overall quality of products.

### **Task Work**

1. Conduct three QA/QC reviews at 30 percent (kickoff), 60 percent (preliminary), and 90 percent (semifinal) by key design team members to solicit comments, recommendations, and suggestions regarding engineering products, constructability issues, critical path items, risk management, and quality of product. City will be invited participate. Note: Final QA/QC occurs in Task 8.
2. Prepare memorandum regarding QA/QC meetings.

### **Assumptions**

1. City will participate in one or all of QA/QC meetings.

### **Consultant Responsibilities**

1. Prepare memorandum regarding QA/QC meetings.

### **Deliverables**

1. Copy of QA/QC memorandums for City files.

### **Task 10 – Bid and Award Services**

**Objective:** Assist City in bidding and award services.

### **Task Work**

1. Prepare bid advertisement(s) for publication for City review and use.
2. Prepare and transmit both electronic and hard copies of bid documents to City. Coordinate with City's use of Builders Exchange for bid document distribution.

**Assumptions**

1. City will approve project for bid.
2. Funding agencies will approve project for bid.

**City Responsibilities**

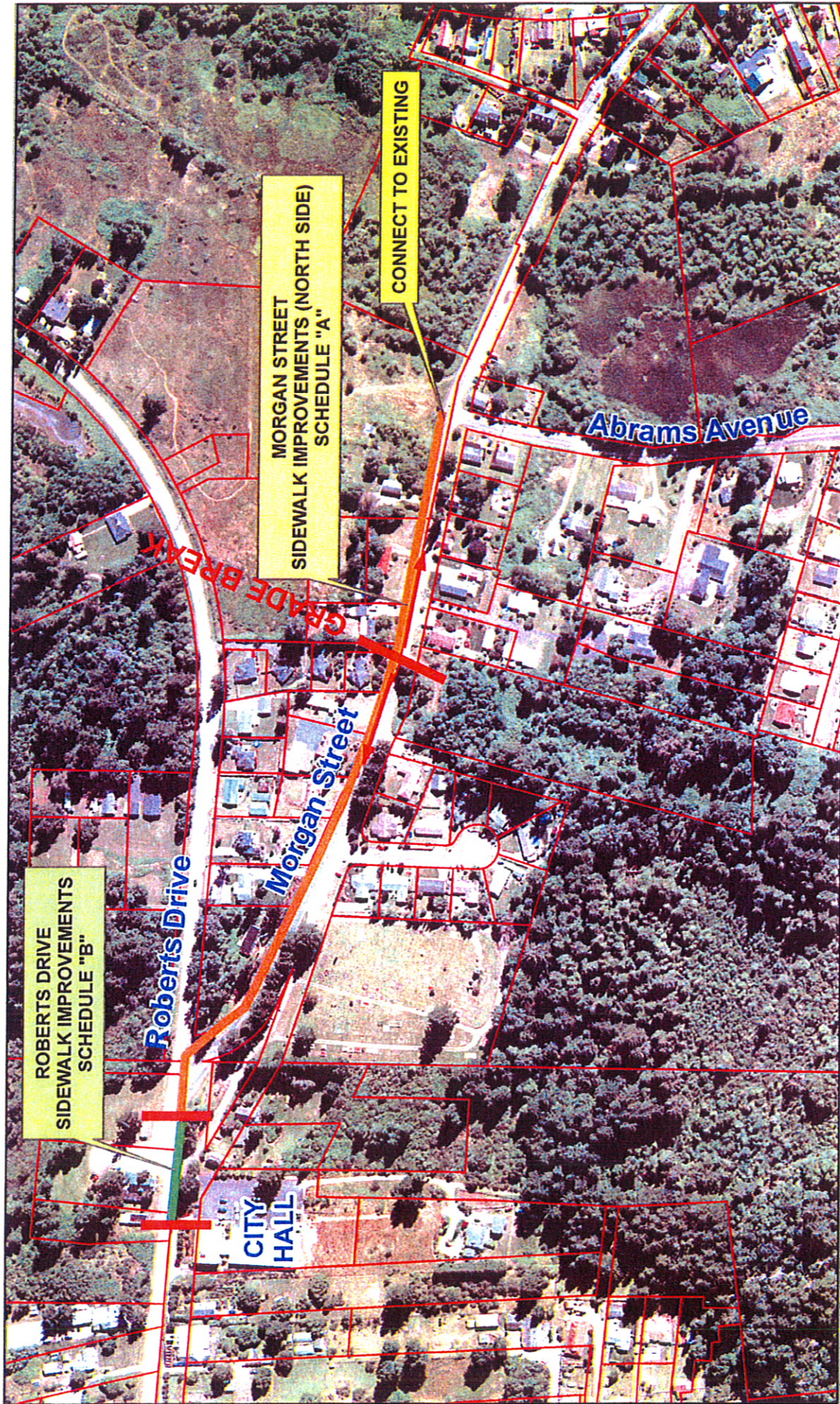
1. City will coordinate bid phase.

**Consultant Responsibilities**

1. G&O will prepare addenda and provide design interpretation as required.
2. Prepare and distribute the bid tabulation.
3. Check the bid proposals and references and make a recommendation to award.

**Deliverables**

1. Electronic file of all plans and specifications and addenda (as may be applicable).
2. Hard copy of plans (two copies) and specifications (two copies) and cost estimates to include any addenda (as may be applicable).



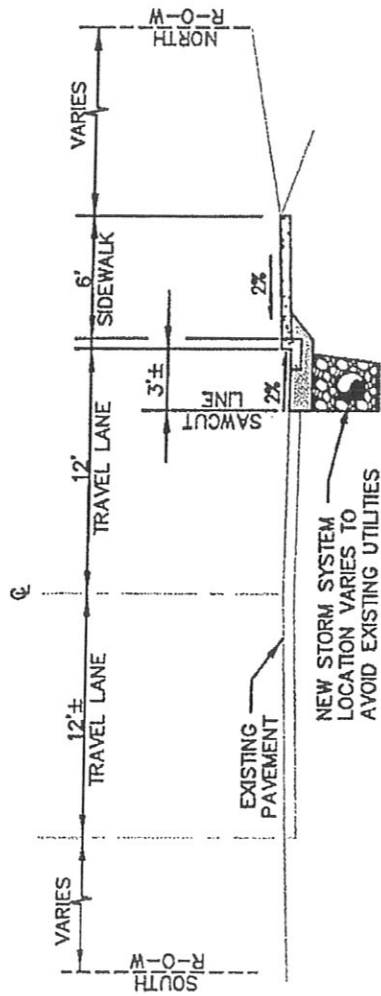
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EXHIBIT "A-1"

CITY OF BLACK DIAMOND

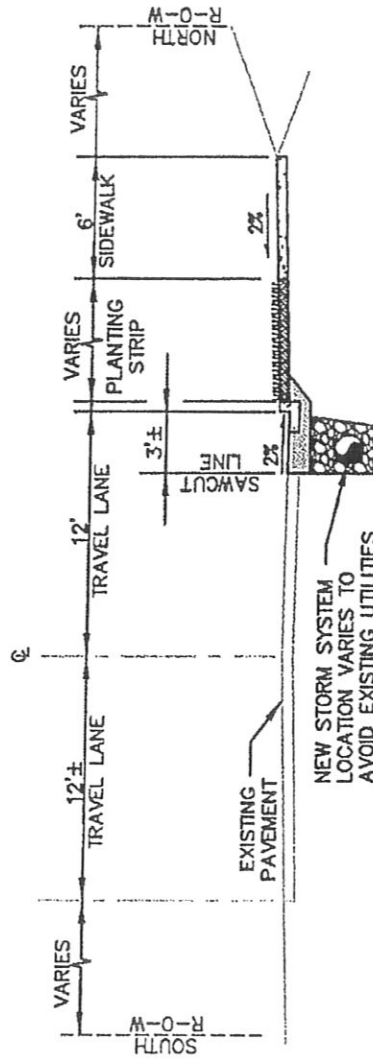
SIDEWALK IMPROVEMENTS - PHASE II



### TYPICAL CROSS SECTION

#### NO PLANTER

NOT TO SCALE



### TYPICAL CROSS SECTION

#### WITH PLANTER

NOT TO SCALE

CITY OF BLACK DIAMOND  
SIDEWALK IMPROVEMENTS PHASE 2

EXHIBIT A-2



Gray & Osborne, Inc.  
CONSULTING ENGINEERS

# EXHIBIT "B"

## FEE SUMMARY

Project: City of Black Diamond  
 Sidewalk Improvement Project (Schedules A and B)  
 G&O #09467

Task No.	Description	Estimated/Rounded Fee (Both Schedules)		
		Gray & Osborne	Subconsultant	Total % of Total
1	Project Management	\$3,500	\$0	\$3,500 4%
2	Geotechnical	\$700	\$7,566**	\$8,266 9%
3	Survey/Mapping	\$17,000	\$0	\$17,000 19%
4	Utility Data Acquisition/Hydraulic Analysis	\$3,300	\$0	\$3,300 4%
5	Conceptual Phase	\$6,500	\$0	\$6,500 7%
6	Public Involvement/Staff Meetings	\$8,400	\$0	\$8,400 10%
7	Preliminary Design Phase	\$29,600	\$0	\$29,600 34%
8	Final Design Phase	\$7,500	\$0	\$7,500 8%
9	QA/QC Program	\$2,100	\$0	\$2,100 2%
10	Bid/Award	\$2,134	\$0	\$2,134 2%
<b>Subtotal</b>		\$80,734	\$7,566	\$88,300 100%

\*Includes expenses.

\*\*Includes 10 percent Administrative Overhead

## EXHIBIT "B"

### ENGINEERING SERVICES SCOPE AND ESTIMATED COST

*City of Black Diamond - Design Services - Schedule A  
(Incl. Geotechnical Service)*

Prepared by Timothy J. Osborne, P.E.					Date April 14, 2009	
Project Schedule A: Sidewalk Improvement Project (Morgan Street)						
Direct Salary Cost (DSC)						
Classification		Hours		Rate		Cost
Principal/Principal In Charge		12	x	\$56	=	\$ 672
Project Manager/Engineer		162	x	\$42	=	\$ 6,804
Civil Engineers		192	x	\$33	=	\$ 6,336
Traffic Engineer		0	x	\$42	=	\$ -
Structural Engineer		2	x	\$44	=	\$ 88
Technician/Drafter/E.I.T.		176	x	\$28	=	\$ 4,928
Environmental Technician/Specialist		6	x	\$32	=	\$ 192
Survey Crew		36	x	\$66	=	\$ 2,376
Professional Land Surveyor		12	x	\$42	=	\$ 504
Field Inspector/Resident Engineer		0	x	\$32	=	\$ -
TOTAL DSC						\$ 21,900
OVERHEAD (OH @ 171.00% x \$21,900)						\$ 37,449
SUBTOTAL, DIRECT LABOR COSTS AND OVERHEAD						\$ 59,349
FIXED FEE (FF) FF @ 15% x \$59,349						\$ 8,902
REIMBURSABLES						
Mileage (@ allowable IRS rate*), Photographs, Printing, Title Reports, and Miscellaneous Items (assessor maps, plat maps, records of survey, etc.) *Currently \$0.55/mile.						\$ 5,183
SUBCONSULTANT COST, INCL. 10% ADMIN. OVERHEAD Geotechnical (PanGEO, Inc.)						\$ 7,566
GRAND TOTAL (WITH MRF)						\$ 81,000

## EXHIBIT "B"

### ENGINEERING SERVICES SCOPE AND ESTIMATED COST

*City of Black Diamond - Design Services - Schedule B*

<b>Prepared by</b> Timothy J. Osborne, P.E.					<b>Date</b> April 14, 2009	
<b>Project</b> Schedule B: Sidewalk Improvement Project (Roberts Drive)						
<b>Direct Salary Cost (DSC)</b>						
<b>Classification</b>	<b>Hours</b>		<b>Rate</b>		<b>Cost</b>	
Principal/Principal In Charge	1	x	\$56	=	\$	56
Project Manager/Engineer	12	x	\$42	=	\$	504
Civil Engineers	12	x	\$33	=	\$	396
Traffic Engineer	0	x	\$42	=	\$	-
Structural Engineer	0	x	\$44	=	\$	-
Technician/Drafter/E.I.T.	8	x	\$28	=	\$	224
Environmental Technician/Specialist	1	x	\$32	=	\$	32
Survey Crew	2	x	\$66	=	\$	132
Professional Land Surveyor	1	x	\$42	=	\$	42
Field Inspector/Resident Engineer	0	x	\$32	=	\$	-
<b>TOTAL DSC</b>					<b>\$</b>	<b>1,386</b>
<b>OVERHEAD (OH @ 171.00% x \$1,386)</b>					<b>\$</b>	<b>2,370</b>
<b>SUBTOTAL, DIRECT LABOR COSTS AND OVERHEAD</b>					<b>\$</b>	<b>3,756</b>
<b>FIXED FEE (FF) FF @ 15% x \$3,756</b>					<b>\$</b>	<b>563</b>
<b>REIMBURSABLES</b>						
Mileage (@ allowable IRS rate*), Photographs, Printing, Title Reports, and Miscellaneous Items (assessor maps, plat maps, records of survey, etc.) *Currently \$0.55/mile.					<b>\$</b>	<b>2,981</b>
<b>SUBCONSULTANT COST, INCL. 10% ADMIN. OVERHEAD</b> Geotechnical (PanGEO, Inc.)					<b>\$</b>	<b>-</b>
<b>GRAND TOTAL (WITH MRF)</b>					<b>\$</b>	<b>7,300</b>

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
<b>SUBJECT:</b>  <b>Resolution No. 09-623, accepting low bid and authorizing the Mayor to execute a contract with All Purpose Structures for the warehouse roof replacement</b>	<b>Agenda Date: August 6, 2009</b>		<b>AB09-096</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		
	City Attorney – Loren D. Combs		
	City Clerk – Brenda L. Martinez		
	Finance – May Miller		
	Public Works – Seth Boettcher	X	
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Cost Impact: \$20,052.99	Court – Kaaren Woods		
Fund Source: REET	Comm. Dev. – Steve Pilcher		
Timeline: Complete by September 30, 2009			
<b>Attachments: Resolution No. 09-623, Contract and copy of low bid</b>			
<b>SUMMARY STATEMENT:</b> Bids on this project were solicited from five contractors who are on the small works roster for roof, insulation, gutters and downspout repairs with a guarantee. Two contractors responded without a guarantee but also included an option to re-roof the entire building with a guarantee. In reviewing the bid situation with VSI, the recommendation was to obtain one more comparable bid for the roof replacement option. Bids were received as follows: <b>All Purpose Structures - \$20,052.99</b> Alpha Steel buildings - \$41,915.39 Johnson Exteriors - \$28,747.50 The bids above include Washington State Sales Tax.  The contract requires completion before September 30 <sup>th</sup> , a 20% performance bond, prevailing wages, and insurance protection for the city and a 5 year guarantee.  <b>FUNDING:</b> \$20,000 was budgeted for 2009 and will cover this project. Funding will be from the Real Estate Excise Taxes.			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b>			
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 09-623, accepting low bid and authorizing the Mayor to execute a contract with All Purpose Structure to install a new roof, gutters and downspouts on the City's metal storage shed building for \$20,052.99.</b>			
<b>RECORD OF COUNCIL ACTION</b>			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
August 6, 2009			

**RESOLUTION NO. 09-623**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON  
ACCEPTING THE BID AND AUTHORIZING A CONTRACT  
WITH ALL PURPOSE STRUCTURES FOR A NEW ROOF  
ON THE CITY WAREHOUSE**

**WHEREAS**, the City has identified the need to replace or repair roof on the metal storage building. The insulation, gutters, downspouts and trim need to be repaired or replaced as well; and

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

**WHEREAS**, the City only received guarantees for total roof replacement; and

**WHEREAS**, the City desires to have a five year no leak guarantee and has received the lowest bid for roof replacement with a guarantee from All Purpose Structures Inc.;

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

**Section 1.** To accept the low bid and authorize the Mayor to execute a contract with All Purpose Structures Inc. for \$20,052.99 to replace the metal roof, insulation, gutters, downspouts and trim on the City warehouse building according to the bid and contract terms as attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 6<sup>TH</sup> DAY OF AUGUST, 2009.**

CITY OF BLACK DIAMOND:

---

Howard Botts, Mayor

Attest:

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Brenda L. Martinez, City Clerk

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

THIS Agreement is dated the \_\_\_\_ day of \_\_\_\_\_, 2009, and is made and entered into by CITY OF BLACK DIAMOND, WASHINGTON (“CITY”) and All-Purpose Structures Inc. (“CONTRACTOR”) for the following project:

Replace the metal roof, trim, gutters and downspouts on a 40x80 metal building and 40 x 20 shed located at 32820 3<sup>rd</sup> AVE, Black Diamond, WA 98010 in accordance with the Scope of Work attached hereto as Exhibit A. (“PROJECT”).

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 in accordance with the Contract Documents. The Contract Documents consist of the following in order of precedence:

- a. Written change orders or orders for changes in the work issued after execution of this Agreement;
- b. This Agreement signed by the City and Contractor;
- c. Bid Quotation (See attached bid Option dated **June 23, 2009**); and
- d. 2008 WSDOT Standard Specifications for Road, Bridge, and Municipal Construction, except Sections 1-02, 1-03, 1-04.1 through 1-04.6, 1-07.18, 1-08, 1-09.5, 1-09.11 and 1-09.13. All references in the Standard Specifications to the terms “State”, “Department of Transportation”, “Washington State Transportation Commission”, “Commission”, “Secretary of Transportation”, “Secretary”, “Headquarters”, and “State Treasurer” shall be revised to read “City of Black Diamond”.

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 thirty (30) calendar days after the date the Notice to Proceed is issued. 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 **\$20,052.99 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 September 30th, plus any authorized extensions thereof, the Contractor shall pay the City liquidated damages in the amount of \$500.00 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.** Each month after commencement of the Project, Contractor shall make a request for payment for work done during the preceding month. Failure to perform any of the obligations under the Contract by the Contractor may be decreed by the City to be adequate reason for withholding any payments until compliance is achieved. Progress payments for work performed shall not be evidence of acceptable performance or an admission by the City that any work has been satisfactorily completed. Payments received on account of work performed by a subcontractor are subject to the provisions of RCW 39.04.250.

**7. Bond and 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. Prior to commencing work, Contractor shall provide a performance and maintenance bond pursuant to RCW 39.08, on forms provided by the City, in the amount of 20% of the Contract Sum. At Contractor's option, the City may retain 20% of the Contract Sum, in lieu of the bond.

**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:

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

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

Contractor:

Troy Hansen  
All Purpose Structures Inc.  
P.O. Box 367  
1408 Hubbard  
Sumner, WA 98390

Phone: 253-862-1255  
Fax: 253-862-1443

**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  
ALL-PURPOSE STRUCTURES INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

## CERTIFICATE AS TO CORPORATE PRINCIPAL

I, \_\_\_\_\_ (*Corporate Officer (Not Contract Signer)*) certify that I am the \_\_\_\_\_ (*Corporate Title*) of the corporation named as Contractor in the Agreement attached hereto; that \_\_\_\_\_, (*Contract Signer*) who signed said Agreement on behalf of the Contractor, was then \_\_\_\_\_ (*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)

\_\_\_\_\_  
Printed

\_\_\_\_\_  
Title

State of \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_, (*corporate officer (not contract signer)*) being duly sworn, deposes and says that he/she is \_\_\_\_\_ (*Corporate Title*) of \_\_\_\_\_ (*Name of Corporation*)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_

\_\_\_\_\_  
Notary Public (Signature)

\_\_\_\_\_  
Notary Public (Print)

My commission expires \_\_\_\_\_

**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:

\_\_\_\_\_ (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*

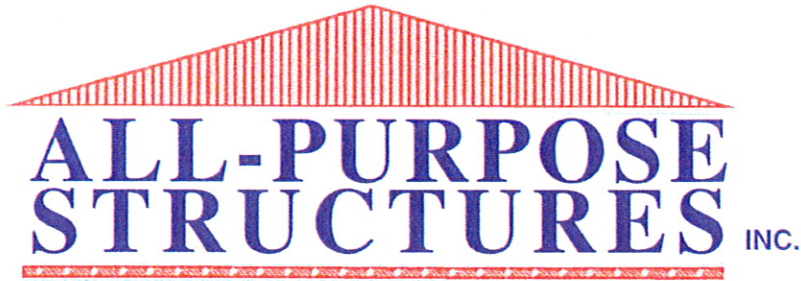
\_\_\_\_\_  
*Date*

# Exhibit “A”

## SCOPE OF WORK

**Replace the metal roof, trim, gutters and downspouts on a 40x80 metal building and 40 x 20 shed located at 32820 3<sup>rd</sup> AVE, Black Diamond, WA 98010. This is a prevailing wage job. More specifically as follows:**

1. Remove and replace roofing with minimum of 24 gauge multi rib metal screw down panels as per manufacturer's recommendations.
2. Remove and replace insulation blanket with minimum of two inch thick insulation with double back seal tape.
3. Remove and replace gutters, downspouts and trim.
4. Remove and properly dispose all old material and debris from job site. Clean the site of all dropped metal screws.
5. Contractor who is awarded bid must provide the city with a performance bond, or assignment of funds for twenty percent of the total project cost guaranteeing completion of the work.
6. Provide the City with a written 5 year guarantee that the roof will not leak.



July 23, 2009

Kevin Esping  
City of Black Diamond  
253 261-0594

**Re: Proposal for repairs to steel building:**

**Specifications:**

- Prevailing wage labor
- Remove and replace all roof screws with #14 tek's
- Remove and replace all gable trim with new 26 gauge gable trim
- Remove and replace all gutter with new gutter
- Remove and replace all downspouts
- Remove and replace all ridge cap with preformed ridge cap
- Remove and replace roof insulation between purlins at damaged areas
- Haul off debris

**WE PROPOSE TO FURNISH MATERIAL, LABOR AND EQUIPMENT FOR THE ABOVE  
SCOPE OF WORK FOR THE SUM OF \$10,717.00 plus tax**

**Option:**

- Remove and replace roofing with 24 gauge Coco Brown Kynar screw down roof panels
- Remove and replace roof insulation with 3" WMP VR metal building insulation with double seal tites
- Remove and replace all roof trim, gutter and downspouts
- Prevailing wage labor
- Remove debris
- Five year weather tightness warranty (labor and materials)
- 35 year film, chalk and fade warranty on panels
- Performance and payment bond
- Builders risk insurance
- Liability insurance four million aggregate

**WE PROPOSE TO FURNISH MATERIAL, LABOR AND EQUIPMENT FOR THE ABOVE  
SCOPE OF WORK FOR THE SUM OF \$18,465.00 plus tax**

**Exclusions:**

- Sales Tax
- Any other items not expressly covered in the above project description

Sincerely,



Troy Hanson  
General Manager

## CITY STORAGE BUILDING

### History:

The warehouse was originally built in 1993 with drug seizure funds and used specifically for that purpose for many years. We stored seized vehicles, evidence and other property until it was forfeited to the city. The building was then used to hold public auctions to sell the forfeited property. The building was later converted to general city use.

The warehouse is in dire need of repair. The roof being the most urgent. There are several spots in the roof where water has been leaking in. It creates pockets in the insulation which eventually drip or burst landing on whatever is below. I have been able at this point to strategically keep most storage items in a fairly dry location. This limits significantly the space and use of the building.

The large bay which is needed for storing the police boat has a leak just behind the boat and also one above the bow. Water gets stagnant and leaks in a green algae type substance. I have to constantly clean that up after a rain.

The leaks are not totally predicable either. The police department had all the back seats to the new Dodge Chargers stacked in what we thought was a good location however, water dried insulation started falling on them creating a crusty white residue all over them.

The building is not sealed properly as well. On several occasions I have found birds nesting and flying around inside. The only way to get them out is to open the big door, leave the lights out so they fly to the light of the outside. They make a real mess and the smell is unbearable.

The lighting is poor and inadequate. There are no lights at all above the south end of the building because the original plan was to build an exercise facility for the police department there with hard walls.

The building is plumbed with floor drains with the idea of being able to wash a car inside if necessary and power wash the floors when needed. The drains are tied in to the sewer. There is also a stub out for a toilet & shower.

The electrical is minimal as well just enough to handle lighting and outlets. It is not wired with 220 amp circuits.

The building is plumbed with copper pipe with the intension of adding a ceiling mounted heater.

There is a phone line coming to the building which was used for the alarm system to protect at the time sometimes over \$100,000.00 in property.

In conclusion:

We are currently storing hundreds of boxes of city records as well as police equipment, police radios, some of which includes a \$60,000.00 set of scales purchased to weigh trucks. With a new roof, heat, minor repairs and an alarm system, the building could have potentially some good long term use. However, in it's current condition we have some serious potential of losing city records and damaging other city property. We also do not have an alarm so we are vulnerable to theft.

Here are some questions that need to be considered:

- 1) What is the long term projected use of the building?
- 2) Would the property space be better utilized for other city use?
- 3) Is the repair cost worth the investment for planned future use?
- 4) Could the building be moved and re-erected at another location?
- 5) Will seal coating the roof be sufficient or does it need to be replaced?
- 6) Can the insulation be removed and replaced with another product?  
(Current insulation is sandwiched between the roof and the steel beams)
- 7) Should we alarm the building now to reduce the risk?

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
<b>SUBJECT:</b>  <b>Resolution No. 09-624, authorizing Contract with PacWest for technical review assistance of the Lawson Hills and Villages Master Planned Developments</b>	<b>Agenda Date: August 6, 2009</b>		<b>AB09-097</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		
	City Attorney – Loren D. Combs		<b>X</b>
	City Clerk –Brenda L. Martinez		
	Finance – May Miller		
	Public Works – Seth Boettcher	<b>X</b>	
	Economic Devel. – Andy Williamson		
	Police –		
Cost Impact: \$25,980	Court – Kaaren Woods		
Fund Source: reimburseable from applicant			
Timeline: by approximately October			
<b>Attachments: , Resolution No. 09-624, Contract, picture of applications</b>			
<p>PacWest, having produced the City’s Water Comprehensive Plan and in the process of updating the City’s Sewer Comprehensive Plan, is well versed in the City’s codes, planning, standards and the projects, and is our most logical choice to efficiently provide technical review assistance for the water and sewer infrastructure proposed for Lawson Hills and The Villages MPD applications.</p> <p>PacWest has our computer water system hydraulic model and staff that understand our infrastructure here in Black Diamond. It is our intent to have PacWest collaborate their efforts with Parametrix for the most effective review.</p> <p>This review assistance will be a reimburseable cost as authorized through our Master Planned Development Ordinance.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: Public Works Committee was cancelled for July 30, 2009. No recommendation.			
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 09-624, authorizing the Mayor to execute the attached contract with PacWest for technical review services of the Lawson Hills and Villages Master Planned Development Applications with respect to water and sewer in the amount of \$25,980.</b>			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
August 6, 2009			

**RESOLUTION NO. 09-624**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON,  
AUTHORIZING A CONTRACT WITH PACWEST FOR  
TECHNICAL REVIEW SERVICES OF THE LAWSON HILLS  
AND VILLAGES MASTER PLANNED DEVELOPMENT  
APPLICATIONS**

**WHEREAS**, the City does not have the staff level or the full range of expertise to provide comprehensive and timely review of the Lawson Hills and Villages Master Planned Development Applications; and

**WHEREAS**, PacWest has been determined to be the most qualified consultant to efficiently review the Master Planned Developments with respect to water and sewer infrastructure; and

**WHEREAS**, The Master Planned Development codes provide for reimbursement of costs associated with the review of the applications;

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

**Section 1.** The Mayor is authorized to execute the a contract with PacWest to provide technical review services of the Lawson Hills and Villages Master Planned Development applications with respect to water and sewer Infrastructure as attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 6TH DAY OF AUGUST, 2009.**

CITY OF BLACK DIAMOND:

---

Howard Botts, Mayor

Attest:

---

Brenda L. Martinez, City Clerk

July 30, 2009



City of Black Diamond  
Seth Boettcher, PE, Public Works Director  
24301 Roberts Drive  
PO Box 599  
Black Diamond, WA 98010

RE: Proposal to Provide Initial Utility Review Services for Yarrow Bay Master Planned Developments – “Exhibit A”

Dear Seth,

Thank you for the opportunity to submit this proposal to provide the above referenced services and serve as Exhibits A & B for contract purposes. PacWest Engineering appreciates the numerous opportunities we have had to provide professional services to the City. Our familiarity with the community and the City's goals will be of benefit to the City in having PacWest Engineering provide review services of Yarrow Bay's MPD applications.

### **Background**

We understand that Yarrow Bay has submitted Master Planned Development applications for both “Lawson Hills” and “The Villages at Black Diamond”. The Villages MPD includes 1,170 acres southwest of the town center, and is proposed for mixed use development to include residential, retail, commercial, office, educational, recreational, and open space. The proposed MPD assumes 4,400 dwelling units and 775,000 square feet of employment (commercial, office and other uses). The Lawson Hills MPD includes 376 acres located to the north and east of the town center. Proposed uses are consistent with those for The Villages, with 1,250 dwelling units and 390,000 square feet of employment. The City's MPD ordinance requires 50% of the total area to be reserved for open space.

### **Scope of Services**

PacWest Engineering will provide the following scope of services:

#### **1) Project Management, Meetings, & Coordination**

This task will include overall project management and quality control services to ensure that the review is completed on time and within budget. Coordination with city staff and with other firms providing review services for transportation and stormwater will be included in this task. This task includes attendance at up to two meetings that are four hours in duration and cover both of the developments.

## **2) Initial Review Services**

PacWest Engineering will complete an initial engineering review of the submitted proposals for utilities planning and operations. We will review the proposals that are submitted by Yarrow Bay to address sanitary sewer and water for the proposed MPD's for consistency with City comprehensive planning and the MPD ordinance and technical aspects of the utility service concepts. We understand that all other topics such as transportation, density requirements, etc. will be reviewed by others.

The initial review will include a review of the materials submitted for completeness. This review will also include the preparation of comments summarizing our initial review of the conceptual designs provided by the developer.

We have reviewed the City's Master Planned Development ordinance and will review the proposals for conformance with the standards included therein which are summarized below:

### **WATER & SEWER**

- An MPD shall be served with public water and sanitary sewer systems that:
  - Employ innovative water conservation measures to reduce and/or discourage the reliance upon potable water for nonpotable uses including outdoor watering.
  - Are designed in such a way to eliminate or reduce to the greatest degree possible the reliance upon pumps, lift stations, and other mechanical devices and their associated costs to provide service to the MPD.
- Each MPD shall develop and implement a water conservation plan that sets forth strategies for achieving water conservation at all phases of development and at full build-out, that results in water usage that is at least ten percent less the average water usage in the City for residential purposes.

PacWest Engineering will also provide professional services in support of the development of a Developer Agreement between Yarrow Bay and the City of Black Diamond. We understand that the agreement will be drafted by others, and PacWest Engineering will provide recommended conditions/comments to be included in the agreement with regard to the water and sanitary sewer improvements required by the developer.

### **Professional Staff**

**Leonard L. Smith, PE/PLS** will serve as the Principal in Charge and Project Manager for the utility reviews associated with the Lawson Hills MPD and The Villages MPD. Mr. Smith will participate in all meetings with the City and/or Yarrow Bay representatives and will serve as the primary point of contact for the City.

**Christine J. Smith, PE** will complete review of the proposed utilities for the Lawson Hills MPD and The Villages MPD. Ms. Smith has provided professional services on



numerous projects for the City of Black Diamond and is familiar with the City's goals for future utility development and operation.

### **Schedule**

PacWest Engineering anticipates that our initial review services will be completed within three months following a notice to proceed. All efforts will be made to complete the review in a timely manner.

### **Cost of Services**

PacWest Engineering will provide initial review services on an hourly basis with an estimated budget of \$25,980 as shown on the attached spreadsheet. Additional services can be provided on an hourly basis as per the following schedule of rates which may be updated periodically from time to time.

#### Schedule of Rates

Leonard L. Smith, PE/PLS, Principal Engineer	\$145 / hr
Christine J. Smith, PE, Senior Engineer	\$125 / hr
Project Engineer	\$90 – 125 / hr
Administrative Expenses	5% of Labor costs
Reimbursable Expenses	Cost + 10%

We look forward to working with the City to provide professional services for the initial review of the utility proposals associated with the Lawson Hills MPD and The Villages MPD. If you have any questions, please feel free to contact me at [lsmith@pacweste.com](mailto:lsmith@pacweste.com) or (253) 926-3400 x433.

Sincerely,



Leonard L. Smith, PE/PLS  
President



# EXHIBIT "B"

## Yarrow Bay Master Planned Developments Utility Review Services (Water & Sanitary Sewer) Professional Services Budget

	Hourly Rate:		Hrs	Subtotal	Administrative Expenses	Reimbursable Expenses	Total
	Leonard L. Smith, PE/PLS (President)	Christine Smith, PE (Professional Engr.)					
LAWSON HILLS							
Project Management, Meetings, & Coordination	12	8	20	\$ 2,740	\$ 140	\$ -	\$ 2,880
Review Services	18	44	62	\$ 8,110	\$ 410	\$ 200	\$ 8,720
Subtotal (Lawson Hills)	30	52	82	\$ 10,850	\$ 550	\$ 200	\$ 11,600
THE VILLAGES AT BLACK DIAMOND							
Project Management, Meetings, & Coordination	14	8	22	\$ 3,030	\$ 150	\$ -	\$ 3,180
Review Services	24	56	80	\$ 10,480	\$ 520	\$ 200	\$ 11,200
Subtotal (The Villages)	38	64	102	\$ 13,510	\$ 670	\$ 200	\$ 14,380
TOTAL HOURS	68	116	184	-	-	-	-
TOTAL COST	\$ 9,860	\$14,500	-	\$ 24,360	\$ 1,220	\$ 400	\$ 25,980

\*Note: 2 meetings (4 hr duration) which cover both of the developments are assumed. (Assume 4 hrs for Lawson Hills & 4 hrs for The Villages. 8 hrs total of meetings)  
 \*Note: Administrative Expenses are calculated at 5% of the budget and include costs for Administrative staff, miscellaneous photocopies, telephone charges, printing, etc.

\*Note: This budget has been prepared for planning purposes only. Billings will be based on actual time spent and may vary from the amount listed above.

## **CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (the or this "Agreement"), for reference purposes only, is dated \_\_\_\_\_, 20\_\_ and is entered into by and between

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

P.O. Box 599

24301 Roberts Drive

Black Diamond, WA 98010

Contact: \_\_\_\_\_ Phone: 360-886-2560 Fax : 360-886-2592

and

PacWest Engineering LLC ("Consultant")

5009 Pacific Highway E., Unit 9-0

Fife, WA 98424

Contact: Leonard Smith Phone: 253-926-3400 ext 433 Fax: 253-926-3402

Tax Id No.: 91-091-4810

for professional services in connection with the following project:

***Technical Review of the water and sanitary sewer systems as proposed in the Master Planned Development Applications for Lawson Hills and the Villages and also referred to as the "Project" within the context of this contract.***

### **TERMS AND CONDITIONS**

#### **1. Services by Consultant**

1.1 Consultant shall perform the services described in the Scope of Work attached to this Agreement as Exhibit "A." The services performed by Consultant shall not exceed the Scope of Work nor shall the Consultant be entitled to a greater amount of compensation as that provided in this Agreement without the prior written authorization of the City.

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

1.3 Consultant represents and warrants that it, its staff to be assigned to the Project, and its subconsultants and their staff have the requisite training, skill, and experience necessary to provide the services required by this Agreement and are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant and its subconsultants under this Agreement will be performed in a manner consistent with that degree

of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

## **2. Schedule of Work**

2.1 Consultant shall perform the services described in the Scope of Work in an efficient and expeditious manner. An initial meeting after the first review will be expected within 3 weeks. This phase of review under this contract is expected to be complete by mid October.

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

2.3 Consultant is authorized to proceed with services upon e-mail notice and authorization to proceed.

## **3. Compensation**

TIME AND MATERIALS NOT TO EXCEED. Compensation for the services provided in the Scope of Work shall not exceed \$ 25,980 without the written authorization of the City and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit "B."

## **4. Payment**

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

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

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

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

## **5. Discrimination and Compliance with Laws**

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

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

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

## **6. Suspension and Termination of Agreement**

6.1 The City reserves the right to terminate or suspend this Agreement at any time, without cause, by giving Consultant notice in writing ten (10) days prior to the termination or suspension date. In the event of termination, all finished or unfinished reports, or other material prepared by Consultant pursuant to this Agreement, shall be submitted to the City. In the event the City terminates this Agreement prior to completion without cause, Consultant may complete such analyses and records as may be necessary to place its files in order. Consultant shall be entitled to compensation for any satisfactory work completed on the Project prior to the date of suspension or termination.

6.2 Any notice from the City to Consultant regarding the suspension of this Agreement shall specify the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to Consultant's reasonable expenses and shall be subject to verification. Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

## **7. Standard of Care**

7.1 Consultant represents and warrants that it has the requisite training, skill, and experience necessary to provide the services under this Agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services Consultant provides under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

## **8. Ownership of Work Product**

8.1 Ownership of the originals of any reports, data, studies, surveys, charts, maps, drawings, specifications, figures, photographs, memoranda, and any other documents which are

developed, compiled, or produced as a result of this Agreement, whether or not completed, shall be vested in the City and shall be submitted to the City upon termination of this Agreement. Any reuse of these materials by the City for projects or purposes other than those that fall within the scope of this Agreement and the Project to which it relates, without written concurrence by Consultant, will be at the sole risk of the City.

8.2 The City acknowledges Consultant's documents as instruments of professional service. Nevertheless, the documents prepared under this Agreement shall become the property of the City upon completion of the work. The City agrees to hold harmless and indemnify Consultant against all claims made against Consultant for damage or injury, including defense costs, arising out of the City's reuse of such documents beyond the use for which they were originally intended without the written authorization of Consultant.

8.3 Methodology, software, logic, and systems developed under this Agreement are the property of Consultant and the City, and may be used as either Consultant or the City see fit, including the right to revise or publish the same without limitation.

## **9. Indemnification/Hold Harmless**

9.1 Consultant 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 reasonable attorney fees, arising directly or indirectly out of or resulting from the acts, errors, or omissions of Consultant or its subconsultants in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. Provided however, that if any such claims, injuries, damages, losses or suits result from the concurrent negligence of Consultant and the City, it is expressly agreed that Consultant's obligations and indemnity under this paragraph shall be effective only to the extent of Consultant's negligence.

## **10. Insurance**

10.1 Consultant shall procure and maintain for the duration of the Agreement, and shall provide proof satisfactory to the City that such insurance is procured and maintained by each of its subconsultants, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, or employees.

10.2 Consultant shall procure and maintain the following types and amounts of insurance:

a. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage. This insurance shall have a minimum combined single limit for bodily injury and property damage of \$2,000,000 per accident.

b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall

cover liability arising from premises, operations, independent contractors, personal injury, and advertising injury. This insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate.

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

d. Professional Liability insurance appropriate to Consultant's profession, with limits no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit.

10.3 The Automobile Liability, Commercial General Liability, and Professional Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

a. Consultant's insurance coverage shall be primary insurance vis-à-vis the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess over Consultant's insurance and shall not contribute with it.

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

10.4 The City shall be named as an additional insured under Consultant's Automobile Liability and Commercial General Liability insurance policies with respect to the work to be performed for the City pursuant to this Agreement.

10.5 Insurance shall be placed with insurers with a current A.M. Best rating of not less than A:VII.

10.6 Declaration pages issued by the insurance carriers for the policies mentioned in this Section 10 showing such insurance to be in force shall be filed with the City not less than ten (10) days following both parties signing this Agreement and before commencement of the work. In addition, the City may request, in writing, a full copy from Consultant of any insurance policy Consultant must procure and maintain pursuant to this Agreement and Consultant must provide such copy to the City within ten (10) days of Consultant's receipt of the City's request. Any policy or required insurance written on a claims-made basis shall provide coverage as to all claims arising out of the services performed under this Agreement and for three (3) years following completion of the services to be performed. It shall be a material breach of this Agreement for Consultant to fail to procure and maintain the insurance required by this Section 10 or to provide the proof of such insurance to the City as provided for in this Agreement.

## **11. Assigning or Subcontracting**

11.1 Consultant shall not assign, transfer, subcontract, or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld at the sole discretion of the City.

**12. Independent Contractor**

12.1 Consultant and its subconsultants are, and shall be at all times during the term of this Agreement, independent contractors.

**13. Notice**

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

City: City Administrator  
City of Black Diamond  
P.O. Box 599  
Black Diamond, WA 98010  
Fax: 360-886-2592

With a copy to: Loren D. Combs and  

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VSI Law Group  
3600 Port of Tacoma Rd. Ste. 311  
Tacoma, WA 98424  
Fax: 253-922-5848

Consultant: Leonard Smith, PE – Project Manager and Principal  
PacWest Engineering LLC (“Consultant”)  
5009 Pacific Highway E., Unit 9-0  
Fife, WA 98424  
Phone 253-926-3400  
Fax: 253-926-3402

**14. Disputes**

14.1 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, Kent, Washington.

**15. Attorney Fees**

15.1 In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney fees from the other party.

**16. General Administration and Management on Behalf of the City**

16.1 The City Administrator for the City, or his designee, shall review and approve Consultant's invoices to the City under this Agreement and shall have primary responsibility for overseeing and approving work or services to be performed by Consultant.

**17. Extent of Agreement/Modification**

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

CITY OF BLACK DIAMOND

CONSULTANT

By: \_\_\_\_\_

Howard Botts

Its: Mayor

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

By: \_\_\_\_\_

Printed Name: Leonard Smith

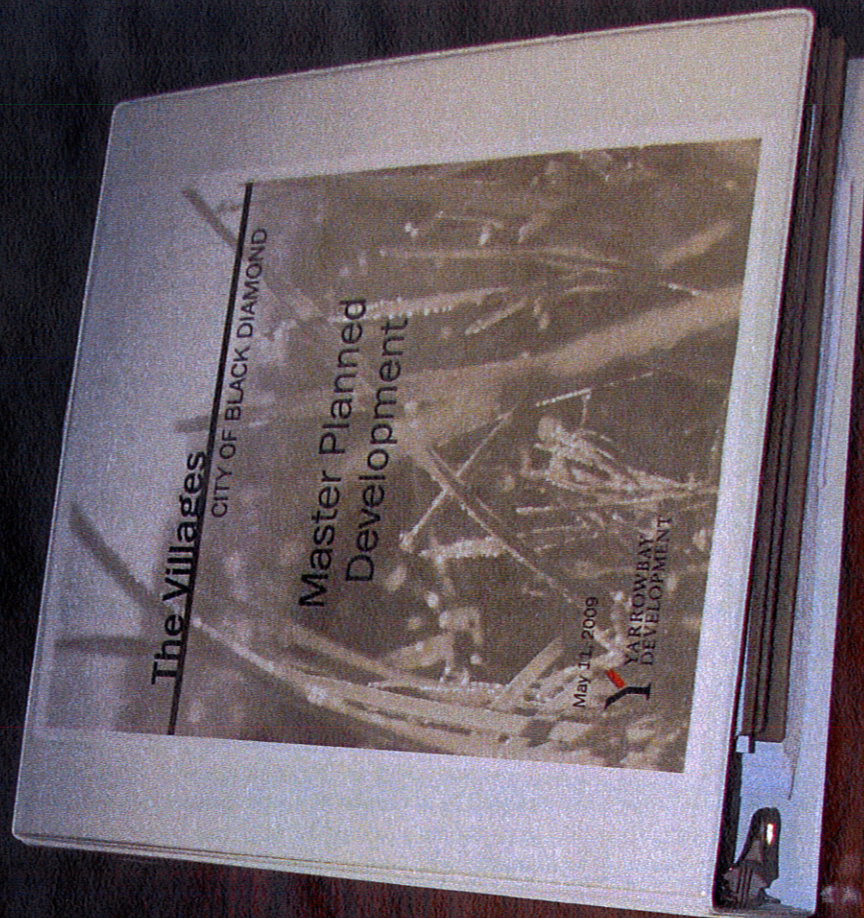
Its: Principal

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

Attest:

By:

\_\_\_\_\_  
Brenda L. Martinez  
City Clerk



# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
<b>SUBJECT:</b> <b>Resolution No. 09-625, authorizing the Mayor to execute a contract with Parametrix for technical review assistance of the Lawson Hills and Villages Master Planned Developments</b>	<b>Agenda Date: August 6, 2009</b>		<b>AB09-098</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		
	City Attorney – Loren D. Combs		<b>X</b>
	City Clerk – Brenda L. Martinez		
	Finance – May Miller		
	Public Works – Seth Boettcher	<b>X</b>	
	Economic Devel. – Andy Williamson		
	Police –		
Timeline: By approximately October	Court – Kaaren Woods		
Cost Impact: \$24,225			
Fund Source: Reimbursable from applicant			
<b>Attachments: Resolution No. 09-625, Contract, picture of applications</b>			
<p>Parametrix is producing the Draft Environmental Impact statements for both the Lawson Hills and Villages MPD and is well versed already on the City’s codes, planning, standards and the projects. Therefore Parametrix is our most logical choice to efficiently provide us with technical review assistance for the streets and stormwater infrastructure proposed for Lawson Hills and the Villages.</p> <p>Parametrix has our computer traffic model and staff that understand the traffic situations here in Black Diamond. Parametrix also has investigated the stormwater plans in detail to evaluate the impacts through the Environmental Impact Study. It is our intent to have Parametrix collaborate their efforts with PacWest for a team effort for the most effective review.</p> <p>This review assistance will be a reimbursable cost as authorized through our Master Planned Development Ordinance.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: Public Works Committee was cancelled. No recommendation.			
RECOMMENDED ACTION: <b>MOTION to adopt Resolution No. 09-625, authorizing the Mayor to execute a contract with Parametrix for technical review services of the Lawson Hills and Villages Master Planned Development Applications with respect to Streets and Stormwater in the amount of \$24,225.</b>			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	
August 6, 2009			

**RESOLUTION NO. 09-625**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON,  
AUTHORIZING A CONTRACT WITH PARAMETRIX FOR  
TECHNICAL REVIEW SERVICES OF THE LAWSON HILLS  
AND VILLAGES MASTER PLANNED DEVELOPMENT  
APPLICATIONS**

**WHEREAS**, the City does not have the staff level or the full range of expertise to provide comprehensive and timely review of the Lawson Hills and Villages Master Planned Development Applications; and

**WHEREAS**, Parametrix has been determined to be the most qualified consultant who will be able to most efficiently review the Master Planned Developments with respect to Streets, traffic and Stormwater infrastructure; and

**WHEREAS**, The Master Planned Development codes provide for reimbursement of costs associated with the review of the applications;

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

**Section 1.** The Mayor is authorized to execute a contract with Parametrix to provide technical review services of the Lawson Hills and Villages Master Planned Development applications with respect to Streets, and Stormwater Infrastructure as attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 6<sup>TH</sup> DAY OF AUGUST, 2009.**

CITY OF BLACK DIAMOND:

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Howard Botts, Mayor

Attest:

---

Brenda L. Martinez, City Clerk

## **CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (the or this "Agreement"), for reference purposes only, is dated August 6, 2009 and is entered into by and between

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

P.O. Box 599

24301 Roberts Drive

Black Diamond, WA 98010

Contact: \_\_\_\_\_ Phone: 360-886-2560 Fax : 360-886-2592

and

PARAMETRIX, INC. ("Consultant")

P.O. Box 460

1231 Fryar Avenue

Sumner, WA 98390

Contact: David Roberts Phone: 253-863-5128 Fax: 253-863-0946

Tax Id No.: 91-091-4810

for professional services in connection with the following project:

***Technical Review of the streets and storm water systems as proposed in the Master Planned Development Applications for Lawson Hills and The and also referred to as the "Project" within the context of this contract.***

### **TERMS AND CONDITIONS**

#### **1. Services by Consultant**

1.1 Consultant shall perform the services described in the Scope of Work attached to this Agreement as Exhibit "A." The services performed by Consultant shall not exceed the Scope of Work nor shall the Consultant be entitled to a greater amount of compensation as that provided in this Agreement without the prior written authorization of the City.

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

1.3 Consultant represents and warrants that it, its staff to be assigned to the Project, and its subconsultants and their staff have the requisite training, skill, and experience necessary to provide the services required by this Agreement and are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant and its

subconsultants under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

## **2. Schedule of Work**

2.1 Consultant shall perform the services described in the Scope of Work in an efficient and expeditious manner. An initial meeting after the first review will be expected within 3 weeks. This phase of review under this contract is expected to be complete by mid October.

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

2.3 Consultant is authorized to proceed with services upon e-mail notice and authorization to proceed.

## **3. Compensation**

TIME AND MATERIALS NOT TO EXCEED. Compensation for the services provided in the Scope of Work shall not exceed \$ 24,225 without the written authorization of the City and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit "B."

## **4. Payment**

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

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

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

## **5. Discrimination and Compliance with Laws**

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

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

## **6. Suspension and Termination of Agreement**

6.1 The City reserves the right to terminate or suspend this Agreement at any time, without cause, by giving Consultant notice in writing ten (10) days prior to the termination or suspension date. In the event of termination, all finished or unfinished reports, or other material prepared by Consultant pursuant to this Agreement, shall be submitted to the City. In the event the City terminates this Agreement prior to completion without cause, Consultant may complete such analyses and records as may be necessary to place its files in order. Consultant shall be entitled to compensation for any satisfactory work completed on the Project prior to the date of suspension or termination.

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10.2 Consultant shall procure and maintain the following types and amounts of insurance:

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endorsed to provide contractual liability coverage. This insurance shall have a minimum combined single limit for bodily injury and property damage of \$2,000,000 per accident.

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City of Black Diamond  
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Black Diamond, WA 98010  
Fax: 360-886-2592

With a copy to: Loren D. Combs and  

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VSI Law Group  
3600 Port of Tacoma Rd. Ste. 311  
Tacoma, WA 98424  
Fax: 253-922-5848

Consultant: David Roberts, PE – Project Manager  
Parametrix, Inc.  
P.O. Box 460  
Sumner, WA 98390  
Fax: 253-863-0946

## **14. Disputes**

14.1 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, Kent, Washington.

## **15. Attorney Fees**

15.1 In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney fees from the other party.

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

CITY OF BLACK DIAMOND

CONSULTANT

By: \_\_\_\_\_

Howard Botts

Its: Mayor

By: \_\_\_\_\_

Printed Name: Daniel McReynolds

Its: Principal

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

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

Attest:

By:

\_\_\_\_\_  
Brenda L. Martinez  
City Clerk

## EXHIBIT A

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### **City of Black Diamond MPD Review – Streets and Stormwater**

Parametrix, Inc.

#### ***Phase 1 – Initial Review***

The City of Black Diamond has received two applications for master planned developments called Lawson Hills and The Villages. The City has requested that Parametrix assist with the technical review of the application materials.

Parametrix will provide a technical review of proposed roadways and the proposed stormwater mitigation approach. Pac West will provide a technical review of the proposed water and sanitary sewer infrastructure improvements.

Parametrix will work with City Staff and Pac West Engineers as a team to determine whether or not additional technical information is necessary from the Applicant in order for the City to complete a Developer Agreement. Further, the team will provide recommendations on the form and content of the Developer Agreement to provide consistency with the City's Comprehensive Plan and the Planned Action Environmental Impact Statements prepared for both Master Planned Developments.

#### **Task 1 – Project Management & Coordination**

##### **Goal**

Maintain constant and thorough communications with the City of Black Diamond and Pac West Engineers to maximize teamwork and productivity. Maintain control of the project scope, budget, and schedule. Provide quality service and products to the client.

##### **Approach**

The approach to Task 1 includes:

- Schedule and coordinate the work of all team members and assure that work is completed accurately and within scope and budget.
- Perform a quality control review of all deliverables prior to submittal to the City.
- Coordinate with City staff and Pac West Engineers on all aspects of project to provide the City with conformed and thorough recommendations.
- Provide monthly updates to the City on the progress of the project including:
  - Prepare and submit monthly progress billings to City Administrator.
  - Provide additional identification of issues and proposed solutions if unforeseen issues arise.

## **Deliverables**

The deliverables for Task 1 consist of the following:

- Monthly progress reports. The monthly report, addressing progress of the work, shall include as appropriate:
  - A summary of actual versus scheduled cost.
  - A summary of actual versus scheduled progress.
  - A narrative to define unanticipated issues, responsive action requirements by Parametrix.
- Meeting Agenda and Notes as applicable.

## **Assumptions**

- The duration of the contract is August 2009 through December 2009.
- It is assumed that several meeting will be necessary to coordinate between Parametrix, Pac West Engineers and the City. We have assumed a total of three (3) meeting workshops that are 4 hours each in length for budgeting purposes.
- Delays due to unforeseen circumstances (i.e., additional meetings or extended review periods) may result in additional effort necessary for project management and coordination.

## **Task 2 – Review**

### **Goal**

To provide the City with a conformed set of comments and recommendations that can be used to obtain additional information from the Applicant if necessary and ultimately prepare a Developer Agreement for both MPD projects.

Parametrix will review the application materials with respect to street/roadway infrastructure and stormwater mitigation.

### **Approach**

The streets technical review will evaluate geometric roadway design standards and roadside safety elements such as:

- Horizontal Curvature
- Cross Slope
- Vertical Grade
- Vertical Curvature
- Clear Zone

- Horizontal, Vertical and Entering Sight Distance
- ADA Compliance and Non-Motorized Use
- Access Management

The streets technical review will also include an initial assessment on whether the street and traffic improvements and the phasing of those improvements are consistent with the conclusions in the Environmental Impact Statement.

The stormwater mitigation review will include an initial assessment of:

- Consistency of the proposed mitigation approach with the 2005 Stormwater Management Manual for Western Washington or applicable current manual as approved by the City.
- Consistency of the proposed mitigation approach with the City's Comprehensive Plan, Design Guidelines and Sensitive Areas Ordinance(s).
- Consistency with the Environmental Impact Statements prepared by the City for the two Master Planned Developments.

The initial review of the Developer Agreement will primarily focus on identifying elements that are either missing or included at an inadequate level of detail to define the responsibilities for delivery of infrastructure improvements.

## **Deliverables**

The deliverables for Task 2 consist of the following:

- A single set of conformed comments on the street and stormwater mitigation elements of the application in a format as determined by the City. Parametrix and Pac West Engineers will coordinate to combine comments prepared by both firms into a single set of comments.

## **Assumptions**

- This review and any subsequent reviews will be limited to verification of compliance with City of Black Diamond design guidelines inclusive of all comprehensive plans, special studies and referenced design guidelines prepared by others. Neither the initial review nor subsequent reviews shall constitute a Peer Review that would preclude the Applicant from their professional diligence as licensed Professional Engineers in the State of Washington in this regard.
- Review of street geometrics will be limited to verifying that the correct standards are referenced. A detailed check on compliance with the standards will not be performed in Phase 1.
- Recommendations for transportation improvement projects will be based upon the phasing information included in the application dated May 11, 2009. The City and/or the Applicant will provide land use data for each phase necessary for determining the need for specific transportation improvement projects.

- The City will provide Parametrix with a copy of their most recent design guidelines and City staff will be available for communication regarding the use of other applicable design guidelines.

**CLIENT: City of Black Diamond**

