



**CITY OF BLACK DIAMOND**  
**March 19, 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: None**

**APPOINTMENTS, PRESENTATIONS, ANNOUNCEMENTS: None**

**UNFINISHED BUSINESS: None**

**NEW BUSINESS:**

- |   |               |
|---|---------------|
| 1.) <b>AB09-025</b> – Resolution Authorizing Collecting Bargaining Agreement with Police Officers Association | Mr.Combs      |
| 2.) <b>AB09-026</b> – Resolution Authorizing FEMA Grant   | Mr. Boettcher |
| 3.) <b>AB09-027</b> – Resolution Authorizing Professional Service Agreement with Parametrix                   | Mr. Boettcher |
| 4.) <b>AB09-028</b> – Resolution Authorizing Court Remodel  | Mr. Boettcher |

**DEPARTMENT REPORTS:**

Natural Resources/Parks – Mr. Nix  
Discussion/Direction on Potential “Treasured Status” for Habenicht Parcel

**MAYOR’S REPORT:**

**COUNCIL REPORTS:**

**ATTORNEY REPORT:**

**PUBLIC COMMENTS:**

**CONSENT AGENDA:**

- 5.) **Claim Checks** – March 19, 2009 No. 33165 through No. 33195, No. 33200 through No. 33239 (voided checks No.33196-33199) in the amount of \$228,189.68
- 6.) **Payroll Checks** – February 28, 2009, No. 15638 through No. 15715 in the amount of \$299,302.18
- 7.) **Minutes** –Workstudy Notes of March 5, 2009, Council Meeting of March 5, 2009 and Workstudy Notes of March 12, 2009

**EXECUTIVE SESSION:**

**ADJOURNMENT:**

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
<b>SUBJECT:</b> <b>Resolution No. 09-583, authorizing the Mayor to sign the Collective Bargaining Agreement between the City of Black Diamond and the Black Diamond Police Officers Association</b>	<b>Agenda Date: March 19, 2009</b>		<b>AB09-025</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. Streepy		
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Cost Impact:	Court – Kaaren Woods		
Fund Source:	Community Devel. – Steve Pilcher		
Timeline: 2009 Budget	Natural Resources – Aaron Nix		
<b>Attachments: Resolution # 09-583, Agreement</b>			
<b>SUMMARY STATEMENT:</b>  <p>The Black Diamond Police Officers Association (the “Association”) is the authorized bargaining representative for the Black Diamond Police Officers. The Association was formed in 2008. The City negotiating team has reached tentative Agreement with the Union for a new six (6) year Collective Bargaining Agreement (“CBA”) effective August 31, 2008 through August 30, 2014 (Attached hereto as Exhibit A) and the City negotiating team has recommended that the Council ratify the CBA. The Association has approved the CBA. The Council has reviewed the CBA and finds it is in the best interests of the City and its employees to authorize the Mayor to execute the CBA.</p>			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b> The City negotiating team consisting of the City Administrator, Chief of Police and City Attorney recommend approval of Resolution 09-583, authorizing the Mayor to execute a Collective Bargaining Agreement with the Black Diamond Police Association.			
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 09-583, authorizing the Mayor to sign the collective bargaining agreement between the City of Black Diamond ad Black Diamond Police Officers Association.</b>			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
March 19, 2009			

RESOLUTION NO. 09-583

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON,  
AUTHORIZING THE MAYOR TO SIGN THE COLLECTIVE  
BARGAINING AGREEMENT BETWEEN THE CITY OF BLACK  
DIAMOND AND BLACK DIAMOND POLICE OFFICERS  
ASSOCIATION

WHEREAS, the Black Diamond Police Officers Association (the “Association”) is the authorized bargaining representative for the Black Diamond Police Officers; and

WHEREAS, the Association was formed in 2008; and

WHEREAS, the City negotiating team has reached tentative Agreement with the Union for a new six (6) year Collective Bargaining Agreement (“CBA”) effective August 31, 2008 through August 30, 2014 (Attached hereto as Exhibit A) and the City negotiating team has recommended that the Council ratify the CBA; and

WHEREAS, the Association has executed the CBA; and

WHEREAS, the Council has reviewed the CBA and finds it is in the best interests of the City and its employees to authorize the Mayor to execute the CBA; now, therefore

BE IT RESOLVED that the City Council hereby ratifies the CBA and authorizes the Mayor to execute the CBA, as attached hereto.

ADOPTED by the City Council at an open meeting on the 19<sup>th</sup> day of March, 2009.

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Howard Botts, Mayor

Attest:

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Brenda Streepy, City Clerk

# **AGREEMENT**

**by and between**

**CITY OF BLACK DIAMOND**

**and**

**BLACK DIAMOND POLICE OFFICERS  
ASSOCIATION**

**August 31, 2008 – August 30, 2014**

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**AGREEMENT BETWEEN  
CITY OF BLACK DIAMOND  
And  
BLACK DIAMOND POLICE OFFICERS ASSOCIATION**

THIS AGREEMENT is made and entered into this 19th day of \_\_\_\_\_, 2009, by and between the City of Black Diamond, hereinafter referred to as the "Employer," and the Black Diamond Police Officers Association, hereinafter referred to as the "Association."

**PREAMBLE**

WHEREAS, it is the purpose of this agreement to maintain a high level of performance in the operation of the Black Diamond City government, together with promoting efficiency, initiative, and harmonious relations between the Employer and the Association, and to provide for the rights, well being, and security of the parties involved; and

WHEREAS, the parties have agreed to certain terms and conditions of wages, hours, and conditions of employment for employees of the Employer as listed herein and wish to reduce the agreement to writing.

NOW, THEREFORE, BE IT MUTUALLY AGREED TO AS FOLLOWS:

**ARTICLE 1 - RECOGNITION**

- 1.1 The Employer recognizes the Association as the sole collective bargaining agent for all regular full time and regular part time commissioned law enforcement officers of the Police Department, including sergeants, and excluding supervisors, confidential employees and all other employees.

**ARTICLE 2 - ASSOCIATION SECURITY**

- 2.1 The Employer agrees that all employees covered under this agreement who have been in the employment of the Employer for thirty (30) days or more, shall become and remain members of the Association in good standing.
- 2.2 The Employer further agrees that all new employees hired subsequent to the date of signing of this agreement shall, as a condition of employment, after thirty (30) days of employment, become and remain members of the Association in good standing.
- 2.3 In the event an employee member of the Association as defined in Article I of this

agreement who joins the Association fails to maintain his membership in the Association in good standing therein, by regular payment of dues, the Association will notify the Employer, in writing, of such employee's delinquency. The Employer agrees to advise the employee that his employment status with the Employer is in jeopardy, and that failure to meet his membership obligation of payment of dues will result in termination of employment within five (5) days following the next regular payroll payment date.

- 2.4 The Employer will furnish the Association on a current basis notice of all permanent and permanent part time employees as defined in Article I who have been hired, rehired, transferred, laid off or terminated.
- 2.5 Nothing in the above sections will interfere with the employee's rights under RCW 41.56.122 of the Public Employee's Collective Bargaining Act. Nothing in this Agreement shall deprive employees covered by this Agreement the right of non-association based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such employee shall pay an amount of money equivalent to regular Association dues to a non-religious charity or to another charitable organization mutually agreed upon by the employee affected and the Association. The employee shall furnish written proof that such payment has been made. If the employee and the Association do not reach agreement on such matter, the Public Employment Relations Commission shall designate the charitable organization.
- 2.6 The Association agrees to defend, indemnify, save and hold the City harmless from, for and against any and all claims arising from the application of this article.
- 2.7 If the Employer schedules a Collective Bargaining Agreement negotiation meeting during the scheduled shift of the Association member that represents the Association, then that member may attend the meeting, in paid status, provided the member remains ready to respond to emergency call out at all times. Any other Association members that attend the meeting, other than the one designated representative, shall do so in an unpaid status.

### **ARTICLE 3 - CHECK-OFF OF DUES**

- 3.1 The Employer agrees to deduct Association dues from the wages of each employee as qualified in Section 3.2 below. The Employer agrees to forward such dues to the account of the Association monthly.
- 3.2 The Employer shall only deduct Association dues from the wages if all of the employees in the bargaining unit each sign an authorization card to that effect, copies of which shall be given to the Employer and the Association for certification purposes.

- 3.3 The Association agrees to defend, indemnify, save and hold the City harmless from, for and against any and all claims arising from the application of this article.



## **ARTICLE 4 - WORK SCHEDULE**

- 4.1 Establishing and changing the work schedule is a management right. Generally, the regular work schedule shall consist of the "4/10" work schedule: A work day shall consist of ten (10) consecutive hours including time for lunch when the employee is on call during the lunch period. The Chief of Police has the right to assign an alternate work schedule for employees when assignments, special duties, training, vacations, sick time, and other circumstances preclude the use of the regular work schedule. Absent an emergency, or the circumstances described above, the Employer shall notify the Association in writing, no less than 14 calendar days before a change in the regular work schedule (i.e. 4-10's vs. 5-8s). If the Association provides written notice within the 14 day period that it wishes to discuss the change before it is implemented, then the Employer agrees not to implement the change for 30 more days in order to give sufficient time to confer with the Association.
- 4.2 The parties may, upon mutual consent, meet and discuss alternative work shifts.

## **ARTICLE 5 - OVERTIME**

- 5.1 Overtime shall be defined as all hours worked beyond forty (40) hours from between 2400 hours on Saturday to 2359 the following Saturday. Hours of work shall include sick leave, vacation, compensatory time, holiday and any other City provided leave. Voluntary shift swapping shall not result in the payment of overtime. Training time shall be considered compensable hours of work. Training time consisting of more than seven (7) hours in a day shall constitute a regular work day for compensation purposes, regardless of whether the time spent is more or less than the regular work day. For example, if the training lasts 7 1/2 hours, the Employee will be compensated for 10 hours if they normally work a 10 hour shift. If the training lasts 11 hours the Employee would be compensated for 10 hours if they normally work a 10 hour shift.
- 5.2 Except as specifically modified herein, the Employees shall be entitled to all of the benefits in the Fair Labor Standards Act.
- 5.3 Employees on their day of rest that are subpoenaed to appear in court on a criminal case, or called back to work, shall be compensated at a minimum of three (3) hours at the overtime rate of pay.
- 5.4 Officers not notified of a cancellation of a scheduled criminal court appearance within twelve (12) hours of the scheduled appearance shall be compensated at a minimum of three (3) hours at the overtime rate of pay, only if they called the Court the day before and were advised that their Court appearance was still required.

- 5.5 Department wide meetings are not subject to the call back minimum set forth above, and Employees required to attend department wide meetings will be paid the appropriate rate of pay for actual time spent in the meeting, with a two hour minimum.. Training for all employees may be conducted during the department meetings.
- 5.6 Any employee, if agreed to by the Employer, may elect to accrue compensatory time off at the rate of time and one-half (1.5) in lieu of overtime payments up to a maximum accumulation of forty (40) hours. Requests to utilize accrued compensatory shall be made to the Chief or their designee. Requests to utilize compensatory time off shall be granted in accordance with the Fair Labor Standards Act.

## **ARTICLE 6 - HOLIDAYS**

- 6.1 Each full time Employee shall receive 110 hours of holiday time in lieu of holidays. If the City recognizes more than 11 holidays in a year as official holidays, then this allotment shall increase by 10 hours for each additional recognized holiday. The holiday time shall be used before vacation time, and must be used in the calendar year in which it is received. There will be no carry forward of holiday time. This allotment amount shall be prorated for regular part time employees based on the percentage of a fulltime shift that they normally work. An Employee who works on a holiday or any portion therefor shall be compensated at the overtime rate. Provided, if, during the holiday, an Employee is called to duty, he shall be compensated at the double time rate.
- 6.2 For Employees who do not work a full year, their prorated share of holiday time will be based on a percentage of time worked which will be established through the date of employment and determined by the Employer.
- 6.3 An Employee may carry over to the following calendar year up to 40 hours of holiday time.

## **ARTICLE 7 - VACATIONS**

- 7.1 Vacation shall be given as an additional employment benefit. Vacation may be taken as earned according to the following schedule:

Date of hire through 5 years	8 hours per month
Beginning of 6 <sup>th</sup> through 9 <sup>th</sup> year	10 hours per month
Beginning of 10 <sup>th</sup> through 15 <sup>th</sup> year	12 hours per month
Beginning of 16 <sup>th</sup> through 19 <sup>th</sup> year	14 hours per month

Beginning of 20 <sup>th</sup> year and thereafter	16 hours per month
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Vacation time is accrued from the date of hire, but cannot be used, until successfully completing six (6) months of employment. Accrued vacation shall not exceed 240 hours at any time.

- 7.2 Vacation Bid Process: Employees shall choose vacation by rank and then seniority within the rank. Vacation bidding shall be done at the time of the annual shift bid. Thereafter, vacation shall be scheduled on a "first come – first served" basis. Once scheduled, vacations shall not be cancelled absent an actual emergency. Only one Employee can be on vacation at any time, unless the Chief of Police determines staffing needs can be adequately met.

7.2.1 Employees shall not be able to bid a vacation on January 1, July 4<sup>th</sup>, Labor Day, Thanksgiving, the day after Thanksgiving or Christmas Day. Provided, nothing prohibits the Department from granting leave on one of those dates by seniority if staffing levels otherwise permit.

- 7.3 Employees shall receive all accrued vacation at the time of termination, provided vacation earned during the year of termination shall be prorated.

## **ARTICLE 8 - SICK LEAVE**

- 8.1 Employees of the police department shall accrue sick leave at the rate of eight (8) hours per month with a maximum accrual of one thousand forty (1,040) hours.
- 8.2 Sickness or disability shall be reported to the department head or the immediate supervisor at least four (4) hours prior to commencement of the employee's workday, or as soon thereafter as practicable. The employee may be required to provide proof of illness. Any employee who utilizes more than three (3) separate work days of sick leave either immediately prior to, or immediately following, their normal weekend (weekly days off) or holiday, may be required to provide a doctor's certificate for every subsequent sick hours taken during the remainder of that year.
- 8.3 Employees noted in 8.1 above are entitled to use sick leave for only a bona fide illness or injury, quarantine due to exposure to contagious diseases, any physical treatment or examination including medical, dental or ocular. Employees may also use sick leave for illness or injury to the employee's spouse or minor child, requiring the employee's attendance and/or care. Employees shall make reasonable attempts to schedule routine medical, dental and vision care appointments during their off-duty time so as to not impact department staffing levels. Emergency and last minute appointments shall be approved by the immediate supervisor not an Association member, or Police Chief.

Sick leave may also be used for parents, including “step”, who do not live in the employee’s household, under circumstances defined as serious or extreme and/or life threatening.

- 8.4 Employees entitled to sick leave who have exhausted their sick leave accrual may use accrued vacation.
- 8.5 Time off for medical purposes shall be charged against sick leave for actual time used only.
- 8.6 If an employee retires from the City, meeting LEOFF plan requirements, that employee is eligible to cash out 25% of their sick leave balance at their current straight time rate.

8.7 Federal Family Medical Leave

Employees who work for the Employer for at least twelve (12) months, and have worked 1250 hours over the previous twelve (12) months are eligible for up to twelve (12) weeks total of paid or unpaid leave per twelve (12) months period for: birth, adoption, or foster care of a child, or a serious health condition of the employee or immediate family member requiring in-patient care or continuing treatment by a health care provider.

8.7.1 An “immediate family member” for purposes of Family Medical Leave is defined as an employee’s spouse, child, parents, or any member of the immediate household. A “serious health condition” is an injury, illness, impairment or physical or mental condition that involves in-patient care or continuing treatment by a health care provider. The Employer may require certification from a health care provider for leave based on a serious health condition. The disability portion of pregnancy leave is considered a serious health condition for purposes of the Family and Medical Leave Act. The leave would normally end six (6) weeks after a normal birth or eight (8) weeks after a cesarean section.

8.7.2 Employees must provide the Employer with at least thirty (30) days’ notice if possible before taking such leave, or notify the Employer as soon as practicable. Before going on unpaid leave status for the birth, adoption, or foster care of a child or the serious health condition of the employee’s spouse, parents or children requiring in-patient care or continuing treatment, an employee is required to use all accrued unused compensatory or personal days and all accrued unused vacation leave. Before going on unpaid leave status for the serious health condition of the employee or the employee’s minor child requiring in-patient or continuing treatment, an employee is required to use all unused sick leave, personal leave, compensatory leave, compensatory time off and vacation leave.

8.7.3 As required by law, the Employer shall maintain the employee's health benefits during the FMLA leave to a maximum of twelve (12) weeks. In the event an employee does not return to Employer employment after taking leave under this section, the Employer may recapture the cost of any health insurance premiums paid by the Employer during the unpaid portion of the leave. If the Employee is owed money for any reason at the time the Employee will not be returning to work, then the Employer may withhold the cost of any health insurance premium paid by the Employer during the unpaid portion of the leave. Upon return from such leave, the employee will be reinstated to the employee's former or equivalent position.

8.7.4 The Employer shall notify the Employee when the Employee has commenced the FMLA leave, and the Employee shall first be required to use all accrued sick leave, vacation and holiday benefits before commencing unpaid status leave. This shall also apply to any leave granted by state law in sections 8.8 and 8.9.

- 8.8 Washington State Family Leave. An employee is entitled to twelve (12) work weeks of family leave during any twenty-four (24) month period to: (a) care for a newborn child or adopted child of the employee who is under the age of six (6) at the time of placement for adoption, or, (b) care for a child under eighteen (18) years old of the employee who has a terminal health condition. This twelve (12) weeks allowed by Washington State Law (RCW 49.78) for leave is in addition to leave provided for pregnancy or childbirth. This provision shall automatically be modified by any addition or deletion of benefits contained in said state law, without negotiation of the impacts.
- 8.9 Washington State Family Care Rules. Under this law, employees may use any accrued sick or other paid leave to care for a child with a health condition that requires treatment or supervision, or to care for a spouse, parent, parent-in-law, or grandparent who has a serious health condition or an emergency health condition, and to care for children eighteen (18) years and older with disabilities. (RCW 49.12.265). This provision shall automatically be modified by any addition or deletion of benefits contained in said state law, without negotiation of the impacts.
- 8.10 Employees injured on duty who receive Labor and Industries compensation shall be permitted to sign over the L&I check to the City and receive their regular compensation provided for under the Agreement. Employees shall not exhaust sick leave while on L&I status.
- 8.11 Employees shall be permitted to donate accrued, but unused, sick leave to another employee of the City of Black Diamond in accordance with any program for donating accrued but unused sick leave that is adopted by the City of Black

Diamond as a city wide policy.

## **ARTICLE 9 - BEREAVEMENT LEAVE**

- 9.1 Bereavement leave shall be granted in accordance with the terms of City Policy 6-004.
- 9.2 Employees may be excused by the Employer to attend the funeral of deceased fellow employees as leave with pay.

## **ARTICLE 10 - JURY DUTY**

- 10.1 An employee serving on a jury of a federal, state, or municipal court shall be granted leave from City employment to the extent required by such service, and shall be paid during such leave the difference between his/her regular salary and the amount paid by the Court for such duty. In order to be eligible for such payments, the employee must furnish a written statement from the appropriate public official showing date and time served and the amount of jury pay received. The employee shall submit to the City the money received for such services performed during City time. This benefit shall be expanded or diminished based upon changes in applicable federal or state law, and the impacts shall not be negotiated.

## **ARTICLE 11 - OTHER LEAVES**

- 11.1 In the event of a military leave, the Employer abides by the provisions of the State of Washington RCW 38.40.060 which stipulates that employees who are members of the National Guard or Federal Reserve military units are entitled to be absent from their duties up to fifteen (15) calendar days with pay during each calendar year while engaged in the performance of ordered military duty and while going to or from such duty. This benefit shall be expanded or diminished based upon changes in applicable federal or state law, and the impacts shall not be negotiated.
- 11.2 The Employer may grant a regular employee a leave of absence without pay for a period not to exceed ninety (90) days, in the sole discretion of the Employer. No leave of absence without pay shall be granted except upon written request of the employee. Whenever granted, the leave shall be in writing and signed by the Employer, and a copy filed with the department head. Upon expiration of a regularly approved leave without pay, the employee shall be reinstated in the position held at the time leave was granted without loss of seniority status, excepting that the time on leave will be deducted from his total service to determine seniority. Failure on the part of the employee on leave without pay to report promptly at the expiration of the leave shall result in automatic termination of employment. The Employer may, in exceptional circumstances and in its sole discretion extend leave beyond ninety (90) days but reinstatement cannot be

guaranteed. The Employee shall be responsible for paying in advance all health insurance premiums during the absence without pay. Failure to do so is grounds for denying the leave of absence.

#### **ARTICLE 12 - SENIORITY**

- 12.1 Seniority is the length of continuous employment of an employee with the Employer in the police department.
- 12.2 Seniority shall be broken only by resignation, discharge, retirement, layoff of more than six (6) months, or failure to return in accordance with the terms of a leave of absence or when recalled from layoff.

#### **ARTICLE 13 - PROMOTIONS, DEMOTIONS AND TRANSFERS**

- 13.1 Promotions, non-disciplinary demotions and transfers will be carried out in accordance with Civil Service Commission rules, regulations and statutes.

#### **ARTICLE 14 - LAYOFFS AND RECALL**

- 14.1 Layoffs will be conducted in reverse order of seniority by rank. Recall from lay-off shall be done in order of seniority with the most senior employee within rank being recalled first. Seniority shall be defined as the total length of service with the Department. Failure of such employee to report for reinstatement within 10 days of notification of job availability shall result in loss of seniority.

#### **ARTICLE 15 - HEALTH & WELFARE - DENTAL - VISION - PRESCRIPTION DRUG - PENSION - LIFE INSURANCE**

- 15.1 The City shall provide all full time employees and their dependants the option of enrolling in one of two health plans offered by AWC. The first plan is the AWC Plan "B" medical and AWC Plan "A" dental insurance. If the health plans offered by the City allow, the Employee may, at its expense, add vision, orthodontia, or any other benefits offered by the plan that are not covered by the basic medical and dental coverage. The second plan is the AWC sponsored Group Health \$10 co pay plan.
- 15.2 If the employee opts for the Plan B health insurance option then the City shall pay the premium for the employee and the employee's spouse and dependants. For the Agreement term, each employee, as a monthly payroll deduction, shall reimburse the City for a portion of the premium. For the Agreement term the employee shall contribute \$50.00 per month, plus a percentage of any increase in the premiums over the 2009 premium rate in the years 2010, 2011, 2012, 2013 and 2014. The City shall pay ninety percent (90%) of the increase in premium in each of those years over the base rate for the previous year, and the employee



shall pay the remaining ten percent (10%) as a monthly payroll deduction.

- 15.3 If the employee opts for the Group Health \$10 co pay option, then the City shall pay the premium for the employee and the employee's spouse and dependants. For the Agreement term, the employee shall contribute, as a monthly payroll deduction, a percentage of any increase in the premiums over the 2009 premium rate commencing with the premium for coverage in January 2010, each in the years 2010, 2011, 2012, 2013 and 2014. The City shall pay ninety percent (90%) of the increase in premium in each of those years over the base rate for the previous year, and the employee shall pay the remaining ten percent (10%) as a monthly payroll deduction.
- 15.4 The City has the right to change health and welfare plans and carriers, but agrees that it shall negotiate the impacts of the changes. If the City anticipates changing a benefit from the plan specified above, it shall give the Association no less than thirty (30) days notice so that the parties may meet and discuss other possible alternatives. The parties acknowledge that the AWC Plan "B" is being terminated in 2011 and thus the parties will negotiate in good faith to find another health plan with similar benefits at the same premium.
- 15.2 For each Employee that is a member of WACOPS the Employer shall pay the annual premium for the life and disability policy offered by WACOPS.
- 15.3 The Employer shall make pension contributions required by statute to the State of Washington, Department of Retirement Systems under the Law Enforcement and Firefighters (LEOFF) Plan.

#### **ARTICLE 16 - DISCIPLINARY PROCEDURES**

- 16.1 The Employer may discipline or discharge an employee for just cause inclusive, but not limited to, those causes set forth in the Civil Service Rules and Regulations.
- 16.2 Disciplinary action or measures may include the following:
- A. Verbal Warning
  - B. Written reprimand
  - C. Reassignment that results in an adverse economic impact
  - D. Suspension without pay
  - E. Demotion
  - F. Discharge
- 16.3 Progressive discipline is generally preferred, but not required, as it is intended to give notice of inappropriate conduct and to afford the Employee an opportunity

to improve performance. The level or degree of discipline imposed shall be appropriately based on an employee's prior record of service, length of service, severity of offenses and prior record of discipline. Certain types of conduct do not require progressive discipline, and may justify an initial higher level of discipline, or even immediate discharge.

- 16.4 When the Employer determines the circumstances are such that retention of the employee will likely result in the disruption of Employer services, damage to or loss of Employer property or be injurious to the employee, fellow employees or the services provided by the Employer, the Employer may immediately suspend with pay, depending on the circumstances. In such cases the facts supporting the circumstances will be made available to the employee by the Employer not later than three (3) working days after the action became effective.
- 16.5 The provisions of this article shall not apply to newly hired employees serving a probationary period. Consistent with Civil Service rules, the probationary period shall be twelve (12) months from police academy graduation date, not in any case to exceed eighteen (18) months from date of hire. Probationary employees shall work under the provisions of this agreement but shall be only on a trial basis during which period they may be discharged without cause and without any recourse. Employees on probationary status shall be eligible for the twelve (12) month step increase under conditions cited in Article XXIV, Section 24.2 of this agreement.
- 16.6 The employee and the employee's Association representative with the employee's written authorization shall have the right to inspect the full contents of his/her personnel file. No written reprimand or greater disciplinary document may be placed in the personnel file without the employee having been first notified of said complaint and given a copy. An employee who disagrees with the validity of any complaint added to the file shall have the opportunity to challenge said complaint under the grievance procedure herein, other than verbal or written reprimands, which shall not be subject to the grievance process. In the case of a written reprimand, the employee may provide a written response, which shall be placed in the personnel file, and only removed at such time that the written response is removed. The employee shall be required to sign the written reprimand or other disciplinary action acknowledging that they have read the contents of the document.
- 16.7 Records of disciplinary action shall be removed from all City or Department maintained files and permanently destroyed in accordance with the following retention schedule and upon request of the employee:
1. Verbal Warning - Written records of a verbal warning or counseling shall be removed and destroyed after twelve (12) month without a reoccurrence of similar conduct which gave rise to the warning or counseling.

2. Written Reprimand - Written reprimands shall be removed and destroyed after eighteen (18) months without reoccurrence of the same conduct which gave rise to the reprimand.

#### **ARTICLE 17 - UNIFORMS WEAPONS AND EQUIPMENT**

- 17.1 The Employer will provide each new hire with all department issued and required equipment, including uniforms. The Employee shall be responsible for maintaining all issued equipment and uniforms. All issued equipment shall be returned to the City upon termination of employment.
- 17.2 Each employee shall be provided a new ballistic vest at least once every five (5) years or whenever the vest has expired.
- 17.3 For each year of this Agreement, \$650 uniform allowance will be provided to each employee and the allowance can only be used at an approved vendor. The City will pay the vendor directly, up to the amount of unused allowance. The allowance shall be credited to the employee in January of each year. If a piece of equipment or uniform is damaged in the line of duty, it will be repaired or replaced by the City separately, without deduction from the Employee or the uniform allowance.

#### **ARTICLES 18 - GRIEVANCE PROCEDURE**

- 18.1 The parties hereto recognize the need for fairness and justice in the adjudication of employee grievances and enter into this Agreement in a cooperative spirit to adjust such actions promptly and fairly. If a grievance cannot be resolved through informal means, the grievance will be settled as hereinafter provided.
- 18.2 A grievance is defined as a dispute involving the interpretation, application or alleged violation of any specific provision of this Agreement.
- 18.3 Any party who believes they have a grievance arising out of the terms of this Agreement may, except for arbitration, personally or through a representative, apply for relief under the provisions of this Article. Provided an employee cannot grieve an item unless it is approved first by the Association executive board, and proof of said approval is provided to the City at the time the grievance process is commenced.
- 18.4 The parties agree that the time limitations provided are essential to the prompt and orderly resolution of any grievance, and that each will abide by the time limitations, unless waived or extended by mutual written agreement of the parties to the grievance.

- 18.5 If any party fails to file a grievance within ten (10) working days from the date of the occurrence or knowledge of the occurrence, then said party forever waives and forfeits the grievance as well as any and all rights and remedies relating to said grievance. Failure to timely pursue a grievance to the next step renders final and conclusive the last determination and response. If an employee wishes to have those matters currently addressed under Civil Service Rules and Regulations, inclusive of promotions, demotions, transfers, layoffs, recall and discipline, but not limited thereto, the employee must file a request for an investigative hearing within ten (10) calendar days of the occurrence. Regarding disciplinary actions, the employee may elect to have disciplinary action reviewed by the Civil Service Commission. If the employee elects to have disciplinary action reviewed by the Civil Service Commission then a request for an investigative hearing must be filed with the Commission within ten (10) calendar days from the date of the disciplinary action. The employee must elect to have disciplinary action reviewed either through the grievance procedure or by the Civil Service Commission. An employee is not entitled to review of disciplinary action under both procedures. If the employee elects to pursue matters before the Civil Service Commission then the Civil Service Commission procedures will be applicable and not those of the collective bargaining agreement.
- 18.6 A grievance may be verbally presented by the Association and/or the grieved employee to the Chief or her designee within ten (10) working days from the occurrence or knowledge of the occurrence. The employee shall have the option of being accompanied by his Association representative. The Chief shall respond within ten (10) working days. If the matter is not satisfactorily resolved, then the grievant may initiate a formal written grievance in accordance with the provisions herein below.
- 18.7 The formal grievance procedure shall be as follows:

Step 1:

The grievance shall be presented in written form, stating the specific provision of this Agreement allegedly violated, to the Chief within ten (10) working days from its occurrence or knowledge thereof. Thereafter, the Chief shall respond in writing to the aggrieved employee within ten (10) working days after receipt of the grievance. If the employee elects to have applicable matters reviewed by Civil Service then the employee will need to comply with the provisions set forth in Section 18.5 above.

Step 2:

If the grievance is not resolved to the satisfaction of the concerned parties at Step 1, then within ten (10) working days of the response in Step 1 above, the

grievance in written form shall be presented to the Mayor or designee. The Mayor or designee shall schedule a meeting with the employee within fifteen (15) working days from the date of submission and respond within seven (7) working days of the meeting to the employee and Association. The employee has the right to be represented by his Association representative and the department head has the right to be represented by an Employer representative.

Step 3:

A. Final and Binding Arbitration and/or Mediation:

If the grievance has not been resolved at Step 2, the Association or City may refer the unsettled grievances to mediation and/or final and binding arbitration. If the parties refer the matter to mediation then the timelines for final and binding arbitration shall be extended to accommodate the mediation process.

B. Notice - Time Limitations: The Association shall notify the other party in writing by certified mail of submission to mediation or arbitration within twenty (20) days.

C. Arbitrator - Selection: After timely notice, the parties shall establish who the arbitrator will be in the following manner:

1. After timely notice, the parties shall select an impartial arbitrator within thirty (30) days, if possible, after the request is made to arbitrate.

2. If the parties cannot mutually agree on an impartial arbitrator who is able and willing to serve on a timely basis, they will request a list of nine (9) arbitrators who are willing to abide by time limitations. A list of impartial arbitrators shall be furnished by the Public Employment Relations Commission (PERC). The parties shall flip a coin to determine who will strike the first name, following which each will alternately strike one of the names submitted until one (1) name remains. This person will serve as the sole arbitrator subject to the following provisions.

D. Decision - Time Limit: The arbitrator will meet and hear the matter at the earliest possible date after the selection of said arbitrator. After completion of the hearing, a decision shall be entered within thirty (30) working days or as soon as possible thereafter, unless an extension of time is agreed upon as provided for herein.

E. Limitations - Scope - Power of Arbitrator:

1. The arbitrator shall not have the authority to add to, subtract from, alter, change or modify the provisions of this Agreement.

2. The arbitrator shall only have the power to interpret and apply the specific terms of the Agreement and/or determine whether there has been a violation of the terms of this Agreement.

3. The arbitrator shall also have the authority to receive evidence and question witnesses.

4. The arbitrator shall not have the authority to review or consider appeals carried out pursuant to Civil Service Commission Rules and Regulations.

F. Arbitration Award - Damages - Expenses:

1. Each party hereto shall pay the expenses of their own attorneys, representatives, witnesses, and other costs associated with the presentation of their case. The party that did not substantially prevail shall pay the expenses of the arbitrator.

2. The arbitrator's written award shall be final and binding on all parties.

**ARTICLE 19 - NON-REDUCTION OF WAGES AND WORKING CONDITIONS**

- 19.1 The parties hereto agree that the wages and working conditions specified in this Collective Bargaining Agreement shall not be modified during the agreement term, except as provided herein or as authorized by law. The Employer may provide additional benefits to the Employees, from time to time, as may be adopted by City ordinance or resolution.

**ARTICLE 20 - STRIKES AND LOCKOUTS**

- 20.1 The employer and the Association recognize that the public interest requires the efficient and uninterrupted performance of all City services and to this end pledge their best efforts to avoid or eliminate any conduct contrary to this objective. During the term of this agreement, neither the Association nor the Employer shall cause, engage in, or sanction any work stoppage, slowdown, or other interference with City functions. Employees who engage in any of the foregoing actions may be subject to disciplinary action including immediate discharge. No individual shall receive any portion of his/her salary or benefits as provided by the employer, and in accordance with applicable law, while engaging in activities in violation of this Article.

**ARTICLE 21 - ASSOCIATION REPRESENTATION**

- 21.1 An authorized representative of the Association shall have the right, in unpaid status and after obtaining appropriate signed releases from the affected employees, to investigate grievances or conditions at reasonable hours upon first securing permission from the Employer to do so and without interfering with the progress of work. The Association shall advise the Employer, in writing, of the names of their authorized representatives and stewards.

## **ARTICLE 22 - BULLETIN BOARD**

- 22.1 The Employer shall provide space for a bulletin board of no more than 8 square feet in size, for the Association's use in an area conveniently accessible to bargaining unit employees, solely to be used for the purpose of notifying employees of matters pertaining to Association business. All notices shall be signed by a representative of the Association who is authorized by the Association to approve Association notices. The Board shall be properly maintained, in a neat and safe manner, by the Association.

## **ARTICLE 23 - NON-DISCRIMINATION**

- 23.1 The Employer agrees that they will not discriminate against any employee because of lawful Association activity.
- 23.2 Neither the Association nor the Employer, in carrying out their obligation under this agreement, shall not unlawfully discriminate in matters of hiring, training, promotion, transfer, layoff, discharge, or otherwise because of race, color, creed, national origin, gender, age, marital status, disability or religion.
- 23.3 All references to employees in this Agreement designate both sexes, and wherever the male gender is used, it shall be construed to include male and female employees.

## **ARTICLE 24 – WAGES**

- 24.1 The Employees shall be paid the base wage set forth in Appendix A, as adjusted from time to time by the operation of sections 24.2.
- 24.2 Effective January 1, 2009, employees in the bargaining unit will receive wage increases of 5% of their base wage rate set forth in Appendix A. Effective January 1, 2010, employees in the bargaining unit will receive a wage increase equal to 80% of the increase of the Seattle CPI-U for July (first half) of 2008 to July of 2009, with not less than 3% nor more than 6% increase in the base wage. Thereafter the base wage shall be adjusted each January of the Agreement term in the same manner with the same terms and using the same index, except the base year for determining the increase shall adjust to July to July of the previous year. The parties agree that the wages set forth in Appendix A, as modified by the cost of living adjustments set forth in this paragraph, shall be reevaluated in August 2010, and August 2012 to assure that the wages remain competitive with departments in comparable Cities.



- 24.3 All bargaining unit employees shall receive an education incentive added to the base pay equal to 2% for an Associate Arts Degree or 4% for a Bachelor Degree and 6% for a Masters degree.
- 24.4 Employees assigned by the chief to act as a Field Training Officer or full time Detective shall be paid an additional premium of three percent (3%) of the base rate of pay each month. There shall be no pyramiding of premium pays, and the FTO premium pay shall only apply during actual training time.
- 24.5 The K-9 Officer shall receive one-half hour release time from each shift and one-half hour of pay or compensatory time off on each day off for compensation for the at home care and feeding of the dog.

#### **ARTICLE 25 - SEPARABILITY**

- 25.1 In the event that any provision of this agreement shall at any time be declared invalid by a final judgment of any court of competent jurisdiction, or through a final decree of a government, state or local body, such decision shall not invalidate the entire agreement, it being the express intention of the parties hereto that all other provisions not declared invalid shall remain in full force and effect. The parties agree that any invalid provision of this agreement shall be modified through negotiations to comply with the existing regulations or laws.

#### **ARTICLE 26 - MILEAGE ALLOWANCE**

- 26.1 All employees required by the cognizant department head to use their private cars for official departmental business, shall be compensated at the rate provided by ordinance or resolution, or as the same may be amended or substituted.

#### **ARTICLE 27 – TAKE HOME CARS**

- 27.1 Employees shall be provided their assigned regular patrol vehicle as a take home vehicle, subject to the rules and regulations, including amendments there to, that are adopted by the Chief of Police. Each employee will be required to sign, prior to receiving a take home vehicle, an agreement with the City that they will comply with the adopted rules and regulations and failure to do so may result in losing the take home car privilege. If the take home car privilege is taken away from an officer, only whether or not a violation of the adopted rules and regulations has occurred will be subject to the grievance process.

#### **ARTICLE 28 - CONFLICT OF CONTRACT AND ORDINANCE**

- 28.1 The rules and regulation of the Black Diamond Civil Service Commission shall govern unless specifically superseded by the terms and conditions of the Agreement.

## **ARTICLE 29 - MANAGEMENT RIGHTS**

- 29.1 Except as expressly modified or restricted by a specific provision of this Agreement or applicable Civil Service Regulations, all statutory and inherent managerial rights, prerogatives, and functions are retained and vested exclusively in management. This shall include, but is not limited to the right in its sole and exclusive judgment and discretion to; 1) take whatever action is either necessary or advisable to determine, manage and fulfill the mission of the department or the City; 2) to discipline employees for cause; 3) to determine the number of employees to be employed and the appropriate staffing levels; 4) to conduct job analysis and performance; 5) to determine the duties, task, responsibilities and essential functions of each job; 6) to hire employees; 7) to determine employee qualifications and to assign and direct their work; 8) to evaluate employee's performance; 9) to promote, demote, transfer, lay off, recall to work, and retire employees; 10) to set productivity standards; 11) to set reasonable fitness standards; 12) to maintain the efficiency of operations; 13) to set working schedules, add or delete shifts, and determine the shift to be worked; 14) to determine the personnel, methods, means and facilities by which operations are conducted; 15) to contract for goods and \or services; 16) to expand, reduce, alter, combine, transfer, assign, or cease any job, department, operation or service; 17) to control and regulate the use of facilities, equipment, and other property of the department; 18) to introduce new or improved equipment, materials, or methods; and 19) to issue, amend, revise and delete policies, rules, regulations, general orders, administrative directives and practices.
- 29.2 The Employer's failure to exercise any right reserved to it in section 29.1, or its exercise of the right in a particular way, shall not be considered a waiver of the right, or a limitation of its exercise of the right in some other way not in conflict with the express provisions of this Agreement. There shall be no prevailing right of the Association or the Employee to any particular way a management right has been exercised in the past, or a benefit has been administered, except as expressly set forth in this Agreement.

## **ARTICLE 30 – BILL OF RIGHTS**

- 30.1 Subject to the provisions of this Agreement and except as otherwise provided, employees have the right to use the grievance procedure contained herein to protect their rights as set forth in this Agreement.
- 30.2 All employees within the bargaining unit shall be covered by the following rules and regulations. The powers and duties of law enforcement officers involve them in many contacts with members of the public and questions are bound to arise as to the nature of such contacts, which questions require immediate investigation

by superior officers who have been authorized to make such investigations by the Chief of Police.

Such investigations shall be conducted under the following general guidelines:

30.2.1 When a permanent, non-probationary employee is the subject of a formal internal investigation by the Black Diamond Police Department, prior to any interview of the employee, the employee shall be advised of the general nature of the inquiry of and whether he or she is suspected of (1) committing a criminal offense; (2) misconduct that would be grounds for termination, demotion, suspension, or other disciplinary actions; (3) that the employee may not be qualified for continued employment with the Department. All interviews shall be conducted in a manner consistent with due process rights granted by law. The officer shall not thereafter contact the citizen or witnesses without prior written permission of the Chief of Police.

30.2.2 If the Chief of Police determines that the officer should be questioned about the allegation, such questioning shall be done as soon as practicable. Unless an emergency is thought by the Chief of Police to exist, such questioning shall be while the member is on duty and during the daytime, if possible.

30.2.3 Questioning of the officer shall be with full regard to his constitutional rights. If the allegations amount to a charge that the officer is guilty of a crime, he shall be fully advised of his rights under the Miranda decision. The employee shall have the right to retain an attorney of his own choosing, (at no expense to the City of Black Diamond). Such attorney (and/or a representative of the Association) shall have the right to be present during any questioning.

30.2.4 An employee who is the subject for a formal investigation shall have a right to make copies of any statement he or she has signed pertaining to the investigation and shall be entitled to a copy, at its expense, of any recording of an interview of the employee.

30.2.5 It is understood that under state law, no officer may be required to take any lie detector test as a condition of continued employment, though he may request a polygraph test. If one is requested by the employee, and the Employer consents to the polygraph of the employee, it shall be taken by an independent agency chosen by the Chief of Police, after consultation with the Association, at the Employee's expense.

## **ARTICLE 31- LIABILITY INSURANCE**

31.1 The Employer agrees to either provide insurance coverage on behalf of the employees or provide liability defense for employees or a combination thereof in

order to reasonably protect and indemnify employees from liability to third parties resulting from employees negligently performing duties within the scope of employment provided, however, such coverage will not protect the employee from their intentional and/or malicious tortious acts or assaults. Subject to the provisions of this Article, the coverage will include reasonable attorney's fees incurred by attorneys chosen by the City and reasonable costs connected with lawsuits.

- 31.2 The Drug and Alcohol Policy and procedures mutually agreed on by the parties is hereby incorporated by reference as though it were set out specifically and completely in this Agreement. Said policies and procedures are a part of this Agreement.

### **ARTICLE 32 - TERMINATION AND RENEWAL**

- 32.1 This agreement shall be in full force and effect from August 31, 2008 until August 30, 2014.

**CITY OF BLACK DIAMOND,  
WASHINGTON**

**BLACK DIAMOND POLICE  
OFFICERS ASSOCIATION**

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

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

Howard Botts, Mayor  
Printed Name and Title

Greg Goral, President\_  
Printed Name & Title

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

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

Attest:

\_\_\_\_\_  
Brenda Streepy, City Clerk

## APPENDIX A

### Effective August 31, 2008

	<b>Step 1</b>	<b>Step 2</b>	<b>Step 3</b>	<b>Step 4</b>	<b>Step 5</b>
<b>Police Officer</b>	4,138.00	4,638.00	5,138.00	5,638.00	6,112.00
<b>Police Sergeant</b>	6,811.00	7,194.00	N/A	N/A	N/A

An officer's wage shall be increased to the next step on his employment anniversary date and upon a satisfactory performance evaluation. Provided, as to the employees employed by the City on the Agreement's effective date, all of whom are listed below, their salary shall remain at the rate set forth below (plus the 5% wage increase commencing January 1, 2009), until their anniversary date, at which time their salary shall be increased to the above listed step that is above their current salary.

	<b>August 2008 Wage</b>
<b>Greg Goral</b>	6,112.00
<b>Kris Chatterson</b>	6,112.00
<b>Tim Macdonald</b>	5,425.00
<b>Ed Volpone</b>	4,924.00
<b>Eric Weinreich</b>	5,644.00
<b>Justin Cripe</b>	4,924.00
<b>Brian Lynch</b>	N/A

<b>NAME</b>	<b>CURRENT STEP</b>	<b>CURRENT PAY EFFECTIVE AS OF 1/1/2009</b>	<b>ANNIVERSARY DATE</b>	<b>NEW PAY SCALE STEP</b>	<b>NEW PAY EFFECTIVE AS OF 4/1/2009</b>
Greg Coral	Police Sergeant Step 1	\$ 6,749.00	10/1/2009	Police Sergeant Step 1	\$ 7,152.00
Kris Chatterson	Senior Officer Step 5	\$ 6,418.00	4/8/2009	Police Officer Step 5	\$ 6,418.00
Tim Macdonald	Senior Officer Step 3	\$ 5,926.00	2/18/2009	Police Officer Step 4	\$ 5,926.00
Ed Volpone	Senior Officer Step 1	\$ 5,466.00	11/1/2009	Police Officer Step 3	\$ 5,466.00

Eric Weinrich	Senior Officer Step 4	\$ 6,157.00	5/20/2009	Police Officer Step 4	\$ 6,157.00
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Justin Cripe	Police Officer Step 5	\$ 5,345.00	12/17/2009	Police Officer Step 3	\$ 5,395.00
Brian Lynch	Senior Officer Step 4	\$ 6,157.00	9/17/2009	Police Officer Step 4	\$ 6,157.00

The following should be effective 4/1/09;

Chatterson will stay at his current pay (Top Step)

Goral will go to new Step 1 of Sergeant Pay

Macdoanld will stay at his current pay (\$5926), but be considered in new Step 4 for future anniversary increase.

Volpone will stay at his current pay (\$5466), but be considered in new Step 3 for future anniversary increase.

Weinreich will stay at his current pay (\$6157), but be considered in new Step 4 for future anniversary increase.

Cripe will be put into new Step 3 (\$5395)

Lynch will stay at his current pay (\$6157), but be considered in new Step 4 for future anniversary increase.

The 3 new hires will be in new Step 1 (current pay)

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
<b>SUBJECT:</b> <b>Resolution No. 09-584, authorizing the Mayor to sign the Federal Emergency Management Agency Public Assistance Grant Agreement</b>	<b>Agenda Date: March 19, 2009</b>		<b>AB09-026</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		
	City Attorney – Loren D. Combs		
	City Clerk – Brenda L. Streepy		<b>X</b>
	Finance – May Miller		
	Public Works – Seth Boettcher	<b>X</b>	
	Economic Devel. – Andy Williamson		
	Police –		
Cost Impact: Staff time, \$12,000-\$15,000	Court – Kaaren Woods		
Fund Source: Revenue to reimburse Storm damage			
Timeline: 6 months			
<b>Attachments: Resolution No. 09-584, Public Assistance Grant Agreement</b>			
<b>SUMMARY STATEMENT:</b>  <p>Early January 7<sup>th</sup> there was a major flood event in the Puget Sound Area. That day the huge flows through the Ginder Creek culvert under Roberts Drive undermined the roadway and scoured the outfall basin exposing the water main. The City staff closed the road and coordinated the repairs. The President has since declared a disaster (3FEMA-1817-DR-WA) and will provide funds for the repair or restoration of damaged public facilities upon FEMA approval.</p> <p>The attached grant agreement establishes the basis for reimbursement of eligible costs. In a preliminary assessment, the FEMA staff felt that most of the expenses on the Ginder Creek culvert repair were eligible and could be reimbursed at 75% plus 100 % of documented administrative costs.</p>			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b> Agreement handed out at the March 12 <sup>th</sup> Public Works committee meeting.			
<b>RECOMMENDED ACTION:</b> <b>MOTION to adopt Resolution No. 09-584, authorizing the Mayor to execute the Washington State Military Department Public Assistance Grant Agreement for potential reimbursement of Ginder Creek culvert repairs.</b>			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
March 19, 2009			



**RESOLUTION NO. 09-584**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON  
AUTHORIZING A GRANT AGREEMENT WITH THE  
FEDERAL EMERGENCY MANAGEMENT AGENCY**

**WHEREAS**, Roberts Drive was undermined and nearly washed out from flooding on January 7<sup>th</sup>, 2009 at the Ginder Creek culvert; and

**WHEREAS**, the City had to close the road, design and permit repairs, and bid and contract the repair work in an expedited manner in order to restore traffic flow on the main east west arterial in Black Diamond; and

**WHEREAS**, the president of the United States declared a disaster (#FEMA-1817-DR-WA) and the City is seeking reimbursement for costs associated with the flooding disaster;

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

**Section 1.** Authorizing the Mayor to execute a Public Assistance Grant Agreement with Washington State Military Department and the Federal Emergency Management Agency (FEMA) for possible reimbursement for repair and restoration of damaged public facilities meeting eligibility requirements and as approved by the Federal Emergency Management Agency as contained in form attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 19TH DAY OF MARCH, 2009.**

CITY OF BLACK DIAMOND:

---

Howard Botts, Mayor

Attest:

---

Brenda L. Streepy, City Clerk



STATE OF WASHINGTON  
MILITARY DEPARTMENT  
EMERGENCY MANAGEMENT DIVISION

*MS: TA-20 Building 20*  
*Camp Murray, Washington 98430-5122*  
*Phone: (253) 512-7000 • FAX: (253) 512-7200*

March 4, 2009

Mr. Seth Boettcher  
Public Works Director  
City of Black Diamond  
PO Box 599  
Black Diamond WA 98010

RE: State No. D09-134  
Disaster No. 1817-DR-WA

Dear Mr. Boettcher:

Thank you for your interest in pursuing supplemental assistance for disaster recovery costs related to the January 2009, Severe Winter Storm event. Please find enclosed the following documents:

1. A copy of the Department's Request for Public Assistance.
2. Two original copies of an agreement between the Washington Military Department and your agency. The designated applicant agent should sign the Grant Agreement Fact Sheet in the lower right section of each agreement. In addition, sections 4, 9, 14, 15, and 16 on the Grant Agreement Fact Sheet need to be completed. On the third page, the name and contact information for your Department's designated applicant agent needs to be completed under the Key Personnel Section. Both copies need to be returned. An original copy will be returned to you with your first funding package, after it has been signed by the authorized representative for the Military Department.
3. Designation of Applicant Agent Resolution. The form provided may be used, or you may submit a letter from the chief executive officer or highest elected official of the Department designating an applicant agent and alternate. A copy of the signed resolution of the governing body is required for designating the applicant agent and the alternate applicant agent. Please have the clerk of the governing body sign a copy of the resolution certifying that it is a true copy of the original. Alternatively, the highest elected or appointed official of the entity may designate the applicant agent and the alternate applicant agent by letter. An official may not appoint themselves the applicant agent or alternate applicant agent. A sample of each form is enclosed for your reference.

Mr. Seth Boettcher  
March 4, 2009  
Page Two

4. State Disaster Assistance Application. Please complete the non-shaded sections. This document must have original signatures of the appointed applicant agent and alternate, preferably in blue ink.
5. State Authorization Form. Please complete the information requested.
6. W-9, Request for Taxpayer Identification Number and Certification. Please complete the general information and parts I and II. Part II requires an original signature.
7. Debarment, Suspension, Ineligibility or Voluntary Exclusion Certification Form. Please complete the upper section and have the applicant agent sign the bottom section.
8. Electronic Fund Transfer Form. Please complete the electronic transfer form and return it to this office. If your jurisdiction already has an account set up with the state, please note that on the form when it is returned.

The enclosed documentation needs to be completed, signed by the applicant agent and alternate applicant agent, where noted, and returned to this office at the following address by April 4, 2009.

Attention: Casey Gordon  
Public Assistance Program  
Washington Military Department  
Bldg 20-B, MS: TA-20  
Camp Murray, WA 98430-5122

Until all of these documents are returned to this office, fully completed and signed, neither the Project Worksheet approvals, nor any related payments will be released. If your agency has decided not to pursue funding under this disaster event, please send a letter advising us of your decision and we will close your original grant funding request.

If you have questions regarding the completion of these documents, please contact Casey Gordon, Program Assistant, at (253) 512-7457 or [c.gordon@emd.wa.gov](mailto:c.gordon@emd.wa.gov).

Sincerely,



Gerard Urbas  
Deputy State Coordinating Officer  
Public Assistance

GU:dw

Enclosures

**Washington State Military Department  
PUBLIC ASSISTANCE GRANT AGREEMENT FACE SHEET**

1. Applicant Name and Address: <b>City of Black Diamond</b>		2. Total Project Amount: <b>To be determined, based upon approved project worksheets</b>		3. Grant Number: <b>D09-134</b>	
4. Applicant Agent, phone number:		5. Grant Start Date: <i>January 30, 2009</i>		6. Grant End Date: <i>January 29, 2013</i>	
7. MD Program Manager/phone number: <b>Gerard Urbas, (253) 512-7402</b>		8. Data Universal Numbering System (DUNS):		9. UBI # (state revenue):	
10. Funding Authority: <b>Washington State Military Department (the "Department"), and Federal Emergency Management Agency (FEMA)</b>					
11. Funding Source Agreement #: <b>FEMA-1817-DR-WA</b>		12. Program Index # <b>794XC/794XD 792XE</b>		13. Catalog of Federal Domestic Asst. (CFDA) # & Title: <b>97.036, Public Assistance</b>	
14. TIN or SSN: <b>9156015204</b>					
15. Service Districts: (BY LEGISLATIVE DISTRICT): <u>          </u> th (BY CONGRESSIONAL DISTRICT): <u>          </u> th		16. Service Area by County(ies): <b>KING County</b>		17. Women/Minority-Owned, State Certified?: <input checked="" type="checkbox"/> N/A <input type="checkbox"/> NO <input type="checkbox"/> YES, OMWBE # <u>          </u>	
18. Contract Classification: <input type="checkbox"/> Personal Services <input type="checkbox"/> Client Services <input checked="" type="checkbox"/> Public/Local Gov't <input type="checkbox"/> Collaborative Research <input type="checkbox"/> A/E <input type="checkbox"/> Other <u>          </u>		19. Contract Type (check all that apply): <input type="checkbox"/> Contract <input checked="" type="checkbox"/> Grant <input checked="" type="checkbox"/> Agreement <input type="checkbox"/> Intergovernmental (RCW 39.34) <input type="checkbox"/> Interagency			
20. Contractor Selection Process: <input checked="" type="checkbox"/> "To all who apply & qualify" <input type="checkbox"/> Competitive Bidding <input type="checkbox"/> Sole Source <input type="checkbox"/> A/E RCW <input type="checkbox"/> N/A <input type="checkbox"/> Filed w/OFM? <input type="checkbox"/> Advertised? <input type="checkbox"/> YES <input type="checkbox"/> NO <u>          </u>		21. Contractor Type (check all that apply): <input type="checkbox"/> Private Organization/Individual <input type="checkbox"/> For-Profit <input checked="" type="checkbox"/> Public Organization/Jurisdiction <input checked="" type="checkbox"/> Non-Profit <input type="checkbox"/> VENDOR <input type="checkbox"/> SUBRECIPIENT <input checked="" type="checkbox"/> OTHER			
22. BRIEF DESCRIPTION: <b>Presidential Disaster Declaration # FEMA-1817-DR-WA--Severe Winter Storms 2009:To provide funds to the Applicant for the repair or restoration of damaged public facilities as approved by the Federal Emergency Management Agency in project worksheets describing eligible scopes of work and associated funding, which are incorporated herein by this reference.</b>					
IN WITNESS WHEREOF, the Department and Applicant acknowledge and accept the terms of this Grant Agreement, exhibits, references and attachments hereto and have executed this Grant Agreement as of the date and year written below. This Grant Agreement Face Sheet, Special Terms and Conditions, General Terms and Conditions, Federal and State Requirements and Assurances, and any other attachments or references govern the rights and obligations of both parties to this Grant Agreement.					
In the event of an inconsistency in this Grant Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:					
<ol style="list-style-type: none"> <li>1. <b>Applicable Federal and State Statutes and Regulations</b></li> <li>2. <b>Statement of Work and/or Project Description as outlined in FEMA approved Project Worksheet(s)</b></li> <li>3. <b>Special Terms and Conditions</b></li> <li>4. <b>General Terms and Conditions, and,</b></li> <li>5. <b>Other provisions of the contract incorporated by reference.</b></li> </ol>					
This Grant Agreement, including all attachments, contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Grant Agreement shall be deemed to exist or to bind any of the parties hereto.					
WHEREAS, the parties hereto have executed this Grant Agreement on the day and year last specified below.					
FOR THE DEPARTMENT:			FOR THE APPLICANT:		
Signature _____ Date _____ James M. Mullen, Director Emergency Management Division Washington State Military Department			Signature _____ Date _____ print or type name: _____		
APPROVED AS TO FORM:			APPROVED AS TO FORM:		
Sara J. Finlay (signature on file) 2/6/2009 Assistant Attorney General			Applicant's Legal Review _____ Date _____		

Form 10/27/00 kdb

## **SPECIAL TERMS AND CONDITIONS**

### **ARTICLE I – COMPENSATION SCHEDULE**

#### **1. FUNDING**

The DEPARTMENT will administer the Public Assistance Grant Program and reimburse approved eligible Public Assistance costs to the APPLICANT that are identified under the auspices of Presidential Emergency Declaration Number FEMA-1817-DR-WA and authorized by and consistent with the Stafford Act (P.L. 93-288, as amended) and applicable regulations. It is understood that no final dollar figure is committed to at the time that this Grant Agreement is executed, but that financial commitments will be made by amendments to the project application as Project Worksheets are completed in the field and projects are authorized by state and federal officials. See Attachment #1-Project Worksheet sample.

Pursuant to the FEMA-STATE AGREEMENT, the Federal Emergency Management Agency (FEMA) will contribute 75 percent of the eligible costs for any eligible project and 100 percent of the administrative costs, as provided for in subsection 3.D. of Article I. The APPLICANT will commit to the remaining 25 percent non-federal match to any eligible project that has been identified under the Presidential Disaster Declaration number FEMA-1817-DR-WA, subject to the following exception:

Donated Resources: FEMA will credit an APPLICANT for the value of certain volunteer labor, donated equipment, and donated materials used in the performance of eligible emergency work – categories A and B, referred to as Donated Resources. The Donated Resources are recognized by FEMA in a Project Worksheet. Donated Resources offset the non-federal share of the eligible emergency work approved in Project Worksheets. For non-state agency applicants, the donated resource value will first be applied to the APPLICANT's non-federal share, and any remaining donated resource value will be applied to the DEPARTMENT's share. The value of the Donated Resources are calculated as described in FEMA Policy 9525.2, and are capped at the non-Federal share of approved eligible emergency work costs. The Federal share of the Donated Resources will not exceed the non-federal share of eligible emergency work costs approved in Project Worksheets. Any excess credit can be credited only to other eligible emergency work costs, for the same APPLICANT in the same disaster. The value of excess donated resources cannot be credited toward or transferred to another eligible APPLICANT, or toward other State obligations.

See Attachment #1 – Project Worksheet sample.

#### **2. GRANT AGREEMENT PERIOD**

Activities payable under this Grant Agreement and to be performed by the APPLICANT under this Grant Agreement shall be those activities which occurred during or subsequent to the incident period defined in the FEMA-State Agreement, and shall terminate upon completion of the project(s) approved by federal and state officials, including completion of close-out and audit. This period shall be referred to as the "Grant Agreement Period."

#### **3. PAYMENTS**

The DEPARTMENT, using funds granted for the purposes of the Presidential Disaster Declaration from FEMA, shall issue payments to the APPLICANT in compliance with the Washington State Public Assistance Applicant Manual procedures as follows:

- A. **Small Project Payments:** Payments are made for all small projects to the APPLICANT upon submission and approval of an A19-1A State of Washington Invoice Voucher to the DEPARTMENT, after FEMA has approved funding through approval of Project Worksheets.
- B. **Progress Payments:** Progress payment of funds for costs already incurred on large projects minus 10 percent retainage may be made to the APPLICANT upon submission by the APPLICANT of an A19-1A State of Washington Invoice Voucher, a letter of request, and a spreadsheet identifying the claimed costs supporting the payment request and approval by the DEPARTMENT.

- C. **Improved Projects:** Payments on improved projects will be pro-rated based upon the percentage of the project that is funded under this disaster grant to the overall project cost. This percentage will be identified when the first payment on the improved project is made. Progress payments will be made as outlined above in Section B.
- D. **Final Payment:** Final Payment on a large project will be made following submission by the APPLICANT of a certification of completion on the STATEMENT OF DOCUMENTATION/FINAL INSPECTION REPORT form upon completion of project(s), completion of all final inspections by the DEPARTMENT, and final approval by FEMA. Final payment on a large project will include any retainage withheld during progress payments. Final payments may also be conditional upon financial review, if determined necessary by the DEPARTMENT or FEMA. Adjustments to the final payment may be made following any audits conducted by the Washington State Auditor's Office, the United States Inspector General or other federal or state agency.
- E. The APPLICANT is eligible to receive \$100 for federal indirect costs, upon completion and closure of the disaster grant. Documentation of costs involved with attending applicant briefing, kick off meeting, and the exit meeting should be retained in the APPLICANT's files to support federal indirect cost reimbursement.
- F. All payment requests shall be made on an A19-1A form, State of Washington, Invoice Voucher. Payments will be made by electronic fund transfer to the APPLICANT's account.
- G. Federal funding shall not exceed the total federal contribution eligible for Public Assistance costs under Presidential Disaster Declaration number FEMA 1817-DR-WA.
- H. For state agencies, the DEPARTMENT will, through interagency reimbursement procedures, transfer payment to the APPLICANT. Payment will be transferred by journal voucher to Agency No. [REDACTED], Accounting Fund No. [REDACTED].

## **ARTICLE II – DOCUMENTATION**

The APPLICANT is required to retain all documentation which adequately identifies the source and application of Public Assistance funds, including the federal indirect cost reimbursement, for six years following the closure of this disaster grant. For all funds received, source documentation includes adequate accounting of actual costs and recoveries incurred.

## **ARTICLE III - QUARTERLY REPORTS**

The APPLICANT is required to submit to the DEPARTMENT a quarterly report indicating the status of all their large projects. The status shall identify the costs incurred to date, the percentage of work completed, the anticipated completion date of the project and whether cost under runs or over runs are expected. In addition, the APPLICANT should note in the comment field any challenges or issues associated with the project. Failure to submit a complete quarterly report within 15 days following the end of the quarter will result in suspension of all payments to the APPLICANT until a complete quarterly report is received by the DEPARTMENT.

## **ARTICLE IV – TIME EXTENSIONS**

A time extension request is required to be forwarded to the DEPARTMENT by the APPLICANT for a project prior to the expiration of the approved completion date. If the project is approved and funded after the statutory approval time period for completion, then a time extension request must be submitted to the DEPARTMENT within fifteen days of receipt of the funding package.

A time extension request must be in writing and identify the project worksheet number, the reason the project has not been completed within the prior approved completion period, a current status of the completion of the work, a detailed timeline for completion of the remaining elements, and an anticipated completion date for the completion of the remaining work. Failure to submit a time extension request in a timely manner will result in denial of the time extension and loss of funding for the related project.

## **ARTICLE V - CLOSE-OUT**

To initiate close-out, the APPLICANT is required to certify in writing, by Project Worksheet Number, date completed and total amount expended on the project, completion of the small projects. To initiate close-out of

the large projects, the APPLICANT shall submit certification of completion on a STATEMENT OF DOCUMENTATION/FINAL INSPECTION REPORT form to the DEPARTMENT.

The DEPARTMENT will then complete a site inspection and a financial review of documentation to support the claimed costs. Certifications on small and large projects are due within sixty days following the completion of the project or receipt of the approved Project Worksheet, whichever date is later.

After all of the projects have been certified as complete and approved for closure by FEMA, the DEPARTMENT will forward a final A19-1A State of Washington Invoice Voucher to the APPLICANT for release of the remaining funds due to the applicant for eligible costs, including any retainage previously withheld.

#### ARTICLE VI – KEY PERSONNEL

The individuals listed below shall be considered key personnel and point of contact. Any substitution by either party must be submitted in writing.

**APPLICANT:**

Name: City of Black Diamond  
Title: Seth Roettcher

E-mail address: g.urbas@emd.wa.gov  
Phone Number: (253) 512-7402

**DEPARTMENT:**

Staff name: **Gerard Urbas**  
Title: Deputy State Coordinating Officer  
Public Assistance  
E-Mail: g.urbas@emd.wa.gov  
Phone Number: **(253) 512-7402**

#### ARTICLE VII - ADMINISTRATIVE REQUIREMENTS

A. The APPLICANT shall comply with the following OMB Circulars as applicable to their organization:

- Cost Principles
  - OMB Circular A-87, as revised, Cost Principles for State, Local and Indian Tribal Governments. OMB Circular A-87 and program regulations will be used to determine costs for nonprofit hospitals funded under FEMA grants.
  - OMB Circular A-21, as revised, Cost Principles for Educational Institutions
  - OMB Circular A-122, as revised, Cost Principles for Non-Profit Organizations
- Administrative Requirements
  - OMB A-102, as revised, Grants and Cooperative Agreements with State and Local Governments
  - OMB A-110, as revised, Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations
- Audit Requirements
  - OMB A-133, as revised, Audits of States, Local Governments, and Non-Profit Organizations

B. The APPLICANT will comply with the federal regulations in 44 CFR Parts 7, 9, 10, 13, 14, 17, 18, and 206, and the state requirements in the Washington State Public Assistance Applicant Manual, dated February 2009.

C. Federal funding is provided by the Federal Emergency Management Agency (FEMA) and is administered by the DEPARTMENT. Under the authority of Presidential Disaster Declaration number FEMA 1817-DR-WA, the DEPARTMENT is reimbursing the APPLICANT for those approved eligible costs and activities necessary under the Public Assistance Grant Program during the incident period beginning January 6-16, 2009. Eligible costs and activities will be identified in Project Worksheets approved by FEMA.

**Washington State Military Department  
GENERAL TERMS AND CONDITIONS  
Assistance Grants**

**A.1 DEFINITIONS**

As used throughout this Grant Agreement, the following terms shall have the meaning set forth below:

- a. **"Department"** shall mean the Washington State Military Department, as a state agency, any division, section, office, unit or other entity of the Department, or any of the officers or other officials lawfully representing that Department.
- b. **"Applicant"** shall mean a state agency, local government, tribal government, special purpose district, or an eligible private nonprofit organization submitting an application to the Governor's Authorized Representative for disaster recovery assistance.
- c. **"Applicant Agent"** shall mean the official representative and alternate designated or appointed by the Applicant and authorized to make decisions on behalf of the Applicant.
- d. **"Grantee"** shall mean the government to which a grant is awarded and which is accountable for the use of the funds provided. The Grantee is an entire legal entity even if only a particular component of the entity is designated in the grant award document. For the purpose of this Grant Agreement, the state is the Grantee. The Grantee and the DEPARTMENT are one and the same.
- e. **"Monitoring Activities"** shall mean all administrative, construction, financial, or other review activities that are conducted to ensure compliance with all state and federal rules, authorities or policies.
- d. **"Subgrantee"** shall mean the government or other eligible legal entity to which a subgrant is awarded and which is accountable to the Grantee for the use of the funds provided. The Subgrantee and Applicant are one and the same.
- e. **"Project"** shall mean those actions funded through the Public Assistance Program and described in approved Project Worksheets. Projects may include one or more of the following: reimbursement of costs for emergency response, debris removal and/or repair or restoration of damaged public facilities. A project may be a small, large, improved, or alternate project.
- f. **"PL"** – is defined and used herein to mean the Public Law.
- g. **"CFR"** – is defined and used herein to mean the Code of Federal Regulations.
- h. **"OMB"** – is defined and used herein to mean the Office of Management and Budget.
- i. **"WAC"** – is defined and used herein to mean the Washington Administrative Code.
- j. **"RCW"** – is defined and used herein to mean the Revised Code of Washington.

**A.2 RECORDS AND REPORTS**

- a. The APPLICANT agrees to maintain all books, records, documents, receipts, invoices and all other electronic or written records necessary to sufficiently and properly reflect the APPLICANT's contracts, contract administration, and payments, including all direct and indirect charges, and expenditures in the performance of this Grant Agreement.
- b. The APPLICANT's records related to this Grant Agreement and the projects funded hereunder may be inspected by the DEPARTMENT or the Director, or their designees, by designees of the Office of the State Auditor, the Federal Emergency Management Agency or their designees, or the Comptroller General of the United States or their designees or by other federal officials authorized by law, for the purposes of determining compliance by the APPLICANT with the terms of this Grant Agreement and to determine the appropriate level of funding to be paid under the subject Grant Agreement.
- c. The records shall be made available by the APPLICANT together with suitable space for such inspection at any and all times during the APPLICANT's normal working day.
- d. The APPLICANT shall retain all records and allow access related to this Grant Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the grant under this Grant Agreement.

**A.3 WAIVERS**

No conditions or provisions of this Grant Agreement can be waived unless approved in advance by the DEPARTMENT in writing. The DEPARTMENT's failure to insist upon strict performance of any provision of the Grant Agreement or to exercise any right based upon a breach thereof, or the



acceptance of any performance during such breach, shall not constitute a waiver of any right under this Grant Agreement.

**A.4 AMENDMENTS AND MODIFICATIONS**

The APPLICANT or the DEPARTMENT may request, in writing, an amendment or modification of this Grant Agreement. However, such amendment or modification shall not take effect until approved, in writing, by the DEPARTMENT and the APPLICANT.

**A.5 TERMINATION AND OTHER REMEDIES**

- a. If, through any cause, the APPLICANT shall fail to fulfill in a timely and proper manner its obligations under this Grant Agreement or if the APPLICANT shall violate any of its covenants, agreements, or stipulations of this Grant Agreement, the DEPARTMENT shall thereupon have the right to terminate this Grant Agreement and withhold the remaining allocation if such default or violation is not corrected within thirty (30) days after submitting written notice to the APPLICANT describing such default or violation.
- b. Notwithstanding any provisions of this Grant Agreement, either party may terminate this Grant Agreement by providing written notice of such termination, specifying the effective date thereof, at least thirty (30) days prior to such date.
- c. Reimbursement for APPLICANT services performed, and not otherwise paid for by the DEPARTMENT prior to the effective date of such termination shall be as the DEPARTMENT reasonably determines.
- d. The DEPARTMENT may unilaterally terminate all or part of this Grant Agreement, or may reduce its scope of work and budget, if there is a reduction in funds by the source of those funds, and if such funds are the basis for this Grant Agreement.

**A.6 COMPLIANCE WITH APPLICABLE STATUTES, RULES AND DEPARTMENT POLICIES**

The APPLICANT and all its contractors shall comply with, and the DEPARTMENT is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies. This obligation includes, but is not limited to: nondiscrimination laws and/or policies, Energy Policy and Conservation Act (PL 94-163, as amended), the Americans with Disabilities Act (ADA), the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (PL 93-288, as amended), Ethics in Public Service (RCW 42.52), Covenant Against Contingent Fees (48 CFR Section 52.203-5), Public Records Act (RCW 42.56), Prevailing Wages on Public Works (RCW 39.12), State Environmental Policy Act (RCW 43.21C), Shoreline Management Act of 1971 (RCW 90.58), State Building Code (RCW 19.27), Energy Related Building Standards (RCW 19.27A), Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92), and safety and health regulations.

**A.7 LEGAL RELATIONS**

It is understood and agreed that this Grant Agreement is solely for the benefit of the parties to the Grant Agreement and gives no right to any other party. No joint venture or partnership is formed as a result of this Grant Agreement.

To the extent allowed by law, the APPLICANT, its successors or assigns, will protect, save and hold harmless the DEPARTMENT, the State of Washington, and the United States Government and their authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of the APPLICANT, its subcontractors, assigns, agents, contractors, consultants, licensees, invitees, employees or any person whomsoever arising out of or in connection with any acts or activities authorized by this Grant Agreement.

To the extent allowed by law, the APPLICANT further agrees to defend the DEPARTMENT and the State of Washington and their authorized agents and employees in any litigation; including payment of any costs or attorneys' fees for any claims or action commenced thereon arising out of or in connection with acts or activities authorized by this Grant Agreement.

This obligation shall not include such claims, costs, damages or expenses which may be caused by the sole negligence of the DEPARTMENT; provided, that if the claims or damages are caused by or result from the concurrent negligence of (1) the DEPARTMENT, and (2) the APPLICANT, its agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the APPLICANT, or APPLICANT's agents or employees.

Insofar as the funding source, the Federal Emergency Management Agency (FEMA), is an agency of the federal government, the following shall apply:

**44 CFR 206.9 Non-liability.** The federal government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the federal government in carrying out the provisions of the Stafford Act.

**A.8 ACKNOWLEDGMENTS**

The APPLICANT shall include language which acknowledges the funding contribution of the DEPARTMENT and FEMA to this project in any release or other publication developed or modified for, or referring to, the project.

**A.9 APPLICANT NOT EMPLOYEE**

The APPLICANT, and/or employees or agents performing under this Grant Agreement are not employees or agents of the DEPARTMENT in any manner whatsoever. The APPLICANT will not be presented as nor claim to be an officer or employee of the DEPARTMENT or of the State of Washington by reason of this Grant Agreement, nor will the APPLICANT make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the DEPARTMENT or of the State of Washington by reason of this Grant Agreement, including, but not limited to, Workmen's Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under Chapter 41.06 RCW.

It is understood that if the APPLICANT is another state department, state agency, state university, state college, state community college, state board, or state commission, that the officers and employees are employed by the state of Washington in their own right and not by reason of this Grant Agreement.

**A.10 NONDISCRIMINATION**

The APPLICANT shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. No person shall, on the grounds of age, race, creed, color, sex, sexual orientation, religion, national origin, marital status, honorably discharged veteran or military status, or disability (physical, mental, or sensory) be denied the benefits of, or otherwise be subjected to discrimination under any project, program, or activity, funded, in whole or in part, under this Grant Agreement.

**A.11 UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)**

The APPLICANT is encouraged to utilize business firms that are certified as minority-owned and/or women-owned in carrying out the purposes of this Grant Agreement. The APPLICANT may set utilization standards, based upon local conditions or may utilize the state of Washington MWBE goals, as identified in WAC 326-30-041.

**A.12 CONFLICT OF INTEREST**

No officer or employee of the DEPARTMENT; no member, officer, or employee of the APPLICANT or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of such locality or localities who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Grant Agreement. The APPLICANT shall incorporate, or cause to incorporate, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to this provision.

**A.13 VENUE**

This Grant Agreement shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by the laws of the state of Washington. Venue of any suit between the parties arising out of this Grant Agreement shall be the Superior Court of Thurston County, Washington. The APPLICANT, by execution of this Grant Agreement acknowledges the jurisdiction of the courts of the State of Washington.

**A.14 OWNERSHIP OF PROJECT/CAPITAL FACILITIES**

The DEPARTMENT makes no claim to any capital facilities or real property improved or constructed with funds under this Grant Agreement, and by this grant of funds does not and will not acquire any

ownership interest or title to such property of the APPLICANT. The APPLICANT shall assume all liabilities arising from the ownership and operation of the project and agrees to hold the DEPARTMENT and the state of Washington and the United States government harmless from any and all causes of action arising from the ownership and operation of the project.

**A.15 SEVERABILITY**

If any court of rightful jurisdiction holds any provision or condition under this Grant Agreement or its application to any person or circumstances invalid, this invalidity does not affect other provisions, terms or conditions of the Grant Agreement, which can be given effect without the invalid provision. To this end, the terms and conditions of this Grant Agreement are declared severable.

**A.16 RECAPTURE PROVISION**

In the event the APPLICANT fails to expend funds in accordance with federal, state, or local law and/or the provisions of the Grant Agreement, the DEPARTMENT reserves the right to recapture funds in an amount equivalent to the extent of noncompliance. Such right of recapture shall exist for the life of the project following Grant Agreement termination. Repayment by the APPLICANT of funds under this recapture provision shall occur within 30 days of demand. In the event the DEPARTMENT is required to institute legal proceeding to enforce the recapture provision, the DEPARTMENT shall be entitled to its costs thereof, including attorney fees.

**A.17 RECOVERY OF FUNDS**

Any person who intentionally causes a condition for which Public Assistance is provided under this Grant Agreement shall be liable for the costs incurred by the state and federal governments in responding to such disaster. The APPLICANT will cooperate in a reasonable manner with the DEPARTMENT and the United States in efforts to recover expenditures under this Grant Agreement..

**A.18 DUPLICATION OF BENEFITS**

The APPLICANT agrees that the Public Assistance funds for which federal or state assistance is requested does not, or will not, duplicate benefits or funds received for the same loss from any other source. The APPLICANT will pursue full payment of eligible insurance benefits for properties covered in a project under this Grant Agreement. The APPLICANT will repay any Public Assistance that is duplicated by other benefits, funds, or insurance proceeds.

**A.19 POLITICAL ACTIVITY**

No portion of the funds provided herein shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

**A.20 NOTICES**

The APPLICANT shall comply with all public notices or notices to individuals required by applicable local, state and federal laws and shall maintain a record of this compliance.

**A.21 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION**

The assistance provided under this Grant Agreement shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such assistance or any other approval or concurrence under this Grant Agreement provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

**A.22 RESPONSIBILITY FOR PROJECT**

While the DEPARTMENT undertakes to assist the APPLICANT with the project by providing grant funds pursuant to this Grant Agreement, the project itself remains the sole responsibility of the APPLICANT. The DEPARTMENT undertakes no responsibility to the APPLICANT, or to any third party, other than as is expressly set out in this Grant Agreement.

The responsibility for the design, development, construction, implementation, operation and maintenance of the project, as these phases are applicable to this project, is solely that of the APPLICANT, as is responsibility for any claim or suit of any nature by any third party related in any way to the project.

Prior to the start of any construction activity, the APPLICANT shall ensure that all applicable Federal, State, and local permits and clearances are obtained, including FEMA compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other environmental laws and executive orders.

The APPLICANT shall defend, at its own cost, any and all claims or suits at law or in equity, which may be brought against the APPLICANT in connection with the project. The APPLICANT shall not look to the DEPARTMENT, or to any state or federal agency, or to any of their employees or agents, for any performance, assistance, or any payment or indemnity, including but not limited to cost of defense and/or attorneys' fees, in connection with any claim or lawsuit brought by any third party related to any design, development, construction, implementation, operation and/or maintenance of a project.

Pursuant to Sections 403 and 407 of the Stafford Act, 42 U.S.C. §§ 5170b & 5173, and to the extent allowed by law, if debris removal is authorized, the APPLICANT agrees to indemnify and hold harmless the state of Washington and the United States of America for any claims arising from the removal of debris or wreckage for this disaster. The APPLICANT agrees that debris removal from public and private property will not occur until the landowner grants the APPLICANT the right to enter and signs an unconditional authorization for the removal of the debris.

**A.23 HAZARDOUS SUBSTANCES**

The APPLICANT shall inspect and investigate the proposed development/construction site for the presence of hazardous substances. The APPLICANT shall fully disclose to the DEPARTMENT the results of its inspection and investigation and all other knowledge the APPLICANT has as to the presence of any hazardous substances at the proposed development/construction project site. The APPLICANT will be responsible for any associated clean-up costs as a result of the inspections. "Hazardous Substances" are defined in RCW 70.105D.020 (10).

**A.24 OCCUPATIONAL SAFETY/HEALTH ACT and WASHINGTON INDUSTRIAL SAFETY/HEALTH ACT (OSHA/WISHA)**

The APPLICANT represents and warrants that its work place does now or will meet all applicable federal and state safety and health regulations that are in effect during the APPLICANT's performance under this Grant Agreement.

To the extent allowed by law, the APPLICANT further agrees to indemnify and hold harmless the DEPARTMENT and its employees and agents from all liability, damages and costs of any nature, including but not limited to, costs of suits and attorneys' fees assessed against the DEPARTMENT, as a result of the failure of the APPLICANT to so comply.

**A.25 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OR INELIGIBILITY**

If federal funds are the basis for this Grant Agreement, the APPLICANT certifies that the APPLICANT is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Grant Agreement by any federal department or agency. If requested by the DEPARTMENT, the APPLICANT shall complete and sign a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form. Any such form completed by the APPLICANT for this Grant Agreement shall be incorporated into this Grant Agreement by reference.

Further, the APPLICANT agrees not to enter into any arrangements or contracts related to this grant with any party that is on the "General Service Administration List of Parties Excluded from Federal Procurement or Non-procurement Programs."

**A.26 SINGLE AUDIT ACT REQUIREMENTS (INCLUDING ALL AMENDMENTS)**

Non-federal APPLICANTS expending financial assistance of \$500,000 or more in federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with the Office of Management and Budget (OMB) Circular A-133-Audits of States, Local Governments, and Non-Profit Organizations (revised June 27, 2003, effective for fiscal years ending after December 31, 2003). Non-federal APPLICANTS that spend less than \$500,000 a year in federal awards are exempt from federal audit requirements for that year, except as noted in Circular No. A-133. Circular A-133 is available at: <http://www.whitehouse.gov/omb/circulars/index.html>.

APPLICANTS required to have an audit must ensure the audit is performed in accordance with Generally Accepted Auditing Standards (GAAS); Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General and the OMB Compliance Supplement.

The APPLICANT has the responsibility of notifying the State Auditor's Office and requesting an audit. Costs of the audit are allowable grant expenditures if the grant has not been closed.

The APPLICANT shall maintain records and accounts so as to facilitate the audit requirement and shall ensure that any subrecipients also maintain auditable records.

The APPLICANT is responsible for any audit exceptions incurred by its own organization or that of its subrecipients. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The APPLICANT must respond to DEPARTMENT requests for information or corrective action concerning audit issues within 30 days of the date of request. The DEPARTMENT reserves the right to recover from the APPLICANT all disallowed costs resulting from the audit.

Once the single audit has been completed, the APPLICANT must send a full copy of the audit to the DEPARTMENT and a letter stating there were no findings, or if there were findings, the letter should provide a list of the findings. The APPLICANT must send the audit and the letter no later than nine (9) months after the end of the APPLICANT'S fiscal year(s) to:

**Accounting Manager  
Washington Military Department  
Finance Division, Building #1 TA-20  
Camp Murray, WA 98430-5032**

In addition to sending a copy of the audit, the APPLICANT must include a corrective action plan for any audit findings and a copy of the management letter, if one was received.

The APPLICANT shall include the above audit requirements in any subcontracts.

#### **A.27 PROJECT MANAGEMENT AND SUBGRANTEE MONITORING**

The DEPARTMENT and the APPLICANT must conduct and monitor grant activities to confirm compliance with applicable Federal requirements and the requirements and special conditions of an approved project.

The APPLICANT agrees to:

- a. Assist in the preparation and writing of the Project Worksheets.
- b. Comply with all funding conditions of an approved project.
- c. Provide financial documentation to support requests for payments.
- d. Maintain records and documentation that adequately identify and directly support a project's eligible costs to the approved project worksheet. Pro-rate or percentage costs are not eligible for reimbursement.
- e. Cooperate with and participate in any scheduled or unscheduled monitoring or evaluation activities conducted by the DEPARTMENT or FEMA that are pertinent to this Grant Agreement or an approved Project Worksheet.
- f. Provide the DEPARTMENT with all documentation required to complete evaluations of eligible costs, and provide additional documentation that the DEPARTMENT or FEMA may request as a result of a monitoring visit, review and other or further evaluation of supporting financial documentation and/or reports. If requested documentation is not provided, all costs associated with the project may be determined to be ineligible.
- g. Submit a request for time extension not later than two weeks before a project's deadline.
- h. Notify the DEPARTMENT and request and receive approval for an alternate project prior to beginning construction. Failure to do so may jeopardize funding approval.
- i. Notify the DEPARTMENT and request and receive approval for an improved project prior to starting construction. Failure to do so may jeopardize funding approval.
- k. Immediately notify the DEPARTMENT if hidden damages are discovered, a change order is required, or the scope of work changes in an approved project.
- l. Submit quarterly reports to the DEPARTMENT.

m. Submit project completion certifications as required for small, large, alternate, or improved projects.

The DEPARTMENT agrees to:

- a. Provide technical assistance during all monitoring or evaluation activities. The DEPARTMENT will coordinate and schedule the meetings necessary to conduct and complete all monitoring and evaluation activities.
- b. Develop the APPLICANT's Project Worksheet(s) (PW) with FEMA and the APPLICANT's assistance based upon the eligible damages.
- c. Provide the APPLICANT with a copy of the approved Project Worksheet.
- d. Conduct site visits during a large project's construction.
- e. Regularly review the APPLICANT's financial documentation to confirm compliance with state and federal rules, authorities, and policies.
- f. Notify the APPLICANT when funding approval is received and issue payment per the process described in Article I, #3 – Payments of the Special Terms and Conditions. Large project final funding will include all costs determined to be eligible based upon the evaluation and review of the APPLICANT's financial documentation.
- g. Work with the APPLICANT to resolve any issues identified during the monitoring process.
- h. Review and respond appropriately to the APPLICANT's requests for time extensions and changes to an approved project.

#### A.28 SUBCONTRACTING

The APPLICANT shall use a competitive procurement process in the award of any contracts with contractors or subcontractors that are entered into under the original contract award. The procurement process followed shall be in accordance with Part 13 of 44 CFR, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments or with OMB Circular A-110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations, as applicable to the APPLICANT.

As required by Section 694 of the "Post-Katrina Emergency Management Reform Act" (P.L. 109-295), which amended section 307 of the Stafford Act, 42 U.S.C. 5150, contracts or agreements with private organizations, firms or individuals for debris clearance, distribution of supplies, reconstruction, and other major disaster assistance activities, shall be awarded to those organizations, firms and individuals residing or doing business primarily in the geographical area affected by the disaster, to the extent feasible and practicable. Such contracts or agreements with private organizations, firms, or individuals, not residing or doing business primarily in the geographical area affected by the declared disaster shall be justified in writing in the APPLICANT's contract file. Contracts in place prior to a declaration should be transitioned to such local organizations, firms or individuals unless the head of the APPLICANT organization determines that it is not feasible or practicable. This determination must be documented in the APPLICANT's contract file. The transition requirement should not be construed to require an APPLICANT to breach an existing contract.

All subcontracting agreements entered into pursuant to this Grant Agreement shall incorporate this Grant Agreement by reference.

#### A.29 PUBLICITY

The APPLICANT agrees to submit to the DEPARTMENT all advertising and publicity matters relating to this Grant Agreement wherein the DEPARTMENT's name is mentioned or language used from which the connection of the DEPARTMENT's name may, in the DEPARTMENT's judgment, be inferred or implied. The APPLICANT agrees not to publish or use such advertising and publicity matters without the prior written consent of the DEPARTMENT. The APPLICANT may copyright original work it develops in the course of or under this Grant Agreement; however, pursuant to 44 CFR 13.34, FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the work for government purposes.

Publication resulting from work performed under this Grant Agreement shall include an acknowledgement of FEMA's financial support, by grant number, and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA's views.

A.30 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, 42 U.S.C. 12101 ET SEQ. AND ITS IMPLEMENTING REGULATIONS ALSO REFERRED TO AS THE "ADA" 28 CFR Part 35.

The APPLICANT must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunication.

A.31 NONASSIGNABILITY

Neither this Grant Agreement, nor any claim arising under this Grant Agreement, shall be transferred or assigned by the APPLICANT.

A.32 DISCLOSURE

The use or disclosure by any party of any information concerning the DEPARTMENT for any purpose not directly connected with the administration of the DEPARTMENT's or the APPLICANT's responsibilities with respect to services provided under this Grant Agreement is prohibited except by prior written consent of the DEPARTMENT. However, the parties acknowledge that the DEPARTMENT, and state and local agencies as defined in RCW 42.56.010, are subject to RCW 42.56, the state Public Records Act.

A.33 LIMITATION OF AUTHORITY – Authorized Signature

Only the assigned Authorized Signature for the DEPARTMENT and the Authorized Signature or the assigned Applicant Agent or Alternate for the APPLICANT, formally designated in writing, shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Grant Agreement.

Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Grant Agreement is not effective or binding unless made in writing and signed by both authorized persons. Additionally, only these persons will have the signature authority to sign payment requests, certification of project completion, time extension requests, and requests for changes to project status (including improved or alternate project status), and Statements of Documentation for large projects.

A.34 ASSURANCES

The APPLICANT certifies that:

- a. They have the legal authority to apply for federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-federal and non-state shares of the project cost) to ensure proper planning, management and completion of the project described in approved Project Worksheets.
- b. They will give the awarding agency, the Comptroller General of the United States and the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
- c. They will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. They will record the federal interest in the title of real property in accordance with FEMA directives and will include a covenant in the title of real property acquired in whole or in part with federal assistance funds to assure non-discrimination during the useful life of the project.
- d. They will comply with the requirements of the DEPARTMENT and FEMA with regard to the drafting, review and approval of construction plans and specifications, and awarding of construction contracts.
- e. They will provide and maintain competent and adequate engineering supervision at construction sites to ensure that the completed work conforms to the approved plans and specifications and will furnish progress reports and such other information as may be required by either FEMA or the DEPARTMENT.
- f. They will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
- g. They will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

- h. They will comply with the Intergovernmental Personnel Act of 1970, as amended (42 U.S.C. §§4701 et seq.) relating to prescribed personnel standards on a merit basis for programs funded under one of the 19 statutes or regulations specified in Appendix A of the federal Office of Personnel Management's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).
- i. They will comply with all applicable state and federal statutes, regulations and executive orders relating to nondiscrimination, including but not limited to: (a) Title VI of the Civil Rights Act of 1964 (PL 88-352, 42 U.S.C. 2000d) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 et seq.), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973 (PL 93-112), as amended (29 U.S.C §794), which prohibits discrimination on the basis of disability; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C §§6101 et seq.), which prohibits discrimination on the basis of age; (e) the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); and (f) the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing. However, the requirements of Section 202 of Executive Order 11246, as amended, do not apply to a government contractor or subcontractor that is a religious corporation, association, educational institution or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities.
- j. They will comply, or have already complied, as applicable, with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (PL 91-646, 42 U.S.C. §§4601 et seq.) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchases.
- k. They will comply, as applicable, with provisions of the Hatch Act, as amended (5 U.S.C §§1501 et seq. and §§7321 et seq.) which limit the political activities of certain employees whose principal employment activities are funded in whole or in part with federal funds.
- l. They will comply, as applicable, with labor and wage provisions related to certain federally-assisted contracts (e.g., the wage rate requirements in the Davis-Bacon Act, as amended, 40 U.S.C. §§3141 et seq., the Copeland Anti-Kickback provisions in 40 U.S.C §3145 and 18 U.S.C §874, and the Contract Work Hours and Safety Standards in 40 U.S.C §§3701 et seq.).
- m. They will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (PL 93-234), as amended.
- n. They will comply, if applicable, with environmental standards prescribed pursuant to the following: (a) protection and enhancement of environmental quality pursuant to Executive Order (EO) 11514, as amended; (b) administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants, or loans pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990, as amended; (d) floodplains management pursuant to EO 11988, as amended; (e) the Coastal Zone Management Act of 1972 (P.L. 92-583), 16 U.S.C. §§1451 et seq., as amended; (f) Air Quality & Emission Limitations pursuant to 42 U.S.C. §§7401 et seq.; (g) the Safe Drinking Water Act of 1974 (PL 93-523), as amended; and, (h) the Endangered Species Act of 1973 (PL 93-205), as amended.
- o. They will comply, if applicable, with the Wild and Scenic Rivers Act (PL 90-542), 16 U.S.C. §§1271 et seq., as amended.
- p. They will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966 (PL 89-665), 16 U.S.C. §470, as amended; EO 11593 (protection and enhancement of the cultural environment); and the Archaeological and Historic Preservation Act, 16 U.S.C. §§469 et seq., as amended.
- q. They will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. chapter 63) which prohibits the use of lead-based paint in construction or rehabilitation of residential structures.
- r. They will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
- s. They will comply with all applicable requirements of all other federal laws, executive orders, regulations, and policies governing this program.



- t. They will certify to the best of their knowledge and belief that the New Restrictions on Lobbying, 44 CFR Part 18, are complied with; i.e., that no federally appropriated funds have been paid or will be paid by or on behalf of the APPLICANT to any person for influencing or attempting to influence an officer or employee of an 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; that if any funds other than federally 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 contract, grant, loan, or cooperative agreement, the APPLICANT will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and that, as applicable, the APPLICANT will require that the language of this certification be included in the award documents for all subcontracts at all tiers and that all subrecipients shall certify and disclose accordingly.

U.S. DEPARTMENT OF HOMELAND SECURITY  
FEDERAL EMERGENCY MANAGEMENT AGENCY

O.M.B. No. 1660-0017

**PROJECT WORKSHEET****PAPERWORK BURDEN DISCLOSURE NOTICE**

Public reporting burden for this form is estimated to average 90 minutes per response. Burden means the time, effort and financial resources expended by persons to generate, maintain, disclose, or to provide information to us. You may send comments regarding the accuracy of the burden estimate and or any aspect of the collection, including suggestions for reducing the burden to: Information Collections Management, U. S. Department of Homeland Security, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, Paperwork Reduction Project (OMB Control Number 1660-0017). You are not required to respond to this collection of information unless a valid OMB number appears in the upper right corner of this form. **NOTE: Do not send your completed form to this address.**

DISASTER F - R	PROJECT NO.	PA ID NO.	DATE	CATEGORY
DAMAGED FACILITY Roberts Drive, Ginder Creek Culvert, Exposed water line			WORK COMPLETE AS OF: _____ : _____ %	
APPLICANT City of Black Diamond		COUNTY King County Washington		
LOCATION			LATITUDE	LONGITUDE

**DAMAGE DESCRIPTION AND DIMENSIONS**

The January 7th storm opened up holes in the bottom of the Ginder Creek culvert under Roberts Drive and washed out 20 cubic yards of road bed and scoured a big hole in the creek south of Roberts Drive exposing and putting our water main at risk. The flood also washed out material behind the culvert headwall. The road had to be closed. Because of the importance of Roberts Drive, design and repairs were

**SCOPE OF WORK**

The City investigated the problem, closed the road, researched a solution, designed a solution, bid out the work on the small works roster, permitted the work through Fisheries, contracted with Piretta Bros. to line the culvert, fix the headwall, fill the voids under the road, armor the stilling basin to protect the pipe, but

Does the Scope of Work change the pre-disaster conditions at the site? ☐ Yes ☒ No Culvert stronger

Special Considerations issues included? ☐ Yes ☒ No Hazard Mitigation proposal included? ☒ Yes ☐ No

Is there insurance coverage on this facility? ☐ Yes ☒ No lined culvert

**PROJECT COST**

I	CODE	NARRATIVE	QUANTITY/UNIT	UNIT PRICE	COST
		Administration estimate	L.S. 1	- 1	\$ 6000
		Design + Permitting	Lump Sum	1	\$ 4000
		Road closure and traffic	Lump Sum	1	\$ 1000
		Fill Voids	20 cy 1±	\$ 306/cy	\$ 6120
		Armor downstream pool	15-20 1cy	\$ 193/cy	\$ 3860
		Fix headwall	Lump Sum	\$ 1	\$ 1631
		Bypass Creek Flow (Permit)	Lump Sum	1	\$ 7696
		Line culvert	Lump Sum	1	\$ 4698
		Mobilization	Lump Sum		\$ 1839

+ sales tax \$2500

TOTAL COST \$39,344

PREPARED BY Seth Boettcher	TITLE Public Works Div.	SIGNATURE Seth Boettcher
APPLICANT REP.	TITLE	SIGNATURE

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
<b>SUBJECT:</b> <b>Resolution No. 09-585, authorizing the Mayor to sign a contract with Parametrix for soil disposition assistance on the Railroad Avenue Water Line replacement project</b>	<b>Agenda Date: March 19, 2009</b>		<b>AB09-027</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		
	City Attorney – Loren D. Combs		
	City Clerk – Brenda L. Streepy		<b>X</b>
	Finance – May Miller		
	Public Works – Seth Boettcher	<b>X</b>	
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Cost Impact: \$7,998	Court – Kaaren Woods		
Fund Source:			
Timeline: ASAP			
<b>Attachments: Resolution No. 09-585, Agreement, Exhibit A</b>			
<b>SUMMARY STATEMENT:</b>  While replacing a water pipeline along Railroad Avenue, impacted soil was encountered during excavation of the waterline. City staff is requesting the assistance of Parametrix.			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b>			
<b>RECOMMENDED ACTION: MOTION to adopt Resolution 09-585, authorizing the Mayor to execute contract addendum #4 with Parametrix, originally authorized under Resolution 08-496, for the purpose of assisting the City of Black Diamond staff with handling impacted soil encountered during a water pipeline replacement project on Railroad Avenue.</b>			
<b>RECORD OF COUNCIL ACTION</b>			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
March 19, 2009			

**RESOLUTION NO. 09-585**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON  
AUTHORIZING A CONTRACT WITH PARAMETRIX FOR  
SERVICES HANDLING CONTAMINATED SOILS**

**WHEREAS**, in the course of the Railroad Avenue water main construction project, soils contaminated with hydrocarbons and heavy metals were encountered; and

**WHEREAS**, the City staff stopped work, began investigating the extent of the contamination; and

**WHEREAS**, the contamination appeared to extend the length of the project, and

**WHEREAS**, the City desires to have advice from experts knowledgeable in dealing with contaminated soils;

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

**Section 1.** Authorizing the Mayor to execute contract with Parametrix for recommendations, research and assistance in dealing with proper handling of contaminated soils on a time and expense basis not to exceed \$7,998 as contained in form attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,  
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 19TH DAY OF MARCH,  
2009.**

CITY OF BLACK DIAMOND:

---

Howard Botts, Mayor

Attest:

---

Brenda L. Streepy, City Clerk

## **CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (the or this "Agreement"), for reference purposes only, is dated March 19, 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: Seth Boettcher      Phone: 360-886-2560      Fax : 360-886-2592

and

PARAMETRIX, INC. ("Consultant")

P.O. Box 460

1231 Fryar Avenue

Sumner, WA 98390

Contact: Austin Fisher      Phone: 253-863-5128      Fax: 253-863-0946

Tax Id No.: 91-091-4810

for professional services in connection with the following project:

Water Line Relocation Soils Investigation (the "Project").

### **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 immediately upon receiving a notice to proceed by the City. Services shall be completed within 30 days of the notice to proceed unless otherwise authorized by the City.

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 \_\_\_\_\_.

## 3. **Compensation**

☐ LUMP SUM. Compensation for the services provided in the Scope of Work shall be a Lump Sum of \$ \_\_\_\_\_.

☒ **TIME AND MATERIALS NOT TO EXCEED.** Compensation for the services provided in the Scope of Work shall not exceed \$ 7,998 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."

☐ TIME AND MATERIALS. Compensation for the services provided in the Scope of Work shall be on a time and materials basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit "B."

☐ OTHER. \_\_\_\_\_

## 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: Austin Fisher, 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.

**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

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

Printed Name: Austin R. Fisher

Its: Transportation Division Manager

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

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

Attest:

By:

\_\_\_\_\_  
Brenda L. Streepy  
City Clerk

## SCOPE OF WORK

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### City of Black Diamond Soil Disposition Assistance Water Line Replacement

#### GOALS AND OBJECTIVES

- Properly dispose of soil from pipeline replacement.
- Report the contaminated soil encountered during pipeline replacement to the Washington State Department of Ecology.

#### BACKGROUND

- The City of Black Diamond is replacing a water pipeline along Railroad Avenue and Merino Road.
- Impacted soil was encountered during excavation of a waterline.

#### APPROACH

The City of Black Diamond requested assistance with handling impacted soil encountered during a water pipeline replacement project. The scope of work includes:

##### Task 1 – Communication-

- Work with Pac West (city contractor) on cost decisions of testing and separating vs. hauling and dump fees. Assist Pac West with information needed for change order negotiation and communication so they can keep our contractor informed.

##### Task 2 – Data Review for Soil Disposition

- Review of the soil sampling results
- Review the soil conditions and assistance with recommendations for possible additional soil sampling.
- Completion of forms for disposal of soil as required by the disposal facility.

##### Task 3 Reporting

Submit report to Ecology according to MTCA regulations including EIM data submittal.

#### DELIVERABLES

- Completed disposal characterization forms
- A draft and final Phase I SA report for the Site.

## **Exhibit A**

### **ASSUMPTIONS**

This is a time and materials budget. At 80% the client will be notified of the status and scope to determine if additional scope or funds are required.

- Two client meetings and several calls to the contractor during the course of the work.
- There will be 2-3 meetings with client and contractor to discuss approach. Meetings are 1-2 hours.
- The laboratory costs are not included in this scope.
- Transportation and disposal cost for soil are not included in this estimate.
- The client is the owner of all disposed soils and will sign all manifests and disposal paperwork.
- Communication with contractor will total approximately 10 hours
- Soil conditions and sampling assistance will total approximately 16 hours
- The report will not exceed 25 pages and will have a draft for client review prior to final submittal to Ecology.
- The client will pay the fees associated with the report submittal.
- The client will provide one set of comments on the draft report.
- Two hard copies and an electronic copy of the final report will be provided.
- Parametrix will prepare data for EIM submittal with report.

### **BUDGET**

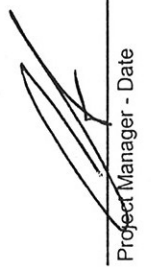

The budget for this scope is \$7,998.00 and will be conducted on a time and materials basis.

### **SCHEDULE**

Work to start immediately upon approval.

# City of Black Diamond WLR Soil investigation

Phase No.	Task No.	Description	ORG	Labor Amount	Inflation Adjustment	Labor Subtotal	Expenses	Expense Mark-up 15.0%	Expense Subtotal	Subconsultants	Sub Mark-up 15.0%	Subconsultants Subtotal	Total
1	1	Soil disposal assistance		\$1,989	\$16	\$2,005	\$130	\$20	\$150				\$2,154
1	2	Contractor assistance		\$1,319	\$11	\$1,330	\$10	\$2	\$12				\$1,341
1	3	Report for Ecology		\$4,450	\$36	\$4,485	\$15	\$2	\$17				\$4,502
TOTAL				\$7,757	\$62	\$7,819	\$155	\$23	\$178				\$7,998
Goal Multipliers:				Labor: 3.20		Expense: 1.15		Subconsultants:					

Project Manager - Date

Division Manager - Date

Principal - Date

# LABOR

Project Delivery System

## EXPENSES

File Name: Budget 03-12-09.xls  
Date Printed: 3/12/2009



# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
<b>SUBJECT:</b> <b>Resolution No. 09-586, authorizing the Mayor to accept STM Construction Company as the lowest bidder and to authorize the Court remodel project</b>	<b>Agenda Date: March 19, 2009</b>		<b>AB09-028</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Gwen Voelpel		<b>X</b>
	City Attorney – Loren D. Combs		
	City Clerk – Brenda L. Streepy		
	Finance – May Miller		
	Public Works – Seth Boettcher	<b>X</b>	
	Economic Devel. – Andy Williamson		
	Police – Chief Kiblinger		
Cost Impact: \$8,951.25	Court – Kaaren Woods		
Fund Source: R.E.E.T. (Real Estate Excise Tax)	Natural Resources – Aaron Nix		
Timeline: April 30, 2009 Completion			
<b>Attachments: Resolution No. 09-586, Copy of bids</b>			
<b>PROJECT DESCRIPTION:</b>  <p>We are removing a wall in the court office and replacing it six feet into the jury room to create more office space. We are removing north entry and police squad room entry and enlarging the court office. We will frame new door entry at NE corner of court office and build a new wall and walk-up counter. Existing window will be moved to new counter area. Jury room needs sheetrock on upper south wall to bring it up to code. Two solid core doors will be installed at both entries to jury room for added privacy. South wall in court office has wallpaper. A ¼ inch cover of sheetrock will be added to cover that. New lights will be installed in jury room. North wall in jury room will be stripped and new sheetrock added. A trap door or pull down stairs will be installed above jury room for access and storage. There will also be some trim work and painting. This project is included in the City’s 2008-2013 Capital Improvement Plan.</p> <p><b>BID PROCESS:</b> This work comes under the category of Limited Public Works Project Process. RCW 39.04.155(3) BDMC 2.90.030 (G). Staff solicited bids from local contractors on our small works roster. We received three bids and are recommending the award go to the low bidder, STM Construction located in Black Diamond for \$8,951.25.</p>			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b>			
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 09-586, authorizing the Mayor to accept STM Construction Company as lowest bidder, therefore allowing the work to begin on the Court remodel, not to exceed \$8,951.25.</b>			
<b>RECORD OF COUNCIL ACTION</b>			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
March 19, 2009			

**RESOLUTION NO. 09-586**

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

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

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

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

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

**Section 1.** To accept STM Construction as the lowest bidder and authorize the Mayor to order the court remodel work not to exceed \$8,951.25 as attached hereto in the bid proposal as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 19<sup>TH</sup> DAY OF MARCH, 2009.**

CITY OF BLACK DIAMOND:

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Howard Botts, Mayor

Attest:

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Brenda L. Streepy, City Clerk

## COURT OFFICE RE-MODEL 2009

[illegible]

## COURT OFFICE RE-MODEL 2009

[illegible]

# IMPACT BUILDERS, INC.

RICK HAIGHT, PRESIDENT

## Estimate Proposal

Proposal Date 3/6/2009

Estimate

### From

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

### Project Information

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

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

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

Estimate Total= \$18,314.01

### Estimate Scope Information

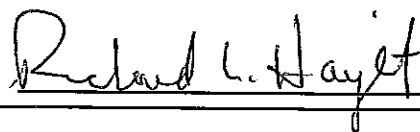
200-0101 - BUILDING PREPARATION

#### Inclusions

1. Price includes sales tax.

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

Authorized  
Signature:



### Acceptance of Proposal:

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

Signature:

Date of Acceptance:

Print Name:

**STM CONSTRUCTION INC.**

PO Box 8922  
Covington WA 98042

**Estimate**

Date	Estimate #
2/25/2009	1270

<b>Name / Address</b>
City of Black Diamond

<b>Ship To</b>
City of Black Diamond Courthouse Remodel

P.O. No.	Terms	Project
		Courthouse remodel

Item	Description	Total
Per Contract	Scope of work to include removing double doors that lead to police station by main bathrooms and convert to single door. construct new partition wall between old double doors and police station remove old wall with security glass and reinstall security glass next to new door by main bathrooms. extend wall between jury room and judges chambers 5' towards west wall and install new door and ceiling at new 5' area with pull down stairway . repair drywall at north wall in jury room and install new sheet rock at upper rake wall between courtroom and jury room . all new drywall will be taped textured primed and painted, mouldings and trim to be primed mdf to match mouldings in police station. price is for labor and materials	8,250.00
<b>Subtotal</b>		\$8,250.00
<b>Sales Tax (8.5%)</b>		\$701.25
<b>Total</b>		\$8,951.25

Signature \_\_\_\_\_

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

**RMJ Construction****Estimate**

Robert Jacobs  
PO Box 237  
Black Diamond, WA 98010

(206) 391-5208 \* ~~(360) 886-0831~~ FAX-253-981-4065

Date	Estimate #
2/23/2009	41
Project	
<i>Black Diamond Courthouse</i>	

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

Description	Rate	Total
Remodel jury room and office in North section of courtroom assembly area Scope of work includes, but not limited to: Remove existing walls, and add new walls as specified on plan. Add (3) ca. new 3'x6'8" solid core 6 panel prehung doors with hardware, to match existing door at NE corner of courtroom Straighten existing walls Add 4'x2' tempered window for natural light between jury room and new office Add window between office and lobby. Size to be determined on site Skim coat existing sheetrock for new texture and paint Hang 5/8" fire rated sheetrock on new framing and ceiling Tearout existing 6' double door and frame in for door and window Add texture and paint Trim Base and doors with 2.25" colonial, to match existing trim Debris will be removed from building and placed in customer provided dumpsite Work will conform to courtroom schedule All labor and materials will be provided by RMJ Construction Bid excludes electric, permits, floor covering	8,452.50	8,452.50
<b>Subtotal</b>		<b>\$8,452.50</b>
<b>Sales Tax (8.6%)</b>		<b>\$726.92</b>
<b>Total</b>		<b>\$9,179.42</b>