



**CITY OF BLACK DIAMOND**  
**October 15, 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.) **AB09-121** – Resolution Authorizing Amendment A to the State Military Management Agreement Mr. Boettcher
- 2.) **AB09-122** – Resolution Authorizing Amendment B to the State Military Management Agreement Mr. Boettcher
- 3.) **AB09-123** – Resolution Authorizing Department of Ecology Grant Agreement for Phase II Permit Implementation Mr. Boettcher
- 4.) **AB09-124** – Resolution Authorizing Public Works to Proceed with Lawson Street Intersection Repairs at Newcastle Drive Mr. Boettcher

**DEPARTMENT REPORTS:**

**Public Works** – Mr. Boettcher

**MAYOR'S REPORT:**

**COUNCIL REPORTS:**

**ATTORNEY REPORT:**

**PUBLIC COMMENTS:**

**CONSENT AGENDA:**

- 5.) **Claim Checks** – October 15, 2009, No. 34093 through 34094, 34694 through 34696, No. 34697 through 34749 in the amount of \$96,461.18
- 6.) **Payroll Checks** – September 30, 2009, No. 16260 through 16340 in the amount of \$287,477.31
- 7.) **Minutes** – Council Meeting of August 20, 2009, September 17, 2009, Special Council Meeting September 24, 2009, October 1, 2009 and Workstudy Notes of September 17, 2009 and October 1, 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. 09-643, authorizing the Mayor to execute Amendment A to the State Military Emergency Management Agreement</b>	<b>Agenda Date: October 15, 2009</b>		<b>AB09-121</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Leonard Smith		
	City Attorney – Loren D. Combs		X
	City Clerk – Brenda L. Martinez		
	Finance – May Miller		
	Public Works – Seth Boettcher	X	
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Cost Impact \$3,127 + or - of revenue	Court – Kaaren Woods		
Fund Source: Reimburse Street			
Timeline:			
<b>Attachments: Resolution No. 09-643, cover letter from State, Amendment A, original agreement</b>			
<p>SUMMARY STATEMENT:</p> <p>The State Legislature approved funding for a portion of the non-federal share of disaster relief funds. In our current agreement, the State Emergency Management division will administer and pass through to the City the Federal 75 percent share of eligible costs.</p> <p>This amendment will provide the City with an additional 12.5 percent cost share of State Funds for eligible expenses incurred in repairing the damage to Roberts Drive at the Ginder Creek culvert from the 2009 winter storm disaster event.</p>			
COMMITTEE REVIEW AND RECOMMENDATION:			
<p>RECOMMENDED ACTION: <b>MOTION to adopt Resolution No. 09-643, authorizing the Mayor to execute Amendment A to the agreement with the State of Washington Military Department Emergency Management Division for an additional 12.5 percent of state funding to assist the City with the costs not covered by the Federal Emergency Management Agency.</b></p>			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
October 15, 2009			

**RESOLUTION NO. 09-643**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON  
AUTHORIZING AMENDMENT A TO THE AGREEMENT  
WITH THE STATE OF WASHINGTON MILITARY  
MANAGEMENT DIVISION FOR AN ADDITIONAL 12.5  
PERCENT OF STATE FUNDING TO ASSIST THE CITY  
WITH THE COSTS NOT COVERED BY THE FEDERAL  
EMERGENCY MANAGEMENT AGENCY**

**WHEREAS**, the City entered into an agreement with the State Military Department of Emergency Management for Federal Emergency Management Agency funds for reimbursement of eligible costs of the repairs to Roberts Drive and the culvert at Ginder Creek due to the January 2009 Severe Winter Storm event by Resolution 09-584; and

**WHEREAS**, the 2009 session of the State Legislature provided funding for 12.5 percent of the eligible costs incurred; and

**WHEREAS**, this amendment does not add further administrative costs;

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

**Section 1.** The Mayor is hereby authorized to execute the attached Amendment A to the State Military Department of Emergency Management obligating additional reimbursement funds for the costs incurred by Black Diamond for repair of damages to Roberts Drive, the culvert and water line at Ginder Creek from the Washington Severe Winter Storm 2009 event as attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 15TH DAY OF OCTOBER, 2009.**

CITY OF BLACK DIAMOND:

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Howard Botts, Mayor

Attest:

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Brenda L. Martinez, City Clerk



RECEIVED  
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BY:.....

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

June 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  
FEMA No. 033-06330-00

Dear Mr. Boettcher:

Enclosed you will find an amendment to your state agreement with the Washington Military Department for the Severe Winter Storms 2009 event. This amendment addresses the state cost share.

During the 2009 Session of the Legislature, the funding of the non-federal share of disaster-related costs was addressed. The 25 percent non-federal share for the eligible costs covered under the Project Worksheets for the Severe Winter Storms 2009 event will be equally split between the state and the City. Funding will be 75 percent federal funds, 12.5 percent state funds and 12.5 percent local funds.

Enclosed you will find two copies of an agreement amendment reflecting these changes. Both originals need to be signed by the individual authorized to sign contract amendments on the Signature Authorization Form, for your City. Please return both signed originals of the amendment to the following address:

Ms. Olivia Hollowwa  
State of Washington Military Department  
Emergency Management Division  
Bldg 20-B, MS: TA-20  
Camp Murray, WA 98430-5122



Mr. Seth Boettcher

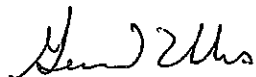
June 4, 2009

Page Two

After all parties have signed the amendments, one original copy of the agreement amendment will be forwarded to your office. When the signed amendment is returned, an invoice voucher for any state funds due to your City will be enclosed for your review and signature. Until all parties have signed the amendments, the state share cannot be released.

If there are any questions regarding the amendment, please contact Amy Gillespie, Public Assistance Coordinator at (253) 512-7452 or [a.gillespie@emd.wa.gov](mailto:a.gillespie@emd.wa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Gerard Urbas".

Gerard Urbas  
Deputy State Coordinating Officer  
Public Assistance

GU:dw

Enclosure

# Washington State Military Department AMENDMENT

1. APPLICANT NAME/ADDRESS: <b>City of Black Diamond</b> <b>24301 Roberts Dr., PO Box 599</b> <b>Black Diamond WA 98010</b>		2. GRANT NUMBER: <b>D09-134</b>	3. AMENDMENT NUMBER: <b>A - Local</b>
4. APPLICANT CONTACT PERSON, NAME/TITLE:		5. MD STAFF CONTACT, NAME/TELEPHONE: <b>Gary Urbas, (253) 512-7402</b>	
6. TIN or SSN:	7. CATALOG OF FEDERAL DOMESTIC ASST. (CFDA) #: <b>97.036 Public Assistance</b>	8. FUNDING SOURCE NAME/AGREEMENT #: <b>FEMA 1817-DR-WA</b>	
9. FUNDING AUTHORITY: <b>Washington State Military Department (Department) and Federal Emergency Management Agency (FEMA)</b>			
10. DESCRIPTION/JUSTIFICATION OF AMENDMENT, MODIFICATION, OR CHANGE ORDER: <b>Under the authority of Presidential Major Disaster Declaration FEMA 1817-DR-WA, the Department through its Public Assistance Program, is reimbursing the Applicant for those eligible costs and activities necessary for the repair and restoration of public facilities damaged during this disaster. As the program has progressed, the need to modify and redefine certain agreement language has become necessary.</b> <ul style="list-style-type: none"> <li><b>Recognize change in non-federal share of funding due to legislative appropriations of the state share.</b></li> </ul>			
11. AMENDMENT TERMS AND CONDITIONS: 1. The grant expiration date of January 29, 2013 remains <b>unchanged</b> . 2. In the Special Terms and Conditions, Article I-Compensation Schedule, <b>replace</b> in its entirety 1. FUNDING <b>with</b> the language found in Attachment A, Article I – Compensation Schedule, 1 FUNDING of this amendment. <b>No other changes are required. All other terms and conditions of the original grant and any previous amendments thereto remain in full force and effect.</b>			
IN WITNESS WHEREOF, the Department and Applicant acknowledge and accept the terms of this grant amendment and attachments hereto and in witness whereof have executed this amendment as of the date and year written below. The rights and obligations of both parties to this grant are governed by this Grant Amendment Face Sheet and other documents incorporated herein by reference or attached and identified in the original grant agreement document. A copy of this grant agreement amendment shall be attached to and incorporated into the original agreement between the Department and the Applicant. Any reference in such grant agreement to the "grant agreement" shall mean "grant agreement as amended."			
IN WITNESS WHEREOF, the parties hereto have executed this amendment as of the date and year last written below:			
FOR THE DEPARTMENT:  <div style="display: flex; justify-content: space-between;"> <div>Signature _____</div> <div>Date _____</div> </div> James M. Mullen, Director Emergency Management Division Washington State Military Department APPROVED AS TO FORM: Sara J. Finlay (signature on file) June 2, 2009 Assistant Attorney General		FOR THE APPLICANT:  <div style="display: flex; justify-content: space-between;"> <div>Signature _____</div> <div>Date _____</div> </div> print or type name: _____ APPROVED AS TO FORM: <div style="display: flex; justify-content: space-between;"> <div>Applicant's Legal Review _____</div> <div>Date _____</div> </div>	

Form Date: 10/27/00

Replace these numbered paragraphs of the original agreement with the following new paragraphs:

## **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.E. of Article I of this Public Assistance Grant Agreement. *The DEPARTMENT will commit to **12.5** percent and the APPLICANT will commit to the remaining **12.5** 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.

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
<b>SUBJECT:</b> <b>Resolution No. 09-644, authorizing the Mayor to execute Amendment B to the State Military Emergency Management Agreement</b>	<b>Agenda Date: October 15, 2009</b>		<b>AB09-122</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Leonard Smith		
	City Attorney – Loren D. Combs		X
	City Clerk – Brenda L. Martinez		
	Finance – May Miller		
	Public Works – Seth Boettcher	X	
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Cost Impact: None	Court – Kaaren Woods		
Fund Source: --			
Timeline:			
<b>Attachments: Resolution No. 09-644, cover letter, amendment</b>			
<b>SUMMARY STATEMENT:</b>  <p>This amendment clarifies program specifications and changes in the Federal Emergency Management Agency Public Assistance Program.</p> <p>The first change to the audit is Section A.26 it reads the same except for adding the following sentence: <i>“Private non-profit APPLICANTS must contact a CPA firm to perform the audit.”</i> This change does not affect us.</p> <p>The second change establishes new limits of signature authority. Previously, the Mayor designated May Miller and Seth Boettcher as Alternate Applicant Agents with authority to sign documents related to the implementation of the grant agreement. The new language limits the Designated Applicant Agent authority to sign payment requests, certification of project completion, time extension requests and requests for changes to project status. Only the Applicants Authorized Authority (the Mayor) shall have authority to sign or alter the agreement.</p>			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b>			
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 09-644, authorizing the Mayor to execute Amendment B to the State Military Emergency Management Agreement for the Washington Severe Winter Storm event of 2009.</b>			
<b>RECORD OF COUNCIL ACTION</b>			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
October 15, 2009			



**RESOLUTION NO. 09-644**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON  
AUTHORIZING AMENDMENT B TO THE STATE MILITARY  
EMERGENCY MANAGEMENT AGREEMENT FOR THE  
2009 SEVERE STORM EVENT**

**WHEREAS**, the City entered into an agreement with the State Military Department Emergency Management for Federal Emergency Management Agency funds for reimbursement of eligible costs of the repairs to Roberts Drive and the culvert at Ginder Creek due to the January 2009 Severe Winter Storm event by Resolution 09-584; and

**WHEREAS**, on October 15, 2009, the Agreement was amended in order to authorize an additional 12.5 percent of state funding to assist the City with the costs not covered by the Federal Emergency Management Agency; and

**WHEREAS**, the Federal Emergency Management Agency has made changes in their program requirements regarding audits and new limits of signature authority; and

**WHEREAS**, the funding agencies have the right to amend the terms of this grant assistance agreement;

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

**Section 1.** The Mayor is hereby authorized to execute the attached Amendment B to the State Military Department of Emergency Management making changes to the audit requirements and new limits to signature authority as attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 15TH DAY OF OCTOBER, 2009.**

CITY OF BLACK DIAMOND:

---

Howard Botts, Mayor

Attest:

---

Brenda L. Martinez, City Clerk



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BY: -----

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*

September 1, 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  
FEMA No. 033-06330-00

Dear Mr. Boettcher:

Enclosed you will find Amendment B to your state agreement with the Washington Military Department for the Severe Winter Storms 2009 event. This amendment clarifies programmatic specifications as well as addresses recent changes in the Federal Emergency Management Agency (FEMA) Public Assistance Program.

Enclosed you will find two copies of an agreement amendment reflecting these changes. Both originals need to be signed by the individual authorized to sign contracts, as shown on the Signature Authorization Form, for your City. Please return both signed originals of the amendment to the following address:

Ms. Olivia Hollowwa  
State of Washington Military Department  
Emergency Management Division  
Bldg 20-B, MS: TA-20  
Camp Murray, WA 98430-5122

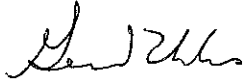
After all parties have signed the amendments, one original copy of the agreement amendment will be forwarded to your office.



Mr. Seth Boettcher  
September 1, 2009  
Page Two

If there are any questions regarding the amendment, please contact Amy Gillespie, Public Assistance Coordinator at (253) 512-7452 or [a.gillespie@emd.wa.gov](mailto:a.gillespie@emd.wa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Gerard Urbas".

Gerard Urbas  
Deputy State Coordinating Officer  
Public Assistance

GU:dw

Enclosure

# Washington State Military Department AMENDMENT

1. APPLICANT NAME/ADDRESS: <b>City of Black Diamond</b>		2. GRANT NUMBER: <b>D09-134</b>	3. AMENDMENT NUMBER: <b>B - Local / State</b>
4. APPLICANT CONTACT PERSON, NAME/TITLE:		5. MD STAFF CONTACT, NAME/TELEPHONE: <b>Gary Urbas, (253) 512-7402</b>	
6. TIN or SSN:	7. CATALOG OF FEDERAL DOMESTIC ASST. (CFDA) #: <b>97.036 Public Assistance</b>	8. FUNDING SOURCE NAME/AGREEMENT #: <b>FEMA 1817-DR-WA</b>	
9. FUNDING AUTHORITY: <b>Washington State Military Department (Department) and Federal Emergency Management Agency (FEMA)</b>			
10. DESCRIPTION/JUSTIFICATION OF AMENDMENT, MODIFICATION, OR CHANGE ORDER: <b>Under the authority of Presidential Major Disaster Declaration FEMA 1817-DR-WA, the Department through its Public Assistance Program, is reimbursing the Applicant for those eligible costs and activities necessary for the repair and restoration of public facilities damaged during this disaster. As the program has progressed, the need to modify and redefine certain agreement language has become necessary.</b> <ul style="list-style-type: none"><li><b>Correct a clerical error in the PA Boilerplate and clarify the Limitation of Authority roles and responsibilities.</b></li></ul>			
11. AMENDMENT TERMS AND CONDITIONS: 1. The grant expiration date of January 29, 2013 remains <b>unchanged</b> . 2. In the General Terms and Conditions, Exhibit A, A.26 <u>Single Audit Act Requirements</u> (Including All Amendments), <b>replace</b> in its entirety <b>with</b> the language found in Amendment B, Attachment A, Exhibit A, General Terms and Conditions, A.26 Single Audit Act Requirements (Including all amendments). 3. In the General Terms and Conditions, Exhibit A, A.26 <u>Limitation of Authority – Authorized Signature</u> , <b>replace</b> in its entirety <b>with</b> the language found in Amendment B, Attachment A, Exhibit A, General Terms and Conditions, A. 26 <u>Limitation of Authority – Authorized Signature</u> . <b>No other changes are required. All other terms and conditions of the original grant and any previous amendments thereto remain in full force and effect.</b>			
IN WITNESS WHEREOF, the Department and Applicant acknowledge and accept the terms of this grant amendment and attachments hereto and in witness whereof have executed this amendment as of the date and year written below. The rights and obligations of both parties to this grant are governed by this Grant Amendment Face Sheet and other documents incorporated herein by reference or attached and identified in the original grant agreement document. A copy of this grant agreement amendment shall be attached to and incorporated into the original agreement between the Department and the Applicant. Any reference in such grant agreement to the "grant agreement" shall mean "grant agreement as amended."			
FOR THE DEPARTMENT:		FOR THE APPLICANT:	
_____ Signature Date James M. Mullen, Director Emergency Management Division Washington State Military Department APPROVED AS TO FORM: Sara J. Finlay (signature on file) August 26 , 2009 Assistant Attorney General		_____ Signature Date print or type name: _____ APPROVED AS TO FORM: _____ Applicant's Legal Review Date	

Form Date: 10/27/00

Replace these numbered paragraphs of the original agreement with the following new paragraphs:

## **GENERAL TERMS AND CONDITIONS**

### **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.

Private non-profit APPLICANTS must contact a CPA firm to perform the audit. Costs of the audit may be an allowable grant expenditure 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.33 LIMITATION OF AUTHORITY – Authorized Signature**

Only the DEPARTMENT's Authorized Signature and the APPLICANT's Authorized Authority shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Grant Agreement. 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 the DEPARTMENT's Authorized Signature and the APPLICANT's Authorized Authority. Only the APPLICANT's Authorized Authority, Designated Applicant Agent, or Designated Alternate Applicant Agent shall have signature authority to sign payment requests, certification of project completion, time extension requests, requests for changes to project status (including improved or alternate project status), and Statements of Documentation for large projects.

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
<b>SUBJECT:</b> <b>Resolution No. 09-645, authorizing the Mayor to execute a Department of Ecology Phase II Stormwater pass-through Grant</b>	<b>Agenda Date: October 15, 2009</b>		<b>AB09-123</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Leonard Smith		
	City Attorney – Loren D. Combs		X
	City Clerk – Brenda L. Martinez		
	Finance – May Miller		
	Public Works – Seth Boettcher	X	
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Cost Impact \$50,000 Revenue	Court – Kaaren Woods		
Fund Source: Stormwater Utility			
Timeline:			
<b>Attachments: Resolution No. 09-645, cover letter, Pass-through grant agreement</b>			
<b>SUMMARY STATEMENT:</b> The purpose of this grant is to provide additional assistance to the City of Black Diamond with Phase II of the Municipal Stormwater Permit requirements.  Page 6 of 7 identifies the general categories where the City intends to utilize the grant funds. More specifically: <ul style="list-style-type: none"> <li>Public education, reimburse the City for a pro-rata share of newsletter mailings with stormwater education and survey costs-(\$2000)</li> <li>Staff training, reimburse the City for illicit discharge education incurred in July-(\$1000)</li> <li>Maintaining MS4 infrastructure, reimbursement for pumping catch basins-(\$33,000)</li> <li>Other Activities-(\$14,000):               <ul style="list-style-type: none"> <li>Completion of the City Comprehensive Storm and Surface Water Plan including-                   <ol style="list-style-type: none"> <li>Existing storm system mapping</li> <li>Basin analysis</li> <li>Capital Improvement Plan</li> <li>Operation and maintenance recommendations</li> <li>Low-impact development recommendations</li> </ol> </li> </ul> </li> </ul>			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b>			
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 09-645, authorizing the Mayor to execute a Department of Ecology Phase II Stormwater pass-through Grant for \$50,000 to assist with the Municipal Stormwater Permit requirements.</b>			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	
October 15, 2009			

**RESOLUTION NO. 09-645**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON  
AUTHORIZING A GRANT AGREEMENT WITH THE  
DEPARTMENT OF ECOLOGY FOR PHASE II  
STORMWATER PERMIT REQUIREMENT ASSISTANCE**

**WHEREAS**, the City of Black Diamond is required to meet Phase II Municipal Stormwater Permit requirements; and

**WHEREAS**, carry-over funds were remaining from the last 2007 - 2009 Biennium and have been made available to municipalities required to meet Phase II Stormwater Permit requirements; and

**WHEREAS**, the City of Black Diamond's Stormwater Utility started collecting charges in 2009 and the fund has a large financial challenge to meet all of the Phase II Stormwater Permit requirements;

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

**Section 1.** The Mayor is authorized to execute a \$50,000 grant agreement with the Department of Ecology for Phase II Municipal Stormwater Permit requirement assistance as attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 15TH DAY OF OCTOBER, 2009.**

CITY OF BLACK DIAMOND:

---

Howard Botts, Mayor

Attest:

---

Brenda L. Martinez, City Clerk



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000  
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

August 20, 2009

The Honorable Howard Botts  
Mayor of Black Diamond  
P.O. Box 599  
Black Diamond, WA 98010

Re: Phase II Stormwater Pass-through Grants Program  
FY 2010-11 Grant Funding Offer

Dear Mayor Botts:

I am pleased to inform you that your community is eligible for a \$50,000 grant from the Department of Ecology's (Ecology) new *Phase II Stormwater Pass-through Grants Program*.

The purpose of the *Phase II Stormwater Pass-through Grants Program* is to provide grants to local governments throughout Washington State for implementation of Phase II municipal stormwater National Pollutant Discharge Elimination System (NPDES) permits.

In the 2007-2009 biennium, the Washington State Legislature provided \$9 million in base funds for stormwater management activities for local governments. Ecology is now offering two programs with the carry-over from those funds. One program is for pass-through grants to cities, towns, and counties covered by a Phase II municipal stormwater general permit, as described in the enclosed materials. We will contact your staff in the near future to solicit offers for the other program, a competitive Request for Proposal (RFP) for stormwater projects of regional or statewide significance.

This letter includes guidelines and a grant agreement to receive the *Phase II Stormwater Pass-through Grant*. Because of the nature of the appropriation, all funds must be obligated in a grant agreement and spent by **June 30, 2011**.

This offer is contingent on Ecology receiving a signed grant agreement and scope of work by **October 30, 2009**. If we do not receive a signed grant agreement from you by that date, the funds will be made available to other local governments.





August 20, 2009

Page 2

To receive your grant, a Phase II Stormwater Pass-through Grant Agreement must be completed and received by Ecology no later than **October 30, 2009, by 5:00 p.m.** Please send completed grant agreements to:

Department of Ecology  
Water Quality Program  
Financial Management Section (Attn: Shawna Beers)  
P.O. Box 47600  
Olympia, WA 98504-7600  
E-mail: [sbee461@ecy.wa.gov](mailto:sbee461@ecy.wa.gov)  
Phone: (360) 407-6502  
FAX: (360) 407-7151

We also ask that if you are unable to use this offer that you let us know in writing as soon as possible, so funds can be offered to other communities.

Thank you for your continued efforts to improve and protect Washington's water quality. Please contact your Regional Permit Specialist listed at <http://www.ecy.wa.gov/programs/wq/stormwater/municipal/municontacts.html> if you have any questions or concerns.

Sincerely,



Kelly Susewind, Program Manager  
Water Quality Program

KS:hb

Enclosures: Grant Program Guidelines  
Grant Agreement



**FY 2010-2011 PHASE II STORMWATER PASS-THROUGH  
GRANTS PROGRAM  
GRANT AGREEMENT BETWEEN THE  
STATE OF WASHINGTON DEPARTMENT OF ECOLOGY  
AND**

THIS is a binding agreement entered into, by, and between the state of Washington Department of Ecology (DEPARTMENT), and \_\_\_\_\_ (RECIPIENT). The purpose of this agreement is to provide funds to the RECIPIENT to carry out the requirements described herein.

**PART I. GENERAL INFORMATION**

Project Title: **Phase II Stormwater Pass-through Grant Program**

Grant Number:

RECIPIENT Name and Address: **Name  
Organization  
Street Address  
Street Address 2  
City, State, Zip**

RECIPIENT Contact:  
Telephone Number:  
Fax Number:  
E-Mail Address:

RECIPIENT Billing Contact:  
Telephone Number:  
Fax Number:  
E-Mail Address:

RECIPIENT Federal ID Number:

DEPARTMENT Project/Financial Manager:  
Mailing Address: **Water Quality Program  
Washington State Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600**  
Telephone Number: **360- 407-6502**  
Fax Number: **360- 407-7151**  
E-Mail Address:

DESIGNATED LOCAL  
GOVERNMENT PARTNERS  
(if applicable)

## Phase II Stormwater Pass-through Grant

For partnerships, the lead government and partners must submit a copy of the signed agreement in Appendix B with each copy of the grant agreement.

DEPARTMENT Funding Source: **2010-2011 Biennial Operating Budget/Local  
Toxics Control Account**

Total Cost (up to \$50,000 each recipient): **\$ 50,000**

Total Eligible Cost (up to \$50,000 each Recipient): **\$ 50,000**

DEPARTMENT Share (\$50,000 each Recipient): **\$ 50,000**

DEPARTMENT Maximum Percentage: **100 %**

The effective date of this grant agreement is July 1, 2009. Any work performed prior to the effective date of this agreement will be at the sole expense and risk of the RECIPIENT.

This agreement expires on **June 30, 2011**.

### **PART II. PERFORMANCE MEASURES**

**A. Water Quality Goal.**

Improved stormwater management and water quality protection associated with development and implementation of a stormwater management program.

**B. Project Outcomes.**

Local Government Stormwater Grants for local governments to receive grants for municipal stormwater programs, including but not limited to implementation of Phase II municipal stormwater National Pollutant Discharge Elimination System (NPDES) permits.

**C. Post Project Assessment.**

The RECIPIENT agrees to submit a brief survey three years after project completion regarding the key project outcomes and the status of environmental results or goals from the project. The DEPARTMENT's Performance Measures Lead will e-mail the RECIPIENT the Post Project Assessment Survey.

The DEPARTMENT may conduct on-site interviews and inspections, and may otherwise evaluate the Project. The DEPARTMENT will enter the information provided into its performance measures database to be provided to the Washington State Legislature, United States Environmental Protection Agency, and other natural resource agencies.

Approximate Post Project Assessment Date: June 30, 2012

### **PART III. PROJECT DESCRIPTION**

The RECIPIENT's stormwater project will address implementation or management of municipal stormwater programs.

### **PART IV. PROJECT BUDGET**

<b>Phase II Stormwater Pass-through Grant Program</b>	
<b>ELEMENTS</b>	<b>TOTAL ELIGIBLE COST (TEC)*</b>
Task 1 – Project Administration/Management (limited to 10% of total)	\$
Task 2 – Implementation and management of Stormwater Program	\$
Total (limited to \$50,000 per Recipient partner)	\$
<b>*The DEPARTMENT's Fiscal Office will track to the Total Eligible Project Cost.</b>	
<b>MATCHING REQUIREMENTS (There are no matching requirements)</b>	
DEPARTMENT Share FY 2010-11 (100% of TEC)	\$

Payment Request Submittals. Payment requests will not be submitted more often than monthly, unless allowed by the DEPARTMENT's Project/Financial Manager. The DEPARTMENT's Project/Financial Manager may require the RECIPIENT to submit regular payment requests to ensure efficient and timely use of funds.

Payment Schedule. Payments will be made on a cost-reimbursable basis.

### **PART V. SCOPE OF WORK**

The RECIPIENT shall ensure that this project is completed according to the details of this agreement. The RECIPIENT may elect to use its own forces or it may contract for professional services necessary to perform and complete project related work. The RECIPIENT certifies by signing this agreement that all applicable requirements have been satisfied in the procurement of any professional services. Eligible and ineligible project costs are separate and identifiable for billing purposes. If professional services are contracted, the RECIPIENT shall submit a copy of the final contract to the DEPARTMENT's Project/Financial Manager.

#### **Task 1 - Project Administration/Management**

- A. The RECIPIENT shall administer the project. Responsibilities will include, but not be limited to: maintenance of project records; submittal of payment vouchers, fiscal forms, and progress reports; compliance with applicable procurement, contracting, and interlocal agreement requirements; application for, receipt of, and compliance with all required

## Phase II Stormwater Pass-through Grant

permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items.

- B. The RECIPIENT shall manage the project. Efforts will include: conducting, coordinating, and scheduling project activities and assuring quality control. Every effort will be made to maintain effective communication with the RECIPIENT's designees; the DEPARTMENT; all affected local, state, or federal jurisdictions; and any interested individuals or groups. The RECIPIENT shall carry out this project in accordance with any completion dates outlined in this agreement.
- C. The RECIPIENT shall submit all invoice voucher submittals and supportive documentation, to the DEPARTMENT's Project/Financial Manager. Copies of all applicable forms shall be included with an original A19-1A, and shall be submitted to the DEPARTMENT. Blank forms are found in Administrative Requirements for Recipients of Ecology Grants and Loans at <http://www.ecy.wa.gov/biblio/9118.html>

### **Required Forms:**

Form A19-1A (original signature)  
Form B2 (ECY 060-7)  
Form C2 (ECY 060-9)  
Form D (ECY 060-11)

### **Where Eligible Costs Have Incurred:**

Form E (ECY 060-12)  
Form F (ECY 060-13)  
Form G (ECY 060-14)  
Form H (F-21)  
Form I (ECY 060-15)

- D. If work conducted results in a report, the RECIPIENT shall submit the following to the DEPARTMENT's Project/Financial Manager and in the quantities identified:
- Draft project completion reports – one electronic copy
  - Final project completion reports – five copies
  - Electronic copy of final project completion report

The RECIPIENT shall submit two copies of any document(s) which requires DEPARTMENT approval. Once approval is given, one copy will be returned to the RECIPIENT. If the RECIPIENT needs more than one approved copy, the number of submittals should be adjusted accordingly.

## **Task 2 – Implementation of Stormwater Planning and Management Needs**

- A. The RECIPIENT shall address stormwater management needs that protect or restore water quality. The RECIPIENT may conduct work related to implementation of activities required by the municipal stormwater National Pollutant Discharge Elimination System (NPDES) permits.

## Phase II Stormwater Pass-through Grant

4. Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
5. Use the services and assistance of the State Office of Minority and Women's Business Enterprises (OMWBE) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

The RECIPIENT shall report to the DEPARTMENT at the time of submitting each invoice, on forms provided by the DEPARTMENT, payments made to qualified firms. Please include the following information:

1. Name and state OMWBE certification number (if available) of any qualified firm receiving funds under the invoice, including any sub-and/or sub-subcontractors.
2. The total dollar amount paid to qualified firms under this invoice.

- G. Progress Reports. The RECIPIENT shall submit quarterly Progress Reports to the DEPARTMENT's Project/Financial Manager. Payment requests will not be processed without a Progress Report.

**Reporting Periods.**

- January 1 through March 31
- April 1 through June 30
- July 1 through September 30
- October 1 through December 31

**Reporting Due Date.** Quarterly Progress Reports are due 15 days following the end of the quarter.

**Report Content.** At a minimum, all Progress Reports must contain a comparison of actual accomplishments to the objectives established for the period, the reasons for delay if established objectives were not met, analysis and explanation of any cost overruns, and any additional pertinent information specified in this agreement.

- H. Water Quality Monitoring. Prior to initiating water quality monitoring activities, the RECIPIENT must prepare a Quality Assurance Project Plan (QAPP) that follows Ecology's *Guidelines and Specifications for Preparing Quality Assurance Project Plans for Environmental Studies*, February 2001 (Ecology Publication No. 01-03-003).

The RECIPIENT must submit the QAPP to the DEPARTMENT for review, comment, and must be approved before starting the environmental monitoring activities.

The RECIPIENT must use an environmental laboratory accredited by Ecology to analyze water samples for all parameters to be analyzed that require bench testing.

The RECIPIENT should manage all monitoring data collected or acquired under this agreement in order to be available to secondary users and meet the "ten-year rule."

**Monitoring Data Submittal / Environmental Information Management System.** Funding recipients that collect water quality monitoring data must submit all appropriate data to Ecology through the Environmental Information Management System (EIM).

**PART VII. ALL WRITINGS CONTAINED HEREIN**

This agreement, the appended GENERAL TERMS AND CONDITIONS, the DEPARTMENT's current edition of *Administrative Requirements for Recipients of Ecology Grants and Loans* ("Yellow Book"), and the *Local Government Stormwater Grants Program FY 2008* contain the entire understanding between the parties, and there are no other understandings or representations other than as set forth or incorporated by reference, herein. No subsequent modification(s) or amendment(s) of this agreement shall be of any force or effect unless signed by authorized representatives of the RECIPIENT and DEPARTMENT and made a part of this agreement, EXCEPT that in response to a request from the RECIPIENT, the DEPARTMENT may redistribute the grant budget. The DEPARTMENT or RECIPIENT may change their respective staff contacts without the concurrence of either party.

IN WITNESS WHEREOF, the parties hereby execute this Grant:

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

\_\_\_\_\_  
JURISDICTION

\_\_\_\_\_  
DATE  
KELLY SUSEWIND, P.E., P.G.  
WATER QUALITY PROGRAM MANAGER

\_\_\_\_\_  
DATE  
NAME:  
TITLE:

APPROVED AS TO FORM ONLY  
ASSISTANT ATTORNEY GENERAL

(Revised 8/14/09)

**Appendix A**

**GENERAL TERMS AND CONDITIONS**  
**Pertaining to Grant and Loan Agreements of**  
**the Department of Ecology**

**A. RECIPIENT PERFORMANCE**

All activities for which grant/loan funds are to be used shall be accomplished by the RECIPIENT and RECIPIENT's employees. The RECIPIENT shall only use contractor/consultant assistance if that has been included in the agreement's final scope of work and budget.

**B. SUBGRANTEE/CONTRACTOR COMPLIANCE**

The RECIPIENT must ensure that all subgrantees and contractors comply with the terms and conditions of this agreement.

**C. THIRD PARTY BENEFICIARY**

The RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this agreement, the state of Washington is named as an express third-party beneficiary of such subcontracts with full rights as such.

**D. CONTRACTING FOR SERVICES (BIDDING)**

Contracts for construction, purchase of equipment and professional architectural and engineering services shall be awarded through a competitive process, if required by State law. RECIPIENT shall retain copies of all bids received and contracts awarded, for inspection and use by the DEPARTMENT.

**E. ASSIGNMENTS**

No right or claim of the RECIPIENT arising under this agreement shall be transferred or assigned by the RECIPIENT.

**F. COMPLIANCE WITH ALL LAWS**

1. The RECIPIENT shall comply fully with all applicable Federal, State and local laws, orders, regulations and permits.

Prior to commencement of any construction, the RECIPIENT shall secure the necessary approvals and permits required by authorities having jurisdiction over the project, provide assurance to the DEPARTMENT that all approvals and permits have been secured, and make copies available to the DEPARTMENT upon request.

2. Discrimination. The DEPARTMENT and the RECIPIENT agree to be bound by all Federal and State laws, regulations, and policies against discrimination. The RECIPIENT further agrees to affirmatively support the program of the Office of Minority and Women's Business Enterprises to the maximum extent possible. If the agreement is federally-funded, the RECIPIENT shall report to the DEPARTMENT the percent of grant/loan funds available to women or minority owned businesses.

3. Wages And Job Safety. The RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.

4. Industrial Insurance. The RECIPIENT certifies full compliance with all applicable state industrial insurance requirements. If the RECIPIENT fails to comply with such laws, the



DEPARTMENT shall have the right to immediately terminate this agreement for cause as provided in Section K.1, herein.

**G. KICKBACKS**

The RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this project to give up any part of the compensation to which he/she is otherwise entitled or, receive any fee, commission or gift in return for award of a subcontract hereunder.

**H. AUDITS AND INSPECTIONS**

1. The RECIPIENT shall maintain complete program and financial records relating to this agreement. Such records shall clearly indicate total receipts and expenditures by fund source and task or object.

All grant/loan records shall be kept in a manner which provides an audit trail for all expenditures. All records shall be kept in a common file to facilitate audits and inspections.

Engineering documentation and field inspection reports of all construction work accomplished under this agreement shall be maintained by the RECIPIENT.

2. All grant/loan records shall be open for audit or inspection by the DEPARTMENT or by any duly authorized audit representative of the State of Washington for a period of at least three years after the final grant payment/loan repayment or any dispute resolution hereunder. If any such audits identify discrepancies in the financial records, the RECIPIENT shall provide clarification and/or make adjustments accordingly.

3. All work performed under this agreement and any equipment purchased, shall be made available to the DEPARTMENT and to any authorized state, federal or local representative for inspection at any time during the course of this agreement and for at least three years following grant/loan termination or dispute resolution hereunder.

4. RECIPIENT shall meet the provisions in OMB Circular A-133 (Audits of States, Local Governments & Non Profit Organizations), including the compliance Supplement to OMB Circular A-133, if the RECIPIENT expends \$500,000 or more in a year in Federal funds. The \$500,000 threshold for each year is a cumulative total of all federal funding from all sources. The RECIPIENT must forward a copy of the audit along with the RECIPIENT'S response and the final corrective action plan to the DEPARTMENT within ninety (90) days of the date of the audit report.

**I. PERFORMANCE REPORTING**

The RECIPIENT shall submit progress reports to the DEPARTMENT with each payment request or such other schedule as set forth in the Special Conditions. The RECIPIENT shall also report in writing to the DEPARTMENT any problems, delays or adverse conditions which will materially affect their ability to meet project objectives or time schedules. This disclosure shall be accompanied by a statement of the action taken or proposed and any assistance needed from the DEPARTMENT to resolve the situation. Payments may be withheld if required progress reports are not submitted.

Quarterly reports shall cover the periods January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be due within thirty (30) days following the end of the quarter being reported.

**J. COMPENSATION**

## Phase II Stormwater Pass-through Grant

1.     **Method of compensation.** Payment shall normally be made on a reimbursable basis as specified in the grant agreement and no more often than once per month. Each request for payment will be submitted by the RECIPIENT on State voucher request forms provided by the DEPARTMENT along with documentation of the expenses. Payments shall be made for each task/phase of the project, or portion thereof, as set out in the Scope of Work when completed by the RECIPIENT and approved as satisfactory by the Project Officer.

The payment request form and supportive documents must itemize all allowable costs by major elements as described in the Scope of Work. Instructions for submitting the payment requests are found in "Administrative Requirements for Ecology Grants and Loans", part IV, published by the DEPARTMENT. A copy of this document shall be furnished to the RECIPIENT. When payment requests are approved by the DEPARTMENT, payments will be made to the mutually agreed upon designee.

Payment requests shall be submitted to the DEPARTMENT and directed to the Project Officer assigned to administer this agreement.

2.     **Period of Compensation.** Payments shall only be made for actions of the RECIPIENT pursuant to the grant/loan agreement and performed after the effective date and prior to the expiration date of this agreement, unless those dates are specifically modified in writing as provided herein.

3.     **Final Request(s) for Payment.** The RECIPIENT should submit final requests for compensation within forty-five(45) days after the expiration date of this agreement and within fifteen (15) days after the end of a fiscal biennium. Failure to comply may result in delayed reimbursement.

4.     **Performance Guarantee.** The DEPARTMENT may withhold an amount not to exceed ten percent (10%) of each reimbursement payment as security for the RECIPIENT's performance. Monies withheld by the DEPARTMENT may be paid to the RECIPIENT when the project(s) described herein, or a portion thereof, have been completed if, in the DEPARTMENT's sole discretion, such payment is reasonable and approved according to this agreement and, as appropriate, upon completion of an audit as specified under section J.6. herein.

5.     **Unauthorized Expenditures.** All payments to the RECIPIENT may be subject to final audit by the DEPARTMENT and any unauthorized expenditure(s) charged to this grant/loan shall be refunded to the DEPARTMENT by the RECIPIENT.

6.     **Mileage and Per Diem.** If mileage and per diem are paid to the employees of the RECIPIENT or other public entities, it shall not exceed the amount allowed under state law for state employees.

7.     **Overhead Costs.** No reimbursement for overhead costs shall be allowed unless provided for in the Scope of Work hereunder.

## **K. TERMINATION**

1. For Cause. The obligation of the DEPARTMENT to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of the DEPARTMENT, to perform any obligation required of it by this agreement, the DEPARTMENT may refuse to pay any further funds thereunder and/or terminate this agreement by giving written notice of termination.

A written notice of termination shall be given at least five working days prior to the effective date of termination. In that event, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the RECIPIENT under this agreement, at the option of the DEPARTMENT, shall become Department property and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Despite the above, the RECIPIENT shall not be relieved of any liability to the DEPARTMENT for damages sustained by the DEPARTMENT and/or the State of Washington because of any breach of agreement by the RECIPIENT. The DEPARTMENT may withhold payments for the purpose of setoff until such time as the exact amount of damages due the DEPARTMENT from the RECIPIENT is determined.

2. Insufficient Funds. The obligation of the DEPARTMENT to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. When this agreement crosses over state fiscal years the obligation of the DEPARTMENT is contingent upon the appropriation of funds during the next fiscal year. The failure to appropriate or allot such funds shall be good cause to terminate this agreement as provided in paragraph K.1 above.

When this agreement crosses the RECIPIENT's fiscal year, the obligation of the RECIPIENT to continue or complete the project described herein shall be contingent upon appropriation of funds by the RECIPIENT's governing body; Provided, however, that nothing contained herein shall preclude the DEPARTMENT from demanding repayment of ALL funds paid to the RECIPIENT in accordance with Section O herein.

3. Failure to Commence Work. In the event the RECIPIENT fails to commence work on the project funded herein within four months after the effective date of this agreement, or by any date mutually agreed upon in writing for commencement of work, the DEPARTMENT reserves the right to terminate this agreement.

## **L. WAIVER**

Waiver of any RECIPIENT default is not a waiver of any subsequent default. Waiver of a breach of any provision of this agreement is not a waiver of any subsequent breach and will not be construed as a modification of the terms of this agreement unless stated as such in writing by the authorized representative of the DEPARTMENT.

## **M. PROPERTY RIGHTS**

1. Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property, the RECIPIENT may copyright or patent the same but the DEPARTMENT retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover or otherwise use the material(s) or property and to authorize others to use the same for federal, state or local government purposes.

Where federal funding is involved, the federal government may have a proprietary interest in patent rights to any inventions that are developed by the RECIPIENT as provided in 35 U.S.C. 200-212.

2. **Publications.** When the RECIPIENT or persons employed by the RECIPIENT use or publish information of the DEPARTMENT; present papers, lectures, or seminars involving information supplied by the DEPARTMENT; use logos, reports, maps or other data, in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to the DEPARTMENT.

3. **Tangible Property Rights.** The DEPARTMENT's current edition of "Administrative Requirements for Ecology Grants and Loans", Part V, shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by the DEPARTMENT in the absence of state, federal statute(s), regulation(s), or policy(s) to the contrary or upon specific instructions with respect thereto in the Scope of Work.

4. **Personal Property Furnished by the DEPARTMENT.** When the DEPARTMENT provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to the DEPARTMENT prior to final payment by the DEPARTMENT. If said property is lost, stolen or damaged while in the RECIPIENT's possession, the DEPARTMENT shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.

5. **Acquisition Projects.** The following provisions shall apply if the project covered by this agreement includes funds for the acquisition of land or facilities:

a. Prior to disbursement of funds provided for in this agreement, the RECIPIENT shall establish that the cost of land/or facilities is fair and reasonable.

b. The RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses contemplated by this agreement.

6. **Conversions.** Regardless of the contract termination date shown on the cover sheet, the RECIPIENT shall not at any time convert any equipment, property or facility acquired or developed pursuant to this agreement to uses other than those for which assistance was originally approved without prior written approval of the DEPARTMENT. Such approval may be conditioned upon payment to the DEPARTMENT of that portion of the proceeds of the sale, lease or other conversion or encumbrance which monies granted pursuant to this agreement bear to the total acquisition, purchase or construction costs of such property.

## **N. SUSTAINABLE PRODUCTS**

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is encouraged to implement sustainable practices where and when possible. These practices include use of clean energy, and purchase and use of sustainably produced products (e.g. recycled paper). For more information, see [www.ecy.wa.gov/sustainability..](http://www.ecy.wa.gov/sustainability..)

## **O. RECOVERY OF PAYMENTS TO RECIPIENT**

The right of the RECIPIENT to retain monies paid to it as reimbursement payments is contingent upon satisfactory performance of this agreement including the satisfactory completion of the project described in the Scope of Work. In the event the RECIPIENT fails, for any reason, to perform obligations required of it by this agreement, the RECIPIENT may, at the

DEPARTMENT's sole discretion, be required to repay to the DEPARTMENT all grant/loan funds disbursed to the RECIPIENT for those parts of the project that are rendered worthless in the opinion of the DEPARTMENT by such failure to perform.

Interest shall accrue at the rate of twelve percent (12%) per year from the time the DEPARTMENT demands repayment of funds. If payments have been discontinued by the DEPARTMENT due to insufficient funds as in Section K.2 above, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination. Any property acquired under this agreement, at the option of the DEPARTMENT, may become the DEPARTMENT'S property and the RECIPIENT'S liability to repay monies shall be reduced by an amount reflecting the fair value of such property.

**P. PROJECT APPROVAL**

The extent and character of all work and services to be performed under this agreement by the RECIPIENT shall be subject to the review and approval of the DEPARTMENT through the Project Officer or other designated official to whom the RECIPIENT shall report and be responsible. In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the Project Officer or other designated official as to the extent and character of the work to be done shall govern. The RECIPIENT shall have the right to appeal decisions as provided for below.

**Q. DISPUTES**

Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement which is not disposed of in writing shall be decided by the Project Officer or other designated official who shall provide a written statement of decision to the RECIPIENT. The decision of the Project Officer or other designated official shall be final and conclusive unless, within thirty days from the date of receipt of such statement, the RECIPIENT mails or otherwise furnishes to the Director of the DEPARTMENT a written appeal.

In connection with appeal of any proceeding under this clause, the RECIPIENT shall have the opportunity to be heard and to offer evidence in support of this appeal. The decision of the Director or duly authorized representative for the determination of such appeals shall be final and conclusive. Appeals from the Director's determination shall be brought in the Superior Court of Thurston County. Review of the decision of the Director will not be sought before either the Pollution Control Hearings Board or the Shoreline Hearings Board. Pending final decision of dispute hereunder, the RECIPIENT shall proceed diligently with the performance of this agreement and in accordance with the decision rendered.

**R. CONFLICT OF INTEREST**

No officer, member, agent, or employee of either party to this agreement who exercises any function or responsibility in the review, approval, or carrying out of this agreement, shall participate in any decision which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly interested; nor shall he/she have any personal or pecuniary interest, direct or indirect, in this agreement or the proceeds thereof.

**S. INDEMNIFICATION**

1. The DEPARTMENT shall in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

2. To the extent that the Constitution and laws of the State of Washington permit, each party shall indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this agreement.

**T. GOVERNING LAW**

This agreement shall be governed by the laws of the State of Washington.

**U. SEVERABILITY**

If any provision of this agreement or any provision of any document incorporated by reference

**V. PRECEDENCE**

In the event of inconsistency in this agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable Federal and State statutes and regulations; (b) Scope of Work; (c) Special Terms and Conditions; (d) Any terms incorporated herein by reference including the "Administrative Requirements for Ecology Grants and Loans"; and (e) the General Terms and Conditions.

SS-010 Rev. 04/04

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
<b>SUBJECT:</b> <b>Resolution No. 09-646, authorizing Public Works to proceed with the Lawson Street Intersection Repairs at Newcastle Drive</b>	<b>Agenda Date: October 15, 2009</b>		<b>AB09-124</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Howard Botts		
	City Administrator –Leonard Smith		
	City Attorney – Loren D. Combs		
	City Clerk – Brenda L. Martinez		
	Finance – May Miller		
	Public Works – Seth Boettcher	X	
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Cost Impact: up to \$25,000	Court – Kaaren Woods		
Fund Source: Real Estate Excise Tax 2			
Timeline:			
<b>Attachments: Resolution No. 09-646, staff report, CIP page</b>			
<p>SUMMARY STATEMENT:</p> <p>City staff solicited bids from eight contractors for a limited Public Works contract (less than \$35,000) and received four bids. The lowest bid was \$51,049 from Cascade Utilities. This amount was well over the available budget of \$25,000. Staff has rejected all bids. Staff is recommending moving the intersection repair work forward as a City managed project.</p> <p>Public Works will negotiate services from a paving company and a contractor with a track hoe. The City will provide all project coordination, inspection, saw cutting, hauling away of the old asphalt, base preparation work, flagging and striping.</p>			
COMMITTEE REVIEW AND RECOMMENDATION:			
<p>RECOMMENDED ACTION: <b>MOTION to approve Resolution No. 09-646, authorizing Public Works to proceed with the Lawson Street Intersection repairs at Newcastle Drive as a City executed project not to exceed \$25,000.</b></p>			
<b>RECORD OF COUNCIL ACTION</b>			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
October 15, 2009			

**RESOLUTION NO. 09-646**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING PUBLIC WORKS TO REPAIR THE LAWSON STREET INTERSECTION AT NEWCASTLE DRIVE AS A CITY EXECUTED PROJECT NOT TO EXCEED \$25,000**

**WHEREAS**, small works roster bids came in substantially over the \$25,000 that was budgeted for this project; and

**WHEREAS**, the City revenues are down because of the recession; and

**WHEREAS**, City staff has the ability and equipment to do much of the street repair work;

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

**Section 1.** Authorizing Public Works to proceed with the Lawson Street Intersection repairs at Newcastle Drive as a City executed project not to exceed \$25,000.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 15TH DAY OF OCTOBER, 2009.**

CITY OF BLACK DIAMOND:

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Howard Botts, Mayor

Attest:

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Brenda L. Martinez, City Clerk





## PUBLIC WORKS MEMORANDUM

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**TO:** COUNCIL  
**FROM:** SETH BOETTCHER, PUBLIC WORKS DIRECTOR  
**SUBJECT:** *COUNCIL ACTION ON THE LAWSON STREET  
INTERSECTION REPAIRS AT NEWCASTLE DRIVE*  
**DATE:** OCT 8<sup>TH</sup>, 2009

**Background:** Lawson Drive was widened to accommodate a left hand turn lane as part of the improvements required for Lawson Hill Estates. Lawson Hills Estates was constructed in 1991. The normal expected design life of pavement should be around 20 years. The widened areas have failed prematurely most likely from inadequate compaction effort on the north side and insufficient base rock on the south side. The staff and council recognized the need for the repairs at this intersection and has budgeted \$25,000 for repairs.

**Initial Action:** Staff solicited bids from 8 contractors off of the small works roster. The City received 4 bids with Cascade providing the low bid at \$51,049 and ranging as high as \$85,740. Given that the bids came in much higher than the budget, the staff has rejected all bids and investigated other solutions for the repair of the intersection.

**Need for a left turn lane:** The City originally required a left hand turn lane based on an earlier requirement for a left hand turn lane based on the number of lots in a subdivision. The Washington Department of Transportation Design Manual does not address the issue of left hand turn lanes for streets with as low of speeds and low levels of traffic as Lawson Street and Newcastle Drive. Staff reviewed the traffic during the PM peak hour and noted that most all cars turning left into Lawson Hills Estates can make the movement with out slowing down. During the two times of

observation only one car had to slow down a significant amount but did not have to stop. It is apparent that a left hand turn pocket is not needed at this location.

### **Options Available to the City:**

1. Budget additional funds for this project and rebid the work in the spring. At this point to rebid the project this year will put the project into mid to late November which would be past a reasonable suitable weather for this project. Winter pothole maintenance would be expected.
2. Eliminate the left turn lane thereby reducing the scope and rebid the project as a late 2009 project with expected weather issues. The City may not be able to get high quality work if the weather turns cold and wet or may not be able to complete the work at all.
3. Eliminate the left turn lane thereby reducing the scope in order to stay within budget and Public Works will manage the project with the use of City staff and equipment to the maximum extent practicable and hire the support from an asphalt paver and possibly a track hoe contractor.
4. Use reserve funds, open all of the rejected bids up for further consideration and award the bid to the lowest bidder and repair both sides of the road right now leaving the left hand turn lane in place.

**Recommendation:** Public Works is recommending option 3 with the attached Council Action Bill. At a time when the City finances are stretched it does not seem prudent to go beyond the budget limits and further spend down reserves at this time. A City managed project will preserve the maximum reserves and address the immediate problems with the intersection.



## Capital Improvement Program 2008 - 2013

Project for the

Street

Department

# T8

### PROJECT TITLE

### Lawson Street & Newcastle Drive Intersection Repair

### DESCRIPTION

Repair and Overlay existing intersection.

### BACKGROUND

The shoulders of the road have sunk and some roadway patches have failed. The road base needs to be established in several locations and portions of the road reconstructed.

### COMMENTS

Reconstruction will avoid higher ongoing maintenance costs.

### CAPITAL PROJECT COSTS

Land/Right of Way  
Building Improvements  
Preliminary Engineering  
Construction Engineering  
Design Engineering  
Construction Costs  
Capital Outlay  
Other (Specify)

Total \$ Requested	2008	2009	2010	2011	2012	2013
25,000		25,000				
\$25,000		\$25,000				

### TOTAL COSTS

### REQUESTED FUNDING

Grants  
Water Utility Fund  
Wastewater Utility Fund  
Stormwater Utility Fund  
Street Funds  
Impact Fees  
Real Estate Tax Excise Tax 1  
Real Estate Tax Excise Tax 2  
PW Trust Fund  
Other

Total \$ Project	2008	2009	2010	2011	2012	2013
25,000		25,000				
\$25,000		\$25,000				

### TOTAL SOURCES

### NON CAPITAL OPERATING COSTS

Salaries, Benefits and Other  
Other (specify)

Total \$ Requested	2008	2009	2010	2011	2012	2013

### TOTAL OPERATING