



CITY OF BLACK DIAMOND
January 7, 2010 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:

APPOINTMENTS, PRESENTATIONS, ANNOUNCEMENTS:

Oath of Offices - Mayor and Councilmembers

Selection of 2010 Mayor Pro-Tem

1.) **AB10-001** - 2010 Council Standing Committees

Mayor Olness

UNFINISHED BUSINESS: None

NEW BUSINESS:

2.) **AB10-002** – Resolution Appointing City Attorney and Authorizing Contract

Mayor Olness

3.) **AB10-003** – Ordinance Amending Chapter 19.04 - Environmental Policy

Ms. Ward

4.) **AB10-004** – Resolution Authorizing Annual Water Quality Sampling

Mr. Nix

5.) **AB10-005** – Resolution Amending Council Rules and Procedures

Mayor Olness

6.) **AB10-006** – Resolution Authorizing Technical Services Agreement with RH2

Mr. Boettcher

DEPARTMENT REPORTS:

MAYOR'S REPORT:

COUNCIL REPORTS:

ATTORNEY REPORT:

PUBLIC COMMENTS:

CONSENT AGENDA:

7.) **Claim Checks** – January 7, 2010 No. 34991 through No. 35054 in the amount of \$122,916.34

8.) **Minutes** – Council Meeting of December 17, 2009 and Workstudy Notes of December 10, 2009

EXECUTIVE SESSION:

ADJOURNMENT:

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION									
SUBJECT: Confirmation of Council Standing Committee Appointments	Agenda Date: January 7, 2010		AB10-001						
	Department/Committee/Individual	Created	Reviewed						
	Mayor Rebecca Olness		X						
	City Administrator –								
	Interim City Attorney – Yvonne Ward								
	City Clerk – Brenda L. Martinez	X							
	Public Works – Seth Boettcher								
	Finance – May Miller								
	Economic Dev. – Andy Williamson								
	Court – Kaaren Woods								
Police – Jamey Kiblinger									
Comm. Devel. – Steve Pilcher									
Attachments: None									
SUMMARY STATEMENT: <p>The Mayor shall recommend, and the Council shall confirm by motion, the membership of each committee. The Committee appointments are for one-year terms.</p> <p>Below is a list of recommended committees and their members:</p> <table border="0"> <tr> <td> Budget and Finance Committee Councilmembers: Craig Goodwin, Kristine Hanson Staff: May Miller </td> <td> Cemetery and Parks Committee Councilmembers: Craig Goodwin, William Saas Staff: Aaron Nix </td> </tr> <tr> <td> Planning and Community Service Committee Councilmembers: Bill Boston, Leih Mulvihill Staff: Steve Pilcher, Andrew Williamson </td> <td> Public Works Committee Councilmembers: William Saas, Kristine Hanson Staff: Seth Boettcher </td> </tr> <tr> <td colspan="2"> Public Safety Committee Councilmembers: Leih Mulvihill, Bill Boston Staff: Chief Kiblinger, Chief Smith, Stephanie Metcalf </td> </tr> </table> <p>Meetings will be scheduled as needed and at the convenience of committee members and staff.</p>				Budget and Finance Committee Councilmembers: Craig Goodwin, Kristine Hanson Staff: May Miller	Cemetery and Parks Committee Councilmembers: Craig Goodwin, William Saas Staff: Aaron Nix	Planning and Community Service Committee Councilmembers: Bill Boston, Leih Mulvihill Staff: Steve Pilcher, Andrew Williamson	Public Works Committee Councilmembers: William Saas, Kristine Hanson Staff: Seth Boettcher	Public Safety Committee Councilmembers: Leih Mulvihill, Bill Boston Staff: Chief Kiblinger, Chief Smith, Stephanie Metcalf	
Budget and Finance Committee Councilmembers: Craig Goodwin, Kristine Hanson Staff: May Miller	Cemetery and Parks Committee Councilmembers: Craig Goodwin, William Saas Staff: Aaron Nix								
Planning and Community Service Committee Councilmembers: Bill Boston, Leih Mulvihill Staff: Steve Pilcher, Andrew Williamson	Public Works Committee Councilmembers: William Saas, Kristine Hanson Staff: Seth Boettcher								
Public Safety Committee Councilmembers: Leih Mulvihill, Bill Boston Staff: Chief Kiblinger, Chief Smith, Stephanie Metcalf									
COMMITTEE REVIEW AND RECOMMENDATION: Recommend Council Approval.									
RECOMMENDED ACTION: MOTION to confirm the 2010 appointments to the Council's Standing Committees.									
RECORD OF COUNCIL ACTION									
Meeting Date	Action	Vote							
January 7, 2010									

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
SUBJECT: Resolution No. 10-663, authorizing the Mayor to execute a Legal Services Agreement with Kenyon Disend, PLLC	Agenda Date: January 7, 2010		AB10-002
	Department/Committee/Individual	Created	Reviewed
	Mayor Rebecca Olness		X
	City Administrator –		
	Interim City Attorney – Yvonne Ward		X
	City Clerk – Brenda L. Martinez	X	
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police – Chief Kiblinger		
Cost Impact:			
Fund Source: Various Funds			
Timeline:			
Attachments: Resolution No. 10-663, Legal Services Agreement			
<p>SUMMARY STATEMENT:</p> <p>On November 21, 2009 Loren D. Combs resigned as City Attorney and Yvonne Ward was hired as Emergency Interim City Attorney.</p> <p>Thereafter, the City advertised for firms or individuals qualified and interested in service as our City Attorney. Several firms responded. A selection panel including the Mayor, Mayor-elect, Interim City Attorney, Councilmember Boston, Acting City Administrator and Community Development Director reviewed the pool of applicants and interviewed three firms.</p> <p>On December 22, 2009 the panel unanimously agreed to recommend to Council that the contract be awarded to Kenyon Disend, PLLC. The firm specializes in municipal law and Noel Treat will serve as the City Attorney with Mike Kenyon serving as primary backup.</p> <p>The contract shall be in effect for nine months with the parties meeting 60 days prior to expiration to confer about renewal terms.</p>			
<p>COMMITTEE REVIEW AND RECOMMENDATION: Selection panel recommends approval.</p>			
<p>RECOMMENDED ACTION: MOTION to adopt Resolution No. 10-663, authorizing the Mayor to execute a Legal Services Agreement with Kenyon Disend, PLLC.</p>			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	
January 7, 2009			

RESOLUTION NO. 10-663

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON,
AUTHORIZING THE MAYOR TO EXECUTE A LEGAL
SERVICES AGREEMENT WITH KENYON DISEND, PLLC**

WHEREAS, the City is in need of a City Attorney to provide legal services; and

WHEREAS, the City advertised for qualified firms and individuals to fill the position of City Attorney and a selection panel including the Mayor, Mayor-elect, Councilmember, Interim City Attorney, Acting City Administrator and Community Development Director reviewed the proposals and interviewed three firms; and

WHEREAS, the panel unanimously recommended Kenyon Disend, PLLC as a firm qualified and willing to provide the necessary services;

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

Section 1. The Mayor is hereby authorized to execute a legal services agreement with Kenyon Disend, PLLC substantially in the form attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 7TH DAY OF JANUARY,
2010.**

CITY OF BLACK DIAMOND:

Rebecca Olness, Mayor

Attest:

Brenda L. Martinez, City Clerk

AGREEMENT FOR LEGAL SERVICES

I. PARTIES

This Agreement is made on this 7th day of January, 2010, between the City of Black Diamond ("City") and Kenyon Disend, PLLC ("Attorneys").

II. SERVICES OF THE ATTORNEYS

The Attorneys shall provide the legal services set forth in this Agreement and shall work for the City at the pleasure of and under the direction of the Mayor. Noel Treat will serve as the City Attorney, with primary back-up provided by Mike Kenyon, and will direct the services provided under this contract.

III. QUALITY OF SERVICES

The Attorneys shall perform all legal services covered by this Agreement in a capable and efficient manner, and in accordance with the professional standards of the Washington State Bar Association. The Attorneys shall be available at all times for consultation and advice, including on weekends and holidays if needed, directly or through telephone, email, or other forms of communication.

IV. SERVICES PROVIDED

The City Attorney shall be principally responsible for performing all legal work for the City, except prosecution of criminal cases, where defense is provided through insurance coverage, matters in which a conflict of interest exists, or as may otherwise be assigned to other counsel by the Mayor. The following list of duties is illustrative, but is not necessarily inclusive, of the services to be performed by the Attorneys:

- (1) Review or draft City ordinances, agreements, resolutions, interlocal agreements, and other legal documents as requested by the City;
- (2) Represent the City in all lawsuits and other contested administrative proceedings commenced by or against the City, except where defense is provided through insurance coverage;
- (3) Consult with and advise the Mayor, City Councilmembers and staff members in person, by telephone, e-mail, or by written memo on City business; and
- (4) Attend regular City Council meetings and other meetings as requested by the Mayor.

V.
FEES AND COSTS

- A. Legal Services. City shall be billed for legal services described above at the Attorneys' and paralegals' regular hourly rates as set forth in Exhibit A. The Attorneys will also charge the City ten cents per page for photocopying and facsimile transmissions, and shall be reimbursed for legal messenger services, computerized legal research charges, filing fees advanced on behalf of the City, and other direct expenses without markup.
- B. The Attorneys shall not charge the City for mileage costs, nor for long-distance telephone charges.
- C. Exclusive of those fees and costs described in subparagraph D. below which are to be initially paid to the City by third parties pursuant to City ordinance or other action of the City, the monthly fees and costs shall not exceed \$7,000.00 without prior authorization from the Mayor.
- D. Fees and costs for Attorneys services, initially paid to the City by land use applicants or other third parties pursuant to City ordinance or other action of the City authorizing such reimbursement ("Pass-Through Fees"), may be subject to prior review for reasonableness by such other third party. In the event that any third party challenges the reasonableness of Attorneys' Pass-Through Fees, the City shall only be responsible to pay Attorneys for such portion of the challenged fees and costs as the City in its sole discretion deems reasonable.

Attorneys' current rates expressly account for any taxes, , or related charges ("charges") imposed on professional service providers by the City and State of Washington. In the event that any such additional charges are imposed during the term of this agreement, Attorneys shall be entitled to recover any such additional charges as a reimbursable cost item on Attorneys' monthly billing statements.

Attorneys shall apply for and obtain a business license with the City and shall maintain a current business license for the duration of this contract. Fees and costs associated with the application shall not be charged to the City.

VI.
PAYMENT TERMS

Fees and costs are due in full from the City upon billing by the Attorneys. A service charge shall accrue at the rate of 12% per annum, but shall only be added to any balance remaining unpaid sixty (60) days after the statement date.

**VII.
TIME RECORDS**

The Attorneys will maintain accurate time records describing the services performed and the dates upon which said services were performed, and shall provide a monthly statement to the City setting forth the time expended for such services.

**VIII.
AGREEMENT PERIOD**

This Agreement shall be in effect after City Council approval, and shall remain in effect for nine months. Sixty days before expiration of this contract, the parties shall meet and confer about renewal terms.

Each party shall have the right to terminate this Agreement upon sixty days written notice.

**IX.
INDEMNIFICATION/HOLD HARMLESS**

The Attorneys shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Attorneys in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

**X.
INSURANCE**

The Attorneys shall maintain for the protection of the City a professional errors and omissions insurance policy with minimum coverage of one million dollars per claim and three million dollars annual aggregate.

CITY OF BLACK DIAMOND

KENYON DISEND, PLLC

By: _____
Rebecca Olness, Mayor

By: _____
Mike Kenyon

EXHIBIT A

KENYON DISEND, PLLC HOURLY RATE SCHEDULE FOR YEAR 2010

ATTORNEYS:

Partners and Senior Attorneys:

Michael R. Kenyon	\$245.00
Bruce L. Disend	\$245.00
Shelley M. Kerslake	\$215.00
Chris D. Bacha	\$215.00
Bob C. Sterbank	\$215.00
Noel R. Treat	\$215.00
Steve I. Victor	\$215.00
Sandra S. Meadowcroft	\$210.00
Margaret J. King	\$210.00
Kari L. Sand	\$200.00

Associate Attorneys:

Renee G. Walls	\$160.00
Sara B. Springer	\$135.00

PARALEGALS:

Margaret C. Starkey	\$100.00
Sheryl A. Loewen	\$ 90.00
Pam M. Odegard	\$ 85.00
Shelly Crossland	\$ 85.00
Mary Eichelberger	\$ 85.00
Terry Cox	\$ 85.00
Kim Obermayer	\$ 85.00
Kathy Swoyer	\$ 85.00

LEGAL INTERNS:	\$100.00
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CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
SUBJECT: Ordinance No. 10-933, amending Black Diamond Municipal Code section 19.04.250 relating to the SEPA appeal process and establishing a fee for filing an appeal	Agenda Date: January 7, 2010		AB10-003
	Department/Committee/Individual	Created	Reviewed
	Mayor Rebecca Olness		
	City Administrator –		
	Interim City Attorney – Yvonne Ward	X	X
	City Clerk – Brenda L. Martinez		
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Cost Impact:	Court –		
Fund Source:	Comm. Dev. – Steve Pilcher	X	X
Timeline:			
Attachments: Ordinance 10-933			
SUMMARY STATEMENT: <p>At the December 17, 2009 regular City Council meeting, the Council voted to reduce the fee for appealing a SEPA action from \$500 to \$250. This ordinance will codify that decision and also add clarifying language regarding the appeal process.</p>			
COMMITTEE REVIEW AND RECOMMENDATION:			
RECOMMENDED ACTION: MOTION to adopt Ordinance No. 10-933, amending the Black Diamond Municipal Code section 19.04.250 relating to the SEPA appeal process and establishing a fee for filing an appeal.			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	
January 7, 2010			

ORDINANCE NO. 10-933

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF BLACK DIAMOND, KING COUNTY,
WASHINGTON, AMENDING CHAPTER SECTION
19.04.250 OF THE MUNICIPAL CODE REGARDING
THE SEPA APPEAL PROCESS**

WHEREAS, BDMC Title 19 constitutes the City's environmental policy; and

WHEREAS, BDMC 19.04 constitute the SEPA procedures for the City; and

WHEREAS, BDMC 19.04.250 provides the process for appeals of SEPA actions; and

WHEREAS, the city council finds it to be in the public interest to ensure that the process for appealing SEPA decisions is clear, accessible, and attainable to the public; and

WHEREAS, the city council finds it be in the public interest to ensure that the fee for filing a SEPA appeal does not discourage public input into the SEPA process; and

WHEREAS, to ensure the process is clear, accessible, and attainable to the public, it is in the public interest to amend BDMC 19.04.250 to clarify the SEPA appeal process for land use actions that require both hearing examiner and city council review,

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

Section 1. Section 19.04.250 of the Black Diamond Municipal Code is hereby amended to read as follows:

A. Any aggrieved person may appeal a threshold determination, adequacy of a final EIS and the conditions or denials of a requested action made by a nonelected city official pursuant to the procedures set forth in this section. No other SEPA appeal shall be allowed. No person may seek judicial review of a SEPA decision without first exhausting the administrative appeal process set forth herein.

B. All appeals filed pursuant to this section must be filed in writing with the community development director within fourteen calendar days of the date of the decision being appealed. The written appeal shall state concisely the basis or bases for the appeal, and the specific relief or remedy sought.

C. A fee of \$250.00 shall accompany each appeal.

D. On receipt of a timely written notice of appeal, the director shall advise the hearing examiner of the appeal and request that a date for considering the appeal be established.

Provided that, if there is a concurrent land use application requiring a hearing examiner public hearing, then the two hearings shall be combined. The hearing examiner shall make the final decision on a SEPA appeal.

E. All relevant evidence shall be received during the hearing of the appeal and the decision shall be made de novo. The procedural determination by the city's responsible official shall carry substantial weight in any appeal proceeding. The burden of proof shall be on the appellant, to demonstrate error by a preponderance of the evidence.

F. For any appeal under this section, the hearing examiner shall provide a record that shall consist of the following:

1. Findings and conclusions;
2. Testimony under oath; and
3. A taped or written transcript.

G. The city may require the applicant to provide an electronic transcript.

H. The city shall give official notice whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal. Appeal from the Hearing Examiner's decision on a SEPA appeal is to superior court. The judicial appeal must be filed within 21 days after the Hearing Examiner renders a decision, unless the SEPA appeal is consolidated with the underlying governmental action, such as a permit application. If there is consolidation, judicial appeal of the Hearing Examiner's decision on the SEPA appeal must be filed within 21 days after the City's final decision on the underlying government action.

I. This chapter constitutes the exclusive administrative process to appeal a SEPA decision. Notwithstanding any other provision of the Municipal Code, the provisions of this chapter shall apply. This provision shall be construed in conjunction with BDMC 18.98, RCW 36.70B, and WAC197-11-680 (3) (a) (v).

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

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

Introduced on the 7th day of January, 2010.

Passed by the City Council on the 7th day of January, 2010.

Mayor Rebecca Olness

ATTEST:

Brenda Martinez, City Clerk

APPROVED AS TO FORM:

Yvonne Kinoshita Ward, City Attorney

Published: _____

Posted: _____

Effective Date: _____

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
SUBJECT: Resolution No. 10-664, authorizing the Mayor to execute a Technical Services Agreement with the Dept. of Natural Resources for continued water monitoring services throughout Black Diamond	Agenda Date: January 7, 2010		AB10-004
	Department/Committee/Individual	Created	Reviewed
	Mayor Rebecca Olness		
	Interim City Attorney – Yvonne Ward		
	City Clerk – Brenda L. Martinez		X
	Finance – May Miller		
	Economic Devel. – Andy Williamson		
	Parks/Natural Resources – Aaron Nix	X	
	Community Develop. – Steve Pilcher		
Cost Impact: \$6,905.00			
Fund Source: Storm Drainage Utility			
Timeline: 2010 fiscal year			
Attachments: Resolution No. 10-664, scope of work and cost estimate, 2008 annual WQ Report			
<p>SUMMARY STATEMENT:</p> <p>The City has identified the need for continued water monitoring services with the Department of Natural Resources and Parks, Water and Land Resources Division (WLRD).</p> <p>WLRD has supplied volunteer training and lab services to the City since 2006. Several water quality parameters including total settleable solids (TSS), phosphorous, pH, temperature, etc. are sampled on an annual basis. Results are recorded by WLRD and reported to the City on an annual basis (The 2008 WQ report is attached for reference).</p>			
COMMITTEE REVIEW AND RECOMMENDATION: N/A			
<p>RECOMMENDED ACTION: MOTION to adopt Resolution No. 10-664, authorizing the Mayor to execute a Technical Services agreement with the Department of Natural Resources and Parks, Water and Land Resources Division for continued water monitoring services throughout the City of Black Diamond.</p>			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	
January 7, 2010			

RESOLUTION NO. 10-664

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE A TECHNICAL SERVICES AGREEMENT WITH THE DEPARTMENT OF NATURAL RESOURCES AND PARKS, WATER AND LAND RESOURCES DIVISION FOR CONTINUED WATER MONITORING SERVICES THROUGHOUT THE CITY OF BLACK DIAMOND

WHEREAS, the City has identified the need for continued water monitoring services with the Department of Natural Resources and Parks, Water and Land Resources Division (WLRD);

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

Section 1. The Mayor is hereby authorized to execute a technical service agreement with the Department of Natural Resources and Parks, Water and Land Resources Division (WLRD) for the year 2010 for services outlined in the Attachment A, scope of work, in an amount not to exceed \$6,905.00.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 7TH DAY OF JANUARY, 2010.

CITY OF BLACK DIAMOND:

Rebecca Olness, Mayor

Attest:

Brenda L. Martinez, City Clerk

**Technical Services Agreement
Between King County and the City of Black Diamond
For Lake Monitoring Services**

This Agreement is made and entered into by King County, Washington, hereinafter referred to as "King County" and the City of Black Diamond, hereinafter referred to as the "City," collectively referred to as the "Parties," in order for King County to provide surface water-related technical services to the City.

The Parties mutually agree as follows:

I. Purpose

This Agreement between King County and the City provides the terms under which King County, through its Department of Natural Resources and Parks, Water and Land Resources Division (WLRD), will provide to the City technical services to support Black Diamond's surface water management-related activities. Services to be provided are described in Exhibit One, attached to this Agreement and incorporated herein and made a part hereof.

II. Management of Technical Services Provision

1. The provision of services under this Agreement will be managed for King County by the WLRD Intergovernmental Relations Coordinator or other staff as designated by King County and for Black Diamond by the Natural Resources Department Director or other staff as may be designated by the City ("Project Administrators").
2. In the event that a dispute arises under this Agreement, it shall be resolved by the Project Administrators. If the dispute cannot be resolved by the Project Administrators, it shall be referred for final resolution to the Division Director of King County WLRD and the Natural Resources Department Director of Black Diamond. This dispute resolution provision shall not be construed as prohibiting either Party from seeking enforcement of the terms of this Agreement, or relief or remedy from a breach of the terms of this Agreement, in law or in equity.

III. Responsibilities

A. King County

King County shall provide services as documented in Exhibit One.

B. Black Diamond

1. The City will provide appropriate staff to coordinate with King County on services to be provided under this Agreement and will ensure that appropriate

municipal regulatory provisions are in place to authorize services provided through this Agreement.

2. The City will pay for service costs as outlined below.

IV. Costs and Billing

A. The City will pay costs to provide such services, including staff time, benefits and equipment. As documented on Exhibit One, total service costs for 2010 are estimated at \$6,905.00.

B. The Parties agree to the following regarding billing and payment:

1. King County will invoice the City for services provided according to the schedule shown in Exhibit One.
2. Payment to King County for submitted invoices will be made by the City within forty-five (45) days of receipt of invoices.

V. Effectiveness, Duration, Termination, and Amendment

- A. This Agreement is effective upon signature by both Parties and will remain in effect until March 31, 2011.
- B. This Agreement may be terminated by either Party upon 30 days written notice. In the event of termination, payment will be made by the City for work performed by the County to the date of termination.
- C. This Agreement may be amended only by written agreement of the Parties. Scopes of Work may be appended to this Agreement provided they are mutually agreed to by both Parties and within the terms and scope of this Agreement.
- D. This Agreement is not assignable by either Party, either in whole or in part.
- E. This Agreement is a complete expression of the intent of the Parties and any oral or written representations or understandings not incorporated herein are excluded. The parties recognize that time is of the essence in the performance of the provisions of this Agreement. Waiver of any default shall not be deemed to be waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by the parties which shall be attached to the original Agreement.
- F. Funding or obligation under this Agreement beyond the current appropriation year is conditional upon appropriation by the County Council of sufficient funds to support the activities described in this Agreement. Should such appropriation not be

approved, this Agreement will terminate at the close of the current appropriation year.

VI. Indemnification and Hold Harmless

- A. King County shall protect, defend, indemnify, and save harmless the City, its officers, officials, and employees, while acting within the scope of their employment, from any and all costs, claims, judgments, and/or awards of damages, arising out of or in any way resulting from King County's own negligent acts or omissions, or the negligent acts or omissions of King County's officials, officers, or employees.
- B. The City of Black Diamond shall protect, defend, indemnify, and save harmless King County, its officers, officials, and employees, while acting within the scope of their employment, from any and all costs, claims, judgments, and/or awards of damages, arising out of or in any way resulting from the City of Black Diamond's own negligent acts or omissions, or the negligent acts or omissions of the City of Black Diamond's officials, officers or employees.
- C. Each Party agrees that its obligations under this Article VI extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each Party, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.
- D. In the event that either Party incurs any judgment, award, and/or cost arising there from, including attorney's fees, to enforce the provisions of this Article, all such fees, expenses, and costs shall be recoverable from the responsible Party to the extent of that Party's culpability.
- E. King County's sole reporting obligations under the terms of this Agreement are to provide the results of the sampling and laboratory analytical services to the City. The Parties agree that King County's reporting obligations do not extend to any third party, including any regulatory agency that may seek to obtain or require the results of sampling or laboratory analyses. The Parties further agree that any reporting obligations that may exist with regard to third parties, including regulatory agencies, shall remain solely the responsibility of the City. King County shall have no liability for any failure to meet any existing reporting requirements and the City agrees to defend, indemnify and hold harmless King County for any damages, suits or claims by third parties related to the failure to report the results of the laboratory analyses.
- F. The indemnification provided for in this Article VI shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the 7th
Day of January, 2010.

Approved as to Form

King County:

By: _____

by: _____

Title: Deputy Prosecuting Attorney

Title: King County Executive

Approved as to Form

City of Black Diamond:

By: _____

by: _____

Title: City Attorney

Title: _____

Scope of Work 2010
City of Black Diamond support services

The King County Water and Land Resources Division will provide services through the Lake Stewardship Program (KC-LSP) to the City of Black Diamond for monitoring water quality and quantity on a seasonal basis in Lake Sawyer and for measuring inlet streams water quality from January through May and November - December.

Monitoring will include assuring the quality of the compiled data and providing pertinent information and analyses, reporting back to the city and citizen volunteers in a timely fashion and in a manner agreed upon by both parties, and providing technical assistance to the city and the public on questions concerning water quality results or problems.

Seasonal monitoring program:

Lake sampling will occur monthly from May through October for a total of six events during 2010. For four of the events, parameters will include Secchi transparency, and temperature, total phosphorus, total nitrogen, chlorophyll-a and pheophytin at 1m depth. For two events (May and August): Secchi + 3 depths (1m, middle and 1m from bottom) ---temperature, total phosphorus, orthophosphate, total nitrogen, nitrate-nitrite, ammonia, chlorophyll-a and pheophytin, total alkalinity, water color as measured by UV254).

Base-flow stream sampling will occur monthly from January to May, then resume in November - December for a total of 7 events. Parameters measured will include conductivity, total alkalinity, total suspended solids, total phosphorus, orthophosphate, temperature and a flow estimate.

Two storm events will also be sampled at 5 - 8 stations along the inlets if precipitation conditions are met. The same parameters will be measured as for the routine events, with the addition of an oil-and-grease measurement at the stations just above the inflows to the lake, as well as at the lake outlet.

KC-LSP will train designated citizen volunteers or city staff in the correct methods of data collection for water sample collection and storage, measurements of surface water temperature and Secchi transparency, and for observations on particles in the water, goose abundance, and gathering pertinent information on lake use.

The program will provide proper sampling equipment and will be responsible for repair or replacement if necessary. The program will also provide all sample bottles and will pick up filled bottles from the lake at a designated site to deliver to the KC Environmental Labs for analysis. Either stream samples will be delivered to county personnel living in Maple Valley, or KC staff will meet a volunteer at a half-way point for delivery to the King Street Center on the day after collection.

Database management, analysis, quality assurance, and reporting:

The program will enter all collected data from monitors and the KC Environmental Labs into a database to be made available to the city at the end of each year, analyze all data for consistency and general water quality conditions, pursue explanations for anomalies, look for trends or indicators of change in the parameters over time, and if requested make management suggestions to the city or citizens based upon the information.

A compilation of the data as part of the program's annual report will be delivered to city staff and cooperating citizen volunteers within a reasonable time after the end of each year, as well as e-

files of the data in excel format. A presentation to the city council or appropriate staff may be made if requested, with time for discussion of pertinent issues.

Technical assistance and educational outreach:

Technical assistance and educational outreach on the nature and management of lake ecosystems will be provided to the city and citizens in the form of phone conversations, specific literature research and reporting back, technical reports other than the annual report that contain information and recommendations, community presentations, or other methods and types of communication provided upon request.

Budget:

The charges set out below are based upon staff salaries, indirect operating charges, lab costs, equipment, materials, and mailing charges.

Lake Sawyer Monitoring – 2010

**Seasonal and annual Monitoring – flat rate
billing**

	\$
water quality, monthly May-October	2,775.00
inlet streams, monthly Jan-May, Nov-Dec	2,750.00
subtotal	5,525.00

Monitoring for two inlet storm events, includes oil-grease – cost-basis billing	1,380.00
Estimated Total	\$6,905.00

Seasonal monitoring will be billed on a flat rate basis, to be paid annually by Black Diamond upon receipt of an invoice from King County in the fourth quarter of 2009. Billing for monitoring for two storm events will also be annual, but will be based on costs incurred, as storm events are not predictable and rainfall criteria might not be met.

Lake Sawyer Water Quality

*A Report on Water Quality Monitoring Results
for Water Year 2008 at Lake Sawyer*



Lake Sawyer

Prepared for the City of Black Diamond
by the King County Lake Stewardship Program

January 12, 2009



King County

Overview

The King County Lake Stewardship Program (KCLSP) collaborated with citizen volunteers to monitor Lake Sawyer between 1993 and 2004. In 2006, the City of Black Diamond contracted with KCLSP to continue monitoring Lake Sawyer. Water quality monitoring is done on a schedule of once per month, versus the typical every other week for other lakes in the program. The water quality data indicate that currently the lake has moderate to low productivity (mesotrophic – oligotrophic) with good water quality.

There is a public boat launch and several public parcels adjacent to the lake that allow members of the public to access for recreation and to launch boats. Lake users should track aquatic plants growing near shore to monitor Eurasian watermilfoil and to catch early infestations of Brazilian elodea or other noxious weeds.

This report refers to two common measures used to predict water quality in lakes. The Trophic State Index or TSI (Carlson 1977) is a method of calculating indicators from collected data that allows comparison between different parameters and predicts the volume of algae that could be produced in the lake. A second measure is the nitrogen to phosphorus ratio (N:P), which is used to predict what groups of algae may become dominant in the lake during certain periods. Both the TSI and N:P ratios have been calculated using the available data collected through the volunteer monitoring program.

The discussion in this report focuses on the 2008 water year. Specific data used to generate the charts in this report can be downloaded from the King County Lake Stewardship data website at:

<http://www.metrokc.gov/dnrp/wlr/water-resources/small-lakes/data/default.aspx>.

Or can be provided in the form of excel files upon request.

Physical Parameters

Secchi clarity and water temperatures were gathered by the volunteer from May through October. Physical parameters were recorded each time water samples were collected through the sampling season.

Secchi transparency is a common method used to assess and compare water clarity. It is a measure of the water depth at which a black and white disk disappears from view when lowered from the water surface.

For Lake Sawyer, Secchi transparency values ranged from 3.0m to 4.5m, averaging 3.7m (Figure 1).

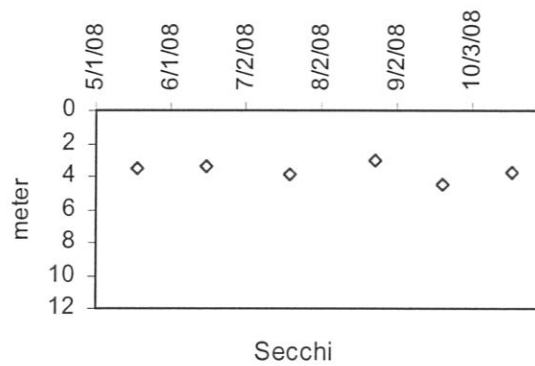


Figure 1. Lake Sawyer Secchi Transparency

Compared to data collected in previous years, the Secchi transparency values exhibited normal and expected variability through the season.

Water temperatures during followed a pattern similar to other lakes in the region, with cool temperatures in the winter and spring, followed by summer maximum temperatures occurring between mid-July and mid-August, and temperatures cooling in the fall. The temperatures through the sampling season ranged from 14.0 degrees Celsius to 23.0 degrees Celsius with an average of 19.0 (Figure 2). Compared to other lakes monitored in 2008 through the KCLSP, Lake Sawyer is generally in the lower range of summer temperatures.

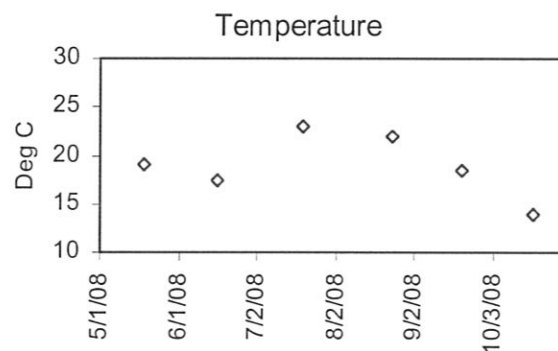


Figure 1. Lake Sawyer Water Temperatures

Nutrient and Chlorophyll Analysis

Phosphorus and nitrogen are naturally occurring elements necessary in small amounts for both plants and animals. However, many activities associated with residential development can increase concentrations of these nutrients beyond natural levels. In lakes of the Puget Sound lowlands, phosphorus is often the nutrient in least supply, meaning that biological productivity is often limited by the amount of available phosphorus. Increases in phosphorus concentrations can lead to more frequent and dense algae blooms – a nuisance to residents and lake users, and a potential safety threat if blooms become dominated by species that can produce toxins. Samples collected by volunteers are

analyzed for total phosphorus (TP) and total nitrogen (TN) concentrations at one meter depth.

Total phosphorus (TP) and total nitrogen (TN) varied throughout the May – October sampling period (Figure 3). In 2008, the TN started higher and decreased, stabilized in July and then again decreased slightly through fall. TP values varied slightly throughout the season, with the lowest values in midsummer.

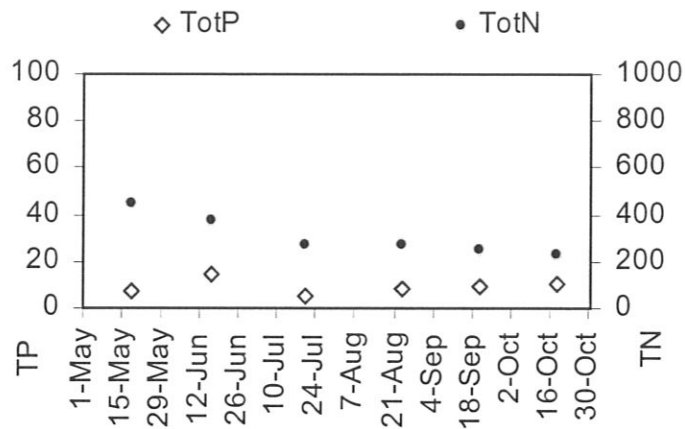


Figure 3. Lake Sawyer Nutrients

The ratio of nitrogen (N) to phosphorus (P) can be used to determine if conditions are favorable for the growth of cyanobacteria (bluegreen algae) that can impact beneficial uses of the lake. When N:P ratios are below 20, cyanobacteria often dominate the algal community due to their ability to take nitrogen from the air. Total phosphorus and total nitrogen remained in relatively constant proportion to each other through the sampling period, ranging from 21.5 to 61.2 with an average of 36.7, which suggests that conditions were generally unfavorable for nuisance bluegreen growth. However, the lower N:P ratios occurred in fall, suggesting that if a nuisance bluegreen algae bloom were to occur it would be during that period.

Chlorophyll *a* values varied very little throughout the monitoring season in Lake Sawyer (Figure 4). The low levels suggest low phytoplankton volumes in the surface water. Pheophytin remained low and steady throughout the majority of the season.

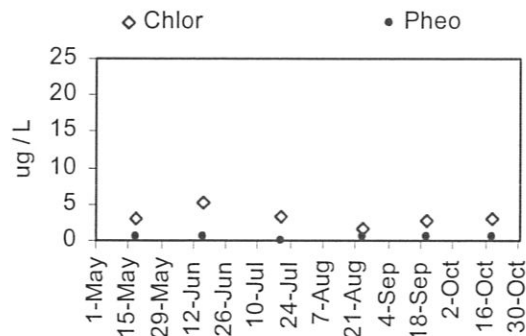


Figure 4. Lake Sawyer Chlorophyll *a* and Pheophytin Concentrations

Profile data indicate that thermal stratification was present early in the season and persisted through the summer (Table 1). In the bottom samples in both May and August there were elevated levels of TN and TP, as well as ammonia, indicating that the hypolimnion (bottom water) of Lake Sawyer becomes anoxic over the summer, causing release of phosphorus from the sediments. This was apparent in the August bottom sample.

Table 1: Lake Sawyer Profile Sample Analysis

Lake name	Locator	Date	Secchi	Depth	DegC	Chlor-a	Pheo	Total N	NO2-3	NH4	Total P	OPO4	UV254	Total Alk
Sawyer	A718	05/18/08	3.5	1	19	3.02	<MDL	0.447	0.200	0.015	0.0073	<MDL	0.091	57.2
				8	7	4.19	<MDL	0.523			0.0080			
				16	6.5			0.546	0.308	0.029	0.0131	0.003		
Sawyer	A718	8/24/08	3	1	22	1.76	<MDL	0.272	<MDL	<MDL	0.0086	<MDL	0.0835	60.1
				8	9	6.25	1.800	0.452			0.0220			
				16	6.5			0.569	<MDL	0.362	0.1530	0.027		

TSI Ratings

A common method of tracking water quality trends in lakes is by calculating the “trophic state index” (TSI), developed by Robert Carlson in 1977. TSI indicators predict the biological productivity of the lake based on water clarity (Secchi) and concentrations of TP and chlorophyll *a*. The 2008 TSI-TP indicator was lower than the other two indicators, placing in the mid oligotrophic range. TSI-Chlorophyll and TSI Secchi were fairly close to each other in the lower mesotrophic range. For Lake Sawyer, the indicators do not suggest any recent changes or trends over the time of measurement, with the average of the three TSI values between the mid oligotrophic and low mesotrophic threshold (Figure 5).

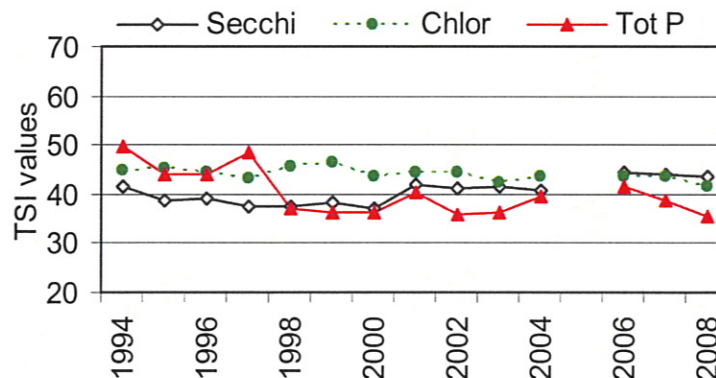


Figure 5. TSI Values at Lake Sawyer

TMDL

The Total Maximum Daily Load for Lake Sawyer set by the Washington Department of Ecology in 1993 defined a goal of an average of 16 ug/L total phosphorus concentration for the lake, but did not include the time period or water volume for which this was to be calculated. A wasteload allocation of zero was set in accordance with the removal of the Black Diamond treatment plant discharge to Rock Creek. A total annual influx of 715 kg phosphorus was estimated to meet the 16 ug/L average concentration target. Load allocations for tributary input was set at 511 kg/yr and internal loading input at 124 kg/yr, with 80 kg/yr allowed for other sources such as direct runoff and dust fall.

Onwumere (WDOE publication 02-02-054 December 2002) assumed that the standard June-September period should apply to the calculation and used the 1m values taken between May and October by the King County Lake Stewardship Program monitoring program to look at TMDL effectiveness. He found that Lake Sawyer appeared to be meeting the TMDL target as a long term average, but noted that it might not be meeting a maximum in-lake mean summer target. However, no such maximum appears to have been set by the original TMDL, so it is hard to know what standard should be applied to the Lake Sawyer data to reach a conclusion.

The long term data set collected by King County and trained volunteer monitors begins in 1985 and continues to the present, with a one year gap in the data. Average June – September 1m values (Fig 6) show that there was a series of years around the time of the decommissioning of the sewage treatment plant when summer average phosphorus concentrations were higher than previously measured and often above the TMDL goal. However, since 1997 the values have been similar to the late 1980s and have shown no increasing trends or cause to believe that the lake is not meeting the standard.

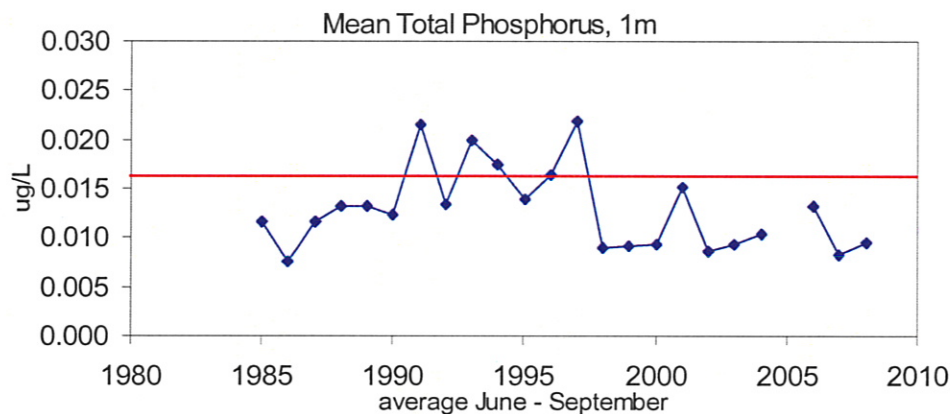


Figure 6. Summer average total phosphorus at 1m depth at Lake Sawyer

This data is encouraging in that currently Lake Sawyer is meeting the TMDL and has been doing so for at least 10 years, if Onwumere's interpretation of the target value is correct. However, because significant land development is expected to occur in the watershed in the future, it is important to keep monitoring to look for changes as it occurs and for some time afterwards, in order to be sure that the permit controls imposed as development proceeds are meeting the water quality goals and targets.

Inlet Water quality

A second monitoring effort focused on the water quality of the major streams flowing into Lake Sawyer: Rock Creek (LSIN1) and Ravensdale Creek (LSIN9). Beginning in January 2006, a program was initiated of sampling once a month at the creek mouths during the wet season (generally November through May) when the creeks are flowing heavily. At the same time, water flowing from the lake at the outlet weir was also sampled (LSIN10). An additional goal was set of sampling one storm a year if possible, but this was not carried out for all years.

Volunteers were trained to take the routine samples and were provided with prepared sample bottles and equipment. Samples were submitted to the King County

Environmental Laboratory for analysis. Parameters measured included specific conductivity and total alkalinity as indicators of development, total phosphorus and orthophosphate for TMDL monitoring, total suspended solids, temperature and water stage for flow calculations.

Total alkalinity and Specific Conductivity

Specific conductivity measures the amount of dissolved salts in water that can carry an electrical current at 25 degrees Celsius. Total alkalinity, also known as acid neutralizing capacity, measures the amount of calcium carbonate equivalents in the water that act as a buffer, thus moderating pH changes. It is closely related to the “hardness” of the water.

In general, both specific conductivity and total alkalinity are tied to the soil types and rocks found in the drainage basin. Both parameters usually increase as a basin is developed because of soil uncovering and disturbance, as well as concrete emplacement. Because of this, they can be used as indicators of development over time.

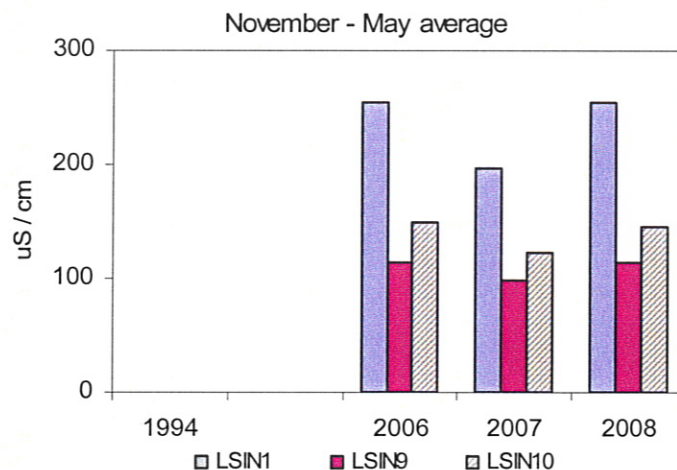


Figure 7. Wet season average of specific conductivity for Lake Sawyer and inlets

Rock Creek (LSIN1) is higher in specific conductivity than Ravensdale each year (Figure 7), while water from Lake Sawyer at the outlet appears to be a mixture of the two, but is closer to Ravensdale in value. The hydrological model constructed in the 1990s for the Lake Management Plan assigned more inflow from Ravensdale than Rock Creek based on the measurements taken in 1993-1994. Therefore, the more dilute water from Ravensdale would have a greater effect on the specific conductivity in the lake than the smaller inflow from Rock Creek, and this is reflected in the water from the lake being between the two inlets in value. This is also consistent with present land use in the two basins; in particular it should be noted that Rock Creek drains an inactive coal mining site with bare soils and rock outcroppings. Unfortunately, specific conductivity and total alkalinity appear not to have been measured in 1993-94, so a long term comparison cannot be made.

Total alkalinity follows the same pattern as specific conductivity (Figure 8). Alkalinity in the lake is higher than in Ravensdale Creek, but significantly lower than Rock Creek.

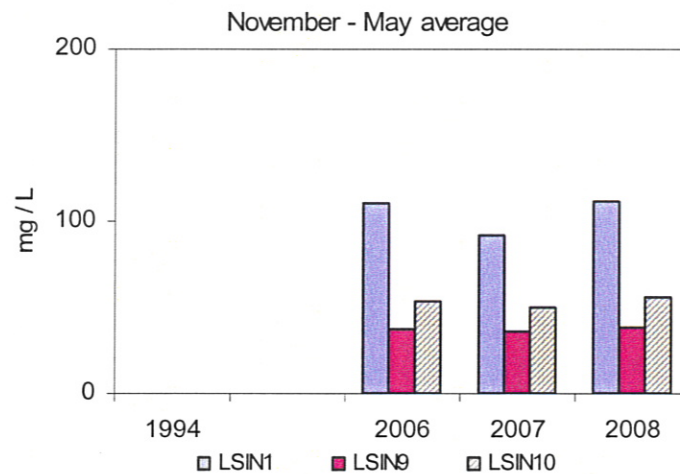


Figure 8. Wet season average of total alkalinity for Lake Sawyer and inlets

Phosphorus

Inputs of both total phosphorus and orthophosphate were also measured on a monthly basis from November through May. Total phosphorus is a measure of all phosphorus in a sample, in both dissolved and particulate form, while orthophosphate is dissolved, inorganic phosphate that is readily available for uptake as a nutrient for algae and aquatic plants.

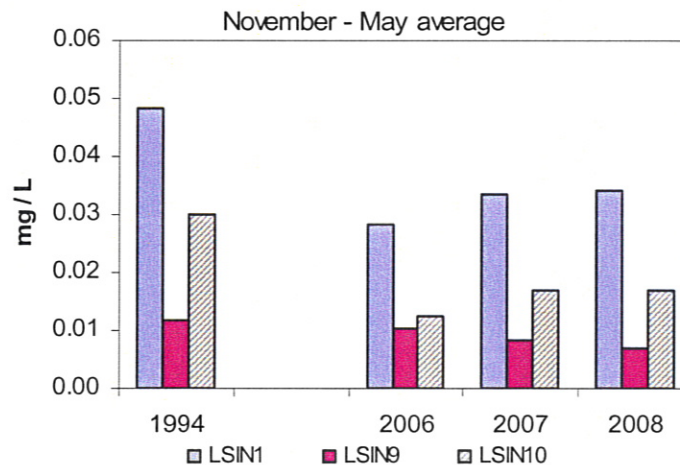


Figure 9. Wet season average of total phosphorus for Lake Sawyer and inlets

Total phosphorus has clearly declined at all three sampling sites since the 1994 water year (Figure 9), with the most dramatic decline occurring in Rock Creek, consistent with the diversion of sewage effluent from the wetland as called for in the TMDL for phosphorus reduction. However, it must be kept in mind that this data represent winter flows and lake concentrations, while the TMDL is set on summer flows and concentrations.

There is a lag in most Pacific Northwest lakes between when the most phosphorus enters lakes (winter) and when it is utilized (summer). This is because of the climate, which delivers most inflow to water bodies during the winter, while summer tends to produce very low baseflows with little water delivery to lakes, so that summer nutrient inputs are actually very small though the concentrations in the inlet water may be high. Therefore, there is often a good correlation between winter phosphorus inputs and summer algae production. Thus, the decrease in winter phosphorus is a good indicator for Lake Sawyer that algae may be reduced as well.

A similar pattern was found for orthophosphate (Figure 10). The apparent increase over the 3 years 2006-2008 should not cause alarm, as variation exists between years based on flows and the randomized nature of sampling. Trends generally cannot be reliably calculated until a minimum of 8 years of data has been collected.

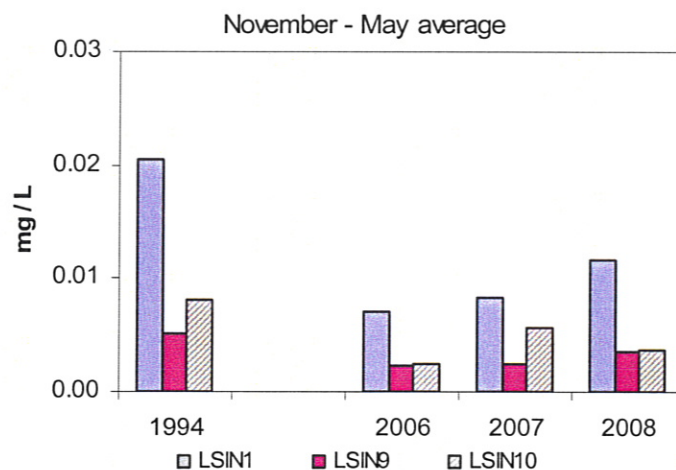


Figure 10. Wet season average of orthophosphate for Lake Sawyer and inlets

Conclusions and Recommendations

Based on monitoring data, water quality in Lake Sawyer appeared to be relatively stable over the last decade. The nutrients in the lake varied a small amount during the sampling season and the N:P ratios were around 20 in 2008, which indicated that conditions in the lake are often unfavorable for bluegreen algae blooms, but there might be times of the year when they can be found in the lake.

The inlets have showed a decline in phosphorus since the 1990s, but not enough data has been collected yet to calculate long term trends. Baseline values of total alkalinity and specific conductivity have been set to use as references as development in the watershed occurs. Continued monitoring should be carried out to assess conditions and to ensure that water quality remains consistent in Lake Sawyer as the area continues to be developed.

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
SUBJECT: Resolution No. 10-665, amending Council Rules and Procedures adopted on May 7, 2009	Agenda Date: January 7, 2010		AB10-005
	Department/Committee/Individual	Created	Reviewed
	Mayor Rebecca Olness		X
	City Administrator –		
	Interim City Attorney – Yvonne Ward		
	City Clerk – Brenda L. Martinez	X	
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Cost Impact:	Court – Kaaren Woods		
Fund Source:	Comm. Dev. – Steve Pilcher		
Timeline:			
Attachments: Resolution No. 10-665, Exhibit A Revised Section 17.1, Old Version 17.1			
SUMMARY STATEMENT: Adoption of the Resolution would amend Section 17.1 of the current Council Rules and Procedures and establish new Council Standing Committees and scopes of authorities to better meet the needs of the Council, staff and citizens.			
COMMITTEE REVIEW AND RECOMMENDATION: 			
RECOMMENDED ACTION: MOTION to adopt Resolution No. 10-665, amending Council Rules and Procedures adopted on May 7, 2009.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
January 7, 2010			

RESOLUTION NO. 10-665

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AMENDING COUNCIL RULES AND PROCEDURES
ADOPTED ON MAY 7, 2009**

WHEREAS, the City Council of the City of Black Diamond adopted Resolution No. 09-598 establishing Council Rules and Procedures; and

WHEREAS, the City Council wishes to amend Section 17.1 of the Council Rules and Procedures regarding Council Standing Committees;

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

Section 1. Section 17.1 of the adopted City Council Rules and Procedures is hereby amended to read as set forth in the attached Exhibit A.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 7TH DAY OF JANUARY, 2010.

CITY OF BLACK DIAMOND:

Rebecca Olness, Mayor

Attest:

Brenda L. Martinez, City Clerk

SECTION 17 - COUNCIL COMMITTEES AND CITIZEN ADVISORY BOARDS

17.1 Annual confirmation by Council. Annually at its first meeting in January, the City Council shall vote on whether to confirm the Mayor's appointments to the Council Standing Committees. The purpose of the committees is to provide recommendations on major policy items to the City Council. Issues are forwarded by the Mayor to the appropriate committee for discussion. Membership of any given committee may include no more than two (2) Councilmembers. The permanent Standing Committees of the City Council and rules are as follows:

17.1.1 *Budget/Finance/Administration Committee:* The Budget, Finance and Administration Committee, in conjunction with City Staff, may consider matters related to the financial issue of the City, including the annual and capital budgets including revenues and expenditures, sales of bonds, general fiscal and financial conditions, voucher approval, rates and fees, audit and operations of the City, including but not limited to, facilities and properties computerization, periodic budget and financial reports, and policy matters related to personnel, in coordination with the finance and administration departments.

17.1.2 *Parks/Cemetery Committee:* The Parks and Cemetery Committee, in conjunction with City Staff, may consider matters related to planning and implementation of park and recreational facilities, capital improvement program, trails and cemetery.

17.1.3 *Planning/Community Services Committee:* The Planning and Community Services Committee, in conjunction with City Staff, may consider matters of a non-quasi-judicial nature related to community growth and development, including but not limited to, planning of the physical, economic, aesthetic and social development of the City, comprehensive plan, zoning code, and housing, annexation policies, code enforcement, this committee may also consider matters not included in other committee's scopes of authority.

17.1.4 *Public Safety Committee:* The Public Safety Committee, in conjunction with City Staff, may consider issues related to the public health, safety and welfare of the citizens of Black Diamond including but not limited to, law enforcement, fire safety, court, hazardous materials, animal control, special events and emergency services.

- 17.1.5 *Public Works Committee:* The Public Works Committee, in conjunction with City Staff, may consider matters related to water, sewer, solid waste, recycling, utility franchises, stormwater management, transportation, capital improvement program, transit, streets, street lighting, signalization and street local improvement.
- 17.1.6 Committees may forward issues with or without changes to staff recommendations to the City Council. Reports on the activities of the committees may be given under the Council Reports section of the Council agenda.
- 17.1.7 Matters forwarded from a standing committee to the City Council as a whole will remain at that level unless requested to be returned to committee by a majority of the Council.
- 17.1.8 Matters may be removed from committee and brought before the Council as a whole by a motion of the Council receiving an affirmative from the majority.

SECTION 17 - COUNCIL COMMITTEES AND CITIZEN ADVISORY BOARDS

17.1 Annual confirmation by Council. Annually at its first meeting in January, the City Council shall vote on whether to confirm the Mayor's appointments to the Council Standing Committees. The purpose of the committees is to provide recommendations on major policy items to the City Council. Issues are forwarded by the Mayor to the appropriate committee for discussion. Membership of any given committee may include no more than two (2) Councilmembers. The permanent Standing Committees of the City Council and rules are as follows:

17.1.1 *Budget/Finance/Human Resources Committee:* This committee considers policies related to fiscal matters for the City notwithstanding the City's operating budget is to be studied before the entire City Council.

17.1.2 *Cemetery/Parks Committee:* This committee considers improvements, maintenance, long-range planning and financing and other issues related to the City's cemetery and parks.

17.1.3 *Community and Economic Development Committee:* In coordination with the Community Development and Economic Development Departments of the City, this committee considers matters of a non-quasi-judicial nature submitted by the Planning Commission or other groups, agencies or organizations. This committee considers issues related to growth and development, including, but not limited to, planning of the physical, economic, aesthetic and social development of the City, the City's Comprehensive Plan, zoning code, housing, annexation policies, and code enforcement.

17.1.4 *Public Safety Committee:* This committee considers matters related to human services, police and fire protection, law enforcement, hazardous materials, animal control and emergency management.

17.1.5 *Public Works/Streets Committee:* This committee considers matters related to water, sewer, transportation, transportation plans, and any fiscal issues dealing with streets.

17.1.6 *Surface Water Committee:* This committee considers matters related to the formation and management of a Stormwater Utility, the adoption of a Stormwater Manual and other ancillary surface water concerns.

- 17.1.7 Committees may forward issues with or without changes to staff recommendations to the City Council. Reports on the activities of the committees may be given under the Council Reports section of the Council agenda.
- 17.1.8 Matters forwarded from a standing committee to the City Council as a whole will remain at that level unless requested to be returned to committee by a majority of the Council.
- 17.1.9 Matters may be removed from committee and brought before the Council as a whole by a motion of the Council receiving an affirmative from the majority.

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
SUBJECT: Resolution No. 10-666, authorizing The Mayor to execute a contract With RH2 for technical review Services for the Master Planned Developments with an emphasis on water and sewer	Agenda Date: January 7, 2010		AB10-006
	Department/Committee/Individual	Created	Reviewed
	Mayor Rebecca Olness		
	City Administrator –		
	City Attorney –		
	City Clerk – Brenda L. Martinez		X
	Finance – May Miller		
	Public Works – Seth Boettcher	X	
	Economic Devel. – Andy Williamson		
	Police – Jamey Kiblinger		
Cost Impact \$18,000	Court – Kaaren Woods		
Fund Source: reimbursable through MPD			
Timeline: January			
Attachments: Resolution No. 10-666, letter to PacWest, RH2 contract			
SUMMARY STATEMENT: <p>As noted in the letter attached, the City has terminated the contract with PacWest for the Master Planned Development review assistance and now needs another firm to fill that gap.</p> <p>Using the Municipal Research Services pre-qualified list of Professional Service Providers, the staff went through a three-step screening and evaluation process selecting RH2. RH2 has a strong background in water and sewer systems engineering and planning. Dan Irvin of RH2 has been in a lead role representing the City of Issaquah with regard to the Issaquah Highland Project and the Talus project. This Master Planned Development experience is needed in the review process.</p> <p>It is the City's intent to have RH2 collaborate their efforts with Parametrix for the most effect assistance in the review process.</p> <p>This review assistance will be a reimbursable cost as authorized through our Master Planned Development Ordinance.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: This action has been fast tracked and no committee has had an opportunity to review.			
RECOMMENDED ACTION: MOTION to adopt Resolution No. 10-666, authorizing the Mayor to execute the attached contract with RH2 for technical review services of the Lawson Hill and Villages Master Planned Development applications with respect to water and sewer, not to exceed \$18,000.			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	
January 7, 2010			

RESOLUTION NO. 10-666

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING A CONTRACT WITH RH2 FOR
TECHINCIAL REVIEW SERVICES OF THE LAWSON HILLS
AND VILLAGES MASTER PLANNED DEVELOPMENT
APPLICATIONS**

WHEREAS, the City does not have the staff level or the full range of expertise to provide comprehensive and timely review of the Lawson Hills and Villages Master Planned Development Applications; and

WHEREAS, RH2 has been determined to be the most qualified consultant to efficiently review the Master Planned Development with respect to water and sewer infrastructure; and

WHEREAS, The Master Planned Development codes provide for reimbursement of costs associated with the review of the applications;

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

Section 1. The Mayor is authorized to execute a contract with RH2 to provide technical review services of the Lawson Hills and Villages Master Planned Development applications with respect to water and sewer infrastructure as attached hereto as Exhibit A.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 7TH DAY OF JANUARY, 2010.

CITY OF BLACK DIAMOND:

Rebecca Olness, Mayor

Attest:

Brenda L. Martinez, City Clerk

CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the or this "Agreement"), for reference purposes only, is dated January 7, 2010 and is entered into by and between

CITY OF BLACK DIAMOND, WASHINGTON (the "City")

24301 Roberts Drive

Black Diamond, WA 98010

Contact: Seth Boettcher Phone: 360-886-2560 Fax : 360-886-2592

and

RH2 Engineering, Inc. ("Consultant")

12100 NE 195th Street Suite 100

Bothell, WA 98011

Contact: Dan Ervin, P.E. Phone: 425-951-5400 Fax: 425-398-2774

Tax Id No.: 91-1108443

for professional services in connection with the following project:

Master Planning Development Assistance. Scope of services is outlined in Exhibit A – Scope of Work.

TERMS AND CONDITIONS

1. Services by Consultant

1.1 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.

1.2 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 within two to three weeks or as amended 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 email authorization.

3. Compensation

TIME AND MATERIALS. Compensation for the services provided in the Scope of Work shall be on a time and materials basis not to exceed \$18,000 according to the schedule of billing rates and reimbursable expenses attached hereto as Exhibit "B."

4. Payment

4.1 Consultant shall maintain time and expense records and provide them to the City monthly, along with monthly invoices, in a format acceptable to the City for work performed to the date of the invoice.

4.2 All invoices shall be paid by City warrant within sixty (60) days of actual receipt by the City of an invoice conforming in all respects to the terms of this Agreement.

4.3 Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Consultant shall make copies available to the City on request.

4.4 If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

5. Discrimination and Compliance with Laws

5.1 Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

5.2 Consultant and its subconsultants shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

5.3 Any violation of this Section 5 shall be a material breach of this Agreement and grounds for immediate cancellation, termination, or suspension of the Agreement by the City, in whole or in part, and may result in Consultant's ineligibility to conduct further work for the City.

6. Suspension and Termination of Agreement

6.1 The City reserves the right to terminate or suspend this Agreement at any time, without cause, by giving Consultant notice in writing ten (10) days prior to the termination or suspension date. In the event of termination, all finished or unfinished reports, or other material prepared by Consultant pursuant to this Agreement, shall be submitted to the City. In the event the City terminates this Agreement prior to completion without cause, Consultant may complete such analyses and records as may be necessary to place its files in order. Consultant shall be entitled to compensation for any satisfactory work completed on the Project prior to the date of suspension or termination.

6.2 Any notice from the City to Consultant regarding the suspension of this Agreement shall specify the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to Consultant's reasonable expenses and shall be subject to verification. Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

7. Standard of Care

7.1 Consultant represents and warrants that it has the requisite training, skill, and experience necessary to provide the services under this Agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services Consultant provides under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

8. Ownership of Work Product

8.1 Ownership of the originals of any reports, data, studies, surveys, charts, maps, drawings, specifications, figures, photographs, memoranda, and any other documents which are developed, compiled, or produced as a result of this Agreement, whether or not completed, shall be vested in the City and shall be submitted to the City upon termination of this Agreement. Any reuse of these materials by the City for projects or purposes other than those that fall within the scope of this Agreement and the Project to which it relates, without written concurrence by Consultant, will be at the sole risk of the City.

8.2 The City acknowledges Consultant's documents as instruments of professional service. Nevertheless, the documents prepared under this Agreement shall become the property of the City upon completion of the work. The City agrees to hold harmless and indemnify Consultant against all claims made against Consultant for damage or injury, including defense costs, arising out of the City's reuse of such documents beyond the use for which they were originally intended without the written authorization of Consultant.

8.3 Methodology, software, logic, and systems developed under this Agreement are the property of Consultant and the City, and may be used as either Consultant or the City see fit, including the right to revise or publish the same without limitation.

9. Indemnification/Hold Harmless

9.1 Consultant shall defend, indemnify, and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including 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.

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 \$1,000,000 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 \$1,000,000 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 \$1,000,000 per claim and \$1,000,000 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: City Attorney

Consultant: Dan Ervin, P.E.
RH2 Engineering, Inc
12100 NE 195th Street Suite 100
Bothell, WA 98011
Fax: 425-398-2774

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: _____

Rebecca Olness

Its: Mayor

Date: _____

By: _____

Printed Name: _____

Its: _____

Date: _____

Attest:

By:

Brenda L. Martinez

City Clerk

Exhibit A

Scope of Work

Yarrow Bay Communities is beginning the development of a Master Planned Community currently known as Lawson Hills and the Villages. An MPD Ordinance has been drafted and is currently being reviewed. It is anticipated that a Development Agreement will be negotiated after the MPD is approved by Council.

This consultant agreement includes assistance to the Black Diamond staff, executive office and Council to determine if the draft MPD Ordinance submittal provides a good base for the City to negotiate a reasonable development agreement that will honor the current city codes, comprehensive plans (some in draft form) and construction standards. The work product is undefined at this time but will include meetings and discussions with staff, written summaries (both formal and informal), and other products requested by Black Diamond.

The Consultant will meet with staff and read historical documents as necessary to become familiar with the project and its impacts. This will include comprehensive plans (City, water, and sewer), the Final Environmental Impact Statement and the Draft MPD Ordinance (particularly chapters 1, 2, 3, 7, 8, 9, 10 and 13).

RH2 Engineering, Inc. (RH2) will prepare summaries of the research and identify areas of ambiguity or inequity and will recommend changes or conditions to the MPD application or topics for inclusion in the future Development Agreement. RH2 will also identify topics that might be unnecessary (if any) or topics that might be missing (if any) and recommend text or procedures to eliminate the potential problems.

RH2 will meet regularly with City staff and perform additional work requested or modify this scope of work as requested to respond to the services desired and necessary.

EXHIBIT B
RH2 Engineering
SCHEDULE OF RATES AND CHARGES

2010 HOURLY RATES

CLASSIFICATION		RATE	CLASSIFICATION		RATE
Professional	IX	\$188.00	Technician	IV	\$120.00
Professional	VIII	\$188.00	Technician	III	\$112.00
Professional	VII	\$180.00	Technician	II	\$83.00
			Technician	I	\$78.00
Professional	VI	\$167.00			
Professional	V	\$159.00	Administrative	V	\$111.00
Professional	IV	\$149.00	Administrative	IV	\$93.00
			Administrative	III	\$79.00
Professional	III	\$139.00	Administrative	II	\$64.00
Professional	II	\$130.00	Administrative	I	\$54.00
Professional	I	\$118.00			

IN-HOUSE SERVICES

In-house copies (each)	8 1/2" X 11"	\$0.07	CAD Plots	Large	\$10.00
In-house copies (each)	8 1/2" X 14"	\$0.08	CAD Plots	Full Size	\$5.00
In-house copies (each)	11" X 17"	\$0.14	CAD Plots	Half Size	\$2.00
In-house copies (color) (each)	8 1/2" X 11"	\$0.85	GIS System	Per Hour	\$10.00
In-house copies (color) (each)	8 1/2" X 14"	\$1.50	GIS Plots	Per Plot	\$5.00
In-house copies (color) (each)	11 X 17"	\$1.70	In-house Computer	Per Hour	\$9.00
			Mileage	Per Mile	\$0.50
FAX (each sheet)		\$1.00	Digital Camera	Per Day	\$10.00
In-house CAD System	Per Hour	\$25.00	Digital Camera	Per Week	\$30.00
			Digital Camera	Per Month	\$90.00

*Note: At project completion all digital photos can be supplied to the client on CD, upon request.

PURCHASED SERVICES

All subconsultant services are billed at cost plus 15%.

CHANGES IN RATES

Rates listed here are adjusted annually. The current, most recent schedule of hourly rates are used for billing purposes. Payment for work accomplished shall be on the basis of hourly rates in effect at the time of billing plus direct expenses and outside services as stated in this Exhibit.