

CITY COUNCIL AGENDA BILL

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

| ITEM INFORMATION | | | |
|---|---------------------------------------|-------------|-----------------|
| SUBJECT: Resolution No. 11-770, authorizing formation of Black Diamond Community Facilities District No. 2011-1 | Agenda Date: December 27, 2011 | | AB11-081 |
| | Department/Committee/Individual | Created | Reviewed |
| | Mayor Rebecca Olness | | |
| | City Administrator – | | |
| | City Attorney –Chris Bacha | | X |
| | City Clerk – Brenda L. Martinez | | |
| | Finance – May Miller | | |
| | Public Works – Seth Boettcher | | |
| | Economic Devel. – Andy Williamson | | |
| | Police – Jamey Kiblinger | | |
| Cost Impact: | Court – Stephanie Metcalf | | |
| Fund Source: | Comm. Dev. – Steve Pilcher | | |
| Timeline: | | | |
| Attachments: Resolution No. 11-770, Mr. Bacha email of December 21, 2011; YarrowBay Memo - Responses to questions; Randy Young Memo – Comments to Topics from December 15 Council Meeting; Cindy Proctor – Supplemental Information; YarrowBay Memo – Responses to Cindy Proctor’s Supplemental Information, Draft Resolution for CFD Board | | | |
| SUMMARY STATEMENT: <p>The City of Black Diamond received a petition from BD Village Partners, LP and YarrowBay Development LLC for the formation of Community Facility District (CFD) No. 2011-1 pursuant to Chapter 36.145 RCW. The petition proposes over \$20 Million of assessments upon the property located within the boundaries of the proposed Community Facilities District, which consists of 377.8 acres.</p> <p>On December 15, 2011 the Black Diamond City Council held a public hearing regarding the formation of Community Facilities District No. 2011-1 to receive public comments and evidence in support of, or in opposition to, formation of the Community Facilities District. During the December 15, 2011 meeting Council direction was for the Mayor to schedule a workstudy for further discussion.</p> <p>The City Council is required by law to take action approving or denying the petition within 30 days after the hearing.</p> | | | |
| COMMITTEE REVIEW AND RECOMMENDATION: | | | |
| RECOMMENDED ACTION: MOTION to adopt Resolution No. 11-770, authorizing the formation of Black Diamond Community Facilities District No. 2011-1. | | | |
| RECORD OF COUNCIL ACTION | | | |
| <i>Meeting Date</i> | <i>Action</i> | <i>Vote</i> | |
| December 27, 2011 | | | |
| | | | |
| | | | |

RESOLUTION NO. 11-770

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, AUTHORIZING THE FORMATION OF A COMMUNITY FACILITIES DISTRICT; ADOPTING FINDINGS IN SUPPORT THEREOF; SETTING FORTH THE AUTHORITY OF THE DISTRICT; GRANTING AUTHORITY TO IMPOSE SPECIAL ASSESSMENTS AND ISSUE BONDS; PROVIDING FOR THE COMPOSITION AND ORGANIZATION OF THE BOARD OF SUPERVISORS; RESERVING STATUTORY AND POLICE POWER AUTHORITY; AND LIMITING RECOURSE TO THE ASSETS, CREDIT AND SERVICES OF THE DISTRICT

WHEREAS, Black Diamond is a municipal corporation operating as a non-charter code city under the laws of the State of Washington and is authorized pursuant to RCW 35A.21.160 and 35A.11.030 to exercise all powers reserved to any city of any class and to exercise all powers of taxation in the manner provided by the general laws of the State; and

WHEREAS, in year 2010 the Washington State Legislature enacted Engrossed Substitute Senate Bill 6241 (codified at RCW Ch. 36.145) authorizing legislative authorities, such as the Black Diamond City Council, to form special taxing districts known as Community Facilities Districts (“CFD”), to provide an option for landowners to voluntarily finance local improvements through special assessments upon their property; and

WHEREAS, the legislature found that such legislation was necessary because inadequate community facilities and infrastructure exist to support growth over the next 20 years and current financing options were not adequate or flexible enough to fund these needed facilities; and

WHEREAS, chapter 36.145 RCW (the “**CFD Statute**”) provides that the City Council may consider approval of formation of a CFD only after a petition meeting the requirements of the CFD Statute has been filed by 100% of the property owners owning land within the district, as certified by the County, and the City Council finds, within the time periods prescribed in the CFD Statute, that formation of the District meets the following requirements: (a) the petitioners will benefit from the proposed district; (b) the formation of the district will be in the best interest of the City; and (c) the formation of the District is consistent with the requirements of Washington’s growth management act; and

WHEREAS, on October 26th, 2011 BD Village Partners, LP and YarrowBay Development LLC (hereafter the “**Petitioners**”) submitted their petition (hereafter the “**Petition**”) to King County Record and Licensing Services for certification of its petition for the formation of CFD No. 2011-1 (hereinafter “**CFD No. 2011-1**” or the “**CFD**”) with its proposed district boundaries located entirely within the corporate boundaries of the City of Black Diamond, King County, Washington; and

WHEREAS, on October 31, 2010 the Office of the King County Executive forwarded to the City of Black Diamond, its certificate of sufficiency of the Petition confirming, as required pursuant to RCW 36.14.020(2), that 100 percent of the owners of the properties located within the proposed district boundaries had executed the Petition; and

WHEREAS, the City is required by law to give notice of and conduct a public hearing regarding the formation of a CFD by no later than 60 days from the date a certificate of sufficiency is issued; and

WHEREAS, the City has provided notice of such hearing in conformance with the requirements of RCW 35.145.030 and 040, a true and correct copy of which is attached hereto as Exhibit "A"; and

WHEREAS, the City Council conducted a public hearing regarding the formation of CFD No. 2011-1 on December 15th, 2011 at which time the City Council took public testimony and received evidence; and

WHEREAS, having considered the public testimony and evidence provided at the public hearing and subsequent thereto, and having considered the formation petition, the Special Benefit Apportionment Analysis prepared by David Taussig & Associates, Inc dated November 28, 2011, the independent analysis of the Taussig Report by Henderson, Young and Company, the additional written comments submitted by Henderson, Young and Company, the Petitioner and members of the public, and other relevant authorities and materials, and having been in all matter fully advised;

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

Section 1. Incorporation of Recitals. The above stated recitals are true and correct and are incorporated as though fully set forth herein.

Section 2. Findings and Conclusions. The City Council hereby makes the following findings and conclusions with respect to formation of CFD No. 2011-1:

A. The content of the Petition meets the statutory requirements for sufficiency of a petition for formation of a CFD, to-wit,

1. The Petition designates and describes the boundaries of the district;
2. The County has certified that the Petition has been executed by one hundred percent of all owners of private property located within the boundaries of the proposed district;
3. The Petition includes a request by the property owners to subject their property to the assessments;
4. The request to subject the property to assessments includes a maximum amount the property owners may be subject to;

5. The assessments described in the Petition are authorized under Chapter 36.145 RCW;

6. The Petition includes a certification by the petitioners that they want to voluntarily submit their property to the authority of the district under Chapter 36.145 RCW to approve the petitioner's request to submit their property to the assessments, up to the amount included in the petition and authorized under this chapter;

7. The Petition includes a general explanation of the objective and plan of the district;

8. The Petition describes the specific facilities that the district anticipates financing;

9. The Petition declares that the district will be conducive to public health, safety, and welfare;

10. The Petition asserts that the purpose for forming the district will be a benefit to the land located in the district;

11. The Petition is accompanied by an "obligation" signed by at least two petitioners who agree to pay the costs of the formation process;

12. The Petition includes a list of petitioners or representatives thereof who are willing and able to serve on the board of supervisors;

13. The petition proposes a special assessment, and includes, a diagram showing each separate lot, tract, parcel of land, or other property in the district, the acreage of the property, the name and address of the owner or reputed owner of each lot, tract, parcel of land, or other property as shown on the tax rolls of the county assessor, a preliminary assessment roll showing the special assessment proposed to be imposed on each lot, tract, parcel of land, or other property; and, a proposed method or combination of methods for computing special assessments, determining the benefit to assessed property or use from facilities or improvements funded directly or indirectly by special assessments under this chapter; and

14. The Petition includes an explanation of what security will be provided to ensure the timely payment of assessments and the timely payment of bonds issued by the district.

B. The City has published noticed of the public hearing in the form of the notice attached hereto as Exhibit "A" in Official newspaper of the City for three consecutive weeks prior to the date of the hearing and thus have met the statutory requirements for notice of the public hearing.

C. Formation of CFD No. 2011-1 is in the best interest of the City for the following reasons: The proposed Black diamond CFD No. 2011-1 will finance a portion of ten infrastructure improvements that will: improve public health, safety, and welfare by improving

traffic circulation and thereby reduce accidents; improve pedestrian safety; provide street lights thereby deterring crime and improving vehicular and pedestrian safety; facilitate the safe transmission of wastewater; mitigate flooding; provide for the transmission of stormwater; deliver potable water; and provide recreation and park improvements. In addition, the infrastructure improvements have benefits for the City, its residents and those who visit, drive through or recreate in the City.

Using a CFD to finance portions of these infrastructure improvements also creates the opportunity for Petitioner to use other sources of funding for beneficial improvements not being financed by CFD No. 2011-1. For example, the Petitioner has stated its intent to commit early funding of a satellite fire station when the CFD bonds for the ten infrastructure improvements have been sold.

Finally, the proposed CFD, through the application of assessments, will provide a secure, long-term financing source for portions of these ten infrastructure improvements thereby reducing the City's reliance on unsecured funds from a for-profit land developer.

D. CFD No. 2011-1 as proposed is consistent with the Growth Management Act, for the following reasons: First, the proposed CFD is an example of growth paying for infrastructure to support growth inside an urban growth area ("UGA"). Second, the infrastructure improvements are consistent with the GMA's planning goals as outlined in RCW 36.70A.020. Last, the infrastructure improvements are consistent with Black Diamond's Comprehensive Plan.

E. The Petitioners will benefit from the formation of the District, for the following reasons: CFD No. 2011-1 will provide Petitioner with a secure source of financing for ten infrastructure improvements necessary to move forward with The Villages and Laws Hills planned communities. In addition, according to the analysis submitted by Petitioners, the properties in the CFD boundaries, all of which are owned by Petitioners, will receive special benefits from the infrastructure improvements financed by the CFD.

Section 3. Approval of Petition and Formation of CFD No. 2011-1. Based upon the foregoing findings and conclusions and pursuant to its authority granted under RCW Ch. 36.145, the City Council does hereby approve the Petition for formation of CFD No. 2011-1 and thereby authorizes formation, upon the effective date of this resolution, of CFD No. 2011-1. Subject to the provisions of this resolution, CFD No. 2011-1 is vested with the corporate authority included under Article VII, section 9 of the state constitution to make local improvements by special assessment in accordance with chapter 36.145 RCW, and is further vested with all powers and authority granted to community facilities districts as an independently governed special purpose district pursuant to RCW Ch. 36.145, as now or hereinafter amended, including by way of example and not limitation, the power and authority to make those local improvements set forth in the Petition by special assessment, to issue revenue bonds in accordance with Chapter 39.46 RCW, to issue assessment bonds in accordance with chapter 35.45 RCW, to transfer to the City of Black Diamond without compensation, any property or assets of CFD No. 2011-1, and to use district revenue derived through special assessments and bonds authorized under chapter 36.145 RCW to finance costs, expenses, and facilities as set forth therein.

Section 4. Incorporation of Petition. The Petition is attached hereto as Exhibit “B” and is incorporated as though fully set forth herein by this reference.

Section 5. Conformance with Petition - Limitations. The powers and authority of CFD No. 2011-1 are limited as follows:

A. **District Boundaries.** The District Boundaries are as set forth in Attachment 1 to the Petition.

B. **District Objectives, plan and facilities.** The authority granted to CFD No. 2011-1 is limited to those powers necessary to carry out the specific purposes authorized in chapter 36.145 RCW to carry out the specific objectives, plan and facilities identified in the Petition.

C. **Improvements.** CFD No. 2011-1 is not authorized to fund improvements not included within the scope of those improvements set forth in the Petition. CFD No. 2011-1 may only undertake such lawful projects and activities and engage in acts that are authorized in the Petition and chapter 36.145 RCW.

D. **Assessments.** Except as otherwise expressly provided under chapter 36.145 RCW, special assessment imposed and collected on property within the district may not exceed the amounts set forth in the Petition.

Section 6. No Recourse. CFD No. 2011-1 is not authorized to incur or create any liability that permits recourse by any contracting party or member of the public to or upon any assets, services, or credit of the City of Black Diamond and shall have no monetary recourse whatsoever against the City or its officials, boards, commissions, officers, directors, agents, or employees for any loss or damage arising out of the City’s exercising its authority pursuant to chapter 36.145 RCW other applicable Law to form CFD NO. 2011-1.

Bonds and notes issued by CFD No. 2011-1 may be secured by the full faith and credit of the CFD No. 2011-1 or may be made payable solely out of certain revenues and receipts as may be designated in the proceedings under which the issuance of the bonds and notes are authorized. All bonds and notes or liabilities occurring thereunder shall be satisfied exclusively from the assets or credit of CFD No. 2011-1, and no creditor or other person shall have any recourse to the assets, credit, or services of the City thereby, unless the City shall expressly, in writing, guarantee such bonds or notes.

Section 7. No Waiver. The formation of CFD No. 2011-1, as authorized herein, is not intended, and shall not be construed, as a waiver of any right or authority of the City to require compliance by CFD No. 2011-1 with the City’s regulatory and land use permitting requirements and the City specifically reserves any such statutory and police power authority.

Section 8. Special Benefit – No Warranty. The City does not, by its approval of formation of CFD No. 2011-1, represent or warrant that property within the district boundaries will receive “benefit” or “special benefit” from improvement projects identified in the petition for purposes of the determination of benefit or special benefit required to impose special

assessments on property located inside the district. Such determination is solely within the power and authority of the Board of Supervisors of CFD No. 2011-1 acting on behalf of CFD No 2011-1.

Section 9. Assessment Roll. The City does not by its approval of formation of CFD No. 2011-1 intend, represent or warrant that such approval and formation shall, nor should it be construed to, constitute approval of the computation of the preliminary assessments presented in the Petition, approval of the preliminary assessment roll, or imposition a preliminary assessment upon property within the CFD boundaries. It is the City's sole and singular intent that this resolution shall authorize the formation of the CFD in conformance with the requirements of Chapter 35.145 RCW, and that the CFD, by and through its Board of Supervisors, shall have and retain the sole power and authority granted under Chapter 36.145 RCW to determine the lawful means and methods for computing and imposing assessments, determining the special assessment roll, conducting hearings and hearing objections thereto, approving, correcting, revising raising, lowering, changing or modifying the assessment roll or any part therefore, and imposing special assessments upon property within the boundaries of the CFD.

Section 10. Composition of Board of Supervisors. The City Council shall within sixty (60) days of the effective date of this resolution, meet to nominate and appoint members to the Board of Supervisors of CFD No. 2011-1 (the "Board"). The composition of the Board, its size and numbers, and the term and qualifications for member positions shall conform to the requirements of chapter 36.145 RCW. All appointments shall be confirmed by a vote of a majority of the City Council.

The Board shall have five (5) members and cannot take action until each of the five Board members is duly appointed. Each of the five members must be natural persons. Except as provided below, three (3) of the members shall be appointed from among the members of the City Council (hereafter referred to as "Council Positions") and two (2) of the members shall be appointed from among the petitioner members or nominees identified in the petition (hereinafter "Petitioner Positions"). The City may, in the alternative, appoint up to two qualified professionals with expertise in "municipal finance" in lieu of appointments from among the members of the City Council.

The term of each supervisor position shall be three (3) years. Initial terms are limited to one (1) and two (2) year appointments respectively. Thus, for example, two Council Positions and one Petitioner Position will have a one-year initial term and one Council Position and one Petitioner Position will have a two-year initial term.

All vacancies in a Council Position shall be filled by appointment of a member of the City Council not already serving on the Board or by appointment of a qualified professional. Vacancies in petitioner positions shall be filled by appointment from eligible persons listed in the Petition or from successor owners of property located within the boundaries of the approved district.

Supervisors shall serve without compensation, but may be reimbursed for their expenses as provided in Chapter 36.145 RCW.

A supervisor shall serve for the term designated and until his/her successor shall have been appointed and qualified; provided that, a Council Position filled by a person who is a member of the City Council shall become vacant at such time as the person filling that Council Position is no longer a member of the City Council. Any supervisor may be removed from his or her position by a majority vote of the City Council upon a finding of good cause. Upon removal of a person from a supervisor position, such person shall have no power of office.

Section 11. Organization. Upon appointment of Board members, the City Clerk shall cause notice of the first organizational meeting of the Board of Supervisors to be posted and published in the manner required by law, to be held in the Black Diamond City Council Chambers on the date of the next regular meeting of the City Council following final appointment of the Board members. At such meeting, the Board shall organize itself, nominate and appoint a chair, consider approval of a resolution authorizing an agreement to contract for support services to facilitate the management and administration of the CFD, consider approval of a motion to authorize the Chair to negotiate a cost reimbursement agreement with Petitioner to reimburse the CFD for the costs associated with the management and administration services contract, approve a schedule and location for regular meetings of the Board of Supervisors, and undertake any further actions as determined by the Board. The Board may adopt by-laws and rules and regulations that are consistent with this resolution, the Petition and chapter 36.145 RCW. In the absence of adoption of rules and procedures for the conduct of meetings of the Board of Supervisors, the Board meetings may be conducted in accordance with the most recent edition of *Roberts Rules of Order*.

The Chair, once appointed, shall preside over all meetings of the Board and shall be responsible for administration of all contracts of the Board and oversee the day to day operations of the CFD, under the direction of and in accordance with the policies and procedures of the Board of Supervisors. The Chair shall not be authorized to enter into or execute agreements, or take other action, on behalf of the CFD without prior approval of a majority of the Board of Supervisors by resolution or motion undertaken during an open public meeting.

Section 12. Quorum. Any resolution or motion authorizing or approving an action may only be passed by a vote representing a majority of the members of the Board of Supervisors.

Section 13. Deposit of public funds. All moneys belonging to or collected for the use of the CFD coming into the hands of any officer or supervisor thereof shall immediately be deposited with the treasurer or other legal depository to the credit of the CFD for the benefit of the funds to which they belong.

Section 14. Private use of public funds prohibited. The use of the funds of the CFD for any purpose not authorized by law by any officer or supervisor having the possession or control thereof is prohibited.

Section 15. Establishment and Maintenance of Records. The CFD shall establish and maintain records in accordance with applicable law, with respect to all matters connected with any projects or activities financed from funds derived directly or indirectly from special

assessments levied by the CFD or from bonds issued by the CFD. Except as otherwise provided by state or federal law, the CFD shall retain such records for a period of three years after completion of the project or activity funded.

Section 16. Reports and Information. The CFD, at such times and in such forms as may be required by the City, state law or by the State Auditor, shall furnish the City or such public agencies, such statements, records, reports, data, and information as may be requested pertaining to matters financed from funds derived directly or indirectly from special assessments levied by the CFD or from bonds issued by the CFD.

Section 17. Dissolution of CFD No 2011-1.

A. **Petition for Dissolution.** When all indebtedness of the CFD has been retired and anticipated responsibilities have been satisfied, a majority of the CFD Board of Supervisors, plus one, may voluntarily authorize by resolution the filing of a petition with the City requesting that the Black Diamond City Council dissolve the CFD. The Petition shall be signed and attested to by the Board Chair on behalf of the CFD and shall set forth the factual and legal basis supporting dissolution, which shall include: (1) the name and principal office of the CFD; (2) the debts, obligations and liabilities of the CFD, including any pending litigation or contingent liabilities, and the property and assets available to satisfy the same; (3) the provisions to be made for satisfaction of outstanding liabilities and performance of executory contracts; (4) the property and assets of the CFD that will be remaining and unencumbered at the time of dissolution and the proposed disposition of said property and assets; (5) provision for retention of records of the CFD for the period established by the State Archivist retention schedule; and, (6) a list of persons, with their mailing addresses, to be notified prior to and upon completion of dissolution. This list shall identify by name and mailing address any persons known or reasonably anticipated to be creditors of the District or persons whose rights or property interests may otherwise be affected by dissolution of the CFD.

The Petition shall include an opinion by general legal counsel for the CFD verifying that the CFD has conducted its reasonable due diligence to ensure that the contents of the petition are true and correct and that the criteria set forth at Subsection D (2) – (4) below of this Section 17 have been satisfied.

The City shall review the petition and oversee the dissolution to protect the public interest and prevent impairment of obligation, or if so authorized or required by law, may authorize or initiate proceedings in the Superior Court for the appointment and supervision of a receiver for such purposes.

B. **Notice of Public Hearing.** Unless otherwise provided by law, within ninety (90) days of receipt of the voluntary petition for dissolution, the City Council shall conduct a hearing at the time and place specified in a notice published at least once, not less than ten days before the hearing, in a newspaper of general circulation within the CFD. This notice shall be in addition to any other notice required by law to be published. The notice shall specify the action to be taken by the City Council pursuant to the petition and the proposed effective date of dissolution. Additional notice of the hearing may be given by mail, by posting within the

proposed district, or in any manner the legislative authorities deem necessary to notify affected persons. All hearings shall be public and the City Council authorities shall hear objections from any person affected by the dissolution of the district.

C. Termination. Unless otherwise provided by law, the existence of the CFD may be terminated by the City, either (1) upon entry of judgment of a court of competent jurisdiction that shall have become final, which judgment annuls the existence of the CFD, or prohibits it from conducting all or a major portion of the activities for which it was formed, or permits recourse by creditors of the CFD or other persons to the assets, property, or credit of the City on account of any debts, obligations, or liabilities of the CFD, or (2) by resolution of the City Council upon voluntary petition by the CFD, at or after a public hearing held with notice as set forth above, and after affording a reasonable opportunity for persons affected by the dissolution to be heard and present evidence.

D. Findings. The City Council may not approve termination of the CFD by petition of the CFD, except upon a finding of the following:

1. The CFD has requested the same by resolution in accordance with the requirements herein;
2. The CFD has discontinued or completed its projects and activities for which it was formed;
3. Any and all obligations, bonds, notes, or other contracts of indebtedness of the CFD have been fully satisfied such that such bonds and contracts will not be impaired; and
4. That there is no pending litigation and that there are no pending claims or known contingent liabilities that would materially impaired by dissolution of the CFD.

Upon satisfactory completion of dissolution proceedings, the City Clerk shall give notice thereof to the Secretary of State, and to other persons designated by the CFD in its petition.

E. Disposition of Property and Assets. Upon termination of the existence of the CFD, all of the rights, assets, and property of the CFD shall pass to and be distributed as provided in the CFD petition and otherwise as provided below. Subject thereto, all of the rights, assets and property of the CFD shall be tendered to the entity first listed below, and if not applicable or not accepted, to the next listed entity in succession:

1. To the City;
2. To some other local municipal corporation that performs similar activities or functions for which the assets were acquired or devoted, or which covenants to use the same in a manner to fulfill the purposes of the Federal or Public Programs;

3. To the State of Washington for use in or application upon projects and activities or functions for which the assets were acquired or are devoted, or for accomplishment of purposes of the program involved; or

4. To a corporate fiduciary or other trustee, in trust for or use under the direction of any of the aforesaid entities for the purposes, projects and activities for which the assets were acquired or devoted;

All rights, property, and assets of the CFD upon transfer shall be vested in the entity receiving and accepting the same, together with any appurtenant obligations and liabilities.

Section 18. Open Public Meetings Act. All meetings of the Board of Supervisors shall be subject to the open public meetings act codified at chapter 42.30 RCW, as now or hereafter amended.

Section 19. Public Records. All records of CFD No. 2011-1 shall be subject to the public records act codified at RCW 42.56 RCW, as now or hereafter amended.

Section 20. Competitive Bidding. All public works and procurement contracts shall be subject to the competitive bidding, including without limitation bonding and retainage requirements, and prevailing wage requirements applicable to public corporations under applicable state and federal laws.

Section 21. Severability. Should any section, paragraph, sentence, clause or phrase of this resolution, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this resolution be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances unless the object and purpose of this resolution of materially impaired or such pre-emption, decision or declaration permits recourse against the City contrary to the provisions of Section 6 of this resolution.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A SPECIAL MEETING THEREOF, THIS ____ DAY OF
_____, 20____.**

CITY OF BLACK DIAMOND:

Rebecca Olness, Mayor

Attest:

Brenda L. Martinez, City Clerk

Filed with the City Clerk:
Passed by the City Council:
Resolution No.:
Date Posted:

EXHIBIT A

(Notice of Public Hearing)

EXHIBIT B

(Copy of Formation Petition)

11-770
RESOLUTION NO. 10-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF BLACK DIAMOND, AUTHORIZING THE FORMATION
OF A COMMUNITY FACILITIES DISTRICT; ADOPTING
FINDINGS IN SUPPORT THEREOF; SETTING FORTH
THE AUTHORITY OF THE DISTRICT; GRANTING
AUTHORITY TO IMPOSE SPECIAL ASSESSMENTS AND
ISSUE BONDS; PROVIDING FOR THE COMPOSITION
AND ORGANIZATION OF THE BOARD OF
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POWER AUTHORITY; AND LIMITING RECOURSE TO
THE ASSETS, CREDIT AND SERVICES OF THE DISTRICT**

WHEREAS, Black Diamond is a municipal corporation operating as a non-charter code city under the laws of the State of Washington and is authorized pursuant to RCW 35A.21.160 and 35A.11.030 to exercise all powers reserved to any city of any class and to exercise all powers of taxation in the manner provided by the general laws of the State; and

WHEREAS, in year 2010 the Washington State Legislature enacted Engrossed Substitute Senate Bill 6241 (codified at RCW Ch. 36.145) authorizing legislative authorities, such as the Black Diamond City Council, to form special taxing districts known as Community Facilities Districts ("CFD"), to provide an option for landowners to voluntarily finance local improvements through special assessments upon their property; and

WHEREAS, the legislature found that such legislation was necessary because inadequate community facilities and infrastructure exist to support growth over the next 20 years and current financing options were not adequate or flexible enough to fund these needed facilities; and

WHEREAS, chapter 36.145 RCW (the "CFD Statute") provides that the City Council may consider approval of formation of a CFD only after a petition meeting the requirements of the CFD Statute has been filed by 100% of the property owners owning land within the district, as certified by the County, and the City Council finds, within the time periods prescribed in the CFD Statute, that formation of the District meets the following requirements: (a) the petitioners will benefit from the proposed district; (b) the formation of the district will be in the best interest of the City; and (c) the formation of the District is consistent with the requirements of Washington's growth management act; and

WHEREAS, on October 26th, 2011 BD Village Partners, LP and YarrowBay Development LLC (hereafter the "**Petitioners**") submitted their petition (hereafter the "**Petition**") to King County Record and Licensing Services for certification of its petition for the formation of CFD No. 2011-1 (hereinafter "**CFD No. 2011-1**" or the "**CFD**") with its proposed district boundaries located entirely within the corporate boundaries of the City of Black Diamond, King County, Washington; and

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WHEREAS, the City is required by law to give notice of and conduct a public hearing regarding the formation of a CFD by no later than 60 days from the date a certificate of sufficiency is issued; and

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WHEREAS, the City Council conducted a public hearing regarding the formation of CFD No. 2011-1 on December 15th, 2011 at which time the City Council took public testimony and received evidence; and

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

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1. A. The content of the Petition meets the statutory requirements for sufficiency of a petition for formation of a CFD, to-wit,

(a)1. the ~~The~~ Petition designates and describes the boundaries of the district;

(b)2. the ~~The~~ County has certified that the Petition has been executed by one hundred percent of all owners of private property located within the boundaries of the proposed district;

(c)3. the ~~The~~ Petition includes a request by the property owners to subject their property to the assessments;

(d)4. the ~~The~~ request to subject the property to assessments includes a maximum amount the property owners may be subject to;

~~(e)5. the~~ The assessments described in the Petition are authorized under Chapter 36.145 RCW;

~~(f)6. the~~ The Petition includes a certification by the petitioners that they want to voluntarily submit their property to the authority of the district under Chapter 36.145 RCW to approve the petitioner's request to submit their property to the assessments, up to the amount included in the petition and authorized under this chapter;

~~(g)7. the~~ The Petition includes a general explanation of the objective and plan of the district;

~~(h)8. the~~ The Petition describes the specific facilities that the district anticipates financing;

~~(i)9. the~~ The Petition declares that the district will be conducive to public health, safety, and welfare;

~~(j)10. the~~ The Petition asserts that the purpose for forming the district will be a benefit to the land located in the district;

~~(k)11. the~~ The Petition is accompanied by an "obligation" signed by at least two petitioners who agree to pay the costs of the formation process;

~~(l)12. the~~ The Petition includes a list of petitioners or representatives thereof who are willing and able to serve on the board of supervisors;

~~(m)13. the~~ The petition proposes a special assessment, and includes, a diagram showing each separate lot, tract, parcel of land, or other property in the district, the acreage of the property, the name and address of the owner or reputed owner of each lot, tract, parcel of land, or other property as shown on the tax rolls of the county assessor, a preliminary assessment roll showing the special assessment proposed to be imposed on each lot, tract, parcel of land, or other property; and, a proposed method or combination of methods for computing special assessments, determining the benefit to assessed property or use from facilities or improvements funded directly or indirectly by special assessments under this chapter; and

~~(n)14. the~~ The Petition includes an explanation of what security will be provided to ensure the timely payment of assessments and the timely payment of bonds issued by the district;

2B. The City has published noticed of the public hearing in the form of the notice attached hereto as Exhibit "A" in Official newspaper of the City for three consecutive weeks prior to the date of the hearing and thus have met the statutory requirements for notice of the public hearing;

3C. Formation of CFD No. 2011-1 is in the best interest of the City for the following reasons: The proposed Black diamond CFD ~~NO~~No. 2011-1 will finance a portion of ten

infrastructure improvements that will: improve public health, safety, and welfare by improving traffic circulation and thereby reduce accidents; improve pedestrian safety; provide street lights thereby deterring crime and improving vehicular and pedestrian safety; facilitate the safe transmission of wastewater; mitigate flooding; provide for the transmission of stormwater; deliver potable water; and provide recreation and park improvements. In addition, the infrastructure improvements have benefits for the City, its residents and those who visit, drive through or recreate in the City.

Using a CFD to finance portions of these infrastructure improvements also creates the opportunity for Petitioner to use other sources of funding for beneficial improvements not being financed by CFD No. 2011-1. For example, the Petitioner has stated its intent to commit early funding of a satellite fire station when the CFD bonds for the ten infrastructure improvements have been sold.

Finally, the proposed CFD, through the application of assessments, will provide a secure, long-term financing source for portions of these ten infrastructure improvements thereby reducing the City's reliance on unsecured funds from a for-profit land developer.

4D. CFD No. 2011-1 as proposed is consistent with the Growth Management Act, for the following reasons: First, the proposed CFD is an example of growth paying for infrastructure to support growth inside an urban growth area ("UGA"). Second, the infrastructure improvements are consistent with the GMA's planning goals as outlined in RCW 36.70A.020. Last, the infrastructure improvements are consistent with Black Diamond's Comprehensive Plan.

5E. The Petitioners will benefit from the formation of the District, for the following reasons: CFD No. 2011-1 will provide Petitioner with a secure source of financing for ten infrastructure improvements necessary to move forward with The Villages and Laws Hills planned communities. In addition, according to the analysis submitted by Petitioners, the properties in the CFD boundaries, all of which are owned by Petitioners, will receive special benefits from the infrastructure improvements financed by the CFD.

Section 3. Approval of Petition and Formation of CFD No. 2011-1. Based upon the foregoing findings and conclusions and pursuant to its authority granted under RCW Ch. 36.145, the City Council does hereby approve the Petition for formation of CFD No. 2011-1 and thereby authorizes formation, upon the effective date of this resolution, of CFD No. 2011-1. Subject to the provisions of this resolution, CFD No. 2011-1 is vested with the corporate authority included under Article VII, section 9 of the state constitution to make local improvements by special assessment in accordance with chapter 36.145 RCW, and is further vested with all powers and authority granted to community facilities districts as an independently governed special purpose district pursuant to RCW Ch. 36.145, as now or hereinafter amended, including by way of example and not limitation, the power and authority to make those local improvements set forth in the Petition by special assessment, to issue revenue bonds in accordance with Chapter 39.46 RCW, to issue assessment bonds in accordance with chapter 35.45 RCW, to transfer to the City of Black Diamond without compensation, any property or assets of CFD No. 2011-1, and to use district revenue derived through special assessments and bonds authorized under chapter 36.145 RCW to finance costs, expenses, and facilities as set forth therein.

Section 4. Incorporation of Petition. The Petition is attached hereto as Exhibit “B” and is incorporated as though fully set forth herein by this reference.

Section 5. Conformance with Petition - Limitations. The powers and authority of the DistrictCFD No. 2011-1 are limited as follows:

1A. **District Boundaries.** The District Boundaries are as set forth in Attachment 1 to the Petition.

2B. **District Objectives, plan and facilities.** The authority granted to CFD No. 2011-1 is limited to those powers necessary to carry out the specific purposes authorized in chapter 36.145 RCW to carry out the specific objectives, plan and facilities identified in the approved pPetition.

3C. **Improvements.** CFD No. 2011-1 is not authorized to fund improvements not included within the scope of those improvements set forth in the Petition. CFD No. 2011-1 may only undertake such lawful projects and activities and engage in acts that are authorized in the Petition and chapter 36.145 RCW.

4D. **Assessments.** Except as otherwise expressly provided under chapter 3536.145 RCW, special assessment imposed and collected on property within the district may not exceed the amounts set forth in the Petition.

Section 6. No Recourse. CFD No. 2011-1 is not authorized to incur or create any liability that permits recourse by any contracting party or member of the public to or upon any assets, services, or credit of the City of Black Diamond and shall have no monetary recourse whatsoever against the City or its officials, boards, commissions, officers, directors, agents, or employees for any loss or damage arising out of the City’s exercising its authority pursuant to chapter 36.145 RCW other applicable Law to form CFD NO. 2011-1.

Bonds and notes issued by CFD No. 2011-1 may be secured by the full faith and credit of the CFD No. 2011-1 or may be made payable solely out of certain revenues and receipts as may be designated in the proceedings under which the issuance of the bonds and notes are authorized. All bonds and notes or liabilities occurring thereunder shall be satisfied exclusively from the assets or credit of CFD No. 2011-1, and no creditor or other person shall have any recourse to the assets, credit, or services of the City thereby, unless the City shall expressly, in writing, guarantee such bonds or notes.

Section 7. No Waiver. The formation of CFD No. 2011-1, as authorized herein, is not intended, and shall not be construed, as a waiver of any right or authority of the City to require compliance by CFD No. 2011-1 with the City’s regulatory and land use permitting requirements and the City specifically reserves any such statutory and police power authority.

Section 8. Special Benefit – No Warranty. The City does not, by its approval of formation of CFD No. 2011-1, represent or warrant that property within the district boundaries will receive “benefit” or “special benefit” from improvement projects identified in the petition

for purposes of the determination of benefit or special benefit required to impose special assessments on property located inside the district. Such determination is solely within the power and authority of the Board of Supervisors of CFD No. 2011-1 acting on behalf of CFD No 2011-1.

Section 9. ~~Preliminary Assessment Roll.~~ The City does not, by its approval of formation of CFD No. 2011-1, ~~intend, represent or warrant that such formation approval and formation shall, nor should it be or will be construed to, constitute approval of the computation of the preliminary assessments presented in the Petition, approval of the preliminary assessment roll, or imposition a preliminary assessment upon property within the CFD boundaries.~~ It is the City's sole and singular intent that this resolution shall authorize the formation of the CFD in conformance with the requirements of Chapter 35.145 RCW, and that the CFD, by and through its Board of Supervisors, ~~shall be granted such~~ have and retain the sole power and authority ~~granted under Chapter 36.145 RCW necessary to determine the lawful means and methods for computing and imposing assessments, determining the special assessment roll, conducting hearings and hearing objections thereto, approving, correcting, revising raising, lowering, changing or modifying the assessment roll or any part therefore, and imposing special assessments upon property within the boundaries of the CFD.~~

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Section 10. Composition of Board of Supervisors. The City Council shall within sixty (60) days of the effective date of this resolution, meet to nominate and appoint members to the Board of Supervisors of CFD No. 2011-1 (the "Board"). The composition of the Board, its size and numbers, and the term and qualifications for member positions shall conform to the requirements of chapter 36.145 RCW. All appointments shall be confirmed by a vote of a majority of the City Council.

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The Board shall have five (5) members and cannot take action until each of the five Board members is duly appointed. Each of the five members must be natural persons. Except as provided below, three (3) of the members shall be appointed from among the members of the City Council (hereafter referred to as "Council Positions") and two (2) of the members shall be appointed from among the petitioner members or nominees identified in the petition (hereinafter "Petitioner Positions"). The City may, in the alternative, appoint up to two qualified professionals with expertise in "municipal finance" in lieu of appointments from among the members of the City Council.

The term of each supervisor position shall be three (3) years. Initial terms are limited to one (1) and two (2) year appointments respectively. Thus, for example, two Council Positions and one Petitioner Position will have a one-year initial term and one Council Position and one Petitioner Position will have a two-year initial term.

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All vacancies in a Council Position shall be filled by appointment of a member of the City Council not already serving on the Board or by appointment of a qualified professional. Vacancies in petitioner positions shall be filled by appointment from eligible persons listed in the Petition or from successor owners of property located within the boundaries of the approved district.

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Supervisors shall serve without compensation, but may be reimbursed for their expenses as provided in Chapter 36.145 RCW.

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A supervisor shall serve for the term designated and until his/her successor shall have been appointed and qualified; provided that, a Council Position filled by a person who is a member of the City Council shall become vacant at such time as the person filling that Council Position is no longer a member of the City Council. Any supervisor may be removed from his or her position by a majority vote of the City Council upon a finding of good cause. Upon removal of a person from a supervisor position, such person shall have no power of office.

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Section 1411. Organization. Upon appointment of Board members, the City Clerk shall cause notice of the first organizational meeting of the Board of Supervisors to be posted and published in the manner required by law, to be held in the Black Diamond City Council Chambers on the date of the next regular meeting of the City Council following final appointment of the Board members. ~~applicant(s), the person or persons appointed by the City Council to constitute the Board of Supervisors shall call an organizational meeting of the persons appointed as Board members within 30 days, giving at least 10 days' advance notice to each, unless waived in writing. At such meeting, the Board shall organize itself, nominate and may shall appoint a chair, consider approval of a resolution authorizing an agreement to contract for support services to facilitate the management and administration of the CFD, consider approval of a motion to authorize the Chair to negotiate a cost reimbursement agreement with Petitioner to reimburse the CFD for the costs associated with the management and administration services contract, approve a schedule and location for regular meetings of the Board of Supervisors, and undertake any further actions as determined by the Board. select the temporary place of business, and assist in organizing the constituency. The Board may adopt by-laws and, rules and regulations that are consistent with this resolution, the Petition and chapter 36.145 RCW. In the absence of adoption of rules and procedures for the conduct of meetings of the Board of Supervisors, the Board meetings may be conducted in accordance with the most recent edition of~~ *Roberts Rules of Order*.

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The Chair, once appointed, shall preside over all meetings of the Board and shall be responsible for administration of all contracts of the Board and oversee the day to day operations of the CFD, under the direction of and in accordance with the policies and procedures of the Board of Supervisors. The Chair shall not be authorized to enter into or execute agreements, or take other action, on behalf of the CFD without prior approval of a majority of the Board of Supervisors by resolution or motion undertaken during an open public meeting.

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Section 1412. Quorum. Any resolution or motion authorizing or approving an action may only be passed by a vote representing a majority of the members of the Board of Supervisors.

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Section 13. Deposit of public funds. All moneys belonging to or collected for the use of the CFD coming into the hands of any officer or supervisor thereof shall immediately be deposited with the treasurer or other legal depository to the credit of the CFD for the benefit of the funds to which they belong.

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Section 14. Private use of public funds prohibited. The use of the funds of the CFD for any purpose not authorized by law by any officer or supervisor having the possession or control thereof is prohibited.

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Section 15. Establishment and Maintenance of Records. The CFD shall establish and maintain records in accordance with applicable law, with respect to all matters connected with any projects or activities financed from funds derived directly or indirectly from special assessments levied by the CFD or from bonds issued by the CFD. Except as otherwise provided by state or federal law, the CFD shall retain such records for a period of three years after completion of the project or activity funded.

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Section 16. Reports and Information. The CFD, at such times and in such forms as may be required by the City, state law or by the State Auditor, shall furnish the City or such public agencies, such statements, records, reports, data, and information as may be requested pertaining to matters financed from funds derived directly or indirectly from special assessments levied by the CFD or from bonds issued by the CFD.

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Section 167. Dissolution of CFD No 2011-1.

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A. Petition for Dissolution. When all indebtedness of the CFD has been retired and anticipated responsibilities have been satisfied, a majority of the CFD Board of Supervisors, plus one, may voluntarily authorize by resolution the filing of a petition with the City requesting that the Black Diamond City Council dissolve the CFD. The Petition shall be signed and attested to by the Board Chair on behalf of the CFD and shall set forth the factual and legal basis supporting dissolution, which shall include: (1) the name and principal office of the CFD; (2) the debts, obligations and liabilities of the CFD, including any pending litigation or contingent liabilities, and the property and assets available to satisfy the same; (3) the provisions to be made for satisfaction of outstanding liabilities and performance of executory contracts; (4) the property and assets of the CFD that will be remaining and unencumbered at the time of dissolution and the proposed disposition of said property and assets; (5) provision for retention of records of the CFD for the period established by the State Archivist retention schedule; and, (6) a list of persons, with their mailing addresses, to be notified prior to and upon completion of dissolution. This list shall identify by name and mailing address any persons known or reasonably anticipated to be creditors of the District or persons whose rights or property interests may otherwise be affected by dissolution of the CFD.

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The Petition shall include an opinion by general legal counsel for the CFD verifying that the CFD has conducted its reasonable due diligence to ensure that the contents of the petition are true and correct and that the criteria set forth at Subsection D (2) – (4) below of this Section 17 have been satisfied.

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The City shall review the petition and oversee the dissolution to protect the public interest and prevent impairment of obligation, or if so authorized or required by law, may authorize or initiate proceedings in the Superior Court for the appointment and supervision of a receiver for such purposes.

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B. Notice of Public Hearing. Unless otherwise provided by law, within ninety (90) days of receipt of the voluntary petition for dissolution, the City Council shall conduct a hearing at the time and place specified in a notice published at least once, not less than ten days before the hearing, in a newspaper of general circulation within the CFD. This notice shall be in addition to any other notice required by law to be published. The notice shall specify the action to be taken by the City Council pursuant to the petition and the proposed effective date of dissolution. Additional notice of the hearing may be given by mail, by posting within the proposed district, or in any manner the legislative authorities deem necessary to notify affected persons. All hearings shall be public and the City Council authorities shall hear objections from any person affected by the dissolution of the district.

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C. Termination. Unless otherwise provided by law, the existence of the CFD may be terminated by the City, either (1) upon entry of judgment of a court of competent jurisdiction that shall have become final, which judgment annuls the existence of the CFD, or prohibits it from conducting all or a major portion of the activities for which it was formed, or permits recourse by creditors of the CFD, or other persons to the assets, property, or credit of the City on account of any debts, obligations, or liabilities of the CFD, or (2) by resolution of the City Council upon voluntary petition by the CFD, at or after a public hearing held with notice as set forth above, and after affording a reasonable opportunity for persons affected by the dissolution to be heard and present evidence.

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D. Findings. The City Council may not approve termination of the CFD by petition of the CFD, except upon a finding of the following:

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1. The CFD has requested the same by resolution in accordance with the requirements herein;

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2. The CFD has discontinued or completed its projects and activities for which it was formed;

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3. Any and all obligations, bonds, notes, or other contracts of indebtedness of the CFD have been fully satisfied such that such bonds and contracts will not be impaired; and

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4. That there is no pending litigation and that there are no pending claims or known contingent liabilities that would materially impaired by dissolution of the CFD.

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Upon satisfactory completion of dissolution proceedings, the City Clerk shall give notice thereof to the Secretary of State, and to other persons designated by the CFD in its petition.

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E. Disposition of Property and Assets. Upon termination of the existence of the CFD, all of the rights, assets, and property of the CFD shall pass to and be distributed as provided in the CFD petition and otherwise as provided below. Subject thereto, all of the rights, assets and property of the CFD shall be tendered to the entity first listed below, and if not applicable or not accepted, to the next listed entity in succession;

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1. To the City;

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2. To some other local municipal corporation that performs similar activities or functions for which the assets were acquired or devoted, or which covenants to use the same in a manner to fulfill the purposes of the Federal or Public Programs;

3. To the State of Washington for use in or application upon projects and activities or functions for which the assets were acquired or are devoted, or for accomplishment of purposes of the program involved; or

4. To a corporate fiduciary or other trustee, in trust for or use under the direction of any of the aforesaid entities for the purposes, projects and activities for which the assets were acquired or devoted;

All rights, property, and assets of the CFD upon transfer shall be vested in the entity receiving and accepting the same, together with any appurtenant obligations and liabilities.

Section 18. Open Public Meetings Act. All meetings of the Board of Supervisors shall be subject to the open public meetings act codified at chapter 42.30 RCW, as now or hereafter amended.

Section 1219. Public Records. All records of CFD No. 2011-1 shall be subject to the public records act codified at RCW 42.56 RCW, as now or hereafter amended.

Section 20. Competitive Bidding. All public works and procurement contracts shall be subject to the competitive bidding, including without limitation bonding and retainage requirements, and prevailing wage requirements applicable to public corporations under applicable state and federal laws.

Section 21. Severability. Should any section, paragraph, sentence, clause or phrase of this resolution, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this resolution be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances unless the object and purpose of this resolution of materially impaired or such pre-emption, decision or declaration permits recourse against the City contrary to the provisions of Section 6 of this resolution.

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**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A SPECIAL MEETING THEREOF, THIS ____ DAY OF
_____, 20____.**

CITY OF BLACK DIAMOND:

Rebecca Olness, Mayor

Attest:

Brenda L. Martinez, City Clerk

Filed with the City Clerk:
Passed by the City Council:
Resolution No.:
Date Posted:

EXHIBIT A

(Notice of Public Hearing)

EXHIBIT B

(Copy of Formation Petition)

Brenda Martinez

Subject: FW: Black Diamond - Comments regarding CFD
Attachments: HYCo Comments 111221.doc

From: cbacha@comcast.net [<mailto:cbacha@comcast.net>]
Sent: Wednesday, December 21, 2011 3:59 PM
To: Andy Williamson; Brenda Martinez; Rebecca Olness
Subject: Black Diamond - Comments regarding CFD -

Please find attached hereto, the comments of Randy Young in response to issues raised during the council meeting and hearing. Please feel free to forward to the City Council. I have also been working on preparing my responsive comments for consideration by the City Council; however, I will not be able to provide those comments today beyond the following

In my view, the majority of the issues raised pertain to, (a) the veracity of the special benefits analysis, and (b) the management and operation of the CFD. With regard to the later, it appears to me that the CFD will not be successful unless we plan now for the means and methods for providing for the administration of the CFD. This can be accomplished only with the assistance of a third party. This can be accomplished either by the CFD contracting for these services with the City, with the Petitioner or with a 3rd party. As a practical matter, it likely makes the most sense for the City to enter into an interlocal agreement with the CFD to provide these services. Given the short window of time for the CFD to approve the assessment roll, there is not sufficient time to search for and contract with a 3rd party to perform those services. It is also more efficient to use city resources because of the intimate knowledge the City staff have with the project and because of the availability of staff and resources. Further, it seems unlikely that constituents would accept contracting with the petitioner to fill that role. Toward that end, I have begun preparing an Interlocal Agreement for consideration by the City Council and the Board of Supervisors in the event CFD formation is approved. I have also contacted petitioner's legal counsel and she is preparing a draft cost reimbursement for approval by the CFD to provide for petitioner's reimbursement of those service costs back to the City through the CFD.

Relative to the first category of issues, in my view the veracity of the special assessment analysis is an issue that should be addressed by the CFD Board of Supervisors. However, because the statute is unclear with regard to the effect of formation of the CFD, it is possible that formation would constitute approval of the preliminary assessment roll. The legislative scheme provides that the City Council's role is to make the three findings and form the district. The statute does not provide that the Council has a role in making the preliminary estimates or the assessment roll but does require that the petition include a preliminary assessment. I will be making revisions to the resolution to make clear that the action of the Council to approve formation of the CFD shall not operate to approve the preliminary assessment roll. This action will be taken by the CFD. The CFD can and should hire attorneys with knowledge and experience in municipal finance to give the CFD advice regarding the steps to be taken to make the preliminary assessment and comply with the time line set forth in Ch. 36.145 RCW.

I hope to have the revised resolution and draft interlocal agreement available for your review tomorrow.

Chris Bacha
Kenyon Disend, PLLC
11 Front Street South

Issaquah, WA 98027-3820
(425) 392-7090
FAX (425) 392-7071

From: "Randy Young" <ryounghyco@aol.com>
To: "Chris Bacha" <cbacha@comcast.net>
Sent: Wednesday, December 21, 2011 3:01:31 PM
Subject: Randy's comments on CFD Dec. 15 hearing topics

Chris--

Here are my comments. Let me know if you have any comments or questions so I can prepare the final version as soon as possible.

Randy Young
Henderson, Young & Company
8060 - 165th Ave., NE, Suite 220
Redmond, WA 98052
(425) 869-1786
Fax: (425) 869-5669



MEMORANDUM

To: Black Diamond City Council

From: Megan Nelson, Director of Legal Affairs, YarrowBay

cc: John Hempelmann, Legal Counsel for YarrowBay

Re: YarrowBay's Response to Questions Regarding Black Diamond CFD No. 2011-1

Date: December 19, 2011

I. INTRODUCTION.

This Response presents answers to certain questions raised by Councilmember Goodwin and Ms. Cindy Proctor during the December 15th Public Hearing on YarrowBay's petition to form Black Diamond Community Facilities District (CFD) No. 2011-1. While good questions, it is important to note that a majority of the questions will, per the Ch. 36.145 RCW, be dealt with by the Board of Supervisors of the proposed Black Diamond CFD No. 2011-1 during its determination of preliminary and final assessment rolls rather than during the formation. Moreover, and most importantly, the questions presented are not generally related to the three statutory criteria for CFD formation: (1) the formation of the district will be in the best interest of the City; (2) formation of the district is consistent with the requirements of Washington's Growth Management Act, Ch. 36.70A RCW (GMA); and (3) the petitioners (i.e., YarrowBay) will benefit from the proposed district.

II. COUNCILMEMBER GOODWIN'S CFD QUESTIONS

During the Black Diamond CFD No. 2011-1 public hearing on December 15, 2011, Councilmember Goodwin asked several good questions regarding the formation and operation of the proposed CFD. The various questions asked by Councilmember Goodwin are addressed below.

- I. *Formation Costs -What is the definition of "formation costs" to be paid by petitioners? What expense categories are included and which are excluded? For example:*
 - a. *Legal expenses for incorporating the district*
 - b. *Experts/consultants to certify that the bond amount, property valuations, project cost allocations to each benefiting parcel, etc.*
 - c. *Bond Counsel*
 - d. *Bond Issuance costs*
 - e. *Insurance costs*
 - f. *Ongoing expense for legal counsel once the District has been incorporated*
 - g. *District staff support such as accounting/financial reporting, in house experts, project management, etc.*
 - h. *Administrative costs related to District Board operations, such as space, public notice*

postings, mail, clerical services, telecommunications/internet service, etc.

Formation costs include all costs incurred by the City of Black Diamond in reviewing YarrowBay's CFD Petition up until the point of CFD District formation. As such, formation costs include subsection (a) above "Legal expenses for incorporating the district." YarrowBay has submitted a cost reimbursement agreement to the City, as well as Attachment 3 to the CFD Petition entitled "Obligation", which formalizes its agreement to pay the costs of CFD formation.

Subsections (b) through (h) above, on the other hand, are costs that the CFD Board of Supervisors will incur after the CFD District's formation. Based on their years of experience assisting with bond issuances, David Taussig & Associates (DTA) budgeted \$1,044,405, 5% of the bond yield, within the Special Benefit Apportionment Analysis dated November 28, 2011 (the "DTA Analysis") for costs related to bond issuance. After CFD District formation, YarrowBay has also agreed to enter into an agreement with the Board of Supervisors to cover indirect costs until the Board collects special assessments and issues bonds and generates revenues. At such time, the Board will then reimburse YarrowBay for costs related to bond issuance up to the budgeted amount. If reasonable bond issuance costs exceed the estimated 5%, YarrowBay's agreement with the CFD Board of Supervisors will also include provisions for YarrowBay to cover such excess costs.

2. *Operating Costs - If any of the above costs are not considered to be Formation Costs, how does the District cover its expenses prior to issuance of bonds? How does the district cover expenses after the bonds are issued?*

See YarrowBay's response to Councilmember Goodwin's Question #1 above.

3. *What happens if for whatever reason bonds are never issued and the District is dissolved - reference dissolution of Pierce County Levee District.*

- a. *How do costs incurred to date get paid?*

See YarrowBay's response to Councilmember Goodwin's Question #1 above.

YarrowBay has agreed to pay, and memorialized such agreement in both a proposed cost reimbursement agreement delivered to the City as well as its Attachment 3 to the CFD Petition entitled "Obligation," costs associated with the formation of Black Diamond CFD No. 2011-1. Whether or not bonds are issued does not change this obligation.

If the CFD District is formed, costs related to the preparation for bond issuance are incurred, and bonds are never issued, YarrowBay would be obligated to pay for such costs per the terms of the agreement, referenced in response to Question #1 above, to be entered into between the CFD's Board of Supervisors and YarrowBay.

4. *What happens if the District gets sued by petitioner or some other party?*
 - a. *How does the District pay legal expenses?*

b. What if the District loses the law suit? How does financial liability get satisfied?

In the unlikely event the CFD District gets sued, the DTA Analysis includes legal costs within its estimated budget for Indirect Costs – \$1,044,405 or 5% of the bond yield – for costs related to bond issuance. Again, if such costs exceed their budgeted amount, YarrowBay would be obligated to pay for such costs per the terms of the agreement, referenced in response to Question #1 above, to be entered into between the CFD's Board of Supervisors and YarrowBay.

It is even more unlikely, in the remote chance the CFD District gets sued, that a suing party would seek damages. Instead, it is more likely that a suing party would ask a reviewing court to order performance by the CFD District, i.e., the issuance of bonds or the construction of a certain Project, if the CFD Board of Supervisors failed to carry out the purposes for which it was formed. Costs for such a lawsuit would be paid pursuant to the process outlined in the preceding paragraph.

5. What happens if bonds are issued by the District and one or more property owners default on their obligation -e.g., Yarrow Bay or one of the developers that Yarrow Bay sells property to or individual homeowners/commercial property owners fail to make payment.

a. Does liability then transfer to the property owners that are meeting their financial obligations to make up for the default of others -recognizing that there will be some reserves (4% of bond value) established at time of bond sale?

No. The bondholders want to be assured that they will receive payment if any tax payments are late or the foreclosure process is undertaken. Thus, a reserve fund that equals approximately one year of debt service payments (in the case of this CFD, 8% of the bond yield or \$1,671,048) is taken from bond proceeds and put into a special reserve account and controlled by the bond administrator should circumstances arise where the funds will be needed.

The reserve fund is drawn upon in order to assure that bondholders receive their payments in a timely manner. If there is a revenue shortfall, which in most cases is due to delinquent property tax payments, the reserve fund is automatically drawn down to assure full payment to the bondholders, normally on March 1st and September 1st of each year. The reserve fund is then automatically replenished as late payments come in or foreclosures proceed to auction.

Pursuant to RCW 36.145.150, assessments resulting from a CFD are a lien on the property. As a lien, the CFD Board of Supervisors can foreclose on the specific parcel of property that has defaulted on its assessment obligation. The liability of one property owner within a CFD District does not transfer to the other property owners within the District because the assessments are specific to a given parcel or legal lot.

6. What personal liabilities do appointed CFD Board of Supervisors have?

a. Will there be personal liability insurance and indemnification and if so, how will it be paid by the District?

The CFD Board of Supervisors members have the same personal liabilities as any other appointed member of a public agency, i.e., a Black Diamond City Councilmember or Planning Commission member.

See YarrowBay's response to Councilmember Goodwin's Question #1 above. The CFD Board of Supervisors can decide whether to purchase insurance and such costs are anticipated to be included in the \$1,044,405 or 5% of the bond yield included within the DTA Analysis.

- b. What happens to District Board Supervisors if the insurance company refuses to cover them?*

In the unlikely event an insurance company refuses to cover the CFD's Board of Supervisors, it can either look to other insurance providers and/or if an insurance company's refusal is based on certain Board members, such members may want to consider recusing themselves from the Board.

- 7. CFD's are responsible to design, obtain permits, construct, etc.*

- a. Who owns the improvements -for example, parks, water, sewer etc.*

All ten Projects within the proposed CFD will be owned by the City of Black Diamond following completion so long as they are consistent with the City's Engineering Design and Construction Standards.

- b. Who is responsible to operate/maintain the improvement so that the improvements maintain their value?*

As City-owned improvements, the City will be responsible for operating/maintaining the CFD's Projects following City acceptance of the improvements pursuant to the process and criteria set forth in the Black Diamond Engineering Design and Construction Standards. These City-owned improvements are subject to the City's maintenance bond requirements, the specific terms of The Villages MPD Development Agreement dated December 12, 2011, and the terms of the MPD Funding Agreement between the City, BD Village Partners, LP, and BD Lawson Partners, LP dated December 12, 2011.

- c. What happens if a homeowners association, for example, is deemed responsible for maintenance but fails to do so that the special value of the improvement degrades? Where does liability rest?*

If a MPD homeowners' association is deemed responsible for maintaining any of the City-owned CFD Projects, then the City has the right pursuant to the terms of The Villages MPD Development Agreement dated December 12, 2011, to step in and perform the maintenance and bill back the cost of the maintenance to the responsible homeowners.

- 8. What are the eminent domain implications of a CFD in Black Diamond? Will any of these projects require the exercise of eminent domain?*

No. There are no "eminent domain implications" of the proposed CFD. The Projects proposed within the CFD Petition for Black Diamond CFD No. 2011-1 are the same projects required by the terms of the

MPD Permit Approvals (Black Diamond Ords. Nos. 10-946 and 10-947) and The Villages and Lawson Hills Development Agreements (Black Diamond Ords. Nos. 11-970 and 11-971).

Moreover, YarrowBay does not anticipate the use of eminent domain for any of the ten CFD Projects proposed for Black Diamond CFD No. 2011-1. Seven out of the ten proposed CFD Projects (Projects 4-10) are located on property owned by the Petitioner, BD Village Partners, LP. Projects 2 and 3 are located entirely within a combination of existing City right-of-way and property owned by the Petitioner. As such, no eminent domain is required for these nine projects.

As designed, Project 1 – the SR-169/Roberts Drive/Black Diamond-Ravensdale Road intersection improvements – requires some construction easements outside the existing City right-of-way for grading. There is no need for the fee simple acquisition of property to complete these intersection improvements. YarrowBay has begun negotiations with affected property owners and anticipates reaching mutually acceptable agreements without the use of eminent domain. In the unlikely event such agreements cannot be reached and Project 1 cannot be reasonably redesigned in such a way to avoid impacts outside the existing City right-of-way, the CFD Board of Supervisors may then elect to approach the City of Black Diamond regarding the possible use of eminent domain subject to all state law requirements. This process is in no way different than if YarrowBay were required, by the MPD Permit Approvals (Black Diamond Ords. Nos. 10-946 and 10-947) and The Villages and Lawson Hills Development Agreements (Black Diamond Ords. Nos. 11-970 and 11-971), to complete this Project 1.

9. *Assuming that responsibility for building each of the 10 projects transfers from the City to the CFD, how does the City enforce conditions of the Development Agreement?*

a. *Does the City need a separate agreement with the CFD?*

No. The City is not responsible for funding or building¹ the ten Projects proposed within Black Diamond CFD No. 2011-1. As such, there is no transfer of responsibility from the City to the proposed CFD and there is no need for a separate agreement between the City and the CFD.

Instead, the responsibility for funding and building the ten Projects proposed within Black Diamond CFD No. 2011-1 is that of BD Village Partners, LP and BD Lawson Partners, LP – the Master Developers of The Villages and Lawson Hills MPDs – pursuant to the terms of The Villages and Lawson Hills Development Agreements dated December 12, 2011. The proposed CFD will only fund 62.6% of the ten Projects. The remaining 37.4% of the Projects' construction cost must be funded by BD Village Partners, LP and BD Lawson Partners, LP under the terms of the Development Agreements. The CFD Board of Supervisors will likely enter into a contract with these two parties to ensure that 100% of the Projects' costs are covered before executing construction contracts. As a condition of funding the remaining 37.4% of the CFD Projects' costs, BD Village Partners, LP and BD Lawson Partners, LP will require that such projects are designed and constructed to meet the terms of the Development Agreements. Moreover, the terms and obligations of the Development Agreements run with the land. As such, the nine CFD Projects occurring on land within The Villages MPD are subject to the terms and conditions of the Development

¹ See YarrowBay's Response to Cindy Proctor's Question N, regarding Project #2 construction responsibility.

Agreements whether or not YarrowBay is the party seeking a permit or the CFD Board of Supervisors is the permittee. Finally, formation of the CFD in no way displaces the City's permitting authority. The City retains the ability to review the CFD Project's compliance with the conditions of the Development Agreements (Black Diamond Ords. Nos. 11-970 and 11-971).

10. *SR169 and Roberts Drive improvements (project #1) would seem to require permitting through WASHDOT. Petitioner has stated that the primary benefit to the community for CFDs is that this and other projects can be accelerated, compared to when these improvements are required to be made by Yarrow Bay consistent with the Development Agreement. Do we even know that accelerating this project is possible working with WASHDOT? What assurance do we have as a City that a CFD will in fact result in an accelerated schedule compared the requirements already established in the Development Agreement?*

YarrowBay has already expended consulting fees to advance the interim design of CFD Project #1 intersection improvements and to commence WSDOT review in order to fix a pre-existing problem on SR-169 within the City of Black Diamond. In fact, after five meetings with WSDOT and several plan submittals, WSDOT is close to giving approval for the channelization plan for CFD Project #1. *See also* YarrowBay's response to Councilmember Goodwin's Question #19(b) below.

Formation of the CFD now guarantees that construction permits from WSDOT will be pursued earlier by the CFD Board of Supervisors than if pursued independently by YarrowBay as a condition of its MPD development. By starting the permitting process earlier, there is greater likelihood that the improvement will be approved by WSDOT earlier and that construction can therefore start.

If Project 1 is pursued independently by YarrowBay, it will likely not formerly apply for permits from WSDOT until after receipt of preliminary plat approval for its Villages MPD – Phase 1A subdivision. Thereafter, The Villages MPD Development Agreement dated December 12, 2011 in Exhibit F, on pages 4-5, requires that YarrowBay apply for permits from WSDOT prior to the intersection falling below the applicable level of service (LOS). Transpo Group's traffic impact analysis study dated February 2011 submitted with YarrowBay's Villages MPD-Phase 1A preliminary plat application concludes that the SR-169/Black Diamond-Ravensdale Road LOS will drop below the applicable LOS before the completion of the first year of MPD development (327 ERUs) and that the SR-169/Roberts Drive intersection will drop below the applicable LOS during the second year of MPD development (between 327 ERUs and 726 ERUs). As such, it is reasonable to conclude that YarrowBay is required to apply for permits from WSDOT for the intersections within the CFD's Project 1 later than if applied for by the CFD's Board of Supervisors.

11. *Sanitary Sewer Storage Facility (project #8) and Sanitary Sewer lift Station (project #7) would appear to require design approval by King County Metro and construction to their specifications. In the past, the City of Black Diamond City Council has approved hiring an engineering consultant to design a sewer storage facility in a location that the county did not agree with and has not approved. Perhaps these are different facilities, but do we know that the county will approve these facility designs and the locations shown on the CFD project map? If not, what are the potential cost implications and how would this impact the issuance of bonds by the CFD?*

CFD Project #7 does not require King County Metro approval because it is a City of Black Diamond lift station. CFD Project #8 may require King County Metro approval; however, there is sufficient time to design and permit the project as a King County Metro facility. Nevertheless, if timing does not work out with King County Metro, CFD Project #8 can also be built as an interim City facility that limits flow rates being discharged into the City's sewer main to match available capacity until such time as a permanent solution is determined. This alternative would not require King County Metro approval and, in Triad's expert opinion, would likely cost less to construct than the estimated construction costs for CFD Project #8 included within DTA's Analysis.

12. *SR169 and Roberts Drive improvements (project #1) would also appear to benefit the planned Lawson Hills development and parts of the Villages development that are outside of the defined CFD boundaries. What is the rationale for excluding these sources of traffic count from the special benefit analysis?*

Only ERUs within Phase 1A of The Villages MPD will benefit from CFD Project #1 because the DTA Analysis is based on the assumption that CFD Project #1 is an interim improvement that will be replaced with the ultimate improvements (i.e., roundabouts) prior to any development in Lawson Hills MPD or the second or third phases of The Villages MPD.

In addition, in response to Councilmember Goodwin's Questions #12-15, please see Henderson, Young & Company's Final Report to the City of Black Diamond dated December 12, 2011 – 5:50 p.m., in which the City's fiscal consultant concludes that "We believe that the City of Black Diamond can rely on the November 28, 2011 Taussig Study and DTA's December 7, 2011 "Response to Questions" when the City makes a decision regarding the petition to create CFD No. 2011-1."

It is also important to note, in reference to Councilmember Goodwin's Questions #12-15, that just because a property or parcel is benefitted by a CFD Project, does not mean that it needs to be burdened by assessments.

13. *Sanitary Sewer Storage Facility (project #8) and Sanitary Sewer Lift Station (project #7) would appear to benefit significant properties within the Villages development that are outside of the defined CFD boundaries. What is the rationale for including such a small percentage of these sources of sewage from the special benefit analysis? If included, would this not substantially reduce the special benefit attributed to properties located within the CFD?*

CFD Projects #7 and #8 are proposed to be sized for ERUs within the CFD District plus a small additional number of ERUs north of Auburn-Black Diamond Road and westerly of Lake Sawyer Road. As such, these improvements do not serve "significant" properties outside of the CFD boundaries and only serve property owners within The Villages MPD. Since only MPD ERUs are served, no General Benefit was assigned to these CFD Projects and, instead, 100% of the benefit conferred was considered Special Benefit in the DTA Analysis. Table 12 from the DTA Analysis (included below) summarizes the proportion of CFD District EDUs versus the EDUs in the MPD but outside the CFD District served by Projects #7 and 8. The District is allocated 74.3% of the Special Benefit to parcels within the CFD and 25.7% of the Special Benefit to MPD units outside the District.

| Table No. 12 Equivalent Dwelling Units & Assessment by Phase Project #7 & Project #8 CFD No. 2011-1 | | | |
|--|----------------|------------------------|------------------|
| Phase 1 - Land Use | Dwelling Units | Equivalent Unit Factor | Equivalent Units |
| (1) Single-Family (DU) | 1,318 | 1.00 | 1,318 |
| (2) Multi-Family (DU) | 334 | 67% | 223 |
| (3) Commercial (Sq.Ft.) | 186,400 | 0.080% | 149 |
| (3) School (Sq.Ft.) | 450 | 10% | 45 |
| Total | 1,652 | 1.05 | 1,735 |
| Phase 2 - Land Use | Dwelling Units | Equivalent Unit Factor | Equivalent Units |
| (1) Single-Family (DU) | 168 | 1.00 | 168 |
| (2) Multi-Family (DU) | 166 | 67% | 111 |
| (3) Commercial (Sq.Ft.) | 400,000 | 0.080% | 320 |
| Total | 334 | 1.79 | 599 |
| Phase 3 - Land Use | Dwelling Units | Equivalent Unit Factor | Equivalent Units |
| (1) Single-Family (DU) | - | 0.00 | - |
| (2) Multi-Family (DU) | 0 | 80% | - |
| Total | - | 0.00 | - |
| | | Benefit Allocation | Equivalent Units |
| PHASE 1 | | 74.3% | 1,735 |
| PHASE 2 | | 25.7% | 599 |
| PHASE 3 | | 0.0% | - |
| GRAND TOTAL | | 100.0% | 2,333 |
| [1] EDU factor set at Single-Family = 1.00, Multi-Family = 0.80 EDU due to reduction in use of improvement, and Commercial = 5,032 square feet per EDU to reflect use of improvement by small business within MPO. | | | |
| [2] See "Phase 1 Parcel Summary" for Dwelling Unit Count, as well as CFD Site Plan Assessment Diagram (included). | | | |
| [3] Calculations may vary slightly due to rounding. | | | |

14. *Stormwater Detention Pond (project 6) would not appear to benefit property owners in Stormwater Management Zone 1 (Note: this should read Stormwater Management Zone 2) where all stormwater flows appear to drain into the Rock Creek Basin. Why are these parcels included in the benefit calculation? This same question should be asked for properties located in Stormwater Management Zones 1A and 1B. See attached exhibit.*

CFD Project #6 – the stormwater detention pond – does in fact benefit property owners in Stormwater Management Zone 2 even though portions of their stormwater will flow and drain into the Rock Creek Basin. While CFD Project #6 benefits property owners within Stormwater Management Zones 1A and 1B because their stormwater drains into this retention pond, it also benefit properties within Stormwater Zone 2 because these properties benefit from the park and roadway improvements (including, but not limited to, CFD Projects #4, #5, #9, and #10) that also drain into CFD Project #6. As YarrowBay's research regarding how best to implement its no net phosphorous initiative relative to Lake Sawyer, as set forth in The Villages and Lawson Hills Development Agreements dated December 12, 2011, has progressed, it now anticipates that a maximum amount of roadway drainage will be directed to Project #6 from Stormwater Management Zone 2 in order to minimize the potential phosphorous draining to Lake Sawyer. As such, the DTA Analysis regarding Special Benefit allocation for CFD Project #6 is an appropriate allocation.

15. *Roberts Drive -750/850 Zone Water Main Extension (project 2) would appear to benefit properties within the Villages outside of the planned CFD boundaries. Why is 100% of the project benefit allocated to those parcels located within the CFD? See attached exhibit.*

While properties outside the proposed CFD District will indirectly benefit from the CFD Project #2 water main extension, such properties require future extensions of the water mains as well as other additional related infrastructure in order to be served with water service. In addition, the timing of this future development outside the proposed CFD District is uncertain. There is some potential that years may transpire before development outside of the CFD District connects to the subject main line extension making any excess capacity less valuable.

16. *Table 4 on Page 9 of the Taussig report appears to identify the total cost of operating the district for a 28 year period to be \$187,627. This would average \$6,701 per year. Is this at all realistic? These costs appear to be only for collection services from King County.*

- a. *What happens if expenses turn out to be significantly higher than this?*
- b. *What happens if the CFD incurs unplanned expenses due to a lawsuit or something else unforeseen. Where does the money come from to cover these costs?*

See YarrowBay's response to Councilmember Goodwin's Question #1 above.

In fact, the DTA Analysis estimates the costs of bond issuance (including operation of the CFD District) to be approximately 5% of the bond yield or \$1,044,405. For further detail regarding indirect costs, please see Figure 3 from DTA's response to the Henderson Evaluation dated December 12, 2011 set forth below.

The answer to subsection (b) of Councilmember Goodwin's Question #26 is answered for three different periods: (1) planned and unplanned expenses during the period of formation; (2) planned and unplanned expenses following CFD District formation but prior to collection of assessments and issuance of bonds; and (3) planned and unplanned expenses following the CFD District's collection of assessments and issuance of bonds. During the period of formation, the Petitioners (BD Village Partners, LP and Yarrow Bay Development LLC) are responsible for all costs, planned and unplanned. An appeal of the City's resolution forming the CFD District would be a cost of formation and would be the responsibility of the Petitioners. Following formation of the CFD District but prior to the collection of assessments and issuance of bonds, the expenses of the CFD District would be funded by the Petitioners' loans or grants to the District. See YarrowBay's response to Councilmember Goodwin's Question #1 above. The State's CFD statute, Ch. 36.145 RCW, authorizes the CFD Board of Supervisors to borrow and accept gifts. Once assessments are collected, assessment revenue can be used for planned expenses and unplanned expenses. Finally, State law allows CFD assessments to be increased if 100% of the property owners agree.

Figure 3 – Indirect Cost Detail

| | | % | |
|---------------|-----------|------------------|--|
| | | TOTAL | ASSESSMENT DESCRIPTION |
| \$ 16,522,850 | | | Bond Yield |
| | 1,044,405 | 5.0% | Cost of bond issuance |
| | 1,671,048 | 8.0% | Reserve fund equal to one year of debt service |
| | 1,462,167 | 7.0% | Capitalized interest |
| \$ 4,177,619 | | 20.0% | Allowance for Indirect Cost |
| \$ 187,627 | | | District Admin & County Collection Fee |
| \$20,888,097 | | TOTAL ASSESSMENT | |

17. *The source document for the calculation of single family detached dwelling units (SFD) was the FEIS submitted in December 2009 (see page 16 of Taussig report).*

- a. *If memory serves, the MPD ordinance and final MPD submittal uses some modified assumptions regarding the mix of dwelling units and where they are located. If so, shouldn't these changes also be reflected in the Taussig calculations?*

The DTA Analysis is based on YarrowBay's latest unit mix and locations, which is reflective of the three subdivision applications that Yarrow Bay has already submitted to the City. The exhibit on Page 11 of the DTA Analysis indicates how property boundaries within the CFD District are consistent with the plats and land uses that have been submitted to the City. The FEIS was only used to provide population generation rate assumptions per dwelling unit, not to determine the mix and locations of the dwelling units within the CFD District. Such population generation rates are also the rates used in The Villages and Lawson Hills Development Agreements (Black Diamond Ords. Nos. 11-970 and 11-971).

- b. *Yarrow Bay has significant flexibility to vary the mix of housing types within each development phase depending on market conditions and where each of these housing types are located within the MPD phases. Therefore, since the city has not yet reviewed the Preliminary Plat application and has not yet seen final plat applications, how is it possible to assign SFD values to each parcel until these are known?*

The assessments outlined in the DTA Analysis are based on the Special Benefit received by each parcel according to each parcel's current projected land use(s) as explained in response to subsection (a) above. Decisions on allocation of benefits and both preliminary and final assessment rolls are made by the CFD Board of Supervisors based on current information at the time and the DTA Analysis was prepared for the purpose of starting the Board's process and informing YarrowBay's CFD Petition.

As the current parcels are all large and will need to be subdivided, there is an opportunity for the CFD Board of Supervisors to apportion each large parcel's current assessment between the new smaller parcels as they develop based on the criteria used in the DTA Analysis or the apportionment analysis ultimately relied on by the CFD Board of Supervisors when it calculates its final assessment roll.

- c. *CFD boundaries appear to include more property than is included in Phase 1 of the*

Villages development and more property than is included in the preliminary plat applications (though no one yet knows how these boundaries overlap). This adds even further uncertainty as to the benefit that can be assigned to each parcel. At this still very preliminary level of development planning, how is it possible to assign equitable values to each parcel at this time?

Please see YarrowBay's response to subsections (a) and (b) above. As noted above, the DTA Analysis was prepared to initiate the process and it does not make any decisions about assigning values. Such decisions will be made by the CFD Board of Supervisors at future dates at the times of its preliminary and final assessment roll determinations.

CFD liens are placed on parcels at the time assessments are issued based on the Special Benefit received by the parcel according to its current projected uses. Other than the reapportionment of a lien that occurs when subdividing a large parcel, there is no way to make changes to a parcel's original assessment without going through the reassessment process outlined in the state statutes (i.e., RCW 35.44).

- d. What if Yarrow Bay chooses to significantly change where, how many and what mix of residential densities are included within each parcel-a flexibility they certainly have. Would this not fundamentally change the calculations for assigning special benefit allocation values to benefiting parcels?*

Please see YarrowBay's responses in subsections (b) and (c) above. A CFD is similar to assessment districts implemented elsewhere in Washington as well as in many other states. All assessments are considered fixed liens that are based on the land uses projected to be built on a property at the time assessments are apportioned and any future uses are subject to those same original liens as explained above.

- 18. The same set of questions as listed in 16 above also applies to non-residential development (see Taussig report page 17). It would appear that the variation in special value allocations to nonresidential parcels could be even greater. For example, the trip count generated by a grocery store is very different from that of an office building, a restaurant or that of a dry goods retail outlet on a square footage basis. Given this level of uncertainty, how is it possible to equitably assess special values across parcels?*

Yes. While it is true that vehicle trip rates for various commercial land uses are uniquely different, for purposes of the DTA Analysis, it is reasonable to estimate retail and office trips based on the trip generation studies of "shopping centers" and "general office buildings," respectively, because: (1) both categories are broad and representative of many possible commercial uses; and (2) the resulting trip generation estimates are based on trip information from many hundreds of studies and thus, statistically more reliable than other more narrowly-defined commercial categories. As such, it is possible to evaluate special values now. In the future, however, as larger parcels are subdivided, the assessments can be reapportioned amongst the smaller parcels based on their unique vehicle trip rates.

- 19. Petitioner identifies 10 projects for funding through the CFD. To my knowledge, none of these projects have been designed to a 30% or even 10% level of engineering, yet cost estimates to the dollar are presented as a basis for approval.*

- a. *With no engineering drawings submitted to City staff even at the conceptual level for these projects, what basis is there to assume that the cost estimates provided are even in the ballpark for what these project costs might realistically be?*

YarrowBay created engineering documents for the CFD Projects at its own expense without knowing if it will be reimbursed. These engineering documents vary from 30% to 95% of final engineering level. The CFD Projects that are at a lower design level are the types of projects where other similar projects have been previously constructed that provide sufficient cost data to adequately estimate their cost. The City of Black Diamond's public works and engineering staff and consultants were consulted on both the CFD Project's design and estimated costs. In Triad's professional estimation, the cost estimates are sufficient for purposes of CFD formation.

- b. *Since WASHDOT and King County Metro must approve projects 1, 7 and 8, and they clearly have provided no input as to project specifications, how can we have even reasonable confidence that these cost estimates are close to what final costs will be?*

YarrowBay expended consulting fees to advance the interim design of CFD Project #1 intersection improvements and to commence WSDOT review. In fact, after five meetings with WSDOT and several plan submittals, WSDOT is close to giving approval for the channelization plan for CFD Project #1. This is the most significant hurdle in the design and permitting process and in turn gives a high level of confidence in the plans for this intersection, which are at a 75% level. As noted in YarrowBay's response to Councilmember Goodwin's Question #11 above, CFD Project #7 does not require King County Metro approval because it is a City of Black Diamond lift station. Project #8 may require King County Metro approval and there is sufficient time to design and permit the project as a Metro facility. Nevertheless, if timing does not work out with King County Metro, CFD Project #8 can also be built as an interim City facility that limits flow rates being discharged into the City's sewer main to match available capacity until such time as a permanent solution is determined. This alternative would not require King County Metro approval and, in Triad's expert opinion, would likely cost less to construct than the estimated construction costs for CFD Project #8 included within DTA's Analysis.

- c. *Petitioner estimates total costs for the SR169/Roberts Drive (project #1) at \$1,758,178. The City of Black Diamond 2012-2017 Capital Improvement Plan includes the Roberts Drive/SR169 roundabout project (T9) with an estimated cost of \$2,230,000. I presume these are the same project, yet City budget estimates are 27% higher than petitioner's estimates. How can this be reconciled? See attached exhibit.*

CFD Project #1 is proposed as an interim intersection improvement and is distinctly different from project T9 in the City's Capital Improvement Plan (CIP) and, thus, the costs should not be expected to be comparable. As an interim improvement, CFD Project #1 allows for the current problems with the intersections to be corrected while allowing YarrowBay time to work out the ultimate improvement plans with WSDOT and the City for this portion of SR-169. It should be noted that the current configuration of these intersections have safety concerns in addition to the level of service issues, which are both alleviated through the interim design of CFD Project #1.

20. *According to petitioner's attorney Mr. Hempelmann, in meeting with City of Black Diamond staff,*

Mayor Olness, Councilmember Hanson, councilmember Goodwin and representatives of Yarrow Bay on Monday November 28, the CFD once formed is "compelled to complete the projects" on the CFD petitioners list.

- a. *Since funding for most of these projects will not be 100% CFD financed, how can the CFD be liable for the performance of others? For example, according to the MPD Conditions of Approval and the Development Agreement, Yarrow Bay is fully responsible for 100% of the funding for each of the 10 projects identified. Yet, the CFD is only expected to fund 44.7% of project 3 with Yarrow Bay responsible for the remainder. What if Yarrow Bay defaults and fails to fund or delays funding of project 3 outside the control of the CFD? What liability does the City of Black Diamond have?*

The City of Black Diamond has no liability. As provided in RCW 36.145.130, and as further confirmed by City Attorney Bacha's presentation to the Black Diamond City Council on December 15th, no bonds issued on behalf of the proposed CFD are obligations of the City.

As noted in YarrowBay's response to Councilmember Goodwin's Question #9 above, the CFD Board of Supervisors will not execute construction contracts without entering into a contract with BD Village Partners, LP and BD Lawson Partners, LP to ensure that 100% of the Projects' costs are covered.

If formed, the Black Diamond CFD No. 2011-1 will only be liable for the obligations it has, i.e., 62.6% of the construction costs for the ten CFD Projects.

- b. *Project #2, Roberts Drive -750/850 Zone Water Main Ext. is budgeted at \$2,261,657 and 100% of the responsibility is that of the CFD. What if, after final design and public bidding, that the sum of engineering costs and low bidder for construction total, for example, \$3,000,000 or more. How does the difference get made up? What is the CFD's liability? What is the City's liability? What if Yarrow Bay won't or can't fund the difference? This same question is applicable to each and every project.*

Pursuant to RCW 36.145.110, the CFD Board of Supervisors may revisit the amount of assessments within 120 days following formation of the CFD District. If during this period, through final design and public bidding, the CFD Board of Supervisors discovers that the cost of construction is greater than anticipated in the DTA Analysis, it may increase the assessment amount by unanimous approval of the Petitioners (i.e., BD Village Partners, LP and Yarrow Bay Development LLC). If the CFD Board of Supervisors discovers that the cost of construction for a CFD Project is greater than anticipated after this 120-day period, YarrowBay, as the party ultimately responsible for construction of such infrastructure improvements per the terms of The Villages and Lawson Hills Development Agreements, is ultimately financially responsible and will likely bear the cost of such overruns pursuant to the agreement referenced in its response to Councilmember Goodwin's Question #9 above.

- c. *What if the final and approved design for any of the identified projects results in total costs that substantially exceed budgeted amounts and Yarrow Bay elects to sue the City and CFD? When queried, Mr. Hempelmann made it very clear in less than veiled terms, that Yarrow Bay has the right to sue the District if it disagrees with CFD policy and*

direction.

Please see YarrowBay's response to subsection (b) above regarding what happens in circumstances where construction costs exceed amounts budgeted in the DTA Analysis.

To clarify, in response to Councilmember Hanson's question regarding what happens in the unlikely event that the CFD Board of Supervisors refuses to do the work it is appointed to do (i.e., design the CFD Projects, let construction constructs, and issue bonds), Mr. Hempelmann responded that a CFD (not the City) could, as a last resort, be sued to enforce performance.

- d. What responsibility does the City of Black Diamond have for completing these projects? What financial liability does the City have to fund and complete these projects?*

None. The City has no responsibility for completing these projects whether or not it elects to form Black Diamond CFD No. 2011-1. Regarding the City's lack of financial liability, please see YarrowBay's response to subsection (a) above.

- e. Attachment 4 to petitioner's submittal is called an "Undertaking Agreement". There are lots of blanks. What are the numbers? What liability does the City have for repayment of any these funds advanced by Yarrow Bay to the City under this proposed agreement?*

Please see Attachment 3 to YarrowBay's Memorandum dated December 12, 2011. The "Undertaking Agreement" has been further refined and revised since Councilmember Goodwin received a preliminary draft on November 28, 2011. The final version of the "Undertaking Agreement" presented to the City Council as part of the December 12th Memorandum contains no blanks.

Moreover, the City has no liability for repayment of any of the funds advanced by YarrowBay under the proposed "Undertaking Agreement." YarrowBay would receive fire mitigation fee credit for its design and construction of the satellite fire station consistent with the terms of The Villages MPD Development Agreement dated December 12, 2011.

- 21. Tax Levy Comparisons & Black Diamond CFD Competiveness - Page 9 of Petitioner's application asserts that even with CFD assessments that tax levy rates in Black Diamond in the CFD will be competitive with that of other communities in our area. Unfortunately, the numbers do not appear to add up and property owners within a CFD will face substantially higher rates than surrounding communities.*

- a. Petitioner's statement on Page 9 section V, Homeowner Impacts appears to falsely state that current Black Diamond property tax levy rates are \$1.51 per \$1,000 of assessed valuation. According to May Miller, City of Black Diamond Director of Finance, current Black Diamond property tax levy rates are \$2.57 per \$1,000 of valuation.*

YarrowBay apologizes for any errors presented in its earlier presentation of tax levy rates. Since obtaining new information, YarrowBay tasked DTA with performing a new rate analysis. Please see Attachment 1 to this Response. We respectfully request that this attachment replace and supersede the information provided in Section V entitled "Homeowner Impacts" of the YarrowBay Memorandum dated December

12, 2011 included within the record created for the December 15th public hearing.

- b. *Adding the CFD assessment as calculated by petitioner, would in fact appear to make new housing in Black Diamond non-competitive with surrounding communities and this excludes the heavy burden soon to come from the need to finance new schools within the Enumclaw school district. Please clarify?*

Please see YarrowBay's response to subsection (a) above as well as Attachment 1 attached hereto. Table 1 from Attachment 1 is included below for the reader's ease of reference.

Table 1

| City | Total Tax per \$1,000 of Assessed Value [1] |
|---|---|
| Black Diamond without CFD No. 2011-1 | 12.52 |
| Maple Valley | 13.01 |
| Covington | 13.13 |
| Enumclaw | 11.49 |
| Issaquah | 11.13 |
| Auburn | 13.92 |
| Kent | 13.23 |
| Black Diamond within CFD No. 2011-1 [2] | 15.30 |

The addition of the assessments from the proposed Black Diamond CFD. No. 2011-1 raises the total tax per \$1,000 of assessed value in Black Diamond approximately \$2.78. YarrowBay, as an experienced residential developer, believes this increase will not result in make housing within the CFD District non-competitive with surrounding communities. New homeowners within the MPDs will pay for the infrastructure improvements, in part, through either CFD assessments or through an increase in home prices. This is the only way to meet the objective of having "growth pay for growth".

22. *If the Black Diamond City Council were to approve formation of a CFD, does this obligate the new CFD Board of Supervisors to fund the specific projects included in petitioner's submittal? Would the CFD Board also be required to accept the benefit calculations included in the submittal for each parcel when the CFD is initially formed? Would the CFD Board be required to accept the project cost calculations submitted by petitioner? What discretion will the CFD Board have to change/delete specific projects or change special benefit allocations to each parcel?*

Per RCW 36.145.110, the CFD Board of Supervisors makes all final decisions on benefit allocations and cost calculations; however, if the assessment roll is revised in any way, it has to be approved by a unanimous vote of the Petitioners.

If the Black Diamond City Council approves formation of proposed Black Diamond CFD No. 2011-1, the CFD's Board of Supervisors will have to fund the specific projects included in YarrowBay's CFD Petition. Per RCW 36.145.060(3) and 36.145.090(2), a resolution approving a petition must conform to the terms and conditions presented in the petition itself and CFD Board's powers are subject to the terms

and conditions of an approved petition. As such, the CFD Board of Supervisors for CFD No. 2011-1 will only have the authority to carry out the terms and conditions of the CFD Petition presented by YarrowBay. CFD Projects included in the CFD Petition cannot be changed or deleted.

23. *What responsibility/liability does the City of Black Diamond have for funding the \$10,181,276 in General Benefits (see page 9 of Taussig report)? If the City is responsible, what liability does the City have to the CFD and bond holders? What if the City doesn't have the funds available?*

None. The City of Black Diamond has no responsibility and/or liability for funding any portion of the CFD Projects, including, but not limited to, the General Benefits totaling \$10,181,276. Pursuant to the terms of The Villages and Lawson Hills MPD Development Agreements dated December 12, 2011 (Black Diamond Ords. Nos. 11-970 and 11-971), YarrowBay is responsible for funding all of infrastructure projects included within Black Diamond CFD No. 2011-1. Thus, YarrowBay will fund the General Benefits cost portions of the CFD Projects per the terms of The Villages and Lawson Hills MPD Development Agreements dated December 12, 2011.

24. *Before approving the formation of a CFD in our community, it would seem prudent that staff have the opportunity to conduct a detailed review of cost projections for each project. I would also appreciate the opportunity to review the detailed estimated costs for each project included within petitioner's submittal.*

If Black Diamond CFD No. 2011-1 is formed by the City Council, the CFD Board of Supervisors can then conduct a detailed review of the cost projections for each CFD Project. Under State law, such a detailed review is part of the CFD Board's purview and is not included within the City's approval criteria for CFD formation as detailed in RCW 36.145.060(1).

25. *Petitioner has indicated that one of the ways in which forming a CFD is in the best interests of the City is that it will allow Yarrow Bay to free up and use other sources of funding for projects such as a fire station that would benefit the city -allowing a new fire station to be built earlier.*

- a. *Where do we find such a guarantee?*

Please see Attachment 3 entitled "Undertaking Agreement" to YarrowBay's Memorandum dated December 12, 2011.

- b. *Is a fire station the highest priority project to accelerate?*

YarrowBay defers to the Black Diamond City Council with support from City Staff to answer this question. However, in the event the City determines the satellite fire station is not the highest priority, YarrowBay would be happy to work with the City to identify another project for early funding.

- c. *Completing the fire station requires both Yarrow Bay mitigation fees and City funding. Do we even know that the required City funding will be available?*

Pursuant to the terms of The Villages MPD Development Agreement dated December 12, 2011, construction of the satellite fire station does not require any City funding other than dedication of certain

City real estate for the site. As set forth in the Development Agreement, YarrowBay is required to finance the entire design and construction of the satellite fire station, along with equipment for such station.

- d. *If the City were to approve this provision, does the City then become liable to fund its share?*

No. Please see YarrowBay's response to subsection (c) above.

26. *We have been advised that the CFD is independent of the City. Where is the legal foundation for this since the CFD Board of Supervisors will have 3 members appointed by the City Council and will require new appointees on a regular basis as terms expire?*

The independence of the CFD from the City is a function of State law. See RCW 36.145.130. As further support for this independence, YarrowBay cites City Attorney Bacha's presentation to the Black Diamond City Council on December 15th at the opening of the public hearing on proposed Black Diamond CFD No. 2011-1 and Hugh Spitzer's presentation at the May 2011 Study Session.²

27. *Since petitioner will be appointing two members of the CFD Board of Supervisors that are paid employees/contractors of petitioner, does this not result in a conflict of interest? Council appointees, whether Council members or designated experts, are all voluntary non-paid positions, and also face potential personal liability for their actions.*

All CFD Board of Supervisor members, whether designated by the City or Petitioner, face personal liability for their actions as representatives of a public entity. It is typical for special purpose districts to obtain liability insurance for board members.

In RCW 36.145.110(5), Washington State law addresses any potential conflict of interest within a CFD's Board of Supervisors by prohibiting any representative of the Petitioner from participating in the determination of the special assessment roll for the CFD.

28. *If the CFD is responsible for building each of these projects, and not the City, how do the funds flow between the parties -City, Yarrow Bay, and CFD?*

Please see YarrowBay's response to Councilmember Goodwin's Question #9 above. Again, under no circumstance is the City responsible for funding any of the CFD Projects whether or not the City Council elects to form the proposed Black Diamond CFD No. 2011-1.

III. CINDY PROCTOR'S CFD QUESTIONS³

² Mr. Spitzer is a well-respected, Washington State bond lawyer who presented to the City Council at the request of Ms. Cindy Proctor.

³ For ease of reference, Councilmember Goodwin's questions have been referenced numerically #1-#28 and Ms. Cindy Proctor's questions embedded within her Public Hearing White Paper have been referenced alphabetically A-R.

In her presentation to the City Council during the Black Diamond CFD No. 2011-1 public hearing on December 15, 2011, Ms. Cindy Proctor asked several questions regarding the formation and operation of the CFD. The various questions posed by Ms. Proctor during her presentation are addressed below. We note that some of Ms. Proctor's questions are the same as, or very similar to, Councilmember Goodwin's questions. Thus, there are some cross references. And, as noted above, many of the questions are appropriately addressed by the Board of Supervisors if the CFD is formed.

(A) Proctor alleges that the Special Assessments proposed in the CFD Petition exceed the Special Benefits conferred on the properties within the CFD District because of the inclusion of indirect CFD costs totaling approximately \$4.4 million.

Contrary to Ms. Proctor's allegations, the Special Assessments proposed in both the CFD Petition and the DTA Analysis do not exceed the Special Benefits conferred on the parcels within the proposed CFD District. The DTA Analysis concluded that 62.6% of Special Benefits conferred by the CFD Projects were allocated to parcels within the proposed CFD District. See Figure 2 in DTA's response to the Henderson Evaluation dated December 12, 2011, set forth for the reader's ease of reference below. As such, 62.6% of the construction costs (\$16,710,477) associated with the CFD Projects can be allocated to parcels within the proposed CFD District in conformance with Washington State law. The DTA Analysis does not, however, conclude that the value of the Special Benefits conferred by the CFD Projects to parcels within the CFD District is limited to \$16,710,477. Instead, DTA concludes in its analysis that the Special Benefits conferred on parcels within the CFD District exceeds \$20,888,097, i.e., the proposed CFD net assessment totaling its proportionate share of the cost of CFD Projects plus the CFD's indirect costs. See below Figure 1-Table 3 (reformatted) in DTA's response to the Henderson Evaluation dated December 12, 2011. That table shows the CFD expenses are included in the special benefit amount.

Figure 2 – Special and General Benefit Allocation Summary Table

| Project | Direct Cost | Special Benefit | | General Benefit % |
|---|----------------------|----------------------------|---------------------|-------------------|
| | | District | Non-District | |
| | | % Direct \$ Cost | % Direct Cost | |
| (1) SR-169 / Roberts Drive / Black Diamond | 1,758,178 | 1,166,316 66.3% | 16.8% | 16.8% |
| (2) Roberts Drive - 750/850 Zone Water Main Ext. | 2,261,657 | 2,261,657 100.0% | 0.0% | 0.0% |
| (3) Auburn – Black Diamond Road Frontage (three stages) | 7,239,271 | 3,236,150 44.7% | 55.3% | 0.0% |
| (4) Onsite Spine Road | 4,877,075 | 2,028,091 41.6% | 58.4% | 0.0% |
| (5) Onsite Ring Road | 3,171,050 | 2,019,657 63.7% | 36.3% | 0.0% |
| (6) Stormwater Detention Pond | 1,762,200 | 1,377,401 78.2% | 21.8% | 0.0% |
| (7) Sanitary Sewer Lift Station | 1,492,912 | 1,109,893 74.3% | 25.7% | 0.0% |
| (8) Sanitary Sewer Storage Facility | 588,000 | 437,144 74.3% | 25.7% | 0.0% |
| (9) Village Green Park Improvements | 1,397,617 | 1,207,025 86.4% | 13.6% | 0.0% |
| (10) Civic Park Improvements | 2,156,167 | 1,867,144 86.6% | 13.4% | 0.0% |
| Total | \$ 26,704,127 | \$ 16,710,477 62.6% | 36.3% | 1.1% |

Figure 1 – TABLE 3 (reformatted)

NET PROPOSED TOTAL ASSESSMENT FOR CFD No. 2011-1

| Item | Amount |
|--|---------------------|
| Cost of Improvements | \$26,704,127 |
| Costs of Issuance / Reserve Fund / Capitalized Interest / Incidental Expenses | \$4,365,246 |
| TOTAL COST | \$31,069,373 |
| LESS: District Contribution to General Benefit | <\$10,181,276> |
| <i>Net Assessment</i> | <i>\$20,888,097</i> |

(B) Why is there such a high attributable percentage Special Benefit Conferred for the regional sanitary sewer storage and sewer lift station? These specific facilities are of a more general nature in that they benefit the entire MPD sites including the Lawson Hills MPD.

Please see YarrowBay's response to Councilmember Goodwin's Question #13 above.

(C) It is unclear whether the on-site Spine and Ring Roads as private roads are eligible for CFD financing. Please clarify.

The onsite Spine and Ring Roads (CFD Projects #4 and 5) are not designed as private roads within The Villages MPD Development Agreement dated December 12, 2011. Instead, the Spine and Ring Roads will be dedicated to the City and, as public improvements, are eligible for CFD financing.

(D) What are the effects of the pending LUPA/GMHB Appeals on the underlying CFD land valuation, special assessment calculations, financing ability, and/or permitting ability?

The underlying LUPA/GMHB appeals have no impact on the special assessment calculations included within the DTA Analysis or the ability to permit the CFD Projects. Moreover, it is unlikely bonds will be issued by the proposed CFD while the LUPA/GMHB appeals are pending.

As for any impact on the underlying CFD land valuation, please see YarrowBay's response to Ms. Proctor's Question G below.

(E) What is the effect on the CFD Project Cost Assumptions of the following factors: (i) some project locations and designs are in dispute (i.e., sewer facility plans per KC Wastewater Treatment Division); or (ii) public works wage rates?

For subsection (i) of Ms. Proctor's Question E, please see YarrowBay's response to Councilmember Goodwin's Questions #11 and 19(b).

As for subsection (ii), the cost assumptions included within the DTA Analysis assumed public bidding

and therefore prevailing wage rates. As a result, there is no effect on the CFD Projects' cost assumptions.

(F) If there are cost overruns for the Infrastructure Improvements proposed within the CFD, who pays?

Please see YarrowBay's response to Councilmember Goodwin's Question #16 above.

(G) The formation requirements under RCW 36.145.020 do not require the submission of supporting land appraisal for a CFD Petition. It would, however, seem materially relevant and not unreasonable for the approving jurisdiction to have a recent land appraisal.

As noted in Ms. Proctor's Public Hearing White Paper, Washington State law does not require the submission of a land appraisal for formation of a CFD. Moreover, the three CFD approval criteria set forth in RCW 36.145.060 do not require the Black Diamond City Council to review a land appraisal. The CFD Board of Supervisors and/or the bond underwriter may require a recent land appraisal to review the value of the security offered by the Petitioners (BD Village Partners, LP and Yarrow Bay Development LLC) in the CFD Petition; however, review of the proffered security is not required prior to formation of Black Diamond CFD No. 2011-1.

(H) Has the Master Developer submitted its detailed implementation schedule for regional facilities to the City?

No. YarrowBay has not yet submitted its detailed implementation schedule for regional facilities because as set forth in MPD Conditions of Approval Nos. 29 and 164 such schedule is not required to be submitted until before the first Implementing Project of any Phase is approved by the City. This threshold has not yet been triggered.

(I) Where would the \$10,181,276 in funds for General Benefits come from?

See YarrowBay's response to Councilmember Goodwin's Question #23 above.

(J) What is the City's proportionate share in the CFD Projects proposed to be included within Black Diamond CFD No. 2011-1? Which projects are allocated as requiring a share from the City?

None of the CFD Projects proposed to be included within Black Diamond CFD No. 2011-1 require any funding or proportionate share from the City of Black Diamond. Therefore, there is no proportionate share for the City.

(K) Are the projects consistent with the City's 2012-2017 Capital Improvement Plan (CIP)?

Yes. The CFD Projects proposed to be included within Black Diamond CFD No. 2011-1 are consistent or functionally equivalent to the City's 2012-2017 Capital Improvement Plan (CIP).

(L) Will any payments by the Master Developer for the CFD's Projects be added to the "TBD" surcharge payment under the MPD Funding Agreement?

No. The potential surcharge under the MPD Funding Agreement (Exhibit N of both The Villages and

Lawson Development Agreements) is to reimburse YarrowBay for costs it incurred under the prior City Staff and Facilities Funding Agreement dated June 29, 2007. Per Section 9 of the MPD Funding Agreement, the potential surcharge shall be calculated based on the costs incurred by YarrowBay from execution date of the Staff and Facilities Funding Agreement to the execution date of The Villages and Lawson Hills Development Agreements. As such, no costs from the CFD Projects can be included in the calculation of the surcharge.

(M) Is the City responsible per the terms of the Development Agreements for the construction of any of the CFD's Projects?

The City is only responsible for the construction of Project #2, the water line project, per Table 11-4-2 of The Villages and Lawson Hills Development Agreements. While responsible for construction, the City is not responsible for the funding of such project, which shall be paid per the terms of the Water Supply and Facilities Funding Agreement (WSFFA), and construction responsibility may be reassigned or delegated my mutual agreement. See Footnote *** under Table 11-4-2. Thus, the City can agree to delegate the construction of Project #2 to Black Diamond CFD No. 2011-1 per the terms of The Villages and Lawson Hills Development Agreements.

(N) Would the City of Black Diamond tax rate far exceed levy rates of comparable cities?

Please see YarrowBay's response to Councilmember Goodwin's Question #21 above.

(O) Would an interlocal agreement for eminent domain be required by the proposed CFD?

No. See YarrowBay's response to Councilmember Goodwin's Question #8 above. Even if, in the most remote circumstances, eminent domain were required for CFD Project #1, an interlocal agreement would not be necessary. The CFD's Board of Supervisors would have to follow the same process as any other entity seeking to have the City of Black Diamond use eminent domain.

(P) Will the Enumclaw School District be required to pay CFD assessments for the first elementary school site located within the CFD District?

No. Per Section 20 of the Comprehensive School Mitigation Agreement, the Enumclaw School District will not be required to pay any costs or assessments related to CFD financing per Chapter 36.145 RCW and the Developer (i.e., BD Village Partners, LP and BD Lawson Partners, LP) shall instead pay to the Escrow Agent the total sum of any such costs or assessments levied or otherwise imposed on an Identified School Site prior to the conveyance of such site to the School District. Moreover, the Developer's payment of such CFD assessment shall not be subject to a mitigation fee credit.

(Q) Will the CFD be relying on grants and other revenue streams from the City to implement the CFD Projects?

No. Black Diamond CFD No. 2011-1 will not be relying on grants or other revenue streams from the City to construct the ten CFD Projects.

(R) Will the City of Black Diamond be liable for the CFD liabilities as is the case with the Wenatchee Events Center?

YarrowBay agrees with the statements of the City Attorney Bacha at the Public Hearing on December 15, 2011. There is no similarity between the proposed Black Diamond CFD No. 2011-1 and the Public Facilities District (PFD) that was formed to purchase the Wenatchee Events Center. There the City of Wenatchee promised to pay debt service if the PFD could not do so. In the case of the proposed Black Diamond CFD No. 2011-1, the City will not enter into the type of contract that was executed in Wenatchee and the CFD bonds will state expressly that the City has no obligation to pay the bonds. Moreover, the Wenatchee PFD was for an enterprise (a hockey arena) rather than for public improvements of the type authorized by the State's CFD statute, Ch. 36.145 RCW, and proposed in the CFD Petition. The bonds for the Wenatchee arena were to be paid out of arena revenues and taxes. Under the proposed Black Diamond CFD No. 2011-1, the bonds will be paid from assessments levied on the property within the CFD District.

SUMMARY**December 16, 2011**

To: YarrowBay Holdings

From: David Taussig and Associates, Inc.

Subject: Updated Total Residential Taxes & Levy Schedule for Black Diamond and Neighboring Cities

Below are the total 2011 residential taxes per \$1,000 of assessed value for Black Diamond, Washington (both within and without CFD No. 2011-1) and neighboring cities:

Table 1

| City | Total Tax per \$1,000 of Assessed Value [1] |
|--|--|
| Black Diamond <i>without CFD No. 2011-1</i> | 12.52 |
| Maple Valley | 13.01 |
| Covington | 13.13 |
| Enumclaw | 11.49 |
| Issaquah | 11.13 |
| Auburn | 13.92 |
| Kent | 13.23 |
| Black Diamond within CFD No. 2011-1 [2] | 15.30 |

Notes

[1] Source: YarrowBay Holdings Property Tax Bills for Black Diamond Parcels; "2011 Assessed Valuation and Taxes by City," King County Department of Assessments (attached). Confirmed by (a) "2011 Codes and Levies – King County Taxing Districts" and (b) "King County Levy Rate Distribution," both produced by the King County Department of Assessments. Rates vary within cities; the rate shown is the predominant rate. Total includes, where applicable, the following levies: state and county, city, school, water, fire, hospital, library, EMS, flood, ferry, transportation, port, and general obligation bonds.

[2] Reflects the addition of CFD No. 2011-1 assessments to the Black Diamond total tax of 12.52 per \$1,000 of assessed value. CFD No. 2011-1 assessments and total taxes assume that all residential units have a sales price of \$300,000. CFD No. 2011-1 assessments and total taxes are as follows:

Table 2

| PRODUCT CATEGORY IN REPORT | CFD PRODUCT MIX | | AVERAGE ANNUAL ASSESSMENT PER UNIT | | ANNUAL CFD ASSESSMENT PER \$1,000 OF SALES PRICE (\$300,000) | TAX PER \$1,000 FOR CFD No. 2011-1 PROPERTIES |
|----------------------------|-----------------|-----------------------|------------------------------------|---------------|--|---|
| Single-Family Detached | 858 | <i>Dwelling Units</i> | \$911 | <i>per DU</i> | 3.04 | 15.56 |
| Single-Family Attached | 460 | <i>Dwelling Units</i> | \$800 | <i>per DU</i> | 2.67 | 15.19 |
| Multi-Family | 334 | <i>Dwelling Units</i> | \$680 | <i>per DU</i> | 2.27 | 14.79 |
| Weighted Average: | | | | | 2.78 | 15.30 |

**All figures subject to rounding*

For example, with a \$911 average assessment per single-family detached unit at a \$300,000 home sales price, the total tax would be [12.52 per \$1,000 of assessed value (see Table 1 above) + 3.04 per \$1,000 levied by CFD No. 2011-1] = 15.56 per \$1,000. A single-family attached unit would be subject to a 15.19 per \$1,000 total tax and a multi-family unit to a 14.79 per \$1,000 total tax. The weighted average of these taxes is 15.30 per \$1,000 of assessed value, alternatively represented as a tax rate of 1.530%.

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Attachment 1 - ii

ASSESSED VALUE AND TAXES BY CITY

Typical Residence in 2010 and 2011

| City | 2010 Average Residence Value | 2010 Typical Levy Rate (1) | 2010 Tax | 2011 Average Residence Value | 2011 Typical Levy Rate (1) | 2011 Tax | Tax Change | Average Percent Tax Change | % AV Change |
|---------------------|------------------------------------|-------------------------------|-------------|------------------------------------|-------------------------------|-------------|------------|-------------------------------------|-------------|
| Seattle | 448,500 | 9.04 | \$ 4,055.25 | 453,300 | 9.66 | \$ 4,377.98 | \$ 322.74 | 8.0% | 1.1% |
| Algona | 193,700 | 12.38 | 2,398.20 | 189,500 | 13.66 | 2,589.41 | 191.21 | 8.0% | -2.2% |
| Auburn | 246,000 | 12.69 | 3,121.56 | 239,400 | 13.92 | 3,331.58 | 210.02 | 6.7% | -2.7% |
| Beaux Arts | 871,300 | 8.17 | 7,121.54 | 766,900 | 9.12 | 6,992.24 | (129.30) | -1.8% | -12.0% |
| Bellevue | 578,400 | 7.89 | 4,573.43 | 563,600 | 8.70 | 4,900.79 | 327.36 | 7.2% | -2.7% |
| Black Diamond | 343,500 | 11.50 | 3,949.69 | 317,400 | 12.50 | 3,968.09 | 18.39 | 0.5% | -7.6% |
| Bothell | 360,400 | 10.54 | 3,797.51 | 365,300 | 11.41 | 4,168.48 | 370.97 | 9.8% | 1.4% |
| Burien | 304,900 | 12.41 | 3,782.43 | 276,500 | 12.92 | 3,572.93 | (209.50) | -5.5% | -9.3% |
| Carnation | 298,700 | 10.71 | 3,200.32 | 275,900 | 11.68 | 3,221.55 | 21.24 | 0.7% | -7.6% |
| Clyde Hill | 1,290,900 | 7.46 | 9,629.37 | 1,135,100 | 8.29 | 9,404.60 | (224.77) | -2.3% | -12.1% |
| Covington | 253,200 | 12.61 | 3,193.29 | 243,500 | 13.13 | 3,197.30 | 4.01 | 0.1% | -3.8% |
| Des Moines | 271,300 | 12.29 | 3,333.95 | 264,200 | 12.87 | 3,401.07 | 67.12 | 2.0% | -2.6% |
| Duvall | 339,700 | 11.84 | 4,020.99 | 340,300 | 12.69 | 4,318.74 | 297.75 | 7.4% | 0.2% |
| Enumclaw | 233,900 | 11.28 | 2,637.66 | 227,400 | 11.49 | 2,613.30 | (24.36) | -0.9% | -2.8% |
| Federal Way | 271,900 | 12.36 | 3,359.68 | 264,400 | 12.77 | 3,376.07 | 16.39 | 0.5% | -2.8% |
| Hunts Point | 4,065,000 | 6.68 | 27,154.40 | 3,608,700 | 7.37 | 26,613.04 | (541.36) | -2.0% | -11.2% |
| Issaquah | 493,200 | 10.84 | 5,344.17 | 503,700 | 11.13 | 5,606.70 | 262.54 | 4.9% | 2.1% |
| Kenmore | 378,300 | 11.63 | 4,401.24 | 373,500 | 12.56 | 4,691.35 | 290.12 | 6.6% | -1.3% |
| Kent | 259,200 | 12.30 | 3,187.25 | 245,200 | 13.23 | 3,245.17 | 57.92 | 1.8% | -5.4% |
| Kirkland | 511,800 | 9.15 | 4,682.25 | 503,900 | 9.66 | 4,867.81 | 185.55 | 4.0% | -1.5% |
| Lake Forest Park | 432,700 | 12.30 | 5,320.63 | 415,900 | 12.75 | 5,300.71 | (19.92) | -0.4% | -3.9% |
| Maple Valley | 284,400 | 12.03 | 3,542.72 | 285,300 | 13.01 | 3,712.78 | 170.07 | 4.8% | -3.1% |
| Medina | 2,116,900 | 7.71 | 16,321.43 | 1,886,500 | 8.60 | 16,217.81 | (103.62) | -0.6% | -10.9% |
| Mercer Island | 1,057,500 | 7.80 | 8,253.35 | 1,037,500 | 8.57 | 8,894.46 | 641.10 | 7.8% | -1.9% |
| Milton | 239,400 | 9.56 | 2,289.53 | 232,800 | 11.68 | 2,717.94 | 428.41 | 18.7% | -2.8% |
| Newcastle | 506,600 | 11.00 | 5,570.27 | 517,600 | 11.57 | 5,989.39 | 419.12 | 7.5% | 2.2% |
| Normandy Park | 476,300 | 12.12 | 5,771.57 | 491,800 | 13.03 | 6,405.97 | 634.40 | 11.0% | 3.3% |
| North Bend | 344,400 | 10.32 | 3,553.45 | 331,200 | 11.46 | 3,794.69 | 241.25 | 6.8% | -3.8% |
| Pacific | 216,200 | 12.25 | 2,648.82 | 209,800 | 13.42 | 2,816.17 | 167.36 | 6.3% | -3.0% |
| Redmond | 444,600 | 9.48 | 4,215.36 | 445,900 | 10.04 | 4,476.29 | 260.91 | 6.2% | 0.3% |
| Renton | 293,500 | 11.12 | 3,263.91 | 285,500 | 12.21 | 3,487.01 | 223.09 | 6.8% | -2.7% |
| Sammamish | 548,900 | 11.86 | 6,507.22 | 549,800 | 12.14 | 6,675.64 | 168.42 | 2.6% | 0.2% |
| SeaTac | 240,300 | 11.57 | 2,779.83 | 229,500 | 12.27 | 2,815.07 | 35.25 | 1.3% | -4.5% |
| Shoreline | 335,300 | 12.97 | 4,348.14 | 336,300 | 13.62 | 4,580.40 | 232.26 | 5.3% | 0.3% |
| Skykomish | 128,200 | 9.52 | 1,219.91 | 129,300 | 9.57 | 1,237.32 | 17.41 | 1.4% | 0.9% |
| Snoqualmie | 413,500 | 11.00 | 4,546.80 | 413,300 | 11.87 | 4,905.88 | 359.08 | 7.9% | 0.0% |
| Tukwila | 234,200 | 11.17 | 2,616.63 | 227,800 | 12.68 | 2,888.67 | 272.04 | 10.4% | -2.7% |
| Woodinville | 427,700 | 11.14 | 4,764.39 | 408,800 | 12.03 | 4,915.90 | 151.51 | 3.2% | -4.4% |
| Yarrow Point | 1,809,500 | 7.00 | 12,659.93 | 1,619,800 | 7.72 | 12,500.94 | (159.00) | -1.3% | -10.5% |
| Unincorporated Area | 371,800 | 11.85 | 4,405.64 | 372,800 | 13.06 | 4,868.71 | 463.07 | 10.5% | 0.3% |

(1) Rates vary within cities. The rate shown is the predominant rate.

Comments on Topics from December 15, 2011 City Council Meeting Regarding Petition to Form Capital Facilities District No. 2011-1 of the City of Black Diamond

On December 15, 2011, the City Council of Black Diamond conducted a public hearing on the petition to create Community Facilities District No. 2011-1 of the City of Black Diamond.

During the Council meeting, Randall Young, President of Henderson, Young & Company, presented a report to the City Council concerning his independent evaluation of the November 28, 2011, a report titled *Special Benefit Apportionment Analysis Community Facilities District No. 2011-1 of the City of Black Diamond* published by David Taussig & Associates, Inc. (DTA). Mr. Young also discussed the *Response to Questions* from DTA dated December 12, 2011, that provided replies to the 11 questions we asked in our *Independent Evaluation* submitted December 7, 2011.

Comments About Fire Station and Fire Protection

During the public hearing and City Council discussion many topics and questions were raised. One topic pertained to the proposed construction of a satellite fire station by YarrowBay. Since our firm developed the fire impact fee for Black Diamond in January 2011, we offer the following comments about the proposed fire station and fire impact fees.

Our analysis of the impact of projected growth on Black Diamond fire protection indicated that the City will need two additional fire stations, two additional fire engines, two additional aid cars (i.e., "ambulances"), and two additional staff vehicles. The impact fee rates are established at levels that projected growth will pay for 84% of those costs and existing development will pay for 16% because the new stations will also serve existing development.

If YarrowBay does not build a satellite station, it will pay the impact fees with each building permit. The City could build a station and buy the apparatus when it collects enough money from the impact fees. The cost of the satellite station is estimated to cost \$3.2 million, so there would need to be over 1,800 dwelling units paying the \$1,783 impact fee per dwelling unit in order to collect enough money to build the station. It would then take over 400 more dwelling units paying impact fees in order to pay for the fire engine for \$726,000, and another 140 dwelling units to pay for the aid car cost of \$251,000. (Commercial development will also pay fire impact fees of \$2.29 per square foot, so any commercial development during the early phases of new development would reduce the number of dwelling units needed to pay for the new station and apparatus.)

If YarrowBay does build a satellite station, the cost of the station would be a credit against future fire impact fees because RCW 82.02.060 (3) mandates credits be

given when the improvement made by the developer is for the same improvement that is the basis for the impact fees. The reason for this mandatory credit is to avoid double-charging the developer for the same thing. And if the law did not require such credits developers would pay the impact fee and not make the improvement themselves in order to avoid paying twice for the same fire station.

A related topic was raised concerning the cost of operating the fire station after it is built. Fire impact fees can be used only for capital costs, therefore fire impact fees cannot pay for operating costs, such as firefighter salaries, fuel for the apparatus, or any other non-capital cost.

The operating costs will be paid by either or both of two sources of revenue: property taxes from new development and/or the funding agreement with YarrowBay. As part of our impact fee research we prepared a detailed analysis of future operating costs and future property tax revenue. We determined that the projected property values and a levy rate less than the maximum allowed by law would generate enough property taxes to fully fund the operating costs of the new stations and apparatus. If, during the phases of development, the property taxes do not pay the full cost, the funding agreement with YarrowBay provides for the developer to pay the difference.

Comments About YarrowBay's December 19, 2011 Memorandum

We have also reviewed the memo dated December 19, 2011, *YarrowBay's Response to Questions Regarding Black Diamond CFD No. 2011-1*. We offer the following comments about several specific items in that memo. Our comments refer to the item numbers used in the YarrowBay memo.

13. Benefits of sewer projects

YarrowBay describes the allocation of benefits of the 2 sewer projects as 74.3% to the CFD parcels and 25.7% to MPD units outside the CFD. We would add that the 74.3% will be paid by assessments on parcels in the CFD, and the 25.7% will be paid by BD Village Partners, LP pursuant to the terms of the Development Agreement. (This point was confirmed in Responses 6 and 9 of DTA's December 12, 2011 *Response to Questions*.)

16. Operating cost of the CFD

Capital facilities districts are primarily funding mechanisms. Unlike fire districts, school districts, PUDs, they typically have no staff, or very small staff, or are staffed by contract with firms that manage these funding districts. The CFD Board of Supervisors is responsible for deciding how best to arrange for the support it needs to accomplish its purpose, but DTA could be asked to provide examples from their experience with CFDs in other states.

YarrowBay's memo describes how these costs (i.e., staffing, or management contracts, or other consultants) are funded through the CFD.

17.d Effect on assessment amounts if development plans change

If the applicant makes changes to the location, quantity and/or mix of development from the assumptions used in DTA's analysis, there would undoubtedly be changes to the estimated future assessments per dwelling unit. This would occur when the apportionment ("segregation") of assessments occurs when parcels are divided.

It must be noted, however, that the total of all assessments is still limited to the total cost of the projects and indirect costs. That total can only be changed with approval of 100% of property owners, therefore significant changes are unlikely after subdivision and marketing of smaller parcels begins.

As a result, for any given total cost of projects and indirect costs, the effect of changing the location, quantity and/or mix of development would be to change the amount of the assessment per parcel. The amount of such revised assessments serve as a practical constraint on the developer making extreme changes in the location, quantity and/or mix of development because extraordinarily high assessments would reduce the marketability of the property in the same way and to the same extent as if the sale price of the property was increased instead of charging the assessment.

19.c Interim vs. ultimate improvement at SR169/Roberts Drive

Depending on the pace of development and the timing of the interim (channelization) and ultimate (roundabout) improvements, it is possible that the assessment for the interim solution would continue after the ultimate improvement is made.

20.e Undertaking agreement and fire mitigation fees

Regarding YarrowBay's reference to fire mitigation credits, see our first comment above (Comments About Fire Station and Fire Protection).

To: Black Diamond City Council
From: Cindy Proctor
Date: 12.20.11
RE: Black Diamond Community Facilities District (CFD) No. 2011-1
(Supplemental Comments)

Please read this in conjunction with my previously submitted presentation. Based on the Public Hearing testimony dated 12.15.11; supplemental Council Reports issued by YB dated 12.12.11; supplemental report/comments from Henderson & Young and Taussig; I would like to submit the following revised presentation information and provide additional comments:

Assessment Calculations and Methodology

I would like to reiterate that Henderson & Young should be given a broader scope for their analysis and work closely with the City's legal advisor for CFDs regarding the statute interpretations. Specific areas of concern are:

- Special Assessment exceeds Special Benefit Conferred
 - On a total assessment basis (\$20,888,077 should be \$16,710,477)
 - On an annual collection/assessment basis (\$1,939,776 should be \$596,802)
 - On a 28-yr period (\$54,313,728 should be \$16,710,477)
 - GAP or general benefit of (\$10,181,276 should be \$14,546,522)
- Several Regional Projects appear to confer more general benefit vs. special benefit due to their regional functions (Sewer/Sewer Lift/HWY 169/Roberts Dr.); allocation should be reviewed
- Taussig report should reflect current project information not dated information from FEIS or even the MPD application.

GAP

- Where would the **\$14,546,522** in GAP funds come from?
- What is the City's proportionate share?
- Which projects are allocated as requiring a share from the City?
- How will the projects move forward with this GAP and with raw land and no permits?

General Concerns

- Lack of design approval and sign-off by WSDOT and King County WTD;
- Does City have capacity, legal knowledge, and skill to move forward with a CFD?

- Does the City understand the GASB requirement for inclusion of the CFD as a “Component Unit” under their Audit? Does this create any construed liability from the City Insurance Company’s perspective?
- Underlying appeals still pending; time is **not** of the essence!

Liability

- In regards to the comparison to the Wenatchee PFD. Mr. Bacha stated “they are not the same”, he is correct but there is no direct comparison for the CFD as this is the first in the State of WA. The comparison was really meant to illustrate how municipalities that were not liable legally are getting sued anyway. It will be costly for the City to defend itself.

I would encourage the City to ask for a legal opinion on risk and not ask an opened ended oral question such as, are we liable? A legal opinion is different and can be relied on for future legal use. If the legal firm doesn't put it in writing, I would ask why? You will be required to defend yourself, and based on the amount of unanswered questions and risk presented it certainly wouldn't help the City's defense position to approve as is;

Best Interest to the City (Taxpayers)

- Mr. Hempelmann testified that with the CFDs these CFD projects will get built; that roads will be improved and parks will be built, fire-station will be built,
 - Council-Member Boston commented that we as a City want these things built;
 - Council-Member Hanson indicated “CFDs are good”

From a legal and technical standpoint these statements were confusing. There appears to be a misleading assumption that if there are no CFDs then there are no infrastructure improvements. This is false. The BDMC; the MPD and the Development Agreement all *require* the Master Developer to build the projects listed in the CFD Petition. **There is no exception to this fact.**

The CFD Petition request is a financing tool for the Master Developer, to benefit them:

- It allows them to use someone else’s money (municipal tax exempt funds)
- It allows them to access financing markets that will lend for infrastructure
- It gives them access to financing that covers non-traditional cost, like the parks
- It allows them to capitalize their CFD financing cost into the special assessment
- It increases their profitability;

The CFD Petitioner has already testified before the Hearing Examiner and in written statements that they do not need the CFDs; that other financing options are available.

The City:

- Is not voting “**Yes or No**” on the value of CFDs or whether CFDs are “**good or bad**” it is voting on whether this CFD Petition, as written at this specific time, is in the best interest of the City.
- Is not required to ensure favorable financing to a private developer if it would create any risk to the City, her taxpayers or any existing funding mechanisms (e.g. school/fire/safety levies)

The City Council has a fiduciary responsibility to the City, taxpayers, and schools, not to a private developer.

After further review; based on the sloppiness and rushed analysis provided, the sheer volume of outstanding concerns and questions of risk, the fact that the Master Developer has other financing options, and the underlying appeals on the proposed CFD District’s security (land) the City should ask the CFD Petitioner to withdraw their CFD Petition and/or “Reject the CFD Petition” and state that the CFD Petitioner may reapply *after* the City has completed its own due diligence and staff recommendations.

Revised Tables to reflect Yarrow Bay's updated Council report dated December 12, 2011.

| CFD PROJECTED TAX LEVY | | | | | | |
|----------------------------|--------------------------------|-----------------|----------------|---------------------|-------------|------------------------------------|
| PRODUCT CATEGORY IN REPORT | FINANCIAL CALCULATION CATEGORY | CFD PRODUCT MIX | | ANNUAL TAX PER UNIT | | Total Annual Assessment Collection |
| Single-Family | Single-Family | 858 | Dwelling Units | \$988 | Per DU | \$847,704 |
| Single-Family | Townhome | 460 | Dwelling Units | \$912 | Per DU | \$419,520 |
| Multi-Family | Multi-Family | 334 | Dwelling Units | \$756 | Per DU | \$252,504 |
| Commercial | Commercial | 186,400 | Total S. Ft | \$2.07 | Per Sq. Ft. | \$385,848 |
| School ¹ | School | 45,000 | Total Sq Ft | \$.076 | Per Sq Ft. | \$34,200 |
| Annual Total | | | | | | \$1,939,776 |

| Total Proposed Annual Assessment Collection | 28 year CFD (Total Annual Tax * Assessment Period) |
|---|---|
| \$1,939,776 | \$54,313,728 |

| Total Proposed Annual Assessment Collection Based on Special Benefit Conferred | 28 year CFD (Total Annual Tax * Assessment Period) Max. Allowed Under RCW = Special Benefit Conferred |
|---|--|
| \$596,802.75 | \$16,710,477 |

Based on the CFD Petitioners proposed assessment per DU or per Sq. Ft. they anticipate collection of **\$1,939,776** annually in Special Assessments. Over the life of the CFD Bond (28- yrs) the CFD would collect approximately **\$54,313,728**. Yet per the RCW the Special Assessment cannot exceed the Special Benefit Conferred, or **\$16,710,477**.

Tax Equivalent

¹ It should be noted that the Enumclaw School District (taxpayers) would be required to pay \$957,600 out of operations over the course of 28 years (based on the annual assessment provided) for just this one school site; The Statue has low-income waivers and/or reductions the City may want to look at a possible school exemption.

The revised Yarrow Bay report date 12.12.11 still does not accurately reflect the current tax rate per \$1,000 of assessed value, nor does it convert the \$988 special assessment into an equivalent rate accurately ($\$988/300 = \3.29). The revised report also deletes references of base home price of \$300,000 for comparison purposes. In order for the \$988 special assessment rate to covert to \$1.43 per \$1,000 the purchase price would have to be \$690,000 ($\$988/690 = \1.43).

Furthermore on page (9) the revised report states:

With the inclusion of the proposed Black Diamond CFD No. 2011-1 special assessments, homeowners within the CFD's district, assuming 2011 tax rates, would have approximately the following tax and assessment rate:

- Single Family Detached: \$1.43
- Single Family Attached: \$1.40
- Multi-Family: \$1.35

Inclusion is defined as: the act of including; including: to place in an aggregate, class, category, or the like. Thus this statement states that the total tax assessment including the CFD and current 2011 tax assessments would be \$1.43 per \$1,000 of assessed value. That is outright false, and the City should dismiss the reports calculations.

| City | Mil Rate per \$1,000 | CFD Special Assessment | Combined Equivalent |
|---------------|----------------------|------------------------|---------------------|
| Maple Valley | \$1.29 | | \$1.29 |
| Enumclaw | \$2.12 | | \$2.12 |
| Black Diamond | \$2.57 | (\$988) or \$3.29 | \$5.86 |

The City of Black Diamond currently has a 2.57 (mil) rate per \$1,000; assuming a tax assessed home value of \$300,000 the City of Black Diamond tax is \$771. The addition of a \$988 special assessment (assuming the same \$300,000 home) would translate to an equivalent of an additional \$3.29 (mil) rate or a combined \$5.86 per \$1,000 for those homes in the MPD/CFD district. That is the equivalent \$1,759 just for the City's portion of the property tax on a \$300,000 home.

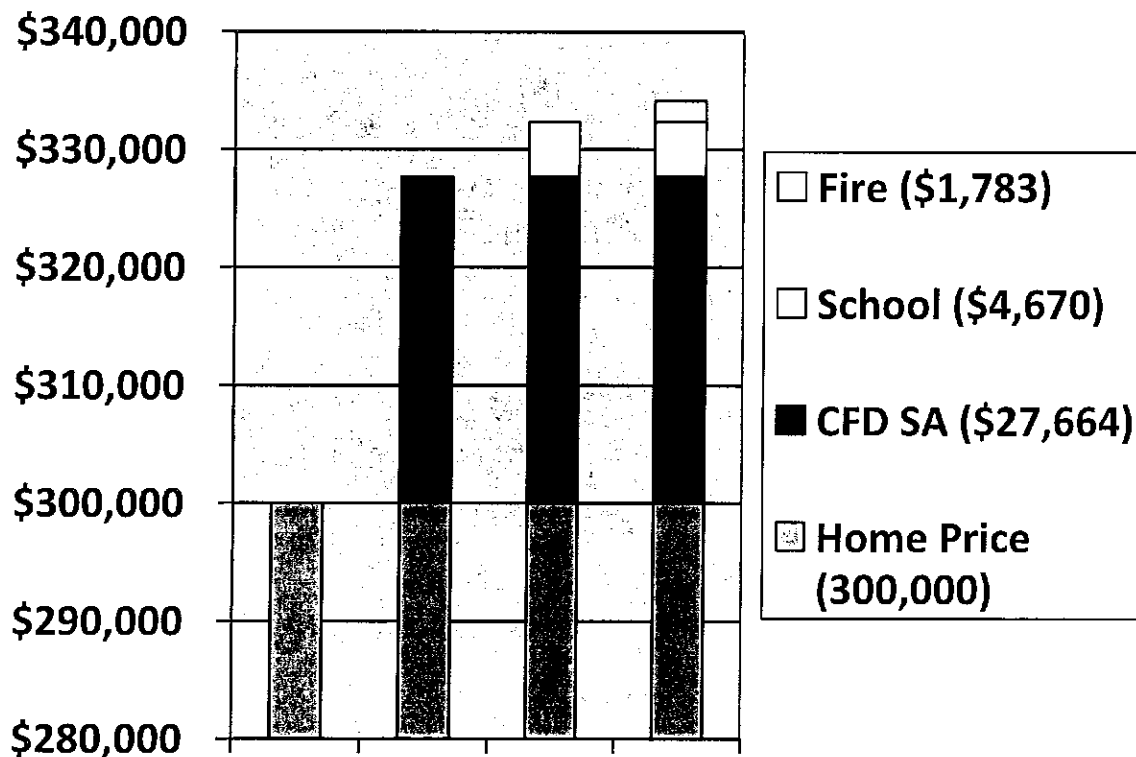
The households within the CFD district will still need to support over \$300M in school levies to ensure school sites transfer and construction funding is available; they would also need to continue to support the Fire and Safety levy at its current rate. Further independent analysis needs to be done by the City to ensure that the financial burden doesn't undermine these critical levy tools.

Regardless of the extrapolated tax rate, it is unlikely that the homeowner will be allowed to make annual special assessments, as a mortgage lender will require their deed and/or mortgage to be in

first position on title. They **will not** allow a foreclosable lien on title in front of their mortgage. It should be assumed that the lender would require that the Special Assessment be paid off outright or thru capitalization into the mortgage. As you can see from the chart above, this would result in a substantial burden to the new homeowner. (Chart assumes a 28-yr CFD tax-exempt bond term)

| Product | Financial Category | Annual Tax Per DU | 28 year CFD (Annual Tax * Assessment Period) | Discounted Early P/O Rate* |
|---------------|--------------------|-------------------|--|----------------------------|
| Single-Family | Single-Family | \$988 | \$27,664 | |
| Single-Family | Townhome | \$912 | \$25,536 | |

If capitalized and layered with other proposed impact and mitigation fees the cost of a Single-Family home starts to become unattainable going from \$300,000 to \$334,117.



Revised Yarrow Bay Memorandum 12.12.11:

Planned Development Development Agreements between the City, BD Village Partners, LP, and BD Lawson Partners, LP dated December 12, 2011.

V. HOMEOWNER IMPACTS.

It is reasonable for the Black Diamond City Council to ask how the special assessments resulting from this proposed CFD will impact future Black Diamond home and business owners living and working within the boundaries of the CFD. Based on the proposed preliminary assessment roll contained in Section III above, homeowners and businesses within this CFD would owe approximately the following special assessments:

| CFD PROJECTED TAX LEVY | | | | | |
|----------------------------|--------------------------------|-----------------|----------------|----------------------------|------------|
| PRODUCT CATEGORY IN REPORT | FINANCIAL CALCULATION CATEGORY | CFD PRODUCT MIX | | ANNUAL ASSESSMENT PER UNIT | |
| Single-Family Detached | Single-Family | 858 | Dwelling Units | \$ 988 | per DU |
| Single-Family Attached | Townhome | 460 | Dwelling Units | \$ 912 | per DU |
| Multi-Family | Multi-Family | 334 | Dwelling Units | \$ 756 | per DU |
| Commercial | Commercial | 186,400 | Total Sq.Ft. | \$ 2.07 | per Sq.Ft. |
| School | School | 45,000 | Total Sq.Ft. | \$ 0.76 | per Sq.Ft. |

For purposes of comparison, below are the 2011 rates per \$1000 assessed value for Black Diamond's neighboring cities:

- Maple Valley: \$1.29
- Covington: \$1.18
- Enumclaw: \$2.112
- Issaquah: \$1.380
- Auburn: \$1.934
- Kent: \$1.484

With the inclusion of the proposed Black Diamond CFD No. 2011-1 special assessments, homeowners within the CFD's district, assuming 2011 tax rates, would have approximately the following tax and assessment rate:

- Single Family Detached: \$1.43
- Single Family Attached: \$1.40
- Multi-Family: \$1.35



MEMORANDUM

To: Black Diamond City Council
From: Megan Nelson, Director of Legal Affairs, YarrowBay
cc: John Hempelmann, Legal Counsel for YarrowBay
Re: YarrowBay's Response to Cindy Proctor's Supplemental Comments dated 12.20.11
Date: December 22, 2011

This memorandum is submitted by YarrowBay in response to Ms. Cindy Proctor's Supplemental Comments dated December 20, 2011 (the "Supplemental Comments"). It is important to note that a majority of questions raised in the Supplemental Comments were thoroughly answered by YarrowBay in its "Response to Questions Regarding Black Diamond CFD No. 2011-1" dated December 19, 2011 and, therefore, will not be revisited here. The one new question raised in the Supplemental Comments is addressed below.

In her Supplemental Comments, Ms. Proctor alleges the following:

Based on the CFD Petitioners proposed assessment per DU or per Sq. Ft. they anticipate collection of **\$1,939,776** annually in Special Assessments. Over the life of the CFD Bond (28-yrs) the CFD would collect approximately **\$54,313,728**. Yet per the RCW the Special Assessment cannot exceed the Special Benefit Conferred, or **\$16,710,477**.

YarrowBay's response consists of three parts. First, David Taussig & Associates (DTA)'s calculation of the anticipated annual collection for Black Diamond CFD No. 2011-1 is attached hereto as Attachment 1. Per DTA's calculation, the proposed CFD will collect \$1,721,011 annually (assuming an annual interest rate of 7% and a 28-year term).

Second, special benefits analyses and decisions on preliminary and final assessment rolls are made by the proposed CFD's Board of Supervisors not by the City of Black Diamond. The State of Washington's criteria for municipal approval of CFD formation do not include a special benefits analysis. *See* RCW 36.145.060. YarrowBay included the DTA Analysis to establish the proposed preliminary assessment roll as a limit on assessments as required by the State's complete petition criteria. *See* RCW 36.145.020. Contrary to Ms. Proctor's assertions, the DTA Analysis does not conclude that the value of the Special Benefits conferred by the infrastructure improvements included in the CFD Petition is \$16,710,477. **Instead, the DTA Analysis finds**



that the Special Benefits conferred to the parcels within the proposed CFD District meet or exceed the total proposed assessment of \$20,888,097.

Third, and finally, special benefits analysis is based on the principal amount of an assessment only. Interest on the principal amount of a proposed assessment is not included in such analysis. There are several reasons for this fact. "...The amount of the special benefits attaching to the property, by reason of the local improvement, is the difference between the fair market value of the property immediately after the special benefits have attached, and the fair market value of the property before the benefits have attached." (Emphasis in the original). *In re Schmitz*, 44 Wn.2d 429 (1954). The test of "immediately after" is when the improvements have been completed. Thus, no case law suggests that parties include the long-term interest on the bonds being calculated into a special benefits analysis. Moreover, any property owner can prepay a special assessment at any time without interest, including, within thirty (30) days of the treasurer's notice of the final assessment. If the property owner elects to pay the assessment over time, the property owner then pays the finance cost, which is approximately 1½% over the cost of the bond interest.

In summary, the anticipated annual collection for Black Diamond CFD No. 2011-1 is \$1,721,011. The DTA Analysis finds that the Special Benefits to be conferred by the infrastructure improvements included within the CFD Petition meet or exceed the total cost of the proposed CFD assessment (\$20,888,097). And, contrary to Ms. Proctor's allegations, long-term interest costs are not properly included in special benefit analysis under Washington State statutes or case law and because property owners can pre-pay CFD assessments without interest.

SUMMARY

December 20, 2011

To: YarrowBay Holdings
From: David Taussig and Associates, Inc.
Subject: CFD No. 2011-1
Annual Collection Estimate

The annual tax collection for CFD No. 2011-1 is projected to total approximately \$1,721,011 plus the small administration fee per tax bill customarily charged by the County. The projection is highly dependent on the key assumptions for the bonds sold [1] – (A) the annual interest rate of 7 percent and (B) the length of the life of bond (a 28-year term).

Notes

[1] The actual interest rate and term are dependent on the bond market at the time the actual bonds are sold.

CFD NO. 2011-1
WASHINGTON
RESOLUTION NO. 20-1**

**A RESOLUTION OF CFD NO. 2011-1, ADOPTING AND
AUTHORIZING EXECUTION OF AN INTERLOCAL
AGREEMENT WITH THE CITY OF BLACK DIAMOND
AND THE CIAW FOR THE PROVISION OF SERVICES
AND INSURANCE**

WHEREAS, Chapter 39.34 RCW (Interlocal Cooperation Act) permits local governmental units to make the most efficient use of their powers by enabling them to cooperate on the basis of mutual advantage; and

WHEREAS, the CFD is an independently governed special purpose district vested with the authority pursuant to RCW 36.145.090(2)(j) to enter into agreements with any municipal corporation; and

WHEREAS, Black Diamond is a municipal corporation operating under the laws of the state of Washington as a non-charter code city and is authorized to enter into interlocal agreements with other governmental units; and

WHEREAS, the CFD requires the assistance of the City to facilitate its day to day operations including, by way of example, providing meeting space, preparing and posting CFD public meeting notices, and providing administrative support; and

WHEREAS, the City is willing to enter into an interlocal agreement with the CFD No. 2011-1 to provide such services; and

WHEREAS, the Governing Board of Supervisors of the CFD finds it in the best interests of the CFD to enter into such an agreement with the City and to become a member of the Cities Insurance Authority of Washington insurance pool;

NOW, THEREFORE, the CFD No. 2011-1 Board of Supervisors does hereby resolve as follows:

Section 1. Participation in the Cities Insurance Authority of Washington Insurance Pool.
The CFD shall join the Cities Insurance Authority of Washington ("CIAW") insurance pool or such equivalent insurance pool. The Chair of the Governing Board of Supervisors of the CFD is hereby authorized to execute the interlocal agreement between the CIAW and the CFD.

Section 2. Interlocal Agreement with the City of Orting. The Chair of the CFD's Governing Board of Supervisors is hereby authorized to execute the Interlocal Agreement with the City of Orting in substantially the form of the interlocal agreement on file with the Black Diamond City Clerk and approved by the Black Diamond City Council.

PASSED BY THE BOARD AT A SPECIAL MEETING THEREOF ON THE ____ DAY
OF _____, 20____.

CFD NO. 2011-1

_____, Chair

ATTEST/AUTHENTICATED:

_____, Clerk

CITY COUNCIL AGENDA BILL

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

| ITEM INFORMATION | | | |
|--|---|-------------|----------|
| SUBJECT: Resolution No. 11-779, authorizing the Mayor to execute an Interlocal Agreement between the City of Black Diamond and Community Facilities District No. 2011-1 | Agenda Date: December 27, 2011 AB11-082 | | |
| | Department/Committee/Individual | Created | Reviewed |
| | Mayor Rebecca Olness | | |
| | City Administrator – | | |
| | City Attorney – Chris Bacha | | X |
| | City Clerk – Brenda L. Martinez | | |
| | Finance – May Miller | | |
| | Public Works – Seth Boettcher | | |
| | Economic Devel. – Andy Williamson | | |
| | Police – Jamey Kiblinger | | |
| | Court – Stephanie Metcalf | | |
| | Comm. Dev. – Steve Pilcher | | |
| Attachments: Resolution No. 11-779, Proposed Interlocal Agreement | | | |
| <p>SUMMARY STATEMENT:</p> <p>The intent of this agreement is to put in place the necessary administrative support to provide for the operation and functioning of the day to day activities including, by way of example, providing meeting space, preparing and posting of the notices of the Community Facilities District and to provide for reimbursement of the costs of such administrative support to the City</p> | | | |
| <p>COMMITTEE REVIEW AND RECOMMENDATION:</p> | | | |
| <p>RECOMMENDED ACTION: MOTION to adopt Resolution No. 11-779, authorizing the Mayor to execute an Interlocal Agreement between the City of Black Diamond and Community Facilities District No. 2011-1.</p> | | | |
| RECORD OF COUNCIL ACTION | | | |
| <i>Meeting Date</i> | <i>Action</i> | <i>Vote</i> | |
| December 27, 2011 | | | |
| | | | |
| | | | |

CITY OF BLACK DIAMOND WASHINGTON

RESOLUTION NO. 11-779

A RESOLUTION OF THE CITY OF BLACK DIAMOND, WASHINGTON, ADOPTING AND AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT WITH CFD NO. 2011-1

WHEREAS, Chapter 39.34 RCW (Interlocal Cooperation Act) permits local governmental units to make the most efficient use of their powers by enabling them to cooperate on the basis of mutual advantage; and

WHEREAS, Black Diamond is a municipal corporation operating under the laws of the state of Washington as a non-charter code city and is authorized to enter into interlocal agreements with other governmental units; and

WHEREAS, upon petition of BD Village Partners, LP, a Washington limited partnership and Yarrow Bay Development, LLC, a Washington limited liability company (collectively “**Petitioner**”), the Black Diamond City Council approved Resolution No. 11-770 (hereinafter the “**CFD Resolution**”), authorizing formation of CFD No. 2011-1 (hereinafter the “**CFD**”) pursuant to RCW Ch. 36.145 as an independently governed special purpose district organized created for the purpose of making local improvements by special assessment in accordance with the CFD Resolution and Chapter 36.145 RCW; and

WHEREAS, the CFD is vested with all powers and authority granted to community facilities districts including the power and authority to enter into interlocal agreements pursuant to Chapter 39.34, to transfer property of the CFD to the City of Black Diamond without compensation, and to use district revenue derived through special assessments and bonds authorized under chapter 36.145 RCW to finance costs, expenses, and facilities as set forth therein; and

WHEREAS, upon formation the CFD will require the assistance of the City to facilitate its day to day operations including, by way of example, providing meeting space, preparing and posting CFD public meeting notices, and providing administrative support; and

WHEREAS, the formation of the CFD will provide public benefit to the City of Black Diamond by providing a mechanism to fund the costs of public improvements through special assessments upon benefitted property which public improvements will be constructed by and through the CFD and will ultimately be transferred to the City pursuant to future agreements between the CFD and the City; and

WHEREAS, the City Council finds it in the best interests of the City to enter into an

Interlocal agreement with the CFD for the herein described purposes;

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

Section 1. Interlocal Agreement with CFD No. 2011-1. The Mayor of the City of Black Diamond is hereby authorized to execute the Interlocal Agreement with the CFD No. 2011-1 in substantially the form of the Interlocal agreement on file with the City Clerk.

PASSED BY THE CITY COUNCIL AT A SPECIAL MEETING THEREOF ON THE
____ DAY OF _____, 20____.

CITY OF BLACK DIAMOND

Rebecca Olness, Mayor

ATTEST/AUTHENTICATED:

Brenda L. Martinez, City Clerk

Approved as to form:

Chris Bacha
Kenyon Disend, PLLC,
City Attorney

Filed with the City Clerk:
Passed by the City Council:
Resolution No.:
Date Posted:

**FIRST INTERLOCAL AGREEMENT BETWEEN
THE CITY OF BLACK DIAMOND, WASHINGTON, AND
CFD NO. 2011-1**

This Interlocal agreement (the "**First Agreement**") between the City of Black Diamond, Washington ("**Black Diamond**"), and CFD No. 2011-1 ("**CFD**"), each of whom is organized as a Municipal Corporation under the laws of the state of Washington, is dated this ____ day of _____, 20__.

WHEREAS, Chapter 39.34 RCW (Interlocal Cooperation Act) permits local governmental units to make the most efficient use of their powers by enabling them to cooperate on the basis of mutual advantage; and

WHEREAS, Black Diamond is a municipal corporation operating under the laws of the state of Washington as a non-charter code city and is authorized to enter into interlocal agreements with other governmental units; and

WHEREAS, upon petition of BD Village Partners, LP, a Washington limited partnership and Yarrow Bay Development, LLC, a Washington limited liability company (collectively "**Petitioner**"), the Black Diamond City Council approved Resolution No. *** (hereinafter the "**CFD Resolution**"), authorizing formation of CFD No. 2011-1 pursuant to RCW Ch. 36.145 as an independently governed special purpose district organized created for the purpose of making local improvements by special assessment in accordance with the CFD Resolution and Chapter 36.145 RCW; and

WHEREAS, the CFD is vested with all powers and authority granted to community facilities districts including the power and authority to enter into interlocal agreements pursuant to Chapter 39.34, to transfer property of the CFD to the City of Black Diamond without compensation, and to use district revenue derived through special assessments and bonds authorized under chapter 36.145 RCW to finance costs, expenses, and facilities as set forth therein; and

WHEREAS, upon formation the CFD will require the assistance of the City to facilitate its day to day operations including, by way of example, providing meeting space, preparing and posting CFD public meeting notices, and providing administrative support; and

WHEREAS, the formation of the CFD will provide public benefit to the City of Black Diamond by providing a mechanism to fund the costs of public improvements through special assessments upon benefitted property which public improvements will be constructed by and through the CFD and will ultimately be transferred to the City pursuant to future agreements between the CFD and the City; and

WHEREAS the CFD and the City desire to enter into this Interlocal agreement for the herein described purposes;

NOW, THEREFORE, the parties have entered into this Agreement in consideration of the mutual benefits to be derived and to coordinate their efforts through the structure provided by the Interlocal Cooperation Act.

1. Purpose and Interpretation. The CFD is a special purpose district that has been constituted in accordance with state law to provide a source of funding for the construction of public improvements as set forth in the CFD petition, the CFD Resolution and Chapter 36.145 RCW. The CFD has no employees and the members of its Board of Supervisors are either City Council Members serving in an ex officio capacity, municipal finance experts appointed by the City Council, or are nominees designated by Petitioner pursuant to Chapter 36.145 RCW. The CFD is authorized to impose special assessments upon property within the boundaries of the CFD that are benefitted by the public improvements. The public improvements funded by the special assessments and bond proceeds will ultimately be conveyed to the City and will provide special benefit to the property within the district and general benefit to surrounding properties and to the City. In order to make the most efficient use of public monies derived by the District from the special assessments and bond proceeds, to avoid duplication of effort and to coordinate the efforts of the CFD and the City, and to provide for the administration and operation of the CFD, the parties have entered into this First Agreement. The intent of this First Agreement is to put in place the necessary administrative support to provide for the operation and functioning of the day to day activities of the CFD and to provide for the reimbursement of the costs of such administrative support to the City. The Parties envision that future agreements between the CFD and the City may be approved to provide for the transfer of the public improvements to the City and to provide for other services to the CFD that may be necessary from time to time. The Parties further envision that the CFD may in the future enter into service agreements with other parties to supplement or replace some or all of the services being provided to the CFD by the City.

In the event of ambiguity or the need for guidance arises, this agreement shall be interpreted in accordance with the provisions of the CFD Resolution, Chapter 36.145 RCW, and the provisions of the Governmental Accounting Act and RCW 43.09.210, as the foregoing (or any of them) exist or shall hereafter be amended. In the event that any provision of this First Agreement is held to be in conflict with existing state statute or any future amendment thereof, such provisions shall be severable, and the remaining provisions of this agreement shall remain in full force and effect.

2. Obligations of the CFD. The CFD agrees to:

2.1 As soon as reasonably practicable after formation, authorize and approve a cost reimbursement agreement with Petitioner for the reimbursement of the CFD's cost obligations to the City under this First Agreement. Such cost reimbursement agreement shall be consistent with the terms and conditions of this First Agreement.

2.2 Convey to the City of Black Diamond, or other appropriate governmental entities, all future public infrastructure improvements funded by the CFD, free and clear of liens and encumbrances, in accordance with all lawful requirements and regulations applicable thereto and

in accordance with such agreements for conveyance of such public improvements as the parties mutually agree upon.

2.3 Hold public hearings as may be required by law prior to levying any special assessment and shall levy any special assessment only in accordance with applicable law.

2.4. Reimburse the City for its Direct Costs of services provided to the CFD pursuant to Section 4 of this First Agreement.

3. Undertakings of Black Diamond. Black Diamond shall:

3.1 Provide administrative staff and necessary related support to the CFD to the extent necessary to organize the CFD, to prepare and conduct meetings of the Board of Supervisors, and to facilitate in the administration of the day to day affairs of the CFD;

3.2 Provide for use of the City Council chambers for public meetings of the CFD Board of Supervisors and provide for use of other public facilities for CFD meeting space;

3.3 Prepare and post public notice of meetings of the CFD Board of Supervisors as directed by the CFD;

3.4 Act as the custodian of records of the CFD and maintain such records for and on behalf of the CFD for the period established by the State Archivist retention schedule;

3.5 Maintain financial records, kept in accordance with generally accepted accounting practice and governmental accounting requirements, as necessary to document that any and all funding received through the CFD is used only for the purposes authorized in the CFD Resolution and Chapter 36.145 RCW;

3.5 Maintain a webpage accessible through the City of Black Diamond's official Website to provide public information about the CFD and to provide facilitate public access to public records of the CFD and public notices for and on behalf of the CFD;

3.6 Record and maintain an official journal of the minutes of all proceedings public meetings of the CFD Board of Supervisors;

3.7 Assist the CFD in identifying and selecting qualified individuals to provide consulting services to the CFD and Board of Supervisors, including by way of example and not limitation, general legal counsel, bond counsel, public finance administration and accounting, construction management and administration, architectural and engineering firms, construction contractors, and other related professional consulting services;

3.6 Provide for advertising, publishing and mailing of notices required for imposition of special assessments;

3.7 Upon appointment by the CFD as the District Treasurer pursuant to the provisions of Chapter 36.145 RCW, the City of Black Diamond finance director shall act as the district treasurer and shall establish a community facilities district fund into which shall be paid all CFD revenues. The finance director, while acting as district treasurer shall have such authority as district treasurer as provided pursuant to Chapter 35.145 and may create such funds, subfunds, accounts, and subaccounts as set forth therein; and

3.8 Provide such invoices and records to CFD as set forth in Section 4 herein.

4. Reimbursement of Costs.

4.7.1. Petitioner shall pay for all Direct Costs the City incurs prior to the effective date of this Agreement and for the Direct Costs it incurs thereafter reasonably related to the services provided herein that are not already subject to re-imbursement from the Petitioner pursuant to the pre-formation cost re-imbursement agreement.

4.7.2 Within fourteen (14) days of execution of this Agreement, City shall provide Petitioner with a statement identifying the City's reimbursable costs incurred prior to execution of this First Agreement.

4.7.3 Within thirty (30) business days of full execution of this First Agreement, CFD shall deposit with the City the sum of five thousand dollars (\$5,000.00) (the "**Administrative Expenses Fund**"), which the City may draw upon to pay for the Direct Costs authorized for reimbursement by this First Agreement. If the balance of the Administrative Expenses Fund falls below \$1000.00, CFD shall, within thirty (30) days of receipt of written request from the City, deposit such additional amount of money into the Administrative Expenses Fund as the parties agree is reasonably necessary, but no less than \$2500.00, for the continuing reimbursement of Administrative Expenses under this Agreement. CFD shall be entitled to a refund from the City of any unencumbered amounts remaining in the Administrative Expenses Fund within thirty (30) days of termination of this First Agreement.

4.7.4 Upon request of the CFD, the City shall provide an itemized invoice detailing the Direct Costs of services provided to the CFD within fourteen (14) days of such request. Upon request of the CFD, City will provide CFD with a written statement of the balance of the Administrative Expenses Fund within fourteen (14) days of such request.

4.7.5. Any time CFD disputes an invoice, receipt, deposit or reimbursement request from the City, CFD shall make such disputed deposit in a timely manner, under protest, to the City according to the timeframes set forth in this Agreement. Following resolution of the dispute per the processes set forth in Paragraph 5, the City shall refund any over payment to CFD within thirty (30) days of final resolution. Nothing in this subsection (d) shall be construed as limiting CFD's ability to terminate this Agreement pursuant to the provisions of Paragraph 9.

4.7.6 "Direct Costs" shall mean and include all costs and expenses to the City directly related to the services provided under this First Agreement to include, without limitation:

4.7.6.1 All costs and expenses of materials, equipment, supplies, utilities, consumables, goods, bonds and other items used or incorporated in connection with and in furtherance of this First Agreement and any taxes, insurance, and interest expenses related thereto, including activity pricing for crews and equipment;

4.7.6.2 All costs and expenses of labor inclusive of payroll benefits, non productive time and overhead for each of the labor classifications of the employees providing services and determined in accordance with the City's normal accounting procedures; and

4.7.6.3 All cost and expenses to the City for any work by consultants or contractors providing services to the CFD under this First Agreement.

5. Dispute Resolution. The parties shall apply their best efforts to fairly resolve any disputes that may arise in regard to implementation of this First Agreement. In the event the parties cannot agree on terms for resolving a dispute within twenty-one (21) days, they may mutually select a neutral third party to help facilitate such resolution. If resolution cannot be reached within fourteen (14) days, they may agree to a schedule and process for continued efforts to resolve the dispute. Neither party shall file a lawsuit in court until they have completed at least one formal session of mediation or other alternative dispute resolution process.

6. Ownership. No joint property ownership is contemplated under the terms of this agreement.

7. No Joint Board. No provision is made for a joint board. The CFD shall exercise its function in accordance with the CFD Resolution (as the same exists or may hereafter be amended), using staff as provided by the City of Black Diamond, pursuant to this First Agreement, or using staff, consultants and services otherwise contracted for by the CFD.

8. Insurance; Indemnity.

8.1 The parties agree to participate in the Cities Insurance Authority of Washington ("CIAW") insurance pool in accord with their respective interlocal agreements with the AWC. The original charge or premium for the CFD will be borne by Black Diamond as a cost to be covered under Section 4 and shall be reimbursed with funds received from or through the CFD. In the event that either or both cease to participate in the CIAW pool, the party or parties agree to obtain comparable coverage.

8.2 The CFD agrees to indemnify, defend and hold harmless Black Diamond, its officers, agents and employees from any from and against any and all claims, losses, damages, liabilities, actions, judgments or execution of third parties of any kind or nature whatsoever, whether at law or in equity, including, but not limited to, reasonable attorney's fees and court costs, arising out of, relating to, resulting from, or arising out of the activities of the CFD, except to the extent the same is caused by the negligence of the City or other person to be indemnified under this Section.

9. Termination. This agreement shall terminate or expire as follows:

9.1 This agreement may be terminated by either party upon the provision of thirty (30) calendar days notice. A final reconciliation of costs, payment, and a current report of completed activities shall be completed by Black Diamond within such period following the notice by either party.

9.2 Unless sooner terminated by either party, this agreement shall expire on the date when the CFD is dissolved in accordance with provisions of the CFD Resolution or Chapter 36.145 RCW or other applicable law, as the same exists or is hereafter amended.

10. Effective Date. This First Agreement shall be posted by subject on the City of Black Diamond' website or other electronically retrievable public source as required by RCW 39.34.040.

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

CITY OF BLACK DIAMOND:

CFD NO. 2001-1:

Rebecca Olness, Mayor

_____, Chair

ATTEST

Brenda Martinez, City Clerk

APPROVED AS TO FORM

Chris Bacha
Kenyon Disend, PLLC,
City Attorney



CITY OF BLACK DIAMOND
December 27, 2011 Special Meeting Agenda
25510 Lawson St., Black Diamond, Washington

6:00 P.M. – CALL TO ORDER, ROLL CALL

1.) Workstudy – Formation of Black Diamond Community Facilities District 2011-1

Mr. Bacha

2.) New Business

a) AB11-081 – Resolution Authorizing Formation of a Community Facilities District

Mr. Bacha

b) AB11-082 – Resolution Authorizing ILA with CFD NO. 2011-1

Mr. Bacha

3.) Adjournment