



CITY OF BLACK DIAMOND
September 20, 2012 REVISED Meeting Agenda
25510 Lawson St., Black Diamond, Washington

7:00 P.M. – CALL TO ORDER, FLAG SALUTE, ROLL CALL

PUBLIC COMMENTS: Persons wishing to address the City Council regarding items of new business are encouraged to do so at this time. When recognized by the Mayor, please come to the podium and clearly state your name and address. Please limit your comments to 3 minutes. If you desire a formal agenda placement, please contact the City Clerk at 360-886-5700. Thank you for attending this evening.

PUBLIC HEARINGS:

APPOINTMENTS, PRESENTATIONS, ANNOUNCEMENTS:

Presentation – Labor Day Awards – Mayor Olness

UNFINISHED BUSINESS:

- | | |
|--|-------------|
| 1.) AB12-069A – Ordinance Amending BDMC 18.14.070- Vesting Period | Mr. Pilcher |
| 2.) AB12-070A – Ordinance Amending Chapter 17.16 and 18.08 – Administrative Appeals | Mr. Pilcher |

NEW BUSINESS:

- | | |
|--|---------------------------------|
| 3.) AB12-071 – Resolution Accepting Donation from Save Black Diamond (K-9 Fundraiser) | Councilmembers Deady and Benson |
| 4.) AB12-072 – Ordinance Relating to Fire Impact Fees | Mr. Bacha |
| 5.) AB12-073 – Resolution Awarding Contract for the Concrete Equipment Wash Pad Project | Mr. Williamson |
| 6.) AB12-074 – Resolution Confirming Melanie Dane as Municipal Court Judge | Mayor Olness |

DEPARTMENT REPORTS:

MAYOR'S REPORT:

COUNCIL REPORTS:

ATTORNEY REPORT:

PUBLIC COMMENTS:

CONSENT AGENDA:

- 7.) **Claim Checks** – September 20, 2012 Check No. 38726 through No. 38802 (voided check Nos. 38729, 38735, 38740 and 38725) in the amount of \$233,459.57
- 8.) **Payroll Checks** – August 31, 2012 No. 17835 through No. 17848 and ACH Pay in the total amount of \$160,903.69
- 9.) **Minutes** – Town Hall Minutes of June 14, 2012 and Council Minutes of September 6, 2012

EXECUTIVE SESSION:

ADJOURNMENT:

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
SUBJECT: Ordinance No. 12-978, amending Chapter 18.14, Black Diamond Municipal Code, regarding vesting periods for previously approved project permits	Agenda Date: September 6, 2012		AB12 -069A
	Department/Committee/Individual		
	Mayor Rebecca Olness		
	City Administrator -- Pete Butkus	X	
	City Attorney --Chris Bacha	X	
	City Clerk -- Brenda L. Martinez		
	Finance -- May Miller		
	Public Works -- Seth Boettcher		
	Economic Devel. -- Andy Williamson		
	Police -- Jamey Kiblinger		
Comm. Dev. -- Steve Pilcher	X		
Cost Impact: legal notice; staff time			
Fund Source: none			
Timeline: Planning Comm hearing 8/7/12			
Attachments: Proposed ordinance			
SUMMARY STATEMENT: <p>In 2009, the City adopted Black Diamond Municipal Code Chapter 18.14, concerning vesting of project permit applications. The chapter included provisions for how long previously approved permit applications would remain valid. If the approval or code did not include a specific expiration date, previously approved permits would expire by April 1, 2012.</p> <p>Black Diamond Plaza, LLC, the proponents of a commercial development proposal along SR 169, requested an extension of time beyond the code-specific April 1 expiration date. The Community Development Director determined their request did not meet the approval criteria contained in 18.14.050.A. However, the Director did grant a 6 month extension until October 1, 2012, in order to allow the proponents the opportunity to seek a change in the regulations.</p> <p>Black Diamond Plaza, LLC subsequently requested an amendment to the code to extend the expiration date until April 1, 2016. The Planning Commission conducted a public hearing on the matter and recommends the Council amend the code to allow an extension until April 1, 2015.</p> <p>Based upon staff research, this proposed amendment would only apply to the Black Diamond Plaza property, as there are no other eligible properties within the city limits.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: The Planning Commission conducted a public hearing on this request on August 7, 2012 and rendered its recommendation at the conclusion of the hearing.			
RECOMMENDED ACTION: MOTION to adopt Ordinance No. 12-978, amending BDMC 18.14 regarding the vesting period for previously approved project permits.			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	
September 6, 2012	Bring to Workstudy/Next Council	Passed 5-0	
September 20, 2012			

CITY OF BLACK DIAMOND WASHINGTON

ORDINANCE NO.12-978

AN ORDINANCE OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO VESTING OF PROJECT PERMITS; AMENDING CHAPTER 18.14 OF THE BLACK DIAMOND MUNICIPAL CODE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, on June 18, 2009, the City Council adopted Ordinance No. 09-909 to replace the majority of the City's then-existing zoning regulations and procedural requirements codified in Title 18 of the Black Diamond Municipal Code; and

WHEREAS, Ordinance No. 09-909 established a new chapter 18.14 relating to vesting of project permits; and

WHEREAS, BDMC 18.14.070 established that project permits approved prior to the adoption of Chapter 18.14 would retain their approval until April 1, 2012; and

WHEREAS, June, 2012, Black Diamond Plaza, LLC filed a request to amend the text of BDMC 18.14.070 to extend the period of approval set forth in BDMC 18.14.070; and

WHEREAS, the Planning Commission reviewed the above described request at a public hearing held on August 7, 2012; and

WHEREAS, after consideration of the request and other facts, the Planning Commission has recommended that the BDMC 18.14.070 be amended to provide the previously approved project permits shall remain vested until April 1, 2015; and

WHEREAS, the City Council finds that it is in the best interest of the public health, safety and welfare to amend BDMC Chapter 18.14 as set forth herein to extend the vesting period for previously approved project permits that have not yet expired pursuant to the provisions of BDMC 18.14.070; and

NOW, THEREFORE, the City Council of the City of Black Diamond, Washington, do ordain as follows:

Section 1. Amendment of BDMC 18.14.070 (Lapsing of existing approvals – Notice required). Section 18.14.070 of the Black Diamond Municipal Code is hereby amended (amendments shown in legislative revision marks) to read as follows:

18.14.070 - Lapsing of existing approvals—Notice required.

Any project permit issued by the city prior to the enactment of this chapter, if such approval or permit is not already subject to a definite expiration date under the provisions of the city's municipal code, shall hereby lapse and become void on April 1, 2012 2015; provided, the city shall take reasonable steps to notify persons who may possess such approval or permits of this deadline. Reasonable steps may include putting notice on the city's website or mailing written notice to any person whom the city is aware would be affected and for whom the city is able, through reasonable effort, to determine a current mailing address. Extension of such an approval or permit, or issuance of a new approval or permit, shall be subject to the provisions of this chapter.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance 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.

Section 3. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force ~~five~~ (5) days after the date of publication.

**ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON
THE ~~6TH~~ 20TH DAY OF SEPTEMBER, 2012.**

CITY OF BLACK DIAMOND

Rebecca Olness, Mayor

ATTEST/AUTHENTICATED:

Brenda L. Martinez, City Clerk

Approved as to form:

Chris D. Bacha,
Kenyon Disend PLLC
City Attorney

Filed with the City Clerk:

Passed by the City Council:

Ordinance No. 12-978

Date of Publication:

Effective Date:

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
SUBJECT: Ordinance No. 12-979, amending Chapters 17.16, Black Diamond Municipal Code, regarding appeals of preliminary plat decisions	Agenda Date: September 20, 2012		AB12 -070A
	Department/Committee/Individual		
	Mayor Rebecca Olness		
	City Administrator – Pete Butkus	X	
	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: NA	Comm. Dev. – Steve Pilcher	X	
Fund Source: none			
Timeline: Planning Comm recomm. 8/7/12			
Attachments: Proposed ordinance			
SUMMARY STATEMENT: <p>On May 3, 2012, the City Council adopted Resolution No. 12-801, directing the Planning Commission to conduct a public hearing and render a recommendation on a proposal to resolve an apparent conflict between BDMC 17.16 and 18.08 by clarifying that an appeal of a Hearing Examiner decision on a preliminary plat application would be directed to the City Council, instead of Superior Court.</p> <p>The Commission conducted a public hearing on June 12, 2012, considered the testimony and asked to receive information from the City's insurance carrier and legal counsel regarding this issue. On August 7, 2012, a presentation was made by Michael Tierney, an attorney under contract with CLAW (insurance carrier) and with Mr. Bacha, City Attorney. Four of the five City Council members were also in attendance for this presentation.</p> <p>After considering the information provided, the Commission voted unanimously to recommend that the City Council <i>not</i> adopt the proposed ordinance and to instead amend Chapter 17 so that it agrees with Chapter 18.</p> <p>At its September 6, 2012 regular meeting, the City Council directed the City Attorney to prepare an ordinance to amend Title 17 so that appeals of Hearing Examiner decisions on preliminary plats would proceed to Superior Court.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: See above.			
RECOMMENDED ACTION: MOTION to adopt Ordinance No. 12-979, amending BDMC 17.16 appeals of preliminary plat decisions.			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	
September 6, 2012	Postponed to September 20, 2012 meeting	Passed 5-0	
September 20, 2012			

CITY OF BLACK DIAMOND WASHINGTON

ORDINANCE NO. 12-979

**AN ORDINANCE OF THE CITY OF BLACK DIAMOND,
WASHINGTON, RELATING TO APPEALS OF
PRELIMINARY PLAT APPROVAL; AMENDING
SECTION 17.16.040 OF THE BLACK DIAMOND
MUNICIPAL CODE; CLARIFYING THAT A
PRELIMINARY PLAT APPROVAL BY THE HEARING
EXAMINER IS NOT SUBJECT TO ADMINISTRATIVE
APPEAL; PROVIDING FOR SEVERABILITY; AND
ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, on June 18, 2009 the City Council adopted Ordinance No. 09-909 to replace the majority of the City's then-existing zoning regulations and procedural requirements codified in Title 18 of the Black Diamond Municipal Code; and

WHEREAS, pursuant to Ordinance No. 09-909 approval of a preliminary plat was made a type – 3 decision; and

WHEREAS, a type – 3 decision is made by a Hearing Examiner following an open record public hearing and may only be appealed to the Superior Court; and

WHEREAS, BDMC 17.16.040 which pre-existed the adoption of Ordinance No. 09-909, provides for a closed record administrative appeal before the City Council, of the hearing examiner's decision on a preliminary plat application; and

WHEREAS, BDMC 17.16.040 is in conflict with the procedures for appeal of a decision on a preliminary plat application as set forth in Ordinance No. 09-909; and

WHEREAS, the planning commission conducted a public hearing commencing on June 12, 2012 and extending to July 10, 2012 and August 7, 2012, to review proposed amendments to BDMC Title 17 and Title 18 that would clarify that preliminary plat approval by the hearing examiner may be subject to administrative appeal before the City Council; and

WHEREAS, the planning commission recommended that the City Council not adopt the proposed amendments to BDMC Title 17 and Title 18 and that the City Council instead amend BDMC Title 17 to eliminate the existing conflict and clarify that the preliminary plat approval by

the hearing examiner is a final decision and subject to appeal only to Superior Court pursuant to the provisions of BDMC Chapter 18.08; and

WHEREAS, the City Council considered the recommendation of the Planning Commission at its regular meeting conducted on September 6, 2012 and determined that it would be in the best interest of the public to accept the recommendation of the planning commission as set forth above; and

WHEREAS, the City Council finds that it is in the best interest of the public health, safety and welfare to amend BDMC 17.16.40 as set forth herein to remove the conflict that has unintentionally been created regarding administrative appeals of preliminary plat approval decisions and to clarify and harmonize the process for such administrative appeals;

NOW, THEREFORE, the City Council of the City of Black Diamond, Washington, do ordain as follows:

Section 1. Amendment of BDMC 17.16.040 (Appeal from hearings examiner decision). Section 17.16.040 of the Black Diamond Municipal Code is hereby repealed in it's entirety and is re-enacted to read as follows:

17.16.040 – Judicial Review.

The hearing examiner's decision on a preliminary plat application shall be the final administrative decision of the city. The decision of the hearing examiner may be subject to judicial review in accordance with BDMC 18.08.230 and Chapter 36.70C RCW.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance 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.

Section 3. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 20TH DAY OF SEPTEMBER, 2012.

CITY OF BLACK DIAMOND

Rebecca Olness, Mayor

ATTEST/AUTHENTICATED:

Brenda Martinez, City Clerk

Approved as to form:

Chris D. Bacha,
Kenyon Disend PLLC
City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No. 12-979
Date of Publication:
Effective Date:

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: Resolution No. 12-830, establishing a policy for and authorizing acceptance of donations for support of the City of Black Diamond Police Department K-9 Unit	Agenda Date: September 20, 2012	
	AB12-071	
	Department/Committee/Individual	
	Mayor Rebecca Olness	
	City Administrator –Pete Butkus	X
	City Attorney –Chris Bacha	X
	City Clerk – Brenda L. Martinez	
	Finance – May Miller	
	Public Works – Seth Boettcher	
	Economic Devel. – Andy Williamson	
Cost Impact: N/A	Police – Jamey Kiblinger	
Fund Source:	Court – Stephanie Metcalf	
Timeline:	Comm. Dev. – Steve Pilcher	
Attachments: Draft Resolution		
<p>SUMMARY STATEMENT:</p> <p>Councilmembers Benson & Deady asked to have this matter considered at the Workstudy Meeting and the following Regular Meeting on 20 September, 2012.</p>		
<p>COMMITTEE REVIEW AND RECOMMENDATION:</p> <p>None, is going to the Committee of the Whole</p>		
<p>RECOMMENDED ACTION: MOTION to adopt Resolution No. 12-830, establishing a policy for and authorizing acceptance of donations for support of the City of Black Diamond Police Department K-9 Unit</p>		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
September 20, 2012		

CITY OF BLACK DIAMOND
WASHINGTON
RESOLUTION NO. 12-830

**A RESOLUTION OF THE CITY OF BLACK DIAMOND,
WASHINGTON, ESTABLISHING A POLICY FOR AND
AUTHORIZING ACCEPTANCE OF DONATIONS FOR
SUPPORT OF THE CITY OF BLACK DIAMOND POLICE
DEPARTMENT K- 9 UNIT**

WHEREAS, the City of Black Diamond has in the past accepted donations from the community for the support of the Black Diamond Police Department K-9 unit; and

WHEREAS, there is community interest in raising funds for continued support of the Black Diamond Police Department K-9 unit, and in particular there is community support from Save Black Diamond, a Washington non-profit corporation which is actively engaged in such fund raising activities; and

WHEREAS, the Black Diamond City Council desires to express its support for the efforts of the community and Save Black Diamond to raise funds for the Black Diamond Police Department K-9 unit; and

WHEREAS, in support thereof the City Council desires to express the policy of the City to accept donations from the community in support of the Black Diamond Police Department K-9 unit;

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

Section 1. That the City of Black Diamond supports the efforts of the community to raise funds for the support of the Black Diamond Police Department K-9 unit, and in support thereof, establishes that it is the policy of the City to accept donations from the community for the Black Diamond Police Department K-9 unit regardless of the source of such funds, which funds upon receipt shall be allocated solely to costs and expense of the Black Diamond Police Department K-9 unit.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 20TH DAY OF SEPTEMBER, 2012.

CITY OF BLACK DIAMOND

Rebecca Olness , Mayor

ATTEST/AUTHENTICATED:

Brenda Martinez, City Clerk

Approved as to form:

Chris Bacha, City Attorney

Filed with the City Clerk:
Passed by the City Council:
Resolution No.: 12-830
Date Posted:

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: Ordinance No. 12-980, relating to Development Impact Fees; updating Chapter 3.50 of the Black Diamond Municipal Code	Agenda Date: September 20, 2012	
	AB12-072	
	Department/Committee/Individual	
	Mayor Rebecca Olness	
	City Administrator –Pete Butkus	
	City Attorney –Chris Bacha	X
	City Clerk – Brenda L. Martinez	
	Finance – May Miller	
	Public Works – Seth Boettcher	
	Economic Devel. – Andy Williamson	X
Cost Impact:		
Fund Source:		
Timeline:		
	Police – Jamey Kiblinger	
	Court – Stephanie Metcalf	
	Comm. Dev. – Steve Pilcher	
Attachments: Ordinance No. 12-980		
<p>SUMMARY STATEMENT:</p> <p>The City Council has held a workshop attended by the Fire Impact Fee consultant where questions from the Council were answered and discussed.</p> <p>The City Council held a Public Hearing on 9/06/2012 to take testimony from the public.</p> <p>The Fire Impact Fee study and calculations were performed by the City’s Fiscal consultant firm Henderson & Young.</p>		
COMMITTEE REVIEW AND RECOMMENDATION:		
<p>RECOMMENDED ACTION: MOTION to adopt Ordinance No. 12-980, relating to Development Impact Fees; updating Chapter 3.50 of the Black Diamond Municipal Code; implementing a Fire Impact Fee; providing for severability; and establishing an effective date</p>		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
September 6, 2012	Public Hearing Only	
September 20, 2012		

CITY OF BLACK DIAMOND

WASHINGTON

ORDINANCE NO. 12-980

**AN ORDINANCE OF THE CITY OF BLACK DIAMOND,
WASHINGTON, RELATING TO DEVELOPMENT
IMPACT FEES; UPDATING CHAPTER 3.50 OF THE
BLACK DIAMOND MUNICIPAL CODE; IMPLEMENTING
A FIRE IMPACT FEE; PROVIDING FOR SEVERABILITY;
AND ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, state law, pursuant to RCW Chapter 82.02, authorizes code cities to implement development impact fees for transportation, parks, schools and fire protection system improvements that are reasonably related to new development, that do not exceed a proportionate share of the costs of system improvements, and that are reasonably related to and will benefit new development; and

WHEREAS, in 1995 the City Council, pursuant to Ordinance No. 580, adopted a development impact mitigation code in conformance with RCW Chapter 82.02; and

WHEREAS, the development impact mitigation code has not been updated since its adoption to conform to changes in state law; and

WHEREAS, the City Council has not yet adopted development impact fees as authorized by state law; and

WHEREAS, the current population of the City of Black Diamond is approximately 4200 persons and the City anticipates substantial growth and new development which will impact the City's fire protection service; and

WHEREAS, anticipated growth and new development will necessitate capital investment for fire protection facilities needed to serve new development; and

WHEREAS, in 2010 the City Council authorized and commissioned a fire impact fee protection facilities study, completed in January of 2011 (the "2011 Fire Impact Fee Study"), for the purpose of establishing the rates for development impact fees for fire protection facilities in the City of Black Diamond using methodology authorized by and in compliance with Washington Law and City Code; and

WHEREAS, the 2011 Fire Impact Fee Study was amended in June of 2012 to include a credit for construction of single family residential properties with residential fire sprinkler systems (hereinafter the "Amended 2011 Fire Impact Fee Study"); and

WHEREAS, the Amended 2011 Fire Impact Fee Study sets forth the methodology, the data, the adjustment for benefit to current city development, and the calculations used to establish impact fees and credits for fire protection facilities; and

WHEREAS, the City Council has reviewed the Amended 2011 Fire Impact Fee Study, conducted a work study session related to the methodology, data and calculations used to establish impact fees for fire protection facilities, and held a public hearing on the 6th day of September, 2012 to receive public testimony regarding this ordinance, the Amended 2011 Fire Impact Fee Study, and the proposed impact fees for fire protection facilities; and

WHEREAS, the City Council having been in all matters fully advised, finds that the proposed impact fees for fire protection facilities as set forth herein are reasonably related to new development, do not exceed a proportionate share of the costs of system improvements that are reasonably related to and will benefit new development; and

WHEREAS, the City Council finds that it is in the interest of the public health, safety and welfare to amend the Development Impact Mitigation Code to update the Code and to implement impact fees for fire protection facilities as set forth herein;

NOW, THEREFORE, the City Council of the City of Black Diamond, Washington, do ordain as follows:

Section 1. Amendment of BDMC Ch. 3.50 (Development Impact Mitigation Code).
Chapter 3.50 of the Black Diamond Municipal Code is hereby amended (shown in legislative revisions marks) to read as follows:

3.50.010 - Title.

This chapter shall be known as the "Black Diamond development impact mitigation code" and may be cited as such.

3.50.020 - Purpose.

It is the purpose of this chapter to:

A. Ensure that adequate facilities are available to serve new growth and development;

B. Promote orderly growth and development by requiring that new development pay a proportionate share of the cost of new facilities needed to serve growth; and in order to promote sound financial management practices in the operation of city government the council finds that the cost of having governmental officials review and process land use proposals should be borne by the land developer and not the taxpayers in general; and whereas, the land developer is entitled to some certainty in knowing what approvals are required for ~~hera~~ development proposal, the estimated time

in obtaining those approvals, and the government officials that will be accountable for each aspect of the approval; and

C. Ensure that impact fees are imposed through established procedures and criteria so that specific developments do not pay arbitrary fees or duplicate fees for the same impact.

3.50.040 - Definitions.

As used in this chapter:

"Applicant" means the person, firm, company, partnership, or corporation, and all successors in interest thereto, proposing a development in the city.

"Building permit" for purposes of this Chapter means the permit required for new construction and additions pursuant to Chapter 15.04 BDMC. ~~The term "building permit," as used herein, shall not be deemed to include:~~

- ~~1. Permits required for the remodeling, rehabilitation or other improvements to an existing structure or rebuilding a damaged or destroyed structure, provided there is no increase in the square footage space (for non-residential construction) or number of dwelling units (for residential construction) resulting therefrom;~~
- ~~2. Permits required for temporary dwellings;~~
- ~~3. Permits required for placement of a mobile home within an approved mobile home park.~~

"Capital improvement plan" means the capital facilities plan element of the city's comprehensive plan adopted pursuant to the provisions of RCW 36.70A.070 and that contains the elements identified in RCW 82.02.050 and that is in effect at the time the impact fee is imposed.

"City" means the city of Black Diamond.

"Development" means any proposed land use, zoning or rezoning, comprehensive plan amendment, annexation, subdivision, short subdivision, planned unit development, planned area development, building permit, binding site plan or any other property development action permitted or regulated by this code.

"Development activity" means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land, that creates additional demand and need for public facilities; but does not include buildings or structures constructed by a regional transit authority.

"Development approval" means any written authorization from the development approval authority which authorizes the commencement of development activity.

"Development approval authority" means the city official or tribunal having code authority to approve a development activity.

"Dwelling Unit" shall have the same meaning as that term is given pursuant to Chapter 18.100 of the Black Diamond Municipal Code as now, or may hereafter be amended.

"Fire Impact Fee Study" shall mean and refer to the fire protection facility impact fee rate study prepared by Henderson Young & Company and dated on or about January 13, 2011 together with the amendments thereto dated on or about June of 2012 to address credits for residential fire sprinkler systems, as on file with the office of the City Clerk, and such future Fire Impact Fee Study or studies as may be commissioned by the City and adopted by the City Council to establish fire protection facility impact fees.

"Fire protection facilities" means fire trucks and apparatus, and fire stations, and any furnishings and equipment that are used with fire trucks and apparatus or fire stations and which can be capitalized.

"Fire protection project improvements" means site improvements and facilities that are planned and designed to provide service for a particular development or users of the project and are not fire protection system improvements. No fire protection improvement or facility included in a capital improvement plan approved by the city council shall be considered a fire protection project improvement.

"Fire protection system improvements" means fire protection facilities that are included in the capital improvement plan and are designed to provide service to service areas within the community at large, in contrast to fire protection project improvements.

"Impact" means any effect on public facilities or services attributable or directly related to the proposed development.

"Impact fee" means the fee or charge levied pursuant to this chapter as a condition of issuance of a building permit or development approval and which mitigates all or any portion of an impact. Impact fee does not include a reasonable permit or application fee.

"Low-income housing" means housing with a monthly housing expense, that is no greater than thirty percent of eighty percent of the median family income adjusted for family size, for the county where the project is located, as reported by the United States department of housing and urban development.

"Mitigation" or "mitigate" means an action which avoids any negative or adverse impact, or which ameliorates any such impact.

"Non-Residential" or "Non-Residential Development" means any and all types of construction that do not constitute residential construction or residential development.

"Owner" means the owner of record of real property, although when real property is being purchased under a real estate contract, the purchaser shall be considered the owner of the real property if the contract is recorded.

"Project improvements" means site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project, and are not system improvements. No improvement or facility included in the capital improvement plan shall be considered a project improvement.

"Proportionate share" means that portion of the cost of public facility improvements that are reasonably related to the service demands and needs of new development.

"Public facilities" means any city-owned, operated or contracted facility or service, in whole or in part, whether existing or planned, including but not limited to parks, utilities, recreational facilities, schools, libraries, playgrounds, streets, transportation facilities, open spaces, police, fire or garbage services, buildings and all such facilities or services, including related equipment.

"Residential" or "Residential Development" means all types of construction intended for human habitation. Unless otherwise specified herein, this shall include, but is not limited to, single-family, duplex, triplex, mobile homes and other multifamily residential development.

"Service area" means a geographical area in which a defined set of public facilities provides services to developments within the area. Service areas may be separately described for each type of public facility.

"System improvements" means public facilities that are included in the capital improvement plan and are designed to provide service to service areas within the community at large, in contrast to project improvements.

3.50.050 - Applicability of impact fee.

A. This chapter shall be applied as part of and integrated into the city's land use and development approval procedures, so that mitigation decisions under this chapter are incorporated into development approval and permitting decisions at the earliest stage, thus permitting public review and comment.

B. This chapter shall be uniformly applicable to development activity that occurs within a designated service area.

C. Mitigation conditions imposed pursuant to this chapter shall be deemed conditions of the development permit and may be enforced by any suitable means.

3.50.060 - Identification of development impacts.

A. Impact Identification Required. Before a development is given approval or is allowed to proceed, the city shall identify all impacts of the development, if any.

B. Impact Criteria. The city shall consider, but not be limited to, the following items in identifying or quantifying an impact, to the extent the items are applicable to the development.

1. The provisions of this code, the capital improvement plan, or any other adopted city plan;
2. Technical documents which discuss or analyze public facilities or services or adopted city plans;
3. Pre-development versus post-development demands upon public facilities and services;
4. Impact of the development on the size, number, capacity, condition, availability, proximity or other characteristics of public facilities and services;
5. Likelihood that an impact from a development, when aggregated with impacts of future development in the immediate vicinity, will require mitigation due to its cumulative effect;
6. Nature, quantity, cost, identified completion date, if any, and pro rata share if applicable, of contributions, improvements or dedications to public facilities and services, including those offered or suggested by the applicant;
7. Likelihood that the development will benefit from or use public facilities and services;
8. Existing or planned alternatives for financing capital improvements;
9. Whether the development furthers the public health, safety and general welfare;
10. Likelihood of city growth through annexation of areas adjacent to the development;

11. Whether impacts have been previously mitigated, in whole or in part;
12. Any other criteria useful for identifying and quantifying impacts deemed relevant by the city;
13. The cost of system improvements previously incurred by the city to the extent that the proposed growth and development is served by the previously constructed improvements.

C. Identification Cost. The cost of any special investigation, analysis or report necessary for the identification of impacts related to any development shall be borne by the applicant.

3.50.070 - Mitigation review/Alternatives.

A. Mitigation of Impacts Required. The city shall not give development approval unless satisfactory provisions have been made to mitigate identified impacts and such provisions meet the policies and goals of this chapter and of the city's development regulations.

B. Review. The city shall review the identified impacts and any proposed alternatives for mitigating such impacts to determine whether the policies and goals of this chapter and of the city's development regulations can be met.

C. Mitigation Alternatives. The following alternatives or any combination, either on-site or off-site, may be used as necessary to mitigate or avoid identified impacts. The list is not exhaustive and does not purport to describe all available and viable alternatives. Other alternatives may be used as necessary to achieve the policies and goals of this chapter and of the city's development regulations.

1. Modification of the development activity so that identified impacts are avoided;
2. Dedication of land to the city for public purposes;
3. Contributions or payments offered by the applicant for use in mitigating on-site or off-site impacts as authorized under RCW 82.02.020. Contributions pursuant to RCW 82.02.020 shall not be required as a condition of development approval and shall be subject to the limitations of RCW 82.02.020 as now existing or hereafter amended; provided, however, that persons entitled to a refund and/or payment of interest may voluntarily and in writing waive their right to such refund or payment in whole, in part, or for a specified time period to facilitate completion of the designated improvement. No such waiver shall be required as a condition

of development approval, but when made shall be recorded with the King County department of records and shall be binding upon subsequent owners;

4. Environmental mitigation agreements under the authority of RCW Chapter 43.21C and Chapter 19.04 of this code. Such agreements shall not fall within the purview of RCW 82.02.020 and shall be distinct from voluntary contribution agreements;
5. Impact fees assessed pursuant to this chapter. Such fees, if assessed, shall be used only to fund system improvements. Formulas for determining the amount of such fees will be adopted, from time to time, by ordinance of the city council;
6. Contractual arrangements between the applicant and the city permitting use by the general public of private facilities or services within the development;
7. Contractual arrangements between the applicant and the city whereby the applicant constructs, funds or commits to construct or fund public facilities and services which mitigate identified impacts;
8. Any contractual agreement, including but not limited to latecomers agreement, no protest agreement, maintenance agreement or funding agreement which mitigates any identified impact;
9. Any alternative offered by the applicant which is satisfactory to the city and has the effect of mitigating identified impacts;
10. If the city determines that identified impacts would be best mitigated on a regional basis, the city may independently or in conjunction with any other jurisdiction prepare or have prepared a cost estimate and define a benefit area for the regional improvement. The fair share of the total costs to be allocated to the proposed development shall then be determined.

3.50.080 - Imposition of impact fee.

A. No building permit shall be issued for a development activity in a designated service area as herein defined unless the impact fee is calculated, imposed and collected pursuant to this chapter.

B.

1. For single-family/duplex residential subdivisions and short subdivisions hereinafter approved, the per lot impact fee shall be calculated, ~~and assessed at the time of final plat or short plat approval, noted on the face of the final plat, and collected on a per lot basis at the time of building permit application; provided, however, if an improvement for which an impact fee is being collected must be constructed prior to occupancy of any phase of the development, then the impact fee for said improvement shall be paid at the time of assessment.~~
2. For new multifamily and nonresidential development hereinafter approved, the impact fee shall be calculated, ~~and assessed, and collected at the time of site plan approval and collected at the time of building permit application; provided, however, if an improvement for which an impact fee is being collected must be constructed for occupancy of any phase of the development, then the impact fee for said improvement shall be paid at the time of impact fee assessment. If the nature of the development activity is then not sufficiently defined, then calculation and assessment of the impact fee shall be deferred until the building permit application is submitted.~~
3. ~~Notwithstanding the foregoing, the fee shall be recalculated for building permit applications filed more than three years following the date of the applicable final plat approval, short plat approval or site plan approval, using the city regulations and capital facility and impact fees in effect at the time the building permit application is submitted.~~
4. ~~If a building permit for a model home is allowed prior to the time of final plat or short plat approval, then the developer shall pay the impact fee in effect at the time the model home building permit application is submitted.~~

~~C. For development activity not necessitating or having previously been granted preliminary plat, preliminary short plat or site plan approval, the impact fees shall be calculated, assessed and collected at the time of building permit application.~~

D. For development activity not necessitating a building permit, the impact fee shall be calculated, assessed and collected at the time of site plan approval.

ED. For mobile home parks, the impact fee shall be calculated, imposed and collected at the time of site plan approval, provided, if the mobile home park is approved for construction in phases, then the fee for the first phase shall be paid at the time of site plan approval, and the fee for each subsequent phase shall be paid prior to the issuance of permits for construction of improvements within that phase.

E. Imposition of Fire Protection Facility Impact Fees. The City hereby imposes, and shall assess and collect, fire protection facility impact fees, calculated in

accordance with BDMC 3.50.100, on every applicant for a building permit within the service area, except as provided in BDMC 3.50.120 (Exemptions).

F. Any fire protection impact fee imposed shall be reasonably related to the impact caused by the new development and shall not exceed a proportionate share of the cost of fire protection facilities that are reasonably related to the new development.

G. The fire protection impact fee imposed may include costs for fire protection facility improvements previously incurred by the City to the extent that new development will be served by the previously constructed improvements; provided, that such fee shall not be imposed to correct any system improvement deficiencies.

H. The fire protection impact fee imposed for any development shall be calculated and determined by the procedures established by this chapter and based on the methods set forth in BDMC 3.50.100.

3.50.090 - Establishment of development service areas.

Service areas, which may vary by type of public facility, are to be established.

A. Such areas will provide a nexus between those paying the fees and receiving the benefits to ensure that those developments paying impact fees receive substantial benefits.

B. Service areas may be designated by the city council, by ordinance or through amendment to the capital improvement plan upon consideration of the following factors:

1. The comprehensive plan;
2. Standards for adequate public facilities incorporated in the capital improvement plan;
3. The projections for full development as permitted by land use ordinances and timing of development;
4. The need for funding unprogrammed capital improvements necessary to support projected development;
5. Such other factors as the city may deem relevant.

C. Fire Protection Service Area. The city hereby establishes as the service area for fire protection facility impact fee, the corporate limits of the City of Black Diamond, including all property located within the corporate city limits. The scope of the Fire Protection Service Area is hereby found to be reasonable and established on the

basis of sound planning and engineering principles and the factors set forth in BDMC 3.50.090(A) and (B), and is found to be consistent with RCW 82.02.060, as described in the Fire Impact Fee Study.

3.50.100 - Calculation of impact fee.

A. Formulas for determining the amount of the impact fees assessed under this chapter will be adopted, from time to time, by ordinance of the city council. The city council shall hold a public hearing before adopting or amending impact fee formulas.

B. If the development for which approval is sought contains a mix of use, the impact fee must be separately calculated for each type of use.

C. Upon application by the ~~developer~~applicant supported by studies and data, the impact fee may be reduced or eliminated if it is shown that either:

1. The formulas adopted by the city council do not accurately reflect the impact; or
2. Due to unusual circumstances:
 - a. Facility improvements identified for the applicable service are not reasonably related to the proposed development, or
 - b. Such facility improvements will not reasonably benefit the proposed development.

D. Prior to making an application for any development approval, an applicant, upon payment of the applicable fee, may request an impact fee determination, which determination shall be based upon information supplied by the applicant sufficient to permit calculation of the impact fee. The impact fee determination shall be binding upon the city for a period of six months unless there is a material change in either the development proposal or this chapter. The fee for a binding preapplication impact fee determination shall be ~~less than fifty dollars~~established by ordinance or resolution of the City Council. The fee shall be the actual cost of making the determination, including all legal, administrative, engineering and planning fees, and shall be paid before the written determination is provided to the applicant.

E. Adoption of Fire Impact Fee Formula. The following fire protection facility impact fee formula shall be used to calculate base fire protection facility impact fees:

<u>Land Use</u>	<u>Fire Protection Impact Fee Formula</u>
<u>Residential</u>	<u>\$1,783.13 per dwelling unit</u>
<u>*Single Family Residential – With Fire Sprinkler System Credit</u>	<u>\$1,450.40 per dwelling unit</u>
<u>Non-Residential</u>	<u>\$2.29 per square foot</u>

*Note: The credit is to be given for the fire portion of the impact fee for single family residential only, but not for the medical emergency portion of the impact fee. The single-family residential fire sprinkler system credit is 18.66% of the combined (fire plus emergency medical) impact fee per dwelling unit. See, BDMC 3.50.120(G)

F. Calculation of Square Footage. Non-residential fire protection facility impact fees shall be based upon the total square footage, rounded to the nearest whole number, included within the gross leasable area of the development subject to impact fees as measured by generally acceptable standards for measuring gross leasable area. For purposes of this section gross leasable area shall mean the total floor area designed for tenant occupancy and exclusive use, including any basements, mezzanines, or upper floors.

G. The base fire protection facility impact fee shall be adjusted from time to time as provided in BDMC 3.50.190.

3.50.120 - Impact fee exemptions.

A. Except as provided for below, the following development activity shall be exempted from the payment of all impact fees imposed pursuant to this Chapter:

1. Remodeling, rehabilitation or other improvements to an existing structure or rebuilding a damaged or destroyed structure; provided that, there is no increase in the square footage space (for non-residential construction) or the number of dwelling units (for residential construction) resulting therefrom; provided further that, for rebuilding of a damaged or destroyed structure, the work is completed within 60 months of the date that the damage or destruction occurred;
2. Miscellaneous improvements which do not generate impact, including, but not limited to, fences, walls, residential swimming pools, and signs;
3. Demolition or moving of a structure;

4. Development Activity that meets the mitigation alternative requirements of BDMC 3.50.070; and
5. Placement of a mobile home within an approved mobile home park.

B. The city council may exempt low-income housing, or designated development activities, with broad public purposes from any impact fees that would have been paid by such development activity; provided that such impact fees shall be ~~is~~paid from public funds other than the impact fee fund and, provided further that, a low-income housing exemption granted under this section shall be conditioned upon the requirement that the applicant record a covenant in the manner set forth in subsection D below.

C. The City Council may also provide a full or partial exemption from impact fees for low-income housing in accordance with the following. The City Council may grant an exemption for low-income housing under this subsection (C) as follows

1. The City Council may grant a partial exemption of not more than eighty percent of impact fees, in which case there is no explicit requirement to pay the exempted portion of the fee from public funds other than impact fee accounts; or
2. The City Council may grant a full waiver, in which case the remaining percentage of the exempted fee must be paid from public funds other than impact fee accounts.

D. An exemption for low-income housing granted under subsection (B) or (C) of this section must be conditioned upon requiring the applicant to record a covenant that, except as provided otherwise by this subsection, prohibits using the property for any purpose other than for low-income housing. At a minimum, the covenant must address price restrictions and household income limits for the low-income housing, and that if the property is converted to a use other than for low-income housing, the property owner must pay the applicable impact fees in effect at the time of conversion. Covenants required by this subsection must be recorded with the applicable county auditor or recording officer.

E. The City, in granting an exemption under subsection (B) or (C) of this section may not collect revenue lost through granting an exemption by increasing impact fees unrelated to the exemption.

F. A school district that receives school impact fees must approve any exemption under subsection (B) of this section or this subsection (C).

G. A person installing a residential fire sprinkler system in a single-family home shall not be required to pay the fire operations portion of the fire protection facility impact fee. The exempted fire operations impact fee shall not include the proportionate

share related to the delivery of emergency medical services. For purposes of this chapter, fire sprinkler system shall have the same meaning as that term is given in RCW 18.60.010.

H. The development approval authority shall be authorized to determine whether a particular development activity falls within an exemption identified in this section. Such determinations shall be subject to the appeals procedures set forth in BDMC 3.50.140.

3.50.130 - Impact fee credits.

A. The ~~developer~~applicant shall be entitled to a credit against the applicable impact fee for the present value of any dedication of land, for improvement to or new construction of any system improvements provided by the ~~developer~~applicant (or the ~~developer~~applicant's predecessor in interest) to facilities that are/were identified in the capital improvement plan and that are required by the city as a condition of approval for the immediate development proposal, if such prior dedication, improvement or construction is located within the same service area as the immediate development proposal.

B. The amount of the credit shall be determined at the time of building permit issuance (or site plan approval where no building permit is required). In the event the amount of the credit is calculated to be greater than the amount of the impact fee due, the ~~developer~~applicant may apply such excess credit toward impact fees imposed on other developments within the same service area; provided, however if the improvement is one for which a latecomers agreement would be authorized, then the ~~developer~~applicant shall only be entitled to a latecomers agreement. In any event the city shall not be responsible for payment to the ~~developer~~applicant of any amount credited and not used.

C. The Development Approval Authority shall be authorized to review requests for impact fee credits under this section, and shall advise the applicant in writing of the grant or denial of the request. Such determinations shall be subject to appeal in accordance with the appeals procedures set forth in BDMC 3.50.140.

3.50.140 - Appeals.

The determination of the development approval authority as to the applicability, ~~and/or the~~ amount of and/or credit against, an impact fee shall be appealable as provided for in this section.

A. The determination of the development approval authority shall be appealable to the Hearing Examiner. Such appeal may be perfected by the proponent or any aggrieved party by giving notice to the city administrator within ten days of the decision being appealed. Review by the Hearing Examiner shall be on a de novo basis; provided, however, where the city council is the development approval authority the only

appeal shall be to the King County Superior Court pursuant to the provisions of subsection D of this section.

B. The notice of appeal shall be made upon a form to be supplied by the city administrator. A nonrefundable fee of two hundred fifty dollars shall be paid at the time the notice of appeal is submitted. A hearing shall then be scheduled before the Hearing Examiner within thirty days of the filing of the notice of appeal and appeal fee.

C. The decision of the Hearing Examiner shall be in writing and shall include findings of fact and conclusions to support the decision.

D. The decision of the Hearing Examiner ~~shall be final unless, within ten calendar days, a party of record files and serves upon all city and all affected parties, a petition for writ of review with the King County Superior Court.~~ may be appealed to Superior Court by filing a land use petition meeting the requirements set forth in Chapter 36.70C RCW. The petition must be filed and served upon all necessary parties as set forth in state law and within the 21-day time period as set forth in RCW 36.70C.040. Requirements for fully exhausting City administrative appeal opportunities must be fulfilled.

E. An applicant may pay the impact fee under protest pending appeal to avoid delays in the issuance of building permits.

3.50.150 - Impact mitigation fee fund.

A. There is created a fund to be known as the "impact mitigation fee fund." The city clerk-treasurer shall establish separate accounts within such fund and maintain records for each such account whereby impact fees collected can be segregated by type of facility and by service area. All interest shall be retained in the account and expended for the purposes for which the impact fees were imposed.

B. By April of each year, the city clerk-treasurer shall provide a report for the previous calendar year on each impact fee account showing the source and amount of moneys collected, earned or received and system improvements that were financed in whole or in part by impact fees.

3.50.160 - Expenditures.

Impact fees for system improvements shall be expended only in conformance with the capital improvement plan. Impact fees shall be expended or encumbered for a permissible use within ~~sixteen~~ years of receipt, unless there exists an extraordinary and compelling reason for fees to be held longer than ~~sixteen~~ years. Such extraordinary and compelling reasons shall be identified in written findings by the city council.

3.50.170 - Refunds.

A. The current owner of property in which an impact fee has been paid may receive a refund of such fee if the city fails to expend or encumber the impact fees within ~~six~~ten years or when the fees were paid or such other period of time established pursuant to this section on public facilities intended to benefit the development activity for which the impact fees were paid. In determining whether impact fees have been encumbered, impact fees shall be considered encumbered on a first in, first out basis. The current owner likewise may receive a proportionate refund where the public funding of applicable service area projects by the end of such ~~six~~ten-year period has been insufficient to satisfy the ratio of public to private funding for such service area as established in the capital improvement plan. The city shall notify potential claimants by first class mail deposited with the United States Postal Service addressed to the last known address of claimants.

B. The request for refund money must be submitted to the city council in writing within one year of the date the right to claim a refund arises or the date the notice is given, whichever is later. Any impact fees that are not expended within these time limitations, and for which no application for refund has been made within this one-year period, shall be retained and expended on the indicated capital improvements. Refunds of impact fees under this subsection shall include interest earned on the impact fees.

C. An ~~developer~~applicant may request and shall receive a refund, including interest earned on the impact fees, when the building permit for which the impact fee has been paid has lapsed for failure to commence construction.

3.50.180 - Impact fee as additional and supplemental requirement.

Nothing in this title shall preclude the city from requiring the applicant or the proponent of a development activity to mitigate adverse environmental impacts of a specific development pursuant to the State Environmental Policy Act, Chapter 43.21C RCW, based on the environmental documents accompanying the underlying development approval process, and/or Chapter 58.17 RCW, governing plats and subdivisions. Compliance with this chapter and/or payment of fees under this chapter shall not constitute evidence of a determination of transportation concurrency. The impact fee is additional and supplemental to, and not in substitution of, any other requirements imposed by the city on the development of land or the issuance of building permits; provided, that any other such city development regulation which would require the ~~developer~~applicant to undertake dedication or construction of a facility contained within the city capital improvement plan shall be imposed only if the ~~developer~~applicant is given a credit against impact fees as provided for in Section 3.50.130.

3.50.190 – Review and Adjustment of Rates.

1. The fees and rates set forth in the Rate Study may be reviewed and adjusted by the city council as it deems necessary and appropriate in conjunction with the annual budget process so that adjustments, if any, will be effective at the first of the calendar year subsequent to budget period under review.

2. Annually, and prior to the first day of January, the community development director shall calculate and adjust the Impact fees by the same percentage change as in the most recent annual change of the Construction Cost Index published in the Engineering News Record. A copy of the adjusted impact fee rates shall be provided to the City Council, and kept on file with the City Clerk, but the adjusted rates shall become effective without further Council review.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance 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.

Section 3. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 20TH DAY OF SEPTEMBER, 2012.

CITY OF BLACK DIAMOND

Rebecca Olness, Mayor

ATTEST/AUTHENTICATED:

Brenda Martinez, City Clerk

Approved as to form:

Chris D. Bacha,
Kenyon Disend PLLC
City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No. 12-980
Date of Publication:
Effective Date:

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: Resolution No. 12-831, awarding a construction contract to Rainier Asphalt and Concrete for the Concrete Equipment Wash Pad project in the amount of \$22,996.05 and authorize a 10% contingency (\$2,299.61).	Agenda Date: September 20, 2012 AB12-073	
	Department/Committee/Individual	
	Mayor Rebecca Olness	
	City Administrator –	
	City Attorney –Chris Bacha	
	City Clerk – Brenda L. Martinez	
	Finance – May Miller	
	Public Works – Seth Boettcher	
	Economic Devel. – Andy Williamson	X
	Police – Jamey Kiblinger	
Cost Impact: \$22,996.05	Court – Stephanie Metcalf	
Fund Source: Stormwater Grant	Comm. Dev. – Steve Pilcher	
Timeline: October/November 2012		
Attachments: Resolution No. 12-831; Bid Tabulation; Rainier Asphalt and Concrete Bid; Contract Form		
SUMMARY STATEMENT: <p>The City has planned to construct an equipment wash pad as part of the Department of Ecology stormwater grant in order to meet Best Management Practices for vehicle washing. This contract will cover the concrete portion of the work needed for the project.</p> <p>The City received 3 bids and staff recommends awarding to the lowest bidder, Rainier Asphalt and Concrete. The low bid was for \$22,996.05. Project costs will be covered by the Stormwater Capacity Grant received from the Department of Ecology.</p>		
COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: MOTION to adopt Resolution No. 12-831, authorizing the Mayor to sign a \$22,996.05 contract with Rainier Asphalt and Concrete for the Concrete Equipment Wash Pad project and authorize a 10% contingency for potential change orders in the amount of \$2,299.61.		
RECORD OF COUNCIL ACTION		
Meeting Date	Action	Vote
September 20, 2012		

RESOLUTION NO. 12-831

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AWARDING THE LOW BID ON THE CONCRETE
EQUIPMENT WASH PAD PROJECT TO RAINIER
ASPHALT AND CONCRETE**

WHEREAS, the City received a Department of Ecology grant to assist the City in meeting the National Pollutant Discharge Elimination Permit requirements; and

WHEREAS, the Department of Ecology has approved the City's design for the equipment wash pad and granted permission to advertise and contract the work; and

WHEREAS, the City has received bids on September 14, 2012; and

WHEREAS, staff has determined that the low bidder, Rainier Asphalt and Concrete, is responsive and responsible contractor from the City's small works roster;

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

Section 1. Award the bid of the Concrete Equipment Wash Pad Project to Rainier Asphalt and Concrete in the amount of \$22,996.05 for the construction of the Concrete Equipment Wash Pad project and authorize the Mayor to execute a contract for the same and authorize a 10% (\$2,299.61) contingency fund for potential change orders.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 20TH DAY OF
SEPTEMBER, 2012.**

CITY OF BLACK DIAMOND:

Rebecca Olness, Mayor

Attest:

Brenda L. Martinez, City Clerk

City of Black Diamond
PO Box 599
Black Diamond, WA 98010

Project: Wash Rack Concrete
Bid Opening: September 14, 2012

City of Black Diamond PO Box 599 Black Diamond, WA 98010													
Project: Wash Rack Concrete Bid Opening: September 14, 2012				Bidder & Address		City Estimate		* Rainier Asphalt & Concrete PO Box 1549 North Bend, WA 98045		Patriot General Contracting PO Box 857 Auburn, WA 98071		Pivetta Brothers Constr. PO Box 370 Sumner, WA 98390	
BASE BID													
Item	Item Description	Unit	Qty.	Unit Bid	Amount	Unit Bid	Amount	Unit Bid	Amount	Unit Bid	Amount		
1	Mobilization	LS	1	\$500.00	\$500.00	\$3,723.00	\$3,723.00	\$2,348.40	\$2,348.40	\$8,877.50	\$8,877.50		
2	Stake Grade and Set Concrete Structure Features	LS	1	\$800.00	\$800.00	\$3,500.00	\$3,500.00	\$3,991.20	\$3,991.20	\$50,574.58	\$50,574.58		
3	Subgrade Preparation	CY	6	\$150.00	\$900.00	\$500.00	\$3,000.00	\$294.40	\$1,766.40	*\$561.85	\$3,371.10		
4	Steel Reinforcing Bar	LB	115.6	\$2.00	\$231.20	\$20.00	\$2,312.00	*\$9.14	\$1,056.58	*\$33.99	\$3,929.24		
5	Concrete Structure	CY	28.8	\$220.00	\$6,336.00	\$300.00	\$8,640.00	\$523.75	\$15,084.00	*\$347.87	\$10,018.66		
TOTAL CONTRACT AMOUNT BID					\$8,767.20		\$21,175.00		\$24,246.58		\$76,771.08		
WST OF 8.6%					\$753.98		\$1,821.05		\$2,085.21		\$6,602.31		
TOTAL					\$9,521.18		\$22,996.05		\$26,331.79		\$83,373.39		

* unit price not given, calculated to nearest cent changed the total bid. Change had no effect on the outcome

REQUEST FOR BIDS
FOR
BLACK DIAMOND PUBLIC WORKS
CONCRETE EQUIPMENT WASH PAD

The City is requesting bids to pour a 23 foot by 42 foot equipment wash pad at the Public Works Facility at 32820 3rd Ave in the City of Black Diamond. The City is requesting unit price bids for each category of work as defined in the attached bid proposal form / Scope of Work.

Small Works Roster Bids must be turned into the Public Works counter (located at 24301 Roberts Drive, Black Diamond, WA 98010; southwest corner of the parking lot) by 2:00 PM September 11, 2012.

REQUEST FOR BIDS

THE CITY OF BLACK DIAMOND

Public Works Concrete Equipment Wash Pad

BID FORM, SCOPE OF WORK, AND SPECIAL PROVISIONS

The City of Black Diamond is hereinafter referred to as "the City"

1. The undersigned hereby certifies that he/she has examined the subject site as outlined in the bid documents for the City of Black Diamond Public Works Concrete Equipment Wash Pad and is familiar with the local conditions at the location of the work to be done, and has read and thoroughly understands the work that the City requires to be completed, the Contract governing the work and the method by which payment will be made for said work in accordance with the City Contract at the proposed bid prices contained herein.

2. The bid shall be awarded by the sum of the total of the bids for the 5 categories of work.

The undersigned has checked the above amounts and understands that the City will not be responsible for any errors or omissions on the part of the undersigned in making up this bid.

In order for the Owner to consider a bid, all items on the bid must be filled in completely.

3. Items of work shall include those items listed in the Design Drawings on sheet 7 of 7, highlighted in green.
4. It is agreed that this bid may not be withdrawn within a period of sixty (60) days after the date set for the opening thereof.
5. In accordance with this bid and the City Contract, the undersigned further agrees to so plan the work and to prosecute it with such diligence that said work shall be commenced within ten (10) days after issuance of a notice to proceed.
6. Receipt of the following Addenda to the Plans and/or Specifications is hereto acknowledged:

Addendum

No.

Addendum Receipt Date

Signed Acknowledgement

1.

9/7/12

2.

NOTE: Failure to acknowledge receipt of the Addenda may be considered as an irregularity in the Bid.

6. The undersigned hereby proposes to complete the attached scope of work and hourly rates at the following prices according to the City Contract, this bid, and the bid solicitation:

ITEM NO.	SCOPE OF WORK	UNIT PRICE	QUANTITY	TOTAL
1	MOBILIZATION	3723 /LS	1 LS	\$ 3,723
2	STAKE GRADE AND SET CONCRETE STRUCTURE FEATURES	3500 /LS	1 LS	\$ 3,500
3	SUBGRADE PREPARATION	500 /CY	6 CY	\$ 3,000
4	STEEL REINFORCING BAR	20 /LB	115.6	\$ 2,312
5	CONCRETE STRUCTURE	300 /CY	28.8	\$ 8,640
SUBTOTAL				\$ 21,175. ⁰⁰
ADD WSST (8.6%)				\$ 1,821. ⁰⁵
GRAND TOTAL				\$ 22,996. ⁰⁵

RAINIER ASPHALT & CONCRETE
Bidder

9/14/2012
Date

RAINIER 91170
Contractor's License No.

602-057-202
Contractor's ~~DUNS~~ No.

By UBI
Authorized Official THOMAS MEANY / MEMBER

Address:

P.O. Box 1549

NORTH BEND, WA 98045

- NOTES: 1. If the bidder is a copartnership, so state, giving firm name under which business is transacted.
2. If the bidder is a corporation, this bid must be executed by its duly authorized officials.

SPECIAL PROVISIONS

(*****)

The work on this project shall be accomplished in accordance with the Standard Specifications for Road, Bridge and Municipal Construction, 2012 edition, as issued by the Washington State Department of Transportation (WSDOT) and the American Public Works Association (APWA), Washington State Chapter (hereafter "Standard Specifications"). The Standard Specifications, as modified or supplemented by the Amendments to the Standard Specifications and these Special Provisions, all of which are made a part of the Contract Documents, shall govern all of the Work.

These Special Provisions are made up of both General Special Provisions (GSPs) from various sources, which may have project-specific fill-ins; and project-specific Special Provisions. Each Provision either supplements, modifies, or replaces the comparable Standard Specification, or is a new Provision. The deletion, amendment, alteration, or addition to any subsection or portion of the Standard Specifications is meant to pertain only to that particular portion of the section, and in no way should it be interpreted that the balance of the section does not apply.

The project-specific Special Provisions are not labeled as such. The GSPs are labeled under the headers of each GSP, with the date of the GSP and its source, as follows:

(May 18, 2007 APWA GSP)

(August 7, 2006 WSDOT GSP)

Also incorporated into the Contract Documents by reference are the following documents, regulations, and/or requirements, which shall supersede any conflicting provisions of the Standard Specifications and are made a part of this contract; provided, however, that if any of the following documents, regulations and or requirements are less restrictive than Washington State Law, then the Washington State Law shall prevail.

City of Black Diamond 2009 Engineering Design and Construction Standards

Manual on Uniform Traffic Control Devices for Streets and Highways, currently adopted edition, with Washington State modifications, if any

Division 2 through 10 of Standard Plans for Road, Bridge, and Municipal Construction, WSDOT/APWA, current edition except as supplemented specifically herein

DIVISION 2

2-06 Subgrade Preparation

2-06.3 Construction Requirements

2.06.3(1) is supplemented with the following :

9. All added fill shall be crushed surfacing top course material.
10. All minimum concrete depths shall not have a "less than" tolerance.
11. Excess material may be stockpiled in the near vicinity on city property for city use.

2-06.5 Measurement and Payment

Sections 2-06.5(1) and 2-06.5(2) are deleted and replaced with the following:

The preparation of the subgrade shall be paid as a lump sum item.

DIVISION 6

6.02 Concrete Structures

6-02.3 Construction Requirements

Add the following new subsection:

6-02.3(1) A Construction Staking

The contractor shall provide surveying and construction staking in conformity with the lines, grades, slopes, cross-sections, and relative elevation data and dimension as shown in the Plans. At a minimum the center line of the east and south gutters shall be strung, the bottom and top of the platform on the north side of the wash pad, the top of concrete edge on south, east and north edge of the concrete structure. The contractor shall set reference stakes for key features of the structure including the precast gutters, the access lid to the oil water separator, the drain box in the SE corner of the structure, the ball valve vault. The contractor shall not place or install other structures or forms until the project construction staking is approved by the City Engineer.

Add the following new subsection:

6-02.3(1)B

The contractor shall secure in place and to grade the following features within the to be poured concrete structure:

- Prefabricated concrete gutters,
- Access lid to the oil water separator with the appropriate risers grouted into place,
- Drain box in the SE corner of the structure,
- Ball valve vault
- Hand rail at the warehouse access door landing.

Piped connections shall be tight and secure. Basins and gutters shall be secured to prevent floating during the concrete pouring operation. The top surfaces of the various features shall match the flush elevations of the staked concrete grades. The features to be incorporated into the concrete structure shall not be installed until the subgrade has been approved by the City Engineer.

Add the following new subsection

6-02.3(1) C Measurement and Payment

The measurement for completion of the staking and placement of incorporated features to the concrete structure shall be the approval of the City Engineer. Payment shall be Lump Sum for the staking grades and control to the satisfaction of the City Engineer and the placement of the 5 features shown on the plans and listed in 6-02.3(1)B.

6-02.3(1) Classification of Structural Concrete

The first sentence of Section 6.02.3(1) shall be deleted and replaced with the following:

The concrete to be used for this project shall be Class 4000A with a coarse aggregate grade of 67 according to 9-03.1(4) and a fine aggregate specification meeting 9.03.1(2) with a Class 2 Surface Finish. The concrete shall also include a plastic composite fiber Stealth 150. The Concrete mix shall have a maximum slump of 4.5 inches.

6-02.3(10)D Concrete Placement, Finishing, and Texturing

The following sentences shall be added to Section 6-02.3(10)D:

The Contractor shall not proceed with pouring concrete until:

- The City has received a certification of Qualification of Concrete Suppliers by the NRMCA.
- The City has received and approved of the mix design
- The City has approved the subgrade and installation of features to be incorporated into the concrete structure
- A pre-construction conference has been held with the contractor verifying procedures, personnel, and equipment to be used according to section 6-02.3(10)A

CITY OF BLACK DIAMOND

Department of Public Works
P.O. Box 599 – 24301 Roberts Drive
Black Diamond, Washington 98010

SMALL PUBLIC WORKS CONTRACT

1. **Parties.** This Contract is voluntarily and knowingly entered into by and between the CITY OF BLACK DIAMOND, King County, Washington ("City"), and RAINIER ASPHALT & CONCRETE ("Contractor"), collectively, "the Parties."
2. **Project.** The Parties enter into this Contract for purposes of Contractor performing work ("the Project"), generally described as:

CONCRETE EQUIPMENT WASH PAD
3. **Effective date.** This Contract becomes effective and binding upon the Parties, including their heirs, successors, and assigns, immediately upon the most recent date of signature appearing on this Contract.
4. **Notices to Parties.** Contractor agrees to accept notices under this Contract via facsimile. It is the responsibility of Contractor to notify City in writing if any of the contact information appearing below should change. Any notices required shall be in writing and delivered to the following addresses:

CITY:

CITY OF BLACK DIAMOND
P.O. Box 599 – 24301 Roberts Drive
Black Diamond, Washington 98010
Contact: Seth Boettcher
Phone: (253) 886-2560
Fax: (360) 886-2592

CONTRACTOR:

Rainier Asphalt & Concrete
PO Box 1549
North Bend, WA 98045
Tax I.D. # _____
Contact: _____
Phone: (_____) _____
Fax: (_____) _____

5. **Obligations of Contractor.** In consideration of the mutual promises and obligations of the parties contained herein and incorporated by reference, Contractor expressly agrees to the following terms and conditions:

A. *In general.*

- (1) Responsible for all labor. Contractor agrees and understands that Contractor shall be solely responsible for furnishing all labor necessary to complete the Project as required.

- (2) Responsible for performing all work. Contractor agrees and understands that Contractor shall be solely responsible for performing all work necessary to complete the Project as required.
- (3) Responsible for furnishing all materials and equipment. Contractor agrees and understands that Contractor shall be solely responsible for furnishing all materials and equipment necessary to complete the Project as required, except for any materials expressly agreed in writing to be provided by City. Materials and equipment furnished under the Contract will be new and of good quality unless otherwise required and permitted by the City.
- (4) Documents incorporated by reference. Contractor agrees and understands that all terms and specifications contained in any Request for Proposals (RFP) that was issued by City as part of determining the awarding of this Contract are hereby incorporated by reference and must be complied with, unless one or more of such terms and specifications are expressly amended or waived in writing by City.
- (5) Laws and regulations to be followed. Contractor agrees and understands that Contractor, his employees, agents, and subcontractors, must at all times fully comply with all applicable laws, regulations, and administrative rulings in performing work for the Project.

B. Work Performance.

- (1) Prevailing wages. Contractor agrees and understands that prevailing wages, as that term is defined under the laws of the State of Washington, shall be paid for all work performed on this Project by Contractor and by Contractor's subcontractors and agents.
The State of Washington prevailing wage rates applicable for this public works project, which is located in King County, may be found at the following website address of the Department of Labor and Industries: <https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>. Based on the bid submittal deadline for this project, the applicable effective date for prevailing wages for this project is September 4, 2012. A copy of the applicable prevailing wage rates are also available for viewing at the office of the Owner, located at 24301 Roberts Drive, Black Diamond, WA 98010. Upon request, the Owner will mail a hard copy of the applicable prevailing wages for this project.
- (2) Notice to City. Minimum 24-hours prior notice shall be given to City's Department of Public Works prior to commencement of work under this Contract.
- (3) Approved Plans & Specifications to be followed. Contractor agrees that all work is to be performed to the City's satisfaction and in compliance with the approved Plans & Specifications, including such requirements contained in any Request for Proposals (RFP) that was issued by the City prior to awarding this Contract, unless such requirements or specifications are expressly amended in writing by the City.
- (4) City Construction Standards to control. Contractor agrees that all work is to be performed to the City's satisfaction and in compliance with the City's Construction

Standards. Where the Construction Standards are in conflict with the approved Plans & Specifications, the City's Construction Standards shall control.

- (5) Schedule of Work to be followed. Contractor understands and agrees that time is of the essence in performing the work needed for this Project. Contractor shall diligently proceed with the work and shall assure that it, and its subcontractors, have adequate staffing at all times in order for Contractor to comply with any Schedule of Work agreed to by the Parties, and shall make all reasonable efforts to complete the work in a timely manner.
- (6) Duty to Correct. Contractor shall promptly correct work rejected by the City as failing to conform to the requirements of the Contract. The Contractor shall bear the cost of correcting such rejected work. In addition to the Contractor's other obligations under the Contract, the Contractor shall, for a period of one year after final acceptance of the Project by the City, correct work not conforming to the requirements of the Contract. If the Contractor fails to correct nonconforming work within a reasonable time, the City may correct it and Contractor shall reimburse the City for the cost of the correction.

C. Non-Discrimination.

- (1) Contractor agrees that it, and its subcontractors and other agents, shall not discriminate against any employee or applicant for employment or any other person in the performance of this Contract because of race, creed, color, national origin, marital status, sex, age, disability, or other condition prohibited by federal, state, or local law or ordinance, except where the condition constitutes a bona fide occupational qualification under law.
- (2) Any violation of this Section shall be a material breach of this Contract and grounds for immediate cancellation, termination, or suspension of the Contract by City, in whole or in part, and may result in Contractor being ineligible to perform further work for the City.

6. Compensation

Compensation for these services shall be a Lump Sum for bid items 1 and 2, and unit price for bid items 3 – 5 for a total contract price of \$22,996.05, including applicable sales tax.

7. Payment

- A. Contractor shall maintain time and expense records and provide them to the City monthly, along with monthly invoices in a format acceptable to the City for work performed to the date of the invoice.
- B. All invoices shall be paid by City warrant within sixty (60) days of receipt of a proper invoice.
- C. Failure to perform any of the obligations under the Contract by the Contractor may be decreed by the City to be adequate reason for withholding any payments until

compliance is achieved. Progress payments for work performed shall not be evidence of acceptable performance or an admission by the City that any work has been satisfactorily completed.

D. Payments received on account of work performed by a subcontractor are subject to the provisions of RCW 39.04.250.

8. **Performance Bond.** Unless waived or the Contractor elects to have the City hold retainage, as provided below, the Contractor shall provide a performance and payment bond to the City prior to commencement of work for 50% of the bid amount including tax guaranteeing the full and faithful performance by the Contractor of the terms and conditions of this Contract.

Projects under \$35,000 (including tax): If the total cost of this project, including Washington State sales tax, is \$35,000 or less, the contractor may, in lieu of the bond, elect to have the city retain fifty percent of the contract amount for a period of forty-five days after the date of final acceptance, or until receipt of all necessary releases from the Department of Labor and Industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later. Contractor election shall be in the form of election attached hereto as Exhibit "B".

Initial: _____ (Contractor)

9. **Retainage.** If a performance bond is provided, no retainage will be required for contracts under thirty-five thousand (\$35,000) dollars (including tax) but, the City has a right of recovery against the Contractor for any payments it makes on behalf of the Contractor.
10. **Changes.** After execution of the Contract, changes in the Project may be accomplished by change order. The City, without invalidating the Contract, may order changes in the Project within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract completion date being adjusted accordingly. Change orders shall be in writing signed by the parties.
11. **Termination of Contract.** This Contract may be terminated by the City at any time upon the default of the Contractor or upon public convenience, in which Contractor shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination. Contractor shall not be entitled to any reallocation of cost, profit or overhead. Contractor shall not in any event be entitled to anticipated profit on work not performed because of such termination. Contractor shall use its best efforts to minimize the compensation payable under this Contract in the event of such termination. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the Contract until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the City in completing the work, including all increased costs

for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.

12. Responsibility Criteria and Verification by Contractor. Pursuant to Chapter 39.04 RCW, the following requirements must be included in any public works contract:

A. Responsibility Criteria.

(1) Eligibility to be awarded contract. To be awarded this public works contract, the Contractor hereby certifies that Contractor meets the following responsibility criteria:

- a. Contractor has a certificate of registration in compliance with chapter 18.27 RCW;
- b. Contractor has a current state unified business identifier number;
- c. If applicable, Contractor has industrial insurance coverage for Contractor's employees working in Washington as required under Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW; and
- d. Contractor is not disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).

B. *Requirement to verify subcontractors.* Contractor must verify the responsibility criteria contained above for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350(1) and possesses an electrical contractor license, if required by chapter 19.28 RCW, or an elevator contractor license, if required by chapter 70.87 RCW. This verification requirement must be included in every public works contract and subcontract of every tier.

13. Insurance

- A. All employees, subcontractors, agents to be covered. Contractor shall procure and maintain for the duration of the Contract, and shall provide proof satisfactory to the City, that insurance is maintained by Contractor and each of its subcontractors or agents who are not otherwise covered by Contractor's insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, or employees.
- B. Lack of insurance grounds for termination of contract. Failure of Contractor to maintain insurance as required herein shall be grounds for immediate termination of this Contract by the City.

C. Title 51 Industrial Insurance Waived. The parties have specifically negotiated as a term of this Contract that Contractor has agreed to expressly waive immunity under Title 51 RCW Industrial Insurance Law.

D. Minimum Scope of Insurance. Contractor shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for The City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Builders Risk insurance covering interests of the City, the Contractor, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance shall be on a all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the Contractor. Higher deductibles for flood and earthquake perils may be accepted by the City upon written request by the Contractor and written acceptance by the City. Any increased deductibles accepted by the City will remain the responsibility of the Contractor. The Builders Risk insurance shall be maintained until final acceptance of the work by the City.

E. Minimum Amounts of Insurance. Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

3. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.

E. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Commercial General Liability and Builders Risk insurance:

1. The Contractor's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

2. The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

F. Contractor's Insurance for Other Losses. The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

G. Verification of Coverage. Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the Automobile Liability and Commercial General Liability insurance of the Contractor before commencement of the work. Before any exposure to loss may occur, the Contractor shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this project.

H. Subcontractors. Contractor shall ensure that each subcontractor of every tier obtain at a minimum the same insurance coverage and limits as stated herein for the Contractor (with the exception of Builders Risk insurance). Upon request the City, the Contractor shall provide evidence of such insurance.

14. Claims for damages.

A. Excluded situations. City shall not be responsible for delays caused by soil conditions; underground obstructions; labor disputes; fire; delays by third parties, including public and private utilities; or reasonably foreseeable delays.

B. Liability limited to direct costs. Contractor agrees that City's liability to Contractor for payment of claims or damages of any kind whatsoever related to this Contract shall be limited to direct costs as provided under the force account provisions of the Standard Specifications. Contractor expressly waives all claims for payment of damages that include or are computed on total costs of job performance, extended overhead, or other similar methods that are not specific as to the

actual, direct costs of contract work as defined in the force account provisions of the Standard Specifications.

- C. **"Damages" defined.** For purposes of applying RCW 4.24.115 to this Contract, Contractor and City agree that the term "damages" applies only to a finding in a judicial proceeding and is exclusive of third party claims for damage primarily thereto.
- D. **Indemnification.** Contractor agrees to defend, indemnify, and hold harmless the City from all claims for damages by third parties, including costs and reasonable attorneys' fees in the defense of claims for damages arising from the performance of Contractor's express or implied obligations under this Contract. It is further agreed that all third party claims for damages against the City for which Contractor's insurance carrier does not accept defense of the City may be tendered by the City to Contractor, who shall then accept and settle with the claimant or defend the claim. City retains the right to approve claims investigation and counsel assigned to said claims, and all investigation of legal work product regarding said claims shall be performed under a fiduciary relationship to the City. In the event that the City agrees or a court finds that a claim arises from the sole negligence of City, City shall be responsible for all damages to third party claimant. In the event that City and Contractor agree or a court finds that a claim arises from the combined negligence of Contractor and City, Contractor shall be responsible for all damages payable by Contractor to third party claimant under the court findings and, in addition, Contractor shall indemnify the City for all damages paid or payable by City under the court findings in an amount not to exceed the percentage of total fault attributable to Contractor.

15. Indemnification/Hold Harmless. The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

16. Assigning or Subcontracting. Contractor shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City.

17. Independent Contractor. Contractor is and shall be at all times during the term of this Agreement an independent contractor.

18. Disputes. Any action for claims arising out of or relating to this Agreement shall be governed by the laws of the State of Washington. Venue shall be in King County Superior Court.

19. Attorneys Fees. In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorneys fees from the other party.

20. Extent of Agreement/Modification. This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

BY ITS SIGNATURE BELOW, EACH PARTY ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE TERMS AND CONDITIONS OF THIS AGREEMENT AND AGREES TO BE BOUND BY THEM.

CITY OF BLACK DIAMOND

CONTRACTOR

By: _____

By: _____

Print name: _____

Print name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attachments

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____ (*Corporate Officer (Not Contract Signer)*) certify that I am the _____ (*Corporate Title*) of the corporation named as Contractor in the Agreement attached hereto; that _____, (*Contract Signer*) who signed said Agreement on behalf of the Contractor, was then _____ (*Corporate Title*) of said corporation; that said Agreement was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

Corp. officer signature (not contract signer)

Printed

Title

State of _____

County of _____

_____, (*corporate officer (not contract signer)*) being duly sworn, deposes and says that he/she is _____ (*Corporate Title*) of _____ (*Name of Corporation*)

Subscribed and sworn to before me this _____ day of _____,
20_____

Notary Public (Signature)

Notary Public (Print)

My commission expires _____

**DECLARATION OF OPTION FOR MANAGEMENT
OF STATUTORY RETAINED PERCENTAGE**

Note: This form must be submitted at the time the Contractor executes the contract. Contractor shall designate the option desired by checking the appropriate space.

Monies reserved under provisions of RCW 60.28, at the option of the Contractor, shall be:

_____ (1) Retained in a fund by the City.

_____ (2) Deposited by the City in an interest-bearing account in a bank, mutual savings bank or savings and loan association.

_____ (3) Placed in escrow with a bank or trust company by the City. When the monies reserved are to be placed in escrow, the City will issue a check representing the sum of the monies reserved payable to the bank or trust company and the Contractor jointly. Such check shall be converted into bonds and securities chosen by the Contractor and approved by the City and the bonds and securities held in escrow. The Contractor in choosing option (2) or (3) agrees to assume full responsibility to pay all costs which may accrue from escrow services, brokerage charges or both, and further agrees to assume all risks in connection with the investment of the retained percentages in securities.

Contractor Signature

Date

PERFORMANCE BOND

We _____ as Principal, and _____ as Surety, jointly and severally bind ourselves, our heirs, successors and assigns as set forth herein to **CITY OF BLACK DIAMOND** (hereinafter called the Owner) for payment of the penal sum of \$ _____, lawful money of the United States in connection with the Owner's award to the Contractor of a contract for construction ("Contract") of the following project:

CONCRETE EQUIPMENT WASH PAD

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Contractor shall in all respects faithfully perform all obligations and provisions in the said Contract, this obligation shall become null and void; otherwise, it shall remain in full force and effect, and Surety shall defend and indemnify Owner against any loss or damage due to the failure of the Principal to strictly perform all obligations of the Contract.

This bond shall remain in force for a period of at least two years after the Substantial Completion Date of the project, with respect to defective workmanship and materials, and shall otherwise secure all other obligations of the Contractor throughout any other periods of limitation or repose.

This bond is provided pursuant to and in compliance with R.C.W. Chapter 39.08, the terms and requirements of which statute are incorporated herein as though fully set forth.

Surety agrees that no change, extension of time, modification, or addition to the terms of the Contract, or the work to be performed thereunder, or to the specifications shall in any way affect its obligation on this bond, and it hereby waives notice thereof.

The Contractor and Surety agree that if the Owner is required to engage the services of an attorney in connection with the enforcement of this bond, each shall be jointly and severally liable to pay the Owner reasonable attorney's fees, costs and expenses incurred, with or without suit, in addition to the penal sum.

Surety certifies that it is an authorized surety bond issuer, properly authorized to transact surety business in Washington. Surety agrees to be bound by the laws of the State of Washington and subject itself to the jurisdiction of the courts of the State of Washington.

Executed in three original counterparts on _____, 2012

CONTRACTOR

By _____

(title)

(Attach acknowledgment of authorized representative of Contractor).

Any claims under this bond made in accordance with R.C.W. 39.08 may be addressed to:

_____ (Name and address of Surety)

_____ (Name and address of Surety's agent for service of
process
in Washington if different from above)

_____ (Telephone No. of Surety's Washington agent)

(Attach acknowledgment)

Surety

By _____
Its Attorney-in-Fact

NOTICE:

Sureties must be authorized to conduct surety business in Washington and have an agent for service of process in Washington. Certified copy of Power of Attorney must be attached.

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION			
SUBJECT: Resolution No. 12-832, confirming the Mayor's appointment of Melanie Thomas Dane as Municipal Court Judge and authorizing the Mayor to enter into a judicial services agreement	Agenda Date: September 20, 2012		AB12-074
	Department/Committee/Individual		
	Mayor Rebecca Olness		
	Interim City Administrator – Pete Butkus	X	
	City Attorney – Chris Bacha		
	City Clerk – Brenda L. Martinez		
	Finance – May Miller		
	Public Works – Seth Boettcher		
	Economic Devel. – Andy Williamson		
Cost Impact: \$ 2,000 (monthly)	Police – Jamey Kiblinger		
Fund Source: General Fund	Court – Stephanie Metcalf		
Timeline:			
Attachments: Resolution No. 12-832, Proposed Contract; staff memo			
SUMMARY STATEMENT: <p>The Mayor has previously appointed, and the City Council has previously confirmed, Bill Bowman as the Judge of the Black Diamond Municipal Court. However, Judge Bowman has been elected as a Judge for the King County District Court and has resigned from his position as Judge of the Black Diamond Municipal Court to be effective October 1, 2012. Due to his resignation a vacancy has been created and the unexpired term must be filled pursuant to Black Diamond Municipal Code 2.36.070.</p> <p>The Mayor directed an open recruitment process with the selection committee consisting of the Mayor, Police Chief, Interim City Administrator and City Attorney. The committee interviewed four candidates and unanimously selected Melanie Dane Thomas as the most qualified candidate.</p> <p>Adoption of this resolution would confirm the Mayor's appointment of Melanie Thomas Dane as Municipal Court Judge with a term of October 1, 2012 through December 31, 2013 and authorize the execution of the judicial services agreement.</p>			
COMMITTEE REVIEW AND RECOMMENDATION:			
RECOMMENDED ACTION: MOTION to adopt Resolution No. 12-832, confirming the Mayor's appointment of Melanie Thomas Dane as Municipal Court Judge and authorizing the Mayor to enter into a judicial services agreement.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
September 20, 2012			

RESOLUTION NO. 12-832

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
CONFIRMING MELANIE THOMAS DANE AS MUNICIPAL
COURT JUDGE AND AUTHORIZING THE MAYOR TO
ENTER INTO A JUDICIAL SERVICES AGREEMENT**

WHEREAS, a vacancy in the position of Municipal Court Judge will occur on October 1, 2012; and

WHEREAS, the Mayor has reviewed several options for Municipal Court Services and concluded the best option for the community is to continue with the Black Diamond Municipal Court with our own Municipal Court Judge; and

WHEREAS, the Mayor has facilitated a search process, candidate interviews and reference checks; all of which indicate that Melanie Thomas Dane is the best qualified candidate for the position;

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

Section 1. Confirmation - Melanie Thomas Dane is hereby confirmed as the Municipal Court Judge.

Section 1. Judicial Services Agreement - The Mayor is authorized to enter into a Judicial Services Agreement with Melanie Thomas Dane as set forth in "Attachment A."

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 20TH DAY OF SEPTEMBER, 2012.

CITY OF BLACK DIAMOND:

Rebecca Olness, Mayor

Attest:

Brenda L. Martinez, City Clerk

MUNICIPAL COURT JUDICIAL SERVICES AGREEMENT

This agreement (the “**Agreement**”) is by and between the City of Black Diamond, a municipal corporation operating as a non-charter code city under the laws of the state of Washington (the “City”) and Melonie Dane (“Contractor”), and is dated the ____ day of _____, 2012.

RECITALS

- A. The City operates a Municipal Court pursuant to BDMC Chapter 2.36 and RCW Ch. 3.50.
- B. The Mayor has previously appointed, and the City Council has previously confirmed, Bill Bowman as the Judge of the Black Diamond Municipal Court for the term of ending December 31, 2013.
- C. Judge Bowman has been elected as a judge for the King County District Court and has resigned from his position as judge of the Black Diamond Municipal Court to be effective October 1, 2012.
- D. Judge Bowman’s resignation has created a vacancy in the Black Diamond Municipal Court which vacancy of the remaining un-expired term must be filled pursuant to BDMC 2.36.070.
- E. Contractor meets the judicial qualifications set forth at BDMC 2.36.030(C) and has been appointed by the Mayor and confirmed by the City Council to fill the remaining unexpired term of Judge Bowman as the Black Diamond Municipal Court Judge, to be effective October 1, 2012.
- F. Contractor is willing and able to serve as the City’s Municipal Court Judge for the remaining un-expired term resulting from the vacancy.
- G. The City and Contractor desire to enter into an agreement setting forth the relative rights, duties and obligations of the Parties;

Now, therefore, in consideration of the mutual promises and covenants set forth below, the sufficiency of which is acknowledged by the parties, it is agreed as follows:

1. **Appointment** – Effective October 1, 2012, Contractor is appointed to be the judge of its Municipal Court for the remainder of the un-expired term vacated

by Judge Bowman. Said term shall commence on October 1, 2012 and terminate on December 31, 2013, unless sooner terminated as may be provided by law.

2. **Term** – The term of this agreement shall be from October 1, 2012 through December 31, 2013.
3. **Duties** – Contractor agrees to serve as the Municipal Court Judge for the City of Black Diamond with all the powers, duties, privileges and obligations which said office confers and in accordance with this Agreement and as required by the City's ordinances, the constitutions and laws of the state of Washington and the United States, and all other applicable laws and treaties. Contractor shall abide by the Rules of Judicial Conduct as promulgated by the Washington Supreme Court. Contractor shall at all times maintain her status as a licensed attorney in the state of Washington in the status of either active or judicial. The services to be provided will include regularly scheduled court sessions and any administrative work and out-of-court work done by the Municipal Court Judge, and all time expended for judicial education. In addition to regularly scheduled sessions of the Black Diamond municipal Court, the Judge shall conduct arraignments, probable cause hearings, bail hearings jury trials, or other court hearings as may be necessary and shall otherwise be available, as needed to provide the Municipal Court services in accordance with BDMC Chapter 2.36 and state statute. Contractor shall also use her best efforts to improve the City's Court by advancing the causes of justice, impartiality, fairness and efficiency in all of the Court's business.
4. **Compensation** – The Parties acknowledge that compensation is based upon the assumption that the Contractor will attend two regularly scheduled one-half day court appearance calendars per month and provide office hours for two one-half days per month to perform administrative duties of the Court. Based upon the foregoing, the City shall compensate Contractor at the flat base rate of \$2,000.00 per month for all her time, both judicial and administrative. In the event that is necessary for the Contractor to schedule additional court calendars to accommodate a motion or trial that cannot be scheduled for a regularly scheduled court calendar, or to otherwise complete a trial, the City agrees to additionally compensate the Contractor in the amount of \$400 for each additional court calendar that is scheduled (\$200.00 per ½ day) up to a total of \$800 dollars per month as full compensation for all additional court calendars. The rate of compensation may be adjusted annually by the mutual agreement of the parties, in writing.
5. **Judges Pro Tem** - In the event that Contractor is unable to serve due to disability, illness and/or absence, an actual conflict, or an affidavit of prejudice, it shall be her responsibility to so notify the City and to make arrangements for the presence of a Judge pro tem. All Judges pro tem shall

be qualified to hold the position of Judge of the Municipal Court, as provided herein. Judges pro tem shall be paid by the Municipal Court Judge, or in the event of disability, by the City the cost of which shall be reimbursed to the City by the Municipal Court Judge.

6. **Status** – Contractor will be an independent contractor, and shall pay all of her own withholding taxes, social security taxes, and any other payroll taxes.
7. **Termination** – This agreement shall be in effect during the term specified in paragraph two unless terminated by mutual agreement or according to law. The City shall release Contractor from her obligations under this contract if Contractor accepts a full time judicial appointment, in which case Contractor will release the City from its obligations.
8. **General Rule 29** – The parties agree that the provisions of Washington State Rules of Court General Rule 29, which governs the election, term, vacancies, removal, selection, responsibilities and authorities of presiding judges in courts of limited jurisdiction, shall be applicable to all court operations and personnel.
9. **Qualification** - Contractor declares that she is, and shall at all times during the term of this Agreement be, qualified to serve as a Municipal Court Judge in that she is a citizen of the United States and of the State of Washington, and an attorney admitted to practice law before the courts of record of the State of Washington.
10. **Indemnity Agreement** - The City shall defend, indemnify and hold Contractor and/or pro tem judges that may serve in her absence, harmless from any and all claims arising out of the good faith performance of her/her duties and functions as the Black Diamond Municipal Court Judge.
11. **Mediation and Arbitration** – Should any dispute arise between the parties, they disputed matter shall be submitted to mediation using a mediator from JAMS (Seattle office), and following the mediator selection process and mediation rules followed by JAMS. The parties shall each pay their own costs associated with mediation and shall each pay one half of the JAMS and mediator's fees. If the mediation is unsuccessful, then the matter, at either party's request, shall be submitted to binding arbitration in accordance with the Uniform Arbitration Act, Chapter 7.04A RCW. The substantially prevailing party shall be entitled to recover their costs and attorneys fees incurred in the arbitration, and the substantially non-prevailing party shall pay the cost of the arbitration, including the arbitrator's fee.

CONTRACTOR:

Melonie Dane,

Date

CITY:

Rebecca Olness, Mayor

Date

MUNICIPAL COURT JUDICIAL SERVICES AGREEMENT

This agreement (the “**Agreement**”) is by and between the City of Black Diamond, a municipal corporation operating as a non-charter code city under the laws of the state of Washington (the “City”) and Melanie Dane (“Contractor”), and is dated the ____ day of _____, 2012.

RECITALS

- A. The City operates a Municipal Court pursuant to BDMC Chapter 2.36 and RCW Ch. 3.50.
- B. The Mayor has previously appointed, and the City Council has previously confirmed, Bill Bowman as the Judge of the Black Diamond Municipal Court for the term of ending December 31, 2013.
- C. Judge Bowman has been ~~selected~~ as a judge for the King County Superior District Court and has resigned from his position as judge of the Black Diamond Municipal Court to be effective October 1, 2012.
- D. Judge Bowman’s resignation has created a vacancy in the Black Diamond Municipal Court which vacancy of the remaining un-expired term must be filled pursuant to BDMC 2.36.070.
- E. Contractor meets the judicial qualifications set forth at BDMC 2.36.030(C) and has been appointed by the Mayor and confirmed by the City Council to fill the remaining unexpired term of Judge Bowman as the Black Diamond Municipal Court Judge, to be effective October 1, 2012.
- F. Contractor is willing and able to serve as the City’s Municipal Court Judge for the remaining un-expired term resulting from the vacancy.
- G. The City and Contractor desire to enter into an agreement setting forth the relative rights, duties and obligations of the Parties;

Now, therefore, in consideration of the mutual promises and covenants set forth below, the sufficiency of which is acknowledged by the parties, it is agreed as follows:

1. **Appointment** – Effective October 1, 2012, Contractor is appointed to be the judge of its Municipal Court for the remainder of the un-expired term vacated

by Judge Bowman. Said term shall commence on October 1, 2012 and terminate on December 31, 2013, unless sooner terminated as may be provided by law.

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4. **Compensation** – The Parties acknowledge that compensation is based upon the assumption that the Contractor will attend two regularly scheduled one-half day court appearance calendars per month and provide office hours for two one-half days per month to perform administrative duties of the Court. Based upon the foregoing, the City shall compensate Contractor at the flat base rate of \$2,000.00 per month for all her time, both judicial and administrative. In the event that is necessary for the Contractor to schedule additional court calendars or to accommodate a motion or trial that cannot be scheduled for a regularly scheduled court calendar, or to otherwise complete a trial, the City agrees to additionally compensate the Contractor in the amount of \$400 for each additional court calendar that is scheduled (\$4200.00 per ½ day) up to a total of \$800 dollars per month as full compensation for all additional court calendars. The rate of compensation may be adjusted annually by the mutual agreement of the parties, in writing.
5. **Judges Pro Tem** - In the event that Contractor is unable to serve due to disability, illness and/or absence, an actual conflict, or an affidavit of prejudice, it shall be her responsibility to so notify the Court Administrator who shall ~~and to make~~ arrangements for the presence of a Judge pro tem. All

Judges pro tem shall be qualified to hold the position of Judge of the Municipal Court, as provided herein. Judges pro tem shall be paid by the Municipal Court Judge, or in the event of disability, training, or Affidavit of Prejudice by the City, ~~the cost of which shall be reimbursed to the City by the Municipal Court Judge.~~

6. **Status** – Contractor will be an independent contractor, and shall pay all of her own withholding taxes, social security taxes, and any other payroll taxes.
7. **Termination** – This agreement shall be in effect during the term specified in paragraph two unless terminated by mutual agreement or according to law. The City shall release Contractor from her obligations under this contract if Contractor accepts a full time judicial appointment, in which case Contractor will release the City from its obligations.
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CONTRACTOR:

Melanie Dane,

Date

CITY:

Rebecca Olness, Mayor

Date

MEMORANDUM

TO: Mayor and City Council
FROM: Pete Butkus
RE: Municipal Court Judge
DATE: 14 SEP 2012

The purpose of this memorandum is to outline the steps taken to select a new Municipal Court Judge.

Our current Judge, the Hon. Bill Bowman, has been appointed to a position on the King County Superior Court and notified the Mayor that he would be vacating his Black Diamond position, effective the end of September, 2012. His appointment was through the end of December, 2013, concurrent with the term of the Mayor.

The Mayor began to explore Municipal Court options before determining that it would be best to retain our own Municipal Court and our own Municipal Court Judge. See the attachment describing the options considered.

The position was advertised and the advertisement supplemented by sending the notice of the opening directly to several attorneys who had previously expressed an interest in the position. Eleven applications were received. One applicant did not live in King County (a state statute and local ordinance requirement) and was removed from consideration. Further screening determined that four applicants would be interviewed. Interviews took place on Thursday, 06 September. The top two candidates were then reviewed with a member of the legal community and it was decided to proceed with an offer of the position to the number one candidate.

On Wednesday, 12 September, that top candidate, **Melanie Dane**, was offered the position and that offer was accepted. The final act is to have her appointment by the Mayor reviewed and confirmed by the City Council and for an Agreement (contract) to be signed. Preparation of that Agreement is now underway and will be available the week of 17 September.

This matter is on the Agenda for Thursday 20 September but not all of the paperwork has been completed. This Memo and the attachment describing the earlier Municipal Court option exploration are included as a part of the City Council Agenda.

Attachment

Memorandum

To: Mayor Olness
From: Pete Butkus
RE: Black Diamond Municipal Court: Changes, Challenges and Opportunities
Date: 20 JULY 2012

Background

The City of Black Diamond, under authority of state law, has operated a Municipal Court since 1984. The court is charged with providing adjudication services for misdemeanor crimes, civil infractions and license penalties or forfeitures. Crimes, for example, range from simple theft to driving while under the influence. Infractions are a civil law offense and include a broad range of actions or non-actions from speeding to defective vehicle equipment. Felony crimes (burglary), major civil actions (land-use appeals) and small claims are adjudicated by King County.

The Court currently employs one part-time Municipal Judge, the Hon. Bill Bowman, a Court Administrator, Stephanie Metcalf and a Court Clerk, Barbara Reid.

Contacts with government officials regarding the options listed below have been made by you as Mayor and the appointing authority and by me on your behalf, as appropriate.

Problem

The Current judge has indicated a desire to leave the position on or about October 1, 2012. This will create a "vacancy" under the law. In order for the Court to continue to function, provisions for a Judge must be made.

Opportunity

With the planned departure of the current judge, an opportunity presents itself: An opportunity to examine alternate means to provide for adjudication services. Several options have been developed and they are set forth below in brief, followed by a pro and con matrix for those options.

Assumptions

Development and examination of options relies on the establishment of assumptions. For the purposes of this memo, the following are assumed:

- The City will remain in the business of providing criminal justice services which includes adjudication services.
- The City desires to the maximum extent possible to deliver adjudication services, including court administration and scheduling, in Black Diamond. This desire may be modified as to the location of the actual hearing site depending on circumstances. I.e., court administration may remain in the City, with actual hearings to take place elsewhere on a scheduled basis -OR- regular hearings scheduled in the City with occasional hearings held elsewhere on a special needs basis.
- The opportunity to reduce long-term costs is not to be taken lightly. Long-term financial modeling shows the need for the city to continue to evaluate the cost of providing services at all levels.
- Pro and con evaluation shall include: 1) services to the community, 2) internal staffing changes, 3) financial costs (additional or savings), 4) time necessary to implement and/ or ease of implementation.

Options

- I. Continue with the existing structure of Municipal Court by recruiting and selecting a new Judge.
- II. Under an Inter-local Agreement, engage a neighboring local government in the sharing of court services (and costs) with services to be delivered in Black Diamond.
 - a. Covington
 - b. Maple Valley
 - c. Enumclaw
 - d. Buckley
 - e. King County
- III. Discontinue local adjudication services and engage the services of King County District Court in total. This would “abolish” the local court.
- IV. Other options that may be developed.

Evaluation of Options

Option	Pros	Cons	Comments
I. Continue with existing organization, appoint a new Municipal Judge. Assumes that compensation would change from salary to a per hour rate and reduce cost.	<p>Minimum disruption or change to community.</p> <p>No change in internal staffing other than a new judge.</p>	<p>No opportunity for process efficiency or savings, if any. Provides for a modest financial savings.</p> <p>No change in internal staffing.</p>	Black Diamond Municipal Code (BDMC) Chapter 2.36 addresses the court and judge: 1. Mayoral appointment of Judge and Council confirmation for both regular and vacancy appointments, but not pro-tem appointments.

	<p>Modest change in expenditures. No change in revenues beyond regular budget adjustments. Allows on-going exploration of other budget saving measures.</p> <p>No time management issues. Would involve Mayor, City Administrator & Council.</p>	<p>This option BY ITSELF does not allow an examination of potential costs/benefits by looking at other options to take place.</p> <p>No time management issues. Would involve Mayor, City Administrator & Council</p>	<p>2. A King County residency requirement for the Judge (also in state law 3.50.057, RCW). State law requires that municipal judges be admitted to practice law in the state (3.50.040, RCW) NOTE: there is an exception for lay judges</p> <p>This option should be explored further.</p> <p>Other cost saving options would be explored as a part of budget development.</p>
<p>II. Inter-local agreement with a neighboring local government to provide a part-time Judge or to provide complete municipal court services.</p> <p>See sub-options below for Covington, Maple Valley, Enumclaw, Buckley and King County</p>			<p>Interlocal agreements for court services are specifically recognized under state law: (3.50.050, RCW on courts; Chapter 39.34, RCW for interlocal agreements in general.</p> <p>This option should be explored with others for actual costs and benefits. See specific notes below.</p>
Covington			<p>Interlocal with King County District Court, currently discussing an agreement with Kent. Cost difference: \$280K/yr. County; \$200K/yr. Kent. 5 yr. withdrawal cycle w/ County may be problematic.</p> <p>Not an option.</p>

Maple Valley			<p>Maple Valley has their own judge who also provides service to two other cities.</p> <p>Exercising an agreement with Maple Valley has no obvious advantages – however – retaining the Judge in a part-time capacity as the BD Municipal Judge is a viable option.</p>
Enumclaw			<p>Has own Muni Court. Given changes in their caseload, their staff and facility may be available for BD cases.</p> <p>Exercising an agreement with Enumclaw has no obvious advantages – however – retaining the Judge in a part-time capacity as the BD Municipal Judge is a viable option</p>
Buckley		Not allowed by state law as their judge must be a resident of Pierce County and ours must be a resident of King County.	No further consideration given.
King County- contract for a judge only to provide services in city.	<p>Implementation time/costs not determined.</p> <p>Retains local staff.</p>	<p>May offer some savings on the cost of a Judge.</p> <p>Retains local staff.</p> <p>Cost implications not known.</p>	<p>Not an option offered by King County District Court.</p> <p>No further consideration given</p>

		Implementation time/costs not determined- but challenging to have in place by 01 OCT 12.	
King County – contract for full services	<p>If court to be provided in BD, service to community will be about the same.</p> <p>County staff</p> <p>Substantial cost shifting, including revenues.</p> <p>Implementation time/costs not determined.</p>	<p>Court held in either Issaquah or Auburn. Court staff for scheduling and fine/forfeitures would not be in city.</p> <p>No local staff</p> <p>Existing interlocal agreements have provisions that might be considered “hidden” costs. I.e., if fines & forfeitures do not cover costs, the city must provide additional funds to support the court.</p> <p>KC Interlocal only allows withdrawal on a 5-yr. cycle</p> <p>Implementation time/costs not determined- but challenging to implement by year-end.</p>	<p>Sammamish paid out \$57,840 in 2011 (2010 reconciliation); Mercer Island elected in 2006 to take back the court function based on likely County court cost increases</p> <p>See also Covington cost difference, above.</p> <p>While initially attractive, the loss of local service and the strong potential for future cost containment issues makes this option less desirable.</p> <p>Not an option.</p>
III. Discontinue city adjudication services and abolish the court as a municipal entity.	<p>No local court.</p> <p>No court staff.</p> <p>Total cost shifting – revenues and</p>	<p>Service would be provided by King County District Court, likely in a somewhat distant location.</p>	<p>Would require <u>substantial</u> re-structuring of municipal code and substantial steps to assure compliance with state</p>

	<p>expenditures to King County. No "court" in future municipal budgets.</p> <p>Frees up existing building space. Eliminates time of elected and appointed officials to deal with a municipal court.</p>	<p>Does not meet assumption criteria for service to the community.</p> <p>Financial costs/benefits will vary and are not easy to determine. Clearly, police costs would increase with court being held elsewhere.</p> <p>A large time commitment to implement. Not likely to be done by 01 OCT 12 or even year-end.</p>	<p>law on dissolution of a municipal court.</p> <p>Does not meet assumption criteria.</p> <p>This Option is not recommended.</p>
IV. Other options – none known			

Recommendation and future action:

Based on the assumptions and the options explored it appears that retaining our own Municipal Court with a part-time judge and staffing at a level appropriate to the work load is the most workable and meets our desire to retain an appropriate level of service IN Black Diamond as opposed to elsewhere. Several attorneys currently serving as part-time judges in King County have expressed an interest in the Black Diamond position.

After discussion of the options with you and Assistant City Administrator Brenda Martinez, it appears the best course of action is to advertise with the King County Bar Association with a Request for Proposal (RFP) from interested local attorneys. Additionally, those attorneys who have expressed an earlier interest would get a direct mailing or e-mail notice of the RFP process.

C: Brenda Martinez