



**CITY OF BLACK DIAMOND**  
**January 2, 2014 Meeting Agenda**  
25510 Lawson St., Black Diamond, Washington

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

**APPOINTMENTS, PRESENTATIONS, ANNOUNCEMENTS:**

**Oath of Offices** (10 minute reception to follow)

**1.) AB14-001 – Appointment of Mayor Pro-Tem**

**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.

**PUBLIC HEARINGS: None**

**UNFINISHED BUSINESS: None**

**NEW BUSINESS:**

**2.) AB14-002 – Resolution Authorizing Addendum to ILA with City of Auburn**

Mr. Hoppen

**3.) AB14-003 – Resolution Authorizing Contract for Public Defender Services**

Mr. Hoppen

**DEPARTMENT REPORTS:**

**MAYOR'S REPORT:**

**COUNCIL REPORTS:**

**ATTORNEY REPORT:**

**PUBLIC COMMENTS:**

**CONSENT AGENDA:**

**4.) AB14-004 – Resolution Authorizing Agreement with Olympic Environmental Serv.**

Mr. Nix

**5.) AB14-005 – Resolution Accepting Local Hazardous Waste Program Grant**

Mr. Nix

**6.) AB14-006 – Resolution Accepting Waste Reduction and Recycling Grant**

Mr. Nix

**7.) Claim Checks – January 2, 2014, No. 40342 through 40404 in the amount of \$81,540.64**

**8.) Payroll Checks – November, 2013, No. 18195 through No. 18213 and ACH Pay in the amount of \$279,444.13**

**9.) Minutes – Council Meeting of December 5, 2013 and Workstudy Notes of December 5, 2013, Special Council Meeting of December 12, 2013.**

**EXECUTIVE SESSION:**

**ADJOURNMENT:**

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
<b>SUBJECT:</b>  <b>Appointment of Mayor Pro Tempore</b>	<b>Agenda Date:</b> <b>January 2, 2014</b> <b>AB14-001</b>	
	Department/Committee/Individual	
	Mayor Dave Gordon	<b>X</b>
	City Administrator – Mark Hoppen	
	City Attorney –Chris Bacha	
	City Clerk – Brenda L. Martinez	
	Finance – May Miller	
	Natural Resources/Parks – Aaron Nix	
	PW/Ec. Dev. – Andy Williamson	
Cost Impact:	Police – Jamey Kiblinger	
Fund Source:	Court – Stephanie Metcalf	
Timeline:	Comm. Dev. – Stacey Welsh	
<b>Agenda Placement:</b> <input type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input checked="" type="checkbox"/> City Administrator		
<b>Attachments:</b>		
<b>SUMMARY STATEMENT:</b>  Annually at the first meeting of a new Council, the members thereof, by majority vote, shall designate one of their members as Mayor Pro Tempore for such period as the Council may specify. The Mayor Pro Tempore shall serve in the absence or temporary disability of the Mayor.		
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b>		
<b>RECOMMENDED ACTION:   <b>MOTION to appoint Councilmember ? as Mayor Pro Tempore.</b></b>		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
January 2, 2014		

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
<b>SUBJECT:</b> <b>Resolution No. 14-913, authorizing the Mayor to execute Addendum No. 1 to the ILA with the City of Auburn for IT Services</b>	<b>Agenda Date: January 2, 2014</b>	
	<b>AB14-002</b>	
	Department/Committee/Individual	
	Mayor Dave Gordon	
	City Administrator – Mark Hoppen	X
	City Attorney –Chris Bacha	
	City Clerk – Brenda L. Martinez	
	Finance – May Miller	
	Natural Resources/Parks – Aaron Nix	
	PW/Ec. Dev. – Andy Williamson	
Police – Jamey Kiblinger		
Court – Stephanie Metcalf		
Comm. Dev. – Stacey Welsh		
Cost Impact:		
Fund Source: General Fund		
Timeline: 2014		
<b>Agenda Placement:</b> <input type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input checked="" type="checkbox"/> City Administrator		
<b>Attachments: Resolution No. 14-913; Addendum No. 1; ILA with Auburn</b>		
<b>SUMMARY STATEMENT:</b>		
<u><b>BACKGROUND</b></u> The City of Black Diamond contracted with the City of Auburn for contract information technology services for the Police Department earlier in Budget Year 2013. The City Council later directed staff to prepare an amendment to the interlocal agreement to provide information technology services city-wide.		
<u><b>POLICY CONSIDERATION</b></u> The attached First Addendum to the Interlocal Agreement between the City of Black Diamond and the City of Auburn for IT services expands information technology services to cover general city-wide IT services, including police IT services, based on amendment to the current agreement already approved by the City Council. The attached addendum has been approved by the Auburn City Council and has been signed by the Mayor of Auburn. The base agreement remains in effect as previously approved, but is amended by this addendum, including Exhibit A and Exhibit B as attached to the addendum.		
<u><b>FISCAL CONSIDERATION</b></u> Monthly base services, including one on-site day per week, will be at the rate of \$3300 per month. Hourly time will be billed beyond this general coverage at the rate of \$110 per hour. Mileage will be billed per IRS rates. The 2014 City of Black Diamond draft budget is scaled to cover both these costs and start-up costs analogous to known start-up costs for the Police Department.		
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b> The Finance Committee reviewed the addendum to the ILA with the City of Auburn for IT Services on December 19, 2013, and forwarded the addendum to the ILA for further consideration by the City Council. The Finance Committee recommends approval of Addendum No. 1 as presented, including 'Exhibit A' and 'Exhibit B' as attached.		

RECOMMENDED ACTION: **MOTION to approve Resolution No. 14-913, authorizing the Mayor to execute Addendum No. 1 for city-wide IT services with the City of Auburn as presented.**

**RECORD OF COUNCIL ACTION**

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
January 2, 2014		



**RESOLUTION NO. 14-913**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON  
AUTHORIZING THE MAYOR TO EXECUTE ADDENDUM  
NO. 1 TO THE INTERLOCAL AGREEMENT BETWEEN  
THE CITY OF AUBURN AND THE CITY OF BLACK  
DIAMOND FOR IT SERVICES**

**WHEREAS**, on October 3, 2013 the City entered into an Interlocal Agreement with the City of Auburn to provide the police department with IT services; and

**WHEREAS**, during the 2014 budget process City Council eliminated the Information Services position from the budget: and

**WHEREAS**, it is the desire of the City Council to have the City of Auburn provide city-wide information services;

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

**Section 1.** The Mayor is hereby authorized to execute Addendum No. 1 to the Interlocal Agreement between the City of Auburn and the City of Black Diamond for city-wide information services, in the form substantially attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 2ND DAY OF JANUARY, 2014.**

CITY OF BLACK DIAMOND:

\_\_\_\_\_  
Dave Gordon, Mayor

Attest:

\_\_\_\_\_  
Brenda L. Martinez, City Clerk

## ADDENDUM NO. 1

ADDENDUM TO INTERLOCAL AGREEMENT  
BETWEEN THE CITY OF BLACK DIAMOND AND THE CITY OF AUBURN  
RELATING TO INFORMATION TECHNOLOGY

**THIS ADDENDUM** is made and entered into this 16<sup>th</sup> day of December, 2013, by and between **CITY OF BLACK DIAMOND** ("Black Diamond"), a municipal corporation of the State of Washington, and the **CITY OF AUBURN**, a municipal corporation of the State of Washington (hereinafter referred to as "Auburn"), as an addendum to the Agreement between the parties for Information Technology Services executed on September 16, 2013, ("Original Agreement") pursuant to the Interlocal Cooperation Act, Chapter 39.34 of the Revised Code of Washington (RCW).

## RECITALS:

1. The parties entered into an Interlocal Agreement for Information Technology Services to be provided by Auburn to Black Diamond for Black Diamond's Police Department.
2. Black Diamond wishes to expand the information technology services provided by Auburn.

NOW THEREFORE in consideration of their mutual covenants, conditions and promises, the PARTIES HERETO HEREBY AGREE as follows:

1. Section 2 of the Original Agreement is amended to read as follows:
2. AMENDMENT REQUIRED FOR ADDITIONAL SERVICES

In the event additional IT services are required by Black Diamond or reduction in services are necessary beyond those specified in Exhibit A and the compensation listed in this Agreement, and further provided that Auburn has the time and resources to provide such additional services and is willing to provide such services, a contract amendment shall be set forth in writing and shall be executed by the respective parties prior to Auburn's performance of the additional IT services, except as may be provided to the contrary in Section 3 of this Agreement. Upon proper completion and execution of an Amendment for additional services, such Amendment shall be incorporated into this Agreement and shall have the same force and effect as if the terms of such Amendment were a part of this Agreement as originally executed. The performance of services pursuant to an Amendment shall be subject to the terms and conditions of this Agreement except where the Amendment

provides to the contrary, in which case the terms and conditions of any such Amendment shall control. In all other respects, any Amendment shall supplement and be construed in accordance with the terms and conditions of this Agreement.

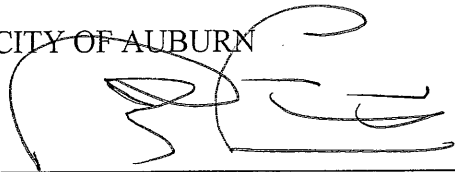
2. Sections 1 and 4(f) of the Original Agreement are amended to strike the reference to the Black Diamond Police Department or "BDPD," and to insert "Black Diamond" in its place.

3. Exhibits A and B of the Original Agreement are replaced with Exhibits A and B to this Addendum.

4. REMAINING TERMS UNCHANGED: That all other provisions of the Original Agreement shall remain unchanged, and in full force and effect.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF AUBURN



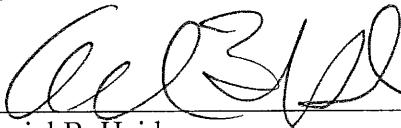
Peter B. Lewis  
Auburn Mayor

Attest:



Danielle Daskam,  
Auburn City Clerk

Approved as to form:



Daniel B. Heid  
Auburn City Attorney

CITY OF BLACK DIAMOND

Black Diamond Mayor

Attest:

Brenda L. Martinez,  
Black Diamond City Clerk

Approved as to form:

Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**SCOPE OF SERVICES**

**Services Provided:**

- Onsite Auburn IT Staff Presence: Auburn primary support function will be via remote access and administration with primary contact and support provided through email: [helpdesk@auburnwa.gov](mailto:helpdesk@auburnwa.gov) and phone support. Remote login and various technical configuration management will be utilized to minimize onsite and travel charges. Under this service level, City of Black Diamond will be allotted "onsite presence" 1 day (7.5 hours) per week hours per month or up to 416 hours per year specific to meeting support and technical requirements. Auburn IT staff will also respond onsite to all technical matters not repairable remotely, and will attempt to respond to non-critical items in multiples to minimize trips where possible.
- General network and desktop support
- GIS and Mapping Services shall be provided on a per project basis, with printing costs the responsibility of Black Diamond based on current Auburn rate schedules.
- Maintenance and management of Servers and "back-end" equipment to include:
  - Telephones, sound equipment, servers, network equipment (routers, firewalls, switches)
  - Server administration, including user setup, access, email and help desk functionality
- Public Meetings: (set-up and attendance at meetings to run equipment included in monthly fee "on-site presence" not to exceed 416 total hours in a year)
- Purchasing: Recommendations, quotes, vendor discussions. Purchasing, purchase orders and requisitions will be the responsibility of Black Diamond.
  - Black Diamond can be added to certain City of Auburn software and hardware agreements to receive similar cost savings where applicable. Such areas including Microsoft volume licensing, Spillman, Sharepoint, Antivirus protection, Netmotion and others.
- Web Services –
  - Website updates, postings, and monitoring
  - Meeting audio conversion and website upload
  - Website design recommendations and future planning
- Backup operations, offsite storage and disaster recovery
  - Auburn will evaluate current backup and disaster contingency plans and make recommendations. Typically this includes weekly offsite storage which is paid for by customer, and daily incremental and differential backups.
  - Disaster recovery may result in an addition of services, or evaluation and recommendation to enhance business continuity and operations based on current procedures.
- Application and software end user support
- Vendor coordination and management as needed
- Operating system, and software patch management

- Limited GIS services and consulting with printed material at cost
- Technical recommendations including:
  - Long and short term strategic planning
  - Disaster recovery and business continuity planning
  - Technology budget recommendations and planning
  - Audit documentation and assistance with CJIS and WCIA annual audits

### **Requesting support:**

All requests for service should be emailed to [helpdesk@auburnwa.gov](mailto:helpdesk@auburnwa.gov). Phone calls will be accepted as well, however tracking tickets and support via our help desk system is preferred with a follow up phone call from Auburn staff. The request will be forwarded to City of Auburn technical staff for resolution. Persons authorized to request support on a non-emergency basis are City of Black Diamond employees or their designee.

### **Service levels:**

For requests e-mailed Monday through Friday from 7:00 am to 5:00 pm, we will try to respond within 30 minutes. During high call volumes, we will assist you as soon as possible.

With authorization of Mayor, City Administrator or Police Chief, support outside regular business hours will be provided on an emergency basis. If you need an immediate response during off hours and have the appropriate authorization, please email [helpdesk@auburnwa.gov](mailto:helpdesk@auburnwa.gov) with the name of authorizing person and nature of issue or call 253-876-1947. Your issue will be forwarded to the on-call technician for resolution.

### **Service Limitations:**

- City of Auburn will assist and provide recommendations on network security but security remains the responsibility of City of Black Diamond.
- City of Auburn will document, and present information relevant to technical audits however compliance will be the responsibility of Black Diamond, including CJIS and ACCESS Audits.
- City of Auburn will assist and provide installation and recommendations on hardware and software purchases. All hardware and software purchases are the responsibility of City of Black Diamond.

### **Additional Services:**

City of Auburn may provide additional services, or alter existing services through the appropriate approval process and addendum.

Additional services include but are not limited to:

GIS Services

Licensing Support : Netmotion and Virus Protection

Web Application and Design Services  
Publishing and Design Services  
Multimedia/ Film Services

**Billing:**

All service will be billed monthly according to Exhibit B. Services that are billed on an hourly basis will include a brief description of the service and the department where the service was performed. Monthly charges for service are based on an estimated 400 helpdesk requests annually. In the event annual helpdesk requests exceed 400 tickets, City of Black Diamond agrees to negotiate these additional services which may include mutually agreed adjustments to monthly service charges.

**EXHIBIT B  
COST OF SERVICES**

Support Function	Operating Hours	Billing rate	Monthly cost
General Network and desktop maintenance and support including operating system patch management, virus system software management, general troubleshooting and problem resolution that can be via remote access/phone and minimal Black Diamond Auburn office visits where deemed possible allowing equipment drop off and minimal hands on configuration support.	M - F, 7 a.m. - 5 p.m. excluding holidays	\$3300.00 / month effective January 2, 2014 and monthly thereafter	\$3300.00
Network and desktop repair and maintenance that require onsite support.	M - F, 7 a.m. - 5 p.m. excluding holidays	Included. Mileage billed separately and based on IRS standard mileage rates	Per hour as required
All support responses by City of Auburn technical support staff.  <b>Note:</b> COA technical support staff will not respond without authorization from City of Black Diamond Mayor, Police Chief or City Administrator.	Non business hours, afterhours, emergency response	\$110.00 / hour with one hour minimum plus mileage based on IRS standard mileage rate	Per incident as required
Netmotion Client Software	n/a	Evaluation Option	Per Client
Virus Protection Software	n/a	Evaluation Option	Yearly

RESOLUTION NO. 13-891

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON  
AUTHORIZING THE MAYOR TO EXECUTE AN  
INTERLOCAL AGREEMENT WITH THE CITY OF AUBURN  
FOR POLICE IT SERVICES

**WHEREAS**, the Black Diamond Police Department seeks professional information technology services; and

**WHEREAS**, the City of Auburn utilizes most, if not all, of the same operating systems and has on-site staff who are specifically familiar with their functions, capabilities, and maintenance; and


**WHEREAS**, the City of Auburn has the requisite skills, resources, and experience necessary to provide such services and is willing and agreeable to provide such services;

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

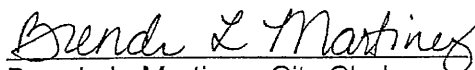
**Section 1.** The Mayor is hereby authorized to execute an Interlocal Agreement between the City of Auburn and the City of Black Diamond for Police Information Services Technology in the form substantially attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 3RD DAY OF OCTOBER, 2013.**

CITY OF BLACK DIAMOND:

  
\_\_\_\_\_  
Rebecca Olness, Mayor

Attest:

  
\_\_\_\_\_  
Brenda L. Martinez, City Clerk



# EXHIBIT A

## CITY OF AUBURN – CITY OF Black Diamond INTERLOCAL AGREEMENT FOR INFORMATION SERVICES TECHNOLOGY

THIS INTERLOCAL AGREEMENT made and entered into, pursuant to the Interlocal Cooperation Act, Chapter 39.34 of the Revised Code of Washington, on the 16<sup>th</sup> day of September, 2013, by and between the CITY OF AUBURN, a municipal corporation of the State of Washington (hereinafter referred to as "Auburn"), and the CITY OF Black Diamond, a municipal corporation of the State of Washington (hereinafter referred to as "Black Diamond"),

### WITNESSETH:

WHEREAS, Black Diamond seeks professional information technology ("IT") services; and

WHEREAS, Auburn has the requisite skills, resources and experience necessary to provide such services and is willing and agreeable to provide such services upon the terms and conditions herein contained.

NOW THEREFORE in consideration of their mutual covenants, conditions and promises, the parties hereto do hereby agree as follows:

#### 1. SCOPE OF SERVICES

Auburn agrees to perform for Black Diamond, in a good and professional manner the tasks specific to support the Black Diamond Police Department ("BDPD") described on Exhibit A which is attached hereto and by this reference made a part of this Agreement. (The tasks described on Exhibit A shall be individually referred to as a "task," and collectively referred to as the "services.") Auburn shall perform the services as an independent contractor and shall not be deemed, by virtue of this Agreement and the performance thereof, to have entered into any partnership, joint venture, employment or other relationship with Black Diamond. Auburn shall perform the services described in Exhibit A which is attached hereto and by this reference made a part of this Agreement.

#### 2. AMENDMENT REQUIRED FOR ADDITIONAL SERVICES

In the event additional IT services are required by Black Diamond beyond those specified in Exhibit A and the compensation listed in this Agreement, and further provided that Auburn has the time and resources to provide such additional services and is willing to provide such services, a contract amendment shall be set forth in writing and shall be executed by the respective parties prior to Auburn's performance of the additional IT services, except as may be provided to the contrary in Section 3 of this Agreement. Upon proper completion and execution of an Amendment for additional services, such Amendment shall be incorporated into this Agreement and shall have the same force and effect as if the terms of such Amendment were a part of this

Agreement as originally executed. The performance of services pursuant to an Amendment shall be subject to the terms and conditions of this Agreement except where the Amendment provides to the contrary, in which case the terms and conditions of any such Amendment shall control. In all other respects, any Amendment shall supplement and be construed in accordance with the terms and conditions of this Agreement.

### 3. PERFORMANCE OF ADDITIONAL SERVICES PRIOR TO EXECUTION OF AN AMENDMENT

The parties hereby agree that situations may arise in which IT services other than those described on Exhibit A are desired by Black Diamond and the time period for the completion of such services makes the execution of Amendment impractical prior to the commencement of Auburn's performance of the requested services. Auburn hereby agrees that it shall perform such services upon the request of an authorized representative of Black Diamond at a rate of compensation to be mutually negotiated in connection therewith. Any such additional IT services shall be memorialized in a written amendment in accordance with Section 2 of this Agreement. The invoice procedure for any such additional services shall be as described in Section 6 of this Agreement.

### 4. Black Diamond'S RESPONSIBILITIES

Black Diamond shall do the following in a timely manner so as not to delay the services of Auburn:

- a. Designate in writing a person to act as Black Diamond's representative with respect to the services described in Exhibit A. Black Diamond's designee shall have complete authority to transmit instructions, receive information, interpret and define Black Diamond's policies and decisions with respect to the services, except in the event of an emergency as described in Exhibit A.
- b. Furnish Auburn with all information, criteria, objectives, schedules and standards for the services provided for herein.
- c. Arrange for access to the property or facilities as required for Auburn to perform the services provided for herein.
- d. Examine and evaluate all studies, reports, memoranda, plans, sketches, and other documents prepared by Auburn and render decisions regarding such documents in a timely manner to prevent delay of the services including passwords, facility access and data systems to which Black Diamond is requesting support. Auburn shall use "remote access" technology to support Black Diamond systems where possible to limit onsite costs. Such examples include Firewall, router, computer, Domain controller, active directory, Spillman and secured/ encrypted access to systems designated by Black Diamond to be supported by Auburn.

f. BDPD must complete, and authorize necessary state documents related to "Agency Authorization" designating City of Auburn as IT Technical contact and complete a "Management Control Agreement" filed with WSP that will allow Auburn IT staff to work with CJIS and ACCESS information including SSID, Mnemonics and ORI information to support the system.

5. ACCEPTABLE STANDARDS

Auburn shall be responsible to provide, in connection with the services contemplated in this Agreement, work products and services of a quality and professional standard acceptable to Black Diamond.

6. COMPENSATION

Compensation for Auburn's performance of the services provided for herein are attached as Exhibit B. Annual sum shall be increased January 1, 2014 with advance notice given to Black Diamond, and each January 1 thereafter, by an amount equal to 2% or the most recent Seattle-Tacoma-Bremerton Consumer Price Index - U whichever is greater for the term of this Agreement.

Auburn shall submit to Black Diamond a monthly invoice and Black Diamond shall process the invoice or statement in the next billing/claim cycle following receipt of the invoice or statement, and shall remit payment to Auburn thereafter in the normal course, subject to any conditions or provisions in this Agreement or Amendment.

7. TIME FOR PERFORMANCE AND TERM OF AGREEMENT

Auburn shall perform the services provided for herein in accordance with the direction and scheduling provided in Exhibit A, unless otherwise agreed to in writing by the parties. The initial term of this agreement shall be twelve (12) months and may be extended thereafter by written agreement of the Parties 60 days prior to term end. It is provided, however, that either party may cancel this Agreement upon sixty (60) days written notice to the other party.

8. OWNERSHIP AND USE OF DOCUMENTS

All documents, reports, memoranda, diagrams, sketches, plans, design calculations, working drawings and any other materials created or otherwise prepared by Auburn as part of its performance of this Agreement (the "Work Products") shall be owned by and become the property of Black Diamond, and may be used by Black Diamond for any purpose beneficial to Black Diamond. Public records requests shall be the responsibility of Black Diamond, however Auburn may assist at Black Diamond request at hourly rates provided under exhibit B for onsite support.

9. RECORDS INSPECTION AND AUDIT

All compensation payments shall be subject to the adjustments for any amounts found upon audit or otherwise to have been improperly invoiced, and all records and books of accounts pertaining to any work performed under this Agreement shall be subject to inspection and audit by Black Diamond for a period of up to three (3) years from the final payment for work performed under this Agreement.

10. CONTINUATION OF PERFORMANCE

In the event that any dispute or conflict arises between the parties while this Contract is in effect, Auburn agrees that, notwithstanding such dispute or conflict, Auburn shall continue to make a good faith effort to cooperate and continue work toward successful completion of assigned duties and responsibilities. Provided that if Black Diamond fails to pay for the services provided by Auburn, Auburn can cease providing such services until payment is made.

11. ADMINISTRATION OF AGREEMENT

This Agreement shall be administered by Ron Tiedeman, Innovation & Technology Director or designee on behalf of Auburn, and by Mark E. Hoppen, City Administrator or designee on behalf of Black Diamond. Any written notices required by the terms of this Agreement shall be served on or mailed to the following addresses:

CITY OF AUBURN  
Innovation & Technology  
Ron Tiedeman  
25 W Main St  
Auburn, WA 98001-4998  
Phone: 253-288-3160  
Fax: 253-804-3116  
E-mail: rtiedeman@auburnwa.gov

CITY OF BLACK DIAMOND  
City Administration  
Mark E. Hoppen  
24301 Roberts Drive  
Black Diamond, WA 98010  
(360) 886-5700  
mhoppen@ci.blackdiamond.wa.us

12. NOTICES

All notices or communications permitted or required to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person or deposited in the United States mail, postage prepaid, for mailing by certified mail, return receipt requested, and addressed, if to a party of this Agreement, to the address for the party set forth above.

Either party may change his, her or its address by giving notice in writing, stating

his, her or its new address, to the other party, pursuant to the procedure set forth above.

### 13. INSURANCE

Black Diamond shall maintain in full force throughout the duration of this Agreement comprehensive general liability insurance with a minimum coverage of \$1,000,000.00 per occurrence/aggregate for personal injury and property damage. This requirement shall be deemed satisfied by evidence of Black Diamond's membership in a municipal self-insurance pool, including evidence of limits of coverages, exclusions and limits of liability satisfactory to Auburn.

Auburn shall maintain in full force throughout the duration of this Agreement comprehensive general liability insurance with a minimum coverage of \$1,000,000.00 per occurrence/aggregate for personal injury and property damage. This requirement shall be deemed satisfied by evidence of Auburn's membership in a municipal self-insurance pool, including evidence of limits of coverages, exclusions and limits of liability satisfactory to Black Diamond.

### 14. INDEMNIFICATION

a. Black Diamond shall indemnify and hold Auburn and its agents, employees, and/or officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against Auburn arising out of, in connection with, or incident to the execution of this Agreement and/or Black Diamond's performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of Auburn, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of Black Diamond; and provided further, that nothing herein shall require Black Diamond to hold harmless or defend Auburn, its agents, employees and/or officers from any claims arising from the sole negligence of Auburn, its agents, employees, and/or officers. No liability shall attach to Auburn by reason of entering into this Agreement except as expressly provided herein.

b. Auburn shall indemnify and hold Black Diamond and its agents, employees, and/or officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against Black Diamond arising out of, in connection with, or incident to the execution of this Agreement and/or Auburn's performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of Black Diamond, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the

negligence of Auburn; and provided further, that nothing herein shall require Auburn to hold harmless or defend Black Diamond, its agents, employees and/or officers from any claims arising from the sole negligence of Black Diamond, its agents, employees, and/or officers. No liability shall attach to Black Diamond by reason of entering into this Agreement except as expressly provided herein.

#### 15. WAIVER OF SUBROGATION

Black Diamond and Auburn hereby mutually release each other from liability and waive all right of recovery against each other for any loss caused by fire or other perils which can be insured against under fire insurance contracts including any extended coverage endorsements thereto which are customarily available from time to time in the State of Washington, provided, that this paragraph shall be inapplicable to the extent that it would have the effect of invalidating any insurance coverage of Black Diamond or Auburn.

#### 16. COMPLIANCE WITH REGULATIONS AND LAWS

The parties shall comply with all applicable rules and regulations pertaining to them in connection with the matters covered herein.

#### 17. ASSIGNMENT

The parties shall not assign this Agreement or any interest, obligation or duty therein without the express written consent of the other party.

#### 18. ATTORNEYS' FEES

If either party shall be required to bring any action to enforce any provision of this Agreement, or shall be required to defend any action brought by the other party with respect to this Agreement, and in the further event that one party shall substantially prevail in such action, the losing party shall, in addition to all other payments required therein, pay all of the prevailing party's reasonable costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorney's fees in the trial court and in any appellate courts.

#### 19. NONDISCRIMINATION

Each of the parties, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, sexual orientation, age, or the presence of any sensory, mental or physical handicap be discriminated against or receive discriminatory treatment by reason thereof.

## 20. MISCELLANEOUS

- a. All of the covenants, conditions and agreements in this Agreement shall extend to and bind the legal successors and assigns of the parties hereto.
- b. This Agreement shall be deemed to be made and construed in accordance with the laws of the State of Washington. Jurisdiction and venue for any action arising out of this Agreement shall be in King County, Washington.
- c. The captions in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.
- d. Unless otherwise specifically provided herein, no separate legal entity is created hereby, as each of the parties is contracting in its capacity as a municipal corporation of the State of Washington. The identity of the parties hereto is as set forth hereinabove.
- e. The performances of the duties of the parties provided hereby shall be done in accordance with standard operating procedures and customary practices of the parties. Semi-annual operational review and service meetings shall be held with representatives from both cities to review and discuss service and support delivery.
- f. No provision of this Agreement shall relieve either party of its public agency obligations and or responsibilities imposed by law.
- g. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable by a final decision of any court having jurisdiction on the matter, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect, unless such court determines that such invalidity or unenforceability materially interferes with or defeats the purposes hereof, at which time either party shall have the right to terminate the Agreement.
- h. This Agreement constitutes the entire agreement between the parties. There are no terms, obligations, covenants or conditions other than those contained herein. No modifications or amendments of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by both parties.
- i. Copies of this Agreement shall be listed by the parties on their websites as provided for in RCW 39.34.040.


IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF AUBURN



Peter B. Lewis  
Auburn Mayor

CITY OF Black Diamond



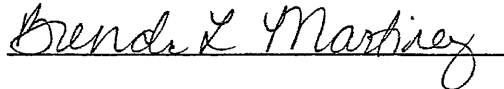
Rebecca Olness  
Black Diamond Mayor

Attest:



✓ Danielle Daskam,  
Auburn City Clerk

Attest:



Brenda L. Martinez,  
Black Diamond City Clerk

Approved as to form:



Daniel B. Heid  
Auburn City Attorney

Approved as to form:

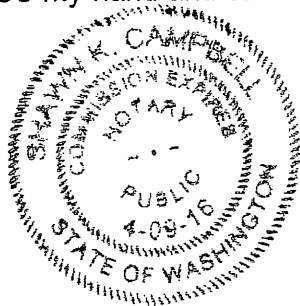
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_



STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

ON THIS 16<sup>th</sup> day of September, <sup>2013</sup>~~2011~~, before me personally appeared Dete Lewis and \_\_\_\_\_ to me known to be the Mayor and \_\_\_\_\_ of The City of Auburn, a municipal corporation, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument, and the seat of said municipal corporation is affixed hereon.

WITNESS my hand and official seal hereto the day and year in this certificate first above written.

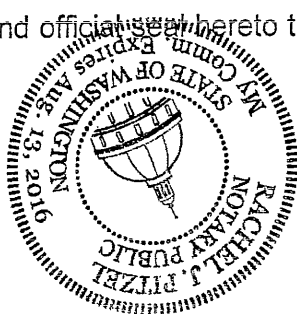


Sherry K. Campbell  
NOTARY PUBLIC in and for the State  
of Washington, residing at King County  
My Commission Expires: 4/9/2016

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

ON THIS 9<sup>th</sup> day of October, <sup>2013</sup>~~2011~~, before me personally appeared Rebecca Olness and \_\_\_\_\_ to me known to be the Mayor and \_\_\_\_\_ of the City of Black Diamond, a municipal corporation, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument, and the seat of said municipal corporation is affixed hereon.

WITNESS my hand and official seal hereto the day and year in this certificate first above written.



Rachael Pittzel  
NOTARY PUBLIC in and for the State  
of Washington, residing at Blk. Diamond  
My Commission Expires: 8/13/16

**EXHIBIT A  
SCOPE OF SERVICES**

**Services Provided:**

- General network and desktop support
- Application and software end user support
- Operating system patch management
- Technical recommendations

**Requesting support:**

All requests for service should be emailed to [helpdesk@auburnwa.gov](mailto:helpdesk@auburnwa.gov). The request will be forwarded to City of Auburn technical staff for resolution. Persons authorized to request support on a non-emergency basis are City of Black Diamond Police Department staff and designees.

**Service levels:**

For requests e-mailed Monday through Friday from 7:00 am to 5:00 pm, we will try to respond within 30 minutes. During high call volumes, we will assist you as soon as possible.

With authorization of Mayor, City Administrator or Police Chief, support outside regular business hours will be provided on an emergency basis. If you need an immediate response during off hours and have the appropriate authorization, please email [helpdesk@auburnwa.gov](mailto:helpdesk@auburnwa.gov) with the name of authorizing person and nature of issue or call 253-876-1947. Your issue will be forwarded to the on-call technician for resolution.

**Service Limitations:**

- City of Auburn will assist and provide recommendations on network security but security remains the responsibility of City of Black Diamond.
- City of Auburn will document, and present information relevant to technical audits however compliance will be the responsibility of Black Diamond, including CJIS and ACCESS Audits.
- City of Auburn will assist and provide recommendations on hardware and software purchases. All hardware and software purchases are the responsibility of City of Black Diamond.
- Unless otherwise specified via addendum or SOW "additional services" identified below will be the responsibility of Black Diamond.

**Additional Services:**

Current IT support is based on needs and requests of Black Diamond Police. City of Auburn may provide City-wide support based on same hourly rate, however all non-police department support will be in addition to the basic services and support payment.

Black Diamond representatives may negotiate to add interim city-wide support services or additional services to this ILA through an addendum process in the event additional ongoing services are needed while both parties seek appropriate Mayor and Council approval.

Additional services include but are not limited to:

GIS Services

Spillman hosting and support

Licensing Support : Netmotion and Virus Protection

Web Application and Design Services

Publishing and Design Services

Multimedia/ Film Services

#### **Billing:**

All service will be billed monthly according to Exhibit B. Services that are billed on an hourly basis will include a brief description of the service and the department where the service was performed. Monthly charges for service are based on an estimated 100 helpdesk requests annually. In the event annual helpdesk requests exceed 100 tickets, City of Black Diamond agrees to negotiate these additional services which may include mutually agreed adjustments to monthly service charges.

**EXHIBIT B  
COST OF SERVICES**

Support Function	Operating Hours	Billing rate	Monthly cost
Project Specific one-time start-up Fees: Evaluation of current needs identifies upfront hours of support to stabilize Police services, software and systems. We estimate approximately 20-30 hours of onsite work to accomplish specific requests in a timely fashion. Estimate includes: Firewall and VPN configuration, Vehicle MDC reimaging, profile updates, State Link activation, and network administration	Staff will coordinate with Black Diamond on appropriate times to accomplish work onsite. Billing will be based on time spent, and billed for actual hours as they occur.	\$1500.00 - \$2250.00 plus mileage. First month will be prorated based on completion of 20-30 hours.	n/a
General Network and desktop maintenance and support including operating system patch management, virus system software management, general troubleshooting and problem resolution that can be via remote access/phone and minimal Black Diamond Auburn office visits where deemed possible allowing equipment drop off and minimal hands on configuration support.	M - F, 7 a.m. - 5 p.m. excluding holidays	\$400.00 / month effective October 1, 2013 and monthly thereafter	\$400.00
Network and desktop repair and maintenance that require onsite support.	M - F, 7 a.m. - 5 p.m. excluding holidays	\$75.00 / hour plus mileage based on IRS standard mileage rate	Per hour as required
All support responses by City of Auburn technical support staff.  <b>Note:</b> COA technical support staff will not respond without authorization from City of Black Diamond Mayor, Police Chief or City Administrator.	Non business hours, afterhours, emergency response	\$110.00 / hour with one hour minimum plus mileage based on IRS standard mileage rate	Per incident as required
Netmotion Client Software	n/a	n/a	Per event
Virus Protection Software	n/a	n/a	Yearly



# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
<b>SUBJECT:</b> <b>Resolution No. 14-914, authorizing the Mayor to execute a contract with O'Brien, Barton &amp; Hopkins, PLLP for Public Defense Services</b>	<b>Agenda Date: January 2, 2014</b> <span style="float: right;"><b>AB14-003</b></span>	
Cost Impact: Fund Source: Timeline:	Department/Committee/Individual	
	Mayor Dave Gordon	
	City Administrator – Mark Hoppen	<b>X</b>
	City Attorney –Chris Bacha	
	City Clerk – Brenda L. Martinez	
	Finance – May Miller	
	Natural Resources/Parks – Aaron Nix	
	PW/Ec. Dev. – Andy Williamson	
	Police – Jamey Kiblinger	
	Court – Stephanie Metcalf	
	Comm. Dev. – Stacey Welsh	
<b>Agenda Placement:</b> <input type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input checked="" type="checkbox"/> City Administrator		
<b>Attachments: Resolution No. 14-914; Proposed Contract</b>		
<b>SUMMARY STATEMENT:</b>  <p>Last year in November the City put out an RFQ for public defender services as our current contract with McPherson Law expired on December 31, 2013.</p> <p>The City received four proposals; Valley Defenders, O'Brien, Barton &amp; Hopkins, Virginia M. Amato, and John Rongerude. Interviews were held on December 19, 2013 with the selection panel consisting of Mayor Olness and City Administrator Mark Hoppen. It was a unanimous decision of the panel to select O'Brien, Barton &amp; Hopkins, PLLP to provide public defender services for the City.</p> <p>The proposed contract is a flat fee of \$2,500 per month plus an additional \$250 per each assigned case in excess of ten cases assigned during that month.</p>		
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b>		
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 14-914, authorizing the Mayor to execute a contract with O'Brien, Barton &amp; Hopkins, PLLP for public defender services.</b>		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
January 2, 2014		

**RESOLUTION NO. 14-914**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON  
AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT  
WITH O'BRIEN, BARTON & HOPKINS, PLLP FOR PUBLIC  
DEFENSE SERVICES**

**WHEREAS**, the City of Black Diamond finds it necessary to hire an attorney to provide public defense services; and

**WHEREAS**, the City advertised for qualified firms and individuals to fill the position of public defender and a selection panel including the Mayor, City Administrator reviewed the proposals and interviewed four firms; and

**WHEREAS**, the panel unanimously recommended O'Brien, Barton & Hopkins, PLLP as a firm qualified and willing to provide the necessary services;

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

**Section 1.** The Mayor is hereby authorized to execute a contract for Public Defense services with O'Brien, Barton & Hopkins, PLLP, substantially in the form attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 2ND DAY OF JANUARY, 2014.**

CITY OF BLACK DIAMOND:

\_\_\_\_\_  
Dave Gordon, Mayor

Attest:

\_\_\_\_\_  
Brenda L. Martinez, City Clerk

**CITY OF BLACK DIAMOND CONTRACT  
FOR PUBLIC DEFENSE SERVICES**

**(O'BRIEN, BARTON & HOPKINS, PLLP)**

This agreement (the "Agreement") is entered into 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 O'Brien, Barton & Hopkins, PLLP ("Attorney"); collectively, the "Parties."

1. Scope of Services.

- a. Attorney shall provide public defender services for indigent criminal defendants charged in Black Diamond Municipal Court under ordinances of the City or laws of the state of Washington who qualify for counsel. **John Price** shall be the principle attorney ("**Principle Attorney**") providing public defender services pursuant to this Agreement.
- b. Attorney shall provide legal representation for each of these defendants from the time of screening or appointment through trial, sentencing, and appeal to Superior Court, if necessary. Attorney be allowed to withdraw from representation upon disposition of a case or if allowed to withdraw upon motion to the Court. Compliance reviews and/or probation revocation hearings are also the responsibility of Attorney following appointment by the Court, but shall be subject to additional compensation outside of the per case flat rate as per Article 7, below.
- c. Attorney shall provide standby representation to all in-custody defendants as well as general advice to unrepresented defendants at out-of-custody arraignments.
- a. Attorney shall provide the Black Diamond Police Department with the telephone number or numbers at which the Attorney can be reached for critical stage advice to defendants during the course of police investigations and/or arrests twenty-four (24) hours each day. Attorney shall also provide the Black Diamond Police Department with the phone number and contact information for at least two (2) other back-up lawyers who are licensed in Washington State should the Principle Attorney be unreachable.
- b. Attorney shall be available for next court day preliminary hearings. Attorney can appear by telephone/video conferencing for such hearings, if available. Attorney shall also provide the City with the phone number and contact information for at least two (2) other back-up lawyers who are licensed in Washington State should Attorney be unreachable for preliminary hearings. Attorney maintains a conference room available at its office in Issaquah to accommodate confidential meetings with clients.



- c. The Attorney shall file monthly reports with the City delineating each client who has been appointed to the Attorney, including name(s), charge(s), case number (s), disposition, bench or jury trial (if applicable), and whether an appeal was filed. The report is due on or before the tenth (10th) day of the following month for services of the prior month.
  - d. The Attorney shall provide a letter of introduction to the screener to be handed out to each defendant who receives an appointment.
2. Applicant Screening. Determination of for eligibility of appointed counsel under this Agreement shall be determined by a screening process established by the Court. The Court shall be responsible for handling the screening process
3. Associated Counsel. The Attorney may associate or employ additional attorneys to represent defendants under this Agreement at Attorney's expense. All attorneys who provide public defense services under this Agreement with the City must be acceptable to the City and must be approved in advance by the City. No legal interns shall be used unless agreed to in advance by the City. Attorney shall be responsible for overseeing and approving serviced performed by other attorneys under this Agreement.
4. Term; Nunc-Pro Tunc. The provision of services under this agreement shall commence on **January 1, 2014**. This Agreement shall remain in full force and effect through December 31, 2014, unless terminated earlier pursuant to the terms hereof. This agreement may be extended for two (2) one-year periods by mutual agreement of the parties. In the event that this agreement is executed on or after January 1, 2014, the parties agree that the terms and conditions hereof shall be interpreted and applied as though the effective date hereof was January 1, 2014.
5. Case defined. A case is defined as the filing of a document with the court naming a person as defendant or respondent, to which an attorney is appointed in order to provide representation. As the Black Diamond Municipal Court is a court of limited jurisdiction, multiple citations from the same incident are counted as one case.
6. Compensation.
- a. Compensation for the services performed under this Agreement shall be a flat fee of \$2500 per month plus an additional \$250.00 per each assigned case in excess of ten (10) cases assigned during that month. For example, if 12 cases are assigned to Attorney in the month of February, Attorney shall be compensated in the amount of \$2500 plus an additional \$500 ( $\$250.00 \times 2$ ) for a total of \$3000; if 8 cases are assigned in March, Attorney shall be compensated in the amount of \$2500. Such compensation shall constitute full compensation for all services performed for each assigned case until disposition of the case or when withdrawal of attorney from the case is allowed by the Court.

- b. The Flat fee shall include compensation of Attorney for coverage of arraignments, telephonic bail hearings, and review, revocation & probation hearings. Attorney shall be allowed to withdraw as attorney of record when each case reaches disposition (plea or other similar disposition, dismissal, verdict after trial or mistrial.
- c. This compensation covers all necessary preparation and hearings to resolve the issue(s) underlying a motion to revoke.
- d. The City shall pay Attorney an additional sum of \$500 for each appeal to Superior Court plus the costs of transcriptions.
- e. Such fees shall include all overhead, costs and expenses of Attorney, except as otherwise set forth herein, and shall be Attorney's sole compensation. All compensation is inclusive of administrative costs as set forth in Standard 5.2 of the Washington State Supreme Court Standards for Indigent Defense issued on September 7, 2012.

7. Professional Liability Coverage. During the term of the Contract, the Attorney shall have professional liability coverage in a minimum amount of \$1,000,000 per claim and \$1,000,000 in general aggregate covering Attorney and Attorney's agents and employees providing services under this Agreement. Proof of this coverage must be provided to the City prior mutual acceptance of this contract.

8. Indemnification/ Hold Harmless. Attorney shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Attorney, and Attorney's associates, agents and employees, in performance of this Agreement. To the extent that any of the damages referenced by this paragraph are caused by or resulting from the concurrent negligence of the City, its agents or employees, this obligation to indemnify, defend and hold harmless will be valid and enforceable only to the extent of the negligence of the Attorney, its associates, agents and employees.

9. Reimbursement of Certain Costs. The City shall reimburse the Attorney for reasonable expert witness fees if the court orders an expert witness upon motion of the Attorney. The City shall reimburse the Attorney for the costs of third party investigative services if the court orders the use of an investigator upon motion of the Attorney. The City shall reimburse the Attorney for the costs of appellate transcripts as required by court rules.

10. Discovery Provided. The City shall provide to the Attorney at no cost to the Attorney or the defendant one (1) copy of all discoverable materials concerning each assigned case with the exception of audio and video tapes which shall be made available for inspection in accordance with rules for discovery. Attorney will have fax and email available for transmission of discovery.

11. Interpreters. Attorney will meet with indigent clients who require interpreters at the court facility and/or jail at the City's expense. When special circumstances arise that may

require a more extensive interview, Attorney will contract the Court to arrange for interpreting services.

12. Assignment or Subcontractors. The contract for public defense services may not be assigned or subcontracted without the prior written consent of the City.

13. Standard of Care. Attorney represents and warrants that she, and any agents used to perform services under this Agreement, has the requisite training, skill and experience necessary to provide the services described herein and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided under this Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances. The Attorney shall comply with the applicable standards for public defense services pursuant to Chapter 10.101 RCW and in compliance with Standard 14.1 of the Washington State Supreme Court Standards for Indigent Defense issued on September 7, 2012.

14. Readiness. The Attorney is expected to be prepared to proceed at every stage of the criminal proceedings, unless restricted by circumstances outside of the Attorney's control. The Attorney will be expected to make every effort to come to scheduled court hearings and calendars prepared to proceed on all assigned cases.

15. Termination.

- a. Either party may terminate this Agreement without cause, by giving the other party ninety (90) days written notice.
- b. Either party may terminate this agreement on seven (7) days written notice in the event of (1) material breach of contract, (2) violation of the rules of professional conduct, or (3) unforeseen medical issues. Such termination is effective only if the party terminating has provided written notice of the deficiency to the other party and such deficiency is not corrected in a timely manner to the reasonable satisfaction of the terminating party.
- c. The City shall have the right to terminate this Agreement immediately if the license to practice law of John Price is suspended or revoked. In the event of termination or expiration of the Agreement, the Attorney shall complete all pending cases if lawfully able to do so.

16. Attorney Conflict. In the event the Attorney must withdraw from a case because of a conflict of interest, the matter will be referred to the municipal court judge for a final decision. Upon the judge's determination that the Attorney cannot represent the assigned client, the Court shall appoint the client to appropriate conflict counsel.

17. Discrimination and Compliance with Laws.

- a. Attorney agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.
- b. Attorney shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

19. Records retention. Attorney shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement or the Rules of Professional Conduct. Copies shall be made available on request.

20. Independent Contractor. Attorney is and shall be at all times during the term of this Agreement an independent contractor. Nothing in this Agreement shall be considered to create an employment relationship between the parties. Neither Attorney nor any employee of Attorney shall be entitled to any benefits accorded City employees.

21. Governing Law and Venue for 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.

22. 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.

23. Entire Agreement--Modification. This Agreement represents the entire Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended or modified only by express written consent of both parties.

24. Training. Attorneys and all attorney employees who regularly appear in the Black Diamond Municipal Court pursuant to this contract shall attend at least seven (7) continuing legal education hour credits approved by the Washington State Office of Public Defense annually.

25. Supervision of Contract and Professional Standard. Any defendant complaints regarding Attorney's services shall first be addressed by Attorney. If defendant this does not resolve defendant's complaint to defendant's satisfaction, Attorney shall report the complaint to the Judge of the Black Diamond Municipal Court within 5 business days and inform defendant in writing of defendant's right to notify the court of complaint.

26. Private Practice Case Load. Attorney shall maintain compliance with the maximum case load requirements as stated by the Supreme Court Order for Indigent Defense Standards and shall file certification as required by this Order.

27. Extraordinarily Complex Cases. Attorney may ask City for extra compensation in extraordinarily complex cases. In order to request such extra compensation, Attorney must make a written request to the Black Diamond Municipal Court for Extraordinary Compensation before extra work or costs are incurred. A copy of such request shall be provided to the Mayor prior to the Court hearing on the request. Such requests may be heard In Camera at Attorney's request. The parties to this contract agree that the Judge of the Black Diamond Municipal Court shall be the decision maker in such requests, and that the Judge's decision in such cases cannot be appealed unless the ruling could be detrimental to the defendant's right to due process or effective assistance of counsel.

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.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014

**CITY OF BLACK DIAMOND:**

**ATTORNEY:**

By: \_\_\_\_\_  
Dave Gordon,  
Mayor

\_\_\_\_\_  
John L. O'Brien  
O'Brien, Barton & Hopkins, PLLP

POB 599  
Black Diamond, WA 98010

175 N.E. Gilman Blvd, Suite 100  
Issaquah, WA 98027

360/886-5700

425/391-7427

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
<b>SUBJECT:</b> <b>Resolution No.14-915, authorizing the Mayor to enter into a Memorandum of Understanding with Olympic Environmental Resources in order to implement the City of Black Diamond's 2014 Spring Recycling Collection Event.</b>	<b>Agenda Date: January 2, 2014</b> <span style="float: right;"><b>AB14-004</b></span>	
Cost Impact: \$20,156.51 Fund Source: 3 Grants Timeline: 2014	Department/Committee/Individual	
	Mayor Dave Gordon	
	City Administrator – Mark Hoppen	
	City Attorney –Chris Bacha	
	City Clerk – Brenda L. Martinez	
	Finance – May Miller	
	Natural Resources/Parks – Aaron Nix	<b>X</b>
	PW/Ec. Dev. – Andy Williamson	
	Police – Jamey Kiblinger	
	Court – Stephanie Metcalf	
	Comm. Dev. – Stacey Welsh	
<b>Agenda Placement:</b> <input type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input checked="" type="checkbox"/> City Administrator		
<b>Attachments: Resolution No.14-915 and Memorandum of Understanding with Olympic Environmental Resources (Final and Strikethrough Versions)</b>		
<b>SUMMARY STATEMENT:</b>  Since the mid 90's, the City has received grant funds to hold an annual spring recycling event coordinated and run by Olympic Environmental Resources. The event is highly attended by the Black Diamond Community and is a great opportunity for recyclers to get rid of their spring cleaning materials. In addition, a wood chipping component is included that allows residents to bring in limbs and yard debris that has collected over the winter months. Staff is looking for the Council to ask the Mayor to sign a Memorandum of Understanding with Olympic Environmental Resources to help manage all three grant resources and hold the event sometime in March or April, early 2014. City Attorney Bacha and Staff have reviewed the materials, made some minor revisions, as highlighted in the attached, draft version.		
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b> N/A		
<b>RECOMMENDED ACTION: MOTION to adopt Resolution 14-915, authorizing the Mayor to enter into a Memorandum of Understanding with Olympic Environmental Resources to help manage grant resources received by the City and to hold the annual recycling event in the Spring of 2014.</b>		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
January 2, 2014		

**RESOLUTION NO. 14-915**

**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF BLACK DIAMOND, KING COUNTY,  
WASHINGTON AUTHORIZING THE MAYOR TO  
EXECUTE A MEMORANDUM OF UNDERSTANDING  
WITH OLYMPIC ENVIRONMENTAL RESOURCES  
FOR THE 2014 RECYCLING EVENT**

**WHEREAS**, the City of Black Diamond has identified the need for recycling services associated with grant resources annually received by the City to hold its' Spring Recycling Event;

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

**Section 1.** The Mayor is hereby authorized to execute a Memorandum of Understanding with Olympic Environmental Resources for the 2014 Spring Recycling Event, in an amount not to exceed \$20,156.51, said agreement to be substantially in the form attached hereto as Exhibit A and by reference incorporated herein.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,  
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 2ND DAY OF  
JANUARY, 2014.**

CITY OF BLACK DIAMOND:

\_\_\_\_\_  
Dave Gordon, Mayor

Attest:

\_\_\_\_\_  
Brenda L. Martinez, City Clerk

## Exhibit A



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

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

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

Physical Address: 24301 Roberts Drive

Mailing Address: PO Box 599

Black Diamond, WA 98010

Contact: Aaron C. Nix Phone: 360-886-5700 Fax: 360-886-2592

and

Olympic Environmental Resources ("Consultant")

4715 SW Walker Street

Seattle, WA 98116

Contact: Paul Devine Phone: 206-938-8262 Fax: 206-938-9873

Tax Id No.: Fed ID – 91-2027892

For professional services in connection with the following project:

Recycling Grant Coordination and Spring 2014 Collection Event (the "Project").

### **TERMS AND CONDITIONS**

#### **1. Services by Consultant**

1.1 Consultant shall perform the services described in the Scope of Work attached to this Agreement as Appendix "A." The services performed by Consultant shall not exceed the Scope of Work nor shall the Consultant be entitled to a greater amount of compensation as that provided in this Agreement without the prior written authorization of the City.

1.2 The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to this Agreement.

1.3 Consultant represents and warrants that it, its staff to be assigned to the Project, and its subconsultants and their staff have the requisite training, skill, and experience necessary to provide the services required by this Agreement and are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant and its subconsultants under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

## **2. Schedule of Work**

2.1 Consultant shall perform the services described in the Scope of Work in accordance with the Schedule attached to this contract as Appendix "A."

2.2 Time is of the essence as to the work provided in the Scope of Work. Consultant will diligently proceed with the work and shall assure that it, and its subconsultants, will have adequate staffing at all times in order to complete the Scope of Work in a timely manner. If factors beyond Consultant's control that could not have been reasonably foreseen as of the date of this Agreement cause delay, then the parties will negotiate in good faith to determine whether an extension is appropriate. The Consultant shall provide the City with written notice of any delay, or potential delay that may trigger the need for a time extension within 3 business days after the Consultant becomes aware of the delay or potential delay.

2.3 Consultant is authorized to proceed with services on January 3, 2014, if approved by the Diamond City Council at its' January 2<sup>nd</sup>, 2014 meeting.

## **3. Compensation**

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

X TIME AND MATERIALS NOT TO EXCEED. Compensation for the services provided in the Scope of Work shall not exceed \$20,156.51 without the written authorization of the City and will be based on the list of billing rates and reimbursable expenses attached hereto as "Exhibit A".

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

OTHER. \_\_\_\_\_

## **4. Payment**

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

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

4.3 Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a

longer period is required by a third-party agreement. Consultant shall make copies available to the City on request.

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

## **5. Discrimination and Compliance with Laws**

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

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

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

## **6. Suspension and Termination of Agreement**

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

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

## **7. Standard of Care**

7.1 Consultant represents and warrants that it has the requisite training, skill, and experience necessary to provide the services under this Agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services Consultant provides under this Agreement will be performed in a manner consistent with that

degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

## **8. Ownership of Work Product**

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

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

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

## **9. Indemnification/Hold Harmless**

9.1 Consultant shall protect, defend, indemnify, and hold harmless King County, its officers, employees and agents from any and all costs, claims, judgments, and/or awards of damages arising out of, or in any way resulting from the negligent act or omissions of subcontractor, its officers, employees, and/or agents in connection with or in support of this contract. Subcontractor expressly agrees and understands that King County is a third party beneficiary to this contract and shall have the right to bring an action against subcontractor to enforce the provisions of this paragraph.

## **10. Insurance**

10.1 Consultant shall procure and maintain for the duration of the Agreement, and shall provide proof satisfactory to the City that such insurance is procured and maintained by each of its subconsultants, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, or employees.

10.2 Consultant shall procure and maintain the following types and amounts of insurance:

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

endorsed to provide contractual liability coverage. This insurance shall have a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident. As part of the implementation of this project and consistent with past projects, the consultant will not use a vehicle on site for collection of materials. This insurance requirement is typically pasted through the consultant to the event vendors, such as the company that collects oil or batteries to meet this requirement.

b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors, personal injury, and advertising injury. This insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington. As part of the implementation of this project and consistent with past projects, the consultant does not carry this insurance. This insurance requirement is typically pasted through the consultant to the event vendors that have the majority of staff on site.

d. Professional Liability insurance appropriate to Consultant's profession, with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

10.3 The Automobile Liability, Commercial General Liability, and Professional Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

a. Consultant's insurance coverage shall be primary insurance vis-à-vis the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess over Consultant's insurance and shall not contribute with it.

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

10.4 The City shall be named as an additional insured under Consultant's Automobile Liability and Commercial General Liability insurance policies with respect to the work to be performed for the City pursuant to this Agreement.

10.5 Insurance shall be placed with insurers with a current A.M. Best rating of not less than A:VII.

10.6 Declaration pages issued by the insurance carriers for the policies mentioned in this Section 10 showing such insurance to be in force shall be filed with the City not less than ten (10) days following both parties signing this Agreement and before commencement of the work. In addition, the City may request, in writing, a full copy from Consultant of any insurance policy Consultant must procure and maintain pursuant to this Agreement and Consultant must provide such copy to the City within ten (10) days of Consultant's receipt of the City's request. Any policy or required insurance written on a claims-made basis shall provide coverage as to all claims arising out of the services performed under this Agreement and for three (3) years following completion of the services to be performed. It shall be a material breach of this

Agreement for Consultant to fail to procure and maintain the insurance required by this Section 10 or to provide the proof of such insurance to the City as provided for in this Agreement.

## **11. Assigning or Subcontracting**

11.1 Consultant shall not assign, transfer, subcontract, or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld at the sole discretion of the City. As part of the implementation of this project and consistent with past projects, the consultant will act as the general contractor and subcontract the collection of items to specialist in the industry. For example, tires will be collected by a licensed tire collector/processor in the region.

The consultant agrees to comply with the additional requirements, placed on the City, within King County Contract #EHS3304. Specifically, section XIII, Assignments/Subcontracting items (A-C) as required by the granting agency, Seattle and King County Public Health and attached herein within Appendix B. The Consultant also agrees to comply with contract #5637173, Interagency Agreement between King County and the City of Black Diamond, specifically, section II Responsibilities of the Parties items 7 and 8, and attached herein within Appendix C.

## **12. Independent Contractor**

12.1 Consultant and its subconsultants are, and shall be at all times during the term of this Agreement, independent contractors.

## **13. Notice**

13.1 All notices required by this Agreement shall be considered properly delivered when personally delivered, when received by facsimile, or on the third day following mailing, postage prepaid, certified mail, return receipt requested to:

City: City Administrator  
Mark Hoppen, Ph.D.  
City of Black Diamond  
P.O. Box 599  
Black Diamond, WA 98010  
Fax: 360-886-2592

With a copy to: Chris Bacha  
Kenyon Disend, PLLC  
11 Front Street South  
Issaquah, WA 98027  
Fax: 425-392-7071

Consultant: Olympic Environmental Services  
Attn: Paul Devine

4715 SW Walker Street  
Seattle, WA 98116  
Tel: 206.938.8262  
Fax: 206.938.9873

**14. Disputes**

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

**15. Attorney Fees**

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

**16. General Administration and Management on Behalf of the City**

16.1 The City Administrator for the City, or his/her designee, shall review and approve Consultant's invoices to the City under this Agreement and shall have primary responsibility for overseeing and approving work or services to be performed by Consultant.

**17. Extent of Agreement/Modification**

17.1 This Agreement, together with any attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may only be amended, modified, or added to by written instrument properly signed by both parties. The parties acknowledge the general contract rule that a clause in a contract, such as this one, prohibiting oral modifications is itself generally subject to oral modification. However, in order to ensure certainty as to the terms and conditions of this Agreement, the parties waive this general contract rule.

CITY OF BLACK DIAMOND

CONSULTANT

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

David Gordon

Its: Mayor

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

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

Printed Name: Paul M Devine

Its: General Manager

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

Attest:

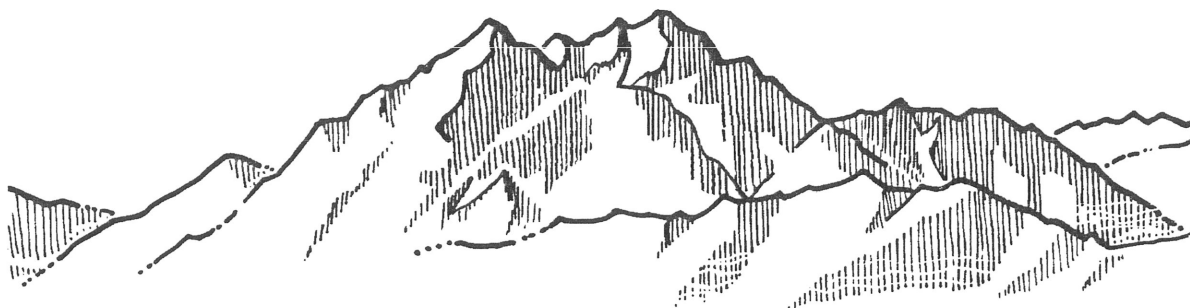
By:

---

Brenda L. Martinez  
City Clerk



## Appendix A



# *Olympic Environmental Resources*

*4715 SW Walker Street Seattle WA 98116*

*Tel. 206 938-8262 Fax (206) 938-9873*

*Email: pauldevine@msn.com*

## **Memorandum of Understanding**

To: The City of Black Diamond

From: Olympic Environmental Resources

Date: November 20, 2013

RE: City of Black Diamond/Olympic Environmental Resources Agreement for Implementing  
2014 Recycling Projects

This Memorandum of Understanding is intended to detail Olympic Environmental Resources (OER) services and responsibilities in implementing City of Black Diamond Recycling 2014 Spring Recycling Collection Event.

The proposed project includes:

### **One Recycling Collection Event**

The event is tentatively scheduled for March or April 2014 at the Black Diamond Police Department, located at 25510 Lawson Street. At the event the following materials will be collected and recycled: used tires, used anti-freeze, used petroleum-based products, used oil filters, lead acid and household batteries, used motor oil, scrap wood, electronic equipment, computer equipment, appliances (including refrigerators, freezers, household air conditioners, and other appliances), ferrous metals, nonferrous metals, textiles, reusable or recyclable household goods, porcelain toilets and sinks, propane tanks, mattresses, and other materials whenever practical. User fees will apply to the collection of some materials – see detail below.

At the 2014 Spring Recycling Collection Event, OER will organize a chipper/bulk yard debris collection event to be held in conjunction with the Recycling Collection Event.

OER wishes to involve the Black Diamond staff at the level most comfortable for the City. OER will meet with the City of Black Diamond staff at any time during the project for updates on activities or will pursue activities independently if desired by the City.

The project budget will incorporate the City of Black Diamond grant funds available from the Seattle-King County Health Department, King County Solid Waste Division, and the Washington State Department of Ecology. **The budget is contingent on continued grant funding from the King County Solid Waste Division, Seattle-King County Health Department and the Washington State Department of Ecology.** Total grant funds are estimated at \$20,156.51 and includes all items that will be billed to the grants directly by the City, such as City staff time, Consultant fees, etc. The specific project activities to be carried out by OER are detailed in the grant scopes of work, focusing on holding one recycling event (spring 2014) and its associated advertising, grant management, education and follow-up reporting. OER will cover project expenses as they arise, such as the costs of printing and vendor services, with prior approval by the City's City Administrator or his/her Designee. OER will then request reimbursement of staff time and expenses on a monthly basis. OER will assist the City in requesting reimbursement for these costs from the King County Solid Waste Division, Seattle-King County Health Department, and the Washington State Department of Ecology.

OER's goal is to conduct events with very limited City staff time and limited City cost. However, there are a number of "official acts" necessary for the City to bring the programs on line:

- Sign necessary grant agreements.
- Keep OER informed of any changes made to grant agreements.
- Reimburse OER for staff time and expenses from grant funding.

Recycling related programs continue on an annual basis. OER will continue to provide service to the City of Black Diamond until the City decides to no longer participate. We ask that you provide thirty-days (30) notice to discontinue services. This agreement solidifies our relationship. Please sign both copies of this agreement and return one to OER. OER looks forward to working with the City of Black Diamond in 2014.

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City of Black Diamond

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Olympic Environmental Resources

## ***2014 Black Diamond Recycling Grants***

The City of Black Diamond is eligible and has applied for the following grants. It is expected that no non-grant City funds will be expended on recycling projects in 2014. The City has applied for the following:

1) The King County Health Department Local Hazardous Waste Management Plan Grant. Grant total \$5,944.01.

2) The Washington State Department of Ecology Coordinated Prevention Grant. Grant total \$4,212.50.

3) The King County Waste Reduction and Recycling Grant Program. Grant total \$10,000.00.

TOTAL: \$20,156.51

### **1. Task One: Recycling Collection Event Budget**

Estimated Costs	2014	2014	2014	TOTAL
	WRR	LHWMP	CPG	
City Staff Costs	\$400.00	\$600.00	\$0.00	\$1,000.00
Management/Staffing/Admin/Graphics	\$2,970.00	\$2,998.00	\$1,320.00	\$7,288.00
Event Staff Costs	\$1,430.00	\$0.00	\$880.00	\$2,310.00
Collection/Hauling Costs				\$0.00
Wood Waste	\$200.00	\$0.00	\$200.00	\$400.00
Scrap Metal, Appliances, etc.	\$800.00	\$0.00	\$800.00	\$1,600.00
Tires	\$600.00	\$0.00	\$0.00	\$600.00
Used Oil/Antifreeze	\$0.00	\$1,250.00	\$562.50	\$1,812.50
Batteries	\$0.00	\$350.00	\$0.00	\$350.00
Other materials	\$400.00	\$0.00	\$0.00	\$400.00
Printing/Mailing	\$300.00	\$225.00	\$0.00	\$525.00
Event Supplies	\$300.00	\$200.00	\$0.00	\$500.00
Other Expenses - rentals, etc	\$600.00	\$321.01	\$450.00	\$1,371.01
TOTALS	\$8,000.00	\$5,944.01	\$4,212.50	\$18,156.51

\*Note – the CPG grant total will be billed to the City of Maple Valley per the two-City agreement with the Department of Ecology.

Note – user fees are charged to offset processing fees of some items. The fee insures proper handling and recycling of the item. In 2014, the user fees will be:

- Hot Water Heaters - \$5
- Refrigerators and Freezers/Air Conditioners - \$10 - \$15
- Tires - \$1.50 for tires on rims, \$1.50 for extra tires over 6, \$5 for truck tires, and \$15 for truck tires on rims
- Porcelain Toilets and Sinks - \$10
- Propane Tanks - \$5
- Mattresses - \$10

## 2. Task Two: Chipper/Bulk Yard Debris Collection Event Budget

ESTIMATED COSTS	2014	2014 Total
Program Management/Coordination/Reporting	\$360.00	\$360.00
Contractor Services	\$600.00	\$600.00
Event Staff	\$990.00	\$990.00
Supplies	\$50.00	\$50.00
Total	\$2,000.00	\$2,000.00

**NOTE: Hourly rates for consultants are as follows: Project Manager - \$70.00 and Event Staff - \$55.00.**

## CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT

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

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

Physical Address: 24301 Roberts Drive

Mailing Address: PO Box 599

Black Diamond, WA 98010

Contact: Aaron C. Nix Phone: 360-886-5700 Fax : 360-886-2592

and

Olympic Environmental Resources ("Consultant")

4715 SW Walker Street

Seattle, WA 98116

Contact: Paul Devine Phone: 206-938-8262 Fax: 206-938-9873

Tax Id No.: Fed ID – 91-2027892

For professional services in connection with the following project:

Recycling Grant Coordination and Spring 2014 Collection Event (the "Project").

### TERMS AND CONDITIONS

#### 1. Services by Consultant

1.1 Consultant shall perform the services described in the Scope of Work attached to this Agreement as AppendixExhibit "A." The services performed by Consultant shall not exceed the Scope of Work nor shall the Consultant be entitled to a greater amount of compensation as that provided in this Agreement without the prior written authorization of the City.

1.2 The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to this Agreement.

1.3 Consultant represents and warrants that it, its staff to be assigned to the Project, and its subconsultants and their staff have the requisite training, skill, and experience necessary to provide the services required by this Agreement and are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant and its subconsultants under this Agreement will be performed in a manner consistent with that degree



of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

## 2. Schedule of Work

2.1 Consultant shall perform the services described in the Scope of Work in accordance with the Schedule attached to this contract as ~~Appendix~~<sup>Exhibit</sup> "A."

2.2 Time is of the essence as to the work provided in the Scope of Work. Consultant will diligently proceed with the work and shall assure that it, and its subconsultants, will have adequate staffing at all times in order to complete the Scope of Work in a timely manner. If factors beyond Consultant's control that could not have been reasonably foreseen as of the date of this Agreement cause delay, then the parties will negotiate in good faith to determine whether an extension is appropriate. The Consultant shall provide the City with written notice of any delay, or potential delay, that may trigger the need for a time extension within 3 business days after the Consultant becomes aware of the delay or potential delay.

2.3 Consultant is authorized to proceed with services on ~~January 31, 2014, if~~<sup>approved by the Black Diamond City Council at its' January 2<sup>nd</sup>, 2014 meeting.</sup>

Formatted: Superscript

## 3. Compensation

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

~~X-~~ TIME AND MATERIALS NOT TO EXCEED. Compensation for the services provided in the Scope of Work shall not exceed ~~\$20,156.51~~ without the written authorization of the City and will be based on the list of billing rates and reimbursable expenses attached hereto as "~~Appendix~~<sup>Exhibit</sup> A".

TIME AND MATERIALS. Compensation for the services provided in the Scope of Work shall be on a time and materials basis according to the list of billing rates and reimbursable expenses attached hereto as ~~Appendix~~<sup>Exhibit</sup> "C."

OTHER. \_\_\_\_\_

## 4. Payment

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

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

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

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

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Consultant provides under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

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9.1 Consultant ~~shall protect, defend, indemnify, and hold harmless King County, its officers, employees and agents from any and all costs, claims, judgments, and/or awards of damages arising out of, or in any way resulting from the negligent act or omissions of subcontractor, its officers, employees, and/or agents in connection with or in support of this contract. Subcontractor expressly agrees and understands that King County is a third party beneficiary to this contract and shall have the right to bring an action against subcontractor to enforce the provisions of this paragraph shall defend, indemnify, and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising directly or indirectly out of or resulting from the acts, errors, or omissions of Consultant or its subconsultants in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. Provided, however, that if any such claims, injuries, damages, losses or suits result from the concurrent negligence of Consultant and the city, it is expressly agreed that Consultant's obligations and indemnity under this paragraph shall be effective only to the extent of Consultant's negligence.~~

## **10. Insurance**

10.1 Consultant shall procure and maintain for the duration of the Agreement, and shall provide proof satisfactory to the City that such insurance is procured and maintained by each of its subconsultants, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, or employees.



10.2 Consultant shall procure and maintain the following types and amounts of insurance:

a. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage. This insurance shall have a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident. As part of the implementation of this project and consistent with past projects, the consultant will not use a vehicle on site for collection of materials. This insurance requirement is typically pasted through the consultant to the event vendors, such as the company that collects oil or batteries to meet this requirement.

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In addition, the City may request, in writing, a full copy from Consultant of any insurance policy Consultant must procure and maintain pursuant to this Agreement and Consultant must provide such copy to the City within ten (10) days of Consultant's receipt of the City's request. Any policy or required insurance written on a claims-made basis shall provide coverage as to all claims arising out of the services performed under this Agreement and for three (3) years following completion of the services to be performed. It shall be a material breach of this Agreement for Consultant to fail to procure and maintain the insurance required by this Section 10 or to provide the proof of such insurance to the City as provided for in this Agreement.

#### **11. Assigning or Subcontracting**

11.1 Consultant shall not assign, transfer, subcontract, or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld at the sole discretion of the City. As part of the implementation of this project and consistent with past projects, the consultant will act as the general contractor and subcontract the collection of items to specialist in the industry. For example, tires will be collected by a licensed tire collector/processor in the region.

The consultant agrees to comply with the additional requirements, placed on the City, within King County Contract #EHS3304. Specifically, section XIII, Assignments/Subcontracting items (A-C) as required by the granting agency, Seattle and King County Public Health and attached herein within Appendix B. The Consultant also agrees to comply with contract #5637173, Interagency Agreement between King County and the City of Black Diamond, specifically, section II Responsibilities of the Parties items 7 and 8, and attached herein within Appendix C.

#### **12. Independent Contractor**

12.1 Consultant and its subconsultants are, and shall be at all times during the term of this Agreement, independent contractors.

#### **13. Notice**

13.1 All notices required by this Agreement shall be considered properly delivered when personally delivered, when received by facsimile, or on the third day following mailing, postage prepaid, certified mail, return receipt requested to:

City: City Administrator  
Mark Hoppen, Ph.D  
City of Black Diamond  
P.O. Box 599  
Black Diamond, WA 98010  
Fax: 360-886-2592

With a copy to: Chris Bacha  
Kenyon Disend, PLLC

11 Front Street South  
Issaquah, WA 98027  
Fax: 425-392-7071

Consultant: Olympic Environmental Services  
Attn: Paul Devine  
4715 SW Walker Street  
Seattle, WA 98116  
Tel: 206.938.8262  
Fax: 206.938.9873

**14. Disputes**

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

**15. Attorney Fees**

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

**16. General Administration and Management on Behalf of the City**

16.1 The City Administrator for the City, or his/her designee, shall review and approve Consultant's invoices to the City under this Agreement and shall have primary responsibility for overseeing and approving work or services to be performed by Consultant.

**17. Extent of Agreement/Modification**

17.1 This Agreement, together with any attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may only be amended, modified, or added to by written instrument properly signed by both parties. The parties acknowledge the general contract rule that a clause in a contract, such as this one, prohibiting oral modifications is itself generally subject to oral modification. However, in order to ensure certainty as to the terms and conditions of this Agreement, the parties waive this general contract rule.

CITY OF BLACK DIAMOND

CONSULTANT

By: \_\_\_\_\_  
David Gordon~~Rebecca Olness~~

Its: Mayor

By: \_\_\_\_\_  
Printed Name: Paul M Devine  
Its: General Manager

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

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

Attest:

By:

\_\_\_\_\_  
Brenda L. Martinez  
City Clerk



Appendix Exhibit A



## *Olympic Environmental Resources*

4715 SW Walker Street Seattle WA 98116

Tel. 206 938-8262 Fax (206) 938-9873

Email: pauldevine@msn.com

### **Memorandum of Understanding**

To: The City of Black Diamond

From: Olympic Environmental Resources

Date: November 20, 2013

RE: City of Black Diamond/Olympic Environmental Resources Agreement for Implementing 2014 Recycling Projects

This Memorandum of Understanding is intended to detail Olympic Environmental Resources (OER) services and responsibilities in implementing City of Black Diamond Recycling 2014 Spring Recycling Collection Event.

The proposed project includes:

#### **One Recycling Collection Event**

The event is tentatively scheduled for March or April 2014 at the Black Diamond Police Department, located at 25510 Lawson Street. At the event the following materials will be collected and recycled: used tires, used anti-freeze, used petroleum-based products, used oil filters, lead acid and household batteries, used motor oil, scrap wood, electronic equipment, computer equipment, appliances (including refrigerators, freezers, household air conditioners, and other appliances), ferrous metals, nonferrous metals, textiles, reusable or recyclable household goods, porcelain toilets and sinks, propane tanks, mattresses, and other materials whenever practical. User fees will apply to the collection of some materials – see detail below.

At the 2014 Spring Recycling Collection Event, OER will organize a chipper/bulk yard debris collection event to be held in conjunction with the Recycling Collection Event.

OER wishes to involve the Black Diamond staff at the level most comfortable for the City. OER will meet with the City of Black Diamond staff at any time during the project for updates on activities or will pursue activities independently if desired by the City.

The project budget will incorporate the City of Black Diamond grant funds available from the Seattle-King County Health Department, King County Solid Waste Division, and the Washington State Department of Ecology. **The budget is contingent on continued grant funding from the King County Solid Waste Division, Seattle-King County Health Department and the Washington State Department of Ecology.** Total grant funds are estimated at \$20,156.51 and includes all items that will be billed to the grants directly by the City, such as City staff time, Consultant fees, etc. The specific project activities to be carried out by OER are detailed in the grant scopes of work, focusing on holding one recycling event (spring 2014) and its associated advertising, grant management, education and follow-up reporting. OER will cover project expenses as they arise, such as the costs of printing and vendor services, with prior approval by the City's City Administrator or his/her Designee. OER will then request reimbursement of staff time and expenses on a monthly basis. OER will assist the City in requesting reimbursement for these costs from the King County Solid Waste Division, Seattle-King County Health Department, and the Washington State Department of Ecology.

OER's goal is to conduct events with very limited City staff time and limited City cost. However, there are a number of "official acts" necessary for the City to bring the programs on line:

- Sign necessary grant agreements.
- Keep OER informed of any changes made to grant agreements.
- Reimburse OER for staff time and expenses from grant funding.

Recycling related programs continue on an annual basis. OER will continue to provide service to the City of Black Diamond until the City decides to no longer participate. We ask that you provide thirty-days (30) notice to discontinue services. This agreement solidifies our relationship. Please sign both copies of this agreement and return one to OER. OER looks forward to working with the City of Black Diamond in 2014.

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City of Black Diamond

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Olympic Environmental Resources

### ***2014 Black Diamond Recycling Grants***

The City of Black Diamond is eligible and has applied for the following grants. It is expected that no non-grant City funds will be expended on recycling projects in 2014. The City has applied for the following:

1) The King County Health Department Local Hazardous Waste Management Plan Grant. Grant total \$5,944.01.

2) The Washington State Department of Ecology Coordinated Prevention Grant. Grant total \$4,212.50.

3) The King County Waste Reduction and Recycling Grant Program. Grant total \$10,000.00.

TOTAL: \$20,156.51

#### **1. Task One: Recycling Collection Event Budget**

Estimated Costs	2014	2014	2014	TOTAL
	WRR	LHWMP	CPG	
City Staff Costs	\$400.00	\$600.00	\$0.00	\$1,000.00
Management/Staffing/Admin/Graphics	\$2,970.00	\$2,998.00	\$1,320.00	\$7,288.00
Event Staff Costs	\$1,430.00	\$0.00	\$880.00	\$2,310.00
Collection/Hauling Costs				\$0.00
Wood Waste	\$200.00	\$0.00	\$200.00	\$400.00
Scrap Metal, Appliances, etc.	\$800.00	\$0.00	\$800.00	\$1,600.00
Tires	\$600.00	\$0.00	\$0.00	\$600.00
Used Oil/Antifreeze	\$0.00	\$1,250.00	\$562.50	\$1,812.50
Batteries	\$0.00	\$350.00	\$0.00	\$350.00
Other materials	\$400.00	\$0.00	\$0.00	\$400.00
Printing/Mailing	\$300.00	\$225.00	\$0.00	\$525.00
Event Supplies	\$300.00	\$200.00	\$0.00	\$500.00
Other Expenses - rentals, etc	\$600.00	\$321.01	\$450.00	\$1,371.01
<b>TOTALS</b>	<b>\$8,000.00</b>	<b>\$5,944.01</b>	<b>\$4,212.50</b>	<b>\$18,156.51</b>

\*Note – the CPG grant total will be billed to the City of Maple Valley per the two-City agreement with the Department of Ecology.

Note – user fees are charged to offset processing fees of some items. The fee insures proper handling and recycling of the item. In 2014, the user fees will be:

- Hot Water Heaters - \$5
- Refrigerators and Freezers/Air Conditioners - \$10 - \$15
- Tires - \$1.50 for tires on rims, \$1.50 for extra tires over 6, \$5 for truck tires, and \$15 for truck tires on rims
- Porcelain Toilets and Sinks - \$10
- Propane Tanks - \$5
- Mattresses - \$10

## 2. Task Two: Chipper/Bulk Yard Debris Collection Event Budget

ESTIMATED COSTS	2014	2014 Total
Program Management/Coordination/Reporting	\$360.00	\$360.00
Contractor Services	\$600.00	\$600.00
Event Staff	\$990.00	\$990.00
Supplies	\$50.00	\$50.00
Total	\$2,000.00	\$2,000.00

NOTE: Hourly rates for consultants are as follows: Project Manager - \$70.00 and Event Staff - \$55.00.



# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
<b>SUBJECT:</b> <b>Resolution No. 14-916, authorizing the Mayor to execute a contract with Seattle-King County Department of Health for Grant monies from the Local Hazardous Waste Management Program for the City's annual recycling event.</b>	<b>Agenda Date: January 2, 2014</b>	
	<b>AB14-005</b>	
	Department/Committee/Individual	
	Mayor Dave Gordon	
	City Administrator – Mark Hoppen	
	City Attorney –Chris Bacha	
	City Clerk – Brenda L. Martinez	
	Finance – May Miller	
	Natural Resources/Parks – Aaron Nix	X
	PW/Ec. Dev. – Andy Williamson	
Cost Impact: \$5,944.01	Police – Jamey Kiblinger	
Fund Source: Grant (LHWMP)	Court – Stephanie Metcalf	
Timeline: Spring 2014	Comm. Dev. – Stacey Welsh	
<b>Agenda Placement:</b> <input type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input checked="" type="checkbox"/> City Administrator		
<b>Attachments: Resolution No. 14-916; Contract</b>		
<b>SUMMARY STATEMENT:</b>  Included in Exhibit A is a contract for the acceptance of annually awarded grant funds in the amount of \$5,994.01 from the Seattle-King County Department of Health to help hold a spring recycling event in March or April of 2014.		
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b>		
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 14-916, authorizing the Mayor to enter into a Community Services Contract with the Seattle-King County Department of Health for the acceptance of grant funds to be utilized in support of the City's Special Collection Event to be held in the spring of 2014.</b>		
RECORD OF COUNCIL ACTION		
Meeting Date	Action	Vote
January 2, 2014		

**RESOLUTION NO. 14-916**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A COMMUNITY SERVICES CONTRACT WITH THE SEATTLE-KING COUNTY DEPARTMENT OF HEALTH FOR GRANT MONIES OFFERED BY THE LOCAL HAZARDOUS WASTE MANAGEMENT PROGRAM IN THE AMOUNT OF \$5,944.01, IN SUPPORT OF THE CITY'S ANNUAL RECYCLING EVENT**

**WHEREAS,** the City of Black Diamond has identified the need for recycling services associated with its spring, 2014 special collection event; and

**WHEREAS,** The Seattle-King County Department of Health has offered a grant (EHS3304) in the amount of \$5,944.01 in support of its' annual recycling event that allows local residents a convenient venue in order to get rid of recyclable materials in a safe, affordable manner, locally;

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

**Section 1.** The Mayor is hereby authorized to enter into a contract with the Seattle-King County Department of Health to receive grant monies in the amount of \$5,944.01, said agreement to be substantially in the form attached hereto as Exhibit A and by reference incorporated herein.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 2ND DAY OF JANUARY, 2014.**

CITY OF BLACK DIAMOND:

\_\_\_\_\_  
Dave Gordon, Mayor

Attest:

\_\_\_\_\_  
Brenda L. Martinez, City Clerk

## Exhibit A



King County Contract #  
Federal Taxpayer ID #  
Federal Sub-recipient -

EHS3304  
91-6016204  
No

This form is available in alternate formats for people with disabilities upon request.

## 2014 COMMUNITY SERVICES CONTRACT WITH OTHER GOVERNMENT, INSTITUTION, OR JURISDICTION

THIS CONTRACT is entered into by KING COUNTY (the "County"), and City of Black Diamond (the "Contractor"), whose address is PO Box 599, Black Diamond, Washington, 98010. The County department overseeing the work to be performed in this Contract is the Seattle-King County Department of Public Health (aka, Public Health - Seattle & King County, "PHSKC").

### Contract Summary

**PHSKC Division: Environmental Health Division**

**Project Title: Local Hazardous Waste Management Program**

**Contract Amount: Five Thousand Nine Hundred Forty Four Dollars and One Cents**

**Contract Start Date: 01/01/2014 Contract End Date: 12/31/2014**

### Fund Source Information

FEDERAL: \$ 0                      COUNTY: \$ 5,944.01                      STATE: \$ 0                      OTHER: \$ 0

### Specific Funding Details (Award number, CFDA #, Amounts, Effective Dates)

1) Local Hazardous Waste Management Program funding

WHEREAS, the County has been advised that the foregoing are the current funding sources, funding levels and effective dates, and

WHEREAS, the County desires to have certain services performed by the Contractor as described in this Contract, and as authorized by the 2014 Annual Budget.

NOW THEREFORE, in consideration of payments, covenants, and agreements hereinafter mentioned, to be made and performed by the parties hereto, the parties mutually agree as follows:

### **I Incorporation of Exhibits**

The Contractor shall provide services and comply with the requirements set forth in the following attached exhibits, which are incorporated herein by reference:

#### Program Exhibits and Requirements

- Exhibit A: Scope of Work
- Exhibit B: Budget
- Exhibit C: Invoice
- Exhibit D: Contractor's Certificate of Insurance and Additional Insured Endorsement

### **II Term and Termination**

A This Contract shall commence on 1/1/2014 8:00:00 AM, and shall terminate on 12/31/2014 8:00:00 AM, unless extended or terminated earlier, pursuant to the terms and conditions of the Contract.

B This Contract may be terminated by the County or the Contractor without cause, in whole or in part, prior to the date specified in Subsection II.A. above, by providing the other party thirty (30)

days advance written notice of the termination. The Contract may be suspended by the County without cause, in whole or in part, prior to the date specified in Subsection II.A. above, by providing the other party thirty (30) days advance written notice of the suspension.

- C The County may terminate or suspend this Contract, in whole or in part, upon seven (7) days advance written notice in the event: (1) the Contractor materially breaches any duty, obligation, or service required pursuant to this Contract, or (2) the duties, obligations, or services required herein become impossible, illegal, or not feasible. If the Contract is terminated by the County pursuant to this Subsection II.C. (1), the Contractor shall be liable for damages, including any additional costs of procurement of similar services from another source.

If the termination results from acts or omissions of the Contractor, including but not limited to misappropriation, nonperformance of required services, or fiscal mismanagement, the Contractor shall return to the County immediately any funds, misappropriated or unexpended, which have been paid to the Contractor by the County.

- D If County or other expected or actual funding is withdrawn, reduced, or limited in any way prior to the termination date set forth above in Subsection II.A., the County may, upon written notification to the Contractor, terminate or suspend this Contract in whole or in part.

If the Contract is terminated or suspended as provided in this Section (1) the County will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination or suspension; and (2) the Contractor shall be released from any obligation to provide such further services pursuant to the Contract as are affected by the termination or suspension.

Funding or obligation under this Contract beyond the current appropriation year is conditional upon appropriation by the County Council of sufficient funds to support the activities described in the Contract. Should such appropriation not be approved, this Contract will terminate at the close of the current appropriation year.

If the Contract is suspended as provided in this Section the County may provide written authorization to resume activities.

- E Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Contract or law that either party may have in the event that the obligations, terms, and conditions set forth in this Contract are breached by the other party.

### **III Compensation and Method of Payment**

- A The County shall reimburse the Contractor for satisfactory completion of the services and requirements specified in this Contract, payable upon receipt and approval by the County of a signed invoice in substantially the form of the attached Invoice Exhibit which complies with the attached Budget Exhibit.
- B The Contractor shall submit an invoice and all accompanying reports as specified in the attached exhibits not more than 60 working days after the close of each indicated reporting period. The County shall make payment to the Contractor not more than 30 days after a complete and accurate invoice is received.
- C The Contractor shall submit its final invoice and all outstanding reports within 90 days of the date this Contract terminates. If the Contractor's final invoice and reports are not submitted by the day specified in this subsection, the County will be relieved of all liability for payment to the Contractor of the amounts set forth in said invoice or any subsequent invoice.
- D When a budget is attached hereto as an exhibit, the Contractor shall apply the funds received from the County under this Contract in accordance with said budget. The Contract may contain separate budgets for separate program components. The Contractor shall request prior approval from the County for an amendment to this Contract when the cumulative amount of transfers among the budget categories is expected to exceed 10% of the Contract amount in any Contract

budget. Supporting documents necessary to explain fully the nature and purpose of the amendment must accompany each request for an amendment.

- E If travel costs are contained in the attached budget, reimbursement of Contractor travel, lodging, and meal expenses are limited to the eligible costs based on the following rates and criteria.
- 1 The mileage rate allowed by King County shall not exceed the current Internal Revenue Service (IRS) rates per mile as allowed for business related travel. The IRS mileage rate shall be paid for the operation, maintenance and depreciation of individually owned vehicles for that time which the vehicle is used during work hours. Parking shall be the actual cost. When rental vehicles are authorized, government rates shall be requested. If the Contractor does not request government rates, the Contractor shall be personally responsible for the difference. Please reference the federal web site for current rates: <http://www.gsa.gov>.
  - 2 Reimbursement for meals shall be limited to the per diem rates established by federal travel requisitions for the host city in the Code of Federal Regulations, 41 CFR § 301, App.A. Please reference <http://www.gsa.gov> for the current host city per diem rates.
  - 3 Accommodation rates shall not exceed the federal lodging limit plus host city taxes. The Contractor shall always request government rates.
  - 4 Air travel shall be by coach class at the lowest possible price available at the time the County requests a particular trip. In general, a trip is associated with a particular work activity of limited duration and only one round-trip ticket, per person, shall be billed per trip. Any air travel occurring as part of federal grant must be in accordance with the Fly America Act.

IV **Internal Control and Accounting System**

The Contractor shall establish and maintain a system of accounting and internal controls which complies with applicable, generally accepted government accounting standards (GAGAS).

V **Debarment and Suspension Certification**

Entities that are debarred, suspended, or proposed for debarment by the U.S. Government are excluded from receiving federal funds and contracting with the County. The Contractor, by signature to this Contract, certifies that the Contractor is not presently debarred, suspended, or proposed for debarment by any Federal department or agency. The Contractor also agrees that it will not enter into a subcontract with a contractor that is debarred, suspended, or proposed for debarment. The Contractor agrees to notify King County in the event it, or a subcontractor, is debarred, suspended, or proposed for debarment by any Federal department or agency.

VI **Maintenance of Records/Evaluations and Inspections**

- A The Contractor shall maintain accounts and records, including personnel, property, financial, and programmatic records and other such records as may be deemed necessary by the County to ensure proper accounting for all Contract funds and compliance with this Contract.
- B In accordance with the nondiscrimination and equal employment opportunity requirements set forth in Section XIV. below, the Contractor shall maintain the following:
- 1 Records of employment, employment advertisements, application forms, and other pertinent data, records and information related to employment, applications for employment or the administration or delivery of services or any other benefits under this Contract; and
  - 2 Records, including written quotes, bids, estimates or proposals submitted to the Contractor by all businesses seeking to participate on this Contract, and any other information necessary to document the actual use of and payments to subcontractors and suppliers in this Contract, including employment records.

The County may visit the site of the work and the Contractor's office to review the foregoing records. The Contractor shall provide every assistance requested by the County during such visits. In all other respects, the Contractor shall make the foregoing records available to the

County for inspection and copying upon request. If this Contract involves federal funds, the Contractor shall comply with all record keeping requirements set forth in any federal rules, regulations or statutes included or referenced in the contract documents.

- C Except as provided in Section VII of this Contract, the records listed in A and B above shall be maintained for a period of six (6) years after termination hereof unless permission to destroy them is granted by the Office of the Archivist in accordance with Revised Code of Washington (RCW) Chapter 40.14.
- D Medical records shall be maintained and preserved by the Contractor in accordance with state and federal medical records statutes, including but not limited to RCW 70.41.190, 70.02.160, and standard medical records practice. If the Contractor ceases operations under this Contract, the Contractor shall be responsible for the disposition and maintenance of such medical records.
- E The Contractor agrees to cooperate with the County or its agent in the evaluation of the Contractor's performance under this Contract and to make available all information reasonably required by any such evaluation process. The results and records of said evaluations shall be maintained and disclosed in accordance with RCW Chapter 42.56.
- F The Contractor agrees that all information, records, and data collected in connection with this Contract shall be protected from unauthorized disclosure in accordance with applicable state and federal law.

**VII Compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA)**

The Contractor shall not use protected health information created or shared under this Contract in any manner that would constitute a violation of HIPAA and any regulations enacted pursuant to its provisions. Contractor shall read and certify compliance with all HIPAA requirements at <http://www.kingcounty.gov/healthservices/health/partnerships/contracts>

**VIII Audits**

- A If the Contractor is a municipal entity or other government institution or jurisdiction, it shall notify the County in writing within 30 days of when its annual report of examination/audit conducted by the Washington State Auditor has been completed.
- B Additional audit or review requirements which may be imposed on the County will be passed on to the Contractor and the Contractor will be required to comply with any such requirements.

**IX Corrective Action**

If the County determines that a breach of contract has occurred, that is, the Contractor has failed to comply with any terms or conditions of this Contract or the Contractor has failed to provide in any manner the work or services agreed to herein, and if the County deems said breach to warrant corrective action, the following sequential procedure will apply:

- A The County will notify the Contractor in writing of the nature of the breach;  
The Contractor shall respond in writing within three (3) working days of its receipt of such notification, which response shall indicate the steps being taken to correct the specified deficiencies. The corrective action plan shall specify the proposed completion date for bringing the Contract into compliance, which date shall not be more than ten (10) days from the date of the Contractor's response, unless the County, at its sole discretion, specifies in writing an extension in the number of days to complete the corrective actions;
- B The County will notify the Contractor in writing of the County's determination as to the sufficiency of the Contractor's corrective action plan. The determination of sufficiency of the Contractor's corrective action plan shall be at the sole discretion of the County;
- C In the event that the Contractor does not respond within the appropriate time with a corrective action plan, or the Contractor's corrective action plan is determined by the County to be

insufficient, the County may commence termination or suspension of this Contract in whole or in part pursuant to Section II.C.;

- D In addition, the County may withhold any payment owed the Contractor or prohibit the Contractor from incurring additional obligations of funds until the County is satisfied that corrective action has been taken or completed; and
- E Nothing herein shall be deemed to affect or waive any rights the parties may have pursuant to Section II. Subsections B, C, D, and E.

#### **X Dispute Resolution**

The parties shall use their best, good-faith efforts to cooperatively resolve disputes and problems that arise in connection with this Contract. Both parties will make a good faith effort to continue without delay to carry out their respective responsibilities under this Contract while attempting to resolve the dispute under this section.

#### **XI Hold Harmless and Indemnification**

- A In providing services under this Contract, the Contractor is an independent Contractor, and neither it nor its officers, agents, employees, or subcontractors are employees of the County for any purpose. The Contractor shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law.

The County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by, or on behalf of the Contractor, its employees, subcontractors and/or others by reason of this Contract. The Contractor shall protect, indemnify, and save harmless the County, its officers, agents, and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) the Contractor's failure to pay any such compensation, wages, benefits, or taxes, and/or (2) the supplying to the Contractor of work, services, materials, or supplies by Contractor employees or other suppliers in connection with or support of the performance of this Contract.

- B The Contractor further agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception which occurs due to the negligence, intentional act, and/or failure, for any reason, to comply with the terms of this Contract by the Contractor, its officers, employees, agents, or subcontractors. This duty to repay the County shall not be diminished or extinguished by the prior termination of the Contract pursuant to the Term and Termination section.
- C The Contractor shall defend, indemnify, and hold harmless the County, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of, or in any way resulting from, the negligent acts or omissions of the Contractor, its officers, employees, subcontractors and/or agents in its performance or non-performance of its obligations under this Contract. In the event the County incurs any judgment, award, and/or cost arising therefrom including attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the Contractor.
- D The County shall defend, indemnify, and hold harmless the Contractor, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of, or in any way resulting from, the negligent acts or omissions of the County, its officers, employees, or agents in its performance or non-performance of its obligations under this Contract. In the event the Contractor incurs any judgment, award, and/or cost arising therefrom including attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the County.
- E Claims shall include, but not be limited to, assertions that use or transfer of software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder,



constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in unfair trade practice.

- F Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Contract.
- G The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Contract.

## **XII Insurance Requirements**

By the date of execution of this Contract, the Contractor shall procure and maintain for the duration of this Contract, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of work hereunder by the Contractor, its agents, representatives, employees, and/or subcontractors. The costs of such insurance shall be paid by the Contractor or subcontractor. The Contractor may furnish separate certificates of insurance and policy endorsements for each subcontractor as evidence of compliance with the insurance requirements of this Contract. The Contractor is responsible for ensuring compliance with all of the insurance requirements stated herein. Failure by the Contractor, its agents, employees, officers, subcontractors, providers, and/or provider subcontractors to comply with the insurance requirements stated herein shall constitute a material breach of this Contract. Specific coverages and requirements are at <http://www.kingcounty.gov/healthservices/health/partnerships/contracts>; contractors shall read and provide required insurance documentation prior to the signing of this Agreement.

## **XIII Assignment/Subcontracting**

- A The Contractor shall not assign or subcontract any portion of this Contract or transfer or assign any claim arising pursuant to this Contract without the written consent of the County. Said consent must be sought in writing by the Contractor not less than fifteen (15) days prior to the date of any proposed assignment.
- B "Subcontract" shall mean any agreement between the Contractor and a subcontractor or between subcontractors that is based on this Contract, provided that the term "subcontract" does not include the purchase of (1) support services not related to the subject matter of this Contract, or (2) supplies.
- C The Contractor shall include Sections III.D., III.E., IV, V, VI, VII, XI, XII, XIII, XIV, XV, XVI, and XVII, XVIII, XXIV, XXV, XXVI, XXVII, and the Funder's Special Terms and Conditions, if attached, in every subcontract that relates to the subject matter of this Contract.
- D The Contractor agrees to include the following language verbatim in every subcontract, for services which relate to the subject matter of this Contract:  
  
"Subcontractor shall protect, defend, indemnify, and hold harmless King County, its officers, employees and agents from any and all costs, claims, judgments, and/or awards of damages arising out of, or in any way resulting from the negligent act or omissions of subcontractor, its officers, employees, and/or agents in connection with or in support of this Contract. Subcontractor expressly agrees and understands that King County is a third party beneficiary to this Contract and shall have the right to bring an action against subcontractor to enforce the provisions of this paragraph."

## **XIV Nondiscrimination and Equal Employment Opportunity**

The Contractor shall comply with all applicable federal, state and local laws regarding discrimination, including those set forth in this Section.

During performance of the Contract, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of the employee or applicant's sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification. The Contractor will make equal employment opportunity efforts to ensure that applicants

and employees are treated, without regard to their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age. Additional requirements are at <http://www.kingcounty.gov/healthservices/health/partnerships/contracts>; contractors shall read and certify compliance.

**XV Conflict of Interest**

- A The Contractor agrees to comply with applicable provisions of K.C.C. 3.04. Failure to comply with such requirements shall be a material breach of this contract, and may result in termination of this Contract pursuant to Section II and subject the Contractor to the remedies stated therein, or otherwise available to the County at law or in equity.
- B The Contractor agrees, pursuant to KCC 3.04.060, that it will not willfully attempt to secure preferential treatment in its dealings with the County by offering any valuable consideration, thing of value or gift, whether in the form of services, loan, thing or promise, in any form to any County official or employee. The Contractor acknowledges that if it is found to have violated the prohibition found in this paragraph, its current contracts with the County will be cancelled and it shall not be able to bid on any County contract for a period of two years.
- C The Contractor acknowledges that for one year after leaving County employment, a former County employee may not have a financial or beneficial interest in a contract or grant that was planned, authorized, or funded by a County action in which the former County employee participated during County employment. Contractor shall identify at the time of offer current or former County employees involved in the preparation of proposals or the anticipated performance of Work if awarded the Contract. Failure to identify current or former County employees involved in this transaction may result in the County's denying or terminating this Contract. After Contract award, the Contractor is responsible for notifying the County's Project Manager of current or former County employees who may become involved in the Contract any time during the term of the Contract.

**XVI Equipment Purchase, Maintenance, and Ownership**

- A The Contractor agrees that any equipment purchased, in whole or in part, with Contract funds at a cost of \$5,000 per item or more, when the purchase of such equipment is reimbursable as a Contract budget item, is upon its purchase or receipt the property of the County and/or federal/state government. The Contractor shall be responsible for all such property, including the proper care and maintenance of the equipment.
- B The Contractor shall ensure that all such equipment will be returned to the County or federal/state government upon termination of this Contract unless otherwise agreed upon by the parties.

**XVII Proprietary Rights**

The parties to this Contract hereby mutually agree that if any patentable or copyrightable material or article should result from the work described herein, all rights accruing from such material or article shall be the sole property of the party that produces such material or article. If any patentable or copyrightable material or article should result from the work described herein and is jointly produced by both parties, all rights accruing from such material or article shall be owned in accordance with US Patent Law. Each party agrees to and does hereby grant to the other party, irrevocable, nonexclusive, and royalty-free license to use, according to law, any material or article and use any method that may be developed as part of the work under this Contract.

The foregoing products license shall not apply to existing training materials, consulting aids, checklists, and other materials and documents of the Contractor which are modified for use in the performance of this Contract.

The foregoing provisions of this section shall not apply to existing training materials, consulting aids, checklists, and other materials and documents of the Contractor that are not modified for use in the performance of this Contract.

**XVIII Political Activity Prohibited**

None of the funds, materials, property, or services provided directly or indirectly under this Contract shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

**XIX King County Recycled Product Procurement Policy**

In accordance with King County Code 18.20, the Contractor shall use recycled paper and both sides of sheet of paper whenever practicable, when submitting proposals, reports, and invoices, if paper copies are required.

**XX Future Support**

The County makes no commitment to support the services contracted for herein and assumes no obligation for future support of the activity contracted herein except as expressly set forth in this Contract.

**XXI Entire Contract/Waiver of Default**

The parties agree that this Contract is the complete expression of the terms hereto and any oral or written representations or understandings not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of the provisions of this Contract. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Contract unless stated to be such through written approval by the County, which shall be attached to the original Contract.

**XXII Contract Amendments**

Either party may request changes to this Contract. Proposed changes which are mutually agreed upon shall be incorporated by written amendments to this Contract.

**XXIII Notices**

Whenever this Contract provides for notice to be provided by one party to another, such notice shall be in writing and directed to the chief executive office of the Contractor and the project representative of the County department specified on page one of this Contract. Any time within which a party must take some action shall be computed from the date that the notice is received by said party.

**XXIV Services Provided in Accordance with Law and Rule and Regulation**

The Contractor and any subcontractor agree to abide by the laws of the state of Washington, rules and regulations promulgated thereunder, and regulations of the state and federal governments, as applicable, which control disposition of funds granted under this Contract, all of which are incorporated herein by reference.

In the event that there is a conflict between any of the language contained in any exhibit or attachment to this Contract, the language in the Contract shall have control over the language contained in the exhibit or the attachment, unless the parties affirmatively agree in writing to the contrary.

**XXV Applicable Law**

This Contract shall be construed and interpreted in accordance with the laws of the State of Washington. The venue for any action hereunder shall be in the Superior Court for King County, Washington.

**XXVI No Third Party Beneficiaries**

Except for the parties to whom this Contract is assigned in compliance with the terms of this Contract, there are no third party beneficiaries to this Contract, and this Contract shall not impart any rights enforceable by any person or entity that is not a party hereto.

**XXVII Contractor Certification**

By signing this Contract, the Contractor certifies that in addition to agreeing to the terms and conditions provided herein, the Contractor certifies that it has read and understands the contracting requirements on the PHSKC website (<http://www.kingcounty.gov/health/contracts>), and agrees to comply with all of the contract terms and conditions detailed on that site, including EEO/Nondiscrimination, HIPAA, Insurance, and Credentialing, as applicable.

IN WITNESS WHEREOF, the parties hereby agree to the terms and conditions of this Contract:

KING COUNTY

CONTRACTOR

FOR

\_\_\_\_\_  
King County Executive

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (Please type or print)

\_\_\_\_\_  
Date

Approved as to Form:

OFFICE OF THE KING COUNTY PROSECUTING ATTORNEY

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
<b>SUBJECT:</b> <b>Resolution No.14-917 , approving the 2014 Interagency Grant Agreement with the King County Solid Waste Divisions for the distribution of funds to be dedicated to recycling services within Black Diamond and to hold its' annual Recycling Day Event in the spring of 2014.</b>	<b>Agenda Date: January 2, 2014</b>	
	<b>AB14-006</b>	
	Department/Committee/Individual	
	Mayor Dave Gordon	
	City Administrator – Mark Hoppen	
	City Attorney –Chris Bacha	
	City Clerk – Brenda L. Martinez	
	Finance – May Miller	
	Natural Resources/Parks – Aaron Nix	<b>X</b>
	PW/Ec. Dev. – Andy Williamson	
Fund Source: KC Waste Reduction and Recycling Grant Program	Police – Jamey Kiblinger	
Timeline: 2014	Court – Stephanie Metcalf	
	Comm. Dev. – Stacey Welsh	
<b>Agenda Placement:</b> <input type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input checked="" type="checkbox"/> City Administrator		
<b>Attachments: Resolution No. 14-917 and contract with the KC Solid Waste Division for grant funds</b>		
<b>SUMMARY STATEMENT:</b>  These annually distributed grant funds by the King County Solid Waste Division, Waste Reduction and Recycling Program have been utilized in the past for recycling services by the City of Black Diamond. The City has been awarded \$10,000 again this year in support of these programs. These funds will be utilized again by staff in support of these efforts, including a spring recycling event that draws many local residents and allows them to recycle materials that might otherwise find their way into the City's right of way and/or Public spaces. These efforts offer a tremendous savings to the City of Black Diamond's Public Work's Department in these types of maintenance related duties, helping to ensure that Black Diamond remains a clean gem in South King County.		
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b> N/A		
<b>RECOMMENDED ACTION: MOTION to approve Resolution No. 14-917, authorizing the Mayor to accept grant funds from the King County Solid Waste Division's Waste Reduction and Recycling Program in support of recycling activities sponsored by the Black Diamond's Natural Resources Department, with oversight by Public Works maintenance staff.</b>		
RECORD OF COUNCIL ACTION		
Meeting Date	Action	Vote
January 2, 2014		

**RESOLUTION NO. 14-917**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO ENTER INTO AN INTERAGENCY GRANT AGREEMENT (CONTRACT #5637173) WITH THE KING COUNTY SOLID WASTE DIVISION FOR THE ACCEPTANCE OF FUNDS IN SUPPORT OF RECYCLING ACTIVITIES SPONSORED BY THE CITY OF BLACK DIAMOND**

**WHEREAS**, the City of Black Diamond has once again been awarded grant funds from the King County Solid Waste Division's Waste Reduction and Recycling Program for fiscal year 2014 in support of recycling activities offered by the City; and

**WHEREAS**, the City of Black Diamond is appreciative of these resources and the benefits they provide in maintaining a high quality of life here in the City;

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

**Section 1.** The Mayor is hereby authorized to enter into a contract with the Seattle-King County Department of Health to receive grant monies in the amount of \$5,944.01, said agreement to be substantially in the form attached hereto as Exhibit A and by reference incorporated herein.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 2ND DAY OF JANUARY, 2014.**

CITY OF BLACK DIAMOND:

---

Dave Gordon, Mayor

Attest:

---

Brenda L. Martinez, City Clerk

## Exhibit A

CONTRACT #5637173

**INTERAGENCY AGREEMENT FOR 2014**

**Between**

**KING COUNTY and the CITY OF BLACK DIAMOND**

This one-year Interagency Agreement "Agreement" is executed between King County, a Charter County and political subdivision of the State of Washington, and the City of Black Diamond, a municipal corporation of the State of Washington, hereinafter referred to as "County" and "City" respectively. Collectively, the County and City will be referred to as "Party" or "Parties."

**PREAMBLE**

King County and the City of Black Diamond adopted the 2001 King County Comprehensive Solid Waste Management Plan, which includes waste reduction and recycling goals. In order to help meet these goals, the King County Solid Waste Division has established a waste reduction and recycling grant program for the cities that operate under the King County Comprehensive Solid Waste Management Plan. This program provides funding to further the development and/or enhancement of local waste reduction and recycling projects and for broader resource conservation projects that integrate with waste reduction and recycling programs and services. This grant program does not fund household hazardous waste collection activities. Program eligibility and grant administration terms are discussed in the Grant Guidelines, attached to this Agreement as Exhibit B. Grant funding for this program is subject to the yearly budget approval process of the King County Council.

Grant funding approved by the King County Council is available to all King County cities that operate under the King County Comprehensive Solid Waste Management Plan. The City will spend its grant funds to fulfill the terms and conditions set forth in the scope of work which is attached hereto as Exhibit A and incorporated herein by reference. The County expects that any information and/or experience gained through the grant program by the City will be shared with the County and other King County cities.

**I. PURPOSE**

The purpose of this Agreement is to define the terms and conditions for funding to be provided to the City of Black Diamond by the County for waste reduction and recycling programs and/or services as outlined in the scope of work and budget attached as Exhibit A.



## II. RESPONSIBILITIES OF THE PARTIES

The responsibilities of the Parties to this Agreement shall be as follows:

### A. The City

1. Funds provided to the City by the County pursuant to this Agreement shall be used to provide waste reduction and recycling programs and/or services as outlined in Exhibit A. The total amount of funds available from this grant in 2014 shall not exceed \$10,000.
2. This Agreement provides for distribution of 2014 grant funds to the City. However, 2014 funds are not available until January 1, 2014, and 2014 funding is contingent upon King County Council approval of the 2014 King County budget. The County shall notify the City in writing of the funding status.
3. During this one-year grant program, the City will submit a minimum of one, but no more than four, progress reports to the County in a form approved by the County. Reports must be signed by a City official. These reports will include:
  - a. a description of each activity accomplished pertaining to the scope of work; and
  - b. reimbursement requests with either copies of invoices for each expenditure for which reimbursement is requested or a financial statement, prepared by the City's finance department, that includes vendor name, description of service, date of service, date paid and check number.

If the City chooses to submit up to the maximum of four (4) progress reports and requests for reimbursement during the one-year grant program, they shall be due to the County on the last day of the month following the end of each quarter - April 30, July 30, October 31 - except for the final progress report and request for reimbursement which shall be due by March 31, 2015.

If the City chooses to submit the minimum of one progress report and request for reimbursement during the one-year grant program, it shall be due to the County by March 31, 2015.

Regardless of the number of progress reports the City chooses to submit, in order to secure reimbursement, the City must provide in writing to the County by the 5<sup>th</sup> working day of January 2015, the dollar amount of outstanding expenditures for which the City has not yet submitted a reimbursement request.

4. The City shall submit a final report to the County which summarizes the work completed under the grant program and evaluates the effectiveness of the projects for which grant funds were utilized, according to the evaluation methods specified in the scope of work. The final report is due within six months of completion of the project(s) outlined in the scope of work, but no later than June 30, 2015.

5. If the City accepts funding through this grant program for the provision of Waste Reduction and Recycling programs and projects for other incorporated areas of King County, the City shall explain the relationship with the affected adjacent city or cities that allows for acceptance of this funding and the specifics of the proposed programs and projects within the scope of work document related thereto.
6. The City shall be responsible for following all applicable Federal, State and local laws, ordinances, rules and regulations in the performance of work described herein. The City assures that its procedures are consistent with laws relating to public contract bidding procedures, and the County neither incurs nor assumes any responsibility for the City's bid, award or contracting process.
7. During the performance of this Agreement, neither the City nor any Party subcontracting under the authority of this Agreement shall discriminate on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or presence of any sensory, mental, or physical handicap in the employment or application for employment or in the administration or delivery of or access to services or any other benefits under this Agreement as defined by King County Code, Chapter 12.16.
8. During the performance of this Agreement, neither the City nor any Party subcontracting under the authority of this Agreement shall engage in unfair employment practices as defined by King County Code, Chapter 12.18. The City shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit such discrimination. These laws include, but are not limited to, RCW Chapter 49.60 and Titles VI and VII of the Civil Rights Act of 1964.
9. The City shall use recycled paper for the production of all printed and photocopied documents related to the fulfillment of this Agreement. The City shall use both sides of paper sheets for copying and printing and shall use recycled/recyclable products wherever practical.
10. The City shall maintain accounts and records, including personnel, financial, and programmatic records, and other such records as may be deemed necessary by the County, to ensure proper accounting for all project funds and compliance with this Agreement. All such records shall sufficiently and properly reflect all direct and indirect costs of any nature expended and service provided in the performance of this Agreement.

These records shall be maintained for a period of six (6) years after termination hereof unless permission to destroy them is granted by the Office of the State Archivist in accordance with RCW Chapter 40.14. These accounts shall be subject to inspection, review or audit by the County and/or by federal or state officials as so authorized by law.
11. The City shall maintain a record of the use of any equipment that costs more than \$1,000 and is purchased with grant funds from King County for a total period of three (3) years. The records shall be compiled into a yearly evaluation report, a copy of which shall be submitted to King County by March 31 of each year through the year 2017.

12. The City agrees to credit King County on all printed materials provided by the County, which the City is duplicating, for distribution. Either King County's name and logo must appear on King County materials (including fact sheets, case studies, etc.), or, at a minimum, the City will credit King County for artwork or text provided by the County as follows: "artwork provided courtesy of King County Solid Waste Division" and/or "text provided courtesy of King County Solid Waste Division."
13. The City agrees to submit to the County copies of all written materials which it produces and/or duplicates for local waste reduction and recycling projects which have been funded through the waste reduction and recycling grant program. Upon request, the City agrees to provide the County with a reproducible copy of any such written materials and authorizes the County to duplicate and distribute any written materials so produced, provided that the County credits the City for the piece.
14. The City will provide the King County Project Manager with the date and location of each Recycling Collection Event provided by the City, as well as copies of any printed materials used to publicize each event, as soon as they are available but no later than thirty (30) days prior to the event. If there is any change in the date or the location of an event, the City will notify the County a minimum of thirty (30) days prior to the event. If the event brochure is required for admission to the City's event, the City is exempt from having to provide the brochure to King County.
15. If the City accepts funding through this grant program for the provision of recycling collection events for adjacent areas of unincorporated King County, the City shall send announcements of the events to all residences listed in the carrier routes provided by King County. The announcements and all other printed materials related to these events shall acknowledge King County as the funding source.
16. The City understands that funding for recycling collection events for adjacent areas of unincorporated King County will be allocated on a yearly basis subject to the King County Council's yearly budget approval process.
17. This project shall be administered by Aaron Nix, Director of Natural Resources; City of Black Diamond; P.O. Box 599; Black Diamond, WA 98010; TEL - 360.886.2560 ext. 220; Email - [anix@ci.blackdiamond.wa.us](mailto:anix@ci.blackdiamond.wa.us), or designee.

B. The County:

1. The County shall administer funding for the waste reduction and recycling grant program. Funding is designated by city and is subject to the King County Council's yearly budget approval process. Provided that the funds are allocated through the King County Council's yearly budget approval process, grant funding to the City will include a base allocation of \$5,000 per year with the balance of funds to be allocated according to the City's percentage of King County's residential and employment population. However, if this population based allocation formula calculation would result in a city receiving less than \$10,000 per year, that city shall receive an additional allocation that would raise their total grant funding to \$10,000 per year.

2. The City of Black Diamond's budgeted grant funds for 2014 are \$10,000. Unspent 2014 funds will not carry over to 2015.
3. Within forty-five (45) days of receiving a request for reimbursement from the City, the County shall either notify the City of any exceptions to the request which have been identified or shall process the request for payment. If any exceptions to the request are made, this shall be done by written notification to the City providing the reason for such exception. The County will not authorize payment for activities and/or expenditures which are not included in the scope of work and budget attached as Exhibit A, unless the scope has been amended according to Section V of this Agreement. King County retains the right to withhold all or partial payment if the City's report(s) and reimbursement request(s) are incomplete (i.e., do not include proper documentation of expenditures and/or adequate description of each activity described in the scope of work for which reimbursement is being requested), and/or are not consistent with the scope of work and budget attached as Exhibit A.
4. The County agrees to credit the City on all printed materials provided by the City to the County, which the County duplicates, for distribution. Either the City's name and logo will appear on such materials (including fact sheets, case studies, etc.), or, at a minimum, the County will credit the City for artwork or text provided by the City as follows: "artwork provided courtesy of the City of Black Diamond" and/or "text provided courtesy of the City of Black Diamond."
5. The County retains the right to share the written material(s) produced by the City which have been funded through this program with other King County cities for them to duplicate and distribute. In so doing, the County will encourage other cities to credit the City on any pieces that were produced by the City.
6. The waste reduction and recycling grant program shall be administered by Morgan John, Project Manager of the King County Solid Waste Division.

### **III. DURATION OF AGREEMENT**

This Agreement shall become effective on either January 1, 2014 or the date of execution of the Agreement by both the County and the City, if executed after January 1, 2014 and shall terminate on June 30, 2015. The City shall not incur any new charges after December 31, 2014. However, if execution by either Party does not occur until after January 1, 2014, this Agreement allows for disbursement of grant funds to the City for County-approved programs initiated between January 1, 2014 and the later execution of the Agreement provided that the City complies with the reporting requirements of Section II. A of the Agreement.

#### **IV. TERMINATION**

- A. This Agreement may be terminated by King County, in whole or in part, for convenience without cause prior to the termination date specified in Section III, upon thirty (30) days advance written notice.
- B. This Agreement may be terminated by either Party, in whole or in part, for cause prior to the termination date specified in Section III, upon thirty (30) days advance written notice. Reasons for termination for cause may include but not be limited to: nonperformance; misuse of funds; and/or failure to provide grant related reports/invoices/statements as specified in Section II.A.3. and Section II.A.4.
- C. If the Agreement is terminated as provided in this section: (1) the County will be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination; and (2) the City shall be released from any obligation to provide further services pursuant to this Agreement.
- D. Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Agreement or law that either Party may have in the event that the obligations, terms and conditions set forth in this Agreement are breached by the other Party.

#### **V. AMENDMENTS**

This Agreement may be amended only by written agreement of both Parties. Amendments to scopes of work will only be approved if the proposed amendment is consistent with the most recently adopted King County Comprehensive Solid Waste Management Plan. Funds may be moved between tasks in the scope of work, attached as Exhibit A, only upon written request by the City and written approval by King County. Such requests will only be approved if the proposed change(s) is (are) consistent with and/or achieves the goals stated in the scope and falls within the activities described in the scope.

#### **VI. HOLD HARMLESS AND INDEMNIFICATION**

The City shall protect, indemnify, and hold harmless the County, its officers, agents, and employees from and against any and all claims, costs, and/or issues whatsoever occurring from actions by the City and/or its subcontractors pursuant to this Agreement. The City shall defend at its own expense any and all claims, demands, suits, penalties, losses, damages, or costs of any kind whatsoever (hereinafter "claims") brought against the County arising out of or incident to the City's execution of, performance of or failure to perform this Agreement. Claims shall include but not be limited to assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in unfair trade practice.

## **VII. INSURANCE**

- A. The City, at its own cost, shall procure by the date of execution of this Agreement and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with performance of work pursuant to this Agreement by the City, its agents, representatives, employees, and/or subcontractors. The minimum limits of this insurance shall be \$1,000,000 general liability insurance combined single limit per occurrence for bodily injury, personal injury, and property damage. If the policy has an aggregate limit, a \$2,000,000 aggregate shall apply. Any deductible or self-insured retentions shall be the sole responsibility of the City. Such insurance shall cover the County, its officers, officials, employees, and agents as additional insureds against liability arising out of activities performed by or on behalf of the City pursuant to this Agreement. A valid Certificate of Insurance and additional insured endorsement is attached to this Agreement as Exhibit C, unless Section VII.B. applies.
- B. If the Agency is a Municipal Corporation or an agency of the State of Washington and is self-insured for any of the above insurance requirements, a written acknowledgement of self-insurance is attached to this Agreement as Exhibit C.
- C. If the Agency is a Municipal Corporation or an agency of the State of Washington and is a member of the Washington Cities Insurance Authority (WCIA), a written acknowledgement/certification of current membership is attached to this Agreement as Exhibit C.

## **VIII. ENTIRE CONTRACT/WAIVER OF DEFAULT**

This Agreement is the complete expression of the agreement of the County and City hereto, and any oral or written representations or understandings not incorporated herein are excluded. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such through written approval by the County, which shall be attached to the original Agreement.

## **IX. TIME IS OF THE ESSENCE**

The County and City recognize that time is of the essence in the performance of this Agreement.

## **X. SEVERABILITY**

If any section, subsection, sentence, clause or phrase of this Agreement is, for any reason, found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions.

## XI. NOTICE

Any notice required or permitted under this Agreement shall be deemed sufficiently given or served if sent to the King County Solid Waste Division and the City at the addresses provided below:

Morgan John, Project Manager, or a provided designee,  
King County Solid Waste Division  
Department of Natural Resources and Parks  
201 South Jackson Street, Suite 701  
Seattle, WA 98104-3855

If to the City:

Aaron Nix, Director of Natural Resources  
City of Black Diamond  
P.O. Box 599  
Black Diamond, WA 98010

IN WITNESS WHEREOF this Agreement has been executed by each Party on the date set forth below:

City

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
Date

King County

BY \_\_\_\_\_

Pat D. McLaughlin, Director  
Solid Waste Division

For Dow Constantine, King County Executive

\_\_\_\_\_  
Date

Exhibit A  
King County Waste Reduction and Recycling Grant Program  
City of Black Diamond  
2014 Scope of Work

**A. Basic Information**

1. City of Black Diamond
2. Grant Project Manager: Aaron Nix  
Director of Natural Resources  
City of Black Diamond  
P.O. Box 599  
24301 Roberts Drive  
Black Diamond, WA 98010  
TEL - (360) 886-5700  
FAX - (360) 886-2592  
Email - anix@ci.blackdiamond.wa.us
3. Consultant name: Paul Devine  
Olympic Environmental Resources  
4715 SW Walker Street  
Seattle, WA 98116  
TEL - (206) 938-8262  
FAX - (206) 938-9873  
Email - pauldevine@msn.com
4. 2014 Budget: \$10,000.00

**B. Scope of Work**

**1. Task One: Recycling Collection Events**

A) Schedule - spring, 2014

B) Task Activities

- Total Number of Recycling Collection Events - One
- Materials to be collected:
  - Appliances
  - Refrigerators and Freezers+
  - Ferrous Metals
  - Non-ferrous Metals
  - Tires+
  - Lead Acid Batteries
  - Household Batteries
  - Porcelain Toilets and Sinks+



- Propane Tanks+
  - Mattresses+
  - Cardboard
  - Reusable Household Goods
  - Textiles
  - Used Motor Oil
  - Used Motor Oil Filters
  - Used Antifreeze
  - Used Petroleum Based Products
  - Bulky Yard Debris
  - Clean Scrap Wood
  - Electronic Equipment
- +User fees may apply

Other materials will be collected when possible.

- The following educational materials will be distributed:
  - Information on City Recycling Programs.
  - Educational Materials produced by King County Department of Natural Resources and Local Hazardous Waste Management Plan.
  - Other educational materials as appropriate.
- Event promotional methods
  - This event will be coordinated with King County and flyers will be sent to King County Solid Waste Division and Black Diamond households.
  - By distributing a promotional flyer through direct mailings.
  - By notices in City newsletters (whenever possible).
  - By posting a notice at City Hall and City web site.
  - By publicizing the event through the King County Solid Waste Division promotional activities.

C) Task evaluation. Event reports will include:

- Number of vehicles attending
- Volume of each material collected
- Event cost by budget category
- Event comments
- Graphic or tabular comparison of 2014 volumes and vehicles with prior year's events

D) Task Budget: \$8,000.00

Management/Staffing/Admin/Graphics	\$2,970.00	\$2,998.00	\$1,320.00	\$2,970.00	\$7,288.00
Event Staff Costs	\$1,430.00	\$0.00	\$880.00	\$1,430.00	\$2,310.00
Collection/Hauling Costs					\$0.00
Wood Waste	\$200.00	\$0.00	\$200.00	\$200.00	\$400.00
Scrap Metal, Appliances, etc.	\$800.00	\$0.00	\$800.00	\$800.00	\$1,600.00
Tires	\$600.00	\$0.00	\$0.00	\$600.00	\$600.00
Used Oil/Antifreeze	\$0.00	\$1,250.00	\$562.50	\$0.00	\$1,812.50
Batteries	\$0.00	\$350.00	\$0.00	\$0.00	\$350.00
Other materials	\$400.00	\$0.00	\$0.00	\$400.00	\$400.00
Printing/Mailing	\$300.00	\$225.00	\$0.00	\$300.00	\$525.00
Event Supplies	\$300.00	\$200.00	\$0.00	\$300.00	\$500.00
Other Expenses - rentals, etc	\$600.00	\$321.01	\$450.00	\$600.00	\$1,371.01
TOTALS	\$8,000.00	\$5,944.01	\$4,212.50	\$8,000.00	\$18,156.51

NOTE: Hourly rates for City staff are \$75.43 per hour. Hourly rates for consultants are as follows: Project Manager - \$70.00 and Event Staff - \$55.00.

E) Task Performance Objectives:

The City plans to send out approximately 1,650 promotional flyers to Black Diamond households per event and publicize the events through King County promotional activities, including County websites and telephone assistance. The City anticipates collecting 25-30 tons of material from the local waste stream per year.

The benefits expected by the collection of these materials will be to divert them from the waste stream and process them for recycling. The event will also provide an opportunity to recycle moderate risk waste. The King County Health Department and Washington State Department of Ecology will pay for event expenses as well.

F) Task Impact Objectives:

By hosting Recycling Collection Events, Black Diamond can reduce the amount of recyclable material finding their way to the local landfill. The City of Black Diamond has a population of approximately 4,200. The City expects, based on past events, that 250-350 households will actively participate each year by bringing recyclable materials to the event for proper disposal and recycling. This will result in 25-30 tons of material diverted from the local waste stream for recycling per year.

In addition to diverting materials from the City waste stream, attracting residents to events provides an opportunity to distribute educational material on City and King County recycling programs. The educational materials can enhance the knowledge of residents and improve behavior in purchase, handling, and disposal of recyclable materials.

## 2. Task Two: Chipper Event

### A) Schedule - spring, 2014

In the spring and fall of each year heavy winds in the Black Diamond area result in tree limbs and branches falling from trees and cluttering up City streets and right-of-ways. The City would like to chip this material for reuse on City property, give to residents, or recycle at a compost facility. The City intends to hold a chipping event to remove chip able material and recycle it back into the Black Diamond community. The service will be held in conjunction with the City Recycling Collection Event.

### B) Task Activities

- Total Number of Chipping Events – One
- Materials to be collected:
  - Chipable material, including tree limbs and branches.
- Event promotional methods
  - By notices in City newsletters.
  - By posting a notice at City Hall and on the City cable channel and City web site (if available).

### C) Task evaluation. Event reports will include:

- Number of chipping events held
- Volume of chipable material collected
- Event cost

### D) Task Budget: \$2,000.00

ESTIMATED COSTS	2014	2014 Total
Program Management/Coordination/Reporting	\$360.00	\$360.00
Contractor Services	\$600.00	\$600.00
Event Staff	\$990.00	\$990.00
Supplies	\$50.00	\$50.00
Total	\$2,000.00	\$2,000.00

D) Task Performance Objectives: The goal of this program is to recycle more material in the City of Black Diamond while providing a valuable organic debris removal service. Chipping fallen tree limbs and branches for reuse in the local community will extend the life of landfills and reduce stress on local composting facilities. This program will result in greater resource efficiency as the City will better manage yard debris and reuse the material on City property or in the local residential community.

### E) Task Impact Objectives:

As a result of the chipping events, the City of Black Diamond will reduce fallen tree limbs and

branches disposal costs and recycle an estimated 2-5 tons of yard debris. The City will monitor the program by reporting the following:

- The estimated amount of yard debris diverted for reuse and recycling.