

City Update

For weeks ending: July 11 through July 25

City Council	Mayor
<p><u>Position 1: Deady</u> Jul 12 – attended Miners Day Jul 24 – attended Special Council meeting</p> <p><u>Position 2: Morgan</u> Jul 12 – attended Miners Day Jul 17 – attended Council meeting Jul 24 – attended Special Council meeting</p> <p><u>Position 3: Edelman</u> Jul 12 – attended Miners Day Jul 17 – attended Finance Committee meeting and Council meeting Jul 24 – attended Special Council meeting Participated in honoring of the Always Brothers 100 mile runners.</p> <p><u>Position 4: Benson</u> Jul 12 – attended Miners Day Jul 17 – attended Finance Committee meeting and Council meeting Jul 24 – attended Special Council meeting</p> <p><u>Position 5: Taylor</u> Jul 12 – attended Miners Day Jul 17 – attended Council meeting Jul 24 – attended Special Council meeting</p>	<p><u>Mayor's Activities</u> Jul 12 – attended Miners Day Jul 16 – attended Management Team meeting Jul 17 – attended Finance Committee meeting and Council meeting Jul 23 – attended Management Team meeting Jul 24 – attended Special Council meeting</p>

Council Commissions, Boards & Committees

- Budget, Finance and Administration Committee. Meeting date: Next meeting: Meeting time: 4:00 PM. Staff support: May Miller.
- Planning and Community Service Committee. Meeting date: (Meets the first Tuesday of the month.) Meeting time: 4:00. Staff support: Aaron Nix.
- Cemetery and Parks Committee. Meeting date: Meeting time: 10:00 AM. Staff support: Seth Boettcher.
- Public Works Committee. Meeting date: _____, 2014. Meeting time: _____. Staff support: Seth Boettcher.
- Public Safety Committee. Meeting date: _____, 2014. Meeting time: _____. Staff support: Chief Kiblinger.

Community Development Activities

Planning Commission:

- Next meeting August 12, 2014

	2014	2013
Pre-application Conferences Held	2	7
Preliminary Plats Approved		
(Number of Residential Lots)		
Multi-family units approves		
New Single Family Residential Permits Issued	3	8
New Commercial Square Footage Approved		
Tenant Improvement Permits Issued	1	3
Sign Permits Issued	1	2
Public Hearings Held	1	1

Status of Active Capital Improvement Projects

Springs Project: Administration, Public Works Committee, and Council @ CIP workshop agreed with the consultant's recommendation to tap the artesian spring on the north side of the Green River. Next steps:

- Preliminary design
- Negotiate scope and fee with RH2 ; Met With State Parks to determine requirements and process
- Review scope and fee with funding partners
- Call for funds to cover the next element of work
- Bring contract to the council for approval

Abrams Guard Rail: SEPA process complete; Coordination with Century Link; Project out to bid.

½ Mil Tank Painting: Phase 1 to take tank off line moving forward; Meeting to discuss decision information needed for possible deferral.

Old Sewer Lagoon Decommissioning. Soil samples taken from site where bio solids to be are in. preparing SEPA document. Started Nitrogen application rate for bio-solids application.

Downtown Water Main Project: Considering RFQ for engineer selection. Grant agreement expected in July.

Roberts Drive Reconstruction at Rock Creek Bridge: Legal says that we need to go through an updated consultant selection process.

Lawson Street Sidewalk Project: Project to bid next week, bid opening July 7th, bid award mid July, Notice to proceed early August

SR 169 / North Commercial Storm Pond In design

Morganville Sewer Pump Station Reconstruction The repaired pump station should be reliable till fall. The project will be scheduled for this fall.

Council Chambers Remodel: audience chairs are in.

- Sheet rock / brick wall covering planned for the last week in July and first week of August,
- Carpet In August,
- Council bench: RFP going out next week. Installation in September
- Audio visual: IT is recommending large flat panel with gateway access for presentations
- IF there is budget new council chairs will be purchased.

Summer asphalt patching: Bids are out, contract in July, work in August and or September.

Ginder Creek Trail/Regional Pond: Study completed by Landau Associates. Reviewed by the Parks/Cemetery Committee at their June 19th meeting.

General Administrative Activities

- Pet licenses issued: _4___; _38___ year-to-date; website updates _33___; _238___ year-to-date; passports processed _39___; _526___ year-to-date; business licenses issued: 11; 366 year-to-date..
- Received submittals from _____for _____ services.
- Other:

Events on the Horizon

- See City calendar at <http://www.ci.blackdiamond.wa.us/calendar.html>
- See Maple Valley Black Diamond Chamber of Commerce calendar at <http://www.maplevalleychamber.org/schedule/calendar/maple-valley-featured-events>
- See Enumclaw School District calendar at: www.enumclaw.wednet.edu
- See Black Diamond Historical Society calendar at <http://www.blackdiamondmuseum.org/calendar.htm>
- See Black Diamond Community Center calendar at <http://www.blackdiamondcc.org/community/community.html>

Adopted Council 2013 Priorities

W2 – Reservoir Painting & Maintenance

10-year plan for asbestos pipe replacement

D2 – North Commercial & State Route 169 Stormwater Pond Design

P2 – Ginder Creek Trail Restoration

F1 & F2 – Fire Engine Replacement

T6 – Rock Creek Bridge

L3 – Police Radio Replacement



CITY OF BLACK DIAMOND
August 7, 2014 Regular Business Meeting Agenda
25510 Lawson St., Black Diamond, Washington

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

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

PUBLIC HEARINGS: None

APPOINTMENTS, PRESENTATIONS, ANNOUNCEMENTS: None

UNFINISHED BUSINESS: None

NEW BUSINESS:

- 1) **AB14-074**– Resolution Authorizing a Contract with AHBL, Inc. for Part-Time Interim Planner Mr. Nix
- 2) **AB14-075**- Resolution Awarding Low Bid on the Abrams Avenue Safety Improvements Project to Peterson Brothers Inc. Mr. Boettcher
- 3) **AB14-076**- Resolution Authorizing the Use of City Parks Funds to Cover Water Costs for the Community Garden Mr. Boettcher
- 4) **AB14-077** – Resolution Regarding Moratoria Ad Hoc Committee Mayor Gordon
- 5) **AB14-078**- Ordinance Regarding Moratoria on Take Offs and Landing on Lake Sawyer Mayor Gordon

DEPARTMENT REPORTS: None

MAYOR’S REPORT:

COUNCIL REPORTS:

A. Council Standing Committees and Regional Committees

- Councilmember Benson - Budget, Finance, Administration Committee; South County Area Transportation Board SCATBd); South East Area Transportation Solutions (SEATS) Coalition; Mental Illness and Drug Dependency Oversight Committee
- Councilmember Edelman - Planning and Community Service Committee; Public Issues Committee (PIC)
- Councilmember Deady - Cemetery and Parks Committee; Growth Management Planning Council (GMPC)
- Councilmember Taylor, Chair - Public Works Committee; Public Safety Committee
- Councilmember Morgan - Water Resource Inventory Area Committee (WRIA 9)

ATTORNEY REPORT:

PUBLIC COMMENTS:

CONSENT AGENDA:

- 6) **Claim Checks** – August 7, 2014, No. 41210 through No. 41251 in the amount of \$57,669.75
- 7) **Minutes** –Regular Council Minutes of July 17, 2014 and Special Council Minutes of July 24, 2014.

EXECUTIVE SESSION:

ADJOURNMENT:

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: AB14-074 Resolution 14-966, authorizing the Mayor to execute a consultant service contract with AHBL for part-time Planning services for the Community Development Department	Agenda Date: July 17, 2014	
	AB14-074	
	Mayor Dave Gordon	
	City Administrator	
	City Attorney Carol Morris	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat. Res. – Aaron Nix	X
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	
	Police – Chief Kiblinger	
Cost Impact (see also Fiscal Note):	Public Works – Seth Boettcher	
Fund Source: Funding Agreement	Court – Stephanie Metcalf	
Timeline: Mid-August 2014 until December of 2014		
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair		
Attachments: Resolution No. 14-966 and Contract as Appendix A		
SUMMARY STATEMENT: <p>The Community Development Department is in need of interim, part-time Planning services in order to help the Director with current Planning duties, un-related to the Master Development Review Team. . The recent re-organization included moving Mr. Nix to a single funding agreement Community Development/Natural Resources position, assigning him both sets of duties. This will allow cost savings as the Natural Resources function is being integrated into Community Development and Mr. Nix will assume the Community Development Director position (recently vacated), along with providing Natural Resources duties for this now, unfilled position. This savings will allow for the Community Development Department to receive much needed, part-time, interim Planning services needed to update the Comprehensive Plan and other General Government Planning work-load.</p> <p>FISCAL NOTE (Finance Department): \$52,200 Saving from the Vacant Funding Agreement Natural Resources position from July-December will cover the cost of the Part-time Funding Agreement General Government Planner. No additional Budget dollars are needed as this position is paid for under the funding agreement. Planning services, in this capacity, will be re-evaluated at the next budget planning cycle in order to address future needs.</p>		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: Finance committee recommended forwarding to the full Council for approval at their July 29, 2014 meeting.		
RECOMMENDED ACTION: MOTION to adopt Resolution No. 14-966, authorizing the Mayor to execute a consultant services contract with AHBL, Inc. in order to provide the Community Development Department current planning services on a part-time, interim basis.		
RECORD OF COUNCIL ACTION		
Meeting Date	Action	Vote
August 7, 2014		

RESOLUTION NO. 14-966

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO EXECUTE A
CONSULTANT SERVICES CONTRACT WITH AHBL, INC
FOR PART-TIME, INTERIM PLANNER SERVICES TO BE
PROVIDED TO THE COMMUNITY DEVELOPMENT
DEPARTMENT**

WHEREAS, the Community Development Department does not have on staff a Planner dedicated to processing land use and permit applications on non-MDRT related issues pertaining to the rest of the City of Black Diamond; and

WHEREAS, with the departure of the Community Development Director, the Mayor has re-organized Staff in order to provide a cost savings to the City, while attempting to still meet the current demands being placed on the Community Development Department as the Department is currently reaching its busy season on non-MDRT related land use applications and other permits the Department is held responsible for; and

WHEREAS, City staff has solicited responses from two consulting firms and two placement services and are recommending the consulting firm AHBL, Inc. to perform these duties; and

WHEREAS, City Staff and the City Attorney have reviewed the contract and Finance has dedicated sufficient funds in order to cover this services through the end of the year (2014), on an interim and part-time basis; and

WHEREAS, AHBL, Inc. is willing and able to the perform the needed work;

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 consultant services contract with AHBL, Inc. in an amount not exceed \$45,000.00 dollars, substantially in the form attached hereto at Exhibit A.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 7TH DAY OF AUGUST, 2014.

CITY OF BLACK DIAMOND:

Dave Gordon, Mayor

Attest:

Brenda L. Martinez, City Clerk

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF BLACK DIAMOND AND
AHBL, INC. FOR TEMPORARY PLANNING SERVICES**

THIS AGREEMENT is made by and between the City of Black Diamond, a Washington municipal corporation (hereinafter the "City"), and AHBL, Inc., (hereinafter the "Consultant,") a corporation organized under the laws of the State of Washington, located and doing business at 2215 North 30th Street, Suite 300, Tacoma, WA 98403.

RECITALS

WHEREAS, the City is in need of day-to-day planning services on a temporary, part-time basis; and

WHEREAS, the Consultant has agreed to provide such services according to the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

I. Description of Work.

The Consultant shall assign professional planning staff, as identified in Exhibit A, to the City to perform on-call planning services on a temporary basis for the period identified in Section IV, or until the parties execute a new Agreement, or the City hires an employee to perform planning services, whichever is sooner, Provided: this shall not obligate the City to enter into any future Agreement with the Consultant. Such planning services shall include, but not be limited to, review of applications for legislative approvals, project permit applications, drafting staff reports to decision-makers, attending hearings and meetings relating to same, drafting public notices and other decision-documents and ensuring that project permit applications are timely reviewed and processed according to law.

The Consultant represents and warrants that it and any staff member or subconsultant assigned to the work will have the requisite training, skill, and experience necessary to provide the services required by this Agreement and if required, are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant and its subconsultant 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.

II. Payment

A. The City shall pay the Consultant an hourly rate of the Planner as described in the billing rates in Exhibit A, not to exceed Forty Five Thousand Dollars (\$45,000.00) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in Exhibit A, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount.

B. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this Agreement. The City shall pay the full amount of an invoice within sixty (60) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

III. Relationship of Parties

The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in Section I immediately upon execution of this Agreement. The parties agree that the individual projects assigned to the Consultant may have individual deadlines for completion that must be met. This Agreement shall terminate on August 22, 2014 as provided in Section I.

V. Termination

A. Termination of Agreement. The City may terminate this Agreement, for public convenience, the Consultant's default, the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors, at any time prior to completion of the work described in Section I. If delivered to Consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date stated in the City's notice, whichever is later.

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise.

VI. Discrimination

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Consultant, its Subcontractors, or any person acting on behalf of such Consultant or sub-consultant shall not by reason of race, religion, color, sex, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

VII. Indemnification

The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal Costs and attorneys' fees, to the extent arising out of the negligent performance of professional services under this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, agents and Volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO. ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

The provisions of this section shall survive the expiration or termination of this Agreement.

VIII. Insurance

A. The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Consultant's own work including the work of the Consultant's agents, representatives, employees, sub-consultants or sub-contractors.

B. Before beginning work on the project described in this Agreement, the Consultant shall provide evidence, in the form of a Certificate of Insurance, of the following insurance coverage and limits (at a minimum):

1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit, and

2. Commercial General Liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate. Coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, and employers liability, and

3. Professional Liability insurance with no less than \$1,000,000. All policies and coverage's shall be on a claims made basis.

C. The Consultant is responsible for the payment of any deductible or self-insured retention that is required by any of the Consultant's insurance. If the City is required to contribute to the deductible under any of the Consultant's insurance policies, the Contractor shall reimburse the City the full amount of the deductible within 10 working days of the City's deductible payment.

D. The City of Black Diamond shall be named as an additional insured on the Consultant's commercial general liability policy. This additional insured endorsement shall be included with evidence of insurance in the form of a Certificate of Insurance for

coverage necessary in Section B. The City reserves the right to receive a certified and complete copy of all of the Consultant's insurance policies.

E. Under this agreement, the Consultant's insurance shall be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage with respect to defense and indemnity of the City only and no other party. Additionally, the Consultant's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

F. The Consultant agrees that the Consultant shall provide prior written notification to the City of Black Diamond at least 3 days in advance of any cancellation, suspension or material change in the Consultant's coverage.

IX. Exchange of Information

The City warrants the accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Agreement. The parties agree that the Consultant will notify the City of any inaccuracies in the information provided by the City as may be discovered in the process of performing the work and that the City is entitled to rely upon any information supplied by the Consultant which results as a product of this Agreement.

X. Ownership and Use of Records and Documents

Original documents, drawings, designs and reports developed under this Agreement shall belong to and become the property of the City. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in Consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

XI. City's Right of Inspection

Even though the Consultant is an independent contractor with the authority to control and direct the performance, and details of the work authorized under this Agreement, the work must meet the applicable deadlines established by the City for completion, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

XII. Consultant to Maintain Records to Support Independent Contractor Status

On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to Independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to the Revised Code of Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties which is subject to RCW Title 51, Industrial Insurance.

XIII. Work Performed at the Consultant's Risk

The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

XIV. Non-Waiver of Breach

The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options and the same shall be and remain in full force and effect.

XV. Resolution of Disputes and Governing Law

Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City of Black Diamond shall determine the term or provision's true intent or meaning. The City of Black Diamond shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the Mayor or Community Development Director's determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in King County Superior Court, King County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

XVI. Written Notice

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified to the contrary. Unless otherwise specified, any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

CONSULTANT:

Attn: Wayne Carlson
AHBL, Inc.
2215 N 30th Street
Suite 300
Tacoma, WA 98403

CITY:

Attn: Aaron Nix
City of Black Diamond
P.O. Box 599
24301 Roberts Drive
Black Diamond, WA 98010

With a copy to the "City Clerk" at the same address.

XVII. Assignment

Any assignment of this Agreement by the Consultant without the written consent of the City shall be void. If the City shall give its consent to any assignment, this paragraph shall continue in full force and effect and no further assignment shall be made without the City's consent.

XVIII. Modification and Severability

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reasons held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

XIX. Entire Agreement

The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, this Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached

hereto, which may or may not have been executed prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on this ____ day of _____, 2014.

CONSULTANT

CITY OF BLACK DIAMOND

By: _____
Its

By: _____
Dave Gordon, Mayor

Consultant:

AHBL, Inc.
2215 North 30th Street, Suite
300 Tacoma, WA 98403-3350

APPROVED AS TO FORM:

City Attorney's Office

ATTEST:

City Clerk

EXHIBIT A

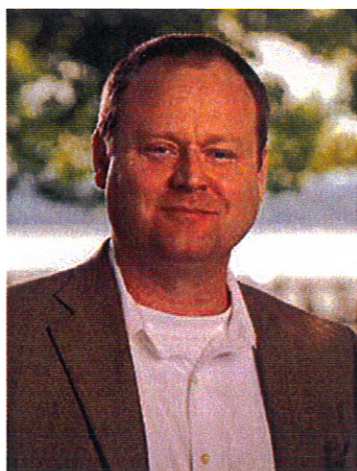
This scope of work is for immediate onsite development review assistance, and a potential need for other planning services as directed by City staff. Work will primarily include review of land use applications for consistency with municipal standards, zoning review of building permit applications under deadlines established by law, and general customer assistance for planning and zoning issues. Following is our proposed scope of services:

- Provide one planner for three to four-days per week at City Hall for a total of 24 hours;
- Provide additional short term development review assistance as needed;
- Specific duties include:
 - Attend pre-application meetings;
 - Conduct site visits;
 - Conduct the review of project permit applications for code compliance in a timely manner, keeping in mind the deadlines for the City to issue a final decision by law;
 - Review SEPA documentation for purposes of recommending additional studies, SEPA determination, and/or mitigation measures to you as the SEPA Responsible Official;
 - Communicate and coordinate with applicants, their consultants, and other City department staff;
 - Prepare staff reports and recommendations in a timely manner;
 - Present reports to the Hearing Examiner, Planning Commission, and City Council; and
 - Keep track of project permit applications in the review process, to ensure that a final decision issues in a timely manner;
 - Provide additional planning services, long range planning, and code revision assistance, as needed.

Wayne Carlson will serve as project manager and principal-in-charge for AHBL to provide day-to-day oversight of our planners and will coordinate with City staff to make sure that we are meeting the City's needs. Planners Stan May (primary staff member at \$100/hour), Sara Coccia (\$100/hour), Annalisa McDaniel (\$110/hour), and/or Brittany Kubinski (\$85/hour) will provide staffing as needed (See resumes for additional detail). Wayne Carlson (\$185/hour) and Brad Medrud (\$156/hour) will provide quality assurance/quality control as authorized.

Wayne Carlson will contact the City on a regular basis throughout the term of the contract to discuss staffing needs and adjust staffing levels accordingly. As principal-in-charge, Wayne will be involved to ensure that AHBL brings the appropriate additional resources to the projects as needed. AHBL understands that the City has a cost-recovery system in its fee schedule for consultant review of development applications (actual cost + 10 percent). We are accustomed to tracking our time by each project and will format our invoices in a manner consistent with the City's cost-recovery system.

All planning services, including development review, contract management, quality control, and review by senior staff, and any assistance with code revisions or other planning services will be based on the attached rate sheet. AHBL will seek your authorization for the use of any staff member outside of those people included herein.



Wayne Carlson, AICP, LEED AP **Principal-in-Charge & Project Manager**

Wayne Carlson is a land use planner with 20 years of professional planning experience for cities, counties, state agencies, and private clients throughout Washington. Wayne has served as an extension of in-house staff for the review of development proposals in the cities of Bonney Lake, Milton, and Pacific as well as the Bethel School District. He also has both reviewed and authored environmental reports and assessments for projects under the Washington State Environmental Policy Act (SEPA), the California Environmental Quality Act (CEQA), and the National Environmental Policy Act (NEPA). Wayne has been involved with several master planned communities and resorts. His long-range planning experience includes preparing city comprehensive plans, sub-area/community plans, and shoreline master program updates. Wayne has prepared and administered numerous code amendments to zoning, landscape, subdivision, sign, and telecommunications ordinances. He authored the first design standards for Pierce County and has been on the leading edge of incorporating low impact development into local codes and standards by working with more than 75 Washington and California municipalities since 2005 to prepare code amendments.

EDUCATION

The Ohio State University, Master
of City and Regional Planning with
Distinction, 1994

California State University,
Fullerton, B.A. in Political Science,
Cum Laude, 1991

REGISTRATION

American Institute of Certified
Planners, 1996

LEED® Accredited Professional,
U.S. Green Building Council, 2004

SELECTED PROJECT EXPERIENCE

SEPA Administration and Development Review, City of Pacific, WA, *Principal-in-Charge and Project Manager*

SEPA Administration and Development Review, City of Milton, WA, *Project Manager*

SEPA Administration and Development Review, City of Bonney Lake, WA, *Project Manager*

Pierce College Puyallup Master Plan, Pierce College, Puyallup, WA, *Project Manager*

Pierce College Fort Steilacoom Master Plan, Lakewood, WA, *Project Manager*

Bethel High School #3 Expanded Checklist and Managed SEPA Administration (Lead Agency), Bethel Public Schools, Spanaway, WA, *Project Manager*

Bethel Junior High School #5 Expanded Checklist and Managed SEPA Administration (Lead Agency), Bethel Public Schools, Spanaway, WA, *Project Manager*

Kapowsin Elementary School Expanded Checklist and Managed SEPA Administration (Lead Agency), Bethel Public Schools, Spanaway, WA, *Project Manager*

South Hill Community Plan EIS, Pierce County, WA, *Project Manager*

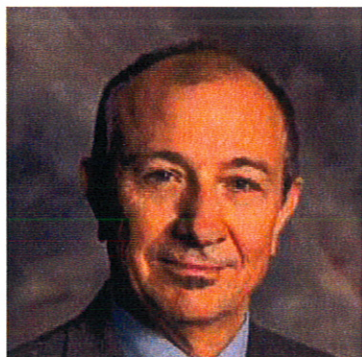
Upper Nisqually Valley Community Plan, Pierce County, WA, *Project Manager*

Parkland-Spanaway-Midland Communities Plan, Pierce County, WA, *Project Manager*

Sybil Brand Institute Women's Maximum Security Prison CEQA EIR, Los Angeles County Sheriff Department, Los Angeles, CA, *Project Manager*

Puget Sound Partnership Low Impact Development Direct Technical Assistance, Anacortes, Bellingham, Bremerton, Coupeville, Eatonville, Edmonds, Everett, Federal Way, Hamilton, Issaquah, Kent, Kirkland, Lacey, Lake Forest Park, Lake Stevens, Marysville, Mill Creek, Mukilteo, Normandy Park, Oak Harbor, Port Angeles, Port Orchard, Port Townsend, Poulsbo, Redmond, Sequim, Woodinville, Clallam County, Island County, Jefferson County, Kitsap County, Mason County, San Juan County, Snohomish County, Thurston County, and Whatcom County, WA, *Principal-in-Charge and Project Manager*





Stan May, AICP Planner

SUMMARY OF QUALIFICATIONS

- Comprehensive Plan updates and amendments
- Zoning and development code updates
- Shoreline Master Program updates
- Critical Areas Ordinance updates
- Update Flood Damage Prevention regulations for compliance with FEMA's new flood insurance requirements for protection of endangered species
- State Environmental Policy Act (SEPA) documents
- Presentations to councils and planning commissions
- Facilitate workshops and other public participation events.
- Development permit reviews
- ESRI ArcGIS software

EDUCATION

Master of Urban Planning,
University of Washington

Bachelor of Science, Computer
Information Systems, City
University

CERTIFICATION

American Institute of Certified
Planners (AICP)

PROFESSIONAL AFFILIATIONS

Member of American Planning
Association

Previously active in the local APA
Chapter as the Puget Sound
Section's Brown Bag Coordinator,
organizing up to twenty AICP
Certification Maintenance credit-
approved lunch time training
sessions per year.

EXPERIENCE

Senior Long Range Planner - Lewis County, Chehalis, WA (2012-2014)

- Project manager for yearly comprehensive plan amendments.
- Updated Flood Damage Prevention regulations to comply with FEMA Community Assistance Visit.
- Project manager for the County Coalition Shoreline Master Program update.
- Established the planning commission's annual work plan and schedule.
- Made presentation and staff recommendations to the planning commission and county commissioners.
- Updated large lot subdivision regulations for consistency with zoning code.
- Staff lead for the Lewis County Planned Growth Committee which included recommended updates to the Countywide Planning Policies.
- Initiated complete zoning code streamlining and update.
- Member of the Airport Planning Advisory Committee.
- Performed GIS analysis.
- Reviewed development permit and land division applications including compliance with SEPA, critical areas and shoreline regulations.
- Initiated, organized and mediated a county project presentation at the American Planning Association's Planning Law Conference.

Principal Planner - Stan May Planning, Seattle, WA (2011-2012)

- Project manager for a Shoreline Master Program update.
- Project manager for a Zoning code update.
- Reviewed development permits including State Environmental Policy Act (SEPA) compliance.



Sara Coccia

Planner

Sara Coccia is a land use planner with 7 years of progressive responsibility on a variety of planning projects. Sara's experience includes environmental review and permitting, site design, feasibility studies, land use submittals, and coordination with local jurisdictions. Sara often serves as the liaison between residential clients and public agencies, working closely with the permitting jurisdiction to interpret codes and design creative, affordable solutions perfectly tailored to the City's requirements. Sara consistently receives positive feedback from her clients for her strong communication skills and proactive identification of land use issues that will impact the project schedule.

SELECTED PROJECT EXPERIENCE

Pacific On-call Planning, City of Pacific, WA, *Planner*

Newcastle On-call Planning & Counter Service, City of Newcastle, WA, *Planner*

Peninsula School District Study and Inventory, Gig Harbor, WA, *Planner*

Bonney Lake Annexation Study, City of Bonney Lake, WA, *Planner*

West Richland Shoreline Master Program Update & GIS Mapping, City of West Richland, WA, *Planner*

Gold Bar Shoreline Master Program Update & GIS Mapping, City of Gold Bar, WA, *Planner*

Roy Shoreline Master Program Update & GIS Mapping, City of Roy, WA, *Planner*

Snoqualmie Shoreline Master Program Update & GIS Mapping, City of Snoqualmie, WA, *Planner*

Federal Way Parks, Recreation & Open Space Plan Update, City of Federal Way, WA, *Planner*

Lindbergh High School and Hazen High School Athletic Field SEPA, Renton School District, Renton, WA, *Planner*

EDUCATION

University of Redlands, Redlands, California, B.A. Environmental Studies, Minor in Studio Art, 2006



Annalisa McDaniel

Planner

Annalisa McDaniel is an urban and land use planner with a variety of experience assisting public sector, private sector, and nonprofit clients with the preparation of comprehensive plan amendments, Shoreline Master Program updates, market analyses, and affordable housing strategies. She is particularly adept at helping local communities shed light on how land use policy affects future development potential and can guide development in a manner that is sustainable and community oriented. With proficiency in GIS, Annalisa supports community planning projects through mapping, visual resource assessment, and environmental impact analysis. Her specialized mapping and analysis experience includes data collection and creation, spatial analysis, development suitability analysis, and land capacity forecasting.

EDUCATION

University of Washington, Bachelor
of Arts, Geography (GIS), 2006

University of Colorado, Master
of Urban and Regional Planning,
2012

SELECTED PROJECT EXPERIENCE

Bellevue LID Code Integration, Bellevue, WA, *Planner*

Lewis County Shoreline Master Program Update, Lewis County, WA, *Planner*

West Richland Comprehensive Plan Update, City of West Richland, WA,
Planner

**Denver Transit-Oriented Development Fund Affordable Housing GIS
Database**, Denver, CO, Technical author (Data Analysis, GIS), *Research Analyst**

Dallas Area Rapid Transit Transit Oriented Development Analysis, Dallas, TX,
Technical author (Land Use Patterns, Market Analysis, Transportation), *Research
Analyst**

Rifle Downtown Transit Oriented Development Strategic Plan, Rifle, CO,
Technical author (Land Use, Transportation, Market Feasibility, Public Services),
*Research Analyst**

Bernalillo County Bridge Boulevard Redevelopment Plan, Bernalillo County,
NM, Technical author (Land Use, Market Feasibility, GIS), *Research Analyst**

Ute Theater Market and Feasibility Analysis, Rifle, CO, Technical author
(Market Analysis, Public Services), *Research Analyst**

E-470 Public Highway Authority Property Development Analysis, Aurora,
CO, Technical author (Land Use, Plans and Policies, Public Services), *Research
Analyst **

Sacramento Railyards Low Income Housing Tax Credit Study, Sacramento,
CA, Technical author (Land Use, Plans and Policies, Public Services), *Research
Analyst**

** indicates project completed with previous employer*





EDUCATION

The Ohio State University, Master of City & Regional Planning, 2014

The Ohio State University, B.S., City & Regional Planning, Magna Cum Laude, 2009

Brittany Kubinski **Planner**

Brittany Kubinski is a land use planner with professional experience in both current and long-range planning projects. Brittany has worked on a variety of policy planning projects, shoreline master programs and zoning code updates for public-sector clients in Washington and California. Brittany has assisted with several code amendments to zoning, landscape and subdivision ordinances particularly as they pertain to incorporating low impact development. She is proficient in GIS and brings experience in data collection and analysis including land capacity analysis and forecasting.

SELECTED PROJECT EXPERIENCE

Aberdeen, Hoquiam and Cosmopolis Shoreline Master Program Update & GIS Mapping, Cities of Aberdeen, Hoquiam and Cosmopolis, WA, *Planner*

Bellevue LID Code Integration, City of Bellevue, WA, *Planner*

California Stormwater Quality Association Proposition 84 LID Code Updates, Various Municipalities, CA, *Planner*

Kitsap County Code & Stormwater Manual LID Integration, Kitsap County, WA, *Planner*

Lewis County Shoreline Master Program Update & GIS Mapping, Lewis County, WA, *Planner*

Montesano Shoreline Master Program Update & GIS Mapping, City of Montesano, WA, *Planner*

Ocean Shores Shoreline Master Program Update & GIS Mapping, City of Ocean Shores, WA, *Planner*

Westport Shoreline Master Program Update & GIS Mapping, City of Westport, WA, *Planner*





Brad Medrud, AICP

Brad Medrud is a land use planner and project manager with 16 years of professional experience in both the public and private sectors with a variety of current and long-range planning projects. His expertise includes feasibility studies, annexations, policy analysis, community planning, project review and entitlement, SEPA documentation and management, public participation, and code updates. Brad has completed numerous land use feasibility studies, including a project for the Mountain Meadow site in Pierce County. Brad managed the 20-acre site that was zoned for 2/3 single-family small lot and 1/2 multifamily. Through the study, Brad determined the residential development was not feasible, so he assisted the client with examining the possibility of a storage use on site. The study determined this was feasible, and we are now working on a rezone to allow for the construction of a Garage+ storage facility. In addition, he has prepared and administered SEPA environmental review as an extension of staff to the cities of Burien, Bonney Lake and Milton, the Federal Way Public Schools, the Renton School District, the Orting School District, the Fife School District and the White River School District.

EDUCATION

University of Washington, Master
of Urban Planning, 1997

University of Wisconsin-Madison,
M.A., History, 1991

Pacific Lutheran University, B.A.,
History and Philosophy, *Cum
Laude*, 1989

REGISTRATION

American Institute of Certified
Planners (AICP), 1999

SELECTED PROJECT EXPERIENCE

Development Application Review, City of Bonney Lake, WA, *Project Manager*

Development Application Review, City of Milton, WA, *Project Manager*

Development Application Review, City of Pacific, WA, *Project Planner*

SEPA Administration and Development Review, City of Bonney Lake, WA, *Project Manager*

SEPA Administration and Development Review, City of Milton, WA, *Project Manager*

Lloyd's Master Plan SEPA Administration and Development Review, City of Milton, WA, *Project Manager*

SEPA Administration and Development Review, City of Pacific, WA, *Project Manager*

Capital Facilities Plan Adoption SEPA Process, Eatonville School District, Eatonville, WA, *Project Manager*

Sequoia Middle School Expanded SEPA Checklist and Managed SEPA Review, Federal Way Public Schools, Federal Way, WA, *Project Manager*

Midway Elementary Replacement SEPA Environmental Review, Highline School District, Des Moines, WA, *Project Manager*

Orting Middle School and Stadium Expanded SEPA Checklist and Managed SEPA Review, Orting School District, Orting, WA, *Project Manager*

Capital Facilities Plan Adoption SEPA Process, Peninsula School District, Gig Harbor, WA, *Project Manager*

Serenity Estates Subdivision, King County, WA, *Project Manager*

River Ridge Heights Residential Subdivision, Lacey, WA, *Project Manager*

Royal Firs Small Lot Subdivision, South Hill, Pierce County, WA, *Project Manager*

Summerset PUD Self-Help Housing Project, Poulsbo, WA, *Project Manager*

Edgewood Johnson Subdivision, Edgewood, WA, *Project Manager*





SCHEDULE OF CHARGES AND COMPENSATION

Principal.....	205.00/Hour	CAD Operator 1	75.00/Hour
Associate Principal.....	185.00/Hour	Planner 5.....	125.00/Hour
Sr. Project Manager.....	173.00/Hour	Planner 4.....	110.00/Hour
Project Manager	165.00/Hour	Planner 3.....	100.00/Hour
Director of Landscape Architecture.....	160.00/Hour	Planner 2.....	85.00/Hour
Sr. Planning Project Manager	156.00/Hour	Planner 1.....	75.00/Hour
Planning Project Manager	145.00/Hour	Landscape Project Manager 2.....	125.00/Hour
Sr. Landscape Project Manager	137.00/Hour	Landscape Project Manager 1.....	110.00/Hour
Survey Project Manager.....	160.00/Hour	Landscape Designer 3	100.00/Hour
Chief of Parties.....	145.00/Hour	Landscape Designer 2	85.00/Hour
Project Engineer 5.....	150.00/Hour	Landscape Designer 1.....	75.00/Hour
Project Engineer 4.....	130.00/Hour	Planning/Landscape Technician	70.00/Hour
Project Engineer 3.....	115.00/Hour	Survey Technician 3.....	110.00/Hour
Project Engineer 2.....	105.00/Hour	Survey Technician 2.....	100.00/Hour
Project Engineer 1.....	95.00/Hour	Survey Technician 1.....	90.00/Hour
Project Designer 3.....	135.00/Hour	Survey Crew.....	190.00/Hour
Project Designer 2.....	125.00/Hour	1-Man Survey Crew	130.00/Hour
Project Designer 1.....	110.00/Hour	Graphic Designer	95.00/Hour
Project Administrator.....	102.00/Hour	Word Processor	85.00/Hour
Engineer Technician 3	110.00/Hour	Administrative Assistant	70.00/Hour
Engineer Technician 2	98.00/Hour	Outside Consultants.....	Separate Fee Proposal
Engineer Technician 1	85.00/Hour	Geotechnical Engineers.....	Separate Fee Proposal
CAD Operator 3.....	95.00/Hour	Environmental Consultants.....	Separate Fee Proposal
CAD Operator 2.....	90.00/Hour		

Large Format Black & White Bond	0.25/sf
Large Format Color Bond.....	4.00/sf
Large Format Mylar	2.00/sf
Small Format Color Bond 11 X 17	0.50/Sheet
Small Format Color Bond 8.5 X 11.....	0.40/Sheet

The Schedule of Charges and Compensation is subject to change.

Charges are made for technical typing, as in the preparation of reports, and for technical clerical services directly related to projects. Direct charges are not made for general secretarial services, office management, accounting, or maintenance.

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION																
SUBJECT: AB14-075 Resolution No. 14-967, awarding a construction contract to Peterson Brothers Inc. for the Abrams Avenue Safety Improvements project in the amount of \$38,378.35	Agenda Date: August 7, 2014 AB14-075															
Cost Impact (see also Fiscal Note): \$45,000 Fund Source: Capital budget Timeline: August – October 2014	Mayor Dave Gordon															
	City Administrator															
	City Attorney Carol Morris															
	City Clerk – Brenda L. Martinez															
	Com Dev/Nat Res – Aaron Nix															
	Finance – May Miller															
	MDRT/Ec Dev – Andy Williamson															
	Police – Chief Kiblinger															
	Public Works – Seth Boettcher	X														
	Court – Stephanie Metcalf															
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator																
Attachments: Resolution No. 14-967, Bid Tab, Peterson Brothers Inc. Bid, Contract Forms																
SUMMARY STATEMENT: <p>The Abrams Avenue Safety Improvements project was investigated and designed last year at the request of the City Council. This project will provide for new guardrails on Abrams Avenue along the one-way portion of the road that crosses the creek. City staff has completed the SEPA process and received no comments or appeals.</p> <p>The City solicited bids off the Municipal Research Services Center Small Works Roster. The City received the 1 bid from Peterson Brothers Inc. at \$38,378.35. The engineer's estimate was \$47,160.00.</p> <p>Peterson Brothers Inc. is from Sumner, WA, is currently licensed, and has the relevant qualifications and experience to successfully perform the specialized work the project will require.</p> <p>FISCAL NOTE (Finance Department): The City Council approved a budget amendment in the amount of \$45,000 for this project on July 24, 2014. A \$7,500 contingency amount was included in the bid.</p> <table style="width: 100%; margin-top: 20px;"> <thead> <tr> <th style="text-align: left;">Estimated 2014 Expenses</th> <th style="text-align: right;">Amount</th> <th style="text-align: right;">Budget Amount</th> </tr> </thead> <tbody> <tr> <td>Peterson Brothers (Construction)</td> <td style="text-align: right;">\$38,378.35</td> <td rowspan="5" style="text-align: right; vertical-align: top;">\$45,000</td> </tr> <tr> <td>Permitting/SEPA</td> <td style="text-align: right;">\$ 700.00</td> </tr> <tr> <td>Other Misc. Costs</td> <td style="text-align: right;">\$ 300.00</td> </tr> <tr> <td>Project Management/Cont.</td> <td style="text-align: right;">\$ 5,621.65</td> </tr> <tr> <td>TOTAL</td> <td style="text-align: right;">\$45,000.00</td> </tr> </tbody> </table>			Estimated 2014 Expenses	Amount	Budget Amount	Peterson Brothers (Construction)	\$38,378.35	\$45,000	Permitting/SEPA	\$ 700.00	Other Misc. Costs	\$ 300.00	Project Management/Cont.	\$ 5,621.65	TOTAL	\$45,000.00
Estimated 2014 Expenses	Amount	Budget Amount														
Peterson Brothers (Construction)	\$38,378.35	\$45,000														
Permitting/SEPA	\$ 700.00															
Other Misc. Costs	\$ 300.00															
Project Management/Cont.	\$ 5,621.65															
TOTAL	\$45,000.00															
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:																

Public Works Committee recommends adoption. Both Finance Committee and Public Works Committee reviewed the project.

RECOMMENDED ACTION: **MOTION to adopt Resolution 14-967, authorizing the Mayor to execute a \$38,378.35 contract with Peterson Brothers Inc. for the Abrams Avenue Safety Improvements Project.**

RECORD OF COUNCIL ACTION

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
August 7, 2014		

RESOLUTION NO. 14-967

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AWARDING THE LOW BID ON THE ABRAMS AVENUE
SAFETY IMPROVEMENTS PROJECT TO PETERSON
BROTHERS INC.**

WHEREAS, the City has investigated and prepared for the Abrams Avenue Safety Improvements Project; and

WHEREAS, the City Council approved a budget amendment in the amount of \$45,000 for this project at their July 24, 2014 meeting; and

WHEREAS, the City has received a bid on July 23, 2014; and

WHEREAS, Peterson Brothers Inc. was the low bidder and has met all conditions of providing a responsible bid;

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

Section 1. Award the bid of the Abrams Avenue Safety Improvements Project to Peterson Brothers Inc. in the amount of \$38,378.35 and authorize the Mayor to execute a contract for the same.

Section 2. Authorize a contingency in the amount of \$3,500.00 to ensure coverage of the full cost of this project.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 7TH DAY OF AUGUST, 2014.

CITY OF BLACK DIAMOND:

Dave Gordon, Mayor

Attest:

Brenda L. Martinez, City Clerk

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

Project: Abrams Avenue Safety Improvements
 Bid Opening: July 23, 2014

BASE BID

		Bidder & Address		Peterson Brothers Inc. 2008 East Valley Highway Sumner, WA 98390		<i>City Estimate</i>	
Item	Item Description	Unit	Qty.	Unit Bid	Amount	<i>Unit Bid</i>	<i>Amount</i>
1	Minor Change	EST	1	\$7,500.00	\$7,500.00	<i>\$7,500.00</i>	<i>\$7,500.00</i>
2	SPCC Plan	LS	1	\$615.00	\$615.00	<i>\$1,000.00</i>	<i>\$1,000.00</i>
3	Mobilization	LS	1	\$1,600.00	\$1,600.00	<i>\$4,060.00</i>	<i>\$4,060.00</i>
4	Project Temporary Traffic Control	LS	1	\$3,178.15	\$3,178.15	<i>\$5,000.00</i>	<i>\$5,000.00</i>
5	Beam Guardrail Type 31	LF	630	\$36.04	\$22,705.20	<i>\$40.00</i>	<i>\$25,200.00</i>
6	Beam Guardrail Anchor Type 10	EA	4	\$695.00	\$2,780.00	<i>\$1,100.00</i>	<i>\$4,400.00</i>
TOTAL CONTRACT AMOUNT BID				\$38,378.35		<i>\$47,160.00</i>	

REQUEST FOR BIDS - PROPOSAL FORM

THE CITY OF BLACK DIAMOND Abrams Avenue Safety Improvements Project

BID FORM, SCOPE OF WORK, AND SPECIAL PROVISIONS

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

1. The undersigned hereby certifies that he/she has examined the locations of the work on Abrams Avenue and is familiar with the local conditions at the location of the work to be done, and has read and thoroughly understands the work that the City requires to be completed, the Contract governing the work and the method by which payment will be made for said work in accordance with the City Contract at the proposed bid prices contained herein.
2. The bid shall be awarded by the sum of the total of the bids for the categories of work as defined in the attached bid proposal form / Scope of Work.

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

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

3. It is agreed that this bid may not be withdrawn within a period of sixty (60) days after the date set for the opening thereof.
4. In accordance with this bid and the City Contract, the undersigned further agrees to so plan the work and to prosecute it with such diligence that said work shall be commenced within ten (10) days after execution of the agreement.
5. Receipt of the following Addenda to the Plans and/or Specifications is hereto acknowledged:

Addendum

<u>No.</u>	<u>Addendum Receipt Date</u>	<u>Signed Acknowledgement</u>
1.	_____	_____
2.	_____	_____

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

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

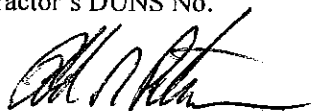
ITEM NO.	SCOPE OF WORK	UNIT PRICE	QUANTITY	TOTAL
1	MINOR CHANGE	EST	1	\$7,500.00
2	SPCC PLAN	615. /LS	1 LS	\$ 615.00
3	MOBILIZATION	1600. /LS	1 LS	\$ 1,600.00
4	PROJECT TEMPORARY TRAFFIC CONTROL	3178.15 /LS	1 LS	\$ 3,178.15
5	BEAM GUARDRAIL TYPE 31	36.04 /LF	630 LF	\$ 22,705.20
6	BEAM GUARDRAIL ANCHOR TYPE 10	695. /EA	4 EA	\$ 2,780.00
BID TOTAL				\$ 38,378.35

Petersen Brothers Inc.
Bidder

7/23/2014
Date

CC01 - Peterb187N2
Contractor's License No.

00-490-5931
Contractor's DUNS No.

By 
Authorized Official

Address:

2008 East Valley Highway
Sumner, wa 98390

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

CITY OF BLACK DIAMOND

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

PUBLIC WORKS CONTRACT SMALL WORKS

1. **Contract and Parties.** This Public Works Contract-Small Works ("Contract") is between the CITY OF BLACK DIAMOND, King County, Washington ("City"), a Washington municipal corporation and PETERSON BROTHERS INC. ("Contractor"). The City and Contractor are each a "Party" and together the "Parties" to the Contract. The Parties agree as follows.
2. **Project.** The Parties enter into this Contract for purposes of Contractor performing work for the City ("the Project"), generally described as:

Abrams Avenue Safety Improvements Project in Black Diamond.
3. **Effective date.** This Contract becomes effective and binding upon the Parties, including each Party's heirs, successors, and assigns, immediately upon execution of this contract by both parties.
4. **Notices to Parties.** Contractor agrees to accept notices under this Contract via email. It is the responsibility of Contractor to notify the City in writing if any of the contact information appearing below should change. Any notices required shall be in writing and delivered to the following addresses. If notice by email, a hard copy shall be delivered or mailed the same date as email.

CITY:

CITY OF BLACK DIAMOND
P.O. Box 599 – 24301 Roberts Drive
Black Diamond, Washington 98010
Contact: Seth Boettcher
Phone: (253) 886-5700
Fax: (360) 886-2592
Email:

CONTRACTOR:

PETERSON BROTHERS INC.
2008 East Valley Highway
Sumner, Washington 98390
Tax I.D. # _____
Contact: _____
Phone: (_____) _____
Fax: (_____) _____
Email: _____

5. **Notice to Proceed.** Contractor shall provide a performance bond, insurance certificates, a City business license and statement of intent to pay prevailing wage rates within 10 days of receiving a notice of award. Upon timely receipt of the bond, insurance certificate, business license and statement of intent to pay prevailing wage rates, the City will thereafter have ten (10) days to issue a notice to proceed. The September 19, 2014

deadline for completion of all work in accordance with the terms and conditions of the Contract shall remain in effect provided that the notice to proceed is issued prior to August 14, 2014.

6. Obligations of Contractor. The following terms and conditions apply to this Contract:

A. In general.

- (1) Responsible for all labor and work. Contractor shall be solely responsible for furnishing all labor and performance of all work necessary to complete the Project as required.
- (2) Responsible for furnishing all materials and equipment. Contractor shall furnish all materials and equipment necessary to complete the Project, except for any materials expressly agreed in writing to be provided by the City.
- (3) Documents incorporated by reference. All terms and specifications contained in any Request for Proposals (RFP) that was issued by the City as part of determining the awarding of this Contract are hereby incorporated by reference and must be complied with by Contractor, unless one or more of such terms and specifications are expressly amended or waived in writing by the City.
- (4) Laws and regulations to be followed. Contractor, its employees, agents, and subcontractors, shall at all times fully comply with all applicable laws, regulations, and administrative rulings in performing work for the Project.
- (5) Work Hours. Contractor shall not work on weekends. On Mondays through Thursdays, Contractor shall not start work before 7:00 AM, and shall not work after 6:00 PM. Contractor shall not start work before 7:00 AM on Fridays. Contractor must be off the street and shall not work after 3:30 PM on Fridays.
- (6) Conditions of Work. By submitting a proposal in response to the City's solicitation for quotations, Contractor represents and warrants to the City that Contractor has fully informed itself of all conditions relating to the work involved for completing the Project. In prosecuting the work, Contractor shall employ such methods or means as will not interfere with or interrupt the work of the City or its agents, employees or contractors.
- (7) Contractor's Responsibility. Contractor will prosecute the work in accordance with instructions, descriptions and/or plans and specifications provided by the City. Contractor shall carry on the work at its own risk until the same is fully completed and accepted, and shall, in case of any accident, destruction or injury to the work and/or materials before its final completion and acceptance, repair or replace forthwith the work and/or materials so injured, damaged or destroyed, at his own expense and to the satisfaction of the City. When materials and equipment are furnished by others for installation or erection by Contractor, Contractor shall receive, unload, store and handle same at site and become responsible therefore as though such materials and/or equipment were being furnished by Contractor. Contractor shall procure all permits (unless permits are secured by the City) and

licenses, pay all charges, fees and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the work. Contractor shall be responsible for preparing working drawings and shall submit them to the City for approval prior to commencement of work. For purposes of this Contract, working drawings shall mean, shop drawings, shop plans, erection plans, falsework plans, framework plans, cofferdam, cribbing and shoring plans, or any other supplementary plans or similar data, including a schedule of submittal dates for working drawings where specified, which Contractor will rely on for purposes of conducting the work for the Project.

- (8) Contractor Clean-Up. Prior to physical completion, all debris resulting from Contractor's work, delivery or installation of equipment shall be disposed of entirely by Contractor in an efficient and expeditious manner as required and directed by the City.
- (9) Safety. Contractor and its subcontractors shall take all safety precautions and furnish and install all guards necessary for the prevention of accidents, and shall comply with all laws and regulations with regard to the prosecution of the work. Contractor agrees to furnish Material Safety Data Sheets (Form OSHA-20) applicable for hazardous or potentially hazardous products. Contractor agrees to comply with the conditions of the Washington Industrial Safety and Health Act of 1970, and standards and regulations issued thereunder, and certify that all items furnished and purchased will conform to and comply with said standards and regulations. Contractor further agrees to indemnify and hold harmless the City from damages assessed against the City because of Contractor's failure to comply with the Acts and the standards issued thereunder and for the failure of the items furnished under this order to so comply.

B. *Work Performance.*

- (1) Prevailing wages. Contractor shall pay prevailing wages, as that term is defined under the laws of the State of Washington, for all work performed on this Project by Contractor and by Contractor's employees, agents and subcontractors. Contractor is fully responsible for prevailing wage compliance.
For reference only, and without relieving any Contractor responsibility, the City notes the State of Washington prevailing wage rates for public works projects located in King County may be found at the following website address of the Department of Labor and Industries: <https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>. Based on the bid submittal deadline for this Project, the applicable effective date for prevailing wages for this Project is June 11, 2014. A copy of prevailing wage rates are also available for viewing at the office of the City, located at 24301 Roberts Drive, Black Diamond, WA 98010. Upon request, the City will mail a hard copy of the applicable prevailing wages for this Project.
- (2) Notice to City. Minimum 24-hours prior notice shall be given to the City's Department of Public Works prior to commencement of work under this Contract.
- (3) Approved Plans & Specifications to be followed. All work is to be performed to the City's satisfaction and in compliance with the Contract Documents, which include the

following: (a) the approved Plans & Specifications and/or Scope of Work, where applicable (collectively, "Plans"); the Standard Specifications for Road, Bridge and Municipal Construction, 2014 edition, as issued by the Washington State Department of Transportation (WSDOT) and the American Public Works Association (APWA), Washington State Chapter (hereinafter referred to as the "Standard Specifications"); (b) Modifications or Amendments to the Standard Specifications, included in the Special Provisions of the Bid Documents and RFP; (c) the Special Provisions; (d) the City of Black Diamond 2009 Engineering Design and Construction Standards; (e) Manual on Uniform Traffic Control Devices for Streets and Highways, currently adopted edition, with Washington State modifications, if any; and (f) the requirements contained in the bid documents, unless such requirements or specifications are expressly amended in writing by the City.

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

A bond guaranteeing maintenance of all improvements for a period of twelve (12) months from acceptance of the work, a form approved by the City Attorney shall be submitted to the City in an amount to be determined by the City Engineer, which maintenance bond shall remain in effect during this period until released in writing by the City.

- (6) Project Administration/Notice to Proceed. The Public Works Director, or his or her designee, shall administer this Contract and shall have all authority provided for the City under this Contract including all project approvals, including change orders. Contractor shall not commence work until Notice to Proceed has been given by the City. All work performed under this Contract will be monitored and inspected by the Public Works Director or his or her designee, and accepted by same.

C. Non-Discrimination.

- (1) Contractor, Contractor's officers and employees, and its subcontractors and agents, shall not discriminate against any employee or applicant for employment or any other person in the performance of this Contract because of race, creed, color, national origin, marital status, sex, age, disability, or other condition prohibited by federal, state, or local law or ordinance, except where the condition constitutes a bona fide occupational qualification under law.

(2) Any violation of this Section shall be a material breach of this Contract and grounds for immediate cancellation, termination, or suspension of the Contract by the City, in whole or in part, and may result in Contractor being ineligible to perform further work for the City.

7. **Compensation.** Compensation shall by Unit Price according to the Bid Schedule for each of the 11 categories of work as defined in the attached Bid Form/Scope of Work at the Bid Amounts.

8. **Payment**

A. Contractor shall request approval and acceptance of each category of work from the City. Contractor may not bill for the completed work until the City has accepted the completed work.

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

C. All invoices shall be submitted for work after it has been performed, and paid by City warrant within sixty (60) days of receipt of a proper invoice.

D. Failure to perform any of the obligations under the Contract by Contractor may be decreed by the City to be adequate reason for withholding any payments until compliance is achieved. Progress payments for work performed shall not be evidence of acceptable performance or an admission by the City that any work has been satisfactorily completed.

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

9. **Performance Bond.** Contractor shall provide a performance and payment bond to the City prior to commencement of work for 100% of the bid amount including tax guaranteeing the full and faithful performance by Contractor of the terms and conditions of this Contract.

Initial: (Contractor)

10. **Retainage.** Pursuant to Chapter 60.28 RCW, a sum of five percent (5%) of the monies earned by Contractor will be retained from progress payments. Such retainage shall be used as a trust fund for the protection and payment (1) to the State with respect to taxes imposed pursuant to RCW Title 82, and (2) the claims of any person arising under the Contract. No final payment or release of any retainage will be made until Contractor and each subcontractor has submitted an "Affidavit of Wages Paid" (LI 700-7 or other approved form) that has been certified by the industrial statistician of the Department of Labor and Industries. Also the retainage will not be released until the City has received certification that the Department of Revenue has received due payment of applicable

taxes. Once the City has received certification from appropriate departments of the state of Washington, 45 days has passed from the date of acceptance of the Project and the City has not received any claims against the Project, then the City will release the retainage.

11. **Changes.** After execution of the Contract, changes in the Project may be accomplished by change order. The City, without invalidating the Contract, may order changes in the Project within the general scope of the Contract consisting of additions, deletions or other revisions, the contract sum and Contract completion date being adjusted accordingly. Change orders shall be in writing signed by the Parties.
12. **Termination of Contract.** This Contract may be terminated by the City at any time upon the default of the Contractor or upon public convenience, in which Contractor shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination. Contractor shall not be entitled to any reallocation of cost, profit or overhead. Contractor shall not in any event be entitled to anticipated profit on work not performed because of such termination. Contractor shall use its best efforts to minimize the compensation payable under this Contract in the event of such termination. If the contract is terminated for default, Contractor shall not be entitled to receive any further payments under the Contract until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to Contractor. Contractor shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.
13. **Responsibility Criteria and Verification by Contractor.** Pursuant to Chapter 39.04 RCW, the following requirements are part of this Contract:
 - A. *Responsibility Criteria.*
 - (1) Eligibility to be awarded contract. Contractor hereby certifies that Contractor meets the following responsibility criteria:
 - a. Contractor has a certificate of registration in compliance with chapter 18.27 RCW;
 - b. Contractor has a current state unified business identifier number;
 - c. If applicable, Contractor has industrial insurance coverage for Contractor's employees working in Washington as required under Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW; and
 - d. Contractor is not disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).
 - B. *Requirement to verify subcontractors.* Contractor verifies the responsibility criteria contained above for each first tier subcontractor, and a subcontractor of any tier that

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

14. Insurance.

- A. All employees, subcontractors, agents to be covered. Contractor shall procure and maintain for the duration of the Contract, and shall provide proof satisfactory to the City, insurance that covers Contractor and each of Contractor's employees, subcontractors or agents (who are not otherwise covered by Contractor's insurance) against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Contractor, its employees, subcontractors or agents.
- B. Lack of insurance grounds for termination of contract. Failure of Contractor to maintain insurance as required herein shall be grounds for immediate termination of this Contract by the City.
- C. Title 51 Industrial Insurance Waived. The Parties have specifically negotiated as a term of this Contract that Contractor has agreed to expressly waive immunity under Title 51 RCW, Industrial Insurance Law.
- D. Minimum Scope of Insurance. Contractor shall obtain insurance of the types described below:
 - 1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. The policy shall provide contractual liability coverage.
 - 2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.
 - 3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

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

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

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

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

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

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

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

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

3. Contractor, at the City's request, shall provide to the City a complete copy of requested policy(ies) and not just certificates.

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

- G. Subcontractors. Contractor shall ensure that each subcontractor of every tier obtains at a minimum the same insurance coverage and limits as stated herein for Contractor (with the exception of Builders Risk insurance). Upon request of the City, Contractor shall provide evidence of such insurance.
- H. Contractor's Other Losses. Whether insured or not, Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, vehicles, equipment or other personal property; and Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by Contractor, or Contractor's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

15. Claims for damages.

- A. Excluded situations. The City shall not be responsible for delays caused by soil conditions; underground obstructions; labor disputes; fire; delays by third parties, including public and private utilities; or reasonably foreseeable delays.
- B. Liability limited to direct costs. Contractor agrees that the City's liability to Contractor for payment of claims or damages of any kind whatsoever related to this Contract shall be limited to direct costs as provided under the force account provisions of applicable standard specifications. Contractor expressly waives all claims for payment of damages that include or are computed on total costs of job performance, extended overhead, or other similar methods that are not specific as to the actual, direct costs of contract work as defined in the force account provisions of applicable standard specifications.
- C. "Damages" defined. For purposes of applying RCW 4.24.115 to this Contract, Contractor and the City agree that the term "damages" applies only to a finding in a judicial proceeding and is exclusive of third party claims for damage primarily thereto.
- D. Indemnification. The following provision shall control over any other indemnification provision in the Contract Documents. The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries or damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.

It is further agreed that claims for damages against the City for which Contractor's insurance carrier does not accept defense of the City may be tendered by the City to Contractor, who shall then accept and settle with the

claimant or defend the claim. The City retains the right to approve claims investigation and counsel assigned to said claims, and all investigation of legal work product regarding said claims shall be performed under a fiduciary relationship to the City.

It is further specifically and expressly understood that the indemnification provided herein constitutes Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Contract.

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

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

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

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

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

CITY OF BLACK DIAMOND

CONTRACTOR

By: _____

By: _____

Print name: _____

Print name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attachments

CERTIFICATE AS TO CORPORATE PRINCIPAL

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

Corp. officer signature (not contract signer)

Printed

Title

State of _____

County of _____

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

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

Notary Public (Signature)

Notary Public (Print)

My commission expires _____

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

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

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

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

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

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

Contractor Signature

Date

**CITY OF BLACK DIAMOND
PUBLIC WORKS PROJECT
PERFORMANCE BOND**

City Project #: _____
Surety Bond #: _____
DATE POSTED: _____
PROJECT COMPLETION DATE: _____

RE: Project Name: Abrams Avenue Safety Improvements Project
Owner: City of Black Diamond
Project Address: Abrams Avenue in the City of Black Diamond

KNOW ALL PERSONS BY THESE PRESENTS: That we, _____
_____ (hereinafter called the "Principal"), and _____
a corporation organized under the laws of the State of _____, and authorized
to transact surety business in the State of Washington (hereinafter called the "Surety"), are held and
firmly bound unto the City of Black Diamond, Washington, in the sum of _____
(\$ _____), lawful money of the United States of America, for the payment of which
sum we and each of us bind ourselves, our heirs, executors, administrators, successors and assigns,
jointly and severally, by these presents. THE CONDITIONS of the above obligation are such that:

WHEREAS, the above named Principal has entered into a certain agreement with the City,
to perform the following public works project within the City: _____
_____ ; and

WHEREAS, the agreement with the City requires that certain improvements be made as
part of the public works project; and that such improvements be constructed in full compliance with
City standards, and the plans and specifications as required by the City; and

WHEREAS, the agreement with the City requires that the improvements are to be made or
constructed within a certain period of time, unless an extension is granted in writing by the City; and

NOW, THEREFORE, it is understood and agreed that this obligation shall continue in effect
until released in writing by the City of Black Diamond, but only after the Principal has performed
and satisfied the following conditions:

- A. Conditions.
1. The improvements to be constructed by the Principal include: (insert complete
description here)
- _____
- _____
- _____
- _____

2. The Principal must construct the improvements to conform to the design, location, materials and other specifications for the indicated site improvements, as required by the City in the above-referenced project. In addition, the Principal must construct the improvements according to the applicable ordinances and standards of the City and/or state statutes, as the same now exist or are hereafter amended.
3. The Principal must have completed all improvements required by the above-referenced conditions, plans and City file within _____ which time period shall begin to run from the earlier of _____ unless an extension is granted by the City.
4. The Principal must have paid all sums owing to laborers, contractors, mechanics, subcontractors, materialmen and suppliers or others as a result of such work for which a lien against any City property has arisen or may arise.
5. The Principal must obtain acceptance by the City of the work completed, all on or before thirty (30) days after the completion date set forth in paragraph 3 above.

B. Default.

1. If the Principal defaults and does not perform the above conditions within the time specified, then the Surety shall, within twenty (20) days of demand of the City, make a written commitment to the City that it will either:
 - a). remedy the default itself with reasonable diligence pursuant to a time schedule acceptable to the City; or
 - b). tender to the City within an additional ten (10) days the amount necessary, as determined by the City, for the City to remedy the default, up to the total bond amount.

Upon completion of the Surety's duties under either of the options above, the Surety shall then have fulfilled its obligations under this bond. If the Surety elects to fulfill its obligation pursuant to the requirements of subsection B(1)(b), the City shall notify the Surety of the actual cost of the remedy, upon completion of the remedy. The City shall return, without interest, any overpayment made by the Surety, and the Surety shall pay to the City any actual costs, which exceeded the City's estimate, limited to the bond amount.

2. In the event the Principal fails to complete all of the above referenced improvements within the time period specified by the City, then the City, its employees and agents shall have the right at the City's sole election to enter onto said property described above for the purpose of completing the improvements. This provision shall not be construed as creating an obligation on the part of the City or its representatives to complete such improvements.

C. Corrections. Any corrections required by the City shall be commenced within seven (7) days of notification by the City and completed within thirty (30) days of the date of

notification. If the work is not performed in a timely manner, the City shall have the right, without recourse to legal action, to take such action under this bond as described in Section B above.

- D. Extensions and Changes. No change, extension of time, alteration or addition to the work to be performed by the Principal shall affect the obligation of the Principal or Surety on this bond, unless the City specifically agrees, in writing, to such alteration, addition, extension or change. The surety waives notice of any such change, extension, alteration or addition thereunder.
- E. Enforcement. It is specifically agreed by and between the parties that in the event any legal action must be taken to enforce the provisions of this bond or to collect said bond, the prevailing party shall be entitled to collect its costs and reasonable attorney fees as a part of the reasonable costs of securing the obligation hereunder. In the event of settlement or resolution of these issues prior to the filing of any suit, the actual costs incurred by the City, including reasonable attorney fees, shall be considered a part of the obligation hereunder secured. Said costs and reasonable legal fees shall be recoverable by the prevailing party, not only from the proceeds of this bond, but also over and above said bond as a part of any recovery (including recovery on the bond) in any judicial proceeding. The Surety hereby agrees that this Agreement shall be governed by the laws of the State of Washington. Venue of any litigation arising out of this Agreement shall be in Pierce County Superior Court.
- F. Bond Expiration. This bond shall remain in full force and effect until the obligations secured hereby have been fully performed and a bond guaranteeing maintenance of all improvements for a period of twelve (12) months from acceptance has been submitted to the City in an amount to be determined by the City Engineer, in a form suitable to the City and until released in writing by the City.

DATED this _____ day of _____, 2014.

SURETY COMPANY
(Signature must be notarized)

DEVELOPER/OWNER
(Signature must be notarized)

By: _____
Its _____

By: _____
Its _____

Print Name: _____

Print Name: _____

Business Name: _____

Business Name: _____

Business Address: _____

Business Address: _____

City/State/Zip Code: _____

City/State/Zip Code: _____

Telephone Number: _____

Telephone Number: _____

CITY OF BLACK DIAMOND

By: _____
Its: _____

Date: _____

P.O. Box 599 – 24301 Roberts Drive
Black Diamond, WA 98010
Contact: Seth Boettcher
Phone: (253) 886-5700
Fax: (360) 886-2592

APPROVED AS TO FORM:

Office of the City Attorney

CHECK FOR ATTACHED NOTARY SIGNATURE

____ Individual (Form P-1)
____ Corporation (Form P-2)

FORM P-1 / NOTARY BLOCK

(Use For Individual/Sole Proprietor Only)

STATE OF WASHINGTON)
) ss.
COUNTY OF)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

(print or type name)
NOTARY PUBLIC in and for the
State of Washington, residing
at: _____
My Commission expires: _____

FORM P-2 / NOTARY BLOCK - (Use For Partnership or Corporation Only)

STATE OF WASHINGTON)
) ss.
COUNTY OF)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said _____ person acknowledged as the _____ of _____ that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

(print or type name)

NOTARY PUBLIC in and for the State of
Washington, residing
at: _____
My Commission expires: _____

(For Surety Company)

STATE OF WASHINGTON)
) ss.
COUNTY OF)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said _____ person acknowledged as the _____ of _____ that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

(print or type name)
NOTARY PUBLIC in and for the
State of Washington, residing
at: _____
My Commission expires: _____

**CITY OF BLACK DIAMOND
MAINTENANCE BOND**

Project #: _____
Surety Bond #: _____
Date Posted: _____
Expiration Date: _____

RE: Project Name: Abrams Avenue Safety Improvements Project
Owner: City of Black Diamond
Project Address: Abrams Avenue in the City of Black Diamond

KNOW ALL PERSONS BY THESE PRESENTS: That we, _____
(hereinafter called the "Principal"), and _____, a corporation organized
under the laws of the State of _____, and authorized to transact surety business in
the State of Washington (hereinafter called the "Surety"), are held and firmly bound unto the City
of Black Diamond, Washington, in the sum of _____
dollars (\$ _____), lawful money
of the United States of America, for the payment of which sum we and each of us bind ourselves,
our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.
THE CONDITIONS of the above obligation are such that:

WHEREAS, the above named Principal has constructed and installed certain improvements
on public property in connection with a project as described above within the City of Black
Diamond; and

WHEREAS, in accordance with BMC _____, as a condition of approval, the developer is
required to post a bond for the 12 months following project completion in order to ensure that the
project does not contain defects that require repair and to cover the cost of repair during that 12-
month period; and

WHEREAS, in order to provide security for the obligation of the Principal to repair and/or
replace said improvements against defects in workmanship, materials or installation for a period of
twelve (12) months after written and final acceptance of the same and approval by the City;

NOW, THEREFORE, this Maintenance Bond has been secured and is hereby submitted to
the City. It is understood and agreed that this obligation shall continue in effect until released in
writing by the City, but only after the Principal has performed and satisfied the following
conditions:

A. The work or improvements installed by the Principal and subject to the terms and conditions
of this Bond are as follows: (insert complete description of work here)

MAINTENANCE BOND

(Rev. 06/11/14)

CAM.90402MUNX/F0008.180.002

B. The Principal and Surety agree that the work and improvements installed in the above-referenced project shall remain free from defects in material, workmanship and installation (or, in the case of landscaping, shall survive,) for a period of twelve (12) months after written and final acceptance of the same and approval by the Town. Maintenance is defined as acts carried out to prevent a decline, lapse or cessation of the state of the project or improvements as accepted by the City during the twelve (12) month period after final and written acceptance, and includes, but is not limited to, repair or replacement of defective workmanship, materials or installations.

C. The Principal shall, at its sole cost and expense, carefully replace and/or repair any damage or defects in workmanship, materials or installation to the City-owned real property on which improvements have been installed, and leave the same in as good condition as it was before commencement of the work.

D. The Principal and the Surety agree that in the event any of the improvements or restoration work installed or completed by the Principal as described herein, fail to remain free from defects in materials, workmanship or installation (or in the case of landscaping, fail to survive), for a period of twelve (12) months from the date of acceptance of the work by the Town, the Principal shall repair and/replace the same within ten (10) days of demand by the Town, and if the Principal should fail to do so, then the Surety shall:

1. Within twenty (20) days of demand of the City, make written commitment to the Town that it will either:
 - a). remedy the default itself with reasonable diligence pursuant to a time schedule acceptable to the City; or
 - b). tender to the City within an additional ten (10) days the amount necessary, as determined by the City, for the City to remedy the default, up to the total bond amount.

Upon completion of the Surety's duties under either of the options above, the Surety shall then have fulfilled its obligations under this bond. If the Surety elects to fulfill its obligation pursuant to the requirements of subsection D(1)(b), the Town shall notify the Surety of the actual cost of the remedy, upon completion of the remedy. The City shall return, without interest, any overpayment made by the Surety, and the Surety shall pay to the City any actual costs which exceeded the Town's estimate, limited to the bond amount.

2. In the event the Principal fails to make repairs or provide maintenance within the time period requested by the City, then the City, its employees and agents shall have the right at the City's sole election to enter onto said property described above for the purpose of repairing or maintaining the improvements. This provision shall not be construed as creating an obligation on the part of the Town or its representatives to repair or maintain such improvements.

MAINTENANCE BOND

(Rev. 06/11/14)

CAM.90402MUNX/F0008.180.002

- E. Corrections. Any corrections required by the City shall be commenced within ten (10) days of notification by the City and completed within thirty (30) days of the date of notification. If the work is not performed in a timely manner, the City shall have the right, without recourse to legal action, to take such action under this bond as described in Section D above.
- F. Extensions and Changes. No change, extension of time, alteration or addition to the work to be performed by the Principal shall affect the obligation of the Principal or Surety on this bond, unless the City specifically agrees, in writing, to such alteration, addition, extension or change. The surety waives notice of any such change, extension, alteration or addition thereunder.
- G. Enforcement. It is specifically agreed by and between the parties that in the event any legal action must be taken to enforce the provisions of this bond or to collect said bond, the prevailing party shall be entitled to collect its costs and reasonable attorney fees as a part of the reasonable costs of securing the obligation hereunder. In the event of settlement or resolution of these issues prior to the filing of any suit, the actual costs incurred by the City, including reasonable attorney fees, shall be considered a part of the obligation hereunder secured. Said costs and reasonable legal fees shall be recoverable by the prevailing party, not only from the proceeds of this bond, but also over and above said bond as a part of any recovery (including recovery on the bond) in any judicial proceeding. The Surety hereby agrees that this Agreement shall be governed by the laws of the State of Washington. Venue of any litigation arising out of this Agreement shall be in King County Superior Court.
- H. Bond Expiration. This bond shall remain in full force and effect until the obligations secured hereby have been fully performed and until released in writing by the City at the request of the Surety or Principal.

DATED this ____ day of _____, 2014.

SURETY COMPANY
(Signature must be notarized)

DEVELOPER/OWNER
(Signature must be notarized)

By: _____
Its _____

By: _____
Its _____

Business Name: _____

Business Name: _____

Business Address: _____

Business Address: _____

City/State/Zip Code: _____

City/State/Zip Code: _____

Telephone Number: _____

Telephone Number: _____

MAINTENANCE BOND

(Rev. 06/11/14)

CAM.90402MUNX/F0008.180.002

CITY OF BLACK DIAMOND

By: _____
Dave Gordon, Mayor

Date: _____

City of Black Diamond
24301 Roberts Drive
P.O. Box 599
Black Diamond, WA 98010

APPROVED AS TO FORM:

Office of the City Attorney

CHECK FOR ATTACHED NOTARY SIGNATURE

_____ Individual (Form P-1)
_____ Corporation (Form P-2)
_____ Surety Company (Form P-2)

MAINTENANCE BOND

(Rev. 06/11/14)

CAM.90402MUNX/F0008.180.002

FORM P-1 / NOTARY BLOCK

(Use For Individual/Sole Proprietor Only)

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated:

(print or type name)
NOTARY PUBLIC in and for the
State of Washington, residing
at: _____
My Commission expires: _____

MAINTENANCE BOND

(Rev. 06/11/14)

CAM.90402MUNX/F0008.180.002

FORM P-2 / NOTARY BLOCK (Use For Partnership or Corporation Only)

(Developer/Owner)

STATE OF WASHINGTON)
) ss.
COUNTY OF)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged as the _____ of _____ that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

(print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing

at: _____

My Commission expires: _____

(Surety Company)

STATE OF WASHINGTON)
) ss.
COUNTY OF)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged as the _____ of _____ that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

(print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing

at: _____

My Commission expires: _____

MAINTENANCE BOND

(Rev. 06/11/14)

CAM.90402MUNX/F0008.180.002

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: AB14-076 Resolution No. 14-968, authorizing the use of Park funds in order to cover the water costs associated with a Community Garden	Agenda Date: August 7, 2014	
	AB14-076	
	Department/Committee/Individual	
	Mayor Dave Gordon	
	City Attorney –Carol Morris	
	City Clerk – Brenda L. Martinez	
	Finance – May Miller	
	Comm. Dev. /Natural Resources – Aaron Nix	
	PW/Ec. MDRT/Ec. Dev. – Andy Williamson	
Cost Impact: Estimated to be approximately \$350 for 2014, \$800 for 2015	Police – Jamey Kiblinger	
Fund Source: Parks Line Item –Community Services-Supplies in City Budget	Court – Stephanie Metcalf	
Timeline: Growing Season-2014	Seth Boettcher – Public Works	X
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Resolution No. 14-968		
SUMMARY STATEMENT: <p>Staff was approached by the Cub Scouts late last year and the property owner at 24318 Roberts Drive (Darryl Bryant) to discuss that possibility of placing a Community Garden at this property as a means to learn how to grow food and provide the Scouts the opportunity to grow food for the Black Diamond Food Bank. The Scouts were able to fund this project with their own resources and the property owner, Darryl Bryant was gracious enough to supply the land in which the Boy Scouts could construct raised garden and grow the food.</p> <p>As we believe that this is a wonderful cause for feeding the less fortunate within our Community, it was suggested by the Mayor that we might be able to supply the water for growing the food at a reduced rate, in order to help others within our community. Mr. Boettcher was tasked in identifying the means in which to do this and this has been affirmed by Finance Director Miller in a specific line item within the Parks budget. It is our hope that the Council will consider this Resolution in this wonderful cause and help support the Boy Scouts in their efforts.</p> <p>Fiscal Note: The estimated water cost of \$350 for 2014 can be covered within a Community Services-supplies line item in the 2014 Budget.</p>		
COMMITTEE REVIEW AND RECOMMENDATION: N/A		
RECOMMENDED ACTION: MOTION to adopt Resolution No. 14-968, authorizing the use of City Parks Funds to cover water costs for the Community Garden at 24318 Roberts Drive as long as the water is used exclusively for the Community Garden.		
RECORD OF COUNCIL ACTION		
Meeting Date	Action	Vote
August 7, 2014		

RESOLUTION NO. 14-968

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE USE OF CITY PARKS FUNDS TO
COVER WATER COSTS FOR THE COMMUNITY GARDEN
AT 24318 ROBERTS DRIVE AS LONG AS THE WATER IS
USED EXCLUSIVELY FOR THE COMMUNITY GARDEN**

WHEREAS, Mr. Darryl Bryant has donated the use of his land at 24318 Roberts Drive for and community garden; and

WHEREAS, the local Boy Scouts have secured donated materials and labor, and constructed the garden boxes to make this amenity in order to help supply food to the Black Diamond Food Bank as an Eagle Scout project; and

WHEREAS, the community garden is available to all residents of Black Diamond for outdoor gardening; and

WHEREAS, Mr. Bryant has requested that the monthly water bill be covered by the City; and

WHEREAS, the proposed community activity is within the public purpose of the City Parks Department;

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

Section 1. The City Parks budget shall cover the cost of the water meter for this community garden at 24318 Roberts Drive for six months during the growing season as long as the water is used exclusively for the community garden.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 7TH DAY OF AUGUST, 2014.

CITY OF BLACK DIAMOND:

Dave Gordon, Mayor

Attest:

Brenda L. Martinez, City Clerk

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

ITEM INFORMATION			
SUBJECT: AB14-077 Resolution No. 14-969, relating to the formation of an Ad Hoc, All Volunteer committee	Agenda Date: August 7, 2014		AB14-077
	Mayor Dave Gordon	X	
	City Administrator		
	City Attorney Carol Morris		
	City Clerk – Brenda L. Martinez		
	Com Dev/Nat Res – Aaron Nix		
	Finance – May Miller		
	MDRT/Ec Dev – Andy Williamson		
	Police – Chief Kiblinger		
Cost Impact (see also Fiscal Note):	Public Works – Seth Boettcher		
Fund Source:	Court – Stephanie Metcalf		
Timeline:			
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator			
Attachments: Resolution No. 14-969			
SUMMARY STATEMENT: Mayor Gordon brought forth this Resolution at the July 17, 2014 Council meeting. Council postponed this item to be brought forth at the August 7, 2014 regular meeting. Mayor Gordon will be addressing Council on this item.			
FISCAL NOTE (Finance Department): 			
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:			
RECOMMENDED ACTION: MOTION to adopt Resolution No. 14-969, relating to the formation of an Ad Hoc, All Volunteer committee to provide the Mayor and Council with recommendations relating to adopted moratoria, establishing the membership qualifications, rules for meetings, powers and duties and expiration.			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	
July 17, 2014	Motion to postpone until August 7, 2014 Council Meeting.		
August 7, 2014			

RESOLUTION NO. 14-969

A RESOLUTION OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO THE FORMATION OF AN AD HOC, ALL VOLUNTEER COMMITTEE TO PROVIDE THE MAYOR AND CITY COUNCIL WITH RECOMMENDATIONS RELATING TO ADOPTED MORATORIA, ESTABLISHING THE MEMBERSHIP QUALIFICATIONS, RULES FOR MEETINGS, POWERS AND DUTIES AND EXPIRATION

WHEREAS, the City of Black Diamond has adopted at least two moratoria on various subjects of interest to its citizens; and

WHEREAS, the City desires to establish an ad hoc, all-volunteer committee to provide the Mayor and City Council with recommendations relating to these moratoria; and

WHEREAS, this ad hoc committee shall not replace any other review procedure, public hearing or recommendation required by law (either state law or City Code); Now, Therefore,

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

Section 1. Formation. An Ad Hoc, all volunteer Moratorium Committee of five individuals shall be appointed by the Mayor, to serve a term of six months or until January 31, 2015, whichever is earlier. This appointment shall not require council confirmation. This appointment shall expire at the end of the six month period, unless an ordinance is passed adopting a permanent committee for the purposes described herein. If a vacancy occurs, the Mayor shall appoint a new member.

Section 2. Qualifications. Members of this Moratorium Committee shall be selected for their interest in planning, land use, environmental affairs or residential and commercial development, as evidenced by training, experience or actions. Membership shall be limited to individuals who reside in the community at least six months out of each calendar year or owners of businesses with a physical presence in the City. Members shall serve without compensation.

Section 3. Rules and Procedures. The Moratorium Committee shall follow Roberts' Rules for the conduct of its meetings. The Moratorium Committee meetings are subject to the Open Public Meetings Act (chapter 42.30 RCW), and shall be open to the public. A secretary shall be appointed to take minutes of the meetings. A majority of the membership of the Moratorium Committee shall constitute a quorum for the transaction of business.

Section 4. Removal. The Mayor may remove any member of the Moratorium Committee, without or without cause and without notice.

Section 5. Meetings, Powers and Duties. The Moratorium Committee shall establish a regular meeting date and time. All Meetings shall be at _____(City Hall). The

Moratorium Committee shall consider all moratoria enacted by the City Council during a regularly scheduled public meeting, either before or after the Planning Commission acts on the subject of the moratorium. The Moratorium Committee shall direct City staff to present the Committee's written recommendation on a moratorium to the City Council, on or before the date that the City Council considers an ordinance that covers the subject of the moratorium. The Moratorium Committee's recommendation is advisory only.

Section 5. No Substitute for Public Hearings or Planning Commission Recommendations. The City's moratoria and the adoption of "permanent" zoning regulations require compliance with public notice, public hearing and other public participation requirements. The fact that the City has created a Moratorium Committee does not mean that the City will eliminate or bypass any of these legally required procedures. The Moratorium Committee's public meeting and recommendation shall be in addition to any procedures that the City is required to follow by law.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 7TH DAY OF
AUGUST, 2014.**

CITY OF BLACK DIAMOND

By: _____
Dave Gordon, Mayor

ATTEST:

By: _____
Brenda L. Martinez, City Clerk

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

ITEM INFORMATION		
SUBJECT: AB14-078 Ordinance No. 14-1033, relating to public health and safety, adopting a moratorium on aircraft landings and take offs on Lake Sawyer	Agenda Date: August 7, 2014	
	AB14-078	
	Mayor Dave Gordon	X
	City Administrator	
	City Attorney Carol Morris	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Aaron Nix	
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	
	Police – Chief Kiblinger	
Cost Impact (see also Fiscal Note):	Public Works – Seth Boettcher	
Fund Source:	Court – Stephanie Metcalf	
Timeline:		
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Ordinance No. 14-1033		
SUMMARY STATEMENT: Mayor Gordon brought forth this Ordinance at the July 17, 2014 Council meeting. Council postponed this item to be brought forth at the August 7, 2014 regular meeting. Mayor Gordon will be addressing Council on this item.		
FISCAL NOTE (Finance Department):		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: MOTION to adopt Ordinance No. 14-1033, relating to public health and safety, adopting a moratorium on aircraft landings and take offs on Lake Sawyer, such moratorium to be effective immediately, temporarily establishing the penalties for violation of this moratorium as those set forth in BDMC Section 8.24.060; directing staff to set a date for a public hearing on the moratorium within the next sixty days, establishing six		

months as the tentative effective period until the Council public hearing on the continued maintenance of the moratorium, and declaring an emergency necessitating immediate adoption of a moratorium.

RECORD OF COUNCIL ACTION

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
July 17, 2014	Motion to postpone until August 7, 2014 Council Meeting.	
August 7, 2014		

ORDINANCE NO. 14-1033

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO PUBLIC HEALTH AND SAFETY, ADOPTING A MORATORIUM ON AIRCRAFT LANDINGS AND TAKE OFFS ON LAKE SAWYER, SUCH MORATORIUM TO BE EFFECTIVE IMMEDIATELY, TEMPORARILY ESTABLISHING THE PENALTIES FOR VIOLATION OF THIS MORATORIUM AS THOSE SET FORTH IN BDMC SECTION 8.24.060; DIRECTING STAFF TO SET A DATE FOR A PUBLIC HEARING ON THE MORATORIUM WITHIN THE NEXT SIXTY DAYS, ESTABLISHING SIX MONTHS AS THE TENTATIVE EFFECTIVE PERIOD UNTIL THE COUNCIL PUBLIC HEARING ON THE CONTINUED MAINTENANCE OF THE MORATORIUM, AND DECLARING AN EMERGENCY NECESSITATING IMMEDIATE ADOPTION OF A MORATORIUM.

WHEREAS, the lakes in the City of Black Diamond are heavily used for recreational purposes, such as boating, water skiing, swimming, jet skiing and other water sports; and

WHEREAS, given the size of Lake Sawyer, aircraft landing and take-offs on this Lake would conflict with these uses; and

WHEREAS, the City currently has regulations for Lake Sawyer, but none address aircraft landing and take-offs; and

WHEREAS, aircraft landing and take-offs on Lake Sawyer during the summer months, when the use of the Lake for the recreational purposes described above is the greatest, presents a danger to health and safety as well as a nuisance; and

WHEREAS, the City Council may adopt an immediate moratorium for a period of up to six months as long as the City Council holds a public hearing on the proposed moratorium within sixty days after adoption (RCW 35A.63.220, RCW 36.70A.390); and

WHEREAS, the City desires to impose an immediate six-month moratorium on any aircraft landing and take-offs from Lake Sawyer, until the City studies this issue, to determine whether the City should adopt a complete prohibition on such activity, allow it in certain areas on the Lake or impose no regulations at all;

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

Section I. Purpose. The purpose of this moratorium is to allow the City to review and analyze the issue whether aircraft landings and take-offs on Lake Sawyer is compatible with the existing activities and land uses in and around the Lake. Other cities do allow aircraft landings and take-offs on certain lakes, but there are some cities which prohibit this activity altogether.

The City desires to study the issue and obtain information to determine whether aircraft landings and take-offs on Lake Sawyer present a public health and safety problem or a nuisance.

Section 2. Moratorium Imposed. The City Council hereby imposes an immediate six-month moratorium on all aircraft landings and take-offs on Lake Sawyer. Violations of this moratorium will be punished as set forth in BDMC Section 8.24.060.

Section 3. Duration of Moratorium. The moratorium imposed by this Ordinance shall commence on the effective date of this Ordinance. As long as the City holds a public hearing on the moratorium and adopts findings and conclusions in support of the moratorium (as contemplated by Section 4 herein), the moratorium shall not terminate until six (6) months after the date of adoption, or at the time the City either adopts an ordinance or determines that no ordinance is required on this subject. The Council shall make the decision to terminate the moratorium by ordinance, and termination shall not otherwise be presumed to have occurred.

Section 4. Public Hearing on Moratorium. Pursuant to RCW 36.70A.390 and RCW35A.63.220, the City Council shall hold a public hearing on this moratorium within sixty (60) days of its adoption, or before _____, 2014. Immediately after the public hearing, the City Council shall adopt findings of fact on the subject of this moratorium and either justify its continued imposition or cancel the moratorium.

Section 5. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 6. Declaration of Emergency. The City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council, and that the same is not subject to a referendum (RCW 35A.12.130). Without an immediate moratorium on the landing and take-offs of planes on Lake Sawyer, there could be an accident or other conflict between a plane, boater or swimmer, which could cause serious injury or death.

Section 7. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 8. Effective Date. This Ordinance shall take effect and be in full force and effect immediately upon passage, as set forth in Section 6, as long as it is approved by a majority plus one of the entire membership of the Council, as required by RCW 35A.12.130.

PASSED BY THE COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF BLACK DIAMOND, THIS 7TH, DAY OF AUGUST, 2014.

CITY OF BLACK DIAMOND

Mayor Dave Gordon

ATTEST/AUTHENTICATED:

Brenda Martinez, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Carol A. Morris, City Attorney

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO: 14-1033