

# City Update

For weeks ending: August 1 and August 8

City Council	Mayor & City Administrator
<p><u>Position 1:</u> Deady – no report</p> <p><u>Position 2:</u> Morgan – no report</p> <p><u>Position 3:</u> Edelman- no report</p> <p><u>Position 4:</u> Benson- no report</p> <p><u>Position 5:</u> Taylor- no report</p>	<p><u>Mayor's Activities</u></p> <p>July 30 – attended Management Team meeting  August 6 – attended Management Team meeting  August 7 – Council Meeting  August 14 – attended Work Session/Town Hall meeting</p> <p><u>City Administrator's Activities</u></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 September 9, 2014

	2013	2012
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 19<sup>th</sup> meeting.

## General Administrative Activities

- Pet licenses issued: \_2\_; \_40\_ year-to-date; website updates 15; 253 year-to-date; passports processed \_30\_; \_556\_ year-to-date; business licenses issued: 3; 369 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 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 21, 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) <b>AB14-079</b> – Ordinance Extending MPD Application Moratorium                                   | Ms. Morris      |
| 2) <b>AB14-080</b> – Ordinance Amending Black Diamond Municipal Code Regarding Development Agreements | Ms. Morris      |
| 3) <b>AB14-081</b> - Resolution Authorizing a Jail Agreement with Yakima County                       | Chief Kiblinger |

**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 Dedy - 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:**

- 4) Claim Checks** – August 21, 2014, No. 41252 through No. 41309 in the amount of \$159,584.07
- 5) Payroll Checks** – July 31, 2014 No.18371 through No.18396 (voids 18375, 18376, 18377) and ACH Pay in the amount of \$274,733.23
- 6) Minutes** – Tri-City Council Meeting Minutes of June 3, 2014 and Council Minutes of August 7, 2014

**EXECUTIVE SESSION:**

**ADJOURNMENT:**

**CITY COUNCIL AGENDA BILL:**

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

ITEM INFORMATION		
<b>SUBJECT:</b>	<b>Agenda Date: August 21, 2014</b>	<b>AB14-079</b>
<b>AB14-079</b>  <b>Ordinance extending the moratorium on accepting applications for properties within the MPD District for an additional six months as previously adopted via Ordinance 14-1025</b>	Mayor Dave Gordon	
	City Attorney Carol Morris	<b>X</b>
	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): \$0.00	Public Works – Seth Boettcher	
Fund Source: N/A	Court Administrator – Stephanie Metcalf	
Timeline: Extending the moratorium an additional six months		
<b>Agenda Placement:</b> <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
<b>Attachments: Proposed Ordinance No. 14-1034; Ordinance No. 14-1025</b>		
<b>SUMMARY STATEMENT:</b> Ordinance No. 14-1025 was previously approved by the City Council at their March 20, 2014 Council meeting. This ordinance imposed a six-month moratorium on the City's acceptance of certain applications for development for property zoned Master Planned Development (MPD). As this moratorium is scheduled to sunset on September 20, 2014, and Staff has recently been reorganized in order to compensate for the loss of the previous Community Development Director. More time is needed to review the moratorium as additional budget cuts have led to additional reductions in staffing and staff has not had the opportunity to discuss this issue or bring alternatives yet to the City Council in order to identify alternatives to this issue. It has been suggested that the City Council extend this moratorium in order to meet the desires of the City Council in this instance.		
FISCAL NOTE (Finance Department): N/A		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: N/A		
<b>RECOMMENDED ACTION: MOTION to adopt Ordinance No. 14-1034, extending the moratorium for the acceptance of applications for development within the MPD District, excluding any applications subject to the moratorium for the MPD developments entitled The Villages and Lawson Hills, previously approved under Ordinance No. 14-1025 on March 20, 2014.</b>		
<b>RECORD OF COUNCIL ACTION</b>		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
August 21, 2014		

## **ORDINANCE NO. 14-1034**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO LAND USE AND ZONING, EXTENDING A MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR NEW DEVELOPMENT WITHIN THE MASTER PLANNED DEVELOPMENT (MPD) DISTRICT FOR ANOTHER SIX MONTHS, EXCLUDING ANY APPLICATIONS SUBJECT TO THE DEVELOPMENT AGREEMENTS APPROVED FOR THE MPD DEVELOPMENTS ENTITLED THE VILLAGES AND LAWSON HILLS; DEFINING THE APPLICATIONS SUBJECT TO THE MORATORIUM, DIRECTING STAFF TO SET A DATE FOR A PUBLIC HEARING ON THE MORATORIUM WITHIN THE NEXT SIXTY DAYS, ESTABLISHING SIX MONTHS AS THE EXTENSION PERIOD UNTIL THE COUNCIL PUBLIC HEARING ON THE CONTINUED MAINTENANCE OF THE MORATORIUM EXTENSION AND ESTABLISHING AN EFFECTIVE DATE.

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WHEREAS, on March 20, 2014, the City adopted Ordinance 14-1025, which imposed a six-month moratorium on the City's acceptance of certain applications for development for property zoned Master Planned Development ("MPD"); and

WHEREAS, this moratorium is due to expire on September 20, 2014; and

WHEREAS, since the moratorium was adopted, the City's Community Development Director resigned and an existing City employee has taken the position, leaving the City short staffed to the point that the City has had to hire two planners on contract from outside firms; and

WHEREAS, the reason the City imposed the moratorium has not changed, but additional time is needed for the City to undertake all of the tasks described in Ordinance No. 1027; and

WHEREAS, City Council may extend the moratorium for a period of up to six months on the acceptance of certain development permit applications as long as the City Council holds a

public hearing on the proposed moratorium extension within sixty days after adoption (RCW 35A.63.220, RCW 36.70A.390); and

WHEREAS, the City desires to extend the existing moratorium on the acceptance of development applications for any “development activity,” “development permit” or “project permit” as defined below, for any property within the Master Plan Development (MPD) district, as shown on the City’s Official Zoning Map, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference for another six months; Now, therefore,

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

Section 1. Definitions. For the purpose of this Ordinance, the following definitions shall apply:

A. **“Exempt Development Permits”** shall include all of the following permit applications for “development” or “development activity” defined in Black Diamond Municipal Code (BDMC) Section 18.98.005 and for “project permit” applications as defined in BDMC 18.14.010, which: (1) are subject to the Development Agreements executed by the City for The Villages and Lawson Hills; or (2) were determined complete by City staff and submitted to the City on or before the effective date of this Ordinance; or (3) propose development or a development activity on property located outside the MDP Zone as identified in the City’s Official Zoning Map; or (4) any applications for permits which involve interior remodeling of existing structures in the MPD Zone.

B. **“Non-Exempt Development Permits”** shall include any permits or “project permit applications” for any “development activity” defined in the Black Diamond code sections

identified above, proposed to take place on property located within the MPD Zone and submitted after the effective date of this Ordinance.

Section 2. Purpose. The purpose of this moratorium extension is to allow the City to review and analyze the growth, environmental and secondary land use impact of the two large developments approved for the Villages and Lawson Hills on the City, and to determine whether any changes need to be made in the City's Comprehensive Plan and development regulations relating to MPD's. If necessary, the City will propose new Plan and development regulation amendments, hold the necessary public hearings, obtain Planning Commission recommendations and adopt ordinances.

Section 3. Moratorium Extension Imposed. The City Council hereby extends the moratorium due to expire on September 20, 2014, on the acceptance of all non-exempt development permit applications for development activities on property located within the MPD Zone, as shown in the map attached hereto as Exhibit A, which is derived from the City's Official Zoning Map for another six months. All such non-exempt applications shall be rejected and returned to the applicant. With regard to the City's acceptance of any exempt development application, such acceptance shall only allow processing to proceed, but shall not constitute an assurance that the application will be approved.

Section 4. Duration of Moratorium Extension. The moratorium extension 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 extension (as contemplated by Section 5 herein), the moratorium extension shall not terminate until six (6) months after the date of adoption, or at the time all of the tasks described herein have been accomplished, whichever is sooner. The Council shall make the decision to

terminate the moratorium by ordinance, and termination shall not otherwise be presumed to have occurred.

Section 5. Public Hearing on Moratorium Extension. Pursuant to RCW 36.70A.390 and RCW 35A.63.220, the City Council shall hold a public hearing on this moratorium extension within sixty (60) days of its adoption, or before October 20, 2014. Immediately after the public hearing, the City Council shall adopt findings of fact on the subject of this moratorium extension and either justify its continued imposition or cancel the moratorium.

Section 6. 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 7. Publication and Effective Date. This Ordinance shall be published by an approved summary consisting of the title. This ordinance shall be effective five days after publication, as provided by law.

PASSED by the Council and approved by the Mayor of the City of Black Diamond, this 21<sup>st</sup> day of August, 2014.

CITY OF BLACK DIAMOND

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Mayor Dave Gordon

ATTEST/AUTHENTICATED:

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Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney

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Carol A. Morris, City Attorney

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

## **ORDINANCE NO. 14-1025**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO LAND USE AND ZONING, ADOPTING A MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR NEW DEVELOPMENT WITHIN THE MASTER PLANNED DEVELOPMENT (MPD) DISTRICT, EXCLUDING ANY APPLICATIONS SUBJECT TO THE DEVELOPMENT AGREEMENTS APPROVED FOR THE MPD DEVELOPMENTS ENTITLED THE VILLAGES AND LAWSON HILLS; AND SUCH MORATORIUM TO BE EFFECTIVE IMMEDIATELY, DEFINING THE APPLICATIONS SUBJECT TO THE MORATORIUM, 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.

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WHEREAS, the City recently approved two major Master Development Plan projects (the “Villages” included 1,196 acres, to be developed with a maximum of 4,800 low, medium and high density dwelling units, and a maximum of 775, 000 square feet of retail, offices, commercial and light industrial development, schools, recreation and open space; and “Lawson Hills” involves a maximum of 1,250 low, medium and high density dwelling units on 371 acres and a maximum of 390,000 square feet of retail, offices, commercial and light industrial development, schools, recreation and open space);<sup>1</sup> and

WHEREAS, the City Council is planning to hire a consultant to assist the City with its comprehensive plan amendment process, which will address the growth issues related to these approvals; and

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<sup>1</sup> These decisions were appealed in *Toward Responsible Development v. City of Black Diamond*, 2014 WL 295838, Court of Appeals, Div. I, January 27, 2014.

WHEREAS, the City also desires to review its development regulations for consistency with the Comprehensive Plan and existing law; and

WHEREAS, these planning efforts would be thwarted if property owners could submit applications for development and “vest” under the existing codes; and

WHEREAS, the City Council may adopt an immediate moratorium for a period of up to six months on the acceptance of certain development permit applications 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 the acceptance of development applications for any “development activity,” “development permit” or “project permit” as defined below, for any property within the Master Plan Development (MPD) district, as shown on the City’s Official Zoning Map, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference; Now, therefore,

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

Section 1. Definitions. For the purpose of this Ordinance, the following definitions shall apply:

A. **“Exempt Development Permits”** shall include all of the following permit applications for “development” or “development activity” defined in Black Diamond Municipal Code (BDMC) Section 18.98.005 and for “project permit” applications as defined in BDMC 18.14.010, which: (1) are subject to the Development Agreements executed by the City for The Villages and Lawson Hills; or (2) were determined complete by City staff and submitted to the City on or before the effective date of this Ordinance; or (3) propose development or a

development activity on property located outside the MDP Zone as identified in the City's Official Zoning Map; or (4) any applications for permits which involve interior remodeling of existing structures in the MPD Zone.

B. **“Non-Exempt Development Permits”** shall include any permits or “project permit applications” for any “development activity” defined in the Black Diamond code sections identified above, proposed to take place on property located within the MPD Zone and submitted after the effective date of this Ordinance.

Section 2. Purpose. The purpose of this moratorium is to allow the City to review and analyze the growth, environmental and secondary land use impact of the two large developments approved for the Villages and Lawson Hills on the City, and to determine whether any changes need to be made in the City's Comprehensive Plan and development regulations relating to MPD's. If necessary, the City will propose new Plan and development regulation amendments, hold the necessary public hearings, obtain Planning Commission recommendations and adopt ordinances.

Section 3. Moratorium Imposed. The City Council hereby imposes an immediate six-month moratorium on the acceptance of all non-exempt development permit applications for development activities on property located within the MPD Zone, as shown in the map attached hereto as Exhibit A, which is derived from the City's Official Zoning Map. All such non-exempt applications shall be rejected and returned to the applicant. With regard to the City's acceptance of any exempt development application, such acceptance shall only allow processing to proceed, but shall not constitute an assurance that the application will be approved.

Section 4. 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 5 herein), the moratorium shall not terminate until six (6) months after the date of adoption, or at the time all of the tasks described herein have been accomplished, whichever is sooner. The Council shall make the decision to terminate the moratorium by ordinance, and termination shall not otherwise be presumed to have occurred.

Section 5. Public Hearing on Moratorium. Pursuant to RCW 36.70A.390 and RCW 35A.63.220, the City Council shall hold a public hearing on this moratorium within sixty (60) days of its adoption, or before May 19, 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 6. 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 7. 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 City's acceptance of non-exempt development applications for property in the MPD Zone, such applications could become vested, leading to development that could be incompatible with the Comprehensive Plan and development regulations eventually adopted by the City. Therefore, the moratorium must be imposed as an emergency measure to protect the public health, safety and welfare, and to prevent the submission of a flood of applications to the City in an attempt to

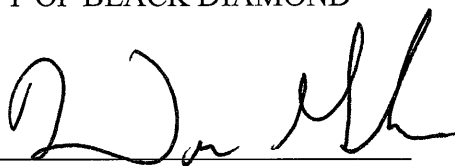
vest rights for an indefinite period of time. This Ordinance does not affect any existing vested rights, nor will it prohibit all development in the City, because those property owners with exempt applications/permits, and those with previously obtained approvals for development may proceed with processing and development, as the case may be.

Section 8. Publication. This Ordinance shall be published by an approved summary consisting of the title.

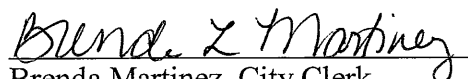
Section 9. Effective Date. This Ordinance shall take effect and be in full force and effect immediately upon passage, as set forth in Section 7, as long as it is approved by a majority plus one of the entire membership of the Council, as required by RCW 35A.12.130.

PASSED by the Council and approved by the Mayor of the City of Black Diamond, this 20<sup>th</sup> day of March, 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: 3/20/2014  
PUBLISHED: 3/25/2014  
EFFECTIVE DATE: 3/20/2014  
ORDINANCE NO: 14-1025

**CITY COUNCIL AGENDA BILL:**

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

ITEM INFORMATION		
<b>SUBJECT:</b>	<b>Agenda Date: August 21, 2014 AB14-080</b>	
<b>AB14-080</b>  <b>Ordinance repealing most of the City's code relating to development agreements and adopting new regulations for development agreements.</b>	Mayor Dave Gordon	
	City Attorney Carol Morris	<b>X</b>
	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	
	Court Administrator – Stephanie Metcalf	
Cost Impact (see also Fiscal Note): N/A		
Fund Source: N/A		
Timeline: N/A		
<b>Agenda Placement:</b> <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
<b>Attachments: Proposed Ordinance No. 14-1030</b>		
<b>SUMMARY STATEMENT:</b> <b>I. Background.</b> State law allows a city to enter into a development agreement with a property owner for a number of reasons, such as annexation, mitigation of development impacts, phasing of a project, etc. RCW 36.70B.170(3). However, a development agreement “shall be consistent with applicable development regulations adopted by a local government” planning under the Growth Management Act. RCW 36.70B.170(1).  <u>Development Agreement Execution Process.</u> Before the City may enter into a development agreement with a property owner, a public hearing must be held and the agreement must be adopted by resolution or ordinance. RCW 36.70B.200. The development agreement must specify a term (or duration), and during this term, the development standards identified in the development agreement govern build-out. RCW 36.70B.180. After build-out and expiration of the agreement, the City can adopt new development regulations for the property. RCW 36.70B.180. (The City also may adopt new development regulations to apply to the property before the development agreement expires, if there is a serious threat to public health or safety. RCW 36.70B.170(4).) If an appeal is filed of the development agreement relating to a project, there could be a judicial appeal of the agreement and underlying permit application under chapter 36.70C RCW. Appeals of a development agreement relating to a legislative action (comp plan amendment as an example) would be filed with the Growth Management Hearings Board.  <u>Development Regulation Adoption Process.</u> The Growth Management Act requires the City to follow this procedure for amendments to development regulations: (A) the development regulation is drafted in a proposed ordinance; (B) the City's SEPA Responsible Official makes a threshold decision on the proposed ordinance (which can be appealed); (C) the proposed ordinance is sent to the Washington State Department of Commerce for comment, pursuant to RCW 36.70B.106; (D) a public hearing is held before the Planning Commission on the proposed ordinance (after public notice); (E) the Planning Commission sends its recommendation on the ordinance to the City Council; (F) the City Council considers the proposed ordinance during a regular meeting; (G) the City Council may be required to hold another public hearing on the proposed ordinance ( <i>see</i> , RCW 36.70A.035(2)); (H) the final ordinance is published; and (G) a copy of the adopted ordinance is sent to the Department of Commerce under RCW 36.70A.106(2). An appeal of the adopted ordinance may be filed with the Growth Management Hearings Board, and the decision of that Board may be filed in court.		

## II. Need for Amendment and Procedure.

A. *Current code is inconsistent with Law.* The City's current code allows a developer to propose the execution of a development agreement with the City for the purpose of "modifying" existing development regulations. As you can see from the above, not only is this contrary to law (RCW 36.70B.170(1)), it eliminates a substantial amount of public participation in the adoption of development regulations. The fact that there is one public hearing on the development agreement does not cure this defect, as interested members of the public wouldn't anticipate that the City would violate state law by amending development regulations by contract. So, few would be watching for public notice of this hearing, which may or may not accurately describe the proposed development regulation amendments.

B. *Current Code doesn't clearly identify discretionary nature.* The City is not required to execute a development agreement with a property owner.

C. *Current Code doesn't clearly describe the contractual elements of a development agreement.* A development agreement is a contract. If the City decides to enter into a development agreement with a property owner, then the City needs to obtain consideration. For example, if a developer would like the City to extend the vesting of his/her project for 20 years so the developer can construct the project in 4 phases, then the developer needs to provide the City with some public amenities to make up for the fact that the City will be "freezing" its development regulations for 20 years for this development.

D. *The City must be consistent with development agreements.* The City could decide that it would only allow a vesting freeze for phased development for 20 years and no longer. The length of the agreement for a particular purpose should be identified in the code, so that the City's decisions on consistent with all developers. There may be reasons to vary from the outside limit (the amount and nature of the public amenities proposed as consideration), and the reasons should be specified in the agreement itself. For example, if a property owner asks the City to annex his or her property, but the City doesn't have sufficient water to serve the property at build-out, it may ask that the property owner pay for certain amenities, such as construction of water holding tanks and other water facilities, establishing a deadline for construction in the development agreement, and making annexation contingent upon construction of the facilities.

E. *The development agreement may be legislative or quasi-judicial.* For example, a property owner may ask for an area-wide rezone (usually more than two parcels), but the SEPA threshold decision on the comprehensive plan amendment may show that there will be a transportation concurrency issue if approved. The City may consider approval of the area-wide rezone contingent upon the developer's construction of a necessary transportation facility within six years. Or, a property owner may ask that the City approve a site specific rezone at the edge of a single family residential neighborhood to the lowest level business use. In order to ameliorate the negative impacts of this rezone, the City may approve it by eliminating certain allowed uses in the proposed business zone, or requiring that the property owner plant a wide vegetative screen as a buffer or other mitigation.

F. *Concurrent processing.* If a developer requests a development agreement, it must be processed with the associated permit application or approval. For example, if a developer requests a development agreement with a preliminary plat, the two must be processed concurrently, so that the decision-maker understands what conditions will be imposed on the application. If a developer requests a development agreement with a comprehensive plan amendment, the two must be processed concurrently, so that everyone – the public, Planning Commission and City Council, can evaluate the advantages and disadvantages of the proposal prior to approval of the comprehensive plan amendment.

**III. Recommendation.** The City Attorney recommends approval of the attached ordinance, for all of the above reasons.

FISCAL NOTE (Finance Department): N/A

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: N/A

RECOMMENDED ACTION: **MOTION to approve Ordinance No. 14-1030, relating to land use and zoning, amending the Black Diamond Municipal Code provisions relating to development agreements, requiring consistency between existing development regulations and development agreements, identifying the elements of an application of a development agreement, describing the procedure for processing development agreements, clarifying the effect, format, requirements for public hearing, recording and appeals; amending BDMC Section 18.66.010; repealing Section 18.66.020; adding new Sections 18.66.020, 18.66.030, 18.66.040 and 18.66.050 and establishing an effective date.**

<b>RECORD OF COUNCIL ACTION</b>		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
August 21, 2014		

## **ORDINANCE NO. 14-1030**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING THE BLACK DIAMOND MUNICIPAL CODE PROVISIONS RELATING TO DEVELOPMENT AGREEMENTS, REQUIRING CONSISTENCY BETWEEN EXISTING DEVELOPMENT REGULATIONS AND DEVELOPMENT AGREEMENTS, IDENTIFYING THE ELEMENTS OF AN APPLICATION OF A DEVELOPMENT AGREEMENT, DESCRIBING THE PROCEDURE FOR PROCESSING DEVELOPMENT AGREEMENTS, CLARIFYING THE EFFECT, FORMAT, REQUIREMENTS FOR PUBLIC HEARING, RECORDING AND APPEALS; AMENDING BDMC SECTION 18.66.010; REPEALING SECTION 18.66.020; ADDING NEW SECTIONS 18.66.020, 18.66.030, 18.66.040 AND 18.66.050 AND ESTABLISHING AN EFFECTIVE DATE.

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WHEREAS, the process in chapter 18.66 BDMC on the subject of development agreements is inconsistent with state law (RCW 36.70B.170(1)), which requires that “a development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter 36.70A RCW”; and

WHEREAS, state law does not allow the City’s development regulations to be “modified in the development agreement” (as currently provided in BCMC Section 18.66.020); and

WHEREAS, chapter 18.66 BDMC does not clearly state that development agreements are discretionary, the purpose for which such agreements should be used, the procedure for processing development agreements and the manner in which appeals of development agreement may be filed; and

WHEREAS the SEPA Responsible Official has determined that this Ordinance is categorically exempt from SEPA as affecting only procedural and no substantive standards, pursuant to WAC 197-11-800(19); and

WHEREAS, the City Council held a public hearing on this Ordinance on July 17, 2014;  
and

WHEREAS, the City Council considered this Ordinance during its regular City Council meeting on August 21, 2014; Now, Therefore,

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

Section 1. Amendment of Section 18.66.010. Section 18.66.010 of the Black Diamond Municipal Code is hereby amended to read as follows:

**18.66.010 Intent and Discretionary Nature.**

The purpose of this chapter is to authorize the use of development agreements, consistent with RCW 36.70B.170 through RCW 36.70B.210. ~~as authorized by state law, as a means to document conditions and procedures for certain types of development and to thereby provide greater certainty to the city, applicants and the public regarding how property will be developed. Development agreements may be used for any type of proposals but are anticipated to be applied most often to master planned development per chapter 18.98 and to other large, complex, phased, and/or sensitive development proposals where useful.~~

The City may, but under no circumstances is required to, enter into a development agreement with a person having ownership or control of real property within the City. The development agreement may address such project elements as those set forth in RCW 36.70B.170B(3). The development agreement shall be consistent with the applicable development regulations of the City. The consideration provided by the property owner for the City's decision to enter into the development agreement may vary, depending on the benefit the development agreement will provide to the City and/or the public in general.

Section 2. Repeal of Section 18.66.020. Section 18.66.020 of the Black Diamond Municipal Code is hereby repealed.

Section 3. Adoption of new Section 18.66.020. A new section 18.66.020 is hereby added to the Black Diamond Municipal Code:

**18.66.020 Form of Agreement, Effect and General Provisions.**

- A. Form. All development agreements shall be on the standard form approved in advance by the City Attorney for this purpose.
- B. Effect. Development agreements are not project permit applications and are not subject to the permit processing procedures in chapter \_\_\_\_ of the BDMC. A development agreement shall constitute a binding contract between the City and the property owner and the subsequent owners of any later-acquired interests in the property identified in the development agreement.
- C. Limitations. Any provision of the development agreement which requires the City to: (1) refrain from exercising any authority; (2) forego adoption of any development regulations affecting the property identified in the agreement; (3) allow vesting beyond the applicable deadlines for a phased development; shall be limited to a period of \_\_\_\_\_ (\_\_) years. The development agreement shall also contain a proviso that the City may, without incurring any liability, engage in action that would otherwise be a breach if the City makes a determination on the record that the action is necessary to avoid a serious threat to public health and safety, or if the action is required by federal or state law.
- D. Developer's Compliance. The development agreement shall include a clause stating that the City's duties under the agreement are expressly conditioned upon the property owner's substantial compliance with each and every term, condition, provision and/or covenant in the development agreement, all applicable federal, state and local laws and regulations and the property owner's obligations as identified in any approval or project permit for the property identified in the development agreement.
- E. No Third Party Rights. Except as otherwise provided in the development agreement, the development agreement shall create no rights enforceable by any party who/which is not a party to the development agreement.
- F. Liability. The development agreement shall include clause providing that any breach of the development agreement by the City shall give right only to damages under state contract law and shall not give rise to any liability under chapter 64.40 RCW, the Fifth and Fourteenth Amendments to the U.S. Constitution or similar state constitutional provisions.
- G. Termination and Modification. Every development agreement shall have an identified, specific, termination date. Upon termination, any further development of the property shall conform to the development regulations applicable to the property. The City shall not modify any development agreement by extending the termination date. Any request for modification shall be consistent with the City's development regulations applicable to the property at the time or request, not the original execution date of the development agreement.

Section 4. A new Section 18.66.030 is hereby added to the Black Diamond Municipal Code, which shall read as follows:

**18.66.030 Application Requirements.** A complete application for a development agreement shall consist of the following:

- A. Name, address, telephone number and e-mail address (if any) of the property owner. If the applicant is not the property owner, the applicant must submit a verified statement from the property owner that the applicant has the property owner's permission to submit the application;
- B. Address, parcel number and legal description of the property proposed to be subject to the development agreement;
- C. Recent title report confirming that the property identified in the application is owned by the applicant/property owner;
- D. Identification of any application (project permit application, comprehensive plan amendment application, development regulation amendment application) that is related to the proposed development agreement;
- E. SEPA Checklist;
- F. A completed application form and the application fee established by the City for this purpose; and
- G. Any other information requested by the Community Development Director relevant to the processing of the development agreement.

Section 5. A new Section 18.66.050 is hereby added to the Black Diamond Municipal Code, which shall read as follows:

**18.66.050. Phasing.**

- A. In order to phase a project to extend the vested rights associated with an underlying project permit application, a development agreement is required. This ensures the availability of public facilities and services to all of the property in the identified individual phases, allows tracking of the available capacity of public facilities and utilities during each phase of construction, and with the extension of the vested rights associated with the project, provides certainty to the developer in the subsequent development approval process.
- B. The deadlines in the City's code relating to each type of project permit application must be consulted to establish the baseline vesting period. The City is

not required to extend the vesting period. If the City decides to do so through a development agreement, it must be in exchange for the property owner's provision of corresponding benefits to the City in the form of, for example, contributions to public facilities and amenities over and above what would normally be required. In any event, the City shall not allow vesting to extend beyond the established \_\_\_\_ (\_\_\_\_) year period after approval of the project permit application.

C. A development agreement for a phased development (such as a subdivision) shall include (in addition to all of the information in Section 18.66.030), all of the following:

1. identification of the phasing schedule;
2. identification of the number of phases and all lots included in each phase;
3. identification of the approximate dates for construction of public streets, public utilities and other improvements in each phase;
4. identification of the approximate dates for commencement of development of each lot, lot sales and building occupancy;
5. identification of the benefits that the property owner will provide to the City in exchange for permission to phase the development according to the proposed schedule;
6. establishment of the deadline for the property owner to submit development applications, including building permit applications, for each phase;
7. a description of the manner in which each phase is designed such that all site requirements are satisfied independently of phases yet to be given final approval and constructed;
8. a description of the manner in which the property owner will ensure that adequate public facilities are available when the impact of development occurs. The property owner shall acknowledge in the development agreement that if the demand for public facilities or services needed to accommodate a subsequent development phase increases following the issuance of a development permit for a prior phase in the approval process, or if public facilities or services included in a concurrency or SEPA determination are not constructed as scheduled in the City's capital facilities plan, final development approval may have to be delayed for future phases pending the achievement of the adopted levels of service.

Section 7. A new Section 18.66.050 is hereby added to the Black Diamond Municipal

Code, which shall read as follows:

**18.66.050 Processing Procedures.**

A. Consolidation. Whenever possible, the development agreement shall be consolidated for processing with an underlying project permit application or other

application for a legislative approval. If the development agreement is consolidated with a project permit application, the property owner must agree to waive the deadline in RCW 36.70B.080 and BDMC Section 18.14.020(A) for issuance of a final decision on the underlying application, as well as the prohibition on no more than one open record hearing and one closed record hearing on the underlying project permit application in RCW 36.70B.060(3) and BDMC Sections 2.30.100 and 18.08.070.

B. Public Hearing. While the Hearing Examiner may provide a recommendation on a development agreement (even if the Hearing Examiner makes the final decision on the underlying project permit application), the City Council shall make the final decision whether to approve a development agreement by ordinance or resolution after a public hearing. Modifications to a development agreement shall be in writing, signed by the duly authorized representatives of the parties, be consistent with this chapter and follow the same procedures set forth in this chapter.

C. Appeal. A development agreement associated with an underlying project permit application may be appealed in the same manner and within the same deadline as the underlying project permit application. A development agreement associated with a legislative approval, such as a comprehensive plan amendment, may be appealed in the same manner and within the same deadline as the legislative approval.

D. Recording Against the Property. The City shall record the development agreement against the property with the real property records of the King County Department of Records and Elections. During the term of the agreement, it is binding upon the owners of the property and any successors in interest to such property.

Section 7. 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 10. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Black Diamond, this 21<sup>st</sup> day of August, 2014.

CITY OF BLACK DIAMOND

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Mayor Dave Gordon

ATTEST/AUTHENTICATED:

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Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney

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Carol A. Morris, City Attorney

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

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION											
<b>SUBJECT:</b> <b>AB14-081</b>  <b>Amendment to Interlocal Agreement between Yakima County and the City of Black Diamond for Jail Services</b>	<b>Agenda Date: August 21, 2014</b>										
	<b>AB14-081</b>										
	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										
Cost Impact (see also Fiscal Note): No impact	Police – Chief Kiblinger	<b>X</b>									
Fund Source:	Public Works – Seth Boettcher										
Timeline:	Court – Stephanie Metcalf										
<b>Agenda Placement:</b> <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator											
<b>Attachments: Resolution No. 14-970; Agreement</b>											
<p><b>SUMMARY STATEMENT:</b></p> <p>This is an inter-local agreement for jail services between Yakima County and the City of Black Diamond for Jail Services. Yakima County's daily rate is \$54.75 with no booking fee. They also provide transportation. Yakima County will be used for long term sentences. Duration of the agreement ends on Dec. 31<sup>st</sup>, 2015, but can be extended by a written addendum.</p> <p><b>FISCAL NOTE (Finance Department):</b> This contract is negotiated to maintain jail costs within budget. The previous contract was changing to not included transportation costs and likely would have exceeded budget if jail cost coverage is consistent.</p>											
<p><b>COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:</b> The Finance Committee reviewed the Yakima County Jail Contract at their August 14, 2014 meeting.</p>											
<p><b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 14-970, authorizing the Mayor to execute an agreement for jail services with Yakima County.</b></p>											
<p align="center"><b>RECORD OF COUNCIL ACTION</b></p> <table border="1"> <thead> <tr> <th><i>Meeting Date</i></th> <th><i>Action</i></th> <th><i>Vote</i></th> </tr> </thead> <tbody> <tr> <td>August 21, 2014</td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> </tr> </tbody> </table>			<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	August 21, 2014					
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>									
August 21, 2014											

**RESOLUTION NO. 14-970**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON,  
AUTHORIZING THE MAYOR TO EXECUTE AN  
AGREEMENT FOR JAIL SERVICES WITH YAKIMA  
COUNTY**

**WHEREAS**, the City of Black Diamond desires to house certain inmates in Yakima County Correctional facilities; and

**WHEREAS**, Yakima County is willing and able to house inmates for the City of Black Diamond;

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

**Section 1.** The Mayor is hereby authorized to execute an Agreement for Jail Services with Yakima County, substantially in the form attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS AUGUST 21<sup>st</sup>, 2014.**

CITY OF BLACK DIAMOND:

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Dave Gordon, Mayor

Attest:

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Brenda L. Martinez, City Clerk

## AGREEMENT FOR INMATE HOUSING 2014

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THIS INTERLOCAL AGREEMENT FOR INMATE HOUSING (hereinafter "Agreement") is made and entered into by and between **Yakima County** (hereinafter the "County") and **the City of Black Diamond** (hereinafter the "City").

WHEREAS, RCW Chapters 39.34 and RCW 70.48 authorize the City and the County to enter into a contract for inmate housing, and

WHEREAS, the City desires to transfer custody of certain of its inmates to the County to be housed in the County's corrections facilities during those inmates' confinement, and to compensate the County for housing such inmates, and

WHEREAS, the County desires to house inmates who would be otherwise in the City's custody on the terms agreed herein.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and promises contained herein, the parties hereto mutually agree as follows:

1. **Purpose.** The purpose and intent of this Agreement is to establish the terms under which the County will house City inmates starting in the calendar year 2014.

2. **Definitions.**

**Business day** means Monday through Friday excluding Yakima County standard holidays.

**Committing Court** means the court that issued the order or sentence that established the City's custody of a City Inmate.

**Detainer** – A legal order authorizing or commanding another agency a right to take custody of a person.

**City Inmate** means a person subject to City custody who is transferred to County custody under this Agreement

3. **General Provisions.** The County shall accept City Inmates according to the terms of this Agreement and shall provide housing, care, and custody of those City Inmates in the same manner as it provides housing, care and custody to its own inmates.

The County shall manage, maintain, and operate its corrections facilities in compliance with all applicable federal, state, and local laws and regulations.

4. **Right to Refuse or Return Inmate.** To the greatest extent permitted by law, the County shall have the right to refuse to accept a City Inmate or to return a City Inmate to the City, if the Inmate has a current illness or injury that is listed in **Attachment A - Medical Acceptability**. The County shall provide notice to the City at least one business day prior to transport.

5. **Inmate Transport. County Transported:** The County shall transport Inmates to and from the County's corrections facilities except when weather or other conditions beyond the County's control prevent transport. **Inmate transport dates will be determined by the amount of inmates the City has housed with the County.**

The County will pick up and drop off Inmates at a mutually agreed upon destination. In the event the City wishes the County to pick up and/or drop off a City Inmate at another detention or correction facility, the City shall notify the County of the location of the Inmate for pick up and/or drop off.

The City shall provide a written inmate transport list to the County the business day prior to transport. At the time of scheduling transport if possible, but no later than transport pickup, the City shall provide to the County the warrant or court order detaining or committing the Inmate, as well as any order that specifies the Inmate's next court date or sentence to confinement.

The City shall provide a complete copy of each Inmate's records in its possession to the County prior to transferring custody of the Inmate to the County. The County will not assume custody of any inmate without a warrant or court order that commits the Inmate to confinement.

**City Transported:** The City will provide the County a written transport list to the County the business day prior to delivery. At the time of delivery, the City shall provide the County the warrant or court order detaining or committing the inmate as well as any order that specifies the Inmate's next court date or sentence to confinement.

The City shall provide a complete copy of each Inmate's records in its possession to the County prior to transferring custody of the Inmate to the County. The County will not assume custody of any inmate without a warrant or court order that commits the Inmate to confinement.

**6. Inmate Records.** The City shall provide all medical records in its possession to the County's transport officers prior to the Inmate's departure from the City's detention or designated detention facility. In the event the Inmate is transported by the City, the City shall provide all medical records in its possession to the County's booking officer. In the event additional information is requested by the County regarding a particular Inmate, the County and City will mutually cooperate to provide the additional information needed.

**7. Inmate Property.** The County shall accept and transport Inmate property in accordance with **Attachment B – Property**, and shall be responsible only for inmate property actually delivered into County possession. The County shall hold and handle each Inmate's personal property in the same manner it holds and handles property of other County inmates. In the event a City Inmate is being transported from a City designated detention or correction facility, it will be the responsibility of the City to dispose of the Inmate's property not delivered and accepted into County possession. When returning Inmates to the City, the County shall transport Inmate property according to the provisions of Attachment B – Property, and it shall be the responsibility of the County to dispose of any of the Inmate's property not transported with the Inmate.

**8. Booking.** Inmates shall be booked pursuant the County's booking policies and procedures. Inmates transported by the City that are not acceptable at booking, will be the responsibility of the City to transport back to City.

Pursuant to RCW 70.48.130, and as part of the booking procedure, the Department of Corrections shall obtain general information concerning the Inmate's ability to pay for medical care, including insurance or other medical benefits or resources to which a City Inmate is entitled. The information is to be used for third party billing.

The County and City will attempt to develop a process at City detention facilities for pre-booking Inmates who are being transferred to the custody of the County.

**9. Classification.** Inmates shall be classified pursuant to the County's classification policies and procedures, and within the sole discretion and judgment of the County. The City shall provide information identified in **Attachment C – Classification**, of this Agreement.

**10. Housing.** Inmates shall be assigned to housing pursuant to the County's policies and procedures, and within the sole discretion and judgment of the County. Provided however, that generally, if a City Inmate's classification qualifies him/her to be housed in the Yakima County Corrections Center, and there is a bed available at the Yakima County Corrections Center, the Inmate shall be housed in the Yakima County Corrections Center. Exceptions to this general provision include circumstances such as: 1) No women are housed at the Yakima County Corrections Center; 2) Inmates assigned to certain work crews must be housed in the Main Jail or Annex; 3) Certain programs are available only to Inmates housed in the Main Jail or Annex; 4) Inmates who will be housed for less than one week will usually be housed in the Main Jail or Annex.

**11. Inmate Work Programs.** The County may assign Inmates to work programs such as inside and outside work crews, kitchen and facility duties, and other appropriate duties.

**12. Health Care.** The County shall provide in-facility medical care commonly associated with county corrections operations as guided by American Correctional Association or National Commission on Correctional Health Care standards.

Inmates shall be responsible for co-payment for health services according to County policy. The City shall not be responsible to the County for Inmate co-payments. No Inmate shall be denied necessary health care because of an inability to pay for health services.

The County shall notify the City's designee(s) via e-mail or fax if a City Inmate requires medical or dental treatment at an outside medical or health care facility. The City shall be responsible to promptly notify the County of any changes in its designee(s).

The City shall pay for all medical, mental health, dental or any other medical services that are required to care for the City's Inmates outside YCDOC facilities. Except, the County shall bear the expense of any such medical care necessitated by improper conduct of the County, or of its officers or agents.

The County shall notify the City as soon as reasonably possible before the Inmate receives medical and/or dental treatment outside of YCDOC facilities. The City acknowledges that such notice may not be reasonably possible prior to emergency care. Lack of prior notice shall not excuse the City from financial responsibility for related medical expenses, and shall not be a basis for imposing financial responsibility for related medical expenses on the County.

Outside medical expenses for Inmates housed for more than one jurisdiction shall be divided equally among those jurisdictions.

**13. Inmate Discipline.** The County shall discipline Inmates according to the same policies and procedures under which other County inmates are disciplined. However, nothing contained herein shall be construed to authorize the imposition of a type of discipline that would not be imposed on a comparable County inmate, up to and including the removal of earned early release credits as approved by the City.

**14. Removal from County Facilities.** Except for work programs or health care, and during emergencies, Inmates shall not be removed from County facilities without written authorization from the City or by the order of any court having jurisdiction. Other jurisdictions

may "borrow" a City Inmate only according to the provisions of **Attachment D – Borrowing**. In the event of the Inmate's emergency removal, the County shall notify the City by email or fax as soon as reasonably possible. No early release or alternative to incarceration, including furloughs, home detention, or work release shall be granted to any Inmate without written authorization by the committing court.

**15. Visitation.** The County shall provide scheduled visitation for attorneys, spouses, family and friends of Inmates. Such visitation may be accomplished as provided in Section 24 of this Agreement.

**16. Inmate-Attorney Communication.** Confidential telephones or visitation rooms shall be available to inmates to communicate with their attorneys.

**17. Inmate Accounts.** The County shall establish and maintain an account for each Inmate. The County shall ensure family members and others have a reasonable process to add funds to a City Inmate's account,

Upon returning custody of a City Inmate to the City, the County shall transfer the balance of that Inmate's account that is not subject to charges, to the Inmate or to the City in the form of a check or a debit card in the name of the Inmate.

In the event the County contracts with a company/business that furnishes technology for wireless inmate account crediting (such as Keefee or JPAY) the City may allow the County (or County's contracted representative) to install the equipment necessary for use of the system. The City shall not be financially responsible for any aspect of the system, including but not limited to installation or maintenance costs. The City shall not receive any compensation or profits for such a system.

**18. Detainers.** Inmates in a "Detainer" status shall be handled according to **Attachment E – Detainers**.

**19. Releases.** The City shall be responsible for computing and tracking all sentence time calculations, good time, court dates and release dates. Inmates will be released in accordance with **Attachment F – Inmate Release**.

The County shall not transfer custody of a City Inmate housed pursuant to this Agreement to any party other than the City, except as provided in this Agreement or as directed by the City.

**20. Escape.** If a City Inmate escapes County custody, the County shall notify the City as soon as reasonably possible. The County shall use all reasonable efforts to pursue and regain custody of escaped City Inmates, and shall assume all costs connected with the recapture of the City Inmate.

**21. Death.** If a City Inmate dies in County custody, the County shall notify the City as soon as reasonably possible. The Yakima County Coroner shall assume custody of the City Inmate's body. Unless another agency becomes responsible for investigation, YCDOC shall investigate and shall provide the City with a report of its investigation. The City may participate in the investigation. If another agency becomes responsible for investigation, YCDOC shall liaison or otherwise facilitate the City's communication with and receipt of reports from the other agency.

The City shall provide the County with written instructions regarding the disposition of the City Inmate's body. The City shall pay for all reasonable expenses for the preparation and shipment of the body. The City may request in writing that the County arrange for burial and all matters related or incidental thereto and the City shall be responsible for all costs associate with this

request. Except, the County shall bear such expenses necessitated by improper conduct of County, or its officers or agents.

**22. Reporting Requirements.** Ordinarily on business days, the County will deliver the following reports to the JAG, which will disseminate them to the City:

Here Now Report - a report detailing City inmates in YCDOC custody.

Housing Report – a report detailing which city inmates are housed at the Yakima County Corrections Center.

Custody Report – a report of total inmate populations confined at all YCDOC facilities. It includes current and historical safety and population data.

Special Housing Report – Identifies city inmates who are in special housing assignments.

**23. City's Right of Inspection.** The City shall have the right, upon reasonable advance notice, to inspect County correction facilities where City Inmates are housed at reasonable times. During such inspections, the City may interview its Inmates and review its Inmates' records. The City shall have no right to interview inmates housed for other jurisdictions or to review their medical records, unless it is properly authorized to do so by the inmate or the other jurisdiction.

**24. Technology.** The County and City may each permit the other continuous access to its computer database regarding all City Inmates housed by the County. This continuous access feature may be accomplished through a computer link between a computer(s) designated by the City and appropriate computer(s) of the County.

By separate mutual agreement, the County and City may provide video conference capabilities for personal visiting, professional visiting, pre-trial conferences, arraignments and other court and conferencing needs.

**Bed Rate.** In consideration of Yakima County's commitment to house City Inmates, the City shall pay the County based on the Monthly Average Daily Population (MADP) sliding scale:

<i>Monthly Average Daily Population (MADP)</i>	<i>Daily Rate Per Inmate</i>
151 - above	\$48.75
126-150	\$49.75
101-125	\$50.75
76-100	\$51.75
51-75	\$52.75
26-50	\$53.75
0-25	\$54.75

The Bed Rate includes all in-facility medical, dental (if available), and mental health services. In the event an inmate requires out of facility medical, dental or mental health services, the City shall be responsible for the cost of the services.

The County shall not charge a booking fee in connection with housing the City's Inmates.

The City may purchase additional beds, as available, at the then- existing bed rate; however, the County shall have the right to refuse to accept custody of or house inmates in excess of the City's minimum bed commitment.

The Daily Fee for inmates housed for more than one jurisdiction shall be divided equally among those jurisdictions.

**25. Billing and Payment.** The County shall provide the City with monthly statements itemizing the name of each City Inmate, the number of days of housing, including the date and time booked into the County and date and time released from the County and itemization of any additional charges including a description of the service provided, date provided and reason for service.

The County shall provide said statement for each month on or about the 10<sup>th</sup> day of the following month. Payment shall be due to the County within (30) days from the billing date. The County may bill the City electronically. Payments not received by the 30<sup>th</sup> day shall bear interest at the rate of 1% per month until payment is received.

The Daily Fee for City Inmates housed for more than one jurisdiction shall be divided equally among those jurisdictions.

**26. Duration of Agreement.** The duration of this Agreement shall be from August, 21st 2014, at 1200 A.M. and shall end at 11:59 P.M., on December 31st, 2015 unless otherwise terminated in accordance with Section 31 of this Agreement. This Agreement may be renewed for any successive period by written addendum under terms and conditions acceptable to the County and City.

**27. Independent Contractor.** In providing services under this Agreement, the County is an independent contractor and neither it nor its officers, nor its agents nor its employees are employees of the City for any purpose, including responsibility for any federal or state tax, industrial insurance, or Social Security liability. Neither shall the provision of services under this Agreement give rise to any claim of career service or civil service rights, which may accrue to an employee of the City under any applicable law, rule or regulation. Nothing in this Agreement is intended to create an interest in or give a benefit to third persons not signing as a party to this Agreement.

**28. Hold Harmless, Defense, and Indemnification.** The County shall hold harmless, defend, and indemnify the City, its elected officials, officers, employees, and agents from and against any and all suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorney's fees) (also including but not limited to claims related to false arrest or detention, alleged mistreatment, injury, or death of any City Inmate, or loss or damage to City Inmate property while in County custody) that result from or arise out of the acts or omissions of County, its elected officials, officers, employees, and agents in connection with or incidental to the performance or non-performance of the County's services, duties, and obligations under this Agreement.

The City shall hold harmless, defend, and indemnify the County, its elected officials, officers, employees, and agents from and against any and all suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorney's fees) (also including but not limited to claims related to false arrest or detention, alleged mistreatment, injury, or death of any City Inmate, or loss or damage to City Inmate property while in County custody) that result from or arise out of the acts or omissions of the City, its elected officials, officers, employees, and agents in connection with or incidental to the performance or non-performance of the City's services, duties, and obligations under this Agreement.

In the event the acts or omissions of the officials, officers, agents, and/or employees of both the City and the County in connection with or incidental to the performance or non-performance of the City's and or County's services, duties, and obligations under this Agreement are the subject of any liability claims by a third party, the City and County shall each be liable for its proportionate share of fault, as determined by a court of competent jurisdiction, in any resulting suits, actions, claims, liability, damages, judgments, costs and expenses and for their own attorney's fees.

Nothing contained in this Section or this Agreement shall be construed to create a right in any third party to indemnification or defense.

The County and City hereby waive, as to each other only, their immunity from suit under industrial insurance, Title 51 RCW. This waiver of immunity was mutually negotiated by the parties hereto.

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

**29. Insurance.** The County and City shall provide each other with evidence of insurance coverage, in the form of a certificate or other competent evidence from an insurance provider, insurance pool, or of self-insurance sufficient to satisfy the obligations set forth in this Agreement.

The County and City shall each maintain throughout the term of this Agreement coverage in minimum liability limits of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate for its liability exposures, including comprehensive general liability, errors and omissions, auto liability and police professional liability. The insurance policy shall provide coverage on an occurrence basis. If any of these policies are on a claims made policy form, coverage must be in place for a least 6 years after agreement has been terminated

**30. Termination.**

A. Mutual Agreement: This Agreement may be terminated by mutual written consent between the County and City with ninety (90) days written notice to the other party and to the State Office of Financial Management as required by RCW 70.48.090 stating the grounds for said termination and specifying plans for accommodating the affected City Inmates.

B. The City shall have the right to terminate this Agreement with or without cause. After Termination under this provision the City shall have no further financial obligations under this Agreement.

C. Material Breach: Either party shall have the right to terminate this Agreement if: 1) the other party is in material breach of any term of this Agreement; 2) the terminating party has sent the breaching party written notice of its intent to terminate this Agreement under this section by certified mail, return receipt requested describing with reasonable specificity the

basis for the termination; and 3) the breaching party has failed to cure the breach within ninety (90) days, unless the parties agree in writing to a longer cure period. Termination shall be effective upon and the City shall have no further financial obligations under this Agreement from the date of removal of its Inmates from the Yakima Facility or County's receipt of final notice that City is terminating the Agreement after the expiration of the cure period, whichever occurs last.

**31. Real or Personal Property.** It is not anticipated that any real or personal property will be acquired or purchased by the parties solely because of this Agreement.

**32. Equal Opportunity.** Neither party shall discriminate against any person on the grounds of race, creed, color, religion, national origin, sex, age, marital status, political affiliation or belief or the presence of any sensory, mental or physical handicap in violation of any applicable federal law, Washington State Law Against Discrimination (RCW chapter 49.60) or the Americans with Disabilities Act (42 USC 12110 et seq.). In the event of the violation of this provision, the other party may terminate this Agreement immediately.

**33. Assignment.** This Agreement, or any interest herein, or claim hereunder, shall not be assigned or transferred in whole or in part by the County to any other person or entity without the prior written consent of the City. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of County stated herein.

**34. Non-Waiver.** The failure of either party to insist upon strict performance of any provision of this Agreement or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any right under this Agreement.

**35. Severability.** If any portion of this Agreement is changed per mutual Agreement or any portion is held invalid, the remainder of the Agreement shall remain in full force and effect.

**36. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Any actions, suit, or judicial or administrative proceeding for the enforcement of this Agreement shall be brought and tried in the Federal or Superior Court for the State of Washington in King County

**37. Approval and Filing.** Each party shall approve this Agreement by resolution, ordinance or otherwise pursuant to the laws of the governing body of each party. The attested signatures of the City, Manager or Mayor and the Yakima County Commissioners below shall constitute a presumption that such approval was properly obtained. A copy of this Agreement shall be filed with the Yakima County Auditor's Office pursuant to RCW 39.34.040.

**38. General Provisions.** Unless otherwise agreed in writing executed by both parties, on and after December 31<sup>st</sup>, 2015, and so long as this Agreement remains in effect, this document constitutes the entire Agreement between the City and the County under which the County houses City Inmates, and no other oral or written agreements between the parties shall affect this Agreement.

No changes or additions to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and executed by both parties.

The County shall not delegate its duties pertaining to housing City Inmates without the written consent of the City, which consent shall not be withheld unreasonably.

Any provision of this Agreement that is declared invalid or illegal shall in no way affect or invalidate any other provision.

In the event the County or City defaults on the performance of any terms of this Agreement and files a lawsuit, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses.

This Agreement may be executed in any number of counterparts.

**39. Notices.** Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties to their addresses as follows:

TO CITY: Jamey Kiblinger, Police Chief  
Black Diamond Police Department  
25510 Lawson Street  
PO Box 309  
Black Diamond, WA 98010

TO COUNTY: Ed Campbell, Director  
Yakima County Department of Corrections  
111 North Front Street  
Yakima, WA 98901

Alternatively, to such other addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand - delivered. Such notices shall be deemed effective when mailed or hand-delivered at the addresses specified above.

	<b>CITY OF BLACK DIAMOND, WASHINGTON</b>
	By: _____ City Mayor
	Date: _____
	Attest: By: _____  Black Diamond City Clerk
	Approved as to form:  By: _____  City Attorney

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**ATTACHMENT A**  
**MEDICAL ACCEPTABILITY**

The County shall determine the medical and mental acceptability of inmates for transport using the following excluding criteria:

1. Blood or fluid present at an open wound site or bleeding from an open wound.
2. Signs of untreated broken bones or dislocated joints.
3. Any injury or illness requiring immediate or emergency medical treatment.
4. Unconsciousness.
5. Inmates unable to stand and walk under their own power.
6. Wheel chair bound individuals.
7. Signs of alcohol toxicity and signs of current or recent use of any intoxicants.
8. Signs of alcohol and/or drug withdrawal.
9. Bed bound individuals.
10. Individuals with attached IV or requiring IV medications.
11. Individuals requiring the use of oxygen tanks.
12. AMA (Against Medical Advice) from the hospital.
13. Individuals having had major invasive surgery within the last 72 hours. Non-invasive surgery such as oral surgery, laser-eye surgery and minor surgery may be evaluated on a case by case basis.
14. Post-operative persons who have follow up appointments within the next four weeks.
15. Wounds with drainage tubes attached.
16. Persons with permanent catheters.
17. Open and/or oozing bedsores.
18. Individuals requiring nebulizers who cannot obtain one.
19. Persons with Alzheimer's, dementia or other psychological conditions to the point where the inmate cannot perform activities of daily living ("ADL's") or who do not have the capacity to function safely within a correctional environment.
20. Persons who are diagnosed as developmentally delayed and who do not have the capacity to function safely within a correctional environment or who cannot perform ADL's.
21. Female inmates more than 5 months pregnant. Or any female inmate considered a high-risk pregnancy.
22. Persons undergoing chemotherapy and/or radiation treatment.
23. Persons undergoing dialysis.

24. Persons with the following untreated medical conditions:
  - a) Heart disease
  - b) Seizures disorders
  - c) Insulin dependent diabetes
  - d) Cancer
  - e) Asthma
  - f) Psychosis
  - g) HIV Positive or AIDS
25. Persons who are HIV positive or have AIDS and are taking anti-viral medications.
26. Persons taking Methadone, or Suboxone, a substitute for Methadone.
27. Persons with suicidal ideations or gestures within the past 72 hours.
28. Person, if prescribed, have not taken psychotropic medications for at least 72 hours.
29. Persons who have attempted suicide within the last 30 days.
30. Persons who have attempted suicide by overdose or ligature strangulation during current incarceration.
31. Persons displaying current psychotic episode.
32. Persons requiring CPAP machines as prescribed must be transported with the machine.

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## **ATTACHMENT B**

### **PROPERTY**

County transport personnel will only accept Inmate property as follows:

1. The property shall be sealed in a single property bag no larger than a common paper grocery bag.
2. Money, valuables, and medications shall be placed in a clear envelope and sealed within the Inmate's property bag.
3. Checks and documents (court, warrants, etc) shall be attached to the outside of the property bag.
4. The transporting officer shall account for the property bag and funds being transported. Yakima County Department of Corrections transport personnel will not accept or transport the following:
  - a) Backpacks, suitcases, etc.
  - b) Unpackaged food products or food products in packaging that has been opened.
  - c) Any type of weapon (includes pocketknives).
  - d) Liquids.
  - e) Any items that will not fit into the property bag.
  - f) Material deemed to be contraband.

Yakima County will limit property returned with the Inmate to the City according to these criteria.

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**ATTACHMENT C**  
**CLASSIFICATION**

The City shall supply the County with the following Classification related information, if it known to or in possession of the City:

1. If the City Inmate has been classified to a special housing unit and/or if the City Inmate has been classified as protective custody.
2. If the City Inmate is a violent offender or has displayed violent behavior during present or past incarcerations.
3. If the City Inmate is an escape risk.

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**ATTACHMENT D**  
**BORROWING**

One contracting city may "borrow" another contracting city's inmate as follows:

1. If a City requests the transport of another contracting City's Inmate from the County the requesting City must notify each agency with rights to custody of the Inmate, and if each agency with rights to custody of the Inmate notifies the County in writing (e-mail) of its approval, the County shall provide the requested transport. The County will complete a custody transfer form that lists all outstanding detainers. The custody transfer paperwork will accompany the inmate.
2. Once custody of the City Inmate has been transferred to another agency, it is the responsibility of the requesting City to determine whether the City Inmate shall be returned to the custody of the County, and if so, the requesting City shall make all necessary and proper arrangements with the County and any agency with rights to custody of the Inmate, for the Inmate's return according to the terms of this agreement.
3. The County will not track the City Inmate once he or she has left the County's facility.
4. If the Inmate is returned to the custody of the County, the requesting City shall provide the County with sentencing/charge information. The City shall supply all pre-sentence, and post-sentence paperwork from agreeing agencies that authorized the borrowing of the Inmate. This will aid Yakima County in determining split billing and release dates.
5. If the agency requesting to borrow a City Inmate is not in the "Contracting Agency," the requesting agency will be responsible to make all transport arrangements including all legal paperwork for the transport with the City of jurisdiction.
6. The County will transport the City Inmate only to a King County city that also contracts with the County for Inmate housing.
7. Inmates transported by the City, cannot be borrowed out of YCDOC.

## **ATTACHMENT E**

**This attachment only applies to Inmates transported by the YCDOC.**

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### **WARRANTS/OTHER COURT ORDERS/DETAINERS**

1. The following shall apply to City Inmates who are subject to warrants from other jurisdictions or to other court orders for confinement or detainers. When receiving a City Inmate, the Transport Officers shall review all paperwork provided by the City for all grounds to hold the Inmate and ensure that this information is entered into the County's JMS and is routed to the Out of County Transport Section Office Specialist.
2. Prior to releasing a City Inmate, the County shall check the NCIC and WACIC systems to determine if the Inmate is subject to any valid warrants or other detainers.
  - a) If the Inmate is subject to a warrant that is limited to King County, YCDOC will, upon receiving written permission (e mail) from the City, transport the Inmate to the custodial agency for the jurisdiction that issued the warrant. However, Yakima County will not assume responsibility to serve any such warrants.
  - b) If the City Inmate is subject to a warrant from a western Washington jurisdiction outside King County, YCDOC will release the Inmate at the location determined by written (e mail) agreement of the YCDOC and the City under Section 5 of this Agreement.
  - c) If the City Inmate is subject to a warrant from an eastern Washington jurisdiction, YCDOC will send the Inmate to the custodial agency for that jurisdiction on the Mini-Chain.
  - d) If, upon return from YCDOC to the City, the Inmate is subject to a warrant that provides for statewide extradition, YCDOC will either transport the Inmate to the detention/correction facility in King County designated by the agency/jurisdiction that issued the warrant if it is in King County, or will send the Inmate to the agency/jurisdiction that issued the warrant on the Mini-Chain.
3. City Inmates who have or are subject to Immigration and Custom Enforcement (ICE) detainers shall be returned to the City, unless the County and City agree in writing (email) to some other course of action.

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## **ATTACHMENT F**

### **INMATE RELEASE**

County transport personnel will release City Inmates as follows:

1. Inside a staffed correction or detention facility (jail).
2. Inside a staffed police agency (sally port or other secured area).
3. Outside of a Law Enforcement Agency when agency personnel, telephone access, and weather protection (lobby areas) are available to the released Inmate.
4. The County does not transport on Mondays.
5. City Inmates for whom bail is posted, or who otherwise have a right to be released may, by signed written waiver, choose to remain in custody and return to City by the regularly scheduled transport, or to be released to a family member or friend, or to the streets of Yakima.
6. Inmates transported by City must be picked up at least 12-(twelve) hours prior to the inmate's scheduled release date and time. If the inmate is not picked up before the scheduled release time, the Inmate will be automatically scheduled to be transported, at the City's cost to include the addition of transport fees for all days served, on the next available transport to the City.