



CITY OF BLACK DIAMOND
August 6, 2015 Regular Business Meeting Agenda
25510 Lawson St., Black Diamond, Washington

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

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

CONSENT AGENDA:

- 1) **Claim Checks** – July 16, 2015, No. 42519 through No. 42587 and EFTs in the amount of \$118,541.59
- 2) **Minutes** – Council Meeting of July 16, 2015

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:

- 3) **AB15-049** – Proposed Ordinance Regarding Assuming the Exclusive Right to Provide Water Service to Approximately 98 Acres in the Western Portion of the City Mr. Boettcher
- 4) **AB15-050** – Proposed Ordinance Regarding the Formation of a Transportation Benefit District Coincident with the City Limits of Black Diamond Mr. Boettcher

UNFINISHED BUSINESS:

NEW BUSINESS:

- 5) **AB15-051** – Resolution Confirming the Mayor's Appointment of Kevin Esping as Director of Emergency Services Mayor Benson
- 6) **AB15-052** – Resolution Adding Two Copiers to the Lease Agreements with the Witt Company Ms. Miller

DEPARTMENT REPORTS:

MAYOR'S REPORT:

COUNCIL REPORTS:

A. Council Standing Committees and Regional Committees

- Councilmember Deady – Chair – Public Safety Committee; Budget, Finance and Administration Committee; Domestic Violence Committee
- Councilmember Morgan – Planning and Community Service Committee; Cemetery and Parks Committee; Water Resource Inventory Area Committee (WRIA 9)

- Councilmember Edelman – Chair - Budget, Finance, Administration Committee; Chair - Planning and Community Service Committee; Public Issues Committee (PIC)
- Councilmember Goodwin – Cemetery and Parks Committee; Public Works Committee
- Councilmember Taylor, Chair - Public Works Committee; Public Safety Committee

ATTORNEY REPORT:

PUBLIC COMMENTS:

EXECUTIVE SESSION:

ADJOURNMENT:

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: AB15-049 Public Hearing - Ordinance that will assume the exclusive right to provide water service to approx. 98 acres in the western portion of the City.	Agenda Date: August 6, 2015	
	AB15-049	
	Mayor Carol Benson	
	City Administrator	
	City Attorney Carol Morris	X
	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	
Cost Impact : \$ None Fund Source: Future water department revenue Timeline: Before development starts		
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input checked="" type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Proposed Ordinance and attachments.		
SUMMARY STATEMENT: The purpose and background statements of the Ordinance itself provide the best summary of the reasons the City is taking this action.		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: Public Hearing only.		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
August 6, 2015		

ORDINANCE NO. 15-____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, TO ASSUME THE EXCLUSIVE RIGHT TO PROVIDE WATER SERVICE TO APPROXIMATELY 98 ACRES LOCATED ON THE CITY'S WEST SIDE PURSUANT TO CH. 35.13A RCW AND TO CONFORM THE 1989 COORDINATED WATER SYSTEM PLAN SERVICE AREA MAP TO THE CITY'S 2009 STATE DEPARTMENT OF HEALTH APPROVED WATER SERVICE AREA AND CITY ANNEXATION.

WHEREAS, under the Growth Management Act, Ch. 36.70A RCW ("GMA"), cities are the preferred providers of urban services; and,

WHEREAS, the State Department of Health approved the City's Water System Plan and retail service area in 2009; and,

WHEREAS, the City of Black Diamond plans to provide water service throughout its entire water service area, which is located within its corporate boundaries; and,

WHEREAS, GMA charges the City with coordinating its land use plans, including its zoning and Comprehensive Plan, with its Water System Plan; and,

WHEREAS, in 1989 King County adopted a Coordinated Water System Plan ("CWSP") which includes a map showing certain property within the City being located within the Covington Water District's future service area, and,

WHEREAS, some of this property is within the City's State Department of Health approved retail service area; and,

WHEREAS, it is inconsistent with GMA and inefficient for multiple service providers to attempt to serve the same properties as duplicative infrastructure is constructed, and property owners and rate payers must then bear the burden of those additional costs; and,

WHEREAS, the 1989 CWSP map should be conformed to the City's State Department of Health approved retail service area and the 2005 annexation; and,

WHEREAS, the City finds it is in the public interest, consistent with GMA's purpose to ensure the efficient provision of urban services and infrastructure to urban development, for it to be sole water service provider within its existing water service area, given the inefficiencies associated with multiple providers attempting to provide water service to the same properties.

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

Section 1. The City Council makes the following findings to support the actions described herein:

A. BACKGROUND

1. The property ("Property") that is the subject of this assumption, pursuant to Ch. 35.13A RCW, is the approximately 98 acres shown in the map of the Property and as legally described in Attachment A, which is incorporated by this reference.

2. The Property is part of a master planned development covering 1,196 acres. The City plans to provide water service to the entire development, which surrounds the Property on three sides. The City is presently providing water for construction purposes within the master planned development. The entire master planned development is within the City's water service area approved by the State Department of Health in 2009.

3. The Property was annexed to the City in 2005. As part of the annexation, the City was identified as the water provider to the Property.

4. As a result of these and other decisions, the City has secured the exclusive right to supply water to the Property. Specifically, these actions include: (a) King County's inclusion of the Property in the City's designated urban growth area ("UGA"); (b) King County actions under the GMA and agreements entered into with the City and Property owner to implement the UGA designation; (c) the City's annexation of the Property; and (d) the 2009 Washington State Health Department approval of the City's Water System Plan and retail service area including the Property.

5. Covington Water District wishes to provide water service to the Property. In a decision issued on May 1, 2015, in an appeal brought by the Covington Water District, the King County UTRC (Utilities Technical Review Committee) found that the City has statutory authority to assume the Property and that "an assumption should be pursued" by the City under Ch. 35.13A RCW. Covington Water District did not appeal the UTRC's finding or conclusion as to assumption. The UTRC also found that the Property was within the City's approved water service area and City service is "timely and reasonable." The District did not appeal these holdings.

6. The UTRC also determined that the 1989 CWSP service area map needed to be amended to identify the City as the sole service provider to the Property and that assumption would accomplish that.

7. The City has appealed the UTRC decision as assumption is not necessary given past planning decisions and the lack of Covington Water District facilities on the Property, and given the Property is outside the District's corporate boundaries. However, completing assumption may reduce litigation and lead to a more efficient resolution of the matter.

8. The City published notice of a public hearing regarding this assumption ordinance on July 21st and 28th, 2015 in the Voice of the Valley Newspaper. The public hearing was held before the City Council on August 6th, 2015. During the hearing, the City heard public testimony and has also reviewed written comments.

B. DISTRICT RESPONSIBILITIES, PROPERTY, FACILITIES, AND/OR EQUIPMENT

9. The City is authorized to "assume by ordinance, jurisdiction of the District's responsibilities, property, facilities and equipment within the corporate limits of the City." RCW 35.13A.050. The Property is located within Black Diamond corporate limits.

10. The Property is not within the corporate boundaries of the Covington Water District,¹ and the District has no authority to impose and has not imposed any taxes or assessments on the Property.

11. The Covington Water District does not own, control, or operate any property, facilities, or equipment in the Property. Specifically, the District does not have any water supply pipelines or transmission mains or other water pumping or conveyance facilities in the Property. The District does not own any real property within the Property. The District does not have any customers in the Property. In sum, the District does not own or hold any property, facilities, equipment or any other assets in the Property. As a result, there are no District contractual obligations secured by the Property for which the City or owners/occupants bear any liability under RCW 35.13A.050.

12. Accordingly, the City's assumption of the District's remaining "responsibilities" in the Property, if any, is repetitive and redundant of the City annexation of the Property in 2005.

13. Following City assumption, RCW 35.13A.050 provides for the District to make certain "serving facilities" available to the City. "Serving facilities" means i) any facilities serving or designed to serve any portion of the District outside the corporate limits of the City, and ii) any facilities serving or designed to serve territory included within the City.

a. Assuming without conceding that the District's three water pipe lines that are located immediately west of the Property are "serving facilities" under RCW 35.13A.050, the City has the right to make use of available capacity in the District's three water pipelines.

b. RCW 35.13A.050 requires the District, for the economically useful life of any "serving facilities," to "make available sufficient capacity" in the serving facilities to meet the water requirements of the Property at a reasonable rate to all parties.

¹ CWD 2007 Water System Plan, Ex. 1-1. Absent limited exceptions, including agreement with another water district serving the area, "[t]he District will not extend water service to any area that has not been formally annexed to the District's corporate boundaries." CWD Admin. Reg. 1.08.020.

c. The City finds that the District's three water pipelines are not useful to meeting water requirements in the Property because they cannot deliver water at adequate pressure. CH2MHill, *Review of Technical Data Related to Water Service Area Dispute in The Villages MPD, Black Diamond* (January 19, 2015), pgs. 5-6; Hearing Examiner's Preliminary Pat Conditions of Approval re: The Villages (December 10, 2012). These water pipelines are not affected by the City's assumption under this Ordinance.

d. Accordingly, the City is not requesting any capacity in the three water pipelines and the District should continue to use all of the available capacity in the "serving facilities" to serve customers in the District's corporate boundaries.

C. CITY SERVICE AND GMA CONSISTENCY

14. Under GMA, cities are the primary providers of urban services, which include urban water utility service.² The King County Countywide Planning Policies are consistent. "The Urban Growth Area is completely located within cities, which are the primary providers of urban services."³

15. The Property was originally located outside the City's Urban Growth Area or UGA, so was not slated for urban development. However, in 1996, King County, the City, and the Property owners executed the Black Diamond Urban Growth Area Agreement, or BDUGGAA, which charges the City with annexation and water utility planning for the Property.⁴

16. Several years later, in 2003, the City and Property owners executed the Water Supply Facilities and Funding Agreement. In return for infrastructure improvements, City water service to the entire 1,196 acre master planned area was provided for.⁵

17. Two years later, in 2005, the City annexed the Property. Notice was provided to the King County Boundary Review Board ("BRB") of the annexation.⁶ In the annexation petition filed with the BRB, the City was identified as the service provider. Covington Water District did not contest or otherwise appeal annexation.

18. The annexed area was then subjected to extensive public review. Following City moratoria, in 2008, the City commenced work on updating comprehensive planning documents, engineering, municipal codes, and construction standards for the master planned

² RCW 36.70A.110(4); *see also* RCW 57.04.020 (City consent required for utility district to provide service within the city).

³ Countywide Planning Policies, pg. 7. *See also* pg. 46, Policy PF-7 ("Plan and locate water systems in the Rural Area that are appropriate for rural uses and densities and do not increase the development potential of the Rural Area."); County Comprehensive Plan, pg. 8-5, Policy F-209 ("In the Rural Area, services provided by agencies should support a rural level of development and not facilitate urbanization").

⁴ Black Diamond Urban Growth Area Agreement, App. A, ¶¶ 6.5 and 8.1, *see also* Maps 1 and 7. The Agreement is also at Appendix B to the City's Water System Plan.

⁵ City Water System Plan, App. N, *see e.g.*, Section Four - Agreement Purpose (agreement intended to provide infrastructure funding and guarantee water supply).

⁶ Black Diamond Urban Growth Area Agreement, App. A, ¶¶ 6.5 and 8.1, *see also* Maps 1 and 7. The Agreement is also at Appendix B to the City's Water System Plan.

development, with multiple hearings held from 2008-2010. This process resulted in a series of utility and land use decisions.

19. The State Department of Health approved the City Water System Plan in 2009 following Covington Water District review and approval by King County. The Water System Plan includes the Property within the City's Service Area and provides detail on City service.⁷

20. The City's Water System Plan was subject to extensive public review. Both Covington Water District and King County, including the King County Utilities Technical Review Committee, reviewed and commented on the City's Water System Plan.

21. Following this review, the King County Council adopted Ordinance 16774, approving the City's Water System Plan and finding the City's Water System Plan is:

consistent with other pertinent county adopted plans and policies, with the exception of the existing South King County Coordinated Water System Plan, which will need to be modified as provided for by law.⁸

22. The South King County Coordinated Water System Plan, or SKCCWSP, was adopted in 1989, and has never been formally updated. King County's more recent legislative actions supersede the CWSP's 1989 map of future service areas.

23. The City's approved water service area includes the Property, which consists of approximately 98 vacant, partially graded, but unimproved acres located on the City's western side. See Attachment A. The Property is part of a larger 1,196 acre development,⁹ which the City will be serving consistent with its Water System Plan and GMA planning documents.

24. Also in 2009, the City updated its Comprehensive Plan. The City's Plan makes note of the annexation and, consistent with past planning, provides for City water service to the Property.¹⁰

25. The County Comprehensive Plan is consistent with City water service,¹¹ as are

⁷ RCW 36.70A.103 ("State agencies shall comply with the local comprehensive plans and development regulations and amendments thereto adopted pursuant to" GMA.).

⁸ King County Ordinance 16774, Finding e.

⁹ CH2MHill Technical Memo, section two, Fig. 3 and Fig. 5; *see also* City Water System Plan, Fig. 2.7, pg. 2-21 (City's water service area).

¹⁰ City's 2009 Comprehensive Plan, *see e.g.*, pgs. 8-35-36 (Fig. 9.1a and 9.1b provide detail on City water service), *see generally*, 8-28-8-32. Long-standing plans for Property development are described at pgs. 1-9, 2-1-2-2, with the master plan development requirements described at pg. 1-11, and the UGA shown at Fig. 2-1, and the 2005 annexation noted on pg. 2-11.

¹¹ County Comprehensive Plan, *see* maps of City/UGA at end of Chapters 1 and 2, note policy commitment to implementation of Black Diamond Urban Growth Area Agreement, pg. 10-37, Policy C-1104. See also, pg. 2-18, UGA Policy U-9 ("Sewer and water facilities extended to the UGA will not serve adjacent rural or resource lands."), and pg. 2-6 ("Efficient use of resources will result from the appropriate location of development so that public water, sewer, storm drainage, police and fire protection service costs are minimized.").

the Countywide Planning Policies, which identify the City UGA and boundaries.¹²

26. A series of development approvals followed. The City approved Yarrow Bay's Master Planned Development in 2010, the Yarrow Bay Development Agreement in 2011, and then a preliminary plat for the first phase of development.

D. SEPA REVIEW

27. This assumption action is the same proposal as the City's adoption of its 2009 Water System Plan, which included the Property within the City's water service area. SEPA was completed on that proposal. A SEPA Checklist was prepared and the City issued a DNS (determination of non-significance). Those documents are attached to the City's Water System Plan and were circulated as part of the Plan update. No appeals were filed. SEPA review has been completed on this proposal.

28. In any event, this action to amend the CWSP map is exempt from SEPA as it is procedural in nature. The Property is already within the City's Water Service Area, which the State Department of Health has approved, and within the City's corporate boundaries. The action contains no substantive standards and does not modify the environment. Such a matter is an exempt procedural action, as defined by SEPA.

The proposal, amendment or adoption of legislation, rules, regulations, resolutions or ordinances, or of any plan or program shall be exempt if they are: (a) Relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment. (b) Text amendments resulting in no substantive changes respecting use or modification of the environment.¹³

29. Even if the action being taken was an actual annexation of property or altered the City's municipal boundaries, those types of actions are also exempt. "All agency organization, reorganization, internal operational planning or coordination of plans or functions"¹⁴ are exempt. More broadly, annexations are exempt from SEPA review¹⁵ as are city consolidations and incorporations.¹⁶

30. Development planned on the Property, including City water utility service to the Property, has undergone extensive SEPA review, including preparation of an environmental impact statement, or EIS. The Villages Master Planned Development EIS, City of Black Diamond (December 2009). The Court of Appeals decision upheld the City's EIS, and no further litigation over that document is pending. *Toward Responsible Development v. City of Black Diamond*, ___ Wn. App. ___ (Div. I, January 27, 2014), unpublished. A water line serving the entire master planned development has also undergone SEPA review. The MDNS

¹² CWPP, pg. 50, *see also* PF-7 ("Plan and locate water systems in the Rural Area that are appropriate for rural uses and densities and do not increase the development potential of the Rural Area.")

¹³ WAC 197-11-800(19)(a) and (b).

¹⁴ WAC 197-11-800(14)(h).

¹⁵ RCW 43.21C.222.

¹⁶ RCW 43.21C.225; *see also* RCW 43.21C.227; WAC 197-11-800(5)(a) and (b) (acquisition of real property rights exempt, as are inter-governmental transfers of real property).

was issued on March 31, 2015 and not appealed (File No. PLN 14-0037). The City's 2009 Comprehensive Plan which addresses City water service also underwent SEPA review and that review was not appealed.

E. ENGINEERING AND COST CONSIDERATIONS

31. The City's Water System Plan, dated 2009, as approved by the State Department of Health, as well as the EIS prepared for the master planned development, addresses water service and outlines in detail the approach to providing water service to the Property. In addition, the City retained independent consultants to further evaluate water service. CH2MHill prepared an engineering analysis which provides further detail on water service. *Review of Technical Data Related to Water Service Area Dispute in The Villages MPD, Black Diamond* (January 19, 2015).

32. The CH2MHill engineering analysis compared the City's approach to service to that proposed by Covington Water District. As the City will be serving the surrounding urban development, City service is logical and more efficient than the District's approach which would extend water pipes from rural areas to provide urban utility service. The District has no infrastructure on the Property. Three pipes within the unincorporated County terminate adjacent to the Property but the pipes are not needed for service and present engineering concerns. In general, the engineering analysis concluded that the District's service approach would require the construction of 4,250 additional feet of 12" pipeline and \$5.2 million of additional costs.¹⁷ There are no hook-up fees associated with City service.

33. There are additional issues with Covington Water District service, as the District cannot meet fire flow requirements.¹⁸ This is not an issue with City service.

34. Costs to the City associated with assumption are minimal. The developer of the Property (Yarrow Bay Holdings) will be installing the extension to the area and the distribution and service lines, and will cover City costs to inspect and install meters and set up customer accounts. After construction of the facilities, they will be turned over to the City for ownership and maintenance.

35. The City's actual service costs will start upon service to the new customers. Initial operational costs will involve slight increases, such as more chlorine, pumping additional water, using more sodium hydroxide, sending out additional bills, and additional water quality testing. Eventually, as the system grows, the City anticipates hiring additional staff. However, these operational cost increases are minimal in comparison to the increased revenue from the additional City customers on the basic existing system. The 98 acres is a small portion of the _____ acres the City either is presently serving or plans to serve throughout its entire service area, which includes the 1,196 acre master planned development.

¹⁷ CH2MHill Technical Memo (January 19, 2015), pg. 14, bullets two and three and Fig. 7, sections six and eight of the Memo provide additional detail.

¹⁸ *Id.*, see pgs. 4, 6, 13-14 (Table 8).

Section 2. Assumption of Exclusive Right to Provide Water Service to Conform 1989 CWSP Service Area Map with 2009 State Department of Health's Approval of City's Water System Plan Service Area and the 2005 Annexation.

a. The City hereby assumes the sole right to provide water service to the Property pursuant to RCW 35.13A.050.

b. This assumption is taken to address a recommendation of the King County Utilities Technical Review Committee to undergo assumption to achieve map conformance. With this action, the City does not concede assumption is in fact necessary.

c. Even though the City finds that the District has no assets whatsoever in or on the Property, for avoidance of doubt, the City hereby assumes any and all "responsibilities, property, facilities, and/or equipment" on the Property pursuant to RCW 35.13A.050.

Section 3. No Assumption of Assets or Indebtedness. With this action, the City is not taking ownership of any Covington Water District assets or assuming any indebtedness with respect to the Property. There are no Covington Water District assets, facilities, or indebtedness on the Property, which is vacant, lacks any District infrastructure, and is located outside the District's corporate boundaries.

Section 4. Transmittal. The City Mayor or her designee shall transmit this ordinance to the King County Utilities Technical Review Committee to take the ministerial action of conforming the 1989 Coordinated Water System Plan mapping with this action.

Section 5. No Waiver. The City expressly disclaims any waiver of its rights and authority separate and independent of RCW 35.13A.050, to provide retail water service in the Property and to continue to implement plans and authority to be the exclusive water purveyor to the Property.

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 ____ day of ____, 2015.

CITY OF BLACK DIAMOND

Mayor Carol Benson

ATTEST/AUTHENTICATED:

Brenda L. Martinez, City Clerk

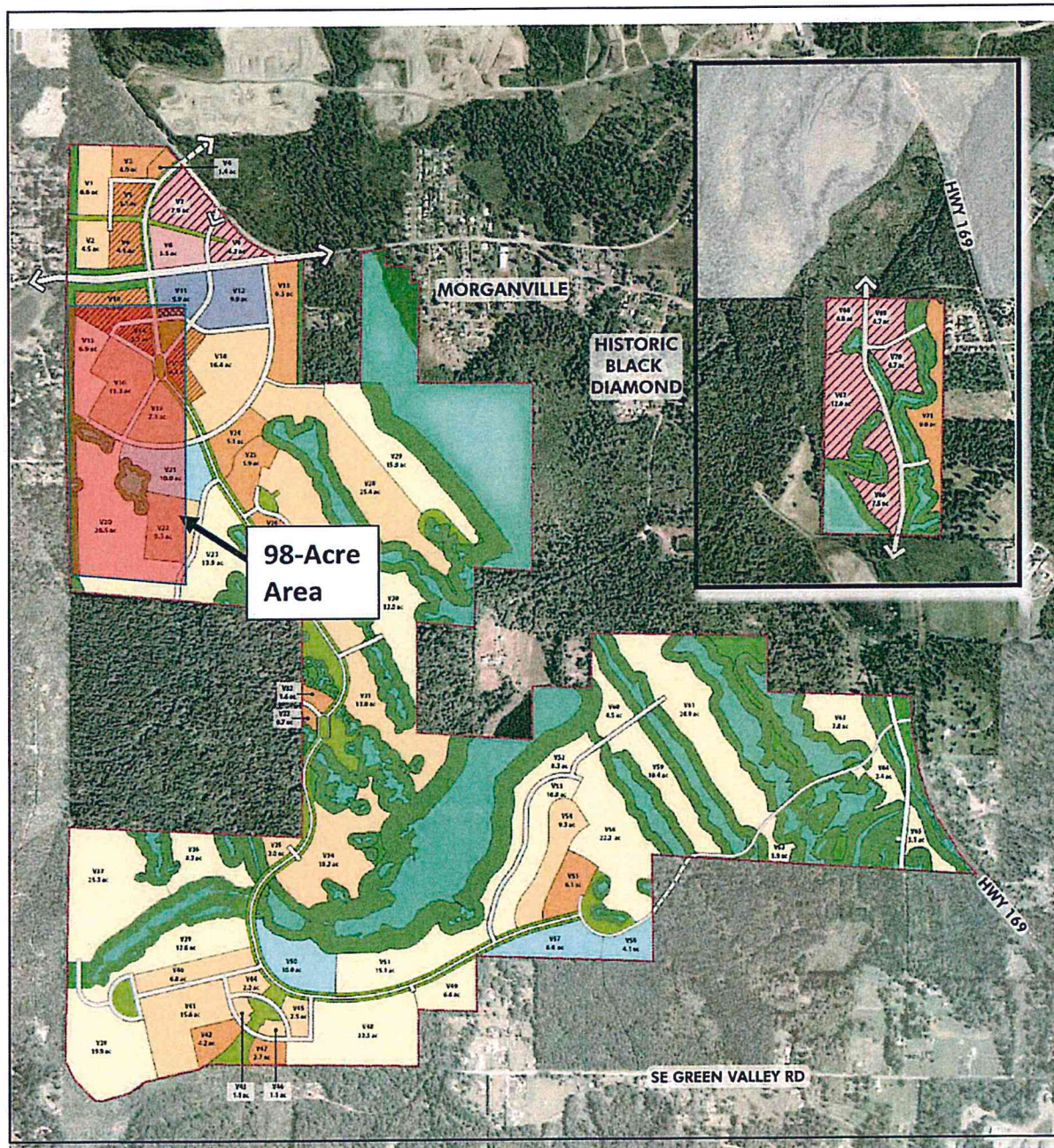
APPROVED AS TO FORM:
Office of the City Attorney

Carol A. Morris, City Attorney

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

ATTACHMENT A

MAP OF PROPERTY AND LEGAL DESCRIPTION



Legal Description of Property

LEGAL DESCRIPTION OF TERRITORY THAT IS THE SUBJECT OF THE SERVICE AREA APPEAL BETWEEN CITY OF BLACK DIAMOND AND COVINGTON WATER DISTRICT

JANUARY 14, 2015

TRIAD JOB NO. 05-336

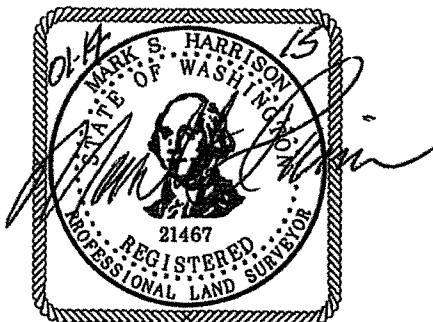
THE WEST HALF OF THE SOUTHWEST QUARTER, TOGETHER WITH THE SOUTH HALF OF THE SOUTH HALF OF THE WEST HALF OF THE NORTHWEST QUARTER, ALL IN SECTION 15, TOWNSHIP 21 NORTH, RANGE 6 EAST, W.M., IN BLACK DIAMOND, WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 15;
THENCE NORTH $01^{\circ}32'55''$ WEST ALONG THE WEST LINE OF SAID WEST HALF OF THE SOUTHWEST QUARTER, 2365.58 FEET TO THE WEST QUARTER CORNER OF SAID SECTION;
THENCE NORTH $01^{\circ}24'33''$ EAST ALONG THE WEST LINE OF SAID SOUTH HALF OF THE SOUTH HALF OF THE WEST HALF OF THE NORTHWEST QUARTER, 664.68 FEET TO THE NORTHWEST CORNER THEREOF;
THENCE SOUTH $89^{\circ}05'03''$ EAST ALONG THE NORTH LINE OF SAID SOUTH HALF OF THE SOUTH HALF OF THE WEST HALF OF THE NORTHWEST QUARTER, 1342.96 FEET TO THE NORTHEAST CORNER THEREOF;
THENCE SOUTH $00^{\circ}56'17''$ WEST ALONG THE EAST LINE OF SAID SOUTH HALF OF THE SOUTH HALF OF THE WEST HALF OF THE NORTHWEST QUARTER, 658.07 FEET TO THE SOUTHEAST CORNER THEREOF;
THENCE SOUTH $00^{\circ}30'04''$ EAST ALONG THE EAST LINE OF SAID WEST HALF OF THE SOUTHWEST QUARTER, 2474.75 FEET TO THE SOUTHEAST CORNER THEREOF;
THENCE NORTH $84^{\circ}32'13''$ WEST ALONG THE SOUTH LINE OF SAID WEST HALF OF THE SOUTHWEST QUARTER, 1312.03 FEET TO SAID SOUTHWEST CORNER OF SAID SECTION AND THE POINT OF BEGINNING.

THIS LEGAL DESCRIPTION IS AN INTERPRETATION OF THE GRAPHIC DEPICTION OF THE TERRITORY THAT IS THE SUBJECT OF THE SERVICE AREA APPEAL BETWEEN CITY OF BLACK DIAMOND AND COVINGTON WATER DISTRICT AS SHOWN ON EXHIBIT III-1 OF THE 1989 SOUTH KING COUNTY COORDINATED WATER SYSTEM PLAN.

WRITTEN BY: MSH

CHECKED BY: LMM



Page 1 of 1

triad

20300 Woodinville Snohomish Rd NE
Suite A | Woodinville, WA 98072
p: 425.415.2000
f: 425.486.5059
triadassociates.net

S:\PROJECTS\05336\CORRSPNC\SEC 15 and Preliminary Plat\Preliminary Plat\Coordinated Water Service Boundary Legal Description and Exhibit\15-0114 05-336 Coordinated Water Service Boundary Legal Description.docx

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: AB15- 050 Public Hearing – Proposed Ordinance forming a Transportation Benefit District coincident with the City limits of Black Diamond	Agenda Date: August 6, 2015	
	AB15-050	
	Mayor Carol Benson	
	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	X
Fund Source: --	Court – Stephanie Metcalf	
Timeline: August / September		
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input checked="" type="checkbox"/> Two Councilmembers <input checked="" type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Proposed Ordinance and supporting material		
<p>SUMMARY STATEMENT: While gas tax and Yarrow Bay funding revenues have decreased in recent years, expenses have increased. The City has considered alternate revenue sources to address the continuing annual deficit in adequate funding for the Street department.</p> <p>The City has been able to utilize City staff to plan, find grant funds, design, manage and oversee many capital projects over the last 6 years improving many city streets and sidewalks. However the success in finding grants and using capital funding efficiently has only slightly, and indirectly assisted the funding for street maintenance and operations by keeping the patching budget under control.</p> <p>The formation of Transportation Benefit District provides the City with wide equitable options for funding assistance for the street maintenance and operation activities. For an example of potential activities that could be funded see the attached proposed budget for the TBD. The Transportation Benefit District will need to make funding and budget decisions once formed.</p> <p>FISCAL NOTE (Finance Department):</p>		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: Public Hearing only.		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
August 6, 2015		

BLACK DIAMOND, WASHINGTON
TRANSPORTATION BENEFIT DISTRICT
ORDINANCE NO. _____

AN ORDINANCE OF THE BLACK DIAMOND, WASHINGTON, TRANSPORTATION BENEFIT DISTRICT, ADOPTING THE ANNUAL BUDGET OF THE TRANSPORTATION BENEFIT DISTRICT FOR THE YEAR 2016 AND AUTHORIZING FUNDING FOR TRANSPORTATION OPERATION AND MAINTENANCE OF THE CITY STREET SYSTEM.

WHEREAS, the Black Diamond City Council created the Black Diamond Transportation Benefit District in Ordinance No. _____; and

WHEREAS, chapter 36.73 RCW requires that the Transportation Benefit District adopt an annual budget; and

WHEREAS, the Black Diamond Transportation Benefit District deliberated on the proposed budget for the fiscal year 2015 and 2016; and

WHEREAS, the SEPA Responsible Official has determined that this Ordinance is categorically exempt under SEPA, WAC 197-11-800(19) as an action relating solely to governmental procedures and containing no substantive standards respecting use or modification of the environment; and

WHEREAS, A public hearing was held on August 6, 2015 considering the formation of the Black Diamond Transportation Benefit District, vehicle license fees and the proposed budget;

Now, Therefore,

IT IS HEREBY ORDAINED BY THE BLACK DIAMOND TRANSPORTATION BENEFIT DISTRICT AS FOLLOWS:

Section 1. Budget Adopted. The 2016 Budget for the Black Diamond Transportation Benefit District for the period January 1 2016 through December 31, 2016, totaling \$67,000, is hereby adopted.

Section 2. Summary of Revenue and Expenditures. The budget sets forth totals of estimated revenues and estimated expenditures of the Transportation Benefit District, and the aggregate totals for the District's general fund, as summarized below:

2015 Estimated Revenues:

Use of Fund Balance.	\$0
TBD Vehicle Fees	\$67,000
Investment Interest	\$300

Total 2015 TBD Estimated Revenues: \$67,300

2015 Estimated Expenditures :

Insurance (AWC RMSA)	\$0
City of Black Diamond 2016 Annual Road Maintenance Program *,	\$58,000
Administrative and Legal	\$9000

**Total 2015 TBD Appropriations,
General Fund Budget: \$67,000**

* See attached TBD Funded Street Maintenance Activities

Section 3. Expenditures Authorized. The Treasurer is authorized to reimburse the City of Black Diamond for payments made to contractors or for force account expenditures on the transportation improvements included in Section 2 from available revenues of the District, not to exceed the total District General Fund Budget.

Section 4. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful 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 5. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 6. Effective Date. This Ordinance shall take effect and be in full force and effect five days after publication, as provided by law.

PASSED by the Black Diamond Transportation Benefit District this 20th day of August, 2015.

Chairperson, Carol Benson

AUTHENTICATED:

City Clerk

APPROVED AS TO FORM:

Carol A. Morris, City Attorney

PUBLISHED:
EFFECTIVE DATE:

Black Diamond Transportation Benefit District Proposed 2016 Street Maintenance Activities			
Activity		Planned Expenditures	
Striping & pavement Markings		\$6,000	
Roadside mowing		\$17,000	
Patching & Crack Sealing		\$2,000	
Traffic Signal Maint & Op.		\$2,000	
Sidewalk Maintenance		\$2,000	
Snow / Ice Control		\$2,000	
Street Lighting		\$25,000	
Dangerous Tree removal		\$2,000	
TBD Admin & set up		\$9,000	
TOTAL		\$67,000	

1. Authority of the district: (a) impose a sales and use tax under RCW 82.14.0455 (requires vote of voters in TBD area); (b) impose a fee on the construction or reconstruction of commercial and industrial buildings under RCW 36.73.120; (c) a vehicle fee in accordance with RCW 82.80.140; (d) vehicle tolls on state routes, city streets or county roads within the boundaries of the district.

2. Vehicle fee under RCW 82.80.140. The TBD can fix and impose an annual vehicle fee not to exceed \$100 per vehicle registered in the district for each vehicle subject to vehicle license fees. If more than \$20.00 is imposed, the process in RCW 36.73.065 is followed -- which requires an approval of the majority of voters in the TBD.

The TBD can impose by majority vote of the governing board of the TBD up to \$20.00 of the vehicle fee authorized under RCW 82.80.140.

If the TBD is county-wide, the revenues of the fee shall be distributed to each city within the county by interlocal agreement.

The Department of Licensing shall administer and collect the fee. A percentage will be deducted for administration and collection expenses incurred by the Department, not to exceed one percent of the fees collected.

3. The TBD can be established by the city or a county under RCW 36.73.020. The district may include area within more than one county, city, port district, etc., if the legislative authority of each participating jurisdiction has agreed to the inclusion in an interlocal agreement. RCW 36.73.020(2).

If there is a TBD with a county and city, then the governing board of the TBD shall be established by interlocal agreement. Otherwise, the governing board of a city is the city council. RCW 36.73.020(3).

4. The first step is to hold a public hearing for the adoption of an ordinance establishing the district. RCW 36.73.050.

5. The notice of the public hearing is supposed to specify the functions or activities to be provided or funded by the TBD. RCW 36.73.050(1).

6. The ordinance establishing the TBD must specify the functions and transportation improvements to be exercised or funded and establish the boundaries of the TBD. RCW 36.73.050.

No fee can be collected until six months after approval under RCW 36.73.065.

Certain vehicles are exempt from the fee, such as campers, farm tractors, mopeds, etc. (See, RCW 82.40.140(6).)

DRAFT – June 8, 2015

**BYLAWS OF THE
BLACK DIAMOND TRANSPORTATION BENEFIT DISTRICT**

ARTICLE 1 – MEMBERSHIP

Section 1.1 Membership. Each member of the Black Diamond City Council shall be an ex officio member of the Board of the District.

ARTICLE 2 – OFFICERS, APPOINTEES AND COMMITTEES

Section 2.1 Officers Designated. The officers of the Board shall be a Chairperson, Vice Chairperson, Treasurer and the Executive Director. The Mayor of Black Diamond shall serve as the ex officio Chairperson. The _____ City of Black Diamond Mayor Pro-Tem shall serve as the ex officio Vice Chairperson. The City of Black Diamond Finance Director shall serve as the ex officio Treasurer. The _____ Chair of the City of Black Diamond Public Works Committee shall serve as the ex-officio Executive Director. No person may simultaneously hold more than one office. In addition to the powers and duties specified below, the officers shall have such powers and perform such duties as the Board may prescribe. The Black Diamond City Clerk, shall be the appointed ex officio Clerk of the Board shall be the District's registered agents for purposes of service of process.

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Section 2.2 Election, Qualification and Term of Office. The Vice Chairperson shall be elected by the Board from among its members at the first regular meeting each year, for a _____ year term, and each officer shall hold office during said _____ year term until his or her successor is elected. The first officers of the Board shall be elected by the Board at its first meeting. Officers may, at the discretion of the Board, hold their respective offices for successive terms.

Comment [SB1]: 2.1 is offices by designation and this is by election. Are these options that the council will need to decide?

Section 2.3 Powers and Duties. The officers of the Black Diamond Transportation Benefit District ("TBD" or "District") shall have the following duties:

A. Chairperson. The Chairperson shall serve as the ceremonial head of the District and shall preside over all Board meetings. On matters decided by the District, unless otherwise required under Interlocal Agreement or these Bylaws, the signature of the Chairperson alone or the _____, as authorized by the Board, is sufficient to bind the District. The City Clerk, as ex officio Clerk of the Board shall be the District's registered agents for purposes of service of process.

Comment [SB2]: I moved the clerk stuff up to 2.1

B. Vice Chairperson. The Vice Chairperson shall serve in the absence of the Chairperson as the ceremonial head of the District and shall preside over Board meetings in the Chairperson's absence and shall otherwise execute the Chairperson's powers and duties.

C. Treasurer. The Treasurer shall receive and faithfully keep all funds of the District and deposit the same in such bank or banks as may be designated by the District Board of Directors. The Treasurer shall also discharge such other duties as may be prescribed by the District board of Directors.

D. Executive Director. The Executive Director shall, subject to the lawful control of the Board, exercise general supervision, direction and control of the business and affairs of the District.

Comment [SB3]: If the Chair runs meetings and signs documents is this position needed?

Section 2.4 Establishment of Committees.

A. Committees of the Board. The Board may, by resolution, designate from among its members one or more committees, each consisting of at least two members, to represent the Board and, where consistent with these bylaws, and chapter 36.73 RCW, act for and on behalf of the Board. The designation of any such committee and the delegation thereto of authority shall not operate to relieve any member of the Board from any responsibility imposed by law. All actions of the District require the vote of the Board.

B. Citizen Committees. The Board may, by resolution, designate from outside its membership one or more committees, each consisting of at least two members, to advise the Board.

Section 2.5 Removal from Office. Upon reasonable prior notice to all Board members of the alleged reasons for dismissal, the Board, by an affirmative vote of the majority of the quorum, may remove any officer of the Board from his or her office whenever in its judgment the best interests of the District will be served thereby. An officer so removed shall continue to serve on the Board.

ARTICLE 3 – MEETINGS

Section 3.1 Regular Board Meetings. Beginning in its second year, regular Board meetings shall be scheduled by the Board through a resolution in January of each year. At any regular meeting of the Board, any business may be transacted and the Board may exercise all of its powers.

Section 3.2 Special Board Meetings. Special meetings of the Board may be held at any place and at any time whenever called by the Chairperson or by a majority of the members of the Board.

Section 3.3 Notice of Regular Board Meetings. Notice of meetings shall be given in a manner consistent with the Open Public Meetings Act, chapter 42.30 RCW. In addition, the District shall provide reasonable notice of meetings to any individual specifically requesting it in writing.

Section 3.4. Notice of Special Board Meetings. Notice of all special meetings of the Board shall be given by the _____ or by the person(s) calling the special meeting by following the procedure set forth in RCW 42.30.080. In addition, the TBD shall provide notice of special meetings to any individual specifically requesting such notice in writing. The time and place of the special meeting and the business to be transacted shall be specified in the notice. Final disposition shall not be taken at a special meeting on any matter not referenced in the notice.

Section 3.5 Waiver of Notice. Notice as provided in Sections 3.3 and 3.4 hereof may be dispensed with as to any member of the Board who, at or prior to the time the meeting convenes, files with the Board of the TBD a written waiver of notice or who is actually present at the meeting at the time it convenes. Such notice may also be dispensed with when a meeting is called to address an emergency. Notice concerning proposed amendments to the Bylaws and votes on such amendments, may not be waived.

Section 3.6 Procedure. *Robert's Rules of Order* as applied to public governing bodies, shall be considered on all questions of procedure and parliamentary law not otherwise provided for by ordinance, statute or these Bylaws; PROVIDED that with the concurrence of a majority of those members present at a meeting, such rules may be waived or modified. PROVIDED FURTHER, that failure to follow such rules will not in itself constitute grounds for invalidating any Board action. Where consistent with state law, the procedures of the City of Black Diamond City Council will govern as the procedures of the Board.

Section 3.7 Public Comment. Opportunity for public comment at Board meetings shall be required through public hearing when the Board considers adoption of (1) its annual plan for service; (2) material change policy; (3) imposition of any tax, charge or fee, and (4) response to a material change; PROVIDED, that the Board may, from time to time, in its sole discretion, permit public comment regarding additional topics.

Section 3.8 Proxies Prohibited. Votes may be cast at Board meetings only by members of the Board in attendance at the meeting, either in person or by electronic means. Voting by proxy shall be prohibited.

ARTICLE 4 – AMENDMENTS TO BYLAWS

Section 4.1 Proposals to Amend Bylaws. Any Board member may introduce a proposed amendment to the Bylaws (which may consist of new Bylaws) at any regular meeting, or at any special meeting for which thirty (30) days' advance notice has been given.

Section 4.2 Board Consideration of Proposed Amendments. If notice of a proposed amendment to the Bylaws, and information including the text of the proposed amendment and a statement of its purpose and effect, is provided to members of the Board fifteen (15) days prior to any regular Board meeting or any special meeting of

which thirty (30) days' advance notice has been given, then the Board may vote on the proposed amendment at the same meeting as the one at which the amendment is introduced. If such notice and information is not so provided, the Board may not vote on the proposed amendment until the next regular Board meeting or special meeting of which thirty (30) days' advance notice has been given and at least fifteen (15) days prior to which meeting such notice and information is provided to Board members. Changes to the proposed amendment that are within the scope of the original amendment will be permitted at the meeting at which the vote is taken.

ARTICLE 5 – ADMINISTRATIVE PROVISIONS

Section 5.1 Books and Records. The TBD shall keep current and complete books and records of account and shall keep minutes of the proceedings of its Board and its committees. The TBD shall maintain all public records according to the schedule adopted by the State Archivist, to ensure compliance with chapter 42.56 RCW, the Public Records Act.

Section 5.2 Principal Office. ~~The principal office and mailing address of the Black Diamond Transportation Benefit District shall be located at Black Diamond City Hall at _____ P.O. 599, Black Diamond, WA 98010. The principal office of the Black Diamond Transportation Benefit District shall be 24301 Roberts Drive, Suite B, Black Diamond, WA 98010~~

Section 5.3 Fiscal Year. The Fiscal Year of the TBD shall begin January 1 and end December 31 of each year, except the first fiscal year which shall run from the date the Bylaws were adopted to December 31, 2015.

Section 5.4 Policies Applicable to Board Members and Employees. The administrative policies of the City of Black Diamond shall be the policies of the Board.

ARTICLE 6 – APPROVAL OF BYLAWS

Adopted by the Black Diamond Transportation Benefit District on the ____ day of _____, 2015.

BLACK DIAMOND TRANSPORTATION BENEFIT DISTRICT

By: Carol Benson, Chairperson

ATTEST:

~~City Clerk~~ Brenda Martinez, Clerk of the Board,

APPROVED AS TO FORM:

City Attorney or ex officio TBD Attorney



Transportation Benefit Districts

(RCW 36.73)

What is a Transportation Benefit District (TBD)?

A TBD is a quasi-municipal corporation and independent taxing district created for the sole purpose of acquiring, constructing, improving, providing, and funding transportation improvements within the district. A TBD is an independent taxing district that can impose specific taxes or fees, either through a vote of the people or through district board action. TBDs are flexible - they allow cities and counties to work independently or cooperatively to address both local and regional transportation challenges.

Who may create a TBD?

The legislative authority of a county or city may create a TBD. The county or city proposing to create a TBD may include other counties, cities, port districts, or transit districts through interlocal agreements.

Who governs the TBD?

The members of the legislative authority (county or city) proposing to establish a TBD serve as the governing body of the TBD. The legislative authority is acting ex officio and independently as the TBD governing body. If a TBD includes additional jurisdictions through interlocal agreements, then the governing body must have at least five members, including at least one elected official from each of the participating jurisdictions.

Why create a TBD if the county or city legislative authority is the governing board?

TBDs have more flexibility to solve specific transportation issues. For example, more than one type of jurisdiction can be part of a TBD and the boundaries can be less than countywide or citywide.

What transportation improvements can be funded by a TBD?

The definition of transportation improvements is fairly broad. This can include maintenance and improvements to city streets, county roads, state highways, public transportation, transportation demand management, and other transportation projects identified in a local, regional or state plan.

What revenue options do TBDs have?

TBDs have several revenue options subject to voter approval:

- Property taxes - a 1-year excess levy or an excess levy for capital purposes;
- Up to 0.2% sales and use tax;
- Up to \$100 annual vehicle fee per vehicle registered in the district; and
- Vehicle tolls.

TBDs have two revenue options that do not require voter approval, but are subject to additional conditions. To impose either fee, the TBD's boundaries must be countywide or citywide, or if applicable, in the unincorporated county. Foregoing a vote is an option. A county or city still has the option of placing either fee to the vote of the people as an advisory vote or an actual requirement of imposition. The two options are:

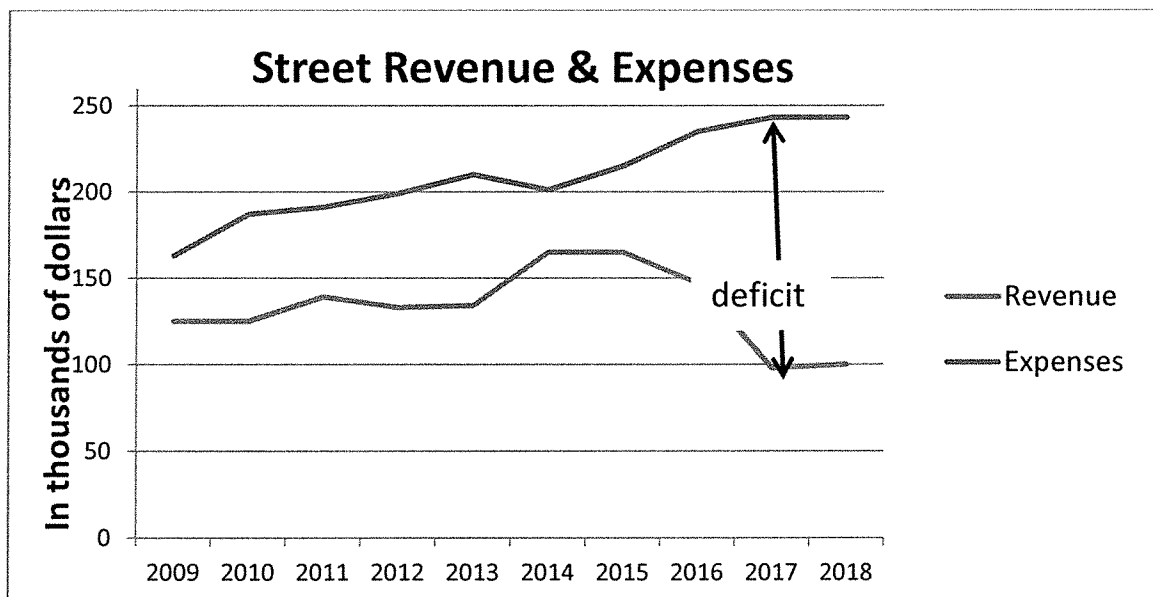
1. **Annual vehicle fee up to \$20.** This fee is collected at the time of vehicle renewal and cannot be used to fund passenger-only ferry service improvements. (HB 1485 increases this option up to \$40.)
2. **Transportation impact fees on commercial and industrial buildings.** Residential buildings are excluded. In addition, a county or city must provide a credit for a commercial or industrial transportation impact if the respective county or city has already imposed a transportation impact fee.

Jurisdiction	Vehicle License Fee	Sales Tax
Transportation Benefit Districts passed in 2012		
Bainbridge Island	\$20 (passed 01/09/2012)	
Castle Rock		\$0.002 sales tax (passed, election 11/6/2012)
Eatonville	\$20 (effective 03/01/2013)	
Kelso	\$20 (passed 12/04/2012)	
Kenmore - Has not passed funding provision		
Maple Valley	\$20 (passed 12/10/2012)	
Kittitas	\$20 (effective 12/01/2012)	
Lynden		\$0.002 sales tax (passed, election 11/6/2012)
Royal City	\$20 (effective 11/01/2012)	
Stanwood		\$0.002 sales tax (passed, election 2/12/2013)
Tacoma	\$20	
Toppenish	\$20 (effective 12/01/2012)	
Waitsburg		\$0.002 sales tax (passed, election 4/17/2012)
Wapato	\$20 (effective 04/01/2013)	
Yakima - Has not passed funding provision		
Transportation Benefit Districts passed in 2011		
Auburn - Has not passed funding provision		
Ferndale		\$0.002 sales tax (passed, election 2/14/2012)
Grandview	\$20 (02/01/2012)	
Mabton	\$20 (12/01/2011)	
Mountlake Terrace	\$20 (effective 08/01/2012)	
North Bend		\$0.002 sales tax (passed, election 11/8/2011)
Orting	\$20 (effective 02/01/2013 - 01/31/2015)	
Snohomish County		\$0.002 sales tax (passed 8/16/2011)

Jurisdiction	Vehicle License Fee	Sales Tax
Transportation Benefit Districts passed in 2011 <i>(con't)</i>		
Spokane	\$20 (09/01/2011)	
Walla Walla		\$0.002 sales tax (passed, election 2/14/2012)
Wenatchee	\$20 (effective 08/01/2012)	
Zillah	\$20 (effective 7/12/2012)	
Transportation Benefit Districts passed in 2010		
Bellingham		\$0.002 sales tax (4/01/2011)
King County - No funding designated		
Leavenworth		\$0.002 sales tax (04/01/2011)
Lynnwood	\$20 (07/01/2011)	
Seattle	\$20 (05/01/2011)	
Snohomish		\$0.002 sales tax (01/01/2012)
Snoqualmie	\$20 (03/01/2011)	
Transportation Benefit Districts passed in 2009		
Bremerton	\$20 (12/07/2011 passed, effective 07/01/2012)	
Burien	\$10 (02/01/2010)	
Prosser	\$20 (11/01/2009)	
Shoreline	\$20 (02/01/2010)	
University Place - No funding designated		
Transportation Benefit Districts passed in 2008		
Des Moines	\$20 (09/01/2009)	
Edmonds	\$20 (09/01/2009)	
Lake Forest Park	\$20 (09/01/2009)	
Olympia	\$20 (10/01/2009)	
Ridgefield		Sales tax repealed effective 10/01/2012 - \$0.002 sales tax (04/01/2009)
Sequim		\$0.002 sales tax (04/01/2010)
Transportation Benefit Districts passed prior to 2008		
Liberty Lake (2002)		
Point Roberts, Whatcom County (1992)		Special gas tax \$0.01/gallon (1992)

Council Considering Funding options for Streets

Street Fund Deficit In the graph below you will note that the City Street department has been operating in the red for over 6 years. This is primarily due to an approximate 20% decrease in gas tax revenue distributed by the state. Larger Cities typically direct a significant portion of sales and or property tax to fund their street departments, but Black Diamond has had to direct sales and property tax to address the needs in public safety. Because of the difficulties in funding streets since 2008 the state legislature as an interim funding measure has allowed the use of Real Estate Excise tax to fund streets. Note that the boost in the revenue line in 2013 is due to the temporary infusion of Real Estate Excise tax. The funding gap is now widening due to the expected sunset of the use of REET and the continued low level of gas tax distribution. The street fund cash reserves will be completely depleted by the end of 2016 without some additional revenue.



One Solution under consideration The Administration and Council is investigating implementing a Transportation Benefit District (TBD). This is a taxing district for the support of local streets with several tax and revenue options. The main option under consideration is a car tab fee starting at \$20 per vehicle which then increases to \$40 per vehicle after two years. The plan for the use of the TBD funds under consideration right now is to split the funds between general city wide asphalt overlay, chip seal program and general street maintenance activities. A Transportation Benefit District (TBD) would help close the funding gap the City

is facing right now in the street department. A TBD would be expected to raise \$60,000 to \$70,000 per year for street maintenance. If this funding option moves forward there will be workshops and public hearings before any decision is made.

How will a Transportation Benefit District benefit citizens? The additional revenue will help balance the fund so that the City can continue to provide maintenance, planning and upgrading public streets and sidewalks. Major maintenance activities include maintaining the street signs, pavement stripes and markings, roadside brush, trees and grass, street lights, pavement, signals, sidewalks and shoulders and addressing safety issues.

Transportation Benefit Districts can also fund road improvement projects. However the City has had good success in finding grant funding for street improvement projects. What is needed is additional funding to continue to provide basic maintenance and operation activities to safely manage the City street system.

Below are some other options

OPTIONS	ADVANTAGES	DISADVANTAGES
Redistribute property and sales tax	Would provide a long term revenue source; No increase in taxes	The general fund would have to make substantial cuts in the general fund (probably public safety) to provide more revenue for streets.
Transp. Benefit Dist.	Council approved	City wide equity
Business and Occupation tax	Council approved	This option comes with administration costs; Unpopular and hard on small businesses
Increase utility tax to fund streets	Council approved	Might be difficult to raise Stormwater Utility Tax further as the rate is already at 18%. Water and Sewer have the city wide inequity problem.
Direct utility taxes from Covington Water district to Streets.	Ordinance already in place	This would help but would not be near enough money
TBD sales tax		Voter approved; The City does not have a very big sales tax base so this might not raise much.

DRAFT – June 8, 2015

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF BLACK DIAMOND AND
THE CITY OF BLACK DIAMOND TRANSPORTATION BENEFIT DISTRICT**

This Agreement between the City of Black Diamond, Washington (the “City”) and the Black Diamond Transportation Benefit District (“BD TBD”), each of whom is organized as a municipal corporation under the laws of the State of Washington, is dated this ____ day of _____, 2015.

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

WHEREAS, the City is empowered to operate, maintain, construct and reconstruct, public street infrastructure within its city limits in accordance with its powers granted pursuant to RCW 35.22.440(33) and chapter ____; and

| WHEREAS, pursuant to Ordinance No. _____, ~~pending~~, the City established the BD TBD and authorized funding for any purpose allowed by law, including but not limited to, the operation of the District and to make transportation improvements consistent with existing state, regional and local transportation plans and necessitated by existing or reasonably foreseeable congestion levels pursuant to chapter 36.73 RCW; and

| WHEREAS, pursuant to Resolution _____, ~~pending~~, the BD TBD has authorized a vehicle license fee to be imposed by the Department of Licensing; and

| WHEREAS, the City and the BD TBD desire to better coordinate their efforts in order to pursue their individual, joint and mutual rights and obligations to fulfill the intent of Ordinance No. _____; ~~pending~~; Now, Therefore,

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

Section 1. Purpose and Interpretation. The City is empowered by Title 35 RCW to construct, reconstruct, maintain and preserve City streets and other related public infrastructure, either by contract or through the use of City forces. The TBD has been constituted in accordance with state law to provide a source of funding for the maintenance and preservation of street and related infrastructure within the City limits of the City of Black Diamond. The BD TBD has no employees and its officers are either City Council Members and the Mayor, serving in an ex officio capacity or are City employees designated to serve under the provisions of state law. In order to make the most efficient use of public monies, to avoid duplication of effort and to coordinate their

efforts, the parties have entered into this Agreement. In the event of ambiguity or the need for guidance arises, this Agreement shall be interpreted in accordance with chapter 36.73 RCW, the Bylaws of the BD TBD, the provisions of the Governmental Accounting Act and RCW 43.09.210, as the same exists or shall hereafter be amended. In the event that any provision of this Agreement is held to be in conflict with existing state statute or any future amendment thereof, such provisions shall be severable, and the remaining provisions of this Agreement shall remain in full force and effect.

Section 2. Obligations of the BD TBD. In accordance with the requirements of chapter 36.73 RCW, Black Diamond Ordinance No. ____ and Resolutions ____ and the TBD Bylaws, the BD TBD agrees to:

- A. Provide to the City all funding received from any and all lawful sources with the BD TBD in its sole discretion may levy for the purpose of completing the BD TBD's authorized street maintenance and operation activities.
- B. Continue the annual provision of funding for the activities approved by the BD TBD, so long as the TBD remains in existence. Such funding shall be in accordance with and limited by the provisions of Ordinance No. ____ pending and Resolutions ____, Pending, the BD TBD Bylaws and chapter 36.73 RCW. By way of illustration and not limitation:

1. The BD TBD shall hold public hearings as required by law prior to levying any charge, tax or fee and shall levy any charge, tax or fee only in accordance with law and ordinance.

2. Develop an annual work plan and designate projects within its jurisdiction for funding.

3. Pursuant to the Material Change Policy adopted in Resolution No. ____, as required by RCW 36.73.160(1), the BD TBD shall consider, at a minimum, the impacts and appropriate remedies if transportation improvements contained in its annual plan exceed its original cost by more than twenty percent (20%). The BD TBD shall consider the input from public hearings and other sources as it determines how such cost changes should be resolved. The obligations of this Agreement shall be interpreted and applied in a manner consistent with adopted policy.

4. Annual Budget Preparation. The steps and timing of the process of annual budget preparation by the BD TBD is as follows:

<u>Steps</u>	<u>Timing</u>
Preliminary budget is prepared by chief ensuing Administrative officer	At least 60 <u>120</u> days before the fiscal year.
Administrative officer-	fiscal year.

Steps, continued.

Clerk publishes notice of filing of the Preliminary budget with City Clerk and Publishes notice of public hearing on it Once a week for two consecutive weeks.

The legislative body must schedule hearings On the budget

Copies of the preliminary budget are made Available to citizens upon request. _____

Final hearing on budget.

Adoption of the budget for next fiscal year. Send copies of the final budget to the State Auditor's Office.

Timing, continued.

Published during the first two weeks of _____. September.

Prior to the final adoption of the budget

No later than six weeks before _____. October 20th

On or before the first Monday of ____

Adopt by ordinance after the public hearing and prior to the beginning of The ensuing fiscal year.

Section 3. Undertakings of the City. The City shall:

A. Provide all staff and necessary related support to the BD TBD. The costs of such support shall be accounted for as a part of the City's annual report to the BD TBD. TBD funding shall first be applied to the reasonable charges incurred in establishing and staffing the TBD. Annual services provided may include the services provided by the City Attorney, the City Clerk when serving as the Clerk of the TBD, the City's Finance Director/Treasurer when serving as the Treasurer of the TBD, and other employees of the City that serve the TBD and any associated costs, including but not limited to the preparation of an annual work plan, reporting, advertising, design, contracting, construction management, accounting and any and all other actual charges or agreed upon percentage of charges associated with the proper application of TBD funding in accordance with law and ordinance. In consideration of the benefits derived by the City, overhead charges such as utilities, information technology, office supplies and equipment shall be a contribution of the City to the parties' joint goals and objectives and need not be directly charged back to the TBD.

B. Maintain for the period established by the State Archivist retention schedule, financial records, kept in accordance with generally accepted accounting practice and governmental accounting requirements, as necessary to document that any and all funding received through the BD TBD is used only for the projects authorized in accordance with law and ordinance.

C. Immediately alert the BD TBD of any material changes in scope, schedule or cost increases of 20% or greater to improvements funded in part or whole with TBD funds.

D. Utilize funding provided for projects shown on the TBC's annual work plan in accordance with the TBD's material change policy, law and ordinance.

Section 4. Ownership. Streets and related transportation infrastructure preserved and maintained with TBD funds are and shall remain the property of the City of Black Diamond. No joint property ownership is contemplated under the terms of this Agreement.

Section 5. No Joint Board. No provision is made for a joint board. The TBD shall exercise its function in accordance with its Bylaws, using staff as provided by the City of Black Diamond, pursuant to law and this Agreement.

Section 6. Insurance, Indemnity.

A. The parties agree to participate in the Association of Washington Cities Risk Management Services Agency (RMSA) insurance pool in accord with their respective interlocal agreements with the RMSA and AWC. The original charge or premium for the TBD will be borne by the City of Black Diamond as a cost to be covered under Section 3 and shall be paid for with funds received from or through the TBD. In the event that either or both cease to participate in the RMSA pool, each party or parties agree to obtain comparable coverage.

B. Each party agrees to indemnify and hold harmless the other party, its officers, agents and employees from any claim, loss or liability arising from or out of the other party's negligent, tortious or illegal actions under this Agreement.

Section 7. Termination. This Agreement shall terminate or expire as follows:

A. This Agreement may be terminated by either party upon the provision of one hundred and eighty (180) calendar days' notice. A final reconciliation of costs, payment and a current report of completed activities shall be completed by the City within such period following the notice by either party.

B. Unless sooner terminated by either party, this Agreement shall expire on the date when the District is automatically dissolved in accordance with the provisions of RCW 36.73.170 and Ordinances _____ and Resolution _____, as the same exist or are hereafter amended.

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Section 8. Effective Date. This Agreement shall be effective upon the last authorizing signature affixed hereto and when listed by subject on the website of the City of Black Diamond or other electronically retrievable public source as required by RCW 39.34.040.

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

THE CITY OF BLACK DIAMOND

BLACK DIAMOND TRANSPORTATION
BENEFIT DISTRICT

Carol Benson, Mayor

Carol Benson, Chairperson

Attested:

| Brenda Martinez, City Clerk of the Board

Approved as to Form:

City Attorney

DRAFT – 6/8/15

BLACK DIAMOND, WASHINGTON
TRANSPORTATION BENEFIT DISTRICT
RESOLUTION NO. _____

A RESOLUTION OF THE BLACK DIAMOND, WASHINGTON,
TRANSPORTATION BENEFIT DISTRICT, AUTHORIZING A
TWENTY DOLLAR (\$20.00) VEHICLE LICENSE FEE PURSUANT
TO RCW 36.73.065 and RCW 82.80.140.

WHEREAS, the City Council of the City of Black Diamond has the responsibility under the Constitution of the State of Washington for the improvement, maintenance and protection of public ways within the corporate limits of the City of Black Diamond, pursuant to RCW 35.23.440(33) and chapter 35.77 RCW; and

WHEREAS, chapter 36.73 RCW provides for the establishment of transportation benefit districts (TBD) by cities and counties and authorization to levy and impose various taxes and fees to generate revenue to support transportation improvements within the district that are consistent with state, regional or local transportation plans and necessitated by existing or reasonably foreseeable congestion levels; and

WHEREAS, the City's Transportation Improvement Plan (TIP), the transportation element of the City's Comprehensive Plan, and the _____, all outline the key strategies, objectives and investments for improving safety, mobility, modal connectivity and access through providing effective transportation choices; and

WHEREAS, the Black Diamond City Council created the Black Diamond Transportation Benefit District in Ordinance No. _____; and

WHEREAS, RCW 36.73.040(3)(b) authorizes a transportation benefit district to impose a vehicle fee in accordance with RCW 82.80.140; and

WHEREAS, RCW 36.73.065(4)(a)(i) allows a transportation district that includes all of the territory within the boundaries of the jurisdiction establishing the district to impose, by majority vote of the governing board of the district, a vehicle fee of up to \$20.00, as authorized in RCW 82.80.140; and

WHEREAS, since 2009, the City of Black Diamond's street revenues from the State Gas Tax and other sources have declined by nearly \$50,000, the General Fund has declined by _____ and Real Estate Excise Tax has declined by _____, the cost of operations and maintenance has gone up by approximately \$70,000; and

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Comment [SB1]: May I need help here

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WHEREAS, the Governing Board of the Black Diamond Transportation Benefit District finds that it is appropriate to establish a twenty-dollar annual vehicle license fee that will generate an estimated \$_____ \$81,000 annually and make investments to enhance pedestrian, bicycle and vehicle mobility within the District boundaries; and

WHEREAS, in accordance with RCW 82.80.140(4), the TBD may fix and impose an annual \$20.00 vehicle license fee, but no fee may be collected until six months after approval under RCW 36.73.065; and

WHEREAS, it is the expectation of the Black Diamond Transportation Benefit District to contract with the City of Black Diamond to utilize revenues for transportation purposes; and

WHEREAS, the Black Diamond Transportation Benefit District considered the adoption of this Resolution during its first regular meeting of _____, August 20, 2016; Now, Therefore,

IT IS HEREBY RESOLVED BY THE BLACK DIAMOND TRANSPORTATION BENEFIT DISTRICT AS FOLLOWS:

Section 1. Fee Imposed. An annual vehicle license fee in the amount of twenty dollars (\$20.00) is established consistent with RCW 36.73.065, to be collected by the Washington State Department of Licensing on qualifying vehicles, as set forth in RCW 82.80.140 and chapters 36.73 and 46.16 RCW.

Section 2. Use of Revenues. The revenues generated by the license fee shall be used in accordance with the purposes set forth in POMC-BDMC _____. The District plans to contract with the City of Black Diamond to utilize the revenues generated from the annual vehicle license fee as follows, after accounting for costs associated with the collection and disbursement of revenues for and administering the Black Diamond Transportation Benefit District:

- A. Preservation, Operations and maintenance of the District's transportation infrastructure;
- B. Enhancing bicycle and pedestrian safety and mobility within the District;
- C. Improving mobility and safety for people with disabilities.

Section 3. Implementation. The Black Diamond Transportation Benefit District requests that the City Clerk for the City of Black Diamond notify the Washington State Department of Licensing of the vehicle license fee established in Section 1 of this Resolution and to request that the Department of Licensing take all the steps necessary to implement collection of this fee no later than _____, in accordance with RCW 82.80.140.

Comment [SB2]: May I need help here

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PASSED by the Black Diamond Transportation Benefit District this ____nd day of _____, 2015.

Chairperson, Carol Benson

AUTHENTICATED:

City Brenda Martinez Clerk of the
Board

APPROVED AS TO FORM:

Carol A. Morris, City Attorney

DRAFT – 6/9/15

BLACK DIAMOND, WASHINGTON
TRANSPORTATION BENEFIT DISTRICT
RESOLUTION NO. _____

AN ORDINANCE OF THE CITY OF BLACK DIAMOND,
WASHINGTON, TRANSPORTATION BENEFIT DISTRICT,
ADOPTING THE MATERIAL CHANGE POLICY AS REQUIRED BY
RCW 36.73.160(1).

WHEREAS, the Black Diamond City Council created the Black Diamond
Transportation Benefit District in Ordinance No. _____; and

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WHEREAS, chapter 36.73 RCW requires that the Transportation Benefit District
adopt a Material Change Policy; and

WHEREAS, the Black Diamond Transportation Benefit District considered the
adoption of this Resolution during its regular meeting of _____, 2015;
Now, Therefore,

IT IS HEREBY RESOLVED BY THE BLACK DIAMOND TRANSPORTATION
BENEFIT DISTRICT AS FOLLOWS:

Section 1. Material Change Policy.

A. *Material Change to Cost.* In the event an approved transportation
improvement exceeds the adopted budget by more than twenty per cent (20%) as
approved annually by the Governing Board, the Board shall hold a public hearing to
solicit comments from the public regarding the manner in which the cost change should
be resolved. TBD Staff shall consult with the Board Chair prior to setting the public
hearing.

B. *Material Change Scope.* In the event that the scope of a transportation
improvement materially changes from that originally anticipated at the time of the
annually adopted budget by the TBD Board, the TBD Staff shall determine whether or
not to convene a meeting of the Board for discussion.

C. *Material Change to Schedule.* In the event that the schedule of a
transportation improvement materially changes in a way that significantly impacts other
TBD budget levels or the schedule changes exceed ninety (90) days, the TBD staff shall
consult with and review such changes with the Board Chair. The Board Chair shall
determine whether or not to convene a meeting of the Board for discussion.

PASSED by the Black Diamond Transportation Benefit District this ____nd day of
____, 2015.

Chairperson, Carol Benson

AUTHENTICATED:

City Clerk

APPROVED AS TO FORM:

Carol A. Morris, City Attorney

PUBLISHED:
EFFECTIVE DATE:

DRAFT – 6/17/15

CITY OF BLACK DIAMOND, WASHINGTON
ORDINANCE NO. _____

AN ORDINANCE OF BLACK DIAMOND, WASHINGTON, RELATING TO THE ESTABLISHMENT OF THE BLACK DIAMOND TRANSPORTATION BENEFIT DISTRICT, IDENTIFYING THE GOVERNING BOARD, DESCRIBING THE FUNCTIONS OF THE DISTRICT, DESCRIBING THE MANNER IN WHICH TRANSPORTATION IMPROVEMENTS SHALL BE FUNDED AND DISSOLUTION OF THE DISTRICT, ALL AS ALLOWED BY CHAPTER 36.73 RCW, ADDING A NEW CHAPTER 12.06 TO THE BLACK DIAMOND MUNICIPAL CODE.

WHEREAS, the City Council desires to respond to the need for transportation funding for the maintenance and operation of city streets by establishing a transportation benefit district, as authorized by chapter 36.73 RCW; and

WHEREAS, the SEPA Responsible Official has determined that this Ordinance is categorically exempt under SEPA, WAC 197-11-800(19) as a program relating solely to governmental procedures and containing no substantive standards respecting use or modification of the environment; and

WHEREAS, notice of a public hearing on this Ordinance establishing a transportation benefit district was provided according to RCW 36.73.050(1), including, but not limited to, publication of such notice in a newspaper in general circulation in the City, not less than ten days before the hearing; and

WHEREAS, the public hearing was held on the establishment of a transportation benefit district by the Black Diamond City Council on August 6th, 2014; and

WHEREAS, the City Council considered the adoption of this ordinance during its regular meeting of August 20, 2015 and determined that the establishment of a transportation benefit district is in the public interest; Now, Therefore,

IT IS HEREBY ORDAINED BY THE BLACK DIAMOND CITY COUNCIL AS FOLLOWS:

Section 1. A new chapter 12.06 shall be added to the Black Diamond Municipal Code, which shall read as follows:

**CHAPTER 12.06
TRANSPORTATION BENEFIT DISTRICT**

Sections:

12.06.010	Purpose.
12.06.020	Establishing the Transportation Benefit District
12.06.030	Governing Board
12.06.040	Functions of the District
12.06.050	Transportation Improvements Funded
12.06.060	Dissolution of District
12.06.070	Liberal Construction.

12.06.010 Purpose. The purpose of this chapter is to establish a transportation benefit district (TBD) pursuant to RCW 35.21.225 and chapter 36.73 RCW, consistent with the public interest, to provide adequate levels of funding for the preservation, maintenance and operations of the street transportation system of the City of Black Diamond.

Comment [SB1]: I revised this to include the council's intent as directed. Note that the purpose now does not include road improvement projects.

12.06.020 Establishing the Transportation Benefit District. There is created a transportation benefit district to be known as the Black Diamond Transportation Benefit District or "District" with geographical boundaries comprised of the corporate limits of the City as they currently exist or as they may exist following future annexations.

12.06.030 Governing Board.

A. The governing board of the Black Diamond Transportation Benefit District shall be the Black Diamond City Council, acting in an ex officio and independent capacity, which shall have the authority to exercise the statutory powers set forth in chapter 36.73 RCW.

B. The treasurer of the Transportation Benefit District shall be the City Finance Director.

C. The Board shall develop a material change policy to address major plan changes that affect project delivery or the ability to finance the plan, pursuant to the requirements set forth in RCW 36.73.160(1). The policy must at least address material changes to cost, scope and schedule, the level of change that will require governing body involvement and how the governing body will address those changes. At a minimum, if the District funding participation in a transportation improvement exceeds its original cost by more than twenty percent (20%) as identified in the District's original plan, a public hearing shall be held to solicit public comment regarding how the cost change should be resolved.

D. The Board shall issue an annual report, pursuant to the requirements of RCW 36.73.160(2).

12.06.040 Functions of the District.

A. The District, by a majority vote of its governing board, may authorize a motor vehicle license fee of up to twenty dollars as provided in RCW 82.80.140 for the purposes set forth in this chapter and as may be subsequently authorized according to law.

B. The District may impose additional taxes, fees or charges authorized by RCW 36.73.040 or ad valorem property taxes authorized by RCW 36.73.060, only if approved by District voters pursuant to RCW 36.73.065.

C. The District shall have all powers and functions provided by chapter 36.73 RCW to fulfill the functions of the District, including the power to issue general obligation bonds and revenue bonds as provided in RCW 36.73.070, or form a local improvement district as provided in RCW 36.73.080.

12.06.050 Transportation improvements funded. The funds generated by the Transportation Benefit District may be used for transportation improvements that preserve, maintain, operate, construct and reconstruct the existing transportation infrastructure of the City, consistent with chapter 36.73 RCW, as it now exists or is hereafter amended. In addition to the foregoing, the funds generated may be used for any purpose allowed by law, including to operate the District and to make transportation improvements that are consistent with state, regional and local transportation plans and necessitated by existing or reasonably foreseeable congestion levels, pursuant to chapter 36.73 RCW. The District shall select to the extent practicable projects for funding that reduce the risk of transportation facility failure and improve safety, decrease travel time, increase daily and peak period trip capacity, improve modal connectivity, provide for economic development, improve accessibility for persons with special transportation needs, and preserve and maintain optimal performance of the infrastructure over time to avoid expensive infrastructure construction and replacement in the future.

Comment [SB2]: This is what we are doing.

Comment [SB3]: The yellow highlight is what we are doing.

All funds raised through the District shall be expended only for such construction, reconstruction, preservation, maintenance and operation in accordance with the provisions of chapter 36.73 RCW as it now exists or is hereafter amended. The funds expended by the District shall preserve, maintain, operate and improve the City's investments in the transportation infrastructure, reduce the risk of transportation facility failure, improve safety, continue the cost effectiveness of the City's infrastructure investments, provide for economic development and continue the optimal performance of the transportation system.

Additional transportation improvement projects may be funded only after compliance with the provisions of RCW 36.73.050(2)(b) following notice, public hearing and enactment of an authorizing ordinance.

12.06.060 Dissolution of District. The District shall be automatically dissolved when all indebtedness of the District has been retired and when all of the District's anticipated responsibilities have been satisfied.

12.06.070 Liberal Construction. This chapter is to be liberally construed to accomplish the purpose of establishing a transportation benefit district with the broadest possible authority under chapter 36.73 RCW, as it now exists or is hereafter amended.

Section 4. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful 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 5. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 6. Effective Date. This Ordinance shall take effect and be in full force and effect five days after publication, as provided by law.

PASSED by the City Council of _____ this ____nd day of _____, 2015.

Mayor

AUTHENTICATED:

City Clerk.

APPROVED AS TO FORM:

Carol A. Morris, City Attorney

PUBLISHED:
EFFECTIVE DATE:

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION																						
SUBJECT: AB15-051 Resolution confirming the Mayor's appointment of Kevin Esping as the Director of Emergency Services for the City of Black Diamond	Agenda Date: August 6, 2015 <div style="float: right;">AB15-051</div>																					
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>Mayor Carol Benson</td><td style="text-align: center;">X</td></tr> <tr><td>City Administrator</td><td></td></tr> <tr><td>City Attorney Carol Morris</td><td></td></tr> <tr><td>City Clerk – Brenda L. Martinez</td><td></td></tr> <tr><td>Com Dev/Nat Res – Aaron Nix</td><td></td></tr> <tr><td>Finance – May Miller</td><td></td></tr> <tr><td>MDRT/Ec Dev – Andy Williamson</td><td></td></tr> <tr><td>Police – Chief Kiblinger</td><td></td></tr> <tr><td>Public Works – Seth Boettcher</td><td></td></tr> <tr><td>Court – Stephanie Metcalf</td><td></td></tr> </table>	Mayor Carol Benson	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		Public Works – Seth Boettcher		Court – Stephanie Metcalf		
Mayor Carol Benson	X																					
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MDRT/Ec Dev – Andy Williamson																						
Police – Chief Kiblinger																						
Public Works – Seth Boettcher																						
Court – Stephanie Metcalf																						
Cost Impact (see also Fiscal Note): N/A																						
Fund Source: --																						
Timeline: August 6, 2015																						
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. 15-1035																						
<p>SUMMARY STATEMENT:</p> <p>Black Diamond Municipal Code Chapter 2.44 establishes the Department of Emergency Services for the City of Black Diamond as well as the position of Director. This position was filled by the Deputy City Clerk, Rachel Pitzel who left the City in May.</p> <p>After careful consideration and given the necessary skills and expected duties of the position I have appointed Kevin Esping, Facilities Equipment Coordinator, to the position of Director of Emergency Services for the City, subject to Council confirmation as required by code.</p> <p>FISCAL NOTE (Finance Department): N/A</p>																						
<p>COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:</p>																						
<p>RECOMMENDED ACTION: MOTION to confirm the Mayor's appointment of Kevin Esping as the Director of Emergency Services for the City of Black Diamond.</p>																						
RECORD OF COUNCIL ACTION																						
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>																				
August 6, 2015																						

RESOLUTION NO. 15-1035

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
CONFIRMING THE MAYOR'S APPOINTMENT OF KEVING
ESPING AS THE DIRECTOR OF EMERGENCY SERVICES
FOR THE CITY OF BLACK DIAMOND**

WHEREAS, Black Diamond Municipal Code Chapter 2.44 establishes the Department of Emergency Services and the position of Director of Emergency Services therein; and

WHEREAS, position was formally filled by the Deputy City Clerk, Rachel Pitzel who left the City in May; and

WHEREAS, given the necessary skills and expected duties of the position, the Mayor has appointed Kevin Esping, Facilities Equipment Coordinator to the position of Director of Emergency Services with no additional compensation beyond that currently provided as Facilities Equipment Coordinator; and

WHEREAS, Section 2.44.020(A) of the Black Diamond Municipal Code requires that this position shall be appointed with the consent of the City Council;

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

Section 1. The Mayor's appointment of Kevin Esping to the position of Director of Emergency Services is hereby confirmed.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 6TH DAY AUGUST, 2015.

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: AB15-052 Amend Resolution No. 15-1010, which authorizing a Maintenance & Supplies agreement with the Witt Company through their UB Bank financing by adding a value lease supplement to add two additional KYOCERA 3551 ci copiers, with terms to end in the final fifty four months of the existing lease agreement.	Agenda Date: August 6, 2015	
	AB15-052	
	Mayor Carol Benson	
	City Administrator	
	City Attorney Carol Morris	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Aaron Nix	
	Finance – May Miller	X
	MDRT/Eco Dev – Andy Williamson	
Cost Impact (see also Fiscal Note): \$16,157 plus tax per year.	Police – Chief Kiblinger	
Fund Source: 2015 Budget ½ Police, ½ MDRT	Public Works – Seth Boettcher	
Timeline:	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. 15-1036, Value Lease Supplement Lease Documents		
SUMMARY STATEMENT: <p>The Police and MDRT copiers are at the end of their lease agreements and need to be replaced with a new lease. The copiers are experiencing a lot of down time and can be replaced with state of the art equipment for approximately the same cost we are currently paying.</p> <p>Staff is recommending that we amend the current five year lease agreement with Witt Company through their banking arrangements with U. S. Bank for billing by adding two more KYOCERA 3551 replacement copiers at the same lease price and terms as the previously approved city copiers through a value Lease Supplement agreement that to amend the lease that was approved by Council through Resolution 15-1010 on February 5, 2015.</p> <p>One copier will be paid for from the Police Budget and the other will be covered in the Reimbursable MDRT Budget. The city currently has two other KYOCERA copiers that have improved the copying timeliness and have the same approximate costs as the previous cost.</p> <p>Not only will the city receive new copiers at approximately the same cost as our 8 year old copiers, they are faster and have updated technology features.</p> <p>FISCAL NOTE (Finance Department): The cost of the two additional copies will be incorporated into the last 54 month of our current lease. The estimated cost of \$16,157 will be covered ½ by Police within their budget and the other ½ by MBRT budget that will be reimbursed within the funding agreement.</p>		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: The Finance Committee reviewed the proposed Copier Lease amendment at their July 30, 2015 meeting and recommended approval.		

RECOMMENDED ACTION: **MOTION** to adopt Resolution No. 15-1036, authorizing a Maintenance and Supplies agreement with the Witt Company and their U. S. Bank agreement for a 60 month Lease of the Kyocera 7551 and 3551 Copiers.

RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
August 6, 2015		

RESOLUTION NO. 15-1036

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE AMENDMENT TO RESOLUTION 15-
1010 APPROVED FEBRUARY 5, 2015 TO ADD A VALUE
LEASE SUPPLEMENT FOR TWO ADDITIONAL COPIERS
AT THE SAME PRICE AND TERMS WITH THE WITT
COMPANY AND THEIR BILLING AGREEMENT WITH U. S.
BANK FOR TWO KYOCERA TA 3551 ci COPIERS**

WHEREAS, the current copiers at the Police Department and the MDRT Building are at the end of their lease and are less reliable with longer downtime periods and need to be replaced, and;

WHEREAS, the City already has a copier lease with the Will Company and their billing agreement with U. S. Bank that was approved by resolution 15-1010 on February 5, 2015 and the company can add two additional replacement copiers at the same cost and terms by amending the Lease Agreement with a Value Lease Supplement, and;

WHEREAS, the Police Department and MDRT Department have budgets to absorb the costs within the same terms of 54 months, and;

WHEREAS, the new copiers have updated technology features and will allow departments to scan in color and print at a higher rate of speed; and

WHEREAS, City staff has reviewed other copiers and selected Witt Company's proposal for the city copier lease through the State allowed bid process and contract pricing from the State KCDA contract 11.213. The two additional copiers will be billed through their U. S. bank arrangement at the same fixed monthly rate for the balance of the 54 months remaining on the original lease. The new copiers will meet the needs of the city over the next five years, while providing the service and value the City requires;

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

Section 1. The Mayor is hereby authorized to amend the Resolution 15-1010 to add the two additional copies for the same costs and terms with a Value Lease Supplement for two additional KYOCERA TA 3551 ci copiers.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 6TH DAY OF AUGUST,
2015.

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk



Value Lease Supplement

EQUIPMENT FINANCE

APPLICATION NO.

VL AGREEMENT NO.

SUPPLEMENT NO.

CUSTOMER INFORMATION

FULL LEGAL NAME

STREET ADDRESS

CITY OF Black Diamond

24301 Roberts Drive

CITY Black Diamond STATE WA ZIP 98101

PHONE 360 886 5700 FAX

BILLING NAME (IF DIFFERENT FROM ABOVE)

BILLING STREET ADDRESS

CITY

STATE

ZIP

DBA

EQUIPMENT ADDED

MAKE/MODEL/ACCESSORIES

SERIAL NO.

STARTING METER

1. TA 3551ci DP77Z DF 770 PF740 PH 7A Pouch

2. TA 3551ci DP77Z DF 790 PF740 FAX PH 7A Pouch

3.

4.

☐ See the attached Schedule A

☐ See the attached Billing Schedule

EQUIPMENT DELETED

MAKE/MODEL/ACCESSORIES

SERIAL NO.

ENDING METER

1.

2.

NEW CONSOLIDATED PAYMENT (Please fill out this section OR the Itemized Payment section below for the Equipment listed on this Supplement.)

The information below reflects your new CONSOLIDATED Payment and allowance.

Monthly Payment* \$ 1,346.88

B&W Pages Included 22,000

Excess B&W Page Charge* \$.007

Color Pages Included 6,000

Excess Color Page Charge* \$.055

OR

*plus applicable taxes

METER READINGS VERIFIED: B&W - QUARTERLY COLOR - QUARTERLY

ITEMIZED PAYMENT (Please fill out this section OR the New Consolidated Payment section above.)

The information below reflects your ITEMIZED Payment and allowance which is for the above-referenced Equipment only and it will be shown separately on your invoice(s).

Monthly Payment* \$

B&W Pages Included

Excess B&W Page Charge* \$

Color Pages Included

Excess Color Page Charge* \$

TERM

54

Mos. Termination date of this Supplement will coincide with the termination date set forth in the Value Lease Agreement and/or previous Supplement(s) (as applicable).

Mos. Termination date will not be set to coincide with any other Value Lease Agreement or Supplement.

TERMS AND CONDITIONS

You have requested this Supplement to the Value Lease Agreement (or Supplement) as set forth above. If you choose the new consolidated payment option above, you agree that the Payment on this Supplement is the new consolidated Payment for your Agreement. Except for the specific provisions set forth above, the original terms and conditions set forth in the Value Lease Agreement and any personal guaranty(s) shall remain in full force and effect and are incorporated herein by reference.

ACCEPTANCE OF DELIVERY

You certify that all the Equipment listed above has been furnished, that delivery and installation has been fully completed and is satisfactory. Upon you signing below, your promises herein will be irrevocable and unconditional in all respects. You understand that we have purchased the Equipment from the supplier, and you may contact the supplier for a full description of any warranty rights under the supply contract, which we hereby assign to you for the term of this Supplement (or until you default). Your approval as indicated below of our purchase of the Equipment from the supplier is a condition precedent to the effectiveness of this Supplement.

Print Name:

Signature: X

Customer (as referenced above):

Date of Delivery:

CUSTOMER ACCEPTANCE

This is a Supplement to the Agreement identified above between Lessor and Customer, all the terms and conditions of which are incorporated herein. Upon the execution of this Supplement, Customer hereby agrees to lease from Lessor the Equipment described above. By signing below, you certify that you have reviewed and do agree to all terms and conditions of the Agreement and this Supplement. The Equipment and terms of this Supplement are in addition to the Equipment and terms stated in the Agreement.

Print Name:

Signature: X

Title:

Customer (as referenced above):

Dated:

LESSOR ACCEPTANCE

Print Name:

Signature:

Lessor: U.S. Bank Equipment Finance

Dated:

RESOLUTION NO. 15-1010

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO EXECUTE A 60 MONTH
MAINTENANCE AND SUPPLIES AGREEMENT WITH THE
WITT COMPANY AND THE ASSOCIATED 60 MONTH
BILLING LEASE AGREEMENT THROUGH U. S. BANK
FOR THE KYOCERA TA 7551 ci & TA 3551 ci COPIERS**

WHEREAS, the current copiers at City Hall and Community Development have entered into their eighth year and have become less reliable with longer downtime periods and need to be replaced; and

WHEREAS, the cost to enter into a five year lease agreement for service and some supplies is approximately the same as our current service agreement costs; and

WHEREAS, the Witt Company has agreed to a base charge of \$11,960 that covers the cost of the 60 month lease, maintenance, toner and staples for the two copiers for a total of 264,00 black and white copies and 72,000 color copies. Any copies over this amount will be billed quarterly at .007 per copy for black and white, and .055 for color.

WHEREAS, the Will Company will clean the current equipment hard drive and provide the City with documentation that all confidential information has been removed; and

WHEREAS, the new copiers have updated technology features and will allow departments to scan in color and print at a higher rate of speed; and

WHEREAS, City staff has reviewed other copiers and selected Witt Company's proposal for a 60 months of service and some supplies through the State allowed bid process and contract pricing from the State KCDA contract 11.213. The Witt lease is billed through their U. S. bank arrangement at no extra cost to the city at a fixed monthly rate for five years. The new copiers will meet the needs of the city over the next five years, while providing the service and value the City requires;

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

Section 1. The Mayor is hereby authorized to enter into a 60 month lease agreement with the WITT Company for services and some supplies and with the U. S. Bank for the 60 month billing of the lease for the Kyocera TA 7551 ci & TA 3551 ci Copiers.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 5TH DAY OF FEBRUARY, 2015.

CITY OF BLACK DIAMOND:



Carol Benson, Mayor

Attest:

Brenda L. Martinez
Brenda L. Martinez, City Clerk



Value Lease Agreement

APPLICATION NO.

AGREEMENT NO.

500-0425-714-000

EQUIPMENT FINANCE

Send Account Inquiries to: 1310 Madrid Street, Suite 101 • Marshall, MN 56258 • Phone: (800) 328-5371 • Fax: (800) 328-9092
Send Payments to: P.O. Box 790448 • St. Louis, MO 63179-0448

The words Lessee, you and your refer to Customer. The words Lessor, we, us and our refer to U.S. Bank Equipment Finance, a division of U.S. Bank National Association ("U.S. Bank Equipment Finance").

CUSTOMER INFORMATION

FULL LEGAL NAME			STREET ADDRESS	
City of Black Diamond			24301 Roberts Drive	
CITY	STATE	ZIP	PHONE	FAX
Black Diamond	WA	98101	360.886.5700	
BILLING NAME (IF DIFFERENT FROM ABOVE)			BILLING STREET ADDRESS	
CITY	STATE	ZIP	E-MAIL	
EQUIPMENT LOCATION (IF DIFFERENT FROM ABOVE)				

SUPPLIER INFORMATION

NAME OF SUPPLIER			STREET ADDRESS	
Witt Company			850 SW 7th Street, Suite 100	
CITY	STATE	ZIP	PHONE	FAX
Renton	WA	98057	800 777-0852	425 974-1815

EQUIPMENT DESCRIPTION

MAKE/MODEL/ACCESSORIES	SERIAL NO.	STARTING METER
Kyocera TA 7551 ci	17W4400179	
Kyocera TA 3551 ci	L8A3500075	

together with all replacements, parts, repairs, additions, and accessories incorporated therein or attached thereto and any and all proceeds of the foregoing, including, without limitation, insurance recoveries.

☐ See the attached Schedule A☐ See the attached Billing Schedule

TERM AND PAYMENT SCHEDULE

Term in	60	Months	60	Payments* of \$	996.68	*plus applicable taxes
The lease contract payment ("Payment") period is monthly unless otherwise indicated.						
Payment includes	22,000	B&W Pages per month	Overages billed quarterly at \$.007	per B&W page*	
Payment includes	6,000	Color Pages per month	Overages billed quarterly at \$.055	per Color page*	

By initialing here, you agree that service and supplies are not included in this Agreement.

END OF LEASE OPTIONS

You may choose one of the following options within the area you check and initial at the end of the original term, provided that no event of default under the Agreement has occurred and is continuing. If no box is checked and initialed, then Fair Market Value will be your end of lease option. Leases with \$1.00 or \$101.00 purchase options will not be renewed. To the extent that any purchase option indicates that the purchase price will be the "Fair Market Value" (or "FMV"), such term means the value of the Equipment in continued use.

- ☒ 1) Purchase all but not less than all the Equipment for the Fair Market Value per paragraph 1, 2) Renew the Agreement per paragraph 1, or 3) Return the Equipment per paragraph 3.
☐ 1) Purchase the Equipment for \$1.00, or 2) Return the Equipment per paragraph 3.

____ Customer's Initials
____ Customer's Initials

THIS IS A NONCANCELABLE / IRREVOCABLE AGREEMENT; THIS AGREEMENT CANNOT BE CANCELED OR TERMINATED.

LESSOR ACCEPTANCE

U.S. Bank Equipment Finance	<i>Dany Sama</i>	Doc Analyst	2/13/15
LESSOR	SIGNATURE	TITLE	DATED

CUSTOMER ACCEPTANCE

By signing below, you certify that you have reviewed and do agree to all terms and conditions of this Agreement on this page and on page 2 attached hereto.

City of Black Diamond	<i>X Carol Benson</i>	Mayor	2-6-2015
CUSTOMER (as referenced above)	SIGNATURE	TITLE	DATED
91-6016204	CAROL BENSON		
FEDERAL TAX I.D. #	PRINT NAME		

ACCEPTANCE OF DELIVERY

You certify that all the Equipment listed above has been furnished, that delivery and installation has been fully completed and is satisfactory. Upon you signing below, your promises herein will be irrevocable and unconditional in all respects. You understand that we have purchased the Equipment from the supplier, and you may contact the supplier for a full description of any warranty rights under the supply contract, which we hereby assign to you for the term of this Agreement (or until you default). Your approval as indicated below of our purchase of the Equipment from the supplier is a condition precedent to the effectiveness of this Agreement.

<i>X Maylene Miller</i>	Finance Director	2-12-2015
CUSTOMER (as referenced above)	SIGNATURE	TITLE DATE OF DELIVERY



EQUIPMENT FINANCE

STATE AND LOCAL
GOVERNMENT ADDENDUM

AGREEMENT #

500-0425714-000

Addendum to Agreement # , dated 2-6-15 between , as Customer and U.S. Bank Equipment Finance, a division of U.S. Bank National Association, as Lessor. City of Black Diamond

The parties wish to amend the above-referenced Agreement by adding the following language:

REPRESENTATIONS AND WARRANTIES OF CUSTOMER: You hereby represent and warrant to us that: (a) you have been duly authorized by the Constitution and laws of the applicable jurisdiction and by a resolution of your governing body to execute and deliver this Agreement and to carry out your obligations hereunder; (b) all legal requirements have been met, and procedures have been followed, including public bidding, in order to ensure the enforceability of this Agreement; (c) this Agreement is in compliance with all laws applicable to you, including any debt limitations or limitations on interest rates or finance charges; (d) the Equipment will be used by you only for essential governmental or proprietary functions of you consistent with the scope of your authority, will not be used in a trade or business of any person or entity, by the federal government or for any personal, family or household use, and your need for the Equipment is not expected to diminish during the term of this Agreement; (e) you have funds available to pay contracted Payments until the end of your current appropriation period, and you intend to request funds to make contracted Payments in each appropriation period, from now until the end of the term of this Agreement; and (f) your exact legal name is as set forth on page one of this Agreement.

NON-APPROPRIATION OR RENEWAL: If either sufficient funds are not appropriated to make contracted Payments or any other amounts due under this Agreement or (to the extent required by applicable law) this Agreement is not renewed, this Agreement shall terminate and you shall not be obligated to make contracted Payments under the Agreement beyond the then-current fiscal year for which funds have been appropriated. Upon such an event, you shall, no later than the end of the fiscal year for which contracted Payments have been appropriated, deliver possession of the Equipment to us. If you fail to deliver possession of the Equipment to us, the termination shall nevertheless be effective but you shall be responsible, to the extent permitted by law and legally available funds, for the payment of damages in an amount equal to the portion of contracted Payments thereafter coming due that is attributable to the number of days after the termination during which you fail to deliver possession and for any other loss suffered by us as a result of your failure to deliver possession as required. You shall notify us in writing within seven days after your failure to appropriate funds sufficient for the payment of the contracted Payments or (to the extent required by applicable law) this Agreement is not renewed, but failure to provide such notice shall not operate to extend the Agreement term or result in any liability to you.

TITLE TO THE EQUIPMENT: If the selected purchase option for this Agreement is \$1.00 or \$101.00, unless otherwise required by law, upon your acceptance of the Equipment, title to the Equipment shall be in your name, subject to our interest under this Agreement.

The parties wish to amend the above-referenced Agreement by restating the following language:

Any provision in the Agreement stating this Agreement supersedes any invoice and/or purchase order is hereby amended and restated as follows: "You agree that the terms and conditions of the Agreement and any supplement or schedule thereto and any related acceptance certificate constitutes the entire agreement regarding the financing or lease of the Equipment and supersedes any purchase order, invoice, request for proposal or other related document."

Any provision in the Agreement stating that the Agreement shall automatically renew unless the Equipment is purchased, returned or a notice requirement is satisfied is hereby amended and restated as follows: "This Agreement will renew for month-to-month terms unless you purchase or return the Equipment (according to the conditions herein) or send us written notice at least 30 days (before the end of any term) that you do not want it renewed."

Any provision in the Agreement stating that we may assign this Agreement is hereby amended and restated as follows: "We may sell, assign, or transfer this Agreement without notice to or consent from you, and you waive any right you may have to such notice or consent."

Any provision in the Agreement stating that you grant us a security interest in the Equipment to secure all amounts owed to us under any agreement is hereby amended and restated as follows: "To the extent permitted by law, you grant us a security interest in the Equipment to secure all amounts you owe us under this Agreement, and you authorize us to file a UCC-1 financing statement or be named on the vehicle title to show our interest."

Any provision in the Agreement stating that you shall indemnify and hold us harmless is hereby amended and restated as follows: "You shall not be required to indemnify or hold us harmless against liabilities arising from the Agreement. However, as between you and us, and to the extent permitted by law and legally available funds, you shall bear the risk of loss for, shall pay directly, and shall defend against any and all claims, liabilities, proceedings, actions, expenses, damages or losses arising under or related to the Equipment, including, but not limited to, the possession, ownership, lease, use or operation thereof, except that you shall not bear the risk of loss of, nor pay for, any claims, liabilities, proceedings, actions, expenses, damages or losses that arise directly from events occurring after you have surrendered possession of the Equipment in accordance with the terms of the Agreement to us or that arise directly from our gross negligence or willful misconduct."

Any provision in the Agreement stating that a default by you under any agreement with our affiliates or other lenders shall be an event of default under the Agreement is hereby amended and restated as follows: "You will be in default if: (i) you do not pay any Payment or other sum due to us under the Agreement when due or if you fail to perform in accordance with the covenants, terms and conditions of this Agreement, (ii) you make or have made any false statement or misrepresentation to us, (iii) you dissolve, terminate your existence or file bankruptcy, or (iv) there has been a material adverse change in your financial, business or operating condition."

Any provision in the Agreement stating that you shall pay our attorneys' fees is hereby amended and restated as follows: "In the event of any dispute or enforcement of rights under this Agreement or any related agreement, you agree to pay, to the extent permitted by law and to the extent of legally available funds, our reasonable attorneys' fees (including any incurred before or at trial, on appeal or in any other proceeding), actual court costs and any other collection costs, including any collection agency fee."

Any provision in the Agreement requiring you to pay amounts due under the Agreement upon the occurrence of a default, failure to appropriate funds or failure to renew the Agreement is hereby amended to limit such requirement to the extent permitted by law and legally available funds.

Any provision in the Agreement stating that the Agreement is governed by a particular state's laws and you consent to such jurisdiction and venue is hereby amended and restated as follows: "This Agreement will be governed by and construed in accordance with the laws of the state where you are located. You consent to jurisdiction and venue of any state or federal court in such state and waive the defense of inconvenient forum."

By signing this Addendum, Customer acknowledges the above changes to the Agreement and authorizes Lessor to make such changes. In all other respects, the terms and conditions of the Agreement remain in full force and effect and remain binding on Customer.

U.S. Bank Equipment Finance

Lessor

Signature

Title

Docs Analyst

Date

2/13/15

Customer

Signature

Title

MAYOR

Date

2-6-2015

NOTE: SIGNER OF THIS DOCUMENT MUST BE SAME AS ON THE AGREEMENT. A FACSIMILE OF THIS DOCUMENT WITH SIGNATURE SHALL BE CONSIDERED TO BE AN ORIGINAL. CAPITALIZED TERMS IN THIS DOCUMENT ARE DEFINED AS IN THE AGREEMENT, UNLESS SPECIFICALLY STATED OTHERWISE.

1. **AGREEMENT:** For business purposes only, you agree to lease from us the goods (the "Equipment") and/or to finance certain licensed software and services ("Financed Items", which are included in the word "Equipment" unless separately stated), all as described on page 1 of this Agreement, as it may be supplemented from time to time. You agree to all of the terms and conditions contained in this Agreement and any supplement, which (with the acceptance certification) is the entire agreement regarding the Equipment ("Agreement") and which supersedes any purchase order or invoice. You authorize us to correct or insert missing Equipment identification information and to make corrections to your proper legal name. This Agreement becomes valid upon execution by us. If service and supplies are not included, this Agreement will start on the date we pay the supplier and interim rent/due date adjustments will be in an amount equal to 1/30th of the Payment, multiplied by the number of days between the Agreement start date and the first Payment due date. This Agreement will renew for 12-month term(s) unless you purchase or return the Equipment (according to the conditions herein) or send us written notice between 90 and 150 days (before the end of any term) that you do not want it renewed. If any provision of this Agreement is declared unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in that jurisdiction and all others.

2. **RENT, TAXES AND FEES:** You will pay the monthly Payment (as adjusted) when due, plus any applicable sales, use and property taxes. The base Payment will be adjusted proportionately upward or downward: (1) by up to 10% to accommodate changes in the actual Equipment cost; (2) if the shipping charges or taxes differ from the estimate given to you; and (3) to comply with the tax laws of the state in which the Equipment is located. If we pay any taxes, insurance or other expenses that you owe hereunder, you agree to reimburse us when we request and to pay us a processing fee for each expense or charge we pay on your behalf. We may charge you for any filing fees required by the Uniform Commercial Code (UCC) or other laws, which fees vary state-to-state. By the date the first Payment is due, you agree to pay us an origination fee, as shown on our invoice or addendum, to cover us for all closing costs. We will have the right to apply all sums, received from you, to any amounts due and owed to us under the terms of this Agreement. If for any reason your check is returned for nonpayment, you will pay us a bad check charge of \$30 or, if less, the maximum charge allowed by law. We may make a profit on any fees, estimated tax payments and other charges paid under this Agreement.

3. **MAINTENANCE AND LOCATION OF EQUIPMENT; SECURITY INTEREST:** At your expense, you agree to keep the Equipment: (1) in good repair, condition and working order, in compliance with applicable manufacturers' and regulatory standards; (2) free and clear of all liens and claims; and (3) only at your address shown on page 1, and you agree not to move it unless we agree. As long as you have given us the written notice as required in paragraph 1 prior to the expiration or termination of this Agreement's term, if you do not purchase the Equipment, you will return all but not less than all of the Equipment and all related manuals and use and maintenance records to a location we specify, at your expense, in retail re-saleable condition, full working order and complete repair. You are solely responsible for removing any data that may reside in the Equipment you return, including but not limited to hard drives, disk drives or any other form of memory. You grant us a security interest in the Equipment to secure all amounts you owe us under any agreement with us, and you authorize us to file a financing statement (UCC-1). You will not change your state of organization, headquarters or residence without providing prior written notice to us so that we may amend or file a new UCC-1. You will notify us within 30 days if your state of organization revokes or terminates your existence.

4. **COLLATERAL PROTECTION; INSURANCE; INDEMNITY; LOSS OR DAMAGE:** You agree to keep the Equipment fully insured against risk and loss, with us as lender's loss payee, in an amount not less than the original cost until this Agreement is terminated. You also agree to obtain a general public liability insurance policy with such coverage and from such insurance carrier as shall be satisfactory to us and to include us as an additional insured on the policy. Your insurance policy(s) will provide for 10 days advance written notice to us of any modification or cancellation. You agree to provide us certificates or other evidence of insurance acceptable to us. If you fail to comply with this requirement within 30 days after the start of this Agreement, you agree to pay a monthly property damage surcharge ("PDS") of up to .0035 of the Equipment cost as a result of our credit risk and administrative and other costs, under the PDS program that is further described on a letter from us to you. We may make a profit on this program. **AS LONG AS YOU ARE NOT IN DEFAULT AT THE TIME OF A LOSS (excluding losses from intentional acts), the remaining balance owed on the subject Equipment will be forgiven. NOTHING IN THIS PARAGRAPH WILL RELIEVE YOU OF RESPONSIBILITY FOR LIABILITY INSURANCE ON THE EQUIPMENT.** We are not responsible for, and you agree to hold us harmless and reimburse us for and to defend on our behalf against, any claim for any loss, expense, liability or injury caused by or in any way related to delivery, installation, possession, ownership, use, condition, inspection, removal, return or storage of the Equipment. You are responsible for the risk of loss or for any destruction of or damage to the Equipment. You agree to promptly notify us in writing of any loss or damage. If the Equipment is destroyed and you do not have the PDS program you will pay to us the unpaid balance of this Agreement, including any future rent to the end of the term plus the anticipated purchase price of the Equipment (both discounted at 3%). Any proceeds of insurance will be paid to us and credited, at our option, against any loss or damage. You authorize us to sign on your behalf and appoint us as your attorney-in-fact to endorse in your name any insurance drafts or checks issued due to loss or damage to the Equipment. All indemnities will survive the expiration or termination of this Agreement.

5. **ASSIGNMENT:** YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS AGREEMENT, without our prior written consent. Without our prior written consent, you shall not reorganize or merge with any other entity or transfer all or a substantial part of your ownership interests or assets. We may sell, assign, or transfer this Agreement without notice. You agree that if we sell, assign or transfer this Agreement, the new Lessor will have the same rights and benefits that we have now and will not have to perform any of our obligations. You agree that the new Lessor will not be subject to any claims, defenses, or offsets that you may have against us. You shall cooperate with us in executing any documentation reasonably required by us or our assignee to effectuate any such assignment. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.

6. **DEFAULT AND REMEDIES:** You will be in default if: (a) you do not pay any Payment or other sum due to us or any other person when due or if you break any of your promises in this Agreement or any other agreement with us or any of our affiliates or any material agreement with any other lender, (b) you make or have made any false statement or misrepresentation to us, (c) you or any guarantor dies, dissolves or terminates existence, (d) there has been a material adverse change in your or any guarantor's financial, business or operating condition, or (e) any guarantor defaults under any guaranty for this Agreement. If any part of a Payment is more than 5 days late, you agree to pay a late charge of 10% of the Payment which is late or, if less, the maximum charge allowed by law. If you are ever in default, at our option, we can terminate this Agreement and require that you pay the unpaid balance of this Agreement, including any future Payments to the end of the term plus the anticipated purchase price of the Equipment (both discounted at 3%). We may recover default interest on any unpaid amount at the rate of 12% per year. Concurrently and cumulatively, we may also use any or all of the remedies available to us under Articles 2A and 9 of the UCC and any other law, including requiring that you: (1) return the Equipment to us to a location we specify; and (2) immediately stop using any Financed Items. In addition, we will have the right, immediately and without notice or other action, to set-off against any of your liabilities to us any money, including depository account balances, owed by us to you, whether or not due. In the event of any dispute or enforcement of rights under this Agreement or any related agreement, you agree to pay our reasonable attorney's fees (including any incurred before or at trial, on appeal or in any other proceeding), actual court costs and any other collection costs, including any collection agency fee. If we have to take possession of the Equipment, you agree to pay the costs of repossession, moving, storage, repair and sale. The net proceeds of the sale of any Equipment will be credited against what you owe us under this Agreement. **YOU AGREE THAT WE WILL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES FOR ANY DEFAULT, ACT OR OMISSION BY ANYONE.** Any delay or failure to enforce our rights under this Agreement will not prevent us from enforcing any rights at a later time. You agree that your rights and remedies are governed exclusively by this Agreement. You waive all rights under Article 2A (509-522) of the UCC. If interest is charged or collected in excess of the maximum lawful rate, we will not be subject to any penalties.

7. **INSPECTIONS AND REPORTS:** We will have the right, at any reasonable time, to inspect the Equipment and any documents relating to its use, maintenance and repair. Within 30 days after our request, you will deliver all requested information (including tax returns) which we deem reasonably necessary to determine your current financial condition and faithful performance of the terms hereof. This may include: (i) completed, reviewed or audited annual financial statements (including, without limitation, a balance sheet, a statement of income, a statement of cash flow, a statement of changes in equity and notes to financial statements) within 120 days after your fiscal year end, and (ii) management-prepared interim financial statements within 45 days after the requested reporting period(s). Annual statements shall set forth the corresponding figures for the prior fiscal year in comparative form, all in reasonable detail without any qualification or exception deemed material by us. Unless otherwise accepted by us, each financial statement submitted to us shall be prepared in accordance with generally accepted accounting principles consistently applied and shall fairly and accurately present your financial condition and results of operations for the period to which it pertains.

8. **FAXED OR SCANNED DOCUMENTS, MISC.:** You agree to submit the original duly-signed documents to us via overnight courier the same day of the facsimile or scanned transmission of the documents. Any faxed or scanned copy may be considered the original, and you waive the right to challenge in court the authenticity or binding effect of any faxed or scanned copy or signature thereon. You agree to execute any further documents that we may request to carry out the intents and purposes of this Agreement. All notices shall be mailed or delivered by facsimile transmission or overnight courier to the respective parties at the addresses shown on this Agreement or such other address as a party may provide in writing from time to time. By providing any telephone number, now or in the future, for a cell phone or other wireless device, you are expressly consenting to receiving communications, regardless of their purpose, at that number, including, but not limited to, prerecorded or artificial voice message calls, text messages, and calls made by an automatic dialing system from us and our affiliates and agents. These calls and messages may incur access fees from your provider.

9. **WARRANTY DISCLAIMERS:** YOU AGREE THAT YOU HAVE SELECTED THE SUPPLIER AND EACH ITEM OF EQUIPMENT BASED UPON YOUR OWN JUDGMENT AND YOU DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US. WE DO NOT TAKE RESPONSIBILITY FOR THE INSTALLATION OR PERFORMANCE OF THE EQUIPMENT. THE SUPPLIER IS NOT AN AGENT OF OURS AND WE ARE NOT AN AGENT OF THE SUPPLIER, AND NOTHING THE SUPPLIER STATES OR DOES CAN AFFECT YOUR OBLIGATION UNDER THIS AGREEMENT. YOU WILL CONTINUE TO MAKE ALL PAYMENTS UNDER THIS AGREEMENT REGARDLESS OF ANY CLAIM OR COMPLAINT AGAINST ANY SUPPLIER, LICENSOR OR MANUFACTURER, AND ANY FAILURE OF A SERVICE PROVIDER TO PROVIDE SERVICES WILL NOT EXCUSE YOUR OBLIGATIONS TO US UNDER THIS AGREEMENT. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, OF, AND TAKE ABSOLUTELY NO RESPONSIBILITY FOR, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, CONDITION, QUALITY, ADEQUACY, TITLE, DATA ACCURACY, SYSTEM INTEGRATION, FUNCTION, DEFECTS, OR ANY OTHER ISSUE IN REGARDS TO THE EQUIPMENT, ANY ASSOCIATED SOFTWARE AND ANY FINANCED ITEMS.

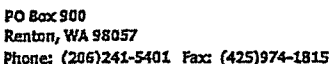
10. **LAW, JURY WAIVER:** Agreements, promises and commitments made by Lessor concerning loans and other credit extensions must be in writing, express consideration and be signed by Lessor to be enforceable. This Agreement may be modified only by written agreement and not by course of performance. This Agreement will be governed by and construed in accordance with Minnesota law. You consent to jurisdiction and venue of any state or federal court in Minnesota and waive the defense of inconvenient forum. For any action arising out of or relating to this Agreement or the Equipment, YOU AND WE WAIVE ALL RIGHTS TO A TRIAL BY JURY.

11. **MAINTENANCE AND SUPPLIES:** The charges established by this Agreement include payment for the use of the Equipment, accessories, maintenance by supplier during normal business hours, inspection, adjustment, parts replacement, drums, cleaning material required for proper operation and black toner and developer. Paper and staples must be separately purchased by you. Color toner is not included in this Agreement and will be billed separately. If necessary, the service and supply portion of this Agreement may be assigned by us. We may charge you a supply freight fee to cover our costs of shipping supplies to you.

12. **OVERAGES AND COST ADJUSTMENTS:** You agree to comply with our billing procedures including, but not limited to, providing us with periodic meter readings on the Equipment. At the end of the first 12 months after commencement of this Agreement, and once each successive 12-month period thereafter, we may increase the Payment and the "cost per page" charge that exceeds the number of pages originally designated in this Agreement ("Overages") by a maximum of 16% of the existing "cost per page" charge.

13. **UPGRADE AND DOWNGRADE PROVISION:** AFTER COMMENCEMENT OF THE AGREEMENT AND UPON YOUR WRITTEN REQUEST, AT OUR SOLE DISCRETION, WE MAY REVIEW YOUR PAGE VOLUME AND PROPOSE OPTIONS FOR UPGRADING OR DOWNGRADING THE EQUIPMENT TO ACCOMMODATE YOUR BUSINESS NEEDS.

14. **TRANSITION BILLING:** In order to facilitate an orderly transition, including installation and training, and to provide a uniform billing cycle, the start date of this Agreement (the "Effective Date") will be a date after the certification of acceptance of the Equipment, as shown on the first invoice. The payment for this transition period will be based on the base minimum usage payment, prorated on a 30-day calendar month, and will be added to your first monthly Payment.



P.O. # 111/2015 DATE: 11/1/2015

CUSTOMER INFORMATION Ship To:		
COMPANY NAME The City of Black Diamond		
ADDRESS 24031 Roberts Drive		SUITE
CITY Black Diamond	STATE WA	ZIP CODE 98010
PHONE # 306.886.5700	FAX #	
EMAIL ADDRESS: May Miller		

CUSTOMER INFORMATION		Bill To:
COMPANY NAME		
Same		
ADDRESS		SUITE
CITY	STATE	ZIP CODE
PHONE #		FAX #
EMAIL ADDRESS:		CONTACT NAME

QTY	ITEM #	DESCRIPTION	ID #	UNIT PRICE	TOTAL AMOUNT
1	TA 7551ci	Color MFP			
1	TA 3551ci	Color MFP			
1	DF 790	Finisher			
2	Punch 7A	Punch			
1	MT730	Bins			
1	Bk 730	Fold			
1	DP 770	DSDP			
1	PF 730	LCT			
1	DF 770	Finisher			
2	Fax w				
		Service and Supplies Inc. Toner, staples			
		Black 264.000 black .007			
		72,000 @ year Color .055			
		WRAP contract			
		Includes 5 year contract			
		US Bank lease payment 60 Payments of			
		996.68 plus tax .			
		Taxes are not included.			
		City to provide proof of insurance.			
		US Bank requires a non approp for the city			
		All terms and			
		conditions of the US Bank agreement			
		Apply .			
Trade-In					
Buyout					

CASH TERMS

SUBTOTAL	
INSTALL AND FREIGHT CHARGES	
SUBTOTAL	
STATE AND LOCAL TAXES	
LESS DEPOSIT	
TOTAL THIS ORDER	
ADDITIONAL TERMS AND CONDITIONS	
US Bank provides the lease and Witt Company Kyocera provides services for 5 years per term no increases to payment for term	
ACCEPTED BY CUSTOMER	
X	<i>Carol Benson</i>
AUTHORIZED SIGNATURE REQUIRED	
X	CAROL BENSON
PRINTED NAME	

	ACCEPTED BY WITT COMPANY
X	<i>[Signature]</i>
	AUTHORIZED SIGNATURE REQUIRED
X	<i>[Signature]</i>
	PRINT NAME

ACCEPTED BY CUSTOMER
X Carol Benson
AUTHORIZED SIGNATURE REQUIRED
X CAROL BENSON
PRINTED NAME

5

Equipment Acquisition Agreement

THIS ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS

1. This order shall not be binding on Witt Company until approved at our office.
2. All shipments shall be F.O.B. our warehouse
3. Witt Company reserves the right to make delivery in installments. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of an installment shall not relieve Buyer of its obligation to accept remaining installments.
4. Witt Company reserves the right at any time to revoke any credit extended to Buyer because of Buyer's failure to pay for any goods when due or for any reason deemed good and sufficient.
5. Witt Company shall not be liable for failure to deliver or delays in delivery occasioned by causes beyond Witt Company's control, including without limitation, strikes, lockouts, fires, embargoes, war or other outbreaks of hostilities, inability to obtain materials or shipping space, machinery breakdowns, delays of carrier or supplier, governmental acts and regulation, other causes beyond Witt Company's control and receipt of orders from all sources in excess of Witt Company's then scheduled production capacity.
6. Witt Company warrants that the goods covered by this agreement when delivered to buyer will be of merchantable quality and free from material defects in workmanship and material for a period of 90 days from the date of delivery by Witt Company under ordinary use and conditions. Witt Company will repair, or at Witt Company's option replace any item of the goods which does not conform to the foregoing warranty and the cause of the nonconformity does not arise from or relate to modification, misuse or abuse by the customer, if a warranty claim, stating in writing and with reasonable particularity the claimed nonconformity, is delivered to Witt Company within the 90 day period. All warranties and remedies other than those set forth above, whether they be express or implied by law or arising from course of dealing or usage of trade, and specifically including but not limited to the warranties of merchantability and fitness for a particular purpose and the remedy of consequential damages, are excluded.
7. All claims for goods or delay in delivery shall be deemed waived unless made in writing delivered to Witt Company within ten days after receipt of goods by Buyer.
8. Title to all goods and equipment shall remain with Witt Company until such time as the purchase price thereof shall have been paid in full.
9. Witt Company shall have a security interest in all goods and equipment delivered to Buyer until the purchase price for same shall have been paid in full. At the request of Witt Company, Buyer shall execute and deliver a security agreement and/or financing statements in the form or forms submitted to Buyer by Witt Company.
10. Customer agrees to provide suitable electric service for the operation of the equipment.
11. Customer agrees to make available an operator for training purposes in the use of the equipment. Customer also agrees to notify Witt Company of any change in operator assignment.
12. All paper, chemicals and toner used to operate the equipment installed hereunder, shall meet or exceed manufacturer's specifications. Customer acknowledges that it understands that it is not a condition of the Agreement that it use only manufacturer's paper, chemicals or toner.
13. This agreement shall be governed by and construed in accordance with the laws of the State of Oregon and exclusive venue of any action arising out of this agreement shall be in Washington County, Oregon, unless this agreement has been entered into in the State of Washington, in which case, it shall be governed and construed in accordance with the laws of the State of Washington and exclusive venue of any action arising out of this agreement shall be in King County, Washington.
14. Customer agrees to provide proper access to the equipment, so that Witt Company service personnel can properly service the machine.
15. This contract is a complete, unambiguous and exclusive statement of the terms of the agreement between the parties and is intended to supersede and replace all prior or contemporaneous writings and oral agreements and understandings and to prevail over any course of dealing or usage of the trade inconsistent with any express term contained herein. Any and all representations, promises, warranties, or statements by Witt Company representative that differ in any way from the terms of this written agreement shall be given no force or effect. The terms of this agreement may be modified or terminated only by a writing signed by the buyer and an officer of Witt Company.
16. In the event either party commences legal action, including arbitration, under this agreement, or if either party is required to file a claim or take action under this agreement in a bankruptcy proceeding, the prevailing party shall be entitled to recover its reasonable attorney fees and costs incurred, including expert witness fees, to be determined by the trial court, arbitrator, or bankruptcy court, as the case may be, and if any appeal is taken, such further sum as may be fixed by the appellate court as the prevailing party's reasonable attorney fees on appeal. If this agreement is placed in the hands of an attorney for collection, the buyer agrees to pay Witt Company actual attorney fees and other expenses incurred, whether or not legal action has been commenced.
17. The parties hereby waive and relinquish any and all claims to the effect that forbearance or indulgence by one party as to any failure or refusal of performance constitutes a waiver of the obligation or grounds for a claim of estoppel with respect thereto.



MAINTENANCE and SUPPLIES

PO Box 900
Renton, WA 98057
Phone: (206)241-5401 Fax: (425)974-1815

P.O. # 11112015 DATE: 1/11/2015

CUSTOMER INFORMATION Ship To:			
COMPANY NAME The City of Black Diamond			
ADDRESS		SUITE	
24031 Roberts Drive			
CITY	STATE	ZIP CODE	
Black Diamond	WA	98010	
PHONE #		FAX #	
306.886.5700			
EMAIL ADDRESS:		CONTACT NAME	
		May Miller	

CUSTOMER INFORMATION Bill To:			
COMPANY NAME Same			
ADDRESS		SUITE	
CITY	STATE	ZIP CODE	
PHONE #		FAX #	
EMAIL ADDRESS:		CONTACT NAME	

The Buyer agrees to acquire, under the plan initiated below, and The Witt-Company, Agrees to sell, in accordance with the terms and conditions of this agreement, the equipment and/or goods listed below.

QTY	ITEM #	DESCRIPTION	ID #	UNIT PRICE	TOTAL AMOUNT
1	TA 7551ci	Color MFP			
1	TA 3551ci	Color MFP			
1	DF 790	Finisher			
2	Punch 7A	Punch			
1	MT 730	Bins			
1	Bk 730	Fold			
1	DP 770	DSDP			
1	PF 730	LCT			
1	DF 770	Finisher			
2	Fax w/				
		Service and Supplies Inc. Toner, staples			
		Black 264,000 black .007			
		72,000 @ year Color .055			
		WRAP contract			
		Includes 5 year contract			
		US Bank lease payment 60 Payments of			
		996.68 plus tax.			
		Taxes are not included.			
		City to provide proof of insurance.			
		US Bank requires a non approp for the city			
		All terms and			
		conditions of the US Bank agreement			
		Apply.			

Trade-In Buyout	
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NO TERMS OR CONDITIONS, EXPRESS OR IMPLIED, ARE AUTHORIZED UNLESS THEY APPEAR ON "ORIGINAL" OF THIS ORDER.

* TERMS: THE EQUIPMENT INDICATED ABOVE IS PURCHASED UNDER THE WITT-COMPANY STANDARD TERMS AS FOLLOWS:

1. IN THE EVENT BUYER DEFAULTS IN PAYMENT THE BUYER WILL BE LIABLE FOR THE PAYMENT OF ANY LEGAL FEES OR COSTS INCURRED IN SUSTAINING OR PROTECTING THE SECURITY INTEREST OR IN ENFORCING THE TERMS OF THE SECURITY AGREEMENT & UPON DEMAND THE BUYER AGREES TO MAKE THE EQUIPMENT AVAILABLE TO THE SELLER AT A LOCATION TO BE DETERMINED BY THE SELLER.

2. ADDITIONAL TERMS AND CONDITIONS ON REVERSE SIDE HEREOF ARE INCORPORATED HEREIN AND MADE PART OF THIS AGREEMENT

CASH TERMS	
SUBTOTAL	
INSTALL AND FREIGHT CHARGES	
SUBTOTAL	
STATE AND LOCAL TAXES	
LESS DEPOSIT	
TOTAL THIS ORDER	

ADDITIONAL TERMS AND CONDITIONS
US Bank provides the lease and Witt Company
Kyocera provides services for 5 years per term
no increases to payment for term

X	ACCEPTED BY WITT-COMPANY	X	ACCEPTED BY CUSTOMER
	AUTHORIZED SIGNATURE REQUIRED		AUTHORIZED SIGNATURE REQUIRED
X	PRINTED NAME	X	PRINTED NAME

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Equipment Acquisition Agreement

THIS ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS

1. This order shall not be binding on Witt Company until approved at our office.
2. All shipments shall be F.O.B. our warehouse
3. Witt Company reserves the right to make delivery in installments. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of an installment shall not relieve Buyer of its obligation to accept remaining installments.
4. Witt Company reserves the right at any time to revoke any credit extended to Buyer because of Buyer's failure to pay for any goods when due or for any reason deemed good and sufficient.
5. Witt Company shall not be liable for failure to deliver or delays in delivery occasioned by causes beyond Witt Company's control, including without limitation, strikes, lockouts, fires, embargoes, war or other outbreaks of hostilities, inability to obtain materials or shipping space, machinery breakdowns, delays of carrier or supplier, governmental acts and regulation, other causes beyond Witt Company's control and receipt of orders from all sources in excess of Witt Company's then scheduled production capacity.
3. Witt Company warrants that the goods covered by this agreement when delivered to buyer will be of merchantable quality and free from material defects in workmanship and material for a period of 90 days from the date of delivery by Witt Company under ordinary use and conditions. Witt Company will repair, or at Witt Company's option replace any item of the goods which does not conform to the foregoing warranty and the cause of the nonconformity does not arise from or relate to modification, misuse or abuse by the customer, if a warranty claim, stating in writing and with reasonable particularity the claimed nonconformity, is delivered to Witt Company within the 90 day period. All warranties and remedies other than those set forth above, whether they be express or implied by law or arising from course of dealing or usage of trade, and specifically including but not limited to the warranties of merchantability and fitness for a particular purpose and the remedy of consequential damages, are excluded.
7. All claims for goods or delay in delivery shall be deemed waived unless made in writing delivered to Witt Company within ten days after receipt of goods by Buyer.
3. Title to all goods and equipment shall remain with Witt Company until such time as the purchase price thereof shall have been paid in full.
3. Witt Company shall have a security interest in all goods and equipment delivered to Buyer until the purchase price for same shall have been paid in full. At the request of Witt Company, Buyer shall execute and deliver a security agreement and/or financing statements in the form or forms submitted to Buyer by Witt Company.
10. Customer agrees to provide suitable electric service for the operation of the equipment.
11. Customer agrees to make available an operator for training purposes in the use of the equipment. Customer also agrees to notify Witt Company of any change in operator assignment.
12. All paper, chemicals and toner used to operate the equipment installed hereunder, shall meet or exceed manufacturer's specifications. Customer acknowledges that it understands that it is not a condition of the Agreement that it use only manufacturer's paper, chemicals or toner.
13. This agreement shall be governed by and construed in accordance with the laws of the State of Oregon and exclusive venue of any action arising out of this agreement shall be in Washington County, Oregon, unless this agreement has been entered into in the State of Washington, in which case, it shall be governed and construed in accordance with the laws of the State of Washington and exclusive venue of any action arising out of this agreement shall be in King County, Washington.
14. Customer agrees to provide proper access to the equipment, so that Witt Company service personnel can properly service the machine.
15. This contract is a complete, unambiguous and exclusive statement of the terms of the agreement between the parties and is intended to supersede and replace all prior or contemporaneous writings and oral agreements and understandings and to prevail over any course of dealing or usage of the trade inconsistent with any express term contained herein. Any and all representations, promises, warranties, or statements by Witt Company representative that differ in any way from the terms of this written agreement shall be given no force or effect. The terms of this agreement may be modified or terminated only by a writing signed by the buyer and an officer of Witt Company.
16. In the event either party commences legal action, including arbitration, under this agreement, or if either party is required to file a claim or take action under this agreement in a bankruptcy proceeding, the prevailing party shall be entitled to recover its reasonable attorney fees and costs incurred, including expert witness fees, to be determined by the trial court, arbitrator, or bankruptcy court, as the case may be, and if any appeal is taken, such further sum as may be fixed by the appellate court as the prevailing party's reasonable attorney fees on appeal. If this agreement is placed in the hands of an attorney for collection, the buyer agrees to pay Witt Company actual attorney fees and other expenses incurred, whether or not legal action has been commenced.
17. The parties hereby waive and relinquish any and all claims to the effect that forbearance or indulgence by one party as to any failure or refusal of performance constitutes a waiver of the obligation or grounds for a claim of estoppel with respect thereto.