



**CITY OF BLACK DIAMOND**  
**December 17, 2015 Meeting Agenda**  
25510 Lawson St., Black Diamond, Washington

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

**APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS: None**

**CONSENT AGENDA:**

- 1) Claim Checks** - December 17, 2015 - No. 42397 through No. 43006 and EFTs in the amount of \$163,661.87
- 2) Minutes** – Special Council Meeting of December 7, 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.

**EXECUTIVE SESSION:** To discuss with Legal Counsel potential litigation pursuant to RCW 42.30.110(1)(i)

**PUBLIC HEARINGS: None**

**UNFINISHED BUSINESS: None**

**NEW BUSINESS:**

- |   |                |
|---|----------------|
| <b>3) Ord No. 15-1069</b> – Adopting the 2016 Budget  | Ms. Miller     |
| <b>4) Ord No. 15-1070</b> – Adopting Concurrency Regulations  | Mr. Boettcher  |
| <b>5) Res No. 15-1057</b> – Authorizing Flood Reduction Grant Agreement with King County                        | Mr. Boettcher  |
| <b>6) Res No. 15-1058</b> – Authorizing a Fuel Tax Agreement with Transportation Improvement Board              | Mr. Boettcher  |
| <b>7) Res No. 15-1059</b> – Adopting Interlocal Agreement with Covington and Maple Valley for Building Services | Ms. Kincaid    |
| <b>8) Res No. 15-1060</b> – Adopting Facility Use Policy  | Ms. Morris     |
| <b>9) Res No. 15-1061</b> – Consent to Assignment of Certain Water Supply Agreements                            | Mr. Williamson |
| <b>10) Res. No. 15-1062</b> – Confirmation of Assignment of MPD Funding Agreement                               | Mr. Williamson |

**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 Weber – Cemetery and Parks Committee; Public Works Committee
- Councilmember Taylor, Chair - Public Works Committee; Public Safety Committee

**ATTORNEY REPORT:**

**PUBLIC COMMENTS:**

**ADJOURNMENT:**

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
<b>SUBJECT:</b>	<b>Agenda Date:</b>	<b>December 17, 2015</b>
<b>Ordinance No. 15-1069 adopting the 2016 Budget</b>		<b>AB15-093</b>
	Mayor Carol Benson	
	City Attorney Carol Morris	
	City Clerk – Brenda L. Martinez	
	Com Development – Barbara Kincaid	
	Finance – May Miller	<b>X</b>
	MDRT/Econ Dev – Andy Williamson	
	Police – Chief Kiblinger	
Cost Impact (see also Fiscal Note):	Public Works – Seth Boettcher	
Fund Source: Various	Court Administrator – Stephanie Metcalf	
Timeline: Public Hearing		
<b>Agenda Placement:</b> <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
<b>Attachments: Ordinance No. 15-1069; Exhibit A - 2016 Salary Schedule, &amp; worksheets -pages 10 &amp; 12 from the 2016 Budget Document</b>		
<b>SUMMARY STATEMENT:</b> The City of Black Diamond Council has reviewed the 2016 Budget at work study sessions on October 1, 2015 and October 29, 2015 and held public hearings on November 19, 2015 and December 7, 2015.  The City Council did not pass the 2016 Budget Ordinance 15-1067 at their December 7, 2015 Special Council Meeting. The Council held an additional work study session on December 10, 2015 to re-examine the 2016 Budget and answer any additional questions.  At the December 10, 2015 Workstudy meeting, Council members requested an additional \$20,000 be added to the General Fund Fire Budget for a total of \$25,000 for the City's half of the costs of an annexation Financial Study. The funds will come from the General Fund ending Fund balance, which will be reduced to \$734,115 and this will reduce the increase from 2015 budget from \$109,035 to \$89,035. This will not change the ordinance, but will change the summary pages 10 and 12, which will be attached to reflect the change.  Ordinance 15-1069 was prepared for Council to adopt the 2016 Budget at the December 17, 2015 meeting.  State law requires that a 2016 Budget be adopted by December 31, 2015 to give the city authority to pay employees and bills effective January 1, 2016.  Mayor Benson's 2016 Budget is in balance for all operating and capital funds. The Ordinance adopting the 2016 Budget at the fund level and Exhibit A- 2016 Salary Schedule and support pages 10 and 12 are attached.  The Budget Document is referenced and is available at City Hall or on the City website.  <b>FISCAL NOTE (Finance Department):</b>  The Mayor's proposed 2016 budget document includes balanced sources and uses for each		

operating and capital fund.		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: the Finance Committee reviewed the 2016 Proposed Budget Document at their December 7, 2015 Finance Committee Meeting.		
RECOMMENDED ACTION: <b>MOTION to approve Ordinance 15-1069, adopting the 2016 Budget.</b>		
<b>RECORD OF COUNCIL ACTION</b>		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
December 17, 2015		



ORDINANCE NO. 15-1069

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF BLACK DIAMOND, KING COUNTY, WASHINGTON,  
ADOPTING THE BUDGET FOR CALENDAR YEAR 2016

**WHEREAS**, the Preliminary Budget was submitted to the City Council by the Mayor on October 1, 2015; and

**WHEREAS**, the City Council held public hearings on the Budget on November 5 and 19th, and December 7, 2015; and work sessions were held on October 1, and the 29th, 2015; and

**WHEREAS**, the City Council did not approve Ordinance No. 15-1067 to adopt the 2016 Budget at their December 7, 2015 special meeting; and

**WHEREAS**, the City Council held an additional special work session meeting on December 10, 2015 to review the 2016 Budget again, and

**WHEREAS**, the 2016 Budget must be adopted by 12/31/2015 for the City to have legal authority to pay employees and/or bills beginning January 1, 2016; and

**WHEREAS**, a copy of the Budget document was on file with the City Clerk for examination by the public during the time it was being considered by the City Council; now, therefore,

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

**Section 1.** The annual budget of the City of Black Diamond for the 2016 calendar year, a reference copy of the document which is on file with the City Clerk and is posted on the city website, is hereby adopted at the fund level as the annual budget for the City of Black Diamond for the calendar year 2016.

**Section 2.** The budget and information contained herein remain provisional to the extent they are subject to mandatory bargaining with the City's collectively bargained employees as required by Washington law.

**Section 3.** The total estimated revenue from all sources and expenditures by fund as set forth in the 2016 budget document is adopted as follows:

<b>Fund # Fund Name</b>	<b>Estimated Revenues</b>	<b>Estimated Expenditures</b>
001 General fund	5,586,502	5,586,502
101 Street Fund	328,979	328,979
107 Fire Impact Fees	61,605	61,605
108 Trans. Benefit District Fund	60,000	60,000
401 Water Fund	959,883	959,883
407 Sewer Fund	963,901	963,901
410 Stormwater Fund	455,738	455,738
310 Gen. Government CIP Fund	327,243	327,243
311 REET 1 Gen Govt	228,491	228,491
320 Street CIP Fund	2,043,211	2,043,211
321 REET 2 Street Projects	211,144	211,144
402 Water Supply and Facility Fund	630,150	630,150
404 Water Capital Fund	716,701	716,701
408 Sewer Capital Fund	737,540	737,540
410 Stormwater Capital Fund	50,000	50,000
510 Equipment Reserve Fund	384,402	384,402
<b>Total All Funds</b>	<b>13,745,490</b>	<b>13,745,490</b>

**Section 4.** This Ordinance shall include the 2016 Salary Schedule as shown in the attachment as Exhibit A.

**Section 5.** This Ordinance shall be in full force and effect five days after its passage, approval, posting and publication in summary form as provided by law.

Passed by a majority of the City Council at a regular meeting on 17th day of December, 2015.

---

Mayor Carol Benson

Attest:

---

Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:

---

Carol Morris, City Attorney

Published:

Posted:

Effective Date:

# 2016 City of Black Diamond Salary Schedule

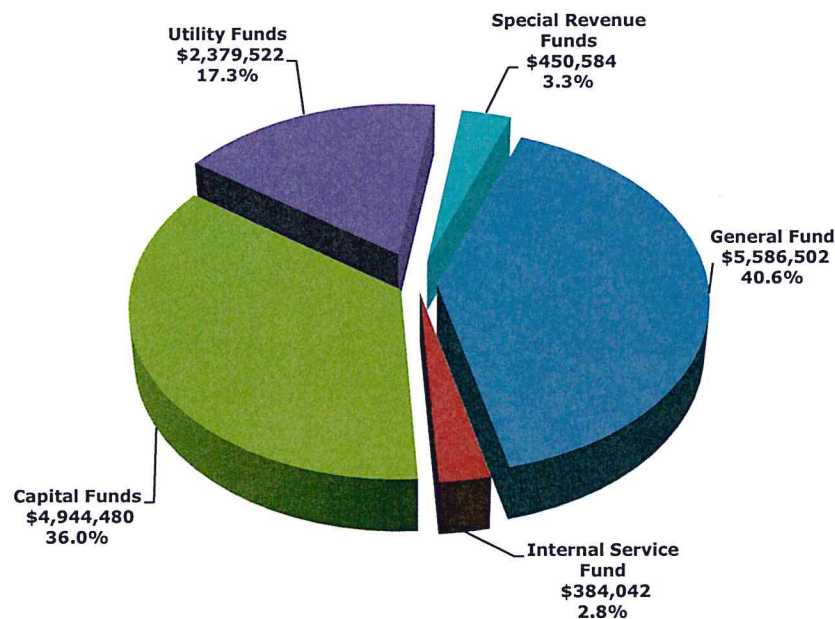
## Exhibit A

2016 Salary Schedule	Step 1	Step 2	Step 3	Step 4	5 & On
City Administrator	9,345	9,649	10,112	10,478	10,848
Assistant City Administrator	8,033	8,435	8,837	9,238	9,640
Court Administrator	5,891	6,159	6,427	6,694	6,962
Interim Court Administrator	5,305	-	-	-	-
Court Clerk (24% hourly)	18.54	20.09	21.63	23.18	24.72
Accounts Payable Clerk (hourly)	17.91	19.34	20.89	22.56	24.93
MDRT & Economic Director	7,498	7,899	8,301	8,703	9,104
City Attorney	8,161	8,569	8,997	9,447	9,919
City Clerk/HR Manager	7,498	7,899	8,301	8,703	9,104
Deputy City Clerk	4,499	4,814	5,128	5,443	5,757
Finance Director	7,498	7,899	8,301	8,703	9,104
Deputy Finance Director	6,631	7,013	7,396	7,778	8,161
Utility Clerk	3,213	3,481	3,749	4,017	4,284
Senior Accountant 73% (hourly)	25.79	27.08	28.43	29.86	31.35
Accountant 1 Journey (hourly)	16.61	17.43	18.30	19.22	20.18
Administrative Assistant 2	3,213	3,481	3,749	4,017	4,284
Administrative Assistant 1	2,356	2,544	2,731	2,919	3,106
Information Services Manager	6,962	7,364	7,766	8,167	8,569
Police Chief	10,236	10,585	11,008	11,287	11,692
Police Commander	8,422	8,702	8,984	9,264	9,588
Police Sergeant	8,292	8,757	-	-	-
Police Officer	5,037	5,645	6,255	6,863	7,440
Police Records Coordinator	4,499	4,814	5,128	5,443	5,757
Police Clerk 62.5% (hourly)	15.05	16.51	17.96	18.98	20.87
Facilities Equipment Coordinator	4,499	4,814	5,128	5,443	5,757
Human Resources Director	7,498	7,899	8,301	8,703	9,104
Community Dev/Natural Resources Dir	7,498	7,899	8,301	8,703	9,104
Permit Center Supervisor	5,891	6,159	6,427	6,694	6,962
Permit Technician	4,499	4,814	5,128	5,443	5,757
Permit Technician (60% hourly)	25.96	27.77	29.59	31.40	33.22
Compliance Officer	4,499	4,814	5,128	5,443	5,757
Senior Planner	5,355	5,622	5,903	6,198	6,508
Planner	4,499	4,814	5,128	5,443	5,757
Associate Planner	4,482	4,707	4,942	5,189	5,448
Assistant Planner	4,181	4,391	4,610	4,840	5,082
Building Official	6,962	7,364	7,766	8,167	8,569
Parks Department Director	7,498	7,899	8,301	8,703	9,104
Public Works Director	7,498	7,899	8,301	8,703	9,104
Utilities Superintendent	6,962	7,364	7,766	8,167	8,569
Capital Project/Program Manager	5,355	5,622	5,903	6,198	6,508
Construction Inspector	6,962	7,364	7,766	8,167	8,569
Public Utilities Operator	4,713	4,794	4,889	4,982	5,076
Public Works Administrative Asst 3	4,250	4,463	4,686	4,920	5,167
Utility Worker-Facility/Eq/Utility Worker	3,323	3,644	3,965	4,287	4,629
Utility Worker Seasonal (hourly)	13.24	-	-	-	-



	All Funds Budget Summary	Beginning Fund Balance	2016 Revenue	Total Sources	2016 Expenditures	Ending Fund Balance	Total Uses
1	General Fund 001	1,072,660	4,513,842	5,586,502	4,697,387	889,115	5,586,502
2	Special Revenue Funds						
3	101 Street Fund	111,645	217,334	328,979	215,291	113,688	328,979
4	107 Fire Impact Fees	43,575	18,030	61,605		61,605	61,605
5	108 Trans. Benefit District Fund		60,000	60,000	60,000		60,000
6	Utility Funds			-			-
7	401 Water Fund	161,635	798,248	959,883	790,943	168,940	959,883
8	407 Sewer Fund	117,641	846,260	963,901	874,239	89,662	963,901
9	410 Stormwater Fund	105,818	349,920	455,738	370,796	84,942	455,738
10	Capital Funds			-			-
11	310 Gen. Government CIP Fund	170,819	156,424	327,243	327,243		327,243
12	311 REET 1 Gen Govt	133,341	95,150	228,491	128,000	100,491	228,491
13	320 Street CIP Fund	225,967	1,817,244	2,043,211	2,043,211		2,043,211
14	321 REET 2 Street Projects	116,024	95,120	211,144	110,000	101,144	211,144
15	402 Water Supply and Facility Fur	70,000	560,150	630,150	560,000	70,150	630,150
16	404 Water Capital Fund	287,700	429,001	716,701	560,771	155,930	716,701
17	408 Sewer Capital Fund	711,000	26,540	737,540	153,000	584,540	737,540
18	410 Stormwater Capital Fund		50,000	50,000	50,000		50,000
19	Internal Service Fund 510			-			-
20	1 - Fire Equipment Reserve Fund	48,876	25,050	73,926	73,926		73,926
21	2 - Street Equipment Reserve Fur	253,096	47,200	300,296	76,000	224,296	300,296
22	3 - Police Equipment Reserve Fur	9,800	20	9,820	9,820		9,820
23	<b>Total All Funds</b>	<b>3,639,597</b>	<b>10,105,533</b>	<b>13,745,130</b>	<b>11,100,627</b>	<b>2,644,503</b>	<b>13,745,130</b>

**Total Budget**  
**\$13,750,130**





## General Fund 2016 Final Budget

	2013 Actual	2014 Actual	2015 Budget	Estimate Year End 2015	2016 Budget	Budget \$ Change inc/(dec)	Budget % Change inc/(dec)
<b>REVENUE</b>							
1 Property Tax	1,400,391	1,438,112	1,436,203	1,436,000	1,465,908	29,705	2.1%
2 Sales Tax	290,796	302,927	280,000	310,750	326,250	46,250	16.5%
3 Utility & Gambling Tax	546,510	582,921	581,400	570,040	563,500	(17,900)	-3.1%
4 Business & Other Licenses & Fees	23,070	21,995	23,500	22,110	22,000	(1,500)	-6.4%
5 Cable Franchise Fees	61,563	62,438	61,000	64,000	66,000	5,000	8.2%
6 Land Use and Permitting Fees	80,068	112,715	86,970	135,000	181,310	94,340	108.5%
7 Liquor Tax & Profits	40,278	44,887	35,700	41,200	54,750	19,050	53.4%
8 State Sales Tax Assistance	61,645	72,195	60,000	70,000	78,460	18,460	30.8%
9 KC EMS Levy, Recycle Grants & misc	70,630	70,648	70,125	71,293	71,991	1,866	2.7%
10 Charges for Services, Passport	88,393	92,298	114,430	113,611	101,400	(13,030)	-11.4%
11 Parks Parking Fees	16,313	22,274	21,000	25,000	25,000	4,000	19.0%
12 Gym Revenue				6,100	9,940	9,940	
13 Cemetery Fees & Charges	9,128	10,371	12,700	10,100	12,600	(100)	-0.8%
14 Police Grants, Crim Justice & Misc	162,180	153,933	131,850	154,882	152,215	20,365	15.4%
15 Court Fines and Fees	104,826	114,777	125,000	108,175	109,521	(15,479)	-12.4%
16 Miscellaneous Revenue	8,676	7,108	1,975	8,000	2,500	525	26.6%
17 <b>Subtotal Operating Revenue</b>	<b>2,964,467</b>	<b>3,109,599</b>	<b>3,041,853</b>	<b>3,146,261</b>	<b>3,243,345</b>	<b>201,492</b>	<b>11.9%</b>
18 <b>Insurance Recovery-Legal Svs</b>				25,000	-	-	
19 <b>Funding Agreement-MDRT</b>	1,412,069	1,310,097	1,045,069	830,688	822,497	(222,572)	-21.3%
20 <b>Total General Fund Op Revenue</b>	<b>4,376,536</b>	<b>4,419,696</b>	<b>4,086,922</b>	<b>4,001,949</b>	<b>4,065,842</b>	<b>(21,080)</b>	<b>-0.5%</b>
21 Developer Reimb-SEPA Legal	51,420	4,263	10,000	200	10,000	-	0.0%
22 Developer Reimb-MDRT Consultants	270,325	342,972	470,000	470,000	438,000	(32,000)	-6.8%
23 Developer Reimb-Makers Consulting	79,400	92,233		-			
24 <b>Grand Total Revenue</b>	<b>4,777,681</b>	<b>4,859,164</b>	<b>4,566,922</b>	<b>4,472,149</b>	<b>4,513,842</b>	<b>(53,080)</b>	<b>-1.2%</b>
25 Beg Cash & Inv Bal General Govt	397,817	644,198	601,492	842,526	912,660	311,168	51.7%
26 Beg Cash & Investment By Dev	261,219	299,129	278,000	190,103	160,000	(118,000)	-42.4%
27 <b>Total Sources</b>	<b>5,436,717</b>	<b>5,802,491</b>	<b>5,446,414</b>	<b>5,504,778</b>	<b>5,586,502</b>	<b>140,088</b>	<b>2.6%</b>
<b>EXPENDITURES</b>							
28 Legislative-Council	3,876	11,782	14,702	14,000	15,711	1,009	6.9%
29 Executive-Mayor	13,924	14,507	14,950	14,500	15,118	168	1.1%
30 Administration	105,545	117,435	-	-	-	-	
31 City Clerk/Human Resources	238,595	220,118	220,309	225,000	227,588	7,279	3.3%
32 Finance	243,879	268,152	173,477	190,000	181,014	7,537	4.3%
33 Information Services	143,454	45,659	49,700	53,700	31,175	(18,525)	-37.3%
34 Legal Service	66,564	110,594	75,400	60,000	55,000	(20,400)	-27.1%
35 Legal Services-Investigation/Other		122,263		-	-	-	
36 Legal-Pros Atty & Pub Defender	24,000	61,000	61,250	37,000	61,250	-	0.0%
37 Municipal Court	151,901	139,944	160,208	160,000	168,769	8,561	5.3%
38 Police Department	1,553,562	1,652,792	1,639,816	1,600,000	1,700,472	60,656	3.7%
39 Fire Department	448,264	454,496	483,526	464,000	530,375	46,849	9.7%
40 Natural Resources	148,077	76,382		-	-	-	
41 Recycle/Air Qual/Mntl Hlth/Animal Cont	27,595	27,344	28,800	25,800	32,166	3,366	11.7%
42 Master Development Review Team	451,226	442,931	714,381	500,000	657,325	(57,056)	-8.0%
43 Hearing Examiner-SEPA	2,791	709	10,000	5,000	5,000	(5,000)	-50.0%
44 Comm Deve-Permitting	168,143	121,283	122,992	128,706	201,688	78,696	64.0%
45 Comm Deve-Planning		91,177	79,080	118,294	119,636	40,556	51.3%
46 Facilities-Staff & Misc	98,239	89,780	82,322	88,000	47,876	(34,446)	-41.8%
47 Facilities Bldg Mtc-Staff & Equip	112,222	110,373	75,236	90,000	73,200	(2,036)	-2.7%
48 Emergency Management	3,714	184	2,500	-	5,000	2,500	100.0%
49 Parks	33,674	37,228	44,432	42,000	51,206	6,774	15.2%
50 Parks Museum	7,710	7,394	8,090	6,870	7,551	(539)	-6.7%
51 Parks Community Center	2,967	3,169	2,696	13,815	-	(2,696)	-100.0%
52 Parks Gym	2,043	2,502	2,147	9,000	11,316	9,169	427.1%
53 Cemetery	15,768	17,680	15,285	16,000	18,598	3,313	21.7%
54 Cntrl Svs Reimb-Paper, Post, Print Cks	29,221	31,276	30,035	30,000	32,353	2,318	7.7%
55 Insurance and Unanticipated Costs				15,000			
56 <b>Total General Fund Op Exp</b>	<b>4,096,954</b>	<b>4,278,154</b>	<b>4,111,334</b>	<b>3,906,685</b>	<b>4,249,387</b>	<b>138,053</b>	<b>3.4%</b>
57 Developer Exp-GFC-Prior Year Planning	106,705	55,168		55,233			
58 Developer MDRT-Consultants	245,220	426,603	470,000	470,000	438,000	(32,000)	-6.8%
59 Developer Legal SEPA Reimb	44,511	9,937	10,000	200	10,000	-	0.0%
60 <b>Total Expenditures</b>	<b>4,493,390</b>	<b>4,769,862</b>	<b>4,591,334</b>	<b>4,432,118</b>	<b>4,697,387</b>	<b>106,053</b>	<b>2.3%</b>
61 Ending Cash & Inv Bal Gen Govt	644,198	842,526	645,080	912,660	729,115	84,035	13.0%
62 Ending Cash & Inv Bal Developer	299,129	190,103	210,000	160,000	160,000	(50,000)	-23.8%
63 <b>Total Uses</b>	<b>5,436,716</b>	<b>5,802,491</b>	<b>5,446,414</b>	<b>5,504,778</b>	<b>5,586,502</b>	<b>140,088</b>	<b>2.6%</b>



# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
<b>SUBJECT:</b>	<b>Agenda Date: December 17, 2015</b>	<b>AB15-094</b>
<b>Ordinance No. 15-1070, establishing Transportation Concurrency regulations.</b>	Mayor Carol Benson	
	City Administrator	
	City Attorney Carol Morris	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Barbara Kincaid	
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	
	Police – Chief Kiblinger	
Cost Impact (see also Fiscal Note):	Public Works – Seth Boettcher	<b>X</b>
Fund Source: --	Court – Stephanie Metcalf	
Timeline:		
<b>Agenda Placement:</b> <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
<b>Attachments: Ordinance No. 15-1070 and strike through version</b>		
<p>SUMMARY STATEMENT: RCW 36.70A070 (6) (b) requires that the City’s planning under the Growth Management Act are required to adopt concurrency regulations for transportation. If a development causes the level of service of a local transportation facility to decline below the City’s Level of Service, this ordinance gives the City the authority to deny the development or approve commitments to complete the improvements or other strategies to improve the facility and meet the level of service within 6 years. The City will monitor the Level of Service on the key intersections within Black Diamond, reserve and track available capacity on the City’s transportation system and require that developments within the City maintain transportation concurrency for their projects within 6 years of the Level of Service deficiency.</p> <p>FISCAL NOTE: The primary fiscal impact will be the additional staff time required to administer the tracking and monitoring. Fees will need to be established to cover the processing of Capacity Reservation Certificate applications.</p>		
<p>COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: The Council held a public hearing on a preliminary draft concurrency ordinance on October 1<sup>st</sup>, 2015. The Council considered, reviewed and deliberated on this concurrency ordinance at a workshop on November 12<sup>th</sup>, 2015. The Council held a second public hearing on a revised concurrency ordinance on November 19<sup>th</sup>, 2015. The Council consider a concurrency ordinance 15-1061 on Dec 7<sup>th</sup>, 2015</p>		
<p>RECOMMENDED ACTION: <b>MOTION to adopt Ordinance 15-1070, establishing a transportation concurrency ordinance which established codes and policies to ensure that transportation facilities are planned, funded and constructed concurrent with the development according to state law.</b></p>		
RECORD OF COUNCIL ACTION		
Meeting Date	Action	Vote
December 17, 2015		

December 47, 2015

ORDINANCE NO. 15-107061

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, RELATING TO COMPREHENSIVE PLANNING UNDER THE GROWTH MANAGEMENT ACT, ADOPTING CONCURRENCY REGULATIONS FOR THE REVIEW OF LEGISLATIVE AND QUASI-JUDICIAL APPLICATIONS, AS MANDATED BY THE GMA (RCW 36.70A.070(6)(b)) FOR TRANSPORTATION FACILITIES, DESCRIBING EXEMPTIONS, REQUIRING EVALUATIONS OF CAPACITY ON THE CITY'S ROAD FACILITIES, DESCRIBING THE ELEMENTS OF A CAPACITY EVALUATION APPLICATION, EXPLAINING THE METHOD FOR DETERMINING AND RESERVING CAPACITY ON ROAD FACILITIES, DESCRIBING THE PROCESS FOR ISSUANCE OF CAPACITY RESERVATION CERTIFICATES (CRC), DENIALS OF CRC'S, APPEALS, DESCRIBING THE ADMINISTRATIVE PROCESS FOR CONCURRENCY REPORTING AND MONITORING, ADOPTING A NEW CHAPTER 11.11 IN THE BLACK DIAMOND MUNICIPAL CODE AND ESTABLISHING AN EFFECTIVE DATE.

---

WHEREAS, the Growth Management Act ("GMA," RCW 36.70A.070(6)(b)) requires that cities planning under GMA "adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development;" and

WHEREAS, the City has no concurrency regulations; and

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



WHEREAS, on Oct 15<sup>th</sup>, 2015, the City Council held a public hearing on a draft concurrency ordinance: and

WHEREAS, On November 12<sup>th</sup>, 2015, the City Council reviewed and deliberated on the concurrency ordinance at a council workshop.

WHEREAS, on November 19<sup>th</sup>, 2015, the City Council held a public hearing and considered this ordinance, during a regular Council meeting; Now, Therefore,

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

Section 1. A new Chapter 11.11 is hereby added to the Black Diamond Municipal Code, which shall read as follows:

#### **CHAPTER 11.11 CONCURRENCY MANAGEMENT**

##### **Sections:**

- 11.11.001 Purpose.
- 11.11.002 Authority.
- 11.11.003 Definitions.
- 11.11.004 Exempt development.
- 11.11.005 Applicability.
- 11.11.006 Capacity evaluation required for a change of use.
- 11.11.007 Capacity evaluations required for certain rezones or comprehensive plan amendments.
- 11.11.008 All capacity evaluations exempt from project permit processing.
- 11.11.009 Level of Service standards.
- 11.11.010 Effect of LOS standards.
- 11.11.011 Capacity evaluations required prior to issuance of capacity reservation certificate.
- 11.11.012 Application for capacity evaluation.
- 11.11.013 Submission and acceptance of an application for a capacity evaluation application.
- 11.11.014 Method of capacity evaluation.
- 11.11.015 Purpose of capacity reservation certificate.
- 11.11.016 Procedure for capacity reservation certificates.
- 11.11.017 Use of reserved capacity.
- 11.11.018 Transfer of reserved capacity.
- 11.11.019 Denial letter.

- 11.11.020 Notice of concurrency determination.
- 11.11.021 Expiration of CRC and extensions of time.
- 11.11.022 Appeals.
- 11.11.023 Concurrency administration and procedure.
- 11.11.024 Annual reporting and monitoring.
- 11.11.025 Intersection LOS monitoring and modeling.

---

**11.11.001 Purpose.** The purpose of this Chapter is to implement the concurrency provisions of the transportation element of the City’s comprehensive plan in accordance with RCW 36.70A.070(6)(b). All applications that are not exempt (as defined herein) shall be processed under and shall comply with this Chapter, which shall be cited as the City’s “concurrency management ordinance.”

**11.11.002 Authority.** The Director of Public Works or his/her designee, shall be responsible for implementing and enforcing this concurrency management ordinance.

**11.11.003 Definitions.** The following words and terms shall have the following meanings for the purpose of Chapter 11.11 unless the context clearly appears otherwise. Terms not defined herein shall be given their usual and customary meaning.

A. “Act” means the Growth Management Act, chapter 36.70A RCW, or as hereafter amended.

B. “Adequate public facilities” means facilities which have the capacity to serve development without decreasing levels of service below locally established minimums.

C. “Approving Authority” means the city employee, agency or official having the authority to issue the approval or permit for the development activity involved.

D. “Annual capacity availability report” means the report prepared each year to include available and reserved capacity for each public facility and identifying those proposed and planned capital improvements for each public facility that will correct deficiencies or improve levels of service, a summary of development activity, a summary of current levels of service and recommendations.

E. “Available public facilities” means that public facilities are in place, or a financial commitment has been made to provide the facilities concurrent with development. For the purposes of transportation facilities, “concurrent with development means” that the improvements or strategies are in place at the time of development or that a financial commitment is in place to complete the improvements or strategies within six years. (RCW 36.70A.070(6)(b).)

F. “Capacity” means the ability of a public facility to accommodate users, expressed in an appropriate unit of measure, such as average daily trip ends, or “peak p.m. trips,” within the LOS standards for the facility.

G. “Capacity, available” means capacity in excess of current demand (“used capacity”) for a specific public facility which can be encumbered, reserved or committed or the difference between capacity and current demand (“used capacity”).

H. “Capacity, encumbered” means a reduction in the available capacity resulting from issuance of a capacity reservation certificate or that portion of the available capacity.

I. “Capacity evaluation” means the evaluation by the Director based on adopted Level of Service (LOS) standards to ensure that public facilities and services needed to support development are available concurrent with the impacts of such development, as defined in the City’s concurrency management ordinance.

J. “Capacity reservation certificate” or “CRC” means a determination made by the Director that: (1) a proposed development activity ~~of~~for development phase will be concurrent with the applicable facilities at the time the CRC is issued, and (2) the Director has reserved capacity for an application for a period that corresponds to the respective development permit.

K. “Capacity, reserved” means capacity which has been reserved through use of the capacity reservation certificate process in Section 11.11.016

L. “Capital facilities” means the facilities or improvements included in a capital facilities plan.

M. “Capital facilities plan” means the capital facilities plan element of the City’s comprehensive plan adopted pursuant to Chapter 36.70A RCW and RCW 36.70A.070, and any amendments to the plan.

N. “Change of use” means, for the purposes of this Chapter, any change, redevelopment or modification of use of an existing building or site which meets the definition of “development activity” herein.

O. “City” means the City of Black Diamond, Washington.

P. “Comprehensive land use plan” or “comprehensive plan” means a generalized coordinated land use policy statement of the City Council, adopted pursuant to Chapter 36.70A RCW.

Q. “Concurrency” or “concurrent with development” means that adequate public facilities are available or improvements/strategies are in place when the impacts of development occur, or that a financial commitment is in place to complete the improvements or strategies within six years. This definition includes the concept of “adequate public facilities” as defined above. (RCW 36.70A.070(6)(b).)



R. “Council” means the City Council of the City of Black Diamond, Washington.

S. “Dedication” means the conveyance of land or facilities to the City for public facility purposes, by deed, other instrument of conveyance or by dedication, on a duly filed and recorded plat (or short plat).

T. “Demand management strategies” means strategies designed to change travel behavior to make more efficient use of existing facilities to meet travel demand. Examples of demand management strategies can include strategies that: (1) shift demand outside of the peak travel time; (2) shift demand to other modes of transportation; (3) increase the number of occupants per vehicle; (4) decrease the length of trips; (5) avoid the need for vehicle trips.

U. “Department” means the public works department of the City of Black Diamond

V. “Developer” means any person or entity who makes application or receives a development permit or approval for any development activity as defined herein.

W. “Development activity” or “development” means any construction or expansion of a building, structure, or use, or change in the use of a building or structure, or any changes in the use of the land that creates additional demand for public facilities (such as a change which results in an increase in the number of vehicle trips to and from the property, building or structure) and requires a development permit from the City. (RCW 82.02.090(1)).

X. “Development agreement” means the agreements authorized in RCW 36.70B.170 and Chapter 18.66 of this Code.

Y. “Development permit” or “project permit” means any land use permit required by the City for a project action, including but not limited to building permits, subdivisions, short plats, binding site plans, planned unit developments, conditional uses, shoreline substantial developments, site plan reviews, or site-specific rezones, and for purposes of the City’s concurrency management ordinance, shall include applications for amendments to the City’s comprehensive plan which request an increase in the extent or density of development on the subject property.

Z. “Director” means the director of the public works department.

AA. “Existing use” means existing development which physically exists or for which the owner holds a valid building permit as of the effective date of the ordinance codified in this Chapter.

BB. “Encumbered” means to reserve or set aside capacity.

CC. “Financial commitment” means those sources of public or private funds or combinations thereof that have been identified as sufficient to finance public facilities necessary to support development and that there is reasonable assurance that such funds will be timely put to that end.



DD. “Growth-related” means a development activity as defined herein that decreases the Level of Service (LOS) below the City’s established minimum LOS for a transportation facility in the City’s Comprehensive Plan.

EE. “Level of Service” or “LOS” means an established minimum capacity of public facilities or services that must be provided per unit of demand or other appropriate measure of need. Level of service standards are synonymous with locally established minimum standards.

FF. “Owner” means the owner of record of real property, although when real property is being purchased under a real estate contract, the purchaser shall be considered the owner of the real property, if the contract is recorded. In addition, the lessee of the real property shall be considered the owner, if the lease of the real property exceeds 25 years, and the lessee is the developer of the real property. (RCW 82.02.090(4).)

GG. “Previous use” means (a) the use existing on the site when a capacity evaluation is sought; or (b) the most recent use on the site, within the five-year period prior to the date of application for the development.

HH. “Public/Private Project” means a system improvement, selected by the City Council for joint private and public funding.

II. “Right of Way” means a public property dedicated for the principal means of access to abutting property, including an avenue, place, way, drive, lane, boulevard, highway, street, and other thoroughfare, except an alley. Secondarily public road right of way provides properties with a corridor for access to various utilities.

JJ. “Road facilities” includes public facilities related to land transportation.

KK. “State” means the State of Washington.

LL. “Subdivision” means all subdivisions as defined in Chapter 17.08, and all short subdivisions as defined in Chapter 17.32.

MM. “Traffic analysis zone” means the minimum geographic unit used for traffic analysis.

NN. “Transportation primary impact area” means a geographically determined area that delineates the impacted area of a deficient roadway link.

OO. “Transportation level of service standards” means a measure which describes the operational condition of the travel stream and acceptable adequacy requirement.

PP. “Traffic demand model” means the simulation through the City’s traffic model of vehicle trip ends assigned on the roadway network.

QQ. “Trip allocation program” means the program established to meter trip ends to new development annually by service area and traffic analysis zone to ensure that the City is maintaining adopted LOS standards.

RR. “Trip end” means a single or one-directional vehicle movement.

SS. “Unit” or “Dwelling unit” means a dwelling unit as defined in BDMC 18.100.280

#### **11.11.004 Exempt development.**

No development activity as defined in Section BDMC 11.11.003(W) shall be exempt from the requirements of this chapter, unless the permit is listed below. The following types of permits are not subject to the capacity reservation certificate (CRC) process because they do not create additional long-term impacts on transportation facilities:

1. Administrative interpretations;
2. Sign permit;
3. Street vacations;
4. Demolition permit;
5. Street use permit;
6. Interior alterations of a structure with no change in use;
7. Excavation/clearing permit;
8. Hydrant use permit;
9. Right-of-way permit;
10. Single-family remodeling with no change of use;
11. Plumbing permit;
12. Electrical permit;
13. Mechanical permit;
14. Excavation permit;
15. Sewer connection permit;
16. Driveway or street access permit;
17. Grading permit;
18. Tenant improvement permit;
19. Fire code permit;
20. Design review approval.

Notwithstanding the exemptions noted in this Section, if any of the above permit applications will generate any new p.m. peak hour trips, such application shall not be exempt from the requirements of this Chapter.

**11.11.005 Applicability** This Chapter shall apply to all applications for development or redevelopment if the proposal or use will generate any new p.m. peak-hour trips. Every



application for development shall be accompanied by an application for capacity reservation certificate.

**11.11.006 Capacity evaluation required for a change in use.** Any non-exempt development activity shall require a capacity evaluation in accordance with this Chapter.

A. Increased Impact on Road Facilities. If a change in use will have a greater impact on road facilities than the previous use, as determined by the Director, based on review of information submitted by the applicant and such supplemental information as available, a CRC shall be required for the net increase only. The applicant shall provide reasonably sufficient evidence that the previous use has been actively maintained on the site during the five-year period prior to the date of application for the capacity evaluation.

B. Decreased Impact on Road Facilities. If a change in use will have an equal or lesser impact on road facilities than the previous use as determined by the Director, based on review of information submitted by the applicant and supplemental information as available, a CRC will not be required.

C. No Capacity Credit. If no use existed on the site for the five-year period prior to the date of application, no capacity credit shall be issued pursuant to this Section.

D. Demolition or Termination of Use. In the case of a demolition or termination of an existing use or structure, the capacity evaluation for future redevelopment shall be based upon the net increase of the impact on road facilities for the new or proposed land use, as compared to the land use existing prior to demolition, provided, that such credit is utilized through a CRC within five years of the date of the issuance of the demolition permit.

**11.11.007. Capacity evaluations required for certain rezones and comprehensive plan amendments.** A capacity evaluation shall be required as part of any application for a comprehensive plan amendment or zoning map amendment (rezone) submitted by the property owner, which, if approved, would increase the intensity or density of permitted development. As part of that capacity evaluation, the Director shall determine whether capacity is available to serve both the extent and density of development which would result from the zoning/comprehensive plan amendment. The capacity evaluation shall be submitted as part of the staff report and shall be considered by the City in determining the appropriateness of the comprehensive plan or zoning amendment. The City's approval of any comprehensive plan or zoning map amendment shall not reserve any capacity in transportation facilities unless the property owner has applied for and is issued a CRC and a development agreement which includes a deadline for the property owner's submission of a development permit application for the proposed development.

**11.11.008 All capacity determinations exempt from project permit processing.** The processing of applications pursuant to the authority in this Chapter shall be exempt from project permit processing procedures as described in Chapter 18.08 of the Zoning Code, except that the appeal procedures of Chapter 11.11.022 shall apply as indicated in this Chapter. The City's processing of capacity determinations and resolving capacity disputes involves a different review

procedure due to the necessity to perform continual monitoring of facility and service needs, to ensure continual funding of facility improvements, and to develop annual updates to the transportation and utilities elements of the comprehensive plan.

#### **11.11.009 Level of Service Standards.**

A. Generally. Level of Service (LOS) is the established minimum capacity of public facilities or services that must be provided per unit of demand or other appropriate measure of need, as mandated by chapter 36.70A RCW. LOS standards shall be used to determine if public facilities or services are adequate to support a development's impact. The concept of concurrency is based on the maintenance of specified levels of service through capacity monitoring, allocation and reservation procedures. Concurrency describes the situation in which road facilities are available when the impacts of development occur. For road facilities, this time period is statutorily established as within six years from the time of development.

B. The City has designated levels of service for road facilities in the transportation element of the City's comprehensive plan:

1. to conform to RCW 47.80.030 for transportation facilities subject to regional transportation plans;
2. to reflect realistic expectations consistent with the achievement of growth aims; and
3. to prohibit development if concurrency for road facilities is not achieved (RCW 36.70A.070), and if sufficient public and/or private funding cannot be found, land use assumptions in the City's comprehensive plan will be reassessed to ensure that level of service standards will be met, or level of service standards will be adjusted.

#### **11.11.010 Effect of LOS standards.**

The Director shall use the LOS standards set forth in the transportation element of the City's comprehensive plan to make capacity evaluations as part of the review of any application for a transportation CRC issued pursuant to this chapter.

#### **11.11.011 Capacity evaluations required prior to issuance of CRC.**

A. A capacity evaluation shall be required for any of the activities that are not exempt in Section 11.11.004 of this chapter.

B. The Director shall utilize the requirements in Sections 11.11.011 through 11.11.016 to conduct a capacity evaluation prior to issuance of a CRC. In addition to the requirements set forth in these sections, the Director may also utilize state law or the Washington Administrative Code, or such other rules regarding concurrency, which may be established from time to time by administrative rule.



C. A CRC will not be issued except after a capacity evaluation performed pursuant to this Chapter, indicating that capacity is available in all applicable road facilities.

#### **11.11.012 Application for capacity evaluation.**

A. An application for capacity evaluation and the application for the underlying development permit, or other activity, shall be accompanied by the requisite fee, as determined by City Council resolution. An applicant for the capacity evaluation shall submit the following information to the Director, on a form provided by the Director, together with the underlying development application:

1. Date of submittal;
2. Developer's name, address, telephone number and e-mail;
3. Legal description of property as required by the underlying development permit application, together with an exhibit showing a map of the property;
4. Proposed use(s) by land use category, square feet and number of units;
5. Phasing information by proposed uses, square feet and number of units, if applicable;
6. Existing use of property;
7. Acreage of property;
8. Proposed site design information, if applicable;
9. The applicant's proposed mitigation (if any) for the impact on the City's transportation facilities;
10. Written consent of the property owner, if different from the developer;
11. Proposed request of capacity by legal description, if applicable;
12. A preliminary site plan, which is a plan showing the approximate layout of proposed structures and other development, type and number of dwelling units, type and number of nonresidential building areas with gross square footage, the land use codes per the most recent edition of Trip Generation from the Institute of Transportation Engineers (ITE) and an analysis of the points of access to existing and proposed roadways;
13. Traffic impact analysis and traffic report. Developments or redevelopments, excluding an individual single-family residence, that will generate one or more new projected p.m. peak-hour vehicle trips that will pass through an intersection or roadway section identified with a level of service below the acceptable level noted in the transportation element in the City's comprehensive plan, or that will generate 15 or more new p.m. peak hour trips shall be required to have the City prepare a traffic impact analysis to determine the full impact of the proposal and appropriate mitigation. The results of the traffic impact analysis will be documented in a traffic report.

B. The applicant is not required to submit a traffic impact analysis from an independent traffic engineer. Instead, those applicants with a transportation CRC application are required to submit sufficient information for the City to prepare a traffic impact analysis. The applicant shall pay to the City a deposit equal to the estimated fee for the City's preparation of a traffic report. The City will cover the costs of the traffic report from the funds deposited by the applicant. If revisions to the traffic impact analysis are needed the applicant shall cover the additional cost.

Even if the traffic report is based on an estimate of the impact, if the City issues a CRC based on this estimate, the applicant will still be bound by the estimate of the impact, and any upward deviation from the estimated traffic impact shall require at least one of the following: (a) a finding that the additional concurrency sought by the developer through a revised application is available to be reserved by the project; (b) mitigation of the additional impact under SEPA; (c) revocation of the CRC.

**11.11.013 Submission and acceptance of a capacity evaluation application.**

A. Notice of application. Issuance of a notice of application for the underlying permit application shall be handled by the Community Development Director or designee, following the process in Section 18.08.120. The notice of application required by Section 18.08.120 shall state that an application for a concurrency determination has been received by the City.

B. Determination of Completeness. The Community Development Director shall immediately forward all capacity evaluation applications received with development applications to the Public Works Director. Within twenty-eight (28) days after receiving a capacity evaluation application, the Public Works Director shall mail or personally deliver to the applicant a determination which states either:

1. That the application for capacity evaluation is complete; or
2. That the application for capacity evaluation is incomplete and what is necessary to make the application complete.

C. Additional information. An application for capacity evaluation is complete for purposes of initial processing when it meets the submission requirements in Section 11.11.012. The determination of completeness shall be made when the application is sufficiently complete for review, even though additional information may be required or project modifications may be undertaken subsequently. The Director's determination of completeness shall not preclude the Director's ability to request additional information or studies.

D. Incomplete applications.

1. Whenever the City issues a determination that the application for capacity evaluation is not complete, the application for capacity evaluation shall be handled in the same manner as a project permit application under Section 18.14.020 (G).

2. Date of Acceptance of Application. An application for capacity evaluation shall not be officially accepted or processed until it is complete and the underlying development application has been determined complete. When a capacity application is determined complete, the Director shall accept it and note the date of acceptance.



#### **11.11.014 Method of capacity evaluation.**

A. Generally. In order to determine concurrency for the purposes of issuance of a CRC, the Director shall make the determination based on the analysis described in this Section. The Director may deem the development concurrent with transportation facilities if capacity is available. Additionally the Director may deem the development concurrent with transportation facilities if the development causes the level of service to decline below the standards adopted in the transportation element of the comprehensive plan, as long as the Director finds that there are acceptable transportation improvements or strategies to accommodate the development proposed by the applicant, and that the same will be made concurrent with the development. “Concurrent with the development” means that the improvements or strategies are in place at the time of the development, or that a financial commitment (secured by an enforceable development agreement) is in place to complete the improvements or strategies within six years. In no event shall the Director determine concurrency for a greater amount of capacity than is needed for the development proposed in the underlying application.

#### **B. Process and methods**

1. Upon submission and acceptance of a complete application for capacity evaluation, the Director shall conduct a Traffic Impact Analysis and issue a traffic report for those applications meeting the requirements of Section 11.11.012.

2. In performing the capacity evaluation for transportation facilities, and to prepare the CRC, the Director shall determine, based on the conclusions of the traffic report, whether a proposed development can be accommodated within the existing or planned capacity of transportation facilities. This shall involve the following:

- a. A determination of anticipated total capacity at the time the proposed impacts of development occur or within six years of such time;
- b. Calculation of how much of that capacity will be used by existing developments and other planned developments at the time the impacts of the proposed development occur;
- c. Calculation of the available capacity for the proposed development;
- d. Calculation of the impact on the capacity of the proposed development, minus the effects of any mitigation identified by the applicant to be provided by the applicant at the applicant’s cost;
- e. Comparison of available capacity with proposed development impacts.

3. The Director shall determine if the capacity of the City’s transportation facilities, less the capacity which is reserved and used, is available while meeting the level of

service performance standards set forth in the City's comprehensive plan, and if so, shall provide the applicant with a CRC. The Director's determination will be based on the application materials provided by the applicant, which must include the applicant's proposed mitigation for the impact on the City's transportation facilities.

C. Lack of Concurrency. If the Director determines that the proposed development will cause the LOS of a City-owned transportation facility to decline below the standards adopted in the transportation element of the City's comprehensive plan, and improvements or strategies to accommodate the impacts of development are not planned to be made concurrent with development, a CRC and the underlying development permit, shall be denied. Upon denial, the applicant may perform one of the following:

1. Appeal the findings of the Director's decision in accordance with Section 11.11.022; or
2. Offer alternative data and/or perform an independent traffic impact analysis at the applicant's sole expense in support of alternative conclusions. Any study shall meet the requirements of the Public Works Director; or
3. Modify the development proposal to lessen the traffic impacts and/or identify voluntary transportation improvements as mitigation to be provided by the applicant at the applicant's cost and re-apply for capacity review. Re-application shall require repayment of the traffic impact analysis and traffic report preparation fee in accordance with Section 11.11.012; or
4. Withdraw the capacity evaluation application.

**11.11.015 Purpose of Capacity Reservation Certificate.** A CRC is a determination by the Director that: (1) the proposed development identified in the application for capacity evaluation does not cause the level of service on a City-owned transportation facility to decline below the standards adopted in the transportation element of the City's comprehensive plan; or (2) that a financial commitment (embodied in a development agreement) is in place to complete the necessary improvements or strategies within six (6) years. Upon issuance of a CRC, the Director will reserve transportation facility capacity for this application until the expiration of the underlying development permit. Although the CRC may identify the number of projected trips associated with the proposed development, nothing in this Chapter (including the trip transfer procedures) shall imply that the applicant "owns" or has any ownership interest in the projected trips.

**11.11.016 Procedure for capacity reservation certificates.** After receipt of a complete application for capacity evaluation, the Director shall process the application in accordance with this Chapter and issue the CRC or a denial letter.

**11.11.017 Use of reserved capacity.** When a CRC and a development permit issues for a project, the CRC shall continue to reserve the capacity unless the development permit lapses or expires without issuance of a certificate of occupancy.



**11.11.018 Transfer of reserved capacity.** Reserved capacity shall not be sold or transferred to property not included in the legal description provided by the applicant in the CRC. The applicant may, as part of a development permit application, designate the amount of capacity to be allocated to portions of the property, such as lots, blocks, parcels or tracts included in the application. Capacity may be reassigned or allocated within the boundaries of the original reservation certificate by application to the Director. At no time may capacity or any certificate be sold or transferred to another party or entity to real property not described in the original application.

**11.11.019 Denial letter.** If the Director determines that there is a lack of concurrency under the above provisions, the Director shall issue a denial letter, which shall advise the applicant that capacity is not available. If the applicant is not the property owner, the denial letter shall also be sent to the property owner. At a minimum, the denial letter shall identify the application and include the following information:

A. An estimate of the level of the deficiency on the transportation facilities; and

B. The options available to the applicant as outlined in 11.11.014(C)(1).

C. A statement that the denial letter may be appealed if the appeal is submitted to the Director within ten (10) days after issuance of the denial letter, and that the appeal must conform to the requirements in Section 11.11.022. Any appeal of a denial letter must be filed according to this section, prior to issuance of the City's decision on the underlying development application. If an appeal is filed, processing of the underlying development application shall be stayed until the final decision on the appeal of the denial letter.

**11.11.020 Notice of concurrency determination.**

A. Notice of the concurrency determination shall be given to the public together with, and in the same manner as, that provided for the SEPA threshold determination (BDMC 19.04.210) for the underlying development permit unless the project is exempt from SEPA, in which case notice shall be given in the same manner as a final decision on the underlying development permit without any accompanying threshold determination. In the case of an approved CRC, any mitigation identified by the applicant to be provided by the applicant at the applicant's cost shall be included in the SEPA threshold determination or underlying permit decision (if categorically exempt from SEPA).

B. If a denial letter is not timely appealed, the underlying permit application will be processed and in most instances, will result in a denial. If a denial letter is appealed, any mitigation or conditions included in the appeal decision shall be included in the SEPA threshold decision or underlying permit decision (if categorically exempt from SEPA).

**11.11.021 Expiration of CRC and extensions of time.**

A. Expiration. If a certificate of occupancy has not been requested prior to the expiration of the underlying permit or termination of the associated development agreement, the Director shall convert the reserved capacity to available capacity for use by other developments. The act of requesting a certificate of occupancy before expiration of the CRC shall only convert the reserved capacity to used capacity if the building inspector finds that the project actually conforms with applicable codes and issues a certificate of occupancy. If a complete underlying project permit application expires, the Director shall convert any reserved capacity allocated to the underlying project permit for use by other developments.

B. The City shall assume that the developer requests an extension of the CRC when the developer is requesting a renewal of the underlying development permit. No unused capacity may be carried forward beyond the duration of the CRC or any subsequent extension.

C. If a CRC has been granted for a rezone or comprehensive plan amendment, the CRC shall expire when the development agreement for the comprehensive plan or rezone terminates.

D. If the city's code or state law does not specify an expiration date for the underlying permit, the CRC shall expire no later than 5 years after issuance of the CRC.

**11.11.022 Appeals.** Upon receipt of an appeal from the applicant of the denial letter, the Director shall handle the appeal as follows:

A. A meeting shall be scheduled with the applicant to review the denial letter and the application materials, together with the appeal statement.

B. Within fourteen (14) days after the meeting, the Director shall issue a written decision, which will list all of the materials considered in making the decision. The written "Director's Decision" shall either affirm or reverse the denial letter. In any decision, the Director shall identify the mitigation that the applicant is required to provide at the applicant's cost, which will be imposed on the application approval in order to achieve concurrency, if any.

C. The mitigation identified in the Director's Decision shall be incorporated into the City's SEPA threshold decision on the application.

D. The Director's Decision shall state that it may be appealed with any appeal of the underlying application or activity, pursuant to Section 18.08.200.

**11.11.023 Concurrency administration and procedure.**

A. There are two transportation capacity accounts to be utilized by the Director in the implementation of this Chapter. These accounts are:

1. The available capacity account; and
2. The reserved capacity account.



Capacity is withdrawn from the available capacity account and deposited into a reserved capacity account when a CRC is issued. Once the proposed development is constructed and an occupancy certificate is issued, the capacity is considered “used.” Each capacity account of available or reserved capacity will experience withdrawals on a regular basis. Only the Director may transfer capacity between accounts.

#### **11.11.024 Annual reporting and monitoring.**

A. The Director is responsible for completion of annual transportation capacity availability reports. The report shall evaluate reserved capacity and permitted development activity for the previous 12-month period, and determine existing conditions with regard to available capacity of road facilities for additional traffic loading. The evaluations shall report on capacity used for the previous period, capacity added from new project(s), and capacity that will be available upon implementation of transportation projects on the City’s six-year capital facilities element of the City’s comprehensive plan and six-year transportation plan for road facilities, based on LOS standards. Forecasts shall be based on the most recently updated schedule of capital improvements, growth projections, public road facility inventories, and revenue projections, and shall, at a minimum, include:

1. A summary of development activity;
  2. The status of each capacity account;
  3. The six-year transportation plan;
  4. Actual capacity of selected street segments and intersections and current LOS;
- and
5. Recommendations on amendments to CIP and annual budget, to LOS standards, or other amendments to the transportation element or to the comprehensive plan.

B. The findings of the annual transportation capacity availability report shall be considered by the Council in preparing the annual update to the transportation element of the comprehensive plan, any proposed amendments to the CIP and six-year TIP, and shall be used in the review of development permits and capacity evaluations during the next period.

C. Based upon the analysis included in the annual transportation capacity availability reports, the Director shall recommend to the City Council each year any necessary amendments to the CIP, TIP, or transportation element of the comprehensive plan. The Director shall also report on the status of all capacity accounts when public hearings for comprehensive plan amendments are heard.

#### **11.11.025 Intersection LOS monitoring and modeling.**

A. The City shall monitor level of service at all major collector and arterial intersections through the keeping of an updated traffic demand model and an annual update of the six-year transportation plan which will add data reflecting development permits issued and trip allocations reserved.

B. New trip generation numbers shall be assigned to the appropriate traffic analysis zone for each new project approved. The City will use the updated traffic demand model, to ensure that the City is achieving the adopted LOS standards described in this Chapter and the transportation element of the comprehensive plan.

Section 2. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 3. 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 4. Effective Date. This Ordinance shall become effective five days after publication as provided by law.

PASSED by the Council and approved by the Mayor of the City of Black Diamond at a ~~regular~~special meeting on this 17<sup>th</sup> day of December, 2015.

CITY OF

\_\_\_\_\_  
Carol Benson, Mayor

ATTEST/AUTHENTICATED:

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



APPROVED AS TO FORM:  
Office of the City Attorney

---

City Attorney

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

**December 10, 2015**

**ORDINANCE NO. 15-1070**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, RELATING TO COMPREHENSIVE PLANNING UNDER THE GROWTH MANAGEMENT ACT, ADOPTING CONCURRENCY REGULATIONS FOR THE REVIEW OF LEGISLATIVE AND QUASI-JUDICIAL APPLICATIONS, AS MANDATED BY THE GMA (RCW 36.70A.070(6)(b)) FOR TRANSPORTATION FACILITIES, DESCRIBING EXEMPTIONS, REQUIRING EVALUATIONS OF CAPACITY ON THE CITY'S ROAD FACILITIES, DESCRIBING THE ELEMENTS OF A CAPACITY EVALUATION APPLICATION, EXPLAINING THE METHOD FOR DETERMINING AND RESERVING CAPACITY ON ROAD FACILITIES, DESCRIBING THE PROCESS FOR ISSUANCE OF CAPACITY RESERVATION CERTIFICATES (CRC), DENIALS OF CRC'S, APPEALS, DESCRIBING THE ADMINISTRATIVE PROCESS FOR CONCURRENCY REPORTING AND MONITORING, ADOPTING A NEW CHAPTER 11.11 IN THE BLACK DIAMOND MUNICIPAL CODE AND ESTABLISHING AN EFFECTIVE DATE.

---

WHEREAS, the Growth Management Act ("GMA," RCW 36.70A.070(6)(b)) requires that cities planning under GMA "adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development;" and

WHEREAS, the City has no concurrency regulations; and

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



WHEREAS, on Oct 15<sup>th</sup>, 2015, the City Council held a public hearing on a draft concurrency ordinance: and

WHEREAS, On November 12<sup>th</sup>, 2015, the City Council reviewed and deliberated on the concurrency ordinance at a council workshop.

WHEREAS, on November 19<sup>th</sup>, 2015, the City Council held a public hearing and considered this ordinance, during a regular Council meeting; Now, Therefore,

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

Section 1. A new Chapter 11.11 is hereby added to the Black Diamond Municipal Code, which shall read as follows:

## **CHAPTER 11.11 CONCURRENCY MANAGEMENT**

### **Sections:**

- 11.11.001 Purpose.
- 11.11.002 Authority.
- 11.11.003 Definitions.
- 11.11.004 Exempt development.
- 11.11.005 Applicability.
- 11.11.006 Capacity evaluation required for a change of use.
- 11.11.007 Capacity evaluations required for certain rezones or comprehensive plan amendments.
- 11.11.008 All capacity evaluations exempt from project permit processing.
- 11.11.009 Level of Service standards.
- 11.11.010 Effect of LOS standards.
- 11.11.011 Capacity evaluations required prior to issuance of capacity reservation certificate.
- 11.11.012 Application for capacity evaluation.
- 11.11.013 Submission and acceptance of an application for a capacity evaluation application.
- 11.11.014 Method of capacity evaluation.
- 11.11.015 Purpose of capacity reservation certificate.
- 11.11.016 Procedure for capacity reservation certificates.
- 11.11.017 Use of reserved capacity.
- 11.11.018 Transfer of reserved capacity.
- 11.11.019 Denial letter.

- 11.11.020 Notice of concurrency determination.
- 11.11.021 Expiration of CRC and extensions of time.
- 11.11.022 Appeals.
- 11.11.023 Concurrency administration and procedure.
- 11.11.024 Annual reporting and monitoring.
- 11.11.025 Intersection LOS monitoring and modeling.

---

**11.11.001 Purpose.** The purpose of this Chapter is to implement the concurrency provisions of the transportation element of the City’s comprehensive plan in accordance with RCW 36.70A.070(6)(b). All applications that are not exempt (as defined herein) shall be processed under and shall comply with this Chapter, which shall be cited as the City’s “concurrency management ordinance.”

**11.11.002 Authority.** The Director of Public Works or his/her designee, shall be responsible for implementing and enforcing this concurrency management ordinance.

**11.11.003 Definitions.** The following words and terms shall have the following meanings for the purpose of Chapter 11.11 unless the context clearly appears otherwise. Terms not defined herein shall be given their usual and customary meaning.

A. “Act” means the Growth Management Act, chapter 36.70A RCW, or as hereafter amended.

B. “Adequate public facilities” means facilities which have the capacity to serve development without decreasing levels of service below locally established minimums.

C. “Approving Authority” means the city employee, agency or official having the authority to issue the approval or permit for the development activity involved.

D. “Annual capacity availability report” means the report prepared each year to include available and reserved capacity for each public facility and identifying those proposed and planned capital improvements for each public facility that will correct deficiencies or improve levels of service, a summary of development activity, a summary of current levels of service and recommendations.

E. “Available public facilities” means that public facilities are in place, or a financial commitment has been made to provide the facilities concurrent with development. For the purposes of transportation facilities, “concurrent with development means” that the improvements or strategies are in place at the time of development or that a financial commitment is in place to complete the improvements or strategies within six years. (RCW 36.70A.070(6)(b).)



F. “Capacity” means the ability of a public facility to accommodate users, expressed in an appropriate unit of measure, such as average daily trip ends, or “peak p.m. trips,” within the LOS standards for the facility.

G. “Capacity, available” means capacity in excess of current demand (“used capacity”) for a specific public facility which can be encumbered, reserved or committed or the difference between capacity and current demand (“used capacity”).

H. “Capacity, encumbered” means a reduction in the available capacity resulting from issuance of a capacity reservation certificate or that portion of the available capacity.

I. “Capacity evaluation” means the evaluation by the Director based on adopted Level of Service (LOS) standards to ensure that public facilities and services needed to support development are available concurrent with the impacts of such development, as defined in the City’s concurrency management ordinance.

J. “Capacity reservation certificate” or “CRC” means a determination made by the Director that: (1) a proposed development activity or development phase will be concurrent with the applicable facilities at the time the CRC is issued, and (2) the Director has reserved capacity for an application for a period that corresponds to the respective development permit.

K. “Capacity, reserved” means capacity which has been reserved through use of the capacity reservation certificate process in Section 11.11.016

L. “Capital facilities” means the facilities or improvements included in a capital facilities plan.

M. “Capital facilities plan” means the capital facilities plan element of the City’s comprehensive plan adopted pursuant to Chapter 36.70A RCW and RCW 36.70A.070, and any amendments to the plan.

N. “Change of use” means, for the purposes of this Chapter, any change, redevelopment or modification of use of an existing building or site which meets the definition of “development activity” herein.

O. “City” means the City of Black Diamond, Washington.

P. “Comprehensive land use plan” or “comprehensive plan” means a generalized coordinated land use policy statement of the City Council, adopted pursuant to Chapter 36.70A RCW.

Q. “Concurrency” or “concurrent with development” means that adequate public facilities are available or improvements/strategies are in place when the impacts of development occur, or that a financial commitment is in place to complete the improvements or strategies within six years. This definition includes the concept of “adequate public facilities” as defined above. (RCW 36.70A.070(6)(b).)

- R. “Council” means the City Council of the City of Black Diamond, Washington.
- S. “Dedication” means the conveyance of land or facilities to the City for public facility purposes, by deed, other instrument of conveyance or by dedication, on a duly filed and recorded plat (or short plat).
- T. “Demand management strategies” means strategies designed to change travel behavior to make more efficient use of existing facilities to meet travel demand. Examples of demand management strategies can include strategies that: (1) shift demand outside of the peak travel time; (2) shift demand to other modes of transportation; (3) increase the number of occupants per vehicle; (4) decrease the length of trips; (5) avoid the need for vehicle trips.
- U. “Department” means the public works department of the City of Black Diamond
- V. “Developer” means any person or entity who makes application or receives a development permit or approval for any development activity as defined herein.
- W. “Development activity” or “development” means any construction or expansion of a building, structure, or use, or change in the use of a building or structure, or any changes in the use of the land that creates additional demand for public facilities (such as a change which results in an increase in the number of vehicle trips to and from the property, building or structure) and requires a development permit from the City. (RCW 82.02.090(1)).
- X. “Development agreement” means the agreements authorized in RCW 36.70B.170 and Chapter 18.66 of this Code.
- Y. “Development permit” or “project permit” means any land use permit required by the City for a project action, including but not limited to building permits, subdivisions, short plats, binding site plans, planned unit developments, conditional uses, shoreline substantial developments, site plan reviews, or site-specific rezones, and for purposes of the City’s concurrency management ordinance, shall include applications for amendments to the City’s comprehensive plan which request an increase in the extent or density of development on the subject property.
- Z. “Director” means the director of the public works department.
- AA. “Existing use” means existing development which physically exists or for which the owner holds a valid building permit as of the effective date of the ordinance codified in this Chapter.
- BB. “Encumbered” means to reserve or set aside capacity.
- CC. “Financial commitment” means those sources of public or private funds or combinations thereof that have been identified as sufficient to finance public facilities necessary to support development and that there is reasonable assurance that such funds will be timely put to that end.



DD. “Growth-related” means a development activity as defined herein that decreases the Level of Service (LOS) below the City’s established minimum LOS for a transportation facility in the City’s Comprehensive Plan.

EE. “Level of Service” or “LOS” means an established minimum capacity of public facilities or services that must be provided per unit of demand or other appropriate measure of need. Level of service standards are synonymous with locally established minimum standards.

FF. “Owner” means the owner of record of real property, although when real property is being purchased under a real estate contract, the purchaser shall be considered the owner of the real property, if the contract is recorded. In addition, the lessee of the real property shall be considered the owner, if the lease of the real property exceeds 25 years, and the lessee is the developer of the real property. (RCW 82.02.090(4).)

GG. “Previous use” means (a) the use existing on the site when a capacity evaluation is sought; or (b) the most recent use on the site, within the five-year period prior to the date of application for the development.

HH. “Public/Private Project” means a system improvement, selected by the City Council for joint private and public funding.

II. “Right of Way” means a public property dedicated for the principal means of access to abutting property, including an avenue, place, way, drive, lane, boulevard, highway, street, and other thoroughfare, except an alley. Secondly public road right of way provides properties with a corridor for access to various utilities.

JJ. “Road facilities” includes public facilities related to land transportation.

KK. “State” means the State of Washington.

LL. “Subdivision” means all subdivisions as defined in Chapter 17.08, and all short subdivisions as defined in Chapter 17.32.

MM. “Traffic analysis zone” means the minimum geographic unit used for traffic analysis.

NN. “Transportation primary impact area” means a geographically determined area that delineates the impacted area of a deficient roadway link.

OO. “Transportation level of service standards” means a measure which describes the operational condition of the travel stream and acceptable adequacy requirement.

PP. “Traffic demand model” means the simulation through the City’s traffic model of vehicle trip ends assigned on the roadway network.

QQ. “Trip allocation program” means the program established to meter trip ends to new development annually by service area and traffic analysis zone to ensure that the City is maintaining adopted LOS standards.

RR. “Trip end” means a single or one-directional vehicle movement.

SS. “Unit” or “Dwelling unit” means a dwelling unit as defined in BDMC 18.100.280

#### **11.11.004 Exempt development.**

No development activity as defined in Section BDMC 11.11.003(W) shall be exempt from the requirements of this chapter, unless the permit is listed below. The following types of permits are not subject to the capacity reservation certificate (CRC) process because they do not create additional long-term impacts on transportation facilities:

1. Administrative interpretations;
2. Sign permit;
3. Street vacations;
4. Demolition permit;
5. Street use permit;
6. Interior alterations of a structure with no change in use;
7. Excavation/clearing permit;
8. Hydrant use permit;
9. Right-of-way permit;
10. Single-family remodeling with no change of use;
11. Plumbing permit;
12. Electrical permit;
13. Mechanical permit;
14. Excavation permit;
15. Sewer connection permit;
16. Driveway or street access permit;
17. Grading permit;
18. Tenant improvement permit;
19. Fire code permit;
20. Design review approval.

Notwithstanding the exemptions noted in this Section, if any of the above permit applications will generate any new p.m. peak hour trips, such application shall not be exempt from the requirements of this Chapter.

**11.11.005 Applicability** This Chapter shall apply to all applications for development or redevelopment if the proposal or use will generate any new p.m. peak-hour trips. Every



application for development shall be accompanied by an application for capacity reservation certificate.

**11.11.006 Capacity evaluation required for a change in use.** Any non-exempt development activity shall require a capacity evaluation in accordance with this Chapter.

A. Increased Impact on Road Facilities. If a change in use will have a greater impact on road facilities than the previous use, as determined by the Director, based on review of information submitted by the applicant and such supplemental information as available, a CRC shall be required for the net increase only. The applicant shall provide reasonably sufficient evidence that the previous use has been actively maintained on the site during the five-year period prior to the date of application for the capacity evaluation.

B. Decreased Impact on Road Facilities. If a change in use will have an equal or lesser impact on road facilities than the previous use as determined by the Director, based on review of information submitted by the applicant and supplemental information as available, a CRC will not be required.

C. No Capacity Credit. If no use existed on the site for the five-year period prior to the date of application, no capacity credit shall be issued pursuant to this Section.

D. Demolition or Termination of Use. In the case of a demolition or termination of an existing use or structure, the capacity evaluation for future redevelopment shall be based upon the net increase of the impact on road facilities for the new or proposed land use, as compared to the land use existing prior to demolition, provided, that such credit is utilized through a CRC within five years of the date of the issuance of the demolition permit.

**11.11.007. Capacity evaluations required for certain rezones and comprehensive plan amendments.** A capacity evaluation shall be required as part of any application for a comprehensive plan amendment or zoning map amendment (rezone) submitted by the property owner, which, if approved, would increase the intensity or density of permitted development. As part of that capacity evaluation, the Director shall determine whether capacity is available to serve both the extent and density of development which would result from the zoning/comprehensive plan amendment. The capacity evaluation shall be submitted as part of the staff report and shall be considered by the City in determining the appropriateness of the comprehensive plan or zoning amendment. The City's approval of any comprehensive plan or zoning map amendment shall not reserve any capacity in transportation facilities unless the property owner has applied for and is issued a CRC and a development agreement which includes a deadline for the property owner's submission of a development permit application for the proposed development.

**11.11.008 All capacity determinations exempt from project permit processing.** The processing of applications pursuant to the authority in this Chapter shall be exempt from project permit processing procedures as described in Chapter 18.08 of the Zoning Code, except that the appeal procedures of Chapter 11.11.022 shall apply as indicated in this Chapter. The City's processing of capacity determinations and resolving capacity disputes involves a different review

procedure due to the necessity to perform continual monitoring of facility and service needs, to ensure continual funding of facility improvements, and to develop annual updates to the transportation and utilities elements of the comprehensive plan.

#### **11.11.009 Level of Service Standards.**

A. Generally. Level of Service (LOS) is the established minimum capacity of public facilities or services that must be provided per unit of demand or other appropriate measure of need, as mandated by chapter 36.70A RCW. LOS standards shall be used to determine if public facilities or services are adequate to support a development's impact. The concept of concurrency is based on the maintenance of specified levels of service through capacity monitoring, allocation and reservation procedures. Concurrency describes the situation in which road facilities are available when the impacts of development occur. For road facilities, this time period is statutorily established as within six years from the time of development.

B. The City has designated levels of service for road facilities in the transportation element of the City's comprehensive plan:

1. to conform to RCW 47.80.030 for transportation facilities subject to regional transportation plans;
2. to reflect realistic expectations consistent with the achievement of growth aims; and
3. to prohibit development if concurrency for road facilities is not achieved (RCW 36.70A.070), and if sufficient public and/or private funding cannot be found, land use assumptions in the City's comprehensive plan will be reassessed to ensure that level of service standards will be met, or level of service standards will be adjusted.

#### **11.11.010 Effect of LOS standards.**

The Director shall use the LOS standards set forth in the transportation element of the City's comprehensive plan to make capacity evaluations as part of the review of any application for a transportation CRC issued pursuant to this chapter.

#### **11.11.011 Capacity evaluations required prior to issuance of CRC.**

A. A capacity evaluation shall be required for any of the activities that are not exempt in Section 11.11.004 of this chapter.

B. The Director shall utilize the requirements in Sections 11.11.011 through 11.11.016 to conduct a capacity evaluation prior to issuance of a CRC. In addition to the requirements set forth in these sections, the Director may also utilize state law or the Washington Administrative Code, or such other rules regarding concurrency, which may be established from time to time by administrative rule.



C. A CRC will not be issued except after a capacity evaluation performed pursuant to this Chapter, indicating that capacity is available in all applicable road facilities.

#### **11.11.012 Application for capacity evaluation.**

A. An application for capacity evaluation and the application for the underlying development permit, or other activity, shall be accompanied by the requisite fee, as determined by City Council resolution. An applicant for the capacity evaluation shall submit the following information to the Director, on a form provided by the Director, together with the underlying development application:

1. Date of submittal;
2. Developer's name, address, telephone number and e-mail;
3. Legal description of property as required by the underlying development permit application, together with an exhibit showing a map of the property;
4. Proposed use(s) by land use category, square feet and number of units;
5. Phasing information by proposed uses, square feet and number of units, if applicable;
6. Existing use of property;
7. Acreage of property;
8. Proposed site design information, if applicable;
9. The applicant's proposed mitigation (if any) for the impact on the City's transportation facilities;
10. Written consent of the property owner, if different from the developer;
11. Proposed request of capacity by legal description, if applicable;
12. A preliminary site plan, which is a plan showing the approximate layout of proposed structures and other development, type and number of dwelling units, type and number of nonresidential building areas with gross square footage, the land use codes per the most recent edition of Trip Generation from the Institute of Transportation Engineers (ITE) and an analysis of the points of access to existing and proposed roadways;
13. Traffic impact analysis and traffic report. Developments or redevelopments, excluding an individual single-family residence, that will generate one or more new projected p.m. peak-hour vehicle trips that will pass through an intersection or roadway section identified with a level of service below the acceptable level noted in the transportation element in the City's comprehensive plan, or that will generate 15 or more new p.m. peak hour trips shall be required to have the City prepare a traffic impact analysis to determine the full impact of the proposal and appropriate mitigation. The results of the traffic impact analysis will be documented in a traffic report.

B. The applicant is not required to submit a traffic impact analysis from an independent traffic engineer. Instead, those applicants with a transportation CRC application are required to submit sufficient information for the City to prepare a traffic impact analysis. The applicant shall pay to the City a deposit equal to the estimated fee for the City's preparation of a traffic report. The City will cover the costs of the traffic report from the funds deposited by the applicant. If revisions to the traffic impact analysis are needed the applicant shall cover the additional cost.



Even if the traffic report is based on an estimate of the impact, if the City issues a CRC based on this estimate, the applicant will still be bound by the estimate of the impact, and any upward deviation from the estimated traffic impact shall require at least one of the following: (a) a finding that the additional concurrency sought by the developer through a revised application is available to be reserved by the project; (b) mitigation of the additional impact under SEPA; (c) revocation of the CRC.

#### **11.11.013 Submission and acceptance of a capacity evaluation application.**

A. Notice of application. Issuance of a notice of application for the underlying permit application shall be handled by the Community Development Director or designee, following the process in Section 18.08.120. The notice of application required by Section 18.08.120 shall state that an application for a concurrency determination has been received by the City.

B. Determination of Completeness. The Community Development Director shall immediately forward all capacity evaluation applications received with development applications to the Public Works Director. Within twenty-eight (28) days after receiving a capacity evaluation application, the Public Works Director shall mail or personally deliver to the applicant a determination which states either:

1. That the application for capacity evaluation is complete; or
2. That the application for capacity evaluation is incomplete and what is necessary to make the application complete.

C. Additional information. An application for capacity evaluation is complete for purposes of initial processing when it meets the submission requirements in Section 11.11.012. The determination of completeness shall be made when the application is sufficiently complete for review, even though additional information may be required or project modifications may be undertaken subsequently. The Director's determination of completeness shall not preclude the Director's ability to request additional information or studies.

D. Incomplete applications.

1. Whenever the City issues a determination that the application for capacity evaluation is not complete, the application for capacity evaluation shall be handled in the same manner as a project permit application under Section 18.14.020 (G).

2. Date of Acceptance of Application. An application for capacity evaluation shall not be officially accepted or processed until it is complete and the underlying development application has been determined complete. When a capacity application is determined complete, the Director shall accept it and note the date of acceptance.

#### **11.11.014 Method of capacity evaluation.**

A. Generally. In order to determine concurrency for the purposes of issuance of a CRC, the Director shall make the determination based on the analysis described in this Section. The Director may deem the development concurrent with transportation facilities if capacity is available. Additionally the Director may deem the development concurrent with transportation facilities if the development causes the level of service to decline below the standards adopted in the transportation element of the comprehensive plan, as long as the Director finds that there are acceptable transportation improvements or strategies to accommodate the development proposed by the applicant, and that the same will be made concurrent with the development. “Concurrent with the development” means that the improvements or strategies are in place at the time of the development, or that a financial commitment (secured by an enforceable development agreement) is in place to complete the improvements or strategies within six years. In no event shall the Director determine concurrency for a greater amount of capacity than is needed for the development proposed in the underlying application.

#### **B. Process and methods**

1. Upon submission and acceptance of a complete application for capacity evaluation, the Director shall conduct a Traffic Impact Analysis and issue a traffic report for those applications meeting the requirements of Section 11.11.012.

2. In performing the capacity evaluation for transportation facilities, and to prepare the CRC, the Director shall determine, based on the conclusions of the traffic report, whether a proposed development can be accommodated within the existing or planned capacity of transportation facilities. This shall involve the following:

- a. A determination of anticipated total capacity at the time the proposed impacts of development occur or within six years of such time;
- b. Calculation of how much of that capacity will be used by existing developments and other planned developments at the time the impacts of the proposed development occur;
- c. Calculation of the available capacity for the proposed development;
- d. Calculation of the impact on the capacity of the proposed development, minus the effects of any mitigation identified by the applicant to be provided by the applicant at the applicant’s cost;
- e. Comparison of available capacity with proposed development impacts.

3. The Director shall determine if the capacity of the City’s transportation facilities, less the capacity which is reserved and used, is available while meeting the level of



service performance standards set forth in the City's comprehensive plan, and if so, shall provide the applicant with a CRC. The Director's determination will be based on the application materials provided by the applicant, which must include the applicant's proposed mitigation for the impact on the City's transportation facilities.

C. Lack of Concurrency. If the Director determines that the proposed development will cause the LOS of a City-owned transportation facility to decline below the standards adopted in the transportation element of the City's comprehensive plan, and improvements or strategies to accommodate the impacts of development are not planned to be made concurrent with development, a CRC and the underlying development permit, shall be denied. Upon denial, the applicant may perform one of the following:

1. Appeal the findings of the Director's decision in accordance with Section 11.11.022; or
2. Offer alternative data and/or perform an independent traffic impact analysis at the applicant's sole expense in support of alternative conclusions. Any study shall meet the requirements of the Public Works Director; or
3. Modify the development proposal to lessen the traffic impacts and/or identify voluntary transportation improvements as mitigation to be provided by the applicant at the applicant's cost and re-apply for capacity review. Re-application shall require repayment of the traffic impact analysis and traffic report preparation fee in accordance with Section 11.11.012; or
4. Withdraw the capacity evaluation application.

**11.11.015 Purpose of Capacity Reservation Certificate.** A CRC is a determination by the Director that: (1) the proposed development identified in the application for capacity evaluation does not cause the level of service on a City-owned transportation facility to decline below the standards adopted in the transportation element of the City's comprehensive plan; or (2) that a financial commitment (embodied in a development agreement) is in place to complete the necessary improvements or strategies within six (6) years. Upon issuance of a CRC, the Director will reserve transportation facility capacity for this application until the expiration of the underlying development permit. Although the CRC may identify the number of projected trips associated with the proposed development, nothing in this Chapter (including the trip transfer procedures) shall imply that the applicant "owns" or has any ownership interest in the projected trips.

**11.11.016 Procedure for capacity reservation certificates.** After receipt of a complete application for capacity evaluation, the Director shall process the application in accordance with this Chapter and issue the CRC or a denial letter.

**11.11.017 Use of reserved capacity.** When a CRC and a development permit issues for a project, the CRC shall continue to reserve the capacity unless the development permit lapses or expires without issuance of a certificate of occupancy.



**11.11.018 Transfer of reserved capacity.** Reserved capacity shall not be sold or transferred to property not included in the legal description provided by the applicant in the CRC. The applicant may, as part of a development permit application, designate the amount of capacity to be allocated to portions of the property, such as lots, blocks, parcels or tracts included in the application. Capacity may be reassigned or allocated within the boundaries of the original reservation certificate by application to the Director. At no time may capacity or any certificate be sold or transferred to another party or entity to real property not described in the original application.

**11.11.019 Denial letter.** If the Director determines that there is a lack of concurrency under the above provisions, the Director shall issue a denial letter, which shall advise the applicant that capacity is not available. If the applicant is not the property owner, the denial letter shall also be sent to the property owner. At a minimum, the denial letter shall identify the application and include the following information:

- A. An estimate of the level of the deficiency on the transportation facilities; and
- B. The options available to the applicant as outlined in 11.11.014(C).
- C. A statement that the denial letter may be appealed if the appeal is submitted to the Director within ten (10) days after issuance of the denial letter, and that the appeal must conform to the requirements in Section 11.11.022. Any appeal of a denial letter must be filed according to this section, prior to issuance of the City's decision on the underlying development application. If an appeal is filed, processing of the underlying development application shall be stayed until the final decision on the appeal of the denial letter.

**11.11.020 Notice of concurrency determination.**

A. Notice of the concurrency determination shall be given to the public together with, and in the same manner as, that provided for the SEPA threshold determination (BDMC 19.04.210) for the underlying development permit unless the project is exempt from SEPA, in which case notice shall be given in the same manner as a final decision on the underlying development permit without any accompanying threshold determination. In the case of an approved CRC, any mitigation identified by the applicant to be provided by the applicant at the applicant's cost shall be included in the SEPA threshold determination or underlying permit decision (if categorically exempt from SEPA).

B. If a denial letter is not timely appealed, the underlying permit application will be processed and in most instances, will result in a denial. If a denial letter is appealed, any mitigation or conditions included in the appeal decision shall be included in the SEPA threshold decision or underlying permit decision (if categorically exempt from SEPA).

**11.11.021 Expiration of CRC and extensions of time.**

A. Expiration. If a certificate of occupancy has not been requested prior to the expiration of the underlying permit or termination of the associated development agreement, the Director shall convert the reserved capacity to available capacity for use by other developments. The act of requesting a certificate of occupancy before expiration of the CRC shall only convert the reserved capacity to used capacity if the building inspector finds that the project actually conforms with applicable codes and issues a certificate of occupancy. If a complete underlying project permit application expires, the Director shall convert any reserved capacity allocated to the underlying project permit for use by other developments.

B. The City shall assume that the developer requests an extension of the CRC when the developer is requesting a renewal of the underlying development permit. No unused capacity may be carried forward beyond the duration of the CRC or any subsequent extension.

C. If a CRC has been granted for a rezone or comprehensive plan amendment, the CRC shall expire when the development agreement for the comprehensive plan or rezone terminates.

D. If the city's code or state law does not specify an expiration date for the underlying permit, the CRC shall expire no later than 5 years after issuance of the CRC.

**11.11.022 Appeals.** Upon receipt of an appeal from the applicant of the denial letter, the Director shall handle the appeal as follows:

A. A meeting shall be scheduled with the applicant to review the denial letter and the application materials, together with the appeal statement.

B. Within fourteen (14) days after the meeting, the Director shall issue a written decision, which will list all of the materials considered in making the decision. The written "Director's Decision" shall either affirm or reverse the denial letter. In any decision, the Director shall identify the mitigation that the applicant is required to provide at the applicant's cost, which will be imposed on the application approval in order to achieve concurrency, if any.

C. The mitigation identified in the Director's Decision shall be incorporated into the City's SEPA threshold decision on the application.

D. The Director's Decision shall state that it may be appealed with any appeal of the underlying application or activity, pursuant to Section 18.08.200.

**11.11.023 Concurrency administration and procedure.**

A. There are two transportation capacity accounts to be utilized by the Director in the implementation of this Chapter. These accounts are:

1. The available capacity account; and
2. The reserved capacity account.



Capacity is withdrawn from the available capacity account and deposited into a reserved capacity account when a CRC is issued. Once the proposed development is constructed and an occupancy certificate is issued, the capacity is considered “used.” Each capacity account of available or reserved capacity will experience withdrawals on a regular basis. Only the Director may transfer capacity between accounts.

#### **11.11.024 Annual reporting and monitoring.**

A. The Director is responsible for completion of annual transportation capacity availability reports. The report shall evaluate reserved capacity and permitted development activity for the previous 12-month period, and determine existing conditions with regard to available capacity of road facilities for additional traffic loading. The evaluations shall report on capacity used for the previous period, capacity added from new project(s), and capacity that will be available upon implementation of transportation projects on the City’s six-year capital facilities element of the City’s comprehensive plan and six-year transportation plan for road facilities, based on LOS standards. Forecasts shall be based on the most recently updated schedule of capital improvements, growth projections, public road facility inventories, and revenue projections, and shall, at a minimum, include:

1. A summary of development activity;
  2. The status of each capacity account;
  3. The six-year transportation plan;
  4. Actual capacity of selected street segments and intersections and current LOS;
- and
5. Recommendations on amendments to CIP and annual budget, to LOS standards, or other amendments to the transportation element or to the comprehensive plan.

B. The findings of the annual transportation capacity availability report shall be considered by the Council in preparing the annual update to the transportation element of the comprehensive plan, any proposed amendments to the CIP and six-year TIP, and shall be used in the review of development permits and capacity evaluations during the next period.

C. Based upon the analysis included in the annual transportation capacity availability reports, the Director shall recommend to the City Council each year any necessary amendments to the CIP, TIP, or transportation element of the comprehensive plan. The Director shall also report on the status of all capacity accounts when public hearings for comprehensive plan amendments are heard.

#### **11.11.025 Intersection LOS monitoring and modeling.**

A. The City shall monitor level of service at all major collector and arterial intersections through the keeping of an updated traffic demand model and an annual update of the six-year transportation plan which will add data reflecting development permits issued and trip allocations reserved.



B. New trip generation numbers shall be assigned to the appropriate traffic analysis zone for each new project approved. The City will use the updated traffic demand model, to ensure that the City is achieving the adopted LOS standards described in this Chapter and the transportation element of the comprehensive plan.

Section 2. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 3. 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 4. Effective Date. This Ordinance shall become effective five days after publication as provided by law.

PASSED by the Council and approved by the Mayor of the City of Black Diamond at a regular meeting on this 17<sup>th</sup> day of December, 2015.

CITY OF

---

Carol Benson, Mayor

ATTEST/AUTHENTICATED:

---

Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney

---

City Attorney

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

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION											
<b>SUBJECT:</b>	<b>Agenda Date: December 17, 2015</b>	<b>AB15-095</b>									
<b>Resolution No. 15-1057, Flood Reduction Grant Agreement with King County for the design of the Covington Creek Culvert project</b>	Mayor Carol Benson										
	City Administrator										
	City Attorney Carol Morris										
	City Clerk – Brenda L. Martinez										
	Com Dev/Nat Res – Barb Kincaid										
	Finance – May Miller										
	MDRT/Ec Dev – Andy Williamson										
	Police – Chief Kiblinger										
Cost Impact (see also Fiscal Note): \$145,000 revenue											
Fund Source: King County Flood Reduction Grant	Public Works – Seth Boettcher	X									
Timeline: 2016	Court – Stephanie Metcalf										
<b>Agenda Placement:</b> <input type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input checked="" type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator <b>Attachments: Resolution No. 15-1057, Grant Agreement, CIP Page</b>											
<p><b>SUMMARY STATEMENT:</b> Public Works staff applied for and was selected for a Flood Reduction Fund grant from King County. Grant funds will be used for the design of the Covington Creek Culvert Replacement project. Public Works staff will apply the next grant cycle for construction funds.</p> <p><b>FISCAL NOTE (Finance Department):</b> There is no match requirement on this project and grant funds can cover City labor for administration and management.</p>											
<p><b>COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:</b> Public Works Committee recommends approval.</p>											
<p><b>RECOMMENDED ACTION: MOTION to adopt Resolution 15-1057, authorizing the Mayor to execute a Flood Reduction grant agreement with King County for the design of the Covington Creek Culvert project.</b></p>											
<p align="center"><b>RECORD OF COUNCIL ACTION</b></p> <table border="1"> <thead> <tr> <th>Meeting Date</th> <th>Action</th> <th>Vote</th> </tr> </thead> <tbody> <tr> <td>December 17, 2015</td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> </tr> </tbody> </table>			Meeting Date	Action	Vote	December 17, 2015					
Meeting Date	Action	Vote									
December 17, 2015											



**RESOLUTION NO. 15-1057**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON  
AUTHORIZING THE MAYOR TO EXECUTE A FLOOD  
REDUCTION GRANT AGREEMENT WITH KING COUNTY  
FOR THE DESIGN OF THE COVINGTON CREEK  
CULVERT PROJECT**

**WHEREAS**, the City has identified the need to replace the deteriorating corrugated metal culverts at Covington Creek in the City Capital Improvement Plan; and

**WHEREAS**, the City's grant application for King County Flood Reduction Grant Funds was selected for the design of the Covington Creek Culvert project in the amount of \$145,000; and

**WHEREAS**, the City has the staff and funds to complete the project; and

**WHEREAS**, an agreement with King County is required to establish the terms of funding the design of the Covington Creek Culvert project;

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

**Section 1.** The Mayor is hereby authorized to execute the Flood Reduction Grant agreement with King County for the design of the Covington Creek Culvert project, substantially in the form attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 17<sup>TH</sup> DAY OF DECEMBER, 2015.**

CITY OF BLACK DIAMOND:

\_\_\_\_\_  
Carol Benson, Mayor

Attest:

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

**AGREEMENT FOR AWARD OF  
FLOOD REDUCTION GRANT FUNDS  
BETWEEN THE TOWN OF BLACK DIAMOND AND KING COUNTY**

This Agreement is made between King County, a municipal corporation, and the Town of Black Diamond ("Recipient") (sometimes collectively referred to as the "parties" and in the singular "party"), for the purposes set forth herein. This Agreement shall be in effect from the date of execution to **December 31, 2016**.

**Project Contacts:**

King County – Kim Harper, Grant Administrator, 206-477-6079, [Kim.harper@kingcounty.gov](mailto:Kim.harper@kingcounty.gov).

Recipient – Seth Boettcher, 360-886-5711, [Sboettcher@ci.blackdiamond.wa.us](mailto:Sboettcher@ci.blackdiamond.wa.us).

**SECTION 1. RECITALS**

- 1.1 Whereas, the King County Flood Control District ("District") is a quasi-municipal corporation of the State of Washington, authorized to provide funding for flood control and stormwater protection projects and activities; and
- 1.2 Whereas King County is the service provider to the District under the terms of an interlocal agreement ("ILA") by and between King County and the District, dated February 17, 2009, as amended, and as service provider implements the District's annual work program and budget; and
- 1.3 Whereas, on November 12, 2013, the District's Board of Supervisors passed Resolution FCD2013-14.3 which established a Flood Reduction Grant Program and criteria for awarding grant funding for projects, and on November 3, 2014, the Board passed Resolution FCD2014-14-3, which authorized an allocation of \$2,883,634 from the District's 2015 budget to fund flood reduction projects; and
- 1.4 Whereas, on August 31, 2015 the District's Board of Supervisors passed Resolution FCD2015-10.1, which approved the flood reduction projects described in Attachment A to that Resolution; and
- 1.5 Whereas, in accordance with the terms of these Resolutions, and in its capacity as service provider to the District, King County has established policies and procedures for administering the flood reduction grant program, a copy of which has been furnished to Recipient and which is incorporated herein by this reference (hereinafter "Grant Policies and Procedures"); and
- 1.6 Whereas, the Recipient submitted an application to receive funds for a project to be funded by the Flood Reduction Grant Program; and
- 1.7 Whereas the District's Board of Supervisors approved funding of Recipient's application for the project, as described in Attachment A to Resolution FCD2015-10.1 ("Project") in

the amount of **\$145,000** ("Award"); and

- 1.8 Whereas King County has received a Scope of Work and a Budget for the Project from the Recipient and has determined that the Scope of Work, attached hereto and incorporated herein as Exhibit B ("Scope of Work"), and the Budget, attached hereto and incorporated herein as Exhibit C ("Budget"), are consistent with the Grant Policies and Procedures, the Recipient's application for the Project, and the Resolution approving funding for the Project; and
- 1.9 Whereas, King County and the Recipient desire to enter into this Agreement for the purpose of establishing the terms and conditions under which King County will provide funding from the District in accordance with Resolution FCD2015-10.1, and the Grant Policies and Procedures, and under which the Recipient will implement the Project.

## **SECTION 2. AGREEMENT**

- 2.1. The Recitals are an integral part of this Agreement and are incorporated herein by this reference.
- 2.2. King County agrees to pay the Award amount to Recipient in the total amount of **\$145,000** from District funds. The Award shall be used by the Recipient solely for the performance of the Project, as described in Exhibit A to this Agreement. Exhibit A, attached hereto and incorporated herein by this reference, contains a description of the Project as described in Attachment A to Resolution FCD2015-10.1. King County shall pay the Recipient in accordance with the terms of the Grant Policies and Procedures.
- 2.3. The Recipient represents and warrants that it will only use the Award for the Scope of Work of this Agreement and in accordance with the Project Budget. The Recipient shall be required to refund to King County that portion of the Award which is used for work or tasks not included in the Scope of Work. Further, the Recipient agrees that King County may retain any portion of the Award that is not expended or remains after completion of the Scope of Work and issuance of the Final Report, as further described below.
- 2.4. Activities carried out for this Project and expenses incurred by the Recipient may predate the execution date of this Agreement provided that 1) they have been identified by Recipient as being within the scopes of numbers 2) and 3) below, and have been approved by King County as being within such scopes; 2) the activities are specified in the Scope of Work of this Agreement; 3) the expenses are incurred in carrying out the Scope of Work and are authorized by the Award as identified in the Budget of this Agreement; 4) such activities and expenses otherwise comply with all other terms of this Agreement; and 5) reimbursements shall be paid to the Recipient only after this Agreement has been fully executed.
- 2.5. The Recipient shall invoice King County for incurred expenses using the Request for Payment form and Progress Report form for those documented and allowable expenses



identified in the Budget and according to the rules set forth in the Grant Policies and Procedures. Blank forms shall be provided to the Recipient by King County upon execution of this Agreement. A progress report (with or without a request for payment) shall be made no less frequently than every six months after the effective date of this Agreement nor more frequently than every three months after the aforementioned date. A one- time advance of no more than 25% of the Award amount may be allowed, in the discretion of King County, for expenses anticipated to be incurred in the three months following the date of submission of the advance Request for Payment only for work that is included in the Scope of Work of this Agreement, and identified as such in the Request for Payment. Documentation of payments made from the advance payment shall be submitted to King County prior to any further requests for payment. Twenty percent (20%) of the Award amount will be withheld by King County until receipt of the final Request for Payment, which shall be accompanied with a final report, as described in Section 2.6 of this Agreement.

- 2.6. The Recipient shall be required to submit to King County a final report which documents the Recipient's completion of the work in conformance with the terms of this Agreement within thirty (30) days after the completion of the work. The final report may be submitted at the same time as the Close-out Report form. A blank form shall be provided to the Recipient by King County upon execution of this Agreement. The final report shall include a summary of the Project's successes and shall address the flood reduction benefits accomplished by the work. .
- 2.7. The Recipient's expenditures of Award funds shall be separately identified in the Recipient's accounting records. If requested, the Recipient shall comply with other reasonable requests made by King County with respect to the manner in which Project expenditures are tracked and accounted for in the Recipient's accounting books and records. The Recipient shall maintain such records of expenditures as may be necessary to conform to generally accepted accounting principles as further described in Section 2.8 below, and to meet the requirements of all applicable state and federal laws.
- 2.8. The Recipient shall be required to track project expenses using the Budget Accounting and Reporting System for the State of Washington ("BARS") or Generally Accepted Accounting Principles set forth by the Financial Accounting Standards Board or by the Governmental Accounting Standards Board.
- 2.9. King County or its representative, and the District or its representative, shall have the right from time to time, at reasonable intervals, to audit the Recipient's books and records in order to verify compliance with the terms of this Agreement. The Recipient shall cooperate with King County and the District in any such audit.
- 2.10. The Recipient shall retain all accounting records and project files relating to this Agreement in accordance with criteria established by the Washington State Archivist Local Government Common Records Retention Schedule (CORE) as revised.

- 2.11. The Recipient shall ensure that all work performed by its employees, agents, contractors or subcontractors is performed in a manner which protects and safeguards the environment and natural resources and which is in compliance with local, state and federal laws and regulations. The Recipient shall implement an appropriate monitoring system or program to ensure compliance with this provision.
- 2.12. The Recipient agrees to indemnify, defend and hold harmless King County, and the District, their elected or appointed officials, employees and agents, from all claims, alleged liability, damages, losses to or death of person or damage to property arising out of any acts or omissions of the Recipient, its employees, agents, contractors or subcontractors in performing its obligations under the terms of this Agreement.
- 2.13. The Recipient agrees to acknowledge the District as a source of funding for the Project on all literature, signage or press releases related to the Project. The Recipient shall obtain from King County the specific language of acknowledgement and any District logo that may be used in the acknowledgement.

### **SECTION 3. GENERAL PROVISIONS**

- 3.1. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.
- 3.2. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. No prior or contemporaneous representation, inducement, promise or agreement between or among the parties which relate to the subject matter hereof which are not embodied in this Agreement shall be of any force or effect.
- 3.3. No amendment to this Agreement shall be binding on any of the parties unless such amendment is in writing and is executed by the parties. The parties contemplate that this Agreement may from time to time be modified by written amendment which shall be executed by duly authorized representatives of the parties and attached to this Agreement.
- 3.4. Each party warrants and represents that such party has full and complete authority to enter into this Agreement and each person executing this Agreement on behalf of a party warrants and represents that he/she has been fully authorized to execute this Agreement on behalf of such party and that such party is bound by the signature of such representative.
- 3.5. The Project shall be completed by no later than **December 31, 2016**. In the event that the Project is not completed by this date, King County has the discretion, but not the obligation, to terminate this Agreement and retain any unexpended Award funds.
- 3.6. This Agreement may be signed in multiple counterparts.
- 3.7. If any provision of this Agreement shall be wholly or partially invalid or unenforceable under applicable law, such provision will be ineffective to that extent only, without in any

way affecting the remaining parts or provision of this Agreement, and the remaining provisions of this Agreement shall continue to be in effect.

- 3.8. The amount of the Award has been fully funded by the District. To the extent that funding of the Award requires future appropriations by the District, King County's obligations are contingent upon the appropriation of sufficient funds by the Board of Supervisors of the District to complete the Scope of Work. If no such appropriation is made, this Agreement will terminate at the close of the appropriation year for which the last appropriation that provides funds under this Agreement was made.

This document has been approved as to form by the King County Prosecuting Attorney's Office as of September 12, 2015.

**KING COUNTY:**

**RECIPIENT:**

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_



**EXHIBIT A: PROJECT DESCRIPTION**

PROJECT NAME	RECIPIENT	DESCRIPTION	MATCH	AWARD
Lake Sawyer Road Culvert Replacement	Town of Black Diamond	Complete design, obtain permits, develop construction bid documents and select contractor to construct the replacement of three 5-foot diameter corrugated metal culverts 70 feet long under 224th Ave SE at Covington Creek in Black Diamond.	\$0	\$145,000

**EXHIBIT B: SCOPE OF WORK**

TASKS	ACTIVITIES AND DELIVERABLES	TOTAL SHARE OF AWARD FUNDS	DATES When is the task starting and ending?
<b>Task 1 – Project Administration &amp; Management</b>	City staff will submit quarterly reports, submit quarterly requests for reimbursement and progress reports, keep grant records, submit closeout paperwork, including the final report. Select an engineering consultant, finalize and oversee the contract with the consultant, process bills/progress reports from engineer. Review engineering reports and make design decisions, ensure that the design efforts meet the city's and resource agency needs. Advertise for construction bids, award bid, develop contract with construction contractor.	\$33,000	Sept 2015 - June 2016
<b>Task 2 – Preliminary Design</b>	Selected engineer under guidance of City staff and in consultations with resource agencies will determine the most cost effective method of conveying Covington Creek under the road that meets the city's road and maintenance needs and best meets the needs of the environment.	\$17,000	Nov 2015 – Mar 2016
<b>Task 3 – Environmental Review &amp; Permits</b>	Selected engineer will consult with resource agencies to determine necessary environmental objectives and outcomes and submit for the environmental review (SEPA Process). Engineer will apply and secure permits from the Washington Department of Fish and Wildlife and the Army Corp of Engineers if required.	\$15,000	Apr 2016 – July 2016
<b>Task 4 – Final Design and Bid Documents</b>	Selected engineer will design replacement culvert, prepare construction plans, specifications, and bid documents	\$80,000	Mar – June 2016
<b>Permits/permission</b>	State all required project permits and authorizations: Hydraulic Permit approval from Washington State Department of Fish and Wildlife; Potentially a permit from the Army Corp of Engineers		
<b>Credits</b>	How, where and when this grant will be acknowledged as funded by the King County Flood Control District: <ul style="list-style-type: none"> <li>The City will post acknowledgement on the City's capital project information webpage.</li> <li>The City will include mention of the FCD funding in correspondence, newsletter articles and local newspapers.</li> </ul>		

**EXHIBIT C: BUDGET**

BUDGET ITEM	TOTAL	GRANT AWARD SHARE	FINANCIAL MATCH (not required)			MATCH TOTAL
			SOURCE	SOURCE	SOURCE	
STAFFING	\$33,000	\$33,000				
COMMERCIAL SERVICES (Contractors, consultants, etc.)	\$112,000	\$112,000				
<b>TOTAL</b>	<b>\$145,000</b>	<b>\$145,000</b>				<b>\$0</b>

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
<b>SUBJECT:</b>  <b>Resolution No. 15-1058, Fuel Tax Agreement with the Washington State Transportation Improvement Board (TIB) for the Jones Lake Road Overlay project</b>	<b>Agenda Date: December 17, 2015</b> <b>AB15-096</b>	
Cost Impact (see also Fiscal Note): \$135,219 revenue Fund Source: TIB Grant Timeline: 2016	Mayor Carol Benson	
	City Administrator	
	City Attorney Carol Morris	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Barb Kincaid	
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	
	Police – Chief Kiblinger	
	Public Works – Seth Boettcher	X
	Court – Stephanie Metcalf	
<b>Agenda Placement:</b> <input type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input checked="" type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
<b>Attachments: Resolution No. 15-1058, Grant Agreement, Award Letter, CIP Page</b>		
<b>SUMMARY STATEMENT:</b> Public Works staff applied for and was selected for a Small City Preservation Program fuel tax grant from the Washington Transportation Improvement Board (TIB). This project will provide for some patching, widening, and asphalt overlay of Jones Lake Road. Design will be done in-house.		
<b>FISCAL NOTE (Finance Department):</b> The overall project cost is estimated at \$150,244. The City has a 10% match requirement (\$15,025). The City can use in-kind labor to meet the match requirement.		
<b>COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:</b> Public Works Committee recommends approval.		
<b>RECOMMENDED ACTION: MOTION to adopt Resolution 15-1058, authorizing the Mayor to execute a fuel tax grant agreement for the Jones Lake Road Overlay project, TIB #2-P-800(004)-1.</b>		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
December 17, 2015		



**RESOLUTION NO. 15-1058**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON  
AUTHORIZING THE MAYOR TO EXECUTE A FUEL TAX  
AGREEMENT WITH THE WASHINGTON  
TRANSPORTATION IMPROVEMENT BOARD (TIB) FOR  
THE JONES LAKE ROAD OVERLAY PROJECT**

**WHEREAS**, the City's grant application for the Transportation Improvement Board Small City Preservation Program was selected for the Jones Lake Road Overlay project in the amount of \$135,219; and

**WHEREAS**, the City has the staff and funds to complete the project; and

**WHEREAS**, a fuel tax agreement with the Washington Transportation Improvement Board is required to establish the terms of funding the Jones Lake Road Overlay project;

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

**Section 1.** The Mayor is hereby authorized to execute the fuel tax agreement with the Washington Transportation Improvement Board for the Jones Lake Road Overlay project TIB #2-P-800(004)-1, substantially in the form attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 17<sup>TH</sup> DAY OF DECEMBER, 2015.**

CITY OF BLACK DIAMOND:

\_\_\_\_\_  
Carol Benson, Mayor

Attest:

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



City of Black Diamond  
2-P-800(004)-1  
FY 2017 Overlay Project  
Multiple Locations

STATE OF WASHINGTON  
TRANSPORTATION IMPROVEMENT BOARD  
AND  
City of Black Diamond  
AGREEMENT

THIS GRANT AGREEMENT (hereinafter "Agreement") for the FY 2017 Overlay Project, Multiple Locations (hereinafter "Project") is entered into by the WASHINGTON STATE TRANSPORTATION IMPROVEMENT BOARD (hereinafter "TIB") and City of Black Diamond, a political subdivision of the State of Washington (hereinafter "RECIPIENT").

1.0 PURPOSE

TIB hereby grants funds in the amount of \$135,219 for the project specified above, pursuant to terms contained in the RECIPIENT'S Grant Application, supporting documentation, chapter 47.26 RCW, title 479 WAC, and the terms and conditions listed below.

2.0 SCOPE AND BUDGET

The Project Scope and Budget are initially described in RECIPIENT's Grant Application and incorporated by reference into this Agreement. Scope and Budget will be further developed and refined, but not substantially altered during the Design, Bid Authorization and Construction Phases. Any material alterations to the original Project Scope or Budget as initially described in the Grant Application must be authorized by TIB in advance by written amendment.

3.0 PROJECT DOCUMENTATION

TIB requires RECIPIENT to make reasonable progress and submit timely Project documentation as applicable throughout the Project. Upon RECIPIENT's submission of each Project document to TIB, the terms contained in the document will be incorporated by reference into the Agreement. Required documents include, but are not limited to the following:

- a) Project Funding Status Form
- b) Bid Authorization Form with plans and engineers estimate
- c) Award Updated Cost Estimate
- d) Bid Tabulations
- e) Contract Completion Updated Cost Estimate with final summary of quantities
- f) Project Accounting History

4.0 BILLING AND PAYMENT

The local agency shall submit progress billings as project costs are incurred to enable TIB to maintain accurate budgeting and fund management. Payment requests may be submitted as often as the RECIPIENT deems necessary, but shall be submitted at least quarterly if billable



amounts are greater than \$50,000. If progress billings are not submitted, large payments may be delayed or scheduled in a payment plan.

#### 5.0 TERM OF AGREEMENT

This Agreement shall be effective upon execution by TIB and shall continue through closeout of the grant or until terminated as provided herein, but shall not exceed 10 years unless amended by the Parties.

#### 6.0 AMENDMENTS

This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.

#### 7.0 ASSIGNMENT

The RECIPIENT shall not assign or transfer its rights, benefits, or obligations under this Agreement without the prior written consent of TIB. The RECIPIENT is deemed to consent to assignment of this Agreement by TIB to a successor entity. Such consent shall not constitute a waiver of the RECIPIENT's other rights under this Agreement.

#### 8.0 GOVERNANCE & VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington and venue of any action brought hereunder shall be in the Superior Court for Thurston County.

#### 9.0 DEFAULT AND TERMINATION

##### 9.1 NON-COMPLIANCE

- a) In the event TIB determines, in its sole discretion, the RECIPIENT has failed to comply with the terms and conditions of this Agreement, TIB shall notify the RECIPIENT, in writing, of the non-compliance.
- b) In response to the notice, RECIPIENT shall provide a written response within 10 business days of receipt of TIB's notice of non-compliance, which should include either a detailed plan to correct the non-compliance, a request to amend the Project, or a denial accompanied by supporting details.
- c) TIB will provide 30 days for RECIPIENT to make reasonable progress toward compliance pursuant to its plan to correct or implement its amendment to the Project.
- d) Should RECIPIENT dispute non-compliance, TIB will investigate the dispute and may withhold further payments or prohibit the RECIPIENT from incurring additional reimbursable costs during the investigation.

##### 9.2 DEFAULT

RECIPIENT may be considered in default if TIB determines, in its sole discretion, that:





- a) RECIPIENT is not making reasonable progress toward correction and compliance.
- b) TIB denies the RECIPIENT's request to amend the Project.
- c) After investigation TIB confirms RECIPIENT'S non-compliance.

TIB reserves the right to order RECIPIENT to immediately stop work on the Project and TIB may stop Project payments until the requested corrections have been made or the Agreement has been terminated.

### 9.3 TERMINATION

- a) In the event of default by the RECIPIENT as determined pursuant to Section 9.2, TIB shall serve RECIPIENT with a written notice of termination of this Agreement, which shall be served in person, by email or by certified letter. Upon service of notice of termination, the RECIPIENT shall immediately stop work and/or take such action as may be directed by TIB.
- b) In the event of default and/or termination by either PARTY, the RECIPIENT may be liable for damages as authorized by law including, but not limited to, repayment of grant funds.
- c) The rights and remedies of TIB provided in the AGREEMENT are not exclusive and are in addition to any other rights and remedies provided by law.

### 9.4 TERMINATION FOR NECESSITY

TIB may, with ten (10) days written notice, terminate this Agreement, in whole or in part, because funds are no longer available for the purpose of meeting TIB's obligations. If this Agreement is so terminated, TIB shall be liable only for payment required under this Agreement for performance rendered or costs incurred prior to the effective date of termination.

## 10.0 USE OF TIB GRANT FUNDS

TIB grant funds come from Motor Vehicle Fuel Tax revenue. Any use of these funds for anything other than highway or roadway system improvements is prohibited and shall subject the RECIPIENT to the terms, conditions and remedies set forth in Section 9. If Right of Way is purchased using TIB funds, and some or all of the Right of Way is subsequently sold, proceeds from the sale must be deposited into the RECIPIENT's motor vehicle fund and used for a motor vehicle purpose.

## 11.0 INCREASE OR DECREASE IN TIB GRANT FUNDS

At Bid Award and Contract Completion, RECIPIENT may request an increase in the TIB funds for the specific project. Requests must be made in writing and will be considered by TIB and awarded at the sole discretion of TIB. All increase requests must be made pursuant to WAC 479-05-202 and/or WAC 479-01-060. If an increase is denied, the recipient shall be liable for costs incurred in excess of the grant amount. In the event that final costs related to the specific project are less than the initial grant award, TIB funds will be decreased and/or refunded to TIB in a manner that maintains the original ratio between TIB funds and total project costs.



## 12.0 INDEPENDENT CAPACITY

The RECIPIENT shall be deemed an independent contractor for all purposes and the employees of the RECIPIENT or any of its contractors, subcontractors, and employees thereof shall not in any manner be deemed employees of TIB.

## 13.0 INDEMNIFICATION AND HOLD HARMLESS

The PARTIES agree to the following:

Each of the PARTIES, shall protect, defend, indemnify, and save harmless the other PARTY, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from, that PARTY's own negligent acts or omissions which may arise in connection with its performance under this Agreement. No PARTY will be required to indemnify, defend, or save harmless the other PARTY if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the other PARTY. Where such claims, suits, or actions result from the concurrent negligence of the PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of a PARTY's own negligence. Each of the PARTIES agrees that its obligations under this subparagraph extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the PARTIES, by mutual negotiation, hereby waives, with respect to the other PARTY only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provision of Title 51 RCW. In any action to enforce the provisions of the Section, the prevailing PARTY shall be entitled to recover its reasonable attorney's fees and costs incurred from the other PARTY. The obligations of this Section shall survive termination of this Agreement.

## 14.0 DISPUTE RESOLUTION

- a) The PARTIES shall make good faith efforts to quickly and collaboratively resolve any dispute arising under or in connection with this AGREEMENT. The dispute resolution process outlined in this Section applies to disputes arising under or in connection with the terms of this AGREEMENT.
- b) Informal Resolution. The PARTIES shall use their best efforts to resolve disputes promptly and at the lowest organizational level.
- c) In the event that the PARTIES are unable to resolve the dispute, the PARTIES shall submit the matter to non-binding mediation facilitated by a mutually agreed upon mediator. The PARTIES shall share equally in the cost of the mediator.
- d) Each PARTY agrees to compromise to the fullest extent possible in resolving the dispute in order to avoid delays or additional incurred cost to the Project.
- e) The PARTIES agree that they shall have no right to seek relief in a court of law until and unless the Dispute Resolution process has been exhausted.



### 15.0 ENTIRE AGREEMENT

This Agreement, together with the RECIPIENT'S Grant Application, the provisions of chapter 47.26 Revised Code of Washington, the provisions of title 479 Washington Administrative Code, and TIB Policies, constitutes the entire agreement between the PARTIES and supersedes all previous written or oral agreements between the PARTIES.

### 16.0 RECORDS MAINTENANCE

The RECIPIENT shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. RECIPIENT shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Agreement shall be subject at all reasonable times to inspection, review or audit by TIB personnel duly authorized by TIB, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

Approved as to Form  
Attorney General

By:

Signature on file

---

Guy Bowman  
Assistant Attorney General

Lead Agency

Transportation Improvement Board

---

Chief Executive Officer

Date

---

Executive Director

Date

---

Print Name

---

Print Name





# Washington State Transportation Improvement Board

## TIB Members

Councilmember Bob Olson, Chair  
*City of Kennewick*

Commissioner Richard Stevens,  
Vice Chair  
*Grant County*

Jim Albert  
*Office of Financial Management*

Pasco Bakotich, P.E.  
*WSDOT*

Wendy Clark-Getzin, P.E.  
*Clallam Transit*

Gary Ekstedt, P.E.  
*Yakima County*

Mayor James Irish  
*City of La Center*

John Klekotka, P.E.  
*Port of Everett*

Commissioner Robert Koch  
*Franklin County*

Colleen Kuhn  
*Human Services Council*

Mayor Patty Lent  
*City of Bremerton*

Mick Matheson, P.E.  
*City of Sultan*

E. Susan Meyer  
*Spokane Transit Authority*

Laura Philpot, P.E.  
*City of Sammamish*

David Ramsay  
*Feet First*

Amy Scarton  
*WSDOT*

Heidi Stamm  
*HS Public Affairs*

John Vodopich  
*City of Bonney Lake*

Jay Weber  
*County Road Administration Board*

Clay White  
*Snohomish County*

Stevan E. Gorcester  
*Executive Director*

P.O. Box 40901  
Olympia, WA 98504-0901  
Phone: 360-586-1140  
Fax: 360-586-1165  
[www.tib.wa.gov](http://www.tib.wa.gov)

November 20, 2015

Mr. Seth Boettcher, P.E.  
Public Works Director  
City of Black Diamond  
Post Office Box 599  
Black Diamond, WA 98010-0599



Dear Mr. Boettcher:

Congratulations! We are pleased to announce the selection of your project, FY 2017 Overlay Project, Multiple Locations, TIB project number 2-P-800(004)-1.

Total TIB funds for this project are \$135,219.

### **Before any work is allowed on this project, you must:**

- Verify the information on the Project Funding Status Form, revise if necessary, and sign;
- Sign both copies of the Fuel Tax Grant Distribution Agreement; and
- Return the above items to TIB.

You may only incur reimbursable expenses after you receive approval from TIB.

In accordance with RCW 47.26.084, you must certify full funding by November 20, 2016 or the grant may be terminated. Grants may also be rescinded due to unreasonable project delay as described in WAC 479-05-211.

If you have questions, please contact Greg Armstrong, TIB Project Engineer, at (360) 586-1142 or e-mail [GregA@tib.wa.gov](mailto:GregA@tib.wa.gov).

Sincerely,

Stevan Gorcester  
Executive Director

Enclosures

Small City Preservation Program (SCPP)  
***Approved Segment Listing***  
FY 2017 Overlay Program

**BLACK DIAMOND**

Street	Termini	Pavement Length	Pavement Width
Jones Lake Road	SR 169 to Railroad Avenue	1,310 feet	24 feet

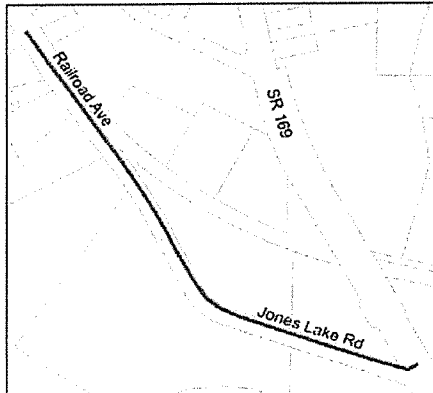
## Capital Plan 2015 - 2020

Project for the	<b>Street Department</b>	# <b>T6</b>
<b>PROJECT TITLE</b>	<b>Jones Lake Road</b>	<b>14.01</b>

**DESCRIPTION** Patch and overlay Jones Lake Road from SR 169 to the end of the overlay improvement on RR Ave.

**BACKGROUND** The pavement condition is average to poor. The roadway width is a little too narrow with no shoulders. The engineering, bid process, inspections and project management will be provided by City staff.

	Total \$ Requested 2015-2020	Capital Plan 2015 - 2020					
		2015	2016	2017	2018	2019	2020
<b>CAPITAL PROJECT COSTS</b>							
Engineering & bid docs	16,000	16,000					
Management & Administration	10,000	10,000					
Construction	96,000	96,000					
<b>TOTAL COSTS</b>	<b>122,000</b>	<b>122,000</b>	-	-	-	-	-
<b>REQUESTED FUNDING</b>							
TIB pavement preservation	110,000	110,000					
Grant Matching	12,000	12,000					
<b>TOTAL SOURCES</b>	<b>122,000</b>	<b>122,000</b>	-	-	-	-	-





# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
<b>SUBJECT:</b> <b>Res 15-1059</b>  A Resolution authorizing the Mayor to sign an Interlocal Agreement with the Cities of Covington and Maple Valley for building department related services.	<b>Agenda Date:</b> December 17, 2015 <b>AB15-097</b>	
	Mayor Carol Benson	
	City Administrator	
	City Attorney Carol Morris	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Barbara Kincaid	X
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	
	Police – Chief Kiblinger	
	Public Works – Seth Boettcher	
<b>Cost Impact (see also Fiscal Note):</b> \$	Court – Stephanie Metcalf	
<b>Fund Source:</b> --		
<b>Timeline:</b>		
<b>Agenda Placement:</b> <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
<b>Attachments:</b> Resolution No. 15-1059; Interlocal Agreement		
<b>SUMMARY STATEMENT:</b>  The City has been using the building services from the Cities of Covington and Maple Valley under an Interlocal Agreement (ILA) for several years because there had not been enough building permit for the City to fund its own Building Official and inspectors. The current ILA, authorized under Resolution 15-1012, is set to expire on December 31, 2015. Even though building permit activities in the City are increasing, these revenues are not yet sufficient to support hiring a Building Official and inspectors. Therefore, there is a need to continue the ILA in 2016 with Covington and Maple Valley to provide these services which include code administration, building related code enforcement, plans examination, and inspections.		
<b>FISCAL NOTE (Finance Department):</b> The 2016 Budget includes \$88,000 for Building Officials and inspectors. This will provide approximately 1,075 hours of Building services from Covington or Maple Valley in 2016.		
<b>COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:</b>		
<b>RECOMMENDED ACTION:</b> <b>MOTION to adopt Resolution No. 15-1059, authorizing the Mayor to execute an Interlocal Agreement with the Cities of Covington and Maple Valley for building department related services.</b>		
RECORD OF COUNCIL ACTION		
Meeting Date	Action	Vote
December 17, 2015		

**RESOLUTION NO. 15-1059**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON,  
AUTHORIZING THE MAYOR TO SIGN AN INTERLOCAL  
AGREEMENT WITH THE CITIES OF COVINGTON AND  
MAPLE VALLEY FOR BUILDING DEPARTMENT RELATED  
SERVICES**

**WHEREAS**, Black Diamond, Covington and Maple Valley are public agencies as defined by Ch. 39.34 of the Revised Code of Washington ("RCW"), and are authorized to enter into Interlocal Agreements on the basis of mutual advantage and thereby to provide services and facilities in the manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs of the local communities; and

**WHEREAS**, Covington and Maple Valley maintain building division staff that regularly enforces and administers building code requirements, reviews building permit applications, conducts building inspections and engages in building-related code enforcement activities; and

**WHEREAS**, although building activity has been increasing, there is currently not enough building permit activity to allow the City to maintain a full-time official/inspector; and

**WHEREAS**, the City of Black Diamond currently utilizes building department related services from the Cities of Covington and Maple Valley under an existing Interlocal Agreement, which is slated to expire on December 31, 2015;

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

**Section 1.** The Mayor is authorized to sign an Interlocal Agreement with the Cities of Covington and Maple Valley for building code administration, plans examination, building inspection and building related code enforcement services, substantially in the form as Attachment A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 17TH DAY OF DECEMBER, 2015.**

CITY OF BLACK DIAMOND:

---

Carol Benson, Mayor

Attest:

---

Brenda L. Martinez, City Clerk

**INTERLOCAL AGREEMENT  
BETWEEN  
THE CITIES OF COVINGTON, MAPLE VALLEY, AND BLACK DIAMOND  
FOR  
BUILDING SERVICES**

**RECITALS**

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into between the City of Covington, a Washington municipal corporation ("Covington"), the City of Maple Valley, a Washington municipal corporation ("Maple Valley"), and the City of Black Diamond, a Washington municipal corporation ("Black Diamond"), (collectively the "Parties" or "Cities" or in the singular "Party" or "City").

WHEREAS, the Parties are "public agencies" as defined by Chapter 39.34 of the Revised Code of Washington (RCW) and through the provisions of that chapter are authorized by state law to enter into interlocal agreements on the basis of mutual advantage and thereby to provide services and facilities in the manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs of local communities; and

WHEREAS, the Parties have similar building code administration, plans examination, and building inspection needs and each Party can realize certain economies from sharing resources, thereby providing savings to taxpayers through contracting for shared services; and

WHEREAS, each Party has agreed to compensate a Party for services offered under this Agreement;

NOW THEREFORE, in consideration of the mutual promises contained herein, it is agreed between the Parties as follows:

**AGREEMENT**

- 1. Purpose.** It is the purpose of this Agreement to utilize the provisions of state law to enable the Parties to take advantage of economies of scale in sharing resources and by offering building code administration, plans examination, and building inspection services to the other Parties.
- 2. Services.** Covington and Maple Valley (collectively the "Providing Parties" or individually a "Providing Party") agree to offer the following services ("Offered Service(s)") to the Parties upon request (collectively the "Requesting Parties" or individually a "Requesting Party") pursuant to the following.



**2.1. Offered Services.**

**2.1.1. Building Code Administration.** Covington agrees to offer building code administration services, performed by Covington's Building Official, to Requesting Parties. Building code administration services includes building code enforcement actions respective to the Requesting Party's building code, as amended, and associated enforcement processes.

**2.1.2. Plans Examination.** Covington agrees to offer plans examination services, performed by Covington's Plans Examiner, to Requesting Parties.

**2.1.3. Building Inspection.** Maple Valley agrees to offer building inspection services, performed by Maple Valley's Building Inspectors, to Requesting Parties.

**2.1.4. Warranty.** The Providing Parties represent and warrant that each of their respective building officials, plans examiners, and building inspectors have the requisite licensing, certification, training, skill, and experience necessary to provide the services offered under this Agreement. The Providing Parties' building officials, plans examiners, and building inspectors, respectively, will perform the services under this Agreement in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

**2.2. Requests for Offered Services.** A Requesting Party shall submit a written request to the relevant Providing Party for performance of an Offered Service, including any and all needs, specifications, or standards that must be considered. Such written request must be made by the Requesting Party's Community Development Director or authorized designee. For the purposes of this sub-section, the Parties agree that a written request may be submitted by a Requesting Party to a Providing Party via email.

**2.3. Acceptance of Request for Offered Services.** The Providing Party shall promptly respond to a written request for an Offered Service with a written acceptance or denial within seventy-two (72) hours of receipt of a written request ("Response Period"). Weekends and legal holidays of the Providing Party shall not be calculated as part of the Response Period (*i.e.* a written request for services received by a Providing Party at 2pm on a Thursday shall be responded to by the Providing Party no later than 2pm on the following Tuesday). The Providing Party may deny a request for an Offered Service at its sole discretion and without reason. Such written acceptance or denial of a request for an Offered Service must be issued by the Providing Party's Community Development Director or authorized designee. For the purposes of this sub-section, the Parties agree that a written acceptance or denial may be issued by a Providing Party to a Requesting Party via email.

**2.4. Providing Party Administrative Oversight.** The Providing Party shall have administrative oversight of the Offered Service requested and shall be responsible for invoicing the Requesting Party for the Offered Service rendered pursuant to Section 4 herein.

**3. Term of Agreement.** This Agreement shall become effective as of the date this Agreement is approved by the legislative body of Covington and at least one additional Party and subsequently executed by those Parties according to each of those Parties' adopted policies and procedures. The remaining Party may enter into this Agreement at any time upon approval of their legislative body and subsequently executed according to that Party's policies and procedures. Unless terminated by all Parties pursuant to the terms of this Agreement, this Agreement shall remain in full force and effect until December 31, 2017.

This Agreement may be extended by written agreement of the Parties subject to the approval of such extension by each Party's legislative body.

**4. Payment.** Requesting Parties shall pay for Offered Services provided by Providing Parties pursuant to the following.

**4.1. Payments for Offered Services.** A Requesting Party shall pay for actual direct and related indirect costs, including any overhead and administrative charges, for Offered Services provided by the relevant Providing Party pursuant to the fees listed for each Providing Party in Exhibit A, attached hereto and incorporated herein by this reference (the "Service Fees").

**4.1.1. Annual Adjustment of Service Fees.** Providing Parties may annually adjust their respective Service Fees, beginning January 2017. Adjustments to Service Fees must be based on the local CPI-U January-to-January rate and/or changes in the local market that can be quantified. Adjustments may also be based on an annual cost study conducted by the respective Providing Party reflecting the increased cost to the Providing Party for the services provided to Requesting Parties under this Agreement. In no event may a Providing Party increase their Service Fees more than four percent (4%) each calendar year. The respective city manager, city administrator, or mayor of a Providing Party shall provide the other Parties with sixty (60) days advance written notice of the effective date of, and basis for, Service Fees adjusted pursuant to this subsection.

**4.2. Billing.** Each Providing Party shall submit a monthly invoice to each Requesting Party, which shall contain the amount of Offered Services provided during the preceding month. Payment shall be made by the Requesting Party within thirty (30) days of receipt of said invoice from a Providing Party.

**4.3. Billing Disputes.** In the event there is a dispute regarding an invoiced amount by a Providing Party, the Parties in dispute shall make every effort to resolve such dispute by mutual agreement. In the event there is no mutually agreed resolution to the dispute, the relevant Parties shall forward the dispute to each Party's City Manager/City Administrator/Mayor for resolution. In the event there is no resolution after review by the Parties' City Manager/City Administrator/Mayor, the Parties shall seek mediation through a mutually agreed mediation service and each Party shall bear its own costs for mediation. If mediation is unsuccessful, any Party may pursue any legal remedy available from a court of competent jurisdiction. Any dispute that has gone to mediation

and mediation was unsuccessful in resolving the dispute shall be grounds for any Party to terminate this Agreement for material breach.

**5. Termination.**

**5.1. Termination by Notice.** Any Party may terminate its participation in this Agreement by providing the other Parties with sixty (60) days advance written notice of the effective date of such termination. The Party providing such notice shall remain responsible for any costs incurred under this Agreement.

**5.2. Termination by Mutual Written Agreement.** This Agreement may be terminated in its entirety at any time by a written agreement executed by all of the Parties.

**5.3. Termination for Breach.** Any Party may terminate its participation in this Agreement for material breach of the terms of this Agreement upon fourteen (14) days advance written notice to the other Parties, provided that disputes regarding billing statements shall be handled pursuant to Subsection 4.3 and shall not be deemed a breach of this Agreement except as set forth in Subsection 4.3.

**6. Indemnification and Hold Harmless.**

**6.1.** Each Providing Party shall defend, indemnify and hold the City of Black Diamond, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Providing Party in performance of this Agreement, except for injuries and damages caused by the sole negligence of Black Diamond.

**6.2.** Each Providing Party shall hold harmless and indemnify each other Providing Party hereto, its elected officials, officers, employees, and agents (collectively the "Indemnitees") from and against any and all suits, actions, claims, liability, damages, judgments, costs, and expenses (including reasonable attorneys' fees) that result from or arise out of the acts or omissions of the respective Providing Party, its elected officials, officers, employees, and agents in connection with or incidental to the performance or non-performance of Offered Services, duties, and obligations under this Agreement.

**6.3.** Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or property caused by or resulting from the concurrent negligence of a Providing Party and the City of Black Diamond, its officers, officials, employees, and volunteers, the Providing Party liability, including the duty and cost to defend, hereunder shall be only to the extent of the Providing Party negligence. **It is further specifically and expressly understood that the indemnification provided herein constitutes the Providing Party's waiver of immunity under the Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.**



**6.4.** In the event the acts or omissions of the officials, officers, agents, and/or employees of a Party in connection with or incidental to the performance or non-performance of Offered Services, duties, or obligations under this Agreement are the subject of any liability claims by a third party, each Party shall each be liable for its proportionate concurrent negligence in any resulting suits, actions, claims, liability, damages, judgments, costs, and expenses and for their own attorneys' fees.

**6.5.** Nothing contained in this section or this Agreement shall be construed to create a right in any third party to indemnification.

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

**7. Insurance.** A Providing Party shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Providing Party, its agents, representatives, or employees.

**7.1. No Limitation.** Providing Party maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Providing Party to the coverage provided by such insurance, or otherwise limit a Requesting Party's recourse to any remedy available at law or in equity.

**7.2. Minimum Scope of Insurance.** Each Providing Party shall obtain insurance of the types described below:

- 7.2.1.** Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- 7.2.2.** General Liability insurance shall be written on an occurrence form and shall cover liability arising from premises, completed operations, independent contractors and personal injury and advertising injury.
- 7.2.3.** Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

**7.3. Minimum Amounts of Insurance.** Each Providing Party shall maintain the following insurance limits:

- 7.3.1.** Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$5,000,000 Combined Single Limit per accident.
- 7.3.2.** Commercial General Liability insurance shall be written with limits no less than \$5,000,000 each occurrence, \$10,000,000 general aggregate.

**7.4. Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, and General Liability insurance:

- 7.4.1.** The Providing Party's insurance coverage shall be primary insurance as respect to a Requesting Party. Any insurance, self-insurance, or insurance pool coverage maintained by a Requesting Party shall be

excess of the Providing Party's insurance and shall not contribute with it.

- 7.4.2.** The Requesting Party will not waive its right to subrogation against the Providing Party. The Providing Party's insurance shall be endorsed to waive the right of subrogation against the Requesting Party, or any self-insurance, or insurance pool coverage maintained by the Requesting Party.
- 7.4.3.** The Providing Party's insurance shall not be cancelled by any party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the other Parties to this Agreement.
- 7.4.4.** If any coverage is written on a "claims made" basis, then a minimum of a three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided to the other Parties to this Agreement.

**7.5. Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII, or as a risk pool, approved by and in good standing with the State of Washington Office of Risk Management.

**7.6. Verification of Coverage.** A Providing Party shall furnish the other Parties to this Agreement with proof of coverage evidencing the insurance requirements of the Providing Service provider before commencement of the Offered Service.

## **8. Independent Service Provider.**

**8.1.** The Parties intend that an independent contractor relationship is created by this Agreement. In providing Offered Services under this Agreement, each Providing Party is an independent contractor and neither it nor its officers, agents, or employees are employees of a Requesting Party for any purpose, including responsibility for any federal or state tax, industrial insurance, or Social Security liability. Neither shall the provision of Offered Services under this Agreement give rise to any claim of career service or civil service rights, which may accrue to an employee of the Providing Party under any applicable law, rule, or regulation. Nothing in this Agreement is intended to create an interest in or give a benefit to third persons not signing as a party to this Agreement. As an independent contractor, each Providing Party shall be responsible for the reporting and payment of all applicable local, state, and federal taxes. No agent, employee, or representative of a Providing Party shall be deemed to be an employee, agent, or representative of a Requesting Party for any purpose, and the employees of a Providing Party are not entitled to any of the benefits that a Requesting Party provides for its employees.

**8.2.** In the performance of the Offered Services herein each Providing Party is an independent contractor with the authority to control and direct the performance of the details of the Offered Service; however, the results of the Offered Services herein must meet the approval of the Requesting Party and shall be subject to the Requesting Party's general rights of inspection and review to secure the satisfactory completion thereof.

Each Providing Party shall be solely and entirely responsible for its acts and for the acts of its agents, employees, or representatives performed within the authorized scope of its agents, employees, or representatives' duties during the performance of this Agreement.

**9. Miscellaneous.**

**9.1. Notices.** Notwithstanding Sub-sections 2.2 and 2.3 herein, notices to be provided pursuant to this Agreement shall be provided in writing to the person and address indicated below. Notices shall be deemed delivered three (3) days after placement of the notice in the U.S. Mail, first class postage pre-paid. Courtesy copies of notices may be provided via email transmission but shall not constitute delivery of written notice as set forth herein.

**9.1.1.** City of Covington  
Community Development Director  
16720 SE 271<sup>st</sup> St. Suite 100  
Covington, WA 98042

**9.1.2.** City of Maple Valley  
Community Development Director  
22017 SE Wax Road, Suite 200  
Maple Valley, WA 98038

**9.1.3.** City of Black Diamond  
Community Development Director  
24301 Roberts Drive  
PO Box 599  
Black Diamond, WA 98010

**9.2. Non-Waiver of Breach.** The failure of any Party to insist upon strict performance of any of the covenants and agreements contained in this Agreement shall not be construed to be a waiver or relinquishment of those covenants, agreements, or options, and the same shall be and remain in full force and effect.

**9.3. Resolution of Disputes and Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Subject to Sub-section 4.3, if the Parties are unable to settle any dispute, difference, or claim arising from the Parties' performance of this Agreement, the exclusive means of resolving that dispute, difference, or claim shall only be by filing suit exclusively under the venue, rules, and jurisdiction of the King County Superior Court, King County, Washington, unless the relevant Parties agree in writing to an alternative dispute resolution process.

**9.4. Assignment.** This Agreement is not assignable by any Party, in whole or in part.

**9.5. Modification.** Except as provided for in Subsection 4.1.1, no waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless made in writing and approved by the legislative body of each city.

**9.6. Compliance with Laws.** Each Party agrees to comply with all local, federal, and state laws, rules, and regulations that are now effective or in the future become applicable to this Agreement.

**9.6.1. Nondiscrimination in Employment.** In the performance of this Agreement, no Party will discriminate against any employee on the grounds of race, religion, creed, color, national origin, sex, marital status, disability, sexual orientation, age, or other basis prohibited by state or federal law unless based upon a bona fide occupational qualification. Each Party shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state, and federal laws prohibiting discrimination in employment.

**9.6.2. Nondiscrimination in Services.** No Party will discriminate against any recipient of any Services provided for in this Agreement on the grounds of race, religion, creed, color, national origin, sex, marital status, disability, sexual orientation, age, or other basis prohibited by state or federal law.

**9.7. Entire Agreement.** The written terms and provisions of this Agreement, together with any exhibits attached hereto, shall supersede all prior communications, negotiations, representations or agreements, either verbal or written, of any officer, employee, or other representative of each party and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. All of the exhibits are hereby made part of this Agreement. Should any of the language of any exhibits to this Agreement conflict with any language contained in this Agreement, the language of this document shall prevail.

**9.8. Severability.** If any provision of this Agreement, in whole or in part, is adjudicated to be invalid, such action shall not affect the validity of any provision not so adjudicated.

**9.9. Interpretation.** The legal presumption that an ambiguous term of this Agreement should be interpreted against the Party who prepared the Agreement shall not apply.

**9.10. No Third Party Beneficiaries.** This Agreement is between the Parties and is not meant to benefit any third party.

**9.11. Counterparts.** This Agreement may be executed in multiple counterparts, any of which shall constitute an agreement by and among the Parties who have executed this Agreement, provided that each Party shall transmit to the attention of the Covington City Clerk an original, executed signature page of this Agreement. The Covington City Clerk shall cause a copy of this Agreement and a copy of each executed signature page of each party to be posted on the Covington City website pursuant to RCW 39.34.040.



IN WITNESS WHEREOF, the Parties below execute this Agreement, which shall become effective pursuant to the terms of Section 3, herein.

<p>CITY OF COVINGTON:</p> <p>By: _____          (signature)</p> <p>Print Name: <u>Regan Bolli</u></p> <p>Its <u>City Manager</u></p> <p>DATE: _____</p>	<p>CITY OF MAPLE VALLEY:</p> <p>By: _____          (signature)</p> <p>Print Name: <u>David W. Johnston</u></p> <p>Its <u>City Manager</u></p> <p>DATE: _____</p>
<p>ATTESTED BY:</p> <p>_____          Sharon Scott, City Clerk</p>	<p>ATTESTED BY:</p> <p>_____          City Clerk</p>
<p>APPROVED AS TO FORM ONLY:</p> <p>_____          Sara Springer, City Attorney</p>	<p>APPROVED AS TO FORM ONLY:</p> <p>_____          Patricia Taraday, City Attorney</p>

CITY OF BLACK DIAMOND:

By: \_\_\_\_\_  
(signature)

Print Name: \_\_\_\_\_  
Carol Benson

Its \_\_\_\_\_  
Mayor

DATE: \_\_\_\_\_

ATTESTED BY:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM ONLY:

\_\_\_\_\_  
City Attorney

**EXHIBIT A**  
**PROVIDING PARTIES' SERVICE FEES—2016 - 2017**

**1. Covington Service Fees**

- (a) Building Administration Services of Building Official, including Project Review or Inspection--Hourly fee of \$89.00.
- (b) Building Plan Review Services of Plans Examiner--Hourly fee of \$75.00
- (c) Travel time will be billed at the same hourly fee for each service provider as indicated above.

**2. Maple Valley Service Fees**

- (a) Building Inspection Services of Building Inspectors-Hourly fee of \$75.00, which includes vehicle and travel costs.

**3. Services Fees may be reviewed annually by each Providing Party pursuant to Subsection 4.1.1.**

# CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
<b>SUBJECT:</b>	<b>Agenda Date: December 17, 2015</b>	<b>AB15-098</b>
<b>Resolution No. 15-1060, adopting facility use rules and procedures for the use of the gym.</b>	Mayor Carol Benson	
	City Administrator	
	City Attorney Carol Morris	<b>X</b>
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Barb Kincaid	
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	
	Police – Chief Kiblinger	
Cost Impact (see also Fiscal Note): \$	Public Works – Seth Boettcher	
Fund Source: --	Court – Stephanie Metcalf	
Timeline:		
<b>Agenda Placement:</b> <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
<b>Attachments: Resolution No. 15-1060</b>		
<p><b>SUMMARY STATEMENT:</b></p> <p>The City of Black Diamond owns and manages the Gym, located at 2511 Lawson Street in Black Diamond. In addition, the City has other public facilities, such as the Council Chambers, that the Council may wish to open for community use.</p> <p>The City Attorney has advised that in order to allow public use of City-owned facilities, the City Council must adopt policies for use. This includes the establishment of rules for use, priority for scheduling of the facility, setting of rental fees and the requirement that users sign agreements that would hold the City harmless for their use of such facilities.</p> <p>After the Council adopts the attached policies, the staff will develop application forms and the appropriate hold harmless agreements to be signed by users.</p> <p><b>FISCAL NOTE (Finance Department):</b></p>		
<b>COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:</b>		
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 15-1060, adopting Facility Use Rules and Procedures for the use of the Gym.</b>		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
December 17, 2015		

RESOLUTION NO. 15-1060

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON  
ADOPTING FACILITY USE RULES AND PROCEDURES  
FOR THE USE OF THE GYM.**

**WHEREAS**, the City of Black Diamond owns and manages the Gym, located at 2511 Lawson Street in Black Diamond; and

**WHEREAS**, the City desires to adopt Facility Rental and Use Policies for the use of the Gym for non-City sponsored events; **NOW, THEREFORE**,

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

**Section 1.** The City Council hereby adopts the following Facility Rental and Use Rules and Procedures for the Gym.

I. **Introduction.** The purpose of these Use Rules and Procedures is to make the Gym and other Public Facilities available for community use, as long as such use does not interfere with City-sponsored events and programs.

II. **Definitions.**

**Applicant.** The authorized agent of the sponsor who completes the application for the use of the Gym or Public Facilities and acts as the primary contact for the facility rental. The applicant is responsible for the actions of all people attending the event described in the application. Applicants must be at least 18 years of age.

**Public Facility.** The Gym, located at 25511 Lawson Street; Black Diamond, WA.

**Rental Coordinator.** Designated by the Mayor.

**Sponsor.** The entity that is participating and/or providing financial support in conjunction with an event.

**User Priority.** The hierarchy the City adheres to when scheduling events at the Public Facility.

III. **Events.**

A. The nature of the event for which the use is sought by the applicant must be described in detail in the Facility Use Application Form.



B. The City reserves the right to accept or reject any request for the use of a Public Facility and to impose additional requirements after reviewing the request of an applicant, based on these Rules and/or any other legal authority.

#### IV. Use of Public Facility.

##### A. Prohibited behavior.

1. Any activity or function at a Public Facility that disrupts or prevents the effective carrying out of the operation of the Public Facility or the activities of the City is prohibited.

2. Prohibited behavior includes: (1) quarrelling or fighting; (2) illegal possession or dispensation of a narcotic or other substance prohibited or regulated by law; (3) possession of a firearm or other lethal weapon; (4) failure to leave a Public Facility at the agreed time; (5) failure to leave a "closed" facility; (6) threatening the security, health, or welfare of the community.

3. Sound amplification that significantly disrupts the operation or activities of the Public Facility or the City or that unreasonably disturbs the surrounding neighborhood is prohibited.

4. No smoking, chew tobacco or alcohol is allowed on the premises of any Public Facility at any time.

5. The following are prohibited: (1) fog and smoke machines; (2) rice, birdseed, confetti, glitter, dance wax; (3) fireworks are not permitted on the grounds or in any Public Facility.

##### B. Use Requirements.

1. Only freestanding decorations are permitted. Items may not be affixed to the ceiling, doors, columns, walls, light fixtures or windows. Damage resulting from tape or other adhesives will be deducted from the damage deposit and may result in the loss of all or a portion of the damage deposit.

2. The applicant/users may not mark, puncture or deface in any manner, equipment and furnishings, including floors, doors, windows mirrors, walls and/or ceilings. Damage resulting from such use will be deducted from the damage deposit and/or may result in an additional charge to the applicant for costs incurred by the City.

3. The City shall not be liable for any loss or theft of personal property. Use of the Public Facilities shall be undertaken by the applicant at the applicant's sole risk.

4. Maximum occupancy. The total number of occupants within a Public Facility must be limited to the safe occupancy of the room or area as determined

by the Fire Marshal and posted by the City. The applicant is responsible to limit attendance at an event so as not to exceed the posted capacity of a room or an area.

5. Emergency exits. An emergency exit may not be blocked at any time or any reason.

6. Public safety. The City's Police Department is responsible for enforcing all applicable laws including these Facility Use Rules and Procedures. Failure to abide by the lawful orders of a Police Officer may subject the violator to a criminal trespass warning or arrest.

7. It is expected, unless otherwise indicated and approved, that the Applicant who has signed the Facility Use Application and Agreement will be in attendance during the entire event. If that is not possible, his or her designee must be identified in the Application and she/he must be present at all times.

V. Availability of Public Facility.

A. Scheduling Priority. The scheduling of the Public Facility is done first by the user priority and then chronologically by date requested. The following is the user priority that shall be adhered to in reserving a Public Facility:

1. City-use.
2. City-sponsored use.
3. Non-City events.

B. Reserved time. Permission to use (or a reservation for use) of a Public Facility is made for a specific date(s) and time(s). Only the date(s), time(s) and the facility for which permission has been granted will be honored.

1. Any rehearsal time, decorating time, special set-up and/or takedown time must be included in the application and approved on the Facility Use Application.

2. Permission to use a Public Facility includes the use of a specified entrance and exit and rest rooms. The use of other areas is prohibited.

3. The Public Facility must be vacated promptly at the end of the reserved time.

4. Holidays and Closures. Public Facilities will be closed on certain holidays (check with the Rental Coordinator for a schedule). If inclement weather occurs, the Public Facility may be closed. If the Public Facility is closed for whatever reason, you will not be able to hold your scheduled event that day.

C. Event advertisement. When promoting your event, you may use the name of the Public Facility and address to direct your attendees. You must state that neither the program nor its content are endorsed nor sponsored by the City. You may not use the City logo.

## VI. Application for Use.

A. Requests to hold an event in a Public Facility must be accompanied by a Rental Agreement/Reservation Request form. All requests must be submitted to the Rental Coordinator.

B. Reservation Request forms are accepted by the Rental Coordinator, Monday through Friday, 9:00 a.m. through 5:00 p.m. Applicants may call first to determine availability, but reservations cannot be confirmed until a Rental Agreement has been completed by the Applicant, the full deposit is paid and the Agreement has been approved by the Rental Coordinator.

C. Rental fees must be paid to the Rental Coordinator at least seven (7) days prior to the date requested in the Rental Agreement for the event. Failure to pay the Rental fees prior to this seven (7) day period could result in the cancellation of the reservation. (See the Cancellation Policy below.)

D. Reservations are accepted according to the user priority procedure in Section V(A) above. Reservations may be accepted up to one year in advance of the event date. Reservations must be made at least ten (ten) days in advance for events scheduled during regular business hours. Reservations must be made at least fourteen (14) days in advance for events during non-business hours.

E. Public Facilities are reserved by the whole hour only. All events will be finished or complete by 10:00 p.m. on the day of the event.

F. Elements of Application form. The application to reserve a Public Facility for an event must be completed on forms provided by the City, and shall include the following information:

1. Applicant and Organization (if any) Name;
2. Purpose of Activity or Event;
3. Date and Time of Activity or Event;
4. If food will be sold, the confirmation that a food handler's permit has been obtained;
5. A list of special equipment or requirements for the event;
6. Estimate of total number of anticipated participants;
7. A description of any items or services offered for sale during the event.

G. On-Going Rentals. Requests for long-term or on-going rentals will be approved for no more than six (6) months at a time.

H. Fees. Rental fees and deposits must be made payable to the City of Black Diamond and submitted to the Rental Coordinator at the time of application. The rental fees and deposits are adopted by the City in the City's fee resolution. The Rental fees and deposits may be paid in cash, credit card or check.

I. Cancellation. Rental cancellations will result in a non-refundable cancellation fee of \$15.00, regardless of the amount of notice provided to the City. Cancellations made with less than 24 hours' notice will not be refunded.

J. Changes to Reservation. Any changes to the reservation or rental must be agreed to in writing by the Rental Coordinator, and are subject to availability. Additional rental time must be paid for at the time the request is received.

#### VII. City Personnel and Use of City Equipment.

A. Requests for the use of specific personnel (such as police officers) or City equipment will be identified in the Application, determined by the City and agreed to in the Facility Use Agreement. Charges for these services are made in accordance with the Fee Resolution adopted by the City.

B. The City reserves the right to change the level of City personnel needed for the event without notice.

C. Permits. It is the responsibility of the facility user to obtain and provide all necessary permits from the appropriate governmental agencies. The facility user shall abide by the limits of any license or permit, and shall act in accordance with all federal, state and local laws and ordinances, and all City policies and procedures.

#### VIII. User-Owned Equipment and Supplies.

A. Prohibited User-Owned Equipment. User-owned equipment and/or supplies, including but not limited to, scenery, hazardous materials, animals or materials of an unusual nature are not allowed in Public Facilities without prior written approval. (For decorations, see Section B.)

B. Approved electronics. All electrical items must be Underwriters Laboratory (U.L.) approved.

C. User Liability for User-Owned Equipment. Any item belonging to a non-City user must be removed from the Public Facility before the end of the scheduled time of use. Any item not promptly removed will be moved and/or stored by City personnel at the user's expense. The City shall not be responsible for any loss of or damage to a facility user's property, regardless of the cause of loss.

#### IX. Cleaning the Public Facility.

A. Applicants/user groups are responsible for cleaning the Public Facility, including hallways and rest rooms after use. Please refer to the Rental Clean-up Checklist for a detailed list of renter responsibilities. The Rental Coordinator is available to conduct a pre-event room inspection prior to the start of your rental to ensure cleanliness of the Facility. Applicants may request this service during check-in on the day of the event. Limited cleaning equipment may be made available to applicants. To ensure the return of the damage deposit, please ask the Rental Coordinator to complete a post-event inspection at the conclusion of the rental.



B. Damage deposits are refundable as long as the rented room and immediate area is clean after your event, and no damage occurs. Failure to meet these conditions will result in forfeiture of your deposit and may also include the applicant being responsible for additional charges and forfeiture of future reservation privileges. Please allow 3-4 weeks for a deposit refund. Any cleaning and/or repairs that require staff time and materials will be deducted from the damage deposit and charged to the rental group. If a rental exceeds the time reserved, the applicant will be charged for the additional time and/or it may be deducted from the damage deposit. Failure to follow the Clean-up Checklist may result in forfeiture of the damage deposit, additional charges and could also result in denial of future rental usage.

X. Insurance requirement.

A. Proof of Insurance required. Any applicant for use of Public Facilities must provide proof of insurance meeting the requirements of this Section prior to the Reserved Event date. This proof of insurance shall be provided at the time of application.

B. The applicant shall provide proof of liability insurance for the event with coverage in the amount of at least \$1,000,000.00 per occurrence with \$2,000,000.00 annual aggregate, unless the Rental Coordinator determines that additional coverage is required for the event.

C. The applicant's insurance shall be primary and shall be written on an "occurrence form," with a company that has a current A.M. Best rating of at least "A VII" or better, and licensed to do business in the State of Washington. The City of Black Diamond shall be named by endorsement as an additional insured on the insurance policy. The insurance policy shall also provide that it may not be cancelled or modified for any reason without fifteen (15) days prior written notice to the City of Black Diamond. The applicant shall provide the City with a certificate(s) of such insurance, including the required endorsements within ten (10) days of the execution of this Agreement.

D. The Applicant's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance or insurance pool coverage maintained by the City shall be in excess of the Applicant's insurance and shall not contribute with it. The City shall not waive the City's right to subrogation against the Applicant's insurance coverage.

XI. Hold Harmless. As a condition of the use of the Public Facility, the applicant must sign an agreement in which the applicant agrees to defend, indemnify and hold harmless the City of Black Diamond, its appointed and elective officers and employees from and against all loss or expense, including but not limited to judgments, settlements, attorneys' fees and costs by reason of any and all claims and demands upon the City of Black Diamond, its appointed and elective officers and employees, arising directly or indirectly out of the applicant/organization's use of the Public Facility for the event. The applicant also assumes all legal responsibility for his/her own negligence, acts or omissions, or the negligence, acts and omissions of the participants

in the scheduled event. If any claims are made or suits filed against the City of Black Diamond, the City may, at its option, require the applicant to defend such action or proceeding at the applicant's own cost and expense, with counsel reasonably satisfactory to the City

XII. Compliance with Law. All terms, conditions and provisions of current law, including but not limited to, the Black Diamond Municipal Code, shall remain in full force and effect, and shall not be altered by this Policy or any Rental Agreement. The approval of a Rental Agreement does not presume to give authority to violate or cancel the provisions of any law (federal, state or local) regulating use of public property. The Mayor or appointee, may revoke or terminate the Rental Agreement if the applicant fails to comply with any or all of its provisions, or the regulations set forth in this Policy, or if the applicant, through willful or unreasonable neglect, fails to heed or comply with any notices given to him or her.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,  
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 17<sup>TH</sup> DAY OF  
DECEMBER, 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		
<b>SUBJECT:</b>  <b>Resolution No. 15-1061, regarding consent to assignment of certain water supply agreements.</b>	<b>Agenda Date: December 17, 2015</b>	
	<b>AB15-099</b>	
	Mayor Carol Benson	
	City Administrator	
	City Attorney Carol Morris	X
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Barb Kincaid	
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	X
	Police – Chief Kiblinger	
Cost Impact (see also Fiscal Note): \$	Public Works – Seth Boettcher	
Fund Source: --	Court – Stephanie Metcalf	
Timeline:		
<b>Agenda Placement:</b> <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
<b>Attachments: Resolution No. 15-1061; Memo; Letter from Public Works Director: Crown Letter</b>		
<p><b>SUMMARY STATEMENT</b></p> <p>The Villages LP and Lawson LP (Collectively the Master Developer) have sold their Black Diamond assets to Crown Community Development Black Diamond Partners LLC (Assignee). On November 11, 2015, CC Black Diamond Partners asked the City to allow it to assume the rights and obligations of Villages LP and Lawson LP under a number of agreements that the latter two developers executed with the City. Some, but not all of these agreements require the City to provide its formal consent. For your information about the specific assignment clauses in each agreement, the City Attorney has drafted a memo (attached) which lists each of the agreements and the applicable clause.</p> <p>City staff has determined that in order for CC Black Diamond Partners to assume the financial responsibilities under each of these agreements, that it would have to have \$2,888,300 in available funds. The proposed assignee has proposed that it provide the City with a letter of credit in this amount, to secure those obligations/responsibilities.</p> <p>At this point in time, we do not have the letter of credit and the City Attorney has not yet approved the form of the letter of credit. However, we expect this to take place on or before December 15, 2015.</p> <p>The Mayor and City staff has determined that the letter of credit in a form acceptable by the City Attorney will meet the requirements of the assignment clauses of these agreements, and recommend that the Council to vote on the attached resolutions to agree to and/or formalize the assignment of the agreements to CC Black Diamond Partners, LLC.</p> <p><b>FISCAL NOTE (Finance Department):</b></p>		
<b>COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:</b>		
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 15-1061, regarding consent to assignment of certain water supply agreements.</b>		

<b>RECORD OF COUNCIL ACTION</b>		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
December 17, 2015		



## **RESOLUTION NO. 15-1061**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON REGARDING CONSENT TO ASSIGNMENT OF CERTAIN WATER SUPPLY AGREEMENTS**

WHEREAS, in 2003, the City of Black Diamond entered a set of agreements known as (a) the Water Supply And Facilities Funding Agreement ("WSFFA") by and among the City of Black Diamond, Plum Creek Land Company, Palmer Coking Coal Co., and Black Diamond Associates, Ltd., (b) the Palmer Coking Coal Company In-City WSFFA, (c) the Plum Creek Land Company In-City WSFFA, and (d) the Three Party Agreement by and among Plum Creek Land Company, Black Diamond Associates, Ltd., and Palmer Coking Coal Company (collectively the "2003 Water Agreements"); and

WHEREAS, the 2003 Water Agreements addressed water supply for the City of Black Diamond generally, as well as water supply for future real estate development projects which are now known as The Villages and Lawson Hills Master Planned Developments; and

WHEREAS, the 2003 Water Agreements authorized the posting of Adequate Assurances, defined to mean adequate security interests to cover certain financial obligations; and

WHEREAS, CCD Black Diamond Partners LLC, a Delaware Limited Liability Company, is acquiring The Villages and Lawson Hills Master Planned Developments from BD Lawson Partners, LP and BD Village Partners, LP; and

WHEREAS, the Adequate Assurances posted by BD Village Partners, LP, BD Lawson Partners, LP or their predecessors shall remain with the City of Black Diamond for the benefit of CCD Black Diamond Partners LLC; and

WHEREAS, the 2003 Water Agreements authorize any party to assign all or a portion of their rights upon written notice to the other party, and provide that assignment must have the City's consent which "consent will not be unreasonably withheld," and include that the assignment will be effective within 60 days following notice by the assignor; and

WHEREAS, BD Lawson Partners, LP and BD Village Partners, LP seek City consent to assignment of the 2003 Water Agreements to CCD Black Diamond Partners LLC, together with release of BD Lawson Partners, LP and BD Village Partners, LP from all obligations under the 2003 Water Agreements and assumption of those obligations by CCD Black Diamond Partners LLC; and

WHEREAS, the City staff has determined that the financial obligations in these agreements can be secured by a letter of credit in the amount of \$2,888,300 and CCD Black Diamond Partners LLC provided such letter of credit to the City by December 17, 2015; and

WHEREAS, the City Council has reviewed this request for assignment and release from obligations, wishes to confirm that it has reviewed evidence that assignee CCD Black Diamond Partners LLC can financially perform the obligations under the 2003 Water Agreements, and wishes to confirm this Resolution as its final action related to the assignment;

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

Section 1. The City Council determines that, based on the above, the Council consents to assignment of all obligations of BD Lawson Partners, LP and BD Village Partners, LP by CCD Black Diamond Partners LLC in the 2003 Water Agreements.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT  
A REGULAR MEETING THEREOF, THIS 17TH DAY OF DECEMBER, 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		
<b>SUBJECT:</b>	<b>Agenda Date: December 17, 2015</b>	<b>AB15-100</b>
<b>Resolution No. 15-1062, confirmation of Assignment of MPD Funding Agreement</b>	Mayor Carol Benson	
	City Administrator	
	City Attorney Carol Morris	X
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Barb Kincaid	
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	X
	Police – Chief Kiblinger	
Cost Impact (see also Fiscal Note): \$	Public Works – Seth Boettcher	
Fund Source: --	Court – Stephanie Metcalf	
Timeline:		
<b>Agenda Placement:</b> <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
<b>Attachments: Resolution No. 15-1062; Oakpointe Letter: Crown Letter; Letter of Credit</b>		
<p><b>SUMMARY STATEMENT:</b></p> <p>The Master Developer BD Village Partners and BD Lawson Partners are assigning its rights and obligations under the MPD Funding Agreement dated December 15, 2011 to CCD Black Diamond Partners. The Master Developer's Letter of Credit currently held by the city pursuant to Section 10 of the MPD Funding Agreement will remain in place. The city holds an Irrevocable letter of credit No. 70000443 for \$1, 033,618.00 From Seattle Bank.</p>		
<p><b>FISCAL NOTE (Finance Department):</b></p>		
<b>COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:</b>		
<b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 15-1062, regarding confirmation of assignment of MPD Funding Agreement.</b>		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
December 17, 2015		

## **RESOLUTION NO. 15-1062**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON REGARDING CONFIRMATION OF ASSIGNMENT OF MPD FUNDING AGREEMENT**

WHEREAS, on December 15, 2011, the City of Black Diamond entered the MPD Funding Agreement with BD Village Partners LP and BD Lawson Partners LP related to The Villages and Lawson Hills Master Planned Developments (the "Funding Agreement"); and

WHEREAS, CCD Black Diamond Partners LLC, a Delaware Limited Liability Company, is acquiring The Villages and Lawson Hills Master Planned Developments from BD Lawson Partners, LP and BD Village Partners, LP; and

WHEREAS, the Funding Agreement authorizes BD Village or BD Lawson "to assign its obligations under this Agreement as the master developer of the Villages MPD and the master developer of the Lawson Hills MPD, respectively, provided BD Village or BD Lawson gives the City thirty (30) days prior written notice of such assignment and successor/assignee provides evidence of its ability to meet the security obligation outlined in Section 10;" and

WHEREAS, BD Lawson Partners, LP and BD Village Partners, LP has given the City notice of its intent to assign all obligations under the Funding Agreement to CCD Black Diamond Partners LLC; and

WHEREAS, Section 10 of the Funding Agreement provides that the current and future security obligation is security in an amount equal to at least 100% of the projected annual City Staffing Shortfalls and MDRT Costs less consultant costs up to a maximum of two million dollars (\$2 million); and

WHEREAS, the existing security put in place by BD Village Partners LP and BD Lawson Partners LP for Section 10 of the Funding Agreement shall remain with the City of Black Diamond for the benefit of CCD Black Diamond Partners LLC; and

WHEREAS, to acknowledge the continued validity of the Funding Agreement in light of the referenced assignment, the City Council wishes to confirm that it has reviewed the BD Lawson Partners and BD Village Partners written notice of assignment; determined that retention of the existing security meets the obligation under Section 10 of the Funding Agreement, and wishes to confirm this Resolution as its final action related to the assignment;

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

**Section 1.** The City Council hereby confirms that it has been provided notice of the assignment of the Funding Agreement from BD Lawson Partners, LP and BD Village Partners, LP to CCD Black Diamond Partners LLC, confirms this Resolution as its final action related to the assignment, and further confirms that CCD Black Diamond Partners LLC has met the security obligation outlined in Section 10 of the Funding Agreement.



PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT  
A REGULAR MEETING THEREOF, THIS 17TH DAY OF DECEMBER, 2015.

CITY OF BLACK DIAMOND

---

Carol Benson, Mayor

Attest:

---

Brenda L. Martinez, City Clerk



December 10, 2015

Mayor Benson  
City of Black Diamond  
P.O. Box 599  
Black Diamond, Washington 9801

Andy Williamson  
City of Black Diamond  
P.O. Box 599  
Black Diamond, Washington 98010

Dear Mayor Benson and Mr. Williamson:

In addition to our prior request regarding the Water Agreements, BD Village Partners, LP, BD Lawson Partners, LP (collectively the Master Developer) and CCD Black Diamond Partners LLC (Assignee) respectfully request that the City of Black Diamond's affirmation of the assignment of rights and obligations under the MPD Funding Agreement be added to the agenda for the December 17, 2015 City Council meeting.

The Master Developer is assigning its rights and obligations under the MPD Funding Agreement dated December 15, 2011 to Assignee. Moreover, the Master Developer's Letter of Credit currently held by the City pursuant to Section 10 of the MPD Funding Agreement will remain in place at this time.

Enclosed for your review and consideration is a draft Black Diamond City Council resolution acknowledging the assignment of the MPD Funding Agreement to Assignee.

If you have any questions regarding this letter or the enclosed draft resolution, please call me at 425-898-2100.

Thank you again for consideration.

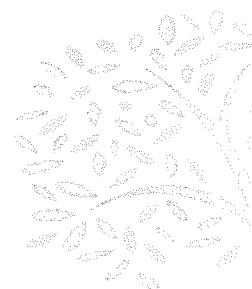
Very Truly Yours,

A handwritten signature in black ink, appearing to read "Colin Lund", is written over a horizontal line.

Colin Lund  
BD Village Partners, LP  
BD Lawson Partners, LP  
CCD Black Diamond Partners LLC

10220 NE POINTS DRIVE  
SUITE 310  
KIRKLAND, WA 98033

WWW.OAKPOINTE.COM



**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON  
REGARDING CONFIRMATION OF ASSIGNMENT OF MPD  
FUNDING AGREEMENT.**

WHEREAS, on December 15, 2011, the City of Black Diamond entered the MPD Funding Agreement with BD Village Partners LP and BD Lawson Partners LP related to The Villages and Lawson Hills Master Planned Developments (the "Funding Agreement"); and

WHEREAS, CCD Black Diamond Partners LLC, a Delaware Limited Liability Company, is acquiring The Villages and Lawson Hills Master Planned Developments from BD Lawson Partners, LP and BD Village Partners, LP; and

WHEREAS, the Funding Agreement authorizes BD Village or BD Lawson "to assign its obligations under this Agreement as the master developer of the Villages MPD and the master developer of the Lawson Hills MPD, respectively, provided BD Village or BD Lawson gives the City thirty (30) days prior written notice of such assignment and successor/assignee provides evidence of its ability to meet the security obligation outlined in Section 10;" and

WHEREAS, BD Lawson Partners, LP and BD Village Partners, LP has given the City notice of its intent to assign all obligations under the Funding Agreement to CCD Black Diamond Partners LLC; and

WHEREAS, Section 10 of the Funding Agreement provides that the current and future security obligation is security in an amount equal to at least 100% of the projected annual City Staffing Shortfalls and MDRT Costs less consultant costs up to a maximum of two million dollars (\$2 million); and

WHEREAS, the existing security put in place by BD Village Partners LP and BD Lawson Partners LP for Section 10 of the Funding Agreement shall remain with the City of Black Diamond for the benefit of CCD Black Diamond Partners LLC; and

WHEREAS, to acknowledge the continued validity of the Funding Agreement in light of the referenced assignment, the City Council wishes to confirm that it has reviewed the BD Lawson Partners and BD Village Partners written notice of assignment; determined that retention of the existing security meets the obligation under Section 10 of the Funding Agreement, and wishes to confirm this Resolution as its final action related to the assignment;

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

Section 1. The City Council hereby confirms that it has been provided notice of the assignment of the Funding Agreement from BD Lawson Partners, LP and BD Village Partners, LP to CCD Black Diamond Partners LLC, confirms this Resolution as its final action related to the assignment, and further confirms that CCD Black Diamond Partners LLC has met the security obligation outlined in Section 10 of the Funding Agreement.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT  
A REGULAR MEETING THEREOF, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2015.

CITY OF BLACK DIAMOND

\_\_\_\_\_  
Carol Benson, Mayor

Attest:

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





December 11, 2015

Dear Mayor and members of the Black Diamond City Council,

With pleasure we are looking forward to investing in the Black Diamond community with our partners at Oakpointe. And although Crown Community Development has a history of creating large, amenitized master-planned communities in other regions of the U.S. since 1990, this will be our first land investment in the Pacific Northwest.

We understand your need to discover more about us, so allow me to provide a bit of information. I hope this provides the comfort that you need.

Crown Community Development is part of the umbrella of companies and investments associated with the Chicago-based Henry Crown and Company. We are a third-generation, privately-owned family with diverse investments throughout the United States. Henry Crown founded the organization in 1923 with a sand and gravel business investment, today known as Material Services Corporation. For almost a century, the family has invested in a number of real estate assets, majority equity holdings, venture capital opportunities and manufacturing companies.

We are a fairly quiet organization outside of Chicago, but well-known in Chicago business, civic and philanthropic circles. Some of our current investments include Aspen Ski Company, Ojai Valley Inn & Resort and several large manufacturing companies. As a result of our long-term equity investments over the years, a family representative sits on the corporate boards of General Dynamics Corporation and J.P. Morgan among others.

Crown Community Development is the family's master planned community development arm. We have current investments in Florida, Arizona, Illinois and Texas. We currently have slightly over \$100,000,000 invested in land and land development in those markets. The positive cash flow thrown off from our diverse investments allows us to be self-financed.

If there is any additional information that we can provide, please do not hesitate to contact me directly. I serve as the point person for investment in land assets for the Crown Family and have been with the organization for 22 years.

All of us thank you greatly for your consideration, and we look forward to becoming your partners in creating the next generation of residential, recreational, commercial and civic opportunities in the City of Black Diamond.

With respect,

A handwritten signature in black ink, appearing to read 'T. Frankiewicz', with a stylized flourish at the end.

Theresa O. Frankiewicz  
Vice President  
Crown Community Development

cc: Brian Ross, Oakpointe



January 29, 2015

Irrevocable Standby Letter of Credit No. 70000443

Beneficiary:  
The City of Black Diamond  
Attention: Finance Director  
24301 Roberts Drive, P. O. Box 599  
Black Diamond, WA 98010

Applicant:  
BD Village Partners, L.P. and  
BD Lawson Partners, L.P.  
C/O Yarrow Bay Development, LLC  
10220 NE Points Drive, Suite 310  
Kirkland, WA 98033

Amount: \$1,033,618.00

Ladies and Gentlemen:

We hereby establish, at the request and for the account of BD Village Partners, LP and BD Lawson Partners, LP (collectively, "Account Party"), in your favor, this Irrevocable Standby Letter of Credit No. 70000443, in the aggregate amount of \$1,033,618.00, as reduced from time to time pursuant to Annex B attached hereto (the "Total Credit"), effective January 31, 2015, and expiring at the close of banking business at our offices on January 29, 2016.

All written notification shall be sent via Certified mail return receipt requested or via overnight courier service. If we notify you that this Letter of Credit will not be extended, the Stated Amount of this Letter of Credit shall be available to you upon presentation of your sight draft by the current expiration date or within sixty (60) days of your actual receipt of such notification, whichever is later.

Seattle Bank Standby Letter of Credit



We hereby irrevocably authorize you to draw on us, in accordance with the term and conditions hereinafter set forth, in one or more drawings by your draft bearing thereon Letter of Credit No. 70000443, payable at sight on a Banking Day (as defined below), and each accompanied by the original of this Letter of Credit, together with any amendment thereto, and a written and appropriately completed certificate signed by you in the form of Annex A attached hereto (any such draft accompanied by such certificate being a "Demand"). As used herein, "Banking Day" means a day of the year on which banks are not required or authorized to close in Seattle, Washington.

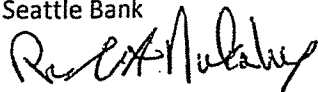
If we receive any such Demand, all in strict conformity with the terms and conditions of this Letter of Credit, not later than 9:00 a.m. (Seattle time) on a Banking Day prior to the termination hereof, we will honor such Demand by making available to you before 1:00 p.m. (Seattle time) on the second Banking day following the date we shall have received such Demand, an amount in same-day funds equal to the amount of the draft submitted with such Demand. If we receive any such Demand, all in strict conformity with the terms and conditions of this Letter of Credit, after 9:00 a.m. (Seattle time) on a banking day prior to the termination hereof, we will honor such Demand by making available to you, before 1:00 p.m. (Seattle time) on the third Banking Day following the date we shall have received such Demand, an amount in same day funds equal to the amount of the draft submitted with such Demand.

In accordance with your instructions, payment under this Letter of Credit may be made by wire transfer of funds from the Federal Reserve Bank of San Francisco to your account in a bank on the Federal Reserve wire system or by deposit of same-day funds into a designated account that you maintain with us.

This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, (except only the certificates and the drafts referred to therein) and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for such Demand.

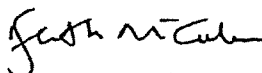
This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600 (the "UCP", and as to matters not addressed by the UCP, by the laws of the State of Washington, including the Uniform Commercial Code in effect in such State. Communications with respect to this Letter of Credit shall be in writing and shall be addressed to us at the above address, specifically referring to the number of this Letter of Credit.

Very truly yours,  
Seattle Bank



Richard A. Mulcahy  
Senior Vice President

Seattle Bank



Keith McCullough  
Chief Credit Officer

ANNEX A

CERTIFICATE FOR DRAWING UNDER  
IRREVOCABLE STANDBY LETTER OF CREDIT NO. 70000443

The undersigned, a duly authorized representative of The City of Black Diamond, a Washington State municipality ("Beneficiary"), hereby certifies to Seattle Bank ("Issuer"), with reference to Irrevocable Standby Letter of Credit No. 70000443 (the "Letter of Credit") issued by the Issuer in favor of Beneficiary, that this Certificate has been executed and delivered by the Beneficiary pursuant to the MPD Funding Agreement dated December 15, 2011 between BD Lawson Partners, LP, BD Village Partners, LP, and the City of Black Diamond (the "Funding Agreement").

I, the undersigned duly authorized representative of the City of Black Diamond, hereby certify that a drawing under Seattle Bank Letter of Credit No. 70000443 is now authorized under Paragraph 4(H) of the Funding Agreement.

IN WITNESS WHEREOF, Beneficiary has executed and delivered this Certificate as of the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

The City of Black Diamond,  
A Washington State Municipality

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_