



CITY OF BLACK DIAMOND
July 7, 2016 Regular Business Meeting Agenda
25510 Lawson St., Black Diamond, Washington

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

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

CONSENT AGENDA:

- 1) Claim Checks** – July 7, 2016 - No. 43655 through No.43711 and EFTs in the amount of \$219,684.65
- 2) Payroll** – June 30, 2016 - No. 19157 through 19174 (void 19156) and ACH Payments in the amount of \$274,615.88

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. Please limit your comments to 3 minutes. If you desire a formal agenda placement, please contact the City Clerk at 360-886-5700. Thank you for attending.

PUBLIC HEARINGS:

- 3) AB16-034B** – (Continuation) 2017-2022 Six Year Transportation Improvement Plan Mr. Boettcher
(Possible action on this item by Council may follow the public hearing)

UNFINISHED BUSINESS:

- 4) AB16-016C** – Resolution Accepting Dept. of Ecology Grant for 2015 – 2017 Stormwater Capacity Grant Councilmember Weber
- 5) AB16-021C** – Resolution Confirming Mayor’s Appointment to Civil Service Commission Mayor Benson
- 6) AB16-038A** – Resolution Regarding Labor Policy and Grievance Review Councilmember Morgan
- 7) AB16-039A** – Resolution Regarding Mediation Councilmember Morgan

NEW BUSINESS:

- 8) DKS Claim Check** Ms. Kincaid
- 9) AB16-042** – Resolution Authorizing an Agreement with DKS Associates Ms. Kincaid
- 10) AB16-043** - Resolution Approving Legal Services Contract with Kenyon Disend, PLLC Mayor Benson

MAYOR’S REPORT:

COUNCIL REPORTS:

- Councilmember Deady
- Councilmember Morgan
- Councilmember Edelman
- Councilmember Weber

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-
-
-
-

- Councilmember Pepper

PUBLIC COMMENTS:

EXECUTIVE SESSION:

ADJOURNMENT:

City of Black Diamond Payroll Register for June 2016

Number	Name	Fiscal Description	Amount
<u>19156 VOID</u>			
<u>19157</u>	Paper Paycheck	2016 - June - Month End	\$915.00
<u>19158</u>	Paper Paycheck	2016 - June - Month End	\$772.08
<u>19159</u>	Paper Paycheck	2016 - June - Month End	\$5,251.38
<u>19160</u>	Paper Paycheck	2016 - June - Month End	\$1,142.22
<u>19161</u>	Paper Paycheck	2016 - June - Month End	\$883.15
<u>19162</u>	Paper Paycheck	2016 - June - Month End	\$3,707.27
<u>19163</u>	Paper Paycheck	2016 - June - Month End	\$883.15
<u>19164</u>	AWC Employee Benefit Trust	2016 - June - Month End	\$37,501.65
<u>19165</u>	AWC Employee Benefit Trust	2016 - June - Month End	\$1,309.39
<u>19166</u>	BD Police Officers Association	2016 - June - Month End	\$720.00
<u>19167</u>	City of Black Diamond Flex	2016 - June - Month End	\$80.00
<u>19168</u>	Dept of Labor and Industries	2016 - June - Month End	\$3,577.02
<u>19169</u>	Dept of Retirement Systems	2016 - June - Month End	\$28,249.57
<u>19170</u>	Employment Security Dept	2016 - June - Month End	\$790.07
<u>19171</u>	Joseph Kaufman Leoff 1 Medical	2016 - June - Month End	\$115.40
<u>19172</u>	Teamsters Local 117	2016 - June - Month End	\$1,017.27
<u>19173</u>	Trusted Plans Service CP LTD	2016 - June - Month End	\$823.44
<u>19174</u>	Washington State Treasurer	2016 - June - Month End	\$4,025.00
<u>ACH June 2016</u>	Aflac	2016 - June - Month End	\$128.44
<u>ACH Taxes June 2016</u>	City of Black Diamond Taxes	2016 - June - Month End	\$55,424.76
<u>June 2016 ACH Draw</u>	Payroll Vendor	2016 - June - Month End	\$30,585.00
<u>June 2016 ACH Payroll</u>	Payroll Vendor	2016 - June - Month End	\$96,714.62
			\$274,615.88

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: Resolution adopting the 2017-2022 Six Year Transportation Improvement Program	Agenda Date: July 7, 2016 AB16-034CB	
	Mayor Carol Benson	
	City Administrator	
	City Attorney David Linehan	
	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): Planning for various budgets		
Fund Source: Various	Public Works – Seth Boettcher	X
Timeline: As per individual project schedules	Court – Stephanie Metcalf	
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input checked="" type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Resolution 16-xxx; Six Year Transportation Improvement Program; Project Map; In Process and Completed Projects Map		
<p>SUMMARY STATEMENT: The City is required to update its Six Year Transportation Improvement Program (TIP) annually per Revised Code of Washington (RCW) 35.77.010 and file the TIP with the Washington State Department of Transportation (WSDOT).</p> <p>Most grant programs require projects to be on the City's Six Year TIP. The City is required by State law to update the TIP annually before July 1st of each year.</p> <p>FISCAL NOTE (Finance Department): The TIP is a Financial Plan that is required to be updated, approved and filed with the State of Washington annually before July 1 of each year. This is a plan and not a budget and has no current financial impact. The Public Works TIP Projects will be included in the 2017-2022 Capital Improvement Plan that the city is currently preparing. Future financing of Transportation projects are anticipated to be covered by Grants, Real Estate Excise Tax (REET) and other local Funding options</p>		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: MOTION to adopt Resolution 16-xxx (Clerk to assign number at adoption), approving the 2017-2022 Six Year Transportation Improvement Program.		

RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
June 16, 2016	Consensus to leave open to July 7 mtg	
July 7, 2016		

RESOLUTION NO. 16-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
APPROVING THE 2017-2022 SIX YEAR
TRANSPORTATION IMPROVEMENT PROGRAM

WHEREAS, per RCW 35.77.010, the City is required to annually update its Six Year Transportation Improvement Program (TIP) before July 1st of each year and file the updated Transportation Improvement Program with the Washington State Department of Transportation within thirty days of adoption; and

WHEREAS, per RCW 35.77.010, the purpose of the requirement for annual updates is to assure that each city and town shall perpetually have available advanced plans looking to the future for not less than six years as a guide in carrying out a coordinated transportation program; and

WHEREAS, it is also an eligibility requirement of many grant programs that the City update its Transportation Improvement Program as required by RCW 35.77.010; and

WHEREAS, per RCW 35.77.010, a public hearing was held on the proposed updates to the Transportation Improvement Program;

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

Section 1. The City Council does hereby approve the 2017-2022 Six Year Transportation Improvement Program, a copy of which is attached as Exhibit "A" and incorporated herein by reference.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS _____ DAY OF _____, 2016.

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk

City of Black Diamond 6 Year Transportation Improvement Plan 2017 - 2022

2017-2022 SIX YEAR TRANSPORTATION IMPROVEMENT PROGRAM
EXHIBIT "A"

Legend

Heading	Capacity Adding Project
*Light Street Maintenance	Safety Project
*Major Street Maintenance	Pedestrian
Street Reconstruction	

*See note at end of document

Rank	Year	Improvement	From	To	Type of Improvement	Length in Miles	Estimated Cost	Funding
1	2017	General Street Improvement	N/A	N/A	Use for opportunities to leverage private funds, short overlays, chip sealing, crack sealing, patch work, addressing minor safety problems	N/A	\$30,000/year; \$180,000 total	Local City Funds
1	2017	Roberts Drive Rehabilitation, Ph. 1	100' west of Rock Creek Bridge	City Hall	Leveling, Overlay, Bridge maintenance, sidewalks, pedestrian lighting, widening	0.31	\$ 1,118,130	Grant/ TIB, Developer, Local City Funds
2	2017	224th Safety Improvements at Covington Creek	N/A	N/A	Guard Rail on the shoulder of the road at Covington Creek	N/A	\$ 35,000	Real Estate Excise Tax or Grant
3	2017	232nd Ave. SE Chip Seal	SE 288th St. Covington Creek	End of road SE 307th Place	Chip seal, excluding portion from SE 293rd to back of Pond @ Greenbrier	0.77	\$ 100,000	Grant/ TIB, Local City Funds
3	2017	224th overlay			Asphalt Overlay	1.40	\$ 160,000	Grant/ TIB, Local City Funds
4	2017	New Arterial "Annexation Rd" Lake Sawyer Road Extension	Lk Sawyer Rd	across Roberts Drive south to A2	New Street Grid Capacity	0.7	\$ 2,900,000	Developer Funded
5	2017	Roberts Drive Rehabilitation, phase 2	Roberts Drive	Annexation Rd.	New Street Grid Capacity	0.5	\$ 1,800,000	Developer Funded
6	2018		City Hall	King County Library	Grind, patch, replace panels, crack sealing, shoulder widening	0.23	\$ 200,000	Pavement Preservation Grant, Local City Funds

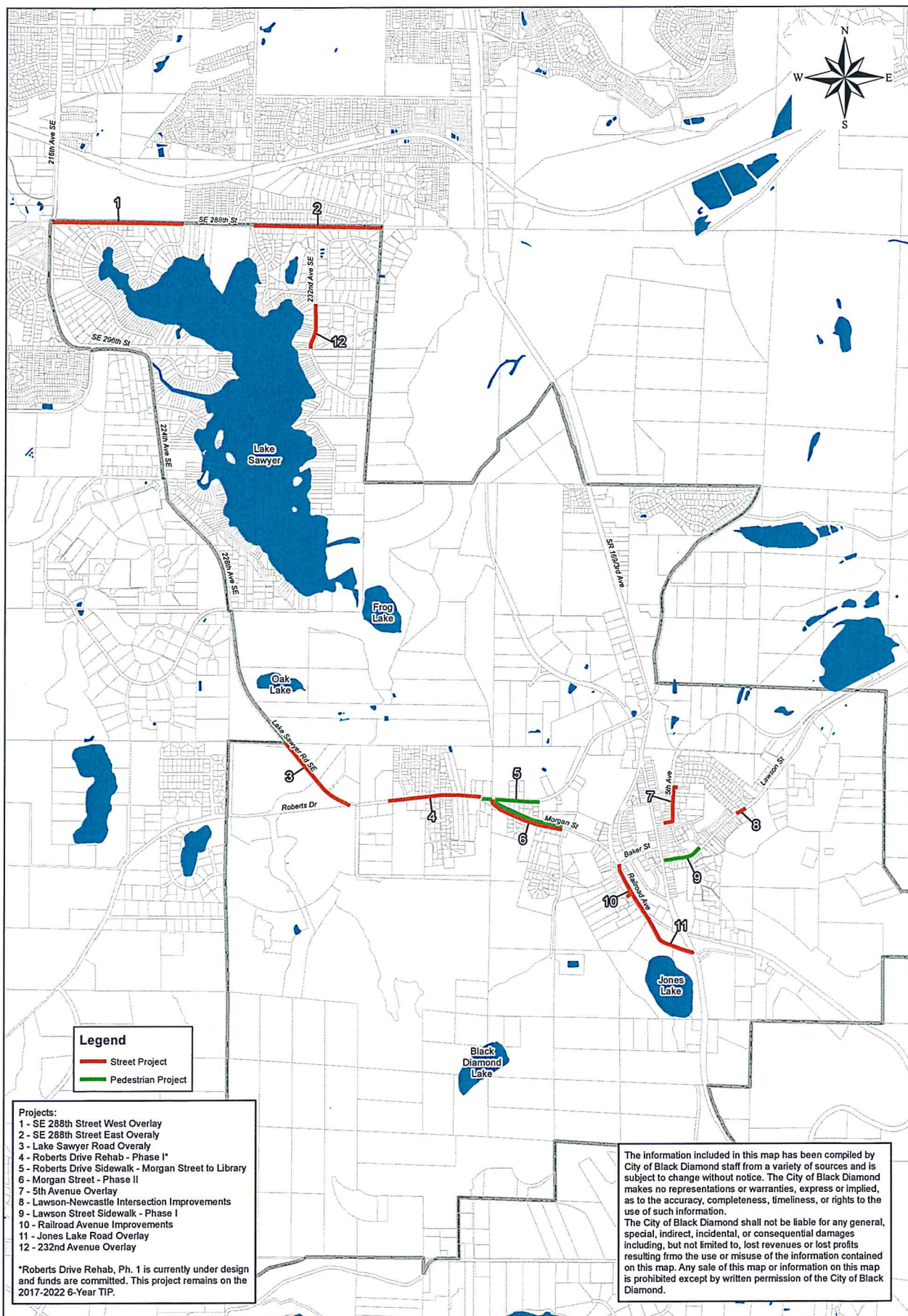
2017-2022 SIX YEAR TRANSPORTATION IMPROVEMENT PROGRAM
EXHIBIT "A"

Rank	Year	Improvement	From	To	Type of Improvement	Length in Miles	Estimated Cost	Funding
6	2018	Morganville Ph. I - Morgan Drive	Dail Dr.	Buena Vista Dr.	Patching and overlay, including Alpine Dr.	0.40	\$ 110,000	Grant/ TIB, Local City Funds
7	2018	Lawson Connector	SR 169	Lawson Street	New Street Grid Capacity	0.60	\$ 3,200,000	Developer Funded
8	2019	Roberts Drive/SR 169 Intersection Improvements	N/A	N/A	Two lane Roundabout or Signalize Intersection	N/A	\$ 7,777,000	Developer Mitigation and Grant
9	2019	216th Ave. SE Overlay	SE 288th St.	SE 296th St.	Patch and overlay	0.41	\$ 160,000	Grant/ TIB, Local City Funds
10	2019	Lawson Street Sidewalk, Ph. II	6th Ave.	Newcastle Dr.	5-foot sidewalk on the north side of Lawson Street	0.19	\$ 395,000	Grant/Safe Routes to School, Developer Mitigation
11	2019	Ravensdale / 169 interim intersection improvements	N/A	N/A	Signal or ?	N/A	\$ 700,000	Developer funded and possible grant
12	2020	Roberts Drive Rehabilitation, phase 3	King County Library	S.R. 169	Widening and overlay, sidewalk, street lighting, and stormwater improvements	0.56	\$ 1,700,000	TIB Grant, Local City Funds
13	2020	Hammond/Baker/ 5th/6th Overlay	N/A	N/A	Widening and overlay	0.39	\$ 141,000	Grant/ TIB, Local City Funds
13	2020	Lawson Street Ph. I	S.R. 169	HL Botts Dr. SE	Surface grinding, select panel replacement, shoulder widening	0.37	\$ 165,000	Grant/ TIB, Local City Funds
13	2020	Morganville Ph. II - Union Drive	Roberts Dr.	South end of road	Patching and overlay, including Highland Dr.	0.34	\$ 95,000	Grant/ TIB, Local City Funds
14	2020	Park St. & SR 169 Intersection Safety Improvements	N/A	N/A	Site distance improvements	N/A	\$ 30,000	Local City Funds, Developer Funds
15	2020	North Connector	169	South to new commercial and multi family housing	New minor arterial connection to SR 169 with signal	0.25	\$ 1,000,000	Developer Funded

2017-2022 SIX YEAR TRANSPORTATION IMPROVEMENT PROGRAM
EXHIBIT "A"

Rank	Year	Improvement	From	To	Type of Improvement	Length in Miles	Estimated Cost	Funding
16	2020	Intersection Roberts Drive & Lake Sawyer Extension	N/A	N/A	New Roundabout	N/A	\$ 1,000,000	Developer Funded
17	2021	229th Ave. SE/ SE 292nd Pl.	228th Ave. SE	232nd Ave. SE	Chip sealing, crack sealing, including 236th Ave. SE between SE 291st & SE 293rd	0.50	\$ 60,000	Grant/ TIB, Local City Funds
17	2021	James/Park/Baker/ 4th/2nd	N/A	N/A	Patching and overlay, including some widening	0.39	\$ 108,000	Grant/ TIB, Local City Funds
18	2021	Railroad Avenue & Jones Lake Road Pedestrian Facilities	SR 169 & James St.	SR 169 & Jones Lake Road	Sidewalk extensions and roadway widening to add bike lanes	0.88	\$ 440,000	Grant Funds
19	2021	Ravensdale / 169 intersection	N/A	N/A	Intersection realignment & signal or roundabout	N/A	\$ 8,000,000	Developer Funded & grant
20	2021	Intersection Roberts Drive & Annexation Road	N/A	N/A	New roundabout	N/A	\$ 1,000,000	Developer Funded
21	2022	Diamond Glen Neighborhood Improvements	N/A	N/A	Patching, crack sealing, and overlay	0.26	\$ 135,000	Grant/ TIB, Local City Funds
22	2022	Morgan Creek Neighborhood Roads Preservation	N/A	N/A	Seal Coat	1.19	\$ 107,000	Local City Funds
23	2022	Lawson Street Ph. II Intersection 216th Ave SE & SE 288th Street	HL Botts Dr. SE	City Limits	Chip sealing, crack sealing	0.41	\$ 45,000	Grant/ TIB, Local City Funds
24	2022		N/A	N/A	Signalization or Roundabout	N/A	\$ 1,400,000	Developer funded
TOTAL ALL PROJECTS							\$ 34,261,130	

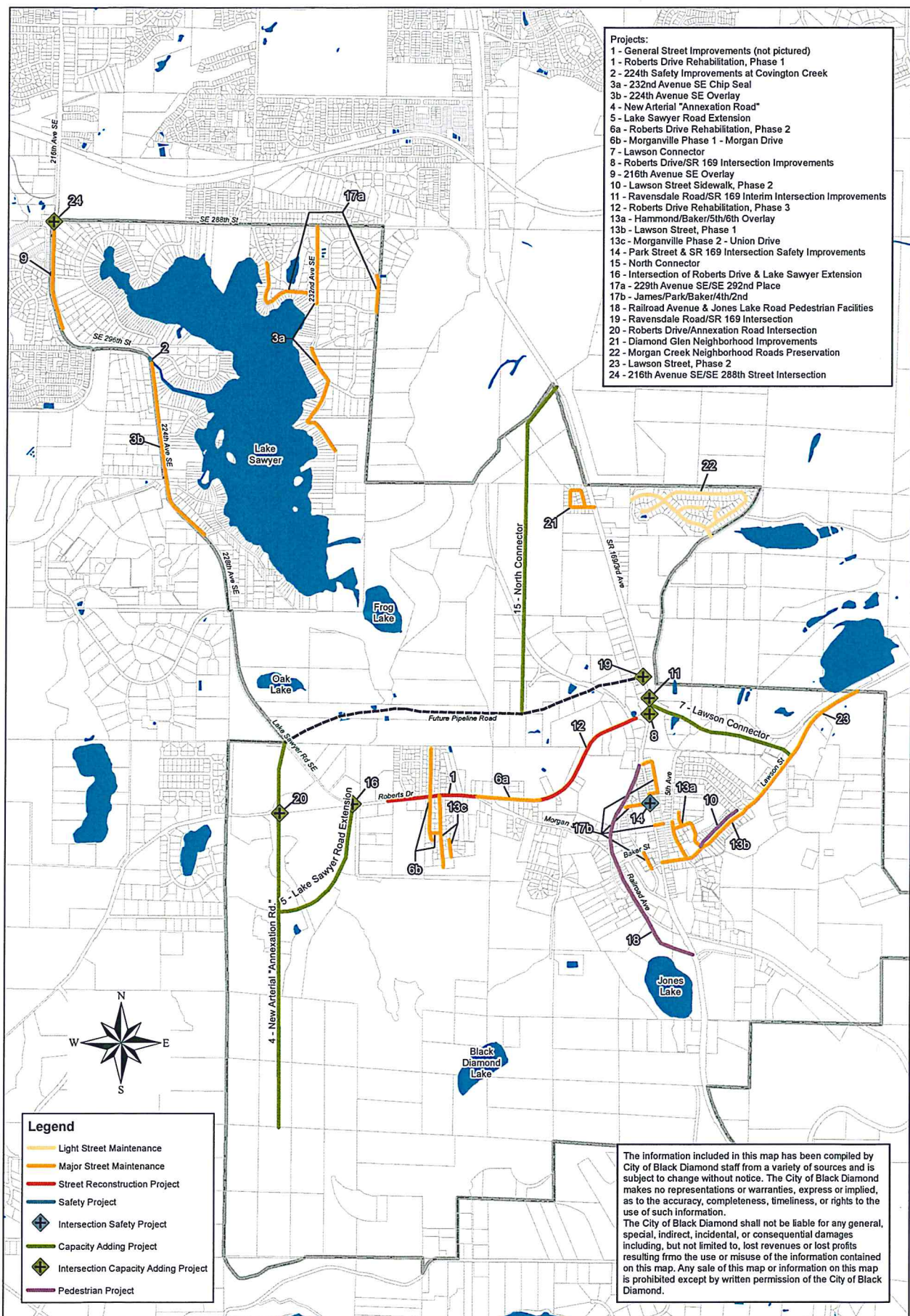
**NOTE: The City has identified the need for maintenance on these streets. There are more projects in these categories than can be funded or completed in six years. Projects in the earlier years have a higher probability of getting funded and completed. Projects in the later years have a lower probability of being funded and completed. If funding does become available and is secured for any project on the list, it will be moved to the top of the list for construction.*



Author: Scott Hanis

Revised: June 10, 2016

**In Process & Completed Projects
Last 6 Years**



Author: Scott Hanis

Revised: June 10, 2016

2017-2022 Transportation Improvement Program

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: Resolution authorizing a grant agreement with the Department of Ecology for the 2015-2017 Stormwater Capacity Grant	Agenda Date: July 7, 2016	
	AB16-016C	
	Mayor Carol Benson	
	City Administrator	
	City Attorney David Linehan	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Barb Kincaid	
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	
Cost Impact (see also Fiscal Note): \$25,000 revenue	Police – Chief Kiblinger	
Fund Source: Department of Ecology	Public Works – Seth Boettcher	X
Timeline: Expires March 31, 2017	Court – Stephanie Metcalf	
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input checked="" type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Resolution No. 16-xxx; Grant Agreement		
SUMMARY STATEMENT: The purpose of this grant is to provide additional assistance to the City of Black Diamond with our Department of Ecology stormwater permit requirements. This grant will expire March 31, 2017 and is retroactive to July 1, 2015. The grant funds are as follows: Task 1 – Up to \$1500 for Project Administration/Management Task 2 - \$23,500 for implementation and management of the Stormwater Program as required by the City's stormwater discharge permit from the Department of Ecology. This is a similar grant to previous grants the City has received from the Department of Ecology and can be used for items outlined in the City's Stormwater Management Program. FISCAL NOTE (Finance Department): This \$25000 grant was expected in 2016 and is already included in the 2016 Budget.		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: MOTION to adopt Resolution No. 16-xxx (Clerk to assign number at adoption), authorizing the Mayor to execute a grant agreement with the Department of Ecology for the 2015-2017 Stormwater Capacity Grant.		

RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
February 4, 2016	Referred to Committee	
May 5, 2016	Motion to adopt	2-3 – Failed)
May 19, 2016	No quorum	
May 25, 2016	No quorum	
June 2, 2016	No quorum	
June 16, 2016	Motion to postpone to July 7 mtg – passed 3-2 (Deady, Edelman)	
July 7, 2016		

RESOLUTION NO. 16-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A GRANT AGREEMENT WITH THE DEPARTMENT OF ECOLOGY FOR THE 2015-2017 STORMWATER CAPACITY GRANT WITH REQUIREMENT TO INCLUDE UPDATES FOR LOW IMPACT DEVELOPMENT AS PART OF THE GRANT SPENDING

WHEREAS, the City of Black Diamond is required to meet Phase II NPDES Permit requirements; and

WHEREAS, the Department of Ecology has made funds available to municipalities required to meet Phase II NPDES Permit requirements in the form of the 2015-2017 Stormwater Capacity Grant; and

WHEREAS, the Phase II NPDES Permit Requirements for the City of Black Diamond require that the city adopt the 2012 Stormwater Management Manual for Western Washington or equivalent; and

WHEREAS, review of existing Black Diamond Municipal Code for potential conflicts with the requirements of the 2012 Stormwater manual is one of the activities identified as an important task by city staff; and

WHEREAS, education about the negative impacts of untreated or unmanaged stormwater as well as the benefits to people and nature of better stormwater management are identified by the City Council as important to the community;

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 grant agreement with the Department of Ecology for the 2015-2017 Stormwater Capacity Grant in the amount of \$25,000, attached hereto as Exhibit A, to meet Phase II NPDES Permit requirements with the following provisions:

- a. Grant fund spending shall include an update of applicable codes to comply with the requirements of the 2012 Stormwater Manual for Western Washington or equivalent; and

b. Grant fund spending shall also include public education and outreach activities including stewardship, with an emphasis on the benefits to people and to streams, lakes, and natural areas of better stormwater management.

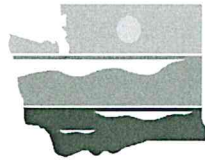
**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS _____ DAY OF ____
_____, 2016.**

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk



DEPARTMENT OF
ECOLOGY
State of Washington

Agreement WQSWCAP-1517-BlaDia-00012

WATER QUALITY STORMWATER CAPACITY AGREEMENT

BETWEEN THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

City of Black Diamond

This is a binding Agreement entered into by and between the State of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY" and City of Black Diamond, hereinafter referred to as the "RECIPIENT" to carry out with the provided funds activities described herein.

GENERAL INFORMATION

Project Title:	2015-2017 Biennial Stormwater Capacity Grants
Total Cost:	\$50,000.00
Total Eligible Cost:	\$50,000.00
Ecology Share:	\$50,000.00
Recipient Share:	\$0.00
The Effective Date of this Agreement is:	07/01/2015
The Expiration Date of this Agreement is no later than	03/31/2017
Project Type:	Capacity Grant

Project Short Description:

This project will assist Phase I and II Permittees in implementation or management of municipal stormwater programs.

Project Long Description:

N/A

Overall Goal:

This project will improve water quality in the State of Washington by reducing stormwater pollutants discharged to state water bodies.

RECIPIENT INFORMATION

Organization Name: City of Black Diamond

Federal Tax ID: 91-6016204

DUNS Number: 195690011

Mailing Address: PO Box 599
Black Diamond, WA, 98010

Physical Address: PO Box 599
24301 Roberts Drive

Organization Email: shanis@ci.blackdiamond.wa.us

Organization Fax: (360) 886-2592

Contacts

Project Manager	Scott Hanis Capital Project/Program Manager PO Box 599 24301 Roberts Drive Black Diamond, Washington, 98010 Email: shanis@ci.blackdiamond.wa.us Phone: (360) 886-5700
Billing Contact	Scott Hanis Capital Project/Program Manager PO Box 599 24301 Roberts Drive Black Diamond, Washington, 98010 Email: shanis@ci.blackdiamond.wa.us Phone: (360) 886-5700
Authorized Signatory	Scott Hanis Capital Project/Program Manager PO Box 599 24301 Roberts Drive Black Diamond, Washington, 98010 Email: shanis@ci.blackdiamond.wa.us Phone: (360) 886-5700

ECOLOGY INFORMATION

Mailing Address:

Physical Address:

Department of Ecology

Water Quality

PO BOX 47600

Olympia, WA 98504-7600

Water Quality

300 Desmond Drive

Lacey, WA 98503

Contacts

<div>Project Manager</div>	<div>Kyle Graunke</div> <div>P.O. Box 47600</div> <div>Olympia, Washington, 98504-7600</div> <div>Email: kygr461@ecy.wa.gov</div> <div>Phone: (360) 407-6452</div>
<div>Financial Manager</div>	<div>Kyle Graunke</div> <div>P.O. Box 47600</div> <div>Olympia, Washington, 98504-7600</div> <div>Email: kygr461@ecy.wa.gov</div> <div>Phone: (360) 407-6452</div>

RECIPIENT agrees to read, understand, and accept all information contained within this entire Agreement. Furthermore, RECIPIENT acknowledges that they have reviewed the terms and conditions of this Agreement, Scope of Work, attachments, all incorporated or referenced documents, as well as all applicable laws, statutes, rules, regulations, and guidelines mentioned in this Agreement.

This Agreement shall be subject to the written approval of Ecology's authorized representative and shall not be binding until so approved.

IN WITNESS WHEREOF, the parties hereby sign this Agreement

City of Black Diamond

Date

Capital Project/Program Manager

Carol Benson

Date _____

SCOPE OF WORK

Task Number: 1 Task Cost: \$3,000.00

Task Title: Project Administration/Management

Task Description:

A. The RECIPIENT shall carry out all work necessary to meet ECOLOGY grant or loan administration requirements. Responsibilities include, but are not limited to: maintenance of project records; submittal of requests for reimbursement and corresponding backup documentation; progress reports; and a recipient closeout report (including photos).

B. The RECIPIENT shall maintain documentation demonstrating compliance with applicable procurement, contracting, and interlocal agreement requirements; application for, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items.

C. The RECIPIENT shall manage the project. Efforts include, but are not limited to: conducting, coordinating, and scheduling project activities and assuring quality control. Every effort will be made to maintain effective communication with the RECIPIENT's designees; ECOLOGY; all affected local, state, or federal jurisdictions; and any interested individuals or groups. The RECIPIENT shall carry out this project in accordance with any completion dates outlined in this agreement.

Task Goal Statement:

Properly managed and fully documented project that meets ECOLOGY's grant or loan administrative requirements.

Task Expected Outcome:

- * Timely and complete submittal of requests for reimbursement, quarterly progress reports, and RECIPIENT closeout report.
- * Properly maintained project documentation

Recipient Task Coordinator: Scott Hanis

Project Administration/Management

Deliverables

Number	Description	Due Date
1.1	Quarterly Progress Reports	
1.2	Recipient Closeout Report	
1.3	Project Outcome Summary Report	

SCOPE OF WORK

Task Number: 2 Task Cost: \$47,000.00

Task Title: Project Administration/Management

Task Description:

Conduct work related to implementation of municipal stormwater National Pollutant Discharge Elimination System (NPDES) permit requirements. If the RECIPIENT is out of compliance with the municipal stormwater National Pollutant Discharge Elimination System (NPDES) permit, the RECIPIENT will ensure funds are used to attain compliance where applicable.

RECIPIENT may conduct work related to implementation of additional activities required by the municipal stormwater NPDES permits. The following is a list of elements RECIPIENT's project may include.

- 1) Public education and outreach activities, including stewardship activities.
- 2) Public involvement and participation activities.
- 3) Illicit discharge detection and elimination (IDDE) program activities, including:
 - a) Mapping or geographic information systems of municipal separate storm sewer systems (MS4s).
 - b) Staff training.
 - c) Activities to identify and remove illicit stormwater discharges.
 - d) Field screening procedures.
 - e) Complaint hotline database or tracking system improvements.
- 4) Activities to support programs to control runoff from new development, redevelopment, and construction sites, including:
 - a) Development of an ordinance and associated technical manual or update of applicable codes.
 - b) Inspections before, during, and upon completion of construction, or for post-construction long-term maintenance.
 - c) Training for plan review and/or inspection staff.
 - d) Participation in applicable watershed planning effort.
- 5) Pollution prevention, good housekeeping, and operation and maintenance program activities, such as:
 - a) Inspecting and/or maintaining the MS4 infrastructure.
 - b) Developing and/or implementing policies, procedures, or stormwater pollution prevention plans at municipal properties or facilities.
- 6) Annual reporting activities.
- 7) Establishing and refining stormwater utilities, including stable rate structures.
- 8) Water quality monitoring to implement permit requirements for a Water Cleanup Plan (TMDL). Note that any monitoring funded by this program requires submittal of a Quality Assurance Project Plan (QAPP) that the DEPARTMENT approves prior to awarding funding for monitoring.

Monitoring, including:

- a) Development of applicable QAPPs.
 - b) Monitoring activities, in accordance with a DEPARTMENT- approved QAPP, to meet Phase I/II permit requirements.
- 9) Structural stormwater controls program activities (Phase I permit requirement)
 - 10) Source control for existing development (Phase I permit requirement), including:
 - a) Inventory and inspection program.
 - b) Technical assistance and enforcement.
 - c) Staff training.
 - 11) Equipment purchases that result directly in improved compliance with permit requirements. Allowed costs for equipment purchases must be specific to implementing a permit requirement (such as a vector truck) rather than

general use (such as a general use pick-up truck). Qualified equipment purchases include but are not limited to:

- a) Illicit discharge testing equipment and materials.
- b) Vactor truck or sweeper truck or MS4 maintenance activities.
- c) Electronic devices dedicated to mapping of MS4 facilities and attributes.
- d) Software dedicated to tracking permit implementation activities.

As a deliverable, documentation of all tasks completed is required. Documentation includes but is not limited to: maps, field reports, dates and number of inspections conducted, dates of trainings held and participant lists, number of illicit discharges investigated and removed, summaries of planning, stormwater utility or procedural updates, annual reports, copies of approved QAPPs, summaries of structural or source control activities, summaries of how equipment purchases have increased or improved permit compliance.

Task Goal Statement:

This task will improve water quality in the State of Washington by reducing the pollutants delivered by stormwater to lakes, streams, and the Puget Sound by implementing measures required by Phase I and II NPDES permits.

Task Expected Outcome:

RECIPIENTS will implement measures required by Phase I and II NPDES permits.

Recipient Task Coordinator: Scott Hanis

Project Administration/Management

Deliverables

Number	Description	Due Date
2.1	Documentation of tasks completed	

Agreement No: WQSWCAP-1517-BlaDia-00012
Project Title: 2015-2017 Biennial Stormwater Capacity Grants
Recipient Name: City of Black Diamond

BUDGET

Funding Distribution EG160312

Funding Title: Capacity Grant FY16
Funding Type: Grant Funding Expiration Date: 03/31/2017
Funding Effective Date: 07/01/2015
Funding Source:

Title: ELSA: Environmental Legacy Stewardship Account
Type: State
CFDA:
Assistance Agreement:
Description: MTCA

Recipient Match %: 0
InKind Interlocal Allowed: No
InKind Other Allowed: No
Is this Funding Distribution used to match a federal grant? No

Capacity Grant FY16	Task Total
Project Administration/Management	\$ 1,500.00
Permit Implementation	\$ 23,500.00

Total: \$ 25,000.00

Agreement No: WQSWCAP-1517-BlaDia-00012
Project Title: 2015-2017 Biennial Stormwater Capacity Grants
Recipient Name: City of Black Diamond

BUDGET

Funding Distribution EG160313

Funding Title: Capacity Grant FY17
Funding Type: Grant Funding Expiration Date: 03/31/2017
Funding Effective Date: 07/01/2016
Funding Source:

Title: ELSA: Environmental Legacy Stewardship Account
Type: State
CFDA:
Assistance Agreement:
Description: MTCA

Recipient Match %: 0
InKind Interlocal Allowed: No
InKind Other Allowed: No
Is this Funding Distribution used to match a federal grant? No

Capacity Grant FY17	Task Total
Project Administration/Management	\$ 1,500.00
Permit Implementation	\$ 23,500.00
Total:	\$ 25,000.00

Funding Distribution Summary

Recipient / Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
Capacity Grant FY16	0.00 %	\$ 0.00	\$ 25,000.00	\$ 25,000.00
Capacity Grant FY17	0.00 %	\$ 0.00	\$ 25,000.00	\$ 25,000.00
Total		\$ 0.00	\$ 50,000.00	\$ 50,000.00

AGREEMENT SPECIFIC TERMS AND CONDITIONS

N/A

SPECIAL TERMS AND CONDITIONS

SECTION 1: DEFINITIONS

Unless otherwise provided, the following terms will have the respective meanings for all purposes of this agreement:

“Administration Charge” means a charge established in accordance with Chapter 90.50A RCW and Chapter 173-98 WAC, to be used to pay Ecology’s cost to administer the State Revolving Fund by placing a percentage of the interest earned in an Administrative Charge Account.

“Administrative Requirements” means the effective edition of ECOLOGY's ADMINISTRATIVE REQUIREMENTS FOR RECIPIENTS OF ECOLOGY GRANTS AND LOANS at the signing of this agreement.

“Annual Debt Service” for any calendar year means for any applicable bonds or loans including the loan, all interest plus all principal due on such bonds or loans in such year.

“Average Annual Debt Service” means, at the time of calculation, the sum of the Annual Debt Service for the remaining years of the loan to the last scheduled maturity of the loan divided by the number of those years.

“Centennial Clean Water Program” means the state program funded from various state sources.

“Contract Documents” means the contract between the RECIPIENT and the construction contractor for construction of the project.

“Cost Effective Analysis” means a comparison of the relative cost-efficiencies of two or more potential ways of solving a water quality problem as described in Chapter 173-98-730 WAC.

“Defease” or “Defeasance” means the setting aside in escrow or other special fund or account of sufficient investments and money dedicated to pay all principal of and interest on all or a portion of an obligation as it comes due.

“Effective Date” means the earliest date on which eligible costs may be incurred.

“Effective Interest Rate” means the total interest rate established by Ecology that includes the Administrative Charge.

“Estimated Loan Amount” means the initial amount of funds loaned to the RECIPIENT.

“Estimated Loan Repayment Schedule” means the schedule of loan repayments over the term of the loan based on the Estimated Loan Amount.

“Equivalency” means projects designated by ECOLOGY to meet additional federal requirements.

“Final Accrued Interest” means the interest accrued beginning with the first disbursement of funds to the RECIPIENT through such time as the loan is officially closed out and a final loan repayment schedule is issued.

“Final Loan Amount” means all principal of and interest on the loan from the Project Start Date through the Project Completion Date.

“Final Loan Repayment Schedule” means the schedule of loan repayments over the term of the loan based on the Final Loan Amount.

“Forgivable Principal” means the portion of a loan that is not required to be paid back by the borrower.

“General Obligation Debt” means an obligation of the RECIPIENT secured by annual ad valorem taxes levied by the RECIPIENT and by the full faith, credit, and resources of the RECIPIENT.

“General Obligation Payable from Special Assessments Debt” means an obligation of the RECIPIENT secured by a valid general obligation of the Recipient payable from special assessments to be imposed within the constitutional and statutory tax limitations provided by law without a vote of the electors of the RECIPIENT on all of the taxable property within the boundaries of the RECIPIENT.

“Gross Revenue” means all of the earnings and revenues received by the RECIPIENT from the maintenance and operation of the Utility and all earnings from the investment of money on deposit in the Loan Fund, except (i) Utility Local Improvement Districts (ULID) Assessments, (ii) government grants, (iii) RECIPIENT taxes, (iv) principal proceeds of bonds and other obligations, or (v) earnings or proceeds (A) from any investments in a trust, Defeasance, or escrow fund created to Defease or refund Utility obligations or (B) in an obligation redemption fund or account other than the Loan Fund until commingled with other earnings and revenues of the Utility or (C) held in a special account for the purpose of paying a rebate to the United States Government under the Internal Revenue Code.

“Guidelines” means the ECOLOGY's Funding Guidelines that that correlate to the State Fiscal Year in which the project is funded.

“Initiation of Operation Date” means the actual date the Water Pollution Control Facility financed with proceeds of the loan begins to operate for its intended purpose.

“Loan” means the Washington State Water Pollution Control Revolving Fund Loan or Centennial Clean Water Fund (Centennial) Loan made pursuant to this loan agreement.

“Loan Amount” means either an Estimated Loan Amount or a Final Loan Amount, as applicable.

“Loan Fund” means the special fund of that name created by ordinance or resolution of the RECIPIENT for the repayment of the principal of and interest on the loan.

“Loan Security” means the mechanism by which the RECIPIENT pledges to repay the loan.

“Loan Term” means the repayment period of the loan.

“Maintenance and Operation Expense” means all reasonable expenses incurred by the RECIPIENT in causing the Utility to be operated and maintained in good repair, working order, and condition including payments to other parties, but will not include any depreciation or RECIPIENT levied taxes or payments to the RECIPIENT in lieu of taxes.

“Net Revenue” means the Gross Revenue less the Maintenance and Operation Expense.

“Original Engineer’s Estimate” means the engineer’s estimate of construction costs included with bid documents.

“Principal and Interest Account” means, for a loan that constitutes Revenue-Secured Debt, the account of that name created in the loan fund to be first used to repay the principal of and interest on the loan.

“Project” means the project described in this agreement.

“Project Completion Date” means the date specified in the agreement on which the Scope of Work will be fully completed.

“Project Schedule” means that schedule for the project specified in the agreement.

“Reserve Account” means, for a loan that constitutes Revenue-Secured Debt, the account of that name created in the loan fund to secure the payment of the principal of and interest on the loan.

“Revenue-Secured Debt” means an obligation of the RECIPIENT secured by a pledge of the revenue of a utility and one not a general obligation of the RECIPIENT.

“Risk-Based Determination” means an approach to sub-recipient monitoring and oversight based on risk factors associated to a RECIPIENT or project.

“Scope of Work” means the tasks and activities constituting the project.

“Section 319” means the section of the Clean Water Act that provides funding to address nonpoint sources of water pollution.

“Senior Lien Obligations” means all revenue bonds and other obligations of the RECIPIENT outstanding on the date of execution of this loan agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of this loan agreement having a claim or lien on the Gross Revenue of the Utility prior and superior to the claim or lien of the loan, subject only to Maintenance and Operation Expense.

“State Water Pollution Control Revolving Fund (Revolving Fund)” means the water pollution control revolving fund established by Chapter 90.50A.020 RCW.

“Termination Date” means the effective date of ECOLOGY’s termination of the agreement.

“Termination Payment Date” means the date on which the RECIPIENT is required to repay to ECOLOGY any outstanding balance of the loan and all accrued interest.

“Total Eligible Project Cost” means the sum of all costs associated with a water quality project that have been determined to be eligible for ECOLOGY grant or loan funding.

“Total Project Cost” means the sum of all costs associated with a water quality project, including costs that are not eligible for ECOLOGY grant or loan funding.

“ULID” means any utility local improvement district of the RECIPIENT created for the acquisition or construction of additions to and extensions and betterments of the Utility.

“ULID Assessments” means all assessments levied and collected in any ULID. Such assessments are pledged to be paid into the Loan Fund (less any prepaid assessments permitted by law to be paid into a construction fund or account). ULID Assessments will include principal installments and any interest or penalties which may be due.

“Utility” means the sewer system, stormwater system, or the combined water and sewer system of the RECIPIENT, the Net Revenue of which is pledged to pay and secure the loan.

SECTION 2: THE FOLLOWING CONDITIONS APPLY TO ALL RECIPIENTS OF WATER QUALITY FINANCIAL ASSISTANCE FUNDING.

The Water Quality Financial Assistance Funding Guidelines are included in this agreement by reference.

A. Architectural and Engineering Services: The RECIPIENT certifies by signing this agreement that the requirements of Chapter 39.80 RCW, “Contracts for Architectural and Engineering Services,” have been, or shall be, met in procuring qualified architectural/engineering services. The RECIPIENT shall identify and separate eligible and ineligible costs in the final negotiated agreement and submit a copy of the agreement to ECOLOGY.

B. Best Management Practices (BMP) Implementation: If the RECIPIENT installs BMPs that are not approved by ECOLOGY prior to installation, the RECIPIENT assumes the risk that part or all of the reimbursement for that activity may be delayed or ineligible. For more details regarding BMP Implementation, please reference the Water Quality Financial Assistance Funding Guidelines available on ECOLOGY’s Water Quality Program funding website.

C. Cultural and Historic Resources Protection Compliance with Environmental Laws and Regulations. The RECIPIENT shall:

- 1) The RECIPIENT shall comply with all applicable federal, state and local environmental laws, statutes, regulations, executive orders, and permits.
- 2) The RECIPIENT shall comply with Ecology’s Archaeological Resource and Historic Property review process. The RECIPIENT agrees that in no case shall construction activities, ground disturbance, or excavation of any kind, begin until provisions of this process are complied with. The RECIPIENT is responsible for developing a complete Inadvertent Discovery Plan (IDP). The IDP must be immediately available by request by any party. An IDP must be immediately available and be implemented to address any discovery. The RECIPIENT will implement the procedures in the IDP, and immediately notify ECOLOGY, the Department of Archeology and Historic Preservation (DAHP), and tribal representatives if human remains, cultural, or archeological resources are discovered in the course of construction. For more details regarding requirements under this provision, please reference the Water Quality Financial Assistance Funding Guidelines available on ECOLOGY’s Water Quality Program funding website.

D. Electronic Fund Transfers: The RECIPIENT must register as a statewide vendor in order to receive payment reimbursement. Washington State’s Department of Enterprise Services (DES) issues all payments. DES maintains a

central vendor file for Washington State agency use to process vendor payments. The RECIPIENT can complete the registration process online at <http://des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>. This registration process also allows The RECIPIENT to sign up for direct deposit payments, also known as electronic fund transfers (EFT). If The RECIPIENT have questions about the vendor registration process or setting up direct deposit payments contact DES at the Payee Help Desk at (360) 664-7779 or payeehelpdesk@des.wa.gov.

E. Equipment Purchase: Equipment not included in the scope of work or a construction plan and specification approval must be pre-approved by ECOLOGY's project manager before purchase.

F. Funding Recognition: The RECIPIENT must inform the public about ECOLOGY or any EPA (see Section 3 for Section 319 funded projects or 7 for SRF funded projects) funding participation in this project through the use of project signs, acknowledgement in published materials, reports, the news media, websites, or other public announcements. Projects addressing site-specific locations must utilize appropriately sized and weather-resistant signs. Sign logos are available from ECOLOGY's Financial Manager upon request.

G. Growth Management Planning: The RECIPIENT certifies by signing this agreement that it is in compliance with the requirements of Chapter 36.70A RCW, "Growth Management Planning by Selected Counties and Cities." If the status of compliance changes, either through RECIPIENT or legislative action, the RECIPIENT shall notify ECOLOGY in writing of this change within 30 days.

H. Interlocal: The RECIPIENT certifies by signing this agreement that all negotiated interlocal agreements necessary for the project are, or shall be, consistent with the terms of this agreement and Chapter 39.34 RCW, "Interlocal Cooperation Act." The RECIPIENT shall submit a copy of each interlocal agreement necessary for the project to ECOLOGY.

I. Lobbying and Litigation: Costs incurred for the purposes of lobbying or litigation are not eligible for funding under this agreement.

J. Post Project Assessment Survey: The RECIPIENT agrees to participate in a brief survey regarding the key project results or water quality project outcomes and the status of long-term environmental results or goals from the project approximately three years after project completion. A representative from ECOLOGY's Water Quality Program may contact the RECIPIENT to request this data. ECOLOGY may also conduct site interviews and inspections, and may otherwise evaluate the project, as part of this assessment.

K. Project Status Evaluation: ECOLOGY may evaluate the status of this project 18 months from the effective date of this agreement. ECOLOGY's Project Manager and Financial Manager will meet with the RECIPIENT to review spending trends, completion of outcome measures, and overall project administration and performance. If the RECIPIENT fails to make satisfactory progress toward achieving project outcomes, ECOLOGY may change the scope of work, reduce grant funds, or increase oversight measures.

L. Technical Assistance: Technical assistance for agriculture activities provided under the terms of this agreement will be consistent with the current U.S. Natural Resource Conservation Service ("NRCS") Field Office Technical Guide for Washington State. However, ECOLOGY may accept as eligible technical assistance, proposed practices, or project designs that do not meet these standards if approved in writing by the NRCS and ECOLOGY.

SECTION 3: THE FOLLOWING CONDITIONS APPLY TO ALL RECIPIENTS OF SFY15-17 CAPACITY GRANTS

ECOLOGY shall reimburse eligible project expenses following the schedule below.

Prior to July 1, 2016: Total reimbursements to the RECIPIENT for eligible project expenses are limited to a maximum \$25,000.

After July 1, 2016: If funding is available, ECOLOGY will provide written notification via email to the RECIPIENT project manager stating that ECOLOGY may reimburse additional eligible expenses up to the total project eligible cost of \$50,000. Eligible project expenses may be incurred at any time between July 1, 2015 and March 31, 2017. If additional funds are not available, total reimbursements for eligible project expenses will be limited to a maximum of \$25,000.

If the RECIPIENT fails to submit two or more consecutive quarterly reports via the EAGL grant management system, ECOLOGY may consider this failure to provide progress reports as non-performance and initiate actions to amend or terminate this agreement.

GENERAL FEDERAL CONDITIONS

If a portion or all of the funds for this agreement are provided through federal funding sources or this agreement is used to match a federal grant award, the following terms and conditions apply to you.

CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION:

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department for assistance in obtaining a copy of those regulations..
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

Federal Funding Accountability And Transparency Act (FFATA) Reporting Requirements:

RECIPIENT must complete the FFATA Data Collection Form (ECY 070-395) and return it with the signed agreement to ECOLOGY.

Any RECIPIENT that meets each of the criteria below must also report compensation for its five top executives, using FFATA Data Collection Form.

- Receives more than \$25,000 in federal funds under this award; and
- Receives more than 80 percent of its annual gross revenues from federal funds; and
- Receives more than \$25,000,000 in annual federal funds

ECOLOGY will not pay any invoice until it has received a completed and signed FFATA Data Collection Form. ECOLOGY is required to report the FFATA information for federally funded agreements, including the required DUNS number, at www.fsrs.gov <<http://www.fsrs.gov>> within 30 days of agreement signature. The FFATA information will be available to the public at www.usaspending.gov <<http://www.usaspending.gov>>.

For more details on FFATA requirements, see www.fsrs.gov <<http://www.fsrs.gov>>.

GENERAL TERMS AND CONDITIONS

1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition". <https://fortress.wa.gov/ecy/publications/SummaryPages/1401002.html>
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

2. AMENDMENTS AND MODIFICATIONS

This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

3. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological or cultural resources. Activities associated with archaeological and cultural resources are an eligible reimbursable cost subject to approval by ECOLOGY.

RECIPIENT shall:

- a) Immediately cease work and notify ECOLOGY if any archeological or cultural resources are found while conducting work under this Agreement.

- b) Immediately notify the Department of Archaeology and Historic Preservation at (360) 586-3064, in the event historical or cultural artifacts are discovered at a work site.
- c) Comply with Governor Executive Order 05-05, Archaeology and Cultural Resources, for any capital construction projects prior to the start of any work.
- d) Comply with RCW 27.53, Archaeological Sites and Resources, for any work performed under this Agreement, as applicable. National Historic Preservation Act (NHPA) may require the RECIPIENT to obtain a permit pursuant to Chapter 27.53 RCW prior to conducting on-site activity with the potential to impact cultural or historic properties.

4. ASSIGNMENT

No right or claim of the RECIPIENT arising under this Agreement shall be transferred or assigned by the RECIPIENT.

5. COMMUNICATION

RECIPIENT shall make every effort to maintain effective communications with the RECIPIENT's designees, ECOLOGY, all affected local, state, or federal jurisdictions, and any interested individuals or groups.

6. COMPENSATION

- a) Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.
- b) Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.
- c) RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible may require approval by ECOLOGY prior to purchase.
- d) RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.
- e) ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.
- f) ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.
- g) RECIPIENT will receive payment through Washington State Department of Enterprise Services' Statewide Payee Desk. RECIPIENT must register as a payee by submitting a Statewide Payee Registration form and an IRS W-9 form at the website, <http://www.des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>. For any questions about the vendor registration process contact the Statewide Payee Help Desk at (360) 407-8180 or email payeehelpdesk@des.wa.gov.
- h) ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.
- i) Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.
- j) RECIPIENT should submit final requests for compensation within thirty (30) days after the expiration date of this Agreement. Failure to comply may result in delayed reimbursement.

7. COMPLIANCE WITH ALL LAWS

RECIPIENT agrees to comply fully with all applicable Federal, State and local laws, orders, regulations, and permits related to this Agreement, including but not limited to:

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.
- b) RECIPIENT agrees to be bound by all federal and state laws, regulations, and policies against discrimination.
- c) RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.
- d) RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.

ECOLOGY shall have the right to immediately terminate for cause this Agreement as provided herein if the RECIPIENT fails to comply with above requirements.

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

8. CONFLICT OF INTEREST

RECIPIENT and ECOLOGY agree that any officer, member, agent, or employee, who exercises any function or responsibility in the review, approval, or carrying out of this Agreement, shall not have any personal or financial interest, direct or indirect, nor affect the interest of any corporation, partnership, or association in which he/she is a part, in this Agreement or the proceeds thereof.

9. CONTRACTING FOR GOODS AND SERVICES

RECIPIENT may contract to buy goods or services related to its performance under this Agreement. RECIPIENT shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by State law. RECIPIENT is required to follow procurement procedures that ensure legal, fair, and open competition.

RECIPIENT must have a standard procurement process or follow current state procurement procedures. RECIPIENT may be required to provide written certification that they have followed their standard procurement procedures and applicable state law in awarding contracts under this Agreement.

ECOLOGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

10. DISPUTES

When there is a dispute with regard to the extent and character of the work, or any other matter related to this Agreement the determination of ECOLOGY will govern, although the RECIPIENT shall have the right to appeal decisions as provided for below:

- a) RECIPIENT notifies the funding program of an appeal request.
- b) Appeal request must be in writing and state the disputed issue(s).
- c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.
- d) ECOLOGY reviews the RECIPIENT's appeal.
- e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review.

The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

The parties agree that this dispute process will precede any action in a judicial or quasi-judicial tribunal.

Appeals of the Director's decision will be brought in the Superior Court of Thurston County. Review of the Director's decision will not be taken to Environmental and Land Use Hearings Office.

Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

Nothing in this contract will be construed to limit the parties' choice of another mutually acceptable method, in addition to the dispute resolution procedure outlined above.

11. ENVIRONMENTAL STANDARDS

- a) RECIPIENTS who collect environmental-monitoring data must provide these data to ECOLOGY using the Environmental Information Management System (EIM). To satisfy this requirement these data must be successfully loaded into EIM, see instructions on the EIM website at: <http://www.ecy.wa.gov/eim>.
- b) RECIPIENTS are required to follow ECOLOGY's data standards when Geographic Information System (GIS) data are collected and processed. More information and requirements are available at: <http://www.ecy.wa.gov/services/gis/data/standards/standards.htm>. RECIPIENTS shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.
- c) RECIPIENTS must prepare a Quality Assurance Project Plan (QAPP) when a project involves the collection of environmental measurement data. QAPP is to ensure the consistent application of quality assurance principles to the planning and execution of all activities involved in generating data. RECIPIENTS must follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030). ECOLOGY shall review and approve the QAPP prior to start of work. The size, cost, and complexity of the QAPP should be in proportion to the magnitude of the sampling effort.

12. GOVERNING LAW

This Agreement will be governed by the laws of the State of Washington, and the venue of any action brought hereunder will be in the Superior Court of Thurston County.

13. INDEMNIFICATION

ECOLOGY will in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

To the extent that the Constitution and laws of the State of Washington permit, each party will indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this Agreement.

14. INDEPENDENT STATUS

The employees, volunteers, or agents of each party who are engaged in the performance of this Agreement will continue to be employees, volunteers, or agents of that party and will not for any purpose be employees, volunteers, or agents of the other party.

15. KICKBACKS

RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this Agreement to give up any part of the compensation to which he/she is otherwise entitled to or receive any fee, commission, or gift in return for award of a subcontract hereunder.

16. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)

RECIPIENT is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated under this Agreement.

Contract awards or rejections cannot be made based on MWBE participation; however, the RECIPIENT is encouraged to take the following actions, when possible, in any procurement under this Agreement:

- a) Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods

or services.

- b) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- c) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
- d) Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

17. ORDER OF PRECEDENCE

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) The Agreement; (c) Scope of Work; (d) Special Terms and Conditions; (e) Any provisions or terms incorporated herein by reference, including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; and (f) the General Terms and Conditions.

18. PRESENTATION AND PROMOTIONAL MATERIALS

ECOLOGY reserves the right to approve RECIPIENT's communication documents and materials related to the fulfillment of this Agreement:

- a) If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.
- b) RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.
- c) If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY's logo shall comply with ECOLOGY's graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY's logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

19. PROGRESS REPORTING

- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.
- e) RECIPIENT shall submit the Closeout Report within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY. RECIPIENT shall use the ECOLOGY provided closeout report format.

20. PROPERTY RIGHTS

- a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.
- b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.
- c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.
- d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.
- e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
- f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:
 - a. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.
 - b. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.
 - g) Conversions. Regardless of the agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

21. RECORDS, AUDITS, AND INSPECTIONS

RECIPIENT shall maintain complete program and financial records relating to this Agreement, including any engineering documentation and field inspection reports of all construction work accomplished.

All records shall:

- a) Be kept in a manner which provides an audit trail for all expenditures.
- b) Be kept in a common file to facilitate audits and inspections.
- c) Clearly indicate total receipts and expenditures related to this Agreement.
- d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder.

RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state

has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder.

RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

22. RECOVERY OF FUNDS

The right of the RECIPIENT to retain monies received as reimbursement payments is contingent upon satisfactory performance of this Agreement and completion of the work described in the Scope of Work.

All payments to the RECIPIENT are subject to approval and audit by ECOLOGY, and any unauthorized expenditure(s) or unallowable cost charged to this agreement shall be refunded to ECOLOGY by the RECIPIENT.

RECIPIENT shall refund to ECOLOGY the full amount of any erroneous payment or overpayment under this Agreement.

RECIPIENT shall refund by check payable to ECOLOGY the amount of any such reduction of payments or repayments within thirty (30) days of a written notice. Interest will accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds.

Any property acquired under this Agreement, at the option of ECOLOGY, may become ECOLOGY's property and the RECIPIENT's liability to repay monies will be reduced by an amount reflecting the fair value of such property.

23. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

24. STATE ENVIRONMENTAL POLICY ACT (SEPA)

RECIPIENT must demonstrate to ECOLOGY's satisfaction that compliance with the requirements of the State Environmental Policy Act (Chapter 43.21C RCW and Chapter 197-11 WAC) have been or will be met. Any reimbursements are subject to this provision.

25. SUSPENSION

When in the best interest of ECOLOGY, ECOLOGY may at any time, and without cause, suspend this Agreement or any portion thereof for a temporary period by written notice from ECOLOGY to the RECIPIENT. RECIPIENT shall resume performance on the next business day following the suspension period unless another day is specified by ECOLOGY.

26. SUSTAINABLE PRACTICES

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is fully encouraged to implement sustainable practices and to purchase environmentally preferable products under this Agreement.

- a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.
- b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers

and imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, and 100% post-consumer recycled paper.

For more suggestions visit ECOLOGY's web page: Green Purchasing, <http://www.ecy.wa.gov/programs/swfa/epp>.

27. TERMINATION

a) For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Failure to Commence Work. ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

Non-Performance. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this Agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement.

Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and the State of Washington because of any breach of this Agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

b) For Convenience

ECOLOGY may terminate for convenience this Agreement, in whole or in part, for any reason when it is the best interest of ECOLOGY, with a thirty (30) calendar days prior written notification to the RECIPIENT. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Non-Allocation of Funds. ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to the completion or expiration date of this agreement, ECOLOGY, at its sole discretion, may elect to terminate the agreement, in whole or part, or renegotiate the agreement, subject to new funding limitations or conditions. ECOLOGY may also elect to suspend performance of the agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification or restrictions.

If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

c) By Mutual Agreement

ECOLOGY and the RECIPIENT may terminate this Agreement, in whole or in part, at any time, by mutual written agreement.

d) In Event of Termination

All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Nothing contained herein shall preclude ECOLOGY from demanding repayment of all funds paid to the RECIPIENT in accordance with Recovery of Funds, identified herein.

28. THIRD PARTY BENEFICIARY

RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this Agreement, the state of Washington is named as an express third party beneficiary of such subcontracts with full rights as such.

29. WAIVER

Waiver of a default or breach of any provision of this Agreement is not a waiver of any subsequent default or breach, and will not be construed as a modification of the terms of this Agreement unless stated as such in writing by the authorized representative of ECOLOGY.

GENERAL TERMS AND CONDITIONS LAST UPDATED 12/25/2015

RESOLUTION No. 16-

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF BLACK DIAMOND, KING
COUNTY, WASHINGTON AUTHORIZING
THE MAYOR TO EXECUTE A GRANT
AGREEMENT WITH THE DEPARTMENT
OF ECOLOGY FOR THE 2015-2017
STORMWATER CAPACITY GRANT WITH
REQUIREMENT TO INCLUDE UPDATES
FOR LOW IMPACT DEVELOPMENT AS
PART OF THE GRANT SPENDING.**

WHEREAS, the City of Black Diamond is required to meet Phase II NPDES Requirements; and

WHEREAS, the Department of Ecology has made funds available to municipalities required to meet Phase II NPDES Permit requirements in the form of the 2015-2017 Stormwater Capacity Grant; and

WHEREAS, the Phase II NPDES Permit Requirements for the City of Black Diamond require that the city adopt the 2012 Stormwater Management Manual for Western Washington or equivalent; and

WHEREAS, review of existing Black Diamond Municipal Code for potential conflicts with the requirements of the 2012 Stormwater manual is one of the activities identified as an important by city staff; and

WHEREAS, education about the negative impacts of untreated or unmanaged stormwater as well as the benefits to people and nature of better stormwater management is identified by the City Council as important to the community

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

Section 1. The Mayor is hereby authorized to execute a grant agreement with the Department of Ecology for the 2015-2017 Stormwater Capacity Grant in the amount of \$25,000 to meet the Phase II NPDES Permit Requirements with the following provisions:

Section 2. Grant fund spending shall include update of applicable codes to comply with the requirements of the 2012 Stormwater Manual for Western Washington or equivalent; and

Section 3. Grant fund spending shall also include public education and outreach activities including stewardship, with an emphasis on the benefits to people and to streams, lakes, and natural areas of better stormwater management.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON,
AT A REGULAR MEETING THEREOF, THIS 4TH DAY OF FEBRUARY, 2016.

CITY OF BLACK DIAMOND:

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT:	Agenda Date: July 7, 2016 AB16-021C	
Resolution No. 16-0000, confirming the Mayor's appointment to the Civil Service Commission	Mayor Carol Benson	X
	City Administrator	
	City Attorney David Linehan	
	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:		
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input checked="" type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Resolution No. 16-0000; application		
SUMMARY STATEMENT: <p>Staff advertised for the vacancy on the Civil Service Commission and one application was received. An interview committee consisting of Mayor Benson, Councilmember Edelman, Councilmember Deady, and Civil Service Secretary Luzville Goebel interviewed the applicant.</p> <p>After careful consideration, the Mayor is seeking confirmation of her appointment of Becky Arnold to the Black Diamond Civil Service Commission Position No. 3, with said term to expire December 31, 2020.</p> <p>FISCAL NOTE (Finance Department): N/A</p> <p>COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:</p>		
RECOMMENDED ACTION: MOTION to adopt Resolution No. 16-? (Clerk to assign number at adoption), authorizing the Mayor's Civil Service Commission appointment of Becky Arnold to the Black Diamond Civil Service Commission Position No. 3.		
RECORD OF COUNCIL ACTION		
Meeting Date	Action	Vote
February 18, 2016	Referred to committee	
May 5, 2016	Motion to adopt	2-3 (failed)
May 19, 2016	No quorum	
May 25, 2016	No quorum	
June 2, 2016	No quorum	
June 16, 2016	Motion to postpone to July 7 mtg. – passed	5-0
July 7, 2016		

RESOLUTION NO. 16-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
CONFIRMING THE MAYOR'S APPOINTMENT TO THE CIVIL
SERVICIE COMMISSION**

WHEREAS, in accordance with Black Diamond Municipal Code 2.64.020, members of the Civil Service Commission shall be appointed by the Mayor and confirmed by the City Council; and

WHEREAS, this Resolution confirms the Mayor's appointment to the City of Black Diamond Civil Service Commission;

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

Section 1. That the Mayor's appointment of Becky Arnold to the City of Black Diamond Civil Service Commission Position No. 3 is hereby confirmed; said term to expire on December 31, 2020.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT
A REGULAR MEETING THEREOF, THIS _____ DAY OF _____, 2016.**

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk



CITY OF BLACK DIAMOND

Commission Application

Mailing Address: PO Box 599

Physical Address: 24301 Roberts Drive

Black Diamond, WA 98010

Phone: 360.886.5700 - Fax: 360.886.2592

CITY OF BLACK DIAMOND
RECEIVED
NOV 5 2015
BY _____
CITY HALL

Name: Becky Arnold

Address: 30420 Cumberland Dr Black Diamond, WA 98010

Home Phone: 360-886-2536 Business Phone: _____

Email address: _____

How long at Residence: 9 yrs Best time to contact: evening

Commission desired: 1.) Black Diamond civil service commission
2.) _____

Reason you are interested in serving: _____
to support Black Diamond police Department

Previous community activities: None

Applicable education, occupational, and specialized experience: _____
work: community center Bask program

Commissions make recommendations regarding monetary expenditures and/or benefits to certain areas of the Community.

1.) Can you foresee possible conflicts of interest with any of your current employment or civic positions:
None

2.) When making these recommendations do you feel you could be impartial and base your decision on the overall need and benefit of the Community: yes

Are there any days or evenings you are unavailable to meet? None

Signature: Becky Arnold Date: 11-22-2015

Please return completed form and any additional information to:
City of Black Diamond - Attn: City Clerk, 24301 Roberts Drive, PO Box 599, Black Diamond, WA 98010
For more information please call (360) 886-5700

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: Resolution regarding labor policy and grievance review	Agenda Date: July 7, 2016 AB16-038A	
Cost Impact (see also Fiscal Note): \$ Fund Source: -- Timeline:	Mayor Carol Benson	
	City Administrator	
	City Attorney David Linehan	
	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		
Court – Stephanie Metcalf		
	Councilmember Morgan	X
Agenda Placement: <input type="checkbox"/> Mayor <input checked="" type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Resolution		
SUMMARY STATEMENT: Councilmember Morgan will be addressing this item.		
FISCAL NOTE (Finance Department):		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: MOTION to		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
June 16, 2016	Motion to postpone – passed 5-0	
July 7, 2016		

RESOLUTION NO. 16-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON REGARDING LABOR POLICY AND GRIEVANCE REVIEW

WHEREAS, the City Council is charged with the authority to review and approve all labor contracts; and

WHEREAS, the Mayor is customarily charged with the responsibility to bargain labor contracts; and

WHEREAS, the Mayor is charged with the authority to supervise the administration of city business consistent with adopted policy and labor agreements; and

WHEREAS, the review and adjudication of labor grievances has both management and policy elements involving both the Mayor and the City Council; and

WHEREAS, there are at least two labor grievances that have been filed against the City of Black Diamond; and

WHEREAS, the City Council by motion at its Regular Council Meeting on May 5 called for the investigation of one of these grievances but included no specifics; and

WHEREAS, there are facts that once established may likely resolve these grievances; and

WHEREAS, one such fact is that the Council wishes to have the support of staff at all of its Standing Committee meetings in a manner that is consistent with the existing contract; and

WHEREAS, another such fact is that Councilmember Morgan has stipulated that her oral comments at the Regular Council Meeting on May 5 "were not intended to cast aspersions against any staff person but were directed to the whole process

involving the contractual authority of the Mayor to approve and terminate contracts"; and

WHEREAS, coordination between the City Council and Mayor is helpful in order to ensure that the bargaining and management of labor contracts is consistent with Council authority to review and approve all labor contracts and establish labor policy; and

WHEREAS, the City Council believes that transparency and timeliness regarding the bargaining of labor contracts and response to informal and formal grievances are important aspects of good faith and good working conditions for all employees; and

WHEREAS, the City Council may adopt labor policies to instruct the bargaining and management of labor contracts consistent with contract terms.

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

Section 1. The Mayor is requested to bargain with Teamsters Local 117 to allow represented employees to perform their duties in support of the City Council and its Standing Committees in a manner that is consistent with the existing contract.

Section 2. The Mayor is requested to investigate and report to Teamsters Local 117 and the City Council all the facts regarding the DKS voucher including the stipulation by Councilmember Morgan regarding her comments made at the Regular Council Meeting on May 5.

Section 3. The City Council requests that the Chair of the Government Operations and Administration Committee begin to develop labor and personnel policies for Council review to instruct future bargaining of labor contracts and the handling of grievances.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THE**

_____.

CITY OF BLACK DIAMOND

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: Resolution Regarding Mediation	Agenda Date: July 7, 2016 AB16-039A	
	Mayor Carol Benson	
	City Administrator	
	City Attorney David Linehan	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Barb Kincaid	
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	
	Police – Chief Kiblinger	
Fund Source: --	Public Works – Seth Boettcher	
Timeline:	Court – Stephanie Metcalf	
	Councilmember Morgan X	
Agenda Placement: <input type="checkbox"/> Mayor <input checked="" type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Resolution		
SUMMARY STATEMENT: Councilmember Morgan will be addressing this item.		
FISCAL NOTE (Finance Department):		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: MOTION to		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
June 16, 2016	Motion to postpone to July 7 mtg	Passed 5-0
July 7, 2016		

RESOLUTION NO. 16-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON REGARDING MEDIATION BETWEEN THE MAYOR AND COUNCIL

WHEREAS, The Mayor and Council are both co-equal branches of government;
and

WHEREAS, the Mayor is given the duty under RCW 35A.12.100 to "preside over
all meetings of the city council"; and

WHEREAS, the proper functioning of the City Council is dependent on the proper
functioning of its council meetings; and

WHEREAS, the Mayor acting as Presiding Officer has a key role to play in the
proper functioning of the City Council meetings; and

WHEREAS, the City Council Meetings in 2016 have been marked with
unnecessary controversy and discord; and

WHEREAS, the City Council believes that more effective City Council meetings
will result in a better working relationship between the Mayor and City Council;
and

WHEREAS, the City Council by motion at its Regular Council Meeting on May
5, 2016 called for mediation between the Mayor and City Council; and

WHEREAS, the scope and method of mediation is a matter that should be subject
to public input and Council review; and

WHEREAS, cost efficient mediation services are available through the King
County Dispute Resolution Center and through other non-profit agencies; and

WHEREAS, the Council believes that a flexible and informal mediation through the offices of a non-profit agency is a better and more cost effective option than a more formal and structured mediation; and

WHEREAS, the Council believes that the scope of the mediation between the Mayor and Council should begin with the conduct of City Council meetings.

WHEREAS, the Council believes that a successful conclusion of mediation regarding the conduct of City Council meetings will build a foundation upon which to build further improvements in dealings between the two branches of Black Diamond city government.

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

Section 1. The Mayor is requested to engage with the Mayor Pro Tempore and the Council President in an informal mediation regarding the conduct of City Council meetings.

Section 2. The Mayor and the Mayor Pro Tempore and Council President are requested to research and propose the use of a non-profit agency as mediator.

Section 3. After the successful conclusion of mediation regarding the conduct of City Council meetings, the Mayor and the Mayor Pro Tempore and Council President are requested to discuss and propose further mediation on other subjects of concern if necessary.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THE

_____.

CITY OF BLACK DIAMOND

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT:	Agenda Date: July 7, 2016	AB16-042
Resolution authorizing the Mayor to sign a Professional Services Agreement with DKS Associates for the transportation element in the Comprehensive Plan update	Mayor Carol Benson	
	City Administrator	
	City Attorney David Linehan	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Barbara Kincaid	X
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	
	Police – Chief Kiblinger	
Cost Impact (see also Fiscal Note): \$34,655 fixed rate total includes two optional tasks (1)\$3,615 for Public Open House and (2) \$6,555 to attend Public Hearings	Public Works – Seth Boettcher	
Fund Source: - Comp Plan Update-2016 Budget	Court – Stephanie Metcalf	
Timeline: April-June 2016		
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input checked="" type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Draft Resolution; Professional Services Agreement		
<p>SUMMARY STATEMENT:</p> <p>The City entered into a Professional Services Agreement with BergerAbam in 2014 and agreed to a scope of work and budget to update the Comprehensive Plan as required under the Growth Management Act (GMA). BergerAbam hired DKS Associates as their subconsultant for the transportation element of the Comprehensive Plan. The City terminated the Agreement with BergerAbam in October 2015 before DKS Associates had completed all the tasks in the original scope of work. However, at the time the BergerAbam contract was terminated, DKS had already completed over 90% of the tasks in the scope of work for the transportation element. The City has not been billed for the remaining work in the scope that was not done.</p> <p>The City needs DKS to complete the tasks in the original BergerAbam Agreement scope of work in order for the draft transportation element to be whole. In addition, staff has identified additional tasks that are needed to ensure the final draft transportation element is comprehensive for the public, planning commissioners, and council members.</p> <p>Tasks from the original scope that need to be completed include the following:</p> <ul style="list-style-type: none"> • Complete the planning level costs for recommended transportation improvements • Respond to the City's review comments and coordination meeting <p>New tasks include:</p> <ul style="list-style-type: none"> • Traffic simulation modeling • Presentation to staff, Planning Commission, and City Council at joint work session • Presentation of traffic analysis and simulation findings at a Public Open House 		

- Attend City Council/Planning Commission Hearings

The timely approval of this Agreement is important because the Comprehensive Plan update is behind the GMA schedule for adoption. This is causing the City to be ineligible for grant funds.

FISCAL NOTE (Finance Department): The funds for the DKS Agreement for \$34,655 are already included in the 2016 Comp Plan Budget.

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:

RECOMMENDED ACTION: **Motion to adopt Resolution No. 16-? (*Clerk to assign number at time of adoption*)**, authorizing the Mayor to sign a Personal Services Agreement with DKS Associates.

RECORD OF COUNCIL ACTION

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
July 7, 2016		

RESOLUTION NO. 16-1095

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH DKS ASSOCIATES TO COMPLETE THE DRAFT TRANSPORTATION ELEMENT PORTION OF THE COMPREHENSIVE PLAN UPDATE; IN THE AMOUNT OF \$24,485.00 WITH TWO OPTIONAL TASKS THAT, IF AUTHORIZED BY THE CITY, WOULD INCREASE THE CONTRACT AMOUNT TO \$34,655.00

WHEREAS, City of Black Diamond is in need of consulting services to complete the update of its Comprehensive Plan mandated by the State of Washington; and

WHEREAS, in 2014, the City entered into a Professional Services Agreement (Agreement) with BergerAbam, a planning consulting firm, to provide such services under an agreed upon scope of work and budget; and

WHEREAS, BergerAbam began work under the Agreement and subcontracted with DKS Associates for the transportation element of the Comprehensive Plan update;

WHEREAS, the City terminated the Agreement with BergerAbam prematurely, and before DKS completed all of the transportation planning work defined in the scope and budget of the Agreement; and

WHEREAS, the City still needs the remaining transportation planning work to be completed by DKS Associates; and

WHEREAS, the City has also identified additional tasks that are needed in order for the City to be successful in updating its Comprehensive Plan; and

WHEREAS, DKS Associates has provided a scope of work and budget which includes the incomplete tasks from the BergerAbam Agreement together with the newly identified tasks, as needed to complete the transportation element, as described in Exhibit A, attached to the DKS Professional Services Agreement; and

WHEREAS, the proposed contract is in the amount of \$24,485.00 for DKS to complete the work required for the City's Comprehensive Plan update; and

WHEREAS, the proposed contract also includes two "optional" elements (Exhibit A to the Professional Services Agreement attached), which the City could authorize if needed, and which would increase the contract amount to not more than \$34,655.00; and

WHEREAS, the City has identified and budgeted for completion of the Comprehensive Plan update and these amounts in the 2016 budget;

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

Section 1. The Mayor is authorized to execute the attached Professional Services Agreement with DKS Associates for transportation planning services to complete its Comprehensive Plan update, in the amount of \$24,485.00, with two optional tasks that may be authorized by the City and which may increase the contract amount to not more than \$34,655.00.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS ____ DAY OF ____, 2016.

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk

CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT

THIS Agreement is made effective as of the _____ day of _____, 2016, by and between the City of Black Diamond, a municipal corporation, organized under the laws of the State of Washington, whose address is:

CITY OF BLACK DIAMOND, WASHINGTON (hereinafter the "CITY")
24301 Roberts Drive
Black Diamond, WA 98010
Contact: Mayor Carol Benson Phone: 360-886-5700 Fax: 360-886-2592

And DKS Associates, a corporation, organized under the laws of the State of Washington, doing business at:

DKS ASSOCIATES (hereinafter the "CONSULTANT")
720 SW Washington St, Suite 500
Portland, Oregon 97205
Contact: Chris Maciejewski, PE Phone: 503-243-3500

for professional services in connection with the following Project:

Black Diamond Comprehensive Plan Update Transportation Element

TERMS AND CONDITIONS

1. Services by Consultant.

A. Consultant shall perform the services described in the Scope of Work attached to this Agreement as Exhibit "A." The services performed by the Consultant shall not exceed the Scope of Work without prior written authorization from the City.

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

2. Schedule of Work.

A. Consultant shall perform the services described in the scope of work in accordance with the Schedule attached to this contract as Exhibit "A." If delays beyond Consultant's reasonable control occur, the parties will negotiate in good faith to determine whether an extension is appropriate.

B. Consultant is authorized to proceed with services upon receipt of a written Notice to Proceed.

3. **Terms.** This Agreement shall commence on upon the date that both parties sign this contract and shall terminate on June 30, 2016 unless extended or terminated in writing as provided herein.

4. **Compensation.**

- ☒ **FIXED FEE.** Compensation for these services shall be a Fixed Fee of \$24,485. Compensation for optional tasks with City authorization shall be a Fixed Fee of \$3,615 for Task 6 and \$6,555 for Task 7.
- ☐ **TIME AND MATERIALS NOT TO EXCEED.** Compensation for these services shall not exceed \$_____ without written authorization and will be based on billing rates and reimbursable expenses attached hereto as Exhibit C.
- ☐ **TIME AND MATERIALS.** Compensation for these services shall be on a time and material basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit "_____."
- ☐ **OTHER.** _____

5. **Payment.**

A. Consultant shall provide monthly invoices in a format acceptable to the City for work performed to the date of the invoice.

B. All invoices shall be paid by City warrant within forty-five (45) days of receipt of a proper invoice. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

C. Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Copies shall be made available on request.

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

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

6. **Discrimination and Compliance with Laws**

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

B. Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the

approval of the City and shall be subject to the City's general right inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state and municipal laws, rules and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

C. Consultant shall obtain a City of Black Diamond business license prior to receipt of written Notice to Proceed.

D. Violation of this Paragraph 6 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by City, in whole or in part, and may result in ineligibility for further work for City.

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

8. **Suspension and Termination of Agreement**

A. Termination without cause. This Agreement may be terminated by the City at any time for public convenience, for the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors.

B. Termination with cause. The Agreement may be terminated upon the default of the Consultant.

C. Rights Upon Termination.

1. *With or Without Cause.* Upon termination for any reason, all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City, and Consultant shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination, not to exceed the total compensation set forth herein. Consultant shall not be entitled to any reallocation of cost, profit or overhead. Consultant shall not in any event be entitled to anticipated profit on work not performed because of such termination. Consultant shall use its best efforts to minimize the compensation payable under this Agreement in the event of such termination. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise.

2. *Default.* If the Agreement is terminated for default, the Consultant shall not be entitled to receive any further payments under the Agreement until all work called for has been

fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Consultant. The Consultant shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.

D. Suspension. The City may suspend this Agreement, at its sole discretion. Any reimbursement for expenses incurred due to the suspension shall be limited to the Consultant's reasonable expenses, and shall be subject to verification. The Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

E. Notice of Termination or Suspension. If delivered to the Consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date as stated in the City's notice of termination, whichever is later. Notice of suspension shall be given to the Consultant in writing upon one week's advance notice to Consultant. Such notice shall indicate the anticipated period of suspension. Notice may also be delivered to the Consultant at the address set forth in Section 15 herein.

9. **Standard of Care.** Consultant represents and warrants that it has the requisite training, skill and experience necessary to provide the services under this agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant under this agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

10. Ownership of Work Product.

A. All data materials, reports, memoranda, and other documents developed under this Agreement whether finished or not shall become the property of City, shall be forwarded to City at its request and may be used by City as it sees fit. Upon termination of this agreement pursuant to paragraph 8 above, all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City.

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

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

12. **Indemnification.** The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's

inspection or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

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

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

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

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named by endorsement as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and Employer's Liability Insurance.
4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

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

2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
4. Employer's Liability insurance each accident \$1,000,000; Employer's Liability Disease each employee \$1,000,000; and Employer's Liability Disease – Policy Limit \$1,000,000.

C. Other Insurance Provisions

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

1. The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
3. The City will not waive its right to subrogation against the Consultant. The Consultant's insurance shall be endorsed acknowledging that the City will not waive their right to subrogation. The Consultant's insurance shall be endorsed to waive the right of subrogation against the City, or any self-insurance, or insurance pool coverage maintained by the City.
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 City.

D. Acceptability of Insurers

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

E. Verification of Coverage

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

14. Assigning or Subcontracting. Consultant shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld in the sole discretion of the City.

15. Notice. Any notices required to be given by the City to Consultant or by Consultant to the City shall be in writing and delivered to the parties at the following addresses:

Carol Benson
Mayor
24301 Roberts Drive
Black Diamond, WA 98010

Phone: 360-886-5700
Fax: 360-886-2592

DKS Associates
Attn: Chris Maciejewski, PE
720 SW Washington St, Suite 500
Portland, Oregon 97205

Phone: 503-243-3500

16. Resolution of Disputes and Governing Law.

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

B. If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the Mayor's determination in a reasonable time, or if the Consultant does not agree with the Mayor's decision on a disputed matter, jurisdiction of any resulting litigation shall be filed in King County Superior Court, King County, Washington.

C. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney's fees from the other party.

17. General Provisions.

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

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

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

D. Entire Agreement. The written provisions of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, the Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and the Exhibits attached hereto, which may or may not have been dated prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document

Revised 3/30/16

as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth above.

CITY OF BLACK DIAMOND,
WASHINGTON

DKS ASSOCIATES

By: _____
Carol Benson
Mayor

Date: _____

Attest:

By: _____
Brenda Martinez
City Clerk

APPROVED AS TO FORM:

By: _____
Carol A. Morris
City Attorney

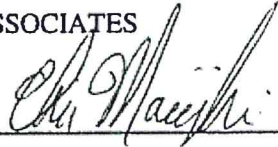
By: 
Name: Chris Maciejewski
Title: Principal
Date: 3/30/16

Exhibit "A" City of Black Diamond Professional Services Agreement

Black Diamond Comprehensive Plan Update Transportation Element Work Schedule

March 7, 2016

Scope Task	Schedule
Task 1 – Planning Level Cost Estimates for recommended transportation improvements	Within 1 month of signed contract
Task 2 – Respond to City Comments	Within 1 month of signed contract
Task 3 – Traffic Simulation Modeling	Within 2 months of signed contract
Task 4 – City Staff Coordination Meeting	Within 3 months of signed contract
Task 5 – Joint City Council/Planning Commission Work Session	Within 3 months of signed contract
Optional Tasks	
Task 6 – Public Open House to present traffic analysis and simulation findings	TBD
Task 7 – City Council/Planning Commission Hearings	TBD

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT:	Agenda Date: July 7, 2016	AB16-043
Resolution authorizing the Mayor to execute a Legal Services agreement with Kenyon Disend, PLLC	Mayor Carol Benson	X
	City Administrator	
	City Attorney David Linehan	
	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:		
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input checked="" type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Resolution; agreement		
<p>SUMMARY STATEMENT:</p> <p>In April of 2016 Yvonne Ward was hired as Emergency Interim City Attorney.</p> <p>Thereafter, the City advertised for firms or individuals qualified and interested in service as our City Attorney; three firms responded. A selection panel including the Mayor Benson, Councilmember Pepper, Councilmember Deady, and Interim City Attorney Yvonne Ward interviewed the three firms.</p> <p>After consideration, the firm Kenyon Disend who specializes in municipal law was selected with David Linehan serving as the City Attorney.</p> <p>The contract shall be in effect until December 31, 2016 with the parties meeting 60 days prior to expiration to confer about renewal terms.</p> <p>FISCAL NOTE (Finance Department): The Budget for Legal expenditures for 2016 is \$94,000. It is difficult to know if the legal budgets will cover legal costs in 2016, as it is unknown the number of legal issues and hours that will be needed for the balance of 2016. While the base hourly rate for Kenyon Disend primary attorney is higher, they will not be charging mileage for travel and this will help offset some of the costs. If 2016 legal costs exceed the 2016 budget, a budget change will probably be required to cover those costs.</p>		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:		
<p>RECOMMENDED ACTION: MOTION to adopt Resolution No. 16-?, (clerk to assign number at adoption) authorizing the Mayor to execute a legal services agreement with Kenyon Disend, PLLC</p>		

RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
July 7, 2016		

RESOLUTION NO. 16-?

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON,
AUTHORIZING THE MAYOR TO EXECUTE A LEGAL
SERVICES AGREEMENT WITH KENYON DISEND, PLLC**

WHEREAS, the City is in need of a City Attorney to provide legal services; and

WHEREAS, the City advertised for qualified firms and individuals to fill the position of City Attorney and a selection panel including the Mayor, Councilmember Pepper, Councilmember Deady, and Interim City Attorney Yvonne Ward interviewed three firms; and

WHEREAS, after consideration the firm Kenyon Disend, PLLC who specializes in municipal law was selected;

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

Section 1. The Mayor is hereby authorized to execute a legal services agreement with Kenyon Disend, PLLC 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 __ DAY OF ____, 2016.

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk

AGREEMENT FOR LEGAL SERVICES

I. PARTIES

This Agreement for Legal Services ("Agreement") is made on this 3rd day of June, 2016, between the City of Black Diamond ("City") and Kenyon Disend, PLLC ("Attorneys").

II. SERVICES OF THE ATTORNEYS

Attorneys shall provide the legal services set forth in this Agreement and shall work for City at the pleasure of and under the direction of the Mayor. David Linehan will serve as the City Attorney and will direct the services provided under this Agreement.

III. QUALITY OF SERVICES

Attorneys shall perform all legal services covered by this Agreement in a capable and efficient manner, and in accordance with the professional standards of the Washington State Bar Association. Attorneys shall be available at all times for consultation and advice, including on weekends and holidays if needed, directly or through telephone, e-mail, or other forms of communication.

IV. SERVICES PROVIDED

The City Attorney shall be principally responsible for performing all legal work for the City, except prosecution of criminal cases, where defense is provided through insurance coverage, matters in which a conflict of interest exists, or as may otherwise be assigned to other counsel by the Mayor. Attorneys understand that they will not provide services related to collective bargaining or other employment-related matters, as those services are provided to the City under separate contract with another law firm. The following list of duties is illustrative, but is not necessarily inclusive, of the services to be performed by the Attorneys:

(1) Review or draft City ordinances, agreements, resolutions, interlocal agreements, and other legal documents as requested by City;

(2) Represent City in all lawsuits and other contested administrative proceedings commenced by or against City, except where defense is provided through insurance coverage or is assigned to other counsel by the Mayor;

(3) Consult with and advise the Mayor, City Councilmembers and staff members in person, by telephone, e-mail, or by written memo on City business; and

(4) Attend regular City Council meetings and other meetings as requested by the Mayor.

**V.
FEES AND COSTS**

A. Legal Services. For 2016, City shall be billed for legal services described above at the Attorneys' and paralegals' regular hourly rates as set forth in Exhibit A. Attorneys will also charge City fifteen cents per page for black and white photocopying and facsimile transmissions, twenty-one cents per page for color photocopying, and shall be reimbursed for legal messenger services, postage, computerized legal research charges, filing fees advanced on behalf of City, and other direct expenses without markup.

B. Attorneys shall not charge City for mileage reimbursement costs, nor for long-distance telephone charges.

C. Fees and costs for Attorneys' services, initially paid to City by land use applicants or other third parties pursuant to City ordinance or other action of City authorizing such reimbursement ("Pass-Through Fees"), may be subject to prior review for reasonableness by such other third party. In the event that any third party challenges the reasonableness of Attorneys' Pass-Through Fees, City shall only be responsible to pay Attorneys for such portion of the challenged fees and costs as City in its sole discretion deems reasonable.

D. Attorneys' current rates expressly account for any taxes or related charges ("charges") imposed on professional service providers by City and State of Washington. In the event that any such additional charges are imposed during the term of this Agreement, Attorneys shall be entitled to recover any such additional charges as a reimbursable cost item on Attorneys' monthly billing statements.

E. Attorneys shall apply for and obtain a business license with City and shall maintain a current business license for the duration of this contract. Fees and costs associated with the application shall not be charged to City.

**VI.
PAYMENT TERMS**

Fees and costs are due in full from City upon billing by Attorneys. A service charge shall accrue at the rate of 12% per annum, but shall only be added to any balance remaining unpaid sixty (60) days after the statement date.

**VII.
TIME RECORDS**

Attorneys will maintain accurate time records describing the services performed and the dates upon which said services were performed, and shall provide a monthly statement to City setting forth the time expended for such services.

VIII.
AGREEMENT PERIOD

After City Council approval, this Agreement takes immediate effect, and shall remain in effect until December 31, 2016, unless sooner terminated as set forth herein. The parties shall meet and confer regarding renewal terms at least sixty days before expiration of this contract. Each party shall have the right to terminate this Agreement upon sixty days' written notice.

IX.
INDEMNIFICATION/HOLD HARMLESS


Attorneys shall defend, indemnify and hold City and its officers and employees harmless from any suits brought against City, and damages awarded as a result of such suits, arising out of or resulting from the fault of Attorneys in performance of this Agreement, except to the extent of any fault of City or its officers or employees.

X.
INSURANCE

Attorneys shall maintain for the protection of City a professional errors and omissions insurance policy with minimum coverage of one million dollars per claim and three million dollars annual aggregate.

CITY OF BLACK DIAMOND

KENYON DISEND, PLLC

By: 
Carol Benson, Mayor

By: _____
Michael R. Kenyon

EXHIBIT A

**KENYON DISEND, PLLC
HOURLY RATE SCHEDULE FOR YEAR 2016**

ATTORNEYS:

Partners and Senior Attorneys:

Michael R. Kenyon	\$305.00
Bruce L. Disend	\$305.00
Kim Adams Pratt	\$270.00
Robert F. Noe	\$270.00
David A. Linehan	\$270.00

Associate Attorneys:

Rachel B. Turpin	\$175.00
Ann Marie Soto	\$170.00
Charlotte A. Archer	\$165.00
Amy S. Mill	\$150.00
Alexandra L. Kenyon	\$135.00

PARALEGALS:

Margaret C. Starkey	\$125.00
Sheryl A. Loewen	\$110.00
Pam M. Odegard	\$110.00
Kathy I. Swoyer	\$110.00
Terry T. Curran	\$110.00
Antoinette M. Mattox	\$100.00