



CITY OF BLACK DIAMOND

November 3, 2016 Regular Business Meeting Agenda – REVISED_3 Approved Per BD Council Rules of Procedure, Resolution 16-1108

25510 Lawson St., Black Diamond, Washington

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

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

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.

CONSENT AGENDA:

- 1) Claim Checks** – November 3, 2016 - No. 44041 through No. 44092 (Voids, 43927, 43928, 44012) and EFTs in the amount of \$227,491.74

PUBLIC HEARINGS:

- 2) AB16-061A** – Continuation - Proposed Resolution Regarding 2017 Stormwater Management Program
Councilmember Pepper
Council Committee Assignment: Growth Management, Land Use, And Community Services

UNFINISHED BUSINESS:

- 3) Postponed Minutes** – Council/Planning Commission Joint Meeting of July 12, 2016, Council meetings of July 21, 2016 and August 18, 2016, Council/Planning Commission Joint Meeting of August 23, 2016, Special Meeting of August 25, 2016, and Council meeting of September 1, 2016 Councilmembers
- 4) AB16-062A** – Resolution Authorizing a Collective Bargaining Agreement with the Black Diamond Police Officers Association Councilmember Morgan

NEW BUSINESS:

- 5) AB16-060A** – First Reading - Resolution Authorizing a PSA with RH2 to serve as Civil Engineering Consultant to Water and Sewer Utilities Councilmembers Deady and Edelman
Council Committee Assignment: Government Operations
- 6) AB16-063** – First Reading - Ordinance Granting Franchise Agreement with CCD Black Diamond Partners, LLC Councilmembers Deady and Edelman
Council Committee Assignment: Government Operations
- 7) AB16-064** – First Reading - Ordinance Granting Franchise Agreement with Astound Broadband, LLC Councilmembers Deady and Edelman
Council Committee Assignment: Government Operations

8) AB16-065 – First Reading - Resolution Authorizing Interlocal Agreement with AWC RMSA

Councilmember Morgan

Council Committee Assignment: Government Operations

9) AB16-066 – First Reading - Resolution Regarding Contracting Policies

Councilmember Morgan

Council Committee Assignment: Budget and Finance

DEPARTMENT REPORTS:

MAYOR'S REPORT:

COUNCIL REPORT:

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

ATTORNEY REPORT:

PUBLIC COMMENTS:

EXECUTIVE SESSION:

ADJOURNMENT:



CERTIFICATION

Date: November 3, 2016 Council Meeting

Check No.'s/EFT Batch Name Check/EFT Date Amount

EFT's	October Month End EFT's	10/31/16	\$ 3,030.00
43927, 43928, 44012	October Voids 3 rd Batch	10/28/16	(\$918.90)
44041-44042	October Pre Council 3 rd Batch	10/18/16	\$ 96,363.31
44043-44089	October 3 rd Batch	11/4/16	\$ 121,440.33
44090-44092	November Pre Council 1 st Council	11/4/16	\$ 7,577.00
		TOTAL	\$ 227,491.74

I, THE UNDERSIGNED DO HEREBY CERTIFY UNDER THE PENALTY OF PERJURY, THAT THE MATERIALS HAVE BEEN FURNISHED, THE SERVICES RENDERED AND OR THE LABOR PERFORMED AS DESCRIBED HEREIN AND THAT THE CLAIM IS A JUST, DUE AND UNPAID OBLIGATION AGAINST THE CITY OF BLACK DIAMOND, AND THAT I AM AUTHORIZED TO AUTHENTICATE AND CERTIFY TO SAID CLAIM.

Carol Benson

MAY MILLER, FINANCE DIRECTOR / CAROL BENSON, MAYOR

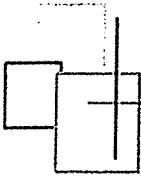
10-27-2016

DATE

DATE

COUNCILMEMBERS

DATE



Register

Fiscal: 2016

Deposit Period: 2016 - November, 2016 - October

Check Period: 2016 - November - Pre-Council Nov 1st Council, 2016 - November - 1st Council, 2016 - October - October

Month End EFT, 2016 - October - October 3rd Batch, 2016 - October - Voids Oct 3rd Batch

Check	Vendor	Print Date	Amount
Columbia Bank			
Check			
<u>44041</u>	Judicial Conference Registrar	10/18/2016	\$35.00
<u>44042</u>	Lakeridge Paving	10/18/2016	\$96,328.31
<u>44043</u>	ADT Security Services (PA)	11/4/2016	\$136.32
<u>44044</u>	AHBL, Inc.	11/4/2016	\$14,600.00
<u>44045</u>	BHC Consultants, LLC	11/4/2016	\$1,820.00
<u>44046</u>	Blumenthal Uniforms & Equipment	11/4/2016	\$124.56
<u>44047</u>	Brat Wear, Inc	11/4/2016	\$555.84
<u>44048</u>	CDW Government, Inc	11/4/2016	\$1,964.08
<u>44049</u>	CHS/Cenex	11/4/2016	\$1,181.87
<u>44050</u>	City of Enumclaw	11/4/2016	\$2,902.25
<u>44051</u>	City of Lake Forest Park	11/4/2016	\$300.00
<u>44052</u>	City of Maple Valley	11/4/2016	\$768.75
<u>44053</u>	Comcast (34744)	11/4/2016	\$312.58
<u>44054</u>	Comcast (PA)	11/4/2016	\$394.47
<u>44055</u>	Ferguson Waterworks	11/4/2016	\$990.73
<u>44056</u>	Ferrell's Fire Ext. Co. Inc.	11/4/2016	\$26.28
<u>44057</u>	Good To Go!	11/4/2016	\$8.25
<u>44058</u>	Greater Maple Valley-Black Diamond Chamber of Commerce	11/4/2016	\$20.00
<u>44059</u>	H.D. Fowler Company	11/4/2016	\$18.94
<u>44060</u>	Home Depot Credit Service	11/4/2016	\$64.77
<u>44061</u>	HWA GeoSciences Inc.	11/4/2016	\$2,950.00
<u>44062</u>	Icicle Creek Engineers	11/4/2016	\$13,512.50
<u>44063</u>	Jason Anderson	11/4/2016	\$207.00
<u>44064</u>	Johnsons Home & Garden	11/4/2016	\$70.37
<u>44065</u>	KING COUNTY FINANCE	11/4/2016	\$232.00
<u>44066</u>	King County Finance I-Net	11/4/2016	\$375.00
<u>44067</u>	King County Radio Comm Services	11/4/2016	\$1,326.01
<u>44068</u>	Lakeside Industries	11/4/2016	\$160.01
<u>44069</u>	Office Products Nationwide	11/4/2016	\$629.19
<u>44070</u>	Orkin Commercial Services	11/4/2016	\$198.67
<u>44071</u>	Parametrix, Inc.	11/4/2016	\$46,435.00

<u>44072</u>	Puget Sound Energy	11/4/2016	\$4,894.78
<u>44073</u>	Republic Services, Inc. #176	11/4/2016	\$668.04
<u>44074</u>	Safe Security	11/4/2016	\$49.98
<u>44075</u>	Shake N Bake	11/4/2016	\$332.73
<u>44076</u>	Shred-It USA	11/4/2016	\$44.23
<u>44077</u>	South Correctional Entity	11/4/2016	\$5,966.00
<u>44078</u>	Summit Law Group	11/4/2016	\$2,327.50
<u>44079</u>	Triad Machinery	11/4/2016	\$464.29
<u>44080</u>	Valley Communications	11/4/2016	\$11,712.11
<u>44081</u>	VenTek International	11/4/2016	\$90.00
<u>44082</u>	Verizon Wireless	11/4/2016	\$1,129.73
<u>44083</u>	Vision Forms LLC	11/4/2016	\$278.60
<u>44084</u>	Vision Municipal Solutions, LLC	11/4/2016	\$271.50
<u>44085</u>	Voice of The Valley	11/4/2016	\$357.00
<u>44086</u>	Washington State Patrol	11/4/2016	\$132.75
<u>44087</u>	Washington Tractor	11/4/2016	\$353.65
<u>44088</u>	Water Management Laboratories, Inc.	11/4/2016	\$47.00
<u>44089</u>	WSAPT	11/4/2016	\$35.00
<u>44090</u>	Kara Murphy Richards	11/4/2016	\$2,000.00
<u>44091</u>	Melanie Thomas Dane	11/4/2016	\$2,000.00
<u>44092</u>	Sorci Family LLC	11/4/2016	\$3,577.00
<u>EFT Payment</u>	CB Columbia Bank EFT	10/31/2016	\$1,171.52
<u>EFT Payment</u>	Dept of Licensing-Firearms Online	10/31/2016	\$186.00
<u>EFT Payment</u>	Invoice Cloud	10/31/2016	\$122.70
<u>EFT Payment</u>	Merchant Card Services	10/31/2016	\$653.70
<u>EFT Payment</u>	U.S. Postal Service (Black Diamond)	10/31/2016	\$696.08
<u>EFT Payment</u>	U.S. Postal Service (CMRS-FP)	10/31/2016	\$200.00
<u>V43927</u>	Adamson Police Products	10/28/2016	(\$792.78)
<u>V43928</u>	Agrishop Inc.	10/28/2016	(\$107.18)
<u>V44012</u>	HD Supply Waterworks, Ltd.	10/28/2016	(\$18.94)
		Total	\$227,491.74

Voucher Directory with Transaction Date

Voucher Number	Transaction Date	Fiscal Description	Amount
Transaction Reference	Association Number	Name	Title

CB Columbia Bank EFT

EFT Payment 10/26/2016 1:58:51 PM - 1

9/30/2016

2016 - October - October Month End EFT

093016 CB

Quarterly Analysis Fees

001-000-180-518-90-49-05
101-000-000-543-30-49-12
401-000-000-534-80-49-12
407-000-000-535-80-49-12
410-000-000-531-10-49-12

Banking Fees
Technology-Sys, Sec, Email, SW, Etc
Tech-Sys, Sec, Email, SW, Etc
Tech-Sys, Sec, Email, SW, etc.
Tech-Sys, Sec, Email, SW, Etc.

\$175.73
\$187.44
\$269.45
\$269.45
\$269.45
\$1,171.52
\$1,171.52
\$1,171.52

Total EFT Payment 10/26/2016 1:58:51 PM - 1

Total CB Columbia Bank EFT

Dept of Licensing-Firearms Online

EFT Payment 10/26/2016 1:58:51 PM - 2

10/4/2016

2016 - October - October Month End EFT

100416 DFAO

633-000-000-586-11-00-00

DOL- Firearms EFT Payments

Total 100416 DFAO

\$57.00
\$57.00

101216 DFAO

633-000-000-586-11-00-00

DOL- Firearms EFT Payments

Total 101216 DFAO

\$18.00
\$18.00

101916 DFAO

633-000-000-586-11-00-00

DOL- Firearms EFT Payments

Total 101916 DFAO

\$111.00
\$111.00

Total EFT Payment 10/26/2016 1:58:51 PM - 2

Total Dept of Licensing-Firearms Online

\$186.00
\$186.00

Vendor	Transaction Number	Transaction Date	Fiscal Description	Amount	Postage	Vendor
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Total 100316 USPS BD
 Total EFT Payment 10/26/2016 1:58:51 PM - 5
 Total U.S. Postal Service (Black Diamond)
 \$348.04
 \$696.08
 \$696.08

U.S. Postal Service (CMRS-FP)
 EFT Payment 10/26/2016 1:58:51 PM - 6
 101116 USPS CRMS FP
 001-000-180-518-90-42-00
 Total 101116 USPS CRMS FP
 Total EFT Payment 10/26/2016 1:58:51 PM - 6
 Total U.S. Postal Service (CMRS-FP)
 \$200.00
 \$200.00
 \$200.00

Vendor Count 6
 Grand Total \$3,030.00

Voucher Directory with Transaction Date

Transaction Number	Transaction Date	Description	Amount	Vendor
10/01/16	10/01/16	10/01/16	10/01/16	10/01/16

Adamson Police Products

V43927 10/7/2016 2016 - October - Voids Oct 3rd Batch

Voids Check 43927

001-000-210-521-10-31-04 Uniforms
Police Overpayment-Check Returned

(\$792.78)
(\$792.78)
(\$792.78)

Total V43927
Total Adamson Police Products

Agrishop Inc.

V43928 10/7/2016 2016 - October - Voids Oct 3rd Batch

Voids Check 43928-Overpayment, Check Returned

001-000-270-576-80-35-00 Small Tools & Safety Equip
001-000-280-536-20-35-00 Small Tools & Safety Equip
401-000-000-534-80-35-00 Small Tools & Safety Equip
407-000-000-535-80-35-00 Small Tools & Safety Equipment
407-000-000-535-80-35-00 Small Tools & Safety Equipment
410-000-000-531-10-35-00 Small Tools and Safety Equipment

(\$2.15)
(\$4.29)
(\$23.58)
(\$25.72)
(\$25.72)
(\$25.72)
(\$107.18)
(\$107.18)
(\$107.18)

Total V43928
Total Agrishop Inc.

HD Supply Waterworks, Ltd.

V44012 10/21/2016 2016 - October - Voids Oct 3rd Batch

Voids Check 44012-Wrong Vendor, See H.D. Fowler

401-000-000-534-80-48-02 Water System Rep & Mtc-Ext/Int

(\$18.94)
(\$18.94)
(\$18.94)
(\$18.94)

Total V44012
Total HD Supply Waterworks, Ltd.

Vendor Count 3

Grand Total (\$918.90)

Voucher Directory with Transaction Date

Vendor	Transaction Number	Transaction Reference	Transaction Date	Fiscal Description	Void Amount
		Account Number		Name Title	

Judicial Conference Registrar

44041

101416 JCR

10/17/2016

2016 - October - Pre-Council Oct 3rd Batch

Training

\$35.00

Total 44041

Total 101416 JCR

Total Judicial Conference Registrar

\$35.00

Lakeridge Paving

44042

27556 LRP

8/31/2016

2016 - October - Pre-Council Oct 3rd Batch

August Services

\$96,328.31

Total 44042

Total 27556 LRP

Total Lakeridge Paving

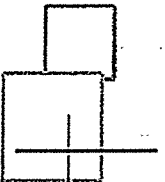
\$96,328.31

Vendor Count 2

Grand Total

\$96,363.31

Voucher Directory with Transaction Date



Vendor	Account	Transaction Date	Project Description	Amount
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ADT Security Services (PA)

44043

602933145

10/13/2016

2016 - October - October 3rd Batch

October 30, 2016 to January 29, 2017 Services

001-000-254-518-20-49-00

Facilities Security

\$136.32

Total 44043

Total 602933145

Total ADT Security Services (PA)

\$136.32

AHBL, Inc.

44044

99726

8/31/2016

2016 - October - October 3rd Batch

July 26 to August 25, 2016 Services

001-000-240-558-60-41-06

Prof Svs-Gen Gvt Planner

\$8,300.00

Total 99726

\$8,300.00

August 26 to September 25, 2016 Services

001-000-240-558-60-41-06

Prof Svs-Gen Gvt Planner

\$6,300.00

Total 99892

\$6,300.00

Total AHBL, Inc.

Total 44044

\$14,600.00

BHC Consultants, LLC

44045

8185

10/5/2016

2016 - October - October 3rd Batch

August 27 to September 23, 2016 Services

001-000-240-558-61-41-03

Bldg Official/Code Inspc. Costs

\$560.00

Total 8185

\$560.00

September Services

320-000-020-595-10-63-00

Roberts Dr Rehab-Eng.

\$1,260.00

Total 8209

\$1,260.00

Total BHC Consultants, LLC

Total 44045

\$1,820.00

Blumenthal Uniforms & Equipment

44046

6139309

9/28/2016

2016 - October - October 3rd Batch

001-000-210-521-10-31-04

Police-Shirts

Uniforms

\$124.56

Total 6139309

Total 44046

Total Blumenthal Uniforms & Equipment

Brat Wear, Inc

44047

20028

10/10/2016

2016 - October - October 3rd Batch

001-000-210-521-10-31-04

Police-Jumpsuit, Embroidered Tags

Uniforms

\$555.84

Total 20028

Total 44047

Total Brat Wear, Inc

CDW Government, Inc

44048

FJN4127

9/15/2016

2016 - October - October 3rd Batch

310-000-011-594-18-64-00

Computer for Finance and PV Director

General Government Technology

\$1,964.08

Total FJN4127

Total 44048

Total CDW Government, Inc

CHS/Cenex

44049

093016 Cenex

9/30/2016

2016 - October - October 3rd Batch

September Fuel

001-000-180-518-50-32-01

Fuel-Central Services

\$126.60

001-000-246-558-70-32-00

Fuel

\$101.85

001-000-270-576-80-32-00

Fuel

\$38.14

001-000-280-536-20-32-00

Fuel

\$19.07

101-000-000-543-50-32-00

Fuel

\$209.75

401-000-000-534-80-32-00

Fuel

\$228.82

407-000-000-535-80-32-00

Fuel

\$228.82

Total 44049		Total 093016 Cenex	410-000-000-531-10-32-00	Fuel	\$228.82
Total CHS/Cenex					\$1,181.87
					\$1,181.87
City of Enumclaw					\$1,181.87
44050					
	04841	10/14/2016	2016 - October - October 3rd Batch		
		September Jail Services			
		001-000-211-523-60-49-00	Jail Costs		
Total 44050	Total 04841				\$2,902.25
					\$2,902.25
Total City of Enumclaw					\$2,902.25
City of Lake Forest Park					\$2,902.25
44051					
	CSPA-10116-07	10/11/2016	2016 - October - October 3rd Batch		
		001-000-210-521-10-49-02	Memberships		
		Police-Annual Dues			
Total 44051	Total CSPA-10116-07				\$300.00
					\$300.00
Total City of Lake Forest Park					\$300.00
City of Maple Valley					\$300.00
44052					
	INV02856	9/29/2016	2016 - October - October 3rd Batch		
		September Services			
		001-000-240-558-51-41-03	Bldg Official/Code Inspc. Costs		
Total 44052	Total INV02856				\$768.75
					\$768.75
Total City of Maple Valley					\$768.75

Comcast (34744)

44053

102416 Comcast

10/24/2016

2016 - October - October 3rd Batch

October 25 to November 24, 2016 Services

001-000-120-512-50-42-00

Telephone/DSL

\$217.58

001-000-214-521-20-42-00

Court Internet Act 8498 34 014 0122286

Police Telephone/DSL/Air Cards

\$95.00

Police Internet Act 8498 34 014 0106156

Total 102416 Comcast

Total 44053

Total Comcast (34744)

\$312.58
\$312.58
\$312.58

Comcast (PA)

44054

46671815

10/1/2016

2016 - October - October 3rd Batch

October Services

001-000-248-518-20-42-00

MDRT Telephone, Fax, Internet costs

001-000-254-518-20-42-00

Facilities-Communication

\$55.21

101-000-000-542-90-42-01

Telephone/DSL/Radios

\$236.72

401-000-000-534-80-42-00

Telephone/DSL/Radios

\$15.77

407-000-000-535-80-42-00

Telephone/DSL/Radios

\$31.55

410-000-000-531-10-42-00

Telephone/DSL/Radios

\$27.61

Total 46671815

Total 44054

Total Comcast (PA)

\$394.47
\$394.47
\$394.47

Ferguson Waterworks

44055

0529279

10/17/2016

2016 - October - October 3rd Batch

401-000-000-534-80-31-01

Operating Supplies

\$990.73

Meters

Total 0529279

Total 44055

Total Ferguson Waterworks

\$990.73
\$990.73
\$990.73

Ferrell's Fire Ext. Co. Inc.

44056

26759

10/11/2016

2016 - October - October 3rd Batch

Annual Inspections

001-000-210-521-10-48-01

Vehicle Maintenance & Repair

\$26.28

Police Vehicle Extinguishers

Total 44056			\$26.28
Total Ferrell's Fire Ext. Co. Inc.			\$26.28

Good To Go!			\$26.28
44057			
TB-163572446	10/17/2016	2016 - October - October 3rd Batch	
		Lodging, Meals & Mileage	\$8.25
		Police-Training in Seattle	\$8.25
Total 44057			\$8.25
Total TB-163572446			\$8.25

Greater Maple Valley-Black Diamond Chamber of Commerce			\$8.25
44058			
9584	10/20/2016	2016 - October - October 3rd Batch	
		Lodging, Meals and Mileage	\$20.00
		Council-Chamber Luncheon, Janie Edelman	\$20.00
Total 9584			\$20.00
Total 44058			\$20.00
Total Greater Maple Valley-Black Diamond Chamber of Commerce			\$20.00

H.D. Fowler Company			\$20.00
44059			
114347132 HD Fowler	10/7/2016	2016 - October - October 3rd Batch	
		Water System Rep & Mic-Ex/Int	\$18.94
		8" OS & Y Gate Valve	\$18.94
Total 114347132 HD Fowler			\$18.94
Total 44059			\$18.94
Total H.D. Fowler Company			\$18.94

Home Depot Credit Service					
44060		10/13/2016	2016 - October - October 3rd Batch		
2591157					
		001-000-191-525-60-31-00	Emergency Management Supplies		\$64.77
		EOC-Flashlights			
Total 44060	Total 2591157				\$64.77
Total Home Depot Credit Service					\$64.77
HWA GeoSciences Inc.					
44061		9/30/2016	2016 - October - October 3rd Batch		
27010					
		September Services			
		001-000-257-558-70-41-05	MDRT Geotech- HWA and SubTerra		\$2,950.00
		On Call Services			
Total 44061	Total 27010				\$2,950.00
Total HWA GeoSciences Inc.					\$2,950.00
Icicle Creek Engineers					
44062		10/20/2016	2016 - October - October 3rd Batch		
161020-1					
		Services Through Occtober 11, 2016			
		402-000-003-594-34-63-06	Springs/Task 3		\$13,512.50
Total 44062	Total 161020-1				\$13,512.50
Total Icicle Creek Engineers					\$13,512.50
Jason Anderson					
44063		10/13/2016	2016 - October - October 3rd Batch		
PUB16-0044					
		001-000-240-341-81-00-00	Technology Cost Recovery Fee		\$45.00
		Refund of Permit Application Fees			
		109-000-000-345-85-22-00	Traffic Mitigation Fees		\$162.00
		Refund of Permit Application Fees			
Total 44063	Total PUB16-0044				\$207.00
Total Jason Anderson					\$207.00
					\$207.00

Johnsons Home & Garden			
44064	10/13/2016	2016 - October - October 3rd Batch	
409695			\$70.37
101-000-000-542-90-31-01			
	Chain Saw Blade	Operating Supplies	
Total 409695			
Total Johnsons Home & Garden			
KING COUNTY FINANCE			
44065	9/30/2016	2016 - October - October 3rd Batch	
2077129			\$232.00
410-000-000-531-10-49-50			
	6 Utility Liens / 1 Release	Bank Analysis Fees/Merch CC/ Lien Fees	
Total 2077129			
Total 44065			
Total KING COUNTY FINANCE			
King County Finance I-Net			
44066	10/5/2016	2016 - October - October 3rd Batch	
11005055			\$232.00
September Services			
	001-000-214-521-20-42-01	Police Comm KC I-Net	\$232.00
Total 11005055			
Total 44066			
Total King County Finance I-Net			
King County Radio Comm Services			
44067	9/22/2016	2016 - October - October 3rd Batch	
11442			\$375.00
September Services			
	001-000-214-521-20-41-03	K/C 800 Mhz Radio Costs	\$375.00
Total 11442			
Total 44067			
Total King County Radio Comm Services			
Lakeside Industries			
44068	10/24/2016	2016 - October - October 3rd Batch	
12046580MB			\$160.01
320-000-002-595-30-63-01			
		Chip Seal & Pot Hole Repair	



Asphalt Cold Patch				
Total 44068	Total 12046580MB			\$160.01
Total Lakeside Industries				\$160.01
				\$160.01
Office Products Nationwide				
44069		10/5/2016	2016 - October - October 3rd Batch	
869074-0			Office & Operating Supplies	\$166.17
Total 869074-0		001-000-240-558-51-31-00		\$166.17
869225-0			Operating Supplies	\$174.10
Total 869225-0		001-000-120-512-50-31-00		\$174.10
870078-0			Office Supplies City Hall	\$177.28
Total 870078-0		001-000-180-518-90-31-00		\$177.28
870174-0			Office Supplies City Hall	\$111.64
Total 870174-0		001-000-180-518-90-31-00		\$111.64
Total 44069				\$629.19
Total Office Products Nationwide				
Orkin Commercial Services				
44070		10/17/2016	2016 - October - October 3rd Batch	
134665335			Police Bldg Repairs & Maintenance	\$81.12
Total 134665335		001-000-212-521-50-48-02		\$81.12
134665771			MDRT Bldg Custodial Costs	\$30.56
Total 134665771		001-000-248-518-20-49-01		\$30.56
		001-000-254-518-20-49-01	Facilities Building Custodial	\$86.99
Total 44070				\$117.55
Total 134665771				\$198.67
Total Orkin Commercial Services				\$198.67

Parametrix, Inc.

44071

01-77822

10/24/2016

2016 - October - October 3rd Batch

August 28 to October 1, 2016 Services

410-000-010-531-10-41-00

KC Grant-Culvert Replacement

Total 01-77822

\$13,016.25

01-77823

August 28 to October 1, 2016 Services

320-000-020-595-10-63-00

Roberts Dr Rehab-Eng.

Total 01-77823

Total 44071

Total Parametrix, Inc.

\$33,418.75
\$33,418.75
\$46,435.00
\$46,435.00

Puget Sound Energy

44072

101116 PSE

10/11/2016

2016 - October - October 3rd Batch

September 2 to October 30, 2016 Services

001-000-212-521-50-47-00

Electric/gas

\$57.50

001-000-212-521-50-47-00

Police Storage-Acct 200024493906

\$424.54

001-000-212-521-50-47-00

Police/Court Elec-Acct 200009377470

\$42.12

001-000-254-518-20-47-00

Police/Court Gas-Acct 20000563300

\$311.25

001-000-254-518-20-47-00

CD Elec-Acct 200019932462

\$207.50

001-000-270-575-30-47-00

CD/PW/MDRT Bldg Elec-Acct 200019932462

\$192.20

001-000-270-575-51-47-00

Museum-Acct 200001525159

\$103.31

001-000-270-576-80-47-00

Gym-Acct 220006098002

\$1.96

001-000-280-536-20-47-00

PV Shop-Parks-Acct 200017719507

\$0.98

101-000-000-542-63-47-01

PV Shop-Cemetery-Acct 200017719507

\$27.97

101-000-000-542-63-47-01

Roberts Drive-Acct 200024810877

\$213.51

101-000-000-542-63-47-01

Kentlake Traffic Signal-Acct 200008062834

\$14.26

Street Lighting

Baker St Crosswalk-Acct 200015449073

Total 44072 Total Puget Sound Energy Republic Services, Inc. #176 44073		Total 101116 PSE			
0176-004829330	10/12/2016	2016 - October - October 3rd Batch			
September Services					
001-000-248-518-20-47-03			MDRT-Waste Disposal Costs		\$82.02
001-000-254-518-20-47-01			Facilities-Waste Disposal		\$123.02
Total 0176-004829330 0176-004829672					
September Services					
001-000-270-576-80-47-04			Waste Disposal		\$10.32
001-000-280-536-20-47-04			Waste Disposal		\$5.16
PW-Cemetery					

	101-000-000-543-31-47-04	PV-Street	Waste Disposal	\$56.75
	401-000-000-534-80-47-04	PV-Water	Waste Disposal	\$61.91
	407-000-000-535-80-47-04	PV-Sewer	Waste Disposal	\$61.91
	410-000-000-531-10-47-04	PV-Drainage	Waste Disposal	\$61.91
	Total 0176-004829672			
	0176-004829833	September Services		\$257.96
	Total 0176-004829833	001-000-212-521-50-47-04	Waste Disposal	\$205.04
				\$205.04
				\$668.04
	Total 44073			
	Total Republic Services, Inc. #176			
	Safe Security			
	44074	10/6/2016	2016 - October - October 3rd Batch	
	15707745	101-000-000-544-90-48-01	PW Clearing-shared Shop Cost	\$49.98
	Total 44074			\$49.98
	Total Safe Security			\$49.98
	Shake N Bake			
	44075	10/13/2016	2016 - October - October 3rd Batch	
	101316 Shake N Bake	BLD16-0038		
		107-000-000-345-85-22-00	Fire Impact Fees	\$332.73
		Partial Refund of Fire Impact Fee		
	Total 101316 Shake N Bake			\$332.73
	Total 44075			\$332.73
	Total Shake N Bake			\$332.73
	Shred-It USA			
	44076	9/22/2016	2016 - October - October 3rd Batch	
	8120888963	001-000-120-512-50-49-04	Shredding Services	\$14.74
		001-000-180-518-90-49-04	Shredding Services	\$14.75

Total 44076
 Total Shred-It USA
 South Correctional Entity
 44077
 2160
 Total 2160
 September Jail Services
 001-000-211-523-60-49-00
 38 Inmate Days @ 157.00 Per Day
 Jail Costs
 2016 - October - October 3rd Batch
 \$14.74
 \$44.23
 \$44.23
 \$44.23

Total 44077
 Total South Correctional Entity
 Summit Law Group
 44078
 81317
 Total 81317
 September Services
 001-000-150-515-30-41-02
 001-000-150-515-30-41-08
 Legal Services -Employment
 Legal Svcs-Union Contracts
 2016 - October - October 3rd Batch
 \$49.00
 \$2,278.50
 \$2,327.50
 \$2,327.50
 \$2,327.50

Total 44078
 Total Summit Law Group
 Triad Machinery
 44079
 C56575
 10/5/2016
 2016 - October - October 3rd Batch
 Vehicle Mtc. & Repair
 Vehicle Maintenance & Repair
 Street Share-Vehicle & Eq Mtc Costs
 Vehicle Maintenance
 Vehicle Maintenance
 Vehicle Maintenance & Repair
 \$15.06
 \$7.54
 \$82.92
 \$90.46
 \$90.46
 \$90.46
 \$376.90

Total C56575
 C56665
 001-000-270-576-80-48-03
 001-000-280-536-20-48-03
 001-000-000-543-33-48-03
 401-000-000-534-80-48-03
 407-000-000-535-80-48-04
 410-000-000-531-10-48-04
 001-000-270-576-80-48-03
 001-000-280-536-20-48-03
 Vehicle Mtc. & Repair
 Vehicle Maintenance & Repair
 \$3.50
 \$1.75

101-000-000-543-33-48-03	Street Share-Vehicle & Eq Mtc Costs	\$19.23
401-000-000-534-80-48-03	Vehicle Maintenance	\$20.97
407-000-000-535-80-48-04	Vehicle Maintenance	\$20.97
410-000-000-531-10-48-04	Vehicle Maintenance & Repair	\$20.97
		\$87.39
		\$464.29

Total C56665
Total Triad Machinery
Total 44079
\$464.29

Valley Communications
44080
0016973
9/30/2016
2016 - October - October 3rd Batch
\$574.01

WSP Quarter 3. ACCESS Fees
001-000-214-521-20-41-02
Valley Comm - Access Charge
\$574.01

September Services
001-000-214-521-20-41-00
Valley Comm - Dispatch Service
\$11,138.10

Total 44080
Total 0016982
\$11,712.11

Total Valley Communications
VentTek International
44081
102307
10/1/2016
2016 - October - October 3rd Batch
\$90.00

001-000-270-576-80-41-02
Parks
Venue Pay Station
\$90.00

Total 102307
Total VentTek International
Total 44081
\$90.00

Verizon Wireless
44082
9773440691
10/19/2016
2016 - October - October 3rd Batch
\$547.13

October 11 to November 10, 2016 Services
001-000-214-521-20-42-00
Police
Police Telephone/DSL/Air Cards
\$40.01

001-000-240-558-51-42-00
Community Development
Telephones
\$116.78

001-000-246-558-70-42-01
MDRT (Funding)
Facilities-Communication
\$58.39

001-000-254-518-20-42-00
City Clerk (Funding)

Total 9773440691					
Total 44082					
Total Verizon Wireless					
Vision Forms LLC					
44083					
3858					
10/21/2016	2016 - October - October 3rd Batch				
001-000-180-518-90-49-02	Printing Vouchers/Receipts				
Claim Vouchers					
					\$278.60
Total 44083					\$278.60
Total Vision Forms LLC					\$278.60
Vision Municipal Solutions, LLC					
44084					
09-4872					
10/17/2016	2016 - October - October 3rd Batch				
001-000-145-518-80-41-02	Inf. Tech. Svs.-Vision				
Voucher Directory Custom Report					
					\$271.50
Total 09-4872					\$271.50
Total 44084					\$271.50
Total Vision Municipal Solutions, LLC					\$271.50
Voice of The Valley					
44085					
18810					
10/18/2016	2016 - October - October 3rd Batch				
001-000-140-514-23-41-75	Advertising				
Notice-Public Hearing 2017 Budget					
410-000-000-531-10-41-75	Advertising				
					\$186.00
					\$171.00

Notice-Stormwater Management

Total 18810						\$357.00
Total 44085						\$357.00
Total Voice of The Valley						\$357.00
Washington State Patrol						
44086						
117002234	10/3/2016	2016 - October 3rd Batch				
Total 117002234						\$132.75
Total 44086						\$132.75
Total Washington State Patrol						\$132.75
Washington Tractor						\$132.75
44087						
1139228	10/7/2016	2016 - October 3rd Batch				
Total 1139228						\$353.65
Total 44087						\$353.65
Total Washington Tractor						\$353.65
Water Management Laboratories, Inc.						
44088						
153698	10/17/2016	2016 - October 3rd Batch				
Total 153698						\$47.00
Total 44088						\$47.00
Total Water Management Laboratories, Inc.						\$47.00
WSAPT						\$47.00
44089						
102016 WSAPT	10/20/2016	2016 - October 3rd Batch				
001-000-240-558-51-49-01		Memberships				\$35.00

Permit Tech-Membership Application

Total 44089

Total WSAPT

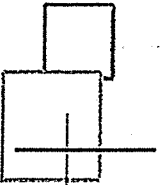
Vendor Count 47

Grand Total

\$121,440.33

\$35.00
\$35.00
\$35.00

Voucher Directory with Transaction Date



Kara Murphy Richards					
44090	103116	10/31/2016	2016 - November - 1st Council		
		November Services			
		001-000-151-515-30-41-04		Court Legal-Pros Attorney	\$2,000.00
Total 44090	Total 103116				\$2,000.00
Total Kara Murphy Richards					\$2,000.00
Melanie Thomas Dane					
44091	103116 MD	10/31/2016	2016 - November - 1st Council		
		November Services			
		001-000-120-512-50-41-00		Court Judge	\$2,000.00
Total 44091	Total 103116 MD				\$2,000.00
Total Melanie Thomas Dane					\$2,000.00
Sorci Family LLC					
44092	103116 Sorci	10/31/2016	2016 - November - 1st Council		
		November Rent			
		001-000-248-518-20-45-02		MDRT Property Rental Cost	\$618.00
		001-000-254-518-20-45-02		Facilities-Prop Rental	\$927.00
		001-000-254-518-20-45-05		Facilities City Hall Bldg Rental	\$2,032.00
Total 44092	Total 103116 Sorci				\$3,577.00
Total Sorci Family LLC					\$3,577.00
Vendor Count 3					
Grand Total					\$7,577.00

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT:	Agenda Date: November 3, 2016	AB16-061A
Public hearing for the 2017 Stormwater Management Program (SWMP) Plan	Mayor Carol Benson	
	City Administrator	
	City Attorney David Linehan	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Andy Williamson	
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	
	Police – Chief Kiblinger	
Cost Impact (see also Fiscal Note): \$0	Public Works – Seth Boettcher	X
Fund Source: --	Court – Stephanie Metcalf	
Timeline: Jan. 1, 2017 – Dec. 31, 2017		
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 2017 Stormwater Management Program Plan		
<p>SUMMARY STATEMENT:</p> <p>The City is required by the Department of Ecology to update its Stormwater Management Program (SWMP) Plan. This SWMP Plan shows how the City is currently meeting the Department of Ecology's requirements in the National Pollutant Discharge Elimination System (NPDES) Permit as well as shows future requirements of this Permit. The SWMP Plan is updated annually.</p> <p>The purpose of the public hearing is to gather input for this SWMP Plan from the community, which is a requirement of the NPDES Permit.</p> <p>FISCAL NOTE (Finance Department): This is an update to a plan. Future costs are unknown at this time.</p>		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: Public hearing only.		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
October 20, 2016	Public Hearing kept open until Nov 3	
November 3, 2016		

CITY OF BLACK DIAMOND

STORMWATER MANAGEMENT PROGRAM PLAN (SWMP PLAN)

20176 UPDATE



PREPARED BY
Public Works Department
CITY OF BLACK DIAMOND
PO BOX 599
BLACK DIAMOND, WA 98010
(360) 886-5700

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LIST OF ACRONYMS AND ABBREVIATIONS

AKART	All Known and Reasonable Treatment
BMP	Best Management Practices
CESCL	Certified Erosion and Sediment Control Lead
DOE	Department of Ecology
GROSS	Grants of Regional or Statewide Significance
IDDE	Illicit Discharge Detection and Elimination
LID	Low Impact Development
MPD	Master Planned Development
MS4	Municipal Separate Storm Sewer System
NPDES	National Pollutant Discharge Elimination System
O&M	Operations and Maintenance
RSMP	Regional Stormwater Management Program
SIDIR	Source Identification Information Repository
SWMMWW	Stormwater Maintenance Manual for Western Washington
SWMP	Stormwater Management Program
SWPPP	Stormwater Pollution Prevention Plan
TMDL	Total Maximum Daily Load

THIS PLAN IS BASED ON THE REQUIREMENTS OUTLINED IN THE WESTERN WASHINGTON PHASE II MUNICIPAL STORMWATER PERMIT. MUCH OF THE LANGUAGE INCLUDED IN THIS DOCUMENT DESCRIBING PERMIT REQUIREMENTS HAS BEEN TAKEN DIRECTLY FROM THIS PERMIT AND HAS BEEN SUMMARIZED FOR EASE OF THE READER.

FOR COMPLETE REQUIREMENTS AND DETAILS, PLEASE REFER TO SECTION S5.C OF THE WESTERN WASHINGTON PHASE II MUNICIPAL STORMWATER PERMIT FROM THE DEPARTMENT OF ECOLOGY.

SECTION 1 – INTRODUCTION

1.1 INTRODUCTION

This document constitutes the City of Black Diamond's Stormwater Management Program (SWMP) Plan as required under Condition S5 of the Western Washington Phase II Municipal Stormwater Permit (the Permit). In addition to the City's permit, the SWMP includes the Total Maximum Daily Load (TMDL) requirements on Lake Sawyer as published in the TMDL document 09-10-053.

The purpose of the SWMP Plan is to detail actions that the City of Black Diamond has taken and will take to maintain compliance with conditions in the permit. This SWMP Plan will be an attachment to the *Annual Report Form for Cities, Towns, and Counties* which is required to be submitted to the Department of Ecology (DOE) by March 31 of each year.

The City's SWMP is intended to reduce the discharge of pollutants from the City's Municipal Separate Storm Sewer System (MS4) to the Maximum Extent Practicable, meet Washington State's All Known and Reasonable Treatment (AKART) requirements, and protect water quality. This goal is accomplished by the inclusion of all Permit SWMP components, minimum measures, and implementation schedules into the City's SWMP.

In compliance with Permit requirements, where the City is already implementing actions or activities called for in this document, the City will continue those actions or activities regardless of the schedule called for in this document. The City will adapt these actions or implement new activities as required by Permit deadlines and as City staff measures the effectiveness of current actions or activities.

| The City ~~now~~ is active in all 6 areas of permit activity including:

- Monitoring the MS4 and reporting to DOE
- Public education and outreach
- Public involvement and participation
- Illicit Discharge Detection and Elimination
- Controlling runoff from new development, redevelopment and construction sites
- Municipal operations and maintenance (O&M)

SECTION 2 –MONITORING, REPORTING AND ASSESSMENT

2.1 PERMIT REQUIREMENTS AND DATES

Section S5.A, S8, and S9 of the Western Washington Phase II Municipal Stormwater Permit requires the City to develop, monitor, and report the City's SWMP. The SWMP shall be designed to reduce the discharge of pollutants from the City's MS4 to the maximum extent practicable and to protect water quality. The monitoring, reporting and assessment requirement helps keep the City on track with Best Management Practices (BMPs) to reduce the discharge of pollutants to stormwater. Specific dates are outlined below:

- Notify DOE in writing the City's decision whether or not to participate in the Regional Stormwater Management Program (RSMP) status and trends monitoring, at an annual cost of \$1,023, by December 1, 2013. Participation in this monitoring meets City requirements for status and trends monitoring. Annual payments began August 15, 2014. (Completed December 2013)
- Notify DOE in writing the City's decision whether or not to participate in the RSMP effectiveness studies, at an annual cost of \$1,705, by December 1, 2013. Participation in this study meets City requirements for effectiveness studies. Annual payments began August 15, 2014. (Completed December 2013)
- The City shall pay into a collective fund to implement the RSMP Source Identification Information Repository (SIDIR), at an annual cost of \$158, which payments began August 15, 2014. (Completed August 2014)

2.2 CURRENT ACTIVITIES

The current city activities associated with Monitoring and reporting include:

- Submit the *Annual Report Form for Cities, Towns, and Counties* which is intended to summarize the City's compliance with the conditions of the Permit. The annual report shall be submitted by March 31 of each calendar year covering the previous calendar year.
- Prepare written documentation of the SWMP and update at least annually for submittal with the City's annual reports to DOE.
- Include with the annual report, notification of any annexations, incorporations, or jurisdictional boundary changes resulting in an increase or decrease in the City's geographic area of permit coverage during the reporting period.
- Track the number of inspections, official enforcement actions and types of public education activities for inclusion in the City's annual reports to DOE.
- Provide a description of any stormwater monitoring or studies conducted by the City during the reporting period for inclusion in the City's annual reports to

DOE. The City is not required to report on monitoring or studies conducted by the Regional Stormwater Monitoring Program (RSMP).

- Track the cost or estimated cost of development and implementation of the SWMP.
- Coordinate, as necessary, with other entities covered under a municipal stormwater National Pollutant Discharge Elimination System (NPDES) permit to encourage coordinated stormwater-related policies, programs and projects within adjoining or shared areas.
- Rain garden monitoring.
- The Development Agreement for the major Master Planned Developments requires extensive water quality monitoring by the developer before, during and after construction; including a yearly review by the Water Quality Review Committee.
- The City is participating in the RSMP, the RSMP effectiveness studies, and the SIDIR.

2.3 PLANNED ACTIVITIES

The City will continue with the current monitoring and reporting activities in 2017~~6~~.

SECTION 3 –PUBLIC EDUCATION AND OUTREACH

3.1 PERMIT REQUIREMENTS AND DATES

Section S5.C.1 of the Western Washington Phase II Municipal Stormwater Permit requires the City to include an education program designed to reduce or eliminate behaviors and practices that cause or contribute to adverse stormwater impacts. No later than February 2, 2016, the City shall measure the understanding and adoption of targeted behaviors for at least one target audience (either the General Public and Businesses; or Engineers, Contractors, Developers and Land Use Planners — completed January 26, 2016).

3.2 CURRENT ACTIVITIES

The City has educated the public through stormwater articles in the city newsletter, posting educational materials on the City website, handing out materials at City sponsored events, workshops to train City staff and elected officials, and meeting with businesses and owners of private stormwater systems. The current City activities associated with Public Education and Outreach include:

- Educating the public about the need of the stormwater utility and the collaborative effort needed from everyone in the City to improve stormwater quality within the City.
- Training on an as-needed basis, for City employees regarding illicit discharges.
- Meeting as-needed, with businesses and the general public about the hazards associated with illicit discharges and improper disposal of waste.
- Distribute illicit discharge information to target audiences through individual meetings.
- Continue to track and maintain records of public education and outreach activities.
- The City is utilizing feedback received from the education survey to determine how to educate the public regarding stormwater.
- ~~Distribute spill kits to businesses and instruct businesses how to use them.~~

3.3 PLANNED ACTIVITIES

The City has the following goals for continued Permit compliance in public education and outreach:

- ~~City staff will receive-utilize feedback received from survey results the residents, business owners, and property owners on education efforts and will continue to evaluate the understanding of target behaviors via a stormwater~~

~~knowledge survey. The targeted behaviors and BMPs shall measure the understanding in at least one of the following:~~

- ~~• Yard care techniques protective of water quality.~~
- ~~• Use and storage of pesticides and fertilizers and other household chemicals.~~
- ~~• Carpet cleaning and auto repair and maintenance.~~
- ~~• Vehicle, equipment and home/building maintenance.~~
- ~~• Pet waste management and disposal.~~
- ~~• LID principles and LID BMPs.~~
- ~~• Stormwater facility maintenance.~~
- ~~• Dumpster and trash compactor maintenance.~~
- Summarize the public education activities in the annual report.
- Educate the general public and businesses on:
 - General impacts of stormwater on surface waters.
 - Impacts from impervious surfaces.
 - Impacts of illicit discharges and how to report them.
 - Low Impact Development (LID) principles and LID BMPs.
 - Opportunities to become involved in stewardship activities.
 - The City will provide education on the City's website and articles in the City newsletter as staff time and opportunity allows.
- Encourage behavior change from the general public and businesses providing education on the City's website and articles in the City newsletter to address any or all BMPs as outlined below:
 - Use of storage of automotive chemicals, hazardous cleaning supplies, carwash soaps and other hazardous materials.
 - Equipment maintenance.
 - Prevention of illicit discharges.
 - Yard care techniques protective of water quality.
 - Use and storage of pesticides and fertilizers and other household chemicals.
 - Carpet cleaning and auto repair and maintenance.
 - Vehicle, equipment and home/building maintenance.
 - Pet waste management and disposal.
 - LID principles and LID BMPs.
 - Stormwater facility maintenance.
 - Dumpster and trash compactor maintenance.

SECTION 4 – PUBLIC INVOLVEMENT AND PARTICIPATION

4.1 PERMIT REQUIREMENTS AND DATES

Section S5.C.2 of the Western Washington Phase II Municipal Stormwater Permit requires the City to provide ongoing opportunities for public involvement. The City will comply with applicable state and local public notice requirements in developing elements of the SWMP. The annual report and updated SWMP Plan are required to be published on the City's website by May 31 of each year.

4.2 CURRENT ACTIVITIES

The current compliance activities associated with public involvement and participation include:

- The City has posted the SWMP Plan and annual report on the City website (click on "Public Works", then "Stormwater").
- Provide opportunities for public involvement in the review of the stormwater comprehensive plan updates, SWMP Plan updates, changes to the stormwater utility charges, or other stormwater codes or similar environmental policies at the early consideration stages at the Public Works Committee level.
- Provide opportunities for public involvement and comment in the consideration of the SWMP Plan by holding a public hearing prior to adoption.
- Review the SWMP Plan with the Public Works Committee and receive public comments in a public hearing prior to adoption.
- Make the SWMP Plan, the annual report, and all other submittals required by the Phase II Permit, available to the public.
- Post the updated SWMP Plan and the annual report on the City's website.

4.3 PLANNED ACTIVITIES

The City will continue with the public involvement and participation activities each year for the SWMP Plan and will continue to make the annual report available for public review by posting it on the City website.

SECTION 5 – ILLICIT DISCHARGE DETECTION AND ELIMINATION

5.1 PERMIT REQUIREMENTS AND DATES

Section S5.C.3 of the Western Washington Phase II Municipal Stormwater Permit requires the City to maintain an ongoing program designed to prevent, detect, characterize, trace and eliminate illicit connections and illicit discharges into the MS4. Specific program components are outlined below:

- Maintain a MS4 map that shall be periodically updated and shall include following information:
 - Known MS4 outfalls.
 - Receiving waters, other than ground water.
 - Stormwater treatment and flow control BMPs/facilities owned or operated by the City.
 - Tributary conveyances to all known outfalls with a 24-inch nominal diameter or larger, or an equivalent cross-sectional area for non-pipe systems, mapping the following attributes:
 - Tributary conveyance type, material, and size where known.
 - Associated drainage areas.
 - Land use.
 - All connections to the MS4 authorized or allowed by the Permittee after February 16, 2007.
 - Geographic areas served by the MS4 that do not discharge stormwater to surface waters.
 - Upon request, make all maps available electronically to the DOE.
 - Upon request, and to the extent appropriate, provide mapping information available to federally-recognized Indian Tribes, municipalities, and other permittees at a reasonable cost.
- Implement an ordinance or other regulatory mechanism to effectively prohibit non-stormwater, illicit discharges into the City's MS4 to the maximum extent allowable under state and federal law by February 2, 2018. The ordinance or regulatory mechanism shall address:
 - Allowable discharges (as outlined in S5.C.3.b.i of the NPDES Permit).
 - Conditionally allowable discharges (as outlined in S5.C.3.b.ii of the NPDES Permit).
 - Further address any category of allowable or conditionally allowable discharges if the discharges are identified as significant sources of pollutants to waters of the State.
 - Escalating enforcement procedures and actions for repeat offenders.
 - A compliance strategy that includes informal compliance actions such as public education and technical assistance as well as the enforcement provisions of the ordinance or other regulatory mechanism. To implement

an effective compliance strategy, the ordinance or other regulatory mechanism may need to include the application of operational and/or structural source control BMPs for pollutant generating sources associated with existing land uses and activities where necessary to prevent illicit discharges and the maintenance of stormwater facilities which discharge into the MS4 in accordance with maintenance standards outlined in the NPDES Permit where necessary to prevent illicit discharges.

- Implement an ongoing program designed to detect and identify non-stormwater discharges and illicit connections into the City's MS4. The program shall include:
 - Procedures for conducting investigations, including field screening and methods for identifying potential sources implementing a field screening methodology appropriate to the characteristics of the MS4 and water quality concerns. Screening for illicit connections may be conducted using: *Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments*, Center for Watershed Protection, October 2004, or another methodology of comparable or improved effectiveness. The City shall document the field screening methodology in the relevant annual report. Field screening for at least 40% of the MS4 shall be complete no later than December 31, 2017 and average 12% each year thereafter.
 - A publicly listed and publicized hotline or telephone number for public reporting of spills and other illicit discharges. Upon discussions with first responders, it was determined that the public should call 911 to report a spill or other illicit discharge. Responding fire and/or police will contact Public Works for assistance and reporting. Public Works can still be contacted for non-emergencies (360-886-5700 during business hours; 253-569-0525 after hours).
 - An ongoing training program on the identification of an illicit discharge and/or connection, and on the proper procedures for reporting and responding to the illicit discharge and/or connection, for all municipal field staff, who, as part of their normal job responsibilities, might come into contact with or otherwise observe an illicit discharge and/or illicit connection to the MS4. Follow-up training shall be provided as needed. City shall document and maintain records of the trainings provided and the staff trained.
 - Informing public employees, businesses, and the general public of hazards associated with illicit discharges and improper disposal of waste.
- Implement an ongoing program designed to address illicit discharges, including spills and illicit connections, into the MS4. The program shall include:
 - Procedures for characterizing the nature of, and potential public or environmental threat posed by, any illicit discharges found or reported to the City. Procedures shall address the evaluation of whether the discharge must be immediately contained and steps to be taken for the containment of the discharge.

- Procedures for tracing the source of an illicit discharge; including visual inspections, and when necessary, opening manholes, using mobile cameras, collecting and analyzing water samples, and/or other detailed inspection procedures.
- Procedures for eliminating the discharge; including notification of appropriate authorities; notification of the property owner; technical assistance; follow-up inspections; and implementation and use of the compliance strategy mentioned above, including escalating enforcement and legal actions if the discharge is not eliminated.
- The City must meet the following timelines and be responsible for the following actions:
 - Immediately respond to all illicit discharges, including spills, which are determined to constitute a threat to human health, welfare, or the environment by taking appropriate action to correct or minimize the threat to human health, welfare, and/or the environment; notifying DOE and other appropriate spill response authorities within 24 hours of learning about the illicit discharge or spill; and immediately report spills or discharges of oils or hazardous substances to DOE and the Washington Emergency Management Division.
 - Investigate (or refer to the appropriate agency with the authority to act) within 7 days any complaints, reports, or monitoring information that indicates a potential illicit discharge.
 - Initiate an investigation within 21 days of any report or discovery of a suspected illicit connection to determine the source of the connection, the nature and volume of discharge through the connection, and the party responsible for the connection.
 - Upon confirmation of an illicit connection, use the compliance strategy in a documented effort to eliminate the illicit connection within 6 months. All known illicit connections to the MS4 shall be eliminated.

5.2 CURRENT ACTIVITIES

The City currently implements activities and programs that meet Permit requirements. The current compliance activities associated with the above Permit requirements include:

- Through Ordinance 09-917, city staff has the ability to intervene and stop illicit discharges, to get involved to educate those that pollute unknowingly and follow up with additional enforcement actions ~~if not complying with corrective actions~~ if not complying with corrective actions.
- City staff responsible for identification, investigation, termination, cleanup, and reporting of illicit discharges, including spills and illicit connections, shall be trained to conduct these activities. Follow-up training shall be provided as needed to address changes in procedures, techniques, requirements or staffing. The training provided and staff trained shall be documented. Four

Public Works staff members received Illicit Discharge Detection and Elimination (IDDE) training on May 9, 2013.

- Continue to respond to reported illicit discharge reports and documenting the actions taken to eliminate them.
- Continue to follow up on hotline illicit discharge tips.
- Update, as needed, the MS4 maps, highlighting those areas that have higher probability of illicit discharges or connections to the MS4.
- Continue with the primary focus of the City's IDDE program, which involves individual meetings with business owners and those responsible for private stormwater system maintenance.
- Implement the City IDDE program to detect and stop illicit discharges to the City's MS4 by:
 - Characterizing the nature of illicit discharges
 - Tracing the source
 - Removing the source
 - Educating those responsible
 - Enforcing the City's code to stop illicit discharges

5.3 PLANNED ACTIVITIES

The City will review Ordinance 09-917 to make sure it captures new Permit requirements in regards to illicit discharges.

The City will field screen a minimum of 40% of the City's outfalls for illicit connections prior to December 31, 2017 with a screening of 12% each year after (all outfalls screened prior to December 31, 2022).

SECTION 6 – CONTROLLING RUNOFF FROM NEW DEVELOPMENT, REDEVELOPMENT AND CONSTRUCTION SITES

6.1 PERMIT REQUIREMENTS AND DATES

Section S5.C.4 of the Western Washington Phase II Municipal Stormwater Permit requires the City to implement and enforce a program to reduce pollutants in stormwater runoff to the City's MS4 from new development, redevelopment and construction site activities. Specific program components are outlined below.

- The City will continue with a program to reduce pollutants in stormwater runoff from new development, redevelopment and construction site activities. This program shall be applied to all sites as determined by Section 3 of Appendix 1 of the Permit. The program shall apply to private and public development, including new roads (as determined in Section 3.4 of Appendix 1 of the Permit).
- The City of Black Diamond has adopted the DOE 2005 Stormwater Maintenance Manual for Western Washington (SWMMWW) to address runoff from new development, redevelopment, and construction site projects in conformance with Permit requirements. In order to comply with new requirements regarding site planning requirements; BMP selection criteria; BMP design criteria; BMP infeasibility criteria; LID competing needs criteria; and BMP limitations, the City should adopt the DOE 2012 SWMMWW as amended in 2014 (the 2014 SWMMWW). Adoption and implementation of the DOE 2014² SWMMWW will meet the requirements of the Permit. The mechanism to meet these requirements shall be in place by December 31, 2016.
- The City shall have the legal authority in place by December 31, 2016, through the approval process for new development and redevelopment, to inspect and enforce maintenance standards for private stormwater facilities that discharge to the City's MS4.
- Before December 31, 2016, the City shall review, revise and make effective local development-related codes, rules, standards, or other enforceable documents to incorporate and require LID principles and LID BMPs as DOE has determined LID as the preferred and commonly-used approach to site development. The revisions are designed to minimize impervious surfaces, native vegetation loss, and stormwater runoff in all types of development situations.
- Include with the annual report, due March 31, 2017, a summary of a review and revision process in regards to requiring LID principles and LID BMPs, considering the range of issues outlined in the document, *Integrating LID into Local Codes: A Guidebook for Local Governments* published by the Puget Sound Partnership in 2012. The summary shall be organized as follows:

- Measures to minimize impervious surfaces;
- Measures to minimize loss of native vegetation; and
- Other measures to minimize stormwater runoff.
- Participate in watershed-scale stormwater planning (WRIA 9) led by King County. As needed and as appropriate, the City shall:
 - Provide existing water quality and flow records.
 - Provide existing and future land use and zoning maps to facilitate land cover projections.
 - Participate in the development of strategies to prevent future impacts and address existing impacts.
 - Provide monitoring locations.

6.2 CURRENT ACTIVITIES

The City code currently implements the majority of the activities and programs to meet Permit requirements. The current compliance activities associated with the above Permit requirements include:

- The City review and inspection staff ~~has reviewed and~~ will continue to review the DOE 201~~42~~ SWMMWW.
- The City conducts construction and stormwater site inspections during the pre-construction and construction phases.
- The City has implemented a permitting process with plan review, inspection and enforcement capability for both private and public projects for compliance with the 2005 SWMMWW and the Master Planned Development (MPD) agreements. This program applies to all sites as determined by Section 3 of Appendix 1 of the Permit.
 - Adherence to the 2005 SWMMWW will be replaced upon adoption of the 2014 SWMMWW.
- The City reviews stormwater site plans for proposed development activities.
- The City inspects, prior to clearing and construction, all known development sites that have a high potential for sediment transport.
- The City inspects all known permitted development sites during construction to verify proper installation and maintenance of required erosion and sediment controls. The City will enforce as necessary based on the inspection.
- The City inspects all permitted development sites upon completion of construction and prior to final approval or occupancy to ensure proper installation of permanent stormwater controls such as stormwater facilities and structural BMPs. Also, the City will verify a maintenance plan is completed and responsibility for maintenance is assigned. Enforcements will be made, as necessary, based on the inspection.
- The City must perform at least 80% of scheduled inspections in order to achieve Permit compliance. Staff schedules all inspections through the City's PermitTrax software and records of inspections are maintained in PermitTrax

by inspectors. Routine inspections not set in PermitTrax will be tracked separately by Public Works maintenance staff.

- The City implements an enforcement strategy to respond to issues of non-compliance.
- The City implements a long-term O&M program for private post-construction stormwater facilities and BMPs.
- Annual inspections (reduced if the City provides records and/or statements to DOE justifying a reduced schedule for specific facilities) of all stormwater treatment BMPs/facilities that were permitted by the City, including those permitted since 2007.
- Inspections of all permanent stormwater treatment and flow control BMPs/facilities and catch basins in new residential developments every six months until 90% of the lots are constructed (or when construction is stopped and the site fully stabilized) to identify maintenance needs and enforce compliance with maintenance standards as needed.
- Enforceable mechanism in place that clearly identifies the party responsible for maintenance, requires inspection of facilities, and establishes enforcement procedures.
- The City ensures that all staff responsible for implementing the program to control stormwater runoff from new development, redevelopment, and construction sites, including permitting, plan review, construction site inspections, and enforcement, are trained to conduct these activities. The City has three Certified Erosion and Sediment Control Leads (CESCL) on staff and two Certified Stormwater Inspectors trained by the NPDES National Stormwater Center.
- Copies of the DOE's "Notice of Intent for Construction Activity" and "Notice of Intent for Industrial Activity" are available to representatives of proposed new development and redevelopment.
- Activities for the "Controlling Runoff from New Development, Redevelopment and Construction Sites" component of the annual report will be summarized annually, beginning in the annual report due March 31, 2015.
- In addition to the above requirements and with the TMDL for phosphorus on Lake Sawyer, City staff (and/or King County, and/or citizen volunteers) takes water quality samples at Lake Sawyer.
- The City has used the DOE 2005 SWMMWW and the Lake Sawyer TMDL in the Development Agreement for the major MPDs in Black Diamond.

6.3 PLANNED ACTIVITIES

The City has a program to help reduce stormwater runoff from new development and construction sites. City staff ~~has reviewed the changes from the DOE 2005 SWMMWW to the~~ will implement the DOE 201~~4~~2 SWMMWW to ~~be ready to~~ maintain compliance ~~as Permit requirements have been modified.~~ Actions that are recommended include:

- Update and implementing process codes, fees and standards as necessary and as identified needs arise.

- Determine staff training needs and develop training strategies as updates to Permit requirements are implemented by DOE.
- City shall review and adopt the DOE 201~~42~~ SWMMWW or equivalent manual. Adoption and implementation of the DOE 201~~42~~ SWMMWW will meet the requirements of the Permit. The mechanism to meet these requirements shall be in place by December 31, 2016 (public hearing scheduled for October 6, 2016).
- The City shall have the legal authority in place by December 31, 2016, through the approval process for new development and redevelopment, to inspect and enforce maintenance standards for private stormwater facilities that discharge to the City's MS4.
- Before December 31, 2016, the City shall review, revise and make effective local development-related codes, rules, standards, or other enforceable documents to incorporate and require LID principles and LID BMPs as DOE has determined LID as the preferred and commonly-used approach to site development. The revisions are designed to minimize impervious surfaces, native vegetation loss, and stormwater runoff in all types of development situations (in process, public hearing scheduled for November 3, 2016).

SECTION 7 –MUNICIPAL OPERATIONS AND MAINTENANCE

7.1 PERMIT REQUIREMENTS AND DATES

Section S5.C.5 of the Western Washington Phase II Municipal Stormwater Permit requires the City to implement an O&M program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Specific program components are outlined below.

- Establish maintenance standards that are as protective, or more protective, of facility function that those specified in Chapter 4 of Volume V of the DOE 2014~~2~~ SWMMWW by December 31, 2016. The purpose of the maintenance standard is to determine if maintenance is required and is not a measure of the facility's required condition at all times between inspections.
- Annual inspection of all municipally owned or operated permanent stormwater treatment and flow control facilities and taking appropriate maintenance actions. Inspection frequency may be reduced as outlined in Section S5.C.5.b of the Permit.
- Spot checks of potentially damaged permanent treatment and flow control facilities after major storm events (10 year storm).
- Inspection of all catch basins and inlets owned or operated by the City at least once before August 1, 2017 and once every two years thereafter. The City is developing an inspection and maintenance schedule for each catch basin and inlet as some catch basins will not need inspections as frequently and other catch basins will need to be inspected and maintained more frequently than required by the Permit to ensure functionality. Reduced inspections will be in accordance with Section S5.C.5.d.i of the Permit.
- Establish and implement policies and procedures to reduce pollutants in discharges from all lands owned or maintained by the City, including but not limited to: streets, parking lots, roads, highways, buildings, parks, open space, road right-of-way, maintenance yards, and stormwater treatment and flow control BMPs/facilities.
- Implement an on-going training program for City staff whose construction, operations or maintenance job functions may impact stormwater quality.
- Continue to implement a Stormwater Pollution Prevention Plan (SWPPP) for all heavy equipment maintenance or storage yards, and material storage facilities owned or operated by the City.
- Keep records of inspections and maintenance or repair activities.

7.2 CURRENT ACTIVITIES

The City currently has activities and programs that meet ~~some of the~~ Permit requirements. The current compliance activities associated with the above Permit requirements include:

- The City has a program for catch basin inspections with the most recent inspections occurring in 2015.
- The City has completed a site assessment of City facilities, including the fire station, the police station, the public works facility, and the water reservoir and pump station.
- The City inspects City owned stormwater treatment facilities ~~and continues to adapt the inspection criteria as identified in the DOE 2005 SWMMWW. The City and~~ will adapt inspections and inspection criteria as identified in the DOE 2014~~2~~ SWMMWW.
- The City has trained employees whose construction, operations or maintenance job functions may impact stormwater quality in the implementation of BMPs that will reduce or eliminate pollution from entering the MS4 from City facilities or operations.
- The City has established maintenance standards that are as protective as those specified in the 2014~~05~~ SWMMWW.
 - ~~Before December 31, 2016, the City will need to establish maintenance standards that are as protective as those specified in the 2012 SWMMWW. The purpose of the maintenance standard is to determine if maintenance is required. The maintenance standard is not a measure of the facility's required condition at all times between inspections. Exceeding the maintenance standard between the period of inspections is not a permit violation. (in process)~~
- The City performs maintenance within required timeframes when an inspection identifies an exceedance of the maintenance standard. For each exceedance of the required timeframe, the City will document the circumstances and how they were beyond the City's control.
- The City annually inspects all municipally owned or operated permanent stormwater treatment and flow control facilities and maintains facilities according to the adopted maintenance standards.
- The City performs maintenance on City ponds and BMPs within required timeframes when an inspection identifies a maintenance standard has been exceeded. For each violation of the required timeframe, the City documents the circumstances and how they were beyond their control, and submits documentation to DOE.
- After major storm events (classified as a 10-year storm), the City conducts spot checks of potentially damaged stormwater facilities.
- The City implements practices to reduce stormwater impacts associated with runoff from streets, parking lots, roads or highways owned or maintained by the City, and road maintenance activities conducted by the City.
- Procedures are in place to reduce pollutants in discharges from all lands owned or maintained by the City and subject to this Permit, including but not limited to: parks, open space, road right-of-way, maintenance yards, and stormwater treatment and flow control facilities. Procedures include:
 - Proper application of fertilizer, pesticides, and herbicides

- Sediment and erosion control (the City has three CESCLs on staff)
 - Proper landscape maintenance and vegetation disposal
 - Proper trash management
 - Proper maintenance and cleaning of City buildings
- City employees, whose construction, operations or maintenance job functions may impact stormwater quality, receive training on an as-needed basis.
- SWPPPs are in place for all heavy equipment maintenance or storage yards, and material storage facilities owned or operated by the City in areas subject to this Permit that are not required to have coverage under the Industrial Stormwater General Permit. The latest update to the SWPPP for the Public Works Maintenance Facility was completed in October, 2015~~3~~.
- Tracking and documentation methods, along with procedures associated with inspection, maintenance or repair activities, are being utilized by City staff.
- The washing of City vehicles and large equipment is performed at the City's equipment washing facility at the City's maintenance site. Staff using the facility is trained prior to use in accordance with standard operating procedures for the facility.

7.3 PLANNED ACTIVITIES

The City will continue with current activities to prevent pollution from municipal maintenance operations. ~~The City is also working on completing the development of site and handling procedures for storage, processing, and reusing street and storm waste with assistance from the King County Solid Waste Treatment Division, which is not a requirement of the Permit. Decant water will be disposed of in accordance with Appendix 6 of the Permit.~~

- The City tries to sweep **arterial and collector** streets at least twice per year as budgets **and schedules** allow.
- Street waste is disposed of according to BMPs.
 - ~~The 2012 SWMMWW does give guidance in the handling of street sweepings.~~ The City will use this guidance from the 2014 SWMMWW to determine how to handle stockpiled sweepings.
 - Clean soil and compost materials will be mixed and reused in the City, where needed, and in accordance with BMPs.

**BLACK DIAMOND SPECIAL JOINT
CITY COUNCIL/PLANNING COMMISSION MEETING MINUTES
July 12, 2016**

CALL TO ORDER, FLAG SALUTE:

Mayor Benson called the special joint meeting of the Council and Planning Commission to order at 6:16 p.m. and led us all in the Flag Salute.

ROLL CALL:

PRESENT: Councilmembers Deady, Edelman, Morgan, Weber and Pepper.
Planning Commissioners McCain, LaConte, Ambur, Senecal, Ammons, and Ekberg.

ABSENT: None

Staff present: Barbara Kincaid, Community Development Director and Brenda L. Martinez, City Clerk.

WORK SESSION:

City's Comprehensive Plan Update – Land Use Element Continuation

Community Development Director Kincaid reported that tonight's special joint work session is a continuation from the last joint meeting on review of the land use element of the Comprehensive Plan update. She also noted bringing the appendix tonight and will review the highlights of it.

She discussed Table 5.1 which is the chart for the land use categories next to the zoning district that shows designations, densities, and acreage. Table 5.2 shows historic, existing, and future projected City population totals and densities. There was discussion on the need to rewrite units to mean people rather than units.

Ms. Kincaid discussed the difference between the land use and zoning maps. She added this is not a pro-growth plan and we need to be realistic and relay what we know to the state.

5.6.5 Commercial

Ms. Kincaid referred to the City's official land use map and discussed the different type of designations. She discussed the area around Black Diamond road and near SR 169 has a mixed use designation, however the City never adopted a mixed used zone so we need to decide what to do with this. She noted all three categories are essentially a mixed use

(Town Center, Community, and Neighborhood). She outlined where each category can be found on the map.

Discussion Suggestion: ~~After a lengthy discussion, it was determined~~ that the area referred to as the “north triangle” in Lawson Hills should be designated Community Commercial, the adjoining rectangle that is part of the Villages MPD should be shown as Medium Density Residential (MDR-8) on the eastern strip that is shown as High Density Residential on the Villages Land Use Map since it is possible to achieve the desired density under MDR-8. The west side of the adjoining rectangle, shown as commercial/office/retail on the Villages Design Concept and Land Use Plan map should be designated as Community Commercial. For the area in the Villages on both sides of the Auburn-Black Diamond Road where it shows commercial/office/retail on the north side of the road and mixed-use on the south side of the road, the land use designation should be Neighborhood Commercial to fit the intent of the plan to have a village center with local retail/commercial businesses with residential.

Designation Criteria

Policy LU-59: Retain and enhance the existing commercial areas while providing sites large enough to accommodate significant commercial uses.

~~Ok as written.~~ No comments to note at this time.

Policy LU-60: Provide day-to-day retail goods and services within walking distance of most residential neighborhoods.

~~Ok as written.~~ No comments to note at this time.

Policy LU-61: Encourage well-planned, coordinated commercial development within the SR 169 area and discourage strip retail development.

Discussion Suggestion: Strike “discourage strip retail development” and after and add “meet the City’s adopted design standards for the gateway overlay district”.

Policy LU-62: Prioritize funding of infrastructure and community enhancement projects in the Town Center to encourage redevelopment and investment in this area.

~~Ok as written.~~ No comments to note at this time.

Policy LU-63: The Town Center commercial area should be pedestrian-oriented and include buildings and nearby parks that symbolize the City’s center.

Discussion Suggestion: Strike this policy.

Policy LU-64: The Town Center area should include a mix of residential, civic, retail, commercial, office, entertainment, services and hospitality services (inns and meeting centers).

Discussion Suggestion: Strike (inns and meeting centers).

Policy LU-65: Town Center commercial area should be pedestrian-oriented and include buildings and nearby parks that symbolize the City's center.

Discussion Suggestion: Merge 64 and 65.

Policy LU-66: Parking in Community Commercial areas should be located to the sides and rear of buildings.

Discussion Suggestion: Strike this policy.

Policy LU-67: Require cross-access between sites to reduce the number of driveways along arterial streets. Pedestrian connections between sites should also be provided.

Discussion Suggestion: Strike this policy.

Policy LU-68: Encourage Mixed Uses in all commercial areas. ~~Ok as written.~~

No comments to note at this time.

5.6.6 Public

Policy LU-69: Public uses should respect the neighborhood and district context in which they are proposed by adherence to the City's design guidelines and zoning code.

~~Ok as written.~~ No comments to note at this time.

Policy LU-70: Public buildings and spaces should be designed to be compatible with Black Diamond's unique architectural heritage and qualities.

~~Ok as written.~~ No comments to note at this time.

Policy LU-71: Public building should fulfill their role as gathering areas and community resources.

Discussion Suggestion: Need to add the words "and spaces" after the word "buildings".

5.7 Regional Coordination

Land Use Goal: Coordinate land use and development actions with government agencies, adjacent jurisdictions, and tribes as appropriate.

~~Ok as written.~~ No comments to note at this time.

Policy LU-72: Use the countywide planning policies and PSRC Vision 2040 as a basis for regional coordination and land use decisions.

~~Ok as written.~~ No comments to note at this time.

Policy LU-73: Monitor implementation of the comprehensive plan for changed conditions in the City's anticipated growth, consistency with the City's vision, GMA requirements, countywide planning policies, and PSRC Vision 2040 and make amendments as necessary.

~~Ok as written.~~ No comments to note at this time.

Policy LU-74: Coordinate with other governmental jurisdictions to site, when necessary, essential public facilities that are typically difficult to site and which are necessary to meet the needs of the City's present and future growth.

Discussion Suggestion: Change to say "regions growth".

Policy LU-75: Conduct appropriate public review and hearing processes, including environmental impact assessments and statements where appropriate, to ensure regional input on the siting of certain development activities.

~~Ok as written.~~ No comments to note at this time.

Policy LU-76: Ensure that essential public facilities sited in the City are consistent with the goals, objectives, and policies of the City's comprehensive plan.

~~Ok as written.~~ No comments to note at this time.

5.8 Open Space

Policy LU-77: Use the open space system as the primary unifying component of the comprehensive plan.

Discussion Suggestion: Need to add a policy on working with King County.

Policy LU-78: Integrate all significant natural areas (wetlands, streams, steep slopes, geologic hazards, and 100-year floodplains) into the open space overlay.

Discussion Suggestion: Change to flood hazard areas and strike 100 year flood plain.

Policy LU-79: Use the open space system to protect surface and groundwater quality.

No comments to note at this time.

Policy LU-80: Protect and enhance the dominant natural features and open space structures, including gateways, viewpoints, and view corridors that characterizes the City.

~~Ok as written.~~ No comments to note at this time.

Policy LU-81: Protect the City's historical sites and structures by connection to the open space system.

~~Ok as written.~~No comments to note at this time.

Policy LU-82: Plan for and retain a natural vegetation buffer around the perimeter of the City adjacent to unincorporated Rural-designated land, The buffer may vary in width based upon sensitive areas, and other constraints. Once established by development, this buffer is to be permanent. Development adjacent to the buffer is encouraged to combine other open space features with the Urban-Rural buffer.

~~Ok as written.~~No comments to note at this time.

Policy LU-83: Encourage the preservation and protection of open space through a variety of approaches that respect the landowner's commitment to the property, including TDR, open space tax incentives, cluster development, public land acquisition, conservation easements, and other public and private initiatives.

Discussion Suggestion: Strike "that respect the landowner's commitment to the property".

Policy LU-84: Develop a stewardship plan for open space. A stewardship plan would identify techniques and ways to maintain and enhance the active and passive open space areas (that lie outside the protected environmentally sensitive areas). The stewardship plan may rely on community involvement to implement the plan.

Discussion Suggestion: Say "Encourage the development of" and strike "Develop".

Policy LU-85: Regularly review the Black Diamond Area Open Space Protection Agreement approved in 2005 and will actively investigate and enforce any violations of the agreement.

Discussion Suggestion: Add "to ensure compliance of the agreement" after "2005" and strike "and will actively investigate and enforce any violations of the agreement".

Policy LU-86: Lands identifies as open space areas include the following:

-All known environmentally sensitive areas, as regulated by the City.

-Lands, adjoining the Rock Creek, Ginder Creek, Lawson Creek, Ravensdale Creek, and other riparian corridors.

-The following lakes, Jones Lake, Black Diamond Lake, Frog Lake, Lake Marjorie (Oak Lake), Lake Sawyer, and the land perimeters of those lakes when not subdivided.

-All existing and proposed public parks, and open space.

-Identifies historical sites and structures

-King County-and City-identifies wildlife habitat corridors.

Discussion Suggestion: Add working in a policy to identify new opens spaces and map them. Also add language referring to a Figure X-X.

5.8 Shoreline Management

-In 2014, the City updated its Shoreline Master Program (SMP) in accordance with WAC 173-26 and with a grant from the Department of Ecology. A map of shoreline jurisdiction is shown in Figure X-X.

-Pursuant to RCW 36.70A.480, the Goals and Policies set forth in the City's Shoreline Master Program, including any future amendments, are hereby adopted and incorporated by reference into the Black Diamond Comprehensive Plan.

Discussion Suggestion: No changes

Ms. Kincaid thanked everyone for their input tonight.

ADJOURNMENT:

A **motion** was made by Commissioner Ambur and **seconded** Councilmember Deady to adjourn the meeting. Motion **passed** with all voting in favor.

The meeting was adjourned at 8:29:36 p.m.

ATTEST:

Carol Benson, Mayor

Brenda L. Martinez, City Clerk

BLACK DIAMOND CITY COUNCIL MINUTES

July 21, 2016

Council Chamber, 25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER, FLAG SALUTE:

Mayor Benson called the regular meeting to order at 7:00 p.m. and led us all in the Flag Salute.

ROLL CALL:

PRESENT: Councilmembers Deady, Morgan, Edelman, Weber and Pepper.

ABSENT: None

Staff present: Seth Boettcher, Public Works Director; Mayene Miller, Finance Director; Kevin Esping, Facilities Coordinator; Megan Ross, Police Officer; David Linehan, City Attorney, and Brenda L. Martinez, City Clerk.

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

Mayor Benson announced attending the Black Diamond/Maple Valley Chamber Wacky and Wild Golf Tournament along with Councilmember Deady and her husband. She reported they won first place for having the best decorated golf cart and were awarded a trophy. She also gave credit to Councilmember Deady's family for their help on the design.

Councilmember Pepper asked for the floor. A point of order was called and Mayor Benson ruled out of order. Councilmember Pepper appealed the decision asked the Chair what was the decision. Mayor Benson again called her out of order. Councilmember Pepper asked to please state the point of order and appealed the decision of the Chair. Councilmember Morgan seconded the appeal and Mayor Benson ruled out of order.

CONSENT AGENDA:

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to approve the Consent Agenda.

A **motion** was made by Councilmember Morgan to not approve the Consent Agenda as we need to hear from the public first. Motion **died** due to lack of second.

Motion passed 3-2 (Morgan, Weber). The Consent Agenda was approved as follows:

- 1) **Claim Checks** – July 21, 2016 - No. 43712 through No.43759 and EFTs in the amount of \$161,913.56
- 2) **Minutes** – Tri-City Council Meeting of May 4, 2016

A **motion** was made by Councilmember Pepper to amend the motion to not approve the consent agenda until we have a substitute agenda as the agenda she distributed to the Council which was created in accordance with the Council rules and the Clerk and Mayor were notified of the needed changes and was emailed to the Council on Tuesday. Mayor Benson called her out of order. Motion died due to lack of second.

Mayor Benson noted the agenda is illegal and Council can add or remove items from the agenda, but not substitute an agenda.

Councilmember Pepper appealed the decision of the chair.

PUBLIC COMMENTS:

Ginger Passerelli, Black Diamond commented on the Soup Ladies representing Black Diamond in Dallas where the five police officers were killed in the line of duty. She noted they served close to 3,000 meals during the nine days they were there. While there she asked for a list of fire departments who responded to the tragedy. She noted the City's Fire Department District 44 overnighted a t-shirt and badges from their department and when she arrived at the first fire station she realized it was Station 44 and presented these to that department. She also commented that while she loves to represent this wonderful community the behavior at this meeting breaks her heart.

Councilmember Edelman thanked Mrs. Passerelli for all she is doing.

Angelina Taylor, Port Orchard discussed the pulling of the DKS and Yvonne Ward vouchers on both agendas. She noted these are services that have already been rendered. She also discussed the Talmadge bill.

Colin Lund, OakPointe briefed Council on the progress of the MPDs and where they are at. He noted Goodfellow Brothers is the primary contractor and they are doing a great job. He highlighted the projects that are currently being worked on and added they have a refreshed website www.inblackdiamond.com and on it is a place to sign up to receive their newsletter. He also added that if anyone has any issues or concerns to please give him a call and if any Councilmember would like a one on one tour he'd be happy to set one up.

Robbin Taylor, Black Diamond commented on the use of committees. She noted there being committee meetings on July 20 and wondered how those meeting were noticed. She stressed that no one knew there were committee meetings on the 20th where three councilmembers were present.

Brock Deady, Black Diamond commented on appreciating the update from OakPointe and as a citizen would like to hear more updates. He agreed with Robbin Taylor's comments and would have like to have been invited to the committee meetings on the 20th.

Darrell Bryant, Black Diamond urged Council to consider approving the Labor Days Special Event Permit tonight. He noted this event has been here for over 100 years and it would be a shame to have it go committee.

Judith Carrier, Auburn commented on what is happening in our country and what is happening in the Council Chambers and discussed certain items on the voucher registers.

Melissa Oglsbee, Black Diamond encouraged Council to keep the Labor Day celebration on the agenda as it is a timely matter. She noted the 12 committee members have worked really hard on this event for the last nine months. It takes approximately \$15,000 to run this event and so far they have raised \$9,000 in donations. They have spent \$2,500 on insurance for the parade which is non-refundable and again she encouraged Council to keep this item on the agenda and let the community come together and enjoy each other and have fun.

PUBLIC HEARINGS: None

UNFINISHED BUSINESS:

DKS Claim Voucher

Councilmember Pepper asked for the floor and called Point of Order. Mayor Benson called her out of order as she has not been recognized to speak. Councilmember Pepper appealed the decision of the Chair. Mayor Benson again ruled her out of order. Councilmember Morgan seconded Councilmember Pepper's appeal. Mayor Benson ruled her out of order. Point of Order was called for by Councilmember Edelman. Mayor Benson continued to call Councilmember Pepper out of order.

Mayor Benson called a five minute recess at 7:28 p.m. The meeting was called back to order at 7:34 p.m. and noted the next item on the agenda is the DKS Claim Voucher.

Councilmember Weber commented that this item was voted down at another meeting and doesn't understand why it is back on the agenda. He noted there not being a contract with DKS and would like to table this item.

Discussion began between Councilmembers on this item and Councilmember Weber noted being concerned that the city did not have a direct contract with DKS as the contract was with BergerABAM and the responsibility lies with BergerABAM.

City Attorney Linehan was asked if the City had a contract with BergerABAM would that constitute a contract with DKS who was a subconsultant. He stated he would need to review the contract with BergerABAM and did say that typically once the city has received the benefit of services provided, whether there is or is not an expressed contract, there is an unjust enrichment claim that can be made against the City for unjustly being enriched by being the recipient of services for which it has not paid.

Councilmember Weber asked Attorney Linehan how that works as far as the municipal code. Does one override the other? Attorney Linehan stated what's in the municipal code is an entirely separate matter from whether or not there is a liability to a third party resulting from the City's receipt of services without paying for them.

Discussion continued amongst Councilmembers on this item regarding postponing, contract with BergerABAM, supporting documentation and the work product the city received.

Councilmember Pepper read Council Rule 7.2.8 regarding tabling of an item.

A motion was made by Councilmember Weber and seconded by Councilmember Morgan to postpone this item to the August 4th regular Council meeting.

Discussion continued with the focus being on why this item needs to be postponed.

Vote: Motion passed 3-2 (Edelman, Deady).

Yvonne Ward Claim Voucher

Councilmember Weber discussed asking for some information from the City on this matter. He noted he did get most of the information he requested. He also noted his request for all correspondence with Ms. Ward was turned into a PDR which will take 20 or more business days for a response. He stated he would like to go through the invoice in detail to see if the City got what we paid for.

Council discussion continued on this item.

A motion was made by Councilmember Weber and seconded by Councilmember Morgan to postpone this item to the August 4th regular Council meeting. Motion passed 3-2 (Edelman, Deady).

Resolution adopting the 2017-2022 Six Year Transportation Improvement Plan (TIP) for the City

A motion was made by Councilmember Edelman and seconded by Councilmember Deady to adopt the resolution adopting the Six Year Transportation Improvement Plan (TIP).

There was Council discussion regarding not having specifics to the proposed projects and no connectors. Councilmember Weber noted there are still some questions out there that he has.

Vote: Motion failed 2-3 (Morgan, Weber, Pepper).

Community Development Director Kincaid cautioned Council not to confuse the maps from the incomplete work from DKS as the TIP is using current information from the current comprehensive plan and that is why you update the TIP and Comprehensive Plan yearly so they are consistent.

Resolution authorizing a contract with DKS Associates

Community Director Kincaid thanked Council for reconsidering this contract. She noted this resolution authorized the Mayor to enter into a not to exceed contract with DKS for the transportation element of the Comprehensive Plan. She highlighted the seven tasks associated with this contract and recommended that Council not spend the money on the last task regarding attendance at hearings.

There was Council discussion on this item.

A **motion** was made by Councilmember Edelman and seconded by Councilmember Deady to adopt the resolution authorizing the Mayor to execute a contract with DKS for the transportation element of the Comprehensive Plan and deleting task 7 from the scope of work as recommended by Ms. Kincaid.

Vote: Motion failed 2-3 (Morgan, Weber, Pepper).

NEW BUSINESS:

Resolution authorizing a services contract with Kenyon Disend, PLLC

Mayor Benson stated that by law the City is required to have a City Attorney. She added this item was voted down before, however the City needs to have an attorney and that attorney needs to be confirmed by the Council.

A **motion** was made by Councilmember Edelman and seconded by Councilmember Deady to adopt the resolution authorizing the Mayor to execute a services agreement with Kenyon Disend, PLLC.

There was discussion between Councilmembers on this item and an inquiry was made on where the legal services budget is at currently for 2016.

Vote: Motion failed 2-3 (Morgan, Weber, Pepper).

Resolution approving the Labor Days Special Event Permit

Community Development Director Kincaid reported Black Diamond Municipal Code states that a special event application for a multiple day event must be approved by Council. She noted this is a city sponsored event. The Labor Days committee has fulfilled all the responsibilities as provided for in code and the event will take place in the same area as in

the previous years. She invited Melissa Oglsbee to talk about this year's event and asked Council to support staff's recommendation of approval.

Ms. Oglsbee discussed the lineup for this year's event and urged Council to consider approving the permit tonight.

Discussion ensued between Councilmembers on the paperwork for this year's permit.

A motion was made by Councilmember Edelman and seconded by Councilmember Deady to approve the Labor Days special event permit.

Discussion continued between Councilmembers on why there is a need to wait to approve this item.

Point of order was called for and Mayor Benson ruled Councilmember Morgan out of order.

Mayor Benson called a five minute recess at 8:48 p.m. The meeting was called back to order at 8:53 p.m.

Vote: Motion failed 2-3 (Morgan, Weber, Pepper).

EXECUTIVE SESSION:

At 9:00 p.m. Mayor Benson announced a fifteen minute executive session to discuss with legal counsel eminent domain litigation as allowed under RCW 42.30.110(1)(c) and (1)(i) with no action to follow. Mayor Benson announced a five minute extension.

The meeting was called back to order at 9:20 p.m.

DEPARTMENT REPORTS: None

MAYOR'S REPORT:

Mayor Benson announced that she and Councilmember Deady attended the AWC Conference in Everett; attended SCA networking dinner, Chief for a Day fundraiser, Chamber's Wild and Wacky golf tournament; met with Les Burberry (new Maple Valley Councilmember) and he is looking into the future on SR169 projects and funding for these with King County.

COUNCIL REPORTS:

Councilmember Deady discussed the AWC Conference she and the Mayor attended; reported receiving her Certificate for Municipal Leadership Training Program; attended SCATBd meeting; met with Finance Director Miller on vouchers; attended Public Safety

meeting, Miners Day festival, and Chief for a Day fundraiser; noted running the free kids booth station at the Farmer's Market every Friday; served soup at Joint Base Lewis McCord as a Soup Lady.

Councilmember Morgan – no report.

Councilmember Edelman discussed the Chief for a Day fundraiser and noted that over \$1,800 was raised. She discussed the AWC Conference and the Councilmembers having a training budget and this budget was used for the Mayor's and Councilmember's Deady attendance.

Councilmember Weber commented on the Soup Ladies being an awesome group and appreciated that they are from Black Diamond; inquired about the new location of the Farmer's Market and wondered how it is working out.

Councilmember Pepper noted she would like to see a sign for the gym so people are aware the City has one and its location. She also noted participating in the 5K run on Miners Day.

ATTORNEY REPORT:

City Attorney Linehan reported working hard with the Public Works and Community Development departments on projects. He also reported working with the Police and Administration on public record requests. He discussed it being very helpful for Council to think about the kinds of legal issues that might come up on an item on the agenda and to ask the attorney prior to the meeting. He noted this helps legal counsel do a thorough analysis so he can give good legal advice rather than off the cuff at the meeting which will be vague. He also added he can respond with that communication having attorney-client privilege.

PUBLIC COMMENTS:

Angelina Taylor handed a public records request to the Clerk. She personally apologized to all the police and first responders in regards to a speaker comparing events here tonight with those happening in Texas and Baton Rouge. She discussed the Labor Days event not costing the city a dime; she questioned the hiring of an attorney from Bainbridge Island; she also noted the three councilmembers could be sued for voting the voucher items down.

Leslie Coulee, Black Diamond stated that she is on the Labor Days Committee and being here tonight regarding the special event permit. She also commented on how the room emptied after the action of Council voting that item down.

Robbin Taylor, Black Diamond commented on the insurance for the Labor Days parade being non-refundable and the city not paying anything for this event. She discussed the dismissal of the Edelman lawsuit, the firing of Carol Morris and the Talmadge contract being signed before there was Council action on it.

ADJOURNMENT:

A motion was made by Councilmember Deady and seconded by Councilmember Weber to adjourn the meeting. Motion passed with all voting in favor (5-0). Meeting ended at 9:49 p.m.

ATTEST:

Carol Benson, Mayor

Brenda L. Martinez, City Clerk

DRAFT

BLACK DIAMOND CITY COUNCIL MINUTES

August 18, 2016

Council Chamber, 25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER, FLAG SALUTE:

Mayor Benson called the regular meeting to order at 7:00 p.m. and led us all in the Flag Salute.

ROLL CALL:

PRESENT: Councilmembers Deady, Morgan, Edelman, Weber and Pepper.

ABSENT: None

Staff present: Seth Boettcher, Public Works Director; Andy Williamson, Interim Community Development Director/MDRT/Ec Dev Director; Jamey Kiblinger, Police Chief; Mike Kenyon, City Attorney; Peter Altman, City Labor Attorney and Brenda L. Martinez, City Clerk.

At 7:00:39 p.m. Mayor Benson announced the Council would be going into an executive session as allowed by RCW 42.30.140(4) to discuss collective bargaining with City Labor Attorney Altman. The executive session was anticipated to last 30 minutes with no final action following the session.

At a ten minute extension was announced 7:30 p.m.

The meeting was called back to order at 7:40:07 p.m.

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

Mayor Benson announced she received a letter from Gomer Evan's sister and read an excerpt. The whole letter is attached and incorporated into the minutes. She instructed the City Clerk to email a copy of it to the Councilmembers.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to move the consent agenda to be after public comments. Motion **passed** with all voting in favor 5-0.

PUBLIC COMMENTS:

Peter French, Bonney Lake commented that he works for the Enumclaw School District and noted being one of the project managers for the Black Diamond Elementary School project. He read a statement from Superintendent Mike Nelson into the record as Mr. Nelson was unable to attend. This statement is attached and incorporated into the minutes.

Judy Goodwin, Black Diamond commented on the resolution before Council regarding the Traffic Mitigation Agreement with the Enumclaw School District. She noted supporting this resolution and urged Council to support the kids and pass it tonight.

Brock Deady, Black Diamond announced that his wife Councilmember Tamie Deady was named Civil Servant of the Year for Black Diamond. He highlighted the volunteer work she does around the Community.

Melody Mann, Black Diamond asked about the TBD fee and wondered if other money could be used to fund streets. She also asked if people had a say in this fee and inquired as to what projects the money will fund. She stated not being able to afford this fee and not being able to afford the front end alignments due to the shape of our roads and wondered where she could bill that to.

Robbin Taylor, Black Diamond discussed the Six Year Transportation Improvement Plan and the schedule of when it has been before Council and the actions taken on it. She also discussed the ramifications for not passing this plan and the need for Council to get work done for the City.

Kristen Bryant, Bellevue discussed making comments before Council on the Six Year Transportation Improvement Plan. She noted her comments were that there wasn't a clear and detailed breakdown of some of the projects that had multiple funding sources and it might be relevant to identify Transportation Benefit District money; there was not a lot of background information provided in an easy and accessible format to the public that led to how that TIP was put together. She also noted not seeing anything that has addressed that comment. She then read a prepared written statement into the record regarding the voluntary traffic mitigation agreement which is attached and incorporated into the minutes.

Judith Carrier, Auburn discussed enjoying the Labor Day celebration in Black Diamond for over 50 years. She noted attending the July 21 Council meeting and the Council needing to know that what they approve is best for the City. She commented on three Councilmembers expressing appreciation for the Labor Day Committee and volunteers. She discussed key documents not being available to Councilmembers on the 21st and noted that finally on July 29th a packet of information came to only one member of the Council for this event. She then discussed the schedule of approval for fire review, WSDOT review and the three separate permits that were issued on the 25th. She added these were not necessary and may be illegal. She discussed when things go to committee they are there for review and to ask questions so members know what they are approving. She asked how many times the Labor Day permit has come before Council and noted this permit has never come before Council, however it did come before Council on the 21st.

CONSENT AGENDA:

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adopt the Consent Agenda.

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Morgan to amend the motion to pull out check number 43820 (Kenyon Disend claim voucher) and the meeting minutes of July 21 and August 7 and have them placed under new business for discussion.

There was discussion between Councilmembers as to why these items were being pulled from the consent agenda and placed under new business for discussion.

Vote: Amended motion **passed** 3-2 (Edelman, Deady). Main motion as amended **passed** 5-0. The Consent Agenda was approved as follows:

- 1) **Claim Checks** – August 18, 2016 - No. 43800 through No. 43849 and EFTs in the amount of \$107,019.69 (Excluding check number 43820 -Kenyon Disend voucher)
- 2) **Payroll** – July 31, 2016 – No. 19175 through No. 19193 (voids 18773, 18795, 18829, 19183, 19188) and EFTs in the amount of \$268,305.28

PUBLIC HEARINGS: None

UNFINISHED BUSINESS: None

NEW BUSINESS:

Resolution regarding Voluntary Traffic Mitigation Agreement with Enumclaw School District

Public Works Director Boettcher discussed being very busy with this project and highlighted the actions that have taken place on the project. He stated now that we approved SEPA we need to resolve the traffic issue. The City has reviewed and accepted a proposed pro rata share traffic and safety mitigation contribution proposed by the school district and supported by their transportation technical report. He noted as the appointed professional engineer for the City and fulfilling authority of his role he has reviewed the methodology of the proposal, the equitability, the nexus to the affected intersections and the proportionality of what is proposed. He stated his role is to assess and determine that concurrency requirements have been met as well as in concert with the Planning Director and evaluation of the impacts through SEPA. He noted this being a common type of agreement to address traffic mitigation which allows the school district to move forward with their project and pay a pro rata share of the equitable fix of four intersections. He encouraged Council support so they could move forward on the school project.

Councilmember Edelman encouraged passage of this resolution tonight.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to table this to the Growth Management Committee.

There was discussion among Councilmembers and staff on this issue with the focus being the information before Council, the role of staff, who determines concurrency, the action before Council, the project schedule, questions Councilmembers may have, timing of this issue coming before Council, and the use of committees for items before Council.

City Attorney Kenyon asked for a 10 minute executive session on potential litigation as authorized by RCW 42.30.110(1)(i).

At 8:36 p.m. the Mayor recessed the meeting for an executive session. Mayor Benson, Councilmember Deady and Councilmember Edelman attended the executive session. Councilmembers Morgan, Weber and Pepper declined to attend the executive session. City Attorney Kenyon re-entered the Chambers and individually asked Councilmembers Morgan, Weber and Pepper if they would like to participate in the executive session and again they declined.

Mayor Benson called the meeting back to order at 8:46 p.m.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to authorize the Mayor to execute an agreement with the Enumclaw School District for contribution to improvements at four intersections impacted by the new Black Diamond Elementary School Project.

Councilmember Pepper stated to the Chair that there is already a motion and second on the floor. City Attorney Kenyon confirmed that there was a pending motion to table before the executive session and there should be a vote on that motion unless that motion was ruled out of order which he hadn't heard. Mayor Benson ruled the previous motion to table out of order as there are no Council committees.

Councilmember Pepper appealed the decision of the Chair and was ruled out of order.

Councilmember Edelman called the question.

City Attorney Kenyon clarified for the record that the motion to table was ruled out of order by the presiding officer and given that, that motion is no longer on the floor. The motion on the floor is a motion to authorize the Mayor to execute the Traffic Mitigation Agreement and that's what Council is voting on now.

Vote: Motion **passed** 4-1 (Morgan).

Kenyon Disend Claim Voucher

Councilmember Weber discussed being concerned that the contracts being authorized by the Mayor under her \$15,000 authority are serial contracts and circumventing the hiring of a full time Attorney. Mayor Benson noted she has the authority to hire the City Attorney and state law requires the City to have an attorney and if Council won't approve the contract she can approve them over and over as it's required by law.

Councilmember Weber noted bringing this issue up before when discussing building permitting and noted the Mayor had the authority to do a contract and the Mayor's response back was to call a special meeting. He added if he understands correctly (needs to go back and look at the email) that according to the state auditor that's kind of a red flag when you are continually doing serial contracts. Mayor Benson commented that she had a conversation with the state auditor on this and it is ok as the City has to have an attorney.

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Pepper to pay claim check #43820 for Kenyon Disend in the amount of \$15,126.54. Motion **passed** 4-1 (Morgan).

Minutes of July 21, 2016 and August 4, 2016

Councilmember Pepper discussed pulling the minutes of August 4th and July 21 as two citizens reached out concerned that their public comments were not reflected as accurately as they could be.

There was Council discussion on the August 4th minutes.

A **motion** was made by Councilmember Weber to postpone approval of these minutes until the next regularly scheduled meeting and give time to go back and listen to the audio.

There was Council discussion on the July 21st minutes.

Councilmember Weber **withdrew** his motion.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Pepper to amend the August 4th minutes to include the two emails for those citizens. Motion **passed** with all voting in favor 5-0.

A **motion** was made by Councilmember Morgan and **seconded** by Councilmember Weber to postpone action on the July 21st minutes to the next regular Council meeting on September 1, 2016. Motion **passed** 3-2 (Edelman, Deady).

DEPARTMENT REPORTS:

Police - Chief Kiblinger distributed and reviewed with Council the Black Diamond Police Department Report/Update for August 2016.

Community Development – Interim Community Development Director Williamson reported on the Tough Mudder event that is coming to the City. He noted the special event permit will be coming before Council at their September 1st meeting and distributed information to Council regarding this event. He urged Council to call him with any questions they may have as there is a need for Council action at the meeting on September 1st.

In addition, Mr. Williamson distributed the DKS claim voucher along with the information requested during the last Council meeting by Councilmember Morgan and the agreement of Council if he brought the requested information forward, Council would approve the payment. He noted following Council's direction and stated he is hopeful that there will be Council action on this tonight.

Councilmember Weber noted appreciating taking Councilmember Morgan's and his suggestion and asked if this action needed to be done by resolution. City Attorney Kenyon stated there is no legal requirement to have it approved by resolution – it can be done by a motion.

Councilmember Morgan commented on wanting to make sure that the spending authority of the Mayor applies in the future.

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Edelman to take the DKS Voucher off the table and approve payment. Motion **passed** with all voting in favor 5-0.

MAYOR'S REPORT:

Mayor Benson reported that Judge Dane will be attending the next Council meeting to give an update on the Court. She also reported attending the SCATBd meeting, one year celebration of life for Greg Goral. She discussed attending Chief for a Day and would like to bring them to a future Council meeting for introductions.

COUNCIL REPORTS:

Councilmember Deady discussed how she makes times to address issues with staff when working a full time job in November and December. She noted attending the Port of Seattle Tour, Chief for a Day, and the one year celebration of life for Greg Goral.

Councilmember Morgan reported on the budget and financial workshop she attended. She highlighted topics and points of discussion from this workshop.

Councilmember Edelman reported she attended a meeting on August 11 with the Mayor, Finance Director and Councilmember Deady to review the vouchers, the one year celebration of life for Greg Goral, Chamber Luncheon on August 17th, Port of Seattle Tour, and Chief for a Day.

Councilmember Weber commented that the children from Black Diamond Elementary School will be attending JJ Smith this school while the new school here in Black Diamond is being built. He also noted the School District has done a great job in getting that facility ready for the kids. He thanked the Boys Scouts who were in attendance at the meeting.

Councilmember Pepper commented on the need for a professional parliamentarian at the Council meetings. She noted having known parliamentary process in different settings and the need to have a registered parliamentarian so the roles and duties of all can be done. She also noted needing to work on points of order and other areas and believes it's exciting that Black Diamond is getting a new elementary school.

ATTORNEY REPORT: None

PUBLIC COMMENTS: None

ADJOURNMENT:

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Dedy to adjourn the meeting. Motion **passed** with all voting in favor (5-0). The meeting ended at 9:33 p.m.

ATTEST:

Carol Benson, Mayor

Brenda L. Martinez, City Clerk

**BLACK DIAMOND SPECIAL JOINT
CITY COUNCIL/PLANNING COMMISSION MEETING MINUTES
August 23, 2016**

CALL TO ORDER, FLAG SALUTE:

Mayor Benson called the special joint meeting of the Council and Planning Commission to order at 6:14 p.m. and led us all in the Flag Salute.

ROLL CALL:

PRESENT: Councilmembers Deady, Edelman, Morgan, Weber and Pepper.
Planning Commissioners McCain, Ambur, and Senegal

ABSENT: Commissioners LaConte, Ekberg, and Ammons

Staff present: Barbara Kincaid, BHC Consultant and Brenda L. Martinez, City Clerk.

WORK SESSION:

City's Comprehensive Plan Update – Parks, Recreation, Trails and Open Space

BHC Consultant Kincaid recapped what has been done, what is left and the goal for this meeting. She reported tonight's meeting is to go through the Parks, Recreation, Trails and Open Space element of the Comprehensive Plan update which is now its own chapter in the Comprehensive Plan. She discussed the elements to review will be utilities, economic development, and traffic.

Ms. Kincaid discussed the documents before Council and asked that all use the document she distributed at the meeting as significant changes were made. She noted that just like the other chapters a lot of the information is being put into an appendix as this is easier for people to understand what is being accomplished in the plan.

Existing Conditions

Ms. Kincaid explained this area includes both active and passive land in the City.

There was lengthy discussion regarding the Regional Park and amenities and whether those amenities transferred over on to the deed. Ms. Kincaid noted further research needs to be done to see if this transferred over to the deed for the property. She will work on getting the deed. It was further noted that this would be discussed at the next meeting on September 6th to see if we keep the language in regarding the amenities at the regional park.

Ms. Kincaid discussed the other parks the City owns which are reflected in Table 1. **Changes needed in the verbiage and table is to correct that the City owns the gym, not the Community Center, location of the BMX track. It was discussed the regional park does not have a picnic area and single track mountain bike; description needs to walking trail instead of hiking trail.**

Ms. Kincaid reported that page three and four of the document list other facilities and amenities that are not city owned. She noted this is a GMA requirement.

Discussion began on these amenities and where they are located. **It was suggested to add a definition on the location of the Henry's Ridge Mountain Bike Trails.**

PARK TYPES AND LEVEL OF SERVICE (LOS) STANDARDS

Ms. Kincaid reported the City's adopted LOS standards are "spatially based" which means they emphasize access to different types of park and recreational facilities to ensure all residents are adequately served. She noted page five of the document describes the park types and what we currently have. She also noted page six is the same as what the City has now in the Comprehensive Plan. She commented that Table 3 shows what our standards are per population units.

EXISTING NEED

Ms. Kincaid commented that this section is dated as it was taken out of the 2008 plan and doesn't meet the adopted standard. She referred to Table 4 which is an illustration of what types of parks, standard, and what the City actually has. She also referred to Table 5 which illustrates the existing recreational facility standards. It was discussed to change the basketball court number as the City's gym has a basketball court. The City also has three swimming areas and offers volleyball.

It was suggested to move the word "new" in the second sentence on page 8 to go in front of the word "additional".

FUTURE NEEDS

Ms. Kincaid noted that the previous pages reviewed were a snapshot in time of where are today and this section discusses what is projected for 2035. She also noted in the Development Agreement the Master Developer is obligated to provide recreational facilities based on the City's adopted LOS standards. She referred to Tables 7 and 8 where it shows the requirements for the MPDs recreational facilities. **It was suggested to add language to the last column in Table 7 that this is at the City's discretion.**

In addition, Ms. Kincaid reported that the MPDs are required to dedicate at least 50% of their total area to open space, except as modified by historic agreements as ash the Black Diamond UGA Agreement.

8.5.1 Parks, Recreation, and Open Space Concepts, Goal, Objectives, and Policies

Ms. Kincaid referred to the Goals and Policies that are currently in the Comprehensive Plan and discussed with Council if they are still relevant.

Goal Foster and support the stewardship of natural resources throughout the community in the form of parks, open space, and recreation to serve the needs of the City's residents. Need to add trails.

Ms. Kincaid noted needing to restate the objectives as policies to be consistent in the document.

Objective CF-6: Parks should include a variety of active, passive, developed, and natural parks and open space. Make a policy and change should to will.

Objective CF-7: Retention of the area's natural beauty and ecology should be represented in the park and open space system. Restate as policy "Area's natural beauty and ecology should be represented in the park and open space system. Use the word "retained" instead of "represented"

Policy CF-5: Provide the City with a system of recreation facilities that are attractive, safe, functional, and available to all segments of the population. Change "available" to "accessible".

Policy CF-6: Encourage development of a trail system which will connect the City's historic district, neighborhoods, Jones Lake, and Morganville with an integrated King County regional trail system, the new park sit at Lake Sawyer, and a state trail system along the Green River. Change "encourage" to "continue".

Policy CF-7: Repairing deficiencies and maintaining the existing park and recreation facilities should be a top priority. Need to add funding language. Suggested language "Repairing deficiencies and maintaining the existing park and recreation facilities shall be funded in the budget". Ms. Kincaid suggested "continue to fund at a minimal LOS".

Policy CF-8: Development of new parks within the City shall involve: a. (ok). b. suggested that types of parks be combined in this.

Policy CF-9: Current Parks, Recreation, and Open Space LOS guidelines include: Old LOS. It was discussed this will have language on the new standards.

Police CF-10: Maintain an up-to-date Parks Plan. OK.

Ms. Kincaid thanked everyone for their input and noted the next joint meeting on the Comp Plan update will be September 6, 2016 at approximately 6:10 p.m.

ADJOURNMENT:

There was a motion and a second to adjourn the meeting. Motion passed with all voting in favor.

The meeting was adjourned at 8:11:29 p.m.

ATTEST:

Carol Benson, Mayor

Brenda L. Martinez, City Clerk

DRAFT

**BLACK DIAMOND CITY COUNCIL
SPECIAL MEETING MINUTES**

August 25, 2016

Council Chamber, 25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER, FLAG SALUTE:

Mayor Benson called the regular work session meeting to order at 6:00 p.m. and led us all in the Flag Salute.

ROLL CALL:

PRESENT: Councilmembers Deady, Morgan, Edelman, Weber and Pepper. (Councilmembers Deady and Weber were not present during roll call. Councilmember Weber entered the meeting at 6:10 p.m. and Councilmember Deady entered the meeting at 6:21 p.m.)

ABSENT: None

Staff present: Andy Williamson, MDRT/EC Dev Director and Interim Community Development Director; Jamey Kiblinger, Police Chief; May Miller, Finance Director; Rob Reed, Milton IS; Scott Hanis, Capital Projects/Program Manager; Chief Smith and Chief Barlow; Brenda L. Martinez, City Clerk.

DRAFT CAPITAL IMPROVEMENT PLAN – GENERAL GOVERNMENT CAPITAL PROJECTS

Mayor Benson welcomed everyone to the meeting and noted tonight's meeting is an overview of the General Government Capital Projects portion of the draft Capital Improvement Plan. She then turned the meeting over to the Finance Director Miller.

Finance Director Miller discussed the order for tonight's meeting and noted that following the presentation she would go over the financial aspect for balancing the plan along with the calendar outlining the steps for adoption of the plan. She noted directors are here tonight to go over their individual projects in respect to timeline and funding.

PARKS DEPARTMENT

Capital Projects/Program Manager Hanis reviewed and discussed with Council the following park projects:

P1 – Ginder Creek Trail and Site Restoration (Councilmember Weber entered the meeting at 6:10 p.m.)

- P2 – Grant Matching Funds
- P3 – Park Plan Update
- P4 – Pond to Park Improvement – Eagle Creek
- P5 – Boat Launch Park Shoreline Stabilization
- P6 – Cemetery -New Niche Wall (Councilmember Deady entered the meeting at 6:21 p.m.)
- P7 – Rehabilitate East Ginder Creek Property

Finance Director Miller reviewed with Council the Parks Department Capital Project Summary page of the plan.

FIRE DEPARTMENT

Fire Chief's Smith and Barlow reviewed and discussed with Council the following fire department projects:

- F1 – Replace Primary Fire Engine (2000)
- F2 – Replace Reserve Engine (1986)
- F3 – Replace Aid Car (1994)
- F4 – New Fire Station and Equipment

Finance Director Miller reviewed with Council the Fire Department Capital Project Summary page of the plan.

GENERAL GOVERNMENT

Staff reviewed and discussed with Council the following General Government projects:

- G1 – City Technology – Capital (excludes police technology) IS Technician Reed gave a general overview and discussed the critical issues facing the City with technology.
- G2 – General Government Facility Updates
- G3 – General Government Vehicle Replacement
- G4 – Comprehensive Plan Completion

Finance Director Miller reviewed with Council the General Government Projects Capital Project Summary page of the plan.

POLICE DEPARTMENT

Chief Kiblinger reviewed and discussed with Council the following police department projects:

- L1 – Police Technology
- L2 – Patrol Car Replacement Plan
- L3 – Police Radio Replacement

Finance Director Miller reviewed with Council the Police Department Capital Project Summary page of the plan.

In closing Finance Director Miller reviewed the General Government Departments Summary page for the 2017-2022 plan. She highlighted the percentages for each department and discussed the REET 1 analysis summary page along with the proposed calendar outlining the next steps for adoption of the plan.

MDRT/Ec Dev/Interim Community Development Director Williamson discussed with Council the fire impact fees the City will receive (i.e. Black Diamond Elementary School project) and noted this money is directly related to growth.

ADJOURNMENT:

A motion was made by Councilmember Edelman and seconded by Councilmember Pepper to adjourn the meeting. Motion passed with all voting in favor (5-0).

ATTEST

Carol Benson, Mayor

Brenda L. Martinez, City Clerk

BLACK DIAMOND CITY COUNCIL MINUTES

September 1, 2016

Council Chamber, 25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER, FLAG SALUTE:

Mayor Benson called the regular meeting to order at 7:00 p.m. and led us all in the Flag Salute.

ROLL CALL:

PRESENT: Councilmembers Deady, Morgan, Weber and Pepper.

ABSENT: Councilmember Edelman (excused).

Staff present: Seth Boettcher, Public Works Director; Andy Williamson, Interim Community Development Director/MDRT/Env. Dev. Director; Kris Chatterson, Police Officer; David Linehan, City Attorney, and Brenda L. Martinez, City Clerk.

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

Mayor Benson read into the record the following proclamation.

WHEREAS, behavioral health is an essential part of health and one's overall wellness; and

WHEREAS, prevention of mental and/or substance use disorders works, treatment is effective, and people recover in our area and around the nation; and

WHEREAS, preventing and overcoming mental and/or substance use disorders is essential to achieving healthy lifestyle, both physically and emotionally; and

WHEREAS, we must encourage relatives and friends of people with mental and/or substance use disorders to implement preventive measures, recognize the signs of a problem and guide those in need to appropriate treatment and recovery support services; and

WHEREAS, an estimated 400,000 people in King County are affected by these conditions; and

WHEREAS, to help more people achieve and sustain long-term recovery, the U.S. Department of Health and Human Services (HHS), the Substance Abuse and Mental Health Services Administration (SAMHSA), the White House Office of National Drug Control Policy (ONDCP), the King County Behavioral and Recovery Division, and the City of Black Diamond invite all residents of Black Diamond to participate in National Recovery Month (Recovery Month);

NOW, THEREFORE, I, Carol Benson, Mayor of the City of Black Diamond, on behalf of the Black Diamond City Council, call upon Black Diamond residents to observe the month of September with appropriate programs, activities, and ceremonies supporting this year's Recovery Month and do hereby proclaim in the City of Black Diamond, the month of September 2016 as a month to recognize National Recovery Month.

Mayor Benson announced a reordering of the agenda. Under unfinished business the July 21 minutes will be item no. 3 and under new business items 3 - 10 will now be 4 - 11.

A motion was made by Councilmember Deady and seconded by Councilmember Morgan to move the consent agenda after public comments. Motion passed with all voting in favor 4-0.

PUBLIC COMMENTS:

Judy Goodwin, Black Diamond thanked Council for the opportunity to speak. She asked Council three questions 1) Where they are at on mediation?, 2) What's happening on the work sessions to develop new Council Rules?, and 3) Any idea of when the comprehensive plan will be ready for public hearing?

CONSENT AGENDA:

Item 2 - August 18, 2016 Council Minutes

Councilmember Pepper asked that the minutes from August 18 be pulled from the consent agenda and placed under new business.

Item 1 - Claim Checks – September 1, 2016 - No. 43850 through No. 43896 and EFTs in the amount of \$91,400.68

A motion was made by Councilmember Morgan and seconded by Councilmember Weber to move the claim checks from the consent agenda and place them at the end of the meeting. Motion passed 3-1 (Deady).

It was clarified that the August 18th minutes will be item no. 12 under new business and the claim checks will be item no. 13 under new business.

PUBLIC HEARINGS: None

UNFINISHED BUSINESS:

Item 3 - July 21, 2016 Minutes

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to table the July 21, 2016 minutes. Motion passed 3-1 (Deady).

NEW BUSINESS:

Item 4 – AB16-047, Resolution Accepting Jones Lake Road Overlay Project

Public Works Director Boettcher briefed Council on the completed project.

A **motion** was made by Councilmember Deady to adopt a resolution accepting the Jones Lake Road Overlay Project by Lakeridge Paving Company as complete according to the contract documents. (Motion died due to motion to table which takes precedence)

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to table this item. Motion passed 3-1 (Deady).

Item 5 – AB16-048, Resolution Approving Tough Mudder Special Event Permit SEP16-0014

MDRT/Interim Community Development Director Williamson discussed with Council the Tough Mudder Special Event Permit.

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Deady to adopt a resolution authorizing the Mayor to execute an agreement with Tough Mudder, LLC approving Special Event Permit SEP16-0014. Motion passed 4-0.

City Attorney Linehan stated that in light of the fact that Council voted to table item #4 regarding the acceptance of the Jones Lake Overlay Project he recommended an executive session tonight so the Council can bring it off the table before we conclude. The executive session will be in accordance with RCW 42.30.110(1)(i) to discuss litigation risks associated with an indefinite delay in approval of the project. He noted this is just a recommendation for the Mayor and Council's consideration.

Item 6 – AB16-049, Resolution Authorizing an Agreement with Parametrix, Inc. – Surveying Services for MDRT

MDRT Director Williamson reported as the director of this team and per the contract which is a 15 year binding contract his department has special needs such as surveying, traffic, civil etc. He added the contracts before Council will allow him to fulfill his obligations on the Development Agreement.

There was Council discussion on the contract.

A motion was made by Councilmember Morgan and seconded by Councilmember Pepper to table this item.

MDRT Director Williamson stated he is playing by the Council rules and is here for a first reading; not for a table. Discussion continued with the focus being the process for a first reading.

MDRT Director Williamson stated for the record that he is fulfilling his obligation under the development agreement by bringing these contracts for a first reading to the Council in enough time to be passed so staff can continue their work and not be in violation of the development agreement, but if Council tables it and not knowing when it will come off the table that is not in the spirit of what the development agreements says that we will work in the spirit of collaboration to timely expedite their (OakPointe) things to meet the inspections on time. He again stressed he needs these consultants and added he is asking Council rather than to table it when we don't know when it will come back, if you would postpone to the next council meeting then Council and himself can engage and have a conversation over the next couple of weeks and work through any issues and he can fine tune the document and hopefully get passage. That seems to be in the spirit of cooperation with staff trying to work with Council. He stated he is asking if Council can set the next reading for the next Council meeting and between those two weeks he can discuss issues with Councilmembers as his door is open. He offered that as a suggestion and noted respecting the process of the Council.

Discussion continued on this item with Councilmember Morgan proposing to do an extension on the contracts. City Attorney Linehan noted that the contracts are essentially an extension of the existing contracts and is suggesting an extension is not a solution because of Council wanting first readings on items.

Vote: Motion passed 3-1 (Deady).

City Attorney Linehan again suggested an executive session to discuss imminent threat of litigation that will result if these contracts are not expeditiously approved.

Item 7 – AB16-050, Resolution Authorizing an Agreement with Parametrix, Inc. for Traffic Engineering Services for the MDRT

MDRT Director Williamson suggested to be expeditious tonight that Council do a blanket motion to table all the contracts related to the MDRT if that is what they want to do. Mr. Williamson went on the record to make very clear that the staff recommends that the Council accept this as their first reading on each one of these contracts and that staff has met Council's timely requirements and they are set for the second reading. So he as a staff member has met his legal obligation.

A **motion** was made by Councilmember Pepper to table the rest of these and taking into consideration what Mr. Williamson has expressed very clearly for the record.

Councilmember Pepper **withdrew** her motion.

MDRT Director Williamson clarified for the record that the items to be tabled are (AB16-049, Parametrix Surveying contract was previously tabled):

- AB16-050 – Resolution Authorizing an Agreement with Parametrix, Inc. - Traffic Eng. Svc. - MDRT
- AB16-051 – Resolution Authorizing an Agreement with RH2 - Civil – MDRT
- AB16-052 – Resolution Authorizing an Agreement with Perteet –Environment-MDRT
- AB16-053 – Resolution Authorizing an Agreement with HWA Geosciences – MDRT

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to table these items 049, 050, 051, 052, and 053. Motion passed 3-1 (Deady).

Item 11 – AB16-054, Resolution Authorizing an Agreement with DKS Associates

MDRT Director Williamson thanked Council for their guidance in helping him work through the last issue with DKS. He noted DKS is not under Berger ABAM and would like to get this second item passed. He discussed the three key elements of the comprehensive plan with traffic being one of them. He stated he is here tonight to see if the contract can be finalized and moved forward. He asked Council to provide the guidance to move this forward and explained that traffic is not an easy concept to understand and we need to make sure our citizens have enough time to digest the information.

There was Council discussion on the traffic simulation modeling, the product belonging to the City, the need to let the City know if they are subcontracting anything out and who drives the two options in the contract.

A **motion** was made by Councilmember Deady to adopt a resolution authorizing the Mayor to sign a Professional Services Agreement with DKS Associates. (Motion died due to motion to table which takes precedence)

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Weber to table this item. Motion passed 3-1 (Deady).

At 8:22 p.m. Mayor Benson announced a 10 minute executive session in accordance with RCW 42.30.110(1)(i) to discuss potential litigation with legal counsel regarding the contracts and the Jones Lake Road Overlay Project. Councilmember Deady and Mayor Benson attended the executive session with City Attorney Linehan. Councilmembers Morgan, Weber and Pepper declined to attend.

Mayor Benson called the meeting back to order at 8:32 p.m.

Item 12 – Minutes - Council Meeting of August 18, 2016

Councilmember Pepper stated that they would like to table the minutes.

City Attorney Linehan stated that Council is required to have minutes and tabling them implies that they may never come back; this would be a legal violation to not have published minutes. He noted he is not saying they don't have the right to table them, but with the advanced warning that failing to bring them off the table creates a lack of minutes of a public meeting which are required under the law.

A **motion** was made by Councilmember Pepper and seconded by Councilmember Morgan to table this item. Motion passed 3-1 (Deady).

Item 13 – Claim Checks – September 1, 2016 – No. 43850 through No. 43896 and EFTs in the amount of \$91,400.68

Mayor Benson answered questions sent in by Councilmember Morgan regarding the claim checks on the agenda for approval.

A **motion** was made by Councilmember Morgan and seconded by Councilmember Weber to adopt the claim checks. Motion passed 4-0.

Councilmember Morgan noted having an item of unfinished business which is a resolution regarding professional services to hire a parliamentarian. There was a lengthy discussion between councilmembers on this item.

DEPARTMENT REPORTS: None

MAYOR'S REPORT:

Mayor Benson reported attending the Fire Ad Hoc committee meeting.

COUNCIL REPORTS:

Councilmember Deady reported attending the Fire Ad Hoc committee meeting and a meeting with Mayor Benson and Finance Director Miller to review the vouchers.

Councilmember Morgan – no report.

Councilmember Weber stated whether it is good, bad, or indifferent he appreciated citizens coming out and if business was being conducted the meetings would be a lot shorter. He commented on hoping the weather cooperates with Labor Days and stated at no time was there any intent not to support Labor Days.

Councilmember Pepper talked about the Council powers as referenced by the Association of Washington Cities (AWC) and Municipal Research and Services Center (MRSC) and thanked everyone for coming out tonight.

ATTORNEY REPORT: None

PUBLIC COMMENTS:

Leslie Coulee, Black Diamond asked Councilmembers Weber, Pepper and Morgan about a meeting the three convened at the Black Diamond Bakery Coffee Shop and what was the purpose.

Terry Yankovich, Black Diamond commented that she still can not understand why three Councilmembers believe what they are doing is correct while the other three believe they are correct. She wondered when can they all come to an understanding as it is ridiculous. She discussed asking Councilmember Pepper to be invited to committee meetings and so far she hasn't been.

Andrew Williamson, representing Teamsters Local 117 reported that additional employees at the City have signed cards to begin a new unit.

Judy Goodwin, Black Diamond discussed why she asked the questions at the beginning of the meeting. She noted there being another viable alternative option for how committee meetings can happen. She discussed how committee meetings worked in the past with previous Councils and understands that arrangement could be going on today and the public can attend. She also commented on Mr. Talmadge having concerns with the way the committees were operating as well as the other three.

Judy Baxley, Black Diamond commented that she is confused on the committees. She noted reading in the handbook Council is allowed to have committees.

Discussion began among Councilmembers regarding Council Committees and the meetings that have been held so far on the Council Rules of Procedure.

ADJOURNMENT:

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Pepper to adjourn the meeting. Motion **passed** with all voting in favor (4-0). The meeting ended at 9:19 p.m.

ATTEST:

Carol Benson, Mayor

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 authorizing the Mayor to sign the Collective Bargaining Agreement and Memorandum of Understanding between the City of Black Diamond and the Black Diamond Police Officers Associations	Agenda Date: November 3, 2016	
	AB16-062A	
	Mayor Carol Benson	
	City Administrator	
	City Labor Attorney Peter Altman	X
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Andy Williamson	
	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-XXXX; Collective Bargaining Agreement (Exhibit A) clean and redlined versions; Memorandum of Understanding		
SUMMARY STATEMENT: Action on this item failed at the Oct 20 th meeting. A motion for reconsideration at the November 3 rd meeting passed; therefore a new resolution is being brought forward. Councilmembers Deady and Edelman have requested this item to be placed on the agenda. The City's negotiating team consisting of Peter Altman, Summit Law Group, City Clerk/HR Manager Brenda Martinez and Police Chief Jamey Kiblinger were able to reach a tentative agreement with the Association for a new three (3) year Collective Bargaining Agreement ("CBA") effective January 1, 2017 through December 31, 2019. The Association has approved the CBA and the City's negotiating team is recommending ratification by the City Council. FISCAL NOTE (Finance Department): The new Collective Bargaining Agreement was negotiated as directed by the City Council with minimal impact to the City of Black Diamond over the term on the agreement.		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: MOTION to adopt Resolution No. 16-XXXX (Clerk to assign number after adoption), authorizing the Mayor to sign the Collective Bargaining Agreement and Memorandum of Understanding between the City of Black Diamond and the Black Diamond Police Officers Association.		

RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
Oct 20, 2016	Motion to adopt. Failed 2-3 (Morgan, Weber, Pepper)	
Nov 3, 2016		

RESOLUTION NO. 16-XXXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF BLACK DIAMOND AND BLACK DIAMOND POLICE OFFICERS ASSOCIATION ALONG WITH THE MEMORANDUM OF UNDERSTANDING

WHEREAS, the Black Diamond Police Officers Association (the "Association") is the authorized bargaining representative for the Black Diamond Police Officers; and

WHEREAS, the Association was formed in 2008; and

WHEREAS, the current agreement will end December 31, 2016; and

WHEREAS, the City negotiating team has reached tentative agreement with the Association for a new three year Collective Bargaining Agreement ("CBA") effective January 1, 2017 through December 31, 2019 (attached hereto as Exhibit A) and the City negotiating team has recommended that the Council ratify the CBA; and

WHEREAS, the Association has executed the CBA along with the Memorandum of Understanding (MOU); and

WHEREAS, The Council has reviewed the CBA and Memorandum of Understanding and finds it is in the best interests of the City and its employees to authorize the Mayor to execute the CBA and MOU;

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

Section 1. The City Council hereby authorizes the Mayor to execute the CBA as attached hereto as Exhibit A.

Section 2. The City Council hereby authorizes the Mayor to execute the MOU, as attached hereto as Exhibit B.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 3RD DAY OF NOVEMBER, 2016.

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk

AGREEMENT

by and between

CITY OF BLACK DIAMOND

and

**BLACK DIAMOND POLICE OFFICERS
ASSOCIATION (F.O.P.)**

January 1, 2017 – December 31, 2019

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**AGREEMENT BETWEEN
CITY OF BLACK DIAMOND
and
BLACK DIAMOND POLICE OFFICERS ASSOCIATION (F.O.P.)**

THIS AGREEMENT is made and entered into by and between the City of Black Diamond, hereinafter referred to as the "Employer" or the "City," and the Black Diamond Police Officers' Association (F.O.P.), hereinafter referred to as the "Association."

PREAMBLE

WHEREAS, it is the purpose of this agreement to maintain a high level of performance in the operation of the Black Diamond City government, together with promoting efficiency, initiative, and harmonious relations between the Employer and the Association, and to provide for the rights, well-being, and security of the parties involved; and

WHEREAS, the parties have agreed to certain terms and conditions of wages, hours, and conditions of employment for employees of the Employer as listed herein and wish to reduce the agreement to writing.

NOW, THEREFORE, BE IT MUTUALLY AGREED TO AS FOLLOWS:

ARTICLE 1 - RECOGNITION

- 1.1 The Employer recognizes the Association as the sole collective bargaining agent for all regular full time and regular part time commissioned law enforcement officers of the Police Department, including sergeants, and excluding supervisors, confidential employees, and all other employees.

ARTICLE 2 - ASSOCIATION SECURITY

- 2.1 The Employer agrees that all employees covered under this agreement who have been in the employment of the Employer for thirty (30) days or more, shall become and remain members of the Association in good standing.
- 2.2 The Employer further agrees that all new employees hired subsequent to the date of signing of this agreement shall, as a condition of employment, after thirty (30) days of employment, become and remain members of the Association in good standing.
- 2.3 In the event an employee member of the Association as defined in Article I of this agreement who joins the Association fails to maintain his membership in the Association in good standing therein, by regular payment of dues, the Association will notify the Employer, in writing, of such employee's delinquency.

The Employer agrees to advise the employee that his employment status with the Employer is in jeopardy, and that failure to meet his membership obligation of payment of dues will result in termination of employment within five (5) days following the next regular payroll payment date.

- 2.4 The Employer will furnish the Association on a current basis notice of all permanent and permanent part time employees as defined in Article I who have been hired, rehired, transferred, laid off or terminated.
- 2.5 Nothing in the above sections will interfere with the employee's rights under RCW 41.56.122 of the Public Employee's Collective Bargaining Act. Nothing in this Agreement shall deprive employees covered by this Agreement the right of non-association based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such employee shall pay an amount of money equivalent to regular Association dues to a non-religious charity or to another charitable organization mutually agreed upon by the employee affected and the Association. The employee shall furnish written proof that such payment has been made. If the employee and the Association do not reach agreement on such matter, the Public Employment Relations Commission shall designate the charitable organization.
- 2.6 The Association agrees to defend, indemnify, save and hold the City harmless from, for and against any and all claims arising from the application of this article.
- 2.7 If the Employer schedules a Collective Bargaining Agreement negotiation meeting during the scheduled shift of the Association member that represents the Association, then that member may attend the meeting, in paid status, provided the member remains ready to respond to emergency call out at all times. Any other Association members that attend the meeting, other than the one designated representative, shall do so in an unpaid status.

ARTICLE 3 - CHECK-OFF OF DUES

- 3.1 The Employer agrees to deduct Association dues from the wages of each employee as qualified in Section 3.2 below. The Employer agrees to forward such dues to the account of the Association monthly.
- 3.2 The Employer shall only deduct Association dues from the wages if all of the employees in the bargaining unit each sign an authorization card to that effect, copies of which shall be given to the Employer and the Association for certification purposes.
- 3.3 The Association agrees to defend, indemnify, save and hold the City harmless from, for and against any and all claims arising from the application of this article.

ARTICLE 4 - WORK SCHEDULE

- 4.1 Establishing and changing the work schedule is a management right. Generally, the regular work schedule shall consist of the "4/10" work schedule: A work day shall consist of ten (10) consecutive hours including time for lunch when the employee is on call during the lunch period. The Chief of Police has the right to assign an alternate work schedule for employees when assignments, special duties, training, vacations, sick time, and other circumstances preclude the use of the regular work schedule. Absent an emergency, or the circumstances described above, the Employer shall notify the Association in writing, no less than 14 calendar days before a change in the regular work schedule (i.e. 4-10's vs. 5-8s). If the Association provides written notice within the 14 day period that it wishes to discuss the change before it is implemented, then the Employer agrees not to implement the change for 30 more days in order to give sufficient time to confer with the Association.
- 4.2 The parties may, upon mutual consent, meet and discuss alternative work shifts.

ARTICLE 5 - OVERTIME

- 5.1 Overtime shall be defined as all hours worked beyond forty (40) hours from between 2400 hours on Saturday to 2359 the following Saturday. Hours of work shall include sick leave, vacation, compensatory time, holiday and any other City provided leave. Voluntary shift swapping shall not result in the payment of overtime. Training time shall be considered compensable hours of work. Training time consisting of more than seven (7) hours in a day shall constitute a regular work day for compensation purposes, regardless of whether the time spent is more or less than the regular work day. For example, if the training lasts 7 1/2 hours, the Employee will be compensated for 10 hours if they normally work a 10 hour shift. If the training lasts 11 hours the Employee would be compensated for 10 hours if they normally work a 10 hour shift.
- 5.2 Except as specifically modified herein, the Employees shall be entitled to all of the benefits in the Fair Labor Standards Act.
- 5.3 Employees on their day of rest that are subpoenaed to appear in court on a criminal case, or called back to work, shall be compensated at a minimum of three (3) hours at the overtime rate of pay.
- 5.4 Officers not notified of a cancellation of a scheduled criminal court appearance within twelve (12) hours of the scheduled appearance shall be compensated at a minimum of three (3) hours at the overtime rate of pay, only if they called the Court the day before and were advised that their Court appearance was still required.

- 5.5 Department wide meetings are not subject to the call back minimum set forth above, and Employees required to attend department wide meetings will be paid the appropriate rate of pay for actual time spent in the meeting, with a two hour minimum. Training for all employees may be conducted during the department meetings.
- 5.6 Any employee, if agreed to by the Employer, may elect to accrue compensatory time off at the rate of time and one-half (1.5) in lieu of overtime payments up to a maximum accumulation of forty (40) hours. Requests to utilize accrued compensatory shall be made to the Chief or their designee. Requests to utilize compensatory time off shall be granted in accordance with the Fair Labor Standards Act.
- 5.7 Effective the signed date of this Agreement, at the start of each calendar month, sergeants of the Department shall receive two (2) hours of compensatory time off. Compensatory time off under this Section is provided as the exclusive compensation for time spent by sergeants responding to work-related telephone calls during off-duty hours, provided, however, that sergeants who are called back to work after receiving an off-duty telephone call shall be paid as provided elsewhere in this Agreement. Sergeants shall normally use the two (2) hours of compensatory time off provided under this Section in the month that they are earned, but may elect to accrue a maximum of four (4) hours. Compensatory time off provided under this section shall be treated and recorded separately from the compensatory time off provided under Section 5.6 of this Article.

ARTICLE 6 - HOLIDAYS

- 6.1 Each full time Employee shall receive 110 hours of holiday time in lieu of holidays. If the City recognizes more than 11 holidays in a year as official holidays, then this allotment shall increase by 10 hours for each additional recognized holiday. Holiday time may be used before or after vacation time, and must be used in the calendar year in which it is received. There will be no carry forward of holiday time. This allotment amount shall be prorated for regular part time employees based on the percentage of a fulltime shift that they normally work. An Employee who works on a holiday or any portion thereof shall be compensated at the overtime rate. Provided, if, during the holiday, an Employee is called to duty, he shall be compensated at the double time rate.
- 6.2 For Employees who do not work a full year, their prorated share of holiday time will be based on a percentage of time worked which will be established through the date of employment and determined by the Employer.
- 6.3 An Employee may carry over to the following calendar year up to 40 hours of holiday time.

ARTICLE 7 - VACATIONS

- 7.1 Vacation shall be given as an additional employment benefit. Vacation may be taken as earned according to the following schedule:

Date of hire through 5 years	8 hours per month
Beginning of 6 th through 9 th year	10 hours per month
Beginning of 10 th through 15 th year	12 hours per month
Beginning of 16 th through 19 th year	14 hours per month
Beginning of 20 th year and thereafter	16 hours per month

Vacation time is accrued from the date of hire, but cannot be used, until successfully completing six (6) months of employment. Accrued vacation shall not exceed 240 hours at any time.

- 7.2 Vacation Bid Process: Employees shall choose vacation by rank and then seniority within the rank. The annual shift bid shall take place first, followed by the annual vacation bid, which spans two weeks and typically takes place during the last two weeks of November. During the annual vacation bid, employees may bid for up to eighty (80) hours of vacation each. Following the annual vacation bid, the paid leave calendar shall remain open for bidding, by rank and then seniority within the rank, for seven (7) calendar days, typically beginning on December 1 and ending on December 7. Thereafter, vacation shall be scheduled on a "first come – first served" basis. The calendar dates for bidding may be adjusted by the Employer based on a delay with issuance of the final budget, although the total days for bidding shall not be reduced. Once scheduled, vacations shall not be cancelled absent an actual emergency. Only one Employee can be on vacation at any time, unless the Chief of Police determines staffing needs can be adequately met.

Employees shall not be able to bid a vacation on January 1, July 4th, Labor Day, Thanksgiving, the day after Thanksgiving or Christmas Day. Provided, nothing prohibits the Department from granting leave on one of those dates by seniority if staffing levels otherwise permit.

- 7.3 Employees shall receive all accrued vacation at the time of termination, provided vacation earned during the year of termination shall be prorated.

ARTICLE 8 - SICK LEAVE

- 8.1 Employees of the police department shall accrue sick leave at the rate of eight (8) hours per month with a maximum accrual of one thousand forty (1,040) hours.

8.2 Sickness or disability shall be reported to the department head or the immediate supervisor at least four (4) hours prior to commencement of the employee's workday, or as soon thereafter as practicable. The employee may be required to provide proof of illness. Any employee who utilizes more than three (3) separate work days of sick leave either immediately prior to, or immediately following, their normal weekend (weekly days off) or holiday, may be required to provide a doctor's certificate for every subsequent sick hours taken during the remainder of that year.

8.3 Employees noted in 8.1 above are entitled to use sick leave for only a bona fide illness or injury, quarantine due to exposure to contagious diseases, any physical treatment or examination including medical, dental or ocular. Employees may also use sick leave for illness or injury to the employee's spouse or minor child, requiring the employee's attendance and/or care. Employees shall make reasonable attempts to schedule routine medical, dental and vision care appointments during their off-duty time so as to not impact department staffing levels. Emergency and last minute appointments shall be approved by the immediate supervisor not an Association member, or Police Chief.

Sick leave may also be used for parents, including "step", who do not live in the employee's household, under circumstances defined as serious or extreme and/or life threatening.

8.4 Employees entitled to sick leave who have exhausted their sick leave accrual may use accrued vacation.

8.5 Time off for medical purposes shall be charged against sick leave for actual time used only.

8.6 If an employee retires from the City, meeting LEOFF plan requirements, that employee is eligible to cash out 25% of their sick leave balance at their current straight time rate.

8.7 Leave Provided by Applicable Statutes.

The Employer will provide eligible employees with all family and medical leave, pregnancy disability leave, military leave, and other paid and unpaid leave required by state and federal law, including:

- a) Family and Medical Leave (29 U.S.C. § 2601 et seq. and RCW 49.78).
- b) Family Care Act Leave (RCW 49.12.265).
- c) Pregnancy Disability Leave (RCW 49.60).
- d) Leave for Victims of Domestic Violence, Sexual Assault, and Stalking (RCW 49.76).
- e) Leave for Spouses of Deployed Military Personnel (RCW 49.77).
- f) Military Leave for Public Employees (RCW 38.40.060).

g) Leave for Certain Emergency Services Personnel (RCW 49.12.460).

Leave eligibility, benefits, and requirements will be determined by applicable state or federal law and will be administered according to the City of Black Diamond Personnel Manual. In the event any provisions of the City of Black Diamond Personnel Manual conflict with state or federal law, then the terms of the state or federal law shall apply.

- 8.8 Employees injured on duty who receive Labor and Industries compensation shall be permitted to sign over the L&I check to the City and receive their regular compensation provided for under the Agreement. Employees shall not exhaust sick leave while on L&I status.
- 8.9 Association members shall be permitted to donate accrued, but unused, vacation or sick leave to other employees in accordance with City policy, as stated in the City of Black Diamond Personnel Manual. The parties recognize that the City will amend its current donation policy to reflect that donated hours will be converted into cash, and then converted into a proportionate share of hours for the employee receiving the donation, to account for pay disparities between the donating and receiving employees. Beyond this change, the City agrees to bargain the impacts of any subsequent policy revision that materially impacts Association members.

ARTICLE 9 - BEREAVEMENT LEAVE

- 9.1 Employees are eligible to receive up to five (5) days of paid bereavement leave for the death of an immediate family member. The specific length shall be determined by the Chief. In addition, employees are guaranteed an additional three (3) days of paid bereavement leave for attendance at the funeral of an immediate family member located more than 500 miles away. In the event an employee's spouse or child dies, the Chief has the discretion to allow the employee to use accrued sick, vacation, or holiday leave for purposes of extended bereavement. All leave taken under this Article shall be used within thirty (30) days of the date of death.

For purposes of this section, "immediate family member" includes spouses, children, stepchildren, foster children, siblings, grandparents, parents of employees or parents of employees' spouses, grandchildren, and any other familial inhabitants of employees' households.

- 9.2 Employees may be excused by the Employer to attend the funeral of deceased fellow employees as leave with pay.

ARTICLE 10 - JURY DUTY

- 10.1 An employee serving on a jury of a federal, state, or municipal court shall be granted leave from City employment to the extent required by such service, and shall be paid during such leave the difference between his/her regular salary and the amount paid by the Court for such duty. In order to be eligible for such payments, the employee must furnish a written statement from the appropriate public official showing date and time served and the amount of jury pay received. The employee shall submit to the City the money received for such services performed during City time. This benefit shall be expanded or diminished based upon changes in applicable federal or state law, and the impacts shall not be negotiated.

ARTICLE 11 - OTHER LEAVES

- 11.1 The Employer provides military leave in accordance with RCW 38.40.060. Leave eligibility, benefits, and requirements will be determined by applicable state law and will be administered according to the City of Black Diamond Personnel Manual. In the event any provisions of the City of Black Diamond Personnel Manual conflict with state law, then the terms of the state law shall apply.
- 11.2 The Employer may grant a regular employee a leave of absence without pay for a period not to exceed ninety (90) days, in the sole discretion of the Employer. No leave of absence without pay shall be granted except upon written request of the employee. Whenever granted, the leave shall be in writing and signed by the Employer, and a copy filed with the department head. Upon expiration of a regularly approved leave without pay, the employee shall be reinstated in the position held at the time leave was granted without loss of seniority status, excepting that the time on leave will be deducted from his total service to determine seniority. Failure on the part of the employee on leave without pay to report promptly at the expiration of the leave shall result in automatic termination of employment. The Employer may, in exceptional circumstances and in its sole discretion extend leave beyond ninety (90) days but reinstatement cannot be guaranteed. The Employee shall be responsible for paying in advance all health insurance premiums during the absence without pay. Failure to do so is grounds for denying the leave of absence.
- 11.3 Pursuant to RCW 1.16.050(3), each employee is entitled to two (2) unpaid holidays per calendar year for a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organization. Leave will be provided in accordance with Washington law and the City of Black Diamond Personnel Manual. In the event City policy conflicts with Washington law, then the minimum requirements of Washington law shall apply.

ARTICLE 12 - SENIORITY

- 12.1 Seniority is the length of continuous employment in each rank of an employee with the Employer in the police department.
- 12.2 Seniority shall be broken only by resignation, discharge, retirement, layoff of more than six (6) months, or failure to return in accordance with the terms of a leave of absence or when recalled from layoff.

ARTICLE 13 - PROMOTIONS, DEMOTIONS AND TRANSFERS

- 13.1 Promotions, non-disciplinary demotions and transfers will be carried out in accordance with Civil Service Commission rules, regulations and statutes.

ARTICLE 14 - LAYOFFS AND RECALL

- 14.1 Layoffs will be conducted in reverse order of seniority by rank. Recall from layoff shall be done in order of seniority, with the most senior employee within a rank being recalled first. Seniority shall be defined as the total length of service with the Department. As a mandatory condition of reinstatement, an employee subject to recall must be qualified to hold his/her position at the time of recall.
- 14.2 The period for recalling a laid-off employee shall be limited to twelve (12) months beginning on the date of the layoff. The Employer reserves the right to extend the twelve (12) month period at its discretion. It is the responsibility of a laid-off employee to provide current contact information to the Employer. If the Employer has difficulty contacting a laid-off employee, it may request assistance from the Association. Failure of an employee to report for reinstatement within ten (10) days of notification of job availability shall result in loss of seniority and, at the Employer's discretion, may result in the forfeiture of the right to reinstatement.

ARTICLE 15 - HEALTH & WELFARE - DENTAL - VISION - PRESCRIPTION DRUG - PENSION - LIFE INSURANCE

- 15.1 The City shall provide all full-time employees and their dependents the option of enrolling in one of two health plans offered by AWC. The first plan is AWC HealthFirst 250 plan with AWC Plan "A" dental insurance. The second plan is AWC Group Health \$20 Co-Pay Plan 3. The vision and orthodontia plans currently offered by AWC (subject to change by AWC) are the following: (1) Vision Service Plan – Full Family, \$25 Deductible; and (2) Orthodontia – Plan V. All employees agree to add both vision and orthodontia plans at their sole expense. Employees also have the option of adding any other benefits offered by AWC through the plans at their sole expense.
- 15.2 Prior to this Agreement, using 2016 rates, employees paid the following cost-share towards premiums under the previous health plans:

2016 AWC HealthFirst Cost-Sharing Premiums

(based on \$50 per month, plus percentage of premium)

Employee only	\$91.97
Employee + Spouse	\$134.46
Employee + Spouse + 1 Child	\$155.37
Employee + Spouse + 2 or more Children	\$173.62
Employee + 1 Child	\$112.88
Employee + 2 of more Children	\$130.33

2016 Group Health \$10 Co-Pay Plan 2 Cost-Sharing Premiums
(based only on percentage of premium)

Employee only	\$43.81
Employee + Spouse	\$87.11
Employee + Spouse + 1 Child	\$109.40
Employee + Spouse + 2 or more Children	\$131.73
Employee + 1 Child	\$66.13
Employee + 2 of more Children	\$88.46

Effective January 1, 2017, employees shall move to AWC HealthFirst 250 and AWC Group Health \$20 Co-Pay Plan 3. Employees shall continue paying the rates listed above, plus 50% of the annual premium increase for the plan they are enrolled in. For example, if 2017 premiums for AWC HealthFirst 250 increase 4.5% then employees shall pay 50% of the increase and the City shall pay the remaining 50%. This 50/50 split of annual premium increases shall apply each year.

- 15.3 The City has the right to change health and welfare plans and carriers, but agrees that it shall negotiate the impacts of the changes. If the City anticipates changing a benefit from the plan specified above, it shall give the Association no less than thirty (30) days notice so that the parties may meet and discuss other possible alternatives.
- 15.4 For each Employee that is a member of WACOPS the Employer shall pay the annual premium for the life and disability policy offered by WACOPS.
- 15.5 The Employer shall make pension contributions required by statute to the State of Washington, Department of Retirement Systems under the Law Enforcement and Firefighters (LEOFF) Plan.

ARTICLE 16 - DISCIPLINARY PROCEDURES

- 16.1 The Employer may discipline or discharge an employee for just cause inclusive, but not limited to, those causes set forth in the Civil Service Rules and Regulations.

16.2 Disciplinary action or measures may include the following:

- A. Verbal Warning
- B. Written reprimand
- C. Reassignment that results in an adverse economic impact
- D. Suspension without pay
- E. Demotion
- F. Discharge

16.3 Progressive discipline is generally preferred, but not required, as it is intended to give notice of inappropriate conduct and to afford the Employee an opportunity to improve performance. The level or degree of discipline imposed shall be appropriately based on an employee's prior record of service, length of service, severity of offenses and prior record of discipline. Certain types of conduct do not require progressive discipline, and may justify an initial higher level of discipline, or even immediate discharge.

16.4 When the Employer determines the circumstances are such that retention of the employee will likely result in the disruption of Employer services, damage to or loss of Employer property or be injurious to the employee, fellow employees or the services provided by the Employer, the Employer may immediately suspend with pay, depending on the circumstances. In such cases the facts supporting the circumstances will be made available to the employee by the Employer not later than three (3) working days after the action became effective.

16.5 The provisions of this article shall not apply to newly hired employees serving a probationary period. Consistent with Civil Service rules, the probationary period shall be twelve (12) months from police academy graduation date, not in any case to exceed eighteen (18) months from date of hire. Probationary employees shall work under the provisions of this agreement but shall be only on a trial basis during which period they may be discharged without cause and without any recourse. Employees on probationary status shall be eligible for the twelve (12) month step increase under conditions cited in Article XXIV, Section 24.2 of this agreement.

16.6 The employee and the employee's Association representative with the employee's written authorization shall have the right to inspect the full contents of his/her personnel file. No disciplinary document may be placed in an employee's personnel file without the employee having been first notified of said disciplinary document and given a copy. An employee who disagrees with the validity of any disciplinary document added to the file shall have the opportunity to challenge said complaint under the grievance procedure herein, other than verbal or written reprimands, which shall not be subject to the grievance process. In the case of a written reprimand or higher form of discipline, the employee may provide a

written response within thirty (30) days of being provided notice, which shall be placed in the personnel file, and only removed if the written response is also removed. The employee shall be required to sign the written reprimand or other disciplinary action acknowledging that they have read the contents of the document.

16.7 Records of disciplinary action shall be removed from all City or Department maintained personnel files and not considered for purposes of progressive discipline based upon the following retention schedule and upon request of the employee:

1. Verbal Warning - Written records of a verbal warning or counseling shall be removed and destroyed after twelve (12) month without a reoccurrence of similar conduct which gave rise to the warning or counseling.
2. Written Reprimand - Written reprimands shall be removed and destroyed after eighteen (18) months without reoccurrence of the same conduct which gave rise to the reprimand.
3. Suspension – Suspensions shall be removed and destroyed after sixty (60) months without a reoccurrence of similar conduct which gave rise to the suspension.

Records of disciplinary action shall be kept by the City as required by Washington State records retention laws and schedules, as promulgated by the Office of the Secretary of State.

ARTICLE 17 - UNIFORMS WEAPONS AND EQUIPMENT

- 17.1 The Employer will provide each new hire with all department issued and required equipment, including uniforms. The Employee shall be responsible for maintaining all issued equipment and uniforms. All issued equipment shall be returned to the City upon termination of employment.
- 17.2 Each employee shall be provided a new ballistic vest at least once every five (5) years or whenever the vest has expired.
- 17.3 For each year of this Agreement, \$700 uniform allowance will be provided to each employee and the allowance can only be used at an approved vendor. The City will pay the vendor directly, up to the amount of unused allowance. The allowance shall be credited to the employee in January of each year. If a piece of equipment or uniform is damaged in the line of duty, it will be repaired or replaced by the City separately, without deduction from the Employee or the uniform allowance.

ARTICLES 18 - GRIEVANCE PROCEDURE

- 18.1 The parties hereto recognize the need for fairness and justice in the adjudication of employee grievances and enter into this Agreement in a cooperative spirit to adjust such actions promptly and fairly. If a grievance cannot be resolved through informal means, the grievance will be settled as hereinafter provided.
- 18.2 A grievance is defined as a dispute involving the interpretation, application or alleged violation of any specific provision of this Agreement.
- 18.3 Any party who believes they have a grievance arising out of the terms of this Agreement may, except for arbitration, personally or through a representative, apply for relief under the provisions of this Article. Provided an employee cannot grieve an item unless it is approved first by the Association executive board, and proof of said approval is provided to the City at the time the grievance process is commenced.
- 18.4 The parties agree that the time limitations provided are essential to the prompt and orderly resolution of any grievance, and that each will abide by the time limitations, unless waived or extended by mutual written agreement of the parties to the grievance. For purposes of this Article, "working day" shall be defined as Monday through Friday, excluding holidays recognized by the City (and specified in the City of Black Diamond Personnel Manual).
- 18.5 To timely initiate the grievance process, a party must file a formal written grievance within ten (10) working days beginning on the date the party knew, or reasonably should have known, of the events giving rise to the grievance. If a party fails to comply with this ten (10) working day period, then that party forever waives and forfeits the grievance as well as any and all rights and remedies relating to the grievance. Failure to timely pursue a grievance to the next step renders final and conclusive the last determination and response. If an employee wishes to have those matters currently addressed under Civil Service Rules and Regulations, inclusive of promotions, demotions, transfers, layoffs, recall and discipline, but not limited thereto, the employee must file a request for an investigative hearing within ten (10) working days of the occurrence. Regarding disciplinary actions, the employee may elect to have disciplinary action reviewed by the Civil Service Commission. If the employee elects to have disciplinary action reviewed by the Civil Service Commission then a request for an investigative hearing must be filed with the Commission within ten (10) working days from the date of the disciplinary action. The employee must elect to have disciplinary action reviewed either through the grievance procedure or by the Civil Service Commission. An employee is not entitled to review of disciplinary action under both procedures. If the employee elects to pursue matters before the Civil Service Commission then the Civil Service Commission procedures will be applicable and not those of the collective bargaining agreement.

- 18.6 Prior to initiating the formal grievance procedure, the Association and/or grievant may verbally present a grievance to the Chief or the Chief's designee. A grievant presenting a verbal grievance shall have the option of being accompanied by an Association representative. The presentation of a verbal grievance under this paragraph is intended as a voluntary, optional, and informal method of attempting to settle potential grievances at an early stage. If a verbal grievance is not satisfactorily resolved, then the grievant may initiate the formal grievance procedure. Presenting a verbal grievance under this paragraph does not suspend the ten (10) working day period for filing a formal written grievance, as dictated by paragraph 18.5 and Step 1 of the formal grievance procedure.
- 18.7 The formal grievance procedure shall be as follows:

Step 1:

The grievance shall be presented in written form, stating the specific provision(s) of this Agreement allegedly violated, to the Chief within ten (10) working days beginning on the date the party knew, or reasonably should have known, of the events giving rise to the grievance. Thereafter, the Chief shall respond in writing to the aggrieved employee within ten (10) working days after receipt of the grievance. If the employee elects to have applicable matters reviewed by Civil Service then the employee will need to comply with the provisions set forth in Section 18.5 above.

Step 2:

If the grievance is not resolved to the satisfaction of the concerned parties at Step 1, then within ten (10) working days of the response in Step 1 above, the grievance in written form shall be presented to the Mayor or designee. The Mayor or designee shall schedule a meeting with the employee within fifteen (15) working days from the date of submission and respond within seven (7) working days of the meeting to the employee and Association. The employee has the right to be represented by his Association representative and the department head has the right to be represented by an Employer representative.

Step 3:

A. Final and Binding Arbitration and/or Mediation:

If the grievance has not been resolved at Step 2, the Association or City may refer the unsettled grievances to mediation and/or final and binding arbitration. If the parties refer the matter to mediation then the timelines for final and binding arbitration shall be extended to accommodate the mediation process.

B. Notice - Time Limitations: The Association shall notify the other party in writing by certified mail of submission to mediation or arbitration within twenty (20) days.

C. Arbitrator - Selection: After timely notice, the parties shall establish who the arbitrator will be in the following manner:

1. After timely notice, the parties shall select an impartial arbitrator within thirty (30) days, if possible, after the request is made to arbitrate.

2. If the parties cannot mutually agree on an impartial arbitrator who is able and willing to serve on a timely basis, they will request a list of nine (9) arbitrators who are willing to abide by time limitations. A list of impartial arbitrators shall be furnished by the Public Employment Relations Commission (PERC). The parties shall flip a coin to determine who will strike the first name, following which each will alternately strike one of the names submitted until one (1) name remains. This person will serve as the sole arbitrator subject to the following provisions.

D. Decision - Time Limit: The arbitrator will meet and hear the matter at the earliest possible date after the selection of said arbitrator. After completion of the hearing, a decision shall be entered within thirty (30) days or as soon as possible thereafter, unless an extension of time is agreed upon as provided for herein.

E. Limitations - Scope - Power of Arbitrator:

1. The arbitrator shall not have the authority to add to, subtract from, alter, change or modify the provisions of this Agreement.

2. The arbitrator shall only have the power to interpret and apply the specific terms of the Agreement and/or determine whether there has been a violation of the terms of this Agreement.

3. The arbitrator shall also have the authority to receive evidence and question witnesses.

4. The arbitrator shall not have the authority to review or consider appeals carried out pursuant to Civil Service Commission Rules and Regulations.

F. Arbitration Award - Damages - Expenses:

1. Each party hereto shall pay the expenses of their own attorneys, representatives, witnesses, and other costs associated with the

presentation of their case. The party that did not substantially prevail shall pay the expenses of the arbitrator.

2. The arbitrator's written award shall be final and binding on all parties.

ARTICLE 19 - NON-REDUCTION OF WAGES AND WORKING CONDITIONS

- 19.1 The parties hereto agree that the wages and working conditions specified in this Collective Bargaining Agreement shall not be modified during the agreement term, except as provided herein or as authorized by law. The Employer may provide additional benefits to the Employees, from time to time, as may be adopted by City ordinance or resolution.

ARTICLE 20 - STRIKES AND LOCKOUTS

- 20.1 The employer and the Association recognize that the public interest requires the efficient and uninterrupted performance of all City services and to this end pledge their best efforts to avoid or eliminate any conduct contrary to this objective. During the term of this agreement, neither the Association nor the Employer shall cause, engage in, or sanction any work stoppage, slowdown, or other interference with City functions. Employees who engage in any of the foregoing actions may be subject to disciplinary action including immediate discharge. No individual shall receive any portion of his/her salary or benefits as provided by the employer, and in accordance with applicable law, while engaging in activities in violation of this Article.

ARTICLE 21 - ASSOCIATION REPRESENTATION

- 21.1 An authorized representative of the Association shall have the right, in unpaid status and after obtaining appropriate signed releases from the affected employees, to investigate grievances or conditions at reasonable hours upon first securing permission from the Employer to do so and without interfering with the progress of work. The Association shall advise the Employer, in writing, of the names of their authorized representatives and stewards.

ARTICLE 22 - BULLETIN BOARD

- 22.1 The Employer shall provide space for a bulletin board of no more than 8 square feet in size, for the Association's use in an area conveniently accessible to bargaining unit employees, solely to be used for the purpose of notifying

employees of matters pertaining to Association business. All notices shall be signed by a representative of the Association who is authorized by the Association to approve Association notices. The Board shall be properly maintained, in a neat and safe manner, by the Association.

ARTICLE 23 - NON-DISCRIMINATION

- 23.1 The Employer agrees that they will not discriminate against any employee because of lawful Association activity.
- 23.2 Neither the Association nor the Employer, in carrying out their obligation under this agreement, shall not unlawfully discriminate in matters of hiring, training, promotion, transfer, layoff, discharge, or otherwise because of race, color, creed, national origin, gender, age, marital status, disability or religion.
- 23.3 All references to employees in this Agreement designate both sexes, and wherever the male gender is used, it shall be construed to include male and female employees.

ARTICLE 24 – WAGES

- 24.1 The Employees shall be paid the base wage set forth in Appendix A.
- 24.2 For the duration of this Agreement, wages for Association members shall remain fixed at the rates listed in Appendix A to this Agreement. Wage rates are still subject to adjustments for education incentive pay (as described in this Article), specialty pay (as described in this Article), progression through steps (as described in Appendix A of this Agreement), and promotions.
- 24.3 All bargaining unit employees shall receive an education incentive added to the base pay equal to 2% for an Associate Arts Degree or 4% for a Bachelor Degree and 6% for a Masters degree.
- 24.4 Employees assigned by the chief to act as a Field Training Officer or full time Detective shall be paid an additional premium of three percent (3%) of the base rate of pay each month. There shall be no pyramiding of premium pays, and the FTO premium pay shall only apply during actual training time.
- 24.5 The K-9 Officer shall receive one-half hour release time from each shift and one-half hour of pay or compensatory time off on each day off for compensation for the at home care and feeding of the dog.

ARTICLE 25 - SEPARABILITY

- 25.1 In the event that any provision of this agreement shall at any time be declared invalid by a final judgment of any court of competent jurisdiction, or through a

final decree of a government, state or local body, such decision shall not invalidate the entire agreement, it being the express intention of the parties hereto that all other provisions not declared invalid shall remain in full force and effect. The parties agree that any invalid provision of this agreement shall be modified through negotiations to comply with the existing regulations or laws.

ARTICLE 26 - MILEAGE ALLOWANCE

- 26.1 All employees required by the cognizant department head to use their private cars for official departmental business, shall be compensated at the rate provided by ordinance or resolution, or as the same may be amended or substituted.

ARTICLE 27 – TAKE HOME CARS

- 27.1 Employees shall be provided their assigned regular patrol vehicle as a take home vehicle, subject to the rules and regulations, including amendments there to, that are adopted by the Chief of Police. Each employee will be required to sign, prior to receiving a take home vehicle, an agreement with the City that they will comply with the adopted rules and regulations and failure to do so may result in losing the take home car privilege. If the take home car privilege is taken away from an officer, only whether or not a violation of the adopted rules and regulations has occurred will be subject to the grievance process.

ARTICLE 28 - CONFLICT OF CONTRACT AND ORDINANCE

- 28.1 The rules and regulation of the Black Diamond Civil Service Commission shall govern unless specifically superseded by the terms and conditions of the Agreement.

ARTICLE 29 - MANAGEMENT RIGHTS

- 29.1 Except as expressly modified or restricted by a specific provision of this Agreement or applicable Civil Service Regulations, all statutory and inherent managerial rights, prerogatives, and functions are retained and vested exclusively in management. This shall include, but is not limited to the right in its sole and exclusive judgment and discretion to; 1) take whatever action is either necessary or advisable to determine, manage and fulfill the mission of the department or the City; 2) to discipline employees for cause; 3) to determine the number of employees to be employed and the appropriate staffing levels; 4) to conduct job analysis and performance; 5) to determine the duties, task, responsibilities and essential functions of each job; 6) to hire employees; 7) to determine employee qualifications and to assign and direct their work; 8) to evaluate employee's performance; 9) to promote, demote, transfer, lay off, recall to work, and retire employees; 10) to set productivity standards; 11) to set reasonable fitness standards; 12) to maintain the efficiency of operations; 13) to

set working schedules, add or delete shifts, and determine the shift to be worked; 14) to determine the personnel, methods, means and facilities by which operations are conducted; 15) to contract for goods and or services; 16) to expand, reduce, alter, combine, transfer, assign, or cease any job, department, operation or service; 17) to control and regulate the use of facilities, equipment, and other property of the department; 18) to introduce new or improved equipment, materials, or methods; and 19) to issue, amend, revise and delete policies, rules, regulations, general orders, administrative directives and practices.

- 29.2 The Employer's failure to exercise any right reserved to it in section 29.1, or its exercise of the right in a particular way, shall not be considered a waiver of the right, or a limitation of its exercise of the right in some other way not in conflict with the express provisions of this Agreement. There shall be no prevailing right of the Association or the Employee to any particular way a management right has been exercised in the past, or a benefit has been administered, except as expressly set forth in this Agreement.

ARTICLE 30 – BILL OF RIGHTS

- 30.1 Subject to the provisions of this Agreement and except as otherwise provided, employees have the right to use the grievance procedure contained herein to protect their rights as set forth in this Agreement.
- 30.2 All employees within the bargaining unit shall be covered by the following rules and regulations. The powers and duties of law enforcement officers involve them in many contacts with members of the public and questions are bound to arise as to the nature of such contacts, which questions require immediate investigation by superior officers who have been authorized to make such investigations by the Chief of Police.

Such investigations shall be conducted under the following general guidelines:

30.2.1 When a permanent, non-probationary employee is the subject of a formal internal investigation by the Black Diamond Police Department, prior to any interview of the employee, the employee shall be advised of the general nature of the inquiry of and whether he or she is suspected of (1) committing a criminal offense; (2) misconduct that would be grounds for termination, demotion, suspension, or other disciplinary actions; (3) that the employee may not be qualified for continued employment with the Department. All interviews shall be conducted in a manner consistent with due process rights granted by law. The officer shall not thereafter contact the citizen or witnesses without prior written permission of the Chief of Police.

30.2.2 If the Chief of Police determines that the officer should be questioned about the allegation, such questioning shall be done as soon as practicable. Unless an emergency is thought by the Chief of Police to exist, such questioning shall be while the member is on duty and during the daytime, if possible.

30.2.3 Questioning of the officer shall be with full regard to his constitutional rights. If the allegations amount to a charge that the officer is guilty of a crime, he shall be fully advised of his rights under the Miranda decision. The employee shall have the right to retain an attorney of his own choosing, (at no expense to the City of Black Diamond). Such attorney (and/or a representative of the Association) shall have the right to be present during any questioning.

30.2.4 An employee who is the subject for a formal investigation shall have a right to make copies of any statement he or she has signed pertaining to the investigation and shall be entitled to a copy, at its expense, of any recording of an interview of the employee.

30.2.5 It is understood that under state law, no officer may be required to take any lie detector test as a condition of continued employment, though he may request a polygraph test. If one is requested by the employee, and the Employer consents to the polygraph of the employee, it shall be taken by an independent agency chosen by the Chief of Police, after consultation with the Association, at the Employee's expense.

ARTICLE 31- LIABILITY INSURANCE

- 31.1 The Employer agrees to either provide insurance coverage on behalf of the employees or provide liability defense for employees or a combination thereof in order to reasonably protect and indemnify employees from liability to third parties resulting from employees negligently performing duties within the scope of employment provided, however, such coverage will not protect the employee from their intentional and/or malicious tortious acts or assaults. Subject to the provisions of this Article, the coverage will include reasonable attorney's fees incurred by attorneys chosen by the City and reasonable costs connected with lawsuits.
- 31.2 The Drug and Alcohol Policy and procedures mutually agreed on by the parties is hereby incorporated by reference as though it were set out specifically and completely in this Agreement. Said policies and procedures are a part of this Agreement.

ARTICLE 32 - TERMINATION AND RENEWAL

- 32.1 This agreement shall be in full force and effect from January 1, 2017 until December 31, 2019.

**CITY OF BLACK DIAMOND,
WASHINGTON**

By: _____
Mayor Carol Benson

Date: _____

**BLACK DIAMOND POLICE
OFFICERS' ASSOCIATION**

By: _____
Sgt. Brian Lynch, President

Date: _____

APPENDIX A

	Step 1	Step 2	Step 3	Step 4	Step 5
Police Officer	5,037	5,645	6,255	6,863.00	7,440
Police Sergeant	8,292	8,757	N/A	N/A	N/A

Wage rates shall remain unchanged for the duration of this Agreement. However, employees shall receive the following signing bonus payments:

January 2017 = \$1,250

January 2018 = \$1,250

January 2019 = \$1,250

The signing bonus payments will be paid only to those employees on the roster at the beginning of each calendar year. Annual payments will be made during the second payroll period of January.

An officer's wage shall be increased to the next step on his/her step-increase eligibility date and upon a satisfactory performance evaluation. For employees hired on or before May 6, 2010, the step-increase eligibility date is the first day of the month of hire. For employees hired after May 6, 2010, including all future employees, the step-increase eligibility date is the first day of the month of hire if hired from the 1st through the 15th of the month, or the first day of the month following the month of hire if hired from the 16th through the 31st of the month.

Employees will submit timesheets to the Employer's payroll department one week before the end of each month to allow sufficient time for payroll processing. A lag report for overtime earned, or leave taken, during the last week of each month will be submitted by employees with the following month's timesheets.

	Wage
Josh Tapecc	7,440.00
Kris Chatterson	7,440.00
Tim Macdonald	7,440.00
Mike Girias	8,757.00
William Riepl	5,037.00
Brian Lynch	8,757.00

AGREEMENT

by and between

CITY OF BLACK DIAMOND

and

**BLACK DIAMOND POLICE OFFICERS
ASSOCIATION (F.O.P.)**

**~~August 31, 2014 – December 31,~~
~~2016~~ January 1, 2017 – December 31, 2019**

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**AGREEMENT BETWEEN
CITY OF BLACK DIAMOND
and**

BLACK DIAMOND POLICE OFFICERS ASSOCIATION (F.O.P.)

THIS AGREEMENT is made and entered into ~~this 19th day of February, 2015,~~ by and between the City of Black Diamond, hereinafter referred to as the "Employer" or the "City," and the Black Diamond Police Officers' Association (F.O.P.), hereinafter referred to as the "Association."

PREAMBLE

WHEREAS, it is the purpose of this agreement to maintain a high level of performance in the operation of the Black Diamond City government, together with promoting efficiency, initiative, and harmonious relations between the Employer and the Association, and to provide for the rights, well-being, and security of the parties involved; and

WHEREAS, the parties have agreed to certain terms and conditions of wages, hours, and conditions of employment for employees of the Employer as listed herein and wish to reduce the agreement to writing.

NOW, THEREFORE, BE IT MUTUALLY AGREED TO AS FOLLOWS:

ARTICLE 1 - RECOGNITION

- 1.1 The Employer recognizes the Association as the sole collective bargaining agent for all regular full time and regular part time commissioned law enforcement officers of the Police Department, including sergeants, and excluding supervisors, confidential employees, and all other employees.

ARTICLE 2 - ASSOCIATION SECURITY

- 2.1 The Employer agrees that all employees covered under this agreement who have been in the employment of the Employer for thirty (30) days or more, shall become and remain members of the Association in good standing.
- 2.2 The Employer further agrees that all new employees hired subsequent to the date of signing of this agreement shall, as a condition of employment, after thirty (30) days of employment, become and remain members of the Association in good standing.
- 2.3 In the event an employee member of the Association as defined in Article I of this agreement who joins the Association fails to maintain his membership in the Association in good standing therein, by regular payment of dues, the Association will notify the Employer, in writing, of such employee's delinquency.

The Employer agrees to advise the employee that his employment status with the Employer is in jeopardy, and that failure to meet his membership obligation of payment of dues will result in termination of employment within five (5) days following the next regular payroll payment date.

- 2.4 The Employer will furnish the Association on a current basis notice of all permanent and permanent part time employees as defined in Article I who have been hired, rehired, transferred, laid off or terminated.
- 2.5 Nothing in the above sections will interfere with the employee's rights under RCW 41.56.122 of the Public Employee's Collective Bargaining Act. Nothing in this Agreement shall deprive employees covered by this Agreement the right of non-association based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such employee shall pay an amount of money equivalent to regular Association dues to a non-religious charity or to another charitable organization mutually agreed upon by the employee affected and the Association. The employee shall furnish written proof that such payment has been made. If the employee and the Association do not reach agreement on such matter, the Public Employment Relations Commission shall designate the charitable organization.
- 2.6 The Association agrees to defend, indemnify, save and hold the City harmless from, for and against any and all claims arising from the application of this article.
- 2.7 If the Employer schedules a Collective Bargaining Agreement negotiation meeting during the scheduled shift of the Association member that represents the Association, then that member may attend the meeting, in paid status, provided the member remains ready to respond to emergency call out at all times. Any other Association members that attend the meeting, other than the one designated representative, shall do so in an unpaid status.

ARTICLE 3 - CHECK-OFF OF DUES

- 3.1 The Employer agrees to deduct Association dues from the wages of each employee as qualified in Section 3.2 below. The Employer agrees to forward such dues to the account of the Association monthly.
- 3.2 The Employer shall only deduct Association dues from the wages if all of the employees in the bargaining unit each sign an authorization card to that effect, copies of which shall be given to the Employer and the Association for certification purposes.
- 3.3 The Association agrees to defend, indemnify, save and hold the City harmless from, for and against any and all claims arising from the application of this article.

ARTICLE 4 - WORK SCHEDULE

- 4.1 Establishing and changing the work schedule is a management right. Generally, the regular work schedule shall consist of the "4/10" work schedule: A work day shall consist of ten (10) consecutive hours including time for lunch when the employee is on call during the lunch period. The Chief of Police has the right to assign an alternate work schedule for employees when assignments, special duties, training, vacations, sick time, and other circumstances preclude the use of the regular work schedule. Absent an emergency, or the circumstances described above, the Employer shall notify the Association in writing, no less than 14 calendar days before a change in the regular work schedule (i.e. 4-10's vs. 5-8s). If the Association provides written notice within the 14 day period that it wishes to discuss the change before it is implemented, then the Employer agrees not to implement the change for 30 more days in order to give sufficient time to confer with the Association.
- 4.2 The parties may, upon mutual consent, meet and discuss alternative work shifts.

ARTICLE 5 - OVERTIME

- 5.1 Overtime shall be defined as all hours worked beyond forty (40) hours from between 2400 hours on Saturday to 2359 the following Saturday. Hours of work shall include sick leave, vacation, compensatory time, holiday and any other City provided leave. Voluntary shift swapping shall not result in the payment of overtime. Training time shall be considered compensable hours of work. Training time consisting of more than seven (7) hours in a day shall constitute a regular work day for compensation purposes, regardless of whether the time spent is more or less than the regular work day. For example, if the training lasts 7 1/2 hours, the Employee will be compensated for 10 hours if they normally work a 10 hour shift. If the training lasts 11 hours the Employee would be compensated for 10 hours if they normally work a 10 hour shift.
- 5.2 Except as specifically modified herein, the Employees shall be entitled to all of the benefits in the Fair Labor Standards Act.
- 5.3 Employees on their day of rest that are subpoenaed to appear in court on a criminal case, or called back to work, shall be compensated at a minimum of three (3) hours at the overtime rate of pay.
- 5.4 Officers not notified of a cancellation of a scheduled criminal court appearance within twelve (12) hours of the scheduled appearance shall be compensated at a minimum of three (3) hours at the overtime rate of pay, only if they called the Court the day before and were advised that their Court appearance was still required.

- 5.5 Department wide meetings are not subject to the call back minimum set forth above, and Employees required to attend department wide meetings will be paid the appropriate rate of pay for actual time spent in the meeting, with a two hour minimum.. Training for all employees may be conducted during the department meetings.
- 5.6 Any employee, if agreed to by the Employer, may elect to accrue compensatory time off at the rate of time and one-half (1.5) in lieu of overtime payments up to a maximum accumulation of forty (40) hours. Requests to utilize accrued compensatory shall be made to the Chief or their designee. Requests to utilize compensatory time off shall be granted in accordance with the Fair Labor Standards Act.
- 5.7 Effective the signed date of this Agreement, at the start of each calendar month, sergeants of the Department shall receive two (2) hours of compensatory time off. Compensatory time off under this Section is provided as the exclusive compensation for time spent by sergeants responding to work-related telephone calls during off-duty hours, provided, however, that sergeants who are called back to work after receiving an off-duty telephone call shall be paid as provided elsewhere in this Agreement. Sergeants shall normally use the two (2) hours of compensatory time off provided under this Section in the month that they are earned, but may elect to accrue a maximum of four (4) hours. Compensatory time off provided under this section shall be treated and recorded separately from the compensatory time off provided under Section 5.6 of this Article.

ARTICLE 6 - HOLIDAYS

- 6.1 Each full time Employee shall receive 110 hours of holiday time in lieu of holidays. If the City recognizes more than 11 holidays in a year as official holidays, then this allotment shall increase by 10 hours for each additional recognized holiday. Holiday time may be used before or after vacation time, and must be used in the calendar year in which it is received. There will be no carry forward of holiday time. This allotment amount shall be prorated for regular part time employees based on the percentage of a fulltime shift that they normally work. An Employee who works on a holiday or any portion thereof shall be compensated at the overtime rate. Provided, if, during the holiday, an Employee is called to duty, he shall be compensated at the double time rate.
- 6.2 For Employees who do not work a full year, their prorated share of holiday time will be based on a percentage of time worked which will be established through the date of employment and determined by the Employer.
- 6.3 An Employee may carry over to the following calendar year up to 40 hours of holiday time.

ARTICLE 7 - VACATIONS

- 7.1 Vacation shall be given as an additional employment benefit. Vacation may be taken as earned according to the following schedule:

Date of hire through 5 years	8 hours per month
Beginning of 6 th through 9 th year	10 hours per month
Beginning of 10 th through 15 th year	12 hours per month
Beginning of 16 th through 19 th year	14 hours per month
Beginning of 20 th year and thereafter	16 hours per month

Vacation time is accrued from the date of hire, but cannot be used, until successfully completing six (6) months of employment. Accrued vacation shall not exceed 240 hours at any time.

- 7.2 Vacation Bid Process: Employees shall choose vacation by rank and then seniority within the rank. The annual shift bid shall take place first, followed by the annual vacation bid, which spans two weeks and typically takes place during the last two weeks of November. During the annual vacation bid, employees may bid for up to eighty (80) hours of vacation each. Following the annual vacation bid, the paid leave calendar shall remain open for bidding, by rank and then seniority within the rank, for seven (7) calendar days, typically beginning on December 1 and ending on December 7. Thereafter, vacation shall be scheduled on a "first come – first served" basis. The calendar dates for bidding may be adjusted by the Employer based on a delay with issuance of the final budget, although the total days for bidding shall not be reduced. Once scheduled, vacations shall not be cancelled absent an actual emergency. Only one Employee can be on vacation at any time, unless the Chief of Police determines staffing needs can be adequately met.

Employees shall not be able to bid a vacation on January 1, July 4th, Labor Day, Thanksgiving, the day after Thanksgiving or Christmas Day. Provided, nothing prohibits the Department from granting leave on one of those dates by seniority if staffing levels otherwise permit.

- 7.3 Employees shall receive all accrued vacation at the time of termination, provided vacation earned during the year of termination shall be prorated.

ARTICLE 8 - SICK LEAVE

- 8.1 Employees of the police department shall accrue sick leave at the rate of eight (8) hours per month with a maximum accrual of one thousand forty (1,040) hours.
- 8.2 Sickness or disability shall be reported to the department head or the immediate supervisor at least four (4) hours prior to commencement of the employee's

workday, or as soon thereafter as practicable. The employee may be required to provide proof of illness. Any employee who utilizes more than three (3) separate work days of sick leave either immediately prior to, or immediately following, their normal weekend (weekly days off) or holiday, may be required to provide a doctor's certificate for every subsequent sick hours taken during the remainder of that year.

- 8.3 Employees noted in 8.1 above are entitled to use sick leave for only a bona fide illness or injury, quarantine due to exposure to contagious diseases, any physical treatment or examination including medical, dental or ocular. Employees may also use sick leave for illness or injury to the employee's spouse or minor child, requiring the employee's attendance and/or care. Employees shall make reasonable attempts to schedule routine medical, dental and vision care appointments during their off-duty time so as to not impact department staffing levels. Emergency and last minute appointments shall be approved by the immediate supervisor not an Association member, or Police Chief.

Sick leave may also be used for parents, including "step", who do not live in the employee's household, under circumstances defined as serious or extreme and/or life threatening.

- 8.4 Employees entitled to sick leave who have exhausted their sick leave accrual may use accrued vacation.
- 8.5 Time off for medical purposes shall be charged against sick leave for actual time used only.
- 8.6 If an employee retires from the City, meeting LEOFF plan requirements, that employee is eligible to cash out 25% of their sick leave balance at their current straight time rate.

8.7 Leave Provided by Applicable Statutes.

The Employer will provide eligible employees with all family and medical leave, pregnancy disability leave, military leave, and other paid and unpaid leave required by state and federal law, including:

- a) Family and Medical Leave (29 U.S.C. § 2601 et seq. and RCW 49.78).
- b) Family Care Act Leave (RCW 49.12.265).
- c) Pregnancy Disability Leave (RCW 49.60).
- d) Leave for Victims of Domestic Violence, Sexual Assault, and Stalking (RCW 49.76).
- e) Leave for Spouses of Deployed Military Personnel (RCW 49.77).
- f) Military Leave for Public Employees (RCW 38.40.060).
- g) Leave for Certain Emergency Services Personnel (RCW 49.12.460).

Leave eligibility, benefits, and requirements will be determined by applicable state or federal law and will be administered according to the City of Black Diamond Personnel Manual. In the event any provisions of the City of Black Diamond Personnel Manual conflict with state or federal law, then the terms of the state or federal law shall apply.

- 8.8 Employees injured on duty who receive Labor and Industries compensation shall be permitted to sign over the L&I check to the City and receive their regular compensation provided for under the Agreement. Employees shall not exhaust sick leave while on L&I status.
- 8.9 Association members shall be permitted to donate accrued, but unused, vacation or sick leave to other employees in accordance with City policy, as stated in the City of Black Diamond Personnel Manual. The parties recognize that the City will amend its current donation policy to reflect that donated hours will be converted into cash, and then converted into a proportionate share of hours for the employee receiving the donation, to account for pay disparities between the donating and receiving employees. Beyond this change, the City agrees to bargain the impacts of any subsequent policy revision that materially impacts Association members.

ARTICLE 9 - BEREAVEMENT LEAVE

- 9.1 Employees are eligible to receive up to five (5) days of paid bereavement leave for the death of an immediate family member. The specific length shall be determined by the Chief. In addition, employees are guaranteed an additional three (3) days of paid bereavement leave for attendance at the funeral of an immediate family member located more than 500 miles away. In the event an employee's spouse or child dies, the Chief has the discretion to allow the employee to use accrued sick, vacation, or holiday leave for purposes of extended bereavement. All leave taken under this Article shall be used within thirty (30) days of the date of death.

For purposes of this section, "immediate family member" includes spouses, children, stepchildren, foster children, siblings, grandparents, parents of employees or parents of employees' spouses, grandchildren, and any other familial inhabitants of employees' households.

- 9.2 Employees may be excused by the Employer to attend the funeral of deceased fellow employees as leave with pay.

ARTICLE 10 - JURY DUTY

- 10.1 An employee serving on a jury of a federal, state, or municipal court shall be granted leave from City employment to the extent required by such service, and shall be paid during such leave the difference between his/her regular salary and

the amount paid by the Court for such duty. In order to be eligible for such payments, the employee must furnish a written statement from the appropriate public official showing date and time served and the amount of jury pay received. The employee shall submit to the City the money received for such services performed during City time. This benefit shall be expanded or diminished based upon changes in applicable federal or state law, and the impacts shall not be negotiated.

ARTICLE 11 - OTHER LEAVES

- 11.1 The Employer provides military leave in accordance with RCW 38.40.060. Leave eligibility, benefits, and requirements will be determined by applicable state law and will be administered according to the City of Black Diamond Personnel Manual. In the event any provisions of the City of Black Diamond Personnel Manual conflict with state law, then the terms of the state law shall apply.
- 11.2 The Employer may grant a regular employee a leave of absence without pay for a period not to exceed ninety (90) days, in the sole discretion of the Employer. No leave of absence without pay shall be granted except upon written request of the employee. Whenever granted, the leave shall be in writing and signed by the Employer, and a copy filed with the department head. Upon expiration of a regularly approved leave without pay, the employee shall be reinstated in the position held at the time leave was granted without loss of seniority status, excepting that the time on leave will be deducted from his total service to determine seniority. Failure on the part of the employee on leave without pay to report promptly at the expiration of the leave shall result in automatic termination of employment. The Employer may, in exceptional circumstances and in its sole discretion extend leave beyond ninety (90) days but reinstatement cannot be guaranteed. The Employee shall be responsible for paying in advance all health insurance premiums during the absence without pay. Failure to do so is grounds for denying the leave of absence.
- 11.3 Pursuant to RCW 1.16.050(3), each employee is entitled to two (2) unpaid holidays per calendar year for a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organization. Leave will be provided in accordance with Washington law and the City of Black Diamond Personnel Manual. In the event City policy conflicts with Washington law, then the minimum requirements of Washington law shall apply.

ARTICLE 12 - SENIORITY

- 12.1 Seniority is the length of continuous employment in each rank of an employee with the Employer in the police department.

- 12.2 Seniority shall be broken only by resignation, discharge, retirement, layoff of more than six (6) months, or failure to return in accordance with the terms of a leave of absence or when recalled from layoff.

ARTICLE 13 - PROMOTIONS, DEMOTIONS AND TRANSFERS

- 13.1 Promotions, non-disciplinary demotions and transfers will be carried out in accordance with Civil Service Commission rules, regulations and statutes.

ARTICLE 14 - LAYOFFS AND RECALL

- 14.1 Layoffs will be conducted in reverse order of seniority by rank. Recall from layoff shall be done in order of seniority, with the most senior employee within a rank being recalled first. Seniority shall be defined as the total length of service with the Department. As a mandatory condition of reinstatement, an employee subject to recall must be qualified to hold his/her position at the time of recall.
- 14.2 The period for recalling a laid-off employee shall be limited to twelve (12) months beginning on the date of the layoff. The Employer reserves the right to extend the twelve (12) month period at its discretion. It is the responsibility of a laid-off employee to provide current contact information to the Employer. If the Employer has difficulty contacting a laid-off employee, it may request assistance from the Association. Failure of an employee to report for reinstatement within ten (10) days of notification of job availability shall result in loss of seniority and, at the Employer's discretion, may result in the forfeiture of the right to reinstatement.

ARTICLE 15 - HEALTH & WELFARE - DENTAL - VISION - PRESCRIPTION DRUG - PENSION - LIFE INSURANCE

- 15.1 The City shall provide all full-time employees and their dependents the option of enrolling in one of two health plans offered by AWC. The first plan is AWC HealthFirst ~~"No Deductible"~~250 plan with AWC Plan "A" dental insurance. The second plan is AWC Group Health ~~\$40-20~~ Co-Pay Plan 3. The vision and orthodontia plans currently offered by AWC (subject to change by AWC) are the following: (1) Vision Service Plan – Full Family, \$25 Deductible; and (2) Orthodontia – Plan V. All employees agree to add both vision and orthodontia plans at their sole expense. Employees also have the option of adding any other benefits offered by AWC through the plans at their sole expense.

- 15.2 ~~For the period of August 31, 2014 through January 31, 2015, the parties agree as follows:~~

~~If an employee opts for the AWC HealthFirst "No Deductible" plan, then the City shall pay the premium for the employee and the employee's spouse and dependents. Each employee, as a monthly payroll deduction, shall reimburse the City for a portion of the premium. Each employee shall contribute \$50 per month, plus a percentage of the increase over the 2009 premium rate. The City shall pay~~

~~ninety (90) percent of the increase in premiums for 2010, 2011, 2012, 2013, 2014, and the first month of 2015, and employees shall pay the remaining ten (10) percent. Thus, the employee's monthly contribution shall be as follows:~~

	<u>2014</u>	<u>Jan. 2015</u>
Employee Only	\$64.64	\$ 67.97
Employee + Spouse	\$79.60	\$ 86.28
Employee + Spouse + 1 Child	\$86.97	\$ 95.30
Employee + Spouse + 2 or more Children	\$93.19	\$102.89
Employee + 1 Child	\$72.01	\$ 76.99
Employee + 2 or more Children	\$78.23	\$ 84.58

~~If an employee opts for the AWC Group Health \$10 co-pay plan, then the City shall pay the premium for the employee and the employee's spouse and dependents. Each employee, as a monthly payroll deduction, shall reimburse the City for a percentage of the increase over the 2009 premium rate. The City shall pay ninety (90) percent of the increase in premiums for 2010, 2011, 2012, 2013, 2014, and the first month of 2015, and employees shall pay the remaining ten (10) percent. Thus, the employee's monthly contribution amount shall be as follows:~~

	<u>2014</u>	<u>Jan. 2015</u>
Employee Only	\$11.80	\$12.98
Employee + Spouse	\$23.52	\$29.71
Employee + Spouse + 1 Child	\$29.64	\$37.40
Employee + Spouse + 2 or more Children	\$35.78	\$45.10
Employee + 1 Child	\$17.94	\$22.62
Employee + 2 or more Children	\$24.08	\$30.33

~~For the period of February 1, 2015 until December 31, 2016, the parties agree as follows:~~

- ~~a. For both the AWC HealthFirst "No Deductible" and AWC Group Health \$10 co-pay plans, the City shall pay the premium for the employee and the employee's spouse and dependents. Each employee, as a monthly payroll deduction, shall reimburse the City for a portion of the premium. The City and employees shall equally split (50/50) total premium increases over final 2014 rates. For example, if total premiums for 2015 are 5.0% above the rates in effect in 2014, the City shall pay half (2.5%) of the total increase and employees shall pay the remaining half (2.5%). Using final 2014 rates as the starting point, employees who opt for the AWC HealthFirst "No Deductible" plan shall contribute \$50 per month plus 50% of the total premium increase for 2015 and 2016. Using final 2014 rates as the starting point, employees who opt for the AWC Group Health \$10 co-pay plan shall contribute 50% of the total premium increase for 2015 and 2016.~~

2015 AWC HealthFirst Cost-Sharing Premiums

Employee Only	\$ 81.28
Employee + Spouse	\$113.01
Employee + Spouse + 1 Child	\$128.63
Employee + Spouse + 2 or more Children	\$141.68
Employee + 1 Child	\$ 96.90
Employee + 2 or more Children	\$109.96

2015 Group Health \$10 Co-Pay Cost-Sharing Premiums

Employee Only	\$ 17.70
Employee + Spouse	\$ 35.28
Employee + Spouse + 1 Child	\$ 44.46
Employee + Spouse + 2 or more Children	\$ 53.67
Employee + 1 Child	\$ 26.91
Employee + 2 or more Children	\$ 36.12

Prior to this Agreement, using 2016 rates, employees paid the following cost-share towards premiums under the previous health plans:

2016 AWC HealthFirst Cost-Sharing Premiums

(based on \$50 per month, plus percentage of premium)

Employee only	\$91.97
Employee + Spouse	\$134.46
Employee + Spouse + 1 Child	\$155.37
Employee + Spouse + 2 or more Children	\$173.62
Employee + 1 Child	\$112.88
Employee + 2 of more Children	\$130.33

2016 Group Health \$10 Co-Pay Plan 2 Cost-Sharing Premiums

(based only on percentage of premium)

Employee only	\$43.81
Employee + Spouse	\$87.11
Employee + Spouse + 1 Child	\$109.40
Employee + Spouse + 2 or more Children	\$131.73
Employee + 1 Child	\$66.13
Employee + 2 of more Children	\$88.46

Effective January 1, 2017, employees shall move to AWC HealthFirst 250 and AWC Group Health \$20 Co-Pay Plan 3. Employees shall continue paying the rates listed above, plus 50% of the annual premium increase for the plan they are enrolled in. For example, if 2017 premiums for AWC HealthFirst 250 increase

4.5% then employees shall pay 50% of the increase and the City shall pay the remaining 50%. This 50/50 split of annual premium increases shall apply each year.

- 15.3 The City has the right to change health and welfare plans and carriers, but agrees that it shall negotiate the impacts of the changes. If the City anticipates changing a benefit from the plan specified above, it shall give the Association no less than thirty (30) days notice so that the parties may meet and discuss other possible alternatives. ~~The parties acknowledge that both of the AWC health plans offered by the Employer (stated in Section 15.1 of this Article) are being eliminated by AWC on December 31, 2017. The parties acknowledge that they will be discussing movement to new health plans in 2016 or early 2017.~~
- 15.4 For each Employee that is a member of WACOPS the Employer shall pay the annual premium for the life and disability policy offered by WACOPS.
- 15.5 The Employer shall make pension contributions required by statute to the State of Washington, Department of Retirement Systems under the Law Enforcement and Firefighters (LEOFF) Plan.

ARTICLE 16 - DISCIPLINARY PROCEDURES

- 16.1 The Employer may discipline or discharge an employee for just cause inclusive, but not limited to, those causes set forth in the Civil Service Rules and Regulations.
- 16.2 Disciplinary action or measures may include the following:
- A. Verbal Warning
 - B. Written reprimand
 - C. Reassignment that results in an adverse economic impact
 - D. Suspension without pay
 - E. Demotion
 - F. Discharge
- 16.3 Progressive discipline is generally preferred, but not required, as it is intended to give notice of inappropriate conduct and to afford the Employee an opportunity to improve performance. The level or degree of discipline imposed shall be appropriately based on an employee's prior record of service, length of service, severity of offenses and prior record of discipline. Certain types of conduct do not require progressive discipline, and may justify an initial higher level of discipline, or even immediate discharge.
- 16.4 When the Employer determines the circumstances are such that retention of the employee will likely result in the disruption of Employer services, damage to or loss of Employer property or be injurious to the employee, fellow employees or

the services provided by the Employer, the Employer may immediately suspend with pay, depending on the circumstances. In such cases the facts supporting the circumstances will be made available to the employee by the Employer not later than three (3) working days after the action became effective.

- 16.5 The provisions of this article shall not apply to newly hired employees serving a probationary period. Consistent with Civil Service rules, the probationary period shall be twelve (12) months from police academy graduation date, not in any case to exceed eighteen (18) months from date of hire. Probationary employees shall work under the provisions of this agreement but shall be only on a trial basis during which period they may be discharged without cause and without any recourse. Employees on probationary status shall be eligible for the twelve (12) month step increase under conditions cited in Article XXIV, Section 24.2 of this agreement.
- 16.6 The employee and the employee's Association representative with the employee's written authorization shall have the right to inspect the full contents of his/her personnel file. No disciplinary document may be placed in an employee's personnel file without the employee having been first notified of said disciplinary document and given a copy. An employee who disagrees with the validity of any disciplinary document added to the file shall have the opportunity to challenge said complaint under the grievance procedure herein, other than verbal or written reprimands, which shall not be subject to the grievance process. In the case of a written reprimand or higher form of discipline, the employee may provide a written response within thirty (30) days of being provided notice, which shall be placed in the personnel file, and only removed if the written response is also removed. The employee shall be required to sign the written reprimand or other disciplinary action acknowledging that they have read the contents of the document.
- 16.7 Records of disciplinary action shall be removed from all City or Department maintained personnel files and not considered for purposes of progressive discipline based upon the following retention schedule and upon request of the employee:
1. Verbal Warning - Written records of a verbal warning or counseling shall be removed and destroyed after twelve (12) month without a reoccurrence of similar conduct which gave rise to the warning or counseling.
 2. Written Reprimand - Written reprimands shall be removed and destroyed after eighteen (18) months without reoccurrence of the same conduct which gave rise to the reprimand.
 3. Suspension – Suspensions shall be removed and destroyed after sixty (60) months without a reoccurrence of similar conduct which gave rise to the suspension.

Records of disciplinary action shall be kept by the City as required by Washington State records retention laws and schedules, as promulgated by the Office of the Secretary of State.

ARTICLE 17 - UNIFORMS WEAPONS AND EQUIPMENT

- 17.1 The Employer will provide each new hire with all department issued and required equipment, including uniforms. The Employee shall be responsible for maintaining all issued equipment and uniforms. All issued equipment shall be returned to the City upon termination of employment.
- 17.2 Each employee shall be provided a new ballistic vest at least once every five (5) years or whenever the vest has expired.
- | 17.3 For each year of this Agreement, ~~\$650~~\$700 uniform allowance will be provided to each employee and the allowance can only be used at an approved vendor. The City will pay the vendor directly, up to the amount of unused allowance. The allowance shall be credited to the employee in January of each year. If a piece of equipment or uniform is damaged in the line of duty, it will be repaired or replaced by the City separately, without deduction from the Employee or the uniform allowance.

ARTICLES 18 - GRIEVANCE PROCEDURE

- 18.1 The parties hereto recognize the need for fairness and justice in the adjudication of employee grievances and enter into this Agreement in a cooperative spirit to adjust such actions promptly and fairly. If a grievance cannot be resolved through informal means, the grievance will be settled as hereinafter provided.
- 18.2 A grievance is defined as a dispute involving the interpretation, application or alleged violation of any specific provision of this Agreement.
- 18.3 Any party who believes they have a grievance arising out of the terms of this Agreement may, except for arbitration, personally or through a representative, apply for relief under the provisions of this Article. Provided an employee cannot grieve an item unless it is approved first by the Association executive board, and proof of said approval is provided to the City at the time the grievance process is commenced.
- 18.4 The parties agree that the time limitations provided are essential to the prompt and orderly resolution of any grievance, and that each will abide by the time limitations, unless waived or extended by mutual written agreement of the parties to the grievance. For purposes of this Article, "working day" shall be defined as Monday through Friday, excluding holidays recognized by the City (and specified in the City of Black Diamond Personnel Manual).

- 18.5 To timely initiate the grievance process, a party must file a formal written grievance within ten (10) working days beginning on the date the party knew, or reasonably should have known, of the events giving rise to the grievance. If a party fails to comply with this ten (10) working day period, then that party forever waives and forfeits the grievance as well as any and all rights and remedies relating to the grievance. Failure to timely pursue a grievance to the next step renders final and conclusive the last determination and response. If an employee wishes to have those matters currently addressed under Civil Service Rules and Regulations, inclusive of promotions, demotions, transfers, layoffs, recall and discipline, but not limited thereto, the employee must file a request for an investigative hearing within ten (10) working days of the occurrence. Regarding disciplinary actions, the employee may elect to have disciplinary action reviewed by the Civil Service Commission. If the employee elects to have disciplinary action reviewed by the Civil Service Commission then a request for an investigative hearing must be filed with the Commission within ten (10) working days from the date of the disciplinary action. The employee must elect to have disciplinary action reviewed either through the grievance procedure or by the Civil Service Commission. An employee is not entitled to review of disciplinary action under both procedures. If the employee elects to pursue matters before the Civil Service Commission then the Civil Service Commission procedures will be applicable and not those of the collective bargaining agreement.
- 18.6 Prior to initiating the formal grievance procedure, the Association and/or grievant may verbally present a grievance to the Chief or the Chief's designee. A grievant presenting a verbal grievance shall have the option of being accompanied by an Association representative. The presentation of a verbal grievance under this paragraph is intended as a voluntary, optional, and informal method of attempting to settle potential grievances at an early stage. If a verbal grievance is not satisfactorily resolved, then the grievant may initiate the formal grievance procedure. Presenting a verbal grievance under this paragraph does not suspend the ten (10) working day period for filing a formal written grievance, as dictated by paragraph 18.5 and Step 1 of the formal grievance procedure.
- 18.7 The formal grievance procedure shall be as follows:

Step 1:

The grievance shall be presented in written form, stating the specific provision(s) of this Agreement allegedly violated, to the Chief within ten (10) working days beginning on the date the party knew, or reasonably should have known, of the events giving rise to the grievance. Thereafter, the Chief shall respond in writing to the aggrieved employee within ten (10) working days after receipt of the grievance. If the employee elects to have applicable matters reviewed by Civil Service then the employee will need to comply with the provisions set forth in Section 18.5 above.

Step 2:

If the grievance is not resolved to the satisfaction of the concerned parties at Step 1, then within ten (10) working days of the response in Step 1 above, the grievance in written form shall be presented to the Mayor or designee. The Mayor or designee shall schedule a meeting with the employee within fifteen (15) working days from the date of submission and respond within seven (7) working days of the meeting to the employee and Association. The employee has the right to be represented by his Association representative and the department head has the right to be represented by an Employer representative.

Step 3:

A. Final and Binding Arbitration and/or Mediation:

If the grievance has not been resolved at Step 2, the Association or City may refer the unsettled grievances to mediation and/or final and binding arbitration. If the parties refer the matter to mediation then the timelines for final and binding arbitration shall be extended to accommodate the mediation process.

B. Notice - Time Limitations: The Association shall notify the other party in writing by certified mail of submission to mediation or arbitration within twenty (20) days.

C. Arbitrator - Selection: After timely notice, the parties shall establish who the arbitrator will be in the following manner:

1. After timely notice, the parties shall select an impartial arbitrator within thirty (30) days, if possible, after the request is made to arbitrate.

2. If the parties cannot mutually agree on an impartial arbitrator who is able and willing to serve on a timely basis, they will request a list of nine (9) arbitrators who are willing to abide by time limitations. A list of impartial arbitrators shall be furnished by the Public Employment Relations Commission (PERC). The parties shall flip a coin to determine who will strike the first name, following which each will alternately strike one of the names submitted until one (1) name remains. This person will serve as the sole arbitrator subject to the following provisions.

D. Decision - Time Limit: The arbitrator will meet and hear the matter at the earliest possible date after the selection of said arbitrator. After completion of the hearing, a decision shall be entered within thirty (30) days or as soon as possible thereafter, unless an extension of time is agreed upon as provided for herein.

E. Limitations - Scope - Power of Arbitrator:

1. The arbitrator shall not have the authority to add to, subtract from, alter, change or modify the provisions of this Agreement.
2. The arbitrator shall only have the power to interpret and apply the specific terms of the Agreement and/or determine whether there has been a violation of the terms of this Agreement.
3. The arbitrator shall also have the authority to receive evidence and question witnesses.
4. The arbitrator shall not have the authority to review or consider appeals carried out pursuant to Civil Service Commission Rules and Regulations.

F. Arbitration Award - Damages - Expenses:

1. Each party hereto shall pay the expenses of their own attorneys, representatives, witnesses, and other costs associated with the presentation of their case. The party that did not substantially prevail shall pay the expenses of the arbitrator.
2. The arbitrator's written award shall be final and binding on all parties.

ARTICLE 19 - NON-REDUCTION OF WAGES AND WORKING CONDITIONS

- 19.1 The parties hereto agree that the wages and working conditions specified in this Collective Bargaining Agreement shall not be modified during the agreement term, except as provided herein or as authorized by law. The Employer may provide additional benefits to the Employees, from time to time, as may be adopted by City ordinance or resolution.

ARTICLE 20 - STRIKES AND LOCKOUTS

- 20.1 The employer and the Association recognize that the public interest requires the efficient and uninterrupted performance of all City services and to this end pledge their best efforts to avoid or eliminate any conduct contrary to this objective. During the term of this agreement, neither the Association nor the Employer shall cause, engage in, or sanction any work stoppage, slowdown, or other interference with City functions. Employees who engage in any of the foregoing

actions may be subject to disciplinary action including immediate discharge. No individual shall receive any portion of his/her salary or benefits as provided by the employer, and in accordance with applicable law, while engaging in activities in violation of this Article.

ARTICLE 21 - ASSOCIATION REPRESENTATION

- 21.1 An authorized representative of the Association shall have the right, in unpaid status and after obtaining appropriate signed releases from the affected employees, to investigate grievances or conditions at reasonable hours upon first securing permission from the Employer to do so and without interfering with the progress of work. The Association shall advise the Employer, in writing, of the names of their authorized representatives and stewards.

ARTICLE 22 - BULLETIN BOARD

- 22.1 The Employer shall provide space for a bulletin board of no more than 8 square feet in size, for the Association's use in an area conveniently accessible to bargaining unit employees, solely to be used for the purpose of notifying employees of matters pertaining to Association business. All notices shall be signed by a representative of the Association who is authorized by the Association to approve Association notices. The Board shall be properly maintained, in a neat and safe manner, by the Association.

ARTICLE 23 - NON-DISCRIMINATION

- 23.1 The Employer agrees that they will not discriminate against any employee because of lawful Association activity.
- 23.2 Neither the Association nor the Employer, in carrying out their obligation under this agreement, shall not unlawfully discriminate in matters of hiring, training, promotion, transfer, layoff, discharge, or otherwise because of race, color, creed, national origin, gender, age, marital status, disability or religion.
- 23.3 All references to employees in this Agreement designate both sexes, and wherever the male gender is used, it shall be construed to include male and female employees.

ARTICLE 24 – WAGES

- 24.1 The Employees shall be paid the base wage set forth in Appendix A.
- 24.2 For the duration of this Agreement, wages for Association members shall remain fixed at the rates as they existed on August 30, 2014 listed in Appendix A to this Agreement. Wage rates are still subject to adjustments for education incentive pay (as described in this Article), specialty pay (as described in this Article),

progression through steps (as described in Appendix A of this Agreement), and promotions.

- 24.3 All bargaining unit employees shall receive an education incentive added to the base pay equal to 2% for an Associate Arts Degree or 4% for a Bachelor Degree and 6% for a Masters degree.
- 24.4 Employees assigned by the chief to act as a Field Training Officer or full time Detective shall be paid an additional premium of three percent (3%) of the base rate of pay each month. There shall be no pyramiding of premium pays, and the FTO premium pay shall only apply during actual training time.
- 24.5 The K-9 Officer shall receive one-half hour release time from each shift and one-half hour of pay or compensatory time off on each day off for compensation for the at home care and feeding of the dog.

ARTICLE 25 - SEPARABILITY

- 25.1 In the event that any provision of this agreement shall at any time be declared invalid by a final judgment of any court of competent jurisdiction, or through a final decree of a government, state or local body, such decision shall not invalidate the entire agreement, it being the express intention of the parties hereto that all other provisions not declared invalid shall remain in full force and effect. The parties agree that any invalid provision of this agreement shall be modified through negotiations to comply with the existing regulations or laws.

ARTICLE 26 - MILEAGE ALLOWANCE

- 26.1 All employees required by the cognizant department head to use their private cars for official departmental business, shall be compensated at the rate provided by ordinance or resolution, or as the same may be amended or substituted.

ARTICLE 27 – TAKE HOME CARS

- 27.1 Employees shall be provided their assigned regular patrol vehicle as a take home vehicle, subject to the rules and regulations, including amendments there to, that are adopted by the Chief of Police. Each employee will be required to sign, prior to receiving a take home vehicle, an agreement with the City that they will comply with the adopted rules and regulations and failure to do so may result in losing the take home car privilege. If the take home car privilege is taken away from an officer, only whether or not a violation of the adopted rules and regulations has occurred will be subject to the grievance process.

ARTICLE 28 - CONFLICT OF CONTRACT AND ORDINANCE

- 28.1 The rules and regulation of the Black Diamond Civil Service Commission shall govern unless specifically superseded by the terms and conditions of the Agreement.

ARTICLE 29 - MANAGEMENT RIGHTS

- 29.1 Except as expressly modified or restricted by a specific provision of this Agreement or applicable Civil Service Regulations, all statutory and inherent managerial rights, prerogatives, and functions are retained and vested exclusively in management. This shall include, but is not limited to the right in its sole and exclusive judgment and discretion to; 1) take whatever action is either necessary or advisable to determine, manage and fulfill the mission of the department or the City; 2) to discipline employees for cause; 3) to determine the number of employees to be employed and the appropriate staffing levels; 4) to conduct job analysis and performance; 5) to determine the duties, task, responsibilities and essential functions of each job; 6) to hire employees; 7) to determine employee qualifications and to assign and direct their work; 8) to evaluate employee's performance; 9) to promote, demote, transfer, lay off, recall to work, and retire employees; 10) to set productivity standards; 11) to set reasonable fitness standards; 12) to maintain the efficiency of operations; 13) to set working schedules, add or delete shifts, and determine the shift to be worked; 14) to determine the personnel, methods, means and facilities by which operations are conducted; 15) to contract for goods and or services; 16) to expand, reduce, alter, combine, transfer, assign, or cease any job, department, operation or service; 17) to control and regulate the use of facilities, equipment, and other property of the department; 18) to introduce new or improved equipment, materials, or methods; and 19) to issue, amend, revise and delete policies, rules, regulations, general orders, administrative directives and practices.
- 29.2 The Employer's failure to exercise any right reserved to it in section 29.1, or its exercise of the right in a particular way, shall not be considered a waiver of the right, or a limitation of its exercise of the right in some other way not in conflict with the express provisions of this Agreement. There shall be no prevailing right of the Association or the Employee to any particular way a management right has been exercised in the past, or a benefit has been administered, except as expressly set forth in this Agreement.

ARTICLE 30 – BILL OF RIGHTS

- 30.1 Subject to the provisions of this Agreement and except as otherwise provided, employees have the right to use the grievance procedure contained herein to protect their rights as set forth in this Agreement.
- 30.2 All employees within the bargaining unit shall be covered by the following rules and regulations. The powers and duties of law enforcement officers involve them

in many contacts with members of the public and questions are bound to arise as to the nature of such contacts, which questions require immediate investigation by superior officers who have been authorized to make such investigations by the Chief of Police.

Such investigations shall be conducted under the following general guidelines:

30.2.1 When a permanent, non-probationary employee is the subject of a formal internal investigation by the Black Diamond Police Department, prior to any interview of the employee, the employee shall be advised of the general nature of the inquiry of and whether he or she is suspected of (1) committing a criminal offense; (2) misconduct that would be grounds for termination, demotion, suspension, or other disciplinary actions; (3) that the employee may not be qualified for continued employment with the Department. All interviews shall be conducted in a manner consistent with due process rights granted by law. The officer shall not thereafter contact the citizen or witnesses without prior written permission of the Chief of Police.

30.2.2 If the Chief of Police determines that the officer should be questioned about the allegation, such questioning shall be done as soon as practicable. Unless an emergency is thought by the Chief of Police to exist, such questioning shall be while the member is on duty and during the daytime, if possible.

30.2.3 Questioning of the officer shall be with full regard to his constitutional rights. If the allegations amount to a charge that the officer is guilty of a crime, he shall be fully advised of his rights under the Miranda decision. The employee shall have the right to retain an attorney of his own choosing, (at no expense to the City of Black Diamond). Such attorney (and/or a representative of the Association) shall have the right to be present during any questioning.

30.2.4 An employee who is the subject for a formal investigation shall have a right to make copies of any statement he or she has signed pertaining to the investigation and shall be entitled to a copy, at its expense, of any recording of an interview of the employee.

30.2.5 It is understood that under state law, no officer may be required to take any lie detector test as a condition of continued employment, though he may request a polygraph test. If one is requested by the employee, and the Employer consents to the polygraph of the employee, it shall be taken by an independent agency chosen by the Chief of Police, after consultation with the Association, at the Employee's expense.

ARTICLE 31- LIABILITY INSURANCE

- 31.1 The Employer agrees to either provide insurance coverage on behalf of the employees or provide liability defense for employees or a combination thereof in order to reasonably protect and indemnify employees from liability to third parties resulting from employees negligently performing duties within the scope of employment provided, however, such coverage will not protect the employee from their intentional and/or malicious tortious acts or assaults. Subject to the provisions of this Article, the coverage will include reasonable attorney's fees incurred by attorneys chosen by the City and reasonable costs connected with lawsuits.
- 31.2 The Drug and Alcohol Policy and procedures mutually agreed on by the parties is hereby incorporated by reference as though it were set out specifically and completely in this Agreement. Said policies and procedures are a part of this Agreement.

ARTICLE 32 - TERMINATION AND RENEWAL

- 32.1 This agreement shall be in full force and effect from ~~August 31, 2014~~ January 1, 2017 until ~~December 31, 2016~~ December 31, 2019.

**CITY OF BLACK DIAMOND,
WASHINGTON**

**BLACK DIAMOND POLICE
OFFICERS' ASSOCIATION**

By: _____
Mayor Carol Benson

By: _____
Sgt. Brian ~~Martinez~~ Lynch, President

Date: _____

Date: _____

Attest:

~~Brenda L. Martinez, City Clerk~~

APPENDIX A

Effective August 31, 2014

	Step 1	Step 2	Step 3	Step 4	Step 5
Police Officer	5,037	5,645	6,255	6,863.00	7,440
Police Sergeant	8,292	8,757	N/A	N/A	N/A

Wage rates shall remain unchanged for the duration of this Agreement. However, employees shall receive the following signing bonus payments:

January 2017 = \$1,250

January 2018 = \$1,250

January 2019 = \$1,250

The signing bonus payments will be paid only to those employees on the roster at the beginning of each calendar year. Annual payments will be made during the second payroll period of January.

An officer's wage shall be increased to the next step on his/her step-increase eligibility date and upon a satisfactory performance evaluation. For employees hired on or before May 6, 2010, the step-increase eligibility date is the first day of the month of hire. For employees hired after May 6, 2010, including all future employees, the step-increase eligibility date is the first day of the month of hire if hired from the 1st through the 15th of the month, or the first day of the month following the month of hire if hired from the 16th through the 31st of the month.

Employees will submit timesheets to the Employer's payroll department one week before the end of each month to allow sufficient time for payroll processing. A lag report for overtime earned, or leave taken, during the last week of each month will be submitted by employees with the following month's timesheets.

	<u>August 2014 Wage</u>
Josh Tapece	7,440.00
Kris Chatterson	7,440.00
Tim Macdonald	7,440.00
Brian MartinezMike Grias	8,757.00
Megan RossWilliam Riepl	5,037.00
Brian Lynch	8,757.00

MEMORANDUM OF UNDERSTANDING
CITY OF BLACK DIAMOND
AND
BLACK DIAMOND POLICE OFFICERS' ASSOCIATION (F.O.P.)

1. Dates and Parties. This Memorandum of Understanding (MOU) is effective January 1, 2017 through December 31, 2019, by and between the City of Black Diamond (the "City") and the Black Diamond Police Officers' Association (the "Association").
2. Background and Purpose.
 - a. The parties have executed a collective bargaining agreement ("CBA") for the period of January 1, 2017 through December 31, 2019.
 - b. During bargaining over the CBA, the parties could not reach an agreement concerning a notice period for shift adjustments. The parties agreed to this MOU as a compromise to evaluate the need for and costs associated with providing such notice.
3. Terms of this MOU – Shift Adjustments
 - a. The City will provide 48 hours' notice of adjustments to an officer's regularly-scheduled shift. Overtime will be paid for adjustments made with less than 48 hours' notice, paid for those hours falling outside of an officer's regularly-scheduled shift. A deviation of four (4) hours or less from a regularly-scheduled shift does not qualify as a shift adjustment and does not qualify for overtime payment.
 - b. The payment of overtime for shift adjustments is intended to avoid causing inconvenience to officers' personal lives during time off and is not intended to incur overtime liability on a regular basis. The payment of overtime provided by this MOU shall apply only when the Department is fully staffed and not during staffing emergencies or public emergencies (as determined by the Chief or Commander). For example, having an officer on extended L&I leave for one (1) week or more in duration counts as a staffing emergency. Shift adjustments made by mutual agreement between the Department and the affected officer(s) shall not qualify for overtime payments.
 - c. All paid time off (vacation, holiday, compensatory time off) requests must be submitted with 72 hours' notice or they are subject to denial.

4. This MOU will remain in effect for the duration of the parties' 2017-2019 CBA and then expire. While the MOU remains in effect, the parties will evaluate its pros/cons. This MOU will not become part of the status quo or evidence at interest arbitration. The terms of this MOU will be subject for negotiation during bargaining over a successor CBA. All other terms and conditions of the 2017-2019 CBA shall remain unchanged and in full force and effect.

CITY OF BLACK DIAMOND

BLACK DIAMOND POLICE OFFICERS'
ASSOCIATION

Date: _____

Date: _____

Carol Benson, Mayor

Sgt. Brian Lynch, Association President

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT:	Agenda Date: October 6, 2016	AB16-060A
Resolution authorizing the Mayor to execute a professional services agreement with RH2 Engineering, Inc. to serve as the Civil Engineering Consultant to the Water and Sewer utilities.	Mayor Carol Benson	
	City Administrator	
	City Attorney David Linehan	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Andy Williamson	
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	
	Police – Chief Kiblinger	
Cost Impact (see also Fiscal Note): \$60,000	Public Works – Seth Boettcher	X
Fund Source: Water/Sewer	Court – Stephanie Metcalf	
Timeline: 2 years		
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Resolution No. 16-xxx; Contract		
SUMMARY STATEMENT: <p>A motion passed at the October 20 meeting to bring this resolution forward at the November 3rd meeting.</p> <p>Councilmembers Deady and Edelman have asked to place this item on the agenda.</p> <p>The City is in need of on-going water and sewer engineering services. The City hired RH2 two years ago and would like to extend that agreement with this new agreement.</p> <p>The City has been using RH2 for on-call tasks and has received responsive, technically sound engineering with accurate and clear billing. Staff is recommending this two year agreement with RH2 because of their very good service and their familiarity with the City's water and sewer systems.</p> <p>Tasks under this agreement will be executed via an on-call task request according to adopted purchasing policies. The staff will use this contract for initial study and investigation work for capital project development, operation and maintenance troubleshooting and assistance, and for serving development needs and plan review (reimbursable).</p> <p>FISCAL NOTE (Finance Department): Task orders over \$7,500 will require Council approval if not covered by approved budgets; task orders over \$15,000 will require Council approval. Many expenses will be reimbursable by developers.</p>		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: MOTION to adopt Resolution 16-xxx (Clerk to assign		

***number after adoption*) authorizing the Mayor to execute a professional services agreement with RH2 Engineering, Inc. to serve as the Civil Engineering Consultant for the Water and Sewer utilities.**

RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
October 6, 2016	Motion to remove from agenda. Passed 3-2 (Edelman, Deady)	
October 20, 2016	Motion to bring forward at November 3 rd meeting. Passed 5-0	
November 3, 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 PROFESSIONAL SERVICES AGREEMENT WITH RH2 ENGINEERING, INC. TO SERVE AS THE CIVIL ENGINEERING CONSULTANT TO THE WATER AND SEWER UTILITIES

WHEREAS, the City does not have sufficient staff resources to provide civil engineering services to meet the needs of the water and sewer utilities; and

WHEREAS, on September 18, 2014, RH2 Engineering, Inc. and the City entered into a contract for ongoing services described in the contract; and

WHEREAS, the City would like to continue the services with RH2 Engineering, Inc.

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 professional services agreement with RH2 Engineering, Inc. to serve as the Civil Engineering Consultant to the Water and Sewer utilities.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 3RD DAY OF NOVEMBER, 2016.

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk

**CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT
FOR CIVIL ENGINEERING SERVICES**

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

and RH2 ENGINEERING, INC., a corporation organized under the laws of the State of Washington, doing business at:

RH2 ENGINEERING, INC. (hereinafter the "CONSULTANT")
22722 29th Drive SE, Suite 210
Bothell, WA 98021

Contact: Geoff Dillard Phone: 425-951-5322 Fax: 425-951-5401

for professional services in connection with the following Project:

City of Black Diamond Public Works Civil Engineering (Water, Sewer)

WHEREAS, the City has previously contracted with Consultant to provide the City with the same or substantially similar services for the Public Works Department, and the City desires to continue working with Consultant on Public Works matters related to civil engineering for the water and sewer utilities under the terms and conditions set forth herein; and

WHEREAS, the Consultant has agreed to provide the services described in Exhibit A (Scope of Work) under the terms and conditions set forth herein;

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

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. The City will issue an on-call task request, in the form attached as Exhibit "B," for each project task for which the City requires Consultant services. No work shall be commenced by Consultant under this Agreement except pursuant to such an on-call task request issued by the City. Consultant shall perform the services described in the on-call task request in accordance with the schedule and scope of work set forth in the on-call task request (the "Task Scope of Work").

B. Consultant will work within the project schedule set forth in the on-call task request and will diligently proceed with the work and shall assure that it, and its subconsultants, will have adequate staffing at all times in order to complete the Scope of Work in a timely manner. If factors beyond the Consultant's control that could not have been reasonably foreseen as of the date of this Agreement cause delay, then the parties will negotiate in good faith to determine whether an extension is appropriate. The Consultant shall provide the City with written notice of any delay, or potential delay, that may trigger the need for a time extension within 3 business days after the Consultant becomes aware of the delay or potential delay.

C. Consultant is authorize to proceed with services upon receipt of a signed on-call task request.

3. Compensation.

A. Rates. Compensation for the services provided pursuant to each on-call task request shall be on a time and materials basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit "C." Consultant may adjust the billing rates and reimbursable expenses once each calendar year on or after January 1st by providing the City with written notice of the adjusted rates and expenses no less than (30) thirty days prior to the effective date of such adjustment. The billing rates and reimbursable expenses for on-call task requests issued prior to receipt of written notice of the rate/expense adjustment by the City shall not be affected by the adjustment.

B. Other. In the event that after commencement of work, the Consultant anticipates that the work for an on-call task request will exceed the initial amount authorized, Consultant shall promptly notify the City and provide the City with whatever documents or information is necessary to request approval of any amounts in excess thereof.

4. Payment.

A. The City shall pay the Consultant an amount based on time and materials according to the list of billing rates and reimbursable expenses attached hereto as Exhibit "C." The total amount of services under this contract shall not exceed sixty thousand dollars (\$60,000) for the services describe in Section 1 herein. This is the maximum amount to be paid under this Agreement for the work described in Exhibit "A," and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section 5 herein before reaching the maximum amount.

B. Compensation for the services provided pursuant to an on-call task request shall not exceed \$7,500 without the written authorization of the City Council. In the event that, after the commencement of the work, the Consultant anticipates that the work for an on-call task request will

exceed \$7,500, Consultant shall promptly notify the City and provide the City with whatever documents or information is necessary to request approval of any amounts in excess thereof.

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

5. Terms

A. This agreement shall commence on October 7, 2016, ("Commencement Date") and shall terminate on October 7, 2018, unless extended or terminated in writing as provided herein.

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:

Seth Boettcher
Public Works Director
PO Box 599
24301 Roberts Drive
Black Diamond, WA 98010

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

NAME OF CONSULTANT
Attn: Geoff Dillard
RH2 Engineering, Inc.
22722 29th Drive SE, Suite 210
Bothell, WA 98021

Phone: 425-951-5322
Fax: 425-951-5401

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 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

RH2 ENGINEERING, INC.

By: _____

Carol Benson
Mayor

Date: _____

By: Geoffrey G. Dillard

Name: Geoffrey G. Dillard

Title: Director

Date: 9-23-16

Attest:

By: _____

Brenda Martinez
City Clerk

APPROVED AS TO FORM:

By: _____
David Linehan
City Attorney

Exhibit A

Scope of Work

Background

In the course of a year and from time to time, the City will be in need of engineering assistance for the City's water and sewer utilities as well as capital project design work for these utilities. This scope of work is intended to disclose the types of services the City may be seeking but is not intended to be all inclusive of the City's needs nor is it intended to be a complete list of all services that the City will be requesting.

The following tasks are not intended to imply chronological order, but rather serve as general categories of work that may be required by this contract.

Task 1 - Computer modeling of City Utility systems

- Review various utility system performance and constraints using computer modeling for the water and sewer systems.
- Evaluate different utility system configurations to meet City needs or to address identified problems.

Task 2 - Agency Coordination

- Assist the City with processing projects through various state and local agencies.
- Assist the City with preparing, presenting and advocating for solutions to City utility needs before various state and local agencies.

Task 3 – Professional Assistance to Address Utility System Urgent Needs

- Provide the City with professional engineering and technical advice to deal with system operations and maintenance problems that may arise.
- Assist the City with responding to regulatory requirements, new technology, or new demands on the utility systems.

Task 4 – Capital Project Engineering

- Provide the City with early project planning engineering to define a general scope and budget.
- Provide the City with preliminary project engineering to find creative, technically sound and practical solutions to address City needs.

- Provide efficient, clear drawings and contract documents for bidding public works projects.
- Attend meeting as necessary and as directed by the City to ensure compliance with City needs.
- Provide quality control and maintain quality assurance procedures for work products.
- Maintain complete and efficient working files of project activities.
- Provide timely and accurate billing invoices and billing records.
- Provide peer-review services as requested by the City.
- Meet with other City departments and as requested by the City to share information and maintain a cooperative working environment.

Task 5 – Mapping and As-built Drawings

- Provide mapping services for the City as requested.
- Update City maps with information collected by the City or from developers.
- Assist City with GIS systems and as-built formatting.

Task 6 – Services During Construction

- Provide on-call field inspection services to assist and supplement the experience and resources of City staff.
- Assist the City with project management activities as requested.

Task 7 – Rates and Financial Analysis

- Provide the City with rate studies, capital facility charge analysis, cost benefit analysis and funding recommendations.

Task 8 – General

- Provide professional technical assistance related to the planning, review, permit requirements, capital project implementation, operations, maintenance and reporting for the City's water and sewer utilities as directed by the City.

Exhibit B

City of Black Diamond On-Call Task Request

Date: _____	City Staff Contact: _____
Task Name: _____	Phone: <u>360-886-5700</u>
Consultant Project No.: _____	Fax: <u>360-886-2592</u>
Consultant Contact Name: _____	
Consultant Phone: _____	
Consultant Fax: _____	

Scope of Task Request Including Deliverables and Schedule

Budget Estimate:

Task Request Approval:	
City of Black Diamond:	
_____ Written Name	_____ Title
_____ Signature	_____ Date

Consultant:	
_____ Written Name	_____ Title
_____ Signature	_____ Date

*Costs are billed on a time and materials basis, the Consultant shall notify the City should additional funds be necessary to complete the task order. Additional work beyond that which is ordered by the City shall not commence until written notification is received from the City.

EXHIBIT C RH2 ENGINEERING, INC. 2016 SCHEDULE OF RATES AND CHARGES		
RATE LIST	RATE	UNIT
Professional I	\$137	\$/hr
Professional II	\$150	\$/hr
Professional III	\$159	\$/hr
Professional IV	\$170	\$/hr
Professional V	\$180	\$/hr
Professional VI	\$189	\$/hr
Professional VII	\$204	\$/hr
Professional VIII	\$213	\$/hr
Professional IX	\$213	\$/hr
Technician I	\$96	\$/hr
Technician II	\$101	\$/hr
Technician III	\$129	\$/hr
Technician IV	\$137	\$/hr
Administrative I	\$65	\$/hr
Administrative II	\$77	\$/hr
Administrative III	\$92	\$/hr
Administrative IV	\$108	\$/hr
Administrative V	\$128	\$/hr
CAD/GIS System	\$27.50	\$/hr
CAD Plots - Half Size	\$2.50	price per plot
CAD Plots - Full Size	\$10.00	price per plot
CAD Plots - Large	\$25.00	price per plot
Copies (bw) 8.5" X 11"	\$0.09	price per copy
Copies (bw) 8.5" X 14"	\$0.14	price per copy
Copies (bw) 11" X 17"	\$0.20	price per copy
Copies (color) 8.5" X 11"	\$0.90	price per copy
Copies (color) 8.5" X 14"	\$1.20	price per copy
Copies (color) 11" X 17"	\$2.00	price per copy
Technology Charge	2.50%	% of Direct Labor
Mileage	\$0.540	price per mile (or Current IRS Rate)
Subconsultants	15%	Cost +
Outside Services	at cost	

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: Ordinance regarding CCD Black Diamond Partners LLC and Ten Trails Residential Owners Associate a Non- Exclusive Franchise to use and occupy certain public right of ways	Agenda Date: November 3, 2016 AB16-063	
Cost Impact - N/A Fund Source: Timeline: Immediately	Mayor Carol Benson	
	City Administrator	
	City Attorney David Linehan	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Andy Williamson	
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	X
	Police – Chief Kiblinger	
	Public Works – Seth Boettcher	
	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: Ordinance 16-xxx		
SUMMARY STATEMENT: Councilmembers Edelman and Deady have placed this item on the agenda.		
<p>Granting CCD Black Diamond and the Ten Trails Residential Owners Association, Non-Exclusive franchise to use and occupy certain public rights-of-way for the purpose of construction, maintaining, and operating private drainage systems, including rain gardens and systems; irrigation systems, including reclaimed water distribution; landscaping lighting; private sanitary sewer systems; and appurtenances.</p> <p>CCD Black Diamond and the Ten Trails Residential Owners Association meets the qualifications to operate within the City Right-of-Way per the Development Agreement, chapter 7.1.7</p> <p>CCD Black Diamond and the Ten Trails Residential Owners Association will be required to obtain any and all regulatory permit required by the City prior to beginning work in the City’s Right-of-Way. Following any work within the Right-of-Way, CCD Black Diamond and the Ten Trails Residential Owners Association will be required to restore the area of construction to the reasonable satisfaction of the City.</p> <p>FISCAL NOTE: No Fiscal impact</p>		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: MOTION to adopt Ordinance No. 16-xxx (Clerk to assign number after adoption), authorizing the Mayor to execute an agreement with CCD Black Diamond Partners LLC and Ten Trails Residential Owners Associate a Non- Exclusive Franchise to use and occupy certain public right of ways.		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
November 03, 2016		

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BLACK DIAMOND, WASHINGTON, GRANTING TO CCD BLACK DIAMOND PARTNERS LLC A NON-EXCLUSIVE FRANCHISE TO USE AND OCCUPY CERTAIN PUBLIC RIGHTS-OF-WAY FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING, AND OPERATING PRIVATE STORM DRAINAGE SYSTEMS, INCLUDING RAIN GARDENS AND BIO RETENTION SYSTEMS; IRRIGATION SYSTEMS, INCLUDING RECLAIMED WATER DISTRIBUTION; LANDSCAPE LIGHTING; PRIVATE SANITARY SEWER SYSTEMS; AND APPURTENANCES.

WHEREAS, RCW 35A.47.040 authorizes code cities to issue non-exclusive franchises for use of public street and rights-of-way, and

WHEREAS, the City has determined that the improvements contemplated and regulated by this ordinance are appropriate and in the best interests of current and future residents of the City; and

WHEREAS, this ordinance has been introduced more than five (5) days prior to its passage by the City Council, and

WHEREAS, this ordinance has been submitted to the City Attorney and has received at least a majority vote of the entire City Council at a regular meeting, now, therefore

THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON,
DO ORDAIN AS FOLLOWS:

Section 1. Rights Granted. The right is hereby granted to CCD BLACK DIAMOND PARTNERS LLC and TEN TRAILS RESIDENTIAL OWNERS ASSOCIATION, its heirs, successors, legal representatives and assigns (collectively hereinafter referred to as the "Grantee") to lay, construct, extend, maintain, repair, renew, operate, and replace private storm drainage systems, including rain gardens and bio retention systems, irrigation systems, including reclaimed water distribution, landscape lighting, private sanitary sewer systems, and appurtenances in, on, under, over, though, along and/or across the public right-of-ways within The Villages Master Planned Development as legally described in Exhibit B to The Villages Master Planned Development Development Agreement dated December 12, 2011 recorded under King County recording no. 2012013000065 as amended (the "Development Agreement") located in the City of Black Diamond (hereinafter referred to as the "City") for the term of ten (10)-years from and after the effective date of this ordinance, except as hereinafter provided. At the end of the ten (10)-year period this franchise shall automatically renew on the anniversary date each year thereafter unless one party gives the other party written notice of intent to terminate the franchise at least six (6) months in advance of the anniversary date. The City of Black Diamond agrees to not unreasonably

withhold such franchise renewal provided the purpose of the franchise has not substantially changed. In the event that this franchise continues beyond the existence of the Master Development Review Team ("MDRT") as defined in the Development Agreement, the City Public Works Director shall succeed the MDRT with regard to all rights and obligations conferred by this franchise.

Section 2. City's Reservation of Rights. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances, and permit requirements regulating the performance of the conditions of this franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations the location, elevation, manner of construction and maintenance of any facilities of the Grantee, and the Grantee shall promptly conform with all such regulations, and permit requirements, unless compliance would cause the Grantee to violate other requirements of law.

Section 3. Franchise Fee. In consideration of the fact that i) the Development Agreement requires the recharge of groundwater with stormwater infiltrated using low impact development techniques and infiltration facilities, ii) the City requires adaptive management of detention and discharge rates and maintenance of hydrology for Black Diamond Lake and wetlands on the site through recharge, and iii) that the only feasible route to achieve these standards and conditions is by crossing and within the City right of way, the City will not impose a franchise fee. Further, in consideration for Grantee providing and paying for the cost of irrigation systems, reclaimed water systems, and water necessary for irrigation of landscape improvements on City-owned property, at no charge to the City, the City will not impose a franchise fee. In addition, in consideration of landscape lighting being provided where appropriate to enhance the character of the community while providing a higher level of security for all citizens of the community who may use the parks and trails at night and that the cost to operate the lights will be at no cost to the City, the City will not impose a franchise fee. Finally, in consideration of the fact that private side sewers are required by the City to be placed in City right of way because it is the most protected and practical route, the City will not impose a franchise fee.

Section 4. Approval of Plans. Prior to construction of any of the facilities in the area described in Section 1 herein, the Grantee shall submit to the City's MDRT, in triplicate, plans drawn to an accurate scale, showing the exact location, character, position, depth and height of the work to be done. The plans shall accurately depict the relative position and location of all lines, facilities and appurtenances to be constructed, hung, laid, re-laid, installed, replaced, repaired, connected or disconnected, in the existing street or public right-of-way. All streets and public right-of-way denoted thereon shall be designated by their name and number and any local improvements therein such as roadway pavement, shoulders, sidewalks, curbs, gutters, ditches, driveways, parking strips, telephone or electric distribution poles, conduits, storm, gas or water pipes as may exist on the ground or area above sought to be occupied shall be outlined.

In the construction proposed by the Grantee, all materials and equipment shall be of the first class type and kind. The exact class and type to be used shall be shown on the plans, as will the equipment to be used and the mode of safeguarding and facilitating the public traffic during

construction. The manner of excavation, construction installation, backfill and temporary structures (such as traffic turnouts, road obstructions, etc.) shall meet with the approval of, pass all requirements of, and be constructed under the supervision of the MDRT. Prior to approval of any work under this franchise, the MDRT may require such modifications or changes, deemed necessary to properly protect the public in the use of the public places, and may fix the time or times within and during which such work shall be done. The Grantee shall submit a Right-of-Way Use Permit and/or Utility Permit as required by the MDRT prior to work within the City's right-of-way.

Section 5. Requirement for Work in Public Rights-of-Way. Whenever the Grantee shall excavate in any public right-of-way for the purpose of installation, construction, repair, maintenance or relocation of its facilities, it shall apply to the City for a permit to do so and, in addition, shall give the City at least ten (10) working days' notice of intent to commence work on main lines in the right-of-way, unless such notice is waived by the MDRT. In no case shall any work commence within any public right-of-way without a permit, except as otherwise provided in this franchise ordinance.

During any period of relocation, installation, construction or maintenance, all surface structures, if any, shall be erected and used in such places and positions within said public right-of- ways and other public properties so as to interfere as little as possible with the free passage of traffic and the free use of adjoining property, and the Grantee shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems.

If the Grantee shall at any time plan to make excavations in any area covered by this franchise and as described in this Section, the Grantee shall afford the City, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

- A. Installation of any lines is compatible with all federal, state and local regulations and Grantee's construction standards;
- B. Such joint use shall not unreasonably delay the Grantee's work;
- C. Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties;
- D. The Grantee may deny such request for safety reasons.

Section 6. Protection of the Public Health, Safety and Property. Whenever an accident, faulty operation, excavation, fill or other condition associated with the construction, installation, maintenance or repair of the facilities authorized under this franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endanger the public, and adjoining public place or street utilities or City

property, the MDRT may direct the Grantee, at its own expense, to take actions to protect the public, adjacent public places, City property and street utilities, and may require compliance within a prescribed time.

In the event that the Grantee fails or refuses to take the actions directed promptly, or fails to fully comply with such directions given by the MDRT, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions necessary to protect the public, the adjacent streets, or streets, or street utilities, or to maintain the lateral support thereof, including placing of temporary shoring, backfilling, alteration of drainage patterns and any other actions reasonable necessary to decrease the possibility of earth movement, or actions regarded as necessary safety precautions; and the Grantee shall be liable to the City for the costs thereof.

Section 7. Records. Grantee shall at all times keep complete records showing the relative location and size of all facilities heretofore installed in public right-of-ways within the City. Such records shall be kept current by the Grantee, who shall provide as-builts to the City when this franchise is granted, and if the City permits additional installations, then immediately after construction is complete.

Upon the City's request for information on the location of Grantee's facilities prior to the designing of rights-of-way improvements or other City improvements, the Grantee shall respond with the information on both the horizontal and vertical depth location of the Grantee's facilities no later than two (2) business days after the receipt of the request, unless otherwise agreed by the parties in writing. The City, as excavator, shall have the right to receive compensation from the Grantee for all costs incurred if the Grantee does not accurately locate its facilities as required by this section and in accordance with RCW 19.122.030. Such compensation shall be paid by the Grantee to the City within thirty (30) days after receipt of an invoice

Section 8. Recovery of Costs. During the term of the Development Agreement, Grantee shall be responsible for all costs associated with activities undertaken through the authority granted in this franchise ordinance in accordance with the terms of the MPD Funding Agreement, Exhibit N to the Development Agreement. Thereafter, the Grantee shall be responsible for all permit fees associated with activities undertaken through the authority granted in this franchise ordinance or under the laws of the City. When the City incurs costs and expenses for review, inspection or supervision of activities undertaken through the authority granted in this franchise or any ordinances relating to the subject for which a fee is not established, the Grantee shall pay such costs and expenses directly to the City.

Section 9. Restoration. The Grantee shall, after installation, construction, relocation, maintenance or repair of its facilities within the franchise area, restore the surface of the right-of-way to at least the same condition the property was in immediately prior to any such installation, construction, relocation, maintenance or repair. The MDRT shall have final approval of the condition of such streets after restoration or repair. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to all federal, state and local

standards and specifications. The Grantee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the affected area at its sole cost and expense.

Section 10. Indemnification. The Grantee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, officials, employees, agents, volunteers, and representatives from any and all claims, injuries, damages, costs, judgments, awards or liability to any person, including claims by the Grantee's own employees to which the Grantee might otherwise be immune under Title 51 RCW, arising out of or related to any activities or operations performed by Grantee or on Grantee's behalf under or in connection with this franchise, except for injuries or damages to persons or property caused by the sole negligence of the City.

The Grantee further releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, officials, employees, agents, volunteers, and representatives from any and all claims, injuries, damages, costs, judgments, awards or liability to any person including claims by the Grantee's own employees, including those claims to which the Grantee might otherwise be immune under Title 51 RCW, arising against the City (1) solely by virtue of the City's ownership or control of the rights-of-way; (2) by virtue of the Grantee's exercise of the rights granted herein; or (3) by virtue of the City's permitting the Grantee's use of the City's rights-of-way; which claims are based upon the City's inspection or lack of inspection of work performed by the Grantee, its employees, agents, officers or representatives, in connection with the work authorized on the City's property or property over which the City has control, pursuant to this franchise or pursuant to any other permit or approval issued in connection with this franchise.

This covenant of indemnification shall include, but not be limited by this reference, claims against the City arising as a result of negligent acts or omissions of the Grantee, its employees, officers, representatives or agents in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction or work in any public right-of-way in the performance of the work or services permitted under this franchise.

Inspection or acceptance by the City of any work performed by the Grantee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.

In the event that the Grantee refuses the tender of defense in any suit or claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter) to have been a wrongful refusal on the part of the Grantee, then the Grantee shall pay all of the City's costs of defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fee for recovering under this indemnification clause.

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 Grantee and the City, its officers,

employees and agents, the Grantee's liability hereunder shall be only to the extent of the Grantee's negligence. It is further specifically and expressly understood that the indemnification provided herein covers claims by the Grantee's own employees from which the Grantee might otherwise be immune under Title 51 RCW, and this waiver has been mutually negotiated by the parties.

Section 11. Bond. Except for a street-restoration bond applicable to future repair and maintenance projects undertaken by the developer, the City will not require the Grantee to post bond for the faithful performance of the terms and conditions of this franchise.

Section 12. Relocation. Grantee agrees and covenants at its sole cost and expense, to protect, support, temporarily disconnect, or relocate any of its installations within City right-of-ways when so required by the City by reason of traffic conditions or public safety, dedications of new rights-of-way and the establishment and improvement thereof, widening and improvement of existing rights-of-way, street vacations, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity (any or all of which, individually or collectively, constitute a "Public Project").

Any condition or requirement (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals for permit for zoning, land use, construction or development) imposed by the City upon any third party or agreed upon between the City and any third party that reasonably necessitates the relocation of Grantee's facilities within the franchise area shall be deemed to be at the request of and to accommodate such third party.

If the City determines that a Public Project necessitates the relocation of Grantee's then existing facilities, the City shall:

- A. At least sixty (60) days prior to the notice to proceed with the Public Project, provide Grantee with written notice requiring such relocation; and
- B. Provide Grantee with copies of pertinent portions of the plans and specifications for the Public Project and a proposed location for Grantee's facilities so that Grantee may relocate its facilities in other City right-of-way in order to accommodate the Public Project.
- C. After receipt of the notice to relocate and the plans and specifications for the Public Project, Grantee shall complete relocation of its facilities at least ten (10) days prior to commencement of the City's Public Project at no charge or expense to the City. Relocation shall be accomplished in such a manner as to accommodate the Public Project.

Grantee may, after receipt of written notice requesting a relocation of its facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise Grantee in writing if one or more of the alternatives are suitable to accommodate the work which would otherwise necessitate relocation of the facilities. If so requested by the City, Grantee shall submit additional information to assist the City in making such evaluation. The City shall

give each alternative proposed by Grantee full and fair consideration. In the event the City ultimately determines that there is no other reasonable or feasible alternative, Grantee shall relocate its facilities as otherwise provided in this Section. The provisions of this Section shall survive the expiration or termination of this franchise agreement.

The provisions of this Section shall in no manner preclude or restrict Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated or maintained facilities, provided that such arrangements do not unduly delay a City construction project.

Section 13. Non-Exclusive Franchise Grant. This franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below or across any of said streets, avenues, alleys or public rights-of-way of every type and description. Such franchise shall in no way prevent or prohibit the City from using any of said roads, streets or public rights-of-way, or affect the City's jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new rights-of-way of every type and description.

Section 14. Forfeiture and Revocation. If Grantee willfully violates or fails to comply with any of the provisions of this franchise, or through willful misconduct or gross negligence fails to heed or comply with any notice given the Grantee by the City under the provisions of this franchise, then the Grantee shall, at the election of the City Council, forfeit all rights conferred hereunder and this franchise may be revoked or annulled by the Council after a hearing held upon at least thirty (30) days notice to the Grantee. Prior to or at the hearing, the Grantee may request a reasonable time within which to remedy the default.

The City may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling the Grantee to comply with the provisions of this ordinance, and to recover damages and costs incurred by the City by reason of the Grantee's failure to comply.

In addition to any other remedy provided herein, the City reserves the right to pursue any legal remedy to compel or force the Grantee to comply with the terms of this franchise, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein.

Section 15. Insurance. Grantee shall procure and maintain for the duration of this franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to the Grantee, its officials, employees and representatives. Grantee shall provide a copy of its insurance policy(ies) to the City for its inspection prior to the adoption of this franchise ordinance.

Grantee shall obtain and maintain insurance of at least the following types of coverage and minimum coverage limits:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01, and shall have a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover liability arising from operations, products-completed operations, and stop-gap liability, and shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate, and a \$2,000,000 products- completed operations aggregate limit. There shall be no exclusion for liability arising from explosion, collapse, or underground property damage. The City shall be named as an additional insured under the Grantee's Commercial General Liability insurance policy using ISO Additional Insured-State or Political Subdivisions-Permits CG 20 12 or a substitute endorsement providing at least as broad coverage.

Any deductibles or self-insured retentions must be declared to and approved by the City. Payment of deductible or self-insured retentions shall be the sole responsibility of the Grantee. If the Grantee maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Grantee, irrespective of whether such limits maintained by the Grantee are greater than those required by this franchise or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Grantee.

The insurance policy obtained by Grantee shall name the City, its officers, officials, employees, and volunteers as additional insureds with regard to activities performed by or on behalf of the Grantee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, or volunteers. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Grantee's insurance shall be primary insurance as respects the City, its officers, officials, employees or volunteers. Any insurance, self-insurance, or self-insured pool coverage maintained by the City, its officers, officials, employees, and volunteers shall be in excess of Grantee's insurance and shall not contribute with it. The insurance policy or policies required by this clause shall be endorsed to state that coverage shall not be suspended, voided, or canceled by either party, or reduced in coverage or in limits, except after thirty (30) days prior written notice, by certified mail, return receipt requested, has been given to the City. Any failure to comply with the reporting provisions of the policies required herein shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII. Before beginning any work under this Agreement, Grantee shall provide evidence, in the form of an original Certificate of Insurance, and a copy of the amendatory endorsements, including the additional insured endorsement, of the insurance requirements specified above. Grantee's failure to maintain the insurance as required shall constitute a material breach of the franchise, upon which the City may, after giving five business days' notice to Grantee to correct the breach, immediately terminate the franchise or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand.

Grantee's maintenance of insurance as required by this franchise does not limit the liability of the Grantee to the coverage provided by such insurance, nor does it otherwise limit the City's recourse to any remedy available at law or in equity.

Section 16. Assignment. This agreement may not be assigned or transferred without the prior, written approval of the City. The Grantee shall provide prompt, written notice to the City of any such proposed assignment. All of the provisions, conditions, regulations and requirements contained in this franchise ordinance shall be binding upon the successors and assigns of the Grantee, and all privileges of the Grantee shall inure to the successors and assigns as if they were mentioned herein.

Section 17. Abandonment of Facilities. Any plan for abandonment of any of Grantee's facilities installed under this franchise or any of its predecessors must be submitted to the City for its written consent. The MDRT shall review the plan for abandonment prior to commencement of any work, and all necessary permits must be obtained prior to such work. The provisions of this Section shall survive the expiration, revocation or termination of this franchise ordinance.

Section 18. Modification. The City and Grantee hereby reserve the right to alter, amend or modify the terms and conditions of this franchise upon written agreement of both parties to such alteration, amendment or modification.

Section 19. Integration. The written provisions and terms of this franchise ordinance shall supersede all prior verbal statements of either party, and any prior franchise ordinance between the parties. Such statements or prior franchise ordinances shall not be effective or be construed as entering into, forming a part of, or altering in any manner whatsoever, this Agreement.

Section 20. Street Vacations. This section will only become operative in those instances where the street vacation is subject to the City's street vacation ordinance, and not in those situations where the street has been vacated by the lapse of time and operations of law. The City may have occasion to vacate certain streets, public ways or areas that have Grantee's facilities located thereon. City agrees to exert reasonable good faith efforts to reserve an easement for Grantee's facilities when a street, public way or area is vacated. If it is not feasible for City to reserve an easement for Grantee's facilities, the proponents of the vacation shall be required (by

City) as part of land use or other permitting approvals, to reimburse Grantee all costs to relocated said facilities, as allowed by law.

Section 21. Notice. Any notice or information required or permitted to be given to the parties under this franchise agreement may be sent to the following addresses unless otherwise specified:

City of Black Diamond
PO Box 599
Black Diamond, WA 98010
Attn: MDRT

Grantee c/o Oakpointe LLC
10220 NE Points Drive, Suite 310
Kirkland, WA 98033
Attn: Brian Ross

Section 22. Binding Effect. All of the provisions, conditions, regulations and requirements contained in this franchise ordinance shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of the Grantee and all privileges, as well as all obligations and liabilities of the Grantee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever the Grantee is mentioned herein.

Section 23. Compliance with Law. The Grantee, is subcontractors, employees and any person acting on behalf of the Grantee shall keep him/herself fully informed of all federal and state laws and regulations, and all municipal ordinances and regulations which in any manner affect the work or performance of the work authorized under this franchise ordinance, whether or not such laws, ordinances, or regulations are mentioned herein, and shall indemnify the City, its officers, agents, employees, volunteers, or representatives against any claim or liability arising from or based upon the violation of any such laws and regulations.

Section 24. Survival. All of the provisions, conditions, and requirements of Sections 6, 7, 9, 10, 17, and 22 shall survive the City's franchise to the Grantee for the use of the areas mentioned in Section 1 herein, and any renewals or extensions thereof.

Section 25. Severability. If any section, sentence, clause or phrase of this franchise ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this franchise ordinance. In the event that any of the provisions of this franchise are held to be invalid by a court of competent jurisdiction, the parties reserve the right to renegotiate the grant of franchise and may amend, repeal, add, replace or modify any other provision of this franchise, or may terminate this franchise.

Section 26. Acceptance. This franchise is granted upon the express condition that Grantee, within thirty (30) days after the adoption of this ordinance, shall file with the Clerk of the City a written acceptance of the same together with the other documentation required in this franchise, and when so accepted by the Grantee shall constitute a contract between the City and Grantee for all of the uses, services and purposes herein set forth.

Section 27. Emergency Work – Permit Waiver. In the event of any emergency in which any of Grantee's facilities located in or under any right-of-way breaks, becomes damaged, or if Grantee's construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any individual, Grantee shall immediately take the proper emergency measures to repair its facilities, to cure or remedy the dangerous conditions for the protection of property, life, health or safety of individuals without first applying for and obtaining a permit as required by this franchise. However, this shall not relieve Grantee from the requirement of obtaining any permits necessary for this purpose, and Grantee shall apply for all such permits not later than the next succeeding day during which the Black Diamond City Hall is open for business.

Section 28. Effective Date. This Ordinance shall take effect on the date of its first publication in the City's official newspaper, or on the date the Grantee submits the written acceptance required by Section 26 above, whichever occurs later.

PASSED BY THE COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AND APPROVED BY ITS MAYOR AT A REGULAR MEETING OF SAID
COUNCIL HELD ON THIS ____ DAY OF _____, 2016.

APPROVED:

ATTEST/AUTHENTICATED:

CITY CLERK,

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____

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

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: Ordinance Regarding Astound Broadband, LLC, d/b/a “Wave” granting A Non-Exclusive Telecommunications Franchise to install, construct, maintain, repair, and operate a telecommunications system within the public rights of way	Agenda Date: November 3, 2016	
	AB16-064	
	Mayor Carol Benson	
	City Administrator	
	City Attorney David Linehan	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Andy Williamson	
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	X
	Police – Chief Kiblinger	
Cost Impact - N/A	Public Works – Seth Boettcher	
Fund Source: --	Court – Stephanie Metcalf	
Timeline: 10 year agreement		
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input checked="" type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Ordinance 16- xxx; Overview		
SUMMARY STATEMENT: Councilmembers Edelman and Deady have placed this item on the agenda.		
<p>Granting, Astound Broadband, LLC, d/b/a “Wave” a Non-Exclusive Telecommunications Franchise to install, construct, maintain, repair, and operate a telecommunications system within the public rights of way.</p>		
<p>Astound Broadband meets the qualifications to operate within the City Right-of-Way as a wireless telephone business and a telecommunications company meeting RCW 80.</p>		
<p>Astound Broadband will be required to obtain any and all regulatory permit required by the City prior to beginning work in the City’s Right-of-Way. Following any work within the Right-of-Way, Astound Broadband will be required to restore the area of construction to the reasonable satisfaction of the City.</p>		
FISCAL NOTE: No Fiscal Impact		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: MOTION to adopt Ordinance No. xxx authorizing the Mayor to execute an agreement with Astound Broadband, LLC, d/b/a “Wave”, granting a Non- Exclusive Franchise to use and occupy certain public right of ways.		
RECORD OF COUNCIL ACTION		
Meeting Date	Action	Vote
November 3, 2016		

CITY OF BLACK DIAMOND, WASHINGTON

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF BLACK DIAMOND, WASHINGTON, GRANTING TO ASTOUND BROADBAND, LLC, A LIMITED LIABILITY COMPANY, A NONEXCLUSIVE TELECOMMUNICATIONS FRANCHISE TO INSTALL, CONSTRUCT, MAINTAIN, REPAIR, AND OPERATE A TELECOMMUNICATIONS SYSTEM WITHIN THE PUBLIC RIGHTS OF WAY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, Astound Broadband, LLC, a Washington limited liability company d/b/a Wave (hereinafter "Franchisee") has made application to the City to construct, install, maintain, repair and operate a fiber optic-based telecommunications system with the public rights-of-way of the City; and

WHEREAS, Franchisee represents that it has the legal, technical and financial qualifications to operate in the rights-of-way of the City as a wireline telephone business and a telecommunications company within the meaning of Title 80 RCW; and

WHEREAS, based on representations and information provided by Franchisee, and in response to its request for the grant of a franchise, the City Council has determined that the grant of a nonexclusive franchise, on the terms and conditions herein and subject to applicable law, are consistent with the public interest; and

WHEREAS, the City is authorized by applicable law to grant such a nonexclusive franchises within the boundaries of the City;

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

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- E. Financial Security
- F. Contractor/Subcontractor Insurance Requirements

ARTICLE 1. DEFINITIONS.

For the purposes of this Franchise and the Exhibits attached hereto, the following terms, phrases, words and their derivations where capitalized shall have the meanings given herein. Words not defined herein shall have the meaning given pursuant to such federal

statutes, rules, or regulations that apply to and regulate the services provided by the Franchisee. Words not otherwise defined, shall be given their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directory. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law, regulation or rule referred to herein be renumbered, then the reference shall be read to refer to the renumbered provision.

"Affiliate" when used in connection with Franchisee means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with Franchisee.

"City" shall mean the City of Black Diamond, a municipal corporation organized as a non-charter code city, operating under the laws of the state of Washington.

"Construct" shall mean to construct, reconstruct, install, reinstall, align, realign, locate, relocate, adjust, affix, attach, remove, or support.

"Default" shall mean any failure of a Party to keep, observe, or perform any of its duties or obligations under this Franchise.

"Design Document(s)" shall mean the plans and specifications for the Construction of the Facilities meeting the minimum applicable general plan submittal requirements for engineering services plan review as set forth in the City's Engineering Design and Construction Standards manual, illustrating and describing the refinement of the design of the Telecommunications System Facilities to be Constructed, establishing the scope, relationship, forms, size and appearance of the Facilities by means of plans, sections and elevations, typical construction details, location, alignment, materials, and equipment layouts. The Design Documents shall include specifications that identify utilities, major material and systems, Public Right-of-Way improvements, restoration and repair, and establish in general their quality levels.

"Direct Costs" shall mean and include all costs and expenses incurred by the City and directly related to a particular activity or activities, including by way of example:

- i. All costs and expenses of materials, equipment, supplies, utilities, consumables, goods and other items used or incorporated in connection with and in furtherance of such activity or activities and any taxes, insurance, and interest expenses related thereto, including costs for crews and equipment;

- ii. All costs and expenses of labor inclusive of payroll benefits, non-productive time and overhead for each of the labor classifications of the employees performing work for the activity and determined in accordance with the City's ordinary governmental accounting procedures; and,

iii. All costs and expenses to the City for any work by consultants or contractors to the extent performing work for a particular activity or activities, including by way of example and not limitation, engineering and legal services.

“Dispute” shall mean a question or controversy that arises between the Parties concerning the observance, performance, interpretation or implementation of any of the terms, provisions, or conditions contained in this Franchise or the rights or obligations of either Party under this Franchise.

“Effective Date” shall mean and refer to that term as it is defined at Section 4.3 herein.

“Emergency” shall mean and refer to a sudden condition or set of circumstances that, (a) significantly disrupts or interrupts the operation of Facilities in the Public Rights-of-Way and Franchisee’s ability to continue to provide services if immediate action is not taken, or (b) presents an imminent threat of harm to persons or property if immediate action is not taken.

“Environmental Law(s)” means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law.

“Facility” or “Facilities” means any part or all of the facilities, equipment and appurtenances of Franchisee whether underground or overhead and located within the Public Rights-of-Way as part of the Franchisee’s Telecommunications System, including but not limited to, conduit, case, pipe, line, fiber, cabling, equipment, equipment cabinets and shelters, vaults, generators, conductors, poles, carriers, drains, vents, guy wires, encasements, sleeves, valves, wires, supports, foundations, anchors, transmitters, receivers, antennas, and signage.

“Franchise” shall mean the grant, once accepted, giving general permission to the Franchisee to enter into and upon the Public Rights-of-Way to use and occupy the same for the purposes authorized herein, all pursuant and subject to the terms and conditions as set forth herein.

“Franchisee” shall mean Astound Broadband, LLC d/b/a Wave and any of its Affiliates.

“Franchise Area” shall mean collectively or individually the Public Rights-of-Way located within the area described in Exhibit “C”.

“Franchise Ordinance” shall mean the Ordinance authorizing the Franchise.

“Hazardous Substance” means those substances which have been recognized as dangerous or potentially dangerous to health, welfare, or to the environment by any federal, municipal, state, City, or other governmental or quasi-governmental authority, and/or any department or agency thereof; those substances which use, or have as its component thereof or therein, asbestos or lead-based paint; and petroleum oil and any of its fractions; and as such has been defined, listed or regulated under any Environmental Law.

“Law(s)” shall mean all present and future applicable laws, ordinances, rules, regulations, resolutions, environmental standards, orders, decrees and requirements of all federal, state, and local governments, the departments, bureaus or commissions thereof, or other governmental authorities, including the City acting in its governmental capacity. References to Laws shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

“Noticed Party” shall mean the Party in receipt of notice that it is in Default.

“Person” means and includes any individual, corporation, partnership, association, joint-stock-company, limited liability company, political subdivision, public corporation, taxing districts, trust, or any other legal entity, but not the City or any Person under contract with the City to perform work in the Public Rights-of-Way.

“Party(ies)” shall mean either the City or the Franchisee or both.

“Private telecommunications system” means a telecommunications system controlled by a person or entity for the sole and exclusive use of such person, entity, or affiliate thereof, including the provision of private shared telecommunications services by such person or entity. “Private telecommunications system” does not include a system offered for hire, sale, or resale to the general public.

“Public Rights-of-Way” means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, any easement now or hereafter held by the City within the corporate boundaries of the City as now or hereafter constituted for the purpose of public travel, and over which the City has authority to grant permits, licenses or franchises for use thereof, or has regulatory authority thereover, excluding railroad rights-of-way, airports, harbor areas, buildings, parks, poles, conduits, and excluding such similar facilities or property owned, maintained or leased by the City in its proprietary capacity or as an operator of a utility.

“Public Works Director” means and refers to the Public Works Director for the City or his or her designee or such officer or person who has been assigned the duties of public works director or his or her designee.

“Regulatory Permit” means a permit issued under the regulatory authority of the City that provides specific requirements and conditions for Work to Construct Facilities within the Public Rights-of-Way and includes by way of example and not limitation, a construction permit, building permit, street excavation permit, barricade permit, and clearing and grading permit.

“Remedy”, “Remediate” and “Remedial Action” shall have the same meaning as these are given under the Model Toxics Control Act (Chapter 70.105D RCW) and its implementing regulations at Chapter 173-340 WAC.

“Service” shall mean the service or services authorized to be provided by the Franchisee under the terms and conditions of this Franchise.

“Telecommunications Service” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. Telecommunications Service includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added. Telecommunications Service excludes, radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services include but are not limited to cable service as defined in 47 U.S.C. Sec. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in section 20.3, Title 47 C.F.R.

“Transfer” shall mean any transaction in which all or a portion of the Telecommunications System is sold, leased or assigned (except a sale or transfer that results in removal of a particular portion of the Telecommunications System from the Public Rights-of-Way); or the rights and/or obligations held by the Franchisee under the Franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another Person. A transfer of control of an operator shall not constitute a transfer as long as the same person continues to hold the Franchise both before and after the transfer of control.

“Telecommunications System” shall mean collectively the Facilities that together with other facilities, appurtenances and equipment of Franchisee or other Persons are used to provide Telecommunications Services.

“Work” shall mean any and all activities of the Franchisee, or its officers, directors, employees, agents, contractors, subcontractors, volunteers, invitees, or licensees, within the Public Rights-of-Way to Construct the Facilities.

ARTICLE 2. FRANCHISE GRANT.

2.1 Public Right-of-Way Use Authorized. Subject to the terms and conditions of this Franchise, the City hereby grants to Franchisee a nonexclusive Franchise authorizing the Franchisee to Construct, maintain, repair and operate Facilities in, along, among, upon, across, above, over, and under the Public Rights-of-Ways located within the Franchise Area.

2.2 Authorized Services. The grant given herein expressly authorizes Franchisee to use the Public Rights-of-Way to Construct, maintain, repair and operate its Facilities as part of its Telecommunications System to provide Telecommunications Services. This authorization is limited and is not intended nor shall it be construed as granting Franchisee or any other Person the right, duty or privilege to use its Facilities or the Public Rights-of-Way to provide Services not specifically authorized herein. This Franchise shall not be interpreted to prevent the City from lawfully imposing additional conditions, including additional compensation conditions, if authorized by applicable law for use of the Public Rights-of-Way, should Franchisee provide Service other than Service specifically authorized herein. However, this Franchise shall not be read as a concession by the Franchisee that it needs authorization to provide any services not otherwise authorized herein.

2.3 No Rights Shall Pass to Franchisee by Implication. No rights shall pass to the Franchisee by implication. Without limiting the foregoing and by way of example, this Franchise shall not include or be a substitute for:

2.3.1 Any other authorization required for the privilege of transacting and carrying on a business within the City that may be lawfully required by the Laws of the City;

2.3.2 Any Regulatory Permit required by the City for Public Rights-of-Way users in connection with operations on or in Public Rights-of-Way or public property; or

2.3.3 Any licenses, leases, easements or other agreements for occupying any other property or infrastructure of the City or other Persons to which access is not specifically granted by this Franchise including, without limitation, agreements for placing devices on poles, light standards, in conduits, in vaults, in or on pipelines, or in or on other structures or public buildings.

2.3.4 Any permits or other authorizations that may be required under the land use code and development regulations of the City for the construction of Facilities within a particular zoning district in the City, including by way of example and not limitation, a conditional use permit or a variance.

2.4 Interest in the Public Right-of-Way/Release/Indemnity. This Franchise shall not operate or be construed to convey title, equitable or legal, in the Public Rights-of-Way. This Franchise shall be deemed to grant no more than those rights which the City may have the undisputed right and power to give. The grant given herein does not confer rights other than as expressly provided in the grant hereof and is subject to the

limitations in applicable Law. Such right may not be subdivided or subleased to a person other than the Franchisee except as set forth in Section 2.8 below.

CITY DOES NOT WARRANT ITS TITLE OR PROPERTY INTEREST IN OR TO ANY FRANCHISE AREA NOR UNDERTAKE TO DEFEND FRANCHISEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.

Franchisee hereby releases City from any and all liability, cost, loss, damage or expense in connection with any claims that City lacked sufficient legal title or other authority to convey the rights described herein. In case of eviction of Franchisee or Franchisee's contractors by anyone owning or claiming title to, or any interest in the Franchise Area, City shall not be liable to Franchisee or Franchisee's contractors for any costs, losses or damages of any Party.

2.5 Rights Subordinate. Franchisee further acknowledges that Franchisee's rights under this Franchise to Construct Facilities in the Franchise Area, are subject and subordinate to all outstanding rights and encumbrances on the City's Public Rights-of-Way.

2.6 Condition of Franchise Area. Franchisee has inspected or will inspect the Franchise Area described on the attached Exhibit C, and enters upon each such Franchise Area with knowledge of its physical condition and the danger inherent in operations conducted in, on or near any Franchise Area. Franchisee acknowledges that Hazardous Substances or other adverse matters may affect the Franchise Area that were not revealed by Franchisee's inspection.

CITY HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF THE FRANCHISE AREA, INCLUDING THE ENVIRONMENTAL CONDITION OF THE FRANCHISE AREA, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE PUBLIC RIGHT-OF-WAY, OR THE CONFORMITY OF ANY PART OF THE PUBLIC RIGHT-OF-WAY TO ITS INTENDED USES. CITY SHALL NOT BE RESPONSIBLE TO FRANCHISEE OR ANY OF FRANCHISEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PART OF THE PUBLIC RIGHT-OF-WAY PRESENT ON OR CONSTITUTING ANY FRANCHISE AREA, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES, EXCEPT TO THE EXTENT ANY DAMAGES RELATING TO THE CONDITION, QUALITY, OR SAFETY OF ANY PART OF THE PUBLIC RIGHT-OF-WAY ARISE FROM THE CITY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

2.7 Franchise Nonexclusive. This Franchise shall be nonexclusive. Subject to the terms and conditions herein, the City may at any time grant authorization to others to use

the Public Rights-of-Way for any lawful purpose on terms and conditions that are competitively neutral and nondiscriminatory among similarly situated franchisees; provided that, no other Person holding a valid franchise shall have superior rights to Franchisee to use and occupy the space within the Public Right-of-Way lawfully occupied by Franchisee Facilities, except as provided pursuant to Section 7.8 (Facility Relocation) hereof.

2.8 Transfer. Franchisee may Transfer this Franchise after prior written notice to the City and Transferee's written commitment, in substantially the form of the agreement attached hereto as Exhibit "B", delivered to the City, that transferee(s) shall thereafter be responsible for all obligations of Franchisee with respect to the Franchise and guaranteeing performance under the terms and conditions of the Franchise and that transferees will be bound by all the conditions of the Franchise and will assume all the obligations of its predecessor. Such a Transfer shall relieve the Franchisee of any further obligations under the Franchise, including any obligations not fulfilled by Franchisee's Transferee; provided that, the Transfer shall not in any respect relieve the Franchisee, or any of its successors in interest, of responsibility for acts or omissions, known or unknown, or the consequences thereof, which acts or omissions occur prior to the time of the Transfer. This Franchise may not be transferred without filing or establishing with the City the insurance certificates, security fund and performance bond as required pursuant to this Franchise and paying all Direct Costs to the City related to the Transfer.

Notwithstanding the foregoing, notice to the City shall not be required for a mortgage, hypothecation or an assignment of Franchisee's interest in the Franchise in order to secure indebtedness.

Franchisee may, without the prior written notice to or consent of the City: (i) lease the Telecommunications System, or any portion thereof, to another Person; (ii) grant an Indefeasible Right of User Interest in the Telecommunications System, or any portion thereof, to another Person; or (iii) offer or provide capacity or bandwidth in its Telecommunications System to another Person; provided that, Franchisee at all times retains exclusive control over its Telecommunications System and remains responsible for Constructing its Facilities pursuant to the terms and conditions of this Franchise, and provided further that, Franchisee may grant no rights to any such Person that are greater than any rights Franchisee has pursuant to this Franchise; such Persons shall not be construed to be a third-party beneficiary hereunder; and, no such Person may use the Telecommunications System for any purpose not authorized herein.

2.9 Street Vacation. If any Public Right-of-Way or portion thereof used by Franchisee is to be vacated during the term of this Franchise, unless as a condition of such vacation the Franchisee is granted the right to continue to occupy the vacated Public Right-of-Way, Franchisee shall, without delay or expense to City, remove its Facilities from such Public Right-of-Way, and restore, repair or reconstruct the Public Right-of-Way where such removal has occurred, and place the Public Right-of-Way in such condition as may be required by the City. Nothing herein is intended to operate as a waiver of Franchisee's right or entitlement under state law or City ordinance to receive notice of or to object to vacation of the Public Right-of-Way occupied by Franchisee Facilities.

2.10 Reservation of City Use of Public Right-of-Way. Nothing in this Franchise shall prevent the City from constructing sanitary or storm sewers; grading, changing grade, paving, repairing, widening or otherwise altering any Public Right-of-Way; laying down, repairing or removing water mains; or installing conduit or fiber optic cable.

ARTICLE 3. COMPLIANCE WITH LAWS/ORDER OF PRECEDENCE.

3.1 Alteration of Material Terms and Conditions. Subject to federal and State preemption, the material rights, benefits, obligations or duties as specified in this Franchise may not be unilaterally altered or impaired by the City through subsequent amendments to, or enactment of, any ordinance, regulation, resolution or other enactment of the City. Notwithstanding the foregoing, the City specifically reserves its right to make and enforce those laws that are within the lawful exercise of the City's police power.

3.2 Compliance with Laws. Except as provided herein pursuant to Section 3.1, the Franchisee agrees to comply with all applicable Laws as now or hereafter in effect, and any lawful orders from regulatory agencies or courts with jurisdiction over Franchisee and its Facilities, or over the City and the Public Rights-of-Way.

3.3 Reservation of Rights/Wavier. The City expressly reserves all of its rights, authority and control arising from any relevant provisions of federal, State or local Laws granting the City rights, authority or control over the Public Rights-of-way or the activities of the Franchisee.

3.4 Change in Form of Government. Any change in the form of government of the City shall not affect the validity of this Franchise. Any governmental unit succeeding the City shall, without the consent of Franchisee, succeed to all of the rights and obligations of the City provided in this Franchise.

ARTICLE 4. ACCEPTANCE.

4.1 Acceptance. Within thirty (30) days after the passage and approval of this Franchise by the City Council, this Franchise shall be accepted by Franchisee by filing with the City Clerk during regular business hours, or to the City Attorney, three originals of this Franchise with its original signed and notarized written acceptance of all of the terms, provisions and conditions of this Franchise in conformance with Exhibit "A", together with the following, if required herein:

4.1.1 Payment in readily available funds of the administrative costs for issuance of the Franchise in conformance with the requirements of Section 5.6 herein.

4.1.2 Submission of proof of financial security in accordance with Section 5.3 herein.

4.1.3 Submission of an insurance certificate in accordance with Section 5.2 herein.

4.1.4 Payment of the costs of publication of this Franchise Ordinance in conformance with the requirements of Section 8.18 herein.

In the event that the thirtieth day falls on a Saturday, Sunday or legal holiday during which the City is closed for business, the filing date shall fall on the last business day before such Saturday, Sunday or legal holiday.

4.2 Failure to Timely File Acceptance. The failure of Franchisee to timely file its written acceptance shall be deemed a rejection by Franchisee of this Franchise, and this Franchise shall then be void.

4.3 Effective Date; Term.

4.3.1 Effective Date. Except as provided pursuant to Section 4.2 of this Franchise, the Effective Date of this Ordinance and Franchise shall be 12:01 a.m. on the day following Franchisee's acceptance under Section 4.1 and not later than the 31st day following passage and approval of this Franchise by the City Council. This Franchise and the rights, privileges, and authority granted hereunder and the relationship established hereby shall take effect and be in force from and after the Effective Date of this Ordinance for the term hereof.

4.3.2 Term. The term of this Franchise shall commence on the Effective Date and shall continue in full force and effect for a period of ten (10) years, unless sooner terminated, revoked or rendered void. No more than one hundred eighty (180) days prior to expiration, the Parties may mutually agree in writing to extend the term of this Franchise for an additional five (5) year term upon the same terms and conditions as provided herein. The Mayor is authorized to execute such an extension on behalf of the City without further action or approval by the City Council.

4.4 Effect of Acceptance. By accepting the Franchise the Franchisee:

4.4.1 Accepts and agrees to comply with and abide by all of the lawful terms and conditions of this Franchise;

4.4.2 Acknowledges and agrees that it has carefully read the terms and conditions of this Franchise; it unconditionally accepts all of the terms and conditions of this Franchise; it unconditionally agrees to abide by the same; it has relied upon its own investigation of all relevant facts; it has had the assistance of counsel; it was not induced to accept a Franchise; and, that this Franchise represents the entire agreement between the Franchisee and the City;

4.4.3 Warrants that Franchisee has full right and authority to enter into and accept this Franchise in accordance with the terms hereof, and by entering into or performing this Franchise, Franchisee is not in violation of its charter or by-laws, or any law, regulation, or agreement by which it is bound or to which it is subject; and

4.4.4 Warrants that Franchisee has full right and authority to enter into and accept this Franchise in accordance with the terms hereof, that the signatories for Franchisee hereto are authorized to sign the Franchise acceptance, and that the joinder or consent of any other party, including a court, trustee, or referee, is not necessary to make valid and effective the execution, delivery, and performance of this Franchise.

4.5 Effect of Expiration/Termination. Upon expiration, revocation or termination of the Franchise without renewal or other authorization, Franchisee shall no longer be authorized to operate the Facilities within the Franchise Area and shall, to the extent it may lawfully do so, cease operation of the Facilities. Forthwith thereafter, except as provided in this Section, or as otherwise provided by ordinance, Franchisee shall: (1) remove its Facilities from the Public Rights-of-Ways and restore the Public Right-of-Way in accordance with Section 7.12.1 (Restoration of Public Rights-of-Way) hereof; (2) sell its Facilities to another entity authorized to operate Facilities within the Franchise Area (which may include the City) in accordance with the transfer provisions under Section 2.8; or (3) abandon any Facilities in place in the Public Rights-of-Way in accordance with Section 7.14 (Abandonment of Facilities) hereof.

ARTICLE 5. PROTECTION OF THE CITY AND PUBLIC.

5.1 Limitation of Liability.

5.1.1 INDEMNITY/RELEASE/DEFENSE. TO THE FULLEST EXTENT PERMITTED BY LAW, FRANCHISEE SHALL RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY AND THE CITY'S SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS (ELECTED OR APPOINTED), EMPLOYEES, AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM, AND AGAINST CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, REASONABLE ATTORNEYS' FEES, AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION, AND GOVERNMENTAL OVERSIGHT COSTS), ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):

5.1.1.1 FRANCHISEE'S OCCUPATION AND USE OF THE PUBLIC RIGHT-OF-WAY;

5.1.1.2 FRANCHISEE'S OPERATION OF THE TELECOMMUNICATIONS SYSTEM;

5.1.1.3 ENVIRONMENTAL CONTAMINATION OF THE PUBLIC RIGHTS-OF-WAY CAUSED BY, AGGRAVATED BY, OR CONTRIBUTED TO, IN WHOLE OR IN PART, BY FRANCHISEE OR ITS CONTRACTORS, SUBCONTRACTORS, OR AGENTS (BUT ONLY TO THE EXTENT OF SUCH AGGRAVATION OR CONTRIBUTION); OR

5.1.1.4 ANY ACT OR OMISSION OF FRANCHISEE OR FRANCHISEE'S CONTRACTORS, SUBCONTRACTORS, AGENTS AND SERVANTS, OFFICERS OR EMPLOYEES IN CONNECTION WITH WORK IN THE PUBLIC RIGHTS-OF-WAY.

THE ONLY LIABILITIES WITH RESPECT TO WHICH FRANCHISEE'S OBLIGATION TO RELEASE AND INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF AN INDEMNITEE OR FOR LIABILITIES THAT BY LAW THE INDEMNITEES CANNOT BE INDEMNIFIED FOR.

This covenant of indemnification shall include, but not be limited by this reference, to Liabilities arising, (1) as a result of the negligent acts or omissions of Franchisee, its agents, servants, officers, or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any public Rights-of-Way or other public place in performance of work or services Permitted under this Franchise; and (2) solely by virtue of the City's ownership or control of the Public Rights-of-Way or other public properties occupied or used by Franchisee.

The fact that Franchisee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Franchisee's duties of defense and indemnification under this Section 5.1.

5.1.2 Tender of Defense. Upon written notice from the City, Franchisee agrees to assume the defense of any lawsuit, claim or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this Franchise for which Franchisee has an obligation to assume liability for and/or save and hold harmless any Indemnatee. Franchisee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments. Further, said indemnification obligations shall extend to claims that are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation. The City has the right to defend and may participate in the defense of a claim and, in any event, Franchisee may not agree to any settlement of claims financially affecting the City without the City's prior written approval which shall not be unreasonably withheld. If separate representation to fully protect the interests of both Parties is necessary, such as a conflict of interest between the City and the counsel selected by Franchisee to represent the City, Franchisee shall select additional counsel with no conflict with the City. Franchisee's indemnification obligations do not apply to any lawsuit, claim, or proceeding, including any settlement or compromise of a claim that is not reduced to a suit, if the City fails to provide timely notice to Franchisee, or if City enters into a settlement or compromise, or consents to entry of judgment, without Franchisee's prior written consent.

5.1.3 Refusal to Accept Tender. In the event Franchisee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the

indemnification clauses contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the Parties shall agree to decide the matter), to have been a wrongful refusal on the part of Franchisee, then Franchisee shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fees of recovering under this indemnification clause.

5.1.4 Title 51 Waiver. THE FRANCHISEE WAIVES IMMUNITY UNDER RCW TITLE 51 AND AFFIRMS THAT THE CITY AND THE FRANCHISEE HAVE SPECIFICALLY NEGOTIATED THIS PROVISION, AS REQUIRED BY RCW 4.24.115, TO THE EXTENT IT MAY APPLY.

5.1.5 Inspection. Inspection or acceptance by the City of any Work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification.

5.2 Insurance Requirements. See Attached Exhibit "D".

5.3 Financial Security. See Attached Exhibit "E".

5.4 Contractors/Subcontractors. Franchisee contractors and subcontractors performing Work in the Public Rights-of-Way shall comply with such bond, indemnity and insurance requirements as may be required by City code or regulations, or other applicable Law. If no such requirements are set forth in the City code or regulations, the Franchisee contractors and subcontractors shall comply with the requirements set forth in attached Exhibit "F".

5.5 Liens. In the event that any City property becomes subject to any claims for mechanics', artisans', or materialmen's liens, or other encumbrances chargeable to or through Franchisee which Franchisee does not contest in good faith, Franchisee shall promptly, and in any event within 30 days from receipt of written notice of such lien, cause such lien claim or encumbrance to be discharged or released of record (by payment, posting of bond, court deposit, or other means), without cost to the City, and shall indemnify the City against all costs and expenses (including attorneys' fees) incurred in discharging and releasing such claim of lien or encumbrance. If any such claim or encumbrance is not so discharged and released, the City may pay or secure the release or discharge thereof at the expense of Franchisee after first giving Franchisee five business days' advance notice of its intention to do so. Nothing herein shall preclude Franchisee's or the City's contest of a claim for lien or other encumbrance chargeable to or through Franchisee or the City, or of a contract or action upon which the same arose.

5.6 Financial Conditions.

5.6.1 Franchise Fees. During the term of this Franchise, should federal and/or state Law change or the statutory prohibition or limitation upon assessment of Franchise fees be invalidated, amended, or modified allowing revenues derived by Franchisee from any Services provided by Franchisee using the Franchise Area to be

subject to a Franchise fee or other fee in lieu of a Franchise fee that was otherwise prohibited or limited on the Effective Date, the City and Franchisee shall in good faith endeavor to negotiate a reasonable Franchise fee or other fee or other consideration in lieu of a Franchise fee, consistent with federal and/or state Law. The fee or other consideration shall be comparable to Franchise or similar fees received by the City, or other cities of comparable population or assessed property value, for other similar uses of the Public Rights-of-Way by similar users.

5.6.2 Reimbursement of Direct Costs of Application, Administration, and Amendment. Franchisee agrees to pay an application fee of \$5,000 to cover the City's legal and administrative costs for negotiation, review, and approval of this Franchise. Thereafter, Franchisee shall reimburse the City for the City's Direct Costs (as defined in Section 5.6.3, below) and the cost of negotiation, review, and approval of any amendments to this Franchise requested by or for the benefit of the Franchisee.

5.6.3 Reimbursement of Direct Costs of Design Review and Inspection. City approvals and inspections, as provided for in this Franchise, are for the sole purpose of protecting the City's rights as the owner or manager of the road Public Rights-of-Way and are separate and distinct from the approvals and inspections and fees that may be required pursuant to a Regulatory Permit. Therefore, Franchisee shall reimburse to the City, its Direct Costs of approvals and inspections, to the extent that such Direct Costs are not included in the costs for issuance of and compliance with a Regulatory Permit. Approvals and inspection, by way of example and not limitation, include review of design documents and inspection for compliance with the City's Engineering Design and Construction Standards and Design Document submittal.

5.6.4 Franchisee Responsibility for Costs. Except as expressly provided otherwise in this Franchise, any act that Franchisee, its contractors or subcontractors are required to perform under this Franchise shall be performed at their sole cost and expense.

5.6.5 Franchisee Work Performed by the City. Any work performed by the City that Franchisee has failed to perform as required pursuant to this Franchise and which is performed by the City in accordance with the terms of this Franchise, shall be performed at the cost and expense of the Franchisee. Franchisee shall be obligated to pay the Direct Costs to the City for performing such work.

5.6.6 Costs to be Borne by Franchisee. In addition to the Direct Costs referenced in section 5.6.2, above, Franchisee shall reimburse the City for all costs of publication of this Franchise, and any notices prior to any public hearing regarding this Franchise, contemporaneous with its acceptance of this Franchise.

5.6.7 Taxes and Fees. Nothing contained in this Franchise Agreement shall exempt Franchisee from Franchisee's obligation to pay any utility tax, business tax, or ad valorem property tax, now or hereafter levied against real or personal property within the City, or against any local improvement assessment imposed on Franchisee.

Any fees, charges and/or fines provided for in the City Municipal Code or any other City ordinance, whether pecuniary or in-kind, are separate from, and additional to, any and all federal, state, local, and City taxes as may be levied, imposed or due from Franchisee.

5.6.8 Itemized Invoice. Upon request and as a condition of payment by the Franchisee of Direct Costs payable by Franchisee under this Franchise, City shall submit an itemized billing so as to specifically identify the Direct Costs incurred by the City for each project for which the City claims reimbursement.

5.6.9 Time for Payment. All non-contested amounts owing shall be due and paid within sixty (60) days of receipt of invoice, or itemized invoice if requested; provided that, in the event that an itemized invoice is not provided at the time of receipt of invoice and the City receives a request from Franchisee for an itemized invoice within 30 days of receipt of invoice, such amounts shall be due and paid within sixty (60) days of receipt of the itemized invoice.

5.6.10 Overdue Payments. Any amounts payable under this Franchise by Franchisee which shall not be paid upon the due date thereof, shall bear interest at the lower of (x) the maximum interest rate allowed by law, and (y) a rate of twelve (12%) percent per annum.

5.6.11 Contesting charges. Franchisee may contest all or parts of amounts owed within sixty (60) days of receipt of any invoice. The City will investigate Franchisee's contest and will make appropriate adjustments to the invoice, if necessary, and resubmit the invoice to Franchisee. Franchisee shall pay any amounts owing as itemized in the resubmitted invoice which amounts shall be due within thirty (30) days of receipt of the resubmitted invoice. However, Franchisee does not waive its rights to further dispute resolution processes pursuant to Section 6.1 of this Franchise. Submittal of a dispute over amounts owing pursuant to Section 6.1 does not relieve the Franchisee of its obligation to pay amounts due under the resubmitted invoice.

5.6.12 Receivables. Either Party hereto may assign any monetary receivables due them under this Franchise upon notice to the other; provided, however, (i) such transfer shall not relieve the assignor of any of its rights or obligations under this Franchise, and (ii) Franchisee shall have no such notice obligation with respect to any receivables other than those owed by the City.

ARTICLE 6. ENFORCEMENT AND REMEDIES.

6.1 Communication and Discussion. The Parties are fully committed to working with each other throughout the term of this Franchise and agree to communicate regularly with each other at all times so as to avoid or minimize Disputes. The Parties agree to act in good faith to prevent and resolve potential sources of conflict before they escalate into a Dispute. The Parties each commit to resolving a Dispute in an amicable, professional and expeditious manner.

The Parties further agree that in the event a Dispute arises, they will attempt to resolve any such Disputes through discussions between representatives of each Party. Each Party will exchange relevant information that will assist the Parties in resolving the Dispute.

6.2 Remedies. The Parties have the right to seek any and all remedies, in equity, at law or in contract. Remedies are cumulative; the exercise of one shall not foreclose the exercise of others. No provision of this Franchise shall be deemed to bar either Party from seeking appropriate judicial relief.

Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of either Party to recover monetary damages, as allowed under applicable Law, or to seek and obtain judicial enforcement by means of specific performance, injunctive relief or mandate, or to commence an action for equitable or other relief, and/or proceed against the other Party and any guarantor for all direct monetary damages, costs and expenses arising from the Default and to recover all such damages, costs and expenses, including reasonable attorneys' fees.

The City specifically does not, by any provision of this Franchise, waive any right, immunity, limitation or protection otherwise available to the City, its officers, officials, City Council, Boards, commissions, agents, or employees under federal, State, or local law.

6.3 Right to Cure Default.

6.3.1 Notice. If a Party believes that the other Party is in default, such Party shall give written notice to the Noticed Party stating with reasonable specificity the nature of the alleged default. The Noticed Party shall have thirty (30) days, or such greater time as specified in the notice or such lesser time as specified in the event that there is an imminent threat of harm to the public health, safety or welfare resulting from the default, from the receipt of such notice to:

6.3.1.1 Respond to the other Party, contesting that Party's assertion that a Default has occurred; or

6.3.1.2 Cure the default; or

6.3.1.3 Notify the other Party that the Noticed Party cannot cure the default within the time provided in the notice, because of the nature of the Default. In the event the Default cannot be cured within the time provided in the notice, the Noticed Party shall promptly take all reasonable steps to begin to cure the Default and notify the other Party in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the other Party may set a meeting to determine whether additional time beyond the time provided in the notice is indeed needed, and whether the Noticed Party's proposed completion schedule and steps are reasonable.

6.3.2 Time to Cure. When specifying the time period for cure, the Party giving notice shall take into account, the nature and scope of the alleged Default, the nature and scope of the work required to cure the Default, whether the Default has created or will allow to continue an unsafe condition, the extent to which delay in implementing a cure will result in adverse financial consequences or other harm to the Party giving notice, and whether delay in implementing a cure will result in a violation of Law or Default of contract.

6.3.3 Failure to Cure. If the Noticed Party fails to promptly commence and diligently pursue cure of a Default to completion to the reasonable satisfaction of the Party giving notice and in accordance with the agreed upon time line or the time provided for in the Notice of Default, then the parties may pursue any remedies available to them.

6.4 Termination/Revocation. In addition to the remedies available to the City as provided at Law, in equity or in this Franchise, upon a Default without cure, the City may revoke this Franchise and rescind all rights and privileges associated with this Franchise in accordance with the following:

6.4.1 Notice. Prior to termination of the Franchise, the City shall give written notice to the Franchisee of its intent to revoke the Franchise. The notice shall set forth the exact nature of the Default. If Franchisee objects to such termination, Franchisee shall object in writing and state its reasons for such objection and provide any explanation.

6.4.2 Hearing. The City may then seek a termination/revocation of the Franchise in accordance with this Subsection.

6.4.2.1 The City Council, or its designee, shall conduct a public hearing to determine if termination/revocation of the Franchise is warranted.

6.4.2.2 At least fourteen (14) days prior to the public hearing, the City shall issue a public hearing notice that shall establish the issue(s) to be addressed in the public hearing; provide the time, date and location of the hearing; provide that the Hearing Body/Officer shall hear any Persons interested therein; and provide that the Franchisee shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, to be represented by counsel and to question witnesses. The public hearing notice shall be provided to Franchisee in accordance with Section 8.13 hereof and public notice of the hearing shall be provided in the same manner as notice is provided for regular meetings of the City Council.

6.4.2.3 Within sixty (60) days after the close of the hearing, the City Council shall issue a written decision regarding the termination/revocation of the Franchise. If the City Council has designated another hearing body/officer to conduct the public hearing, such hearing body/officer shall make a recommendation to the City Council within thirty (30) days following the close of the public hearing, and the City Council shall make a decision upon the recommendation of the Hearing Body/Officer after a closed record hearing and within sixty (60) days following receipt of the recommendation of the Hearing

Body/Officer. The decision of the City Council shall be final. The Parties recognize that a decision to terminate/revoke a Franchise is not a land use decision that is subject to appeal pursuant to the Land Use Petition Act (Chapter 36.70C RCW). Failure to render a decision within the required time period shall not be a basis for invalidation of the decision that is made. Any appeal to which the Franchisee may be entitled (e.g., constitutional or statutory writ of review) shall be filed within 30 calendar days of issuance of the final decision of the City Council.

6.4.3 Decision to Terminate. The City Council may consider one or more of the following when determining whether or not to terminate/revoke the Franchise based upon the material Default:

6.4.3.1 The history of repeated non-compliance by Franchisee with material terms and conditions of this Franchise;

6.4.3.2 Whether other remedies will achieve compliance with this Franchise;

6.4.3.3 Whether the Franchisee has acted in good faith;

6.4.3.4 Whether the acts or omissions that gave rise to the Default were willful or indifferent to the requirements that gave rise to the Default;

6.4.3.5 Whether the type of services provided by the Franchisee will be available to the general public through other providers;

6.4.3.6 Whether services provided by the Franchisee are essential public services or regulated utilities;

6.4.3.7 The impact or potential impact of the Default upon the public health, safety and welfare;

6.4.3.8 The economic risk the City is exposed to as a result of the Default;

6.4.3.9 Whether consent, permission, adjudication, an order or other authorization of a governmental agency or body, is required as a condition precedent to the City ordering the Franchisee to abandon or remove Facilities from the Public Rights-of-Way or to cease operations (temporarily or otherwise) of the Facilities.

6.4.3.10 Such other facts and circumstances that are relevant to the controversy that gave rise to the Default and/or to whether or not the continued presence and operation of the Franchisee Facilities with the Franchise Area will be harmful to the public health, safety or welfare.

6.5 Receivership. At the option of the City, subject to applicable law and lawful orders of courts of competent jurisdiction, this Franchise may be revoked after the appointment of a receiver or trustee to take over and conduct the business of Franchisee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

6.5.1 The receivership or trusteeship is timely vacated; or

6.5.2 The receiver or trustee has timely and fully complied with all the terms and provisions of this Franchise, and has remedied all defaults under the Franchise. Additionally, the receiver or trustee shall have executed an agreement duly approved by the court having jurisdiction, by which the receiver or trustee assumes and agrees to be bound by each and every term, provision and limitation of this Franchise.

ARTICLE 7. CONDITIONS UPON USE OF PUBLIC RIGHTS-OF-WAY.

7.1 Regulatory Permit. If Franchisee has submitted an application for a Regulatory Permit to perform work in the Public Rights-of-Way, the City shall, to the extent practicable, consider such application contemporaneously with the design review requirements hereunder.

7.2 Submission/Approval of Design Documents.

7.2.1 Submission. At the time of application for a Regulatory Permit, or in the event that Franchisee seeks to alter or change the location of Facilities in a Franchise Area, Franchisee shall submit its Design Documents to the City for review and approval in accordance with the City's plan review process.

7.2.2 Use of Public Rights-of-Way. Within parameters reasonably related to the City's role in protecting the public health, safety and welfare and except as may be otherwise preempted by Law, the City may require that Facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to the proposed Franchise Area and may deny access if Franchisee is not willing to comply with such requirements; and, may require removal of any Facility that is not installed in compliance with the Standards (defined in Section 7.3 below) or which is installed without prior City approval of the time, place, or manner of installation.

7.2.3 Approval of Plans. Work may not commence without prior approval by the City of the Design Documents submitted by the Franchisee, which approval will not be unreasonably withheld, conditioned or delayed. The City may review and approve the Franchisee's Design Documents with respect to:

7.2.3.1 Location/Alignment/Depth;

7.2.3.2 The manner in which the Facility is to be installed;

7.2.3.3 Measures to be taken to preserve safe and free flow of traffic;

7.2.3.4 Structural integrity, functionality, appearance, compatibility with and impact upon roadways, bridges, sidewalks, planting strips, signals, traffic control signs, intersections, or other facilities and structures in the Public Rights-of-Way;

7.2.3.5 Ease of future road maintenance, and appearance of the roadway;

7.2.3.6 Compliance with applicable Standards (as defined below) and codes; and

7.2.3.7 Compliance and compatibility with the City's comprehensive plan, six-year transportation plan, capital improvements plan, and regional transportation improvement plans.

7.3 Compliance with Standards/Codes. Except as may be preempted by federal or state Laws, all Facilities shall conform to and all Work shall be performed in compliance with the following "Standards" as now or may be hereafter revised, updated, amended or re-adopted:

7.3.1 Standards for Public Works Engineering and Construction. The most current edition of the City Standards for Public Works Engineering and Construction as adopted from time to time by the City. This document includes the City's Engineering Design and Construction Standards Manual, Design Standards Detail, and appendixes, and the most recently City adopted edition of the Standard Specifications for Road, Bridge and Municipal Construction as prepared by the Washington State Department of Transportation ("WSDOT") and the Washington State Chapter of American Public Works Association ("APWA");

7.3.2 MUTCD. The Washington State Department of Transportation Manual of Uniform Traffic Control Devices ("MUTCD");

7.3.3 Special Conditions. Requirements and standards set forth as additional conditions in a Regulatory Permit.

7.3.4 City Regulations. City ordinances, codes, and regulations establishing standards for placement of Facilities in Public Rights-of-Way, including by way of example and not limitation, the specific location of Facilities in the Public Rights-of-Way.

7.3.5 Other Regulatory Requirements. Applicable requirements of federal or state governmental authorities that have regulatory authority over the placement, construction, or design of Franchisee Facilities;

7.3.6 Industry Standards. All Facilities shall be durable and Constructed in accordance with good engineering practices and standards promulgated by the government and industry for placement, Construction, design, type of materials and operation of Franchisee Facilities;

7.3.7 Safety Codes and Regulations. Franchisee Facilities and Work shall comply with all applicable federal, State and City safety requirements, rules, regulations, Laws and practices. By way of illustration and not limitation, Franchisee shall comply with the National Electrical Safety Code and the Occupational Safety and Health Administration (OSHA) Standards; and

7.3.8 Building Codes. Franchisee Facilities and Work shall comply with all applicable City Building Codes.

7.4 Conditions Precedent to Work. Except as may be otherwise required by applicable City code, rule, regulation or Standard, Franchisee shall comply with the following as a condition precedent to Work:

7.4.1 Regulatory Permits Required. Except in the event of an Emergency, prior to performing any Work in the Public Right-of-Way requiring a Regulatory Permit, Franchisee shall apply for, and obtain, in advance, such appropriate Regulatory Permits from the City as are required by ordinance or rule. Franchisee shall pay all generally applicable and lawful fees for the requisite City Regulatory Permits.

7.4.2 Compliance with Franchise. Franchisee shall be in material compliance with the Franchise.

7.5 Work in the Public Rights-of-Way.

7.5.1 Permit required. If the Franchisee needs to dig more than 6 inches or cut and remove concrete or asphalt, or if the work will interfere with traffic, a Road Right of Way permit will be required.

7.5.2 Least Interference. Work in the Public Rights-of-Way shall be done in a manner that does not unnecessarily hinder or obstruct the free use of the Public Rights-of-Way or other public property and which causes the least interference with the rights and reasonable convenience of property owners, businesses and residents along the Public Rights-of-Way. Franchisee Facilities shall be designed, located, aligned and Constructed so as not to disturb or impair the use or operation of any street improvements, utilities, and related facilities of City or City's existing lessees, licensees, permittees, franchisees, easement beneficiaries or lien holders, without prior written consent of City or the Parties whose improvements are interfered with and whose consent is required pursuant to agreements with the City existing prior to the Effective Date.

7.5.3 Work Subject to Inspection. The City may observe or inspect the Construction Work, or any portion thereof, at any time to ensure compliance with applicable Regulatory Permits, this Franchise, applicable Law, the applicable approved Design Documents, the Standards, and to ensure the Work is not being performed in an unsafe or dangerous manner.

7.5.4 Notice to the Public. Except in the case of an Emergency, City retains the right to require the Franchisee to notify the public prior to commencing any significant planned Construction that Franchisee reasonably anticipates will materially disturb or disrupt public property or have the potential to present a danger or affect the safety of the public generally.

7.5.5 Work of Contractors and Subcontractors. Franchisee's contractors and subcontractors performing Work in the Franchise Area shall be licensed and bonded in accordance with the City's and State's applicable regulations and requirements. Any contractors or subcontractors performing Work within the Public Rights-of-Way on behalf of the Franchisee shall be deemed servants and agents of the Franchisee for the purposes of this Franchise and are subject to the same restrictions, limitations and conditions as if the Work were performed by Franchisee. Franchisee shall be responsible for all Work performed by its contractors and subcontractors and others performing Work on its behalf as if the Work were performed by it, and shall ensure that all such Work is performed in compliance with this Franchise and other applicable laws, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Franchisee's responsibility to ensure that contractors, subcontractors or other Persons performing Work on Franchisee's behalf are familiar with the requirements of this Franchise and other applicable Laws governing the Work performed by them.

7.5.6 Emergency Permits. In the event that Emergency repairs are necessary, Franchisee shall perform such Work, provide such notices, and obtain Regulatory Permits in conformance with applicable Standards.

7.5.7 Stop Work. On notice from the City that any Work does not comply with the Franchise, the approved Design Documents for the Work, the Standards, or other applicable Law, or is being performed in an unsafe or dangerous manner as reasonably determined by the City, the non-compliant Work may immediately be stopped by the City. The stop work order shall be in writing, given to the Person doing the Work and be posted on the Work site, indicate the nature of the alleged violation or unsafe condition; and establish conditions under which Work may be resumed. If so ordered, Franchisee shall cease and shall cause its contractors and subcontractors to cease such activity until the City is reasonably satisfied that Franchisee is in compliance. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable Law, may order Franchisee to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes in its reasonable discretion. The City has the right to inspect, repair and correct the unsafe condition if Franchisee fails to do so, and to reasonably charge Franchisee for the costs incurred to perform such inspection, repair or correction. Payment by Franchisee will be made in

accordance with Section 5.6.9. The authority and remedy set forth herein in this section is in addition to, and not a substitute for, any authority the City may otherwise have to take enforcement action for violation of City Codes or Standards.

7.5.8 Discovery of Hazardous Substances/Indemnity. In the event that the Work of the Franchisee in, on, and upon the Franchise Area results in the discovery of the presence of Hazardous Substances (“**Discovered Matters**”) in, on or upon the areas excavated or otherwise opened or exposed by Franchisee within the Franchise Area (the “**Excavated Areas**”), the Franchisee shall immediately notify the City and, take whatever other reporting action is required by applicable Environmental Law as it relates to the Discovered Matters in the Excavated Areas.

In the event the Franchisee’s Work, in, on or upon the Franchise Area within the Excavated Areas results in a release (as determined under applicable Environmental Laws) of Hazardous Substances which were, before such activities, confined to areas within the Excavated Areas, but which after such activities by Franchisee are released beyond the Excavated Areas, and if the release is caused in whole or in part by the Franchisee, then the Franchisee shall indemnify, defend and hold the City harmless from the costs of all necessary Remedial Actions which are required under the applicable Environmental Laws, to the extent of Franchisee’s share of the liability for the release. Franchisee’s liability for the release may, inter alia, be determined by a final non-appealable decision by a court of competent jurisdiction, or as provided in a final non-appealable administrative order issued by the Environmental Authority, or by a consent decree entered by Franchisee and the Environmental Authority.

7.6 Alterations. Except as may be shown in the Design Documents or Regulatory Permits approved by the City or the record drawings, or as may be necessary to respond to an Emergency, Franchisee, and Franchisee’s contractors and subcontractors, may not make any material alterations to the Franchise Area, or permanently affix anything to the Franchise Area, without the City’s prior written consent. Material alteration shall include by way of example and not limitation, a change in the dimension or height of the above ground Facilities. If Franchisee desires to change either the location of any Facilities or otherwise materially deviates from the approved design of any of the Facilities, Franchisee shall submit such change to the City in writing for its approval pursuant to Section 7.2 of this Franchise. Franchisee shall have no right to commence any such alteration change until after Franchisee has received the City’s approval of such change in writing.

7.7 General Conditions.

7.7.1 Right-of-Way Meetings. Subject to receiving advance notice, Franchisee will make reasonable efforts to attend and participate in meetings of the City regarding Right-of-Way issues that may impact the Telecommunications System.

7.7.2 Compliance Inspection. Franchisee’s Facilities shall be subject to the City’s right of periodic inspection upon at least seventy-two (72) hours’ notice, or, in

case of an emergency, upon demand without prior notice, to determine compliance with the provisions of this Franchise or other applicable Law over which the City has jurisdiction. Franchisee shall respond to reasonable requests for information regarding its Telecommunications System as the City may from time to time issue in writing to determine compliance with this Franchise, including requests for information regarding the Franchisee's plans for Construction and the purposes for which the Facility is being Constructed.

7.7.3 One Call. If Franchisee places Facilities underground, Franchisee shall, at its own expense, continuously be a member of the State of Washington one number locator service under Chapter 19.122 RCW, or an approved equivalent, and shall comply with all such applicable rules and regulations. The Franchisee shall locate and field mark its Facilities for the City at no charge.

7.7.4 Graffiti Removal. Within 5 business days after notice from the City, Franchisee shall remove any graffiti on any part of its Telecommunications System, including, by way of example and not limitation, equipment cabinets. If either the Franchisee fails to do so within 5 business days or in the City's discretion and subject to advance communication with the Franchisee, the City may remove the graffiti and bill the Franchisee for the reasonable cost thereof.

7.7.5 Dangerous Conditions, Authority for City to Abate. Whenever Construction of Facilities has caused or contributed to a condition that in the reasonable opinion of the City Engineer, substantially impairs the lateral support of the adjoining Public Right-of-Way, street, or public place, or endangers the public, any utilities, or City-owned property, the City may reasonably require the Franchisee to take action to protect the Public Right-of-Way, the public, adjacent public places, City-owned property, streets, and utilities. Such action may include compliance within a prescribed time. In the event that the Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if Emergency conditions exist which require immediate action, the City may, to the extent it may lawfully do so, take such actions as are necessary to protect the Public Right-of-Way, the public, adjacent public places, City-owned property, streets, and utilities, to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and the Franchisee shall be liable to the City for the reasonable costs thereof to the extent Franchisee is determined to be the proximate cause of such condition.

7.7.6 No Duty. Notwithstanding the right of the City to inspect the Work, issue a stop work order, and order or make repairs or alterations, the City has no duty or obligation to observe or inspect, or to halt Work on, the applicable Facilities, it being solely Franchisee's responsibility to ensure that the Facilities are Constructed and operated in strict accordance with this Franchise, the approved Design Documents, the Standards, and applicable Law. Neither the exercise nor the failure by the City to exercise any right set forth in this Article 7 shall alter the liability allocation set forth in this Franchise.

7.7.7 Roadside Hazard. All of Franchisee's Facilities shall be kept by Franchisee at all times in a safe and hazard-free condition. Franchisee shall ensure that Facilities within the Public Rights-of-Way do not become or constitute an unacceptable roadside obstacle and do not interfere with or create a hazard to maintenance of and along the Public Rights-of-Way. In such event, the Franchisee shall take corrective action. In the event that the City determines that a Facility within the Public Rights-of-Way has become or constitutes an unacceptable roadside obstacle or may interfere with or create a hazard to maintenance of and along the Public Rights-of-Way, following written notice explaining with reasonable specificity the nature of any such matter and a reasonable opportunity to cure of not less than thirty (30) days, the Franchisee shall take corrective action; provided that, nothing herein shall relieve the Franchisee from keeping its Facilities at all times in safe and hazard-free condition.

Franchisee, at all times, shall employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public or to Franchisee's agents or employees. Franchisee, at its own expense, shall repair, renew, change, and improve its Facilities from time to time as may be necessary to accomplish this purpose. Franchisee shall use suitable barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such Work in or affecting such Public Rights-of-Way or property. All excavations made by Franchisee in the Public Rights-of-Way shall be properly safeguarded for the prevention of accidents.

7.7.8 Verification of Alignment/Depth. Upon the reasonable request and prior written notice, in non-Emergency situations at least thirty (30) days' notice by the City and in order to facilitate the location, alignment and design of Public Improvements (defined below), the Franchisee agrees to locate, and if reasonably determined necessary by the City, to excavate and expose portions of its Facilities for inspection so that the location of same may be taken into account in the Public Improvement design; PROVIDED that, Franchisee shall not be required to excavate and expose its Facilities unless the Franchisee's record drawings and maps of its Facilities submitted pursuant to Section 7.11 of this Franchise are reasonably determined by the City to be inadequate for purposes of this paragraph.

7.8 Facility Relocation at Request of the City.

7.8.1 Public Improvement. The City may require Franchisee to alter, adjust, relocate, or protect in place its Facilities within the Public Rights-of-Way when reasonably necessary for construction, alteration, repair, or improvement of any portion of the Public Rights-of-Way for purposes of public welfare, health, or safety ("Public Improvements"). Such Public Improvements include, by way of example but not limitation, Public Rights-of-Way construction; Public Rights-of-Way repair (including resurfacing or widening); change of Public Rights-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines,

communication lines, or any other type of government-owned communications, utility or public transportation systems, public work, public facility, or improvement of any government-owned utility; Public Rights-of-Way vacation, and the Construction of any public improvement or structure by any governmental agency acting in a governmental capacity for the public benefit.

7.8.2 Alternatives. If the City requires Franchisee to relocate its Facilities, the City shall make a reasonable effort to provide Franchisee with an alternate location within the Public Right-of-Way. The Franchisee may, after receipt of written notice requesting a relocation of its Facilities, propose design alternatives that would mitigate or lessen the impact upon Franchisee's Facilities. The City shall provide a full and fair evaluation of such proposed design alternatives that, in the reasonable judgment of the City, would not impair, interfere with, or materially alter the scope, purpose or functioning of the Public Improvement and would not increase the anticipated public costs of the Public Improvement. If so requested by the City, Franchisee shall submit additional information to assist the City in making such evaluation. In the event that the City reasonably determines that it does not have available resources within the existing Public Improvement budget to fully and fairly evaluate Franchisee's proposal, the City shall not be obligated to further consider such proposal unless and until the Franchisee funds the additional costs to the City to complete its evaluation.

7.8.3 Notice. The City shall notify Franchisee in writing as soon as practicable of the need for relocation and shall specify the date by which relocation shall be completed. Except in case of Emergency such notice shall be no less than one hundred and eighty (180) days. In calculating the date that relocation must be completed, City shall consult with Franchisee and consider the extent of Facilities to be relocated, the service requirements, and the construction sequence for the relocation, within the overall project construction sequence and constraints, to safely complete the relocation. Franchisee shall complete the relocation by the date specified, unless the City, or a reviewing court, establishes a later date for completion, after a showing by the Franchisee that the relocation cannot be completed by the date specified using best efforts and meeting safety and service requirements.

7.8.4 Coordination of Work. Franchisee acknowledges and understands that any delay by Franchisee in performing the Work to alter, adjust, relocate, or protect in place its Facilities within the Public Rights-of-Way may delay, hinder, or interfere with the work performed by the City and its contractors and subcontractors in furtherance of construction, alteration, repair, or improvement of the Public Improvement, and result in damage to the City and/or its contractors, including but not limited to, delay and disruption claims. Franchisee shall cooperate with the City and its contractors and subcontractors to coordinate such Franchisee Work to accommodate the Public Improvement project and project schedules to avoid delay, hindrance, or disruption of such project.

7.8.5 Assignment of Rights. In addition to any other rights of assignment the City may have, the City may from time to time assign or transfer to its contractors or subcontractors its rights under Section 7.10 of this Franchise.

7.8.6 Reimbursement for Costs. Notwithstanding the cost allocation provisions set forth in this Franchise, Franchisee does not waive its right(s) to and shall be entitled to seek reimbursement of its relocation costs as may be otherwise specifically set forth and authorized by Law, including in statute. Further, if the City reimburses or pays the relocation costs of a similarly situated franchisee for a given Public Improvement project, the City shall reimburse or pay Franchisee's relocation costs on the same basis

7.9 Movement of Facilities for Others.

7.9.1 Private Benefit. If any alteration, adjustment, temporary relocation, or protection in place of the Telecommunications System is required solely to accommodate the Construction of facilities or equipment that are not part of a Public Improvement project, Franchisee shall, after at least one hundred eighty (180) days advance written notice, take action to effect the necessary changes requested by the responsible Person; provided that, (a) the Person requesting the same pays for the Franchisee's time, design, engineering and material costs associated with the requested work; (b) the alteration, adjustment, relocation or protection in place is reasonably necessary to accommodate such work; (c) Franchisee's services are not interrupted; and (d) such alteration, adjustment, or relocation is not requested for the purpose of obtaining a competitive advantage over the Franchisee.

7.9.2 Temporary Changes for Other Franchisees. At the request of any Person holding a valid permit and upon reasonable advance notice, Franchisee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder. Franchisee shall be given not less than thirty (30) days' advance notice to arrange for such temporary wire changes.

7.10 Movement of Facilities During Emergencies.

7.10.1 Immediate Threat. In the event of an unforeseen event, condition or circumstance that creates an immediate threat to the public safety, health, or welfare, the City shall have the right to require Franchisee to shut down, relocate, remove, replace, modify, or temporarily disconnect Franchisee's Facilities located in the Public Rights-of-Way at the expense of the Franchisee without regard to the cause or causes of the immediate threat.

7.10.2 Emergency. In the event of an Emergency, or where a Facility creates or is contributing to an imminent danger to health, safety, or property, the City retains the right and privilege to protect, support, temporarily disconnect, remove, or relocate any or all parts of the Telecommunications System located within the Public

Rights-of-Way, as the City may determine to be reasonably necessary, appropriate or useful in response to any public health or safety Emergency and charge the Franchisee for costs incurred.

7.10.3 Notice. During Emergencies the City shall endeavor to, as soon as practicable, provide notice to Franchisee of such Emergency at a designated Emergency response contact number, to allow Franchisee the opportunity to respond and rectify the problem without disrupting Telecommunications Service. If after providing notice, there is no immediate response, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the Telecommunications System located within the Public Rights-of-Way in accordance with this Section 7.10.

7.10.4 Limitation on Liability. The City shall not be liable for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section.

7.11 Record of Installations.

7.11.1 Map/Record Drawing of Telecommunications System. Upon request by the City, Franchisee shall search for and provide the City with the most accurate and available maps and record drawings in a form and content reasonably prescribed by the City reflecting the horizontal and vertical location and configuration of its Telecommunications System within the Public Rights-of-Way and upon City property in a format reasonably acceptable to the City. Franchisee shall provide the City with updated record drawings and maps within a reasonable period of time following receipt of written request. As to any such record drawings and maps so provided, Franchisee does not warrant the accuracy thereof and to the extent the location of the Telecommunications System is shown, such Telecommunications System is shown in its approximate location.

7.11.2 Maps/Record Drawings of Improvements. After Construction involving the locating or relocating of Facilities, the Franchisee shall provide the City with accurate copies of all record drawings and maps showing the horizontal and vertical location and configuration of all located or relocated Facilities within the Public Rights-of-Way. These record-drawings and maps shall be provided at no cost to the City, and shall include hard copies and digital copies in a format reasonably specified by the City. As to any such record drawings and maps so provided, Franchisee does not warrant the accuracy thereof and to the extent the location of the Telecommunications System is shown, such Telecommunications System is shown in its approximate location.

7.12 Restoration of Public Rights-of-Way, Public and Private Property.

7.12.1 Restoration after Construction. Franchisee shall, after completion of Construction of any part of its Telecommunications System, leave the Public Rights-of-Way and other property disturbed thereby, in as good or better condition in all respects as it was in before the commencement of such Construction. Franchisee agrees to promptly complete restoration work to the reasonable satisfaction of the City and in

conformance with City Standards, including by way of example and not limitation, backfilling and restoration requirements as set forth in City Standards.

7.12.2 Notice. If Franchisee's Work causes unplanned, unapproved, or unanticipated disturbance of or alteration or damage to Public Rights-of-Way or other public or private property, the Franchisee shall promptly notify the property owner within twenty-four (24) hours.

7.12.3 Duty to Restore. If Franchisee's Work causes unplanned, unapproved, or unanticipated disturbance of or alteration or damage to Public Rights-of-Way or other public property, it shall promptly remove any obstructions therefrom and restore such Public Rights-of-Way and public property to the reasonable satisfaction of the City and in accordance with City Standards.

7.12.4 Temporary Restoration. If weather or other conditions do not allow the complete restoration required by this Section, Franchisee shall temporarily restore the affected Public Right-of-Way or public property. Franchisee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

7.12.5 Survey Monuments. All survey monuments which are disturbed or displaced by any Work shall be referenced and restored, as per WAC 332-120, as the same now exists or may hereafter be amended, and all pertinent federal, state and local standards and specifications.

7.12.6 Approval. The City Engineer, or designee, shall be responsible for observation and final approval of the condition of the Public Rights-of-Way and City property following any restoration activities therein. Franchisee is responsible for all testing and monitoring of restoration activities.

7.12.7 Warranty. Franchisee shall warrant any restoration work performed by Franchisee in the Public Rights-of-Way or on other public property for two (2) years, unless a longer period is required by applicable City Standards. If restoration is not satisfactorily and timely performed by the Franchisee, the City may, after prior notice to the Franchisee, or without notice where the disturbance or damage may create an imminent risk to public health or safety, cause the repairs to be made and recover the reasonable cost of those repairs from the Franchisee. Franchisee shall pay the City for such costs in accordance with Section 5.6.9.

7.12.8 Restoration of Private Property. When Franchisee does any Work in the Public Rights-of-Way that affects, disturbs, alters, or damages any adjacent private property, it shall, at its own expense, be responsible for restoring such private property to the reasonable satisfaction of the private property owner.

7.13 Approvals. Nothing in this Franchise shall be deemed to impose any duty or obligation upon the City to determine the adequacy or sufficiency of Franchisee's

Design Documents or to ascertain whether Franchisee's proposed or actual Construction is adequate or sufficient or in conformance with the Design Documents reviewed and approved by the City. No approval given, inspection made, review or supervision performed by the City pursuant to or under authority of this Franchise shall constitute or be construed as a representation or warranty express or implied by the City that such item reviewed, approved, inspected, or supervised, complies with applicable Laws or this Franchise or meets any particular Standard, code or requirement, or is in conformance with the approved Design Documents, and no liability shall attach with respect thereto. City approvals and inspections as provided herein, are for the sole purpose of protecting the City's rights as the owner and/or manager of the Public Rights-of-Way and shall not constitute any representation or warranty, express or implied, as to the adequacy of the design or Construction of the Facilities or Telecommunications System, suitability of the Franchise Area for Construction, or any obligation on the part of the City to insure that Work or materials are in compliance with any requirements imposed by a governmental entity. The City is under no obligation or duty to supervise the design, Construction, or operation of the Telecommunications System.

7.14 Abandonment of Facilities. Except as may be otherwise provided by Law, Franchisee may abandon in place any Facilities in the Public Rights-of-Way upon written notice to the City, which notice shall include a description of the Facilities it intends to abandon, the specific location in the Public Rights-of-Way of such Facilities, and the condition of such Facilities. However, if the City determines within 180 days of the receipt of notice of abandonment from the Franchisee, that the safety, appearance, functioning, or use of the Public Rights-of-Way and other facilities in the Public Rights-of-Way, including without limitation, utilities and related facilities, will be adversely affected, the operator must remove its abandoned Facilities by a date specified by the City and restore the Public Rights-of-Way in accordance with City Standards. Franchisee shall be and remain responsible in perpetuity for any Facilities abandoned in the Public Rights-of-Way.

ARTICLE 8. MISCELLANEOUS.

8.1 Headings. Titles to articles and sections of this Franchise are not a part of this Franchise and shall have no effect upon the construction or interpretation of any part hereof.

8.2 Entire Agreement. This Franchise contains all covenants and agreements between the City and the Franchisee relating in any manner to the Franchise, use, and occupancy of the Public Rights-of-Way and other matters set forth in this Franchise. No prior agreements or understanding pertaining to the same, written or oral, shall be valid or of any force or effect and the covenants and agreement of this Franchise shall not be altered, modified, or added to except in writing signed by the City and Franchisee and approved by the City in the same manner as the original Franchise was approved.

8.3 Incorporation of Exhibits. All exhibits annexed hereto at the time of execution of this Franchise or in the future as contemplated herein, are hereby incorporated by reference as though fully set forth herein.

8.4 Calculation of Time. Except where a period of time refers to "business days," all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Washington, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of Washington, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday in the State of Washington; provided that, the Effective Date shall be determined as provided at Section 4.3 of this Franchise.

8.5 Time Limits Strictly Construed. Whenever this Franchise sets forth a time for any act to be performed by Franchisee, such time shall be deemed to be of the essence, and any failure of Franchisee to perform within the allotted time may be considered a Default of this Franchise.

8.6 No Joint Venture. It is not intended by this Franchise to, and nothing contained in this Franchise shall, create any partnership, joint venture, or principal-agent relationship or other arrangement between Franchisee and the City. Neither Party is authorized to, nor shall either Party act toward third Persons or the public in any manner which would indicate any such relationship with the other. The Parties intend that the rights, obligations, and covenants in this Franchise and the collateral instruments shall be exclusively enforceable by the City and Franchisee, their successors, and assigns. No term or provision of this Franchise is intended to be, or shall be, for the benefit of any Person not a Party hereto, and no such Person shall have any right or cause of action hereunder, except as may be otherwise provided herein. Further, the Franchisee is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City. Nothing in this Section 8.6 shall be construed to prevent an assignment as provided for at Sections 2.8 or 7.8.5 of this Franchise.

8.7 Approval Authority. Except as may be otherwise provided by Law or herein, any approval or authorization required to be given by the City, shall be given by the Public Works Director (or its successor), or by the Public Works Director's designee.

8.8 Binding Effect upon Successors and Assigns. All of the provisions, conditions, and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, receivers, trustees, legal representatives, transferees and assigns of the Franchisee; and all privileges, as well as all obligations and liabilities of the Franchisee shall inure to its heirs, successors, and assigns equally as if they were specifically mentioned wherever the Franchisee is named herein.

8.9 Waiver. No failure by either Party to insist upon the performance of any of the terms of this Franchise or to exercise any right or remedy consequent upon a Default thereof, shall constitute a waiver of any such Default or of any of the terms of

this Franchise. None of the terms of this Franchise to be kept, observed or performed by either Party, and no Default thereof, shall be waived, altered or modified except by a written instrument executed by the injured Party. No waiver of any Default shall affect or alter this Franchise, but each of the terms of this Franchise shall continue in full force and effect with respect to any other then existing or subsequent Default thereof. No waiver of any default of the defaulting Party hereunder shall be implied from any omission by the injured Party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. One or more waivers by the injured Party shall not be construed as a waiver of a subsequent Default of the same covenant, term or conditions.

8.10 Severability. If any word, article, section, subsection, paragraph, provision, condition, clause, sentence set forth herein, or its application to any person or circumstance (collectively referred to as "Term"), shall be held to be illegal, invalid, or unconstitutional for any reason by any court or agency of competent jurisdiction, such Term declared illegal, invalid or unconstitutional shall be severable and the remaining Terms of the Franchise shall remain in full force and effect unless to do so would be inequitable or would result in a material change in the rights and obligations of the Parties hereunder.

8.11 Signs. No signs or advertising shall be permitted in the Franchise Area except as may be required by Law or as may be required by the City for the protection of the public health, safety and welfare, to the extent it has authority to do so.

8.12 Discriminatory Practices Prohibited. Throughout the term of this Franchise, Franchisee shall fully comply with all equal employment and nondiscrimination provisions of applicable Law.

8.13 Notice. Any notice required or permitted to be given hereunder shall be in writing, unless otherwise expressly permitted or required, and shall be deemed effective either, (i) upon hand delivery to the person then holding the office shown on the attention line of the address below, or, if such office is vacant or no longer exists, to a person holding a comparable office, or (ii) or when delivered by a nationally recognized overnight mail delivery service, to the Party and at the address specified below, or (ii) on the third business day following its deposit with the United States Postal Service, first class and certified or registered mail, return receipt requested, postage prepaid, properly sealed and addressed as follows:

Franchisee's address: Astound Broadband, LLC
401 Parkplace Center
Suite 500
Kirkland, WA 98033
Attn: Steve Weed, CEO, and Byron Springer, EVP

The City's Address: City of Black Diamond
24301 Roberts Drive

Black Diamond, WA 98010
Attention: City Administrator

The City and Franchisee may designate such other address from time to time by giving written notice to the other, but notice cannot be required to more than two addresses, except by mutual agreement.

8.14 Survival of Terms. Upon the expiration, termination, revocation or forfeiture of the Franchise, the Franchisee shall no longer have the right to occupy the Franchise Area for the purpose of providing services authorized herein. However, the Franchisee's obligations under this Franchise to the City shall survive the expiration, termination, revocation or forfeiture of these rights according to its terms for so long as the Franchisee's Telecommunications System or any part thereof shall remain in whole or in part in the Public Rights-of-Way, or until such time as the Franchisee transfers ownership of all Facilities in the Franchise Area to the City or a third-Party, or until such time as the Franchisee abandons said Facilities in place, all as provided herein. Said obligations include, by way of illustration and not limitation, Franchisee's obligations to indemnify, defend, and protect the City, to provide insurance, to relocate its Facilities, and to reimburse the City for its costs to perform Franchisee's Work.

8.15 Force Majeure. In the event Franchisee is prevented or delayed in the performance of any of its obligations herein due to circumstances beyond its control or by reason of a force majeure occurrence, such as, but not limited to, acts of God, acts of terrorism, war, riots, civil disturbances, natural disasters, floods, tornadoes, earthquakes, severe weather conditions, employee strikes and unforeseen labor conditions not attributable to Franchisee's employees, Franchisee shall not be deemed in Default of provisions of this Franchise.

If Franchisee believes that circumstances beyond its control or by reason of a force majeure occurrence have prevented or delayed its compliance with the provisions of this Franchise, Franchisee shall provide documentation as reasonably required by the City to substantiate the Franchisee's claim. Franchisee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is reasonably satisfactory to the City; provided that, the Franchisee shall perform to the maximum extent it is able to perform and shall take reasonable steps within its power to correct such cause(s) in as expeditious a manner as possible, provided that the Franchisee takes prompt and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with the Franchise without unduly endangering the health, safety, and integrity of the Franchisee's employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

8.16 Attorneys' Fees. In the event of a suit, action, arbitration, or other proceeding of any nature whatsoever, whether in contract or in tort or both, is instituted to enforce any word, article, section, subsection, paragraph, provision, condition, clause or sentence of this Franchise or its application to any person or circumstance, the prevailing

Party shall be entitled to recover from the losing Party its reasonable attorneys, paralegals, accountants, and other experts fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as allowed by Washington law and as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by Law. This provision shall cover costs and attorneys' fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law. This provision shall not apply to the extent that the suit, action, arbitration or other proceeding is brought to interpret any term, condition, provision, section, article or clause of this Franchise.

8.17 Venue/Choice of Law. This Franchise shall be governed by, and construed in accordance with, the laws of the State of Washington. Any action brought relative to enforcement of this Franchise, or seeking a declaration of rights, duties or obligations herein, shall be initiated in the Superior Court of the County in which the City is located, and shall not be removed to a federal court, except as to claims over which such Superior Court has no jurisdiction. Removal to federal court shall be to the Federal Court of the Western District of Washington.

8.18 Publication. This ordinance, or a summary thereof, shall be published in the official newspaper of the City, the expense of which shall be borne by Franchisee, and shall take effect and be in full force in accordance with Section 4.3 herein.

**ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF
ON THE _____ DAY OF _____, 2016, AND SIGNED IN AUTHENTICATION OF
ITS PASSAGE THIS _____ DAY OF _____, 2016.**

CITY OF BLACK DIAMOND

Carol Benson, Mayor

ATTEST/AUTHENTICATED:

Brenda Martinez, City Clerk

Approved as to form:

David Linehan, City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No.
Date of Publication:

DRAFT

EXHIBIT "A"

(Acceptance of Franchise)

Franchise issued pursuant to Ordinance No. _____.

I, _____, am the _____,
and am the authorized representative to accept the above-referenced Franchise on behalf
of _____. In my capacity as
_____, and not individually, I certify that this Franchise and
all terms and conditions thereof are accepted by _____, without
qualification or reservation and that _____ unconditionally
guarantee(s) performance of all such terms and conditions.

DATED this _____ day of _____, 20____.

By _____
Its _____

Tax Payer ID# _____

STATE OF _____
CITY OF _____ ss.

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

Dated this _____ day of _____, _____.

(Signature of Notary)

Print Name

Notary public in and for the state of _____

_____, residing at _____

My appointment expires _____

EXHIBIT "B"

(Form of Transfer Agreement)

THIS TRANSFER AGREEMENT ("Agreement") is made this ____ day of _____, 20____, by and between:

1. PARTIES.

1.1 City of Black Diamond, a legal subdivision of the state of Washington ("City").

1.2 _____ ("Franchisee").

1.3 _____ ("Transferee").

RECITALS

WHEREAS the City has issued a single Franchise (the "Franchise") to Franchisee, which was authorized on the ____ day of _____, 2016, pursuant to Ordinance No. _____, and

WHEREAS Franchisee has reached an agreement with Transferee on a *(describe transaction, example: conveyance of benefited property)*

_____ with
Transferee, to *(example: acquire from Franchisee its facilities and equipment located in the Public Rights-of-Way)* _____, and

WHEREAS Franchisee and Transferee have requested that the City approve a transfer of the Franchise from Franchisee to Transferee, and

WHEREAS, as a result of the transfer of the Franchise, Transferee will assume all rights, duties, and obligations that Franchisee has under the Franchise, will be responsible for full compliance with the Franchise, and will meet or exceed all applicable and lawful federal, state, and local requirements, and

WHEREAS, relying on the representations made by the Transferee and Franchisee, the City, on the ____ day of _____, 20____, has, pursuant to Resolution No. _____ and the Franchise, approved the transfer upon the terms and conditions as stated herein;

NOW, THEREFORE, in consideration of the City's approval of the transfer, subject to the terms and conditions of this Agreement, THE PARTIES DO HEREBY AGREE as follows:

2. TRANSFER. Transfer of the Franchise shall be effective upon the following conditions precedent:

2.1 Receipt by the City of the fully executed acceptance of Franchise attached hereto as Exhibit B-1 together with all required certificates of insurance, security fund and performance bond;

2.2 Payment to the City of the Transfer fees; and

2.3 The date of closing of the sale/conveyance of the property benefited by this Franchise and/or the Facilities located in the Franchise Area or upon a date as mutually agreed to by the City, Franchisee and Transferee as follows:_____

3. ACCEPTANCE OF FRANCHISE OBLIGATIONS.

3.1 The Franchisee and Transferee hereby accept, acknowledge, and agree that neither the proposed transaction between Franchisee and Transferee nor the City's approval of this Agreement shall diminish or affect the existing and continuing commitments, duties, or obligations, present, continuing, and future, of the Franchisee and Transferee embodied in the Franchise.

3.2 Transferee and Franchisee agree that neither the transfer nor the City's approval of this Agreement and the resulting transfer shall in any respect relieve Franchisee, or any of its successors in interest, of any obligation or liability arising from acts or omissions occurring prior to the transfer of the Franchise, whether known or unknown, or the consequences thereof.

3.3 The transfer is not intended and shall not be construed to authorize the Franchisee to take any position or exercise any right that could not have been exercised prior to the Transfer.

3.4 Notwithstanding anything to the contrary herein, Transferee shall not be responsible for any of Franchisee's financial liabilities and obligations under the Franchise or pursuant to the City code, rules, and regulations that accrued before the Transfer of the Franchise, and Franchisee shall not be responsible for any financial liabilities and obligations under the Franchise or pursuant to the City code, rules, and regulations that accrue on or after the Transfer of the Franchise.

3.5 The City waives none of its rights with respect to the Franchisee's or Transferee's compliance with the terms, conditions, requirements, and obligations set forth in the Franchise. The City's approval of this Agreement shall in no way be deemed

a representation by the City that Franchisee is in compliance with all of Franchisee's obligations under the Franchise.

3.6 Franchisee and Transferee acknowledge and agree that the City's approval and acceptance of this Agreement and the resulting transfer is made in reliance upon the representations, documents, and information provided by the Franchisee and Transferee in connection with the request for Transfer.

4. MISCELLANEOUS PROVISIONS.

Field Code Changed

Field Code Changed

4.1 Conditions Precedent. The Agreement shall be effective and binding upon the signatories once it has been signed by all signatories; provided that, within 30 days of execution of the Agreement by all of the signatories, Transferee has provided to the City the following: (1) all fees required for this Transfer, (2) its acceptance of the Franchise in substantially the form of the document attached hereto as Exhibit B-1; (3) its insurance certificate in conformance with the requirements of the Franchise; (4) a performance bond or cash deposit in conformance with the requirements of the Franchise.

4.2 Entire Agreement. The Agreement constitutes the entire agreement of the Parties with respect to the matters addressed herein. No statements, promises, or inducements inconsistent with the Agreement made by any Party shall be valid or binding, unless in writing and executed by all Parties.

4.3 Binding Acceptance. The Agreement shall bind and benefit the Parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors, and assigns, and the promises and obligations herein shall survive the expiration date hereof. Any purported transfer of the Agreement is void without the express written consent of the signatories.

4.4 Severability. In the event that any provision of the Agreement shall, to any extent, be held to be invalid, preempted, or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective.

4.5 Defined Terms. Terms not defined in this Agreement shall have the same meaning as given in the Franchise.

4.6 Governing Law. The Agreement shall be governed in all respects by the laws of the state of Washington.

4.7 Notice. Pursuant to Section 8.13 of the Franchise, Notices to Transferee shall be delivered to:

Transferee's address: **
 **
 **
 **

And to:

**
**
**
**

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the day and year first written above.

CITY:

FRANCHISEE:

By: _____, City Administrator

By: _____
Title: _____

TRANSFeree:

By: _____
Title: _____

Tax Id. No. _____

TRANSFER EXHIBIT B-1

Acceptance of Franchise

Franchise issued pursuant to Ordinance No. _____ and accepted _____,
20____; Transfer authorized pursuant to Resolution No. _____, effective _____,
20____.

I, _____, am the _____,
and am the authorized representative to accept the above-referenced Franchise on behalf
of _____. In my capacity as
_____, and not individually, I certify that this Franchise and
all terms and conditions thereof are accepted by _____, without
qualification or reservation and that _____ unconditionally
guarantee(s) performance of all such terms and conditions.

DATED this _____ day of _____, 20____.

By _____
Its _____

Tax Payer ID# _____

STATE OF _____
CITY OF _____ ss.

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

Dated this _____ day of _____, _____.

(Signature of Notary)

Print Name
Notary public in and for the state of
_____, residing at _____
My appointment expires: _____

DRAFT

EXHIBIT “C”

(Description of Franchise Area)

The area within the jurisdictional boundaries of the City of Black Diamond, Washington, and such additional areas as may be included in the jurisdictional boundaries of the City of Black Diamond, Washington, during the term of this Franchise.

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EXHIBIT "D"

(Insurance Requirements)

1. **General Requirement.** Franchisee shall have adequate insurance at all times while Franchisee owns or operates Facilities in the Public Rights-of-Way, to protect the City against claims for death or injuries to Persons or damages to property or equipment which in any way relate to, arise from or are connected with the Work, the Facilities, or the activities of Franchisee, its employees, agents, representatives, contractors, subcontractors and their employees, within the Franchise Area.

2. **Minimum Insurance Limits.** The Franchisee shall maintain the following minimum insurance coverages and limits:

2.1 **Commercial General Liability:** insurance to cover liability, bodily injury, and property damage. The Commercial General Liability insurance shall be written on an occurrence basis, and shall provide coverage for any and all costs, including reasonable defense costs, and losses and damages resulting from personal injury, bodily injury and death, property damage, products liability and completed operations. Such insurance shall include broad form and blanket contractual coverage, including coverage for the Franchise as now or hereafter amended. Coverage must be written with the following limits of liability:

\$2,000,000 per occurrence,
\$4,000,000 general aggregate and
\$1,000,000 products/completed operations aggregate.

2.2 **Automobile Liability:** shall include owned, hired, and non-owned vehicles on an occurrence basis with coverage of at least \$2,000,000 per occurrence.

2.3 **Workers Compensation Insurance:** shall be maintained during the life of this Franchise to comply with statutory limits for all employees, and in the case any work is sublet, the Franchisee shall require its contractors and subcontractors similarly to provide workers' compensation insurance for all the employees. The Franchisee shall also maintain, during the life of this policy, employer's liability insurance with limits of \$1,000,000 each occurrence.

2.4 **Excess or Umbrella Liability:** \$5,000,000 each occurrence and \$5,000,000 policy limit.

3. **Endorsements.** Franchisee Commercial General Liability insurance policies are to contain, or be endorsed to contain, the following:

3.1 The Franchisee's insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Franchisee's insurance and shall not contribute to it.

3.2 Franchisee, through policy endorsement, shall waive its rights of subrogation against the City for all claims and suits.

3.3 That the coverage shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3.4 The Franchisee's insurance shall name the City as an additional insured, to protect or insure as an additional insured, from and against Liabilities arising out of work performed in the Public Rights-of-Way under a grant of authority of the City.

3.5 The Franchisee's insurance shall include a requirement that the "railroad exclusion" be deleted or may include, in the alternative, ISO endorsement CG 24 17 or the equivalent.

3.6 The insurance coverages and limits provided herein shall not be canceled without thirty (30) days' prior written notice first being given to the City, with the exception that ten (10) days' notice shall be required for cancellation resulting from non-payment of premium. If the insurance is canceled or reduced in coverage, Franchisee shall provide a replacement policy.

4. Acceptability of Insurers. Each insurance policy obtained pursuant to this Franchise shall be issued by financially sound insurers who may lawfully do business in the State of Washington with a financial strength rating at all times during coverage of no less than an "A-" and in a financial size category of no less than "VII", in the latest edition of "Best's Rating Guide" published by A.M. Best Company. In the event that at any time during coverage, the insurer does not meet the foregoing standards, Franchisee shall give prompt notice to the City and shall seek coverage from an insurer that meets the foregoing standards. The City reserves the right to change the rating or the rating guide depending upon the changed risks or availability of other suitable and reliable rating guides.

5. Verification of Coverage. The Franchisee shall furnish the City with signed certificates of insurance and a copy of the amendatory endorsements, including, but not necessarily limited to, the additional insured endorsement, evidencing the Automobile Liability, Commercial General Liability and Umbrella or Excess insurance of the Franchisee upon acceptance of this Franchise. The certificate for each insurance policy is to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificate for each insurance policy must be on standard forms or on such forms as are consistent with standard industry practices. The Franchisee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

6. Deductible. Commercial General Liability Insurance policies and coverage required herein may include a deductible; provided, however, that if Franchisee elects to include any deductible, Franchisee shall itself directly cover, in lieu of insurance, any and all City Liabilities that would otherwise in accordance with the

provisions of this Franchise be covered by Franchisee insurance if Franchisee elected not to include a deductible. Such direct coverage by Franchisee shall be in an amount equal to the amount of Franchisee's actual deductible.

7. No Limitation. Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee or limit the liability of Franchisee to the coverage provided in the insurance policies, or otherwise limit the City's recourse to any other remedy available at law or in equity.

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EXHIBIT "E"

(Financial Security)

1. Performance Bond.

1.1 Franchisee shall provide to the City a faithful performance and payment bond in the initial amount of **\$50,000** to ensure the full and faithful performance of all of its responsibilities under this Franchise and applicable Laws, including, by way of example and not limitation, its obligations to relocate and remove its Facilities, to restore the Public Rights-of-Way and other property when damaged or disturbed, to reimburse the City for its Direct Costs and keeping Franchisee's insurance in full force.

1.2 The performance bond shall be in a form with terms and conditions reasonably acceptable to the City and reviewed and approved by the City Attorney.

1.3 The performance bond shall be with a surety with a rating no less than "A- VII" in the latest edition of "Bests Rating Guide," published by A.M. Best Company.

1.4 The Franchisee shall pay all premiums or costs associated with maintaining the performance and payment bond, and shall keep the same in full force and effect at all times. If Franchisee fails to provide or maintain the bond, then the City, in its sole discretion, may require Franchisee to substitute an equivalent cash deposit as described below in lieu of the bond.

1.5 Franchisee's maintenance of the bond(s) shall not be construed to excuse unfaithful performance by Franchisee, or limit the liability of Franchisee to the amount of the bond(s), or otherwise limit the City's recourse to any other remedy available at law or in equity.

1.6 The amount of the bond may, in the reasonable discretion of the City, be adjusted by the City to take into account (1) cumulative inflation, (2) increased risk to the City, (3) the experiences of the Parties regarding Franchisee compliance with its obligations under the Franchise, and (4) issuance of Site Specific Permits for installation of new Facilities. Prior to adjusting the amount of the bond, the City shall provide reasonable notice to the Franchisee and an opportunity to provide comments, and the City shall review and consider such comments that are timely made.

2. Cash Deposit/Irrevocable Letter of Credit in Lieu of Bond.

Franchisee may, at its election substitute an equivalent cash deposit with an escrow agent approved by the City or an irrevocable letter of credit in form and content reasonably approved by the City Attorney, instead of a performance and payment bond. This cash deposit or irrevocable letter of credit shall ensure the full and faithful performance of all of Franchisee's responsibilities hereto under this Franchise and all

applicable Laws. This includes but, is not limited to, its obligations to relocate or remove its facilities, restore the Public Rights-of-Way and other property to their original condition, reimbursing the City for its costs, and keeping Franchisee's insurance in full force.

In the event that the Franchisee fails to cure a Default as provided in Section 6 of the Franchise, the City may, at its option, draw upon the cash deposit or letter of credit up to the amount of the City's costs incurred to cure Franchisee's default. Upon the City's cure of Franchisee's default, the City shall notify Franchisee in writing of such cure.

In the event that the City draws upon the cash deposit or letter of credit, Franchisee shall thereupon replenish the cash deposit or letter of credit to the full amount as specified herein or provide a replacement performance and payment bond.

EXHIBIT "F"

(Contractor/Subcontractor Insurance Requirements)

1. General Requirement. Prior to commencing and during the period of Work performed within the Franchise Area, Franchisee contractors and subcontractors (hereafter the "Contractors") must have in place adequate insurance to protect the City against claims for death or injuries to Persons or damages to property or equipment which in any way relate to, arise from or are connected with this such Work.

2. Minimum Insurance Limits. The Contractors shall maintain the following minimum insurance coverages and limits:

2.1 Commercial General Liability: insurance to cover liability, bodily injury, and property damage. The Commercial General Liability insurance shall be written on an occurrence basis, , and shall provide coverage for any and all costs, including reasonable defense costs, and losses and damages resulting from personal injury, bodily injury and death, property damage, products liability and completed operations. Coverage must be written with the following limits of liability:

\$1,000,000 per occurrence,
\$2,000,000 general aggregate and
\$1,000,000 products/completed operations aggregate.

2.2 Automobile Liability: shall include owned, hired, and non-owned vehicles on an occurrence basis with coverage of at least \$1,000,000 per occurrence.

2.3 Workers Compensation Insurance: shall be maintained during the period of such Work to comply with statutory limits for all employees.

3. Endorsements. Commercial General Liability insurance policies are to contain, or be endorsed to contain, the following:

3.1 The Contractor's insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Contractor's insurance and shall not contribute to it.

3.2 Contractor, through policy endorsement, shall waive its rights of subrogation against the City for all claims and suits.

3.3 That the coverage shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3.4 The Contractor's insurance shall name the City as an additional insured, to protect or insure as an additional insured, from and against Liabilities arising out of Work performed in the Public Rights-of-Way under a grant of authority of the City.

3.5 The Contractor's insurance shall include a requirement that the "railroad exclusion" be deleted or may include, in the alternative, ISO endorsement CG 24 17 or equivalent.

3.6 The insurance coverages and limits provided herein shall not be canceled without thirty (30) days written notice first being given to the City, with the exception that ten (10) days' notice shall be required for cancellation resulting from non-payment of premium. If the insurance is canceled or reduced in coverage, Franchisee shall provide a replacement policy.

4. Acceptability of Insurers. Each insurance policy required herein shall be issued by financially sound insurers who may lawfully do business in the State of Washington with a financial strength rating at all times during coverage of no less than an "A-" and in a financial size category of no less than "VII", in the latest edition of "Best's Rating Guide" published by A.M. Best Company. In the event that at any time during coverage, the insurer does not meet the foregoing standards, Contractor shall give prompt notice to the City and shall seek coverage from an insurer that meets the foregoing standards. The City reserves the right to change the rating or the rating guide depending upon the changed risks or availability of other suitable and reliable rating guides.

5. Verification of Coverage. The Franchisee shall furnish the City with Contractors' signed certificates of insurance and a copy of the amendatory endorsements, including, but not necessarily limited to, the additional insured endorsement, evidencing the Automobile Liability, and Commercial General Liability policies of the Contractors. The certificate for each insurance policy is to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificate for each insurance policy must be on standard forms or on such forms as are consistent with standard industry practices.

6. No Limitation. Contractor's maintenance of insurance policies required herein shall not be construed to excuse unfaithful performance by Franchisee or limit the liability of Franchisee or contractor to the coverage provided in the insurance policies, or otherwise limit the City's recourse to any other remedy available at law or in equity.

OVERVIEW OF TELECOMMUNICATIONS FRANCHISE ORDINANCE

FRANCHISEE	Astound Broadband, LLC, d/b/a "Wave"
AUTHORIZED SERVICES	Fiber-Optic Telecommunications Services
FRANCHISE AREA	Public Rights-of-Way within the Jurisdictional Boundaries of the City of Black Diamond
DURATION	10 Years

Franchise Grant

- The Franchise Ordinance authorizes Wave to construct, maintain, operate, and repair a fiber-optic broadband telecommunications system using the public rights-of-way within city limits. The Franchise is non-exclusive, meaning the City remains free to grant a similar franchise to another qualified telecommunications system operator during the same time period, so long as the terms are competitively neutral and nondiscriminatory consistent with federal law.
- The Franchise does not include the right to install or operate cable television or commercial mobile radio (i.e., cellular) services. The City may impose additional compensation requirements (e.g., right-of-way permit fees and, if a future cable franchise ordinance is approved, cable fees) for use of public rights-of-way to provide services beyond those specifically authorized in the Franchise Ordinance.
- The Franchise Ordinance does not exempt Wave from having to obtain other licenses, easements, or agreements needed to place devices on other City or private property (e.g., on utility poles, pipelines, or buildings), nor does it

exempt Wave from having to comply with applicable land-use or development regulations (e.g., conditional use permits or zoning variances).

Conditions of Acceptance

If the City Council passes and approves the Franchise Ordinance, Wave has 30 days to accept the Franchise by paying certain administrative costs of the City, submitting required insurance certificates, and paying the costs of publication of the Franchise Ordinance. Otherwise, the Franchise will be deemed rejected by Wave.

Transferability of Franchise

With prior notice to the City, Wave is permitted to transfer the Franchise to another provider, so long as the transferee agrees in writing to assume and be responsible for all of Wave's obligations and guarantees their performance. The transferee must also supply the required insurance certificates, security fund, and performance bond.

Term of Franchise and Renewal

The Franchise runs for a term of 10 years following acceptance by Wave. Within 180 days of expiration, and with the agreement of the parties, the Mayor may renew the Franchise for an additional 5 years without further action by the City Council.

Powers Retained by City

The City retains full authority to use the public rights-of-way, including construction of sanitary and storm sewers; paving, widening, or altering rights-of-way; laying down water mains; etc. The City also retains its full police powers to make and enforce laws, although it may not enact new ordinances or amendments that unilaterally alter or impair material rights or benefits granted to Wave under this Franchise Ordinance.

Liability Protections

- The City has disclaimed liability to Wave (and its contractors) for any damages relating to the design, condition, or safety of the public rights-of-way within the Franchise area, except for damages due to gross negligence or willful misconduct by the City.
- Wave has also agreed to a very broad indemnification of the City and its officials and employees for claims by third parties that arise out of or relate to Wave's occupation and use of the public rights-of-way, its operation of the Telecommunications System, environmental contamination that Wave causes or contributes to, and any acts or omission of Wave or its contractors, agents, and employees in connection with its work in the rights-of-way. The City retains liability for third-party damages caused by its own gross negligence or intentional misconduct.
- Wave is required to obtain a performance bond in the amount of \$50,000 to ensure full and faithful performance of Wave's obligations under the Franchise.
- Wave and its subcontractors are required to maintain commercial general liability insurance with minimum coverage limits. For Wave, the applicable limits are \$2,000,000 per occurrence, \$4,000,000 general aggregate, and \$1,000,000 products/completed operations aggregate. Wave is also required to maintain umbrella or excess liability insurance with limits of at least \$5,000,000.

Reimbursement of City Costs

- Wave is required to reimburse the City for costs (including labor, materials, equipment, and consultant fees) it incurs in approving and inspecting Wave's work on its facilities (e.g., the City's review of design documents and inspections for compliance with the City's Design Standards) to the extent such costs are not included in the issuance of regulatory permits (construction permits, street

excavation permits, clearing and grading permits, etc.). Any required work that the City has to perform after Wave has failed to perform it will be charged to Wave. The City is required to invoice Wave for such costs.

- Additionally, Wave is required to pay an application fee of \$5,000 to cover the City's legal and administrative expenses for negotiating, reviewing, and approving the Franchise Ordinance. Wave must also pay the costs of publication of the Franchise Ordinance and any other public notices prior to any public hearings on the Franchise Ordinance.
- Federal law prohibits the imposition of telecommunications franchise fees if they may prohibit or have the effect of prohibiting the provision of services. Certain fees may be permissible if limited to what is necessary for management and regulation of use of the public rights-of-way. 47 U.S.C. § 253.

Construction Standards, Permit Application, and Approval Process

- Wave may not commence work without the City's prior approval of its design documents. The City may require Wave to install facilities at a particular time, or in a particular place or manner as a condition of access, and may require removal of any facilities not installed in compliance with the current edition of the City Standards for Public Work Engineering and Construction, or any of the other federal, state, and City standards and codes specified in Section 7.3 of the Franchise Ordinance.
- The City may review and approve Wave's design documents with respect to, among other things: location, alignment, and depth; any measures needed to preserve the free flow of traffic; structural integrity, functionality, and compatibility with roadways, sidewalks, traffic signals, etc.; ease of road maintenance; appearance; and compatibility with the City's longer-term plans.

- Before performing any work in public rights-of-way, Wave must apply for and obtain all regulatory permits required by City ordinance or rule, at Wave's expense.
- Any contractors or subcontractors of Wave must adhere to the conditions and limitations of the Franchise Ordinance, and Wave must ensure that they are familiar with the Franchise Ordinance and that all work performed by them is in compliance with it.
- Wave is required to use suitable barricades, flags, lights, and other measures as required for the safety of the general public and to prevent accidents and injuries to persons, vehicles, or other property due to work done in public rights-of-way.

Right of Inspection

Upon 72 hours' notice, or without notice in case of emergency, the City may inspect Wave's facilities to determine compliance with the Franchise Ordinance or other applicable requirements. The City retains the power to immediately stop all work that the City learns or determines is non-compliant or is being performed in an unsafe or dangerous manner, and may compel Wave to take actions necessary to correct the unsafe condition or otherwise bring the work into compliance.

Facility Relocations

- The City may require Wave to alter, adjust, or relocate any facilities when reasonably necessary for the construction, repair, or improvement of any public rights-of-way in furtherance of the public health, safety, or welfare. The City must give 180 days' notice, and must make reasonable efforts to provide an alternate location for Wave's facilities. The City also must, within budgetary constraints, consider any alternative designs proposed by Wave to mitigate the

impact on its facilities. Wave may seek reimbursement of its relocation costs when authorized by law to do so.

- If there is an immediate threat to public health or safety, the City may require Wave, at Wave's expense, to shut down, relocate, remove, or modify its facilities in a public right-of-way, without regard to fault. A party seeking alteration, adjustment or temporary relocation of Wave facilities for something other than a public improvement project must compensate Wave for its time, engineering, design, and material costs.
- After construction of any facilities, or upon request by the City, Wave must provide up-to-date maps showing the horizontal and vertical location and configuration of located or relocated facilities in the public rights-of-way. Wave does not, however, warrant the accuracy of such maps; it represents only that its Telecommunications Systems are shown in approximate locations.

Duty of Restoration

Wave has a duty to leave the public rights-of-way and other property disturbed by its work in as good or better condition as it was before commencement of construction.

Wave must complete restoration work to the reasonable satisfaction of the City, as determined by the City Engineer, and warrant restoration work for at least two years.

Restoration work for adjacent private property disturbed or damaged by Wave must be performed to the private owner's reasonable satisfaction.

Revocation of Franchise

Upon an uncured default by Wave, the City may give notice of intent to revoke the Franchise. If Wave objects to the revocation, it may object in writing and provide its rationale. The City may then conduct a public hearing, at which evidence and witness

may be examined, before deciding whether to terminate or revoke the Franchise. The City Council's decision is final, subject only to other appeal rights provided by law.

Denial of Franchise

The City Council has the legal authority to deny Wave's franchise application.

However, a denial cannot be arbitrary and capricious or for an unlawful reason. RCW 35.99.030(3) requires that a denial be "supported by substantial evidence contained in a written record."

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: Resolution authorizing the Mayor to execute an Interlocal Agreement with Association of Washington Cities Risk Management Service Agency regarding membership	Agenda Date: November 3, 2016	
	AB16-065	
	Mayor Carol Benson	X
	City Administrator	
	City Attorney David Linehan	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Andy Williamson	
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	
	Police – Chief Kiblinger	
Cost Impact (see also Fiscal Note):	Public Works – Seth Boettcher	
Fund Source: --All Funds	Court – Stephanie Metcalf	
Timeline: December 1, 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: Resolution No. 16-XXXX, Interlocal Agreement clean and redlined versions		
SUMMARY STATEMENT: Councilmembers Edelman and Deady have placed this item on the agenda.		
<p>Currently the City belongs to the insurance pool of Association of Washington Cities Risk Management Service Agency (AWC RMSA). Their Board of Directors have updated and approved changes to the Interlocal Agreement.</p> <p>The Interlocal Agreement provides for self-insurance pooling and group purchasing power of insurance coverage, while receiving risk management services and property and liability claims administration. In the packet you will find a redlined version showing the changes.</p> <p>FISCAL NOTE (Finance Department): The City's overall rate increase for 2017 is 4%.</p>		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: MOTION to adopt Resolution No. 16-XXXX (Clerk to assign number after adoption), regarding membership in the Association of Washington Cities Risk Management Service Agency.		
RECORD OF COUNCIL ACTION		
Meeting Date	Action	Vote
November 3, 2016		

RESOLUTION NO. 16-XXXX

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
REGARDING MEMBERSHIP IN THE ASSOCIATION OF
WASHINGTON CITIES (AWC) RISK MANAGEMENT
SERVICE AGENCY (RMSA)**

WHEREAS, the Association of Washington Cities Risk Management Service Agency (AWC RMSA) offers pooled self-insurance providing cost stability and the potential for long-term savings; and

WHEREAS, AWC RMSA is sponsored by the Association of Washington Cities as a service to Washington cities and towns; and

WHEREAS, the City of Black Diamond acknowledges that after becoming a member of the AWC RMSA, the City of Black Diamond shall be subject to assessments and any future reassessments as required by the AWC RMSA; and

WHEREAS, the City of Black Diamond concludes that membership in the AWC RMSA would be beneficial in managing the municipal risks involved in providing services to our citizens;

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

Section 1. The City of Black Diamond does hereby agree to enter into and abide by the Interlocal agreement, which, along with this Resolution, constitutes a contract between the City of Black Diamond and the AWC RMSA.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 3RD DAY OF NOVEMBER, 2016.

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk

**INTERLOCAL AGREEMENT OF
THE ASSOCIATION OF WASHINGTON CITIES
RISK MANAGEMENT SERVICE AGENCY
(AWC-RMSA)**

Effective January 1, 2017

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INTERLOCAL AGREEMENT: OF THE ASSOCIATION OF WASHINGTON CITIES RISK MANAGEMENT SERVICE AGENCY

PREAMBLE

State law authorizes the formation of pooling organizations to provide insurance, to reduce the amount and frequency of the Members' losses, and to decrease the cost incurred by the Members in the handling and litigation of claims. This Agreement provides for self-insurance pooling and/or the economical purchase of Insurance coverage for Local Governmental Entities. This Agreement is made and entered into in the State of Washington by and among the Members organized and existing under the Constitution or laws of the State of Washington, hereinafter collectively referred to as "Members", and individually as "Member", which are parties signatory to this Agreement.

RECITALS

WHEREAS, Chapter 48.62 RCW provides that two or more local governmental agencies may, by Interlocal Agreement, provide insurance for any purpose by one or more of certain specified methods;

WHEREAS, the Association of Washington Cities, the sponsoring entity, of the Risk Management Service Agency ("Agency"), would like to maintain the long-standing relationship that has been achieved over the years because of the mutual goals of both entities, which is to support all cities and towns in Washington State;

WHEREAS, the Association of Washington Cities as sponsor of the Agency desires to provide its Members, as well as other Local Governmental Entities, the opportunity to jointly self-insure or pool their primary risks to enhance their ability to control their insurance programs and coverages;

WHEREAS, each of the parties to this Agreement desires to join together with the other parties for the purpose of pooling their self-insured losses and jointly purchasing excess insurance and administrative services in connection with a Joint Self-Insurance program for said parties; and

WHEREAS, it appears economically feasible and practical for the parties to this Agreement to do so;

NOW, THEREFORE, in consideration of all of the mutual benefits, covenants and agreements contained herein the parties hereto agree as follows:

ARTICLE 1 Definitions

The following definitions shall apply to the provisions of this Agreement:

- 1.1 **"Administrative Agent,"** shall mean the Association of Washington Cities that provides the contracted administrative services for the Agency.
- 1.2 **"Agency"** shall mean the Association of Washington Cities Risk Management Service Agency (RMSA).
- 1.3 **"Agreement"** shall mean the Interlocal Agreement, however amended, among and between the Agency and the Members.

- 1.4 **“Assessment”** shall mean the monies paid by the Members to the Agency.
- 1.5 **“Association”** shall mean the Association of Washington Cities.
- 1.6 **“Board of Directors”** or **“Board”** shall mean the governing body of the Risk Management Service Agency (RMSA) as duly elected by the members of the Agency.
- 1.7 **“Bylaws”** shall mean the document(s) that provides for the governance and operation of the Agency. “Bylaws” mean the Bylaws adopted by the Board of Directors of the Agency and all duly adopted amendments and revisions thereto, however amended.
- 1.8 **“Claim(s)”** means a demand for payment for damages against the Agency arising out of occurrences within the Coverage Agreement; or policy benefit because of the occurrence of an event that includes, but is not limited to, the destruction or damage of property or reputation, bodily injury or death and alleged civil rights violations.
- 1.9 **“Coverage Agreement”** shall mean the coverage document(s) established by the Board of Directors and intended to address the general claim operations of the Agency.
- 1.10 **“Excess insurance”** shall mean that insurance purchased or other financing arrangements made on behalf of the Agency to protect the funds of the Agency against catastrophes or against an unusual frequency of losses during a single year.
- 1.11 **“Fiscal Year”** shall mean that period of 12 months, from January 1 to December 31, which is established as the fiscal year of the Agency.
- 1.12 **“Insurance”** shall mean and include self-insurance through a funded program and/or commercial insurance contract.
- 1.13 **“Interlocal Agreement”** means an Agreement established under the Interlocal Cooperation Act defined in Chapter 39.34 RCW which permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and therefore, to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.
- 1.14 **“Joint Self-Insurance Program”** means two or more Local Government Entities which have entered into a cooperative risk sharing Agreement subject to regulation under Chapter 48.62 RCW.
- 1.15 **“Local Governmental Entity”** shall mean every unit of local government, both general purpose and special purpose, and shall include, but not be limited to, counties, cities, towns, port districts, public utility districts, water districts, sewer districts, fire protection districts, irrigation districts, metropolitan municipal corporations, conservation districts, and other political subdivisions, governmental subdivisions, municipal corporations, and quasi municipal corporations.
- 1.16 **“Member”** – shall mean any eligible entity which participates in the Agency, pays the annual Assessment and is signatory to the Agency’s Interlocal Agreement.
- 1.17 **“Member Standards”** shall mean the required and advisory standards adopted by the Board of Directors in an effort to provide consistent administrative practices for members, with the goal of reducing property and liability losses.
- 1.18 **“Operating Committee”** shall mean the standing advisory committee to the Board.

- 1.19 **“Reassessment”** shall mean additional monies paid by the Members to the Joint Self-Insurance Program if claims shall exceed assets.
- 1.20 **“Risk Sharing”** means a decision by the Members of a Joint Self Insurance program to jointly absorb certain or specific financial exposures to risks of loss through the creation of a formal program of advance funding of actuarially determined anticipated losses; and/or joint purchase of Insurance or reinsurance as a Member of a Joint Self-Insurance program formed under Chapter 48.62 RCW.
- 1.21 **“Signatory”** or **“Signatories”** shall mean those parties who sign this Agreement, including execution by counterpart, thereby becoming a Member of the Agency bound by the terms of this Agreement.
- 1.22 **“Special Committee”** – shall mean committees of the Agency created by the Board of Directors.

ARTICLE 2

Risk Sharing

- 2.1 This Agreement is entered into by the Members to provide for Joint Self-Insurance pooling and/or the economical purchase of Insurance coverage, risk management services, and property and liability claims administration. Furthermore, the purpose of the Agreement is to reduce the amount and frequency of the Members' losses and to decrease the cost incurred by the Members in the handling and litigation of claims. This purpose shall be accomplished through the exercise of the powers of the Members jointly in the creation of a separate public Agency, the Association of Washington Cities Risk Management Service Agency, to direct and administer a Joint Self-Insurance Program wherein the Members will engage in certain activities, including but not limited to the following:
- 2.1.1 Risk Sharing
 - 2.1.2 Joint purchase of insurance which may include, but is not limited to Excess and or reinsurance; and
 - 2.1.3 Joint purchase of administrative and other services including:
 - 2.1.3.1 Claims adjusting;
 - 2.1.3.2 Data processing;
 - 2.1.3.3 Risk management consulting;
 - 2.1.3.4 Loss prevention;
 - 2.1.3.5 Legal; and
 - 2.1.3.6 Miscellaneous related services.
- 2.2 It is also the purpose of the Agreement to provide, to the extent permitted by law, for the inclusion at a subsequent date of such additional Local Government Entities organized and existing under the Constitution or laws of the State of Washington as may desire to become parties to this Agreement and Members of the Agency, subject to approval by the Board of Directors.

- 2.3 This Agreement may but is not required to provide, to the extent permitted by law, that the Agency may, at the discretion of its directors, contract with non-member Local Government Entities in the State of Washington.

Article 3 Agency Offices

- 3.1 **Principal Executive Office**
The principal executive office for the transaction of business of the Agency shall be located at 1076 Franklin St. SE, Olympia, WA 98501. The Administrative Agent in cooperation with the Board of Directors of the Agency shall have the authority to change the location of the principal executive office from time to time.
- 3.2 **Other Offices**
Other business offices may be at any time be established by the Administrative Agent in cooperation with the Board of Directors of the Agency at any place or places where the Agency is qualified to do business.

ARTICLE 4 Parties to Agreement

Each party to this Agreement certifies that it intends to and does contract with all other parties who are Signatories of this Agreement and, in addition, with such other parties as may later be added to and Signatories of this Agreement pursuant to Article 14. Each party to this Agreement also certifies that the deletion of any party from this Agreement, pursuant to Articles 16 and 17, shall not affect this Agreement nor such party's intent to contract as described above with the other parties to the Agreement then remaining.

ARTICLE 5 Term of Agreement

This Agreement shall become effective on January 1, 2017, and shall be of unlimited duration, but not less than one year, and will continue unless terminated as hereinafter provided in Article 19.

ARTICLE 6 Financial Obligations of Agency

Pursuant to Chapter 48.62 RCW, of the State of Washington, the debts, liabilities, and obligations of the Agency shall not constitute debts, liabilities, or obligations of any Member to this Agreement.

ARTICLE 7 Powers of the Agency

- 7.1 Agency shall have the powers provided for by law and is hereby authorized to do all acts necessary for the exercise of said powers, including, but not limited to, any or all of the following:
- 7.1.1 Contract or otherwise provide for risk management, claims administration and loss prevention services;
 - 7.1.2 Contract or otherwise provide legal counsel for the defense of Claims and/or other legal services;
 - 7.1.3 Consult with the Washington State Risk Manager and State Auditor;
 - 7.1.4 Jointly purchase Insurance coverage in such form and amount as the organization's participants may by contract agree;
 - 7.1.5 Incur debts, liabilities, or obligations;

- 7.1.6 Acquire, receive, hold, or dispose of property, funds, services, and other forms of assistance from persons, firms, corporations, and governmental entities;
 - 7.1.7 Sue and be sued in its own name;
 - 7.1.8 Hire employees and agents; and
 - 7.1.9 Exercise all powers necessary and proper to carry out the terms and provisions of this Agreement, or otherwise authorized by law.
- 7.2 Said powers shall be exercised to the terms hereof and in the manner provided by law.

ARTICLE 8

The Board of Directors and their Powers and Responsibilities

- 8.1 The Agency, its funds and service programs shall be administered by a Board of Directors.
- 8.2 Number of directors
There shall be seven (7) directors of the Agency, who shall be elected officials representing members of the Agency.
- 8.3 Acceptance of Appointment by directors
Each director shall sign a document accepting their appointment as director and agreeing to abide by the terms and provisions of this Agreement and the Bylaws.
- 8.4 Powers and Responsibilities of the Board of Directors
The Board of Directors of the Agency shall have the following powers and functions:
 - 8.4.1 The Board shall have the power to review, amend, modify, adopt, override, or reject the Operating Committee's recommendations.
 - 8.4.2 The Board shall review, modify if necessary, and approve the annual operating budget of the Agency.
 - 8.4.3 The Board shall receive and review periodic accountings of all funds of the Agency.
 - 8.4.4 Annually the Board shall review, amend, adopt, or reject the Operating Committee's recommendation of the Assessment, or Reassessment rate to be charged to the Members of the Agency.
 - 8.4.5 The Board may review, modify if necessary, and approve the Coverage Agreement, the Agency's Bylaws, policies and Member Standards.
 - 8.4.6 The Board shall have the power to conduct all business on behalf of the Agency, which the Agency may conduct under the provisions hereof and pursuant to law.
 - 8.4.7 The Board shall determine and select Insurance, necessary to carry out the Joint Self-Insurance Program for the Agency.
 - 8.4.8 The Board shall have authority to contract for or develop various services for the Agency, including, but not limited to, an Administrative Agent, claims adjusting, loss prevention, risk management consulting services, independent actuary services, insurance brokerage services, independent claims auditing services, and legal counsel.

- 8.4.9 The Board shall have such other powers and functions as are provided for in this Agreement, and the Bylaws, which are necessary to implement the purposes of this Agreement, including, but not limited to, the power to authorize contracts.

ARTICLE 9

Operating Committee

The Operating Committee shall consist of nine (9) representatives from Members. All members of the Operating Committee shall be non-elected officials. It is the Board's intent that the Operating Committee is advisory to the Board and/or the Administrative Agent, regarding the operations of the Agency.

ARTICLE 10

Coverage

- 10.1 The type and limits of the Insurance coverage provided for Members by the Agency shall be established by the Board of Directors.
- 10.2 The Board may approve purchase of additional types or limits of coverage for Members interested in obtaining additional types or limits of coverage at additional cost to those Members. Such additional cost may include an administrative fee for the Agency's services.
- 10.3 The Board may arrange for the purchase of any other Insurance or services deemed necessary to protect the Agency or funds held by the Agency against catastrophe.

ARTICLE 11

Bond Requirements

The Board may require that the Administrative Agent authorized to disburse funds of the Agency, provide a fidelity bond in the amount as set by the Board, and provide that such bond be paid by the Agency.

ARTICLE 12

Responsibility of the Agency

The Agency shall perform the following functions in discharging its responsibilities under this Agreement:

- 12.1 Provide Insurance coverage as deemed necessary, including but not limited to a self-insurance fund and commercial insurance, as well as excess coverage or reinsurance, and other insurance. Such insurance, to be arranged by negotiation or bid, and/or purchase, as necessary;
- 12.2 Assist each Member's designated risk manager with the implementation of the risk management functions within the Member entity;
- 12.3 Provide loss prevention consulting services to Members as required;
- 12.4 Provide Claim adjusting and subrogation services for Claims covered by the Agency's Coverage Agreement;
- 12.5 Provide loss analysis by the use of statistical studies, data processing, and record and file-keeping services, to identify high exposure operations and to evaluate proper levels of self-retention and deductibles;
- 12.6 Assist Members, as requested, with review of their contracts to determine sufficiency of indemnity and insurance provisions;

- 12.7 Conduct risk management audits to review the participation of each Member in the program. The audit shall be performed by appointed Agency staff or, at the discretion of the Administrative Agent, and/or an independent auditor may be retained by contract to conduct the audits;
- 12.8 Provide for the defense of any civil action or proceeding brought against any officer, employee, Board member, or other agent of the Agency, in their official or individual capacity or both, on account of an act or omission within the scope of their agency as an agent of the Agency;
- 12.9 Abide by the rules and regulations as stated or hereinafter amended of RCW Chapter 48.62 and WAC 200-100; and
- 12.10 The Agency shall have such other responsibilities as deemed necessary by the Board of Directors in order to carry out the purposes of the Agreement.

ARTICLE 13

Responsibilities of Members

Members shall have the following responsibilities:

- 13.1 All Members must maintain membership in the Association of Washington Cities.
- 13.2 Each Member shall appoint an employee of the member entity to be responsible for the risk management function within that member entity and to serve as a liaison between the Member and the Agency.
- 13.3 Each Member shall implement a risk management policy which shall include implementing loss prevention recommendations, and complying with the Member Standards.
- 13.4 Each Member shall be responsible for payment of any Member-elected deductible, and/or appropriate deductible associated with the Member Standards.
- 13.5 Each Member shall promptly pay its Assessment, Reassessment, and any readjusted amount promptly to the Agency when due. After withdrawal or termination, each Member shall pay promptly to the Agency its share of any Reassessment and accrued interest at a rate determined by the Board, when and if required of it by the Board.
- 13.6 Each Member shall provide the Agency with such other information or assistance as may be necessary for the Agency to carry out the provisions of this Agreement.
- 13.7 Each Member shall in any and all ways cooperate with and assist the Agency, and any insurer of the Agency, in all matters relating to this Agreement and covered losses, and will comply with all Bylaws, policies, procedures and Member Standards as adopted or amended by the Board of Directors.
- 13.8 All members shall cooperate with the Agency and assist with any investigations, settlement discussions, defense or prosecution of suits, and cooperate and assist the Agency in enforcing any right of contribution, indemnity, or subrogation in which the Agency may have an interest by virtue of a payment made pursuant to the Bylaws, this Agreement, or the Coverage Agreement. Members shall also assist the Agency and attend hearings and trials as well as secure and give evidence and obtain the attendance of witnesses. Further, the members shall undertake appropriate due diligence and concur in exercising all things reasonably practicable to avoid or diminish any loss of or damage to the property insured under this agreement.

ARTICLE 14
New Members

- 14.1 Additional Members shall be permitted to become Signatories to this Agreement. All potential members to the Agency must be members of the Association of Washington Cities or become members prior to acceptance into the Agency. The Agency shall allow entry into the program of new members approved by the Board of Directors at such time during the year as the Board deems appropriate.
- 14.2 Members entering under this Article may be required to pay their share of expenses as determined by the Board, including those necessary to analyze their loss data and determine their Assessment.

ARTICLE 15
Defense of Agents

- 15.1 For purposes of this article, "agent" means any person who is or was: a director, an Operating Committee member, a Special Committee member, an officer, or an agent acting on behalf of the Agency or Administrative Agent.
- 15.2 The Agency shall provide for the defense of any agents and paying of any valid judgments and claims brought against any such agent arising from their actions or conduct in their official or individual capacity or both, on account of an act or omission within the scope of their responsibility; provided, however, this section shall not apply to those occurrences covered by an Agency policy of liability insurance or if the claim or judgment results from the intentional misconduct of said agent.

ARTICLE 16
Withdrawal

- 16.1 A Member signing this Agreement may not withdraw as a party to this Agreement and as a Member of the Agency for a one-year period commencing on the date said Member signs the Agreement.
- 16.1.1 After the initial one-year non-cancellable commitment provided pursuant to this Agreement, a Member may withdraw only at the end of the Agency's Fiscal Year, provided the Member has given the Agency a minimum of 12-month written notice of its intent to withdraw from this Agency.
- 16.2 A Member shall be entitled to withdraw from the Agency where the Member presents to the Board of Directors evidence demonstrating a material breach of contract by the Agency as regards its obligations to the Member. The Member shall be allowed to withdraw from the agency within ninety (90) days of any finding by the Board of Directors that a material breach of contract by the Agency has occurred. The withdrawal of any Member under the conditions identified here shall not however free it from any and all requirements made of any withdrawing Member.
- 16.3 No Member withdrawing from the agency shall be entitled to payment or return of any Assessment, Reassessment, contributions or monies contributed to the Agency or to the distribution of any assets of the Agency.

ARTICLE 17
Termination by Agency

- 17.1 The Agency shall have the right to terminate any Member's participation in the Agreement upon a motion approved by a vote of 66% or more of the entire Board of Directors. Prior to taking action on such a motion, the Board may, but is not required to, request that the Operating Committee review and make recommendations to the Board on any allegation giving rise to the request to

terminate, including but not limited to failure to: comply with a written condition, disregard of risk management recommendations or Member Standards, noncompliance with any provision of this Agreement, and/or the Bylaws of the Agency.

- 17.2 Any Member so terminated from the Agency, shall be given at least one hundred eighty (180) days notice prior to the effective date of the termination. Any Member so terminated shall have a period of up to six (6) months coverage under the terms of this Agreement, or may affect alternate insurance or self-insurance arrangements if it so desires. Upon written receipt of confirmation from the terminating Member that the terminating Member has in force valid insurance or membership in another risk sharing pool, the effective date of the termination may be adjusted by the Agency. Any Member so terminated shall be treated as if it had voluntarily withdrawn.
- 17.3 Upon termination from this Agreement, a Member shall not be entitled to payment or return of any Assessment, Reassessment, contributions or monies contributed to the Agency or to the distribution of any assets of the Agency.

ARTICLE 18

Effect of Withdrawal or Termination

- 18.1 The withdrawal of any Member from this Agreement shall not terminate the same for purposes of continuing to comply with all conditions and requirements of the Agreement, and survives the withdrawal or termination of any Member.
- 18.2 No Member by withdrawing or terminating from the Agreement shall be entitled to payment or return of any Assessment, Reassessment, consideration of property paid, or donated by the Member to the Agency, or to any distribution of assets.
- 18.3 The withdrawal or termination of any Member shall not cease its responsibility to contribute its share or Assessment, Reassessment, or funds to any fund or Joint Self-Insurance program created by the Agency until all Claims, or other unpaid liabilities, covering the period the Member was Signatory hereto have been finally resolved and a determination of the final amount of payments due by the Member or credits to the Member for the period of its membership has been made by the Board of Directors. In connection with this determination, the Board may exercise similar powers to those provided for in Article 17, *Termination by Agency*, of this Agreement.
- 18.4 The withdrawn or terminated Member shall be responsible for any applicable deductible that would have been applied related to a claim the same as if the Member was still in good standing with the Agency.
- 18.5 Any withdrawn or terminated Member may not be permitted to rejoin the Agency, or allowed to submit an application to rejoin the Agency for a period of three (3) years after the effective date of the Member's withdrawal or termination without Board approval.

ARTICLE 19

Termination and Distribution

- 19.1 This Agreement may be terminated at any time by the written consent of three-fourths (75%) of the Members, provided, however, that this Agreement and Agency shall continue to exist for the purpose of paying all debts and liabilities, disposing of all Claims, distributing net assets, and otherwise liquidating the affairs of the Agency. The Board of Directors is vested with all powers of the Agency during such liquidation, including the power to require Members, including those who were Members at the time the claim arose or at the time the loss was incurred, to pay their share of any additional amount of Reassessment deemed necessary by the Board for final disposition

of all Claims, losses, and liabilities covered by this Agreement. Such additional Reassessment shall be determined and thereafter adjusted, if necessary.

- 19.2 Upon termination of this Agreement, all assets of the Agency shall be distributed only among the parties that are Members in good standing of the Agency on the date of termination of this Agreement. The assets shall be distributed in accordance with and proportionate to their Assessment, Reassessment and property contributions made during the term of this Agreement. The Board shall determine such distribution within six (6) months after the last pending claim or loss covered by this Agreement has been finally disposed of.
- 19.3 The Board is vested with all powers of the Agency for the purpose of liquidating and dissolving the business affairs of the Agency. These powers shall include the power to require Members, including those which were Members at the time the claim arose or at the time the loss was incurred, to pay their share of any additional amount of assessment deemed necessary by the Board for final disposition of all Claims and losses covered by this Agreement. A Member's share of such additional assessment shall be determined on the same basis as that provided for annual assessments, and shall be treated as if it were the next year's annual assessment for that Member.

ARTICLE 20

Bylaws, Policy, Procedures and Member Standards

The Board may adopt Agency Bylaws, policies, procedures, and Member Standards or other documents that govern the day-to-day operations of the Agency. Each Member shall have access in electronic or written format.

ARTICLE 21

Notices

Notices to Members hereunder shall be sufficient if mailed to the last address, or electronic mail, provided to the Agency by the respective Member. Postal mail will be deemed received three (3) days after mailing.

ARTICLE 22

Amendment

This Agreement may be amended at any time by the written approval of the majority of all Members of the Agency. Amendments to the Agreement shall be adopted by ordinance or resolution of the governing board or council of each Member, signed by an authorized representative of each member, and a copy returned to the Agency

ARTICLE 23

Enforcement

The Agency is hereby granted the authority to enforce this Agreement. In the event action is instituted to enforce any term of this Agreement or any term of the Bylaws against any City Member which signed this Agreement, the substantially prevailing party in such dispute shall be entitled to its costs and reasonable attorney's fees.

ARTICLE 24

Prohibition Against Assignment

No Member may assign any right, claim, or interest it may have under this Agreement, except to a successor entity following reorganization. No creditor, assignee, or third-party beneficiary of any Member shall have any right, claim, or title to any part, share, interest, fund, assessment, or asset of the Agency. Should any participating Member reorganize in accordance with the statutes of the State of Washington, the successor in interest, or successors in interest, may be substituted as a Member upon approval by the Board.

ARTICLE 25
Severability

In the event that any article, provision, clause, or other part of this Agreement should be held invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability with respect to other articles, clauses applications, or occurrences, and this Agreement is expressly declared to be severable.

ARTICLE 26
Agreement Complete

The foregoing constitutes the full and complete Agreement of the parties. There are no oral understandings or agreements not set forth in writing herein.

ARTICLE 27
Conflicts

In the event of a conflict between this Agreement and the adopted Bylaws, policies, procedures, or the Member Standards, this Agreement shall take precedence."

Article 28
Supersession

This Agreement supersedes and replaces all prior Interlocal Agreements and amendments thereto pertaining to the Agency."

Article 29
Signature in Counterparts

This Agreement may be executed in any number of Counterparts and each of such Counterparts shall for all purposes constitute one Agreement, binding on all Members, notwithstanding that all Members are not Signatories to the same Counterpart. All references herein to this Agreement are deemed to refer to all such Counterparts.

Article 30
Section Headings

The section headings in this Agreement are inserted for convenience only and are not intended to be used in the interpretation of the contents of the sections they identify and introduce.

**Article 31
Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

**Article 32
Time**

Time is of the essence in this Agreement and each and every provision hereof.

**ARTICLE 33
Authorization of Signature**

Each Member signing this Agreement has passed the required Ordinance or Resolution authorizing and approving this Agreement, a copy of which Ordinance or Resolution is attached hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by authorized officials thereof.

Association of Washington Cities (AWC)
Risk Management Service Agency (RMSA)

By 
Peter King, AWC CEO

(Member Name)

By _____

_____, Mayor
(Printed name)

Date 9/14/16

Date _____

INTERLOCAL AGREEMENT OF
THE ASSOCIATION OF WASHINGTON CITIES
RISK MANAGEMENT SERVICE AGENCY
(AWC-RMSA)

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INTERLOCAL AGREEMENT: OF THE ASSOCIATION OF WASHINGTON CITIES RISK MANAGEMENT SERVICE AGENCY

PREAMBLE

State law authorizes the formation of pooling organizations to provide ~~such~~ insurance, to reduce the amount and frequency of the Members' losses, and to decrease the cost incurred by the Members in the handling and litigation of claims. This Agreement provides for self-insurance pooling and/or the economical purchase of ~~primary Insurance and/or Excess Insurance~~ coverage for all Local Governmental Entities. ~~This Agreement is made and entered into in the State of Washington by and among the Members organized and existing under the Constitution or laws of the State of Washington, hereinafter collectively referred to as "Members", and individually as "Member", which are parties signatory to this Agreement. Said Members are sometimes referred to herein as "Parties".~~

RECITALS

WHEREAS, ~~Chapter~~ 48.62 RCW provides that two or more local governmental agencies may, by Interlocal Agreement, provide insurance for any purpose by one or more of certain specified methods;

WHEREAS, the Association of Washington Cities, the sponsoring entity, of the Risk Management Service Agency ("Agency"), would like to maintain the long-standing relationship that has been achieved over the years because of the mutual goals of both entities, which is to support all cities and towns in Washington State;

WHEREAS, the Association of Washington Cities as sponsor of the Agency desires to provide its Members, as well as other Local Governmental Entities, the opportunity to jointly self-insure or pool their primary risks to enhance their ability to control their insurance programs and coverages;

WHEREAS, each of the parties to this Agreement desires to join together with the other parties for the purpose of pooling their self-insured losses and jointly purchasing excess insurance and administrative services in connection with a ~~Joint protection~~ Self-Insurance program for said parties; and

WHEREAS, it appears economically feasible and practical for the parties to this Agreement to do so;

NOW, THEREFORE, in consideration of all of the mutual benefits, covenants and agreements contained herein the parties hereto agree as follows:

ARTICLE 1 Definitions

The following definitions shall apply to the provisions of this Agreement:

- 1.1 **"Administrative Agent,"** shall mean the Association of Washington Cities that provides ~~third party administration (TPA) services to the Agency.~~ the contracted administrative services for the Agency.

1.2 **"Agency"** shall mean the Association of Washington Cities Risk Management Service Agency (RMSA).

1.3 ~~X.XX~~ **"Agreement"** shall mean the Interlocal Agreement, however amended, among and between the Agency and the Member.

1.43 **"Assessment"** shall mean the monies ~~sees~~ paid by the ~~m~~ Members to the Agency.

1.54 **"Association"** shall mean the Association of Washington Cities.

1.65 **"Board of Directors" or "Board"** shall mean the governing body of the Risk Management Service Agency (RMSA) as duly elected by the members of the Agency.

~~X.XX~~1.7 **"Bylaws"** shall mean the document(s) that provides for the governance and operation of the Agency. "Bylaws" mean the Bylaws adopted by the Board of Directors of the Agency and all duly adopted amendments and revisions thereto, however amended.

1.86 **"Claim(s)"** ~~shall mean demands made against the Agency arising out of occurrences which are within the Agency's Joint Protection Program as developed by the Board of Directors.~~ mMeans a demand for payment for damages against the Agency arising out of occurrences within the Coverage Agreement; or policy benefit because of the occurrence of an event that includes, but is not limited to, the destruction or damage of property or reputation, bodily injury or death and alleged civil rights violations.

1.9X.XX **"Coverage Agreement"** shall mean the coverage document(s) established by the Board of Directors and intended to address the general claims operations of the Agency.

1.107 **"Excess insurance"** shall mean that insurance purchased or other financing arrangements made on behalf of the Agency to protect the funds of the Agency against catastrophes or against an unusual frequency of losses during a single year.

1.118 **"Fiscal Year"** shall mean that period of 12 months, from January 1 to December 31, which is established as the fiscal year of the Agency.

1.129 **"Insurance"** shall mean and include self-insurance through a funded program and/or commercial insurance contract.

1.13X.XX **"Interlocal Agreement"** means an Agreement established under the Interlocal Cooperation Act defined in ~~C~~chapter 39.34 RCW which permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and therefore, to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

1.140 **"Joint Protection Program"** ~~shall mean the program established by the Board of Directors and intended to address the general operation of the Agency.~~

1.14X.XX **"Joint Self-Insurance Program"** means two or more Local Government Entities which have entered into a cooperative risk sharing Agreement subject to regulation under 48.62 RCW.

1.154 **"Local Governmental Entity"** shall mean every unit of local government, both general purpose and special purpose, and shall include, but not be limited to, counties, cities, towns, port districts,

public utility districts, water districts, sewer districts, fire protection districts, irrigation districts, metropolitan municipal corporations, conservation districts, and other political subdivisions, governmental subdivisions, municipal corporations, and quasi municipal corporations.

~~1.16X.XX~~ — “**Member**” – shall mean any eligible entity which participates in the Agency, pays the annual Assessment and is signatory to the Agency’s Interlocal Agreement.

~~1.17X.XX~~ — “**Member Standards**” shall mean the required ~~and~~ advisory standards ~~were~~ adopted by the Board of Directors in an effort to provide consistent administrative practices for members, with the goal of reducing property and liability losses.

~~1.182~~ “**Operating Committee**” shall mean the standing advisory committee ~~of the Agency to the Board.~~

~~1.19X.XX~~ — “**Reassessment**” shall mean additional monies ~~sees~~ paid by the Members to the Joint Self-Insurance Program if claims shall exceed assets.

1.20 “Risk Sharing” means a decision by the Members of a Joint Self Insurance Program to jointly absorb certain or specific financial exposures to risks of loss through the creation of a formal program of advance funding of actuarially determined anticipated losses; and/or joint purchase of Insurance or reinsurance as a member of a Joint Self Insurance Program formed under Chapter 48.62 RCW.

~~1.2143~~ “**Signatory**” or “**Signatories**” shall mean those parties who sign this Agreement, including execution by ~~C~~counterpart, thereby becoming a Member of the Agency bound by the terms of this Agreement.

~~1.22X.XX~~ — “**Special Committee**” – shall mean committees of the Agency created by the Board of Directors.

ARTICLE 2

Purposes Risk Sharing

2.1 This Agreement is entered into by the Members to provide for ~~Joint s~~Self-~~ii~~Insurance pooling and/or the economical purchase of ~~primary~~ Insurance ~~and/or Excess Insurance~~ coverage, risk management services, and property and liability claims administration. ~~for all forms of Insurance available or required by law for Local Governmental Entities and for which state law authorizes the formation of pooling organizations to provide such Insurance.~~ Furthermore, the purpose of the Agreement is to reduce the amount and frequency of the Members' losses; and to decrease the cost incurred by the Members in the handling and litigation of claims. This purpose shall be accomplished through the exercise of the powers of the Members jointly in the creation of a separate public Agency, the Association of Washington Cities Risk Management Services Agency, to direct and administer a Joint ~~Protection~~Self-Insurance Program wherein the Members will engage in certain activities, including but not limited to the following:

2.1.1 ~~Pool their losses and Claims~~Risk Sharing;

2.1.2 Jointly purchase of insurance which may include, but is not limited to ~~Ex~~Excess Insurance ~~and or reinsurance~~; and

2.1.3 Jointly purchase of administrative and other services including:

2.1.1.1 Claims adjusting;

2.1.1.2 Data processing;

- 2.1.1.3 Risk management consulting;
- 2.1.1.4 Loss prevention;
- 2.1.1.5 Legal; and
- 2.1.1.6 Miscellaneous related services.

- 2.2 It is also the purpose of the Agreement to provide, to the extent permitted by law, for the inclusion at a subsequent date of such additional Local Government Entities organized and existing under the Constitution or laws of the State of Washington as may desire to become parties to this Agreement and ~~m~~Members of the Agency, subject to approval by the Board of Directors.
- 2.3 ~~It is also the purpose of t~~ This Agreement ~~to~~ may but is not required to provide, to the extent permitted by law, that the Agency may, at the discretion of its ~~d~~Directors, contract with non-member Local Government Entities in the State of Washington.

Article 3 Agency Offices

- 3.1 Principal Executive Office
The principal executive office for the transaction of business of the Agency shall be located at 1076 ~~South~~ Franklin St. SE, Olympia, WA 98501. The Administrative Agent in cooperation with the Board of Directors of the Agency shall have the authority to change the location of the principal executive office from time to time.
- 3.2 Other Offices
Other business offices may be at any time be established by the Administrative Agent in cooperation with the Board of Directors of the Agency at any place or places where the Agency is qualified to do business.

ARTICLE 4 Parties to Agreement

Each party to this Agreement certifies that it intends to and does contract with all other parties who are Signatories of this Agreement and, in addition, with such other parties as may later be added to and ~~S~~signatories of this Agreement pursuant to Article 14. Each party to this Agreement also certifies that the deletion of any party from this Agreement, pursuant to Articles 16 and 17, shall not affect this Agreement nor such party's intent to contract as described above with the other parties to the Agreement then remaining.

ARTICLE 5 Term of Agreement

This Agreement shall become effective on January 1, 20107, and shall be of unlimited duration, but not less than one year, and will continue unless terminated as hereinafter provided in Article 19.

ARTICLE 6 Financial Obligations of Agency

Pursuant to Chapter. 48.62 RCW, of the State of Washington, the debts, liabilities, and obligations of the Agency shall not constitute debts, liabilities, or obligations of any ~~party~~ Member to this Agreement.

ARTICLE 7

Powers of the Agency

- 7.1 Agency shall have the powers provided for by law and is hereby authorized to do all acts necessary for the exercise of said powers, including, but not limited to, any or all of the following:
- 7.1.1 Contract or otherwise provide for risk management, claims administration and loss ~~control~~ prevention services;
 - 7.1.2 Contract or otherwise provide legal counsel for the defense of Claims and/or other legal services;
 - 7.1.3 Consult with the Washington State Risk Manager and State Auditor;
 - 7.1.4 Jointly purchase Insurance coverage in such form and amount as the organization's participants may by contract agree;
 - 7.1.5 Incur debts, liabilities, or obligations;
 - 7.1.6 Acquire, receive, hold, or dispose of property, funds, services, and other forms of assistance from persons, firms, corporations, and governmental entities;
 - 7.1.7 Sue and be sued in its own name;
 - 7.1.8 Hire employees and agents; and
 - 7.1.9 Exercise all powers necessary and proper to carry out the terms and provisions of this Agreement, or otherwise authorized by law.
- 7.2 Said powers shall be exercised to the terms hereof and in the manner provided by law.

ARTICLE 8

The Board of Directors and their Powers and Responsibilities

- 8.1 The Agency, its funds and service programs shall be administered by a Board of Directors.
- 8.2 Number of Directors
There shall be seven (7) Directors of the Agency, who shall be elected officials representing members of the Agency.
- 8.3 Acceptance of Appointment by Directors
Each Director shall sign a document accepting their appointment as Director and agreeing to abide by the terms and provisions of this ~~Interlocal~~ Agreement and the Bylaws.
- 8.4 Powers and Responsibilities of the Board of Directors
The Board of Directors of the Agency shall have the following powers and functions:
- 8.4.1 The Board shall have the power to review, amend, modify, adopt, override, or reject the Operating Committee's recommendations.
 - 8.4.2 The Board shall review, modify if necessary, and approve the annual operating budget of the Agency.
 - 8.4.3 The Board shall receive and review periodic accountings of all funds of the Agency.

- 8.4.~~34~~ Annually the Board shall review, amend, adopt, or reject the Operating Committee's recommendation of the ~~a~~Assessment, or Reassessment rate to be charged to the ~~m~~ Members of the Agency.
- 8.4.~~45~~ The Board ~~shall~~ may review, modify if necessary, and approve the ~~Joint Protection Program (JPP) Coverage Agreement, which identifies Agency and Member coverages,~~ the Agency's Bylaws, and manuals policies and Member Standards.
- 8.4.~~56~~ The Board shall have the power to conduct all business on behalf of the Agency, which the Agency may conduct under the provisions hereof and pursuant to law.
- 8.4.~~67~~ The Board shall determine and select ~~all necessary~~ Insurance, ~~including Excess Insurance,~~ necessary to carry out the Joint Self-Insurance Protection Program ~~of for~~ the Agency.
- 8.4.~~78~~ The Board shall have authority to contract for or develop various services for the Agency, including, but not limited to, an ~~a~~Administrative ~~a~~Agent, claims adjusting, loss ~~control~~prevention, risk management consulting services, independent actuary services, insurance brokerage services, independent claims auditing services, and ~~general~~ legal counsel.
- 8.4.~~89~~ The Board shall have such other powers and functions as are provided for in this Agreement, and the Bylaws, ~~or these~~ which are necessary to implement the purposes of this Agreement, including, but not limited to, the power to authorize contracts.

ARTICLE 9

Operating Committee

The Operating Committee shall consist of nine (9) representatives from Members ~~entities participating in the Agency.~~ All members of the Operating Committee shall be ~~appointed non-elected officials not elected officials.~~ It is the Board's intent that the Operating eCommittee assists is advisory to the Board and/or the Administrative Agent, with regarding the operations of the Agency, ~~and to keep the Board advised on all aspects of Agency operations including professional standards.~~

ARTICLE 10

Coverage

- 10.1 The type and limits of the Insurance coverage provided for Members by the Agency shall be established by the Board of Directors.
- 10.2 The Board may ~~arrange~~ approve purchase of ~~a group policy~~ additional types or limits of coverage for Members interested in obtaining additional types or limits of coverage at additional cost to those ~~participating of other~~ Members. Such additional cost may include an administrative fee for the Agency's services.
- 10.3 The Board may arrange for the purchase of any other Insurance or services deemed necessary to protect the Agency or funds held by the Agency against catastrophe.

ARTICLE 11

Bond Requirements

The Board may require that the Administrative Agent authorized to disburse funds of the Agency, provide a fidelity bond in the amount as set by the Board, and provide that such bond be paid by the Agency.

ARTICLE 12

Responsibility of the Agency

12.1 The Agency shall perform the following functions in discharging its responsibilities under this Agreement:

- 12.~~412~~ Provide Insurance coverage as deemed necessary, including but not limited to a self-insurance fund and commercial insurance, as well as excess coverage or reinsurance, and other insurance; ~~s~~Such insurance, to be arranged by negotiation or bid, and/or purchase, as necessary;
- 12.~~223~~ Assist each Member's designated risk manager with the implementation of the risk management functions within the Member entity;
- 12.~~334~~ Provide loss prevention, ~~safety~~, and consulting services to Members as required;
- 12.~~45~~ Provide Claims ~~s~~ adjusting and subrogation services for Claims covered by the Agency's ~~Joint Protection Program~~; Coverage Agreement;
- 12.~~556~~ Provide loss analysis by the use of statistical studies, data processing, and record and file-keeping services, to identify high exposure operations and to evaluate proper levels of self-retention and deductibles;
- 12.~~667~~ Assist Members, as requested, with review of their contracts to determine sufficiency of indemnity and ~~i~~insurance provisions;
- 12.~~778~~ Conduct risk management audits to review the participation of each Member in the program. The audit shall be performed by appointed Agency staff or, at the discretion of the ~~a~~Administrative ~~a~~Agency~~t~~, and/or an independent auditor may be retained by contract to conduct the audits;
- 12.~~889~~ Provide for the defense of any civil action or proceeding brought against any officer, employee, Board member, or other agent of the Agency, in their official or individual capacity or both, on account of an act or omission within the scope of their agency as an agent of the Agency;
- 12.~~9910~~ Abide by the rules and regulations as stated or hereinafter amended of RCW Chapter 48.62 and WAC ~~82-60~~; 200-100; and
- 12.~~40101~~ The Agency shall have such other responsibilities as deemed necessary by the Board of Directors in order to carry out the purposes of the Agreement.

ARTICLE 13

Responsibilities of Members

13.1 Members shall have the following responsibilities:

- 13.~~412~~ All ~~Agency m~~Members must maintain membership in the Association of Washington Cities.
- 13.~~223~~ Each ~~m~~Member shall appoint an employee of the member entity to be responsible for the risk management function within that member entity and to serve as a liaison between the Member and the Agency ~~as to risk management~~.
- 13.~~334~~ Each Member shall implement a risk management policy which shall include maintain an active safety officer and/or committee, and shall consider all implementing completing loss prevention recommendations, and complying with the Member Standards of the Agency.

~~concerning including but not limited to the development and implementation of a loss control risk management policy to prevent unsafe and, and practice(s).~~

13.45 Each Member shall be responsible for payment of any Member-elected deductible, and/or appropriate deductible associated with the Member Standards.

~~13.4 Each Member shall maintain its own set of records, as a loss log, in all categories of loss to insure accuracy of the Agency's loss reporting system.~~

13.556 Each Member shall promptly pay its ~~a~~Assessment, Reassessment, and any readjusted amount promptly to the Agency when due. After withdrawal or termination, each Member shall pay promptly to the Agency its share of any ~~additional~~ Reassessment and accrued interest at a rate determined by the Board, when and if required of it by the Board.

13.667 Each Member shall provide the Agency with such other information or assistance as may be necessary for the Agency to carry out the ~~Joint Protection Program under~~ provisions of this Agreement.

13.778 Each Member shall in any and all ways cooperate with and assist the Agency, and any insurer of the Agency, in all matters relating to this Agreement and covered losses, and will comply with all Bylaws, ~~rules, and regulations~~ policies, procedures and Member Standards as adopted or amended by the Board of Directors.

~~13.889 All members shall cooperate with the Agency and assist with investigations, making settlements, and defense or prosecution of suits; cooperate and assist the Agency in enforcing any right of contribution, indemnity or subrogation in which the Agency may have an interest by virtue of a payment made pursuant to the Bylaws, interlocal aAgreement or the Joint Protection Program (JPP); attend hearings and trials and assist in the securing and giving evidence and obtaining the attendance of witnesses; use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any loss of or damage to the property herein insured.~~
All members shall cooperate with the Agency and assist with any investigations, settlement discussions, defense or prosecution of suits, and cooperate and assist the Agency in enforcing any right of contribution, indemnity, or subrogation in which the Agency may have an interest by virtue of a payment made pursuant to the Bylaws, this Agreement, or the Coverage Agreement. Members shall also assist the Agency and attend hearings and trials as well as securing and giving evidence and obtaining the attendance of witnesses. Further, the members shall undertake appropriate due diligence and concur in exercising all things reasonably practicable to avoid or diminish any loss of or damage to the property insured under this agreement.

ARTICLE 14

New Members

14.1 Additional Members shall be permitted to become Signatories to this Agreement, ~~and to the Joint Protection Program~~. All potential members to the Agency must be members of the Association of Washington Cities or become members prior to acceptance into the Agency. The ~~Directors~~ Agency shall allow entry into the program of new members approved by the Board of Directors at such time during the year as the Board deems appropriate.

- 14.2 Members entering under this Article may be required to pay their share of expenses as determined by the Board, including those necessary to analyze their loss data and determine their ~~a~~Assessment.

ARTICLE 15

Defense of Agents

- 15.1 For purposes of this article, "agent" means any person who is or was: a ~~d~~Director, an Operating Committee member, a Special Committee member, an officer, or an agent acting on behalf of the Agency or Administrative Agent.
- 15.2 The Agency shall provide for the defense of any agents and paying of any valid judgments and claims brought against any such agent arising from their actions or conduct in their official or individual capacity or both, on account of an act or omission within the scope of their responsibility; provided, however, this section shall not apply to those occurrences covered by an Agency policy of liability insurance or if the claim or judgment results from the intentional misconduct of said agent.

ARTICLE 16

Withdrawal

- 16.1 A Member signing this Agreement may not withdraw as a party to this Agreement and as a Member of the Agency for a one-year period commencing on the date said Member signs the Agreement.
- 16.1.1 After the initial one-year non-cancellable commitment provided pursuant to this Agreement, a Member may withdraw only at the end of ~~the Agency's any~~ Fiscal Year, provided ~~the Member~~ has given the Agency a minimum of 12-month written notice of its intent to withdraw from this Agency.
- 16.2 A Member shall be entitled to withdraw from the Agency where ~~the Member~~ presents to the Board of Directors evidence demonstrating a material breach of contract by the Agency as regards its obligations to the Member. The Member shall be allowed to withdraw from the agency within ninety (90) days of any finding by the Board of Directors that a material breach of contract by the Agency has occurred. The withdrawal of any Member under the conditions identified here shall not however free it from any and all requirements made of any withdrawing Member.
- 16.3 No Member withdrawing from the Agency shall be entitled to payment or return of any Assessment, Reassessment, contributions or monies contributed to the Agency or to the distribution of any assets of the Agency. No member shall be entitled to any payment or return of any assessment paid by the member to the Agency or any agency insurer or to any distribution of the Agency's assets.

ARTICLE 17

Termination by Agency

- 17.1 The Agency shall have the right to terminate any Member's participation in the ~~Joint Protection Program Agreement~~ upon a motion approved by a three-quarters (75%) vote of 66% or more of the entire Board of Directors. ~~The Board of Directors may, p~~Prior to taking action on such a motion, the Board may, but is not required to, request that the Operating Committee review and make recommendations to the Board on any allegation giving rise to the request to terminate, including but not limited to failure to: comply with a written condition, disregard of ~~safety or~~ risk management recommendations or Member sStandards, noncompliance with any provision of this ~~Interlocal Agreement,~~ and/or the Bylaws of the Agency.

- 17.2 Any Member so ~~cancelled~~ terminated from the Agency, shall be given at least one hundred eighty (180) days notice prior to the effective date of the ~~cancellation~~ termination. Any Member so ~~cancelled~~ terminated shall have a period of up to six (6) months coverage under the terms of this Agreement, or may affect alternate insurance or self-insurance arrangements if it so desires. Upon written receipt of confirmation from the terminating Member that the terminating Member has in force valid insurance or membership in another risk sharing pool, the effective date of the termination may be adjusted by the Agency. Any Member so ~~cancelled~~ terminated shall be treated as if it had voluntarily withdrawn.
- 17.3 Upon termination from this Agreement, a no-Member shall not be terminated from the agency shall be entitled to payment or return of any Assessment, Reassessment, contributions or monies contributed to the Agency or to the distribution of any assets of the Agency. No member shall be entitled to any payment or return of any assessment paid by the member to the Agency or any agency insurer or to any distribution of the Agency's assets.
- ~~17.4 A terminated Member shall be responsible for any Reassessment issued in the future covering dates the terminated entity was a Member of the Agency.~~

ARTICLE 18

Effect of Withdrawal or Termination

- 18.1 The withdrawal of any Member from this Agreement shall not terminate the same for purposes of continuing to comply with all conditions and requirements of the Agreement, and survives the withdrawal or termination of any Member.-
- 18.2 No Member by withdrawing or terminating from the Agreement shall be entitled to payment or return of any ~~a~~ Assessment, Reassessment, consideration of property paid, or donated by the Member to the Agency, or to any distribution of assets.
- 18.3 The withdrawal or termination of any Member shall not ~~terminate~~ cease its responsibility to contribute its share or ~~a~~ Assessment, Reassessment, -or funds to any fund or Joint Self-Insurance program created by the Agency until all Claims, or other unpaid liabilities, covering the period the Member was Signatory hereto have been finally resolved and a determination of the final amount of payments due by the Member or credits to the Member for the period of its membership has been made by the Board of Directors. In connection with this determination, the Board may exercise similar powers to those provided for in Article 17, *Termination by Agency*, of this Agreement.
- 18.4 The withdrawn or terminated Member shall be responsible for any applicable deductible that would have been applied related to a claim the same as if the Member was still in good standing with the Agency.
- 18.45 Any withdrawing ~~ing~~ n-or terminated Member may shall not be permitted to rejoin the Agency, or allowed to submit an application to rejoin the Agency for a period of three (3) years after the effective date of the Member's withdrawal or termination without Board approval.

ARTICLE 19

Termination and Distribution

- 19.1 This Agreement may be terminated at any time by the written consent of three-fourths (75%) of the Members, provided, however, that this Agreement and Agency shall continue to exist for the purpose of paying all debts and liabilities, disposing of all Claims, distributing net assets, and otherwise ~~winding up and~~ liquidating the affairs of the Agency. The Board of Directors is vested with all powers of the Agency during such ~~winding up and~~ liquidation, including the power to require Members, including those ~~which who were -are~~ which who were Members at the time the claim arose or at

the time the loss was incurred, to pay their share of any additional amount of Reassessment deemed necessary by the Board for final disposition of all Claims, losses, and liabilities covered by this Agreement. Such additional Reassessment shall be determined and thereafter adjusted, if necessary.

19.2 Upon termination of this Agreement, all assets of the Agreement Agency shall be distributed only among the parties that are Members in good standing of the Joint Protection Program Agency on the date of termination of this Agreement. The assets shall be distributed in accordance with and proportionate to their ~~cash payments~~ Assessment, Reassessment and property contributions made during the term of this Agreement. The Board shall determine such distribution within six (6) months after the last pending claim or loss covered by this Agreement has been finally disposed of.

19.3 The Board is vested with all powers of the Agency for the purpose of ~~winding-up~~ liquidating and dissolving the business affairs of the Agency. These powers shall include the power to require Members, including those which were Members at the time the claim arose or at the time the loss was incurred, to pay their share of any additional amount of assessment deemed necessary by the Board for final disposition of all Claims and losses covered by this Agreement. A Member's share of such additional assessment shall be determined on the same basis as that provided for annual assessments, and shall be treated as if it were the next year's annual assessment for that Member.

ARTICLE 20

Bylaws and Manual Policy, Procedures and Member Standards

The Board ~~has developed~~ may adopt Agency Bylaws, ~~and a policyies, and~~ procedures, ~~manual and Member Standards or other documents~~ that governs the day-to-day operations of the Agency. Each Member shall have access in electronic or written format. ~~electronically or in written format~~ ~~Each Member shall receive a copy of any Bylaws, policy statement, or manual developed under this Article.~~

ARTICLE 21

Notices

Notices to Members hereunder shall be sufficient if mailed to the last address, or electronic mail, provided to the Agency by the respective Member postal mail will be deemed received three (3) days after mailing.

ARTICLE 22

Amendment

This Agreement may be amended at any time by the written approval of the majority three-quarters (75%) of all Members of the Agency. Amendments to the Agreement shall be adopted by ordinance or resolution of the governing board or council of each Member, signed by an authorized representative of each member, and a certified copy returned to the Agency

ARTICLE 23

Enforcement

The Agency is hereby granted the authority to enforce this Agreement. In the event action is instituted to enforce any term of this Agreement or any term of the Bylaws against any City Member which signed this Agreement, the substantially prevailing party in such dispute shall be entitled to its costs and reasonable attorney's fees.

ARTICLE 24

Prohibition Against Assignment

No Member may assign any right, claim, or interest it may have under this Agreement, except to a successor entity following reorganization. No creditor, assignee, or third-party beneficiary of any Member shall have any right, claim, or title to any part, share, interest, fund, assessment, or asset of the Agency. Should any participating Member reorganize in accordance with the statutes of the State of Washington, the successor in interest, or successors in interest, may be substituted as a Member upon approval by the Board.

ARTICLE 25

Severability

In the event that any article, provision, clause, or other part of this Agreement should be held invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability with respect to other articles, clauses applications, or occurrences, and this Agreement is expressly declared to be severable.

ARTICLE 26

Agreement Complete

The foregoing constitutes the full and complete Agreement of the parties. There are no oral understandings or agreements not set forth in writing herein.

ARTICLE 27

Conflicts

In the event of a conflict between this Agreement and the adopted Bylaws, policies, or procedures, or the Member Standards, this Agreement shall take precedence."

Article 28

Supersession

This Agreement supersedes and replaces all prior interlocal Agreements and amendments thereto pertaining to the Agency."

Article 29

Signature in Counterparts

This Agreement may be executed in any number of Counterparts and each of such Counterparts shall for all purposes constitute one Agreement, binding on all Members, notwithstanding that all Members are not Signatories to the same Counterpart. All references herein to this Agreement are deemed to refer to all such Counterparts.

Article 30

Section Headings

The section headings in this Agreement are inserted for convenience only and are not intended to be used in the interpretation of the contents of the sections they identify and introduce."

Article 31

Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington."

Article 32

Time

Time is of the essence in this Agreement and each and every provision hereof.

ARTICLE ~~3328~~30
Authorization of Signature

Each Member signing this Agreement has passed the required Ordinance or Resolution authorizing and approving this Agreement, a certified copy of which Ordinance or Resolution is attached hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by authorized officials thereof.

Association of Washington Cities (AWC)
Risk Management Service Agency (RMSA)

(Member Name)

By _____

By _____

_____, Mayor
(Printed name)

Date _____

Date _____

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: A resolution on contracting procedures and policies	Agenda Date: November 3, 2016 AB16-066	
	Mayor Carol Benson	
	City Administrator	
	City Attorney David Linehan	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Andy Williamson	
	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:	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: Proposed Resolution; email		
SUMMARY STATEMENT: Councilmembers Morgan and Weber have placed this item on the agenda for first reading.		
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>
November 3, 2016		

RESOLUTION NO 16-

**A RESOLUTION OF THE CITY OF THE CITY COUNCIL OF
THE CITY OF BLACK DIAMOND, KING COUNTY,
WASHINGTON ON CONTRACTING PROCEDURES AND
POLICIES**

WHEREAS RCW 35A.11.020 gives the city's contracting authority to the Council, "by and through its legislative body, such municipality may contract and be contracted with;" and

WHEREAS State law imposes certain restrictions on the City's contracting authority which includes bidding requirements, etc., such as that in RCW 39.80; and

WHEREAS The State Auditor has promulgated advisories regarding contracting procedures; and

WHEREAS The City has not fully adopted Financial and Contracting policies as required by RCW42.24; and

WHEREAS The City Council is considering a Resolution Requiring Council Pre-Approval Before Payment of all Claims and Expedited Compliance with RCW 42.24 and BDMC 3.23. This Resolution requests that the Mayor furnish the Council with draft financial and contracting policies. This Resolution has been unable to receive legal review because the mayor has obstructed the City Council-approved contract for a City Attorney, and it is incorrect to characterized existing city Ordinances as fulfilling this requirement; and

WHEREAS The BDMC authorizes the Mayor to sign contracts without Council approval as a way to facilitate the business of the city, but this authority is limited in many ways such as certain types of contracts must be advertised and approved by the Council regardless of amount; a contract up to \$7500 must have the approval of a Finance Committee member; a contract of up to \$15,000 must match a line item in the approved budget; and

WHEREAS Generally accepted accounting procedures suggest that serial contracts are not appropriate; and

WHEREAS Serial contracts are subject to abuse by avoiding bidding processes, enabling favoritism, and circumventing legislative oversight; and

WHEREAS The Council interprets the Black Diamond Municipal Code to authorize the Mayor to sign only one contract per vendor or service to perform the same general service per year; and

WHEREAS The Mayor has signed serial contracts this year; and

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

Section 1. It is the policy of the City of Black Diamond to seek competitive bids for all contracts wherever possible.

Section 2. It is the policy of the City of Black Diamond to comply with all applicable law and policies regarding Office of Minority and Women's Business Enterprises (OMWBE) goals and accounting standards.

Section 3. It is the policy of the City of Black Diamond that all requests for proposals are subject to Council approval to ensure that proposals and final contracts reflect legislative intent and are processed in a timely and efficient manner.

Section 4. It is the policy of the City of Black Diamond to incorporate quality control, monitoring, and reporting to the public provisions in all contracts where appropriate.

Section 5. It is the policy of the City of Black Diamond to provide for closing reports and documentation of products delivered in all contracts where appropriate.

Section 6. The Mayor is requested to properly administer these contracting policies.

Section 7. The Mayor is not authorized to circumvent the BDMC by issuing serial contracts. Any contracts that are approved in this manner will be subject to disapproval by the Council.

Section 8. The Mayor is requested to notify the Council prior to the approval of any additional contracts under her signature authority.

Section 9. The Council may not approve vouchers for contracts that are do not comply with these policies.

Section 10. Contractors and vendors are hereby notified that contracts that are signed by the Mayor in violation of these policies may not be valid contracts.

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:

Mayor

ATTEST:

City Clerk

Brenda Martinez

From: Erika Morgan
Sent: Tuesday, October 25, 2016 5:47 PM
To: Brenda Martinez
Cc: Carol Benson; Brian Weber
Subject: Resolution on contracting for Nov.3
Attachments: ResContractPolicies.pdf

Hello Brenda,

Please include the attached resolution for first reading November 3.

Thank you,
Erika Morgan
BDCC pos #2