



CITY OF BLACK DIAMOND
January 19, 2017 Regular Business Meeting Agenda
25510 Lawson St., Black Diamond, Washington

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

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

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** – January 19, 2017 - No. 44291 through No. 44351 and EFTs in the amount of \$204,737.50
- 2) **Payroll** – September 2016 payroll correction for L&I Check No. 19223 in the amount of \$66.00
- 3) **Payroll** – December 30, 2016 No. 19256 – No. 19270 and EFTs in the amount of \$237,532.23
- 4) **Minutes** – Council Meeting of June 16, 2016
- 5) **Minutes** – Council Meeting of July 7, 2016
- 6) **Minutes** – Council Meeting of November 29, 2016 Continued from November 17, 2016

PUBLIC HEARINGS: None

UNFINISHED BUSINESS:

- 7) **Claim Checks** – January 5, 2017 – No. 44228 through No. 44290 and EFTs in the amount of \$259,762.66 Councilmember Morgan
- 8) **Minutes** – June 9, 2016 Work Session Councilmember Morgan
- 9) **AB17-006** – Ordinance Granting Franchise Agreement with CCD Black Diamond Partners, LLC Mr. Williamson
- 10) **AB17-007** – Ordinance Granting Franchise Agreement with Astound Broadband, LLC Mr. Williamson

NEW BUSINESS:

- 11) **AB17-008** – Resolution Authorizing Yearly Addendum to Valley Communications Contract Chief Kiblinger
- 12) **AB17-009** – Resolution Approving Purchases of Police Vehicles Chief Kiblinger
- 13) **AB17-010** – Resolution Accepting Marine Grant for Police Department Chief Kiblinger
- 14) **AB17-011** – Resolution Approving Contract with Keating, Buckland, McCormack for Legal Services Mayor Benson

DEPARTMENT REPORTS:

MAYOR'S REPORT:

COUNCIL REPORT:

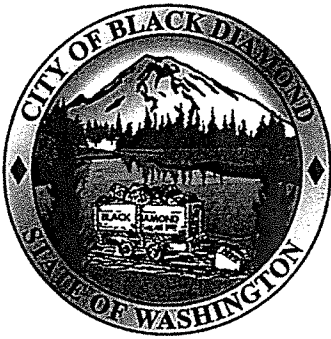
- Councilmember Deady
- Councilmember Morgan
- Councilmember Edelman
- Councilmember Weber
- Councilmember Pepper

ATTORNEY REPORT:

PUBLIC COMMENTS:

EXECUTIVE SESSION:

ADJOURNMENT:



CERTIFICATION

Date: January 19, 2017 Council Meeting

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

EFT's	December-Early Release EFT 01/19 Council	12/1 & 12/29	\$ 267.37
44291-44293	December-Early Release 4 th Dec Batch	01/10/17	\$ 766.72
44294	January – Early Release 2 nd Jan Batch	01/10/17	\$ 10,000.00
44295-44334	December-4 th Dec Batch for 01/19 Council	01/20/17	\$ 128,919.19
44335-44351	January – 2 nd Jan Batch for 1/19 Council	01/20/17	\$ 64,784.22
		TOTAL	\$ 204,737.50

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.

May Miller 1-12-2017

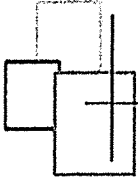
MAY MILLER, FINANCE DIRECTOR / CAROL BENSON, MAYOR

DATE

DATE

COUNCILMEMBERS

DATE



Register

Fiscal: 2017, 2016

Deposit Period: 2017 - January, 2016 - December

Check Period: 2017 - January - Early Release 2nd Jan Batch, 2017 - January - 2nd Jan Batch for 1/19 Council, 2016 -

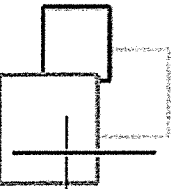
December - Early Release EFT 1/19 Council, 2016 - December - 4th Dec Batch for 1/19 Council, 2016 - December - Early

Release 4th Dec Batch

Number	Name	Print Date	Amount
Columbia Bank			
<u>44291</u>	Comcast (34744)	1/10/2017	\$190.00
<u>44292</u>	Mayene Miller	1/10/2017	\$483.21
<u>44293</u>	Petty Cash Custodian	1/10/2017	\$93.51
<u>44294</u>	Black Diamond Community Center	1/10/2017	\$10,000.00
<u>44295</u>	Black Diamond Auto Parts	1/20/2017	\$144.38
<u>44296</u>	Brandon & Lindsay Porter	1/20/2017	\$124.79
<u>44297</u>	CHS/Cenex	1/20/2017	\$1,236.09
<u>44298</u>	City of Black Diamond	1/20/2017	\$1,303.52
<u>44299</u>	City of Issaquah	1/20/2017	\$1,455.00
<u>44300</u>	City of Milton	1/20/2017	\$5,778.29
<u>44301</u>	Comcast (PA)	1/20/2017	\$393.38
<u>44302</u>	Granite Telecommunications	1/20/2017	\$44.63
<u>44303</u>	Greater Maple Valley-Black Diamond Chamber of Commerce	1/20/2017	\$20.00
<u>44304</u>	Honey Bucket/Northwest Cascade Inc.	1/20/2017	\$87.00
<u>44305</u>	HWA GeoSciences Inc.	1/20/2017	\$11,578.39
<u>44306</u>	Hydraulic Installation & Repair, Inc.	1/20/2017	\$2,025.75
<u>44307</u>	Intercom Language Services	1/20/2017	\$265.36
<u>44308</u>	Kenyon Disend, PLLC	1/20/2017	\$25,740.30
<u>44309</u>	KING COUNTY FINANCE	1/20/2017	\$8,500.00
<u>44310</u>	King County Finance I-Net	1/20/2017	\$375.00
<u>44311</u>	King County Prosecuting Attorney	1/20/2017	\$109.17
<u>44312</u>	King County Radio Comm Services	1/20/2017	\$1,326.01
<u>44313</u>	Leist Law Office, P.S.	1/20/2017	\$1,250.00
<u>44314</u>	Librato Soltero	1/20/2017	\$7.91
<u>44315</u>	O'Brien, Barton, & Hopkins, PLLP	1/20/2017	\$2,500.00
<u>44316</u>	Office Products Nationwide	1/20/2017	\$240.44
<u>44317</u>	Orkin Commercial Services	1/20/2017	\$115.81
<u>44318</u>	Parametrix, Inc.	1/20/2017	\$9,679.08
<u>44319</u>	Public Safety Testing, Inc	1/20/2017	\$193.00
<u>44320</u>	Puget Sound Energy	1/20/2017	\$7,007.05
<u>44321</u>	RH2 Engineering Inc.	1/20/2017	\$19,677.77
<u>44322</u>	Severson's Building Maint	1/20/2017	\$1,550.00
<u>44323</u>	Shake N Bake, LLC	1/20/2017	\$357.30
<u>44324</u>	Shred-It USA	1/20/2017	\$88.46

<u>44325</u>	South Correctional Entity	1/20/2017	\$5,338.00
<u>44326</u>	T and J Logging	1/20/2017	\$800.00
<u>44327</u>	TRM Wood Products Co. Inc.	1/20/2017	\$176.72
<u>44328</u>	Valley Automotive Repair & Electric	1/20/2017	\$117.29
<u>44329</u>	Valley Communications	1/20/2017	\$7,423.54
<u>44330</u>	Warm Homes, Inc	1/20/2017	\$113.92
<u>44331</u>	Washington State Patrol	1/20/2017	\$180.00
<u>44332</u>	Washington State Treasurer	1/20/2017	\$7,236.05
<u>44333</u>	Washington Tractor	1/20/2017	\$3,932.79
<u>44334</u>	Water Management Laboratories, Inc.	1/20/2017	\$427.00
<u>44335</u>	AWC	1/20/2017	\$2,186.00
<u>44336</u>	Comcast (34744)	1/20/2017	\$240.64
<u>44337</u>	Johnsons Home & Garden	1/20/2017	\$52.39
<u>44338</u>	Judicial Conference Registrar	1/20/2017	\$40.00
<u>44339</u>	King Co. Finance- Wastewater Treat Div.	1/20/2017	\$49,614.84
<u>44340</u>	King County	1/20/2017	\$100.00
<u>44341</u>	Leads Online LLC	1/20/2017	\$1,428.00
<u>44342</u>	Modular Space Corp	1/20/2017	\$5,412.63
<u>44343</u>	Office Products Nationwide	1/20/2017	\$457.75
<u>44344</u>	Orkin Commercial Services	1/20/2017	\$117.55
<u>44345</u>	Puget Sound Clean Air Agency	1/20/2017	\$838.75
<u>44346</u>	Puget Sound Regional Council	1/20/2017	\$603.00
<u>44347</u>	Sound Cities Assoc.	1/20/2017	\$2,658.77
<u>44348</u>	Spillman Northwest Users Group	1/20/2017	\$100.00
<u>44349</u>	Taylor-Made Printing	1/20/2017	\$213.33
<u>44350</u>	VenTek International	1/20/2017	\$627.57
<u>44351</u>	Voice of The Valley	1/20/2017	\$93.00
<u>EFT Payment 12/1/16</u>	Merchant Card Services	12/1/2016	\$177.37
<u>EFT Payment 12/29/2016</u>	Dept of Licensing-Firearms Online	12/29/2016	\$90.00
		Total	\$204,737.50

Voucher Directory with Transaction Date



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

Dept of Licensing-Firearms Online
 EFT Payment 12/29/2016
 11:07:39 AM - 1

122916 DOF

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

DOL- Firearms EFT Payments

\$90.00

Total 122916 DOF
 Total EFT Payment 12/29/2016 11:07:39 AM - 1

\$90.00
 \$90.00

Total Dept of Licensing-Firearms Online

Merchant Card Services

EFT Payment 12/1/16 11:08:28
 AM - 1

12/1/2016

2016 - December - Early Release EFT 1/19 Council

120116 MCS

November Charges

001-000-180-518-90-49-03

Bank Analysis Fee/Merch CC Fees

\$70.81

City Hall 633

001-000-210-521-10-49-04

Bank Analysis Fees/Merch CC Fees

\$74.58

Police 375

001-000-270-576-80-49-01

Bank Analysis Fees/Merch CC Fees

\$31.98

Lake Sawyer Parking 758

Total 120116 MCS

\$177.37

Total EFT Payment 12/1/16 11:08:28 AM - 1

\$177.37

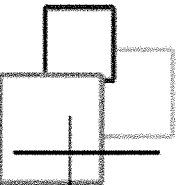
Total Merchant Card Services

\$177.37

Vendor Count 2

Grand Total

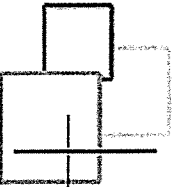
\$267.37



Voucher Directory with Transaction Date

Vendor	Transaction Number	Transaction Reference	Transaction Date	Fiscal Description	Void Amount
		Account Number		Name Title	
Comcast (34744)					
44291	121616 0106156		12/16/2016	2016 - December - Early Release 4th Dec Batch	
		Nov 15 - Jan 24 Services			\$190.00
		001-000-214-521-20-42-00		Police Telephone/DSL/Air Cards	\$190.00
				Police Internet Act 8498 34 014 0106156	\$190.00
	Total 121616 0106156				
Total 44291					\$483.21
Total Comcast (34744)					\$190.00
Mayene Miller					
44292	122916 MM		12/29/2016	2016 - December - Early Release 4th Dec Batch	
		Nov 28 - Dec 31 Medical Reimbursement			\$483.21
		633-000-000-586-00-00-04		Due from Flex 125 Med. Plan Reimb.	\$483.21
	Total 122916 MM				\$483.21
Total 44292					\$483.21
Total Mayene Miller					\$483.21
Petty Cash Custodian					
44293	122716 PC		12/27/2016	2016 - December - Early Release 4th Dec Batch	
		Close out year - Re up Petty Cash			(\$0.37)
		001-000-000-369-81-00-00		Cash Over/Short	(\$0.42)
		001-000-000-369-81-00-00		Cash Over/Short	\$12.00
		001-000-110-511-60-43-00		Lodging, Meals and Mileage	\$26.46
		001-000-140-514-23-43-00		Lodging, Meals & Mileage	\$8.76
		001-000-180-518-10-49-05		Recognition Awards	\$5.42
		001-000-180-518-10-49-09		City Wellness Program	\$41.66
		001-000-270-576-80-31-03		Operating Supplies	\$93.51
	Total 122716 PC				\$93.51
Total 44293					\$93.51
Total Petty Cash Custodian					\$93.51
Vendor Count	3				
Grand Total					\$766.72

Voucher Directory with Transaction Date



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

Black Diamond Community Center

44294

011017 BDCC

1/10/2017

2017 - January - Early Release 2nd Jan Batch

Resolution 16-1136

001-000-270-575-50-46-02

Community Center-Insurance supplement
Insurance Premium Contribution

\$10,000.00

Total 44294

Total 011017 BDCC

Total Black Diamond Community Center

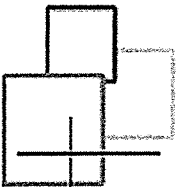
Vendor Count 1

Grand Total

\$10,000.00

\$10,000.00
\$10,000.00
\$10,000.00

Voucher Directory with Transaction Date



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

Black Diamond Auto Parts

44295

417049

12/16/2016

2016 - December - 4th Dec Batch for 1/19 Council

Police Department

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

Vehicle Maintenance & Repair

\$11.94

Fix a Flat

Total 417049

\$11.94

417332

Utilities

101-000-000-544-90-48-02

PW Clearing- Shared Veh/Equip Maint

\$132.44

Battery

Total 417332

\$132.44

Total 44295

\$144.38

Total Black Diamond Auto Parts

\$144.38

Brandon & Lindsay Porter

44296

122916 BP

12/29/2016

2016 - December - 4th Dec Batch for 1/19 Council

Utility Reimbursement

410-000-000-343-83-00-00

Stormwater Charges

\$124.79

New Owner 12/5/16

Total 122916 BP

\$124.79

Total 44296

\$124.79

Total Brandon & Lindsay Porter

\$124.79

CHS/Cenex

44297

123116 CHS PD

12/31/2016

2016 - December - 4th Dec Batch for 1/19 Council

December Police Fuel

001-000-210-521-10-32-00

Fuel

\$1,236.09

Total 123116 CHS PD

\$1,236.09

Total 44297

\$1,236.09

Total CHS/Cenex

\$1,236.09

City of Black Diamond

Vendor	Transaction Number	Transaction Date	Fiscal Description	Void
	Transaction Reference	Account Number	Name	Amount
			Title	
44298	122816 COBD	12/28/2016	2016 - December - 4th Dec Batch for 1/19 Council	
	December Utility Billing			
	001-000-212-521-50-47-01		Water	\$50.40
	001-000-212-521-50-47-02		Sewer	\$62.26
	001-000-212-521-50-47-03		Stormwater	\$80.00
	001-000-248-518-20-47-01		MDRT BD Wtr, Swr, Storm	\$47.82
	001-000-254-518-20-47-00		Facilities-Utilities	\$71.73
	001-000-270-575-30-47-01		Museum Water/Sewer/Storm	\$32.00
	001-000-270-575-30-47-01		Museum Water/Sewer/Storm	\$98.94
	001-000-270-575-51-47-01		Gym-Stormwater	\$32.00
	001-000-270-575-51-47-02		Gym-Sewer	\$62.26
	001-000-270-575-51-47-03		Gym-Water	\$46.35
	001-000-270-576-80-47-01		Water	\$35.63
	001-000-270-576-80-47-01		Water	\$35.63
	001-000-270-576-80-47-01		Water	\$3.15
	001-000-270-576-80-47-02		Sewer	\$4.98
	001-000-270-576-80-47-03		Stormwater	\$96.00
	001-000-270-576-80-47-03		Stormwater	\$11.52
	001-000-280-536-20-47-01		Water	\$0.77
	001-000-280-536-20-47-01		Water	\$35.63
	001-000-280-536-20-47-02		Sewer	\$1.23

Vendor	Transaction Number	Transaction Date	Fiscal Description	Vendor Amount
	Transaction Reference	Account Number	Name	
			Title	
	001-000-280-536-20-47-03	PV Shop- Stormwater Split	Stormwater	\$2.88
	001-000-530-522-10-47-01	Fire Department- Water	Water	\$37.34
	001-000-530-522-10-47-02	Fire Department- Sewer	Sewer	\$62.26
	001-000-530-522-10-47-03	Fire Department- Storm	Stormwater	\$40.00
	101-000-000-543-31-47-01	Railroad Ave Irrigation- Water	Water	\$35.63
	101-000-000-543-31-47-01	PV Shop- Water Split	Water	\$5.91
	101-000-000-543-31-47-02	PV Shop- Sewer Split	Sewer	\$9.34
	101-000-000-543-31-47-03	PV Shop- Stormwater Split	Stormwater	\$21.60
	401-000-000-534-80-47-01	PV Shop- Water Split	Water	\$9.85
	401-000-000-534-80-47-02	PV Shop- Sewer Split	Sewer	\$15.57
	401-000-000-534-80-47-03	PV Shop- Stormwater Split	Stormwater	\$36.00
	407-000-000-535-80-47-01	PV Shop- Water Split	Water	\$9.85
	407-000-000-535-80-47-02	PV Shop- Sewer Split	Sewer	\$15.57
	407-000-000-535-80-47-03	Sewer Lagoon- Storm	Stormwater	\$96.00
	407-000-000-535-80-47-03	PV Shop- Stormwater Split	Stormwater	\$36.00
	410-000-000-531-10-47-01	PV Shop- Water Split	Water	\$9.85
	410-000-000-531-10-47-02	PV Shop- Sewer Split	Sewer	\$15.57
	410-000-000-531-10-47-03	PV Shop- Stormwater Split	Stormwater	\$36.00
Total 44298	Total 122816 COBD			\$1,303.52
Total City of Black Diamond				\$1,303.52
				\$1,303.52

Vendor	Transaction Number	Transaction Reference	Transaction Date	Fiscal Description	Void Amount
			Account Number	Name Title	
City of Issaquah	44299	04-50008331	12/29/2016	2016 - December - 4th Dec Batch for 1/19 Council	
		November Costs			
		001-000-211-523-60-49-00		Jail Costs	\$1,455.00
		15 days @ \$97.00/day			
	Total 44299	Total 04-50008331			\$1,455.00
City of Milton	44300	1196 CM	1/6/2017	2016 - December - 4th Dec Batch for 1/19 Council	
		December IT Services			
		001-000-145-518-80-41-01		Inf. Tec. Svs. - Milton	\$3,178.05
		001-000-248-518-20-49-12		Technology Costs	\$751.18
		101-000-000-543-30-48-12		Fac Staff & Veh Alloc	\$115.57
		401-000-000-534-80-49-12		Tech-Sys, Sec. Email, Sw, Etc	\$577.83
		407-000-000-535-80-49-12		Tech-Sys, Sec. Email, SW, etc.	\$577.83
		410-000-000-531-10-49-12		Tech-Sys, Sec. Email, SW, Etc.	\$577.83
	Total 44300	Total 1196 CM			\$5,778.29
Total City of Milton	44301	49066499	1/1/2017	2016 - December - 4th Dec Batch for 1/19 Council	
		December Services			
		001-000-248-518-20-42-00		MDRT Telephone, Fax, Internet costs	\$55.07
		001-000-254-518-20-42-00		Facilities-Communication	\$236.03
		101-000-000-542-90-42-01		Telephone/DSL/Radios	\$25.57
		401-000-000-534-80-42-00		Telephone/DSL/Radios	\$25.57
		407-000-000-535-80-42-00		Telephone/DSL/Radios	\$25.57
		410-000-000-531-10-42-00		Telephone/DSL/Radios	\$25.57
	Total 44301	Total 49066499			\$393.38
Total Comcast (PA)	44301				\$393.38

Vendor	Transaction Number	Transaction Reference	Transaction Date	Fiscal Description	Void Amount
Granite Telecommunications					
	44302		1/1/2017	2016 - December - 4th Dec Batch for 1/19 Council	
	380385436				
		December Services			\$11.16
		001-000-248-518-20-42-00		MDRT Telephone, Fax, Internet costs	\$33.47
		001-000-254-518-20-42-00		Facilities-Communication	\$44.63
	Total 44302	Total 380385436			\$44.63
Total Granite Telecommunications					
Greater Maple Valley-Black Diamond Chamber of Commerce					
	44303		12/29/2016	2016 - December - 4th Dec Batch for 1/19 Council	
	9860				
		Luncheon Chamber Member			\$20.00
		001-000-130-513-10-43-00		Lodging, Meals & Mileage	\$20.00
		Mayor Benson			\$20.00
	Total 44303	Total 9860			\$20.00
Total Greater Maple Valley-Black Diamond Chamber of Commerce					
Honey Bucket/Northwest Cascade Inc.					
	44304		12/22/2016	2016 - December - 4th Dec Batch for 1/19 Council	
	0550214796				
		12/22/16-01/18/17 Services			\$87.00
		001-000-270-576-80-31-00		Portable Restroom Facility	\$87.00
		Parks-Boat Launch Rental			\$87.00
	Total 44304	Total 0550214796			\$87.00
Total Honey Bucket/Northwest Cascade Inc.					
HWA GeoSciences Inc.					
	44305		11/30/2016	2016 - December - 4th Dec Batch for 1/19 Council	
	27126				
		Res14-977 extension Con-136			\$10,433.39
		001-000-257-558-70-41-05		MDRT Geotech- HWA and SubTerra	\$10,433.39
		November Services			\$1,145.00
	Total 44305	Total 27126			\$1,145.00
Total HWA GeoSciences Inc.					

Vendor	Transaction Number	Transaction Date	Fiscal Description	Vendor Amount
	Transaction Reference	Account Number	Name Title	
December Services				
Total 44305				\$1,145.00
Total HWA GeoSciences Inc.				\$11,578.39
				\$11,578.39
Hydraulic Installation & Repair, Inc.				
44306		12/12/2016	2016 - December - 4th Dec Batch for 1/19 Council	
74566				
Total 44306				\$2,025.75
Total 74566				\$2,025.75
Modify Gressen Circuit				
510-000-200-594-48-64-05			PW Sander/Snow Plow	\$2,025.75
Total Hydraulic Installation & Repair, Inc.				\$2,025.75
Intercom Language Services				
44307		12/31/2016	2016 - December - 4th Dec Batch for 1/19 Council	
16-679				
December Services				
001-000-120-512-50-41-04			Court Interpreter	\$265.36
Total 16-679				\$265.36
Total 44307				\$265.36
Total Intercom Language Services				\$265.36
Kenyon Disend, PLLC				
44308		12/31/2016	2016 - December - 4th Dec Batch for 1/19 Council	
123116 KD				
001-000-150-515-30-41-01			Legal Services-General Govt	\$8,125.54
001-000-150-515-30-41-10			Legal Lawsuits/Other Charges	\$4,277.35
001-000-150-515-30-41-17			Legal Costs-Public Disclosure	\$621.00
001-000-257-558-70-41-00			MDRT Legal Services	\$2,785.20
101-000-000-543-30-41-05			Legal Costs	\$1,805.68
401-000-000-534-80-41-04			Legal Svcs	\$2,708.51
407-000-000-535-80-41-09			Legal Costs	\$2,708.51
410-000-000-531-10-41-01			Legal Costs	\$2,708.51
Total 123116 KD				\$25,740.30
Total 44308				\$25,740.30
Total Kenyon Disend, PLLC				\$25,740.30

Vendor	Transaction Number	Transaction Reference	Transaction Date	Fiscal Description Name Title	Void Amount
KING COUNTY FINANCE					
	44309		12/30/2016	2016 - December - 4th Dec Batch for 1/19 Council	
	81285				
		2016 Lake Sawyer Monitoring			
		410-000-000-531-10-41-03		KC Water Quality - Testing and Lab	\$8,500.00
	Total 44309				\$8,500.00
	Total 81285				\$8,500.00
	Total KING COUNTY FINANCE				
					\$8,500.00
	King County Finance I-Net				
	44310		12/30/2016	2016 - December - 4th Dec Batch for 1/19 Council	
	11005323				
		December Services			
		001-000-214-521-20-42-01		Police Comm KC I-Net	\$375.00
	Total 44310				\$375.00
	Total 11005323				\$375.00
	Total King County Finance I-Net				
					\$375.00
	King County Prosecuting Attorney				
	44311		12/31/2016	2016 - December - 4th Dec Batch for 1/19 Council	
	123116	KCPA			
		December Court Remittance			
		633-000-000-586-00-00-01		Treasurers Trust Court	\$109.17
	Total 44311				\$109.17
	Total 123116	KCPA			\$109.17
	Total King County Prosecuting Attorney				
					\$109.17
	King County Radio Comm Services				
	44312		12/27/2016	2016 - December - 4th Dec Batch for 1/19 Council	
	11740				
		December Police Services			
		001-000-214-521-20-41-03		K/C 800 Mhz Radio Costs	\$1,326.01
	Total 44312				\$1,326.01
	Total 11740				\$1,326.01
	Total King County Radio Comm Services				
					\$1,326.01
	Leist Law Office, P.S.				
	44313		12/2/2016	2016 - December - 4th Dec Batch for 1/19 Council	
	1496				
		Conflict Counsel			
		001-000-120-512-50-41-02		Protem Judge	\$1,250.00

Vendor	Transaction Number	Transaction Reference	Transaction Date	Fiscal Description	Void Amount
		Account Number		Name Title	
	December Services				
	Total 1496				\$1,250.00
Total 44313					\$1,250.00
Total Leist Law Office, P.S.					\$1,250.00
Librato Soltero					
44314	122916 LS	12/29/2016	2016 - December - 4th Dec Batch for 1/19 Council		
		Utility Reimbursement			
		410-000-000-343-83-00-00	New Owner 12/9/16	Stormwater Charges	\$7.91
	Total 122916 LS				\$7.91
Total 44314					\$7.91
Total Librato Soltero					\$7.91
O'Brien, Barton, & Hopkins, PLLP					
44315	53175	1/3/2017	2016 - December - 4th Dec Batch for 1/19 Council		
		December Services			
		001-000-151-515-91-41-00		Court Legal-Public Defender	\$2,500.00
	Total 53175				\$2,500.00
Total 44315					\$2,500.00
Total O'Brien, Barton, & Hopkins, PLLP					\$2,500.00
Office Products Nationwide					
44316	876880-0	11/16/2016	2016 - December - 4th Dec Batch for 1/19 Council		
		City Hall Supplies			
		001-000-254-518-20-31-00		Facilities Operating Supplies	\$69.78
	Total 876880-0				\$69.78
882549-0		Permit Center Supplies			
		001-000-240-558-51-31-00		Office & Operating Supplies	\$48.86
	Total 882549-0				\$48.86
883326-0		PD Supplies			
		001-000-120-512-50-31-00		Operating Supplies	\$9.64
	Total 883326-0				\$9.64

Vendor	Transaction Number	Transaction Reference	Transaction Date	Fiscal Description	Vendor Amount
	883935-0				
				City Hall Supplies	
			001-000-254-518-20-31-00	Facilities Operating Supplies	\$112.16
	Total 883935-0				\$112.16
Total Office Products Nationwide	Total 44316				\$240.44
					\$240.44
Orkin Commercial Services	44317				\$240.44
			12/19/2016	2016 - December - 4th Dec Batch for 1/19 Council	
	151210088				
			001-000-248-518-20-49-01	MDRT Bldg Custodial Costs	\$30.11
			001-000-254-518-20-49-01	Facilities Building Custodial	\$85.70
	Total 151210088				\$115.81
Total Orkin Commercial Services	Total 44317				\$115.81
Parametrix, Inc.	44318				\$115.81
			1/6/2017	2016 - December - 4th Dec Batch for 1/19 Council	
	01-78206				
			Res 16-1101		\$9,461.00
			410-000-010-531-10-41-00	KC Grant-Culvert Replacement	
			December Services		\$9,461.00
	Total 01-78206				
	01-78207				
			Res 14-98 & Res 15-1022		
			320-000-020-595-10-63-00	Roberts Dr Rehab-Eng.	\$218.08
	Total 01-78207				\$218.08
Total Parametrix, Inc.	Total 44318				\$9,679.08
Public Safety Testing, Inc	44319				\$9,679.08
			12/23/2016	2016 - December - 4th Dec Batch for 1/19 Council	
	2016-7160				
			4th Qtr Subscription Fees		\$193.00
			001-000-213-521-10-41-00	Civil Service Testing	
			Oct 16 - Dec 16		\$193.00
	Total 2016-7160				\$193.00
Total Public Safety Testing, Inc	Total 44319				\$193.00
					\$193.00
					\$193.00

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

Puget Sound Energy 44320 123116 PSE 1/4/2017 2016 - December - 4th Dec Batch for 1/19 Council

December Services					
001-000-212-521-50-47-00	Police/Court Elec-Acct 200009377470	Electric/gas			\$448.14
001-000-212-521-50-47-00	Police/Court Gas-Acct 200000563300	Electric/gas			\$348.11
001-000-212-521-50-47-00	Police Storage-Acct 200024493906	Electric/gas			\$165.30
001-000-248-518-20-47-00	CD Elec-Acct 200019932462	MDRT Electricity			\$516.93
001-000-254-518-20-47-00	CD/PW/MDRT Bldg Elec-Acct 200019932462	Facilities-Utilities			\$775.39
001-000-270-575-30-47-00	Museum-Acct 200001525159	Museum Electricity/Gas			\$488.99
001-000-270-575-51-47-00	Gym-Acct 220006098002	Gym- Electricity and Gas			\$570.61
101-000-000-542-63-47-01	Baker St Crosswalk-Acct 200015449073	Street Lighting			\$14.21
101-000-000-542-63-47-01	Roberts Drive-Acct 200024810877	Street Lighting			\$34.31
101-000-000-542-63-47-01	Cov Sawyer & 216th-Acct 200008062644	Street Lighting			\$51.29
401-000-000-534-80-47-00	Booster Station-Acct 200002538847	Electric/Gas			\$2,470.45
401-000-000-534-80-47-00	.5 Mil Gal Resv-Acct 200008062404	Electric/Gas			\$962.12
401-000-000-534-80-47-00	Booster Station-Acct 200008062180	Electric/Gas			\$18.59
407-000-000-535-80-47-00	Morganville Lift Stn-Acct 200001558101	Electric/Gas			\$93.13
407-000-000-535-80-47-00	Sewer Pump-Acct 200016310662	Electric/Gas			\$12.78
407-000-000-535-80-47-00	Dia Glen Sewer-Acct 200019391925	Electric/Gas			\$36.70
Total 44320					\$7,007.05
Total 123116 PSE					\$7,007.05

Vendor	Transaction Number	Transaction Date	Fiscal Description	Void Amount
	Transaction Reference	Account Number	Name	Title
RH2 Engineering Inc.				
44321	66709	12/20/2016	2016 - December - 4th Dec Batch for 1/19 Council	
	Res 15-1011 extension Letter	404-000-011-534-80-41-00	Water Comp Plan	\$4,684.91
	November Services			\$4,684.91
Total 66709				
66766-R	Res 14-974 extension 5	001-000-257-558-70-41-02	MDRT Civil Engineering-RH2 Engineering	\$14,992.86
	December Services			\$14,992.86
Total 66766-R				
Total 44321				\$14,992.86
Total RH2 Engineering Inc.				\$19,677.77
				\$19,677.77
Severson's Building Maint				
44322	715984	12/31/2016	2016 - December - 4th Dec Batch for 1/19 Council	
	PD	001-000-212-521-50-41-03	Police Custodial Cost	\$500.00
				\$500.00
Total 715984				
715985	City Hall	001-000-248-518-20-49-01	MDRT Bldg Custodial Costs	\$360.00
		001-000-254-518-20-49-01	Facilities Building Custodial	\$540.00
Total 715985				\$900.00
715987	Gym	001-000-270-575-51-48-00	Gym Facility Repair & Maintenance	\$150.00
				\$150.00
Total 715987				\$1,550.00
Total 44322				\$1,550.00
Total Severson's Building Maint				\$1,550.00
Shake N Bake, LLC				
44323	122916 SnB	12/29/2016	2016 - December - 4th Dec Batch for 1/19 Council	
	Utility Reimbursement	410-000-000-343-83-00-00	Stormwater Charges	\$357.30
				\$357.30

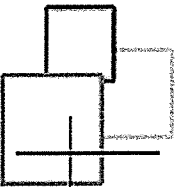
Vendor	Transaction Number	Transaction Date	Fiscal Description	Void Amount
	Transaction Reference	Account Number	Name	Title
	New Owner 12/29/16			
Total 44323	Total 122916 SnB			\$357.30
Total Shake N Bake, LLC				\$357.30
Shred-It USA				\$357.30
44324	8121430079	12/22/2016	2016 - December - 4th Dec Batch for 1/19 Council	
	December Services			
			001-000-120-512-50-49-04	\$29.48
			001-000-180-518-90-49-04	\$29.50
			001-000-210-521-10-49-05	\$29.48
	Total 8121430079		Shredding Services	\$88.46
Total 44324				\$88.46
Total Shred-It USA				\$88.46
South Correctional Entity				
44325	2240	12/9/2016	2016 - December - 4th Dec Batch for 1/19 Council	
	November Services			
			001-000-211-523-60-49-00	\$5,338.00
			34 days @ \$157/day	
	Total 2240		Jail Costs	\$5,338.00
Total 44325				\$5,338.00
Total South Correctional Entity				\$5,338.00
T and J Logging				
44326	122916 TJL	12/29/2016	2016 - December - 4th Dec Batch for 1/19 Council	
	December Charges			
			401-000-000-534-80-48-02	\$800.00
			Removal of tree on waterline over river	\$800.00
	Total 122916 TJL		Water System Rep & Mic-Ext/Int	\$800.00
Total 44326				\$800.00
Total T and J Logging				\$800.00

Vendor	Transaction Number	Transaction Reference	Transaction Date	Fiscal Description	Void
			Account Number	Name	Amount
TRM Wood Products Co. Inc.					
44327	339764		12/28/2016	2016 - December - 4th Dec Batch for 1/19 Council	
		December Charges			
		320-000-002-595-64-63-04		Street Signs	\$176.72
		Posts & Concrete			
	Total 339764				\$176.72
Total 44327					
Total TRM Wood Products Co. Inc.					
Valley Automotive Repair & Electric					
44328	0025220		12/15/2016	2016 - December - 4th Dec Batch for 1/19 Council	
		December Charges - Police			
		001-000-210-521-10-48-01		Vehicle Maintenance & Repair	\$117.29
	Total 0025220				\$117.29
Total 44328					
Total Valley Automotive Repair & Electric					
Valley Communications					
44329	0020741		12/28/2016	2016 - December - 4th Dec Batch for 1/19 Council	
		WSP Access			
		001-000-214-521-20-41-00		Valley Comm - Dispatch Service	\$574.01
		2016 4th Qtr			
	Total 0020741				\$574.01
	0020752		911 Calls for December		
		001-000-214-521-20-41-00		Valley Comm - Dispatch Service	\$6,849.53
	Total 0020752				\$6,849.53
Total 44329					
Total Valley Communications					
Warm Homes, Inc					
44330	122916 WH		12/29/2016	2016 - December - 4th Dec Batch for 1/19 Council	
		Utility Reimbursement			
		410-000-000-343-83-00-00		Stormwater Charges	\$113.92

Vendor	Transaction Number	Transaction Reference	Transaction Date	Fiscal Description	Void Amount
		Account Number	Name	Title	
	New Owner 12/29/16				
	Total 44330				\$113.92
Total Warm Homes, Inc					\$113.92
					\$113.92
Washington State Patrol					
44331	117004471	1/5/2017	2016 - December - 4th Dec Batch for 1/19 Council		
		December Charges			
		633-000-000-586-00-00-06		Due to WSP-FBI Fingerprinting-Background	\$180.00
	Total 117004471				\$180.00
Total Washington State Patrol					\$180.00
Washington State Treasurer					
44332	123116 WST	12/31/2016	2016 - December - 4th Dec Batch for 1/19 Council		
		December Court Remittance			
		633-000-000-586-00-00-01		Treasurers Trust Court	\$7,236.05
	Total 123116 WST				\$7,236.05
Total Washington State Treasurer					\$7,236.05
Washington Tractor					
44333	1176773	12/16/2016	2016 - December - 4th Dec Batch for 1/19 Council		
		PW Equipment Replacement			
		510-000-200-594-48-64-00		Various Mower	\$3,932.79
	Total 1176773				\$3,932.79
Total Washington Tractor					\$3,932.79

Vendor	Transaction Number	Transaction Reference	Transaction Date	Fiscal Description	Void
				Name	Amount
			Account Number	Title	
Water Management Laboratories, Inc.					
	44334		12/21/2016	2016 - December - 4th Dec Batch for 1/19 Council	
	155295				
		December Services			
		401-000-000-534-80-41-02		Water Testing and Sampling	
	Total 44334				\$427.00
		Total 155295			\$427.00
					\$427.00
Total Water Management Laboratories, Inc.					
	Vendor Count	40			
				Grand Total	\$128,919.19

Voucher Directory with Transaction Date



Vendor	Transaction Number	Transaction Date	Fiscal Description	Voucher Amount
	Transaction Reference	Account Number	Name	Title
AWC				
44335	122016	12/20/2016	2017 - January - 2nd Jan Batch for 1/19 Council	
			2017 Membership Fee	
			001-000-180-518-50-49-09	
			AWC Membership	\$2,186.00
Total 44335	Total 122016			\$2,186.00
Total AWC				
Comcast (34744)	44336	12/26/2016	2017 - January - 2nd Jan Batch for 1/19 Council	
			January Services	
			001-000-248-518-20-42-00	
			MDRT Telephone, Fax, Internet costs	\$96.26
			MDRT Internet Act 8498 34 014 0125628	
			001-000-254-518-20-42-00	
			Facilities-Communication	\$144.38
			City Hall Internet Act 8498 34 014 0125628	
Total 122616 Com 34744				\$240.64
Total 44336	Total Comcast (34744)			\$240.64
Johnson's Home & Garden				
44337	412208	1/6/2017	2017 - January - 2nd Jan Batch for 1/19 Council	
			January Street Supplies	
			101-000-000-542-90-31-01	
			Operating Supplies	\$52.39
Total 44337	Total 412208			\$52.39
Total Johnson's Home & Garden				
				\$52.39

Vendor	Transaction Number	Transaction Reference	Transaction Date	Fiscal Description	Vendor Amount
		Account Number	Name	Title	
Judicial Conference Registrar					
44338	012517 JCR		1/10/2017	2017 - January - 2nd Jan Batch for 1/19 Council	
			Institute for Court Management	Training	\$40.00
			001-000-120-512-50-49-01		
			Management Conference		
	Total 012517 JCR				\$40.00
Total 44338					
Total Judicial Conference Registrar					
King Co. Finance- Wastewater Treat Div.					
44339			1/1/2017	2017 - January - 2nd Jan Batch for 1/19 Council	
	30016369			Metro Sewer Charges	\$49,614.84
			407-000-000-535-80-41-04		\$49,614.84
	Total 30016369				\$49,614.84
Total 44339					
Total King Co. Finance- Wastewater Treat Div.					
King County					
44340			12/1/2016	2017 - January - 2nd Jan Batch for 1/19 Council	
	SCB03				\$100.00
			2017 Membership		
			101-000-000-542-90-49-02	Membership - S Co Area Trans Board	\$100.00
			South County Area Transportation Board Annual Dues		
	Total SCB03				\$100.00
Total 44340					
Total King County					
Leads Online LLC					
44341			1/1/2017	2017 - January - 2nd Jan Batch for 1/19 Council	
	239288				\$1,428.00
			Police Annual Renewal	Memberships	\$1,428.00
			001-000-210-521-10-49-02		\$1,428.00
	Total 239288				\$1,428.00
Total 44341					
Total Leads Online LLC					

Vendor	Transaction Number	Transaction Reference	Transaction Date	Fiscal Description	Void
			Account Number	Name	Amount
				Title	
Modular Space Corp	44342		12/28/2016	2017 - January - 2nd Jan Batch for 1/19 Council	
	501865452		January Rental		
			001-000-248-518-20-45-01	MDRT-Bldg Rental-Modspace	\$1,958.06
	Total 501865452				\$1,958.06
	501865459		January Rental		
			001-000-254-518-20-45-01	Facilities-Bldg Rental/Modspace	\$3,454.57
	Total 501865459				\$3,454.57
	Total 44342				\$5,412.63
	Total Modular Space Corp				\$5,412.63
	Office Products Nationwide	44343		1/3/2017	2017 - January - 2nd Jan Batch for 1/19 Council
884320-0			City Hall Supplies		
			001-000-180-518-90-31-00	Office Supplies City Hall	\$400.53
Total 884320-0					\$400.53
885737-0			City Hall Supplies		
			001-000-180-518-90-31-00	Office Supplies City Hall	\$57.22
Total 885737-0					\$57.22
Total 44343					\$457.75
Total Office Products Nationwide					\$457.75
Orkin Commercial Services		44344		1/11/2017	2017 - January - 2nd Jan Batch for 1/19 Council
	152205509		Jan Services		
			001-000-248-518-20-49-01	MDRT Bldg Custodial Costs	\$30.56
			001-000-254-518-20-49-01	Facilities Building Custodial	\$86.99
	Total 152205509				\$117.55
	Total 44344				\$117.55
	Total Orkin Commercial Services				\$117.55

Vendor	Transaction Number	Transaction Date	Fiscal Description	Void Amount
	Transaction Reference	Account Number	Name	Title
Puget Sound Clean Air Agency				
44345	17-019S	1/6/2017	2017 - January - 2nd Jan Batch for 1/19 Council	
		1st Qtr Assessment	PS Clean Air Assmt	
		001-000-182-553-70-41-00		\$838.75
Total 44345	Total 17-019S			\$838.75
Total Puget Sound Clean Air Agency				
				\$838.75
Puget Sound Regional Council				
44346	2017014	8/18/2016	2017 - January - 2nd Jan Batch for 1/19 Council	
		2017 Dues	PS Regional C Membership	
		001-000-180-518-50-49-06		\$603.00
Total 44346	Total 2017014			\$603.00
Total Puget Sound Regional Council				
				\$603.00
Sound Cities Assoc.				
44347	2649	1/1/2017	2017 - January - 2nd Jan Batch for 1/19 Council	
		2017 Dues	Sound Cities Membership	
		001-000-180-518-50-49-15		\$2,658.77
Total 44347	Total 2649			\$2,658.77
Total Sound Cities Assoc.				
				\$2,658.77
Spillman Northwest Users Group				
44348	010417 SNUG	1/4/2017	2017 - January - 2nd Jan Batch for 1/19 Council	
		2017 Registration Fees - Police	Memberships	
		001-000-210-521-10-49-02		\$100.00
Total 44348	Total 010417 SNUG			\$100.00
Total Spillman Northwest Users Group				
				\$100.00
Taylor-Made Printing				
44349	31189	12/28/2016	2017 - January - 2nd Jan Batch for 1/19 Council	
		2017 Permits	Operating Supplies	
		001-000-270-576-80-31-03		\$213.33

Vendor	Transaction Number	Transaction Date	Fiscal Description	Void
	Transaction Reference	Account Number	Name	Amount
			Title	
	Lake Sawyer Parking			
	Total 44349			\$213.33
Total Taylor-Made Printing				\$213.33
				\$213.33
Ventek International	44350	1/1/2017	2017 - January - 2nd Jan Batch for 1/19 Council	
	103729			
		Jan Services		
		001-000-270-576-80-41-02	Venue Pay Station	\$627.57
		Lake Sawyer		
	Total 103729			\$627.57
Total Ventek International				\$627.57
				\$627.57
Voice of The Valley	44351	1/4/2017	2017 - January - 2nd Jan Batch for 1/19 Council	
	19131			
		2017 Budget & 2016 Budget Amentment		
		001-000-140-514-23-41-75	Advertising	\$93.00
	Total 19131			\$93.00
Total Voice of The Valley				\$93.00
				\$93.00
Vendor Count	17			
Grand Total				\$64,784.22

September 2016 Payroll Correction

Number	Name	Fiscal Description	Amount
<u>19223</u>	Dept of Labor and Industries	2016 - September - Month End	\$66.00

Correction (addition) to September's payroll of \$66.

Previous Payroll	\$ 275,418.20
New total September 2016 Payroll	\$275,484.20

September 2016 Payroll Correction

Number	Name	Fiscal Description	Amount
<u>19223</u>	Dept of Labor and Industries	2016 - September - Month End	\$66.00

Correction (addition) to September's payroll of \$66.

Previous Payroll	\$ 275,418.20
New total September 2016 Payroll	\$275,484.20

City of Black Diamond Payroll Register

December 2016

Number	Name	Fiscal Description	Amount
<u>19256</u>	Paper Paycheck	2016 - December - Month End	\$692.00
<u>19257</u>	Paper Paycheck	2016 - December - Month End	\$5,239.05
<u>19258</u>	Paper Paycheck	2016 - December - Month End	\$849.48
<u>19259</u>	Paper Paycheck	2016 - December - Month End	\$883.15
<u>19260</u>	Paper Paycheck	2016 - December - Month End	\$3,592.85
<u>19261</u>	Paper Paycheck	2016 - December - Month End	\$199.04
<u>19262</u>	Paper Paycheck	2016 - December - Month End	\$883.15
<u>19263</u>	AWC Sup Life	2016 - December - Month End	\$21.40
<u>19264</u>	BD Police Officers Association	2016 - December - Month End	\$720.00
<u>19265</u>	City of Black Diamond Flex	2016 - December - Month End	\$80.00
<u>19266</u>	Dept of Labor and Industries	2016 - December - Month End	\$2,919.75
<u>19267</u>	Employment Security Dept	2016 - December - Month End	\$766.77
<u>19268</u>	Joseph Kaufman LEOFF 1	2016 - December - Month End	\$115.40
<u>19269</u>	Teamsters Local 117	2016 - December - Month End	\$949.49
<u>19270</u>	Trusteed Plans Service CP LTD	2016 - December - Month End	\$870.40
<u>ACH Dec</u>	Aflac	2016 - December - Month End	\$128.44
<u>ACH Dec Taxes</u>	City of Black Diamond Taxes	2016 - December - Month End	\$49,688.59
<u>ACH Def Comp Dec</u>	Washington State Treasurer	2016 - December - Month End	\$3,205.00
<u>ACH Med Ins 2 Dec</u>	AWC Employee Benefit Trust Copay	2016 - December - Month End	\$5,743.46
<u>ACH Med Ins Adj.</u>	AWC Employee Benefit Trust (Adjust.)	2016 - December - Month End	(\$297.10)
<u>ACH Med Ins Dec</u>	AWC Employee Benefit Trust	2016 - December - Month End	\$38,846.63
<u>ACH Retirement Dec</u>	Dept of Retirement Systems	2016 - December - Month End	\$27,619.21
<u>December 2016 Payroll</u>	Payroll Vendor	2016 - December - Month End	\$93,816.07
			\$237,532.23

BLACK DIAMOND CITY COUNCIL MINUTES

June 16, 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 were: Andrew Williamson, MDRT/Economic Development; Scott Hanis, Capital Project/Program Manager; Jamey Kiblinger, Police Chief; Natalie Oosterhof, Accounts Payable Clerk, Kevin Esping, Facilities Coordinator; Barbara Kincaid, Community Development Director; Dan Dal Santo, Utility Superintendent; David Linehan, City Attorney (entered meeting at 7:12 pm) Brenda L. Martinez, City Clerk.

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

Mayor Benson read a prepared statement.

Councilmember Pepper commented that an attorney has come to address the specific item related to Council rules and legal services tonight.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan that Council hold a ten minute executive session with the Attorney from Talmadge & Fitzpatrick.

Mayor Benson noted that we need to wait until City Attorney Linehan arrives and suggested to move on to the next items on the agenda.

CONSENT AGENDA:

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adopt the consent agenda. Motion **passed** with all voting in favor (5-0). The consent agenda was approved as follows:

- 1) **Claim Checks** – June 17, 2016 - No. 43605 through No.43654 (voids No. 43644-43648) and EFTs in the amount of \$133,559.63

PUBLIC COMMENTS:

Brian Derdowski, Bellevue spoke to Council.

Bob Edelman, Black Diamond spoke to Council.

Judy Carrier, Auburn spoke to Council.

City Attorney Linehan entered the meeting at 7:12 pm

Robbin Taylor, Black Diamond spoke to Council.

EXECUTIVE SESSION:

Mayor Benson stated there is a **motion** and a **second** on the floor to go into executive session for ten minutes with the attorney from Talmadge & Fitzpatrick.

There was Council discussion regarding the purpose of the executive session.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to waive the Attorney Client Privilege on the memos and because we are bound by the open public meetings and public records requirements that Attorney Talmadge further address the key points of those memos following the executive session.

Council discussion regarding the purpose of the executive session continued.

Vote: Motion to hold the executive session **passed** 4-1 (Deady).

It was noted the discussion with Attorney Phil Talmadge will be on items his firm was hired to give an opinion on. Councilmember Morgan stated the executive session will be under RCW 42.30.110(1)(i) and will last 10 ten minutes with possible action to follow.

Councilmember Weber called point of order stating Mr. Edelman is out of order.

Councilmember Deady asked for an amendment to the motion to release the Carol Morris memo so that everything is being released.

At 7:24 p.m. Mayor Benson announced an executive session as authorized under RCW 42.30.110(1)(i) to discuss with legal counsel potential litigation. Two fifteen minute extensions were announced.

Mayor Benson called the meeting back to order at 8:04 p.m.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to also waive privilege on the Carol Morris privileged memo that came out so that everything will be transparent, and you can see the January 19 memo and the Talmadge memo. Motion **passed** with all voting in favor (5-0).

Vote: Motion regarding waiving the attorney client privilege on the Talmadge memos **passed** (5-0).

Attorney Phil Talmadge gave a brief background of himself and his partner. He noted with their experience he comes with expertise on the issues he was contracted to provide an opinion on by the City Council. He discussed history of Black Diamond and the code the City operates under. He discussed his opinions in the memo his firm prepared which is attached and incorporated into the minutes.

There was Council discussion around this.

Councilmembers Weber and Pepper thanked Mr. Talmadge for coming out tonight.

PUBLIC HEARINGS:

2) AB16-034A- Continuation 2017-2022 Six Year Transportation Improvement Plan

Mr. Hanis noted the public hearing was left open from the last meeting. He highlighted the changes that were made since the last meeting.

There was Council discussion around this.

Mayor Benson opened the public hearing at 8:37 p.m.

Brian Derdowski, Bellevue discussed his suggestion from the last hearing regarding relating this plan to the development agreement and he believes staff should put together a document that matches up. He further discussed the deadline for submitting this plan and noted it being a soft deadline and many jurisdictions do not meet this deadline as they want to get it right. He also noted there is time for the Growth Management Committee to discuss this plan as it needs to match the development agreement.

Councilmember Weber noted that he would like the public hearing left open for a few more weeks until we get answers back from Mr. Boettcher.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to move this item to the Growth Management Committee. (no vote was taken)

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to close the public hearing. (no vote was taken)

Mayor Benson noted that a motion is not needed to hold the public hearing open she just needs consensus. A majority of the Council agreed they would like this public hearing left open. Mayor Benson announced the majority rules and the public hearing will be left open until the next regular Council meeting.

UNFINISHED BUSINESS:

3) AB16-026B-Resolution Approving an Agreement with DKS Associates

Attorney Linehan discussed his reading of code is if Council denies a payment that has been paid out of City funds, the City has an obligation to go back and try to recover the dollars. He does think there is some concern that DKS may feel they provided work they have not been compensated for and would be willing to discuss this further in executive session under potential litigation.

Community Development Director Kincaid asked for Council's consideration to approve a services agreement with DKS for the transportation element of the Comprehensive Plan update. She noted it would be beneficial to have DKS complete the work they have started and it makes sense to have them continue.

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 sign a professional services agreement with DKS associates.

It was noted this was with the additional \$10,000 dollars due to the City invoicing the vendor for that past voucher of \$10,000.

Roll call vote: Councilmember Deady voted aye, Councilmember Morgan voted no, Councilmember Edelman voted aye, Councilmember Weber voted no, Councilmember Pepper voted no. Motion **failed** 2-3 (Weber, Morgan, Pepper).

Councilmember Edelman called point of order for Councilmember Pepper.

4) AB16-031A-Resolution Authorizing an Interlocal Agreement (ILA) with City of Maple Valley for Building Inspection Services

Community Development Director Kincaid reported she would like Council to adopt an ILA with Maple Valley to provide building inspection services for Black Diamond. She noted the ILA between Covington and Maple Valley was terminated and noted the Maple Valley Inspectors being a good fit for Black Diamond and this contract would be for two years.

There was Council discussion on this item.

Councilmember Deady suggested going into executive session to discuss the personnel issue surrounding the terminated Interlocal Agreement. There was Council consensus to do this.

At 9:07 p.m. Mayor Benson announced an executive session as allowed under RCW 42.30.110(1)(g) to discuss a personnel issue. The executive session was anticipated to last ten (10) minutes with possible action to follow. A five minute extension was announced.

Mayor Benson called meeting back to order at 9:23 p.m.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adopt a Resolution authorizing the Mayor to execute an Interlocal Agreement with the City of Maple Valley for building inspections services. Motion **passed** 4-1 (Pepper).

5) AB16-032A-Resolution Awarding Jones Lake Overlay Project to Lakeridge Paving Co., LLC

Mr. Hanis reported the Jones Lake Overlay Project was identified on the TIP and staff went out to bid and the low bid was from Lakeridge Paving. He noted there is an urgency as the bid is up next week and if not acted upon this project will not happen this summer as planned. He commented that staff is asking for contingency funds as noted in the agenda bill.

There was Council and staff discussion on this item.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to adopt a resolution authorizing the Mayor to execute a \$77,415.20 contract with Lakeridge Paving Company, LLC for the Jones Lake Road Overlay Project and authorizing a \$52,000 contingency fund for the construction of this project. Motion **passed** 4-1 (Pepper).

7) AB16-029A-Resolution Authorizing a Water Quality Grant Agreement with King County for the North Commercial Stormwater Treatment Facility Project

Mr. Hanis reported this project was a priority several years ago and staff was able to secure a Water Quality Improvement Project Grant to help fund the project from King County. He noted staff would like to start on the project next year. It was also noted that Public Works will continue to apply for funding for the remaining funds to complete this project.

Question and answers ensued between Council and staff regarding the project.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adopt a resolution authorizing the Mayor to execute a Water Quality Improvement Project Grant Agreement with King County for the North Commercial and SR 169 Stormwater Treatment Facility Project. Motion **passed** 3-2 (Pepper, Morgan).

Mayor Benson stated she missed the below item on the agenda and asked Mr. Hanis to address it.

6) AB16-028A- Resolution Authorizing a Conservation Grant Agreement with Puget Sound Energy (PSE) for the LED Streetlight Conversion Project

Mr. Hanis gave background information on the project and discussed the funding. He explained how this project will provide a cost savings for the City in the future. He noted receiving a phone call from PSE asking for a status report as they are ready to close out this project due to the work being completed.

Question and answers ensued between Council and staff regarding the project.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to adopt a Resolution authorizing the Mayor to execute a Conservation Grant Agreement with Puget Sound Energy for the LED Streetlight Conversion Project. Motion **passed** 3-2 (Pepper, Weber).

8) AB16-030A-Resolution Confirming Mayor's Appointment to the Planning Commission Position #7

Mayor Benson noted this confirmation was referred to committee on May 5 and at the last three meetings there was not a quorum of the Council so no action has happened.

There was Council discussion regarding this item and the candidate interview at the Committee meeting.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to adopt a Resolution authorizing the Mayor's Planning Commission appointment of Jason Seth to the Black Diamond Planning Commission Position #7. Motion **failed** 2-3 (Morgan, Weber, Pepper).

9) AB16-033A- Resolution Approving a Professional Services Contract with Parametrix, Inc. for Design of Covington Creek Culvert Replacement

Mr. Hanis discussed with Council the project and noted the project will replace the three aging culverts where Lake Sawyer outlets to Covington Creek under 224th Ave SE. He noted this grant expires at the end of the year and the design work needs to be completed.

There was Council discussion on this item.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adopt a resolution authorizing the Mayor to execute a Professional Services Agreement with Parametrix, Inc. for the design of the Covington Creek Culvert Replacement Project. Motion **passed** 3-2 (Pepper, Morgan).

NEW BUSINESS:

10) AB16-016B-Resolution Accepting Dept. of Ecology Grant for 2015 –2017 Stormwater Capacity Grant

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Pepper to postpone this item to the next regular Council meeting (July 7). Motion **passed** 3-2 (Deady, Edelman).

11) AB16-021B-Resolution Confirming Mayor's Appointment to Civil Service Commission

Mayor Benson noted this has been on the agenda since February 18 when it was referred to Committee.

There was Council discussion on this.

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Edelman to postpone confirmation of the Mayor's Civil Service appointment until the July 7 regular scheduled meeting with the caveat that the City Attorney to have a legal opinion. Motion **passed** with all voting in favor (5-0).

12) AB16-024C-Resolution Authorizing an Agreement with BHC for Building Services

Ms. Kincaid noted this piece of legislation is to get the City's building department back on track. She noted Mr. Hill from BHC is working under a contract with the Mayor's limited authority.

There was Council discussion and staff noted this will be a two year agreement.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to adopt a resolution authorizing the Mayor to execute a Professional Service Agreement with BHC Consultants, LLC for building services. Motion **passed** 4-1 (Pepper).

13) AB16-035-Resolution Accepting the Downtown Watermain Project

Mr. Hanis reported on this project. He discussed the project is complete as of May 19. He noted to close out this project it takes formal action from the Council to accept it. He noted staff being happy with the project and the work done by the vendor. He noted after 45 days and after release is received from the state departments (DOR, L&I, and ESD), the City may release retainage to Iversen and Sons, Inc.

There was Council discussion on this item.

Councilmember Pepper noted she would like to see this referred to the Growth Management Committee.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to adopt a resolution accepting the Downtown AC Watermain Replacement and Looping Project by Iversen & Sons, Inc. according to the contract documents. Motion **passed** 3-2 (Pepper, Morgan).

14) AB16-036-Resolution Accepting 5th Avenue Road Repairs Project

Mr. Hanis reported this was a small project on 5th avenue that tied into improvements completed by the developer for frontage improvements. He noted after the 45 days, the City may release retainage to Johansen Excavating, Inc. He also noted the City does not need to receive a release from State agencies since this project was less than \$35,000; the City just needs to officially accept this project.

There was Council and staff discussion on this.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to adopt a resolution accepting the Fifth Avenue Road Repairs Project by Johansen Excavating Inc. according to the contract documents. Motion **passed** 3-2 (Pepper, Morgan).

15) AB16-037-Resolution Approving Legal Services Contract with Kenyon Disend, PLLC

Mayor Benson discussed the interview process. She noted Kenyon Disend having extensive municipal experience and can handle all issues of the City. Mr. Linehan noted their firm only represents cities and does not represent developers as it creates a conflict.

There was Council discussion on this with Mr. Linehan and also discussion on the other applicant qualifications.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to adopt a resolution authorizing the Mayor to execute a Legal Service Agreement with Kenyon Disend, PLLC. Motion **failed** 2-3 (Pepper, Morgan, Weber).

16) AB16-038-Resolution Regarding Labor Policy and Grievance Review

Councilmember Morgan addressed this item and noted this item is not ready and she noted discussion would be from the new appointed attorney and from labor attorney specialists and suggests we postpone until there is a government ops meeting.

Mayor Benson stated you have to have a date certain.

Councilmember Morgan then stated that this will be brought up at the next Council meeting.

A **motion** was made by Councilmember Morgan and **seconded** by Councilmember Weber to postpone this until the next Council meeting. Motion **passed** with all voting in favor (5-0).

17) AB16-039-Resolution Regarding Mediation

Councilmember Morgan addressed this item with Council.

Mayor Benson stated this is a free service from our insurance carrier (AWC RMSA). Councilmember Morgan stated she has the floor.

Councilmember Morgan continued addressing this item and there was Council discussion.

A **motion** was made by Councilmember Morgan and **seconded** by Councilmember Weber for her to do some more investigation and postpone to July 7.

Councilmember Pepper stated this should be assigned to the Budget and Finance Committee.

VOTE: Motion **passed** with all voting in favor (5-0).

18) AB16-040-Resolution Revising Council Rules of Procedure

Councilmember Morgan stated she would like to waive the normal rules so we can adopt these rule changes that were advised by the Talmadge memo. She noted the Council Rules being a living document and will probably have revisions in the future. She also noted the eight revisions suggested which are mostly about clarifying language and making things more specific.

There was Council discussion on this.

Councilmember Edelman stated she has the floor and noted she sees thirteen revisions.

Council discussion continues on this item and scheduling a work session.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to have a workstudy on the Council Rules on July 14 commencing at 6 p.m. Motion **passed** with all voting in favor (5-0).

Councilmember Pepper **moved** to amend the agenda with a resolution regarding legal services contract. This resolution accepts the firm Vancil Law to provide legal services. She further stated she served on the interview committee and was impressed with Mr. Vancil's energy and fresh perspective. She continued to read a prepared statement. Councilmember Morgan **seconded** the motion to amend the agenda.

There was Council discussion on this.

Councilmember Weber called point of order for keeping the audience in order.

Council discussion continued on the contract.

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

19) AB16-041-Resolution Regarding Interlocal Agreement with City of Maple Valley and Covington for Building Inspection Services

A **motion** was made by Councilmember Morgan and **seconded** by Councilmember Pepper to withdraw item #19 from the agenda. Motion **passed** with all voting in favor (5-0).

Councilmember Edelman proposed suspending going through Mayor's Report and Council Report's considering it is 11:20 p.m. and adjourn the meeting after the Public Comments.

Councilmembers stated there is no motion on the floor regarding the attorney contract.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to hire the lawyer Vancil Law Firm.

Councilmember Pepper appealed the decision to the chair.

Council discussion continued on the above motion.

Vote: Motion **failed** 2-3 (Deady, Morgan, Edelman).

DEPARTMENT REPORTS: None

MAYOR'S REPORT: None

COUNCIL REPORTS: None

ATTORNEY REPORT: None

PUBLIC COMMENTS:

Robbin Taylor, Black Diamond spoke to the Council.

Daryl Bus, Black Diamond spoke to the Council.

Bob Edelman, Black Diamond spoke to the Council.

EXECUTIVE SESSION: None

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).

The meeting adjourned at 11:36 p.m.

ATTEST:

Carol Benson, Mayor

Brenda L. Martinez, City Clerk

BLACK DIAMOND CITY COUNCIL MINUTES

July 7, 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; Jamey Kiblinger, Police Chief; David Linehan, City Attorney; Barbara Kincaid, Community Development Director and Brenda L. Martinez, City Clerk.

Councilmember Pepper requested the floor at the completion of roll call.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to amend the agenda to the agenda that was passed out in front of you and sent out on Friday, the approved council agenda and the information was sent out on Sunday.

Councilmember Edelman called point of order; regarding the procedure for revising the agenda

Councilmember Pepper called for the vote.

Mayor Benson called for a consultation with the attorney. She further stated that the Attorney addressed the agenda on Tuesday to all councilmembers.

There was Council discussion around this with the Attorney on the process.

Councilmember Pepper called point of order, that we still have a motion on the floor and it's a motion to accept the approved Council agenda.

Council discussion continued on the amended agenda.

Councilmember Weber called point of order.

Council discussion continued.

Mayor Benson called Councilmember Morgan out of order as she was off topic.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to approve the consent agenda. (no vote taken on this)

Councilmember Weber and Pepper called point of order as there is already a motion on the floor to accept the approved Council agenda.

Council discussion continued on the amended agenda.

Councilmember Pepper called the question.

VOTE: Motion on accepting the approved Council agenda **passed** 3-2 (Edelman, Deady).

Mayor Benson noted all memos from Talmadge are posted to the website for public view under public notices.

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS: None

CONSENT AGENDA:

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

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to accept the consent agenda.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to table item number 43661 (Yvonne Ward Voucher) until the finance committee makes a recommendation.

There was Council discussion on this.

VOTE: Motion to table item 43661 (Yvonne Ward Voucher) **passed** 3-2 (Edelman, Deady).

Council discussion continued.

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Morgan to accept the amended consent agenda. Motion **passed** 3-2 (Edelman, Deady). The consent agenda as amended was passed as follows:

- 1) **Claim Checks** – July 7, 2016 - No. 43655 through No.43711 and EFTs in the amount of \$219,684.65 (excluding 43661 – Yvonne Ward Voucher)
- 2) **Payroll** – June 30, 2016 - No. 19157 through 19174 (void 19156) and ACH Payments in the amount of \$274,615.88

PUBLIC COMMENTS:

Mira Hoke, Black Diamond spoke to Council.

Robbin Taylor, Black Diamond spoke to Council.

Bod Edelman, Black Diamond spoke to Council.

Kristen Bryant, Bellevue spoke to Council.

PUBLIC HEARINGS:

3) AB16-034B - (Continuation) 2017-2022 Six Year Transportation Improvement Plan

Public Work Director Boettcher reported that the public comment period has been held open for the last two meetings. He noted making amendments from the work session and the public and highlighted the changes. He also noted supplying a map showing what has been accomplished over the past six years.

Mayor Benson opened the public hearing at 7:41 p.m. There was no public comment and Mayor Benson closed the public hearing at 7:41 p.m.

There was Council and staff discussion on this item.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adopt a resolution approving the 2017-2022 Transportation Improvement Program.

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Morgan to amend the motion to postpone this item to the next Council meeting.

Council and staff discussion continued on this item.

VOTE: The amended motion **passed** 3-2 (Edelman, Deady).

There was a procedural question regarding comments received timely by Councilmember Weber. It was noted by Attorney Linehan that those comments need to be made part of the record.

Mayor Benson noted the public hearing will remain open so those comments can be addressed.

VOTE: Main motion as amended **passed** 3-2 (Edelman, Deady).

TIME-CRITICAL COUNCIL BUSINESS

4) Resolution for Interim City Attorney Via Legal Services Contract

Councilmember Morgan stated this resolution regarding interim city attorney services for 3 months and would like to bring this resolution back for reconsideration as she voted on the prevailing side.

A **motion** was made by Councilmember Morgan and **seconded** by Councilmember Weber to waive the rules of the timely and urgent matter. Motion **passed** by 3-2 (Edelman, Deady).

Councilmember Morgan discussed this item.

Mayor Benson stated you have no authority to hire an Attorney.

Point of order was called by Councilmembers Pepper and Weber; Councilmember Morgan has the floor.

Councilmember Morgan continued to discuss this item.

Councilmember Deady addressed Council.

Mayor Benson called Councilmember Morgan out of order; Councilmember Deady has the floor.

Councilmember Deady continued to address Council.

Mayor Benson called Councilmember Pepper out of order.

Councilmember Deady continued to address Council.

Councilmember Pepper called point of order; Councilmember Deady is being accusative.

Mayor Benson stated you (Councilmember Pepper) cannot call point of order, Councilmember Deady still has the floor.

Councilmember Deady continued to address Council.

Mayor Benson called Councilmember Pepper out of order as Councilmember Pepper stated she did not hire the Attorney.

Discussion between Councilmembers continued on this item.

Councilmember Pepper addressed Council.

A **motion** was made by Councilmember Morgan and **seconded** by Councilmember Pepper to adopt a resolution for the City of Black Diamond to hire an Interim Attorney via Legal Services Contract, Mr. Vancil.

Attorney Linehan noted the privileged memo he sent to Councilmembers and the Mayor on his opinion about the hiring of a City Attorney. He noted it is not his job to waive privilege on that memo. If the Council authorizes the release of that privileged document he will release it. He shared that the client meaning the City, the Mayor and the Council together are the client and it is up to the client whether they take or reject his advice.

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

Mayor Benson noted she will be denying this and calling Mr. Vancil.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady that the privileged memo from Kenyon Disend be released to the public.

Vote: Motion **passed** with all voting in favor (5-0).

City Attorney Linehan noted the document addresses many items and sought clarification on the motion. He asked if the motion was meant to be for the entire document or just the portion regarding the hiring of a City Attorney. There was Council consensus it was for the whole document.

City Attorney Linehan read an excerpt from his memo, which is attached, and incorporated into the minutes.

5) Resolution Revising Council Rules of Procedures

Councilmember Morgan discussed suspending the Council rules once again to adopt these few eight changes to the Council rules that were adopted in January. She noted there being eight simple recommended clarifications from the Talmadge memo. She discussed the rules being impugned and the need to have these changes adopted.

Mayor Benson asked Councilmember Morgan to please speak to the facts.

Councilmember Pepper called point of order.

A **motion** was made by Councilmember Morgan and **seconded** by Councilmember Pepper to make these eight simple changes, they are marked in the rules that are in the packet you can find them pretty easily, there is a mark on the left side there to see where they are.

Mayor Benson stated there are no rules in the packet.

Councilmember Edelman discussed the different versions she received and the document not addressing all the needed changes.

There was Council discussion on this.

City Attorney Linehan read the excerpt from his memo (attached) regarding the proposed Council rule changes. He did note that he did not see all the proposed changes prior to writing this memo and it is limited to what he was able to review over the weekend.

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

Mayor Benson noted these rules will be denied and will be using the 2015 rules.

6) Resolution Revising Committee Membership

Councilmember Weber discussed the attendance at the committee meetings and feels they are there to allow the public to come in if they so choose.

There was Council and Mayor discussion on this item.

A **motion** was made by Councilmember Morgan and **seconded** by Councilmember Pepper that we revise the committee membership as stated in our resolution here, the finance committee will have two members; they will be Brian Weber and Erica Morgan and Brian Weber will retain as Chair of that committee. The Growth Management Land Use Committee will have three members; Brian Weber, Pat Pepper and Janie Edelman; and the Government Operations Committee will have three members; Erika Morgan will be the Chair, Pap Pepper and Tami Deady will be on that committee.

Councilmember Edelman went on record and stated that as long as there is a quorum at these meetings, she will not attend.

Councilmember Deady concurred with Councilmember Edelman and stated she will not be at those meetings per legal advice.

City Attorney Linehan read the excerpt in his memo (attached) regarding the proposed committee establishment and assignment.

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

Mayor Benson noted she will not be recognizing these meetings or sending staff and Council will need to do this on their own.

7) Resolution Regarding Excused Absences by Councilmembers

A **motion** was made by Councilmember Morgan and **seconded** by Councilmember Weber to suspend the rules to adopt this resolution tonight.

Councilmember Morgan addressed Council on this item.

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

A **motion** was made by Councilmember Morgan and **seconded** by Councilmember Pepper to adopt the resolution of the City of Black Diamond regarding absences by Councilmembers.

There was Council discussion on this.

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

City Attorney Linehan read the excerpt from his memo (attached) regarding the resolution.

UNFINISHED BUSINESS:

8) AB16-016C-Resolution Accepting Department of Ecology Grant for 2015-2017 Storm Water Capacity Grant

Councilmember Weber discussed Agenda Bill AB16-016C still being in committee and the need to adopt AB16-034 an ordinance to revise the city code to adopt the 2012 code manual.

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Pepper to postpone AB16—016C until the AB16-034 ordinance revised city code 2012 code manual can be brought to Council.

Mr. Boettcher noted with this item being postponed he is not able to do his job to get the code revised regarding low impact development as there is no money to get it done.

There was Council discussion on this.

Councilmember Weber called the question.

Vote: Motion **failed** 2-3 (Edelman, Deady, Pepper).

Councilmember Pepper wanted to change her vote. Mayor Benson noted the vote has already been taken.

Councilmember Weber called for a roll call vote. Mayor Benson said he (Councilmember Weber) can't call for a roll call vote; she (Mayor) can call for a roll call vote. The Mayor stated there were three no votes and it didn't pass.

Councilmember Weber asked the parliamentarian about a roll call vote and who has the authority to call for one.

City Clerk Martinez commented she didn't know the answer off hand and would need to look it up in Robert's Rules of Order.

City Attorney Linehan stated he didn't have an answer for that as well.

9) AB16-021C-Resolution Confirming Mayor's Appointment to Civil Service Commission

City Attorney Linehan said there is no rule against two members of the commission working at the same company as long as they are not conducting commission business.

There was Council discussion on this.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adopt a resolution authorizing the Mayor's Civil Service Commission appointment of Becky Arnold to the Black Diamond Civil Service Commission Position #3.

Councilmember Weber addressed Council on this item.

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

City Clerk Martinez read into the record an excerpt from Robert's Rules of Order about a Councilmembers right to change their vote. It can be made by unanimous consent.

Mayor Benson stated there needs to be a unanimous vote and there will be no unanimous vote.

10) AB16-038A-Resolution Regarding Labor Policy and Grievance Review

Mayor Benson shared that our Labor Attorney Peter Altman couldn't be here this evening. However, he has addressed this prior to the meeting and his recommendation was to not pass the resolution.

There was Council and Mayor discussion on this.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to adopt a resolution regarding labor policy and grievance review, I support this item because it makes it simple and clear that the Mayor should deal with the grievances as part of the requirements of the Union contract, it saves City time and possibly money. Motion **passed** 3-2 (Edelman, Deady).

11) AB16-039A-Resolution Regarding Mediation

Councilmember Morgan **moved** to adopt the resolution regarding mediation. (No second)

Mayor Benson stated there is no information in the packet around mediation.

There was Council discussion on this item.

A **motion** was made by Councilmember Morgan and **seconded** by Councilmember Edelman to withdraw this resolution regarding mediation at this time. Motion **passed** with all voting in favor (5-0).

NEW BUSINESS:

Claim Check-Yvonne Ward

There was Council discussion on this.

Councilmember Morgan stated she would like to go into executive session to discuss with legal counsel potential litigation regarding this issue.

Councilmember Weber called point of order; he asked who has the floor.

Councilmember Weber **moved** to postpone this voucher 43661 (Yvonne Ward) to the next scheduled meeting and asked the City Attorney to follow up with Councilmember Morgan with the RCW for the executive session she's requesting at our next meeting.

Council discussion continued.

Councilmember Weber **withdrew** his motion.

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Morgan to hold an executive session based on the potential litigation and the RCW. (No vote taken).

Mayor Benson stated you cannot have an executive session if you really don't know what it's about.

Mayor Benson called for a recess at 9:33 p.m. for Councilmember Morgan to discuss with City Attorney Linehan whether or not an executive session is needed for this item.

Mayor called the session back to order at 9:35 p.m.

City Attorney Linehan determined that based on what Councilmember Morgan shared with him there is no need for an executive session.

Councilmember Morgan addressed her concerns with this item.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Weber to postpone item 43661 Yvonne Ward Voucher until the next meeting. Motion **passed** 3-2 (Edelman, Deady).

DKS CLAIM VOUCHER:

Community Development Director Kincaid reported bringing forward at the last meeting a resolution to hire DKS to complete their work on the transportation element of the comp plan update. She noted this was voted down at the last meeting and DKS was sent an invoice for the \$10,000 the City paid. She distributed an email that she wrote to Council and noted she is looking for direction from Council on next steps. She stated if DKS is not approved to continue with this work the City will need to start over and lose that investment the City made with DKS, plus there is no budget to start over.

Mayor Benson called a recess at 9:52 p.m.

The meeting was called back to order at 9:57 p.m.

City Clerk Martinez clarified action still needs to be taken on the Stormwater Capacity Grant.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to adopt a resolution accepting Dept. of Ecology Grant for 2015-2017 Stormwater Capacity Grant. Motion **failed** 2-3 (Weber, Pepper, Morgan).

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Morgan to postpone items 8 (DKS claim check) & 9 (resolution authorizing a contract with DKS Associates) on the published agenda until the July 21, regular scheduled Council meeting. Motion **passed** 3-2 (Edelman, Deady).

DEPARTMENT REPORTS: None

MAYOR'S REPORT: None

COUNCIL REPORTS: None

ATTORNEY REPORT: None

PUBLIC COMMENTS:

Terry Yankovich, Black Diamond spoke to Council.

Andy Williamson, representing Teamsters 116 spoke to Council.

Robbin Taylor, Black Diamond spoke to Council.

EXECUTIVE SESSION: None

ADJOURNMENT:

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

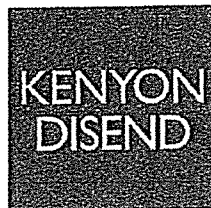
The meeting ended at 10:15 p.m.

ATTEST:

Carol Benson, Mayor

Brenda L. Martinez, City Clerk

Michael R. Kenyon
Rachel B. Turpin
Ann Marie J. Soto
Kim Adams Pratt
Robert F. Noe
David A. Linehan
Amy S. Mill
Charlotte A. Archer
Alexandra L. Kenyon



Bruce L. Disend
Doug F. Mosich
Of Counsel

Shelley M. Kerslake
1967 - 2014

**CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION
NOT SUBJECT TO PUBLIC DISCLOSURE**

TO: Mayor and Councilmembers
FROM: David A. Linehan
DATE: July 6, 2016
RE: July 7, 2016 City Council Meeting Agenda Items

This memo serves to advise Councilmembers and the Mayor of legal issues regarding certain items put forward for potential action at the City Council Meeting scheduled for July 7, 2016.

I. Agenda Posted on July 1, 2016

With respect to the agenda posted by City Clerk Brenda Martinez on Friday, July 1, 2016, we address only one item: The resolution referenced in Item 6, "Resolution Regarding Labor Policy and Grievance Review." I understand from the Mayor that this is a held-over item from the previous meeting. I have not seen the text of the resolution and do not really have a clear idea of its purpose, but I would be happy, upon request, to review the proposed resolution before the meeting. I would also note, merely as a reminder, that discussion of sensitive employment matters may be more appropriately conducted in Executive Session, when appropriate under RCW 42.30.110(f) (to receive and evaluate complaints or charges brought against a public officer or employee), or 42.30.110(g) (to review the performance of a public employee); and discussions of strategies or positions to be taken in a grievance proceeding may be exempt from OPMA altogether under RCW 42.30.140(4).

II. Agenda Items Proposed by Councilmembers Pepper and Morgan on July 1st

I understand that Councilmembers Pepper and Morgan forwarded four additional agenda items, with supporting documentation, late in the afternoon of Friday, July 1st, as the official agenda notice was being finalized and posted by the Clerk. While those items may not have arrived in sufficient time to be posted with the preliminary agenda, a majority of the Council retains the prerogative to amend the agenda to add or remove items from consideration at the meeting. I offer the following advice and observations concerning these four additional agenda

items in the event that the Council chooses to amend the agenda and consider them at the July 7th meeting.

A. Resolution on Interim Legal Services

This resolution, if adopted, would be invalid *ab initio* (that is, invalid from its inception rather than later voidable). State law is clear that the power to appoint and contract for City Attorney services lies with the Mayor in a mayor-council form of government. The City Council has no authority to independently appoint a City Attorney or retain contract legal services for general City Attorney services. As I mentioned in a previous e-mail before the June 16th Council Meeting, Washington courts have, on rare occasion, recognized a city council's ability to retain legal counsel in narrow, discrete circumstances—e.g., when there was a separation-of-powers dispute wherein the court recognized that it would be appropriate for the council to have its own, independent legal representation to advise it on matters in which the council's interests were directly adverse to the interests of the mayor. But this narrow exception does not apply to retention of general legal counsel to represent the City as a whole. In Black Diamond, only the Mayor has the power to appoint a City Attorney or retain contract City Attorney services for the City. The Council has no authority to appoint or contract with a City Attorney not approved by the Mayor, just as the Council has no authority to hire other members of the City Staff or to independently select and contract with other professional consultants for geotechnical or traffic studies not put forward by the Mayor.

Accordingly, the proposed resolution for interim legal services is invalid, and the Mayor would be under no obligation to use the services of any attorney with which the Council has purported to contract, nor would the City be obligated to pay for services rendered thereunder.

B. Resolution Revising Council Rules of Procedure

Without offering any opinion on the manner in which the new Council Rules were adopted or the validity of their adoption, I have only one legal concern with the substance of the proposed amendments proposed by this resolution. Specifically, the proposed change to Rule 18.1.4(b), which the "Summary of Rule Changes for the Agenda Bill" describes as follows:

Revise 18.1.4(b): Add clarifying language that the Growth Management Committee would consider quasi-judicial matters where it pertains to city policies or code. (A clause was already included that the committee would not consider matters prohibited by law.)

This proposed "clarification" of Rule 18.1.4(b) is problematic because it is (a) vague in its intent, and (b) may conflict with specific provisions of the Black Diamond Municipal Code relating to quasi-judicial decisions—specifically, BDMC 18.08.030, .060, and .070. These Code provisions spell out precisely which types of land-use decisions are quasi-judicial and they direct that such decisions be made by the Hearing Examiner (Type 3), or by the City Council following a recommendation by the Hearing Examiner (Type 4). Again, it is unclear what the intent is for saying in the Council Rules that the Growth Management Committee "would consider quasi-

judicial matters where it pertains to city policies or code.” But any intent to modify the existing BDMC provisions governing quasi-judicial processes (such as by requiring some sort of interim review by a committee) could only be enacted, if at all, through a duly adopted ordinance, not a change to the Council Rules.

C. Resolution Regarding Absences of Councilmembers

I have no legal concerns about Section 1 of this resolution. The relevant statute, RCW 35A.12.060, provides that failure to attend a regular council meeting may be “excused by the council,” which clearly indicates that the determination of whether a Councilmember’s absence should be excused is one that the Council is authorized to make. Here, Council Rule 5.1.1 provides that if a Councilmember gives prior notice of an absence to the Clerk or the Mayor, the absence will be recorded as “excused.” While this seems to be a rather “low bar” for excusing absences, I am aware of no provisions of state law that prevents the Council from setting the bar wherever it sees fit on this issue.

I offer no opinion regarding Section 2 of this resolution, as it merely applies the Council’s excused-absence rule to particular facts occurring on particular dates, about which I have no personal knowledge.

D. Resolution Revising Committee Membership

As a general rule, city councils have the authority to “organize and regulate [their] internal affairs,” RCW 35A.11.020, and to “determine [their] own rules,” RCW 35A.12.120. Accordingly, establishing committees and setting rules for determining the composition of those committees are generally within the Council’s purview so long as the committee structure and composition do not violate other state or local laws. That said, as I have previously advised on another occasion, any committee structure that contemplates having a quorum of sitting Councilmembers in regular attendance—which the proposed “Growth Management, Land Use and Community Services” and “Government Operations and Administration” Committee memberships both clearly would have—is problematic for a number of reasons.

First, if a committee meets regularly on a pre-set schedule (established by ordinance, resolution, or rule) and that committee contains a quorum of Councilmembers, that committee meeting arguably constitutes a regular meeting of the Council under the OPMA. This means that the Mayor would then be required to attend and preside over all such committee meetings per RCW 35A.12.110 (“Meetings of the council shall be presided over by the mayor . . .”), in addition to other state statutory and local code requirements for regular meetings of the legislative body of the City (e.g., keeping of minutes, etc.). Indeed, it is likely that standing committees holding regular meetings with a quorum of Councilmembers would violate BDMC 2.04.010, which provides for regular Council meetings only on the first and third Thursdays, and Council work sessions on the second Thursday of each month. No other regular meetings of Council are authorized under the Code. Any change to BDMC 2.04.010 would require adoption of a new ordinance, not a mere resolution affecting the Council Rules.

Second, as you know, Open Public Meeting Act ("OPMA") requirements would require giving public notice of either a regular or special meeting, including preparation of an agenda, and an opportunity for public attendance at every Committee meeting where a quorum is present. This may require coordination with the Clerk and expenditures of City funds or use of other resources that may or may not be available. Further, at a practical level, the hours of operation of the City are set by local Code, and my understanding is the Mayor will not authorize Staff overtime to attend after-hours Committee meetings due to, among other things, budgetary impacts. Council lacks authority to compel Staff to attend such meetings, which may diminish their utility.

Third, even if all procedural requirements for public meetings are acknowledged, having a quorum of Councilmembers present at a Committee meeting significantly increases the risk of mistakes and misunderstandings, even with the best of intentions. All manner of substantive remarks, discussions, proposals, agreements, deliberations, and recommendations at such meetings could easily be construed – rightly or wrongly – as *de facto* final actions, taken without proper notice and without input from or deliberation by the full Council at a regular or special meeting. Indeed, it would not be hard to see how a complainant could make an argument that the contemplated committee meetings may effectively turn a five-member City Council into a three-member City Council, in violation of numerous laws. In short, in my view, this committee structure is inviting litigation, with liability being very difficult to predict or contain. Conceivably, every one of these Committee meetings could spawn lawsuits, the outcome of which may not be known until finally resolved after a fact-intensive—and therefore costly—trial.

Most of these potential lawsuits are likely to arise under the OPMA. In addition to the legal and other fees that the City would expend on such lawsuits, a successful plaintiff is also entitled to recover his or her attorney fees. RCW 42.30.120(2). Councilmembers, as members of the City's "governing body," who are found to have violated the OPMA "shall be subject to personal liability in the form of a civil penalty in the amount of one hundred dollars." RCW 42.30.120(1).¹

Finally, in my view, the Council should not be too confident that adding a textual disclaimer in Council Rule 18.1.3(c) saying that "A committee recommendation does not constitute enactment of any ordinance or resolution" will insulate the City from liability if litigation ensues. While this proposed language may be persuasive as a first line of defense, determined plaintiffs will likely argue that this language is mere "window dressing," designed to mask, rather than prevent, the taking of final action at committee meeting. Ultimately, it will be up to a court of law to decide whether, in a particular set of circumstances, this disclaimer is valid and shields the City or Councilmembers from liability.

Please let me know if you would like to discuss any of the above issues in further detail.

¹ The OPMA applies only to members of an agency's "governing body." RCW 42.30.020(2). A mayor, as the chief executive of a city, is not a member of the "governing body" and accordingly cannot be personally liable under the OPMA.

BLACK DIAMOND CITY COUNCIL MINUTES
Continuation of November 17 Regular Meeting
to November 29, 2016

Council Chamber, 25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER, FLAG SALUTE:

Mayor Benson called the regular meeting continued from November 17, 2016 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: Jamey Kiblinger, Police Chief; David Linehan, City Attorney; Kevin Esping, Facilities Equipment Coordinator; Brian Lynch, Sergeant; May Miller, Finance Director; and Brenda L. Martinez, City Clerk.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to amend the agenda.

Mayor Benson called Councilmember Pepper out of order.

Councilmember Pepper **appealed** the decision of the Chair.

In unison both Councilmember Pepper and Councilmember Morgan **appealed** the decision of the Chair.

Mayor Benson again called Councilmember Pepper out of order.

Councilmember Morgan stated the Mayor was out of order and has a duty to call the vote on the appeal.

Mayor Benson called a five minute recess at 7:00:48 p.m.

Councilmember Morgan and Councilmember Pepper both explained the Mayor does not have the ability to call a recess without a motion and a vote of the Council body.

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

Councilmember Pepper continued stating there is a motion and a second on the floor to amend the agenda and that business needs to be taken care of.

Mayor Benson commented she didn't recognize Councilmember Pepper and further stated that as the presiding officer she has a statement to make.

Point of order was called by Councilmember Morgan that Councilmember Pepper has the floor.

There continued to be back and forth on this between Councilmembers Pepper, Morgan, and Mayor Benson regarding the motion on the floor, the appeal on the floor, and being called out of order.

Councilmember Pepper appealed the decision of the chair, again.

Councilmember Morgan called the Mayor out of order and stated she (Mayor) has a duty to call a vote on the appeal and read in part RCW 35A.12.120 regarding voting.

Mayor Benson called Councilmember Morgan out of order.

Councilmember Morgan stated the Chair is out of order as she is not performing her duty as the presiding officer to call for the vote on the motion on the floor.

Councilmember Pepper called for a roll call vote.

Mayor Benson stated she has a duty to explain what this meeting is and you cannot change this meeting. She explained this meeting is a continuation of the November 17 regular business meeting which was adjourned to tonight's date due to a lack of a quorum. She further stated would like them to understand that the agenda stands. The agenda can't be changed and no adjustments can be made as no adjustments were made before the meeting on the 17th. She commented that between the 10th and the 17th there were no communications from any of the three Councilmembers at all on this meeting.

Councilmember Edelman read a **motion** regarding a censure on Councilmember Pepper. This censure is attached and incorporated into the minutes.

Councilmember Morgan called a point of order as this item is not on the agenda.

Both Councilmembers Pepper and Morgan appealed the decision of the Chair and noted this is not on the agenda.

Councilmember Morgan stated there is a motion on the floor and Councilmember Edelman is out of order as this is not on the agenda.

Councilmember Edelman continued to read the censure and at the same time Councilmember Pepper continued to call point of order as this is not on the agenda.

Councilmember Deady **seconded** the motion.

Point of order was called by Councilmember Morgan as this item is not on the agenda for tonight.

Discussion continued around this item not being on the agenda and a vote not being allowed. Councilmember Pepper noted the amended agenda was brought forward and also discussed the motion and second to amend the agenda. Mayor Benson noted the agenda cannot be replaced as this is a continued meeting.

Point of order was called by Councilmember Morgan.

Councilmember Pepper called for the question.

Vote: 2-3 (Weber, Morgan, Pepper) Following the vote there was discussion that Councilmember Pepper was not allowed to vote on her own censure making it a tie vote of 2-2 (Weber, Morgan). Mayor Benson broke the tie with an affirmative vote. Motion **passed** 3-2 (Weber, Morgan).

There was continued discussion about whether Councilmember Pepper is allowed to vote. Councilmember Morgan and Pepper stated this is procedural matter and she (Pepper) is allowed to vote. Mayor Benson stated Councilmember Pepper cannot vote on her own censure.

Councilmember Pepper noted there is a motion on the floor to amend the agenda. Mayor Benson stated the motion was called out of order. Councilmember Pepper stated she appealed the decision of the chair and Mayor Benson noted that appeal was called out of order. There continued to be discussion between Councilmembers Pepper, Morgan, and Mayor Benson regarding the presiding officer's duty to call for the vote. Councilmember Morgan and Pepper continued that as the presiding officer she (Mayor) is out of order as she (Mayor) is not performing her duty to call for the vote.

Councilmember Morgan called for the vote. Mayor Benson noted she (Morgan) is not the presiding officer and then called Councilmember Pepper out of order as the agenda cannot be substituted. Mayor Benson continued to call Councilmember Pepper out of order.

Mayor Benson called a five minute recess at 7:13 p.m.

The meeting was called back to order at 7:21 p.m.

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

Mayor Benson announced the City has a problem with a fire engine and it needs to be replaced. This engine was scheduled to be replaced in 2018, however since there is an issue the City will need to replace it sooner than expected and find the additional funding for this expenditure. She also reported that Black Diamond will be receiving \$27, 500 from King County; \$5,000 to Parks and Recreation, \$5,000 to the Black Diamond Community

Center, \$2,500 to the Black Diamond Historical Society, and \$15,000 to the Ginder Creek Trail. In addition, the City has received a Transportation Improvement Board grant in the amount \$63,236 for street overlays in multiple locations within the City. Lastly, she announced the invited everyone to attend the Community Tree Lighting Ceremony at the Black Diamond Community Center on December 2, 2016 at 6:00 p.m.

PUBLIC COMMENTS:

Mira Hoke, Black Diamond spoke to Council.

Mitch Neary, Black Diamond spoke to Council.

Leslie Cooley, Black Diamond spoke to Council.

CONSENT AGENDA:

- 1) **Claim Checks** – November 17, 2016 - No. 44093 through No. 44125 and EFTs in the amount of \$83,444.74
- 2) **Payroll** – October 31, 2016 No. 19222 – No. 19240 (voids 19223, 19227) and EFTs in the amount of \$260,775.35
- 3) **Minutes** – Special Meeting of October 18, 2016, Special Meeting of October 27, 2016 and Council meeting of November 3, 2016

Councilmember Morgan requested all items on the above consent agenda be moved under new business.

PUBLIC HEARINGS:

- 4) **AB16-073** – Continuation - Proposed Ordinances Regarding Property Tax Increases

Finance Director Miller reported to Council on this item and noted 100% of the increase and property taxes go to fund public safety. Ms. Miller also noted receiving a written comment against adoption of these ordinances which is attached and incorporated into the minutes.

Mayor Benson opened the public hearing at 7:31 p.m.

Leslie Cooley, Black Diamond spoke in favor of adoption of these ordinances.

Mitch Neary, Black Diamond spoke in favor of adoption of these ordinances.

Mayor Benson closed the public hearing at 7:32 p.m.

- 5) **AB16-067** – Proposed 2017 Preliminary Budget

Finance Director Miller briefed Council on this item.

Mayor Benson opened the public hearing at 7:34:18 p.m. There were no public comments received or heard and the public hearing was closed at 7:34:39 p.m.

UNFINISHED BUSINESS:

6) Postponed Minutes – 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

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Dedy to adopt these meeting minutes.

There was discussion between Councilmembers.

Point of order was called by Councilmember Weber stating Councilmember Pepper has the floor.

Point of order was called by Councilmember Edelman.

Councilmember Edelman called the question.

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

Following the vote there was continued discussion this item.

Point of order was called by Councilmember Morgan that Councilmember Dedy is impugning other Councilmembers.

7) AB16-063A – Ordinance Granting Franchise Agreement with CCD Black Diamond Partners, LLC

Councilmember Pepper stated this item is assigned to the Government Operations Committee.

Point of order was called by Councilmember Edelman regarding on November 3rd this item was already assigned to that committee.

There was Council discussion on this item with the focus on attorney review and the need to review the Development Agreement 7.1.7.

Point of order was called by Councilmember Pepper regarding Councilmember Edelman impugning another Councilmember.

Point of order was called by Councilmember Pepper that Councilmember Edelman's remarks are off topic.

Point of order was called by Councilmember Pepper regarding Councilmember Edelman remarks violating Council rule 6.3 because they are discourteous or impugn members of the Council.

Point of order was called by Councilmember Pepper.

City Attorney Linehan stressed that these franchise agreements (#7 & #8) are time sensitive.

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

Point of order was called by Councilmembers Pepper and Morgan.

Point of order was called by Councilmember Pepper stating Councilmember Deady's remarks violate Council rule 6.3.

Point of order was called by Councilmember Pepper.

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

8) AB16-064A – Ordinance Granting Franchise Agreement with Astound Broadband, LLC

Councilmember Pepper stated this item has the Council committee assignment of Government Operations.

There was discussion on when the committee meeting will be held.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to table this item indefinitely. Motion **passed** 3-2 (Edelman, Deady).

9) AB16-065A – Resolution Authorizing Interlocal Agreement with AWC RMSA

Councilmember Pepper stated this item has been assigned to the Government Operations committee.

Councilmember Pepper moved that the Council Government Operations committee recommends additional review for any potential adjustments prior to adoption.

There was discussion on this item.

Point of order was called by Councilmember Pepper.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adopt a resolution regarding membership in the Association of Washington Cities Risk Management Service Agency.

There was Council debate on this item and committee meetings

Point of order was called by Councilmember Pepper stating the committees are not illegal.

Councilmember Pepper called a point of order that Councilmember Deady is violating Council rule 6.3.

Discussion continued.

Councilmember Edelman called for the question.

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

A **motion** was made by Councilmember Pepper and seconded by Councilmember Morgan to move this item to the Government Operations Committee. Motion **passed** 3-2 (Deady, Edelman).

NEW BUSINESS:

Clerk note: The two property tax ordinances were approved out of order.

10) AB16-068 – Ordinance Setting the Property Tax Dollar Amount for 2017

Finance Director Miller reported to Council on this item.

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Pepper to postpone this item to the December 1st meeting at 7:00 p.m.

There was Council discussion on this item.

Point of order was called by Councilmember Pepper regarding Councilmember Deady's language.

Point of order was called by Councilmember Pepper regarding Councilmember Deady impugning another Councilmember.

Discussion continued.

A point of order was called by Councilmember Pepper regarding Councilmember Edelman violating Council rule 6.3.

Another point of order was called by Councilmember Pepper.

Following discussion between Council, Attorney, and staff Councilmember Weber **withdrew** his motion.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adopt an ordinance setting the property tax dollar amount to be used for public safety, including, police, fire and emergency services. Motion **passed** 4-1 (Pepper).

11) AB16-069 – Ordinance Setting the Property Tax Percentage Increase and Dollar Amount

Finance Director briefed Council on this proposed ordinance.

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Edelman to adopt an ordinance setting the property tax percentage increase and dollar amount as calculated by King County for 2017 property taxes to be used for public safety, including fire police, fire, and emergency services. Motion **passed** 4-1 (Pepper).

12) AB16-070 – Ordinance Amending the 2016 Budget

Councilmember Pepper stated she would like to amend this for first reading and Council Committee assignment is Budget and Finance Committee.

Finance Director Miller reported to Council on the proposed 2016 budget amendment ordinance.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to adopt an ordinance adopting the 2016 budget amendment. Motion **failed** 2-3 (Morgan, Weber, Pepper)

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to move this to the Budget and Finance Committee as it is for first reading. **(No vote was taken on this motion).**

There was Council discussion on this item and Councilmember Weber announced the Budget and Finance Committee meeting will be December 12 at 6 p.m. at the Black Diamond Library unless that meeting room is not available and then it would be at the Black Diamond Bakery. He also asked that the Mayor notice this meeting and open the Council Chambers as was done earlier in the year.

Point of order was called by Councilmember Pepper.

Discussion continued on committee meetings.

13) AB16-071 – Ordinance Approving an Interfund Loan from the Sewer Capital and Reserve Fund to the Equipment Replacement for Replacement of Four Police Vehicles in 2017

Finance Director Miller reviewed with Council the proposed interfund loan ordinance and purpose.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adopt an ordinance approving an interfund loan from the sewer capital and reserve fund to the equipment replacement fund for the replacement of four police vehicles in 2017.

There was Council discussion and following discussion Councilmember Edelman **withdrew** her motion.

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Morgan to move this item to the Budget and Finance Committee meeting at 6:00 p.m. on December 12th. Motion **passed** 3-2 (Deady, Edelman).

Councilmember Weber stated it is his intention to bring this back at the December 15th meeting.

14) AB16-072 – Resolution Adopting the 2017-2022 Capital Improvement Plan

Finance Director Miller reported on this proposed resolution.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to not have this resolution voted on this evening and would like to amend the agenda to not have the Council take this up at this time.

There was Council discussion.

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

Below are the consent agenda items Councilmember Morgan at the beginning of the meeting placed under new business.

1) Claim Checks – November 17, 2016 - No. 44093 through No. 44125 and EFTs in the amount of \$83,444.74

A **motion** was made by Councilmember Morgan and **seconded** by Councilmember Pepper to postpone all the claim checks to the December 15th Council meeting. Motion **passed** 3-2 (Edelman, Deady).

There was Council discussion.

Point of order was called by Councilmember Pepper.

Point of order was called by Councilmember Morgan stating Councilmember Deady is impugning her and violating Council ruled 6.3.

- 2) Payroll** – October 31, 2016 - No. 19222 through No. 19240 (voids 19223, 19227) and EFTs in the amount of \$260,755.35

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Morgan to accept the payroll of October 31, 2016. Motion **passed** with all Council voting in favor (5-0).

- 3) Minutes** – Special Meeting of October 18, 2016, Special Meeting of October 27, 2016, and Council Meeting of November 3, 2016.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Weber to postpone the minutes indefinitely.

Council discussion continued on this.

Point of order was called by Councilmember Pepper regarding Councilmember Edelman violating Council rule 6.3.

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

DEPARTMENT REPORTS:

Clerk Department

City Clerk Martinez reported on the status of past due meeting minutes.

Councilmember Morgan expressed appreciating the Clerks work and would like to see the point of orders and appeal the decisions of the chair in the minutes.

MAYOR'S REPORT:

Mayor Benson reported attending the SCATBd meeting. She also discussed the Black Diamond Community Center request of \$10,000 for liability insurance and noted the Clerk would be sending the information out early so it can be placed on the December 15th agenda and asked that it be acted upon that night.

COUNCIL REPORTS:

Councilmember Deady reported attending a finance committee meeting, SCATBd meeting, the Thanksgiving luncheon at the Black Diamond Community Center, a roundtable meeting on transportation, fire ad hoc committee meeting, and a public safety meeting.

Councilmember Morgan reported on the King Conservation District meeting on the 19th.

Councilmember Edelman reported attending the Public Issues Committee meeting, meeting with Finance Director Miller to review vouchers, Council work session, Marie Freeman memorial, fire ad hoc committee meeting, chamber luncheon, CERT class, November 17 Council meeting, Kiwanis Thanksgiving dinner, and the Regional Transportation Summit.

Councilmember Weber apologized for not being at the November 17th meeting as he was out of town for work. He noted he is working on the budget, discussed event being on the community events calendar, and reminded everyone there will be a Budget and Finance meeting at 6:00 p.m. at the Black Diamond Library.

Councilmember Pepper reported attending the Council work session, CERT training and commented she is learning a lot; attended a day long conference on December 8 on Taking Government from Good to Great.

ATTORNEY REPORT: None

PUBLIC COMMENTS:

Mitch Neary, Black Diamond commented.

Bob Edelman, Black Diamond commented.

Gary Davis, Black Diamond commented.

EXECUTIVE SESSION: None

ADJOURNMENT:

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

The meeting ended at 9:52:36 p.m.

ATTEST:

Carol Benson, Mayor

Brenda L. Martinez, City Clerk

Censure of Council Member Pat Pepper

WHEREAS, BDMC 2.04.010 mandates that Council meetings be held on the first and third Thursdays of each month at the hour of 7:00 p.m.;

WHEREAS, failure to attend a regularly scheduled meeting that results in the lack of a quorum interferes with managing the business of the City and protecting the best interests of its citizens; because a quorum is required to conduct City business, and

WHEREAS, failure to attend the regularly scheduled meeting can result in significant civil, criminal, and other penalties assessed against the noncompliant parties due to the detrimental impact upon the City and its citizens by not having a quorum present;

WHEREAS, Pat Pepper stated that she would not be attending the regularly scheduled meeting of November 17, 2016;

WHEREAS, the reason cited was that "Well, the Budget Committee [Weber and Morgan] isn't going to be there. Why would I go to a meeting where the Budget Committee isn't there?"

WHEREAS, it was pointed out by the Mayor that that was not a valid reason.

WHEREAS, by her absence, Pat Pepper ensured that a quorum would not be present, and City business could not be conducted;

WHEREAS, such action constituted interference with government operations;

WHEREAS, the Presiding Officer found the absence of Pat Pepper was willful and unexcused;

NOW THEREFORE,

THE City of Black Diamond hereby and publicly censures Councilmember Pat Pepper for violation of her duty to the Citizens of Black Diamond to obey all laws; for willful interference with government operations; and for violation of the oath of office. You are hereby warned to cease and desist disobeying local, and state law and to adhere to your oath of office.

Brenda Martinez

From: Duane Garcia <duane@nwreonline.com>
Sent: Tuesday, November 29, 2016 2:36 PM
To: Brenda Martinez
Subject: Council meeting Tues November 29th at 7PM

Hello Ms. Martinez,

This is my comment for the Public Hearing on November 29th on Property Taxes. Could you please forward to the City Council?

I am against any increase upon our property tax. I wholeheartedly feel that there are many areas of waste within our local government. We have employees within our City Hall that make more salary than their equals in larger cities than ours. We have to be diligent in spending our citizens money. Most of our citizens live on fixed incomes. How does an increase on property tax help them?

Thank you,
Duane Garcia,
Black Diamond



CERTIFICATION

Date: January 05, 2017 Council Meeting

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

EFT's	December-Early Release EFT 01/05 Council	12/1 – 12/23	\$ 6,991.06
44228-44238	December-Early Release 3 rd Dec Batch	12/22/16	\$ 88,971.51
44239-44285	December-3 rd Dec Batch for 01/05 Council	01/06/17	\$ 155,828.09
44286-44290	January – 1 st Jan Batch for 1/05 Council	01/06/17	\$ 7,972.00
		TOTAL	\$ 259,762.66

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.

May Miller

MAY MILLER, FINANCE DIRECTOR / CAROL BENSON, MAYOR

12-27-2017

DATE

DATE

COUNCILMEMBERS

DATE

Register

Fiscal: 2017, 2016

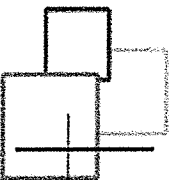
Deposit Period: 2017 - January, 2016 - December

Check Period: 2017 - January - 1st Jan Batch for 1/05 Council, 2016 - December - Early Release EFT 01/05 Council, 2016 - December - Early Release 3rd Dec Batch, 2016 - December - 3rd Dec Batch for 01/05 Council

Number	Name	Print Date	Amount
Columbia Bank			
Check			
<u>44228</u>	CHS/Cenex	12/22/2016	\$2,425.83
<u>44229</u>	City of Black Diamond	12/22/2016	\$1,300.49
<u>44230</u>	Comcast (PA)	12/22/2016	\$394.37
<u>44231</u>	KING COUNTY FINANCE	12/22/2016	\$44,131.50
<u>44232</u>	King County Finance I-Net	12/22/2016	\$375.00
<u>44233</u>	Language Line Services, Inc.	12/22/2016	\$64.29
<u>44234</u>	Mayene Miller	12/22/2016	\$551.00
<u>44235</u>	Puget Sound Energy	12/22/2016	\$15,113.12
<u>44236</u>	RH2 Engineering Inc.	12/22/2016	\$21,705.64
<u>44237</u>	Verizon Wireless	12/22/2016	\$1,131.27
<u>44238</u>	Voice of The Valley	12/22/2016	\$1,779.00
<u>44239</u>	AHBL, Inc.	1/6/2017	\$11,345.00
<u>44240</u>	Alpine Products Inc.	1/6/2017	\$714.49
<u>44241</u>	BHC Consultants, LLC	1/6/2017	\$2,798.95
<u>44242</u>	Black Diamond Auto Parts	1/6/2017	\$201.91
<u>44243</u>	Blumenthal Uniforms & Equipment	1/6/2017	\$57.31
<u>44244</u>	Brat Wear, Inc	1/6/2017	\$90.68
<u>44245</u>	CDW Government, Inc	1/6/2017	\$1,027.36
<u>44246</u>	CenturyLink (WA)	1/6/2017	\$1,209.09
<u>44247</u>	City of Black Diamond/Retained Funds	1/6/2017	\$2,989.62
<u>44248</u>	City of Enumclaw	1/6/2017	\$1,629.75
<u>44249</u>	City of Maple Valley	1/6/2017	\$1,293.75
<u>44250</u>	City of Milton	1/6/2017	\$5,756.26
<u>44251</u>	Comcast (34744)	1/6/2017	\$220.88
<u>44252</u>	Criminal Justice Training Commission	1/6/2017	\$3,187.00
<u>44253</u>	Custom Electric & Controls	1/6/2017	\$591.87
<u>44254</u>	Firestone Complete Auto Care	1/6/2017	\$589.70
<u>44255</u>	Gold Coast Armory	1/6/2017	\$2,530.40
<u>44256</u>	Gwenevere Kelly & Douglas Jensen	1/6/2017	\$223.39
<u>44257</u>	Home Depot Credit Service	1/6/2017	\$232.48
<u>44258</u>	International Institute of Municipal Clerks	1/6/2017	\$350.00
<u>44259</u>	Joe & Andrea McArthur	1/6/2017	\$61.02
<u>44260</u>	Johnsons Home & Garden	1/6/2017	\$121.06
<u>44261</u>	Kenyon Disend, PLLC	1/6/2017	\$13,539.16
<u>44262</u>	Kevin & Debra Andersen	1/6/2017	\$333.13
<u>44263</u>	KING COUNTY FINANCE	1/6/2017	\$378.55
<u>44264</u>	Matthew C. Barton	1/6/2017	\$248.34
<u>44265</u>	Municipal Code Corporation	1/6/2017	\$1,206.80

<u>44266</u>	Natalie Oosterhof	1/6/2017	\$27.86
<u>44267</u>	Office Products Nationwide	1/6/2017	\$560.06
<u>44268</u>	Orkin Commercial Services	1/6/2017	\$117.55
<u>44269</u>	Parametrix, Inc.	1/6/2017	\$34,346.02
<u>44270</u>	Perteet Inc.	1/6/2017	\$380.00
<u>44271</u>	PumpTech, Inc.	1/6/2017	\$56,802.83
<u>44272</u>	Rebecca Sackrider	1/6/2017	\$30.87
<u>44273</u>	Regional Animal Services of King County	1/6/2017	\$45.00
<u>44274</u>	Republic Services, Inc. #176	1/6/2017	\$668.04
<u>44275</u>	RH2 Engineering Inc.	1/6/2017	\$618.08
<u>44276</u>	Safe Security	1/6/2017	\$49.98
<u>44277</u>	Safelite Fulfillment, Inc	1/6/2017	\$150.03
<u>44278</u>	State Auditor Office	1/6/2017	\$186.20
<u>44279</u>	Summit Law Group	1/6/2017	\$294.00
<u>44280</u>	Valley Communications	1/6/2017	\$7,276.35
<u>44281</u>	Warm Homes, Inc	1/6/2017	\$300.27
<u>44282</u>	Washington Dept of Corrections	1/6/2017	\$30.00
<u>44283</u>	Washington State Patrol	1/6/2017	\$630.00
<u>44284</u>	Water Management Laboratories, Inc.	1/6/2017	\$63.00
<u>44285</u>	Wilma Eicher	1/6/2017	\$324.00
<u>44286</u>	Greater Maple Valley-Black Diamond Chamber of Commerce	1/6/2017	\$235.00
<u>44287</u>	Kara Murphy Richards	1/6/2017	\$2,000.00
<u>44288</u>	Melanie Thomas Dane	1/6/2017	\$2,000.00
<u>44289</u>	Sorci Family LLC	1/6/2017	\$3,642.00
<u>44290</u>	WABO	1/6/2017	\$95.00
<u>EFT Payment 12/1/2016</u>	U.S. Postal Service (Black Diamond)	12/1/2016	\$646.81
<u>EFT Payment 12/10/2016</u>	Invoice Cloud	12/10/2016	\$110.70
<u>EFT Payment 12/12/2016</u>	U.S. Postal Service (CMRS-FP)	12/12/2016	\$200.00
<u>EFT Payment 12/13/2016</u>	Dept of Licensing-Firearms Online	12/13/2016	\$90.00
<u>EFT Payment 12/14/2016</u>	U.S. Postal Service (Black Diamond)	12/14/2016	\$155.04
<u>EFT Payment 12/19/2016</u>	Dept of Revenue	12/19/2017	\$3,773.14
<u>EFT Payment 12/19/2016</u>	Dept of Licensing-Firearms Online	12/19/2017	\$36.00
<u>EFT Payment 12/2/2016</u>	Dept of Licensing-Firearms Online	12/2/2016	\$18.00
<u>EFT Payment 12/20/2016</u>	US Bank Equipment Finance	12/20/2017	\$1,471.37
<u>EFT Payment 12/20/2016</u>	Dept of Licensing-Firearms Online	12/20/2017	\$18.00
<u>EFT Payment 12/22/2016</u>	U.S. Postal Service (CMRS-FP)	12/2/2017	\$200.00
<u>EFT Payment 12/23/2016</u>	Dept of Licensing-Firearms Online	12/23/2017	\$18.00
<u>EFT Payment 12/5/2016</u>	U.S. Postal Service (CMRS-FP)	12/5/2016	\$200.00
<u>EFT Payment 12/6/2016</u>	Dept of Licensing-Firearms Online	12/6/2016	\$54.00
		Total	\$259,762.66

Voucher Directory with Transaction Date



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

Dept of Licensing-Firearms Online

EFT Payment 12/2/2016 3:38:37 PM - 1 12/2/2016 2016 - December - Early Release EFT 01/05 Council

120216 DFO

CPL's

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

DOL- Firearms EFT Payments

\$18.00

Total 120216 DFO

Total EFT Payment 12/2/2016 3:38:37 PM - 1

\$18.00

EFT Payment 12/6/2016 3:39:44 PM - 1 12/6/2016

2016 - December - Early Release EFT 01/05 Council

120616 DFO

CPL's

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

DOL- Firearms EFT Payments

\$54.00

Total 120616 DFO

Total EFT Payment 12/6/2016 3:39:44 PM - 1

\$54.00

EFT Payment 12/13/2016 3:40:32 PM - 1 12/13/2016

2016 - December - Early Release EFT 01/05 Council

121316 DFO

CPL's

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

DOL- Firearms EFT Payments

\$90.00

Total 121316 DFO

Total EFT Payment 12/13/2016 3:40:32 PM - 1

\$90.00

EFT Payment 12/19/2016 11:40:55 AM - 1 12/19/2016

2016 - December - Early Release EFT 01/05 Council

121916 DFO

CPL's

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

DOL- Firearms EFT Payments

\$36.00

Total 121916 DFO

Total EFT Payment 12/19/2016 11:40:55 AM - 1

\$36.00

Vendor	Transaction Number	Transaction Reference	Transaction Date	Fiscal Description	Void
		Account Number <td></td> <th>Name</th> <th>Amount</th>		Name	Amount
				Title	
	EFT Payment 12/20/2016	12/20/2016	2016 - December - Early Release EFT 01/05 Council		
	11:44:13 AM - 1				
	122016 DFO				
	CPL's				
	633-000-000-586-11-00-00			DOL- Firearms EFT Payments	\$18.00
	Total 122016 DFO				\$18.00
	Total EFT Payment 12/20/2016 11:44:13 AM - 1				\$18.00
	EFT Payment 12/23/2016	12/23/2016	2016 - December - Early Release EFT 01/05 Council		
	11:48:12 AM - 1				
	122316 DFO				
	CPL's				
	633-000-000-586-11-00-00			DOL- Firearms EFT Payments	\$18.00
	Total 122316 DFO				\$18.00
	Total EFT Payment 12/23/2016 11:48:12 AM - 1				\$234.00
Total Dept of Licensing-Firearms Online					
Dept of Revenue					
EFT Payment 12/19/2016	12/19/2016	2016 - December - Early Release EFT 01/05 Council			
11:40:00 AM - 1					
121916 DOR					
November Excise Taxes					
001-000-210-521-10-31-04				Uniforms	\$20.64
401-000-000-534-80-44-01				State of WA Utility Excise Tax	\$19.32
401-000-000-534-80-44-01				State of WA Utility Excise Tax	\$2,678.59
407-000-000-535-80-44-01				State of WA Excise Tax	\$645.30
407-000-000-535-80-44-01				State of WA Excise Tax	\$2.07
410-000-000-531-10-44-01				WA St Excise Taxes	\$407.22
Total 121916 DOR					\$3,773.14
Total EFT Payment 12/19/2016 11:40:00 AM - 1					\$3,773.14
Total Dept of Revenue					\$3,773.14
Invoice Cloud					
EFT Payment 12/10/2016 3:33:17	12/10/2016	2016 - December - Early Release EFT 01/05 Council			
PM - 1					
121016 IC					
November Charges					
401-000-000-534-80-49-50				Bank Analysis Fees/Merch CC Fees	\$27.67
Water					
407-000-000-535-80-49-50				Bank Analysis Fees/Merch CC Fees	\$27.68
Sewer					
410-000-000-531-10-49-50				Bank Analysis Fees/Merch CC/ Lien Fees	\$55.35

Vendor

Transaction Number

Transaction Date

Fiscal Description

Void

Transaction Reference

Name

Amount

Account Number

Title

Storm

Total 121016 IC

Total EFT Payment 12/10/2016 3:33:17 PM - 1

Total Invoice Cloud

\$110.70
\$110.70
\$110.70

U.S. Postal Service (Black Diamond)

EFT Payment 12/1/2016 3:27:53 PM - 1

12/1/2016

2016 - December - Early Release EFT 01/05 Council

120116 USPS BD

November Charges

401-000-000-534-80-42-01

407-000-000-535-80-42-01

410-000-000-531-10-42-01

Postage

Postage

Postage

Total 120116 USPS BD

Total EFT Payment 12/1/2016 3:27:53 PM - 1

EFT Payment 12/14/2016 3:38:09 PM - 1

12/14/2016

2016 - December - Early Release EFT 01/05 Council

121416 USPS BD

December Charges

001-000-180-518-90-42-00

Postage

Total 121416 USPS BD

Total EFT Payment 12/14/2016 3:38:09 PM - 1

Total U.S. Postal Service (Black Diamond)

\$155.04
\$155.04
\$155.04
\$801.85

U.S. Postal Service (CMRS-FP)

EFT Payment 12/5/2016 3:29:45 PM - 1

12/5/2016

2016 - December - Early Release EFT 01/05 Council

120516 USPS CMRS-FP

Postage

001-000-180-518-90-42-00

Postage

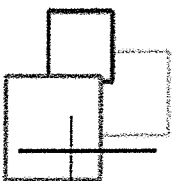
Total 120516 USPS CMRS-FP

Total EFT Payment 12/5/2016 3:29:45 PM - 1

\$200.00
\$200.00
\$200.00

Vendor	Transaction Number	Transaction Date	Fiscal Description	Void
	Transaction Reference	Account Number	Name	Amount
	EFT Payment 12/12/2016 3:35:29 PM - 1	12/12/2016	2016 - December - Early Release EFT 01/05 Council	
	121216 USPS CMRS-FP			
	Postage			
	001-000-180-518-90-42-00			\$200.00
	Total 121216 USPS CMRS-FP			\$200.00
	Total EFT Payment 12/12/2016 3:35:29 PM - 1			\$200.00
	EFT Payment 12/22/2016 11:48:34 AM - 1	12/22/2016	2016 - December - Early Release EFT 01/05 Council	
	122216 USPS CMRS-FP			
	December Charges			
	001-000-180-518-90-42-00			\$200.00
	Total 122216 USPS CMRS-FP			\$200.00
	Total EFT Payment 12/22/2016 11:48:34 AM - 1			\$200.00
	Total U.S. Postal Service (CMRS-FP)			\$600.00
	US Bank Equipment Finance			
	EFT Payment 12/20/2016 11:40:21 AM - 1	12/20/2016	2016 - December - Early Release EFT 01/05 Council	
	317214534			
	December Charges			
	001-000-210-521-10-45-00			\$193.03
	001-000-248-518-20-45-03			\$193.03
	001-000-254-518-20-45-04			\$1,085.31
	Total 317214534			\$1,471.37
	Total EFT Payment 12/20/2016 11:40:21 AM - 1			\$1,471.37
	Total US Bank Equipment Finance			\$1,471.37
	Vendor Count 6			
	Grand Total			\$6,991.06

Voucher Directory with Transaction Date



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

CHS/Cenex

44228

113016 CHS #124244

12/22/2016

2016 - December - Early Release 3rd Dec Batch

Nov Fuel

001-000-180-518-50-32-01
001-000-181-518-30-32-00
001-000-215-521-14-32-00
001-000-246-558-70-32-00
001-000-270-576-80-32-00
001-000-280-536-20-32-00
101-000-000-543-50-32-00
401-000-000-534-80-32-00
407-000-000-535-80-32-00
410-000-000-531-10-32-00

Fuel-Central Services
Fuel
Marine Grt-Fuel
Fuel
Fuel
Fuel
Fuel
Fuel
Fuel

Total 113016 CHS #124244

113016 CHS #128275

Nov Police Fuel

001-000-210-521-10-32-00

Fuel

Total 113016 CHS #128275

Total 44228

Total CHS/Cenex

City of Black Diamond

44229

12212016 COBD

11/28/2016

2016 - December - Early Release 3rd Dec Batch

November Utility Billing

001-000-212-521-50-47-01
001-000-212-521-50-47-02
001-000-212-521-50-47-03
001-000-248-518-20-47-01
001-000-254-518-20-47-00
001-000-270-575-30-47-01
001-000-270-575-30-47-01
001-000-270-575-51-47-01
001-000-270-575-51-47-02

Water
Sewer
Stormwater
MDRT BD Wtr, Swr, Storm
Facilities-Utilities
Museum Water/Sewer/Storm
Museum Water/Sewer/Storm
Gym-Stormwater
Gym-Sewer

\$49.47
\$62.26
\$80.00
\$46.82
\$70.24
\$99.10
\$32.00
\$32.00
\$62.26

\$1,477.64
\$1,477.64
\$2,425.83
\$2,425.83

Vendor	Transaction Number	Transaction Date	Fiscal Description	Void
	Transaction Reference	Account Number	Name	Amount
		410-000-000-531-10-42-00	Telephone/DSL/Radios	\$27.61
Total 44230				\$394.37
Total Comcast (PA)				\$394.37
				\$394.37
KING COUNTY FINANCE				
44231		12/1/2016	2016 - December - Early Release 3rd Dec Batch	
30015514				
		December Charges		
		407-000-000-535-80-41-04	Metro Sewer Charges	\$44,131.50
Total 44231				\$44,131.50
Total KING COUNTY FINANCE				\$44,131.50
				\$44,131.50
King County Finance I-Net				
44232		12/7/2016	2016 - December - Early Release 3rd Dec Batch	
11005246				
		December Services		
		001-000-214-521-20-42-01	Police Comm KC I-Net	\$375.00
Total 44232				\$375.00
Total KING County Finance I-Net				\$375.00
				\$375.00
Language Line Services, Inc.				
44233		11/30/2016	2016 - December - Early Release 3rd Dec Batch	
3960917				
		November Charges		
		001-000-211-523-60-49-00	Jail Costs	\$64.29
Total 44233				\$64.29
Total Language Line Services, Inc.				\$64.29
				\$64.29

Vendor

Transaction Number
Transaction Reference

Transaction Date

Fiscal Description
Name

Title

Void

Amount

Account Number

Title

Amount

Total 44235
Total Puget Sound Energy

RH2 Engineering Inc.

44236

66407-R

11/7/2016

2016 - December - Early Release 3rd Dec Batch

\$15,113.12
\$15,113.12
\$15,113.12

Total 66407-R
66563

9/26-10/5 Services

001-000-257-558-70-41-02

MDRT Civil Engineering-RH2 Engineering
112061 Master Dev Review Team (MDRT)

\$15,000.00

10/6-10/23 Services

001-000-257-558-70-41-02

MDRT Civil Engineering-RH2 Engineering
112061 Master Dev Review Team (MDRT)

\$6,705.64

Total 44236
Total RH2 Engineering Inc.

Verizon Wireless

44237

9776780658

12/10/2016

2016 - December - Early Release 3rd Dec Batch

\$6,705.64
\$21,705.64
\$21,705.64

001-000-180-518-90-49-00

Miscellaneous
Extra Phone/Credits

\$0.00

Printed by BAD\sonelli on 12/27/2016 1:34:33 PM

Voucher Directory with Transaction Date

Page 5 of 6

Voucher Directory with Transaction Date

Vendor	Transaction Number	Transaction Date	Fiscal Description	Year	Amount
AHBL, Inc.	44239	11/30/2016	2016 - December - 3rd Dec Batch for 01/05 Council		
	100526				
			Oct/Nov Planning Services		
			001-000-240-558-60-41-06		
			Prof Svs-Gen Gvt Planner		\$4,945.00
			Land Use Planning Services		
	Total 100526				\$4,945.00
	100536				
			Oct/Nov Planning Services		
			001-000-240-558-60-41-06		
Alpine Products Inc.			Land Use Planning Services		
			Prof Svs-Gen Gvt Planner		\$6,400.00
	Total 100536				\$6,400.00
	44240				
		12/19/2016	2016 - December - 3rd Dec Batch for 01/05 Council		
	TM-163985				
			320-000-002-595-64-63-04		
			Street Signs		\$714.49
	Total TM-163985				\$714.49
BHC Consultants, LLC	Total 44240				\$714.49
	44241				
		12/1/2016	2016 - December - 3rd Dec Batch for 01/05 Council		
	0008373				
			Building Inspection Services		
			001-000-240-558-51-41-03		
			Bldg Official/Code Inspc. Costs		\$663.95
	Total 0008373				\$663.95
	0008379				
			October Services		
			310-000-025-558-60-41-00		
			Comp Plan Update-Prof Svs		\$1,645.00
			On-Call Planning Services		
	Total 0008379				\$1,645.00

0008380		Sep/Oct/Nov Services	Prof Svs-Gen Gvt Planner	\$490.00
001-000-240-558-60-41-06		On-Call Planning Services		
Total 0008380				\$490.00
Total 44241				\$2,798.95
Total BHC Consultants, LLC				\$2,798.95
44242		11/7/2016	2016 - December - 3rd Dec Batch for 01/05 Council	
416051		Battery (Exchange)	PW Clearing- Shared Veh/Equip Maint	\$201.91
Total 416051		101-000-000-544-90-48-02		\$201.91
Total 44242				\$201.91
Total Black Diamond Auto Parts				\$201.91
44243		12/7/2016	2016 - December - 3rd Dec Batch for 01/05 Council	
006566744		001-000-210-521-10-31-04	Uniforms	\$57.31
Total 006566744		Badge Case		\$57.31
Total 44243				\$57.31
Total Blumenthal Uniforms & Equipment				\$57.31
44244		12/7/2016	2016 - December - 3rd Dec Batch for 01/05 Council	
20550		001-000-210-521-10-31-04	Uniforms	\$90.68
Total 20550		Alteration		\$90.68
Total 44244				\$90.68
Total Brat Wear, Inc				\$90.68
44245		12/15/2016	2016 - December - 3rd Dec Batch for 01/05 Council	
HPJB491		Barruda Renewal	General Government Technology	\$1,027.36
310-000-011-594-18-64-00				\$1,027.36
Total 44245				\$1,027.36
Total CDW Government, Inc				\$1,027.36

ATC/NIWER	
Total HPJB491	\$1,027.36
Total 44245	\$1,027.36
Total CDW Government, Inc	\$1,027.36

44246	12/11/2016	2016 - December - 3rd Dec Batch for 01/05 Council
121116 CL		
November Services		

407-000-000-535-80-42-00	Telephone/DSL/Radios	\$53.21
Morganville Pump Station 360-886-2835 784B		
407-000-000-535-80-42-00	Telephone/DSL/Radios	\$33.43
PW Shop Allocation - 360-886-2523 656B		
410-000-000-531-10-42-00	Telephone/DSL/Radios	\$33.43
PW Shop Allocation - 360-886-2523 656B		

Total 121116 CL

Total 44246

Total CenturyLink (WA)

\$1,209.09

\$1,209.09

\$1,209.09

City of Black Diamond/Retained Funds

44247	0111098-IN Retainage	11/8/2016	2016 - December - 3rd Dec Batch for 01/05 Council	\$2,989.62
	PumpTech Retainage			\$2,989.62
	402-000-003-594-34-63-10		Springs Retainage-Pump/tech	\$2,989.62
Total 44247	Total 0111098-IN Retainage			\$2,989.62

Total City of Black Diamond/Retained Funds

City of Enumclaw

44248	04879	12/13/2016	2016 - December - 3rd Dec Batch for 01/05 Council	\$1,629.75
	November Charges			\$1,629.75
	001-000-211-523-60-49-00		Jail Costs	\$1,629.75
	8 days @ \$60 per day, 21 days @ \$54.75 per day			\$1,629.75
Total 44248	Total 04879			\$1,629.75

Total City of Enumclaw

City of Maple Valley

44249	INV03019	12/21/2016	2016 - December - 3rd Dec Batch for 01/05 Council	\$1,293.75
	November Services			\$1,293.75
	001-000-240-558-51-41-03		Bldg Official/Code Inspc. Costs	\$1,293.75
Total 44249	Total INV03019			\$1,293.75

Total City of Maple Valley

City of Milton

44250

1133

12/12/2016

2016 - December - 3rd Dec Batch for 01/05 Council

IT Services for November

001-000-145-518-80-41-01
001-000-248-518-20-49-12
101-000-000-543-30-48-12
401-000-000-534-80-49-12
407-000-000-535-80-49-12
410-000-000-531-10-49-12

Inf. Tec. Svs. - Milton
Technology Costs
Fac Staff & Veh Alloc
Tech-Sys, Sec. Email, Sw, Etc
Tech-Sys, Sec. Email, SW, etc.
Tech-Sys, Sec. Email, SW, Etc.

Total 1133

Total City of Milton

Comcast (34744)

44251

8498340140106172 121016

12/10/2016

2016 - December - 3rd Dec Batch for 01/05 Council

12/17-1/16 Services

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

Police Telephone/DSL/Air Cards
Police Cable TV Act 8498 34 014 0106172

Total 8498340140106172 121016
8498340140122286 121216

12/22-1/21 Services

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

Telephone/DSL
Court Internet Act 8498 34 014 0122286

Total 8498340140122286 121216

Total Comcast (34744)

Criminal Justice Training Commission

44252

201127479

12/13/2016

2016 - December - 3rd Dec Batch for 01/05 Council

001-000-210-521-10-49-01

Training

Total 201127479

Total 44252

Total Criminal Justice Training Commission

Custom Electric & Controls

44253

18299

12/9/2016

2016 - December - 3rd Dec Batch for 01/05 Council

Pump Motor

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

Operating Supplies

\$591.87

Total 44253

Total 18299

\$591.87

Total Custom Electric & Controls

Firestone Complete Auto Care

44254

047059

12/22/2016

2016 - December - 3rd Dec Batch for 01/05 Council

Firestone Tire Package

101-000-000-544-90-48-02

PW Clearing- Shared Veh/Equip Maint

\$589.70

Total 44254

Total 047059

\$589.70

Total Firestone Complete Auto Care

Gold Coast Armory

44255

GCA060733-2016

12/21/2016

2016 - December - 3rd Dec Batch for 01/05 Council

Ammunition

001-000-210-521-10-35-00

Firearms Program

\$2,530.40

Total 44255

Total GCA060733-2016

\$2,530.40

Total Gold Coast Armory

Gwenevere Kelly & Douglas Jensen

44256

121916 Kelly & Jensen

12/21/2016

2016 - December - 3rd Dec Batch for 01/05 Council

New Owner 11/29/16

410-000-000-343-83-00-00

Stormwater Charges

\$223.39

Total 44256

Total 121916 Kelly & Jensen

\$223.39

Total Gwenevere Kelly & Douglas Jensen

\$223.39

Transaction Number	Transaction Date	Transaction Description	Transaction Amount
Transaction Reference	Account Number	Name	Address

Home Depot Credit Service

44257

1577359

12/23/2016

2016 - December - 3rd Dec Batch for 01/05 Council

Facilities Tools

001-000-181-518-30-35-00

Small Tools & Equipment

Total 1577359

2595624

Ext Pole Gym

001-000-270-575-51-48-00

Gym Facility Repair & Maintenance

Total 2595624

5562431

Gloves PW

001-000-270-576-80-35-00
001-000-280-536-20-35-00
101-000-000-542-90-31-04
401-000-000-534-80-35-00
407-000-000-535-80-35-00
410-000-000-531-10-35-00

Small Tools & Safety Equip
Small Tools & Safety Equip
Uniforms & Safety Supplies
Small Tools & Safety Equip
Small Tools & Safety Equipment
Small Tools and Safety Equipment

Total 5562431

7072374

Light Bulbs Police

001-000-212-521-50-48-02

Police Bldg Repairs & Maintenance

Total 7072374

7072375

Light Bulbs Gym

001-000-270-575-51-48-00

Gym Facility Repair & Maintenance

Total 7072375

Total 44257

Total Home Depot Credit Service

\$40.12
\$40.12
\$232.48
\$232.48

International Institute of Municipal Clerks

44258

122216 IIMC

12/22/2016

2016 - December - 3rd Dec Batch for 01/05 Council

MMC Certification Application Fee

001-000-137-514-21-49-01

Workshops and Training

Total 122216 IIMC

Total 44258

Total International Institute of Municipal Clerks

\$350.00
\$350.00
\$350.00
\$350.00

Joe & Andrea McArthur
44259

12/16/2016	2016 - December - 3rd Dec Batch for 01/05 Council	
121616 McArthur		
New Owner 11/15/16		
410-000-000-343-83-00-00	Stormwater Charges	\$61.02
Total 121616 McArthur		\$61.02

Total Joe & Andrea McArthur
Total 44259

Johnsons Home & Garden
44260

12/6/2016	2016 - December - 3rd Dec Batch for 01/05 Council	
411390		
PW Ice Melt		
101-000-000-544-90-31-00	PW Clearing Acct-Supplies	\$31.47
Total 411390		\$31.47

411581		
Cemetery Maintenance Supplies		
001-000-280-536-20-31-02	Cemetery Operating Supplies	\$24.41
Total 411581		\$24.41

411617		
Gym Maintenance Supplies		
001-000-270-575-51-48-00	Gym Facility Repair & Maintenance	\$37.98
Total 411617		\$37.98

411625		
Return Gym Maintenance Supplies		
001-000-270-575-51-48-00	Gym Facility Repair & Maintenance	(\$22.80)
Total 411625		(\$22.80)

411635		
Water Supplies		
401-000-000-534-80-31-01	Operating Supplies	\$25.05
Total 411635		\$25.05

411907		
Water Supplies		
401-000-000-534-80-31-01	Operating Supplies	\$24.95
Total 411907		\$24.95

Total Joe & Andrea McArthur
Total 44260

Total Johnsons Home & Garden
Total 411907

Transaction Number	Transaction Date	Transaction Reference	Account Number	Check Description	Amount
--------------------	------------------	-----------------------	----------------	-------------------	--------

Kenyon Disend, PLLC

44261

184834

11/30/2016

2016 - December - 3rd Dec Batch for 01/05 Council

November Services				
001-000-150-515-30-41-01	Legal Services-General Govt			\$4,281.13
001-000-150-515-30-41-17	Legal Costs-Public Disclosure			\$2,163.00
001-000-257-558-70-41-00	MDRT Legal Services			\$1,862.51
101-000-000-543-30-41-05	Legal Costs			\$951.37
401-000-000-534-80-41-04	Legal Svcs			\$1,427.05
407-000-000-535-80-41-09	Legal Costs			\$1,427.05
410-000-000-531-10-41-01	Legal Costs			\$1,427.05
Total 184834				\$13,539.16

Total 44261

\$13,539.16

Kevin & Debra Andersen

44262

120916 Anderson

12/9/2016

2016 - December - 3rd Dec Batch for 01/05 Council

New Owner 11/28/16				
410-000-000-343-83-00-00	Stormwater Charges			\$333.13
Total 120916 Anderson				\$333.13

Total 44262

\$333.13

Kevin & Debra Andersen

44263

80837-80837

11/30/2016

2016 - December - 3rd Dec Batch for 01/05 Council

DOT Road Services Division				
101-000-000-542-64-48-01	Traffic Signal Maintenance			\$378.55
Total 80837-80837				\$378.55

Total 44263

\$378.55

Matthew C. Barton

44264

120916 Barton

12/9/2016

2016 - December - 3rd Dec Batch for 01/05 Council

New Owner 11/23/16				
410-000-000-343-83-00-00	Stormwater Charges			\$248.34
Total 120916 Barton				\$248.34

Total 44264

\$248.34

Matthew C. Barton

Transaction Number	Transaction Date	Transaction Category	Account Number	Amount
--------------------	------------------	----------------------	----------------	--------

Municipal Code Corporation

44265

00279784

12/15/2016

2016 - December - 3rd Dec Batch for 01/05 Council

Copies of Supplement No 21

001-000-137-514-21-41-01

Code Update

To the Code of Ordinances

\$1,206.80

Total 44265

Total 00279784

\$1,206.80
\$1,206.80
\$1,206.80

Total Municipal Code Corporation

Natalie Oosterhof

44266

121316 NO

12/13/2016

2016 - December - 3rd Dec Batch for 01/05 Council

Mileage Reimbursement

001-000-240-558-51-43-01

Lodging, Meals & Mileage

Training-WVA State Archives-Records Retention

\$27.86

Total 44266

Total 121316 NO

Total Natalie Oosterhof

\$27.86
\$27.86
\$27.86

Office Products Nationwide

44267

879929-1

12/7/2016

2016 - December - 3rd Dec Batch for 01/05 Council

City Hall Supplies

001-000-180-518-90-31-00

Office Supplies City Hall

\$114.57
\$114.57

Total 879929-1
881107-0

Municipal Court Supplies

001-000-120-512-50-31-00

Operating Supplies

\$25.46
\$25.46

Total 881107-0
881114-0

Comm Devel/Public Works Supplies

001-000-180-518-90-31-99

Office Supplies CD Bldg Clearing

\$84.59
\$84.59

Total 881114-0
881118-0

City Hall Supplies

001-000-180-518-90-31-00

Office Supplies City Hall

\$70.18
\$70.18

Total 881118-0
881118-1

City Hall Supplies

001-000-180-518-90-31-00

Office Supplies City Hall

\$48.86
\$48.86

Total 881118-1

Transaction Number	Transaction Date	Transaction Description	Amount
881219-0		City Hall Supplies	
	001-000-180-518-90-31-00	Office Supplies City Hall	\$32.55
Total 881219-0			\$32.55
881921-0		City Hall Supplies	
	001-000-180-518-90-31-00	Office Supplies City Hall	\$13.65
Total 881921-0			\$13.65
882500-0		Police Dept Supplies	
	001-000-210-521-10-31-00	Operating Supplies	\$170.20
Total 882500-0			\$170.20
Total 44267			\$560.06
Total Office Products Nationwide			\$560.06
Orkin Commercial Services			\$560.06
44268			
144623664	11/21/2016	2016 - December - 3rd Dec Batch for 01/05 Council	
	001-000-248-518-20-49-01	MDRT Bldg Custodial Costs	\$30.56
	001-000-254-518-20-49-01	Facilities Building Custodial	\$86.99
Total 144623664			\$117.55
Total 44268			\$117.55
Total Orkin Commercial Services			\$117.55
Parametrix, Inc.			\$117.55
44269			
01-77918	11/15/2016	2016 - December - 3rd Dec Batch for 01/05 Council	
		MDRT TrafficEngSvcs	
	001-000-257-558-70-41-03	MDRT Traffic Engineering-Parametrix	\$2,714.68
	Roberts Drive-Lake Sawyer Rd RBT		
Total 01-77918			\$2,714.68
01-77919		MDRT TrafficEngSvcs	
	001-000-257-558-70-41-03	MDRT Traffic Engineering-Parametrix	\$950.93
	Villages Plat C Illumination		
Total 01-77919			\$950.93
01-78074		Covington Creek Culvert Replacement	
	410-000-010-531-10-41-00	KC Grant-Culvert Replacement	\$24,521.08
	Covington Creek Culvert Replacement		
Total 01-78074			\$24,521.08

Transaction Number	Transaction Date	Transaction Description	Amount
Transaction Reference	Account Number	Name	Type

01-78075

Roberts Drive Reconstruction
320-000-020-595-10-63-00

Roberts Dr Rehab-Eng.

\$6,159.33

Total 01-78075

Total 44269

Perfeet Inc.

44270

20160294.001-1

12/8/2016

2016 - December - 3rd Dec Batch for 01/05 Council

\$6,159.33
\$34,346.02
\$34,346.02

P2C Baseline Assessment Review
001-000-257-558-70-41-04

MDRT Wetland On-Call

MDRT Environmental Consultant-Perfeet

\$380.00

Total 44270

Total Perfeet Inc.

PumpTech, Inc.

44271

0111098-IN

11/8/2016

2016 - December - 3rd Dec Batch for 01/05 Council

\$380.00
\$380.00
\$380.00

OSHG System
402-000-003-594-34-63-06

Charge minus retainage

Springs Water Project

\$56,802.83

Total 0111098-IN

Total 44271

Total PumpTech, Inc.

Rebecca Sackrider

120916 Rebecca

12/9/2016

2016 - December - 3rd Dec Batch for 01/05 Council

\$56,802.83
\$56,802.83
\$56,802.83

New Owner 11/17/16
410-000-000-343-83-00-00

Stormwater Charges

Total 120916 Rebecca

Total 44272

Total Rebecca Sackrider

\$30.87
\$30.87
\$30.87

Transaction Number	Transaction Date	Transaction Description	Transaction Amount
--------------------	------------------	-------------------------	--------------------

Regional Animal Services of King County

44273

12/16/2016

2016 - December - 3rd Dec Batch for 01/05 Council

121616 RAS

December Pet Licensing

633-000-000-589-00-00-01

King County Animal License

Total 121616 RAS

\$15.00
\$15.00

122316 RAS

December Pet Licensing

633-000-000-589-00-00-01

King County Animal License

Total 122316 RAS

\$30.00
\$30.00
\$45.00
\$45.00

Total 44273

Total Regional Animal Services of King County

Republic Services, Inc. #176

44274

11/30/2016

2016 - December - 3rd Dec Batch for 01/05 Council

0176-004882314

Acct # 3-0176-0091940

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

City Hall

Total 0176-004882314

\$205.04

0176-004882654

Acct # 3-0176-0805992

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

Waste Disposal

\$56.75

PW-Street

401-000-000-534-80-47-04

Waste Disposal

\$61.91

PW-Water

407-000-000-535-80-47-04

Waste Disposal

\$61.91

PW-Sewer

410-000-000-531-10-47-04

Waste Disposal

\$61.91

PW-Drainage

Total 0176-004882654

\$257.96

0176-004882814

Acct # 3-0176-0808164

001-000-212-521-50-47-04

Waste Disposal

\$205.04

Transaction Number	Transaction Date	General Description	Vendor Name	File	Amount
--------------------	------------------	---------------------	-------------	------	--------

Total 0176-004882814	Police				\$205.04
Total 44274					\$668.04
Total Republic Services, Inc. #176					\$668.04

RH2 Engineering Inc.					
44275	12/6/2016	2016 - December - 3rd Dec Batch for 01/05 Council			
66540					

MDRT					
001-000-257-558-70-41-02					
Total 66540					\$618.08
Total RH2 Engineering Inc.					\$618.08
					\$618.08

Safe Security					
44276	12/6/2016	2016 - December - 3rd Dec Batch for 01/05 Council			
15847510					

Monitoring Premium					
101-000-000-544-90-48-01					
Total 15847510					\$49.98
Total Safe Security					\$49.98
					\$49.98

Safelite Fulfillment, Inc					
44277	12/1/2016	2016 - December - 3rd Dec Batch for 01/05 Council			
00440-129151					
001-000-210-521-10-48-01					
Total 00440-129151					\$150.03
Total Safelite Fulfillment, Inc					\$150.03
					\$150.03

State Auditor Office					
44278	12/12/2016	2016 - December - 3rd Dec Batch for 01/05 Council			
L117637					

Accountability Audit					
001-000-140-514-23-41-03					
101-000-000-543-30-41-02					
401-000-000-534-80-41-03					
407-000-000-535-80-41-07					
					\$46.54
					\$11.17
					\$42.83
					\$42.83

Transaction Number	Transaction Reference	Account Number	Special Description	Amount
Total 44278		410-000-000-531-10-41-02	State Auditor Services	\$42.83
Total State Auditor Office				\$186.20
Summit Law Group				\$186.20
44279				\$186.20
82210	12/16/2016	2016 - December - 3rd Dec Batch for 01/05 Council		
	November Services			
	001-000-150-515-30-41-08		Legal Svcs-Union Contracts	\$171.50
	Acct # 83007-1			
Total 82210				\$171.50
83007-3				
	November Services			
	001-000-150-515-30-41-08		Legal Svcs-Union Contracts	\$122.50
	Acct # 83007-3			
Total 83007-3				\$122.50
Total 44279				\$122.50
Total Summit Law Group				\$294.00
Valley Communications				\$294.00
44280				
0020683	12/5/2016	2016 - December - 3rd Dec Batch for 01/05 Council		
	November Services			
	001-000-214-521-20-41-00		Valley Comm - Dispatch Service	\$7,276.35
Total 0020683				\$7,276.35
Total 44280				\$7,276.35
Total Valley Communications				\$7,276.35
Warm Homes, Inc				\$7,276.35
44281				
120916 Warm Homes, Inc	12/9/2016	2016 - December - 3rd Dec Batch for 01/05 Council		
	New Owner 11/29/16			
	410-000-000-343-83-00-00		Stormwater Charges	\$300.27
Total 120916 Warm Homes, Inc				\$300.27
Total 44281				\$300.27
Total Warm Homes, Inc				\$300.27

Washington Dept of Corrections

44282

1116.1-17KCWC-HQ

11/30/2016

2016 - December - 3rd Dec Batch for 01/05 Council

November Services

001-000-211-523-60-49-04

2 days @ \$15 per day

Work Crew Costs-State Exp

\$30.00

Total 44282

Total 1116.1-17KCWC-HQ

Total Washington Dept of Corrections

\$30.00

Washington State Patrol

44283

00062386

12/15/2016

2016 - December - 3rd Dec Batch for 01/05 Council

User Fee

001-000-214-521-20-42-02

WSP Access

\$534.00
\$534.00

Total 00062386

117003791

November Background Checks

633-000-000-586-00-00-06

Due to WSP-FBI Fingerprinting-Background

\$96.00
\$96.00
\$630.00
\$630.00

Total 44283

Total 117003791

Total Washington State Patrol

Water Management Laboratories, Inc.

44284

155020

12/9/2016

2016 - December - 3rd Dec Batch for 01/05 Council

December Services

401-000-000-534-80-41-02

Water Testing and Sampling

\$63.00
\$63.00
\$63.00
\$63.00

Total 44284

Total 155020

Total Water Management Laboratories, Inc.

Wilma Eicher

44285

122116 PUB16-0063

12/21/2016

2016 - December - 3rd Dec Batch for 01/05 Council

PUB16-0063

001-000-240-341-81-00-00

Technology Cost Recovery Fee

\$45.00
\$162.00
\$207.00

407-000-000-369-91-04-00

Sewer Investigation MF/IN &SF

Total 122116 PUB16-0063

PUB16-0064

001-000-240-341-81-00-00

Technology Cost Recovery Fee

\$45.00

Vendor

Transaction Number

Transaction Date

Food Description

VOID

Transaction Reference

Name

Account Number

Time

Amount

401-000-000-369-91-06-00

Water Investigation MF/IN

Total 44285

Total 122116 PUB16-0064

Total Wilma Eicher

\$72.00

\$117.00

\$324.00

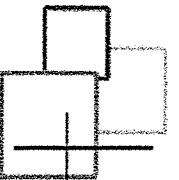
\$324.00

Vendor Count 47

Grand Total

\$155,828.09

Voucher Directory with Transaction Date



Vendor	Transaction Number	Transaction Date	Fiscal Description	Void Amount
Greater Maple Valley-Black Diamond Chamber of Commerce	Transaction Reference Account Number		Name Title	
44286	9627	1/2/2017	2017 - January - 1st Jan Batch for 1/05 Council	
			Membership MV/BD Chamber	\$235.00
	Total 9627			\$235.00
Total 44286				\$235.00
Greater Maple Valley-Black Diamond Chamber of Commerce				
Kara Murphy Richards	44287	12/31/2016	2017 - January - 1st Jan Batch for 1/05 Council	
	123116 KMR			
			January Services	\$2,000.00
			001-000-151-515-30-41-04	\$2,000.00
	Total 123116 KMR		Court Legal-Pros Attorney	\$2,000.00
Total 44287				\$2,000.00
Total Kara Murphy Richards				
Melanie Thomas Dane	44288	12/31/2016	2017 - January - 1st Jan Batch for 1/05 Council	
	123116 MD			
			January Services	\$2,000.00
			001-000-120-512-50-41-00	\$2,000.00
	Total 123116 MD		Court Judge	\$2,000.00
Total 44288				\$2,000.00
Total Melanie Thomas Dane				
Sorci Family LLC	44289	12/23/2016	2017 - January - 1st Jan Batch for 1/05 Council	
	123116 SFLLC			
			January Rent	\$630.00
			001-000-248-518-20-45-02	\$944.00
			001-000-254-518-20-45-02	
			MDRT Property Rental Cost	
			Facilities-Prop Rental	

Vendor	Transaction Number	Transaction Date	Fiscal Description	Void
	Transaction Reference	Account Number	Name	Amount
			Time	
			Facilities City Hall Bldg Rental	
	Total 123116 SFLLC	001-000-254-518-20-45-05		\$2,068.00
	Total 44289			\$3,642.00
Total Sorci Family LLC				\$3,642.00
WABO				\$3,642.00
	44290	12/19/2016	2017 - January - 1st Jan Batch for 1/05 Council	
	WABO2017			
		2017 Membership Renewal		
		001-000-240-558-51-49-01	Memberships	\$95.00
	Total WABO2017			\$95.00
	Total 44290			\$95.00
Total WABO				\$95.00
	Vendor Count	5		
			Grand Total	\$7,972.00

CITY OF BLACK DIAMOND
CITY COUNCIL WORK SESSION MEETING MINUTES
June 9, 2016

Council Chamber, 25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER:

Mayor Benson announced this work session is on the 2017-2022 Six Year Transportation Improvement Plan

ROLL CALL:

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

ABSENT:

Staffs present: Seth Boettcher, Public Works Director, and Brenda L. Martinez, City Clerk

WORK SESSION

1) 2017-2022 Six Year Transportation Plan- Mr. Boettcher

Public Works Director Boettcher addressed issues around emails that have been received at the City in response to the Peter Rimbos email. He distributed to Council the proposed street network and discussed the comprehensive plan, the development codes and passed out the street network that was in the comprehensive plan from 2006. He discussed the flaws he saw in the proposed network. He distributed a new spreadsheet that was prepared after the public hearing held on June 2, 2016. He noted adding safety projects which are new this year. Also new this year which can be preferential is the amount of maintenance projects that are needed in the City; he noted there is no way we get to do these projects and need assistance from preservation grants from TIB to fund these. He discussed the grant rating system for projects and there being a lot of streets that are in need of work. He further discussed Council having authority to take projects off this plan. He pointed out that this plan is not a budget document and thinking ahead to budget the City's street budget was in red so we passed the TBD. We are holding it together because we have been successful with grants, but we are still short from the street fund to do all the projects that need to be done. Temporarily the state has allowed some maintenance dollars that help.

Councilmember Morgan stated how pleased she was with the maps, it's very helpful and she was thankful for the map. She noted on one of the new maps, the lagoon on Abram Ave. She wanted to clarify that there is no longer water there.

Mr. Boettcher noted this is their base map to know where the roads are.

Councilmember Deady suggested adding language based on grant availability that would clarify on some projects that is dependent on funding availability.

Councilmember Edelman asked what projects, if any, have been submitted for grant funding.

Councilmember Deady asked about grants and money left over, and stated we are in competition with other cities.

Mr. Boettcher shared that TIB is divided by area, East and West in County areas, they do the best they can to be fair with the entire state. Our competition is with other smaller cities.

Mr. Boettcher discussed Ms. Bryant's written comments. He noted holding the public hearing open and needs to meet with the Attorney about adding a project back in and does the city need to hold another public hearing due to that change.

Councilmember Pepper asked in the last plan what is the estimate in that plan of how many were able to be completed. Mr. Boettcher noted there are twelve projects that are in process and completed within the last six years.

Mayor Benson discussed missing out on grant money for a project due to the fact our comp plan is not complete.

Mr. Boettcher distributed the proposed street network that will be in the comp plan update.

Councilmember Morgan noted why it is important to the road engineer to show the cracks and it would be really helpful in the future to have some kind of landmark that shows where those cracks are. This suggestion is for the CIP update.

Mr. Boettcher discussed the Morgan Frans statement and staff agrees with that. He also noted that Judith Carrier noticed a conflict on the website with some of the maps.

Mr. Boettcher noted Mr. Bryant's comment on the six year tip regarding the intersection alignment; he stated the City should consider moving pipeline north to go past Columbia Bank.

Councilmember Deady discussed #18 on the plan and wondered where specifically these bike lanes would be going and the need to specify for the public as to where the projects will be.

Mr. Boettcher stated would you support if we put from 169 to Jones Lake Road.

Councilmember Morgan asked on the generalized street improvement, could it be somewhere on this that says "opportunity".

Mr. Boettcher noted he will put leverage private funds.

Councilmember Pepper asked if grants come out by category, for example roundabouts.

Mr. Boettcher stated they are not typically like that. They are in broader categories of dealing with congestion, safety or preservation. He noted they are funds set aside for example for bridges, bridge replacement.

Councilmember Weber asked about grant money and there is additional grant funding left over, how can the money be utilized.

Mr. Boettcher noted if grant funds are left over, TIB will allow the extension of the existing project. However, if you hop to a new location, you need to be careful with that and you really need to stay within the confines of the project fairly close.

Councilmember Deady asked about number fourteen, she asked if this is the street going down to the skateboard park and wondered what types of site distance improvements are being proposed. She noted it being a huge safety issue.

Mr. Boettcher noted the safety concerns.

Mr. Boettcher discussed the need to have a traffic engineer come back with three options. How much are they going to cost and then having good information to make decisions.

Councilmember Morgan noted this project is related to the new school. She discussed low impact development streets. She noted that it was supposed to be maintenance free for many years.

Councilmember Deady asked about 288th and 169.

Mr. Boettcher noted this is King County.

Mr. Boettcher reviewed the changes to provide leverage for private funds or monies project one. He noted a typo on line eighteen and shows the specific right of way to be improved with more definition on from and to.

Councilmember Edelman asked if our new city Attorney says we don't have to do another public hearing, then your plan would be to bring this to council next week.

Mr. Boettcher noted we can post this information right away and get to the public, take additional public comments, and then Council could pass this if there is no issue with the advertising. If there are additional public comments, and there could be amendments.

Councilmember Edelman stated even with additional public comments period, if you get comments, we could still go ahead and preempt your resolution, the motion could be however it is written and then amended by public comments x, y and z. And then it could still pass next week.

Councilmember Deady noted questions around number eighteen on where the sidewalk extension would be.

Mr. Boettcher noted Roberts Drive phase three would take sidewalks from project number twelve. This is not a stand-alone project, it is a combined project. Project number twelve is where we address the sidewalks. Sidewalks, curb, streetlights, bringing them up to urban standards.

Councilmember Edelman discussed the Roberts Rehab number one projects.

Mr. Boettcher noted they would add more definition there.

Councilmember Weber asked if there is a way to put in an asterisk note that gives a line sentence to explain to folks about ranking order by year.

Mr. Boettcher noted he would think of ways of giving them a heads up.

Councilmember Deady noted could you perhaps put in language about projects chosen by grant availability.

Mayor Benson stated as Mr. Weber said just asterisk the projects and make a notation at the bottom that just says these projects, if funds are available, will be moved up on the list. She further stated just add some kind of disclaimer.

Mr. Boettcher noted this is primarily an issue with maintenance projects. He noted they will put it at the bottom of each page.

ADJOURNMENT:

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Weber to adjourn the meeting.

Motion **passed** with all voting in favor (5-0).

The meeting ended at 7:39 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: 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: January 19, 2017 AB17-006	
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 17-xxx		
SUMMARY STATEMENT: Councilmembers Edelman and Deady have placed this item on the agenda. 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. 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 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. FISCAL NOTE: No Fiscal impact		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: MOTION to adopt an Ordinance 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	First Reading	
November 17, 2016	No quorum	
November 29, 2016	Tabled 3-2 (Edelman, Deady)	

December 15, 2016	Motion to remove from agenda – 3-2(Edelman, Deady)
January 19, 2017	

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, its 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 _____, 2017.

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 Cost Impact - N/A Fund Source: -- Timeline: 10 year agreement	Agenda Date: January 19, 2017	
	AB17-007	
	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 17- xxx; Overview		
SUMMARY STATEMENT: Councilmembers Edelman and Deady have placed this item on the agenda. 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. 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. 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. 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	First Reading	
November 17, 2016	No quorum	

November 29, 2016	Tabled 3-2 (Edelman, Deady)
December 15, 2016	Removed from agenda. 3-2 (Edelman, Deady)
January 19, 2017	

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:

Table of Contents.

ARTICLE 1. DEFINITIONS

ARTICLE 2. FRANCHISE GRANT

- 2.1 Public Right-of-Way Use Authorized
- 2.2 Authorized Services
- 2.3 No Rights Shall Pass to Franchisee by Implication
- 2.4 Interest in the Public Right-of-Way; Release; Indemnity
- 2.5 Rights Subordinate

- 2.6 Condition of Franchise Area
- 2.7 Franchise Nonexclusive
- 2.8 Transfer
- 2.9 Street Vacation
- 2.10 Reservation of City Use of Public Right-of-Way

ARTICLE 3. COMPLIANCE WITH LAWS/ORDER OF PRECEDENCE

- 3.1 Alteration of Material Terms and Conditions
- 3.2 Compliance with Laws
- 3.3 Reservation of Rights/Wavier
- 3.4 Change in Form of Government

ARTICLE 4. ACCEPTANCE

- 4.1 Acceptance
- 4.2 Failure to Timely File Acceptance
- 4.3 Effective Date; Term
- 4.4 Effect of Acceptance
- 4.5 Effect of Expiration/Termination

ARTICLE 5. PROTECTION OF THE CITY AND PUBLIC

- 5.1 Limitation of Liability
- 5.2 Insurance Requirements – Attached Exhibit D
- 5.3 Financial Security – Attached Exhibit E
- 5.4 Contractors/Subcontractors
- 5.5 Liens
- 5.6 Financial Conditions

ARTICLE 6. ENFORCEMENT AND REMEDIES

- 6.1 Communications and Discussion
- 6.2 Remedies
- 6.3 Right to Cure Default
- 6.4 Termination/Revocation
- 6.5 Receivership

ARTICLE 7. GENERAL CONDITIONS UPON USE OF PUBLIC RIGHTS-OF-WAY

- 7.1 Regulatory Permit
- 7.2 Submission; Approval of Design Documents
- 7.3 Compliance with Standards/Codes
- 7.4 Conditions Precedent to Work
- 7.5 Work in the Public Rights-of-Way
- 7.6 Alterations

- 7.7 General Conditions
- 7.8 Facility Relocation at Request of the City
- 7.9 Movement of Facilities for Others
- 7.10 Movement of Facilities During Emergencies
- 7.11 Record of Installations
- 7.12 Restoration of Public Rights-of-Way, Public and Private Property
- 7.13 Approvals
- 7.14 Abandonment of Facilities

ARTICLE 8. MISCELLANEOUS

- 8.1 Headings
- 8.2 Entire Agreement
- 8.3 Incorporation of Exhibits
- 8.4 Calculation of Time
- 8.5 Time Limits Strictly Construed
- 8.6 No Joint Venture
- 8.7 Approval Authority
- 8.8 Binding Effect upon Successors and Assigns
- 8.9 Waiver
- 8.10 Severability
- 8.11 Signs
- 8.12 Discriminatory Practices Prohibited
- 8.13 Notice
- 8.14 Survival of Terms
- 8.15 Force Majeure
- 8.16 Attorneys' Fees
- 8.17 Venue/Choice of Law
- 8.18 Publication

EXHIBITS:

- A. Form of Acceptance of Franchise
- B. Form of Transfer Agreement
- C. Description of Franchise Area
- D. Insurance Requirements
- 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 _____, 2017, AND SIGNED IN AUTHENTICATION OF
ITS PASSAGE THIS _____ DAY OF _____, 2017.**

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.

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: **
 **
 **
 **

Field Code Changed
Field Code Changed

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.

DRAFT

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.

DRAFT

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.

DRAFT

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:	Agenda Date: January 19, 2017	AB17-008
Resolution authorizing the yearly addendum to the Agreement with Valley Communications for Dispatch Services	Mayor Carol Benson	
	City Administrator	
	City Attorney David Linehan	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res –	
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	
Cost Impact (see also Fiscal Note): \$0.14 increase	Police – Chief Kiblinger	X
Fund Source: --General Fund	Public Works – Seth Boettcher	
Timeline: 2017	Court – Stephanie Metcalf	
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input checked="" type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Resolution; addendum		
SUMMARY STATEMENT: Councilmembers Deady and Edelman have placed this item on the agenda. This is our yearly addendum to our contract with Valley Communications for Dispatch Services. Price per call increases from \$40.65 to \$40.79. FISCAL NOTE (Finance Department): This increase was anticipated and included in the 2017 Budget.		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: MOTION to adopt a resolution authorizing the Mayor to execute the addendum to the contract with Valley Communications for Dispatch Services.		
RECORD OF COUNCIL ACTION		
Meeting Date	Action	Vote
January 19, 2017		

RESOLUTION NO. 17-XXXX

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON,
AUTHORIZING THE MAYOR TO EXECUTE AN
ADDENDUM TO THE AGREEMENT FOR POLICE SERVICE
FOR VALLEY COMMUNICATIONS FOR 2017**

WHEREAS, the City is authorized by Chapter 39.34 RCW to enter into agreements with other governmental jurisdictions; and

WHEREAS, currently the City of Black Diamond Police Department contracts with Valley Communications for Dispatch Services;

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

Section 1. The Mayor is hereby authorized to execute an Addendum to the Emergency Dispatch Agreement for Police Service with Valley Communications for 2017 in the form as attached hereto as Exhibit A.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS ____ DAY OF JANUARY, 2017.

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk



A NATIONALLY ACCREDITED COMMUNICATIONS CENTER

EXHIBIT "A"
to the
AGREEMENT
by and between
VALLEY COMMUNICATIONS CENTER
and
BLACK DIAMOND POLICE DEPARTMENT

This **EXHIBIT** is supplemental to the **AGREEMENT** between **VALLEY COMMUNICATIONS CENTER** and **BLACK DIAMOND POLICE DEPARTMENT**

This appendix shall remain in effect from **January 1, 2017** thru **December 31, 2017**.

- A.1 The rate shall be **Forty Dollars and Seventy Nine Cents (\$40.79)** for each dispatchable call.
- A.2 ACCESS user fees will be charged on a quarterly basis determined by user agency transaction count. Transactions for any given calendar year are used to determine fees for two years past the year when the transaction count was taken.

Signed this **28th** day of **December, 2016**.



LORA UELAND
EXECUTIVE DIRECTOR

MAYOR



CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT:	Agenda Date: January 19, 2017	AB17-009
Resolution authorizing the purchase of four new police vehicles.	Mayor Carol Benson	
	City Administrator	
	City Attorney David Linehan	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res –	
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	
	Police – Chief Kiblinger	X
Cost Impact (see also Fiscal Note): \$180,000 (not to exceed)	Public Works – Seth Boettcher	
Fund Source: REET (CIP) and Interfund loan from sewer capital and reserve fund	Court – Stephanie Metcalf	
Timeline: ASAP		
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		
<p>SUMMARY STATEMENT:</p> <p>Councilmembers Deady and Edelman have placed this item on the agenda.</p> <p>This resolution is for the purpose of purchasing four new police vehicles. In 2006 the City of Black Diamond established a cycle to replace vehicles on a scheduled basis but due to budget constraints were not able to follow the scheduled replacement for over four years.</p> <p>This has resulted in having costly repair bills, significant down time for both staff and vehicles in order to transport these vehicles to/from the repair shop, and officer safety issues as vehicles have broken down during calls for service.</p> <p>The City included the cost of the four police replacement vehicles in the 2017-2022 Capital Improvement Plan and in the 2017 preliminary budget; and</p> <p>The City Council passed Ordinance NO. 16-1078 on December 15, 2016, providing for an inter-fund loan from the sewer capital and reserve fund to the equipment placement fund to provide funding for the replacement of four police vehicles in 2017; providing for repayment and providing for termination.</p> <p>FISCAL NOTE (Finance Department): The Funds for the four Police Cars have been included in the 2017 Budget. The replacement of patrol vehicles should reduce police vehicle maintenance expenditures during 2017.</p>		

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:

RECOMMENDED ACTION: **MOTION to adopt a resolution authorizing the purchase of four new police vehicles through Emergency Vehicle Solutions LLC,; not to exceed \$180,000.**

RECORD OF COUNCIL ACTION

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
January 19, 2017		

RESOLUTION NO. 17-XXXX

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON,
AUTHORIZING THE PURCHASE OF FOUR NEW POLICE
VEHICLES**

WHEREAS, in 2006 the City of Black Diamond established a cycle to replace vehicles on a scheduled basis but due to budget constraints were not able to follow the scheduled replacement for over four years; and

WHEREAS, the police department has identified the need to replace four police vehicles in 2017, several with over 120,000 miles and currently having costly repair bills; and

WHEREAS, the replacement of the four police vehicles in January 2017 will provide officers with reliable vehicles in order to respond to emergencies and will save the city money currently being spent in costly repair bills and significant staff time transporting these vehicles; and

WHEREAS, the City included the cost of the four police replacement vehicles in the 2017-2022 Capital Improvement Plan and in the 2017 budget; and

WHEREAS, the City Council passed Ordinance No. 16-1078 on December 15, 2016, providing for an inter-fund loan from the sewer capital and reserve fund to the equipment placement fund to provide funding for the replacement of four police vehicles in 2017; providing for repayment and providing for termination;

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

Section 1. The police department is hereby authorized to purchase four police vehicles through Emergency Vehicle Solutions LLC, not to exceed \$180,000.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS ____ DAY OF JANUARY, 2017.

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT:	Agenda Date: January 19, 2017	AB17-010
Resolution accepting grant award in the amount of \$11,738.23 with a local match requirement of \$6,036.25 from the Washington State Parks and Recreation Commission, Recreational Boating Safety Program.	Mayor Carol Benson	
	City Administrator	
	City Attorney David Linehan	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res –	
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	
	Police – Chief Kiblinger	X
	Public Works – Seth Boettcher	
Cost Impact (see also Fiscal Note): \$	Court – Stephanie Metcalf	
Fund Source: --		
Timeline:		
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input checked="" type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Resolution; Agreement		
SUMMARY STATEMENT: Councilmembers Deady and Edelman have placed this item on the agenda.		
<p>On January 10th, 2017, the City of Black Diamond was notified that they were awarded \$11,738.23 from the Washington State Parks and Recreation Commission, Recreational Boating Safety Program to assist the police department with law enforcement on Lake Sawyer.</p>		
<p>The City is required to provide a local match requirement of 50% or \$6,036.25. This local match will come from already budgeted items in the police department's portion of the general fund; training, salaries, and educational supplies etc.</p>		
<p>This is an award that the police department has received numerous times. It allows the police department to provide education and enforcement in several areas in order to protect the lives and property of persons boating on Lake Sawyer.</p>		
<p>Grant awards may be utilized for the purchase, maintenance, and operation of vessels, marine equipment, educational materials, and marine related personnel salaries.</p>		
<p>This is time sensitive due to the application and approval must be completed, submitted and postmarked by January 31st, 2017 (see page 28.)</p>		
<p>FISCAL NOTE (Finance Department): The Grant Revenue and Expenditures of \$11,738.21 will need to be added to the 2017 Budget as an amendment during 2017. The Matching Salaries are already included in the 2017 Budget. This Grant provides Funds for needed summer Marine training, supplies and Marine Patrol at Lake Sawyer.</p>		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:		

RECOMMENDED ACTION: **MOTION** to adopt a resolution accepting grant award in the amount of **\$11,783.23** with a local match requirement of **\$6,036.25** from the Washington State Parks and Recreation Commission, Recreational Boating Safety Program.

RECORD OF COUNCIL ACTION

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
January 19, 2017		

RESOLUTION NO. 17-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON TO ACCEPT AN AWARD FROM THE WASHINGTON STATE PARKS AND RECREATION COMMISSION RECREATIONAL BOATING PROGRAM FEDERAL FINANCIAL ASSISTANCE GRANT PROGRAM, FOR THE YEAR 2017, IN THE AMOUNT OF \$11,738.23, WITH A LOCAL MATCH REQUIREMENT OF \$6,036.25.

WHEREAS, the Washington State Parks and Recreation Commission, Recreational Boating Safety Program is authorized by law to administer grant funds to local law enforcement agencies who are in Approved Program status; and

WHEREAS, the City of Black Diamond has an approved boating program with the Washington State Parks and Recreation Commission; and

WHEREAS, the Washington State Parks has awarded the City of Black Diamond a 2017 Federal Financial Assistance Grant in the amount of \$11,738.23 with a local match requirement of 50% or \$6,036.25; and

WHEREAS, the local match requirement will be provided through the Police Department's portion of the General Fund; and

WHEREAS, this has been an award to the police department in order to assist in law enforcement on Lake Sawyer; and

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

Section 1. The City of Black Diamond is hereby authorized to execute any documents necessary to accept the award of a 2017 Federal Financial Assistance Grant, from the Washington State Parks and Recreation Commission, Recreational Boating Safety Program in the amount of \$11,738.23, with a local match requirement of \$6,036.25.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS __ DAY OF ____, 2017.

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk

Washington State Parks & Recreation Commission 2017
Marine Patrol Federal Financial Assistance Grant Program

WASHINGTON STATE PARKS & RECREATION COMMISSION

RECREATIONAL BOATING PROGRAM

FEDERAL FINANCIAL ASSISTANCE GRANT PROGRAM

APPLICATION AND GUIDELINES



Washington State Parks & Recreation Commission 2017 Marine Patrol Federal Financial Assistance Grant Program

INTRODUCTION

The Washington State Parks and Recreation Commission, Recreational Boating Safety Program is authorized by law to administer grant funds to local law enforcement agencies who are in Approved Program status. Agencies must meet the minimum Approved Program requirements of WAC 352-65 and have an updated P&R A-299 (Rev 10/2016) on file with State Parks to be considered eligible to apply for the Federal Financial Assistance Grant for FFY 2017.

Under this grant program, the purpose of a marine patrol unit is to enforce RCW 79A.60 Regulation of Recreational Vessels. Provide emergency response to boating accidents that occur on the water. Each marine patrol should serve to protect the lives and property of persons participating in recreational boating in this state. All grants are awarded based on the potential success and ability of the marine patrol to provide such service to the boating community. Established marine patrols are evaluated using the grant criteria published in this document as well as its ability to meet the requirements and assurances of WAC 352-65 Boating Safety Program Approval.

Grants are awarded on a cost share basis. Only those agencies willing to provide matching funds of a 100% match of their allocated Vessel Registration Fees if that allocation is \$10,000.00 or less, or 50% match of their allocated Vessel Registration Fees if that allocation is \$10,001.00 or more. The grants may be utilized for the purchase, maintenance, and operation of vessels, marine equipment, education materials, and personnel salaries.

Agencies that do not report local expenditures on the annual *Vessel Registration Fee Expenditure Report* are not eligible to apply for the grant.

The grant guidelines contained within this booklet explain the application process. The booklet is designed as a fill-in document so that information may be entered without disrupting the overall format of the document.

The 2017 application must be postmarked on or prior to close of business Tuesday, January 31st, 2017. Extensions of this deadline will not be granted.

Contact Hoyle Hodges at 360-902-8835 for questions regarding the Federal Financial Assistance Grant. Additional contacts for the Recreational Boating Safety Program are located on page 4 of this booklet.

On behalf of the WSPRC Recreational Boating Program, thank you for your interest in the Federal Financial Assistance Grant Program.

Washington State Parks & Recreation Commission 2017 Marine Patrol Federal Financial Assistance Grant Program

Table of Contents

Introduction.....	2
Contacts.....	4
SECTION 1 - PROGRAM INFORMATION	5
Authority to Provide Funding	5
Approved Program Status	6
Determining Funding.....	6
Allowable Costs And Expenditures.....	9
Non-Allowable Costs and Expenditures	15
SECTION 2 - REQUIREMENTS AND TIMELINE FOR GRANT DOCUMENTS.....	16
Timeline for FFY 2017 Grant Documents	16
FY 2017 Grant Document Checklist.....	16
SECTION 3 FY 2017 GRANT APPLICATION	17
Local Funding Match: MLE Funding Eligibility Requirements.	17
Prevention Plan Part 1 -.....	18
Assessment, Identification, Goals	18
Prevention Plan Part 2 -.....	19
Tasks, Tactics, Media	19
Instructor Information.....	24
Participation in Meetings	24
Training / Currency.....	24
FY 2017 Federal Financial Assistance Grant Awards	25
SECTION 4 - ADDITIONAL BILLING AND ADMINISTRATIVE INFORMATION	26
Authorized Signature.....	28

Washington State Parks & Recreation Commission 2017
Marine Patrol Federal Financial Assistance Grant Program

CONTACTS

Washington State Boating Law Administrator

Wade Alonzo

Office: 360-902-8836

Mobile: (360) 628-1876

wade.alonzo@parks.wa.gov

Marine Law Enforcement Coordinator

Hoyle Hodges

Office: 360-902-8835

Mobile: 360-628-4920

Hoyle.Hodges@parks.wa.gov

Education Coordinator

Derek Van Dyke

Office: 360-902-8842

Mobile: 360-628-3260

derek.vandyke@parks.wa.gov

Accidents and Reporting

Sherri Sweeney

Office: 360-902-8845

Sherri.Sweeney@parks.wa.gov

Fiscal Analyst

Kat O'Kelly

Office: 360-902-8843

Kat.OKelly@parks.wa.gov

Communications Consultant

Christina Fremont

Office: 360-902-8837

Christina.Fremont@parks.wa.gov

IT/Applications Specialist

Art Brown

Office: 360-902-8839

Art.Brown@parks.wa.gov

SOAR Reports

Cheri Peel

Office: 360-902-8846

Cheri.Peel@parks.wa.gov

Mailing Address

Washington State Parks

Recreational Boating Program

1111 Israel Rd. SW

P.O. Box 42650

Olympia, WA. 98504-2650

Washington State Parks & Recreation Commission 2017 Marine Patrol Federal Financial Assistance Grant Program

SECTION 1 - PROGRAM INFORMATION

AUTHORITY TO PROVIDE FUNDING

RCW 79A.05.310

Powers and duties — Program of boating safety education — Casualty and accident reporting program.

The state parks and recreation commission shall:

(1) Coordinate a statewide program of boating safety education using to the maximum extent possible existing programs offered by the United States power squadron and the United States coast guard auxiliary;

(2) Adopt rules in accordance with chapter 34.05 RCW, consistent with United States coast guard regulations, standards, and precedents, as needed for the efficient administration and enforcement of this section;

(3) Enter into agreements aiding the administration of this chapter;

(4) Adopt and administer a casualty and accident reporting program consistent with United States coast guard regulations;

(5) Adopt and enforce recreational boating safety rules, including but not necessarily limited to equipment and navigating requirements, consistent with United States coast guard regulations;

(6) Coordinate with local and state agencies the development of biennial plans and programs for the enhancement of boating safety, safety education, and enforcement of safety rules and laws; allocate money appropriated to the commission for these programs as necessary; and accept and administer any public or private grants or federal funds which are obtained for these purposes under chapter 43.88 RCW; and

(7) Take additional actions necessary to gain acceptance of a program of boating safety for this state under the federal boating safety act of 1971.

[1998 c 245 § 66; 1994 c 151 § 3; 1984 c 183 § 4; 1983 2nd ex.s. c 3 § 52. Formerly RCW 43.51.400.]

Notes:

Penalties for violations: RCW 88.02.380.

Washington State Parks & Recreation Commission 2017 Marine Patrol Federal Financial Assistance Grant Program

APPROVED PROGRAM STATUS

Only those law enforcement agencies with a current and up to date Boating Safety Program Approval form P&R A-299 (Rev 10/2016) on file with State Parks Recreational Boating Program are considered approved programs.

These programs are required to meet all of the Required Assurances provided for in WAC 352-65 Boating Safety Program Approval.

- Boating accident reporting and investigation
- Boater assistance
- Training
- Rules and regulations
- Enforcement
- Boating safety education and information
- Waterway marking
- Boating safety inspections
- Reports
- Limitations on use of funds

Failure to maintain approved program status makes law enforcement agencies ineligible to apply for or receive Federal Financial Assistance Grant funds.

DETERMINING FUNDING

- At our foundations, we are an injury prevention program. As such, we seek to work with our partners in law enforcement to reduce recreational boating injuries and accidents and increase the chances that all boaters go home at the end of the day.
- We wholeheartedly believe in the ability of local law enforcement officers to make a difference working within their communities by collaborating with community leaders, stakeholders and volunteer organizations on community based solutions; to act as teachers to their boaters seeking compliance with the law at the lowest level possible, guardians for those in crisis on the water and a visible deterrent to those that would knowingly violate Washington boating safety laws.
- We strive to provide adequate funding, technical support and the very best training to Washington's corps of maritime officers so that they are equipped with the vessels, equipment, and most importantly the skills necessary to safely, confidently and competently perform the duties that the citizens of Washington expect and deserve.

Washington State Parks & Recreation Commission 2017 Marine Patrol Federal Financial Assistance Grant Program

- We embrace our role as good stewards of public funds. As such, we:
 - Expect a high level of performance from those partners to whom we provide funding.
 - Devote our limited financial resources where additional resources are most needed to prevent boating accidents even though this may not result in a uniform distribution.
 - Seek financial partnership with all law enforcement partners defined by the contribution of financial resources by both parties to achieve our common mission.

For FY 2017 State Parks and the Marine Law Enforcement Committee have no changes to the criteria used to determine award amounts.

2017 Grant Eligibility Criteria for Equal Share of 60% of Funds (\$420,000)

1. Local funding match:
 - a. 100% match requirement if agency receives \$10,000 or less of vessel registration fees. Example: if an agency receives \$6,000 in vessel registration fees, they must show \$6,000 in local funding devoted to the marine law enforcement program.
 - b. 50% match requirement if agency receives more than \$10,000 in vessel registration fees. Example: If an agency receives \$20,000 in vessel registration fees, they must show \$10,000 in local funding devoted to the marine law enforcement program.
2. Approved Prevention Plan: A plan that includes:
 - a. An assessment of the highest priority recreational boating risks and hazards within the jurisdiction based on accident data, any other relevant data, and best professional judgment.
 - b. Identification of highest priority audiences: Based on data in subsection (a) identify the demographic groups of boaters that are the highest priority for prevention efforts and the specific behaviors that, if changed, would result in fewer boating accidents or fatalities.
 - c. Measureable prevention goals for the end of the current year - FY 2017.
 - d. Tactical prevention plan: A plan that describes how the jurisdiction will use a mix of the following tactics to influence the behavior of the target audiences. Not all may be necessary. Tactics must be clearly tied to the goals of the plan and target audiences. Each tactic should include a measureable performance goal.
 - i. Patrol plans, emphasis patrols, and enforcement policies
 - ii. Safety Inspections
 - iii. Education classes

Washington State Parks & Recreation Commission 2017 Marine Patrol Federal Financial Assistance Grant Program

- iv. Community events
 - v. Presentations to groups or schools
 - vi. Outreach to boaters through a mix of media, including but not limited to traditional media (i.e. press releases) or outreach channels of the agency or its partners and stakeholders including websites, newsletters, outbound email marketing, and social media.
 - vii. Participation in community forums, drowning prevention cooperatives, safe kids groups, or other injury prevention based partnerships that results in the jurisdiction's ability to leverage the resources and expertise of other community groups to help reduce recreational boating accidents.
 - viii. Local ordinances
3. Instructors: The jurisdiction must be willing to provide marine law enforcement instructors if requested by State Parks that are able to attend instructor training and then teach up to 40 hours of classes for three years.
4. Participation in meetings: The lead marine officer identified by the agency must attend all meetings and conferences convened by State Parks.
5. Advanced Training / Currency: Agencies must ensure that all marine officers identified in their roster have received all advanced training required by State Parks.

2017 Grant Allocation Criteria of 40% of Funds (\$280,000)

1. Boat Launches Lanes (Access) – the agency will provide the total number of boat launch lanes providing access to water bodies patrolled by the agency. State Parks will augment the data provided by agencies with information gathered from WDFW and RCO on public boat launches. 10% of the funds will be allocated based on each agency's percent of the total boat launch lanes.
2. Surface Acres of Patrolled Waters – Based on the survey of patrolled water bodies conducted June and July 2014, State Parks will use geographic information systems to calculate the total surface acres of water patrolled by the jurisdiction agency. 10% of the funds will be allocated based on each agency's percent of the total acres of patrolled water.
3. Boating Accidents – State Parks will calculate the total number of reportable boating accidents that occurred during Federal FY 2016 within the agency's jurisdiction. State Parks will include all accidents documented and submitted to State Parks as Boating Accident

Washington State Parks & Recreation Commission 2017 Marine Patrol Federal Financial Assistance Grant Program

Reports (State Parks Form A-440) or Boating Accident Investigation Reports (State Parks Form A-425). 10% of the funds will be allocated based on each agency's percent of the total accident reports.

4. Boat Log Hours – State Parks will calculate based on data submitted by the agency from the SOAR for Federal FY 2016. This is not a measure of total officer hours but boat patrol hours. 10% of the funds will be allocated based on each agency's percent of the total boat log hours submitted.
5. Assists and Search and Rescues – State Parks will calculate based on data submitted by the agency from the SOAR the total number of documented assists and search and rescues reported in the prior five calendar years. 10% of the funds will be allocated based on each agency's percent of the total assists and search and rescues reported.
6. Inspections – State Parks will summarize the total number of written inspections conducted in the prior calendar year from data submitted by the agency in the SOAR or obtained from SECTOR. 20% of the funds will be allocated based on each agency's percent of the total number of inspections reported.
7. Accuracy and Timeliness of Paperwork – State Parks will monitor the accuracy and timeliness of submittal of SOARs, grant billings and accident reports by marine law enforcement programs. Scored as follows – All paperwork submitted on time = 2 points. Any late submissions = 1. No paperwork / reports submitted on time = 0. 70% of the funding will be set aside for this category among agencies with a score of 2. 30% of the funding will be allocated equally among all agencies with a score of 1. No funding will be allocated among agencies with a score of zero.
8. Prevention Goals Met: 20% of funds will be allocated equally among agencies that meet all the goals stated in their approved prevention plans. Note: For 2016, funds for the Prevention Plan are being allocated equally among all eligible agencies.

ALLOWABLE COSTS AND EXPENDITURES

Vessel Registration Fees & Grant Funding

If an item is not listed that local government determines is a valid Recreational Boating Safety expenditure, it is not considered acceptable until reviewed and found acceptable by Washington State Parks.

UNIT COST APPROVAL

Washington State Parks & Recreation Commission 2017 Marine Patrol Federal Financial Assistance Grant Program

- Items with a unit cost of \$5,000 or more must have the prior written approval of Washington State Parks and Recreation Commission MLE Coordinator.

COST PRORATION

If a cost benefits both your RBS program and other work of your agency, the cost should be allocated to the RBS Program based on the proportional benefit to the program. The costs may be allocated using any reasonable documented method.

Allowable Expenditures

Grant funds may be used only for activities under WAC 352-65-040, the ten elements necessary to accomplish the Recreational Boating Safety (RBS) mission. If it is unclear if an expense meets these criteria, contact State Parks at (360) 902-8845 or sherri.sweeney@parks.wa.gov to discuss the item before proceeding. **Grant funds may not be used for indirect costs.**

Allowable expenses include but are not limited to:

1. RBS SALARIES:

- Officer time, salaries, benefits and wages for CJTC trained full-time and reserve personnel who have completed a RBS course acceptable to State Parks (BMLE or equal)
- Officer time, salaries, benefits and wages for CJTC trained full-time and reserve personnel who have not completed a BMLE course ONLY when working with an RBS trained officer AND when the agency has a written 'two-officer' policy for officers on marine patrol for the purpose of officer safety

2. RBS EDUCATION AND INSTRUCTION:

Providing instruction classes in the state instruction class *Adventures in Boating* that qualifies graduates for the required mandatory boater education card. Costs may include classroom supplies, light refreshments, other goods and services necessary to promote and teach classes, and officer salaries, benefits and wages. Officer salaries will only be reimbursed for those officers who have successfully completed a State Parks *Adventures in Boating* Instructor Training class and are listed on our files.

Lifejackets (USCG approved only) for the state *Adventures in Boating* course and other RBS presentations; includes lifejackets, throw rings/cushions for loaners and the cost to print only the agency's name and/or RBS safety messages.

3. RBS TRAINING:

Grant funds can be used to pay for training provided by Washington State Parks or State Parks approved courses. **Note: Approval from State Parks is mandatory if an Officer or Deputy is applying for a Non-WA RBS Course. Examples of approved courses include:**

Washington State Parks & Recreation Commission 2017 Marine Patrol Federal Financial Assistance Grant Program

- Training courses for full-time and reserve officers who have completed CJTC basic training academy or equivalent)
 - Courses include Basic Marine Law Enforcement –CJTC 0460 (40 hours) or equivalency
 - Boating Under the Influence (24 hour course at NASBLA standard)
 - Personal watercraft operation – flat-water and swift water
 - Vessel sound level measurement training (8 hours to WSP&RC standard)
 - Accident reporting and investigation course training (40 hours to NASBLA standard)
 - Other USCG training on case-by-case basis
- Per Diem travel expenses at state per diem rate in effect for the destination (at state per diem rate if local rate is higher) RBS training, conferences, and meetings. Cost is prorated for percentage of travel /per diem for RBS purposes /missions only.

4. RBS EQUIPMENT:

Purchase, maintenance, and operation of patrol boats and patrol boat equipment to perform the RBS elements in WAC 352-65-040 only. All decisions by State Parks for equipment purchases shall be final.

PATROL VESSELS

- Motors and hardware
- Props
- Trailers and maintenance of trailers (repair, tires, winch, cables, power take-off)
- Patrol vessel and engine drive system repairs
- Repair and replacement of equipment on boat (includes de-watering pumps which can also be used as fire-fighting equipment)
- Tow vehicles (dedicated for 100% RBS use, or the percentage of time used for RBS activities; only for dedicated vehicles to RBS, not for application to an agencies fleet)
- Hitch assemblies and installation cost for tow vehicles that are dedicated for 100% RBS use or the percentage of time used for RBS activities (only for dedicated vehicles to RBS, not for application to agency fleet vehicles)
- Anti-freeze fluid
- Batteries and fluid; maintenance and replacement
- Costs related to the maintenance and repair of the vessel
- Costs related to marking and identifying patrol vessels as government owned;
 - Includes painting, decals and cost of removal and application

Washington State Parks & Recreation Commission 2017 Marine Patrol Federal Financial Assistance Grant Program

- Electrical system repairs and replacement
 - Electronic devices – parts and labor for the maintenance, repairs to maintain, or replacement when devices fail, or are no longer serviceable, or when upgrades are required to meet customary and current standards for LE work;
 - Includes devices dedicated to the program such as agency & VHF radios
 - Radar units
 - Sirens
 - Blue lighting equipment
 - Hailers
 - Global positioning system (GPS) units
 - Personal breath testers (PBT)
 - Cell phones for 100% RBS use only, or percentage of time used on boat
 - Battery chargers and computers dedicated to program use
 - Includes brackets/fittings for installation and use
- Fluids for hydraulic system
- Fuel, fuel additives/filters; associated disposal fees
- Gear oil for lower units
- Glass replacement and costs to install; associated disposal fees
- Grease and lubricants
- Oil and oil filters; associated disposal fees
- Parts and labor for regular scheduled maintenance and scheduled replacement
- Parts for replacement on the vessel when failure occurs or when damaged and labor;
 - Includes engine, lower unit and cooling system repairs and replacement
- Vessel canvas tops and side covers; includes repairs and replacement of canvas/vinyl/plastic material and framing structures
- Vessel hull and structural repairs/replacement of railings, pilot house, decks, cleats, ladders, swim platforms, Sampson posts, fittings, towing equipment, davits, anchors, chain, and associated hardware and fittings

Washington State Parks & Recreation Commission 2017 Marine Patrol Federal Financial Assistance Grant Program

ASSOCIATED EQUIPMENT FOR PATROL VESSELS

- Cost of emergency response and rescue equipment repair, replacement and maintenance;
 - Includes stretchers, first aid/first responder kits and materials, fire suppression equipment and supplies
- Cost of fees related to cell phone charges, annual registration charges, renewal fees, and insurance are prorated for percentage of time used performing RBS missions.
- Cost of haul-outs and associated costs with cleaning and maintenance of hull, fixtures and drive systems; associated disposal fees
- Costs related to moorage, including cost of water/electricity associated with maintenance & moorage
- Cost of required safety equipment on the vessel when replacement, repair, or regular maintenance is needed to meet state/federal regulations and maintain USCG standards;
 - Includes life jackets, replacement parts (clips, hooks, CO2 cartridges and re-arm kits) and stenciling/screening of agency name or law enforcement
 - Exposures suits
 - Fire extinguishers/extinguishing systems
 - Visual distress signals
 - Navigation lights
 - Sounding devices
 - Ventilation systems
 - Backfire flame arrestor
- Cost of replacement, repair, or regular maintenance of equipment used during operation and moorage;
 - Fenders
 - Line – for towing and mooring.
 - Chafing gear
 - Boat hooks
 - Towing equipment
 - Bilge pumps
 - Batteries
 - Navigation charts

Washington State Parks & Recreation Commission 2017 Marine Patrol Federal Financial Assistance Grant Program

- Piloting equipment
- Helm fixtures and seats
- Log books
- Depth sounders & radar; does not include FLIR systems
- Portable fuel tanks and hoses

PATROL VESSEL TRAILERS

- Costs related to maintenance and repair of patrol vessel trailer(s)
- Cost of tires and wheels; includes installation, repair, and balancing; associated disposal fees
- Electrical system maintenance, repair and replacement
- Hitch and ball repair/replacement
- Hydraulic/electric brake system maintenance, repair and replacement
- Oil, grease & lubricants; associated disposal fees
- Winch maintenance, repair and replacement

BOAT EQUIPMENT

- Anchors
- Line for towing and mooring
- Chain/shackles and attachment hardware
- Carabineers
- Boat hooks
- Fire extinguishers (only USCG approved)
- Fenders
- Depth finders
- Radar units; does not include FLIR systems
- Radios & computers (dedicated for 100% RBS use, or the percentage of time used for RBS activities)
- Lines for tie up
- Light bars – blue lights only (no red, white or yellow lights)
- Sirens
- Cost of installation and servicing of electronic components
- Canvas and siding for weather protection

Washington State Parks & Recreation Commission 2017 Marine Patrol Federal Financial Assistance Grant Program

- Haul out for cleaning/painting/servicing patrol vessels
- First-aid kits (dedicated for 100% RBS use, or the percentage of time used for RBS activities)
- Rescue throw bags for use on boats only

NAVIGATION AIDS & BUOYS

- Navigation signs & markers (to meet RCW 79A.60.500 and WAC 352-67)
- Decals for buoys
- Chain
- Cable & connectors
- Weights
- Equipment to maintain buoys & signs to remain effective

EDUCATION

- Publications to promote RBS education that are already prepared or the creation, design and printing of publications
- Education equipment related to required boating safety equipment for recreational boats
- Promotion of *Adventures in Boating* classes (including presentation materials, light refreshments, and room rental for classes)

NON-ALLOWABLE COSTS AND EXPENDITURES

- Bullet proof vests are beneficial however State Parks sees that because all officers work on land the majority of the time for which they are paid, equipment of this nature is not essential for meeting the established criteria in WAC 352-65-040 nor is it related to the performance of Recreational Boating Safety program mission and is considered a local agency responsibility to purchase.
- Equipment used in recovery operations (dive equipment, side scan sonar, etc.) while being used in a search or investigation mode are 100% eligible, once this equipment is used for recovery operations it is no longer an allowable expense. This type of equipment cost is normally prorated between RBS missions and recovery missions. Homeland security missions (night vision equipment, weapons, etc.), or any other equipment determined as unrelated by State Parks is not an allowable expense.

Note: Grant funds cannot be used for indirect costs.

Washington State Parks & Recreation Commission 2017 Marine Patrol Federal Financial Assistance Grant Program

SECTION 2 - REQUIREMENTS AND TIMELINE FOR GRANT DOCUMENTS

State Parks Recreational Boating Program requires that each applicant abide by all deadlines established in this booklet. This booklet will be made available each year with ample time to return the required documents. Failure to meet the identified deadlines will disqualify that agency / applicant and they will be removed from further consideration for assistance.

Incomplete or inaccurate documents shall be penalized for the following years grant allocation under the scoring system for accuracy and timeliness of paperwork and reporting. Documents that are incomplete or contain errors delay the evaluation of all the applicants. Please ensure that you follow all instructions and only provide the information that is requested.

Please ensure that all documents submitted have the appropriate signatures. The individual who signs the documents is accountable for all the information provided on these documents.

E-Mail documents to: hoyle.hodges@parks.wa.gov

Mail signed original documents to: Washington State Parks
Recreational Boating Program
Attn: Hoyle Hodges
1111 Israel Rd. SW
P.O. Box 42650
Olympia, WA. 98504-2650

NOTE: E-mailed documents with scanned original signatures will be sufficient for meeting turn in deadlines. Original paper copies should still be mailed to State Parks for an agency to be considered complete on grant paperwork and documents.

TIMELINE FOR FY 2017 GRANT DOCUMENTS

FY 15 Grant Applications and Supporting Documents are due: **Tuesday, 31 January 2017**

FY 2017 GRANT DOCUMENT CHECKLIST

1. P&R A-300 Federal Financial Assistance Grant Application
2. P&R A-299 Boating Safety Program Approval
3. Budget document proving match requirement is met.

Washington State Parks & Recreation Commission 2017 Marine Patrol Federal Financial Assistance Grant Program

SECTION 3 - FY 2017 GRANT APPLICATION

LOCAL FUNDING MATCH: MLE FUNDING ELIGIBILITY REQUIREMENTS.

- a) 100% match requirement if agency receives \$10,000 or less of VRF fees.
- b) 50% match requirement if agency receives more than \$10,000 in VRF fees.
- c) State Parks feels the most successful RBS programs have support in their local communities. The clearest sign of support is the amount of funds budgeted by county commissioners or city councils for local RBS programs. State Parks is prioritizing its federal assistance grants for communities that have made RBS programs a priority by budgeting local dollars for their program. State Parks does not want to discourage or prevent a community that has made marine law enforcement a priority from receiving federal assistance grants, however State Parks 1) would like to increase the local commitment for funding boating safety and 2) is unable to fund local marine law enforcement programs by itself so it is prioritizing funding to those communities that can provide a local match. The documentation of local match should show what local funds have been budgeted for the agency's marine law enforcement program for 2017 – the same funds that when spent, would be reported in the vessel registration expenditure report. For the purposes of the financial assistance grants application, State Parks would accept an official budget document on agency letterhead, signed by the police chief or sheriff as evidence of the financial commitment made by the community and would suffice to meet the match requirement for the 2017 federal assistance grants. State Parks is only considering locally provided funds as match. Other grant funds or in-kind contributions would not meet these criteria.
- d) Your agency's match requirement for 2017 is: \$6,036.25

Describe the agency's match category (100% or 50%) and how those local matching funds will be used.

Washington State Parks & Recreation Commission 2017 Marine Patrol Federal Financial Assistance Grant Program

PREVENTION PLAN PART 1 - ASSESSMENT, IDENTIFICATION, GOALS

Risk Factors

Objective: Describe the highest priority recreational boating risks and hazards within your jurisdiction based on accident data, any other relevant data, and best professional judgment.

High Priority Boating Risks & Hazards	Data / Professional Judgment

Comments

--

High Priority Audiences

Objective: Describe the demographic groups of boaters that are the highest priority for prevention efforts and the specific behavior that, if changed, would result in fewer boating accidents or fatalities.

Description of the Audience	Why is this audience a priority?

Comments

--

Washington State Parks & Recreation Commission 2017 Marine Patrol Federal Financial Assistance Grant Program

PREVENTION PLAN PART 2 - TASKS, TACTICS, MEDIA

- 1. Patrol Plans / Emphasis Patrols / Enforcement Policies:** Please describe how you will use patrol to achieve your prevention goals. (Consider emphasis patrols for Operation Dry Water and other campaigns)

Activity	Time Frame	Patrol Hour Goal for this Activity
Total Patrol Hour Goal		

Comments

2. Safety Inspections

Activity	Time Frame	Inspection Goals
Total Inspection Goal		

Comments

Washington State Parks & Recreation Commission 2017
Marine Patrol Federal Financial Assistance Grant Program

3. Education Classes

Activity	Time Frame	Number of Students Trained
Total Number of Students Trained Goal		

Comments

--

4. Community Events

Activity	Time Frame
Total Community Events Goal	

Washington State Parks & Recreation Commission 2017 Marine Patrol Federal Financial Assistance Grant Program

6. Media Plan

What are you attempting to accomplish through media? What audiences do you need to inform or influence? What partners do you have that can re-broadcast your message for you? All the national campaigns listed come with media materials pre-made. You are encouraged to consider using them in your program.

Tactic / Strategy	Describe when and how you will use this tactic	Performance Measure (what are you measuring to evaluate your success?)	What is your measurable goal?
Press Releases			
Agency Website			
Agency Newsletter			
Facebook			
Twitter			
Media Ride Alongs			
Partner Media			
Operation Dry Water			
Nat'l Safe Boating Week			
Spring Aboard			
Wear It!			
Other (please describe)			

Comments

[Spring Aboard – March 19-25](#)

[Ready Set Wear It!](#) May 20, 2017

National Safe Boating Week – May 20-26

[Operation Dry Water](#) - June 30 – July 2

Washington State Parks & Recreation Commission 2017 Marine Patrol Federal Financial Assistance Grant Program

7. Professional Prevention Partners; i.e. Safe Kids, Washington Drowning Prevention Network, US Coast Guard Auxiliary, etc...

Partnering Organizations	What measureable goal does this partner help you achieve?	Time Frame

Comments

--

8. Local Ordinances

Goal	
Expected Outcome	

Ordinance Title	Hyperlink to full text	Applies to a single water body or all.

Comments – describe any other ordinances you might propose to help reduce boating accidents within your jurisdiction.

--

Washington State Parks & Recreation Commission 2017 Marine Patrol Federal Financial Assistance Grant Program

Prevention Goals Summary – Use comment box if needed

Activity	Goal for 2017
Patrol	
Inspections	
Education Classes	
Presentations to Groups & Schools	
Media	
Partners	
Local Ordinances	

Comments

INSTRUCTOR INFORMATION

9. Instructors

Your agency must be willing to provide marine law enforcement instructors if requested by State Parks. Instructors must be able to attend Instructor Training and become NASBLA certified instructors. Instructors must be available to teach up to 40 hours of classes per year for three years. Agencies providing instructors to State Parks will receive an additional amount of funding (goal is \$5,000.00) per year if the instructor is selected and approved.

<i>Please list potential MLE Instructor Candidates:</i>			
Name	Phone #	Email	Instructor Development (Please enter Yes or No)

PARTICIPATION IN MEETINGS

The lead marine officer identified by your agency on Form A-299, must attend all meetings and conferences convened by State Parks.

TRAINING / CURRENCY

Agencies must ensure that all marine officers identified in their roster have received all training required by State Parks. Completion of Basic Marine Law Enforcement (BMLE)/Basic Crew Member (BCM) Course and annual BCM currency are the only requirements at this time.

Washington State Parks & Recreation Commission 2017 Marine Patrol Federal Financial Assistance Grant Program

FY 2017 FEDERAL FINANCIAL ASSISTANCE GRANT AWARDS

Agency	2017 Award
Asotin Co SO	\$11,075.93
Bainbridge Island PD	\$13,075.36
Benton Co SO	\$15,414.19
Black Diamond PD	\$11,738.23
Bonney Lake PD	\$12,460.62
Chelan Co SO	\$15,058.89
Clallam Co SO	\$22,574.21
Clark Co SO	\$20,405.25
Cowlitz Co SO	\$13,038.42
Douglas Co SO	\$12,457.34
Everett PD	\$18,309.75
Ferry Co SO	\$11,980.49
Franklin Co SO	\$16,022.27
Gig Harbor PD	\$12,161.77
Grant Co SO	\$21,586.06
Grays Harbor Co SO	\$15,465.29
Island Co SO	\$17,103.59
Jefferson Co SO	\$18,641.88
Kent PD	\$12,715.00
King Co SO	\$19,228.19
Kitsap Co SO	\$15,190.28
Kittitas Co SO	\$14,129.28
Klickitat Co SO	\$13,050.07
Lake Stevens PD	\$14,113.97
Lakewood PD	\$12,268.76
Lewis Co SO	\$14,855.35
Lincoln Co SO	\$12,830.55
Mason Co SO	\$14,522.18
Mercer Island PD	\$20,356.33
Pacific County	\$13,660.01
Pend Oreille Co SO	\$14,098.84
Pierce Co SO	\$19,112.86
Port Orchard PD	\$11,698.95
Poulsbo PD	\$11,226.13
San Juan Co SO	\$16,113.63
Seattle PD	\$38,695.48
Skagit Co SO	\$15,459.51
Snohomish Co SO	\$16,138.49
Spokane Co SO	\$17,760.06
Tacoma PD	\$12,070.18
Thurston Co SO	\$13,914.96
Walla Walla Co SO	\$12,613.93
Whatcom Co SO	\$18,374.57
Whitman Co SO	\$15,784.22
Yakima Co SO	\$11,448.44
	\$699,999.76

Washington State Parks & Recreation Commission 2017 Marine Patrol Federal Financial Assistance Grant Program

SECTION 4 - ADDITIONAL BILLING AND ADMINISTRATIVE INFORMATION

These grant funds are specifically for reducing boating-related loss of life, personal injury, and property damage tied to the U.S. Coast Guard's *Strategic Plan of the National Recreational Boating Safety Program 2017-2021*. This is accomplished by using the grant funds for on-water law enforcement hours for patrol by officers who have completed a basic Recreational Boating Safety training course meeting State Parks standards. Review the plan at <http://www.uscgboating.org/>.

By completing and submitting this application, the applicant agrees to the following terms:

1. Expand patrols beyond those paid for with state Vessel Registration Fees and local funds.
2. Enforce state RBS regulations using a "zero tolerance" policy for:
 - a. Life jacket requirements, including lifejackets not worn, insufficient lifejackets, and lifejackets found unserviceable or the incorrect size;
 - b. Completion and possession of the mandatory boater education card when operating, for operators required to carry it;
 - c. Boat operation under the influence of alcohol (BUI) rules; and
 - d. "Rules of the road" and other operating regulations.
3. Participate in the national *Operation Dry Water* campaign June, 2017.
4. Follow the following procedures for requesting reimbursement. Invoices for reimbursement may be submitted no more often than monthly but no less than quarterly.
 - a. Submit the following documents.
 - i. The Marine Law Enforcement Grant Invoice Voucher (form A-19) provided including the Officer List Worksheet. When preparing the A-19 invoice voucher, please be sure all expenditures support the RBS mission and that detailed explanations are provided for purchases of equipment and maintenance that occurred during the period in which reimbursement is requested. Boating Program staff will review all A-19's and contact you if any expenditure listed is unclear. Copies of receipts may be requested to support reimbursement.
 - ii. Summary of Activities Report (A-428)
 - iii. Yellow copies of all written vessel inspections completed (P&R A-274). Copies submitted with the quarterly Summary of Activities Report will be sufficient.

Washington State Parks & Recreation Commission 2017 Marine Patrol Federal Financial Assistance Grant Program

- iv. Copies of the vessel log sheet to document each patrol vessel and shift may be requested.
 - v. Names of officers performing patrols paid with these funds.
- b. A-19 Invoice Vouchers requesting reimbursement must be received and date stamped at State Parks by the following dates. The timely submission of reimbursement requests allows proper time for the processing of payments. A-19's submitted after these dates will not be accepted, but may, at our discretion, be processed only when State Parks has been contacted in advance of due date.
 - i. For the period March-April-May-June (2nd quarter): by July 15th.
For the period July-August-September (3rd quarter): by October 15th.
 - ii. Invoices for reimbursement (form A-19) may be submitted monthly or quarterly.
- c. Unforeseen Circumstances: If, during any quarter, an agency is unable to meet the requirements of the grant it should submit a letter, signed by the police chief or sheriff, along with the reimbursement request explaining the reasons and mitigating circumstances. In extreme cases, State Parks may request these applicants to submit a plan within 30 days of the end of the quarter that describes steps the applicant will take to meet minimum requirements. In these cases, reimbursement requests may be deferred until the plan is received and approved by State Parks.
- d. Grantees are required to maintain records of all allowable expenditures for which grant dollars were spent and must make these records available to State Parks for review upon request. Expenditure records may include but are not limited to receipts, invoices, and timesheets. These records must be maintained for six years following the completion of the grant.

Agencies that did not report local expenditures on the annual *Vessel Registration Fee Expenditure Report* due November, 2016 are not eligible to apply for the grant.

Washington State Parks & Recreation Commission 2017
Marine Patrol Federal Financial Assistance Grant Program

AUTHORIZED SIGNATURE

I certify that I am authorized to obligate the agency listed below and that I am authorized to accept such funds and to guarantee that the funds will be used solely for expenditures limited to the areas in WAC 352-65-040, and that federal grant funds will be used in conjunction with local funding and state Vessel Registration Fees. Grant funds are not for the replacement of local funds or state Vessel Registration Fees and are only for the performance to meet the terms and conditions detailed in this application.

Authorized Representative:

Signature

Date

Print Name

Title

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

ITEM INFORMATION			
SUBJECT: Resolution authorizing the Mayor to execute a contract with Keating, Buckland, McCormack for legal services		Agenda Date: January 19, 2017	
		AB17-011	
		Mayor Carol Benson	X
		City Administrator	
		City Attorney David Linehan	
		City Clerk – Brenda L. Martinez	
		Com Dev/Nat Res –	
		Finance – May Miller	
		MDRT/Ec Dev – Andy Williamson	
Cost Impact (see also Fiscal Note): \$	Police – Chief Kiblinger		
Fund Source: --General Fund	Public Works – Seth Boettcher		
Timeline:	Court – Stephanie Metcalf		
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input checked="" type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator			
Attachments: Resolution; contract			
SUMMARY STATEMENT: Councilmember Deady and Edelman have placed this item on the agenda. Mayor Benson will be addressing this item.			
FISCAL NOTE (Finance Department):			
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:			
RECOMMENDED ACTION: MOTION to adopt a resolution authorizing the Mayor to execute a contract with Keating, Buckland, McCormack for legal services related to the lawsuit filed alleging a violation of the Open Public Meetings Act.			
RECORD OF COUNCIL ACTION			
Meeting Date	Action		Vote
January 19, 2017			

RESOLUTION NO. 17-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT
WITH KEATING, BUCKLIN & MCCORMACK FOR LEGAL
SERVICES RELATED TO A LAWSUIT ALLEGING OPEN
PUBLIC MEETINGS ACT VIOLATIONS**

WHEREAS, on December 2, 2016 the City was served with a lawsuit alleging Open Public Meetings Act Violations ("OPMA Lawsuit"); and

WHEREAS, the City and the City Council are named defendants in the OPMA Lawsuit, and therefore require a legal defense; and

WHEREAS, the Lighthouse Law Group has entered an appearance in the Superior Court on behalf of the individually named Councilmember defendants only, and that attorney has not entered an appearance to represent the City or the City Council; and

WHEREAS, the City had a deadline of January 12, 2017 to answer the Complaint in the OPMA Lawsuit, and Plaintiff's counsel clearly stated she would seek default against the City if its answer were not timely filed; and

WHEREAS, the law firm of Keating, Bucklin & McCormack is well-respected law firm that is highly experienced in defending cities in civil litigation matters, and is willing to represent the City in the OPMA Lawsuit on the terms provided in Attachment A;

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

Section 1. Retention of Keating, Bucklin & McCormack. The Mayor is authorized to enter into the contract for legal services with Keating, Bucklin & McCormack attached hereto as Attachment A.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 19TH DAY OF JANUARY, 2017.

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk

MARK R. BUCKLIN
STEVEN L. THORSRUD
MICHAEL C. WALTER
ANDREW G. COOLEY
STEWART A. ESTES
JAYNE L. FREEMAN
RICHARD B. JOLLEY
SHANNON M. RAGONESI
KIMBERLY J. WALDBAUM



KEATING, BUCKLIN & MCCORMACK, INC., P.S.

ATTORNEYS AT LAW
800 Fifth Avenue, Suite 4141
Seattle, Washington 98104-3175
Phone: 206.623.8861
Fax: 206.223.9423
www.kbmlawyers.com
sragonesi@kbmlawyers.com

JEREMY W. CULUMBER
AMANDA G. BUTLER
BRIAN C. AUGENTHALER
RUTH NIELSEN
DEREK C. CHEN

OF COUNSEL:
BRENDA L. BANNON

ROBERT C. KEATING (1915-2001)

January 9, 2017

Via Electronic Mail
cbenson@ci.blackdiamond.wa.us

Mayor Carol Benson
City of Black Diamond
24301 Roberts Drive
P.O. Box 599
Black Diamond, WA 98010

RE: *Legal Services Retention Agreement*

Dear Mayor Benson:

Thank you for choosing Keating, Bucklin & McCormack, Inc. ("KBM") to provide legal services described more fully below. I look forward to working with you and your staff on this matter. To ensure as clear an understanding as possible as to the basis of our procedures and charges in rendering the requested legal services, I have prepared this letter of engagement for your review and consideration.

This confirms our agreement that you are retaining KBM to provide legal services to the City of Black Diamond in the lawsuit filed against the City, and other individuals, by Oakpointe Communities alleging a violation of the Open Public Meetings Act. Our fee for litigation defense is \$285.00 per hour performed by shareholder attorneys such as myself, and \$255.00 per hour for work performed by associate attorneys. Please be advised that these billing rates may be subject to change on an annual basis, and that by signing this retention agreement, you agree to pay such fees as may be adjusted per our law firm's current rates.

Our firm will bill you monthly for attorney time at these rates and for costs as they occur. We will send detailed billings once a month directed to you. Our billings will indicate both the attorney who is providing the work and a detailed description to the tenth of an hour. In addition to our hourly rate, we charge for travel mileage at the rate of \$.54 per mile and we charge for long distance, fax, and postage expenses as directly incurred along with any other direct costs incurred on behalf of the client. We will advance costs as outlined above, including court reporter fees, as necessary. We do not charge separately for administrative tasks such as

Caitlin Magee
January 9, 2017
Page 2

secretarial typing or paralegal fees.

If you agree with these terms, please sign in the space below, retain a copy of this letter for your files, and return the original to me. We appreciate very much the opportunity to assist you in this matter, and I look forward to working with you. If you have any questions regarding this agreement, or should you at any time have any questions regarding the nature of our services, please do not hesitate to contact me.


Very truly yours,

/s/Shannon M. Ragonesi

SMR:dbe

I agree to the foregoing terms regarding retention of Shannon M. Ragonesi and Keating, Bucklin & McCormack, Inc. P.S. to provide legal services on behalf of the City of Black Diamond.

Dated: 1/9/2017



Mayor Carol Benson
On behalf of the City of Black Diamond