



CITY OF BLACK DIAMOND
February 1, 2018 Regular Business Meeting Agenda – REVISED – 01/29/18
25510 Lawson St., Black Diamond, Washington

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

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

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

Presentation – Cedarbrook Mobile Home Park – Jeremy Millard

CONSENT AGENDA:

- 1) **Claim Checks** – February 1, 2018 – Check No. 45789 through 45827 in the amount of \$105,402.01
- 2) **Minutes** – Council Work Session of January 11, 2018
- 3) **Minutes** – Council Meeting of January 18, 2018
- 4) **Minutes** – Council Work Session of August 11, 2016
- 5) **Minutes** – Council Meeting of August 18, 2016
- 6) **Minutes** – Council/PC Joint Meeting of August 23, 2016
- 7) **Minutes** – Council Special Meeting of August 25, 2016
- 8) **AB18-029** – Resolution No. 18-1224 Approving Purchase of Vehicle for the MDRT Department

PUBLIC COMMENTS: Persons wishing to address the City Council regarding items of new business are encouraged to do so at this time. When recognized by the Mayor, please come to the podium and clearly state your name. Please limit your comments to 3 minutes. If you desire a formal agenda placement, please contact the City Clerk at 360-886-5700. Thank you for attending.

PUBLIC HEARINGS: None

UNFINISHED BUSINESS:

- 9) **AB18-026A** - Ordinance No. 18-1098 Adopting Updated Illicit Discharge Requirements and Amending Chapter 14.04 of the Black Diamond Municipal Code Mr. Boettcher
- 10) **AB18-027A** – Resolution No. 18-1225 Approving 2018 Stormwater Management Program (SWMP) Plan Mr. Boettcher
- 11) **AB16-064B** – Ordinance No. 18-1099 Relating to Astound Broadband Franchise Mr. Williamson

NEW BUSINESS:

12) AB18-030 – Resolution No. 18-1226 Approving Professional Services Agreement with Parametrix, Inc.
to Provide On-Call Civil Engineering Services Mr. Boettcher

13) AB18-031 – Resolution No. 18-1227 Approving Professional Services Agreement with RH2 Engineering.
to Provide On-Call Civil Engineering Services Mr. Boettcher

14) AB18-032 – Resolution No. 18-1228 Approving Professional Services Agreement with RH2 Engineering.
for Design Engineering of the Springs Rehabilitation Project Mr. Boettcher

DEPARTMENT REPORTS:

MAYOR’S REPORT:

COUNCIL REPORTS:

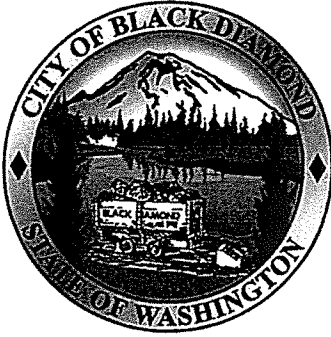
- Councilmember Deady
- Councilmember Oglesbee
- Councilmember Edelman
- Councilmember Stout
- Councilmember Pepper

ATTORNEY REPORT:

PUBLIC COMMENTS:

EXECUTIVE SESSION:

ADJOURNMENT:



CERTIFICATION

Date: February 1st, 2018 Council Meeting

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

45789-45797	December – Early 5 th December Batch	01/19/2018	\$ 64,365.29
45798-45825	January – 3rd Jan Batch for 02/01 Council	02/02/2018	\$ 37,241.48
45826-45827	February- 1st Feb Batch for 02/01 Council	02/02/2018	\$ 3,795.24
		TOTAL	\$ 105,402.01

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, FINANCE DIRECTOR

CAROL BENSON, MAYOR

1-24-2018
DATE

DATE

COUNCILMEMBERS

DATE

Register

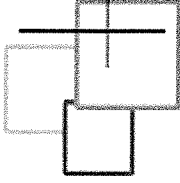
Fiscal: 2018, 2017

Deposit Period: 2018 - February, 2018 - January, 2017 - December

Check Period: 2018 - February - 1st Feb Batch for 02/01 Council, 2018 - January - 3rd Jan Batch for 02/01 Council, 2017 - December - Early 5th December Batch

Number	Name	Print Date	Amount
Check			
<u>45789</u>	City of Maple Valley	1/19/2018	\$3,131.25
<u>45790</u>	City of Renton/EHD	1/19/2018	\$364.00
<u>45791</u>	Enumclaw School District	1/19/2018	\$15,566.00
<u>45792</u>	Magnum Print Solutions	1/19/2018	\$658.66
<u>45793</u>	Mt. View Fire & Rescue	1/19/2018	\$2,002.50
<u>45794</u>	Parametrix, Inc.	1/19/2018	\$7,768.23
<u>45795</u>	Puget Sound Energy	1/19/2018	\$10,012.27
<u>45796</u>	RH2 Engineering Inc.	1/19/2018	\$22,164.37
<u>45797</u>	Summit Law Group	1/19/2018	\$2,698.01
<u>45798</u>	Beatriz Jordan	2/2/2018	\$141.04
<u>45799</u>	BHC Consultants, LLC	2/2/2018	\$18,989.93
<u>45800</u>	Bill's Locksmith Service Inc.	2/2/2018	\$64.72
<u>45801</u>	Cadman, Inc.	2/2/2018	\$745.69
<u>45802</u>	CenturyLink (AZ)	2/2/2018	\$31.72
<u>45803</u>	CenturyLink (WA)	2/2/2018	\$1,120.80
<u>45804</u>	City of Seattle	2/2/2018	\$1,900.00
<u>45805</u>	Comcast (34744)	2/2/2018	\$227.81
<u>45806</u>	Enumclaw Chrysler Jeep	2/2/2018	\$1,224.39
<u>45807</u>	Greater Maple Valley-Black Diamond Chamber of Commerce	2/2/2018	\$66.00
<u>45808</u>	IACP Membership	2/2/2018	\$150.00
<u>45809</u>	Johnsons Home & Garden	2/2/2018	\$379.55
<u>45810</u>	Kara Murphy Richards	2/2/2018	\$4,300.00
<u>45811</u>	King County Municipal Clerk's Association	2/2/2018	\$60.00
<u>45812</u>	Krista C. White Swain	2/2/2018	\$3,600.00
<u>45813</u>	Les Schwab Tire Ctr - MV	2/2/2018	\$28.72
<u>45814</u>	Michael & Amanda Stanley	2/2/2018	\$254.20
<u>45815</u>	Office Products Nationwide	2/2/2018	\$700.18
<u>45816</u>	Puget Sound Clean Air Agency	2/2/2018	\$858.00
<u>45817</u>	Regional Animal Services of King County	2/2/2018	\$285.00
<u>45818</u>	Ron & Leo's Welding Service	2/2/2018	\$16.17
<u>45819</u>	Sound Uniform Solutions/Bratwear	2/2/2018	\$285.16
<u>45820</u>	State Auditor's Office	2/2/2018	\$186.20
<u>45821</u>	Verizon Wireless	2/2/2018	\$853.56
<u>45822</u>	Vision Forms, LLC.	2/2/2018	\$486.64
<u>45823</u>	Voice of The Valley	2/2/2018	\$250.00
<u>45824</u>	Washington State Dept. of Corrections	2/2/2018	\$15.00
<u>45825</u>	Water Management Laboratories, Inc.	2/2/2018	\$21.00
<u>45826</u>	Safe Security	2/2/2018	\$52.48
<u>45827</u>	Sorci Family LLC	2/2/2018	\$3,742.76
Total			\$105,402.01

Voucher Directory with Transaction Date



Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description Name	Title	Void Amount
City of Maple Valley						
45789	INV03663		1/8/2018	2017 - December - Early 5th December Batch		
		Dec Services ILA Building Inspector				
		001-000-240-558-51-41-03		CD-Bldg /Code Inspc. Svs		\$1,518.75
		Community Dev Building Inspector Hourly				\$1,518.75
	Total INV03663					
45789	INV03666		12/13/2017	2017 - December - Early 5th December Batch		
		Nov Services ILA Building Inspector				
		001-000-240-558-51-41-03		CD-Bldg /Code Inspc. Svs		\$1,612.50
		Community Dev Building Inspector Hourly				\$3,131.25
	Total INV03666					\$3,131.25
Total City of Maple Valley						
City of Renton/EHD						
45790	010918 REHD		1/9/2018	2017 - December - Early 5th December Batch		
		Services for 12/01/17-12/31/17				
		001-000-211-523-60-49-01		Electronic Home Monitor Costs		\$364.00
	Total 010918 REHD					\$364.00
	Total 45790					\$364.00
Total City of Renton/EHD						

Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void
		Account Number	Name	Title	Amount
Enumclaw School District					
45791	123117 ESD	12/31/2017	2017 - December - Early 5th December Batch		
		Dec 2017 Mitigation Fee			
		637-000-000-589-30-00-00	School Mitigation Fee disbursement		\$15,566.00
Total 45791	Total 123117 ESD				\$15,566.00
Total Enumclaw School District					
Magnum Print Solutions					
45792	174551	10/26/2017	2017 - December - Early 5th December Batch		
		First Time Receiving Invoice			
		001-000-270-576-80-31-09	Plotter Supplies		\$131.74
		101-000-000-542-90-31-10	Plotter Costs		\$131.73
		401-000-000-534-80-31-10	Plotter supplies		\$131.73
		407-000-000-535-80-31-10	Plotter Supplies		\$131.73
		410-000-000-531-10-31-10	Plotter Supplies		\$658.66
Total 45792	Total 174551				\$658.66
Total Magnum Print Solutions					
Mt. View Fire & Rescue					
45793	17-173	1/16/2018	2017 - December - Early 5th December Batch		
		2016 Inspections & Plan Checks			
		001-000-240-558-51-41-04	Fire Inspection & Plan Check		\$2,002.50
Total 45793	Total 17-173				\$2,002.50
Total Mt. View Fire & Rescue					
Parametrix, Inc.					
45794	01-80007	12/18/2017	2017 - December - Early 5th December Batch		
		Services from 10/29/17-11/25/17			
		001-000-257-558-70-41-06	MDRT Surveyor-Parametrix		\$3,902.50
Total 45794	Total 01-80007				\$3,902.50

Vendor	Transaction Number Transaction Reference	Invoice Date Account Number	Fiscal Description Name Title	Void Amount
45794	01-80054	1/5/2018	2017 - December - Early 5th December Batch	
		Services from 11/26/17-12/31/17		
		001-000-240-558-51-41-01	Prof Svs.Comm Dev. Pass Thru	\$1,252.50
	Total 01-80054			\$1,252.50
45794	01-80057	1/5/2018	2017 - December - Early 5th December Batch	
		Services from 11/26/17-12/30/17		
		001-000-240-558-51-41-01	Prof Svs.Comm Dev. Pass Thru	\$877.50
	Total 01-80057			\$877.50
45794	01-80058	1/5/2018	2017 - December - Early 5th December Batch	
		Services from 11/26/17-12/30/17		
		001-000-240-558-51-41-01	Prof Svs.Comm Dev. Pass Thru	\$822.00
	Total 01-80058			\$822.00
45794	01-80066	1/8/2018	2017 - December - Early 5th December Batch	
		Services from 10/29/17-12/31/17		
		001-000-257-558-70-41-03	MDRT Traffic Engineering-Parametrix	\$913.73
	Total 01-80066			\$913.73
	Total 45794			\$7,768.23
	Total Parametrix, Inc.			\$7,768.23
Puget Sound Energy				
45795	010818 PSE	1/8/2018	2017 - December - Early 5th December Batch	
		Services for 12/03/17-01/03/18		
		001-000-212-521-50-47-00	Electric/gas	\$832.51
		200009377470: PD/CT Elec		
		001-000-212-521-50-47-00	Electric/gas	\$105.79
		220013379882: Police Storage		
		001-000-248-518-20-47-00	MDRT Electricity	\$506.92
		220013379841: MDRT Mod Bldgs Elec		
		001-000-254-518-20-47-00	Facilities-Utilities	\$760.37
		220013379841: CD/PW Mod Bldgs Elec		
		001-000-254-518-20-47-00	Facilities-Utilities	\$191.75
		200008061844: City Hall Elec		
		001-000-254-518-20-47-00	Facilities-Utilities	\$169.25
		200008062016: City Hall Elec		

Vendor	Transaction Number Transaction Reference	Invoice Date	Fiscal Description Name	Void Amount
	Account Number		Title	
	001-000-270-575-30-47-00		Museum Electric/Gas	\$551.52
	220013378793: Museum			
	001-000-270-575-51-47-00		Gym- Electricity and Gas	\$483.00
	220013379652: Gym			
	001-000-270-576-80-47-00		Electric/Gas	\$10.81
	220013379221: Lake Sawyer Boat Launch			
	001-000-270-576-80-47-00		Electric/Gas	\$5.39
	220013379635: PW Shop-Parks 4%			
	001-000-280-536-20-47-00		Electric/Gas	\$2.70
	220013379635: PW Shop-Cemetery 2%			
	101-000-000-542-63-47-01		Street Lighting	\$10.81
	220013379247: 216th Signal & Street Lights			
	101-000-000-542-63-47-01		Street Lighting	\$52.84
	220013379197: Cov Sawyer & 216th			
	101-000-000-542-63-47-01		Street Lighting	\$521.59
	220013379791: Intersection Light 219th & SE 296th St			
	101-000-000-542-63-47-01		Street Lighting	\$1,987.63
	220013379355: PSE Streellights			
	101-000-000-542-63-47-01		Street Lighting	\$97.84
	220013379817: Ped Lighting Roberts			
	101-000-000-542-63-47-01		Street Lighting	\$14.42
	220013379601: Baker St Crosswalk			
	101-000-000-543-31-47-00		Electric/Gas	\$29.67
	220013379635: PW Shop-Street 22%			
	401-000-000-534-80-47-00		Electric/Gas	\$891.53
	220013378868: 4.3 Mil Gal Resv			
	401-000-000-534-80-47-00		Electric/Gas	\$32.37
	220013379635: PW Shop-Water 24%			
	401-000-000-534-80-47-00		Electric/Gas	\$2,523.22
	220013378835: Booster Station			
	401-000-000-534-80-47-00		Electric/Gas	\$19.30
	220013378850: .5 Mil Gal Resv			
	407-000-000-535-80-47-00		Electric/Gas	\$97.93
	220013378819: Morganville Lift Station			
	407-000-000-535-80-47-00		Electric/Gas	\$32.37
	220013379635: PW Shop-Sewer 24%			
	407-000-000-535-80-47-00		Electric/Gas	\$35.96
	220013379643: Diamond Glen Sewer			
	407-000-000-535-80-47-00		Electric/Gas	\$12.41
	220013379619: Sewer Pump			
	410-000-000-531-10-47-00		Electric/Gas	\$32.37
	220013379635: PW Shop-Drainage 24%			

Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description Name	Title	Void Amount
Total 010818 PSE						
Total 45795						\$10,012.27
Total Puget Sound Energy						\$10,012.27
RH2 Engineering Inc.						\$10,012.27
45796	69502	Services Through Dec 31, 2017 001-000-257-558-70-41-02	1/8/2018	2017 - December - Early 5th December Batch		
	Total 69502			MDRT Civil Engineering-RH2 Engineering		\$10,392.79
45796	69503	Services Through Dec 31, 2017 001-000-257-558-70-41-02	1/8/2018	2017 - December - Early 5th December Batch		\$10,392.79
	Total 69503			MDRT Civil Engineering-RH2 Engineering		\$11,076.30
45796	69504	Services Through Dec 31, 2017 001-000-257-558-70-41-02	1/8/2018	2017 - December - Early 5th December Batch		\$11,076.30
	Total 69504			MDRT Civil Engineering-RH2 Engineering		\$695.28
Total 45796						\$695.28
Total RH2 Engineering Inc.						\$22,164.37
Summit Law Group						\$22,164.37
45797	89987	General Labor 001-000-150-515-30-41-02 Activity Billed Through 12/31/17	1/19/2018	2017 - December - Early 5th December Batch		\$127.50
	Total 89987					\$127.50
45797	89988	Teamsters 001-000-150-515-30-41-08	1/19/2018	2017 - December - Early 5th December Batch		\$2,570.51
				Legal Svcs-Union Contracts		

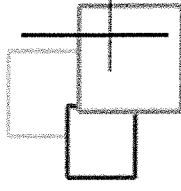
Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void
		Account Number		Name	Amount
				Title	

Activity Billed Through 12/31/17

Total 89988					\$2,570.51
Total 45797					\$2,698.01
Total Summit Law Group					\$2,698.01
				Grand Total	\$64,365.29

Vendor Count 9

Voucher Directory with Transaction Date



Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void Amount
Beatriz Jordan					
	45798	1275 BJ	1/10/2018	2018 - January - 3rd Jan Batch for 02/01 Council	
		Jan Services			
		001-000-120-512-50-41-04		Court Interpreter	\$141.04
		Total 1275 BJ			\$141.04
Total Beatriz Jordan					\$141.04
BHC Consultants, LLC					
	45799	0009526	1/16/2018	2018 - January - 3rd Jan Batch for 02/01 Council	
		11/25/17-12/31/17 Services			
		001-000-240-558-51-41-03		CD-Bldg /Code Inspc. Svs	\$18,989.93
		First Time Receiving Invoice			\$18,989.93
		Total 0009526			\$18,989.93
Total BHC Consultants, LLC					\$18,989.93
Bill's Locksmith Service Inc.					
	45800	116542	1/23/2018	2018 - January - 3rd Jan Batch for 02/01 Council	
		PW Duplicate Keys			
		101-000-000-544-90-31-00		PW Clearing Acct-Supplies	\$64.72
		Total 116542			\$64.72
Total Bill's Locksmith Service Inc.					\$64.72

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

Cadman, Inc.

45801	5487610	1/18/2018	2018 - January - 3rd Jan Batch for 02/01 Council		
		320-000-002-595-30-63-01	Chip Seal & Pot Hole Repair		\$745.69
Total 45801	Total 5487610				\$745.69
Total Cadman, Inc.					\$745.69
CenturyLink (AZ)					
45802	1430308019	1/11/2018	2018 - January - 3rd Jan Batch for 02/01 Council		
		12/12/17-01/11/18 Services			
		001-000-254-518-20-42-00	Facilities-Communication		\$31.72
		Facilities-Old City Hall Main Line # 360-886-2560			\$31.72
Total 45802	Total 1430308019				\$31.72
Total CenturyLink (AZ)					
CenturyLink (WA)					
45803	011118 CL	1/11/2018	2018 - January - 3rd Jan Batch for 02/01 Council		
		12/04/17-01/03/18 Services			
		001-000-120-512-50-42-00	Telephone/DSL		\$48.88
		PD/CT Security Line 253-631-1012 182B			
		001-000-214-521-20-42-00	Police Telephone/DSL/Air Cards		\$66.93
		Police-Fax 360-886-2901 325B			
		001-000-214-521-20-42-00	Police Telephone/DSL/Air Cards		\$66.42
		Police-Line 2 360-886-2862 596B			
		001-000-214-521-20-42-00	Police Telephone/DSL/Air Cards		\$180.16
		Police-Main Line 253-631-1012 182B			
		001-000-214-521-20-42-00	Police Telephone/DSL/Air Cards		\$140.36
		Police-T1 Line-KC Inet 206-T54-3585 584B			
		001-000-270-576-80-42-00	Telephone/DSL/Radios		\$5.07
		PW Shop Allocation - 360-886-2523 656B			
		001-000-280-536-20-42-00	Telephone, DSL & Radios		\$2.54
		PW Shop Allocation - 360-886-2523 656B			
		101-000-000-542-90-42-01	Telephone/DSL/Radios		\$27.86
		PW Shop Allocation - 360-886-2523 656B			
		401-000-000-534-80-42-00	Telephone/DSL/Radios		\$285.01
		Water Reservoir 360-886-7235 830B			

Vendor	Transaction Number Transaction Reference	Invoice Date	Fiscal Description Name Title	Void Amount
Total CenturyLink (WA) City of Seattle	Total 45803 Link (WA)	01/11/18 CL	401-000-000-534-80-42-00 Telephone/DSL/Radios	\$30.39
			PW Shop Allocation - 360-886-2523 656B	
			407-000-000-535-80-42-00 Telephone/DSL/Radios	\$53.48
			Morganville Pump Station 360-886-2835 784B	
			407-000-000-535-80-42-00 Telephone/DSL/Radios	\$30.39
			PW Shop Allocation - 360-886-2523 656B	
			407-000-000-535-80-42-00 Telephone/DSL/Radios	\$48.88
			Diamond Glen Sewer 360-886-0537 580 B	
			407-000-000-535-80-42-00 Telephone/DSL/Radios	\$45.62
			Ridge Sewer Pump Station 360-886-0474 006B	
Total 45804	SU1000069	1/3/2018	407-000-000-535-80-42-00 Telephone/DSL/Radios	\$58.42
			Old Lawson Pump Station 360-886-8146 712B	
			410-000-000-531-10-42-00 Telephone/DSL/Radios	\$30.39
			PW Shop Allocation - 360-886-2523 656B	
			Total 0111118 CL	
			Total 45803	\$1,120.80
			Link (WA)	\$1,120.80
			City of Seattle	\$1,120.80
			2018 - January - 3rd Jan Batch for 02/01 Council	
			101-000-000-542-90-42-03 GPS Subscription & Costs	\$27.08
Total 45804	SU1000070	1/3/2018	401-000-000-534-80-42-03 GPS Subscription & Costs	\$27.08
			407-000-000-535-80-42-03 GPS Subscription & Costs	\$27.07
			410-000-000-531-10-42-03 GPS Subscription & Costs	\$27.07
			Total SU1000069	
			Total SU1000069	\$108.30
			2018 - January - 3rd Jan Batch for 02/01 Council	
			101-000-000-542-90-42-03 GPS Subscription & Costs	\$323.95
			401-000-000-534-80-42-03 GPS Subscription & Costs	\$323.95
			407-000-000-535-80-42-03 GPS Subscription & Costs	\$323.95
			410-000-000-531-10-42-03 GPS Subscription & Costs	\$1,295.80
Total 45804	SU1000071	1/3/2018	101-000-000-542-90-42-03 GPS Subscription & Costs	\$123.97
			401-000-000-534-80-42-03 GPS Subscription & Costs	\$123.97
			407-000-000-535-80-42-03 GPS Subscription & Costs	\$123.98
			2018 - January - 3rd Jan Batch for 02/01 Council	
			101-000-000-542-90-42-03 GPS Subscription & Costs	\$123.97
			401-000-000-534-80-42-03 GPS Subscription & Costs	\$123.97
			407-000-000-535-80-42-03 GPS Subscription & Costs	\$123.98
			2018 - January - 3rd Jan Batch for 02/01 Council	
			101-000-000-542-90-42-03 GPS Subscription & Costs	\$123.97
			401-000-000-534-80-42-03 GPS Subscription & Costs	\$123.97

Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void Amount
		Account Number	Name	Title	
		410-000-000-531-10-42-03		GPS Subscription & Costs	
	Total SU1000071				\$123.98
	Total 45804				\$495.90
Total City of Seattle					\$1,900.00
Comcast (34744)					\$1,900.00
45805	0106172 011018	01/17-02/16 Services	1/10/2018	2018 - January - 3rd Jan Batch for 02/01 Council	
		001-000-214-521-20-42-00		Police Telephone/DSL/Air Cards	\$3.29
		Police Cable TV Act 8498 34 014 0106172			
	Total 0106172 011018				\$3.29
45805	0122286 011218	01/22-02/21 Services	1/12/2018	2018 - January - 3rd Jan Batch for 02/01 Council	
		001-000-120-512-50-42-00		Telephone/DSL	\$224.52
		Court Phone Act 8498 34 014 0122286			
	Total 0122286 011218				\$224.52
Total Comcast (34744)					\$227.81
Enumclaw Chrysler Jeep					\$227.81
45806	606773	PD	1/12/2018	2018 - January - 3rd Jan Batch for 02/01 Council	
		001-000-210-521-10-48-01		Vehicle Maintenance & Repair	\$1,224.39
	Total 606773				\$1,224.39
Total 45806					\$1,224.39
Total Enumclaw Chrysler Jeep					\$1,224.39

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

Greater Maple Valley-Black Diamond Chamber of Commerce

45807	10505	1/17/2018	2018 - January - 3rd Jan Batch for 02/01 Council		
		1/17/18 Luncheon Chamber Meeting			
		001-000-110-511-60-43-00	J. Edelman	Lodging, Meals and Mileage	\$22.00
		001-000-110-511-60-43-00	E. Stout	Lodging, Meals and Mileage	\$22.00
		001-000-130-513-10-43-00	C. Benson	Lodging, Meals & Mileage	\$22.00
	Total 10505				\$66.00
	Total 45807				\$66.00
					\$66.00

Total Greater Maple Valley-Black Diamond Chamber of Commerce

IACP Membership

45808	1001288741	12/29/2017	2018 - January - 3rd Jan Batch for 02/01 Council		
		PD Active Member 01-Jan-2018 to 31-Dec-2018			
		001-000-210-521-10-49-02	Memberships		\$150.00
		2018 Annual Dues			\$150.00
	Total 1001288741				\$150.00
	Total 45808				\$150.00
					\$150.00
					\$150.00

Total IACP Membership

Johnsons Home & Garden

45809	422870	1/11/2018	2018 - January - 3rd Jan Batch for 02/01 Council		
		410-000-000-531-10-48-03	Stormwater Maintenance & Repair		\$21.25
	Total 422870				\$21.25
45809	422964	1/16/2018	2018 - January - 3rd Jan Batch for 02/01 Council		
		410-000-000-531-10-48-03	Stormwater Maintenance & Repair		\$71.35
	Total 422964				\$71.35
45809	422968	1/16/2018	2018 - January - 3rd Jan Batch for 02/01 Council		
		001-000-212-521-50-48-02	Police Bldg Repairs & Maintenance		\$21.71
	Total 422968				\$21.71

Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void Amount
		Account Number	Name	Title	
Krista C. White Swain	45812	012218 KWS	1/22/2018	2018 - January - 3rd Jan Batch for 02/01 Council	
			January Services		
			001-000-120-512-50-41-00	Court Judge	
		Total 012218 KWS			\$3,600.00
	Total 45812				\$3,600.00
	Total Krista C. White Swain				\$3,600.00
	Les Schwab Tire Ctr - MV				\$3,600.00
	45813	39800287230	12/6/2017	2018 - January - 3rd Jan Batch for 02/01 Council	
			Riding Mower Repair		
			101-000-000-544-90-48-02	PW Clearing- Shared Veh/Equip Maint	
Michael & Amanda Stanley		Total 39800287230			\$28.72
	Total 45813				\$28.72
	Total Les Schwab Tire Ctr - MV				\$28.72
	Michael & Amanda Stanley				\$28.72
	45814	011018 MAS	1/10/2018	2018 - January - 3rd Jan Batch for 02/01 Council	
			Water Refund: Acct 5695.0		
			401-000-000-343-40-00-01	Water Charges	
			New Owner Effective 01/10/18		
		Total 011018 MAS			\$254.20
	Total 45814				\$254.20
Office Products Nationwide	Total Michael & Amanda Stanley				\$254.20
	45815	950356-0	1/8/2018	2018 - January - 3rd Jan Batch for 02/01 Council	
			001-000-180-518-50-31-99	Office Supplies CD Bldg Clearing	
			CD Office Supplies		
		Total 950356-0			\$160.81
	45815	951302-0	1/11/2018	2018 - January - 3rd Jan Batch for 02/01 Council	
			001-000-180-518-50-31-99	Office Supplies CD Bldg Clearing	
			CD Office Supplies		
		Total 951302-0			\$83.58
	Total 45815				\$83.58

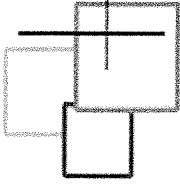
Vendor		Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void
			Account Number	Name	Title	Amount
45815	951578-0	2018 - January - 3rd Jan Batch for 02/01 Council	1/12/2018	001-000-246-558-70-31-00	Office Supplies	\$106.93
	Total 951578-0			MDRT Office Supplies		\$106.93
45815	952008-0	2018 - January - 3rd Jan Batch for 02/01 Council	1/15/2018	001-000-180-518-50-31-00	Office Supplies City Hall	\$231.85
	Total 952008-0			CH Office Supplies		\$231.85
45815	953416-0	2018 - January - 3rd Jan Batch for 02/01 Council	1/23/2018	001-000-180-518-50-31-00	Office Supplies City Hall	\$54.70
	Total 953416-0			CH Office Supplies		\$54.70
45815	953522-0	2018 - January - 3rd Jan Batch for 02/01 Council	1/23/2018	001-000-180-518-50-31-00	Office Supplies City Hall	\$23.22
	Total 953522-0			CH Office Supplies		\$23.22
45815	953525-0	2018 - January - 3rd Jan Batch for 02/01 Council	1/23/2018	001-000-254-518-20-31-00	Facilities Operating Supplies	\$39.09
	Total 953525-0			Bldg Maint Supplies		\$39.09
Total Office Products Nationwide						\$700.18
Puget Sound Clean Air Agency						\$700.18
45816	18-021S 1st Qtr	2018 - January - 3rd Jan Batch for 02/01 Council	1/12/2018	2018 Clean Air Assessment		\$858.00
	Total 18-021S 1st Qtr			001-000-182-553-70-41-00	PS Clean Air Assmt	\$858.00
Total Puget Sound Clean Air Agency						\$858.00

Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description Name	Void Amount
Regional Animal Services of King County					
45817	011218 RAS	01/12/18 Licenses	1/12/2018	2018 - January - 3rd Jan Batch for 02/01 Council	
	Total 011218 RAS	633-000-000-589-90-00-01		King County Animal License	\$240.00
45817	011918 RAS	01/19/18 Licenses	1/19/2018	2018 - January - 3rd Jan Batch for 02/01 Council	\$240.00
	Total 011918 RAS	633-000-000-589-90-00-01		King County Animal License	\$45.00
	Total 45817				\$285.00
Total Regional Animal Services of King County					
Ron & Leo's Welding Service					
45818	207017		1/16/2018	2018 - January - 3rd Jan Batch for 02/01 Council	\$45.00
	Total 207017	410-000-000-531-10-48-03		Stormwater Maintenance & Repair	\$45.00
	Total 45818				\$16.17
Total Ron & Leo's Welding Service					
Sound Uniform Solutions/Bratwear					
45819	201801B014	PD	1/5/2018	2018 - January - 3rd Jan Batch for 02/01 Council	\$16.17
	Total 201801B014	001-000-210-521-10-31-04		Uniforms	\$16.17
	Total 45819				\$16.17
Total Sound Uniform Solutions/Bratwear					
State Auditor's Office					
45820	L123345	15-16 Financial Audit	1/10/2018	2018 - January - 3rd Jan Batch for 02/01 Council	\$285.16
		001-000-140-514-23-41-01		State Auditor Services	\$285.16
		101-000-000-543-30-41-02		State Auditor Services	\$285.16
		401-000-000-534-80-41-03		State Auditor Services	\$285.16
		407-000-000-535-80-41-07		State Auditor Services	\$285.16

Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void Amount
		Account Number		Name Title	
		410-000-000-531-10-41-02		State Auditor Services	
	Total L123345				\$42.82
Total 45820					\$186.20
Total State Auditor's Office					\$186.20
Verizon Wireless					\$186.20
	45821	9799631193	1/10/2018	2018 - January - 3rd Jan Batch for 02/01 Council	
		12/11/17-01/10/18 Services			
		001-000-120-512-50-42-00		Telephone/DSL	\$58.66
		Court			
		001-000-145-518-80-42-00		Communications	\$68.66
		IT			
		001-000-180-518-50-49-00		Miscellaneous	(\$500.00)
		Miscellaneous/Extra Phone/Credits			
		001-000-214-521-20-42-00		Police Telephone/DSL/Air Cards	\$642.36
		Police			
		001-000-246-558-70-42-01		Telephones	\$117.32
		MDRT (Funding)			
		001-000-254-518-20-42-00		Facilities-Communication	\$58.66
		City Clerk (Funding)			
		001-000-270-576-80-42-00		Telephone/DSL/Radios	\$16.30
		PW/Facilities			
		001-000-280-536-20-42-00		Telephone, DSL & Radios	\$8.16
		101-000-000-542-90-42-01		Telephone/DSL/Radios	\$89.74
		PW/Facilities			
		401-000-000-534-80-42-00		Telephone/DSL/Radios	\$97.90
		PW/Facilities			
		407-000-000-535-80-42-00		Telephone/DSL/Radios	\$97.90
		PW/Facilities			
		410-000-000-531-10-42-00		Telephone/DSL/Radios	\$97.90
		PW/Facilities			
	Total 9799631193				\$853.56
Total 45821					\$853.56
Total Verizon Wireless					\$853.56

Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void Amount
		Account Number	Name	Title	
Vision Forms, LLC.					
	45822		1/23/2018	2018 - January - 3rd Jan Batch for 02/01 Council	
	4601				
		Utility Billing Forms			
		401-000-000-534-80-49-04		Printing	\$223.85
		407-000-000-535-80-49-03		Printing	\$223.85
		410-000-000-531-10-49-03		Printing	\$38.94
	Total 4601				\$486.64
	Total 45822				\$486.64
Total Vision Forms, LLC.					
Voice of The Valley					
	45823		1/10/2018	2018 - January - 3rd Jan Batch for 02/01 Council	
	20222				
		410-000-000-531-10-41-75		Advertising	\$250.00
	Total 20222				\$250.00
	Total 45823				\$250.00
Total Voice of The Valley					
Washington State Dept. of Corrections					
	45824		12/31/2017	2018 - January - 3rd Jan Batch for 02/01 Council	
	1217.1-18-KCWC-HQ				
		December Services			
		001-000-211-523-60-49-04		Work Crew Costs-State Exp	\$15.00
	Total 1217.1-18-KCWC-HQ				\$15.00
	Total 45824				\$15.00
Total Washington State Dept. of Corrections					
Water Management Laboratories, Inc.					
	45825		1/16/2018	2018 - January - 3rd Jan Batch for 02/01 Council	
	164420				
		401-000-000-534-80-41-02		Water Testing and Sampling	\$21.00
	Total 164420				\$21.00
	Total 45825				\$21.00
Total Water Management Laboratories, Inc.					
	Vendor Count	28		Grand Total	\$37,241.48

Voucher Directory with Transaction Date



Vendor	Transaction Number Transaction Reference	Invoice Date Account Number	Fiscal Description Name Title	Void Amount
Safe Security	45826	1/11/2018	2018 - February - 1st Feb Batch for 02/01 Council	
	4102200	02/01/18-02/28/18 BD Storage Alarm Monitoring		
		101-000-000-544-90-48-01	PW Clearing-shared Shop Cost	\$52.48
	Total 4102200			\$52.48
	Total 45826			\$52.48
Sorci Family LLC	45827	1/31/2018	2018 - February - 1st Feb Batch for 02/01 Council	
	013118 SFLLC	February Rent		
		001-000-248-518-20-45-02	MDRT Property Rental Cost	\$647.43
		001-000-254-518-20-45-02	Facilities-Prop Rental	\$970.12
		001-000-254-518-20-45-05	Facilities City Hall Bldg Rental	\$2,125.21
	Total 013118 SFLLC			\$3,742.76
Total Sorci Family LLC	Total 45827			\$3,742.76
Vendor Count 2				Grand Total
				\$3,795.24

**BLACK DIAMOND CITY COUNCIL
WORK SESSION MINUTES
January 11, 2018**

Council Chamber, 25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER, FLAG SALUTE:

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

ROLL CALL:

PRESENT: Councilmembers Deady, Oglesbee, Edelman, Stout and Pepper.

ABSENT:

Staff present were: Brenda L. Martinez, City Clerk.

Mayor Benson announced that tonight's work session is on the Council Rules of Procedure and turned the meeting over to Councilmember Edelman.

1) Council Rules of Procedure

Councilmember Edelman discussed with Council the items that were included in the packet and what items she will be using tonight. She suggested starting with the 1/2/18 draft and using the 2015 Council Rules to refer back to on the changes.

SECTION 1 - Authority

Councilmember Pepper commented she noticed in Section 1 that the authorities that are included in the current rules have been removed from the new draft.

There was Council discussion about putting RCWs in their entirety in the rules or just citing the numbers.

SECTION 2 – Council Meetings

Councilmember Edelman discussed the following changes that were made in the draft proposed Council Rules. They are as follows:

2.1 – Last line should read 6.7, not 2.10 as in the current rules

2.2 – Added second paragraph to amend the agenda and voting and added a reference to section 3.4 – There was Council discussion on how to add things to the agenda. Councilmember Edelman will work on new wording for this section.

2.3 – shortened the last sentence to read “No changes shall be made to the minutes except by Council approval”. Discussion to delete the word “cause” and change it to read “The City Clerk shall prepare”.

2.4 – Revised the location of the meeting to read “City Council Chambers” instead of Black Diamond Municipal Building; ordinance revision needed to do this. Deleted rule about changes in meeting location. Added paragraph allowing Council meetings, work session and/or Town Hall meetings to be cancelled; ordinance revision needed to do this.

2.5 – Deleted “A quorum shall be required to transact Council business. The presence of a majority of the whole membership of the Council who are also eligible to vote at a Council Meeting shall constitute a quorum”.

2.6 – No changes

2.7 and below are renumbered to break out Special Meetings and Emergency Meetings as separate paragraphs.

2.8 – New number - Special Meetings. Made a separate section and rewrote the paragraphs to make sure Special Meetings are made in an open public meeting and criteria for noticing by the City Clerk. Emergency meetings are included in this section. Councilmember Dedy would like to add the word “city” before the word emergencies in the second line. Councilmember Pepper suggested underling “24 hours”.

2.9 – Number change from old rules is now 2.4. Need to add in an open public meeting for cancellation. There was discussion on cancelling meetings.

2.9 – 2.8 in old rules, shortened first sentence. Suggested to add the words “and closed” to the title.

2.10 – is now Town Hall meetings and is a new section.

2.11 – Mayor Benson suggested combining 2.11 under 2.2. Councilmember Edelman will revise to include the change which will delete 2.11.

SECTION 3 – Regular Council Meeting Order of Business

3.4 – new section added – Agenda Review

3.5.5 – Prohibited Topics. Gave it a separate section number.

3.7 – now reads see section 9 due to renumbering.

6.7 is now disruption of meetings before it was 2.10

3.10 – used to be agenda modifications which is now 3.4. New 3.10 is unfinished business which used to be 3.11. 3.11 through 3.18 have numbering changes.

3.21 – Old 3.21 Town Hall meetings was moved to 3.10.

3.19 – Recess - Councilmember Dedy asked about adding Council majority. There was Council discussion on the Mayor calling a recess and the role of the presiding officer.

SECTION 5 - Councilmembers

5.1.1 – Rewritten – There was discussion on this section. Keep as is in the 2015 rules and take out the first sentence as it is addressed in 5.1.2.

5.2 – Added new paragraph addressing the reading of prepared material. Councilmember Dedy suggested changing may to shall and taking the last sentence out. There was Council discussion on what a manuscript is and what can and cannot be read from.

5.4 – Revised note from Section 20 to Section 19.

There was Council consensus to take a five minutes recess at 7:45 p.m.

The meeting was called back to order at 7:50 p.m.

Councilmember Edelman asked if Council would like to break now before starting section 6 or continue until 9 p.m., or continue at another session. There was Council consensus to go until 8:30 p.m.

SECTION 6 – Parliamentary Procedures

Councilmember Edelman noted that sections 6 and 7 are major rewrites.

There was back and forth conversation regarding sections 6 and 7 and it was suggested to keep section 6 parliamentary procedure and then add section 7 from the old rules back in and to keep voting there.

6.5.2 – Abstention has its own number and was taken out of 6.5.2. There was discussion about having everything stay under abstention as it's easier to find and would like the wording in the 2015 rules.

6.5.5 – Councilmember Pepper preferred the wording in the old rules 8.4; Councilmembers Stout and Deady prefer the new wording.

6.5.6 – was 8.5 in the old rules.

Councilmember Edelman noted this is a good place to stop as it's 8:30 p.m.

Mayor Benson discussed the email regarding the Council retreat and wondered if Friday, March 9th would work. She explained what a retreat is and the goals for the retreat. She noted it would be from 9 a.m. – 3 p.m. and lunch will be provided. She stated we are hoping to have it at the Olson Mansion.

There was discussion on when the next meeting would be to continue with the revisions to the Council Rules of Procedure. There was consensus to have it at the next regular work session in February.

ADJOURNMENT:

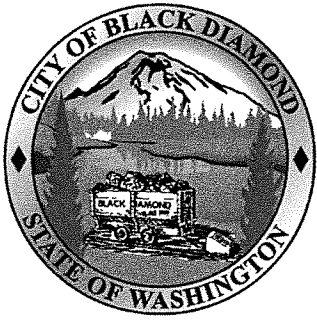
Councilmember Deady **moved** to adjourn the meeting; **second** Councilmember Edelman. Motion **passed** with all voting in favor (5-0).

The meeting ended at 8:35 p.m.

ATTEST:

Carol Benson, Mayor

Brenda L. Martinez, City Clerk



CITY OF BLACK DIAMOND
January 18, 2018 Regular Business Meeting Agenda – REVISED-Adopted
25510 Lawson St., Black Diamond, Washington

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

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

Presentation – State of the County Address

King County Councilmember Reagan Dunn

1) Proclamation - January 21 – 27, 2018 School Choice Week

Mayor Benson

CONSENT AGENDA:

2) Claim Checks – January 18, 2018 – Check No. 45720 through 45788 and ACHs in the amount of \$402,553.14

3) Minutes – Council Special Meeting of January 4, 2018

4) Minutes – Council Meeting of January 4, 2018

5) Minutes – Council Work Session of June 9, 2016

7) Minutes – Council Meeting of July 7, 2016

PUBLIC COMMENTS: Persons wishing to address the City Council regarding items of new business are encouraged to do so at this time. When recognized by the Mayor, please come to the podium and clearly state your name. Please limit your comments to 3 minutes. If you desire a formal agenda placement, please contact the City Clerk at 360-886-5700. Thank you for attending.

PUBLIC HEARINGS:

9) AB18-026 - Ordinance Adopting Updated Illicit Discharge Requirements and Amending Chapter 14.04 of the Black Diamond Municipal Code

Mr. Boettcher

10) AB18-027 – 2018 Stormwater Management Program (SWMP) Plan

Mr. Boettcher

UNFINISHED BUSINESS: None

NEW BUSINESS:

11) AB18-028 – Resolution No. 18-1223 Authorizing Agreement with Olympic Environmental

Mr. Boettcher

6) Minutes – Council Meeting of June 16, 2016

8) Minutes – Council Meeting of July 21, 2016

DEPARTMENT REPORTS:

MAYOR'S REPORT:

COUNCIL REPORTS:

- Councilmember Deady
- Councilmember Oglesbee
- Councilmember Edelman
- Councilmember Stout
- Councilmember Pepper

ATTORNEY REPORT: To discussion Legal Counsel potential litigation pursuant to RCW 42.30.110(1)(i)

PUBLIC COMMENTS:

EXECUTIVE SESSION:

ADJOURNMENT:

BLACK DIAMOND CITY COUNCIL MINUTES

January 18, 2018

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, Oglesbee, Edelman, Stout and Pepper.

ABSENT: None

Staff present: Seth Boettcher, Public Works Director; Andrew Williamson, MDRT/Ed Dev/Interim Community Development Director; Kevin Esping, Facilities Coordinator; Jamey Kiblinger, Police Chief; Deanna Humphreys, Police Clerk; David Linehan, City Attorney, and Brenda L. Martinez, City Clerk.

APPROVAL OF THE AGENDA:

Councilmember Deady stated she would like to add an executive session to the end of tonight's meeting.

Councilmember Edelman **moved** to adopt the agenda with the addition of an executive session tonight; **second** Councilmember Deady.

There was discussion regarding when to pull items from the consent agenda.

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

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS, AND PRESENTATIONS:

Mayor Benson announced that King Councilmember Dunn was ill so he will not be giving his "State of the County" address.

1) **Proclamation** - January 21 – 27, 2018 School Choice Week

Mayor Benson discussed the proclamation she included in the packet material.

CONSENT AGENDA:

Councilmember Edelman **moved** to adopt the consent agenda; **second** Councilmember Deady.

Councilmember Pepper stated she would like to separate out items 6 and 8 for an individual discussion.

Councilmember Edelman noted for the record that since these items are being pulled out they will be discussed later at this meeting and voted on.

Vote: Motion **passed** with all voting in favor with the changes to the consent agenda (5-0). The Consent Agenda was approved as follows:

- 2) **Claim Checks** – January 18, 2018 – Check No. 45720 through 45788 and EFTs in the amount of \$402,553.14
- 3) **Minutes** – Council Special Meeting of January 4, 2018
- 4) **Minutes** – Council Meeting of January 4, 2018
- 5) **Minutes** – Council Work Session of June 9, 2016
- 7) **Minutes** – Council Meeting of July 7, 2016

PUBLIC COMMENTS:

Erika Morgan, Black Diamond spoke to Council.

PUBLIC HEARINGS:

- 9) **AB18-026** - Ordinance Adopting Updated Illicit Discharge Requirements and Amending Chapter 14.04 of the Black Diamond Municipal Code

Public Works Director Boettcher briefed Council on this item.

Mayor Benson opened the public hearing at 7:09 p.m.

Erika Morgan, Black Diamond commented on looking through this and noted that 1) a pet waste station is needed for Abrams Avenue since that road runs through the meandering Rock Creek class 4 wetland demanding maximum protection, and 2) the practice of placing gravel on the road – gravel which contains silt, which then washes into the wetland degrading it with silt. This silt will then carry the phosphorus (PO₄) downstream into Lake Sawyer imperiling the TMDL for phosphorus on the lake, and 3) another issue is over the holiday dinner leavings have been set out along Abrams Avenue and this practice needs to stop. It is wrong to feed wildlife and it's dangerous to encourage feeding behavior by this wildlife in the City. She discussed at the last meeting a resident shared with her a recent night photo showing two lionesses and their nine cubs feeding on an elk carcass inside the city limits of Black Diamond. She further commented on testimony from Game Warden

Bruce Richards that these cougars travel 70 miles a day regularly and they are here in Black Diamond following a concentration of elk from Buckley, Green Valley Road, and Cougar Mountain. She discussed that they converge in Black Diamond for mating this time of year and are present during spring/summer months to raise cubs and it is incredibly irresponsible to encourage feeding behavior where humans are likely to become food.

Mayor Benson closed the public hearing at 7:12 p.m.

10) AB18-027 – 2018 Stormwater Management Program (SWMP) Plan

Public Works Director Boettcher updated Council on this item.

Mayor Benson opened the public hearing at 7:14 p.m.

Kristen Bryant, Bellevue thanked Council for the opportunity to speak on the Stormwater Management Program Plan. She noted growing up in Black Diamond and attending Enumclaw High School and during high school she was part of a club that took a trip with the school and other students across the nation to visit places important to our founding fathers. She noted going to Philadelphia and taking a bus down to Washington DC and remembered a moment crossing a big river and it was flowing brown and all the kids from the Pacific Northwest looked out the window and wondered what was wrong with the river as they were shocked. She noted a kid from Stanton Island making fun of them because rivers are brown, because that was his experience and not theirs. She further commented that everyone knows we have a clean water act in this country that covers all 50 states and the states are required to adopt regulations to implement the clean water act with education being one of the requirements for implementation of the clean water act. She noted the Black Diamond Stormwater Management Plan includes an education component and her experience with talking to people in Black Diamond is that this is a pretty difficult issue for some to understand why there is a stormwater fee and how we can make Puget Sound water cleaner based on the stormwater runoff and is something the education component is valuable about. The developments and the roads we all use are impacted by stormwater runoff and it's difficult for people to understand as they usually say they don't have a stormwater pond on their property and they don't see why they need to pay this tax. She feels this is why the education component is really important. She shared that while living in Pennsylvania her township sent out a beautiful piece about how stormwater runoff affects the fish, streams, and wildlife. She further noted it was so well done and easy to understand that she saved it. She stated she couldn't find it before coming tonight, but would be happy to share with the City as it is something that people could latch right on to and wanted to offer that and encourage the City to put a lot of emphasis on making that education component easy for people to understand, because she thinks they'll feel good about protecting our waters and streams.

Erika Morgan, Black Diamond asked if the City is still allowed to discharge from the Jones Lake lift station into the Rock Creek wetland as it's proven that this leads directly to a polluted Lake Sawyer. She noted the cause of the TMDL on the lake is the result of this past practice. She asked if she could be given an idea of how often the discharges happen and what volumes are discharged. She also inquired as to where citizens can get the

results of the Regional Stormwater Monitoring Program done by DOE and asked for an explanation on the rain garden monitoring that is happening – what is happening, who is responsible for monitoring, and who is responsible for the monitoring on the developer's roads and would the financial responsibility for this on the developer's roads ever become a city responsibility.

Kristine Hanson, Black Diamond commented on agreeing with Ms. Bryant on the education part. She noted when she was on Council doing a lot of research and finding great ways of education especially for the children and that's where the education needs to begin to teach them the importance of clean water and how they can keep our waterways clean. She discussed ideas of having the kids paint fish symbols next to the storm drains in the City so they know that these drains lead to our waterways. She stressed the importance of this and noted when she was a Councilmember she suggested for staff to work with the Black Diamond Elementary to do an educational assembly at the school and found all kinds of tools and coloring books for children to educate them which will get them excited and in turn they can go home and educate their parents, because as we grow there will be more runoff and hopes the City will champion this to happen.

Gary Davis, Black Diamond Lawson Hill area commented that in the past there have been problems with surface water runoff down past the water tank up there down through the drainage at the southend of his property and even Botts Drive has been flooded at the coal company gate one time or another. He noted one of the stormwater management things that he thinks needs to be checked on because as far as he knows it's not being checked on a regular basis is the activity of the beavers up above the water tank which he was told caused the last problem we had of that sort and hopes this can be dealt with in a way that will satisfy the federal requirements regarding the beaver and the needs of managing surface water runoff.

Mark Hill, Black Diamond commented that he has been reading about stormwater and listening to the people testifying tonight and wanted to say that he doesn't want to see the burden on the City Council and staff. The fact is that there is already a lot of knowledge out there and you have time to go and volunteer because stormwater is a public education thing and we shouldn't look at our City Council like it's their problem to go educate as he doesn't feel it is their problem to go educate – we all have it and we all can go and talk to our own kids and we all can volunteer time to go do this.

Mayor Benson closed the public hearing at 7:25 p.m.

UNFINISHED BUSINESS: None

NEW BUSINESS:

11) AB18-028 – Resolution No. 18-1223 Authorizing Agreement with Olympic Environmental

Public Works Director Boettcher reported on this item.

Councilmember Edelman **moved** to adopt Resolution No. 18-1223, authorizing the Mayor to execute a professional services agreement with Olympic Environmental Resources for the City's 2018 Spring and Fall recycling events; **second** Councilmember Oglesbee.

Councilmember Edelman spoke to her motion followed by Council and staff discussion.

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

6) Minutes – Council Meeting of June 16, 2016

Councilmember Pepper commented that she would like to add more complete comments from Mr. Talmadge and provided a transcript of that part of the minutes to be added.

There was Council discussion.

Councilmember Deady **moved** to approve the June 16, 2016 City Council minutes; **second** Councilmember Oglesbee. Motion **passed** 4-1 (Pepper).

8) Minutes – Council Meeting of July 21, 2016

There was Council discussion.

Councilmember Edelman **moved** to adopt the meeting minutes for the Council meeting of July 21, 2016; **second** Councilmember Deady. Motion **passed** 4-1 (Pepper).

DEPARTMENT REPORTS:

MDRT/Ec Dev/Interim Community Development Director Williamson discussed with Council the Comprehensive Plan update and the plan moving forward. He suggested holding a special joint meeting with the Planning Commission at their meeting on February 6, 2018 on the comprehensive plan update. He further noted that following that meeting will be a scheduled work plan for getting this update completed.

Councilmember Edelman **moved** to have a special meeting with the Planning Commission on Tuesday, February 6, 2018 starting at 6 p.m.; **second** Councilmember Deady. Motion **passed** with all voting in favor (5-0).

MAYOR'S REPORT:

Mayor Benson reported attending the first Finance Committee meeting; summary judgement hearing; SCATBd meeting; Public Works Committee meeting; Chamber luncheon; Fire Commissioners annual banquet and the staff management meeting.

COUNCIL REPORTS:

Councilmember Deady reported attending the summary judgement hearing; Fire Commissioners annual banquet, and the Finance Committee meeting.

Councilmember Olgesbee reported speaking with staff on agenda items; attending Hometown Christmas wrap up meeting; AWC Workshop next Thursday on Parliamentary Procedure; Public Safety meeting on the 26th of January and noted welcoming emails from citizens on items to bring forward to that committee; volunteering at the Museum.

Councilmember Edelman reported attending the PIC meeting; upcoming Legislative Action Days; 31st PSRS and SCA will have an all day orientation at PSRC for newly electeds; SCA will be holding on the 7th at SeaTac City Hall an orientation on SCA committees; summary judgement hearing; Public Works Committee meeting; Kiwanis Lunch, and Chamber luncheon.

Councilmember Stout reported attending training with City Attorney David Linehan on the 5th; invited to speak to Cub Scout Troup and gave presentation on running a campaign; Finance Committee meeting; Council work session; Kiwanis luncheon; Public Works Committee meeting; Chamber Luncheon; SCA networking Dinner; and noted it being a busy couple of weeks.

Councilmember Pepper reported attending the Council work session; discussed AWC issues on homelessness and affordable housing; Department of Commerce is sponsoring workshop for Block Grants March 14 and 28th and this might be something of interest for the City to attend and apply for grants.

ATTORNEY REPORT:

Attorney Linehan reported there are a lot of telecommunications companies who want to build infrastructure in Black Diamond and noted Council may see draft ordinances coming forward should they wish to pursue.

PUBLIC COMMENTS:

Kristine Hanson, Black Diamond spoke to Council.

Johna Thomson, Black Diamond spoke to Council.

Mark Hill, Black Diamond spoke to Council.

Erika Morgan, Black Diamond spoke to Council.

Kristen Bryant, Bellevue spoke to Council.

Gary Davis, Black Diamond spoke to Council.

Jackie Buss, Black Diamond spoke to Council.

EXECUTIVE SESSION:

At 8:07 p.m. Mayor Benson announced that the Council would be going into executive session pursuant to RCW 42.30.110(1)(i) to discuss with Legal counsel potential litigation. It was anticipated the executive session would last 15 minutes with possible action to follow.

At 8:22 p.m. a ten minute extension was announced.

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

Councilmember Deady **moved** that the City Code Enforcer move forward with legal action on property 32110 Bruckners Way, Black Diamond; **second** Councilmember Edelman. Motion **passed** with all voting in favor (5-0).

ADJOURNMENT:

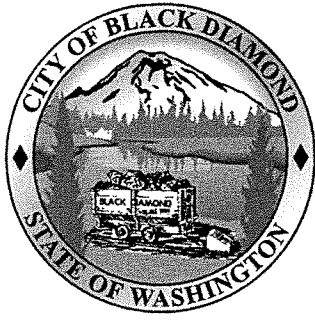
Councilmember Edelman **moved** to adjourn the meeting; **second** Councilmember Deady. Motion **passed** with all voting in favor (5-0).

The meeting ended at 8:34 p.m.

ATTEST:

Carol Benson, Mayor

Brenda L. Martinez, City Clerk



CITY OF BLACK DIAMOND
August 11, 2016 Regular Work Session
25510 Lawson Street, Black Diamond, Washington

6:00 P.M. – CALL TO ORDER, FLAG SALUTE, ROLL CALL

WORK SESSION:

- 1) Six Year Transportation Improvement Program - Mr. Boettcher
- 2) Continuation of Council Rules of Procedure
- 3) Adjournment

**BLACK DIAMOND CITY COUNCIL
WORK SESSION MINUTES
August 11, 2016**

CALL TO ORDER, FLAG SALUTE:

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

ROLL CALL:

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

ABSENT: None

Staff present: Seth Boettcher, Public Works Director; Jamey Kiblinger, Police Chief; Brenda L. Martinez, City Clerk.

Work Session:

1) Six Year Transportation Improvement Program

Public Works Director Boettcher reported on the public hearing held on June 2 and the workshop that was held. He discussed revisions that were made based on Council's input at the last workshop. The issue was tabled for another workshop. He asked Council what revisions, edits, additions or deletions Council would like to see to make this an approvable document.

There was Council discussion.

Councilmember Edelman noted for the record there are Councilmembers who showed up not prepared to discuss this item.

Councilmember Deady called a point of order, this is a work study meeting.

There was continued Council discussion around the Development Agreement.

2) Continuation of Council Rules of Procedure

▪ **Section 7: Parliamentary Procedures and Motions**

7.3- Waiver of Rules-Councilmember Edelman noted that to be consistent with Roberts Rules that carries an affirmative vote of at least a majority of the whole membership, the Council may waive or modify these rules of procedure. To be consistent with Robert's Rules; she referenced back to 7.2.11. She noted an appendix to J of Roberts Rules take 2/3 vote and recommended that we change section **7.3** to be consistent with **7.2.11**.

There was Council discussion.

Section 8: Voting

- **8.1-**Councilmember Edelman noted no change
- **8.2-**Councilmember Edelman noted no change
- **8.3-**There was discussion around RCW (conflicts of interest) and RMSA-this is 8.5 in July version, and 8.6 in January version. Councilmember Edelman will add a statement prior to 8.6.1 that refers to the RCW. Councilmembers noted to move forward with this.
- **8.4-**Councilmember Edelman discussed that votes by Mayor were deleted in the July rules. There was discussion on the veto powers of the Mayor. She recommended to leave 8.4 as is in the 2015 version.
- **8.5- 8.7-** Councilmember Edelman noted no change

Section 9: Ordinances and Resolutions

- **9.1-** Councilmember Edelman stated changes were made in the July version. She noted that Talmadge took exception to the revision and Talmadge wrote "revise rule 9.1 removes the mandatory review of ordinances by the City Attorney. It replaces it with language that the City Attorney "should" review ordinances; since ordinances are laws adopted by the City, we suggest the mandatory review procedure." Morris wrote "the language should remain consistent with law to the extent that it prevents the Mayor from placing an ordinance on the agenda and ensuring timely adoption. This is also inconsistent with law because the Mayor Pro Tem has no duties unless the Mayor is absent." She suggested we need to keep the language that was in the January version.
- **9.2-**Councilmember Edelman commented that this was in the July version but not the January version. She noted that it needs to have its own section. She shared that both Talmadge and Morris suggest that resolutions can constitute City policy. Talmadge states "review by the City Attorney is suggested at least as to resolutions that could affect City policy and potential legal liability." She recommended that we keep the former rules from the 2015 version.

Section 10: Public Comments

- **10.1-**Councilmember Edelman commented she doesn't see a problem in eliminating the sign-in sheet. She also suggested verbiage saying "persons

addressing the Council should step up to the podium and give their name and city for the record.”

10.2- Councilmember Edelman noted no change.

10.3- Councilmember Edelman noted no change.

10.4- Councilmember Edelman noted no change.

Section 11: Legislative and Quasi-Judicial Hearings

- 11.1.3- Councilmember Edelman noted that in the 2015 version no one may speak for a second time without the approval of the presiding officer. In the July 2016 version, there is no mention of the presiding officer, it has been deleted and per Carol Morris that is contrary to law, the presiding officer still needs to be in there. It may be the Mayor; it may be the Mayor Pro Tempore, but deleting the presiding officer is taking authority away from whomever is the presiding officer.

There was Council discussion over the verbiage of section 11.1.3 in the 2015 rules.

- 11.1.4- Councilmember Edelman noted no change.
- 11.1.5- Councilmember Edelman noted this was deleted in the July 2016 version.

There was Council discussion around the verbiage.

Section 12: Town Hall Meetings

- Recommended to put quotation marks around Town Hall Meetings. However, Councilmember Edelman doesn't believe this to be necessary.

Section 13: Mayor Pro Tempore and Council President Selection Process

- Discussion over the first paragraph reading the same as the 2015 version. New paragraph was added in the 2016 version.

There was Council discussion around rules and Mayor Pro Tempore.

Councilmember Edelman noted for the record, “you really cannot justify the need for the position of Council President.”

Section 14: Selecting a Council Member Pro Tempore or Filling a Vacant Council Position

Councilmember Edelman noted no change.

Section 15: Council Meeting Staffing

- 15.1- Councilmember Edelman noted no change.

- 15.2-Councilmember Edelman read a quote from Talmadge regarding this section. She read what Morris stated on this item. She suggested to keep the same language as 2015 rules.
- 15.3-Councilmember Edelman read the suggestions from Talmadge and Morris. and suggested verbiage.

Section 16: Council Relations with Staff

- 16.3-Councilmember Morgan noted there was an RMSA issue and there may be a conflict.
- 16.5-Councilmember Edelman commented that this paragraph was deleted. She read the Talmadge and Morris opinion. She also suggested keeping the 16.5 verbiage in 2015 rules.

There was Council discussion around this.

- Councilmember Weber suggested that we revisit this item to give Councilmember Morgan more time to come up with a citation.

Section 17: Appointment by Mayor and Confirmation by City Council-When Required

- Councilmember Edelman noted no change.

Section 18: Council Committees and Citizen Advisory Boards

- 18.1.1- Councilmember Edelman noted that this was rewritten. She read the quote from Talmadge and read the Morris recommendation. Noted “do pas” is a way to obstruct City business. She then suggested to keep as is in the 2015 version.

There was Council discussion around this.

Mayor Benson noted inviting Council to have Committee meetings that start at 4 p.m. and those meetings will be open to the public.

- 18.1.2- Councilmember Edelman discussed being at an impasse and noted taking all authority away from the Mayor. The Mayor appoints, the Council confirms. She noted that the Mayor should be able to have some say of what’s going on at the committees.

There was Council discussion around this.

- 18.1.3- Councilmember Edelman noted no change.
- 18.1.3(a)-Councilmember Edelman noted deleted verbiage working with the Mayor and Staff, and added verbiage noticing requirements for meeting times to be on week-day evenings.

There was Council discussion around this.

- 18.1.3(b) Councilmember Edelman noted there being added a Vice Chair; she wondered why there was a need for a Vice Chair.

There was Council discussion around this.

18.1.3 (d)-Councilmember Edelman discussed this being in the July 2016 rules; she read what Talmadge and Morris noted on what “signed out” means and there needing to be a definition added.

There was Council discussion around this.

Councilmember Edelman backed up to section 18.1.3:

- A) Councilmember Edelman discussed in July version, revised rules deleted verbiage “working with Mayor and City” and rewrote the entire paragraph A.
- 18.1.3-Councilmember Edelman read the new language in 2016 rules. She noted whoever it is, needs to work with the Mayor to finalize agendas.

There was Council discussion around this.

3) ADJOURNMENT:

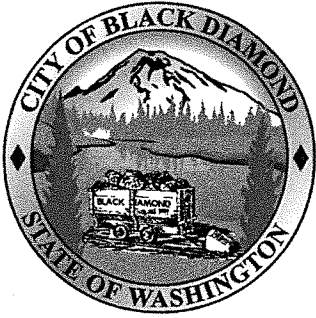
A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adjourn the meeting. Motion **passed** with all voting in favor (5-0).

The meeting ended at 7:59 p.m.

ATTEST:

Carol Benson, Mayor

Brenda L. Martinez, City Clerk



CITY OF BLACK DIAMOND
August 18, 2016 Regular Business Meeting Agenda
25510 Lawson St., Black Diamond, Washington

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

EXECUTIVE SESSION: Executive session as authorized by RCW 42.30.140(4) to discuss collective bargaining

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

CONSENT AGENDA:

- 1) **Claim Checks** – August 8, 2016 - No. 43800 through No.43849 and EFTs in the amount of \$122,146.23
- 2) **Payroll** – July 31, 2016 – No. 19175 through No. 19193 (voids, 18773, 18795, 18829, 19183, 19188) and EFTs in the amount of \$268,305.28
- 3) **Minutes** – Council Meeting of July 21, 2016 and Council Meeting of August 4, 2016

PUBLIC COMMENTS: Persons wishing to address the City Council regarding items of new business are encouraged to do so at this time. When recognized by the Mayor, please come to the podium and clearly state your name. Please limit your comments to 3 minutes. If you desire a formal agenda placement, please contact the City Clerk at 360-886-5700. Thank you for attending.

PUBLIC HEARINGS: None

UNFINISHED BUSINESS:

NEW BUSINESS:

- 4) **AB16-046** – Resolution Regarding Voluntary Traffic Mitigation Agreement with Enumclaw School District

Mr. Boettcher

DEPARTMENT REPORTS:

MAYOR'S REPORT:

COUNCIL REPORT:

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

ATTORNEY REPORT:

PUBLIC COMMENTS:

ADJOURNMENT:

Items on the Table

- *DKS Claim Voucher*

BLACK DIAMOND CITY COUNCIL MINUTES

August 18, 2016

Council Chamber, 25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER, FLAG SALUTE:

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

ROLL CALL:

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

ABSENT: None

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

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

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

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

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

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

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

PUBLIC COMMENTS:

Peter French, Bonney Lake commented that he works for the Enumclaw School District and noted being one of the project managers for the Black Diamond Elementary School project.

He read a statement from Superintendent Mike Nelson into the record as Mr. Nelson was unable to attend.

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

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

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

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

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

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

CONSENT AGENDA:

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

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

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

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

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

PUBLIC HEARINGS: None

UNFINISHED BUSINESS: None

NEW BUSINESS:

Resolution regarding Voluntary Traffic Mitigation Agreement with Enumclaw School District

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

Councilmember Edelman encouraged passage of this resolution tonight.

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

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

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

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

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

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

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

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

Councilmember Edelman called the question.

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

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

Kenyon Disend Claim Voucher

Councilmember Weber discussed being concerned that the contracts being authorized by the Mayor under her \$15,000 authority are serial contracts and circumventing the hiring of a full time Attorney. Mayor Benson noted she has the authority to hire the City Attorney

and state law requires the City to have an attorney and if Council won't approve the contract she can approve them over and over as it's required by law.

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

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

Minutes of July 21, 2016 and August 4, 2016

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

There was Council discussion on the August 4th minutes.

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

There was Council discussion on the July 21st minutes.

Councilmember Weber **withdrew** his motion.

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

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

DEPARTMENT REPORTS:

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

Community Development – Interim Community Development Director Williamson reported on the Tough Mudder event that is coming to the City. He noted the special event permit will be coming before Council at their September 1st meeting and distributed

information to Council regarding this event. He urged Council to call him with any questions they may have as there is a need for Council action at the meeting on September 1st.

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

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

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

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

MAYOR'S REPORT:

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

COUNCIL REPORTS:

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

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

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

Councilmember Weber commented that the children from Black Diamond Elementary School will be attending JJ Smith this school while the new school here in Black Diamond is

being built. He also noted the School District has done a great job in getting that facility ready for the kids. He thanked the Boys Scouts who were in attendance at the meeting.

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

ATTORNEY REPORT: None

PUBLIC COMMENTS: None

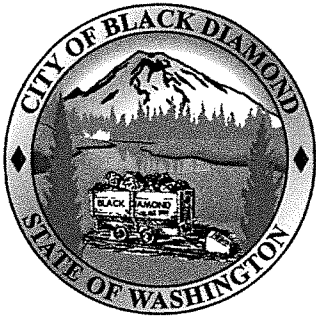
ADJOURNMENT:

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

ATTEST:

Carol Benson, Mayor

Brenda L. Martinez, City Clerk



CITY OF BLACK DIAMOND
August 23, 2016 Special Joint Meeting Agenda
City Council and Planning Commission
25510 Lawson St., Black Diamond, Washington

6:10 P.M. – CALL TO ORDER, FLAG SALUTE, ROLL CALL

WORK SESSION -

1. City's Comprehensive Plan Update
 - a. Parks, Trails, Recreation and Open Space Element

ADJOURNMENT:

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

CALL TO ORDER, FLAG SALUTE:

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

ROLL CALL:

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

ABSENT: Commissioners LaConte, Ekberg, and Ammons

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

WORK SESSION:

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

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

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

Existing Conditions

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

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

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

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

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

PARK TYPES AND LEVEL OF SERVICE (LOS) STANDARDS

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

EXISTING NEED

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

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

FUTURE NEEDS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ADJOURNMENT:

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

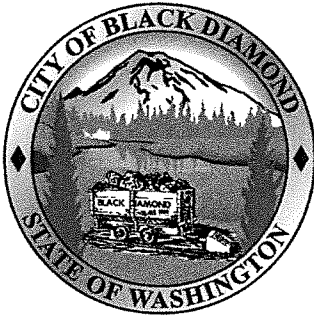
The meeting was adjourned at 8:11:29 p.m.

ATTEST:

Carol Benson, Mayor

Brenda L. Martinez, City Clerk

DRAFT



CITY OF BLACK DIAMOND
August 25, 2016 Special Council Meeting Agenda
25510 Lawson St., Black Diamond, Washington

6:00 P.M. – CALL TO ORDER, FLAG SALUTE, ROLL CALL

1. Draft 2017-2022 Capital Improvement Plan for General Government Capital Projects

ADJOURNMENT:

**BLACK DIAMOND CITY COUNCIL
SPECIAL MEETING MINUTES**

August 25, 2016

Council Chamber, 25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER, FLAG SALUTE:

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

ROLL CALL:

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

ABSENT: None

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

DRAFT CAPITAL IMPROVEMENT PLAN – GENERAL GOVERNMENT CAPITAL PROJECTS

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

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

PARKS DEPARTMENT

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

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

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

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

FIRE DEPARTMENT

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

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

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

GENERAL GOVERNMENT

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

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

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

POLICE DEPARTMENT

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

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

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

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

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

ADJOURNMENT:

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

ATTEST

Carol Benson, Mayor

Brenda L. Martinez, City Clerk

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: Resolution 18-1224, authorizing the purchase of a new 4x4 extended cab truck for MDRT Inspector	Agenda Date: February 1, 2018 AB18-029	
Cost Impact (see also Fiscal Note): \$40,000 Fund Source: -- Paid by Developer per MPD Funding Agreement Timeline: Immediately	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	X
	Police – Chief Kiblinger	
	Public Works – Seth Boettcher	
	Court – Stephanie Metcalf	
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Resolution 18-1224		
SUMMARY STATEMENT: MDRT has hired an additional Inspector and will need to furnish a city vehicle for inspections.		
FISCAL NOTE (Finance Department): Paid by Developer per MPD Funding Agreement		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: MOTION to adopt Resolution No. 18-1224, authorizing the purchase of a new 4x4 extra cab and equipment for the Master Development Review Team Construction Inspector.		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
February 1, 2018		

RESOLUTION NO. 18-1224

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE PURCHASE OF A NEW 4x4 EXTRA
CAB AND EQUIPMENT FOR THE MASTER
DEVELOPMENT REVIEW TEAM CONSTRUCTION
INSPECTOR**

WHEREAS, the City needs to purchase an equipped vehicle for the Master Development Review Team Construction Inspector within a budget of \$40,000; and

WHEREAS, purchasing vehicles through Washington State Office of Procurement meets the competitive bid requirements; and

WHEREAS, a new 4x4 Extra Cab Truck outfitted with tools, graphics and safety equipment to provide room for several passengers, and maneuverability around construction sites; and

WHEREAS, the Master Developer is required to provide the equipment needed for the Master Development Review Team;

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

Section 1. Authorize the Mayor to purchase a new 4x4 Extra Cab through the Washington State Office of Procurement and the necessary equipment not to exceed \$40,000.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THERE OF, THIS 1ST DAY OF FEBRUARY 2018.

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT:	Agenda Date: February 1, 2018	AB18-026A
Ordinance No. 18-1098, adopting updated illicit discharge requirements and amending Chapter 14.04 of the Black Diamond Municipal Code	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	
Cost Impact (see also Fiscal Note): \$0	Public Works – Seth Boettcher	X
Fund Source: --	Court – Stephanie Metcalf	
Timeline: Due February 2, 2018		
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Ordinance 18-1098 (clean and redlined versions)		
SUMMARY STATEMENT: The adoption of these Illicit Discharge Detection and Elimination (IDDE) regulations is a requirement of the City's National Pollutant Discharge Elimination System (NPDES) Permit from the Department of Ecology. These code updates update general definitions to be more consistent with NPDES Permit language, clarifies items considered to be illicit discharges and illicit connections, and further clarifies enforcement. Adoption of this ordinance will keep the City in compliance with the NPDES Permit. A public hearing was held January 18, 2018. No changes from public comments are recommended by staff. FISCAL NOTE (Finance Department):		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: Public Works Committee recommends adoption.		
RECOMMENDED ACTION: MOTION to adopt Ordinance 18-1098, adopting Illicit Discharge regulations to meet NPDES Permit requirements and amending Chapter 14.04 of the Black Diamond Municipal Code.		
RECORD OF COUNCIL ACTION		
Meeting Date	Action	Vote
January 18, 2018	Public Hearing	
February 1, 2018		

ORDINANCE NO. 18-1098

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON REGARDING ILLICIT DISCHARGES INTO THE CITY'S STORMWATER DRAINAGE SYSTEM OR CREEKS, LAKES, WETLANDS AND WATERWAYS, AND AMENDING BLACK DIAMOND MUNICIPAL CODE SECTIONS 14.04.005 AND 14.04.390; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City's National Pollution Discharge Elimination System (NPDES), Phase 2 Permit from the Department of Ecology requires the City to implement an ordinance or other regulatory mechanism to effectively prohibit non-stormwater, illicit discharges into the City's stormwater system to the maximum extent allowable under state and federal law; and

WHEREAS, in 2009 through Ordinance No. 09-917, the Black Diamond City Council adopted measures to effectively prohibit non-stormwater, illicit discharges into the City's stormwater system as required by the City's previous NPDES Phase 2 Permit; and

WHEREAS, the City's current NPDES Phase 2 Permit has modified the requirements for prohibiting such discharges into the City's stormwater system; and

WHEREAS, the City is required to implement these updated requirements by February 2, 2018; and

WHEREAS, the Council held a public hearing on this ordinance on January 18, 2018;

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

Section 1. Section 14.04.005 of the Black Diamond Municipal Code is hereby amended to read as follows:

14.04.005 Definitions

1. "AKART" means all known, available, and reasonable methods of prevention, control, and treatment and as described in the State Water Pollution Control Act, Sections RCW 90.48.010 and RCW 90.48.520 now or hereafter amended.

2. "Black Diamond waterway" means a lake, wetland, creek, stream, and/or secondary channels leading to these water features.

3. "Combined Sewer" means a system that collects sanitary sewage and stormwater in a single sewer system.

4. "Hazardous Materials" means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

5. "Hyperchlorinated" means water that contains more than ten milligrams per liter of chlorine.

6. "Illicit connection" means any infrastructure connection to a municipal separate storm sewer that is not intended, permitted, or used for collecting and conveying stormwater or non-stormwater discharges, excluding roof drains and other similar type connections. Examples include, but are not limited to, sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the municipal separate storm sewer system.

7. "Illicit discharge" means any discharge to a municipal separate storm sewer or Black Diamond waterway that is not composed entirely of stormwater with the exception of discharges allowed under BDMC 14.04.390(B)(2) and discharges that meet the stated conditions in BDMC 14.04.390(B)(3).8. "Municipal separate storm sewer system" or "MS4" means a conveyance or system of conveyances including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains:

1. Owned and operated by the City; and
2. Designed or used for collecting or conveying stormwater; and
3. Which is not part of a publicly owned treatment works (POTW); and
4. Which is not a Combined Sewer.

9. "Non-stormwater discharge" means any discharge to the storm drain system that is not composed entirely of stormwater.

10. "Pollutant" means anything which causes or contributes to pollution. Pollutants may include, but are not limited to, paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that the same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

11. "Premises" means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

12. "Publicly Owned Treatment Works" or "POTW" means any device or system used in treatment of municipal sewage or industrial wastes of a liquid nature and which is publicly owned.

13. "Storm drainage system" means publicly owned facilities, including the City's municipal separate storm sewer system, by which stormwater is collected and/or conveyed, including but not limited to, any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention or detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

14. "Stormwater Pollution Prevention Plan" or "SWPPP" means a document which describes the best management practices and activities to be implemented by a person to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

Section 2. Section 14.04.390(B) of the Black Diamond Municipal Code is hereby amended to read as follows:

14.04.390 Protection of storm drainage systems

B. Illicit Discharges.

1. Prohibited Discharges. Prohibition of illegal discharges. No person shall throw, drain, or otherwise discharge, cause or allow others under its control to throw, drain or otherwise discharge into the municipal storm drain system and/or surface and ground waters any materials other than stormwater. Examples of prohibited contaminants include, but are not limited to, the following:

- a. Trash or debris.
- b. Construction materials.
- c. Petroleum products including, but not limited to, oil, gasoline, grease, fuel oil and heating oil.
- d. Antifreeze and other automotive products.
- e. Metals in either particulate or dissolved form.
- f. Flammable or explosive materials.
- g. Radioactive material.
- h. Batteries.
- i. Acids, alkalis, or bases.
- j. Paints, stains, resins, lacquers, or varnishes.

- k. Degreasers and/or solvents.
- l. Drain cleaners.
- m. Pesticides, herbicides, or fertilizers.
- n. Steam cleaning wastes.
- o. Soaps, detergents, or ammonia.
- p. Swimming pool or spa filter backwash, including cleaning wastewater.
- q. Chlorine, bromine, or other disinfectants.
- r. Heated water.
- s. Domestic animal wastes.
- t. Sewage.
- u. Recreational vehicle waste.
- v. Animal carcasses.
- w. Food wastes.
- x. Bark and other fibrous materials.
- y. Lawn clippings, leaves, or branches.
- z. Silt, sediment, concrete, cement or gravel.
- aa. Dyes.
- bb. Chemicals not normally found in uncontaminated water.
- cc. Any other process-associated discharge except as otherwise allowed in this section.
- dd. Any hazardous material or waste not listed above.

2. Allowable Discharges. The following types of discharges shall not be considered illegal discharges for the purposes of this chapter unless the director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater:

- a. Diverted stream flows.
- b. Rising ground waters.
- c. Uncontaminated ground water infiltration, as defined in 40 CFR 35.2005(20).
- d. Uncontaminated pumped ground water.

- e. Foundation drains.
- f. Air conditioning condensation.
- g. Irrigation water from agricultural sources that is commingled with urban stormwater.
- h. Springs.
- i. Uncontaminated water from crawl space pumps.
- j. Footing drains.
- k. Flows from riparian habitats and wetlands.
- l. Non-stormwater discharges authorized by another NPDES or state waste discharge permit.
- m. Discharges from emergency firefighting activities.

3. Conditional Discharges. The following types of discharges shall not be considered illegal discharges for the purposes of this chapter if they meet the stated conditions, or unless the director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater:

a. Potable water, including but not limited to, water from water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be de-chlorinated to a total residual chlorine concentration of 0.1 ppm or less, pH-adjusted, if necessary and in volumes and velocities controlled to prevent re-suspension of sediments in the stormwater system;

b. Lawn watering and other irrigation runoff are permitted but shall be minimized;

c. De-chlorinated swimming pool (including spa and hot tub) discharges. These discharges shall be de-chlorinated to a total residual chlorine concentration of 0.1 ppm or less, pH-adjusted, if necessary and in volumes and velocities controlled to prevent re-suspension of sediments in the stormwater system. Discharges shall be thermally controlled to prevent an increase in temperature of the receiving water;

d. Street and sidewalk wash water, water used to control dust, and routine external building wash-down that does not use detergents are permitted if the amount of street wash and dust control water used is minimized. At active construction sites, street sweeping must be performed prior to washing the street;

e. Non-stormwater discharges covered by another NPDES permit, provided, that the discharger is in full compliance with all requirements of the

permit, waiver, or order and other applicable laws and regulations; and provided, that written approval has been granted for any discharge to the storm drain system;

f. Other non-stormwater discharges. The discharges shall comply with the requirements of a Stormwater Pollution Prevention Plan reviewed and approved by the City, which addresses control of such discharges by applying AKART to prevent contaminants from entering surface or ground water.

Section 3. Section 14.04.390(D) of the Black Diamond Municipal Code is hereby amended to read as follows:

14.04.390 Protection of storm drainage systems

D. Enforcement.

In addition to any other remedies set forth in this chapter or available at law, the City shall have the remedies set forth in this subsection for any violation of the provisions of this section. The choice of enforcement action and the severity of any penalty shall be based on the nature of the violation, the damage or risk to the public or to public resources, and/or the degree of bad faith of the person subject to the enforcement action. Repeated violations shall escalate the severity of the enforcement action.

Section 4. Each and every provision of this Ordinance is severable. If any provision of this Ordinance is found to be unconstitutional or otherwise unenforceable or contrary to law by a court of competent jurisdiction, that finding shall not affect the validity of the remaining provisions, which shall remain in force and effect.

Section 5. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

PASSED BY A MAJORITY OF THE CITY COUNCIL AT A MEETING HELD ON THE 1ST DAY OF FEBRUARY, 2018.

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:

David Linehan, City Attorney

Published: _____

Posted: _____

Effective Date: _____

ORDINANCE NO. 18-~~1098~~

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON REGARDING ILLICIT DISCHARGES INTO THE CITY'S STORMWATER DRAINAGE SYSTEM OR CREEKS, LAKES, WETLANDS AND WATERWAYS, AND AMENDING BLACK DIAMOND MUNICIPAL CODE SECTIONS 14.04.005 AND 14.04.390; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City's National Pollution Discharge Elimination System (NPDES), Phase 2 Permit from the Department of Ecology requires the City to implement an ordinance or other regulatory mechanism to effectively prohibit non-stormwater, illicit discharges into the City's stormwater system to the maximum extent allowable under state and federal law; and

WHEREAS, in 2009 through Ordinance No. 09-917, the Black Diamond City Council adopted measures to effectively prohibit non-stormwater, illicit discharges into the City's stormwater system as required by the City's previous NPDES Phase 2 Permit; and

WHEREAS, the City's current NPDES Phase 2 Permit has modified the requirements for prohibiting such discharges into the City's stormwater system; and

WHEREAS, the City is required to implement these updated requirements by February 2, 2018; and

WHEREAS, the Council held a public hearing on this ordinance on January 18, 2018;

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

Section 1. Section 14.04.005 of the Black Diamond Municipal Code is hereby amended to read as follows:

14.04.005 Definitions

1. "AKART" means aAll kKnown, aAvailable, and rReasonable methods of prevention, control, and tTreatment and as described in. See also the State Water Pollution Control Act, Sections RCW 90.48.010-RCW and RCW 90.48.520-RCW now or hereafter amended.

2. "Black Diamond waterway" means a lake, wetland, creek, stream, and/or secondary channels leading to these water features.

3. "Combined Sewer" means a system that collects sanitary sewage and stormwater in a single sewer system.

4. "Hazardous Materials" means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

5. "Hyperchlorinated" means water that contains more than ten milligrams/ per liter of chlorine.

6. "Illicit connection" means any ~~man-made conveyance infrastructure connection that is connected~~ to a municipal separate storm sewer ~~without a permit that is not intended, permitted, or used for collecting and conveying stormwater or non-stormwater discharges~~, excluding roof drains and other similar type connections. Examples include, but are not limited to, sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the municipal separate storm sewer system.

7. "Illicit discharge" means any discharge to a municipal separate storm sewer or Black Diamond waterway that is not composed entirely of stormwater with the exception of discharges allowed under BDMC 14.04.390(B)(2) and discharges that meet the stated conditions in BDMC 14.04.390(B)(3)~~except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.~~

8. "Municipal separate storm sewer system" or ("MS4") means a conveyance or system of conveyances (including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

1. Owned and operated by the City; and

2. Designed or used for collecting or conveying stormwater; and

3. Which is not part of a publicly owned treatment works (POTW)~~publicly owned treatment works (POTW). "POTW" means any device or system used in treatment of municipal sewage or industrial wastes of a liquid nature which is publicly owned; and~~

4. Which is not a Combined Sewer. ~~"Combined sewer" means a system that collects sanitary sewage and stormwater in a single sewer system.~~

9. "Non-stormwater discharge" means any discharge to the storm drain system that is not composed entirely of stormwater.

10. "Pollutant" means anything which causes or contributes to pollution. Pollutants may include, but are not limited to, paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that the same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

11. "Premises" means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

12. "Publicly Owned Treatment Works" or "POTW" means any device or system used in treatment of municipal sewage or industrial wastes of a liquid nature and which is publicly owned.

13. "Storm drainage system" means publicly owned facilities, including the Ceity's municipal separate storm sewer system, by which stormwater is collected and/or conveyed, including but not limited to, any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention or detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

14. "Stormwater Ppollution Pprevention Pplan" or "SWPPP" means a document which describes the best management practices and activities to be implemented by a person to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

Section 2. Section 14.04.390(-B) of the Black Diamond Municipal Code is hereby amended to read as follows:

14.04.390 Protection of storm drainage systems

B. Illicit Discharges.

1. Prohibited Discharges. Prohibition of illegal discharges. No person shall throw, drain, or otherwise discharge, cause or allow others under its control to throw, drain or otherwise discharge into the municipal storm drain system and/or surface and ground waters any materials other than stormwater. Examples of prohibited contaminants include, but are not limited to, the following:

- a. Trash or debris.
- b. Construction materials.
- c. Petroleum products including, but not limited to, oil, gasoline, grease, fuel oil and heating oil.

- d. Antifreeze and other automotive products.
- e. Metals in either particulate or dissolved form.
- f. Flammable or explosive materials.
- g. Radioactive material.
- h. Batteries.
- i. Acids, alkalis, or bases.
- j. Paints, stains, resins, lacquers, or varnishes.
- k. Degreasers and/or solvents.
- l. Drain cleaners.
- m. Pesticides, herbicides, or fertilizers.
- n. Steam cleaning wastes.
- o. Soaps, detergents, or ammonia.
- p. Swimming pool or spa filter backwash, including cleaning wastewater.
- q. Chlorine, bromine, or other disinfectants.
- r. Heated water.
- s. Domestic animal wastes.
- t. Sewage.
- u. Recreational vehicle waste.
- v. Animal carcasses.
- w. Food wastes.
- x. Bark and other fibrous materials.
- y. Lawn clippings, leaves, or branches.
- z. Silt, sediment, concrete, cement or gravel.
- aa. Dyes.
- bb. Chemicals not normally found in uncontaminated water.
- cc. Any other process-associated discharge except as otherwise allowed in this section.
- dd. Any hazardous material or waste not listed above.

2. Allowable Discharges. The following types of discharges shall not be considered illegal discharges for the purposes of this chapter unless the director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater:

- a. Diverted stream flows.
- b. Rising ground waters.
- c. Uncontaminated ground water infiltration, as defined in 40 CFR 35.2005(20).
- d. Uncontaminated pumped ground water.
- e. Foundation drains.
- f. Air conditioning condensation.
- g. Irrigation water from agricultural sources that is commingled with urban stormwater.
- h. Springs.
- i. Uncontaminated Wwater from crawl space pumps.
- j. Footing drains.
- k. Flows from riparian habitats and wetlands.
- l. Non-stormwater discharges authorized by another NPDES or state waste discharge permit.
- m. Discharges from emergency ~~fire-fighting~~firefighting activities.

3. Conditional Discharges. The following types of discharges shall not be considered illegal discharges for the purposes of this chapter if they meet the stated conditions, or unless the director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater:

- a. Potable water, including but not limited to, water from water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be de-chlorinated to a total residual chlorine concentration of 0.1 ppm or less, pH-adjusted, if necessary and in volumes and velocities controlled to prevent re-suspension of sediments in the stormwater system;
- b. Lawn watering and other irrigation runoff are permitted but shall be minimized;
- c. De-chlorinated swimming pool (including spa and hot tub) discharges. These discharges shall be de-chlorinated to a total residual chlorine

concentration of 0.1 ppm or less, pH-adjusted, if necessary and in volumes and velocities controlled to prevent re-suspension of sediments in the stormwater system. Discharges shall be thermally controlled to prevent an increase in temperature of the receiving water;

d. Street and sidewalk wash water, water used to control dust, and routine external building wash-down that does not use detergents are permitted if the amount of street wash and dust control water used is minimized. At active construction sites, street sweeping must be performed prior to washing the street;

e. Non-stormwater discharges covered by another NPDES permit, provided, that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations; and provided, that written approval has been granted for any discharge to the storm drain system;

f. Other non-stormwater discharges. The discharges shall ~~comply~~^{be in compliance} with the requirements of a ~~S~~stormwater ~~P~~pollution ~~P~~revention ~~P~~lan (SWPPP) reviewed and approved by the ~~C~~eity, which addresses control of such discharges by applying AKART to prevent contaminants from entering surface or ground water.

Section 3. Section 14.04.390(-D) of the Black Diamond Municipal Code is hereby amended to read as follows:

14.04.390 Protection of storm drainage systems

D. Enforcement.

~~Enforcement.~~ In addition to any other remedies set forth in this chapter or available at law, the ~~C~~eity shall have the remedies set forth in this subsection for any violation of the provisions of this section. The choice of enforcement action and the severity of any penalty shall be based on the nature of the violation, the damage or risk to the public or to public resources, and/or the degree of bad faith of the person subject to the enforcement action. Repeated violations shall escalate the severity of the enforcement action.

Section 4. Each and every provision of this Ordinance is severable. If any provision of this Ordinance is found to be unconstitutional or otherwise unenforceable or contrary to law by a court of competent jurisdiction, that finding shall not affect the validity of the remaining provisions, which shall remain in force and effect.

Section 5. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

PASSED BY A MAJORITY OF THE CITY COUNCIL AT A MEETING HELD ON THE 1ST
DAY OF FEBRUARY, 2018.

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:

David Linehan, City Attorney

Published: _____

Posted: _____

Effective Date: _____

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT:	Agenda Date: February 1, 2018	AB18-027A
Resolution No. 18-1225 adopting the 2018 Stormwater Management Program (SWMP) Plan	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	
Cost Impact (see also Fiscal Note): \$0	Public Works – Seth Boettcher	X
Fund Source: --	Court – Stephanie Metcalf	
Timeline: 2018		
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Resolution No. 18-1225; 2018 Stormwater Management Program Plan		
<p>SUMMARY STATEMENT:</p> <p>The City is required by the Department of Ecology to update its Stormwater Management Program (SWMP) Plan. This SWMP Plan shows how the City is currently meeting the Department of Ecology's requirements in the National Pollutant Discharge Elimination System (NPDES) Permit, as well as shows future requirements of this Permit. The City held a public hearing on January 18, 2018. Comments were received with changes being made to Section 2.2, Section 3.3, and Section 4.3. This SWMP Plan is updated annually.</p> <p>FISCAL NOTE (Finance Department):</p>		
<p>COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:</p> <p>Public Works Committee is recommending adoption.</p>		
<p>RECOMMENDED ACTION: MOTION to adopt Resolution 18-1225, adopting the Stormwater Management Program (SWMP) 2018 update.</p>		
RECORD OF COUNCIL ACTION		
Meeting Date	Action	Vote
January 18, 2018	Public Hearing	
February 1, 2018		

RESOLUTION NO. 18-1225

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
ADOPTING THE STORMWATER MANAGEMENT
PROGRAM (SWMP) PLAN 2018 UPDATE**

WHEREAS, City staff prepared the Stormwater Management Program (SWMP) Plan update for 2018; and

WHEREAS, the City is required to update the SWMP Plan annually by the Western Washington Phase II National Pollutant Discharge Elimination System (NPDES) Permit issued by the State of Washington Department of Ecology; and

WHEREAS, the purpose of the SWMP Plan is to detail actions that the city is currently taking and will need to take to maintain compliance with the conditions of the NPDES Permit, and to reduce the discharge of pollutants from the City's municipal separate storm sewer system to the maximum extent practicable; and

WHEREAS, the City Council held a public hearing on January 18, 2018 to take public comment on the SWMP Plan;

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

Section 1. The City Council hereby adopts the Stormwater Management Program Plan 2018 update.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 1ST DAY OF FEBRUARY, 2018.

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk

CITY OF BLACK DIAMOND

STORMWATER MANAGEMENT PROGRAM
PLAN (SWMP PLAN)

2018 UPDATE



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

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LIST OF ACRONYMS AND ABBREVIATIONS

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

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

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

SECTION 1 – INTRODUCTION

1.1 INTRODUCTION

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

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

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

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

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

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

SECTION 2 –MONITORING, REPORTING AND ASSESSMENT

2.1 PERMIT REQUIREMENTS AND DATES

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

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

2.2 CURRENT ACTIVITIES

The current city activities associated with Monitoring and reporting include:

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

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

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

2.3 PLANNED ACTIVITIES

The City will continue with the current monitoring and reporting activities in 2018.

SECTION 3 –PUBLIC EDUCATION AND OUTREACH

3.1 PERMIT REQUIREMENTS AND DATES

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

3.2 CURRENT ACTIVITIES

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

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

3.3 PLANNED ACTIVITIES

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

- City staff will continue to utilize feedback received from survey results on education efforts and will continue to evaluate the understanding of target behaviors.
- Summarize the public education activities in the annual report.

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

SECTION 4 – PUBLIC INVOLVEMENT AND PARTICIPATION

4.1 PERMIT REQUIREMENTS AND DATES

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

4.2 CURRENT ACTIVITIES

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

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

4.3 PLANNED ACTIVITIES

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

The City has "No Dumping" stencils that can be made available to volunteers for marking around catch basins. City staff will determine a plan for soliciting help from community volunteers to assist with these markings.

SECTION 5 – ILLICIT DISCHARGE DETECTION AND ELIMINATION

5.1 PERMIT REQUIREMENTS AND DATES

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

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

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

- Implement an ongoing program designed to detect and identify non-stormwater discharges and illicit connections into the City's MS4. The program shall include:
 - Procedures for conducting investigations, including field screening and methods for identifying potential sources implementing a field screening methodology appropriate to the characteristics of the MS4 and water quality concerns. Screening for illicit connections may be conducted using: *Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments*, Center for Watershed Protection, October 2004, or another methodology of comparable or improved effectiveness. The City shall document the field screening methodology in the relevant annual report. Field screening for at least 40% of the MS4 shall be complete no later than December 31, 2017 and average 12% each year thereafter (100% achieved by September 13, 2017).
 - A publicly listed and publicized hotline or telephone number for public reporting of spills and other illicit discharges. Upon discussions with first responders, it was determined that the public should call 911 to report a spill or other illicit discharge. Responding fire and/or police will contact Public Works for assistance and reporting. Public Works can still be contacted for non-emergencies (360-886-5700 during business hours; 253-569-0525 after hours).
 - An ongoing training program on the identification of an illicit discharge and/or connection, and on the proper procedures for reporting and responding to the illicit discharge and/or connection, for all municipal field staff, who, as part of their normal job responsibilities, might come into contact with or otherwise observe an illicit discharge and/or illicit connection to the MS4. Follow-up training shall be provided as needed. City shall document and maintain records of the trainings provided and the staff trained.
 - Informing public employees, businesses, and the general public of hazards associated with illicit discharges and improper disposal of waste.
- Implement an ongoing program designed to address illicit discharges, including spills and illicit connections, into the MS4. The program shall include:
 - Procedures for characterizing the nature of, and potential public or environmental threat posed by, any illicit discharges found or reported to the City. Procedures shall address the evaluation of whether the discharge

must be immediately contained and steps to be taken for the containment of the discharge.

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

5.2 CURRENT ACTIVITIES

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

- Through Ordinance 09-917, city staff has the ability to intervene and stop illicit discharges, to get involved to educate those that pollute unknowingly and follow up with additional enforcement actions not complying with corrective actions. City staff is currently drafting an update to this ordinance so the City can be in compliance with S5.C.3.b.
- City staff responsible for identification, investigation, termination, cleanup, and reporting of illicit discharges, including spills and illicit connections, shall be trained to conduct these activities. Follow-up training shall be provided as

needed to address changes in procedures, techniques, requirements or staffing. The training provided and staff trained shall be documented. Four Public Works staff members received Illicit Discharge Detection and Elimination (IDDE) training on May 9, 2013.

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

5.3 PLANNED ACTIVITIES

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

The City will field screen a minimum of 12% of the City's outfalls for illicit connections prior to December 31, 2018 to meet the requirement of screening 12% of all outfalls each year after the initial screening in 2017 (all outfalls screened prior to December 31, 2022).

The City will review the Municipal Code and update, as necessary, in order to effectively prohibit non-stormwater, illicit discharges into the City's MS4 to the maximum extent allowable under state and federal law by February 2, 2018. The ordinance or regulatory mechanism will address:

- Allowable discharges (as outlined in S5.C.3.b.i of the NPDES Permit).
- Conditionally allowable discharges (as outlined in S5.C.3.b.ii of the NPDES Permit).
- Further address any category of allowable or conditionally allowable discharges if the discharges are identified as significant sources of pollutants to waters of the State.
- Escalating enforcement procedures and actions for repeat offenders.

A compliance strategy that includes informal compliance actions such as public education and technical assistance as well as the enforcement provisions of the ordinance or other regulatory mechanism. Informal compliance actions are included in this document. The current ordinance allows for different levels of City action.

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

6.1 PERMIT REQUIREMENTS AND DATES

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

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

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

6.2 CURRENT ACTIVITIES

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

-
- The City conducts construction and stormwater site inspections during the pre-construction and construction phases.
- The City has implemented a permitting process with plan review, inspection and enforcement capability for both private and public projects for compliance with the 2014 SWMMWW and the Master Planned Development (MPD) agreements. This program applies to all sites as determined by Section 3 of Appendix 1 of the Permit.
- The City reviews stormwater site plans for proposed development activities.
- The City inspects, prior to clearing and construction, all known development sites that have a high potential for sediment transport.
- The City inspects all known permitted development sites during construction to verify proper installation and maintenance of required erosion and sediment controls. The City will enforce as necessary based on the inspection.
- The City inspects all permitted development sites upon completion of construction and prior to final approval or occupancy to ensure proper installation of permanent stormwater controls such as stormwater facilities and structural BMPs. Also, the City will verify a maintenance plan is completed and responsibility for maintenance is assigned. Enforcements will be made, as necessary, based on the inspection.
- The City must perform at least 80% of scheduled inspections in order to achieve Permit compliance. Staff schedules all inspections through the City's PermitTrax software and records of inspections are maintained in PermitTrax by inspectors. Routine inspections not set in PermitTrax will be tracked separately by Public Works maintenance staff.
- The City implements an enforcement strategy to respond to issues of non-compliance.
- The City implements a long-term O&M program for private post-construction stormwater facilities and BMPs.

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

6.3 PLANNED ACTIVITIES

The City has a program to help reduce stormwater runoff from new development and construction sites. The City implemented the DOE 2014 SWMMWW to maintain compliance. The City will continue to:

- Update and implementing process codes, fees and standards as necessary and as identified needs arise.
- Determine staff training needs and develop training strategies as updates to Permit requirements are implemented by DOE.

SECTION 7 –MUNICIPAL OPERATIONS AND MAINTENANCE

7.1 PERMIT REQUIREMENTS AND DATES

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

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

7.2 CURRENT ACTIVITIES

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

- The City has a program for catch basin inspections with the most recent inspections occurring in July 2017.
- The City has completed a site assessment of City facilities, including the fire station, the police station, the public works facility, and the water reservoir and pump station.
- The City inspects City owned stormwater treatment facilities and has adapted inspections and inspection criteria as identified in the DOE 2014 SWMMWW.
- The City has trained employees whose construction, operations or maintenance job functions may impact stormwater quality in the implementation of BMPs that will reduce or eliminate pollution from entering the MS4 from City facilities or operations.
- The City has established maintenance standards that are as protective as those specified in the 2014 SWMMWW.
- The City performs maintenance within required timeframes when an inspection identifies an exceedance of the maintenance standard. For each exceedance of the required timeframe, the City will document the circumstances and how they were beyond the City's control.
- The City annually inspects all municipally owned or operated permanent stormwater treatment and flow control facilities and maintains facilities according to the adopted maintenance standards.
- The City performs maintenance on City ponds and BMPs within required timeframes when an inspection identifies a maintenance standard has been exceeded. For each violation of the required timeframe, the City documents the circumstances and how they were beyond their control, and submits documentation to DOE.
- After major storm events (classified as a 10-year storm), the City conducts spot checks of potentially damaged stormwater facilities.
- The City implements practices to reduce stormwater impacts associated with runoff from streets, parking lots, roads or highways owned or maintained by the City, and road maintenance activities conducted by the City.
- Procedures are in place to reduce pollutants in discharges from all lands owned or maintained by the City and subject to this Permit, including but not limited to: parks, open space, road right-of-way, maintenance yards, and stormwater treatment and flow control facilities. Procedures include:
 - Proper application of fertilizer, pesticides, and herbicides
 - Sediment and erosion control (the City has three CESCLs on staff)
 - Proper landscape maintenance and vegetation disposal
 - Proper trash management
 - Proper maintenance and cleaning of City buildings
- City employees, whose construction, operations or maintenance job functions may impact stormwater quality, receive training on an as-needed basis.
- SWPPPs are in place for all heavy equipment maintenance or storage yards, and material storage facilities owned or operated by the City in areas subject to this Permit that are not required to have coverage under the Industrial

Stormwater General Permit. The latest update to the SWPPP for the Public Works Maintenance Facility was completed in October, 2017.

- Tracking and documentation methods, along with procedures associated with inspection, maintenance or repair activities, are being utilized by City staff.
- The washing of City vehicles and large equipment is performed at the City's equipment washing facility at the City's maintenance site. Staff using the facility is trained prior to use in accordance with standard operating procedures for the facility.

7.3 PLANNED ACTIVITIES

The City will continue with current activities to prevent pollution from municipal maintenance operations.

- The City tries to sweep arterial and collector streets at least twice per year as budgets and schedules allow.
- Street waste is disposed of according to BMPs.
 - The City utilizes guidance from the 2014 SWMMWW to determine how to handle stockpiled sweepings.
 - Clean soil and compost materials will be mixed and reused in the City, where needed, and in accordance with BMPs.
- The City will inspect all catch basins at least once every two years. The City will continue to track sediment levels in all catch basins to help determine frequencies for each individual catch basin.

APPENDIX A

RECENT STORMWATER ACCOMPLISHMENTS

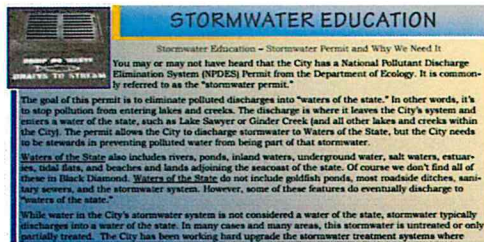
IDDE Inspections (A-2)



Catch Basin Cleaning (A-3)



Stormwater Education (A-4)



Roberts Drive Stormwater (A-5)



APPENDIX A

RECENT STORMWATER ACCOMPLISHMENTS

IDDE Inspections

The City had a requirement to perform IDDE inspections for 40% of the stormwater system this year. One method to inspect the system is to inspect stormwater outfalls within the City. Public Works staff went above and beyond and inspected all outfalls (157) over the summer for illicit discharges and connections. Public Works staff will continue to monitor outfalls in the coming years.



APPENDIX A

RECENT STORMWATER ACCOMPLISHMENTS

Catch Basin Cleaning

Public Works staff, through tracking inspections and maintenance, has been able to get a better idea regarding the frequency at which many catch basins need to be cleaned. Some need to be cleaned as frequently as every year; some may only need cleaning once every six years.

While City data with the recommended frequency at which each individual catch basin needs to be cleaned is still pretty new, Public Works staff continues to inspect and maintain catch basins. As outlined in Section 7.1 of the SWMP Plan, the City needs to inspect all catch basins by August 1, 2017 and every other year thereafter. Public Works staff was able to complete those inspections and was able to clean out most catch basins with the City's vacuor trailer. As staff works to establish maintenance timelines on each individual catch basin, future inspections and cleaning may be less time consuming and provide a cost savings to the City.



Public Works staff inspects a catch basin in the Morgan Creek neighborhood

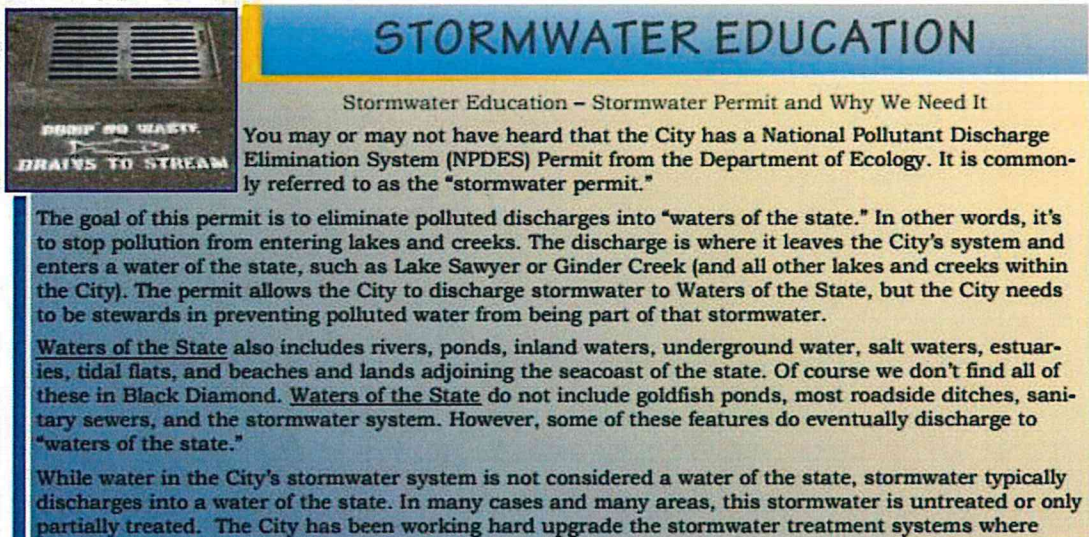
Stormwater Education

APPENDIX A

RECENT STORMWATER ACCOMPLISHMENTS

City staff published stormwater education articles in the City Connection Newsletter in 2017. These articles focused on explaining what the stormwater utility is and what impacts different practices can have on protecting water of the state (including cleaning up pet waste, who to call to report a spill or illicit discharge, and preventing debris from entering catch basins).

Aside from the newsletter articles, the City also has stormwater education fliers available at City counters and have provided them as handouts at City events.

The flyer features a blue header with the title "STORMWATER EDUCATION" in white. Below the header, on the left, is a photograph of a storm drain with a sign that reads "DUMP NO WASTE. DRAINS TO STREAM". To the right of the photo, the text "Stormwater Education – Stormwater Permit and Why We Need It" is displayed. The main body of the flyer contains three paragraphs of text explaining the stormwater permit, the goal of the permit, the definition of waters of the state, and the City's efforts to upgrade treatment systems.

STORMWATER EDUCATION

Stormwater Education – Stormwater Permit and Why We Need It

You may or may not have heard that the City has a National Pollutant Discharge Elimination System (NPDES) Permit from the Department of Ecology. It is commonly referred to as the "stormwater permit."

The goal of this permit is to eliminate polluted discharges into "waters of the state." In other words, it's to stop pollution from entering lakes and creeks. The discharge is where it leaves the City's system and enters a water of the state, such as Lake Sawyer or Ginder Creek (and all other lakes and creeks within the City). The permit allows the City to discharge stormwater to Waters of the State, but the City needs to be stewards in preventing polluted water from being part of that stormwater.

Waters of the State also includes rivers, ponds, inland waters, underground water, salt waters, estuaries, tidal flats, and beaches and lands adjoining the seacoast of the state. Of course we don't find all of these in Black Diamond. Waters of the State do not include goldfish ponds, most roadside ditches, sanitary sewers, and the stormwater system. However, some of these features do eventually discharge to "waters of the state."

While water in the City's stormwater system is not considered a water of the state, stormwater typically discharges into a water of the state. In many cases and many areas, this stormwater is untreated or only partially treated. The City has been working hard upgrade the stormwater treatment systems where

APPENDIX A

RECENT STORMWATER ACCOMPLISHMENTS

Roberts Drive Stormwater Facilities

The City recently completed its Roberts Drive Roadway Improvements project. As part of this project, the City looked at options for capturing stormwater runoff in the project area. As part of this project, new stormwater pipe was installed along with new catch basins and inlets. These facilities will help capture stormwater runoff and will help eliminate some ponding issues that have existed along the south side of Roberts Drive.



Installation of a stormwater pipe across Roberts Drive at Bruckners Way

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: Ordinance No. 18-1099, regarding Astound Broadband, LLC, d/b/a "Wave" granting A Non-Exclusive Telecommunications Franchise to install, construct, maintain, repair, and operate a telecommunications system within the public rights of way	Agenda Date: February 1, 2018	
	AB16-064B	
	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
Cost Impact - N/A	Police – Chief Kiblinger	
Fund Source: --	Public Works – Seth Boettcher	
Timeline: 10 year agreement	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 18- 1099; Overview		
SUMMARY STATEMENT: This item has been before Council on November 3, and November 29, 2016 and was postponed indefinitely. 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. 18-1099, 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	Motion to postpone to Nov 17 mtg.	Passed 5-0
November 17, 2016	Motion to table indefinitely – Passed 3-2 (Edelman, Deady)	
February 1, 2018		

CITY OF BLACK DIAMOND, WASHINGTON

ORDINANCE NO. 18-1099

AN ORDINANCE OF THE CITY OF BLACK DIAMOND, WASHINGTON, GRANTING TO ASTOUND BROADBAND, LLC, A LIMITED LIABILITY COMPANY, A NONEXCLUSIVE TELECOMMUNICATIONS FRANCHISE TO INSTALL, CONSTRUCT, MAINTAIN, REPAIR, AND OPERATE A TELECOMMUNICATIONS SYSTEM WITHIN THE PUBLIC RIGHTS OF WAY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, Astound Broadband, LLC, a Washington limited liability company d/b/a Wave (hereinafter “Franchisee”) has made application to the City to construct, install, maintain, repair and operate a fiber optic-based telecommunications system with the public rights-of-way of the City; and

WHEREAS, Franchisee represents that it has the legal, technical and financial qualifications to operate in the rights-of-way of the City as a wireline telephone business and a telecommunications company within the meaning of Title 80 RCW; and

WHEREAS, based on representations and information provided by Franchisee, and in response to its request for the grant of a franchise, the City Council has determined that the grant of a nonexclusive franchise, on the terms and conditions herein and subject to applicable law, are consistent with the public interest; and

WHEREAS, the City is authorized by applicable law to grant such a nonexclusive franchises within the boundaries of the City;

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

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- 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 _____, 2018, AND SIGNED IN AUTHENTICATION OF
ITS PASSAGE THIS ____ DAY OF _____, 2018.

CITY OF BLACK DIAMOND

Carol Benson, Mayor

ATTEST/AUTHENTICATED:

Brenda L. 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:

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: **
 **
 **
 **

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: _____

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.

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.

EXHIBIT "E"

(Financial Security)

1. Performance Bond.

1.1 Franchisee shall provide to the City a faithful performance and payment bond in the initial amount of **\$50,000** to ensure the full and faithful performance of all of its responsibilities under this Franchise and applicable Laws, including, by way of example and not limitation, its obligations to relocate and remove its Facilities, to restore the Public Rights-of-Way and other property when damaged or disturbed, to reimburse the City for its Direct Costs and keeping Franchisee's insurance in full force.

1.2 The performance bond shall be in a form with terms and conditions reasonably acceptable to the City and reviewed and approved by the City Attorney.

1.3 The performance bond shall be with a surety with a rating no less than "A- VII" in the latest edition of "Bests Rating Guide," published by A.M. Best Company.

1.4 The Franchisee shall pay all premiums or costs associated with maintaining the performance and payment bond, and shall keep the same in full force and effect at all times. If Franchisee fails to provide or maintain the bond, then the City, in its sole discretion, may require Franchisee to substitute an equivalent cash deposit as described below in lieu of the bond.

1.5 Franchisee's maintenance of the bond(s) shall not be construed to excuse unfaithful performance by Franchisee, or limit the liability of Franchisee to the amount of the bond(s), or otherwise limit the City's recourse to any other remedy available at law or in equity.

1.6 The amount of the bond may, in the reasonable discretion of the City, be adjusted by the City to take into account (1) cumulative inflation, (2) increased risk to the City, (3) the experiences of the Parties regarding Franchisee compliance with its obligations under the Franchise, and (4) issuance of Site Specific Permits for installation of new Facilities. Prior to adjusting the amount of the bond, the City shall provide reasonable notice to the Franchisee and an opportunity to provide comments, and the City shall review and consider such comments that are timely made.

2. Cash Deposit/Irrevocable Letter of Credit in Lieu of Bond.

Franchisee may, at its election substitute an equivalent cash deposit with an escrow agent approved by the City or an irrevocable letter of credit in form and content reasonably approved by the City Attorney, instead of a performance and payment bond. This cash deposit or irrevocable letter of credit shall ensure the full and faithful performance of all of Franchisee's responsibilities hereto under this Franchise and all applicable Laws. This

includes but, is not limited to, its obligations to relocate or remove its facilities, restore the Public Rights-of-Way and other property to their original condition, reimbursing the City for its costs, and keeping Franchisee's insurance in full force.

In the event that the Franchisee fails to cure a Default as provided in Section 6 of the Franchise, the City may, at its option, draw upon the cash deposit or letter of credit up to the amount of the City's costs incurred to cure Franchisee's default. Upon the City's cure of Franchisee's default, the City shall notify Franchisee in writing of such cure.

In the event that the City draws upon the cash deposit or letter of credit, Franchisee shall thereupon replenish the cash deposit or letter of credit to the full amount as specified herein or provide a replacement performance and payment bond.

EXHIBIT "F"

(Contractor/Subcontractor Insurance Requirements)

1. General Requirement. Prior to commencing and during the period of Work performed within the Franchise Area, Franchisee contractors and subcontractors (hereafter the "Contractors") must have in place adequate insurance to protect the City against claims for death or injuries to Persons or damages to property or equipment which in any way relate to, arise from or are connected with this such Work.

2. Minimum Insurance Limits. The Contractors shall maintain the following minimum insurance coverages and limits:

2.1 Commercial General Liability: insurance to cover liability, bodily injury, and property damage. The Commercial General Liability insurance shall be written on an occurrence basis, , and shall provide coverage for any and all costs, including reasonable defense costs, and losses and damages resulting from personal injury, bodily injury and death, property damage, products liability and completed operations. Coverage must be written with the following limits of liability:

\$1,000,000 per occurrence,
\$2,000,000 general aggregate and
\$1,000,000 products/completed operations aggregate.

2.2 Automobile Liability: shall include owned, hired, and non-owned vehicles on an occurrence basis with coverage of at least \$1,000,000 per occurrence.

2.3 Workers Compensation Insurance: shall be maintained during the period of such Work to comply with statutory limits for all employees.

3. Endorsements. Commercial General Liability insurance policies are to contain, or be endorsed to contain, the following:

3.1 The Contractor's insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Contractor's insurance and shall not contribute to it.

3.2 Contractor, through policy endorsement, shall waive its rights of subrogation against the City for all claims and suits.

3.3 That the coverage shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3.4 The Contractor's insurance shall name the City as an additional insured, to protect or insure as an additional insured, from and against Liabilities arising out of Work performed in the Public Rights-of-Way under a grant of authority of the City.

3.5 The Contractor's insurance shall include a requirement that the "railroad exclusion" be deleted or may include, in the alternative, ISO endorsement CG 24 17 or equivalent.

3.6 The insurance coverages and limits provided herein shall not be canceled without thirty (30) days written notice first being given to the City, with the exception that ten (10) days' notice shall be required for cancellation resulting from non-payment of premium. If the insurance is canceled or reduced in coverage, Franchisee shall provide a replacement policy.

4. Acceptability of Insurers. Each insurance policy required herein shall be issued by financially sound insurers who may lawfully do business in the State of Washington with a financial strength rating at all times during coverage of no less than an "A-" and in a financial size category of no less than "VII", in the latest edition of "Best's Rating Guide" published by A.M. Best Company. In the event that at any time during coverage, the insurer does not meet the foregoing standards, Contractor shall give prompt notice to the City and shall seek coverage from an insurer that meets the foregoing standards. The City reserves the right to change the rating or the rating guide depending upon the changed risks or availability of other suitable and reliable rating guides.

5. Verification of Coverage. The Franchisee shall furnish the City with Contractors' signed certificates of insurance and a copy of the amendatory endorsements, including, but not necessarily limited to, the additional insured endorsement, evidencing the Automobile Liability, and Commercial General Liability policies of the Contractors. The certificate for each insurance policy is to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificate for each insurance policy must be on standard forms or on such forms as are consistent with standard industry practices.

6. No Limitation. Contractor's maintenance of insurance policies required herein shall not be construed to excuse unfaithful performance by Franchisee or limit the liability of Franchisee or contractor to the coverage provided in the insurance policies, or otherwise limit the City's recourse to any other remedy available at law or in equity.

OVERVIEW OF TELECOMMUNICATIONS FRANCHISE ORDINANCE

FRANCHISEE	Astound Broadband, LLC, d/b/a "Wave"
AUTHORIZED SERVICES	Fiber-Optic Telecommunications Services
FRANCHISE AREA	Public Rights-of-Way within the Jurisdictional Boundaries of the City of Black Diamond
DURATION	10 Years

Franchise Grant

- The Franchise Ordinance authorizes Wave to construct, maintain, operate, and repair a fiber-optic broadband telecommunications system using the public rights-of-way within city limits. The Franchise is non-exclusive, meaning the City remains free to grant a similar franchise to another qualified telecommunications system operator during the same time period, so long as the terms are competitively neutral and nondiscriminatory consistent with federal law.
- The Franchise does not include the right to install or operate cable television or commercial mobile radio (i.e., cellular) services. The City may impose additional compensation requirements (e.g., right-of-way permit fees and, if a future cable franchise ordinance is approved, cable fees) for use of public rights-of-way to provide services beyond those specifically authorized in the Franchise Ordinance.
- The Franchise Ordinance does not exempt Wave from having to obtain other licenses, easements, or agreements needed to place devices on other City or private property (e.g., on utility poles, pipelines, or buildings), nor does it

exempt Wave from having to comply with applicable land-use or development regulations (e.g., conditional use permits or zoning variances).

Conditions of Acceptance

If the City Council passes and approves the Franchise Ordinance, Wave has 30 days to accept the Franchise by paying certain administrative costs of the City, submitting required insurance certificates, and paying the costs of publication of the Franchise Ordinance. Otherwise, the Franchise will be deemed rejected by Wave.

Transferability of Franchise

With prior notice to the City, Wave is permitted to transfer the Franchise to another provider, so long as the transferee agrees in writing to assume and be responsible for all of Wave's obligations and guarantees their performance. The transferee must also supply the required insurance certificates, security fund, and performance bond.

Term of Franchise and Renewal

The Franchise runs for a term of 10 years following acceptance by Wave. Within 180 days of expiration, and with the agreement of the parties, the Mayor may renew the Franchise for an additional 5 years without further action by the City Council.

Powers Retained by City

The City retains full authority to use the public rights-of-way, including construction of sanitary and storm sewers; paving, widening, or altering rights-of-way; laying down water mains; etc. The City also retains its full police powers to make and enforce laws, although it may not enact new ordinances or amendments that unilaterally alter or impair material rights or benefits granted to Wave under this Franchise Ordinance.

Liability Protections

- The City has disclaimed liability to Wave (and its contractors) for any damages relating to the design, condition, or safety of the public rights-of-way within the Franchise area, except for damages due to gross negligence or willful misconduct by the City.
- Wave has also agreed to a very broad indemnification of the City and its officials and employees for claims by third parties that arise out of or relate to Wave's occupation and use of the public rights-of-way, its operation of the Telecommunications System, environmental contamination that Wave causes or contributes to, and any acts or omission of Wave or its contractors, agents, and employees in connection with its work in the rights-of-way. The City retains liability for third-party damages caused by its own gross negligence or intentional misconduct.
- Wave is required to obtain a performance bond in the amount of \$50,000 to ensure full and faithful performance of Wave's obligations under the Franchise.
- Wave and its subcontractors are required to maintain commercial general liability insurance with minimum coverage limits. For Wave, the applicable limits are \$2,000,000 per occurrence, \$4,000,000 general aggregate, and \$1,000,000 products/completed operations aggregate. Wave is also required to maintain umbrella or excess liability insurance with limits of at least \$5,000,000.

Reimbursement of City Costs

- Wave is required to reimburse the City for costs (including labor, materials, equipment, and consultant fees) it incurs in approving and inspecting Wave's work on its facilities (e.g., the City's review of design documents and inspections for compliance with the City's Design Standards) to the extent such costs are not included in the issuance of regulatory permits (construction permits, street

excavation permits, clearing and grading permits, etc.). Any required work that the City has to perform after Wave has failed to perform it will be charged to Wave. The City is required to invoice Wave for such costs.

- Additionally, Wave is required to pay an application fee of \$5,000 to cover the City's legal and administrative expenses for negotiating, reviewing, and approving the Franchise Ordinance. Wave must also pay the costs of publication of the Franchise Ordinance and any other public notices prior to any public hearings on the Franchise Ordinance.
- Federal law prohibits the imposition of telecommunications franchise fees if they may prohibit or have the effect of prohibiting the provision of services. Certain fees may be permissible if limited to what is necessary for management and regulation of use of the public rights-of-way. 47 U.S.C. § 253.

Construction Standards, Permit Application, and Approval Process

- Wave may not commence work without the City's prior approval of its design documents. The City may require Wave to install facilities at a particular time, or in a particular place or manner as a condition of access, and may require removal of any facilities not installed in compliance with the current edition of the City Standards for Public Work Engineering and Construction, or any of the other federal, state, and City standards and codes specified in Section 7.3 of the Franchise Ordinance.
- The City may review and approve Wave's design documents with respect to, among other things: location, alignment, and depth; any measures needed to preserve the free flow of traffic; structural integrity, functionality, and compatibility with roadways, sidewalks, traffic signals, etc.; ease of road maintenance; appearance; and compatibility with the City's longer-term plans.

- Before performing any work in public rights-of-way, Wave must apply for and obtain all regulatory permits required by City ordinance or rule, at Wave's expense.
- Any contractors or subcontractors of Wave must adhere to the conditions and limitations of the Franchise Ordinance, and Wave must ensure that they are familiar with the Franchise Ordinance and that all work performed by them is in compliance with it.
- Wave is required to use suitable barricades, flags, lights, and other measures as required for the safety of the general public and to prevent accidents and injuries to persons, vehicles, or other property due to work done in public rights-of-way.

Right of Inspection

Upon 72 hours' notice, or without notice in case of emergency, the City may inspect Wave's facilities to determine compliance with the Franchise Ordinance or other applicable requirements. The City retains the power to immediately stop all work that the City learns or determines is non-compliant or is being performed in an unsafe or dangerous manner, and may compel Wave to take actions necessary to correct the unsafe condition or otherwise bring the work into compliance.

Facility Relocations

- The City may require Wave to alter, adjust, or relocate any facilities when reasonably necessary for the construction, repair, or improvement of any public rights-of-way in furtherance of the public health, safety, or welfare. The City must give 180 days' notice, and must make reasonable efforts to provide an alternate location for Wave's facilities. The City also must, within budgetary constraints, consider any alternative designs proposed by Wave to mitigate the

impact on its facilities. Wave may seek reimbursement of its relocation costs when authorized by law to do so.

- If there is an immediate threat to public health or safety, the City may require Wave, at Wave's expense, to shut down, relocate, remove, or modify its facilities in a public right-of-way, without regard to fault. A party seeking alteration, adjustment or temporary relocation of Wave facilities for something other than a public improvement project must compensate Wave for its time, engineering, design, and material costs.
- After construction of any facilities, or upon request by the City, Wave must provide up-to-date maps showing the horizontal and vertical location and configuration of located or relocated facilities in the public rights-of-way. Wave does not, however, warrant the accuracy of such maps; it represents only that its Telecommunications Systems are shown in approximate locations.

Duty of Restoration

Wave has a duty to leave the public rights-of-way and other property disturbed by its work in as good or better condition as it was before commencement of construction.

Wave must complete restoration work to the reasonable satisfaction of the City, as determined by the City Engineer, and warrant restoration work for at least two years.

Restoration work for adjacent private property disturbed or damaged by Wave must be performed to the private owner's reasonable satisfaction.

Revocation of Franchise

Upon an uncured default by Wave, the City may give notice of intent to revoke the Franchise. If Wave objects to the revocation, it may object in writing and provide its rationale. The City may then conduct a public hearing, at which evidence and witness

may be examined, before deciding whether to terminate or revoke the Franchise. The City Council's decision is final, subject only to other appeal rights provided by law.

Denial of Franchise

The City Council has the legal authority to deny Wave's franchise application.

However, a denial cannot be arbitrary and capricious or for an unlawful reason. RCW 35.99.030(3) requires that a denial be "supported by substantial evidence contained in a written record."

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT:	Agenda Date: February 1, 2018 AB18-030	
Resolution No. 18-1226, authorizing the Mayor to execute a professional services agreement with Parametrix, Inc. to provide on-call civil engineering services to the City.	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	
Cost Impact (see also Fiscal Note): not to exceed \$150,000	Public Works – Seth Boettcher	X
Fund Source: Water/Sewer/Streets/Storm/Developers	Court – Stephanie Metcalf	
Timeline: 2 years		
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Resolution No. 18-1226; Agreement		
<p>SUMMARY STATEMENT:</p> <p>The City is in need of on-going civil engineering services. City staff send out a Request for Qualifications (RFQ) from civil engineering firms. In reviewing the submittals and considering the services previously provided by Parametrix, Inc., City staff recommends executing a new agreement for on-call services.</p> <p>The City has been using Parametrix for on-call tasks and has received responsive, technically sound engineering with accurate and clear billing. Parametrix is very familiar with the City's infrastructure, codes and standards.</p> <p>Tasks under this agreement will be executed via an on-call task request (Exhibit B in the Agreement) according to adopted purchasing policies. Staff will use this agreement for initial study and investigation work for capital project development, operation and maintenance troubleshooting and assistance, and for serving development needs and plan review (reimbursable).</p> <p>FISCAL NOTE (Finance Department): Task orders under this agreement cannot exceed \$15,000. Work that exceeds \$15,000 will require a separate agreement. It is expected that most expenses under this agreement will be in the reimbursable category by developers.</p>		
<p>COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:</p> <p>Public Works Committee recommends authorization.</p>		

RECOMMENDED ACTION: **MOTION** to adopt Resolution No. 18-1226, authorizing the Mayor to execute a professional services agreement with Parametrix, Inc. to provide on-call civil engineering services to the City.

RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
February 1, 2018		

RESOLUTION NO. 18-1226

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO EXECUTE A
PROFESSIONAL SERVICES AGREEMENT WITH
PARAMETRIX, INC. TO PROVIDE ON-CALL CIVIL
ENGINEERING SERVICES TO THE CITY**

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

WHEREAS, the City advertised for civil engineering services and received Statements of Qualifications from interested consultants on January 9, 2018; and

WHEREAS, City staff recommends authorizing a professional services agreement with Parametrix, Inc. to be one of the consultants to provide on-call civil engineering services to the City;

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

Section 1. The Mayor is hereby authorized to execute a professional services agreement with Parametrix, Inc. to provide on-call civil engineering services to the City.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 1ST DAY OF FEBRUARY 2018.

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk

CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT FOR CIVIL ENGINEERING SERVICES

This Professional Services Agreement ("Agreement") is entered into by and between:

CITY OF BLACK DIAMOND, WASHINGTON (the "City")

Physical Address: 24301 Roberts Drive

Mailing Address: PO Box 599

Black Diamond, WA 98010

Contact: Seth Boettcher, P.E. Phone: 360-886-5700 Fax : 360-886-2592

and

PARAMETRIX, INC. ("Consultant")

Physical Address: 1019 39th Avenue SE, Suite 100

Puyallup, WA 98374

Mailing Address: Same as above

Contact: Austin Fisher, P.E. Phone: 253-604-6600 Fax: 855-542-6353

Tax ID No.: 91-0914810

for non-exclusive on-call professional civil engineering services for the City of Black Diamond Public Works and Community Development.

WHEREAS, the City has previously contracted with Consultant to provide the City with the same or substantially similar services for the Public Works and Community Development departments; and

WHEREAS, the City has conducted an RFQ and qualifications-based selection process for civil engineering services, and based on that process the City desires to continue working with the Consultant on Public Works and Community Development matters under the terms and conditions set forth herein; and

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

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

TERMS AND CONDITIONS

1. Services by Consultant

1.1 Consultant has been retained by the City to provide professional civil engineering on-call services as generally described in the Scope of Work attached to this Agreement as Exhibit "A". The services performed by Consultant shall not exceed the Scope of Work nor shall the

Consultant be entitled to a greater amount of compensation as that provided in this Agreement without the prior written authorization of the City.

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

1.3 Consultant represents and warrants that it, its staff to be assigned to the Project, and its subconsultants and their staff have the requisite training, skill, and experience necessary to provide the services required by this Agreement and are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant and its subconsultants under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

2. Schedule of Work

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

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

2.3 Consultant is authorized to proceed with services upon receipt of a signed task order.

3. Compensation

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

3.2 The City shall pay the Consultant an amount based on time and materials, not to exceed One Hundred Fifty Thousand Dollars (\$150,000.00) for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amendment to this Agreement. Compensation for the services provided pursuant to any one particular On-Call Task Order shall not exceed Fifteen Thousand Dollars (\$15,000.00).

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

4. Payment

4.1 Consultant shall maintain time and expense records and provide them to the City monthly, along with monthly invoices, in a format acceptable to the City for work performed to the date of the invoice.

4.2 All invoices shall be paid by City warrant within sixty (60) days of actual receipt by the City of an invoice conforming in all respects to the terms of this Agreement.

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

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

5. Discrimination and Compliance with Laws

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

5.2 Consultant and its subconsultants shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

5.3 Any violation of this Section 5 shall be a material breach of this Agreement and grounds for immediate cancellation, termination, or suspension of the Agreement by the City, in whole or in part, and may result in Consultant's ineligibility to conduct further work for the City.

6. Duration, Suspension, and Termination of Agreement

6.1 This Agreement takes effect on the date it has been signed by both parties, and it shall remain in effect for a period of two years, unless extended or terminated in writing pursuant to this Section 6.

6.2 The City reserves the right to terminate or suspend this Agreement at any time, with or without cause, by giving Consultant notice in writing no fewer than ten (10) days prior to the stated termination or suspension date. In the event of termination, all finished or unfinished reports, or other material prepared by Consultant pursuant to this Agreement, shall be submitted to the City. In the event the City terminates this Agreement prior to completion without cause, Consultant may complete such analyses and records as may be necessary to place its files in order. Consultant shall be entitled to compensation for any satisfactory work completed on the Project prior to the date of suspension or termination.

6.3 Any notice from the City to Consultant regarding the suspension of this Agreement shall specify the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to Consultant's reasonable expenses and shall be subject to verification. Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

6.4 Consultant may terminate this Agreement at any time for cause, so long as Consultant first gives the City at least 30 days' written notice of Consultant's intent to terminate and a reasonable opportunity for the City to cure the purported default. Consultant may terminate this Agreement without cause upon no fewer than 90 days' prior written notice to the City.

7. Standard of Care

7.1 Consultant represents and warrants that it has the requisite training, skill, and experience necessary to provide the services under this Agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services Consultant provides under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances. Consultant understands and agrees that the services rendered pursuant to this Agreement are for the sole exclusive benefit of the City and that no third party shall have authority to authorize, approve, direct or control any of the services rendered to the City pursuant to this Agreement.

8. Ownership of Work Product

8.1 Ownership of the originals of any reports, data, studies, surveys, charts, maps, drawings, specifications, figures, photographs, memoranda, and any other documents which are developed, compiled, or produced as a result of this Agreement, whether or not completed, shall be vested in the City and shall be submitted to the City upon termination of this Agreement. Consultant assigns to the City all of Consultant's right, title, and interest in any such documents. Any reuse of these materials by the City for projects or purposes other than those that fall within

the scope of this Agreement and the Project to which it relates, without written concurrence by Consultant, will be at the sole risk of the City.

8.2 The City acknowledges Consultant's documents as instruments of professional service. Nevertheless, the documents prepared under this Agreement shall become the property of the City upon completion of the work. The City agrees to hold harmless and indemnify Consultant against all claims made against Consultant for damage or injury, including defense costs, arising out of the City's reuse of such documents beyond the use for which they were originally intended without the written authorization of Consultant.

8.3 Methodology, software, logic, and systems developed under this Agreement are the property of Consultant and the City, and may be used as either Consultant or the City see fit, including the right to revise or publish the same without limitation.

9. Indemnification/Hold Harmless

9.1 Consultant shall defend, indemnify, and hold the City, its officers, officials, employees, volunteers, and agents harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising directly or indirectly out of or resulting from the acts, errors, or omissions of Consultant or its subconsultants in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. PROVIDED, HOWEVER, THAT IF ANY SUCH CLAIMS, INJURIES, DAMAGES, LOSSES OR SUITS RESULT FROM THE CONCURRENT NEGLIGENCE OF CONSULTANT AND THE CITY, IT IS EXPRESSLY AGREED THAT CONSULTANT'S OBLIGATIONS AND INDEMNITY UNDER THIS PARAGRAPH SHALL BE EFFECTIVE ONLY TO THE EXTENT OF CONSULTANT'S NEGLIGENCE.

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

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

9.4 The provisions of this Section 9 shall survive the expiration or termination of this Agreement.

10. Insurance

10.1 Consultant shall procure and maintain for the duration of the Agreement, and shall provide proof satisfactory to the City that such insurance is procured and maintained by each of its subconsultants, insurance against claims for injuries to persons or damage to property which

may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, or employees.

10.2 Consultant shall procure and maintain the following types and amounts of insurance:

a. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage. This insurance shall have a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors, personal injury, and advertising injury. This insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

d. Professional Liability insurance appropriate to Consultant's profession, with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

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

a. Consultant's insurance coverage shall be primary insurance vis-à-vis the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess over Consultant's insurance and shall not contribute with it.

b. Consultant's insurance shall be endorsed to state that coverage shall not be cancelled, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

10.4 The City shall be named as an additional insured under Consultant's Automobile Liability and Commercial General Liability insurance policies with respect to the work to be performed for the City pursuant to this Agreement.

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

10.6 Declaration pages issued by the insurance carriers for the policies mentioned in this Section 10 showing such insurance to be in force shall be filed with the City not less than ten (10) days following both parties signing this Agreement and before commencement of the work. In addition, the City may request, in writing, a full copy from Consultant of any insurance policy. Consultant must procure and maintain pursuant to this Agreement and Consultant must provide such copy to the City within ten (10) days of Consultant's receipt of the City's request. Any policy or required insurance written on a claims-made basis shall provide coverage as to all claims arising out of the services performed under this Agreement and for three (3) years following completion of the services to be performed. It shall be a material breach of this Agreement for Consultant to

fail to procure and maintain the insurance required by this Section 10 or to provide the proof of such insurance to the City as provided for in this Agreement.

11. Assigning or Subcontracting

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

12. Independent Contractor

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

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

13. Notice

13.1 All notices required by this Agreement shall be considered properly delivered when personally delivered by courier service, when received by facsimile, or on the third day following mailing, postage prepaid, certified mail, return receipt requested to:

City:	Seth Boettcher, P.E. City of Black Diamond 24301 Roberts Drive P.O. Box 599 Black Diamond, WA 98010
-------	---

Fax: 360-886-2592

With a copy to: City Clerk

Consultant: Happy Longfellow
Senior Consultant
Parametrix, Inc.
1019 39th Avenue SE, Suite 100
Puyallup, WA 98374
Fax: 855-542-6353

14. Disputes

14.1 This Agreement, and any dispute arising out of or relating to the interpretation or enforcement of this Agreement, shall be governed by and construed according to the laws of the State of Washington, excluding its choice-of-law rules. Venue and personal jurisdiction shall lie exclusively in King County Superior Court, Kent, Washington.

15. Attorney Fees

15.1 In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney fees from the other party.

16. General Administration and Management on Behalf of the City

16.1 The Mayor of the City, or his/her designee (the contract Administrator) shall review and approve Consultant's invoices to the City under this Agreement and shall have primary responsibility for overseeing and approving work or services to be performed by Consultant. Consultant understands and agrees that any and all work to be performed pursuant to this Agreement must be approved in advance by the contract Administrator. No third party, including the project applicant, shall have any direct control or influence over the services performed under this Contract.

16.2 Even though the Consultant is an independent contractor with the authority to control and direct the performance, and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

16.3 The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances,

shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options and the same shall be and remain in full force and effect.

17. Extent of Agreement/Modification

17.1 This Agreement, together with any attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may only be amended, modified, or added to by written instrument properly signed by both parties. The parties acknowledge the general contract rule that a clause in a contract, such as this one, prohibiting oral modifications is itself generally subject to oral modification. However, in order to ensure certainty as to the terms and conditions of this Agreement, the parties waive this general contract rule.

18. Conflict of Interest; Non-Collusion

18.1 No officer, employee or agent of the City, nor any member of the immediate family of any such officer, employee or agent, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The Consultant shall comply with all federal, state, and City conflict of interest laws, statutes and regulations. The Consultant represents that the Consultant presently has no interest and shall not acquire any interest, direct or indirect, in the project to which this Contract pertains which would conflict in any manner or degree with the performance of the Consultant's services and obligations hereunder. The contractor's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from the project applicant or any affiliate or agent of the project applicant.

18.2 The Consultant warrants and represents that the Consultant has not, nor has any other member, employee, representative, agent or officer of the Consultant, entered into or offered to enter into any combination, collusion or agreement with any person or entity to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of this Contract other than the consideration offered pursuant to the terms and conditions hereof.

AGREED TO BY:

CITY OF BLACK DIAMOND

CONSULTANT

By: _____

Carol Benson

Its: Mayor

By: _____

Happy Longfellow

Its: Senior Consultant

Date: _____

Date: _____

Attest:

By:

Brenda L. Martinez
City Clerk

APPROVED AS TO FORM:

David A. Linehan
City Attorney

EXHIBIT A

SCOPE OF SERVICES

Provide on-call engineering services to support the City of Black Diamond, including but not limited to, the following:

- Capital projects
- Community Development services
- Development review services
- Utility operations and maintenance needs
- Street Department needs
- Other City departmental needs
- Survey needs

EXHIBIT B

City of Black Diamond On-Call Task Request

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

Scope of Task Request Including Deliverables and Schedule

Budget Estimate:

Task Request Approval:

City of Black Diamond:

_____	_____
Written Name	Title
_____	_____
Signature	Date

Consultant:

_____	_____
Written Name	Title
_____	_____
Signature	Date

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

EXHIBIT C

(Billing Rates and Reimbursable Expenses)

Exhibit C

Parametrix Puget Sound Billing Rates - October 1, 2017 through September 30, 2018

Classification	Grade	Rate for Billing	Classification	Grade	Rate for Billing
CADD Operator I	8	\$90	Jr. Planner	8	\$85
CADD Operator II	9	\$100	Planner I	10	\$95
CADD Operator III	11	\$115	Planner II	11	\$110
CADD Supervisor/Technical Lead	12	\$130	Planner III	12	\$125
CADD Services Manager	14	\$140	Planner III	13	\$130
			Planner IV	14	\$145
Jr. Designer	8	\$90	Sr. Planner	15	\$160
Designer I	10	\$105	Sr. Planner	16	\$190
Designer II	11	\$120	Sr. Planner	17	\$205
Designer III	12	\$130			
Designer III	13	\$145	Jr. Scientist/Biologist	8	\$90
Designer IV	14	\$150	Scientist/Biologist I	10	\$100
Sr. Designer	15	\$170	Scientist/Biologist II	11	\$115
Sr. Designer	16	\$185	Scientist/Biologist III	12	\$125
Sr. Designer	17	\$200	Scientist/Biologist III	13	\$135
			Scientist/Biologist IV	14	\$150
Jr. Engineer	8	\$90	Sr. Scientist/Biologist	15	\$175
Engineer I	10	\$110	Sr. Scientist/Biologist	16	\$190
Engineer II	11	\$120	Sr. Scientist/Biologist	17	\$200
Engineer III	12	\$130			
Engineer III	13	\$140	Environmental Technician I	7-8	\$95
Engineer IV	14	\$160	Environmental Technician II	9	\$100
Sr. Engineer	15	\$170	Environmental Technician III	10	\$105
Sr. Engineer	16	\$190			
Sr. Engineer	17	\$215	Jr. Hydrogeologist	8	\$90
Sr. Consultant	18	\$225	Hydrogeologist I	10	\$105
Sr. Consultant	19	\$235	Hydrogeologist II	11	\$110
			Hydrogeologist III	12-13	\$130
Electrical Designer I	11	\$115	Hydrogeologist IV	14	\$145
Electrical Designer II	12	\$130	Sr. Hydrogeologist	15	\$170
Electrical Designer III	13	\$145	Sr. Hydrogeologist	16	\$185
Electrical Designer IV	14-15	\$150	Sr. Hydrogeologist	17	\$195
Sr. Electrical Designer	16-17	\$180			
Sr. Electrical Designer	18	\$185	GIS Technician	9	\$100
Electrical Engineer I	11	\$115	GIS Analyst	10	\$105
Electrical Engineer II	12	\$130	Sr. GIS Analyst	11	\$115
Electrical Engineer III	13	\$145			
Electrical Engineer IV	14-15	\$160	Graphic Designer	10-11	\$115
Sr. Electrical Engineer	16-17	\$190	Sr. Graphic Designer	12-13	\$130
Sr. Electrical Engineer	18	\$225			
Jr. Surveyor	8	\$90	Publications Specialist I	8	\$100
Surveyor I	9	\$100	Publications Specialist II	9-10	\$105
Surveyor II	10	\$105	Sr. Publications Specialist	10-11	\$115
Surveyor III	11	\$120	Publications Supervisor	12-13	\$130
Sr. Surveyor	12	\$130	Technical Editor	10-11	\$120
Sr. Surveyor	13	\$160	Sr. Technical Editor	12-13	\$130
Survey Supervisor	14-16	\$170			
Sr Surveyor of Operations	17	\$185	Technical Aide	7	\$80
Survey Prevailing Wage*			Sr. Technical Aide	8	\$90
			Project Coordinator	9	\$100
Jr. Inspector	8	\$90	Sr. Project Coordinator	10	\$105
Construction Inspector	10-11	\$110	Project Controls Specialist	11	\$115
Sr. Construction Inspector	12-13	\$130	Sr. Project Controls Specialist	12-13	\$130
Resident Engineer	13	\$140			
Resident Engineer	14	\$150	Project Accountant	9	\$100
Construction Manager I	12-14	\$145	Sr. Project Accountant	10-11	\$120
Construction Manager II	15-17	\$160	Accounting Specialist	9	\$100
Sr. Construction Manager	15	\$170	Sr. Accounting Specialist	10-11	\$105
Sr. Construction Manager	16-17	\$190			
Owner's Representative	19	\$215	Admin Assistant	7	\$80
			Sr. Admin Assistant	8	\$90
Division Manager	16-17	\$205	Office Administrator	10-11	\$110
Division Manager	18-19	\$225	Sr. Office Administrator	12-13	\$135
Operations Manager	16-17	\$205	Office Administrative Manager	14-15	\$155
Operations Manager	18-19	\$240	Business Manager	15-16	\$160
Program Manager	19-20	\$245	Sr. Contract Administrator	11	\$130
Principal Consultant	19	\$240	Director of Risk Management	20	\$260
Principal Consultant	20	\$260			
Vice President/Sr. Vice President	19-20	\$260	UAV Pilot		\$155
			Expert Witness		\$350

* Prevailing Wage Rates apply to construction surveying on all Washington Public Works Projects.

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: Resolution No. 18-1227 authorizing the Mayor to execute a professional services agreement with RH2 Engineering, Inc. to provide on-call civil engineering services to the City.	Agenda Date: February 1, 2018 AB18-031	
	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	
	Public Works – Seth Boettcher	X
Cost Impact (see also Fiscal Note): not to exceed \$150,000	Court – Stephanie Metcalf	
Fund Source: Water/Sewer/Streets/Storm/Developers		
Timeline: 2 years		
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Resolution No. 18-1227; Agreement		
<p>SUMMARY STATEMENT:</p> <p>The City is in need of on-going civil engineering services. City staff send out a Request for Qualifications (RFQ) from civil engineering firms. In reviewing the submittals and considering the services previously provided by RH2 Engineering, Inc., City staff recommends executing a new agreement for on-call services.</p> <p>The City has been using RH2 for on-call tasks and has received responsive, technically sound engineering with accurate and clear billing. RH2 is very familiar with the City's infrastructure.</p> <p>Tasks under this agreement will be executed via an on-call task request (Exhibit B in the Agreement) according to adopted purchasing policies. Staff will use this agreement for initial study and investigation work for capital project development, operation and maintenance troubleshooting and assistance, and for serving development needs and plan review (reimbursable).</p> <p>FISCAL NOTE (Finance Department): Task orders under this agreement cannot exceed \$15,000. Work that exceeds \$15,000 will require a separate agreement. Many expenses under this agreement will be reimbursable by developers.</p>		
<p>COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: Public Works Committee recommends authorization.</p>		

RECOMMENDED ACTION: **MOTION** to adopt Resolution No. 18-1227 authorizing the Mayor to execute a professional services agreement with RH2 Engineering, Inc. to provide on-call civil engineering services to the City.

RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
February 1, 2018		

RESOLUTION NO. 18-1227

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH RH2 ENGINEERING, INC. TO PROVIDE ON-CALL CIVIL ENGINEERING SERVICES TO THE CITY

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

WHEREAS, the City advertised for civil engineering services and received Statements of Qualifications from interested consultants on January 9, 2018; and

WHEREAS, City staff recommends authorizing a professional services agreement with RH2 Engineering, Inc. to be one of the consultants to provide on-call civil engineering services to the City;

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

Section 1. The Mayor is hereby authorized to execute a professional services agreement with RH2 Engineering, Inc. to provide on-call civil engineering services to the City.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 1ST DAY OF FEBRUARY 2018.

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk

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

This Professional Services Agreement ("Agreement") is entered into by and between:

CITY OF BLACK DIAMOND, WASHINGTON (the "City")

Physical Address: 24301 Roberts Drive

Mailing Address: PO Box 599

Black Diamond, WA 98010

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

and

RH2 ENGINEERING, INC. ("Consultant")

Physical Address: 22722 29th Drive SE, Suite 210

Bothell, WA 98021

Mailing Address: Same as above

Contact: Geoffrey Dillard, P.E. Phone: 1-800-800-8052 ext. 5322 Fax: 425-951-5401

Tax ID No.: 91-1108443

for non-exclusive on-call professional civil engineering services for the City of Black Diamond Public Works and Community Development.

WHEREAS, the City has previously contracted with Consultant to provide the City with the same or substantially similar services for the Public Works and Community Development departments; and

WHEREAS, the City has conducted an RFQ and qualifications-based selection process for civil engineering services, and based on that process the City desires to continue working with the Consultant on Public Works and Community Development matters under the terms and conditions set forth herein; and

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

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

TERMS AND CONDITIONS

1. Services by Consultant

1.1 Consultant has been retained by the City to provide professional civil engineering on-call services as generally described in the Scope of Work attached to this Agreement as Exhibit "A". The services performed by Consultant shall not exceed the Scope of Work nor shall the

Consultant be entitled to a greater amount of compensation as that provided in this Agreement without the prior written authorization of the City.

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

1.3 Consultant represents and warrants that it, its staff to be assigned to the Project, and its subconsultants and their staff have the requisite training, skill, and experience necessary to provide the services required by this Agreement and are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant and its subconsultants under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

2. Schedule of Work

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

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

2.3 Consultant is authorized to proceed with services upon receipt of a signed task order.

3. Compensation

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

3.2 The City shall pay the Consultant an amount based on time and materials, not to exceed One Hundred Fifty Thousand Dollars (\$150,000.00) for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amendment to this Agreement. Compensation for the services provided pursuant to any one particular On-Call Task Order shall not exceed Fifteen Thousand Dollars (\$15,000.00).

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

4. Payment

4.1 Consultant shall maintain time and expense records and provide them to the City monthly, along with monthly invoices, in a format acceptable to the City for work performed to the date of the invoice.

4.2 All invoices shall be paid by City warrant within sixty (60) days of actual receipt by the City of an invoice conforming in all respects to the terms of this Agreement.

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

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

5. Discrimination and Compliance with Laws

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

5.2 Consultant and its subconsultants shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

5.3 Any violation of this Section 5 shall be a material breach of this Agreement and grounds for immediate cancellation, termination, or suspension of the Agreement by the City, in whole or in part, and may result in Consultant's ineligibility to conduct further work for the City.

6. Duration, Suspension, and Termination of Agreement

6.1 This Agreement takes effect on the date it has been signed by both parties, and it shall remain in effect for a period of two years, unless extended or terminated in writing pursuant to this Section 6.

6.2 The City reserves the right to terminate or suspend this Agreement at any time, with or without cause, by giving Consultant notice in writing no fewer than ten (10) days prior to the stated termination or suspension date. In the event of termination, all finished or unfinished reports, or other material prepared by Consultant pursuant to this Agreement, shall be submitted to the City. In the event the City terminates this Agreement prior to completion without cause, Consultant may complete such analyses and records as may be necessary to place its files in order. Consultant shall be entitled to compensation for any satisfactory work completed on the Project prior to the date of suspension or termination.

6.3 Any notice from the City to Consultant regarding the suspension of this Agreement shall specify the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to Consultant's reasonable expenses and shall be subject to verification. Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

6.4 Consultant may terminate this Agreement at any time for cause, so long as Consultant first gives the City at least 30 days' written notice of Consultant's intent to terminate and a reasonable opportunity for the City to cure the purported default. Consultant may terminate this Agreement without cause upon no fewer than 90 days' prior written notice to the City.

7. Standard of Care

7.1 Consultant represents and warrants that it has the requisite training, skill, and experience necessary to provide the services under this Agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services Consultant provides under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances. Consultant understands and agrees that the services rendered pursuant to this Agreement are for the sole exclusive benefit of the City and that no third party shall have authority to authorize, approve, direct or control any of the services rendered to the City pursuant to this Agreement.

8. Ownership of Work Product

8.1 Ownership of the originals of any reports, data, studies, surveys, charts, maps, drawings, specifications, figures, photographs, memoranda, and any other documents which are developed, compiled, or produced as a result of this Agreement, whether or not completed, shall be vested in the City and shall be submitted to the City upon termination of this Agreement. Consultant assigns to the City all of Consultant's right, title, and interest in any such documents. Any reuse of these materials by the City for projects or purposes other than those that fall within

the scope of this Agreement and the Project to which it relates, without written concurrence by Consultant, will be at the sole risk of the City.

8.2 The City acknowledges Consultant's documents as instruments of professional service. Nevertheless, the documents prepared under this Agreement shall become the property of the City upon completion of the work. The City agrees to hold harmless and indemnify Consultant against all claims made against Consultant for damage or injury, including defense costs, arising out of the City's reuse of such documents beyond the use for which they were originally intended without the written authorization of Consultant.

8.3 Methodology, software, logic, and systems developed under this Agreement are the property of Consultant and the City, and may be used as either Consultant or the City see fit, including the right to revise or publish the same without limitation.

9. Indemnification/Hold Harmless

9.1 Consultant shall defend, indemnify, and hold the City, its officers, officials, employees, volunteers, and agents harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising directly or indirectly out of or resulting from the acts, errors, or omissions of Consultant or its subconsultants in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. PROVIDED, HOWEVER, THAT IF ANY SUCH CLAIMS, INJURIES, DAMAGES, LOSSES OR SUITS RESULT FROM THE CONCURRENT NEGLIGENCE OF CONSULTANT AND THE CITY, IT IS EXPRESSLY AGREED THAT CONSULTANT'S OBLIGATIONS AND INDEMNITY UNDER THIS PARAGRAPH SHALL BE EFFECTIVE ONLY TO THE EXTENT OF CONSULTANT'S NEGLIGENCE.

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

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

9.4 The provisions of this Section 9 shall survive the expiration or termination of this Agreement.

10. Insurance

10.1 Consultant shall procure and maintain for the duration of the Agreement, and shall provide proof satisfactory to the City that such insurance is procured and maintained by each of its subconsultants, insurance against claims for injuries to persons or damage to property which

may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, or employees.

10.2 Consultant shall procure and maintain the following types and amounts of insurance:

a. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage. This insurance shall have a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors, personal injury, and advertising injury. This insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

d. Professional Liability insurance appropriate to Consultant's profession, with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

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

a. Consultant's insurance coverage shall be primary insurance vis-à-vis the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess over Consultant's insurance and shall not contribute with it.

b. Consultant's insurance shall be endorsed to state that coverage shall not be cancelled, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

10.4 The City shall be named as an additional insured under Consultant's Automobile Liability and Commercial General Liability insurance policies with respect to the work to be performed for the City pursuant to this Agreement.

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

10.6 Declaration pages issued by the insurance carriers for the policies mentioned in this Section 10 showing such insurance to be in force shall be filed with the City not less than ten (10) days following both parties signing this Agreement and before commencement of the work. In addition, the City may request, in writing, a full copy from Consultant of any insurance policy Consultant must procure and maintain pursuant to this Agreement and Consultant must provide such copy to the City within ten (10) days of Consultant's receipt of the City's request. Any policy or required insurance written on a claims-made basis shall provide coverage as to all claims arising out of the services performed under this Agreement and for three (3) years following completion of the services to be performed. It shall be a material breach of this Agreement for Consultant to

fail to procure and maintain the insurance required by this Section 10 or to provide the proof of such insurance to the City as provided for in this Agreement.

11. Assigning or Subcontracting

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

12. Independent Contractor

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

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

13. Notice

13.1 All notices required by this Agreement shall be considered properly delivered when personally delivered by courier service, when received by facsimile, or on the third day following mailing, postage prepaid, certified mail, return receipt requested to:

City:	Seth Boettcher, P.E. City of Black Diamond 24301 Roberts Drive P.O. Box 599 Black Diamond, WA 98010
-------	---

Fax: 360-886-2592

With a copy to: City Clerk

Consultant: Geoffrey Dillard, P.E.
RH2 Engineering, Inc.
22722 29th Drive SE, Suite 210
Bothell, WA 98021
Fax: 425-951-5401

14. Disputes

14.1 This Agreement, and any dispute arising out of or relating to the interpretation or enforcement of this Agreement, shall be governed by and construed according to the laws of the State of Washington, excluding its choice-of-law rules. Venue and personal jurisdiction shall lie exclusively in King County Superior Court, Kent, Washington.

15. Attorney Fees

15.1 In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney fees from the other party.

16. General Administration and Management on Behalf of the City

16.1 The Mayor of the City, or his/her designee (the contract Administrator) shall review and approve Consultant's invoices to the City under this Agreement and shall have primary responsibility for overseeing and approving work or services to be performed by Consultant. Consultant understands and agrees that any and all work to be performed pursuant to this Agreement must be approved in advance by the contract Administrator. No third party, including the project applicant, shall have any direct control or influence over the services performed under this Contract.

16.2 Even though the Consultant is an independent contractor with the authority to control and direct the performance, and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

16.3 The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options and the same shall be and remain in full force and effect.

17. Extent of Agreement/Modification

17.1 This Agreement, together with any attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may only be amended, modified, or added to by written instrument properly signed by both parties. The parties acknowledge the general contract rule that a clause in a contract, such as this one, prohibiting oral modifications is itself generally subject to oral modification. However, in order to ensure certainty as to the terms and conditions of this Agreement, the parties waive this general contract rule.

18. Conflict of Interest; Non-Collusion

18.1 No officer, employee or agent of the City, nor any member of the immediate family of any such officer, employee or agent, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The Consultant shall comply with all federal, state, and City conflict of interest laws, statutes and regulations. The Consultant represents that the Consultant presently has no interest and shall not acquire any interest, direct or indirect, in the project to which this Contract pertains which would conflict in any manner or degree with the performance of the Consultant's services and obligations hereunder. The contractor's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from the project applicant or any affiliate or agent of the project applicant.

18.2 The Consultant warrants and represents that the Consultant has not, nor has any other member, employee, representative, agent or officer of the Consultant, entered into or offered to enter into any combination, collusion or agreement with any person or entity to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of this Contract other than the consideration offered pursuant to the terms and conditions hereof.

AGREED TO BY:

CITY OF BLACK DIAMOND

CONSULTANT

By: _____

Carol Benson

Its: Mayor

By: _____

Geoffrey Dillard, P.E.

Its: Director

Date: _____

Date: _____

Attest:

By:

Brenda L. Martinez
City Clerk

APPROVED AS TO FORM:

David A. Linehan
City Attorney

EXHIBIT A

SCOPE OF SERVICES

Provide on-call engineering services to support the City of Black Diamond, including but not limited to, the following:

- Capital projects
- Community Development services
- Development review services
- Utility operations and maintenance needs
- Street Department needs
- Other City departmental needs
- Survey needs

EXHIBIT B

City of Black Diamond On-Call Task Request

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

Scope of Task Request Including Deliverables and Schedule

Budget Estimate:

Task Request Approval:

City of Black Diamond:

_____	_____
Written Name	Title
_____	_____
Signature	Date

Consultant:

_____	_____
Written Name	Title
_____	_____
Signature	Date

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

EXHIBIT C

(Billing Rates and Reimbursable Expenses)

EXHIBIT C
RH2 ENGINEERING, INC.
2018 SCHEDULE OF RATES AND CHARGES

RATE LIST	RATE	UNIT
Professional I	\$138	\$/hr
Professional II	\$153	\$/hr
Professional III	\$164	\$/hr
Professional IV	\$175	\$/hr
Professional V	\$191	\$/hr
Professional VI	\$203	\$/hr
Professional VII	\$219	\$/hr
Professional VIII	\$230	\$/hr
Professional IX	\$230	\$/hr
Technician I	\$100	\$/hr
Technician II	\$107	\$/hr
Technician III	\$132	\$/hr
Technician IV	\$140	\$/hr
Administrative I	\$69	\$/hr
Administrative II	\$81	\$/hr
Administrative III	\$96	\$/hr
Administrative IV	\$114	\$/hr
Administrative V	\$131	\$/hr
CAD/GIS System	\$27.50	\$/hr
CAD Plots - Half Size	\$2.50	price per plot
CAD Plots - Full Size	\$10.00	price per plot
CAD Plots - Large	\$25.00	price per plot
Copies (bw) 8.5" X 11"	\$0.09	price per copy
Copies (bw) 8.5" X 14"	\$0.14	price per copy
Copies (bw) 11" X 17"	\$0.20	price per copy
Copies (color) 8.5" X 11"	\$0.90	price per copy
Copies (color) 8.5" X 14"	\$1.20	price per copy
Copies (color) 11" X 17"	\$2.00	price per copy
Technology Charge	2.50%	% of Direct Labor
Mileage	\$0.545	price per mile (or Current IRS Rate)
Subconsultants	15%	Cost +
Outside Services	at cost	

Rates listed are adjusted annually.

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: Resolution 18-1228 authorizing the Mayor to execute a professional services agreement with RH2 Engineering, Inc. for design engineering of the Springs Rehabilitation project.	Agenda Date: February 1, 2018 AB18-032	
	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	
	Public Works – Seth Boettcher	X
Cost Impact (see also Fiscal Note): \$590,000 Fund Source: WSFFA Partners – see fiscal note Timeline: on-going services	Court – Stephanie Metcalf	
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Resolution No. 18-1228; Agreement		
<p>SUMMARY STATEMENT:</p> <p>The City of Black Diamond relies on natural groundwater springs on the south side of the Green River for its municipal water supply. The Black Diamond Springs includes three collection systems, an above-ground conveyance system that runs from the Springs to the Green River crossing on an early 1900s cable suspension bridge (the “Swinging Bridge”), underground piping to the North Bank Pump Station, and several miles of transmission main that deliver the water to the City’s distribution system.</p> <p>Many of the existing facilities are old, undersized, and vulnerable, most notably the above-ground conveyance to the river crossing. The older facilities are near the end of their useful service life, difficult to access and maintain, and susceptible to damage or failure due to slope instability. The structural integrity of the bridge and the risk of flood damage to the bridge need to be evaluated.</p> <p>The purpose of the Springs Rehabilitation project is to repair, replace, and reconstruct the Springs water source to enable full use of the City’s water right in a long-term, efficient and reliable way that meets applicable Washington State Department of Health (DOH) requirements.</p> <p>RH2 Engineering, Inc. is very familiar with this project and has been involved in all aspects of the preliminary engineering and feasibility analysis. RH2 has an excellent team of engineers assembled and ready to move this project forward.</p> <p>FISCAL NOTE (Finance Department): This project is funded by Palmer Coking Coal and Ten Trails (the funding partners) through a</p>		

funding agreement with the City entitled the Water Supply and Facilities Funding Agreement (WSFFA). By the authority of this agreement, the City may call for the funds needed to cover all costs associated with this project. The Agreement requires that the Partners maintain a \$70,000 Prepaid Capital Deposit. The City will be making calls for funds, on a quarterly basis, to cover the costs of this engineering contract, as needed. This \$590,000 contract is well within the planned and anticipated 2018 expenditure Budget of \$2,087,000.

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:
The Public Works Committee recommends authorization.

RECOMMENDED ACTION: **MOTION to adopt Resolution No. 18-1228, authorizing the Mayor to execute a professional services agreement with RH2 Engineering, Inc. for design engineering for the Springs Rehabilitation project.**

RECORD OF COUNCIL ACTION

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
February 1, 2018		

RESOLUTION NO. 18-1228

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO EXECUTE A
PROFESSIONAL SERVICES AGREEMENT WITH RH2
ENGINEERING, INC. FOR DESIGN ENGINEERING FOR
THE SPRINGS REHABILITATION PROJECT**

WHEREAS, the City does not have sufficient staff resources for the design engineering of the Springs Rehabilitation project; and

WHEREAS, RH2 Engineering, Inc. has provided preliminary investigation and engineering services for this project; and

WHEREAS, RH2 Engineering, Inc. has the resources available to perform this work; and

WHEREAS, the costs for this project are covered under the Water Supply and Facilities Funding Agreement (WSFFA);

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

Section 1. The Mayor is hereby authorized to execute a Professional Services Agreement with RH2 Engineering, Inc. for design engineering for the Springs Rehabilitation project, substantially in the form attached hereto.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 1ST DAY OF FEBRUARY, 2018.

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk

CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT

THIS Agreement is made effective as of the _____ day of _____, 201____, by and between the City of Black Diamond, a municipal corporation, organized under the laws of the State of Washington, whose address is:

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

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

RH2 Engineering, Inc (hereinafter the "CONSULTANT")
22722 29th Drive SE, Suite 210
Bothell, WA 98021

Contact: Geoffrey Dillard Phone: 1-800-800-8052 ext 5322 Fax: 425-951-5401
e-mail: gdillard @rh2.com Tax Id No. 91-1108443

for professional services in connection with the following Project:

Black Diamond Springs Reconstruction project.

TERMS AND CONDITIONS

1. Services by Consultant.

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

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

2. Schedule of Work.

A. Consultant shall perform the services described in the scope of work expeditiously, with the following goals: the SEPA portion of Task 3.3 of Phase 1 completed by December 14, 2018; all necessary items to complete Task 4.1 of Phase 1 in the Scope of Work completed by December 14, 2018; and all necessary items to complete Task 4.1 of Phase 2 of the Scope of Work completed by December 14, 2018; Task 1 of Phase 3 complete by December 14, 2018.

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

Revised 8/18/16

3. **Terms.** This Agreement shall commence on the effective date and shall terminate upon satisfactory completion of the project or as outlined in Section 8 of this Agreement.

4. **Compensation.**

TIME AND MATERIALS NOT TO EXCEED. Compensation for these services shall not exceed \$590,000 without written authorization and will be based on the fee schedule attached hereto as Exhibit B, and the billing rates and reimbursable expenses attached hereto as Exhibit C.

5. **Payment.**

A. Consultant shall maintain time and expense records and provide them to the City monthly after services have been performed, along with monthly invoices in a format acceptable to the City for work performed to the date of the invoice.

B. All invoices shall be paid by City warrant within sixty (60) days of receipt of a proper invoice. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

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

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

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

6. **Discrimination and Compliance with Laws**

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

B. Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state and municipal laws, rules and

regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

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

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

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

8. Suspension and Termination of Agreement

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

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

C. Rights Upon Termination.

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

2. *Default.* If the Agreement is terminated for default, the Consultant shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed to industry standards and specifications required for the relevant Task(s) as described in the Scope of Work. Any extra cost or damage to the City resulting from such

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

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

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

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

10. Ownership of Work Product.

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

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

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

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

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

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

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

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

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

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

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

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

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

C. Other Insurance Provisions

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

1. The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
3. The City will not waive its right to subrogation against the Consultant. The Consultant's insurance shall be endorsed acknowledging that the City will not waive their right to subrogation. The Consultant's insurance shall be endorsed to waive the right of subrogation against the City, or any self-insurance, or insurance pool coverage maintained by the City.
4. If any coverage is written on a "claims made" basis, then a minimum of a three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided to the City.

D. Acceptability of Insurers

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

E. Verification of Coverage

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

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

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

Carol Benson
Mayor
24301 Roberts Drive
Black Diamond, WA 98010

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

RH2 Engineering, Inc.
Attn: Geoff Dillard, P.E.
22722 29th Drive SE, suite 210
Bothell, WA 98021

Phone: 1-800-720-8052 ext 5322
Fax: 425-951-5401

16. Resolution of Disputes and Governing Law.

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

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

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

17. General Provisions.

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

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

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

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

Exhibits attached hereto, which may or may not have been dated prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

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

CITY OF BLACK DIAMOND,
WASHINGTON

CONSULTANT

By: _____
Carol Benson
Mayor

By: _____

Name: Geoff Dillard

Title: Principal

Attest:

By: _____
Brenda Martinez
City Clerk

APPROVED AS TO FORM:

By: _____
David Linehan
City Attorney

EXHIBIT A
Scope of Work
City of Black Diamond
Black Diamond Springs Rehabilitation
Phases 1, 2, and 3
January 2018

Background

The City of Black Diamond (City) relies on natural groundwater springs on the south side of the Green River for its municipal water supply. The Black Diamond Springs (Springs) source includes four (4) capture and impoundment facilities, an aboveground conveyance system that runs from the springs to the Green River crossing on an early 1900s cable suspension bridge, underground piping to the North Bank Pump Station (NBPS), and several miles of transmission main that deliver the water to the City's distribution system.

Many of the existing facilities are old, undersized, and vulnerable, most notably the aboveground conveyance to the river crossing. The older facilities are near the end of their useful service life, difficult to access and maintain, and susceptible to damage or failure due to slope instability. The structural integrity of the bridge and the risks of flood damage to the bridge need to be evaluated.

The purpose of the Black Diamond Springs Rehabilitation project is to repair, replace, and reconstruct the spring water source to enable full use of the City's water right in a long-term, efficient, and reliable way that meets applicable Washington State Department of Health (DOH) requirements. RH2 Engineering, Inc., (RH2) will use and rely upon information and data provided or generated by the City and others.

Project Phasing

1. **Phase 1 – Conveyance System Upgrade.** The system required to deliver captured spring water to the north side of the river is old, undersized, and vulnerable and should be upgraded, taking into consideration slope stability, pipeline access, permitting, construction and maintenance costs, flooding hazards, etc. The pipe will be replaced, the bridge crossing replaced or upgraded, and larger pumps installed at the NBPS.
2. **Phase 2 – Transmission Main Replacement.** The transmission capacity of the NBPS is limited due to undersized pipe. Phase 2 will augment the system's transmission capacity to fully utilize the City's maximum instantaneous (Qi) and maximum annual (Qa) water right allocations. Approximately 9,000 linear feet (LF) of transmission main will be replaced.
3. **Phase 3 – Spring Protection Improvements.** The Springs capture and impoundment facilities will be upgraded to reduce vulnerability to damage from natural events, isolate the impacts and risks of contamination from surface water, eliminate manmade contamination risks from maintenance activities, and reduce the likelihood that DOH would reclassify the springs and collection system as Ground Water Under the Influence of Surface Water (GWI).

Project Schedule

The City's goal is to increase the capacity of the Springs supply as soon as possible. Therefore, Phase 1 will be permitted and constructed first. Phase 1 should increase the deliverable capacity of the Springs from approximately 400 gallons per minute (gpm) to 950 gpm. Phase 2 should increase the deliverable capacity of the Springs from approximately 950 gpm to 1,410 gpm. It is anticipated that Phase 3 will not increase the

Springs capacity, but improve reliability and avoid additional treatment requirements to address surface water influence concerns.

The critical path items of this project are twofold: 1) methods for crossing the Green River; and 2) permitting for the conveyance system and river crossing. The City has hired Parametrix, Inc. (Parametrix) to assist in evaluating the condition of the existing bridge, the cost to upgrade the existing bridge, and feasibility of the alternative option of building a new bridge. Permitting will involve both King County and the U.S. Army Corps of Engineers (USACE), and are long lead items.

Although all three phases will be sequenced over time, some tasks can be accomplished concurrently. A single State Environmental Policy Act (SEPA) process will be undertaken for all three phases. In addition, the geological investigation and preparation of engineering geology technical memoranda can be accomplished simultaneously for all three phases. A project report has already been prepared and approved by DOH for Phase 1. However, a second project report will be required for Phase 3.

Phase 1 – Conveyance System Upgrade

The existing springs collection systems and conveyance pipes from the Black Diamond Springs junction box to the NBPS is undersized, nearing the end of its useful service life, and not adequately secured along the steep-bank section on the south side of the Green River. RH2 will provide the design and permitting necessary to prepare the project for construction.

The conveyance system replacement is approximately 1,330 LF in length, has two (2) existing pumps, and includes:

- Crossing under a tributary of the Green River on the upper south plateau (*assumed via open-trench construction*);
- Traversing a steep slope section from the upper south plateau to the Green River (*assumed above grade with anchor blocks*);
- Crossing the Green River via the existing or new cable bridge (*replaced or upgraded*);
- Connecting to the existing NBPS (*assumed via open trench construction*); and
- Replacing the existing pumps at the NBPS.

This project will review the required pipe diameter and pump station upgrades necessary to deliver 1,410 gpm of water supply from the Black Diamond Springs to the City's water system.

Task 1 – Geologic Review

Objective: Provide an engineering geology and geotechnical evaluation to support the conveyance system design and constructability evaluation.

Approach:

- 1.1 Conduct a site reconnaissance along the conveyance system alignment for the exposed and buried pipe on both the south and north sides of the Green River, and for positioning of anchor blocks at the crest and toe of the steep slope. Evaluate observable geologic hazards along the alignment.
- 1.2 Investigate subsurface conditions at up to four (4) accessible locations along the alignment at the crest and toe of the steep slope, and at the north side of the Green River; *this Scope of Work assumes the City will provide a backhoe and operator*. Collect soil samples for soil laboratory analysis.

- 1.3 Evaluate conditions that would affect directional drilling or other trenchless construction methods and open-cut trenching on the north side of the Green River. Evaluate conditions that would affect performance and construction of anchoring blocks along the steep slope.
- 1.4 Provide an engineering geology and geotechnical technical memorandum summarizing RH2's findings, geological conditions, and recommendations for design and construction.

Provided by the City:

- Backhoe, operator, and access to investigation locations.
- Payment of soil laboratory fees.

RH2 Deliverables:

- One (1) site reconnaissance to collect soil samples.
- Test pit logs, soil laboratory reports, and engineering geology and geotechnical technical memorandum in PDF form.

Task 2 – Plans and Specifications

Objective: Prepare plans, specifications, and construction cost estimate for the proposed conveyance system.

Approach:

- 2.1 Perform one (1) site visit to review survey and proposed alignment.
- 2.2 Coordinate with trenchless technology contractors to evaluate the risks and feasibility of directional drilling.
- 2.3 Develop design plans to include the following.
 - Cover sheet and general information sheet.
 - Plan and profile sheets.
 - Access road construction and permanent improvements.
 - Tributary crossing.
 - Slope anchoring system.
 - Bridge attachment system.
 - Mechanical improvements.
 - Structural improvements.
 - Electrical improvements.
 - Telemetry and controls modifications.
 - Construction details.
- 2.4 Perform hydraulic analyses to develop system curves for pump selection and pipe material evaluation.
- 2.5 Evaluate power requirements and assist the City with confirming load capacity of its power lines to the NBPS.
- 2.6 Develop preliminary specifications based on RH2 modified Washington State Department of Transportation (WSDOT) format. Assemble technical specifications and non-technical documents as

needed for the water main work. *The City shall provide RH2 with the most current version of the City's standard public works contract documents.*

- 2.7 Develop quantity schedules and engineer's estimate.
- 2.8 Perform internal quality assurance/quality control (QA/QC) review of the plans and technical specifications.
- 2.9 Attend three (3) coordination meetings with City staff to discuss alignment and design issues.
- 2.10 Finalize plans, bid documents, and specifications based on City review comments and internal quality control review.

Assumptions:

- *RH2 will utilize the City provided survey (prepared and updated by Parametrix in 2017).*
- *Plans will be produced in color at a 1 inch equals 20 feet scale.*
- *RH2 is entitled to rely on the accuracy and completeness of any data, information, or materials provided by the City or others in relation to this work.*
- *The City has an easement for access to property not owned by the City, and if additional negotiations are necessary then they will be handled by the City.*
- *The City will secure a bridge evaluation expert to document that the existing bridge can support the load of the new pipe.*
- *The existing power grid can support the load from the new pumps.*
- *The existing telemetry panel will not need any modifications to control the new pumps.*

Provided by the City:

- Access to site for site visit.
- Access to property not owned by the City, if necessary.
- Coordination with property owners.
- Construction easement.

RH2 Deliverables:

- Attendance at three (3) coordination meetings.
- Plans, specifications, and probable construction cost estimate, submitted to the City as two (2) hard copy files in 11x17 color format for 60-percent and final review.

Task 3 – Permitting Assistance

Objective: Identify environmental constraints associated with proposed project improvements and evaluate permits needed to accomplish the project. Prepare permit applications and submit to applicable regulatory agencies. Facilitate permit reviews and approvals by responding to agency requests/questions.

Approach:

- 3.1 Compile background environmental site data available from online public agency sources to guide site investigations and permit compliance, including soils, wetlands, water mapping, sensitive species and habitats, and regulatory requirements.

- 3.2 RH2 and the City have already attended a Pre-Application meeting with King County Department of Development and Environmental Services (KCDDDES). Prepare permitting documents and respond to KCDDDES comments. *It is assumed that two (2) resubmittals will be required.*
- 3.3 Prepare SEPA and Conditional Use Permit (CUP) application for City submittal and processing. Attend and assist the City during the permitting intake meeting. *It is assumed the City will prepare the SEPA prior to submittal of the Shoreline permit at King County (County). Unless determined otherwise through consultation with City Planning staff, it is assumed that the SEPA will be processed under the umbrella of the CUP, and Sensitive Areas, Tree Removal, and Clearing/Grading permits would be reviewed concurrently. Consequently, this subtask includes preparation of those permit packages as well. It is assumed that one (1) SEPA and CUP will be prepared to address Phases 1 through 3 of the project, with the expectation that a SEPA amendment may be needed for Phases 2 and 3 as more project information is developed. Additional documentation for the accompanying permit applications may be needed for Phases 2 and 3 as more project information is developed.*
- 3.4 Prepare Shoreline Substantial Development Permit (SSDP) for County submittal and processing. Prepare Critical Areas Report (CAR) and Mitigation Plan for inclusion with SSDP. *It is assumed that the SSDP submittal will also include Site and Design Plans (e.g., clearing, grading, erosion control, structural, mitigation, etc.), Geotechnical Investigation and Report, Structural Assessment of the existing bridge, etc.* Attend the permitting intake meeting and assist the City, as needed. *It is assumed that the SSDP and CAR will address Phases 1 through 3 of the project; however, additional documentation for the accompanying permit applications may be needed for Phases 2 and 3 as more project information is developed.*
- 3.5 Prepare Hydraulic Project Approval (HPA) application for submittal to the Washington Department of Fish and Wildlife (WDFW) to construct the creek crossing and possibly the river crossing. Work with the City to prepare the application and necessary submittal elements, and submit application on the City's behalf.
- 3.6 Prepare Joint Aquatic Resource Permit Application (JARPA) for submittal to the USACE and the Washington State Department of Ecology (Ecology) for creek/river crossing work, as needed. This requirement is dependent on the selected method for crossing these waterbodies, and will need to be further evaluated. *This subtask assumes that Section 404 approval through the USACE will also require Endangered Species Act (ESA) documentation in the form of a No Effect Letter and Cultural Resources Survey. If required, RH2 would sub-consult with a local cultural firm for the Cultural Resources Survey work. USACE submittal will also require specialized 8.5-inch by 11-inch project plans.*

Assumptions:

- Existing and newly completed additional survey data from Parametrix is adequate for this project.
- The City will submit application forms.
- The structural integrity of the existing bridge will be determined by others.
- The Pre-application meeting was adequate for all phases of this project and an additional pre-application meeting with KCDDDES will not be required.
- The project is not located within the public right-of-way; therefore, a grading permit through the County will be required.
- The City already has an easement with Washington State Parks and Recreation Commission (Parks) and additional negotiations will not be necessary.
- Parks will not require additional permit applications.

- *The City will pay all permit fees directly.*
- *Construction Stormwater General Permit (CSGP) will not be required for Phase 1 improvements.*

RH2 Deliverables:

- Electronic environmental site data for inclusion in project permit documents in PDF form.
- Documentation of correspondence with regulatory agency staff, meeting agenda and minutes, and associated coordination for site meetings, if needed.
- SEPA Environmental Checklist in PDF form.
- Master Land Use Application – City.
- CUP application – City.
- CAR meeting both the County and City Sensitive Areas Code requirements.
- Mitigation Plan for shoreline impacts – draft, one revision, and final *(to comply with County reviews)* in PDF form.
- Clear/Grade and Grading Permit application meeting both the County and City clearing/grading requirements.
- SSDP application – County.
- HPA and JARPA applications – WDFW, Ecology, and USACE.
- List of anticipated permits and costs included in the DOH project report in PDF form.

Task 4 – Services During Bidding

Objective: Assist the City in advertising and administering the bids and awarding the construction contracts.

Approach:

- 4.1 Produce one (1) set of electronic bid documents to be used for online viewing by prospective bidders. Produce five (5) sets of half-size plans and specifications.
- 4.2 Prepare up to two (2) addenda to the plans and specifications, as needed, to notify prospective bidders of changes and provide clarification.
- 4.3 Respond to contractor questions regarding the project.
- 4.4 Attend the bid opening and assist the City in tabulating the bid results.

Assumptions:

- *It is assumed that the City will pay bid advertisement fees directly.*

Provided by the City:

- Bid award process and construction contract execution.
- Bid tabulation.
- Reference check of lowest bidder.
- Project award recommendation letter.

RH2 Deliverables:

- Plans and specifications for bidders, the City, and RH2 as outlined in subtask 4.1.
- Phone assistance to vendors and bidders during the advertisement phase.
- Up to two (2) addenda, if necessary, in electronic format.

Phase 2 – Transmission Main Replacement

The existing 8-inch-diameter transmission main from the NBPS to the City's system is both undersized and of substandard material (asbestos concrete). The main is installed on sections of steep slope and along an abandoned railroad alignment. RH2 will prepare the bid documents necessary for construction of the transmission main replacement project.

Task 1 – Plans and Specifications

Objective: Prepare plans, specifications, and construction cost estimate for the proposed transmission main.

Approach:

- 1.1 Perform one (1) site visit to review survey and proposed alignment.
- 1.2 Coordinate with surveyor to obtain topographic information for the proposed alignment. *It is assumed that sub-surface investigation, such as ground penetrating radar (GPR), will be utilized to locate the existing water main.*
- 1.3 Develop preliminary plans to include the following.
 - Cover sheet and general information sheet.
 - Plan and profile sheets.
 - Construction details.
- 1.4 Develop preliminary specifications based on RH2 modified WSDOT format. Assemble technical specifications and non-technical documents as needed for the water main work. *The City shall provide RH2 with the most current version of the City's standard public works contract documents.*
- 1.5 Develop quantity schedules and engineer's estimate.
- 1.6 Perform internal QA/QC review of the plans and technical specifications.
- 1.7 Attend three (3) coordination meetings with City staff to discuss alignment and design issues.
- 1.8 Finalize plans, bid documents, and specifications based on City review comments and internal quality control review.

Assumptions:

- *RH2 will utilize the City provided survey (prepared and updated by Parametrix 2017) for Task 1.1.*
- *RH2 will coordinate with land surveyor for Task 1.2.*
- *Plans will be produced in color at a 1 inch equals 20 feet scale.*
- *RH2 is entitled to rely on the accuracy and completeness of any data, information, or materials provided by the City or others in relation to this work.*
- *The City has an easement for access to property not owned by the City and additional negotiations will not be necessary.*

Provided by the City:

- Construction records/reports of existing transmission main.
- Access to site for site visit.
- Access to property not owned by the City, if necessary.
- Coordination with property owner.
- Construction easement.

RH2 Deliverables:

- Attendance at three (3) coordination meetings.
- Plans, specifications, and probable construction cost estimate, submitted to the City as two (2) hard copy files in 11x17 color format for 60-percent and final review.

Task 2 – Permitting Assistance

Objective: Assist the City in preparing and submitting project permits.

Approach:

- 2.1 Perform environmental site investigations along the project alignment to inform project permitting efforts.
- 2.2 Prepare grading permit for submittal to KCDDDES. Work with the City to submit the grading permit application, and associated plans, technical studies, etc. for permit issuance.
- 2.3 Prepare Construction Stormwater General Permit (CSGP) Notice of Intent (NOI) and work with the City to publish notices for compliance under the National Pollutant Discharge Elimination System (NPDES) permit. Prepare documentation and necessary application forms to coordinate work with the overhead power utility operator.
- 2.4 Prepare documentation and assist the City to coordinate with Parks. *It is assumed that two (2) coordination meetings will be required for this phase of the project.*

Assumptions:

- *Additional pre-application meetings will not be needed for this phase of the project.*
- *SEPA will have been completed as part of the Phase 1 efforts and no additional SEPA work will be required for Phase 2. Additionally, the proposed pipe diameter is 12 inches, and not anticipated to cross state waters, thus it would be SEPA exempt.*
- *Critical areas are not present on the Parks property; therefore, no critical areas report or mitigation will be required. If critical areas are determined to be present through environmental site investigations, design can be modified to work around these features, thereby avoiding impacts and necessary permitting.*
- *Parks will not require additional permit applications.*
- *The City will pay all permit fees directly.*

RH2 Deliverables:

- Grading permit application and submittal to KCDDDES in PDF form.
- CSGP NOI submittal online.
- Attendance at two (2) Parks meetings.

Task 3 – Geologic Review

Objective: Provide engineering geology and geotechnical evaluation to support transmission main design.

Approach:

- 3.1 Conduct site reconnaissance along the transmission main alignment and evaluate geologic hazards along alignment.
- 3.2 Perform subsurface investigation at four (4) locations along alignment, coordinating with City-provided operator and backhoe. Collect soil samples for soil laboratory analysis.
- 3.3 Provide engineering geology and geotechnical memorandum identifying geological conditions and recommendations for design and construction. Evaluate conditions for directional drilling or other trenchless construction options, and open-cut trenching.

Provided by the City:

- Backhoe, operator, and access to investigation locations.
- Payment of soil laboratory fees.

RH2 Deliverables:

- One (1) site visit to collect soil samples.
- Test pit logs, soil laboratory reports, and engineering geology and geotechnical memorandum in PDF form.

Task 4 – Services During Bidding

Objective: Assist the City in advertising and administering the bids and awarding the construction contracts.

Approach:

- 4.1 Produce one (1) set of electronic bid documents to be used for online viewing by prospective bidders. Produce five (5) sets of half-size plans and specifications.
- 4.2 Prepare up to two (2) addenda to the plans and specifications, if needed, to notify prospective bidders of changes and provide clarification.
- 4.3 Respond to contractor questions regarding the project.
- 4.4 Attend the bid opening and assist the City in tabulating the bid results.

Assumptions:

- *It is assumed that City will pay bid advertisement fees directly.*

Provided by the City:

- Bid award process and construction contract execution.
- Bid tabulation.
- Reference check of lowest bidder.
- Project award recommendation letter.

RH2 Deliverables:

- Plans and specifications for bidders, the City, and RH2, as outlined in subtask 4.1.

- Phone assistance to vendors and bidders during the advertisement phase.
- Up to two (2) addenda, if necessary, in electronic format.

Phase 3 – Springs Protection Improvements

The Black Diamond Springs collection system is inadequately protected from the surrounding environment. This project will provide the infrastructure necessary to isolate the collection areas for Springs 1 and 3 from surface water runoff, rain, insects, animals, and human actions.

Task 1 – Prepare Project Report

Objective: Document project intent in a project report. Summarize the proposed improvements and identify estimated costs, schedules, and the scope of the design.

Approach:

- 1.1 Prepare and evaluate up to three (3) design alternatives.
- 1.2 Estimate construction costs for each alternative.
- 1.3 Perform a site visit to collect additional observed data.
- 1.4 Prepare project schematic site plans utilizing the existing survey provided to the City (Parametrix 2017).
- 1.5 Prepare for and attend one (1) meeting with City staff to discuss results of analysis and review design options.
- 1.6 Prepare a project report based on applicable Washington Administrative Code (WAC) report requirements. Document the background and objectives of the project, preliminary design, and project design criteria.

Provided by the City:

- Electronic files from the Parametrix survey in AutoCAD format.

RH2 Deliverables:

- Two (2) copies of schematic site plans and project report to DOH.
- Attendance one (1) design option review meeting.

Task 2 – Geologic Review

Objective: Provide engineering geology and geotechnical evaluation to support the proposed design and constructability evaluation.

Approach:

- 2.1 Conduct site reconnaissance and evaluate observable geologic hazards at the Springs collection system.
- 2.2 Investigate subsurface conditions at up to two (2) locations using a City-provided backhoe and operator. Collect soil samples for soil laboratory analysis.
- 2.3 Provide an engineering geology and geotechnical memorandum summarizing findings, geological conditions, and recommendations for design and construction.

Provided by the City:

- Backhoe and operator, as well as access to investigation locations.
- Payment of all soil laboratory fees.

RH2 Deliverables:

- One (1) site visit to collect soil samples.
- Test pit logs and soil laboratory reports in PDF form.
- Engineering geology technical memorandum in PDF form.

Task 3 – Prepare Preliminary Design

Objective: Prepare preliminary design plans that illustrate the improvements at Springs 1 and 3 based on incorporating the results of other tasks.

Approach:

- 3.1 Evaluate construction access requirements for Springs 1 and 3.
- 3.2 Prepare design concepts to guide cost estimates and final design based on selected alternative.
- 3.3 Evaluate construction methods and phasing issues to protect the Black Diamond Springs during construction.
- 3.4 Develop preliminary site plans for the project.
- 3.5 Develop a schematic design for the structures necessary to protect the Springs.

RH2 Deliverables:

- Two (2) sets of 11-inch by 17-inch color preliminary plans. *Construction bid documents will be prepared under a separate task.*

Task 4 – Permitting Assistance

Objective: Identify environmental constraints associated with proposed project improvements and evaluate permits needed to accomplish the project. Prepare and submit environmental permit applications.

Approach:

- 4.1 Conduct investigations of the Springs, as needed, to supplement investigations prepared in Phase 1. Document investigations for permit applications.
- 4.2 Prepare City building permit for review of proposed springs source cover.
- 4.3 Coordinate with DOH staff and update the DOH project report.

Assumptions:

- *Existing survey data from Parametrix is adequate for this project.*
- *SEPA, CUP, and Critical Areas reports completed for Phase 1 will be sufficient to cover Phase 3 improvements, such that no additional permitting with respect to these elements will be required.*
- *Any grading work needed as part of the Phase 3 improvements will be under the thresholds triggering the need to obtain a City grading permit. The project will be exempt from grading permit requirements.*

RH2 Deliverables:

- City Building permit application.
- Two (2) copies of updated DOH project report for resubmittal.

Task 5 – Final Plans and Specifications

Objective: Prepare plans, specifications, and construction cost estimate for the proposed Springs protection improvements.

Approach:

- 5.1 Conduct one (1) site visit with City staff.
- 5.2 Plans to include the following.
 - Cover sheet and general information sheet.
 - Building elevations.
 - Mechanical improvements.
 - Structural improvements.
 - Collection box improvements.
 - Construction details.
- 5.3 Develop specifications based on RH2 modified WSDOT format. Assemble technical specifications and non-technical documents as needed for the springs improvements. *The City shall provide RH2 with the most current version of the City's standard public works contract documents.*
- 5.4 Develop quantity schedules and engineer's estimate.
- 5.5 Perform internal QA/QC review of the plans and technical specifications.
- 5.6 Attend three (3) coordination meetings with City staff to discuss improvements and design issues.
- 5.7 Finalize plans, bid documents, and specifications based on City review comments and internal quality control review.

Assumptions:

- *Plans will be produced in color at a 1 inch equals 20 feet scale.*
- *RH2 is entitled to rely on the accuracy and completeness of any data, information, or materials provided by the City or others in relation to this work.*
- *The City has an easement and additional negotiations will not be necessary.*

Provided by the City:

- Construction records/reports of existing springs collection system.
- Access to the site for site visit.
- Access to property not owned by the City, if necessary.
- Coordination with property owner.
- Construction easement.

RH2 Deliverables:

- One (1) site visit.
- Attendance at three (3) coordination meetings.
- Plans, specifications, and probable construction cost estimate, submitted to the City as two (2) hard copy files in 11x17 color format for 60-percent and final review.

Task 6 – Services During Bidding

Objective: Assist the City in advertising and administering the bids and awarding the construction contracts.

Approach:

- 6.1 Produce one (1) set of electronic bid documents to be used for online viewing by prospective bidders. Produce five (5) sets of half-size plans and specifications.
- 6.2 Prepare up to two (2) addenda to the plans and specifications, if needed, to notify prospective bidders of changes and provide clarification.
- 6.3 Respond to contractor questions regarding the project.
- 6.4 Attend the bid opening and assist the City in tabulating the bid results.

Assumptions:

- *It is assumed that City will pay bid advertisement fees directly.*

Provided by the City:

- Bid award process and construction contract execution.
- Bid tabulation.
- Reference check of lowest bidder.
- Project award recommendation letter.

RH2 Deliverables:

- Plans and specifications for bidders, the City, and RH2, as outlined in subtask 6.1.
- Phone assistance to vendors and bidders during the advertisement phase.
- Up to two (2) addenda, if necessary, in electronic format.

EXHIBIT B.1 - PRELIMINARY

City of Black Diamond
Black Diamond Springs Rehabilitation
Phase 1 - Conveyance System Upgrade
Fee Estimate

Fee Estimate			Description		Classification		Staff Engineer		Electrical Engineer		Project Engineer		Wetland Specialist		Structural Engineer		Electrical Engineer Manager		Project Manager		Engineering Geologist		Principal		Administrative Support		Total Hours		Total Labor		Total Expense		Total Cost	
							Professional I		Professional IV		Professional V		Professional V		Professional IV		Professional VII		Professional V		Professional VII		Professional VIII		Administrative Support II									
Task 1			Geologic Review																															
1.1			Conduct Site Reconnaissance																															
1.2			Investigate Subsurface Conditions																															
1.3			Evaluate Conditions for Construction Methods																															
1.4			Provide Engineering Geology Technical Memorandum																															
Task 2			Plans and Specifications																															
2.1			Perform Site Visit																															
2.2			Coordinate with Trenchless Contractor to Evaluate Drilling Options																															
2.3			Develop Preliminary Design Plans																															
2.4			Perform Hydraulic Analyses to Develop System Curves																															
2.5			Evaluate Power Requirements																															
2.6			Develop Preliminary Specifications																															
2.7			Develop Schedules and Engineer's Estimate																															
2.8			Perform Internal QA/QC Review of Plans and Specifications																															
2.9			Attend Coordination Meetings																															
2.10			Finalize Plans and Specifications																															
Task 3			Permitting Assistance																															
3.1			Compile Background Environmental Data																															
3.2			Prepare KCDOS Permitting Documents																															
3.3			Prepare SEPA and CUP Applications																															
3.4			Prepare SSDP, CMA, and Mitigation Plan for County Submittal																															
3.5			Prepare HVA Application																															
3.6			ANPA Process																															
Task 4			Services During Bidding																															
4.1			Produce Bid Documents																															
4.2			Produce Addenda																															
4.3			Respond to Contractor Questions																															
4.4			Attend the Bid Opening																															
Phase 1 - Conveyance System Upgrade					188		168		206		141		105		63		122		22		42		157		59		1273		224,196		15,804		240,000	

EXHIBIT B.2 - PRELIMINARY

City of Black Diamond
Black Diamond Springs Rehabilitation
Phase 2 - Transmission Main Replacement
Fee Estimate

Task	Description	Classification	Staff Engineer		Scientist	Project Engineer		Project Manager	Geologist	Permitting Specialist		Principal	Administrative - Support		Total Hours	Total Labor	Total Subconsultant	Total Expense	Total Cost
			Professional I	Professional II		Professional III	Professional IV	Professional V	Professional VII	Professional V	Professional V	Professional VIII	Professional II	Professional II					
Task 1	Plans and Specifications		270		-	90	70		-	-	-	28	45		503	\$ 75,475	\$ 48,300	\$ 9,465	\$ 133,240
1.1	Perform Site Visit		8		-	-	4		-	-	-	1	-		17	\$ 2,646	\$ -	\$ 450	\$ 3,136
1.2	Coordinate with Surveyor		2		-	-	4		-	-	-	1	1		8	\$ 1,351	\$ 48,300	\$ 101	\$ 49,752
1.3	Develop Preliminary Plans		160		-	30	15		-	-	-	12	-		217	\$ 32,625	\$ -	\$ 4,818	\$ 37,443
1.4	Develop Preliminary Specifications		-		-	10	15		-	-	-	2	20		47	\$ 6,585	\$ -	\$ 259	\$ 6,844
1.5	Develop Schedules and Engineer's Estimate		4		-	4	4		-	-	-	1	-		13	\$ 2,202	\$ -	\$ 177	\$ 2,379
1.6	Perform Internal QA/QC Review		10		-	-	4		-	-	-	4	4		22	\$ 3,388	\$ -	\$ 317	\$ 3,705
1.7	Attend Coordination Meetings		6		-	8	8		-	-	-	6	-		28	\$ 5,048	\$ -	\$ 494	\$ 5,542
1.8	Finalize Plans and Specifications		80		-	30	20		-	-	-	1	20		151	\$ 21,650	\$ -	\$ 2,810	\$ 24,460
Task 2	Permitting Assistance		16		16	12	12		-	24		4	8		92	\$ 14,828	\$ -	\$ 1,182	\$ 16,010
2.1	Perform Environmental Site Investigations		4		4	3	3		-	6		1	2		23	\$ 3,707	\$ -	\$ 308	\$ 4,015
2.2	Prepare Grading Permit for KCDDES		4		4	3	3		-	6		1	2		23	\$ 3,707	\$ -	\$ 306	\$ 4,013
2.3	Prepare CSGP NOI		4		4	3	3		-	6		1	2		23	\$ 3,707	\$ -	\$ 284	\$ 3,991
2.4	Prepare Documentation for Coordination with Parks		4		4	3	3		-	6		1	2		23	\$ 3,707	\$ -	\$ 284	\$ 3,991
Task 3	Geologic Review		-		-	-	-		60	-	-	2	8		70	\$ 14,248	\$ -	\$ 602	\$ 14,850
3.1	Conduct Site Reconnaissance		-		-	-	-		10	-	-	-	-		10	\$ 2,150	\$ -	\$ 155	\$ 2,345
3.2	Perform Subsurface Investigation		-		-	-	-		10	-	-	-	-		10	\$ 2,150	\$ -	\$ 137	\$ 2,327
3.3	Provide Geotechnical Memorandum		-		-	-	-		40	-	-	2	8		50	\$ 9,868	\$ -	\$ 311	\$ 10,179
Task 4	Services During Bidding		8		-	8	5		-	-	-	5	6		32	\$ 5,007	\$ -	\$ 893	\$ 5,900
4.1	Produce Bid Documents		2		-	2	1		-	-	-	1	4		10	\$ 1,549	\$ -	\$ 582	\$ 1,931
4.2	Prepare Addenda		2		-	2	1		-	-	-	1	2		8	\$ 1,187	\$ -	\$ 85	\$ 1,272
4.3	Respond to Contractor Questions		2		-	2	1		-	-	-	1	-		6	\$ 1,025	\$ -	\$ 81	\$ 1,106
4.4	Attend the Bid Opening		2		-	2	2		-	-	-	2	-		8	\$ 1,446	\$ -	\$ 146	\$ 1,592
Phase 2 - Transmission Main Replacement			294		16	110	87		60	24		39	67		697	\$ 109,558	\$ 48,300	\$ 12,142	\$ 170,000

EXHIBIT B.3 - PRELIMINARY

City of Black Diamond

Black Diamond Springs Rehabilitation

Phase 3 - Springs Protection Improvements

Fee Estimate

PER ESTIMATE																												
Task	Description	Classification	Staff Engineer		Environmental Staff Engineer		Project Engineer		Wetland Specialist		Structural Engineer		Project Manager		Geologist		Principal		Administrative Support		Total Hours	Total Labor	Total Expense	Total Cost				
			Professional I	Professional II	Professional I	Professional II	Professional V	Professional V	Professional IV	Professional V	Professional VII	Professional VIII	Professional VII	Professional VIII	Professional VII	Professional VIII												
Task 1	Prepare Project Report		26	-	-	-	48	-	2	-	12	-	14	-	10	48	16	-	-	-	170	\$	31,952	\$	2,048	\$	34,000	
1.1	Prepare and Evaluate Design Alternatives		2	-	-	-	4	-	-	-	-	-	-	-	-	-	-	-	-	-	22	\$	4,720	\$	217	\$	4,937	
1.2	Estimate Construction Costs and Alternatives		4	-	-	-	8	-	-	-	4	-	2	-	-	8	-	-	-	-	26	\$	5,002	\$	269	\$	5,271	
1.3	Perform Site Visit to Collect Data		4	-	-	-	4	-	-	-	4	-	-	-	-	8	-	-	-	-	20	\$	3,856	\$	349	\$	4,205	
1.4	Prepare Project Schematic Site Plans		8	-	-	-	2	-	-	-	-	-	2	-	-	2	-	-	-	-	15	\$	2,409	\$	287	\$	2,696	
1.5	Prepare for and Attend Meeting with City Staff		-	-	-	-	6	-	-	-	-	-	4	-	-	6	-	-	-	-	25	\$	5,087	\$	215	\$	5,302	
1.6	Prepare Project Report		8	-	-	-	24	-	2	-	4	-	4	-	-	8	-	-	-	-	62	\$	10,898	\$	710	\$	11,608	
Task 2	Geologic Review		-	-	-	-	-	-	-	-	-	-	-	-	-	28	4	-	-	-	32	\$	7,052	\$	268	\$	7,320	
2.1	Conduct Site Reconnaissance		-	-	-	-	-	-	-	-	-	-	-	-	-	4	1	-	-	-	5	\$	1,106	\$	92	\$	1,198	
2.2	Investigate Subsurface Conditions		-	-	-	-	-	-	-	-	-	-	-	-	-	4	1	-	-	-	5	\$	1,106	\$	37	\$	1,143	
2.3	Prepare Geotechnical Memorandum		-	-	-	-	-	-	-	-	-	-	-	-	-	20	2	-	-	-	22	\$	4,840	\$	339	\$	4,979	
Task 3	Prepare Design		14	-	-	-	18	-	2	-	20	-	5	-	-	8	22	4	-	-	92	\$	12,262	\$	1,598	\$	18,860	
3.1	Evaluate Construction Access Requirements		4	-	-	-	8	-	-	-	-	-	2	-	-	2	4	-	-	-	21	\$	3,901	\$	702	\$	4,603	
3.2	Prepare Design Concepts		4	-	-	-	8	-	2	-	8	-	2	-	-	4	8	-	-	-	37	\$	7,041	\$	351	\$	7,392	
3.3	Evaluate Construction Methods and Phasing Issues		2	-	-	-	2	-	-	-	12	-	1	-	-	2	6	-	-	-	26	\$	4,848	\$	269	\$	5,117	
3.4	Develop Preliminary Site Plans		2	-	-	-	-	-	-	-	-	-	-	-	-	2	2	-	-	-	4	\$	736	\$	138	\$	874	
3.5	Develop a Schematic Design to Protect the Springs		2	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	4	\$	736	\$	138	\$	874	
Task 4	Permitting Assistance		12	-	10	-	-	-	40	-	20	-	3	-	6	6	2	-	-	-	12	109	\$	18,415	\$	1,005	\$	19,420
4.1	Conduct Investigations of the Springs		4	-	2	-	-	-	-	-	-	-	2	-	2	2	-	-	-	-	4	19	\$	3,005	\$	310	\$	3,310
4.2	Prepare City Building Permit		4	-	6	-	-	-	16	-	20	-	1	-	2	2	-	-	-	-	4	55	\$	9,349	\$	433	\$	9,782
4.3	Coordinate with DOI Staff and Update Project Report		4	-	2	-	-	-	20	-	-	-	1	-	2	2	-	-	-	-	35	\$	6,061	\$	268	\$	6,329	
Task 5	Final Plans and Specifications		132	-	8	-	84	-	24	-	62	-	60	-	18	70	-	-	-	40	498	\$	85,540	\$	6,230	\$	91,770	
5.1	Conduct Site Visit		8	-	-	-	8	-	-	-	-	-	8	-	-	8	-	-	-	-	32	\$	6,000	\$	505	\$	6,505	
5.2	Develop Plans		80	-	8	-	24	-	-	-	40	-	20	-	-	16	-	-	-	-	196	\$	32,980	\$	2,850	\$	35,830	
5.3	Develop Specifications		4	-	-	-	8	-	8	-	2	-	4	-	-	4	-	-	-	-	60	\$	9,188	\$	440	\$	9,628	
5.4	Develop Schedules and Engineer's Estimate		8	-	-	-	4	-	2	-	2	-	4	-	-	2	-	-	-	-	22	\$	3,824	\$	389	\$	4,213	
5.5	Perform Internal QA/QC Review		12	-	-	-	8	-	2	-	4	-	8	-	2	16	-	-	-	-	52	\$	9,912	\$	623	\$	10,535	
5.6	Attend Coordination Meetings		-	-	-	-	16	-	8	-	8	-	8	-	-	16	-	-	-	-	48	\$	9,792	\$	482	\$	10,274	
5.7	Finalize Plans and Specifications		20	-	-	-	16	-	8	-	8	-	8	-	-	16	-	-	-	-	88	\$	13,644	\$	941	\$	14,785	
Task 6	Services During Bidding		6	-	-	-	4	-	6	-	3	-	10	-	3	7	-	-	-	6	45	\$	7,926	\$	704	\$	8,630	
6.1	Produce Bid Documents		2	-	-	-	1	-	2	-	1	-	2	-	1	1	-	-	-	-	14	\$	2,179	\$	185	\$	2,364	
6.2	Prepare Addenda		2	-	-	-	1	-	2	-	1	-	2	-	1	1	-	-	-	-	12	\$	2,017	\$	175	\$	2,192	
6.3	Respond to Contractor Questions		2	-	-	-	1	-	2	-	1	-	2	-	1	1	-	-	-	-	10	\$	1,855	\$	171	\$	2,026	
6.4	Attend the Bid Opening		-	-	-	-	1	-	-	-	-	-	4	-	-	4	-	-	-	-	9	\$	1,875	\$	171	\$	2,046	

Phase 3 - Springs Protection Improvements	190	18	154	74	117	92	71	157	946	\$ 168,147	\$ 11,853	\$ 180,000
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EXHIBIT C
RH2 ENGINEERING, INC.
2018 SCHEDULE OF RATES AND CHARGES

RATE LIST	RATE	UNIT
Professional I	\$138	\$/hr
Professional II	\$153	\$/hr
Professional III	\$164	\$/hr
Professional IV	\$175	\$/hr
Professional V	\$191	\$/hr
Professional VI	\$203	\$/hr
Professional VII	\$219	\$/hr
Professional VIII	\$230	\$/hr
Professional IX	\$230	\$/hr
Technician I	\$100	\$/hr
Technician II	\$107	\$/hr
Technician III	\$132	\$/hr
Technician IV	\$140	\$/hr
Administrative I	\$69	\$/hr
Administrative II	\$81	\$/hr
Administrative III	\$96	\$/hr
Administrative IV	\$114	\$/hr
Administrative V	\$131	\$/hr
CAD/GIS System	\$27.50	\$/hr
CAD Plots - Half Size	\$2.50	price per plot
CAD Plots - Full Size	\$10.00	price per plot
CAD Plots - Large	\$25.00	price per plot
Copies (bw) 8.5" X 11"	\$0.09	price per copy
Copies (bw) 8.5" X 14"	\$0.14	price per copy
Copies (bw) 11" X 17"	\$0.20	price per copy
Copies (color) 8.5" X 11"	\$0.90	price per copy
Copies (color) 8.5" X 14"	\$1.20	price per copy
Copies (color) 11" X 17"	\$2.00	price per copy
Technology Charge	2.50%	% of Direct Labor
Mileage	\$0.545	price per mile (or Current IRS Rate)
Subconsultants	15%	Cost +
Outside Services	at cost	

Rates listed are adjusted annually.