



CITY OF BLACK DIAMOND
October 4, 2018 Regular Business Meeting Agenda
25510 Lawson St., Black Diamond, Washington

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

AGENDA REVIEW AND APPROVAL:

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

CONSENT AGENDA:

- 1) Claim Checks** – October 4, 2018 – Check No. 46729 through 46774 in the amount of \$140,822.02
- 2) Minutes** – Work Session of September 13, 2018 and Council Meeting of September 20, 2018
- 3) AB18-081** – Resolution No. 18-1268 Approving Vehicle Purchase for Community Development Ms. Kincaid
- 4) AB18-082** – Resolution No. 18-1269 Confirming Mayor's Appointment of Steve Jensen to Position 2 of the Black Diamond Planning Commission Mayor Benson
- 5) AB18-083** – Resolution No. 18-1270 Confirming Mayor's Appointment of Weston Butt to Position 3 of the Black Diamond Planning Commission Mayor Benson
- 6) AB18-084** – Resolution No. 18-1271 Accepting Grant for Covington Creek Culvert Design Mr. Boettcher
- 7) AB18-085** – Resolution No. 18-1272 Authorizing the Sale of the Former Sewage Lagoon Property to Palmer Coking Coal Company, LLP Mr. Boettcher
- 8) AB18-086** – Resolution No. 18-1273 Authorizing the Water Quality Improvement Project Grant Mr. Boettcher

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: None

NEW BUSINESS:

- 9) AB18-080A** – Ordinance No. 18-1106 Granting a Nonexclusive Telecommunications Franchise to MCImetro Access Transmission Services Corporation., D/B/A Verizon Access Mr. Boettcher
- 10) AB18-087** – Resolution No. 18-1274 Approving The Villages MPD, Ten Trails PP1A Division 1 Final Plat Alteration Mr. Williamson

DEPARTMENT REPORTS:

MAYOR'S REPORT:

COUNCIL REPORTS:

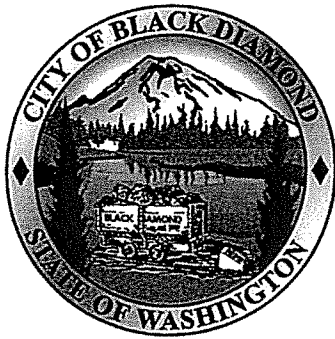
- Councilmember Deady
- Councilmember Oglesbee
- Councilmember Edelman
- Councilmember Stout
- Councilmember Wisnoski

ATTORNEY REPORT:

PUBLIC COMMENTS:

EXECUTIVE SESSION:

ADJOURNMENT:



CERTIFICATION

Date: October 4th, 2018 Council Meeting

Check No.'s/EFT	Batch Name	Check/EFT Date	Amount
46729	September – Early 3 rd September Batch	09/17/2018	\$ 11,372.80
46730 – 46771	September – 3 rd September Batch for 10/04 Council	10/05/2018	\$ 121,762.49
46772 – 46774	October – 1 st October Batch for 10/04 Council	10/05/2018	\$ 7,686.73
		TOTAL	\$ 140,822.02

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

May Miller

MAY MILLER, FINANCE DIRECTOR

CAROL BENSON, MAYOR

9-27-2018

DATE

DATE

COUNCILMEMBERS

DATE

Register

Fiscal: 2018

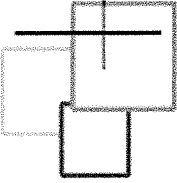
Deposit Period: 2018 - October, 2018 - September

Check Period: 2018 - October - 1st Oct Batch for 10/04 Council, 2018 - September - 3rd Sep Batch for 10/04 Council,
2018 - September - Early 3rd September Batch

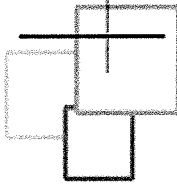
Number	Name	Print Date	Amount
Check			
46729	Puget Paving & Construction, Inc.	9/17/2018	\$11,372.80
46730	AHBL, Inc.	10/5/2018	\$28,365.00
46731	Art Gamblin Motors	10/5/2018	\$57.40
46732	Barbara Kincaid	10/5/2018	\$439.74
46733	Beatriz Jordan	10/5/2018	\$161.42
46734	BHC Consultants, LLC	10/5/2018	\$33,853.01
46735	CenturyLink (AZ)	10/5/2018	\$31.94
46736	CenturyLink (WA)	10/5/2018	\$1,072.82
46737	City of Issaquah	10/5/2018	\$1,212.50
46738	Comcast (34744)	10/5/2018	\$227.54
46739	Firestone Complete Auto Care	10/5/2018	\$806.04
46740	Fugate Ford	10/5/2018	\$293.74
46741	Gary W. Horejsi, Jr.	10/5/2018	\$705.52
46742	Good To Go!	10/5/2018	\$2.75
46743	Greater Maple Valley-Black Diamond Chamber of Commerce	10/5/2018	\$22.00
46744	Home Depot Credit Service	10/5/2018	\$751.01
46745	HWA GeoSciences Inc.	10/5/2018	\$1,785.00
46746	Intercom Language Services	10/5/2018	\$369.19
46747	Johnsons Home & Garden	10/5/2018	\$164.89
46748	Jon E. Buss	10/5/2018	\$1,191.71
46749	Kara Murphy Richards	10/5/2018	\$3,400.00
46750	King County Finance - I-Net	10/5/2018	\$375.00
46751	Krista White Swain	10/5/2018	\$3,600.00
46752	Kyocera	10/5/2018	\$2,877.90
46753	Language Line Services, Inc.	10/5/2018	\$82.51
46754	Legend Data Systems, Inc.	10/5/2018	\$16.50
46755	Les Schwab Tire Ctr - MV	10/5/2018	\$1,242.60
46756	Municipal Code Corporation	10/5/2018	\$2,543.55
46757	Northwest Lubricants LLC	10/5/2018	\$608.16
46758	Office Products Nationwide	10/5/2018	\$186.73
46759	Parametrix, Inc.	10/5/2018	\$9,860.00
46760	Perteet Inc.	10/5/2018	\$5,847.50
46761	Regional Animal Services of King County	10/5/2018	\$105.00
46762	Safe Security	10/5/2018	\$54.98
46763	SHI International Corp.	10/5/2018	\$745.15
46764	Summit Law Group	10/5/2018	\$1,828.50
46765	TRM Wood Products Co. Inc.	10/5/2018	\$2,324.57
46766	Varius Inc.	10/5/2018	\$13,449.00
46767	Voice of The Valley	10/5/2018	\$200.00
46768	Wa Association of Sheriffs & Police Chiefs	10/5/2018	\$75.00

46769	Washington Tractor	10/5/2018	\$23.52
46770	Water Management Laboratories, Inc.	10/5/2018	\$444.00
46771	Yakima County Dept. of Corrections	10/5/2018	\$359.10
46772	ADT Security Services (PA)	10/5/2018	\$49.99
46773	Sorci Family LLC	10/5/2018	\$3,742.76
46774	RH2 Engineering Inc.	10/5/2018	\$3,893.98
		Total	\$140,822.02

Voucher Directory with Transaction Date



Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void Amount
		Account Number		Name Title	
Puget Paving & Construction, Inc.				2018 - September - Early 3rd September Batch	
	46729	091718 PPC	9/17/2018		
		Release Retainage + Interest			
		634-000-000-589-20-00-21		Paid Interest Misc Retained Funds	\$72.52
		634-000-000-589-20-00-33		REI Ret.Puget Paving	\$11,300.28
		Total 091718 PPC			\$11,372.80
	Total 46729				\$11,372.80
Total Puget Paving & Construction, Inc.					\$11,372.80
		Vendor Count	1	Grand Total	\$11,372.80



Voucher Directory with Transaction Date

Vendor	Transaction Number Transaction Reference	Invoice Date Account Number	Fiscal Description Name Title	Void Amount
AHBL, Inc.	46730	8/31/2018	2018 - September - 3rd Sep Batch for 10/04 Council	
	109498	BD On Site Planning 001-000-240-558-51-41-08 06/26-08/25 Services	Prof Svs-Planning/Reg Review	\$7,470.00
	Total 109498			\$7,470.00
	46730	8/31/2018	2018 - September - 3rd Sep Batch for 10/04 Council	
	109499	MDRT Planning Services 001-000-257-558-70-49-00 07/26-08/25 Services	MDRT- Prof Svcs - Planning	\$20,895.00
Total AHBL, Inc.	Total 46730			\$20,895.00
				\$28,365.00
				\$28,365.00
				\$28,365.00
				\$28,365.00
Art Gamblin Motors	46731	9/12/2018	2018 - September - 3rd Sep Batch for 10/04 Council	
	269982	MDRT 2015 Chevy Silverado 001-000-246-558-70-48-00	Vehicle Repair & Maintenance	\$57.40
	Total 269982			\$57.40
				\$57.40
				\$57.40
Total Art Gamblin Motors	Total 46731			\$57.40
				\$57.40
				\$57.40
				\$57.40
				\$57.40
Barbara Kincaid	46732	9/13/2018	2018 - September - 3rd Sep Batch for 10/04 Council	
	091318 BK	Employee Reimbursement 001-000-240-558-60-43-00 Meals: Planning Director's Annual Conference 001-000-240-558-60-43-00 Meals: Planning Director's Annual Conference	Lodging, Meals & Mileage Lodging, Meals & Mileage Lodging, Meals & Mileage Lodging, Meals & Mileage	\$104.22
				\$104.22
				\$104.22
				\$104.22
				\$104.22

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

CenturyLink (WA)

46736	091118 CL	9/11/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
		09/11-10/11 Services			
		001-000-120-512-50-42-00	Telephone/DSL		\$49.44
		360-886-2456 160B: PD/CT Security Line	Police Telephone/DSL/Air Cards		\$85.24
		001-000-214-521-20-42-00	Police Telephone/DSL/Air Cards		\$82.48
		360-886-2901 325B: Police-Fax	Police Telephone/DSL/Air Cards		\$178.45
		001-000-214-521-20-42-00	Police Telephone/DSL/Air Cards		\$5.77
		360-886-2862 596B: Police-Line 2	Police Telephone/DSL/Air Cards		\$2.88
		001-000-214-521-20-42-00	Police Telephone/DSL/Air Cards		\$31.72
		253-631-1012 182B: Police-Main Line	Telephone/DSL/Radios		\$321.18
		001-000-270-576-80-42-00	Telephone, DSL & Radios		\$34.61
		360-886-2523 656B: PW Shop Allocation	Telephone/DSL/Radios		\$48.35
		001-000-280-536-20-42-00	Telephone, DSL & Radios		\$59.81
		360-886-2523 656B: PW Shop Allocation	Telephone/DSL/Radios		\$34.61
		101-000-000-542-90-42-01	Telephone/DSL/Radios		\$49.44
		001-000-280-536-20-42-00	Telephone, DSL & Radios		\$54.23
		360-886-2523 656B: PW Shop Allocation	Telephone/DSL/Radios		\$34.61
		401-000-000-534-80-42-00	Telephone/DSL/Radios		\$49.44
		360-886-7235 830B: Water Reservoir	Telephone/DSL/Radios		\$54.23
		401-000-000-534-80-42-00	Telephone/DSL/Radios		\$34.61
		360-886-2523 656B: PW Shop Allocation	Telephone/DSL/Radios		\$48.35
		407-000-000-535-80-42-00	Telephone/DSL/Radios		\$59.81
		360-886-0474 006B: Ridge Sewer Pump Station	Telephone/DSL/Radios		\$34.61
		407-000-000-535-80-42-00	Telephone/DSL/Radios		\$49.44
		360-886-8146 712B: Old Lawson Pump Station	Telephone/DSL/Radios		\$54.23
		407-000-000-535-80-42-00	Telephone/DSL/Radios		\$34.61
		360-886-2523 656B: PW Shop Allocation	Telephone/DSL/Radios		\$49.44
		407-000-000-535-80-42-00	Telephone/DSL/Radios		\$54.23
		360-886-0537 580B: Diamond Glen Sewer	Telephone/DSL/Radios		\$34.61
		407-000-000-535-80-42-00	Telephone/DSL/Radios		\$54.23
		360-886-2835 784B: Morganville Pump Station	Telephone/DSL/Radios		\$34.61
		410-000-000-531-10-42-00	Telephone/DSL/Radios		\$34.61
		360-886-2523 656B: PW Shop Allocation	Telephone/DSL/Radios		\$34.61
		Total 091118 CL			\$1,072.82
		Total 46736			\$1,072.82
		Total CenturyLink (WA)			\$1,072.82

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

City of Issaquah

46737	04-50008654	8/24/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
		Jail Services July, 2018			
		001-000-211-523-60-49-00		Jail Costs	\$1,212.50
		12.5 days			
	Total 04-50008654				\$1,212.50
Total 46737					\$1,212.50
Total City of Issaquah					\$1,212.50
Comcast (34744)					\$1,212.50
46738	0106172 091018	9/10/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
		09/17-10/16 PD Services			
		001-000-214-521-20-42-00		Police Telephone/DSL/Air Cards	\$3.29
		Police Cable TV Act 8498 34 014 0106172			\$3.29
	Total 0106172 091018				
46738	0122286 091218	9/12/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
		09/22-10/21 Crt Services			
		001-000-120-512-50-42-00		Telephone/DSL	\$224.25
		Court Phone Act 8498 34 014 0122286			\$224.25
	Total 0122286 091218				\$227.54
Total 46738					\$227.54
Total Comcast (34744)					\$227.54
Firestone Complete Auto Care					
46739	065208	9/13/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
		PD 2007 Dodge Charger R/T			
		001-000-210-521-10-48-01		PD-Vehicle Maintenance & Repair	\$806.04
	Total 065208				\$806.04
Total 46739					\$806.04
Total Firestone Complete Auto Care					\$806.04

Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void
		Account Number		Name Title	Amount
Fugate Ford	46740		9/11/2018	2018 - September - 3rd Sep Batch for 10/04 Council	
	424714	PW 2015 Ford F-150			
		510-000-200-594-48-64-09		PW- Truck & Equip	\$293.74
		PW Truck			
Total 46740					\$293.74
Total Fugate Ford					\$293.74
Gary W. Horejsi, Jr.	46741		9/23/2018	2018 - September - 3rd Sep Batch for 10/04 Council	
	18-0010 EPD	Tough Mudder Traffic Control			
		001-000-210-521-10-49-08		PD-Prof Svs-Oth Agency O/T	\$705.52
		11.5 hrs.			
Total 18-0010 EPD					\$705.52
Total 46741					\$705.52
Total Gary W. Horejsi, Jr.					\$705.52
Good To Go!	46742		9/22/2018	2018 - September - 3rd Sep Batch for 10/04 Council	
	TB-182651742				
		001-000-210-521-10-43-00		PD-Lodging, Meals & Mileage	\$2.75
Total TB-182651742					\$2.75
Total 46742					\$2.75
Total Good To Go!					\$2.75
Greater Maple Valley-Black Diamond Chamber of Commerce	46743		9/19/2018	2018 - September - 3rd Sep Batch for 10/04 Council	
	10730	Chamber Luncheon			
		001-000-110-511-60-43-00		Lodging, Meals and Mileage	\$22.00
		J. Edelman			
Total 10730					\$22.00
Total 46743					\$22.00
Total Greater Maple Valley-Black Diamond Chamber of Commerce					\$22.00

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

Home Depot Credit Service

46744	3561826	MDRT Bldg Maint 001-000-248-518-20-31-00	9/12/2018	2018 - September - 3rd Sep Batch for 10/04 Council	
	Total 3561826			MDRT Bldg. Supplies	\$27.64
46744	4014951	MDRT Bldg Maint 001-000-248-518-20-31-00	9/21/2018	2018 - September - 3rd Sep Batch for 10/04 Council	\$27.64
	Total 4014951			MDRT Bldg. Supplies	\$12.16
46744	4584776	MDRT Bldg Maint 001-000-248-518-20-31-00	9/21/2018	2018 - September - 3rd Sep Batch for 10/04 Council	\$12.16
	Total 4584776			MDRT Bldg. Supplies	\$31.98
46744	6584578	MDRT Bldg Maint 001-000-248-518-20-31-00	9/19/2018	2018 - September - 3rd Sep Batch for 10/04 Council	\$31.98
	Total 6584578			MDRT Bldg. Supplies	\$34.71
46744	7094437	Gym Bldg Maint 001-000-270-575-51-31-00	9/18/2018	2018 - September - 3rd Sep Batch for 10/04 Council	\$34.71
	Total 7094437			Gym Operating Supplies	\$29.32
46744	7113935	Gym Bldg Maint(Return) 001-000-270-575-51-31-00	9/18/2018	2018 - September - 3rd Sep Batch for 10/04 Council	\$29.32
	Total 7113935			Gym Operating Supplies	(79.13)
46744	7580526	Gym Bldg Maint 001-000-270-575-51-31-00	9/18/2018	2018 - September - 3rd Sep Batch for 10/04 Council	(79.13)
	Total 7580526			Gym Operating Supplies	\$93.35
					\$93.35

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

46744	7580527	9/18/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
	PD Bldg Maint				
	001-000-212-521-50-31-00			Police Bldg Mtc Sup	\$60.47
	Total 7580527				\$60.47
46744	8012942	9/7/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
	PD IT Re-Do				
	310-000-011-594-21-64-03			Police Technology & Other	\$67.48
	Total 8012942				\$67.48
46744	8064857	9/7/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
	PD Bldg Maint				
	001-000-212-521-50-31-00			Police Bldg Mtc Sup	\$214.95
	Total 8064857				\$214.95
46744	8113553	9/7/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
	CH Bldg Maint(return)				
	001-000-254-518-20-31-00			Facilities Operating Supplies	(\$123.80)
	Total 8113553				(\$123.80)
46744	8561378	9/7/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
	CH Bldg Maint				
	001-000-254-518-20-31-00			Facilities Operating Supplies	\$123.80
	Total 8561378				\$123.80
46744	8574623	9/7/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
	CH Bldg Maint				
	001-000-254-518-20-31-00			Facilities Operating Supplies	\$123.80
	Total 8574623				\$123.80
46744	8970600	9/7/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
	MDRT Bldg Maint				
	001-000-248-518-20-31-00			MDRT Bldg. Supplies	\$134.28
	Total 8970600				\$134.28
	Total 46744				\$751.01
	Total Home Depot Credit Service				\$751.01

Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description Name	Title	Void Amount
HWA GeoSciences Inc.						
46745	28658	MDRT Geotechnical Services 001-000-257-558-70-41-05	9/22/2018	2018 - September - 3rd Sep Batch for 10/04 Council	MDRT Geotech Services through 09/22	\$600.00
	Total 28658					\$600.00
46745	28661	MDRT Geotechnical Services 001-000-257-558-70-41-05	9/22/2018	2018 - September - 3rd Sep Batch for 10/04 Council	MDRT Geotech Services through 09/22	\$1,185.00
	Total 28661					\$1,185.00
Total 46745						\$1,785.00
Intercom Language Services						
46746	18-327		9/20/2018	2018 - September - 3rd Sep Batch for 10/04 Council	Court Interpreter	\$369.19
	Total 18-327					\$369.19
Total 46746						\$369.19
Johnsons Home & Garden						
46747	429963		9/13/2018	2018 - September - 3rd Sep Batch for 10/04 Council	Water Operating Supplies	\$53.50
	Total 429963					\$53.50
46747	430199		9/23/2018	2018 - September - 3rd Sep Batch for 10/04 Council	MDRT Bldg. Supplies	\$11.38
	Total 430199					\$11.38
46747	430230		9/24/2018	2018 - September - 3rd Sep Batch for 10/04 Council	PD-Firearms Program	\$74.04
	Total 430230					\$74.04

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

46747	430269	9/25/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
		407-000-000-535-80-31-01	Sewer Operating Supplies		\$25.97
Total 46747	Total 430269				\$25.97
Total Johnsons Home & Garden					\$164.89
Jon E. Buss					\$164.89
46748	18-009 JB	9/23/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
		Tough Mudder Traffic Control			
		001-000-210-521-10-49-08	PD-Prof Svs-Oth Agency O/T		\$1,191.71
		16.5 hrs			
Total 46748	Total 18-009 JB				\$1,191.71
Total Jon E. Buss					\$1,191.71
Kara Murphy Richards					\$1,191.71
46749	093018 KMR	9/30/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
		Sept 2018 Services			
		001-000-151-515-30-41-04	Court Legal-Pros Attorney		\$3,400.00
Total 46749	Total 093018 KMR				\$3,400.00
Total Kara Murphy Richards					\$3,400.00
King County Finance - I-Net					\$3,400.00
46750	11007286	8/31/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
		Aug 2018-Contract 01COBD09			
		001-000-214-521-20-42-01	Police Comm KC I-Net		\$375.00
Total 46750	Total 11007286				\$375.00
Total King County Finance - I-Net					\$375.00

Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void Amount
		Account Number		Name Title	
Krista White Swain					
46751	092518 KWS	9/25/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
	Sept 2018 Services				
	001-000-120-512-50-41-00			Court Judge	\$3,600.00
Total 46751	Total 092518 KWS				\$3,600.00
Total Krista White Swain					\$3,600.00
Kyocera					
46752	55T1043007	8/15/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
	Folding Machine				
	310-000-011-594-18-64-00			General Government Technology	\$2,877.90
Total 46752	Total 55T1043007				\$2,877.90
Total Kyocera					\$2,877.90
Language Line Services, Inc.					
46753	4391686	8/31/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
	001-000-211-523-60-49-00			Jail Costs	\$82.51
Total 46753	Total 4391686				\$82.51
Total Language Line Services, Inc.					\$82.51
Legend Data Systems, Inc.					
46754	123769	9/18/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
	Photo ID				
	101-000-000-544-90-31-00			PW Clearing Acct-Supplies	\$16.50
Total 46754	Total 123769				\$16.50
Total Legend Data Systems, Inc.					\$16.50

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

Les Schwab Tire Ctr - MV

46755	39800330706	9/12/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
		PD 2006 Ford Crown Victoria			
		001-000-210-521-10-48-01		PD-Vehicle Maintenance & Repair	\$1,242.60
Total 46755	Total 39800330706				\$1,242.60
Total Les Schwab Tire Ctr - MV					\$1,242.60
Municipal Code Corporation					\$1,242.60

46756	00316480	9/10/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
		001-000-137-514-21-41-01		Code Update	\$2,543.55
Total 46756	Total 00316480				\$2,543.55
Total Municipal Code Corporation					\$2,543.55
Northwest Lubricants LLC					\$2,543.55

46757	1052	9/21/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
		Oil			
		101-000-000-544-90-31-00		PW Clearing Acct-Supplies	\$608.16
Total 46757	Total 1052				\$608.16
Total Northwest Lubricants LLC					\$608.16
Office Products Nationwide					\$608.16

46758	997040-0	9/17/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
		001-000-180-518-50-31-00		Office Supplies City Hall	\$121.60
		CH Office Supplies			
Total 46758	Total 997040-0				\$121.60
46758	997725-0	9/20/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
		001-000-180-518-50-31-99		Office Supplies CD Bldg Clearing	\$65.13

Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void Amount
	Account Number	Name	Title		
CD Office Supplies					
Total 997725-0					\$65.13
Total 46758					\$186.73
Total Office Products Nationwide					\$186.73
Parametrix, Inc.					
46759	04338	2018 On-Call Civil Engineering	9/13/2018	2018 - September - 3rd Sep Batch for 10/04 Council	
		320-000-033-542-64-41-00		Park St Int Imp.	\$4,630.00
		07/29-08/25 Services			\$4,630.00
Total 04338					
46759	04339	Roberts Dr Improvements	9/13/2018	2018 - September - 3rd Sep Batch for 10/04 Council	
		320-000-020-595-10-63-00		Roberts Dr 236th to Bruckner-Eng	\$4,475.00
		07/29-08/25 Services			\$4,475.00
Total 04339					
46759	04560	Springs Access Bridge Structural	9/13/2018	2018 - September - 3rd Sep Batch for 10/04 Council	
		402-000-003-594-34-63-06		Springs Water Project	\$755.00
		02/25-08/25 Services			\$755.00
Total 04560					\$9,860.00
Total 46759					\$9,860.00
Total Parametrix, Inc.					
Perfeet Inc.					
46760	20170202.002-3	BD MDRT Villages Phase 2	9/11/2018	2018 - September - 3rd Sep Batch for 10/04 Council	
		001-000-257-558-70-41-04		MDRT Environmental Consultant-Perfeet	\$845.00
		06/04-09/02 Services			\$845.00
Total 20170202.002-3					

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

SHI International Corp.

46763	B0884964	9/17/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
			Annual Support & Maintenance		
			001-000-214-521-20-48-04	NetMotion Maintenance Mobile Units	\$745.15
Total 46763	Total B0884964				\$745.15

Total SHI International Corp.

Summit Law Group					\$745.15
46764	95337	9/19/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
			General Labor		
			001-000-150-515-30-41-02	Legal Services -Employment	\$185.50
			Services through 08/31		
Total 95337					\$185.50

46764	95338	9/19/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
			Teamsters		
			001-000-150-515-30-41-08	Legal Svcs-Union Contracts	\$1,643.00
			Services through 08/31		
Total 95338					\$1,643.00
Total 46764					\$1,828.50
Total Summit Law Group					\$1,828.50

TRM Wood Products Co. Inc.

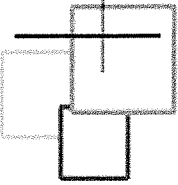
46765	366099	9/18/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
			404-000-014-594-34-63-00	Wtr-Old Ele. Booster Sta-Roof repl & Repl	\$875.26
Total 366099					\$875.26
46765	366159	9/19/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
			404-000-014-594-34-63-00	Wtr-Old Ele. Booster Sta-Roof repl & Repl	\$183.32
Total 366159					\$183.32
46765	366160	9/19/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
			404-000-014-594-34-63-00	Wtr-Old Ele. Booster Sta-Roof repl & Repl	\$25.35
Total 366160					\$25.35

Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void Amount
		Account Number	Name	Title	
46765	366192	404-000-014-594-34-63-00	2018 - September - 3rd Sep Batch for 10/04 Council	Wtr-Old Ele. Booster Sta-Roof repl & Repi	\$1,096.27
	Total 366192				\$1,096.27
	366193	404-000-014-594-34-63-00	2018 - September - 3rd Sep Batch for 10/04 Council	Wtr-Old Ele. Booster Sta-Roof repl & Repi	\$55.13
	Total 366193				\$55.13
	366386	404-000-014-594-34-63-00	2018 - September - 3rd Sep Batch for 10/04 Council	Wtr-Old Ele. Booster Sta-Roof repl & Repi	\$89.24
46766	Total 366386				\$89.24
	Total 46765				\$2,324.57
	Total TRM Wood Products Co. Inc.				\$2,324.57
	Varius Inc.				
	1040V	TA10-Gen'l Eng. Services 001-000-257-558-70-41-02	2018 - September - 3rd Sep Batch for 10/04 Council	MDRT Civil Engineering-	\$1,664.50
46766	Total 1040V				\$1,664.50
	1041V	TA5-Pre Platt 2A 001-000-257-558-70-41-02	2018 - September - 3rd Sep Batch for 10/04 Council	MDRT Civil Engineering-	\$4,830.00
	Total 1041V				\$4,830.00
	1042V	TA6-Pre Plat 2A Clear/Grade 001-000-257-558-70-41-02	2018 - September - 3rd Sep Batch for 10/04 Council	MDRT Civil Engineering-	\$2,584.50
	Total 1042V				\$2,584.50
46766	1043V	TA8-Pre Plat 1A, Schedule C 001-000-257-558-70-41-02	2018 - September - 3rd Sep Batch for 10/04 Council	MDRT Civil Engineering-	\$460.00
	Total 1043V				\$460.00

Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void
		Account Number	Name	Title	Amount
46766	4044V	9/14/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
		TA9-Pre Plat 1A, Schedule O			
		001-000-257-558-70-41-02		MDRT Civil Engineering-	\$3,910.00
Total 46766	Total 4044V				\$3,910.00
Total Varius Inc.					\$13,449.00
					\$13,449.00
Voice of The Valley					
46767	20798	9/12/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
		PW Public Hearing			
		101-000-000-542-90-44-00		Advertising	\$200.00
Total 20798					\$200.00
Total 46767					\$200.00
Total Voice of The Valley					\$200.00
Wa Association of Sheriffs & Police Chiefs					
46768	DUES 2018-00561	9/4/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
		001-000-210-521-10-49-02		PD-Memberships	\$75.00
Total 46768	Total DUES 2018-00561				\$75.00
Total Wa Association of Sheriffs & Police Chiefs					\$75.00
Washington Tractor					
46769	1674270	9/20/2018	2018 - September - 3rd Sep Batch for 10/04 Council		
		101-000-000-544-90-48-02		PW Clearing- Shared Veh/Equip Maint	\$23.52
Total 46769	Total 1674270				\$23.52
Total Washington Tractor					\$23.52

Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void
		Account Number	Name	Title	Amount
Water Management Laboratories, Inc.					
46770	169952	08/28 Testing	2018 - September - 3rd Sep Batch for 10/04 Council		
		401-000-000-534-80-41-02		Water Testing and Sampling	\$444.00
Total 46770	Total 169952				\$444.00
Total Water Management Laboratories, Inc.					
Yakima County Dept. of Corrections					
46771	090618	YCDC	2018 - September - 3rd Sep Batch for 10/04 Council		
		Aug 2018 Regular Housing		Jail Costs	\$359.10
		001-000-211-523-60-49-00			\$359.10
		6 days			\$359.10
Total 46771	Total 090618	YCDC			
Total Yakima County Dept. of Corrections					
Vendor Count 42					
Grand Total					\$121,762.49

Voucher Directory with Transaction Date



Vendor	Transaction Number Transaction Reference	Invoice Date Account Number	Fiscal Description Name Title	Void Amount
ADT Security Services (PA)				
46772	672922168	9/13/2018	2018 - October - 1st Oct Batch for 10/04 Council	
		10/1-10/31 Services		
		001-000-270-576-80-49-02	Security	\$0.99
		001-000-280-536-20-49-02	Security	\$2.00
		101-000-000-542-90-49-03	Security	\$11.00
		401-000-000-534-80-49-07	Security	\$12.00
		407-000-000-535-80-49-05	Security	\$12.00
		410-000-000-531-10-49-04	Security	\$12.00
		Total 672922168		\$49.99
		Total 46772		\$49.99
Total ADT Security Services (PA)				
RH2 Engineering Inc.				
46774	71276	9/26/2018	2018 - October - 1st Oct Batch for 10/04 Council	
		On-Call Services through 08/26		
		401-000-000-534-80-41-10	Professional Services	\$84.05
		402-000-003-594-34-63-06	Springs Water Project	\$3,809.93
		Total 71276		\$3,893.98
		Total 46774		\$3,893.98
Total RH2 Engineering Inc.				
Sorci Family LLC				
46773	100118 SFLLC	10/1/2018	2018 - October - 1st Oct Batch for 10/04 Council	
		Oct 2018 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

**BLACK DIAMOND CITY COUNCIL
WORK SESSION MINUTES
September 13, 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 Wisnoski.

ABSENT: None

Staff present were: Mayene Miller, Finance Director; Andy Williamson, MDRT/Economic Development Director; and Brenda L. Martinez, City Clerk.

1) Discussion on Fire Service Analysis/Annexation

Mayor Benson welcomed everyone and noted that tonight's work session is a discussion on a Fire Service Analysis for Black Diamond. She then turned the meeting over to Finance Director Miller.

Finance Director Miller discussed the following areas with Council:

- Population
- Discussion on houses sold and houses permitted
- Assessed valuation trends
- General Fund expenses
- Other funds used to support fire expenses
- Fire Impact Fee revenue
- Real Estate Excise Tax II from the 2019-2024 Capital Improvement Plan
- King County assessed valuation vs. levy rates – how it works
- Property Tax excess capacity available WITHOUT annexation
- Property Tax impact WITH annexation
- Difference between levy rates and voted bonds
- Black Diamond tax growth and how Black Diamond is property tax dependent
- Citizen tax impact
- Discussion on fire station that will be built soon in old town by the developer
- Current deficiencies the city has regarding fire service and the need to address it
- Pre-annexation agreement speaking to the deficiency

- City tax impact and Fire District 44 tax impact

There was back and forth discussion regarding the timing of annexation and the expectation as information has changed and needs to be reviewed again.

Chief Smith noted the district is interested in moving forward and explained what that would like that.

MDRT Director Williamson discussed what OakPointe has agreed to and what is on the table regarding a new fire station in old town.

There was discussion on lid lifts and what the net loss to the City will be as there is a need to answer questions the public may have. Councilmember Deady added the last lift lid was in 2009 and both police and fire are deficient, and Council should be going to the citizens to bring the Level of Service (LOS) up.

There was discussion on the length of time it takes for government agencies to get things going and the need to have a plan, so the Council and Citizens know what it is happening and why.

Councilmember Wisnoski again stressed, the need to be able to tell our citizens what the City's plan is for fire service and annexation. Also, the need to figure out what the City's fair share is.

Fire District discussed the need to look at the citizens of the district not carrying the City. Councilmember Edelman stated this would be a discussion with the District, the Mayor and the Finance Director.

In closing, it was discussed that the City is still moving forward with annexation into Mountain View Fire District, however the timing is still up in question.

ADJOURNMENT:

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

The meeting ended at 7:46 p.m.

ATTEST:

Carol Benson, Mayor

Brenda L. Martinez, City Clerk

BLACK DIAMOND CITY COUNCIL MINUTES
Council Meeting of September 20, 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 Wisnoski. (Councilmember Stout raised her hand for roll call since she had no voice)

ABSENT: None

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

AGENDA REVIEW AND APPROVAL:

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

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

Presentation of Lifesaving Award – Chief Kiblinger presented a Lifesaving Award to Officer Ryan Keller. The lifesaving award is awarded to members of the Black Diamond Police Department who, by their immediate actions, have saved a human life under unusual and/or extraordinary circumstances. She shared that on July 14th, Officer Keller was headed home after working his normal patrol shift when he heard another officer being dispatched to a male patient who had stopped breathing and was unresponsive. She stated officer Keller took it upon himself to turnaround and respond to the location. When he arrived, he was unable to open the gate by hand, so he had to use his vehicle to push the gate open which also cleared the path for Fire and Medics. Once inside the residence he took over for the wife and continued performing CPR until Engine 92 arrived. The actions of Officer Keller were crucial in the outcome of the patient's survival. She thanked Officer Keller for acting out of selflessness, acting with character, and ultimately saving a citizen's life. The patient and his wife were in attendance and thanked Officer Keller and stressed the importance of learning CPA.

CONSENT AGENDA:

Councilmember Deady **moved** to adopt the Consent Agenda; **second** Councilmember Oglesbee. Motion **passed** with all voting in favor (5-0). The Consent Agenda was approved as follows:

- 1) **Claim Checks** – September 20, 2018 – Check No. 46679 through 46728 and EFTs in the amount of \$417,785.63
- 2) **Payroll** – August 31, 2018 – No. 19614 through 19633 (voids 19492, 19511) and ACHs in the amount of \$330,402.43
- 3) **Minutes** – Council Meeting of September 6, 2018

PUBLIC COMMENTS:

Robbin Taylor, Black Diamond spoke to Council.

PUBLIC HEARINGS:

- 4) **AB18-080** – Ordinance Granting a Nonexclusive Telecommunications Franchise to MCImetro Access Transmission Services Corporation., D/B/A Verizon Access

Public Works Director Boettcher reported to Council on this item.

Mayor Benson opened the public hearing at 7:11:32 p.m. There was no public testimony and Mayor Benson closed the public hearing at 7:11:39 p.m.

NEW BUSINESS: None

DEPARTMENT REPORTS:

Fire Department – Chief Smith reported on the volunteer recruit academy that starts October 3rd and last for three weeks. He commented he will let everyone know when the graduation date will be. The new career firefighter started the recruit academy and graduation is scheduled for the end of January. He shared that five officers received blue card training that requires 50 hours of online training followed by a three-day hands-on class. He noted he will be meeting with Mr. Williamson to sign the final plat Council recently approved. He discussed the burn bans that are currently in place and noted he anticipates they will be lifted by the end of the month. Recreational fires are allowed and the rules for outside burning can be found on their website. He shared that on October 3rd a national alert text message from the President will be send to cell phones as they are testing the system. He congratulated Officer Keller and stressed the importance of learning CPR and having it administered quickly. He noted that with the retirement of Robert Young, he is working with Auburn Regional Fire Authority under contract to have one of their plan reviewers on board to review Black Diamond plans.

Police – Chief Kiblinger shared that on October 3rd the department will be participating in the National Program “Coffee with a Cop” at Black Gold Coffee is Black Diamond from 7

a.m. – 10 a.m. She noted Coffee with a Cop provides a unique opportunity for community members to ask questions and learn more about the department's work in Black Diamond neighborhoods.

MAYOR'S REPORT:

Mayor Benson reported attending the SCATBd meeting and the main agenda item was the Washington State Road Usage Tax.

COUNCIL REPORTS:

Councilmember Edelman reported on the Public Works Committee meeting and shared the items that were discussed; attended the Public Information Committee (PIC) and pre-PIC where the subjects were the Open Public Meetings Act and new rules coming out on emotional support critters vs. support animals, interviewing for vacancies on Council, special meetings and closed session and announcing the estimated time; she distributed SCA's draft 2019 Legislative Agenda.

Councilmember Stout passed due to having no voice.

Councilmember Wisnoski reported attending the work session on the fire analysis.

Councilmember Deady asked if there was any movement on getting the CERT group together to start the CERT program here in Black Diamond and the need to get a CPR class here also. She reported attending the work session on the fire analysis and noted the fire study should move forward and the need to start looking at a levy; attended the PIC meeting, Finance Committee meeting and meeting with Reagan Dunn regarding the Community Center where funds were awarded and vans awarded to the school district.

Mayor Benson announced there will be an Emergency Preparedness Fair on September 29th from 9-2 at Rock Creek Elementary.

Councilmember Oglesbee reported attending the Hometown Christmas spaghetti feed, Council work session on the fire analysis and noted the need to move forward with a levy and annexation; Black Diamond Labor Days wrap up meeting; and announced there will be a Hometown Harvest at Ten Trails on September 29th.

ATTORNEY REPORT: City Attorney Linehan noted discussing at an earlier Council meeting the State Business Licensing statute and the need to come into compliance before the end of the year. He discussed the two decisions Council needs to provide guidance on are 1) Keep the threshold at the \$2,000 amount or raise it, and 2) for businesses that fall below the threshold should the city have them obtain a free business license. He stated he would like to get feedback at the next Council meeting and then bring a final ordinance back to Council for adoption.

PUBLIC COMMENTS:

Gary Davis, Black Diamond spoke to Council.

Robbin Taylor, Black Diamond spoke to Council.

EXECUTIVE SESSION: None

ADJOURNMENT:

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

The meeting ended at 7:42 p.m.

ATTEST:

Carol Benson, Mayor

Brenda L. Martinez, City Clerk

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: Resolution authorizing the purchase of a new Community Development vehicle for the City	Agenda Date: October 4, 2018 AB18-081	
	Mayor Carol Benson	
	City Administrator	
	City Attorney David Linehan	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Barb Kincaid	X
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	
	Police – Chief Kiblinger	
	Public Works – Seth Boettcher	
Cost Impact (see also Fiscal Note): Not to exceed \$35,000	Court – Stephanie Metcalf	
Fund Source: -- General Fund-Comm. Deve.		
Timeline: Immediately		
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Resolution 18-1268		
SUMMARY STATEMENT: <p>The City has hired a Building Official who will start on October 22, 2018. For several years, the City has been contracting for building services and the contractors have been providing their own vehicles. The City does not currently have a vehicle in the motor pool for it's newly hired Building Official to use.</p> <p>The Community Development Department has unused funds from its 2018 budget and is requesting authorization from Council to use these funds to purchase a vehicle. This purchase would not exceed \$35,000.</p> <p>FISCAL NOTE (Finance Department): The 2018 Community Development budget anticipates unspent expenditure funds will cover the cost of the vehicle.</p>		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: MOTION to adopt Resolution No. 18-1268, authorizing the purchase of a vehicle for the Community Development Department and not to exceed \$35,000.		
RECORD OF COUNCIL ACTION		
Meeting Date	Action	Vote
October 4, 2018		

RESOLUTION NO. 18-1268

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE PURCHASE OF A NEW VEHICLE
FOR THE COMMUNITY DEVELOPMENT DEPARTMENT**

WHEREAS, the City has recently hired a Building Official who will need a dedicated vehicle to conduct daily field work including building inspections and code compliance; and

WHEREAS, the City does not currently have a vehicle in its motor pool for the Building Official to use; and

WHEREAS, the City needs to purchase a new pool vehicle for the City within a budget of \$35,000.

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 pool vehicle for the City and not to exceed \$35,000.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THERE OF, THIS 4TH DAY OF OCTOBER 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: October 4, 2018	AB18-082
Resolution confirming the Mayor's appointment of Steve Jensen to Position 2 on the Planning Commission	Mayor Carol Benson	X
	City Administrator	
	City Attorney David Linehan	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Barb Kincaid	
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	
	Police – Chief Kiblinger	
Cost Impact (see also Fiscal Note): \$	Public Works – Seth Boettcher	
Fund Source: --	Court – Stephanie Metcalf	
Timeline:		
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Proposed Resolution; application		
SUMMARY STATEMENT:		
<p>Staff advertised for recent a recent vacancy for Position 2 on the Planning Commission due to a resignation. Position No. 2 expires on December 31, 2019.</p> <p>Staff received two applications for this vacancy</p> <p>Mayor Benson is seeking confirmation of her appointment of Steve Jensen to the Black Diamond Planning Commission Position No. 2.</p> <p>FISCAL NOTE (Finance Department): N/A</p>		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: MOTION to adopt Resolution No. 18-1269 confirming the Mayor's Planning Commission appointment of Steve Jensen to Position No. 2, said term expiring on December 31, 2019.		
RECORD OF COUNCIL ACTION		
Meeting Date	Action	Vote
October 4, 2018		

RESOLUTION NO. 18-1269

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

WHEREAS, in accordance with Black Diamond Municipal Code 2.24.010, members of the Planning Commission shall be appointed by the Mayor and confirmed by the City Council; and

WHEREAS, this Resolution confirms the Mayor's appointment to the City of Black Diamond Planning Commission Position #2;

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

Section 1. That the Mayor's appointment of Steve Jensen to the City of Black Diamond Planning Commission Position No. 2 is hereby confirmed; said term to expire on December 31, 2019.

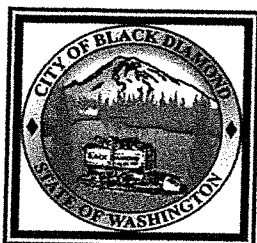
**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR
MEETING THEREOF, THIS 4TH DAY OF OCTOBER 2018.**

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk



CITY OF BLACK DIAMOND

Commission Application

Mailing Address: PO Box 599

Physical Address: 24301 Roberts Drive
Black Diamond, WA 98010

Phone: 360.886.5700 - Fax: 360.886.2592

CITY OF BLACK DIAMOND
RECEIVED
JUL 09 2018
BY _____
CITY HALL

Name: Stephen Jensen

Address: 30524 [REDACTED], Black Diamond

Home Phone: [REDACTED] Business Phone: [REDACTED]

Email address: [REDACTED]

How long at Residence: Since 2004 Best time to contact: anytime

Commission desired:

- 1.) Planning Commission
- 2.) Position #2

Reason you are interested in serving: Service to community I live in.

Previous community activities: _____

Applicable education, occupational, and specialized experience: Masters in Educational Administration - currently own Branches Garden Center in Auburn / Federal Way.

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

1.) Can you foresee possible conflicts of interest with any of your current employment or civic positions:

no

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

Are there any days or evenings you are unavailable to meet? no - Business does take me out of town from time to time.

Signature: [Signature]

Date: 7-6-18

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT:	Agenda Date: October 4, 2018	AB18-083
Resolution confirming the Mayor's appointment of Weston Butt to Position 3 on the Planning Commission	Mayor Carol Benson	X
	City Administrator	
	City Attorney David Linehan	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Barb Kincaid	
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	
	Police – Chief Kiblinger	
Cost Impact (see also Fiscal Note): \$	Public Works – Seth Boettcher	
Fund Source: --	Court – Stephanie Metcalf	
Timeline:		
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Proposed Resolution; application		
SUMMARY STATEMENT: <p>Staff recently advertised for a vacancy for Position 2 on the Planning Commission and received two applications. On September 24th the City received a resignation letter for Position 3 making there two vacancies on this Commission.</p> <p>Mayor Benson is seeking confirmation of her appointment of the other applicant Weston Butt to the Black Diamond Planning Commission Position No. 3.</p> <p>FISCAL NOTE (Finance Department): N/A</p>		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: MOTION to adopt Resolution No. 18-1270 confirming the Mayor's Planning Commission appointment of Weston Butt to Position No. 3; said term expiring on December 31, 2020.		
RECORD OF COUNCIL ACTION		
Meeting Date	Action	Vote
October 4, 2018		

RESOLUTION NO. 18-1270

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

WHEREAS, in accordance with Black Diamond Municipal Code 2.24.010, members of the Planning Commission shall be appointed by the Mayor and confirmed by the City Council; and

WHEREAS, this Resolution confirms the Mayor's appointment to the City of Black Diamond Planning Commission Position #3;

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

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

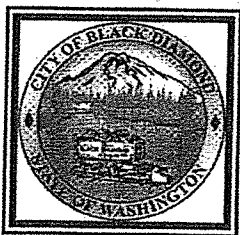
PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 4TH DAY OF OCTOBER 2018.

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk



CITY OF BLACK DIAMOND

Commission Application

Mailing Address: PO Box 599

Physical Address: 24301 Roberts Drive

Black Diamond, WA 98010

Phone: 360.886.5700 - Fax: 360.886.2592

Name: Charles Weston Butt

Address: 29732 [REDACTED]

Home Phone: [REDACTED]

Business Phone: 77

Email address: [REDACTED]

How long at Residence: 29 years Best time to contact: anytime

Commission desired:

1.) Planning position #2

2.) _____

Reason you are interested in serving: I've lived in the city most of my life and I want to be involved in shaping it for the future

Previous community activities: LSCC volunteer. (Lake Sawyer Community Club) easter egg hunt, volleyball tournament, fireworks ect.

Applicable education, occupational, and specialized experience: I do construction in a lot of cities and see how they operate. I've worked in a lot of developed cities and I notice good and bad planning ideas. Commissions make recommendations regarding monetary expenditures and/or benefits to certain areas of the Community.

1.) Can you foresee possible conflicts of interest with any of your current employment or civic positions:

unlikely but possibly with my construction work

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

Are there any days or evenings you are unavailable to meet? No

Signature: Charles Weston Butt

Date: 8/8/18

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT:	Agenda Date: October 4, 2018	AB18-084
Resolution authorizing Flood Reduction Grant Agreement with King County for the design of the Covington Creek Culvert Enhancements project	Mayor Carol Benson	
	City Administrator	
	City Attorney David Linehan	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Barb Kincaid	
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	
	Police – Chief Kiblinger	
Cost Impact (see also Fiscal Note): \$110,000 revenue		
Fund Source: King County Flood Reduction Grant	Public Works – Seth Boettcher	X
Timeline: Expires March 31, 2020	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; Grant Agreement; CIP Page		
<p>SUMMARY STATEMENT: Public Works staff applied and was selected for a Flood Reduction Fund grant from King County. Grant funds will be used for the design of the Covington Creek Culvert Enhancements project. Public Works staff will apply for construction funds during the next grant cycle.</p> <p>FISCAL NOTE (Finance Department): There is no match requirement on this project and grant funds will also cover City labor for administration and management.</p>		
<p>COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: Public Works Committee recommends forwarding to Council for their approval.</p>		
<p>RECOMMENDED ACTION: A motion to adopt Resolution No. 18-1271, authorizing the Mayor to execute a Flood Reduction Grant Agreement with King County for the design of the Covington Creek Culvert Enhancements project.</p>		
RECORD OF COUNCIL ACTION		
Meeting Date	Action	Vote
October 4, 2018		

RESOLUTION NO. 18-1271

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

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

WHEREAS, the City's grant application for King County Flood Reduction Grant Funds was selected for the design of the Covington Creek Culvert Enhancement project; and

WHEREAS, the City has the staff and funds to complete the design of this project; and

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

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

Section 1. The City Council hereby accepts Flood Reduction Grant funds from King County in the amount of \$110,000 to fund the design of the Covington Creek Culvert Enhancement project;

Section 2. The Mayor is hereby authorized to execute the Flood Reduction Grant Agreement with King County for the Covington Creek Culvert Enhancement 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 4TH DAY OF OCTOBER 2018.

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk

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

This Agreement is made between King County, a municipal corporation, and the **City of Black Diamond** ("Recipient") (collectively referred to as the "parties" and in the singular "party"), for the purposes set forth herein. This Agreement shall be in effect from the date of execution to **March 31, 2020**.

Project Contacts:

King County – Kim Harper, Grant Administrator, 206-477-6079, Kim.harper@kingcounty.gov.

Recipient – Scott Hanis, 360-886-5713 – Shanis@blackdiamondwa.gov.

SECTION 1. RECITALS

- 1.1 Whereas, the King County Flood Control District ("District") is a quasi-municipal corporation of the State of Washington, authorized to provide funding for flood control and stormwater protection projects and activities; and
- 1.2 Whereas King County is the service provider to the District under the terms of an interlocal agreement ("ILA") by and between King County and the District, dated February 17, 2009, as amended, and as service provider implements the District's annual work program and budget; and
- 1.3 Whereas, on November 12, 2013, the District's Board of Supervisors passed Resolution FCD2013-14.3 which established a Flood Reduction Grant Program and criteria for awarding grant funding for projects, and on November 13, 2017, the Board passed Resolution FCD2017-07.2, which authorized an allocation of \$3,085,306 from the District's 2018 budget to fund flood reduction projects; and
- 1.4 Whereas, on September 4, 2018 the District's Board of Supervisors passed Resolution FCD2018-08, which approved the flood reduction projects described in Attachment A to that Resolution; and
- 1.5 Whereas, in accordance with the terms of these Resolutions, and in its capacity as service provider to the District, King County has established policies and procedures for administering the flood reduction grant program, a copy of which has been furnished to Recipient and which is incorporated herein by this reference (hereinafter "Grant Policies and Procedures"); and
- 1.6 Whereas, the Recipient submitted an application to receive funds for a project to be funded by the Flood Reduction Grant Program; and
- 1.7 Whereas the District's Board of Supervisors approved funding of Recipient's application

for the project ("Project"), as described in Attachment A to Resolution FCD2018-08 in the amount of **\$110,000** ("Award"); and

- 1.8 Whereas King County has received a Scope of Work and a Budget for the Project from the Recipient and has determined that the Scope of Work, attached hereto and incorporated herein as Exhibit B ("Scope of Work"), and the Budget, attached hereto and incorporated herein as Exhibit C ("Budget"), are consistent with the Grant Policies and Procedures, the Recipient's application for the Project, and the Resolution approving funding for the Project; and
- 1.9 Whereas, King County and the Recipient desire to enter into this Agreement for the purpose of establishing the terms and conditions under which King County will provide funding from the District in accordance with Resolution FCD2018-08, and the Grant Policies and Procedures, and under which the Recipient will implement the Project.

SECTION 2. AGREEMENT

- 2.1. The Recitals are an integral part of this Agreement and are incorporated herein by this reference.
- 2.2. King County agrees to pay the Award amount to Recipient in the total amount of **\$110,000** from District funds. The Award shall be used by the Recipient solely for the performance of the Project, as described in Exhibit A to this Agreement. Exhibit A, attached hereto and incorporated herein by this reference, contains a description of the Project as described in Attachment A to Resolution FCD2018-08. King County shall pay the Recipient in accordance with the terms of the Grant Policies and Procedures.
- 2.3. The Recipient represents and warrants that it will only use the Award for the Scope of Work of this Agreement and in accordance with the Project Budget. The Recipient shall be required to refund to King County that portion of the Award which is used for work or tasks not included in the Scope of Work. Further, the Recipient agrees that King County may retain any portion of the Award that is not expended or remains after completion of the Scope of Work and issuance of the Final Report, as further described below.
- 2.4. Activities carried out for this Project and expenses incurred by the Recipient may predate the execution date of this Agreement provided that 1) they have been identified by Recipient as being within the scopes of numbers 2) and 3) below, and have been approved by King County as being within such scopes; 2) the activities are specified in the Scope of Work of this Agreement; 3) the expenses are incurred in carrying out the Scope of Work and are authorized by the Award as identified in the Budget of this Agreement; 4) the activities occur after the District passes a resolution approving an award for the Project; 5) such activities and expenses otherwise comply with all other terms of this Agreement; and 6) reimbursements shall be paid to the Recipient only after this Agreement has been fully executed.

- 2.5. The Recipient shall invoice King County for incurred expenses using the Request for Payment form and Progress Report form for those documented and allowable expenses identified in the Budget and according to the rules set forth in the Grant Policies and Procedures. Blank forms shall be provided to the Recipient by King County upon execution of this Agreement. A progress report (with or without a request for payment) shall be made no less frequently than every six months after the effective date of this Agreement nor more frequently than every three months after the aforementioned date. A Progress Report form shall be submitted with all payment requests. A one- time advance of no more than 25% of the Award amount may be allowed, in the discretion of King County, for expenses anticipated to be incurred in the three months following the date of submission of the advance Request for Payment only for work that is included in the Scope of Work of this Agreement, and identified as such in the Request for Payment. Documentation of payments made from the advance payment shall be submitted to King County prior to any further requests for payment.
- 2.6. The Recipient shall be required to submit to King County a final report which documents the Recipient's completion of the work in conformance with the terms of this Agreement within thirty (30) days after the completion of the work. The final report may be submitted on the Close-out Report form unless a more detailed final report is specified in the scope of work. A blank form shall be provided to the Recipient by King County upon execution of this Agreement. The final report shall include a summary of the Project's successes and shall address the flood reduction benefits accomplished by the work.
- 2.7. The Recipient's expenditures of Award funds shall be separately identified in the Recipient's accounting records. If requested, the Recipient shall comply with other reasonable requests made by King County with respect to the manner in which Project expenditures are tracked and accounted for in the Recipient's accounting books and records. The Recipient shall maintain such records of expenditures as may be necessary to conform to generally accepted accounting principles as further described in Section 2.8 below, and to meet the requirements of all applicable state and federal laws.
- 2.8. The Recipient shall be required to track project expenses using the Budget Accounting and Reporting System for the State of Washington ("BARS") or Generally Accepted Accounting Principles set forth by the Financial Accounting Standards Board or by the Governmental Accounting Standards Board.
- 2.9. King County or its representative, and the District or its representative, shall have the right from time to time, at reasonable intervals, to audit the Recipient's books and records in order to verify compliance with the terms of this Agreement. The Recipient shall cooperate with King County and the District in any such audit.
- 2.10. The Recipient shall retain all accounting records and project files relating to this Agreement in accordance with criteria established by the Washington State Archivist Local Government Common Records Retention Schedule (CORE) as revised.

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

SECTION 3. GENERAL PROVISIONS

- 3.1. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.
- 3.2. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. No prior or contemporaneous representation, inducement, promise or agreement between or among the parties which relate to the subject matter hereof which are not embodied in this Agreement shall be of any force or effect.
- 3.3. No amendment to this Agreement shall be binding on any of the parties unless such amendment is in writing and is executed by the parties. The parties contemplate that this Agreement may from time to time be modified by written amendment which shall be executed by duly authorized representatives of the parties and attached to this Agreement.
- 3.4. Each party warrants and represents that such party has full and complete authority to enter into this Agreement and each person executing this Agreement on behalf of a party warrants and represents that he/she has been fully authorized to execute this Agreement on behalf of such party and that such party is bound by the signature of such representative.
- 3.5. The Project shall be completed by no later than **March 31, 2020**. In the event that the Project is not completed by this date, King County has the discretion, but not the obligation, to terminate this Agreement and retain any unexpended Award funds.
- 3.6. This Agreement may be signed in multiple counterparts.
- 3.7. If any provision of this Agreement shall be wholly or partially invalid or unenforceable under applicable law, such provision will be ineffective to that extent only, without in any

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

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

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

KING COUNTY:

RECIPIENT:

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

EXHIBIT A: PROJECT DESCRIPTION

PROJECT NAME	RECIPIENT	DESCRIPTION	LEVERAGE	AWARD
Covington Creek Culvert Rehabilitation Design	City of Black Diamond	Design and permit smooth lining with salmon passage enhancement for three 6-foot corrugated metal culverts that outlet from Lake Sawyer into Covington Creek crossing under 224th Ave. SE. These culverts are deteriorating at the bottom. This project would also provide design for headwalls to protect the road embankment and channel flows through the culverts.	\$0	\$110,000

EXHIBIT B: SCOPE OF WORK

TASKS	ACTIVITIES AND DELIVERABLES	APPROX. PERCENT OF AWARD REQUEST	MONTH/YEAR TASK WILL BE COMPLETED
Task 1: Project Administration (Required task)	Scott Hanis, Capital Project/Program Manager, will submit reimbursement request forms, backup documentation for billing, and progress reports at least every 6 months. Submit a Fiscal Closeout form and a Closeout Report form with the final reimbursement request.	3%	December 2019
Task 2: City Project Administration	Scott Hanis and Seth Boettcher will monitor the budget, review invoices, process payments, review design and bid materials, advertise for bids for construction, bring a construction contract through the City process for award, oversee construction and closeout.	9%	December 2019
Task 3: Design	Consultant will design best method for upgrading the existing culverts and will design a headwall. Consultant will also obtain necessary permits and prepare bid documents for the City.	88%	December 2019
Task 4: Credits	Acknowledgement that the project is funded by the King County Flood Control District will be posted on the City's website; and articles and notifications will be posted in City newsletter. Costs for this task will be covered under Task 2: City Project Administration. When this project goes to construction in the future, the City will acknowledge these grant funds with project signage, but those costs will not be associated with this grant.	0%	December 2019

EXHIBIT C: BUDGET

BUDGET ITEM	GRANT AWARD REQUEST	FINANCIAL LEVERAGE (not required)			LEVERAGE TOTAL	TOTAL (Grant + Leverage)
		SOURCE NAME				
		AMOUNT				
STAFFING	\$12,804					\$12,804
PROJECT SUPPLIES						
COMMERCIAL SERVICES AND CREW TIME	\$97,196					\$97,196
TRANSPORTATION						
OFFICE EXPENSES/ OVERHEAD						
TOTAL	\$110,000					\$110,000

Stormwater Department

D3

Covington Creek Culverts

13.14

DESCRIPTION

Construct a stormwater treatment facility for the stormwater discharge coming off Park Street. This stormwater discharge is the second highest priority to get treated because of the size of the discharge and the pollutants coming off the state route and the old downtown area.

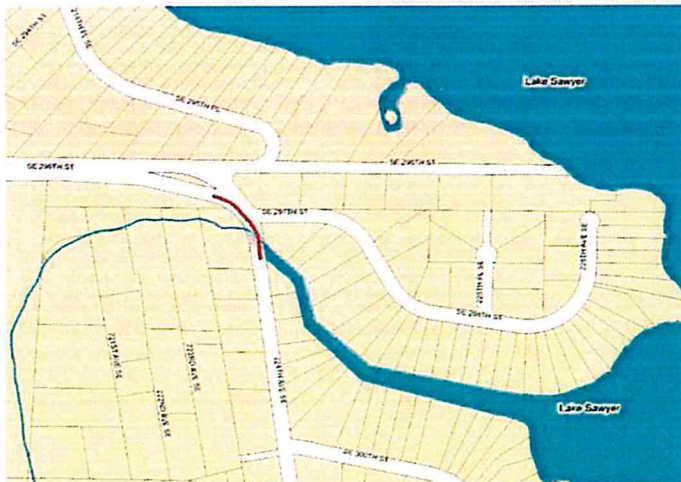
BACKGROUND

The summer 2012 inspections found the culverts are nearing the end of their useful life and have serious corrosion and pitting in the lower third of the culverts and a few areas where corrosion has opened holes in the culvert. The three culverts divide the small summer flow leaving only a small amount of water for fish passage. The city began design on a concrete box culvert but found there were too many conflicts to make that replacement work.

COMMENTS

It is highly unlikely that the city would be able to come up with the funding for a bridge alternative (early estimate \$2,000,000). This project refocuses the city's funding to address the impending problem of the deteriorating culverts and improving fish passage.

CAPITAL PROJECT COSTS	Total \$ 2019 - 2024	2019	2020	2021	2022	2023	2024
Design Engineering	93,706	93,706					
Construction	485,473		485,473				
Management / Administration	20,821	8,000	12,821				
TOTAL COSTS	600,000	101,706	498,294				
REQUESTED FUNDING							
King County Flood Control Dist	600,000	101,706	498,294				
TOTAL SOURCES	600,000	101,706	498,294				



CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: Resolution authorizing the sale of the former sewer lagoon to Palmer Coking Coal Company, LLP	Agenda Date: October 4, 2018 AB18-085	
	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): \$15,000 revenue	Public Works – Seth Boettcher	X
Fund Source: --	Court – Stephanie Metcalf	
Timeline: October 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; Purchase and Sale Agreement		
SUMMARY STATEMENT: In 1982, Palmer Coking Coal sold the sewer lagoon property to the City for \$15,000. The warranty deed gave Palmer Coking Coal an exclusive right to repurchase the property for \$15,000 if the City ceased to use the site for sewage treatment. The City has ceased to use the site for sewage treatment and has since decommissioned the facility and made it ready for other uses. The City also has used the site for storage (woody debris, compost, street sweepings, etc.) and desired to temporarily continue using a portion of the site for such purpose. Palmer Coking Coal has expressed a desire to exercise its exclusive right to repurchase the property. As part of the sale of the property, Palmer Coking Coal is willing to grant the City a temporary storage easement for the storage of debris for two years, and will allow the City to have a permanent water and sewer easement across the north portion of the property. FISCAL NOTE (Finance Department): the 2018 Budget is in place to cover any legal or closing costs for this transaction.		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: Public Works Committee recommends forwarding to Council for their approval.		

RECOMMENDED ACTION: **A motion to adopt Resolution No. 18-1272 authorizing the Mayor to execute a purchase and sale agreement with Palmer Coking Coal (PCC) to convey the former sewer lagoon property to PCC in exchange for \$15,000.**

RECORD OF COUNCIL ACTION

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
October 4, 2018		

RESOLUTION NO. 18-1272

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE SALE OF THE FORMER SEWAGE LAGOON PROPERTY TO PALMER COKING COAL COMPANY, LLP

WHEREAS, in June 1982, Palmer Coking Coal Company ("PCC") conveyed certain real property to the City for its use in construction of a sewage collection and treatment facility, for the below-market price of approximately \$3,000 per acre, or a total of \$15,000; and

WHEREAS, the 1982 warranty deed for the property reserves to PCC an exclusive right to repurchase the property for the sum of \$15,000 in the event the City ever elects to sell or otherwise cease use of the property for a sewage treatment facility for a period of one year or longer; and

WHEREAS, the City has decommissioned the sewage collection and treatment facility and no longer needs the property for such purposes; and

WHEREAS, PCC has expressed its desire to exercise its exclusive repurchase right; and

WHEREAS, the City desires to sell the property back to PCC, while (i) retaining a temporary storage easement on a portion of the property for the purpose of storage and handling of soil, woody debris, compost, and street sweepings for a period of two years; (ii) retaining a permanent water and sewer utility easement across the property; and (iii) terminating the existing City easements for treated effluent and discharge;

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

Section 1. The Mayor is authorized to convey the former sewer lagoon property to Palmer Coking Coal, LLP, by executing a purchase and sale agreement in a form substantially similar to the one attached hereto as Attachment A, together with such related deeds and easements as are necessary to effectuate the purposes described above.

Section 2. In exchange for the conveyances and agreements so described, the City accepts payment of the sum of \$15,000, consistent with the terms of the 1982 purchase from PCC.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON,
AT A REGULAR MEETING THERE OF, THIS 4TH DAY OF OCTOBER 2018.**

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk

**CITY OF BLACK DIAMOND
REAL ESTATE PURCHASE AND SALE AGREEMENT**

This Real Estate Purchase and Sale Agreement (hereafter, the "Agreement") is made this _____ day of _____, 2018, by and between the City of Black Diamond, a Washington municipal corporation (the "City" or the "Seller"), and Palmer Coking Coal Company, LLP, a Washington limited liability partnership ("Palmer" or the "Purchaser").

A. RECITALS

A. In June 1982, Palmer conveyed certain real property (as described below) to the City for its use in construction of a sewage collection and treatment facility. Palmer conveyed this property to the City for a below-market price of approximately \$3,000 per acre, or a total of \$15,000.

B. The 1982 warranty deed for the property reserves to Palmer an exclusive right to re-purchase the property for the sum of \$15,000 in the event the City elects to sell or otherwise ceases use of the property for use as a sewage treatment facility for a period of one year or longer.

C. The City has now decommissioned the sewage collection and treatment facility and no longer needs the property for such purposes.

D. Palmer has expressed its desire to exercise its exclusive right to re-purchase the property for the aforementioned sum.

E. The City has agreed to sell, and Palmer has agreed to re-purchase, the property on the following mutually agreeable terms and conditions.

B. TERMS AND CONDITIONS OF AGREEMENT

1. PREMISES.

Purchaser agrees to buy, and Seller agrees to sell, the real property legally described in Exhibit A to this Agreement (the "Premises").

2. CLOSING AND DELIVERY OF DEED.

Seller, at closing, shall convey to Purchaser a statutory warranty deed to the Premises in the form attached hereto as Exhibit B (the "Deed"). The Premises shall be conveyed "as-is," with all faults, and Seller makes no warranties or representations concerning the condition of the Premises or its suitability for Purchaser's intended purposes. Seller shall warrant that title to the Premises is free from any defects or encumbrances except for the Easement Agreement (as defined below) being recorded at closing and any previous rights reserved by Palmer when Palmer first sold the Premises to the City. At closing, the parties shall execute and record the Deed, the Easement Agreement (as defined in Section 4 below), and the Termination Statement

(as defined in Section 5 below) and shall execute and file any required real estate excise tax affidavit with King County.

3. PURCHASE PRICE AND PAYMENT.

In addition to the other promises made in this Agreement, the Purchaser agrees to pay and the Seller agrees to accept Fifteen Thousand Dollars (\$15,000) as the purchase price for the Premises. The purchase price shall be paid at closing by cashier's check payable by the Palmer and made out to the City of Black Diamond.

4. RECORDING OF EASEMENT AGREEMENT.

At closing, Palmer, as grantor, shall record an easement agreement in the form attached hereto as Exhibit C (the "Easement Agreement") granting to Seller and Seller's successors and assigns a perpetual, non-exclusive 20-foot water and sewer utility easement across the Premises and a temporary storage easement across the southwest portion of the Premises, each as more fully described in the Easement Agreement.

5. TERMINATION OF EASEMENTS FOR TREATED EFFLUENT AND DISCHARGE.

In connection with Palmer's prior conveyance of the Premises to the City, Palmer granted easements over adjacent property for placement of a sewer line or lines and for discharge of treated effluent, as more fully described in that certain Easement for Treated Effluent and Discharge, dated June 19, 1981 (the "Discharge Easements"). The parties to this Agreement acknowledge that the City no longer requires the Discharge Easements, and at closing the City shall record a termination statement in the form attached hereto as Exhibit D (the "Termination Statement").

6. CLOSING DATE.

Closing shall occur at a time and place mutually agreeable to Purchaser and Seller (subject to approval of the City Council), but no later than December 28, 2018. Purchaser shall be entitled to possession of the Premises on the date of closing.

7. PRORATION OF TAXES.

Seller and Purchaser agree that the obligation to pay King County property taxes shall be prorated as of the date of closing.

8. INDEMNIFICATION.

Except where otherwise provided in this Agreement or the Easement Agreement, Purchaser shall defend, indemnify, and hold harmless the City and its officers, officials, employees, and volunteers against any and all claims, suits, actions, or liability for bodily injury or death of any person, or for loss or damage to any property, arising out of or caused by any negligent or intentional act or omission by Purchaser or Purchaser's employees, agents, or customers in connection with its or their use or occupation of the Premises. Purchaser's obligation to defend, indemnify, and hold harmless the City extends to the payment of the City's reasonable attorney fees and court costs incurred in defending such claims or suits, but does not extend to payment for injuries or damages caused by the sole negligence of the City. If a court of competent

jurisdiction (or neutral arbitrator) determines that any bodily injury, death, or property damage is a result of the concurrent negligence of both the City and the Purchaser, then Purchaser's liability under this indemnification provision will be limited to the extent of Purchaser's fault. In no event shall Purchaser be responsible for any injury or damage caused by the intentional or willful misconduct of the City, its employees, agents, volunteers, or consultants.

9. RISK OF LOSS.

Seller bears the risk of loss or damage to the Premises (and any personal property located thereon) until 5:00 p.m. on the date of closing. Thereafter, subject to the terms of the Easement Agreement, Purchaser bears the risk of loss or damage to the Premises, except that Seller at all times retains the risk of loss to any personal property of Seller that is stored or maintained by Seller on the Premises. In the event of material loss or damage to the Premises before closing, Seller is not obligated to restore the Premises, nor must Seller pay damages to Purchaser, but Purchaser may elect to terminate this Agreement effective immediately if Purchaser gives written notice to Seller after the date of loss or damage and before the date of closing.

10. APPLICABLE LAW; VENUE; ATTORNEYS' FEES.

This Agreement is governed by and shall be construed and interpreted in accordance with the laws of the State of Washington, without reference to its choice-of-law rules. King County, Washington, is the exclusive venue for any suit, arbitration, or other legal proceeding instituted to construe, interpret, or enforce any term of this Agreement. The prevailing party in any such action is entitled to its attorneys' fees and costs of suit, which shall be fixed by the judge or neutral hearing the case, and such fee shall be included in the judgment or award.

11. ENTIRE AGREEMENT.

This Agreement (along with the Deed, Easement Agreement, and Termination Statement, once executed and recorded) contains the entire agreement between the parties, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement exist or bind either of the parties. Either party may request changes to the Agreement. Changes that are mutually agreed upon shall be incorporated by written amendments to this Agreement, executed under signatures of all parties. The terms, covenants, and representations contained in this Agreement shall not merge with the deed of conveyance but instead shall survive and continue after closing.

12. SEVERABILITY.

In the event any provision or part of this Agreement is found to be void or unenforceable under any law or regulation, all remaining provisions shall continue to be valid and binding upon the Seller and Purchaser, who both agree that the Agreement shall be reformed to replace such void or unenforceable provision or part with a valid and enforceable provision that comes as close as reasonably possible to expressing the intent of the void or unenforceable provision.

AGREED TO BY:

SELLER: CITY OF BLACK DIAMOND

PURCHASER: PALMER COKING COAL
COMPANY, LLP

By: _____

Name: Carol Benson

Title: Mayor

By: _____

Name: William Kombol

Title: Operating Manager

Date: _____

Date: _____

Attest/Authenticated:

Approved As To Form:

City Clerk

City Attorney

EXHIBIT A

Legal Description of the Premises

Real property situate in the County of King, State of Washington, and described as follows:

The South 410 feet of the North 495 feet of the West 600 feet of the Southeast Quarter of the Southwest Quarter of Section 14, Township 21 North, Range 6 East, Willamette Meridian, in King County, Washington;

EXCEPT the following described parcel:

Beginning at the Northwest Corner of said subdivision; thence Southerly along the subdivision line 185 feet to the true point of beginning; thence continuing Southerly along the subdivision line 310 feet; thence Easterly parallel to the North line of said subdivision 100 feet; thence Northerly parallel to the West line of said subdivision 250 feet; thence Northwesterly to the true point of beginning;

SUBJECT to a more particular description of 248th Avenue S.E. as said roadway exists in its present location, not as indicated on existing short plat maps.

EXHIBIT B

Form of Statutory Warranty Deed

[See attached]

AFTER RECORDING RETURN TO:

Fikso Kretschmer Smith Dixon Ormseth PS
2025 First Avenue, Suite 1130
Seattle, WA 98121
Attn: Marc Kretschmer

STATUTORY WARRANTY DEED

Grantor: City of Black Diamond, a Washington municipal corporation

Grantee: Palmer Coking Coal Company, LLP, a Washington limited liability partnership

Abbreviated Legal Property Description: Portion of Section 14, Township 21 North, Range 6 East, situated in King County, WA (Full legal description follows below)

Assessor's Tax Parcel ID#: 142106-9152

GRANTOR, City of Black Diamond, a Washington municipal corporation, for and in consideration of the sum of FIFTEEN THOUSAND DOLLARS (\$15,000) and other good and valuable consideration the receipt of which is hereby acknowledged, hereby conveys and warrants to GRANTEE, Palmer Coking Coal Company, LLP, a Washington limited liability partnership, all of GRANTOR'S right, title, and interest in and to the following described real property (the "Premises") situated in the King County, Washington:

The South 410 feet of the North 495 feet of the West 600 feet of the Southeast Quarter of the Southwest Quarter of Section 14, Township 21 North, Range 6 East, Willamette Meridian, in King County, Washington;

EXCEPT the following described parcel:

Beginning at the Northwest Corner of said subdivision; thence Southerly along the subdivision line 185 feet to the true point of beginning; thence continuing Southerly along the subdivision line 310 feet; thence Easterly parallel to the North line of said subdivision 100 feet; thence Northerly parallel to the West line of said subdivision 250 feet; thence Northwesterly to the true point of beginning;

SUBJECT TO a more particular description of 248th Avenue S.E. as said roadway exists in its present location, not as indicated on existing short plat maps.

GRANTOR warrants that its title to the Premises is free from any defects or encumbrances, subject to certain easements recorded pursuant to that certain Easement Agreement of even date hereof, and further subject to any previous rights or encumbrances reserved by GRANTEE when it first sold the Premises to GRANTOR. Except as expressly stated herein and in the corresponding Purchase and Sale Agreement dated _____, 2018, the Premises is conveyed "as-is" with all faults and without any other representation or warranty by GRANTOR whatsoever, whether express or implied, as to its condition or its suitability or sufficiency for GRANTEE'S intended uses or purposes.

//

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//

DATED THIS _____ day of _____, 2018.

GRANTOR, CITY OF BLACK DIAMOND, WASHINGTON

By: Carol Benson, Mayor

)

) ss.

—

On this day before me personally appeared CAROL BENSON, to me known to be the Mayor of the City of Black Diamond, a Washington municipal corporation, who executed the within and foregoing instrument, and acknowledged the same to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument for and on behalf of said municipal corporation.

GIVEN my hand and official seal this _____ day of _____, 2018.

Name: _____

Notary Public in and for the State of Washington.

My commission expires: _____

Assessor's Tax Parcel ID#: 1421069152

EXHIBIT C

Form of Easement Agreement

[See attached]

After recording return to
Fikso Kretschmer Smith Dixon Ormseth PS
2025 First Avenue, Suite 1130
Seattle, WA 98121
Attn: Marc Kretschmer

Reference No. of related document: N/A

Grantor: Palmer Coking Coal Company, LLP

Grantee: City of Black Diamond

Abbreviated Legal Description: S 410 FT OF N 495 FT OF W 600 FT OF GL 4 LESS BEG NW COR
GL 4 TH S ALG W LN 185 FT TO TPOB TH CONT S ALG W LN 310 FT TH E PLT N LN 100 FT TH N
PLT W LN 250 FT TH NWLY TO TPOB LESS C/M RGTS
Additional Legal Description is on Exhibit A-1 of Document

Tax Parcel Account Number: 142106-9152

**TEMPORARY STORAGE EASEMENT
AND PERMANENT UTILITY EASEMENT AGREEMENT**

This Temporary Use Easement and Permanent Utility Easement Agreement (the "Agreement") is entered into this ____ day of _____, 2018, by and between PALMER COKING COAL COMPANY, LLP, a Washington limited liability partnership (the "Grantor"), and the CITY OF BLACK DIAMOND, a Washington municipal corporation (the "Grantee").

RECITALS

A. Grantor and Grantee entered into that certain Real Estate Purchase and Sale Agreement (the "Purchase Agreement") pursuant to which Grantee sold to Grantor the real property located in the City of Black Diamond, King County, Washington that is legally described on Exhibit A-1 attached hereto (the "Grantor Property").

B. In consideration of the mutual promises of the parties hereto and other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor and Grantee agree on behalf of themselves and their successors and assigns as follows:

AGREEMENTS

1. TEMPORARY STORAGE EASEMENT.

Grantor hereby grants to Grantee a temporary nonexclusive easement over, across, on, and through the southwest quarter of the Grantor Property (the "Temporary Storage Easement Area") as described on Exhibit B-1 attached hereto and as depicted on Exhibit B-2 attached hereto, including the right of ingress and egress, for purposes of storage and handling of soil, woody debris, compost, and street sweepings for a period of two years from the date hereof (the "Temporary Storage Easement"). Grantee agrees to cooperate in recording all papers necessary to document the termination of the Temporary Storage Easement upon expiration of such two-year period. Grantee agrees to maintain the area and remove soil barriers, soil, woody debris, compost, and street sweepings that Grantee has stored on the Premises upon the termination of this temporary easement. Grantee agrees that its use and occupation of the Temporary Storage Easement Area shall not unreasonably impede or impair Grantor's use and enjoyment of or access to the remainder of the Grantor Property.

3. PERMANENT UTILITY EASEMENT.

Grantor hereby grants to Grantee a perpetual nonexclusive 20-foot water and sewer utility easement across the Grantor Property (the "Utility Easement" and together with the Temporary Storage Easement, the "Easements"), as specifically described on Exhibit C-1 attached hereto and as depicted on Exhibit C-2 attached hereto (the "Utility Easement Area"). Grantee agrees that Grantor may, at Grantor's sole expense, relocate the easement and any corresponding utility facilities (the "Utility Facilities") to a new location on the Grantor Property, so long as such relocation does not unreasonably interfere with Grantee's use of the Utility Easement. In the event of a relocation, Grantor agrees to record, and Grantee agrees to cooperate in executing, all papers necessary to document the new location of the Utility Easement.

4. RESERVED RIGHTS.

Grantor may use the Grantor Property for any purpose that will not interfere with the exercise of the rights granted to Grantee hereunder.

5. MAINTENANCE OF UTILITY FACILITIES.

Grantee shall maintain the Utility Facilities in good condition, repair and working order. The cost of maintenance, repair or reconstruction of the Utility Facilities shall be borne by Grantee. When it becomes necessary to repair, clean or reconstruct the Utility Facilities, Grantee shall have a right of entry onto the Permanent Utility Easement Area.

6. RESTORATION.

Upon termination of the Temporary Storage Easement, the Grantee will remove any remaining soil, wood waste, compost, concrete soil bins, or other debris associated with the Grantee's use of the Temporary Storage Easement Area. Grantor's Property will be restored to a clean, useable condition. Final restoration will include, as appropriate, sod replacement in existing lawns, hydro-seeding in unimproved areas, and replanting or replacement of existing shrubs and

bushes, where such will not unreasonably interfere with the use of the Grantor's Property. Fences, rockeries, and concrete, asphalt and/or gravel driveways that do not unreasonably interfere with the use of the Grantor's Property will be repaired or replaced after the expiration of the Temporary Storage Easement.

7. INDEMNIFICATION.

Grantee does hereby release and shall indemnify, defend and hold Grantor harmless for, from and against all losses, liabilities, claims (including mechanics' or materialmen's' liens), costs (including attorneys' fees), actions or damages of any sort or nature whatsoever incurred as a result of or arising out of Grantee's use of the Easements or Grantee's exercise of its rights hereunder to the extent attributable to the negligent acts or omissions, willful misconduct or breach of this Agreement by Grantee, its servants, agents, employees and contractors. The indemnities granted hereby shall not apply to any losses, liabilities, claims, costs, actions or damages caused by the sole negligence of Grantor. In the event that any action is brought against Grantor by any employee of Grantee, the indemnification obligation of Grantee set forth in this Section shall not be limited by a limit on the amount or type of damages, compensation or benefits payable by or for Grantee under RCW Title 51, the Industrial Insurance Act, or any other employee benefit act. In addition, solely for the purpose of giving full effect to the indemnities contained herein and not for the benefit of Grantee's employees or any third parties, Grantee waives its immunity under RCW Title 51. Grantee acknowledges that this indemnification has been negotiated by the parties. Notwithstanding the foregoing, if a loss, liability, claim, cost, action or damage subject to this Section 7 is caused by the joint or concurrent negligence of Grantee and Grantor, Grantee shall only be responsible for such loss, liability, claim, cost action or damage in proportion to its negligence in the matter.

8. GENERAL.

The covenants of this Agreement are intended to and will run with the land and inure to the benefit of and bind future fee owners and mortgagees in possession of the Grantor Property. This Agreement may be modified only in writing, signed by authorized representatives of Grantor and Grantee. Any waiver hereunder must be in writing. In any arbitration or other legal proceeding to enforce or interpret this Agreement, the prevailing party will be entitled to recover its costs incurred therein, including court costs, other litigation costs, expert and consulting fees, and reasonable attorneys' fees. This Agreement will inure solely to the benefit of and bind the signatories hereto and their successors and assigns.

[Signature Page to Follow.]

EXECUTED as of the date first written above.

GRANTOR:

PALMER COKING COAL COMPANY, LLP,
a Washington limited liability partnership

By: _____

Name: William Kombol

Title: Operating Manager

GRANTEE:

CITY OF BLACK DIAMOND,
a Washington municipal corporation

By: _____

Name: Carol Benson

Title: Mayor

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that WILLIAM KOMBOL 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 Operating Manager of Palmer Coking Coal Company, LLP, a Washington limited liability partnership, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 2018.

(print or type name)
NOTARY PUBLIC in and for the State of _____, residing at _____
My Commission expires: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this day before me personally appeared CAROL BENSON, to me known to be the Mayor of the City of Black Diamond, a Washington municipal corporation, who executed the within and foregoing instrument, and acknowledged the same to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument for and on behalf of said municipal corporation.

GIVEN my hand and official seal this _____ day of _____, 2018.

(print or type name)
NOTARY PUBLIC in and for the State of _____, residing at _____
My Commission expires: _____

EXHIBIT A-1
LEGAL DESCRIPTION OF GRANTOR PROPERTY

Real property situate in the County of King, State of Washington, and described as follows:

The South 410 feet of the North 495 feet of the West 600 feet of the Southeast Quarter of the Southwest Quarter of Section 14, Township 21 North, Range 6 East, Willamette Meridian, in King County, Washington;

EXCEPT the following described parcel:

Beginning at the Northwest Corner of said subdivision; thence Southerly along the subdivision line 185 feet to the true point of beginning; thence continuing Southerly along the subdivision line 310 feet; thence Easterly parallel to the North line of said subdivision 100 feet; thence Northerly parallel to the West line of said subdivision 250 feet; thence Northwesterly to the true point of beginning;

SUBJECT to a more particular description of 248th Avenue S.E. as said roadway exists in its present location, not as indicated on existing short plat maps.

EXHIBIT B-1
LEGAL DESCRIPTION OF TEMPORARY STORAGE EASEMENT

The west 240 feet of the south 240 feet of the following described parcel:

The South 410 feet of the North 495 feet of the West 600 feet of the Southeast Quarter of the Southwest Quarter of Section 14, Township 21 North, Range 6 East, Willamette Meridian, in King County, Washington;

EXCEPT the following described parcel:

Beginning at the Northwest Corner of said subdivision; thence Southerly along the subdivision line 185 feet to the true point of beginning; thence continuing Southerly along the subdivision line 310 feet; thence Easterly parallel to the North line of said subdivision 100 feet; thence Northerly parallel to the West line of said subdivision 250 feet; thence Northwesterly to the true point of beginning;

SUBJECT to a more particular description of 248th Avenue S.E. as said roadway exists in its present location, not as indicated on existing short plat maps.

EXHIBIT B-2
DEPICTION OF TEMPORARY STORAGE EASEMENT

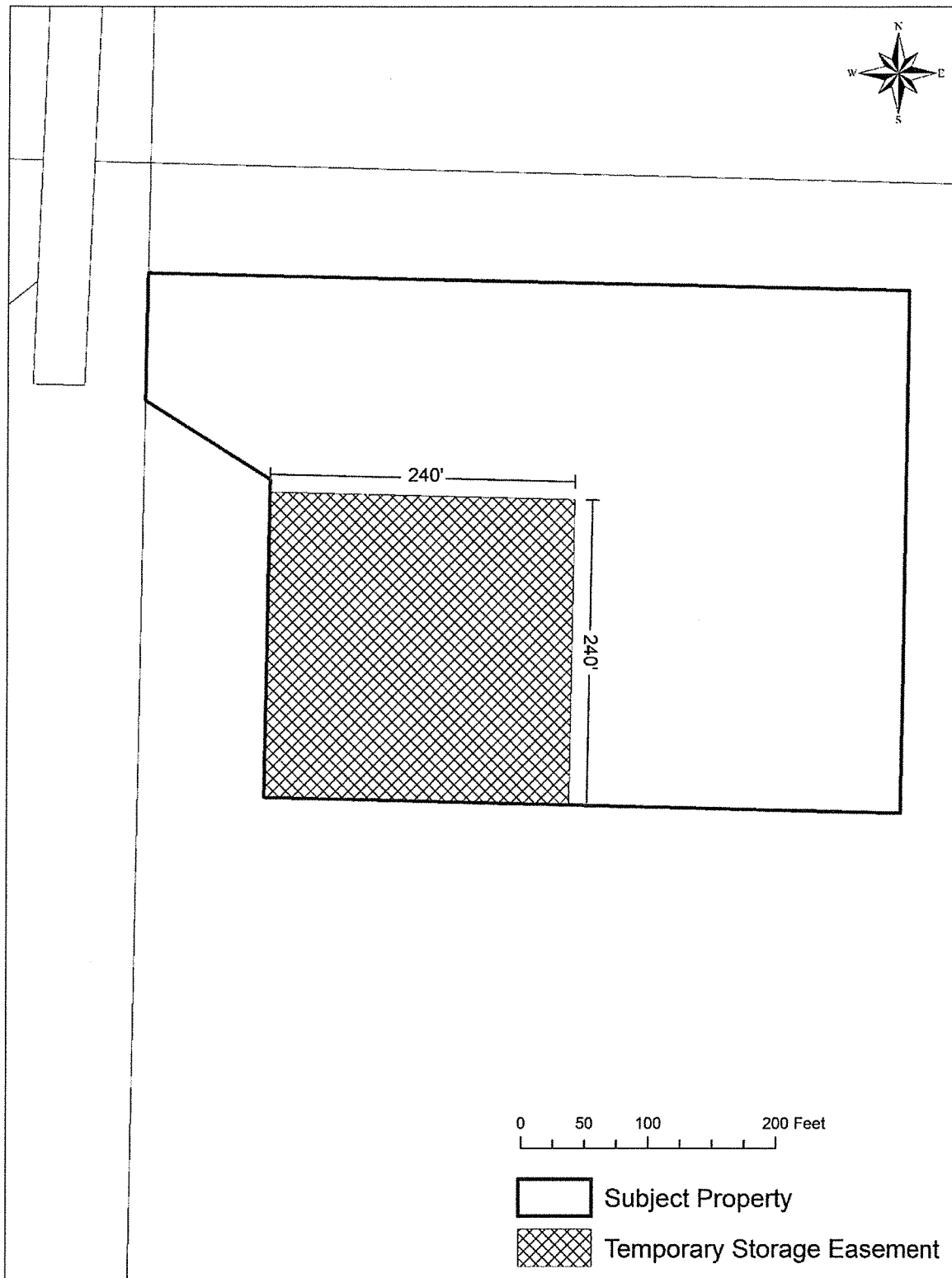


EXHIBIT C-1
LEGAL DESCRIPTION OF UTILITY EASEMENT

EXHIBIT A
LEGAL DESCRIPTION FOR UTILITY EASEMENT
KING COUNTY PARCEL NO. 1421069152

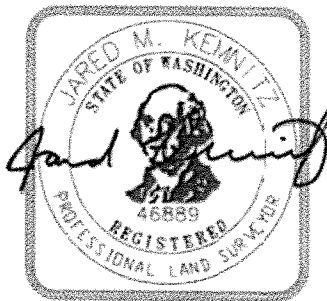
A STRIP OF LAND BEING IN THE FOLLOWING DESCRIBED PARCEL AND LYING IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 21 NORTH, RANGE 6 EAST, W.M.:

THE SOUTH 410.00 FEET OF THE NORTH 495.00 FEET OF THE WEST 600.00 FEET OF SAID SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 14;
EXCEPT THE FOLLOWING PARCEL;
BEGINNING AT THE NORTHWEST CORNER OF SAID SUBDIVISION;
THENCE SOUTHERLY ALONG THE SUBDIVISION LINE 185.00 FEET TO THE TRUE POINT OF BEGINNING;
THENCE CONTINUING SOUTHERLY ALONG THE SUBDIVISION LINE 310.00 FEET;
THENCE EASTERLY PARALLEL TO THE NORTH LINE OF SAID SUBDIVISION 100.00 FEET;
THENCE NORTHERLY PARALLEL TO THE WEST LINE OF SAID SUBDIVISION 250.00 FEET;
THENCE NORTHWESTERLY TO THE TRUE POINT OF BEGINNING.

SAID STRIP OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE SOUTH 20.00 FEET OF THE NORTH 105.00 FEET OF THE WEST 540.00 FEET OF SAID SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 14.

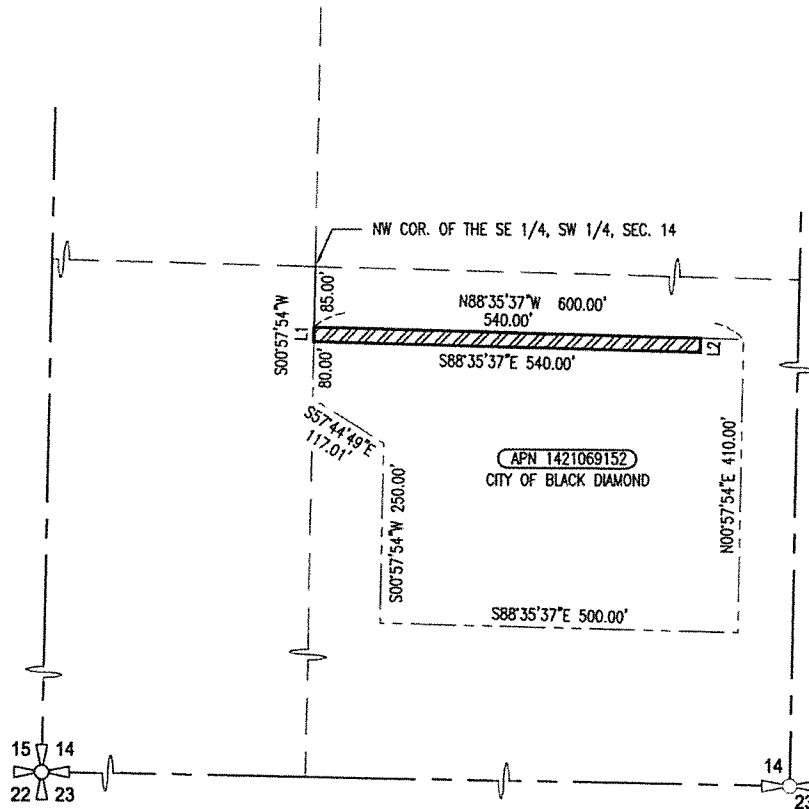
UTILITY EASEMENT CONTAINING 10,800 SQUARE FEET, MORE OR LESS.



7-17-18

EXHIBIT C-2
DEPICTION OF UTILITY EASEMENT
APN 1421069152

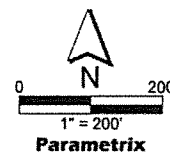
SE 1/4 OF THE SW 1/4 OF SECTION 14, T. 21 N., R. 6 E., W.M.
 KING COUNTY, WASHINGTON



EASEMENT AREA

10,800 SQ. FT.

LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	20.00	S00°57'54\"W
L2	20.00	N00°57'54\"E

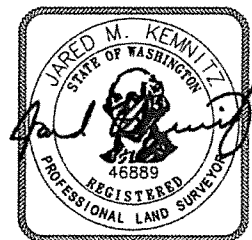


LEGEND

	EASEMENT AREA
	PROPERTY LINE
	SECTION LINE
	SIXTEENTH LINE
	KING COUNTY TAX PARCEL NUMBER

BASIS OF BEARINGS:

PER RECORD OF SURVEY BY KRAMER, CHIN & MAYO, INC.,
 RECORDED UNDER AUDITOR'S FILE NO. 8111059010, DATED
 NOV. 5, 1981.



7-17-18

EXHIBIT D

Form of Termination Statement

[See attached]

After Recording Return to:

Fikso Kretschmer Smith Dixon Ormseth PS
2025 First Avenue, Suite 1130
Seattle, WA 98121
Attn: Marc Kretschmer

Reference Number of Related Document: [_____]

Grantor: Palmer Coking Coal Company, LLP

Grantee: City of Black Diamond

TERMINATION OF EASEMENT FOR TREATED EFFLUENT AND DISCHARGE

THIS TERMINATION OF EASEMENT FOR TREATED EFFLUENT AND DISCHARGE (the "Termination"), dated as of _____, 2018, is entered into by and between Palmer Coking Coal Company, LLP, a Washington limited liability partnership ("Palmer"), and the City of Black Diamond, a Washington municipal corporation (the "City").

Palmer, as grantor, and City, as grantee, are the parties to that certain Easement for Treated Effluent and Discharge recorded on June 19, 1981 under King County Recording No. _____ (the "Easement"). All obligations of the parties under the Easement have been satisfied, the City no longer requires the Easement.

The parties hereby terminate the Easement effective as of the date of recording this Termination.

[Signature pages follow]

CITY:

CITY OF BLACK DIAMOND,
a Washington municipal corporation

By: _____

Name: _____

Title: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that CAROL BENSON 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 Mayor of THE CITY OF BLACK DIAMOND, a municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 20__.

(print or type name)

NOTARY PUBLIC in and for the State of
Washington, residing at _____

My Commission expires: _____

PALMER:

PALMER COKING COAL COMPANY, LLP,
a Washington limited liability partnership

By: _____

Name: William Kombol

Title: Operating Manager

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that WILLIAM KOMBOL 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 Operating Manager of PALMER COKING COAL, LLP, a Washington limited liability partnership, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 20__.

(print or type name)

NOTARY PUBLIC in and for the State of
Washington, residing at _____

My Commission expires: _____

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: Resolution authorizing the Mayor to execute an amendment to the Water Quality Improvement Project Grant Agreement with King County for the North Commercial and SR 169 Stormwater Facility Treatment project	Agenda Date: October 4, 2018 AB18-086	
	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): 0 Fund Source: King County Timeline: Expires February 28, 2019	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; Grant Amendment; Resolution No. 16-1099		
SUMMARY STATEMENT: <u>CONSENT AGENDA</u> The City received a Water Quality Improvement Project grant from King County in 2016 (Resolution 16-1099). This grant was to be paired with other grant funding to treat stormwater runoff in the SR 169 and north commercial area along SR 169. The City has received a notice of award from the Department of Ecology for the remainder of the funds. There is an opportunity to treat stormwater runoff closer to the source rather than piping stormwater to the City's Ginder Creek property for treatment. This new method would be at least as effective and likely less costly. This amendment reflects this change of scope and would allow the City to move forward with the purchase of property for this treatment. The City will also need to amend the scope for the Department of Ecology grant when that grant agreement is ready for processing. FISCAL NOTE (Finance Department): The amount of the grant from King County does not change with this amendment.		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: Public Works Committee recommends forwarding to Council for their approval.		
RECOMMENDED ACTION: A motion to adopt Resolution No. 18-1273 authorizing the Mayor to execute an amendment to the Water Quality Improvement Project Grant Agreement with King County for the North Commercial and State Route 169 Stormwater Treatment Facility project.		

RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
October 4, 2018		

RESOLUTION NO. 18-1273

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO EXECUTE AN
AMENDMENT TO THE WATER QUALITY IMPROVEMENT
PROJECT GRANT AGREEMENT WITH KING COUNTY
FOR THE NORTH COMMERCIAL AND STATE ROUTE 169
STORMWATER TREATMENT FACILITY**

WHEREAS, the City executed a Water Quality Improvement Project Grant Agreement with King County for the North Commercial and State Route 169 Stormwater Treatment Facility in 2016 through Resolution No. 16-1099; and

WHEREAS, City staff requested an amendment from King County to this Grant Agreement to change the Scope of Work; and

WHEREAS, King County has provided an amendment to the Grant Agreement;

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

Section 1. The Mayor is hereby authorized to execute an amendment to the Water Quality Improvement Project Grant Agreement with King County for the North Commercial and State Route 169 Stormwater Treatment Facility 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 4TH DAY OF OCTOBER
2018.**

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk



Water Quality Improvement Project Grant Program Amendment

This is an Amendment to the Agreement between King County and City of Black Diamond, hereinafter "THE PARTIES", regarding the project **North Commercial and State Route 169 Stormwater Treatment Facility**, with start date July 12, 2016 and end date February 28, 2019 for the amount of \$243,643.

As agreed by THE PARTIES in Section 3, Paragraph G of the aforementioned agreement...
"This Agreement may be amended at any time by written concurrence of the parties and will terminate upon fulfillment of all obligations contained herein."

The said Agreement is hereby amended as of the last date of signature below.

TYPE OF AMENDMENT

- ☐ Time Extension
☒ Scope Amendment

- ☐ Budget Amendment
☐ Other _____

SUMMARY

With this amendment, the scope of work is changed--from initial proposal of final design and construction of storm pipe and constructed wetlands, to acquisition of property for future stormwater treatment. The new parcel will be in the same area as the original plan, with a goal of removing pollutants before stormwater from SR 169 near North Commercial reaches Ginder Creek.

This change is being made due to delay in additional funds from a Department of Ecology grant, which will pay for the stormwater treatment, as well as additional construction that will add two roundabouts (and additional impervious surface) in this area in the near future.

The property to be purchased with these grant funds is to be owned and maintained by the City Black Diamond. This property shall be used for the future siting of a constructed wetland, or equivalent system, to provide basic and enhanced stormwater quality treatment of two sub-basins contributing 11.89 acres of untreated stormwater runoff.

See attached revised scope of work.

ADDITIONAL CONDITIONS

- A. THE PARTIES signing this Amendment agree that, as of the last date of signature below, any and all deletions and/or additional provisions stated herein effectively modify the said Agreement and become enforceable as part of the Agreement according to its Terms and Conditions.
- B. This Amendment can only be revoked or modified by further written and jointly signed amendment as to form.

RECIPIENT _____ Date _____

Name:

Title:

KING COUNTY _____ Date _____

Water Works Grants Administrator, King County Wastewater Treatment Division

Revised Scope of Work:

Tasks and Activities	Measurable Results/Deliverables	Timeframe
<i>Example:</i> TASK 1: Provide educational programs on water quality topics	<i>Example:</i> Staff members will provide 1-hour educational programs in 15 classrooms, reaching 350 students, for schools in incorporated areas of the Sammamish Watershed.	<i>Example:</i> October 2016-May 2017
TASK 1: Purchase of property for stormwater treatment facilities	The City will procure property near the intersection of SR 169 and Roberts Drive to be used for future stormwater treatment of two sub-basins contributing 11.89 acres of untreated stormwater runoff.	October 2018-February 2019
Permits/Permissions (if applicable)	None required for this phase of project	

RESOLUTION NO. 16-1099

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO EXECUTE A WATER
QUALITY IMPROVEMENT PROJECT GRANT
AGREEMENT WITH KING COUNTY FOR THE NORTH
COMMERCIAL AND SR 169 STORMWATER TREATMENT
FACILITY PROJECT**

WHEREAS, the City has identified the need to treat stormwater runoff from State Route 169 and the north commercial area in the Capital Improvement Plan; and

WHEREAS, the City has completed design for the North Commercial and SR 169 Stormwater Treatment Facility project; and

WHEREAS, the City was selected for a Water Quality Improvement Project Grant in the amount of \$243,643; and

WHEREAS, Public Works staff will continue to seek additional grants needed for fully funding this project; and

WHEREAS, an agreement with King County is required to establish the terms of funding the North Commercial and SR 169 Stormwater Treatment Facility project;

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

Section 1. The Mayor is hereby authorized to execute the Water Quality Improvement Project Grant Agreement with King County for the North Commercial and SR 169 Stormwater Treatment Facility 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 16TH DAY OF JUNE, 2016.

CITY OF BLACK DIAMOND:



Carol Benson, Mayor

Attest:



Brenda L. Martinez, City Clerk



Water Quality Improvement Project Agreement Cover Page

Year: 2015-2016

Application Cycle: Round 1, Council-allocated funds

Project Name: North Commercial and State Route 169 Stormwater Treatment Facility

Recipient: City of Black Diamond

Funding Amount: \$243,643

Project Summary Supports final design and construction of wetland and infiltration swale to address stormwater outfall in Green River/Soos Creek basin to provide treatment prior to discharge to Ginder Creek.

Primary Contact: Scott Hanis

Phone: 360-886-5713

Email: shanis@ci.blackdiamond.wa.us

Start Date: July 12, 2016

End Date: February 28, 2019



King County

Water Quality Improvement Project Grant Agreement

**AGREEMENT
between
CITY OF BLACK DIAMOND
and
KING COUNTY**

This is an Agreement between **City of Black Diamond**, hereinafter the “RECIPIENT” and King County, a political subdivision of the state of Washington, hereinafter the “COUNTY.” **This Agreement is effective as of the date of the COUNTY signatory.**

The purpose of this Agreement is to set forth the terms, conditions, and the legal and administrative relations that apply to the RECIPIENT in exchange for financial assistance in carrying out a proposed project entitled **North Commercial and State Route 169 Stormwater Treatment Facility**, hereinafter the “PROJECT.”

Section 1. Background and Recitals:

- A. RECIPIENT description: City of Black Diamond, a municipality located in southeast King County
- B. Proposed PROJECT benefit or improvement to water quality and/or the regional wastewater treatment system and its ratepayers: Supports final design and construction of wetland and infiltration swale to address stormwater outfall in Green River/Soos Creek basin to provide treatment prior to discharge to Ginder Creek.
- C. The COUNTY plans and proposes to remunerate the RECIPIENT for the purpose described in Subsection B above in an amount up to, but not exceeding \$243,643, hereinafter the “AWARD.”
- D. This AWARD is made with the understanding that the RECIPIENT will complete the PROJECT as outlined in the Scope of Work (Exhibit A) and will fulfill reporting requirements as described under the Terms and Conditions of this Agreement.
- E. The RECIPIENT plans to contribute to this PROJECT a cash and/or in-kind match valued at \$676,357, to be verified in submitted PROJECT reports.

Section 2. Terms and Conditions:

- A. The PROJECT shall be in accordance with the tasks and activities specified in the Scope of Work (Exhibit A). Any modifications must be requested in an Agreement Amendment

and be approved by the Director of the Wastewater Treatment Division (WTD) in the COUNTY's Department of Natural Resources and Parks.

- B. The COUNTY will, upon execution of this Agreement, establish procedures to allow payment to the RECIPIENT of all eligible expenses for approved activities up to the limit of the AWARD. Payments are on a reimbursement basis; except in special circumstances, at the discretion of the COUNTY, where advances of a portion of the AWARD may be made. Twenty percent (20%) of the AWARD amount will be withheld by the COUNTY until receipt of the final Quarterly Progress and Expense Reports and the Closeout Reports.
- C. The RECIPIENT's expenditures of AWARD funds shall be separately identified in the RECIPIENT's accounting records. If requested, the RECIPIENT shall comply with other reasonable requests made by the COUNTY with respect to the manner in which PROJECT expenditures are tracked and accounted for in the RECIPIENT's accounting books and records. The RECIPIENT shall maintain such records of expenditures as may be necessary to conform to generally accepted accounting principles, and to meet the requirements of all applicable state and federal laws.
- D. The COUNTY will reimburse RECIPIENT for expenses on a quarterly basis, following receipt and approval of Quarterly Progress Reports, Quarterly Expense Reports, and Closeout Reports. Twenty percent (20%) of the AWARD will be held back until a close-out verifies fiscal and programmatic compliance with the terms and conditions of the agreement.
 - 1. The RECIPIENT shall be responsible for submitting the following PROJECT progress reports: Quarterly Progress Reports (Exhibit E), Quarterly Expense Reports (Exhibit F or G), Financial Closeout Report (Exhibit H), and Narrative Closeout Report (Exhibit I); including backup documentation such as photos, copies of articles, and financial backup such as copies of receipts.
 - 2. Quarterly Progress Report (Exhibit E) and Quarterly Expense Report (Exhibit F or G) shall be submitted together.
 - a. Each Quarterly Progress Report shall be presented in the format shown in Exhibit E of this Agreement; each Quarterly Expense Report shall be presented in the format shown in Exhibit F of this agreement.
 - b. The Quarterly Progress and Quarterly Expense reports are due thirty (30) days after the end of each quarter.
 - c. If no expenses are made during a quarter, no Expense Report is needed. However, the Quarterly Progress Report should still be submitted and indicate that no expenses were made during that time period.

- d. The Quarterly Expense Report should detail expenses and include backup documentation of expenses.
- 3. Financial Closeout Report (Exhibit H) and Narrative Closeout Report (Exhibit I) shall be submitted together, which will include closeout documentation.
 - a. The Final Closeout reports are due thirty (30) days after the end date of the contract or not later than February 28, 2019.
- E. Failure to submit the aforementioned Quarterly Report on the PROJECT progress within ninety (90) days of the due date may be cause for the COUNTY to terminate this agreement for non-performance. Termination would require the return of any funds advanced but not already spent executing the PROJECT, as well as forfeiture of AWARD funds for activities not completed by termination date.
- F. Failure to provide all of aforementioned documentation may result in the need to withhold part or all of the AWARD.
- G. Costs eligible for payment shall be limited to those costs identified in the Budget (Exhibit B) and incurred during the effective dates of this Agreement.
- H. Any and all activities to be funded by this Agreement to the RECIPIENT shall be completed by February 28, 2019. If needed, an Agreement Amendment may be granted to extend the terms of the contract beyond the end date, adjust the scope of work, or change the budget details (but not increase the total AWARD amount), conditioned upon approval by KING COUNTY. The extension must be requested and approved at least sixty (60) days in advance of the original end date.
- I. The RECIPIENT agrees to acknowledge the COUNTY in all media, publications, and signage that are produced as part of the PROJECT. This includes press releases, public service announcements, posters, flyers, signage, Web pages, blogs, and videos. The RECIPIENT will use the wording provided in Exhibit C of this Agreement (Credit and Disclaimers).

Section 3. Legal and Administrative Relations:

- A. The RECIPIENT shall maintain such records of expenditures as may be necessary to conform to generally accepted accounting principles and to meet the requirements of all applicable state and federal laws. The RECIPIENT shall maintain and submit to the COUNTY any such records as the COUNTY may require to conduct any audit of the PROJECT it may elect to conduct or to substantiate expenditures paid for by this AWARD. The RECIPIENT shall maintain and retain books and records related to the Agreement for at least three (3) years after the termination of said Agreement.
- B. The COUNTY's financial assistance to the RECIPIENT shall be construed by the parties as a special disbursement to the RECIPIENT to fund activities, as described herein that

generally benefit the COUNTY's efforts to leverage or complement the water quality mission of the regional wastewater system. The COUNTY's sole obligation under this agreement shall be to provide funds to the RECIPIENT and this agreement shall not be construed as a contract for services between the RECIPIENT and the COUNTY, or as establishing a principal agent relationship between the COUNTY and the RECIPIENT. No joint venture or partnership is formed as a result of this Agreement.

- C. The RECIPIENT shall be solely responsible for the recruiting, training, and supervision of its employees and volunteers. Individuals hired and paid by the RECIPIENT shall not, in any event, be construed to be employees of, or contractors to, the COUNTY and the RECIPIENT shall indemnify and hold harmless the COUNTY from any and all claims arising from any contention that said individuals are employees of, or contractors to, the COUNTY. This condition shall survive the termination of this Agreement. All actions undertaken under the funding provided by the terms of this agreement are, as between the COUNTY and the RECIPIENT, the sole responsibility of the RECIPIENT. No employees, agents, volunteers, or contractors of RECIPIENT shall be deemed, or represent themselves, to be employees of the COUNTY.
- D. RECIPIENT agrees for itself, its successors, assigns or by others including, without limitation, all persons directly or indirectly employed by RECIPIENT, or any agents, contractors, subcontractors, consultants, subconsultants, volunteers, licensees or invitees of RECIPIENT, to defend, indemnify, and hold harmless the COUNTY, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof for injury to persons, death, or property damage which is caused by, arises out of, or is incidental to RECIPIENT's exercise of rights, privileges, and obligations under this Agreement, except for the COUNTY's sole negligence. RECIPIENT's obligations under this section shall include, but not be limited to all of the following: (i) The duty to promptly accept tender of defense and provide defense to the COUNTY with legal counsel acceptable to the COUNTY at RECIPIENT's own expense; (ii) Indemnification of claims made by RECIPIENT's own employees or agents; and (iii) Waiver of RECIPIENT's immunity under the industrial insurance provisions of Title 51 R.C.W. but only to the extent necessary to indemnify the COUNTY, which waiver has been mutually negotiated by the Parties.

In the event it is necessary for the COUNTY to incur attorney's fees, legal expenses, or other costs to enforce the provisions of this section, all such fees, expenses, and costs shall be recoverable from RECIPIENT. The provisions of this Section 3.D shall survive the expiration, abandonment, or termination of this Agreement.

- E. Nothing in this Agreement shall be construed as prohibiting the RECIPIENT from undertaking or assisting projects developed outside the purview of this Agreement, or entering into agreements with other parties to undertake said projects in accordance with whatever terms and conditions may be agreed to between the RECIPIENT and other parties.

- F. The COUNTY shall be under no obligation to continue this agreement and may request partial or full reimbursement of payments it made to the RECIPIENT should the RECIPIENT fail to perform according to the terms and conditions of this Agreement, whether or not failure to perform is within the RECIPIENT's control.
- G. This Agreement may be amended at any time by written concurrence of the parties through a formalized Amendment Agreement Form and will terminate upon fulfillment of all obligations contained herein.
- H. The COUNTY may terminate this Agreement immediately for cause. If this Agreement is terminated the RECIPIENT shall return any unused portion of the funds advanced up to the date of termination.
- I. Invalidity or unenforceability of one or more provisions of this Agreement shall not affect any other provision of this Agreement.
- J. In its performance under this Agreement the RECIPIENT shall not discriminate against any person on the basis of sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression, age except by minimum age, and retirement provisions, unless based upon a bona fide occupational qualification, and the RECIPIENT shall not violate any of the terms of chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, or any other applicable federal, state, or local law or regulation regarding nondiscrimination in employment.
- K. Authority: Representations and Warranties. Each signatory to this Agreement represents and warrants that he or she has full power and authority to execute and deliver this Agreement on behalf of the entity for whom he or she is signing.
- L. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all counterparts together shall constitute but one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile transmission, by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.
- M. The effective date of this agreement is the date of COUNTY signatory.

AGREEMENT SIGNATURE PAGE

CITY OF BLACK DIAMOND by:

Signature: Carol Benson

Carol Benson, Mayor

Date: 6/17/16

KING COUNTY by:

Signature: Gunars Sreibers

Gunars Sreibers, Acting Division Director, Wastewater Treatment Division

Date: 7/12/16

EXHIBIT A: SCOPE OF WORK

The task(s) set forth below summarize the RECIPIENT's activities to be performed under this agreement to complete the PROJECT. All activities in the following tasks, including deliverables, must be completed by the expiration date of this agreement unless otherwise modified through an Agreement Amendment Form and approved by the COUNTY in writing.

Any work performed or costs incurred prior to the effective date of this agreement will be at the sole expense of the RECIPIENT.

Tasks and Activities	Measurable Results/Deliverables	Timeframe
Design and Permitting	Ensure environmental protection; implementation of good science and standards	
Construction of storm pipe to collect stormwater	Intercept the polluted stormwater before it discharges to Ginder Creek and transport it 2000 ft. downstream to a great site for treatment	Summer 2017 or 2018
Construct a wet pond for primary settling and a large shallow wetland for biological treatment	The constructed wetland will provide a natural highly effective treatment system to remove pollutants before the stormwater reaches Ginder Creek	Summer 2017 or 2018
Project Management and Inspection	The City's oversight will ensure that state law is followed, construction is completed according to the contract and plans, reporting and records are properly kept and permit conditions are met	2016 - 2018
Permits/Permissions	Coordination with WSDOT for work within the State Right of Way; hydraulic permit approval from the state department of Fish and Wildlife for a storm pipe under or over Ginder Creek and possibly a new stream bank protection wall along Roberts Drive	Winter 2016

EXHIBIT B: BUDGET

Costs are limited to those approved by the COUNTY in the current Budget. Costs should be reasonable and necessary to carry out the task. All activities and PROJECT expenditures must be completed according to this agreement unless otherwise modified through an Agreement Amendment Form and approved by the COUNTY in writing.

Any work performed or costs incurred prior to the effective date of this agreement will be at the sole expense of the RECIPIENT.

An Agreement Amendment must be completed and approved to change a scope of work, request an extension, or if the budget might deviate more than ten percent (10%) (of Grand Total). For more information, contact your grant administrator.

A	B	C	D	E	F
BUDGET CATEGORY	ITEMS: Description (rate or unit x quantity)	GRANT AWARD	CASH MATCH	IN-KIND MATCH	SOURCE OF MATCH (indicate if pending or secured)
Staff salaries & benefits: for Project management, inspection services during construction and project administration	Public Works Director, Capital Project Manager and Utilities Supervisor average \$75/hr. x 1,200 hours	[\$24,300] (27% of \$90,000)		City is providing the property but cost is not accounted for in project budget	Secured
<i>Salary and Benefits Subtotal</i>		\$24,300			
Project supplies, materials, and equipment	Included in the construction bid below				
Construction by contract	Construction is currently estimated @ \$775,000	[\$201,500] 26% of \$775,000	[\$676,357] Opportunity fund, State leg, and WRIA 9		State legis. and WRIA 9 funding not secured yet
Engineering and permitting	Currently estimated at \$55,000	[\$17,843] 32%			
<i>Direct Costs Subtotal</i>		\$219,343	\$676,357		
<i>Project Subtotal (Salary and Benefits Subtotal + Direct Costs Subtotal)</i>		\$243,643	\$676,357		
<i>Overhead (not more than 10% of Grand TOTAL)</i>					
<i>Grand TOTAL</i>		\$243,643	\$676,357		

EXHIBIT C: ACKNOWLEDGEMENTS AND DISCLAIMERS



King County

Department of
Natural Resources and Parks
Wastewater Treatment Division

Logo and logo standards: For electronic versions of the official logos and logo standards, contact your grant administrator. **The above logo must be included on all printed documents and electronic media** produced in carrying out the PROJECT. This includes signage, posters, documents, brochures, flyers, newsletters, newspaper advertising, Web pages, blogs, and videos.

Credit for materials produced as part of the PROJECT: Acknowledge PROJECT funding by including the following sentence with the logo:

This project is funded by the King County Wastewater Treatment Division

If your PROJECT has multiple funders, it can say:

This project is funded in part by the King County Wastewater Treatment Division

Disclaimer language: For items where opinions or advice or a list of organizations or businesses are included in the copy (e.g., an interpretive panel, a guidebook, or a directory), please add the following disclaimer sentence:

The content herein does not constitute an endorsement by King County government, its employees, or its elected and appointed officials.

EXHIBIT D: AGREEMENT TERMS AND PROCEDURES

ACKNOWLEDGMENT: Please acknowledge KING COUNTY in all written and electronic media (publications, signage, press releases, public service announcements, posters, flyers, Web pages, videos, PowerPoint presentations, etc.). Refer to Exhibit C for further information.

ADVANCE: Advance payments are allowed in some cases at the discretion of the COUNTY; documentation of payments made from advances shall be submitted to the COUNTY prior to any further requests for AWARD funds.

AGREEMENT AMENDMENT: This document must be completed and approved to change a scope of work, request an extension, or if the budget (Exhibit B) might deviate in any PROJECT cost categories by an amount equal to or greater than ten percent (10%) of the total AWARD amount. This form is available from your grant administrator.

BALANCE OF AWARD: Any amount of your AWARD not spent on this PROJECT must be returned to KING COUNTY, if an advance was issued.

CLOSEOUT REPORTS, FINANCIAL AND NARRATIVE: These reports document the successful completion of the PROJECT according to the scope of work. The Financial and Narrative Closeout Reports are due thirty (30) days after the end of your agreement period. Refer to Exhibit H for more information.

Include in the final report:

1. Financial Closeout Report (Exhibit H) documenting the records of expenditures for the PROJECT (reconcile your project expenses, award, cash, and in-kind match).
2. Narrative Closeout Report (Exhibit I) documenting the successful completion of the PROJECT according to the scope of work. The final report will include a narrative, outreach materials, copies of communication materials, and tools created for and about the PROJECT.

ELIGIBLE CHARGES: Only expenses in the categories listed in the budget page of this grant agreement can be covered by this AWARD and only up to the indicated amount without prior authorization.

FINANCIAL RECORDS: Maintain a record of your expenditures to conform to generally accepted accounting principles. Retain records for at least three (3) years after the end date of your agreement. It is highly recommended that if you use a computer to track your project expenses you assign a code to this grant. If you keep track of your expenses manually, you will need to make copies of your receipts or other "manual" documents. This way, you will be able to document your expenses.

MATCH: Keep track of cash and/or in-kind match amount as it is described in your budget (Exhibit B) because it must be documented in your Financial Closeout Report (Exhibit H).

MILESTONE: Milestones are considered significant actions or events marking important progress or change in the stage of development of the PROJECT.

QUARTERLY PROGRESS REPORTS (Exhibit E): These reports include a task summary and provide a status report on the progress of tasks identified in the scope of work. It also quantifies the amount spent to date and percent of the PROJECT completed. The quarterly reports are due thirty (30) days after the end of each quarter.

QUARTERLY EXPENSE REPORTS (Exhibit F or G): This form, submitted along with a Quarterly Progress Report, is for reimbursement of costs each quarter.

SCOPE OF WORK (EXHIBIT A): Keep track of your activities as they relate to the scope of work you provided. You will have to document the progress when submitting your Quarterly Reports (Exhibit E) and Closeout Report (Exhibit I).

START DATE: The start date of this agreement is the date of the COUNTY signatory. Expenses can be posted as of the start date of your agreement but not sooner. (Same thing as Effective Date.)

EXHIBIT E: QUARTERLY PROGRESS REPORT



Water Quality Improvement Project Quarterly Progress Report

Date _____
Recipient _____
(organization) _____
Contact Name _____
Phone _____ Email _____
Address _____
City, State, Zip Code _____
Request No. _____ Dates _____
Project Name _____ (beginning & end date for this claim) _____

<i>Instructions: Complete this form and submit together with Quarterly Expense Report to Grant Administrator</i>	
Tasks/Activities (from Scope of Work)	Measurable Results/Deliverables progress/status/percentage completed (note dates) (from Scope of Work)
1)	
2)	
3)	

4)	
5)	

Briefly describe for this time period, in five lines or less per topic:

Project Successes

Obstacles and Challenges

Please email inquiries and all documents to:

Elizabeth Loudon, Grant Administrator

Wastewater Treatment Division

Phone: 206-477-4297 Email: water.grants@kingcounty.gov

EXHIBIT F: QUARTERLY EXPENSE REPORT



King County

Water Quality Improvement Project Quarterly Expense Report

Date _____
Recipient _____
 (organization) _____
Contact Name _____
Phone _____ **Email** _____
Address _____
City, State, Zip Code _____

Request No. _____ **Dates** _____
 (beginning & end date for this claim)
Project Name _____

Instructions: Complete this spreadsheet in Excel and attach your financial/accounting system reports to document all expenses.

Budget Line Item (From Exhibit B Budget, use latest approved amendment)	Budgeted (From Exhibit B Budget, use latest approved amendment)	Current Request	Amount of all Prior Requests (Do not include advances as a line item)	Award Balance Remaining
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
TOTAL	\$	\$ -	\$ -	\$ -
GRAND TOTAL		\$ -		
THIS REQUEST		\$ -		

Please email inquiries and all documents to:
 Elizabeth Loudon, Grant Administrator
 Wastewater Treatment Division
 Phone: 206-477-4297 Email: water.grants@kingcounty.gov

EXHIBIT G: QUARTERLY EXPENSE REPORT—ADVANCE



Water Quality Improvement Project Quarterly Expense Report with Advance

Date _____
Recipient (organization) _____
Contact Name _____
Phone _____ **Email** _____
Address _____
City, State, Zip Code _____
Request No. _____ **Dates** _____
 (beginning & end date for this claim)
Project Name _____

Instructions: Complete this spreadsheet in Excel and attach your financial/accounting system reports to document all expenses. Advances will only be given in specific circumstances and need prior approval from grant administrator.

Budget Line Item (From Exhibit B Budget, use latest approved amendment)	Budgeted (From Exhibit B Budget, use latest approved amendment)	Current Request	Advance Reconciliation (Expenses covered by last advance)	Amount of all Prior Requests (Do not include advances as line item)	Award Balance Remaining
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
TOTAL	\$	\$ -	\$ -	\$ -	\$ -
ADVANCE REQUESTED (For next period)		\$ -			\$ -
GRAND TOTAL		\$ -			\$ -
ADVANCE FROM LAST INVOICE			\$ -		\$ -
ADJUSTED FOR ADVANCE FORFEITURE (Advance balances do not carry forward)			\$ -		\$ -
THIS REQUEST		\$ -			\$ -
ADVANCE EXPLANATION:					

Please email inquiries and all documents to:
 Elizabeth Loudon, Grant Administrator
 Wastewater Treatment Division
 Phone: 206-477-4297 Email: water.grants@kingcounty.gov

EXHIBIT H: FINANCIAL CLOSEOUT REPORT



Water Quality Improvement Project Financial Closeout Report

Project Name _____
Recipient _____
Total Award _____
Project Contact _____
Address _____
City/State _____
Phone _____
Email _____
Grant Agreement Dates *Start Date – End Date* _____
Date Reporting *Today's Date* _____

Instructions: Complete the budget table below comparing your proposed budget to actual spending within the project and sign. Include receipts and/or auditable accounting details for all costs incurred for the project. This may include ledger-based copies, cancelled checks, and payroll records.

BUDGET ITEM	GRANT BUDGET	GRANT ACTUAL	CASH MATCH PROPOSED	CASH MATCH ACTUAL	IN-KIND MATCH PROPOSED	IN-KIND MATCH ACTUAL
Staff salaries & benefits						
<i>Salaries & Benefits Sub Total</i>						
Freelance workers and consultants						
Project supplies, materials, and equipment						
Commercial services						
Transportation						
Other costs						
<i>Direct Costs Sub Total</i>						
<i>Overhead (10% of Grand Total max)</i>						
Grand TOTAL						

Provisions

Please complete and sign below.

By signing this financial closeout report, I _____, an authorized representative of the above named RECIPIENT, confirm that I have examined the information contained herein and that, to the best of my knowledge, it is a true and accurate account of all the financial expenses and in-kind contributions incurred by the above named PROJECT in the course of fulfilling the conditions of the Agreement between City of Black Diamond and KING COUNTY.

This report contains financial documents from _____ to _____ (dates).

I hereby acknowledge that there are no further expenses associated with this PROJECT, nor any pending or future claims to the COUNTY and that the COUNTY is not liable for any expenses not documented in the budget. I understand that City of Black Diamond is fully bound by the provisions of the Agreement, including but not limited to, the return of COUNTY funds that are unspent or whose spending is unsubstantiated according to the Terms of the Agreement, and the right to examine records. I further understand that the COUNTY, upon examining final budget and closeout reports, submitted by the RECIPIENT will determine the amount of the balance due to the RECIPIENT.

Signature: _____

RECIPIENT printed name and title:

Date: _____

Please email inquiries and all documents to:

Elizabeth Loudon, Grant Administrator

Wastewater Treatment Division

Phone: 206-477-4297 Email: water.grants@kingcounty.gov

EXHIBIT I: NARRATIVE CLOSEOUT REPORT



King County

Water Quality Improvement Project Narrative Closeout Report

Project Name	_____
Recipient	_____
Total Award	_____
Project Contact	_____
Address	_____
City/State	_____
Phone	_____
Email	_____
Grant Agreement Dates	Start Date – End Date
Date Reporting	Today's Date

Instructions: In narrative format, summarize the project accomplishments and successes, regional benefits, project performance, obstacles and challenges, lessons learned, and recommendations for future comparable projects. Attach copies of all project materials and publications as well as photos from your project.

Project Performance

Please quantify all fields below that are applicable to your project and for which you have data; add any other quantifiable data that is pertinent, including units (e.g. square feet, volunteer hours, gallons/year).

Wastewater Captured and Treated	Volunteer Hours
Stormwater Runoff Captured	Events Organized Tours Given
Stormwater Runoff Diverted	Event Attendance
Best Management Practices Installed	People Engaged
Rain Gardens Installed	Presentations Given
Cisterns Installed	Materials Created
Water Saved	Materials Distributed
Sites Restored	Languages Provided
Site Depaved	Communities Served
Native Plants Installed	Project Partners
Organizations Engaged	Social Media Followers
Ambassadors Recruited	Website Visits
Active Volunteers	Earned Media Stories

Regional Water Quality Benefits

What difference did this project make in supporting King County WTD's water quality mission, and create a benefit to or improvement of water quality within WTD's service area?

Project Accomplishments and Successes

Please describe the notable accomplishments and success of your project, both anticipated and unanticipated.

Obstacles and Challenges

Please describe any obstacles or challenges you faced while carrying out this project.

Lessons Learned and Recommendations for Future Projects

Please describe any lessons learned from both successes and failures alike. What strategies worked well that might be replicated elsewhere and what approaches fell short of expectations? Why?

Project Materials and Photos (list here and attach)**Please email inquiries and all documents to:**

Elizabeth Loudon, Grant Administrator

Wastewater Treatment Division

Phone: 206-477-4297 Email: water.grants@kingcounty.gov

EXHIBIT J: FUNDING AUTHORITY

The funding authority for this AWARD comes from the COUNTY, through its Department of Natural Resources and Parks, which operates a regional system of sewage treatment and conveyance facilities for which it collects charges from local governments. Said charges constitute the source of revenue for operation of the COUNTY's sewage treatment system. By agreement with said local governments, this revenue can be used only to fund expenditures that are related to the development, operation, maintenance, and replacement and improvement of said system. By budget authority, the COUNTY funds activities related to the regional water quality objectives advanced by the development of the sewage treatment system.

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: Ordinance establishing a non-exclusive, ten-year telecommunications franchise with MCIMetro Access Transmission Services Corp., D/B/A Verizon Access	Agenda Date: October 4, 2018 AB18-080A	
	Mayor Carol Benson	
	City Administrator	
	City Attorney David Linehan	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Barb Kincaid	
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	
	Police – Chief Kiblinger	
	Public Works – Seth Boettcher	X
Cost Impact (see also Fiscal Note): N/A Fund Source: -- Timeline: 10 year agreement	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: Proposed Ordinance		
SUMMARY STATEMENT: Granting MCIMetro Access Transmission Services Corp., D/B/A Verizon Access Transmission Services, a non-exclusive telecommunications franchise to install, construct, maintain, repair, and operate a telecommunications system within the City. A public hearing was held on September 20, 2018. MCIMetro/Verizon will be required to obtain any and all regulatory permits required by the City prior to beginning work in the City's Right-of-Way. Following any work within the Right-of-Way, MCIMetro/Verizon will be required to restore the area to the reasonable satisfaction of the City. FISCAL NOTE (Finance Department): N/A		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: A motion to adopt Ordinance No. 18-1106, granting to MCIMetro Access Transmission Services Corp., A Delaware Corporation, D/B/A Verizon Access Transmission Services, a non-exclusive 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.		

RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
September 20, 2018	Public hearing.	
October 4, 2018		

CITY OF BLACK DIAMOND, WASHINGTON

ORDINANCE NO. 18-1106

AN ORDINANCE OF THE CITY OF BLACK DIAMOND, WASHINGTON, GRANTING TO MCIMETRO ACCESS TRANSMISSION SERVICES CORP., A DELAWARE CORPORATION, D/B/A VERIZON ACCESS TRANSMISSION SERVICES, 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, MCImetro Access Transmission Services Corp., a Delaware corporation, d/b/a Verizon Access Transmission Services (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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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” (and other forms of the word) 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 MCImetro Access Transmission Services Corp., a Delaware corporation, d/b/a Verizon Access Transmission Services 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 (as defined below). Radio and television audio and video programming services include cable service as defined in 47 U.S.C. Sec. 522(6), audio and video programming services delivered by commercial mobile radio service providers, as defined in section 20.3, Title 47 C.F.R., and over the air broadcast radio and television services.

“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 ownership 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, except pursuant to rights such third party may have not included in this Franchise but otherwise provided in such third party's agreement with the City.

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, consistent with applicable law, 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. Generally applicable 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 such Work shall be 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 verify 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), Franchisee agrees to locate, and if reasonably determined necessary by the City, 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 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, normal wear and tear excepted, 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:

Verizon Access Transmission Services
600 Hidden Ridge, Mailcode: HQE02E102
Irving, TX 75038
Attn: Franchise Manager

With copies to: Verizon Business Services
1320 N. Courthouse Road, Suite 900
Arlington, VA 22201
Attn: General Counsel, Network & Technology

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 or the federal courts serving the county. 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 OF THE CITY OF BLACK DIAMOND
AT A REGULAR MEETING THEREOF ON THE 4TH DAY OF OCTOBER, 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)*

Transferee, to (example: acquire from Franchisee its facilities and equipment located in the Public Rights-of-Way) _____, and _____, with _____

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.

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT:	Agenda Date: October 4, 2018 AB18-087	
Resolution authorizing the City Council to approve The Villages MPD, Ten Trails PP1A Division 1 Final Plat Alteration	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	
Cost Impact (see also Fiscal Note): N/A	Public Works – Seth Boettcher	
Fund Source: N/A	Court – Stephanie Metcalf	
Timeline: Immediately		
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator Attachments: Resolution; Staff Assessment; Plat Alteration Drawing; Application		
SUMMARY STATEMENT: <p>Per Black Diamond Municipal City Code 17.20.090, all plat alternations are to be done by consent of the city council. The developer, Oakpointe LLC/CCD Black Diamond Partners LLC, has requested an alteration of the Ten Trails PP1A Division 1 final plat (approved under City File Number PLN17-0049 and Resolution No. 17-1188) to realign Lots 69, 73, 75, and 79 (King County parcel numbers 857600-0690, 85760-0120, 857600-0730, 857600-0750, and 857600-0790, respectively) to remove public utility easements and amend a roadway alignment to provide on-street parking and a pedestrian plaza within the commercial area of the plat.</p>		
FISCAL NOTE (Finance Department): No Fiscal Impact		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: A motion to adopt Resolution No. 18-1274 for The Villages MPD, Ten Trails PP1A Division 1 Final Plat Alteration.		
RECORD OF COUNCIL ACTION		
Meeting Date	Action	Vote
October 4, 2018		

RESOLUTION NO. 18-1274

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
APPROVING A MINOR ALTERATION TO THE FINAL PLAT
OF TEN TRAILS PHASE 1A DIVISION 1**

WHEREAS, in October 2017, the City Council approved the final plat for the Ten Trails MPD Phase 1A Division 1 subdivision ("Plat 1A Division 1"); and

WHEREAS, the final plat for Plat 1A Division 1 was duly recorded in the King County Recorder's Office;

WHEREAS, the developer CCD Black Diamond Partners LLP ("Oakpointe") has applied for an alteration of the final plat to (a) remove certain utility easements on the east and west sides of Tract S and (b) to alter the lot lines for Lots 69, 73, 75, and 79, all as referenced in Attachment A, hereto; and

WHEREAS, the community development department has determined that Oakpointe's proposed alteration to Plat 1A Division 1 constitutes a minor alteration under BDMC 17.20.090.B of the vested code, which may be approved by the City Council if the alteration is determined to be in the public interest; and

WHEREAS, the utility easements presently recorded on Tract S are redundant because Tract S is already designated as a public utility tract, and removing these easements is merely a change to the engineering design that does not eliminate any features required as a condition of the preliminary plat approval and would not change the use or character of the tract or the overall subdivision; and

WHEREAS, altering the lot lines on Lots 69, 73, 75, and 79 would merely result in a change to the lot dimensions of four lots within Plat 1A Division 1, and such change will give the developer greater flexibility to provide angled on-street parking spaces adjacent to proposed commercial areas and facilitate more creative uses of the central pedestrian plaza envisioned for this area; and

WHEREAS, the proposed plat alteration is consistent with Section 12.7 of The Villages MPD Development Agreement and BDMC 18.14.040.A, as referenced therein; and

WHEREAS, the City Staff have reviewed the application for final plat alteration and recommend its approval, as shown in Attachment B, hereto;

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//

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

Section 1. Pursuant to Section 17.20.090.B of the vested Black Diamond Municipal Code, the City Council hereby finds that the proposed minor alteration of Ten Trails Plat 1A Division 1 is in the public interest and is therefore approved.

Section 2. The applicant Oakpointe shall produce a revised drawing that accurately reflects the approved alteration of the subdivision and shall, at its own expense, file the revised final plat with King County.

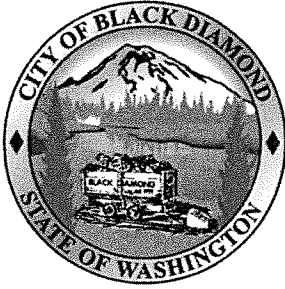
PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THERE OF, THIS 4TH DAY OF OCTOBER 2018.

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk



CITY OF BLACK DIAMOND

P.O. Box 599
24301 Roberts Drive
Black Diamond, WA 98010

Phone: (360) 886-5700
Fax: (360) 886-2592
www.ci.blackdiamond.wa.us

Final Plat Alteration Request – Staff Assessment Ten Trails MPD – Phase 1A Division 1 Final Plat Alteration File Number: PLN18-0049

I. APPLICATION INFORMATION

Project Name: Ten Trails MPD – Phase 1A Division 1 Final Plat Alteration

Project Description: The applicant is requesting a minor alteration to the Phase 1A – Division 1 Final Plat to realign Lots 69, 73, 75, and 79 (see King County parcel numbers below) to remove public utility easements and amend the roadway alignment through the commercial area of the final plat.

Location: King County parcel numbers affected by this application include: 857600-0690, 85760-0120, 857600-0730, 857600-0750, and 857600-0790.

Property Owner / Applicant: Oakpointe/CCD Black Diamond Partners

II. FINDINGS

- a. A minor plat alteration to a final plat that has been recorded with King County may be approved with consent of the City Council, as established by Black Diamond Municipal Code Section 17.20.090.
- b. The Ten Trails Phase 1A Division 1 Final Plat was approved under City File Number PLN17-0049 with associated Resolution Number 17-1188 adopted by the City Council on October 19, 2017.
- c. The application was submitted on August 2, 2018. Public notice was issued on August 21, 2018 via mailings to neighbors within 500 feet of The Villages MPD, publishing in the Voice of the Valley, posting on the project site, and posting to the City's Public Notice webpage.
- d. There were no formal comment letters received during the 14-day public comment period, which closed at 5:00pm on September 4, 2017.

III. APPLICABLE PLANS, CODES AND STANDARDS

1. Black Diamond Municipal Code Section 17.20.090(B), Final Plat Application and Approval – Vacation or alteration of a subdivision.

IV. ANALYSIS

This section of the report analyzes the proposal for compliance with adopted codes and regulations. As established by Black Diamond Municipal Code Section 17.20.090(B), the Community Development Director has the authority to determine whether a proposed alteration constitutes a minor or major alteration.

A major alteration is a request that results in “the creations of additional lots, the elimination of open space, or changes to conditions of approval on an approved preliminary subdivision.”

Staff Comment: The proposed alteration would not result in the creation of additional lots, would not eliminate any proposed open space, and would not result in a change to any conditions of approval for the Phase 1A preliminary plat (City File Number PLN11-0001).

A minor alteration is a request that results in “(a) modifications to engineering design, unless the proposed design alters or eliminates features specifically required as a condition of preliminary subdivision approval, (b) a modification to lot dimensions, provided that such modified dimensions conform to city code, or (c) a reduction in the number of lots to be created, provided that the reduction otherwise conforms to the provisions of city code.”

Staff Comment: The proposed alteration would result in the elimination of public utility easements adjacent to Tract S, which is identified as a utility tract within the Phase 1A Division 1 final plat. Since Tract S is identified as a utility tract, providing utility easements is not necessary since utility installation within the tract is permitted outright. The elimination of the utility easements adjacent to Tract S qualify as a modification to the engineering design of the plat without impacting conditions of approval of the preliminary plat. Additionally, the proposed alteration will modify the lot boundaries of Lots 69, 73, 75, and 79 as shown on the final plat in order to realign Main Street within the commercial area of the plat. The realignment of these lots will allow Main Street to provide on-street angled parking within the right-of-way of Main Street. It will also allow for an accessible pedestrian plaza within the commercial corridor.

Based on the review comment above, it has been determined by the Community Development Director that this request satisfies minor alteration criteria (a) and (b) and qualifies as a minor alteration. Additionally, Black Diamond Municipal Code Section 17.20.090(B) states that the city shall “determine the public use and interest in the proposed alteration.”

Staff Comment: By approving the proposed alteration, Main Street can be realigned to include on-street parking adjacent to proposed commercial areas and be designed as a pedestrian plaza that encourages pedestrian activity and connectivity between residential and commercial uses within the plat and overall MPD.

V. CONCLUSION

The proposed minor alteration to the Ten Trails Phase 1A Division 1 final plat satisfies the review criteria established by Black Diamond Municipal Code Section 17.20.090(B) and is recommended for approval.

TEN TRAILS

VOL/PG

A PLAT ALTERATION OF LOTS 66, 67, 69, 70, 71, 73, 75, 79 AND TRACT S, PP1A DIVISION 1 PORTION OF THE NW 1/4 OF SECTION 15, TOWNSHIP 21 N., RANGE 6 E., WM. CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON

DECLARATION

KNOW ALL PEOPLE BY THESE PRESENTS THAT WE, THE UNDERSIGNED OWNERS OF INTEREST IN THE LAND HEREBY SUBDIVIDED, HEREBY DECLARE THIS PLAT ALTERATION TO BE THE GRAPHIC REPRESENTATION OF THE SUBDIVISION ALTERATION MADE HEREBY.

ALL DEDICATIONS, CONDITIONS, RESTRICTIONS, EASEMENTS AND NOTES FROM THE ORIGINAL SUBDIVISION STILL APPLY EXCEPT AS MODIFIED BY THIS ALTERATION.

THIS SUBDIVISION ALTERATION AND DECLARATION ARE MADE WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF SAID OWNERS.

IN WITNESS WHEREOF WE SET OUR HANDS AND SEALS.

CCD BLACK DIAMOND PARTNERS LLC, A DELAWARE LIMITED LIABILITY COMPANY

BY: OAKPONTE LLC, A WASHINGTON LIMITED LIABILITY COMPANY,

ITS: MANAGER

BY: _____

BRIAN ROSS, MANAGER

TEN TRAILS COMMERCIAL OWNERS ASSOCIATION, A WASHINGTON
NON-PROFIT CORPORATION

BY: _____

BRIAN ROSS, PRESIDENT

ACKNOWLEDGMENTS

STATE OF WASHINGTON }
COUNTY OF KING } SS

ON THIS _____ DAY OF _____, 20____, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, DULY COMMISSIONED AND SWORN PERSONALLY APPEARED BRIAN ROSS, KNOWN TO ME TO BE THE MANAGER OF OAKPONTE LLC, THE MANAGER OF CCD BLACK DIAMOND PARTNERS LLC, THE LIMITED LIABILITY COMPANY THAT EXECUTED THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED THE SAID INSTRUMENT TO BE THE FREE AND VOLUNTARY ACT AND DEED OF SAID LIMITED LIABILITY COMPANY, FOR THE PURPOSES THEREIN MENTIONED, AND ON OATH STATED THAT HE WAS AUTHORIZED TO EXECUTE SAID INSTRUMENT.

SIGNATURE OF _____ DATE _____
NOTARY PUBLIC

MY APPOINTMENT EXPIRES _____

STATE OF WASHINGTON }
COUNTY OF KING } SS

ON THIS _____ DAY OF _____, 20____, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, DULY COMMISSIONED AND SWORN PERSONALLY APPEARED BRIAN ROSS, KNOWN TO ME TO BE THE PRESIDENT OF TEN TRAILS COMMERCIAL OWNERS ASSOCIATION, A WASHINGTON NON-PROFIT CORPORATION THAT EXECUTED THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED THE SAID INSTRUMENT TO BE THE FREE AND VOLUNTARY ACT AND DEED OF SAID LIMITED LIABILITY COMPANY, FOR THE PURPOSES THEREIN MENTIONED, AND ON OATH STATED THAT HE WAS AUTHORIZED TO EXECUTE SAID INSTRUMENT.

SIGNATURE OF _____ DATE _____
NOTARY PUBLIC

MY APPOINTMENT EXPIRES _____

COUNCIL APPROVAL

EXAMINED AND APPROVED THIS _____ DAY OF _____, 2018.

COUNCIL RESOLUTION NUMBER _____

MAYOR, CITY OF BLACK DIAMOND

STATE OF WASHINGTON }
COUNTY OF KING } SS

THIS IS TO CERTIFY THAT ON THIS DAY, BEFORE ME THE UNDERSIGNED NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, DULY COMMISSIONED AND SWORN, PERSONALLY APPEARED CAROL BENSON TO ME KNOWN TO BE THE MAYOR OF THE CITY OF BLACK DIAMOND THAT EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED THE SAID INSTRUMENT TO BE THE FREE AND VOLUNTARY ACT AND DEED OF SAID CITY, FOR THE USES AND PURPOSES THEREIN MENTIONED, AND ON OATH STATED THAT SHE WAS AUTHORIZED TO EXECUTE THE SAID INSTRUMENT.

WITNESS MY HAND AND OFFICIAL SEAL THIS _____ DAY OF _____, 2018.

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON
RESIDING AT _____

MY APPOINTMENT EXPIRES _____

FIRE CHIEF APPROVAL

EXAMINED AND APPROVED THIS _____ DAY OF _____, 2018.

CITY OF BLACK DIAMOND FIRE CHIEF

COMMUNITY DEVELOPMENT DIRECTOR

EXAMINED AND APPROVED THIS _____ DAY OF _____, 2018.

COMMUNITY DEVELOPMENT DIRECTOR

TREASURER CERTIFICATE

I HEREBY CERTIFY THAT ALL PROPERTY TAXES ARE PAID, THAT THERE ARE NO DELINQUENT SPECIAL ASSESSMENTS CERTIFIED TO THIS OFFICE FOR COLLECTION AND THAT ALL SPECIAL ASSESSMENTS CERTIFIED TO THIS OFFICE FOR COLLECTION ON ANY OF THE PROPERTY HEREIN CONTAINED, DEDICATED AS STREETS, ALLEYS OR FOR OTHER PUBLIC USE, ARE PAID IN FULL.

EXAMINED AND APPROVED THIS _____ DAY OF _____, 2018.

TREASURER

DEPUTY

DEPARTMENT OF ASSESSMENTS

EXAMINED AND APPROVED THIS _____ DAY OF _____, 2018.

KING COUNTY ASSESSOR

DEPUTY KING COUNTY ASSESSOR

LEGAL DESCRIPTION

LOTS 66, 67, 69, 70, 71, 73, 75, 79 AND TRACT S OF TEN TRAILS PP1A DIVISION 1, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 280 OF PLATS, PAGES 1 THROUGH 8, INCLUSIVE, RECORDS OF KING COUNTY, WASHINGTON.

SITUATE IN THE CITY OF BLACK DIAMOND, COUNTY OF KING, STATE OF WASHINGTON.

ORIGINAL TAX PARCEL NUMBERS

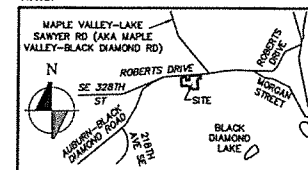
857600-0690, 857600-0700, 857600-0710, 857600-0730, 857600-0750, 857600-0790, 857600-1020, 857600-0860, 857600-0670

PURPOSE OF PLAT ALTERATION

THIS ALTERED PLAT SUPERSEDES LOTS 66, 67, 69, 70, 71, 73, 75, 79 AND TRACT S OF THE PLAT OF TEN TRAILS, PP1A, DIVISION 1, RECORDED IN VOLUME 280 OF PLATS, PAGES 1 THROUGH 8 INCLUSIVE, RECORDS OF KING COUNTY, WASHINGTON.

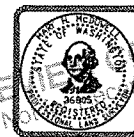
THE PURPOSE OF THIS PLAT ALTERATION IS:
1. ALTER THE COMMON LINES OF TRACT S AND ADJACENT LOTS 69, 73, 75 AND 78.
2. REMOVE THE 10-FOOT PUBLIC UTILITY EASEMENT IN LOTS 69, 70, 71, 73, 75 AND 79 THAT ABUTS TRACT S.
3. REMOVE THE 10-FOOT PUBLIC UTILITY EASEMENT ON THE WEST LINE OF LOTS 66 AND 67 AS SHOWN.

VICINITY MAP
N.T.S.



LAND SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THIS PLAT ALTERATION OF LOTS 66, 67, 69, 70, 71, 73, 75, 79 AND TRACT S OF TEN TRAILS PP1A DIVISION 1 CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE SURVEY RECORDING ACT AT THE REQUEST OF CCD BLACK DIAMOND PARTNERS LLC, A DELAWARE LIMITED LIABILITY COMPANY AND TEN TRAILS COMMERCIAL OWNERS ASSOCIATION, A WASHINGTON NON-PROFIT CORPORATION, AND SAID SURVEY WAS BASED UPON AN ACTUAL SURVEY OF SECTION 15, TOWNSHIP 21 NORTH, RANGE 6 EAST AND THAT THIS PLAT ALTERATION IS A TRUE AND CORRECT REPRESENTATION OF THE LANDS ACTUALLY SURVEYED; THAT THE COURSES AND DISTANCES SHOWN HEREON ARE CORRECT; THAT (1) MONUMENTS AS DESCRIBED AND SHOWN HEREON, UNLESS STATED OTHERWISE HEREON WILL BE OR HAVE BEEN SET AT ALL LOT CORNERS AS SHOWN; (2) MONUMENTS AS DESCRIBED AND SHOWN HEREON AS "SET" WILL BE OR HAVE BEEN SET; AND (3) ALL MONUMENTS DESCRIBED AND SHOWN HEREON THAT ARE SHOWN TO BE SET WITHIN THE RIGHT-OF-WAY, WITHIN AND WITHOUT THE BOUNDARY OF THIS SUBDIVISION, WILL BE SET AFTER THE STREET IS PAVED.



MARY H. MCDOWELL, PLS
SURVEYOR, CERTIFICATE NO. 36825
DAVID EVANS AND ASSOCIATES, INC.
20300 WOODVILLE SNOHOMISH RD NE
SUITE A-WOODINVILLE, WA 98072
PHONE: (425) 415-2000

RECORDING CERTIFICATE

FILED FOR RECORD AT THE REQUEST OF DAVID EVANS AND ASSOCIATES, INC. THIS _____ DAY OF _____, 2018, AT _____ MINUTES PAST _____ M. AND RECORDED IN VOLUME _____ OF PLATS, PAGE(S) _____, RECORDS OF KING COUNTY, WASHINGTON.

DIVISION OF RECORDS AND ELECTIONS

MANAGER

SUPERINTENDENT OF RECORDS

TEN TRAILS

A PLAT ALTERATION OF LOTS 66, 67, 69, 70, 71, 73, 75, 79 AND TRACT S, PP1A DIVISION 1
CITY OF BLACK DIAMOND
FILE NUMBER: PLN
CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON

PORTION OF THE SE 1/4 OF NW 1/4 AND THE SW 1/4 OF NW 1/4 OF SECTION 15, TOWNSHIP 21 N., RANGE 6 E., WM. CITY OF BLACK DIAMOND, WA. AND LOTS 66, 67, 69, 70, 71, 73, 75, 79 AND TRACT S, TEN TRAILS, PP1A, DIVISION 1.

JOB NO 16-001

SHEET 1 OF 3

VOL/PG

PUBLIC WORKS DIRECTOR

REVIEW COPY
Not for Recording



DAVID EVANS
AND ASSOCIATES INC.
20300 Woodville Snohomish Rd NE
Suite A • Woodinville, WA 98072
p: 425.415.2000 f: 425.486.5059

TEN TRAILS

VOL/PG

A PLAT ALTERATION OF LOTS 66, 67, 69, 70, 71, 73, 75, 79 AND TRACT S, PP1A DIVISION 1
PORTION OF THE NW 1/4 OF SECTION 15, TOWNSHIP 21 N, RANGE 6 E, W.M.
CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON

ADDRESSING NOTE

ADDRESSES FOR INDIVIDUAL LOTS HAVE BEEN SHOWN ON THIS PLAT ALTERATION PURSUANT TO BDMC 17.20.020.0 OF THE VESTED CODE, BUT THESE ADDRESSES WERE ASSIGNED WITHOUT BUILDING OR SITE PLANS AVAILABLE FOR EACH LOT. ANY ADDRESS CHANGES REQUIRED SUBSEQUENT TO RECORDING OF THIS PLAT ALTERATION SHALL NOT CONSTITUTE A PLAT ALTERATION AS DEFINED IN BDMC 17.20.090.0 OF THE VESTED CODE. REFER TO THE CITY OF BLACK DIAMOND (OR ITS SUCCESSOR AGENCY) BUILDING OR PLANNING DEPARTMENT RECORD ADDRESSES TO CONFIRM BUILDING ADDRESSES.

ADDRESS TABLE

LOT NUMBER	STREET NAME	ADDRESS
66	MAIN STREET	32517
67	MAIN STREET	32581
69	MAIN STREET	32589
70	MAIN STREET	32505
71	MAIN STREET	32500
73	MAIN STREET	32570
75	MAIN STREET	32610
79	MAIN STREET	32543

TRACT AREAS

TRACT NO.	AREA	USE	GRANTED AND CONVEYED TO
S	36,479 SF	UTILITY, ACCESS	TEN TRAILS COMMERCIAL OWNERS ASSOCIATION

LOT AREAS

LOT NO.	AREA
66	40,049 SF
67	42,031 SF
69	72,203 SF
70	35,110 SF
71	59,870 SF
73	30,647 SF
75	62,627 SF
79	14,678 SF

EXCEPTIONS NOTED IN TITLE REPORT

(TITLE NOTES CORRESPONDING TO PARAGRAPH NUMBERS FROM SCHEDULE A, PER FIDELITY NATIONAL TITLE INSURANCE COMPANY, AMENDED SUBDIVISION GUARANTEE NO. WA-FBOM-IMP-27WAG14-1-18-20377242, DATED JUNE 28, 2018 AT 8:00 AM.

6. RIGHTS OF THE PUBLIC, IF ANY, AS TO THAT PORTION OF THE PROPERTY LYING WITHIN AUBURN-BLACK DIAMOND ROAD CREATED BY ORDER OF ESTABLISHMENT, JUNE 30, 1914.
7. MITIGATION AGREEMENT AND THE TERMS AND CONDITIONS THEREOF:
RECORDED: APRIL 22, 2011
RECORDING NO.: 20110422000249
RECORDING: TRAFFIC
8. COMPREHENSIVE SCHOOL MITIGATION AGREEMENT AND THE TERMS AND CONDITIONS THEREOF:
RECORDED: JUNE 24, 2011
RECORDING NO.: 20110624001156
AND AMENDMENTS THERETO:
RECORDED: JANUARY 30, 2015
RECORDING NO.: 20150130000466
9. THE VILLAGES MPD DEVELOPMENT AGREEMENT AND THE TERMS AND CONDITIONS THEREOF:
RECORDED: JANUARY 30, 2012
RECORDING NO.: 20120130000655
AND AMENDMENTS THERETO:
RECORDED: SEPTEMBER 6, 2012, JANUARY 3, 2014, NOVEMBER 12, 2014 AND DECEMBER 6, 2017
RECORDING NO.: 20120906000762, 20120906000763, 20140103000655, 20141112001375 AND 20171206000581
11. EASEMENT AND THE TERMS AND CONDITIONS THEREOF:
GRANTEE: PUGET SOUND ENERGY, INC.
PURPOSE: TRANSMISSION, DISTRIBUTION AND SALE OF GAS AND ELECTRICITY
AREA AFFECTED: A PORTION OF PARCELS B AND C
RECORDED: JANUARY 28, 2018
RECORDING NO.: 20180128000869
CONTAINS COVENANT PROHIBITING STRUCTURES OVER SAID EASEMENT OR OTHER ACTIVITY WHICH MIGHT ENDANGER THE UNDERGROUND SYSTEM.
12. EASEMENT AND THE TERMS AND CONDITIONS THEREOF:
GRANTEE: PUGET SOUND ENERGY, INC.
PURPOSE: TRANSMISSION, DISTRIBUTION AND SALE OF GAS AND ELECTRICITY
AREA AFFECTED: A PORTION OF PARCELS B AND C
RECORDED: AUGUST 12, 2016
RECORDING NO.: 20160812001925
CONTAINS COVENANT PROHIBITING STRUCTURES OVER SAID EASEMENT OR OTHER ACTIVITY WHICH MIGHT ENDANGER THE UNDERGROUND SYSTEM.
14. EARLY ENTRY AGREEMENT AND THE TERMS AND CONDITIONS THEREOF:
RECORDED: JUNE 13, 2017
RECORDING NO.: 20170613000328
18. SIDEWALK AND CONCRETE BAND EASEMENT AGREEMENT AND THE TERMS AND CONDITIONS THEREOF:
RECORDED: MAY 3, 2018
RECORDING NO.: 20180503000408
AFFECTS: LOTS 67, 69 AND 75



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Not for Recording

TEN TRAILS
A PLAT ALTERATION OF LOTS 66,
67, 69, 70, 71, 73, 75, 79 AND
TRACT S, PP1A DIVISION 1
CITY OF BLACK DIAMOND,
KING COUNTY, WASHINGTON



DAVID EVANS
AND ASSOCIATES INC.
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JOB NO 16-001
SHEET 2 OF 3

CITY OF BLACK DIAMOND FILE NO.

VOL/PG

TEN TRAILS

A PLAT ALTERATION OF LOTS 66, 67, 69, 70, 71, 73, 75, 79 AND TRACT S, PP1A DIVISION 1
PORTION OF THE NW 1/4 OF SECTION 15, TOWNSHIP 21 N, RANGE 6 E, WM.
CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON

VOL/Pg

INSTRUMENTATION NOTE

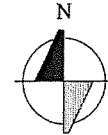
PRIMARY CONTROL POINTS AND ACCESSIBLE MONUMENT POSITIONS WERE FIELD MEASURED UTILIZING GLOBAL POSITIONING SYSTEM (GPS) SURVEY TECHNIQUES USING LEICA SR 9500 EQUIPMENT. MONUMENT POSITIONS THAT WERE NOT DIRECTLY OBSERVED USING GPS SURVEY TECHNIQUES WERE TIED INTO THE CONTROL POINTS UTILIZING A 1 MINUTE THEODOLITE AND ELECTRONIC DISTANCE MEASURING UNIT. PROCEDURES USED IN THIS SURVEY WERE FIELD TRAVERSE, MEETING OR EXCEEDING STANDARDS SET BY WAC 332-130-050.

MONUMENT NOTES

1. ALL TRACT CORNERS ARE SET 1/2" X 24 REBAR WITH CAP "LS NO. 36805 UNLESS OTHERWISE NOTED.
2. ALL TACK IN LEAD WITH WASHERS SET ARE SET ON THE STREETWARD PROJECTION OF THE LATERAL LOT OR LOT/TRACT LINES.
3. SET 1/2" X 24" REBAR WITH CAP "LS NO. 36805" AT ALL SIDE AND REAR LOT CORNERS.

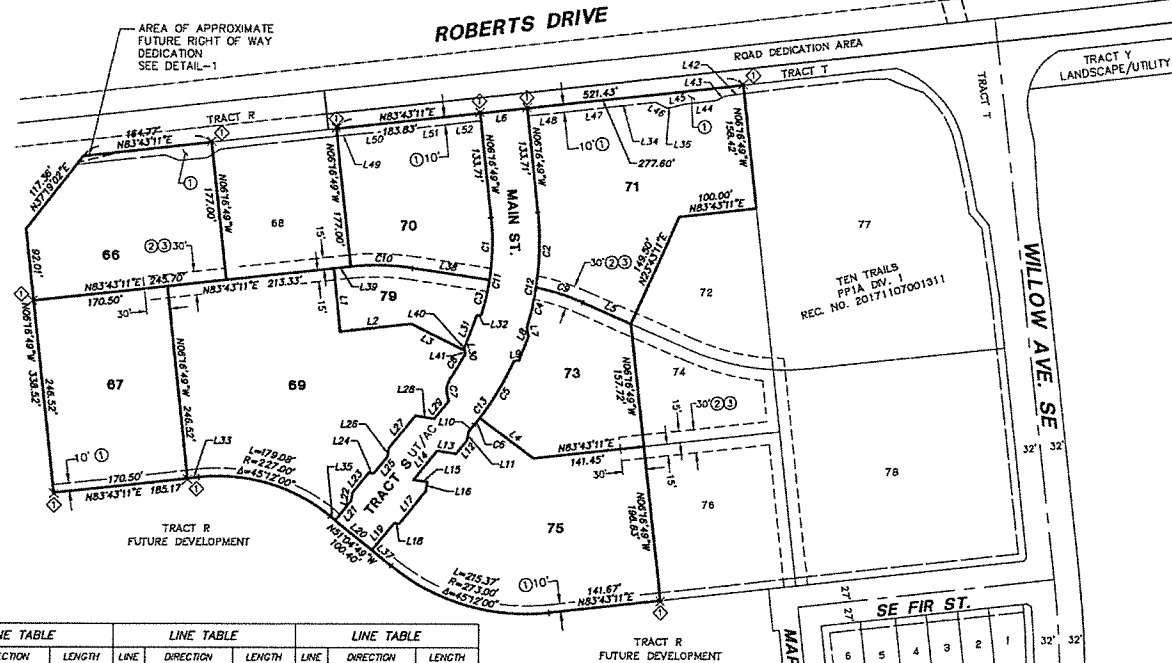
LEGEND

- ⊗ SET TACK IN LEAD W/WASHER ON STREETWARD PROJECTED 1.0' OFFSET
- ① PUBLIC UTILITY EASEMENT
- ② PRIVATE UTILITY EASEMENT
- ③ PRIVATE ACCESS EASEMENT
- UT - UTILITY TRACT
- PA - PEDESTRIAN ACCESS TRACT
- PK - PARK TRACT
- LA - LANDSCAPE TRACT
- AC - ACCESS TRACT
- (R) - RADIAL BEARING



SCALE: 1" = 100'

LAKE SAWYER ROAD

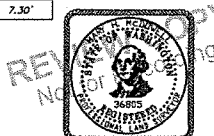
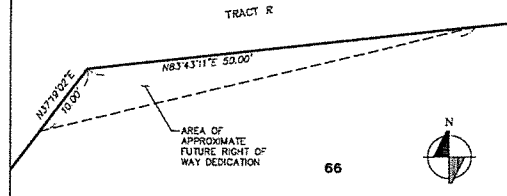


LINE TABLE			LINE TABLE			LINE TABLE		
LINE	DIRECTION	LENGTH	LINE	DIRECTION	LENGTH	LINE	DIRECTION	LENGTH
L1	N87°16'49"W	80.98'	L19	N38°55'11"E	44.82'	L37	N51°04'49"W	31.22'
L2	N83°43'11"E	91.00'	L20	N51°04'49"W	60.00'	L38	N81°16'49"W	99.21'
L3	N63°32'38"W	76.39'	L21	N38°55'11"E	31.75'	L39	N83°43'11"E	21.86'
L4	N52°50'36"W	85.63'	L22	N8°28'58"E	10.88'	L40	N9°30'13"W	4.09'
L5	N66°16'49"W	67.16'	L23	N38°55'11"E	32.87'	L41	N9°30'13"W	3.05'
L6	N83°43'11"E	60.00'	L24	N81°04'49"W	6.35'	L42	N82°57'06"E	23.65'
L7	N9°39'25"W	12.06'	L25	N38°55'11"E	27.18'	L43	N63°58'16"E	14.32'
L8	N20°57'14"E	33.09'	L26	N8°55'11"E	11.00'	L44	N83°17'30"E	41.23'
L9	N50°20'35"E	6.62'	L27	N38°55'11"E	53.65'	L45	N75°47'24"E	15.62'
L10	N38°55'11"E	11.22'	L28	N81°04'49"W	24.25'	L46	N83°16'29"W	15.27'
L11	N8°55'11"E	11.00'	L29	N38°55'11"E	29.27'	L47	N83°21'53"E	52.11'
L12	N38°55'11"E	22.48'	L30	N9°30'13"W	7.14'	L48	N84°04'34"E	60.48'
L13	N81°04'49"W	24.25'	L31	N20°29'47"E	43.26'	L49	N83°33'17"E	14.61'
L14	N38°55'11"E	47.34'	L32	N80°29'47"E	5.75'	L50	N84°16'35"E	67.68'
L15	N81°04'49"W	17.55'	L33	N83°43'11"E	14.67'	L51	N83°23'33"E	48.28'
L16	N83°55'11"E	11.54'	L34	N83°51'41"E	50.89'	L52	N83°55'01"E	21.90'
L17	N38°55'11"E	53.65'	L35	N51°04'49"W	9.18'			
L18	N81°04'49"W	6.35'	L36	N84°06'57"E	7.30'			

CURVE TABLE		
CURVE	DELTA	RADIUS
C1	014°53'37"	308.00'
C2	014°58'50"	368.00'
C3	008°32'55"	308.00'
C4	008°03'45"	368.00'
C5	013°06'03"	368.00'
C6	001°45'47"	368.00'
C7	058°53'00"	30.00'
C8	006°51'14"	308.00'
C9	011°58'46"	300.00'
C10	015°00'00"	300.00'
C11	023°26'48"	308.00'
C12	023°02'34"	368.00'
C13	014°51'20"	368.00'

DETAIL-1

1" = 10'



TEN TRAILS
A PLAT ALTERATION OF LOTS 66, 67, 69, 70, 71, 73, 75, 79 AND TRACT S, PP1A DIVISION 1
CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON

DAVID EVANS AND ASSOCIATES INC.
20300 Woodinville Snohomish Rd NE
Suite A - Woodinville, WA 98072
P: 425.415.2000 F: 425.488.5059

JOB NO 16-001
SHEET 3 OF 3

CITY OF BLACK DIAMOND FILE NO. PLN



August 2, 2018



Andy Williamson
MDRT & Economic Development Director
City of Black Diamond
24301 Roberts Drive
P.O. Box 599
Black Diamond, WA 98010

RE: Application to Alter Ten Trails MPD PP1A Division 1 Final Plat

Dear Mr. Williamson:

On behalf of CCD Black Diamond Partners LLC ("Oakpointe"), we are submitting this letter to request certain alterations to the Ten Trails PP1A Division 1 Final Plat, approved by the Black Diamond City Council on October 19, 2017 and recorded under King County Recording No. 20171107001311 (the "Final Plat"). Specifically, Oakpointe requests to alter the lot lines for Lots 69, 73, 75, and 79 and to remove the public utility easements abutting the eastern and western sides of Tract S, as shown on the attached Final Plat Alteration. This request is made pursuant to BDMC 17.20.090(B) and The Villages MPD Development Agreement dated December 12, 2011 ("DA") Section 12.7.1, which references BDMC 18.14.040.A.

I. This Request Should Be Considered a Minor Alteration

BDMC 17.20.090(B) states that if "an applicant is interested in the alteration of any subdivision or any portion thereof...that person shall submit an application to the community development department requesting the alteration." The code further provides that the "community development department shall have the authority to determine whether the proposed alteration constitutes a minor or major alteration. For purposes of this section...a 'minor alteration' means (a) modifications to engineering design, unless the proposed design alters or eliminates features specifically required as a condition of preliminary subdivision approval, (b) a modification to lot dimensions, provided that such modified dimensions conform to city code, or (c) a reduction in the number of lots to be created, provided that the reduction otherwise conforms to the provisions of city code." As explained below, the request to alter Lots 69, 73, 75, and 79 is a modification of lot dimensions and the removal of public utility easements is a modification to engineering design, so this request meets the requirements to be considered a minor amendment.

3025 112TH AVENUE NE
SUITE 100
BELLEVUE, WA 98004

WWW.OAKPOINTE.COM

A. Modifications to Engineering Design

Oakpointe's request to remove two public utility easements from the PP1A Division 1 Final Plat should be considered a minor alteration because the request is an engineering change that does not alter or eliminate any features that were required as a condition of preliminary subdivision approval. Upon further review of the Final Plat, Oakpointe discovered that the public utility easements are redundant because they border Tract S, which is itself a utility tract. Any public utilities in this area would be installed within Tract S, making the public utility easements unnecessary. Furthermore, no utilities have been installed in this area, so removing the easements at this time is merely an engineering design change. Finally, these easements were not required to be provided as a condition of preliminary subdivision approval, meaning this engineering change should be considered a minor alteration.

B. Modification to Lot Dimensions

Oakpointe's request to revise the lot lines of Lots 69, 73, 75, and 79 should also be considered a minor alteration because the request is a modification to lot dimensions. As shown on the attached Final Plat Alteration, the western edge of lots 73 and 75 and the eastern edge of Lots 69 and 79 have been modified. Because this request is a modification to lot dimensions, it should be considered a minor alteration.

II. This Amendment is in the Public Interest

BDMC 17.20.090(B) states that "[i]f the alteration to a subdivision is requested after filing the final plat with King County, a minor plat alteration may be approved with consent of the city council" and that "[t]he city shall determine the public use and interest in the proposed alteration and may deny or approve the application for alteration." Oakpointe believes that this request is in the public interest and respectfully requests its approval. Removing the public utility easements on either side of Tract S will ensure that utilities are installed in a single consistent area within Tract S. Altering the lot lines of Lots 69, 73, 75, and 79 will allow creative use of the area for buildings, which will create a better sense of place around the central plaza that is envisioned for Tract S. Because this request is in the public interest, Oakpointe respectfully requests approval of this minor alteration.

III. This Alteration Complies with the Development Agreement

Oakpointe also requests approval of this alteration because it complies with the requirements of the DA. Section 12.7 of the DA states that "amendments to Implementing Approvals may be allowed pursuant to applicable sections of BDMC." Section 12.7.1 explains that minor amendments shall be processed pursuant to BDMC 18.14.040.A, which states that minor amendments may be made: "(1) upon a showing of changed circumstances and a determination by the mayor or designee that (a) the requested amendments constitute 'minor'

adjustments that can be sufficiently mitigated through new actions that may be required as part of the permit amendment approval, and (b) each of the proposed amendment conditions is not otherwise prohibited under the municipal code and would not require additional environmental review under BDMC Title 19, and (2) the proposed amendments would not (a) increase gross building area by more than ten percent, (b) increase the number of dwelling units, (c) increase total impervious surface area, (d) change the number of ingress or egress points, or (e) increase the area of site disturbance by more than ten percent.”

A. This Alteration is the Result of Changed Circumstances

Oakpointe is requesting this alteration as a result of changed circumstances. After designing the commercial area to include a distinctive plaza area, Oakpointe realized that the lot layout in the Final Plat would preclude optimal design of the plaza. Oakpointe also discovered the redundancy of the public utility easements through this review. As a result of these changed circumstances, Oakpointe opted to make this request for a plat alteration.

B. This Alteration Would Not Require Additional Mitigation

BDMC 18.14.040.A states that a request for an amendment can be approved if the “amendments constitute ‘minor’ adjustments that can be sufficiently mitigated through new actions that may be required as part of the permit amendment approval.” This alteration request is simply to remove redundant public utility easements and to modify lot lines. The request is a change that does not necessitate any additional mitigation.

C. Alteration Conditions Are Not Prohibited and Would Not Require Additional Environmental Review

BDMC 18.14.040.A states that an amendment can be approved if “each of the proposed amendment conditions is not otherwise prohibited under the municipal code and would not require additional environmental review under BDMC Title 19.” Oakpointe is not proposing any changes or additions to the existing final plat conditions, so the conditions will not be prohibited under the municipal code. Furthermore, because the request is to remove public utility easements and alter existing lot lines, no additional environmental review is required because the removal will not create any additional impacts.

D. This Amendment Would Not Increase the Gross Building Area by More Than Ten Percent

BDMC 18.14.040.A states that a request for an amendment can be approved if the change “would not increase the gross building area by more than ten percent.” Since this request is to remove public utility easements and shift lot lines, it will not result in increasing the gross building area at all.

E. This Amendment Would Not Increase the Number of Dwelling Units

BDMC 18.14.040.A allows a minor amendment if the proposed change would not increase the number of dwelling units. This alteration request will have no impact on the number of dwelling units.

F. This Amendment Would Not Increase the Total Impervious Surface Area

BDMC 18.14.040.A states that a minor amendment request can be permitted if the proposed change would not increase the total impervious surface area. This request eliminates public utility easements and shifts lot lines; it will have no impact on the amount of impervious surface area planned.

G. This Amendment Would Not Change the Number of Ingress or Egress Points

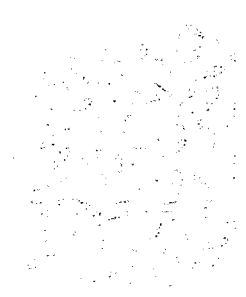
According to the Black Diamond Municipal Code, minor amendments may be made as long as they do not change the number of ingress or egress points. Tract S will still provide ingress and egress from the commercial area as planned, so this request will not affect the number ingress or egress points.

H. This Amendment Would Not Increase the Area of Site Disturbance by More Than Ten Percent

Finally, BDMC 18.14.040.A states that a request for an alteration can be approved if the change would not "increase the area of site disturbance by more than ten percent." Again, removing public utility easements and altering lot lines will not have any effect on the amount of site area that will be disturbed.

Because this request complies with Section 12.7 of the DA and all of the criteria for approval of a minor amendment outlined in BDMC 18.14.040.A, Oakpointe respectfully requests that you approve its request.


Pursuant to BDMC 17.20.090(B), which states that the "application shall contain the signatures of all persons having an ownership interest in lots, tracts, parcels, sites, or divisions in the subject subdivision or portion to be altered," Brian Ross has signed below on behalf of CCD Black Diamond Partners LLC, which owns the portion of the PP1A Division 1 Final Plat that Oakpointe is requesting to alter.



If you have any questions regarding this letter, please do not hesitate to give us a call at (425) 898-2120.

CCD Black Diamond Partners LLC, a Delaware limited liability company

By: Oakpointe LLC, its Manager

By: _____

Brian Ross, Manager