



CITY OF BLACK DIAMOND
March 17, 2011 REVISED Meeting Agenda
25510 Lawson St., Black Diamond, Washington

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

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 and address. Please limit your comments to 3 minutes. If you desire a formal agenda placement, please contact the City Clerk at 360-886-2560. Thank you for attending this evening.

PUBLIC HEARINGS:
APPOINTMENTS, PRESENTATIONS, ANNOUNCEMENTS
UNFINISHED BUSINESS:

- 1) **AB11- 013A** – Resolution Authorizing RH2 Contract Amendment Mr. Williamson

NEW BUSINESS:

- 2) **AB11- 019** – Resolution Authorizing Interlocal Agreement with City of Covington Mr. Pilcher
3) **AB11- 020** – Resolution Authorizing XTERRA - Black Diamond Special Event Mr. Williamson

DEPARTMENT REPORTS:
MAYOR’S REPORT:
COUNCIL REPORTS:
ATTORNEY REPORT:
PUBLIC COMMENTS:

CONSENT AGENDA:

- 4) **Claim Checks** – March 17, 2011, No. 36732 through No. 36796 in the amount of \$160,245.18
5) **Payroll** – February 28, 2011, No. 17373 through No. 17393 and ACH Pay in the total amount of \$277,993.32
6) **Minutes** – Council Meeting of March 3, 2011

EXECUTIVE SESSION:
ADJOURNMENT:

CITY COUNCIL AGENDA BILL

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

| ITEM INFORMATION | | | |
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| SUBJECT: Resolution No. 11-736, authorizing the Mayor to execute Amendment No. 1 to the Professional Services Agreement with RH2 Engineering regarding On-call Engineering Assistance regarding MPD Technical Services Cost Impact: \$150,000 Fund Source: MPD reimbursable cost Timeline: 1 st half of 2011 | Agenda Date: March 17, 2011 AB11-013A | | |
| | Department/Committee/Individual | Created | Reviewed |
| | Mayor Rebecca Olness | | |
| | City Administrator – | | |
| | City Attorney –Chris Bacha | | |
| | City Clerk – Brenda L. Martinez | | X |
| | Finance – May Miller | | |
| | Public Works – Seth Boettcher | X | |
| | Economic Devel. – Andy Williamson | | X |
| | Police – Jamey Kiblinger | | |
| Court – Stephanie Metcalf | | | |
| Comm. Dev. – Steve Pilcher | | | |
| Attachments: Resolution No. 11-736, Amendment No. 1, Original Agreement | | | |
| SUMMARY STATEMENT: | | | |
| <p>Over the last eight months, RH2 has provided necessary engineering technical assistance related to the Master Planned Developments through a Professional Services Agreement executed June 4, 2010.</p> <p>Needed for Master Planned Development Processing: There is an on-going need for engineering technical assistance as the Development Agreement moves through the hearing and Council process. As the project moves forward assistance will also be needed for civil plan review and permitting, inspection and services during construction. The City may need assistance with agency coordination and organizational support and project management.</p> <p>Consultant: RH2 has provided the City with good service and valuable assistance through the MPD review process. RH2 was selected from consulting firms that submitted qualifications for engineering services in the water and sewer utility arena.</p> <p>Funding: The Master Planned Development process requires the applicant to fund the cost of technical assistance support as needed. YarrowBay has been timely with their reimbursements of costs incurred.</p> | | | |
| COMMITTEE REVIEW AND RECOMMENDATION: Public Works Committee is recommending approval. | | | |
| RECOMMENDED ACTION: MOTION to adopt Resolution No. 11-736, authorizing Amendment No. 1 to the Professional Services Agreement with RH2 Engineering for On-call Engineering Assistance regarding MPD Technical Services. | | | |
| RECORD OF COUNCIL ACTION | | | |
| <i>Meeting Date</i> | <i>Action</i> | <i>Vote</i> | |
| February 17, 2011 | Postponed indefinitely | | |
| March 17, 2011 | | | |
| | | | |

RESOLUTION NO. 11-736

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING AMENDMENT NO. 1 WITH RH2
ENGINEERING FOR ON-CALL ENGINEERING
ASSISTANCE REGARDING MPD TECHNICAL SERVICES**

WHEREAS, the City signed a contract with RH2 for MPD technical services and on-call engineering by Resolution 10-687; and

WHEREAS, the City of Black Diamond Public Works Department is limited in staff, and needs to be prepared for the greater infrastructure project details and financial issues associated with the Master Planned Developments; and

WHEREAS, City staff anticipates that the services being provided by RH2 pursuant to the contract will exceed the maximum contract price in the near future; and

WHEREAS, RH2 Engineering has demonstrated relevant Master Planned Development experience, responsive service and technically leading expertise in water and sewer systems; and

WHEREAS, the Master Planned Development process requires the applicant to fund the cost of technical assistance support as needed;

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 Amendment No. 1 with RH2 Engineering, Inc. for continuing MPD Technical Services and On-call Engineering Services.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 17TH DAY OF MARCH, 2011.

CITY OF BLACK DIAMOND:

Rebecca Olness, Mayor

Attest:

Brenda L. Martinez, City Clerk

Amendment #1 to Professional Services Agreement between RH2 Engineering, Inc and the City of Black Diamond

This Professional Services Agreement Amendment is dated February 17, 2011 and is entered into by and between:

CITY OF BLACK DIAMOND, WASHINGTON (the "City")
24301 Roberts Drive
Black Diamond, WA 98010
Contact: Seth Boettcher, Public Works Director
Phone: 360-886-2560 Fax : 360-886-2592

and

RH2 Engineering, Inc. ("Consultant")
12100 NE 195th Street, Suite 100
Bothell, WA 98011
Contact: Dan Ervin, P.E.
Phone: 425-951-5400 Fax: 425-398-2774

RECITALS:

WHEREAS, prior in June of 2010 the City and the Consultant entered into a Professional Services Agreement for Master Planned Developments – Engineering Assistance ("Agreement") for the Consultant to provide, on a time and materials as-needed basis, those services set forth in Exhibit A at the maximum contract price of \$150,000, and

WHEREAS, City staff anticipates that the services being provided by the Consultant pursuant to the Agreement will exceed the maximum contract price in the near future, and

WHEREAS, Ongoing assistance will be needed as the City moves forward with the Master Planned Developments and progresses into the initial phases, and

WHEREAS, the City and Consultant desire to amend the Agreement to increase the maximum contract price to \$300,000;

NOW THEREFORE, in consideration of the foregoing recitals, and the mutual promises and covenants contained herein, the parties hereby enter into this First Amendment, amending the Agreement, as follows:

Section 1. Amendment. Section 3 of the Agreement is amended by striking "\$150,000" and replacing it with "\$300,000" so that the total compensation for services rendered pursuant to the Agreement shall not exceed **three hundred thousand dollars**.

Section 2. Remainder Unaffected. All other terms and conditions of the Agreement shall remain the same and of full force and effect.

CITY OF BLACK DIAMOND

RH2 Consulting Engineering, Inc.

By: _____

By: [Signature]

Rebecca Olness

Printed Name: DAN ERVIN

Its: Mayor

Its: VICE PRESIDENT

Date: _____

Date: 2-4-11

Attest:

By:

Brenda L. Martinez
City Clerk

RESOLUTION NO. 10-687

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH RH2 ENGINEERING FOR ENGINEERING ASSISTANCE REGARDING THE CAPITAL FACILITY CHARGE ANALYSIS FOR WATER AND SEWER.

WHEREAS, the Villages and Lawson Hills Master Planned Developments are moving forward to the council for review; and

WHEREAS, the City of Black Diamond Public Works Department is very limited in staff; and needs to be prepared for the greater infrastructure project details and financial issues associated with the Master Planned Developments; and

WHEREAS, there is a great deal of infrastructure research, analysis, and planning that is needed to provide the City of Black Diamond with the best decision making information for the Development Agreement negotiation; and

WHEREAS, RH2 Engineering has demonstrated relevant Master Planned Development experience, responsive service and technically leading expertise in water and sewer systems;

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

Section 1. The Mayor is hereby authorized to execute a Professional Services Agreement with RH2 Engineering for engineering assistance regarding the Capital Facility Charge Analysis for water and sewer as attached hereto as Exhibit A.

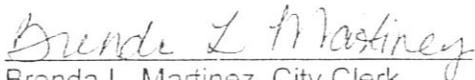
PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 3RD DAY OF JUNE, 2010.

CITY OF BLACK DIAMOND:



Rebecca Olness, Mayor

Attest:



Brenda L. Martinez, City Clerk

CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT
Master Planned Developments - Engineering Assistance
Contract

This Professional Services Agreement (the or this "Agreement"), for reference purposes only, is dated May 20, 2010 and is entered into by and between

CITY OF BLACK DIAMOND, WASHINGTON (the "City")
Physical Address: 24301 Roberts Drive
Mailing Address: PO Box 599
Black Diamond, WA 98010
Contact: Seth Boettcher Phone: 360-886-2560 Fax : 360-886-2592

and

RH2 Engineering ("Consultant")
12100 NE 195th Street Suite 100
Bothell WA 98011

Contact: Dan Ervin, P.E. Phone: 800-720-8052 Fax: 425-591-5305

Tax Id No.: 91-1108443

For professional services in connection with the following project:
Master Planned Developments – Engineering Assistance Contract

TERMS AND CONDITIONS

1. Services by Consultant

1.1 Consultant shall perform the services described in the Scope of Work attached to this Agreement as Exhibit "A." The services performed by Consultant shall not exceed the Scope of Work nor shall the Consultant be entitled to a greater amount of compensation as that provided in this Agreement without the prior written authorization of the City.

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

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

of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

2. Schedule of Work

2.1 Consultant shall perform the services described in the Scope of Work in accordance with the Schedule attached to this contract as Exhibit "A."

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

2.3 Consultant is authorized to proceed with services upon receipt of Notice to Proceed that may be distributed via letter or e-mail.

3. Compensation

3.1 Compensation for the services provided in the Scope of Work shall be on a Time and expenses Basis not to exceed \$150,000 without the written authorization of the City and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit "B."

4. Payment

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

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

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

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

5. Discrimination and Compliance with Laws

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

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

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

6. Suspension and Termination of Agreement

6.1 The City reserves the right to terminate or suspend this Agreement at any time without cause, by giving Consultant notice in writing ten (10) days prior to the termination or suspension date. In the event of termination, all finished or unfinished reports, or other material prepared by Consultant pursuant to this Agreement, shall be submitted to the City. In the event the City terminates this Agreement prior to completion without cause, Consultant may complete such analyses and records as may be necessary to place its files in order. Consultant shall be entitled to compensation for any satisfactory work completed on the Project prior to the date of suspension or termination.

6.2 The City will terminate this contract if the city council does not approve the Villages and Lawson Hills Master Planned Developments.

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

7. Standard of Care

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

8. Ownership of Work Product

8.1 Ownership of the originals of any reports, data, studies, surveys, charts, maps, drawings, specifications, figures, photographs, memoranda, and any other documents which are developed, compiled, or produced as a result of this Agreement, whether or not completed, shall be vested in the City and shall be submitted to the City upon termination of this Agreement. Any reuse of these materials by the City for projects or purposes other than those that fall within the scope of this Agreement and the Project to which it relates, without written concurrence by Consultant, will be at the sole risk of the City.

8.2 The City acknowledges Consultant's documents as instruments of professional service. Nevertheless, the documents prepared under this Agreement shall become the property of the City upon completion of the work. The City agrees to hold harmless and indemnify Consultant against all claims made against Consultant for damage or injury, including defense

costs, arising out of the City's reuse of such documents beyond the use for which they were originally intended without the written authorization of Consultant.

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

9. Indemnification/Hold Harmless

9.1 Consultant shall defend, indemnify, and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney fees, arising directly or indirectly out of or resulting from the acts, errors, or omissions of Consultant or its subconsultants in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

10. Insurance

10.1 Consultant shall procure and maintain for the duration of the Agreement, and shall provide proof satisfactory to the City that such insurance is procured and maintained by each of its subconsultants, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, or employees.

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

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

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

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

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

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

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

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

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

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

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

11. Assigning or Subcontracting

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

12. Independent Contractor

12.1 Consultant and its subconsultants are, and shall be at all times during the term of this Agreement, independent contractors.

13. Notice

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

City: City Administrator
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
Fax: 360-886-2592

Consultant: Dan Ervin
c/o RH2 Engineering
12100 NE 195th Street Suite 200
Bothell WA 98011
Fax: 425-951-5305

14. Disputes

14.1 Any action for claims arising out of or relating to this Agreement shall be governed by the laws of the State of Washington. Venue shall be in King County Superior Court, Kent, Washington.

15. Attorney Fees

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

16. General Administration and Management on Behalf of the City

16.1 The City Administrator for the City, or his designee, shall review and approve Consultant's invoices to the City under this Agreement and shall have primary responsibility for overseeing and approving work or services to be performed by Consultant.

17. Extent of Agreement/Modification

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

CITY OF BLACK DIAMOND

CONSULTANT

By: Rebecca Olness

By: Richard H. Harbert

Rebecca Olness

Printed Name: RICHARD H. HARBERT

Its: Mayor

Its: PRESIDENT

Date: 6/4/10

Date: 6/10/10

Attest:

By: Brenda L. Martinez

Brenda L. Martinez
City Clerk

EXHIBIT A
Master Planned Developments - Engineering Assistance
Contract
SCOPE OF WORK

The Scope of Work is a general description of the types of services and activities where the City staff expects to need additional support to continue to process the Master Planned Development applications. This scope of work is not intended to be all inclusive and it is expected that the staff will request other technical assistance services not listed below, except that they must be related to the Master Planned Development application review process. This Scope of Work is broadly defined to allow the City's Project Managers to adapt the scope to meet the needs of the City. It is not anticipated that all of these services will be required, but they are included in the scope so that they can be assigned and completed as needed to meet the City's delivery schedules.

At all times the Scope of Work will be under the control of the City of Black Diamond. The Consultant is not at liberty to begin or complete work items unless specifically requested to do so by the City in the manner described and as authorized by the City.

1) Development Agreement (DA) Assistance

- Assist PWE and Planning with Project infrastructure planning
- Analyze the impacts of various infrastructure scenarios for constructability, maintainability, sustainability, reliability, community impacts, and capital costs
- Develop and analyze financing/equity/funding alternatives
- Develop standards consistent with the EIS and City requirements
- Write text as necessary to implement the EIS and MPD Ordinance
- Write and process amendments from time to time (as necessary) to react to the maturation of the project
- Maintain records that would allow the basis for Development Agreement decisions to be tracked and enforced.
- Prepare and print graphics as necessary to illustrate DA requirements
- Perform other tasks requested by the city to develop, approve and implement the Development Agreement

2) Infrastructure Project Identification and Funding

- Prepare a comprehensive list of improvements and projects anticipated to serve development ("projects")
- Identify the projects that the city will fund through capital facility charges
- Identify the projects that are exclusively developer extensions with no reimbursement or credit
- Identify the projects that are eligible for late comers reimbursement
- Perform a Capital Facility Charge analysis to set an appropriate CFC fee.

3) Preliminary Plat

- Review preliminary Plat submittals for compliance with DA requirements; sewer, water, stormwater, LID, streets and critical areas. Provide comments and meet with applicants as necessary to ensure compliance with DA and City codes.
- Check survey data and closure data for accuracy
- Check for compliance with County codes and recording requirements
- Prepare necessary documentation to facilitate City approval and acceptance (bond check, bond certification, staff reports, etc)

4) Preliminary Design Elements

- Attend meetings with City and applicants to reach consensus on design concepts and implement special opportunities
- Meet with design team from time to time to assist in implementing decisions and designs that meet the DA requirements

5) Technical Assistance

- Hydraulic analysis of water extension proposals and verification of fire flow needs using the City's water system hydraulic model.
- Research basin issues and line capacity issues using the City's sewer hydraulic model
- Check engineering calculations submitted by others in conjunction with planning, design and permitting.
- Perform Value Engineering Analyses when appropriate to ensure the proposed improvements are reasonable and sustainable
- Analyze rate and O&M impacts when appropriate to ensure the City is able to operate and maintain the permitted improvements
- Provide bonding, rate and financing analyses as necessary to support the City's utilities and administration
- Review codes, standards and procedures from other cities and other utilities for briefing and alternative analyses
- Prepare design plans as requested by the city

6) Construction Documents/Permitting

- Review plans submitted by project applicants for compliance with applicable codes, standards and criteria. These are likely to include: clearing and grading, mass grading, Temporary Erosion and Sedimentation Control, Traffic Control, Utilities (both wet and dry), Roadways, Intersections, Signalization, Channelization, Landscaping, Automatic Control, Reservoirs, Pump Stations, Lift Stations, Pressure Reducing Valves, Detention and Treatment Ponds, and Treatment Systems.
- Prepare comments using standard city forms and procedures or using custom forms and procedures
- Meet with City and applicants as necessary to present the comments and answer questions. Meet with applicants as necessary to optimize plans and capitalize on unique design or operation opportunities
- Maintain records of the plan submittals and the plan review comments
- Approve final permits and comply with State Standards for engineering review and approval
- Prepare reports necessary to obtain DOH and METRO approval of applicable construction projects

7) Assistance during Construction

- Prepare for and attend pre-construction conferences as requested by the City
- Review shop drawing submittals, change orders, field changes and design changes as requested
- Review and certify bond amounts and quantity take-offs as requested
- Assist inspection staff with questions, revisions and construction related questions
- Provide field inspection staff as requested to meet short-term scheduling needs
- Provide staff for on-site reconnaissance and field measurements (environmental monitoring) as requested

- Review and approve as-built drawings and markups
- Process the necessary documents to transfer ownership of the facilities to the city and ensure they are operable and complete
- Process the necessary documents to accept and own Right of Way

8) Agency coordination and communication support

- Prepare for and meet with other agencies as necessary to support the planning, design and permitting efforts of the applicants and as requested by the City.
- Represent the City as requested at regional or inter-governmental venues
- Maintain minutes and action summaries of all meetings
- Maintain a data-base of all required agency approvals and process all permits appropriately to obtain and comply with other agency approval requirements

9) Meeting attendance/consultation

- Prepare for and attend weekly meetings with staff and applicants. Maintain minutes and action items. Follow-through on action items as requested by the City
- Obtain copies of and review minutes, actions and other documents from Council and Committee meetings.
- Prepare for and attend presentations to the public, special interest groups and other agencies as requested by the City
- Attend Council Meetings, Administrative Meetings and staff meetings as requested by the City. Represent the city in a professional and rational manner in all venues.

10) Project Management

- Develop and maintain the processes necessary to work efficiently and provide timely feedback regarding progress and billing
- Maintain billing records and provide invoices in a timely and unambiguous format using methods that allow the City to track and allocate professional costs
- Maintain equipment and processes so that staff can readily and efficiently approach, communicate with and share documents with the consultants' staff
- Maintain all records in a format that supports efficiency and organization
- Provide progress and billing updates when requested by City
- Make administrative staff available to the City to assist with overflow administrative tasks or assistance with project management

CITY COUNCIL AGENDA BILL

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

| ITEM INFORMATION | | | |
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| SUBJECT: Resolution No. 11-741, authorizing the Mayor to execute an Interlocal Agreement with the City of Covington for building code services Cost Impact: NA Fund Source: permit fees; Funding Agreement for code enforcement services Timeline: | Agenda Date: March 17, 2011 | | AB11-019 |
| | Department/Committee/Individual | Created | Reviewed |
| | Mayor Rebecca Olness | | X |
| | City Clerk – B. Martinez | | |
| | City Attorney – Chris Bacha | | X |
| | Finance – May Miller | | |
| | Public Works – Seth Boettcher | | |
| | Economic Devel. – Andy Williamson | | |
| | Police – Jamey Kiblinger | | |
| | Parks/Nat. Resources – Aaron Nix | | |
| Community Develop. – Steve Pilcher | X | | |
| Attachments: Resolution No. 11-741, Interlocal Agreement, Redlined Interlocal Agreement | | | |
| <p>SUMMARY STATEMENT: The City of Black Diamond does not have enough building permit and code enforcement activity to support a full-time staff position. Since January 2010, Robert Meyers has served as the City’s Building Official, working approx. 14-16 hours per week. Mr. Meyers is also the Building Official for the City of Covington. Unfortunately, when Mr. Meyers is ill or on vacation, there is no one available to fill in and we are not able to provide customer service in this area.</p> <p>The City of Covington is also becoming busier in their own permitting activity and will soon likely require more of Mr. Meyers’ time. Covington also has additional staff (a building plans examiner and code enforcement officer) who currently is not working full-time. The proposed ILA will provide additional hours for Covington staff while also ensuring that we always have coverage for building and code inspection services.</p> <p>Billing rates are based upon the various individuals involved and are comparable to what the City paid two years ago under a professional services contract with the prior Building Official. Covington’s staff is highly qualified and is willing to provide these services at a lesser hourly rate than they charge to private applicants.</p> <p>The ILA will last two years, unless terminated earlier by either party. The Covington City Council is scheduled to consider this after Black Diamond takes action.</p> | | | |
| COMMITTEE REVIEW AND RECOMMENDATION: Finance Committee review 3/10/11, recommends approval. | | | |
| RECOMMENDED ACTION: MOTION to adopt Resolution No. 11-741, authorizing the Mayor to execute an Interlocal Agreement with the City of Covington for building code administration, plans examination, building inspection and code enforcement services. | | | |
| RECORD OF COUNCIL ACTION | | | |
| <i>Meeting Date</i> | <i>Action</i> | <i>Vote</i> | |
| March 17, 2011 | | | |
| | | | |

RESOLUTION NO. 11-741

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN AN INTERLOCAL AGREEMENT WITH THE CITY OF COVINGTON FOR BUILDING CODE ENFORCEMENT SERVICES

WHEREAS, Black Diamond and Covington are public agencies as defined by Ch. 39.34 of the Revised Code of Washington ("RCW"), and are authorized to enter into interlocal agreements on the basis of mutual advantage and thereby to provide services and facilities in the manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs of local communities; and

WHEREAS, Covington's Community Development Department maintains a building division that regularly enforces and administers the building code requirements, reviews building permit applications, conducts building inspections, and engages in code enforcement activities; and

WHEREAS, there currently is not sufficient building permit activity within Black Diamond to allow the City to employ a full-time building official/inspector, which results in periodic inability to provide customer service when the part-time individual is out of the office due to work schedule, vacations or illness; and

WHEREAS, Black Diamond desires to utilize the resources of Covington to assist Black Diamond in performing building code administration, plan review, building inspection, and code enforcement; and

WHEREAS, Black Diamond has agreed to compensate Covington for performing these services;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND HEREBY RESOLVES AS FOLLOWS:

Section 1. The Mayor is authorized to execute an interlocal agreement with the City of Covington for building code administration, plans examination, building inspection and code enforcement services substantially in the form attached as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 17TH DAY OF MARCH,
2011.**

CITY OF BLACK DIAMOND

Mayor Rebecca Olness

ATTESTED BY:

Brenda L. Martinez, City Clerk

**INTERLOCAL AGREEMENT BETWEEN
THE CITIES OF BLACK DIAMOND & COVINGTON
RELATING TO BUILDING CODE ADMINISTRATION, PLANS EXAMINATION,
BUILDING INSPECTION, & CODE ENFORCEMENT SERVICES**

THIS INTERLOCAL AGREEMENT, hereinafter "Agreement", is entered into between the CITY OF BLACK DIAMOND, hereinafter "Black Diamond", and the CITY OF COVINGTON, hereinafter "Covington".

WHEREAS, Black Diamond and Covington are public agencies as defined by Ch. 39.34 of the Revised Code of Washington ("RCW"), and are authorized to enter into interlocal agreements on the basis of mutual advantage and thereby to provide services and facilities in the manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs of local communities; and

WHEREAS, Covington's Community Development Department maintains a building division that regularly enforces and administers the building code requirements, reviews building permit applications, conducts building inspections, and engages in code enforcement activities; and

WHEREAS, Black Diamond desires to utilize the resources of Covington to assist Black Diamond in performing building code administration, plan review, building inspection, and code enforcement; and

WHEREAS, Black Diamond has agreed to compensate Covington for performing these services; and

NOW THEREFORE, in consideration of the terms and provisions contained herein, it is agreed between Black Diamond and Covington as follows:

1. **Purpose.** It is the purpose of this Agreement to establish the framework to effectuate Black Diamond's desire to have Covington perform these services for payment.

2. **Services—Generally.**

2.1. **Approval and Priority.** All services provided by Covington to Black Diamond, as detailed in this Agreement, will be performed by Covington's building and code enforcement staff as approved and directed by Covington's Community Development Director (the "Director") or Covington's Building Official ("Building Official") and subsequent to regularly assigned duties for Covington staff.

2.2. **Request for Services.** Covington's building staff will maintain a regular schedule of office hours at Black Diamond. Unless otherwise provided for in this Agreement, Black Diamond shall submit all requests for additional hours of service in writing. Requests submitted via e-mail qualify as "in writing" for purposes of this Agreement.

3. **Building Official Services.** Covington will provide Building Official services in accordance with the current construction codes as adopted and amended by the State of Washington and Black Diamond.

3.1 **Building Official.** Covington's Building Official will perform the duties of Building Official to enforce and administer the provisions of Black Diamond's building code and is authorized to render interpretations of the code in accordance with the adopted construction codes.

3.2 **Meetings.** Covington's Building Official will attend meetings as requested, such as pre-application meetings, pre-submission meetings, enforcement hearings, and City Council meetings, to represent Black Diamond in the role of Building Official.

3.3 **Inspections, Plan Review, Code Enforcement.** Covington's building and code enforcement staff will perform inspections, plan review, and/or code enforcement duties upon request by Black Diamond and pursuant to the procedures provided in this Agreement.

3.4 **Office Hours.** Covington's building staff will hold a minimum of thirteen (13) office hours at Black Diamond per week, with no more than 10 hours per week being provided by the Building Official. In the event that the Building Official is unavailable, other Covington building and code enforcement staff will be directed to cover the minimum thirteen (13) office hours per week. Changes or alterations to the scheduled hours can be requested in writing monthly by either party.

4. **Building Plan Review Services.** Covington Plan Review Staff will review plans for code compliance upon request and in accordance with the current construction codes as adopted and amended by the State of Washington and Black Diamond.

4.1. Black Diamond shall submit requests for any plan review services to the Building Official.

4.2. If corrections or additions are required, Covington Plan Review Staff will draft comments and send an electronic copy to Black Diamond within four (4) weeks of receipt. A longer timeline may be given to allow sufficient review for more time intensive projects, including but not limited to commercial and multi-family projects.

4.3. If approved, Covington Plan Review Staff will indicate in writing that the drawings have been reviewed for code compliance. Approved sets of plans shall be returned to Black Diamond for issuance. Denied or expired permit applications will be returned to Black Diamond after 180 days of inactivity on the application.

4.4. Covington Plan Review Staff will attend meetings upon request, such as pre-application meetings, pre-construction meetings, and enforcement hearings, to represent Black Diamond in the role of Plans Examiner.

5. **Building Inspection Services.** Covington Building Inspection Staff shall perform building inspections, including building, plumbing, and mechanical inspections, upon request. The governing codes used for inspection shall be the International Building Code, International Residential Code, International Mechanical Code and Uniform Plumbing Code as adopted by Black Diamond in the Black Diamond Municipal Code. Inspections will be performed according to the regular inspection schedule set by the Director or Building Official.

5.1. Black Diamond shall submit requests for inspections to the Building Official by 3 pm the business day prior of the requested inspection. Generally, inspections will not be conducted on Fridays, unless Covington notifies Black Diamond that staff will be available.

5.2. Covington Building Inspection staff shall maintain electronic records of inspections in Black Diamond's permit system software and provide Black Diamond with copies of any correction notices and the results of the inspections performed within one (1) business day of the date of the inspection. The correction notices may be provided in electronic or paper format.

6. **Code Enforcement Services.** Covington Code Enforcement Staff will perform code enforcement upon request and in accordance with the Black Diamond Municipal Code and the International Property Maintenance Code.

6.1. Covington Code Enforcement Staff will perform investigations as requested by Black Diamond's Community Development Director.

6.2. Covington Code Enforcement Staff will prepare all written notices and document case history electronically in Black Diamond's permit system software as directed by the Community Development Director.

6.3. Covington Code Enforcement Staff will attend meetings as requested, such as enforcement hearings and City Council meetings, to represent Black Diamond in the role of Code Enforcement Officer.

7. **Term of Agreement.** This Agreement shall become effective on the last date this Agreement is ratified by the legislative body of Covington and the legislative body of Black Diamond. Unless terminated by either party pursuant to the terms of this Agreement, this Agreement shall remain in full force and effect for two (2) years from the effective date. This Agreement may be extended by mutual written agreement of the parties subject to the ratification of such extension by the legislative body of each city.

8. **Payment to Covington.** In consideration of this Agreement and the services provided, Black Diamond shall pay Covington an hourly rate for all services provided by Covington under this Agreement, as listed in Exhibit A. In years subsequent to 2011, Covington and Black Diamond shall negotiate and set the hourly rate for the next year of service. A two (2) hour minimum shall be charged to Black Diamond for each date of any service by Covington. After the two (2) hour minimum is reached for a single date, Black Diamond shall pay for each fifteen (15) minute increment, which shall be rounded to the nearest fifteen (15) minute increment. Black Diamond

shall be required to pay Covington regardless of whether Black Diamond is paid or collects fees for the services that involved the work of Covington. Payments for services rendered shall be made by Black Diamond each month within thirty (30) days of receipt of the billing statement from Covington.

8.1. **Billing Statement.** Covington shall submit a monthly statement to Black Diamond that shall contain the following:

Date of Service
Hours of work

8.2. **Billing Statement Dispute.** In the event that there is a dispute regarding the amount of money owed by Black Diamond to Covington, staff shall make every effort to resolve such dispute. In the event that there is no resolution to the dispute, the disputed amount shall be placed into the registry of the King County Superior Court until the dispute is resolved by agreement of the parties or in a court with jurisdiction over the subject matter of the dispute.

8.3. **Reconciliation of Amount Due After Termination or Expiration.** Within thirty (30) days of the effective date of this Agreement's expiration or earlier termination, Covington shall submit to Black Diamond a statement as described in subsection 7.1 of this Agreement for the past quarter or part thereof. Within thirty (30) days of submitting the statement, the parties shall reconcile the account and determine how much money Black Diamond owes to Covington for unpaid services. Final payment and settlement of accounts shall occur within ninety (90) days of the effective date of termination of the Agreement.

9. **Ownership of Property.** The parties to this Agreement do not contemplate the acquisition of any property to carry out the purposes of this Agreement. Any property owned by Black Diamond shall remain the property of Black Diamond, and any property owned by Covington shall remain the property of Covington.

10. **Independent Contractor.** The Parties understand and agree that Covington is acting hereunder as an independent contractor and shall maintain control of all Covington employees, including but not limited to hiring, firing, discipline, evaluation, and establishment of standards of performance thereof. All Covington personnel rendering service hereunder shall be, for all purposes, employees of Covington, although they may from time to time act as officers of Black Diamond.

11. **Termination.**

11.1. **Termination by Notice.** This Agreement may be terminated by either party upon it providing the other party with sixty (60) days advance written notice of such termination.

11.2. **Termination by Mutual Written Agreement.** This Agreement may be terminated at any time by mutual written agreement of the parties.

11.3. **Termination for Breach.** Covington may terminate this Agreement with fourteen (14) days advance written notice upon the failure of

Black Diamond to make payments as required by this Agreement. Black Diamond may terminate this Agreement upon fourteen (14) days advance written notice in the event Covington fails to provide services as required in this Agreement except disputes handled per Section 7.2.

12. Indemnification and Hold Harmless. Covington agrees to defend, indemnify, and hold harmless Black Diamond, and each of its employees, officials, agents, and volunteers, from any and all losses, claims, liabilities, lawsuits, or legal judgments arising out of any negligent or tortious actions or inactions by Covington or any of its employees, officials, agents, or volunteers, while acting within the scope of the duties required by this Agreement. All costs, including but not limited to attorneys fees, court fees, mediation fees, arbitration fees, settlements, awards of compensation, awards of damages of every kind, etc., shall be paid by Covington or its insurer. This provision shall survive the expiration of this Agreement. This provision shall also survive and remain in effect in the event that a court or other entity with jurisdiction determines that this interlocal Agreement is not enforceable.

Black Diamond agrees to defend, indemnify, and hold harmless Covington and each of its employees, officials, agents, and volunteers from any and all losses, damages, claims, liabilities, lawsuits, or legal judgments arising out of any negligent or tortious actions or inactions by Black Diamond or any of its employees, officials, agents, or volunteers, while acting within the scope of the duties required by this Agreement. All costs, including but not limited to attorneys fees, court fees, mediation fees, arbitration fees, settlements, awards of compensation, awards of damages of every kind, etc., shall be paid by Black Diamond or its insurer. This provision shall survive the expiration or earlier termination of this Agreement. This provision shall also survive and remain in effect in the event that a court or other entity with jurisdiction determines that this interlocal Agreement is not enforceable.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES EACH PARTY'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY TO CARRY OUT THE PURPOSES OF THIS INDEMNIFICATION CLAUSE. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

The rights, duties and obligations set forth in this section 12 (Indemnification and Hold Harmless) survive termination or expiration of this agreement.

13. Miscellaneous.

13.1. **Non-Waiver of Breach.** The failure of either party to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option conferred by this Agreement in one or more instances, shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

13.2. **Resolution of Disputes and Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If the parties are unable to settle any dispute, difference or claim arising from the parties' performance of this Agreement, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the King County Superior Court, King County, Washington, unless the parties agree in writing to an alternative dispute resolution process. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the parties' right to indemnification under this Agreement.

13.3. **Assignment.** Any assignment of this Agreement by either party without the prior written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent.

13.4. **Modification.** No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party and subject to ratification by the legislative body of each City.

13.5. **Compliance with Laws.** Each party agrees to comply with all local, federal and state laws, rules, and regulations that are now effective or in the future become applicable to this Agreement.

13.6. **Entire Agreement.** The written terms and provisions of this Agreement, together with any exhibits attached hereto, shall supersede all prior communications, negotiations, representations or agreements, either verbal or written of any officer or other representative of each party, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. All of the exhibits are hereby made part of this Agreement. Should any of the language of any exhibits to this Agreement conflict with any language contained in this Agreement, the language of this document shall prevail.

13.7. **Severability.** If any section of this Agreement is adjudicated to be invalid, such action shall not affect the validity of any section not so adjudicated.

13.8. **Interpretation.** The legal presumption that an ambiguous term of this Agreement should be interpreted against the party who prepared the Agreement shall not apply.

13.9. **Notice.** All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the Agreement, unless notified to the contrary. Any written notice hereunder shall become effective upon personal service or three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if

**A. EXHIBIT A
BUILDING DEPARTMENT SERVICES FEES**

2011 Hourly Rates

| | |
|--------------------------|-----------|
| Building Official |83.00 |
| Code Enforcement Officer |58.00 |
| Plans Examiner |62.00 |

**INTERLOCAL AGREEMENT BETWEEN
THE CITIES OF BLACK DIAMOND & COVINGTON
RELATING TO BUILDING CODE ADMINISTRATION, PLANS EXAMINATION,
BUILDING INSPECTION, & CODE ENFORCEMENT SERVICES**

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WHEREAS, Covington's Community Development Department maintains a building division that regularly enforces and administers the building code requirements, reviews building permit applications, conducts building inspections, and engages in code enforcement activities; and

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2.2. **Request for Services.** Covington's building staff will maintain a regular schedule of office hours at Black Diamond. Unless otherwise provided for in this Agreement, Black Diamond shall submit all requests for additional hours of service in writing. Requests submitted via e-mail qualify as "in writing" for purposes of this Agreement.

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3.2 **Meetings.** Covington's Building Official will attend meetings as requested, such as pre-application meetings, pre-submission meetings, enforcement hearings, and City Council meetings, to represent Black Diamond in the role of Building Official.

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3.4 **Office Hours.** Covington's building staff will hold a minimum of ~~ten-thirteen (4013)~~ office hours at Black Diamond per week, with no more than 10 hours per week being provided by the Building Official. In the event that the Building Official is unavailable, other Covington building and code enforcement staff will be directed to cover the minimum ~~ten-thirteen (4013)~~ office hours per week. Changes or alterations to the scheduled hours can be requested in writing monthly by either party.

~~4.~~ **Building Plan Review Services.** Covington Plan Review Staff will review ~~4.~~ plans for code compliance upon request and in accordance with the current construction codes as adopted and amended by the State of Washington and Black Diamond,

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4.1. Black Diamond shall submit requests for any plan review services to the Building Official.

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4.2. If corrections or additions are required, Covington Plan Review Staff will draft comments and send an electronic copy to Black Diamond within four (4) weeks of receipt. A longer timeline may be given to allow sufficient review for more time intensive projects, including but not limited to commercial and multi-family projects,

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4.3. If approved, Covington Plan Review Staff will indicate in writing that the drawings have been reviewed for code compliance. Approved sets of plans shall be returned to Black Diamond for issuance. Denied or expired permit applications will be returned to Black Diamond after 180 days of inactivity on the application,

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5.2. Covington Building Inspection staff shall maintain electronic records of inspections in Black Diamond's permit system software and provide Black Diamond with copies of any correction notices and the results of the inspections performed within one (1) business day of the date of the inspection. The correction notices may be provided in electronic or paper format.

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8.1. **Billing Statement.** Covington shall submit a monthly statement to Black Diamond that shall contain the following:

Date of Service
Hours of work

8.2. **Billing Statement Dispute.** In the event that there is a dispute regarding the amount of money owed by Black Diamond to Covington, staff shall make every effort to resolve such dispute. In the event that there is no resolution to the dispute, the disputed amount shall be placed into the registry of the King County Superior Court until the dispute is resolved by agreement of the parties or in a court with jurisdiction over the subject matter of the dispute.

8.3. **Reconciliation of Amount Due After Termination or Expiration.** Within thirty (30) days of the effective date of this Agreement's expiration or earlier termination, Covington shall submit to Black Diamond a statement as described in subsection 7.1 of this Agreement for the past quarter or part thereof. Within thirty (30) days of submitting the statement, the parties shall reconcile the account and determine how much money Black Diamond owes to Covington for unpaid services. Final payment and settlement of accounts shall occur within ninety (90) days of the effective date of termination of the Agreement.

9. **Ownership of Property.** The parties to this Agreement do not contemplate the

9. **acquisition of any property** to carry out the purposes of this Agreement. Any property owned by Black Diamond shall remain the property of Black Diamond, and any property owned by Covington shall remain the property of Covington.

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11. **Termination.**

11.1. **Termination by Notice.** This Agreement may be terminated by either party upon it providing the other party with sixty (60) days advance written notice of such termination.

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11.2. Termination by Mutual Written Agreement. This Agreement may be terminated at any time by mutual written agreement of the parties.

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~~11.2.~~

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11.3. Termination for Breach. Covington may terminate this Agreement with fourteen (14) days advance written notice upon the failure of Black Diamond to make payments as required by this Agreement. Black Diamond may terminate this Agreement upon fourteen (14) days advance written notice in the event Covington fails to provide services as required in this Agreement except disputes handled per Section 7.2.

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~~12.~~ **Indemnification and Hold Harmless.** Covington agrees to defend, indemnify, ~~12.~~ and hold harmless Black Diamond, and each of its employees, officials, agents, and volunteers, from any and all losses, claims, liabilities, lawsuits, or legal judgments arising out of any negligent or tortious actions or inactions by Covington or any of its employees, officials, agents, or volunteers, while acting within the scope of the duties required by this Agreement. All costs, including but not limited to attorneys fees, court fees, mediation fees, arbitration fees, settlements, awards of compensation, awards of damages of every kind, etc., shall be paid by Covington or its insurer. This provision shall survive the expiration of this Agreement. This provision shall also survive and remain in effect in the event that a court or other entity with jurisdiction determines that this interlocal Agreement is not enforceable.

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IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES EACH PARTY'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY TO CARRY OUT THE PURPOSES OF THIS INDEMNIFICATION CLAUSE. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

The rights, duties and obligations set forth in this section 12 (Indemnification and Hold Harmless) survive termination or expiration of this agreement.

13. Miscellaneous.

13.1. Non-Waiver of Breach. The failure of either party to insist upon strict performance of any of the covenants and agreements contained in this

Agreement, or to exercise any option conferred by this Agreement in one or more instances, shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

~~13.1.~~

~~13.2.~~ **Resolution of Disputes and Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If the parties are unable to settle any dispute, difference or claim arising from the parties' performance of this Agreement, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the King County Superior Court, King County, Washington, unless the parties agree in writing to an alternative dispute resolution process. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the parties' right to indemnification under this Agreement.

~~13.2.~~

~~13.3.~~ **Assignment.** Any assignment of this Agreement by either party without the prior written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent.

~~13.3.~~

~~13.4.~~ **Modification.** No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party and subject to ratification by the legislative body of each City.

~~13.4.~~

~~13.5.~~ **Compliance with Laws.** Each party agrees to comply with all local, federal and state laws, rules, and regulations that are now effective or in the future become applicable to this Agreement.

~~13.5.~~

~~13.6.~~ **Entire Agreement.** The written terms and provisions of this Agreement, together with any exhibits attached hereto, shall supersede all prior communications, negotiations, representations or agreements, either verbal or written of any officer or other representative of each party, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. All of the exhibits are hereby made part of this Agreement. Should any of the language of any exhibits to this Agreement conflict with any language contained in this Agreement, the language of this document shall prevail.

~~13.6.~~

~~13.7.~~ **Severability.** If any section of this Agreement is adjudicated to be invalid, such action shall not affect the validity of any section not so adjudicated.

~~13.7.~~

~~13.8.~~ **Interpretation.** The legal presumption that an ambiguous term of this Agreement should be interpreted against the party who prepared the Agreement shall not apply.

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13.8. —

13.9. **Notice.** All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the Agreement, unless notified to the contrary. Any written notice hereunder shall become effective upon personal service or three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

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IN WITNESS, the parties below execute this Agreement, which shall become effective on the last date entered below.

| | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>COVINGTON:</p> <p>CITY OF COVINGTON:</p> <p>By: _____ <i>(signature)</i></p> <p>Print Name: <u>Derek M. Matheson</u> Its <u>City Manager</u></p> <p>DATE: _____</p> | <p>BLACK DIAMOND:</p> <p>CITY OF BLACK DIAMOND:</p> <p>By: _____</p> <p>Print Name: <u>Rebecca Olness</u> Its <u>Mayor</u></p> <p>DATE: _____</p> |
| <p>NOTICES TO BE SENT TO:</p> <p><u>Derek M. Matheson</u>, City Manager City of Covington 16720 SE 271st Street, Suite 100 Covington, WA 98042</p> <p>(253) 638-1110 (telephone) (253) 638-1122 (facsimile)</p> | <p>NOTICES TO BE SENT TO:</p> <p><u>Rebecca Olness</u>, Mayor City of Black Diamond PO Box 599 24301 Roberts Drive Black Diamond, WA 98042</p> <p>(360) 886-2560 (telephone) (360) 886-2592 (facsimile)</p> |
| <p>APPROVED AS TO FORM:</p> <p>_____ City Attorney</p> | <p>APPROVED AS TO FORM:</p> <p>_____ City Attorney</p> |

**A. EXHIBIT A
BUILDING DEPARTMENT SERVICES FEES**

2011 Hourly Rates

| | |
|--------------------------|------------------------------------|
| Building Official | 76.00 <u>83.00</u> |
| Code Enforcement Officer | 50.00 <u>58.00</u> |
| Plans Examiner | 65.00 <u>62.00</u> |

CITY COUNCIL AGENDA BILL

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

| ITEM INFORMATION | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|-------------|-----------------|
| SUBJECT: Resolution No. 11-742, approving SEP11-0001 for Xterra-Black Diamond 2011 | Agenda Date: March 17, 2011 | | AB11-020 |
| | Department/Committee/Individual | Created | Reviewed |
| | Mayor Rebecca Olness | | |
| | City Administrator – | | |
| | City Attorney –Chris Bacha | | |
| | City Clerk – Brenda L. Martinez | | |
| | Finance – May Miller | | |
| | Public Works – Seth Boettcher | | |
| | Economic Devel. – Andy Williamson | X | |
| | Police – Jamey Kiblinger | | |
| Cost Impact: | Court – Stephanie Metcalf | | |
| Fund Source: | Comm. Dev. – Steve Pilcher | | |
| Timeline: August 6 th & 7 th , 2011 | | | |
| Attachments: Resolution 11-742, Application, Staff Comments | | | |
| <p>SUMMARY STATEMENT:</p> <p>The Xterra-Black Diamond Triathlon is proposed to take place on August 6-7, 2011. The race includes a swim in Lake Sawyer, a bike race and run in Lake Sawyer Park and adjoining private property. On Saturday, event organizers will set up for the race. The actual races will take place on Sunday. There is a half and full triathlon race for adults. There will also be a mini race for kids.</p> <p>The event will use an off duty police officer and EMS personnel from District 44. These services are being paid by Xterra. The event is being sponsored by local businesses and the coordinators will encourage participants to visit local businesses after the race.</p> <p>Staff has recommended conditions for approval which is attached.</p> | | | |
| COMMITTEE REVIEW AND RECOMMENDATION: | | | |
| <p>RECOMMENDED ACTION: MOTION to adopt Resolution No. 11-742 approving the Xterra Special Event SEP11-0001.</p> | | | |
| RECORD OF COUNCIL ACTION | | | |
| <i>Meeting Date</i> | <i>Action</i> | <i>Vote</i> | |
| March 17, 2011 | | | |
| | | | |
| | | | |

RESOLUTION NO. 11-742

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
APPROVING THE XTERRA SPECIAL EVENT SEP11-0001**

WHEREAS, Black Diamond Municipal Code 2.59.040(B) requires that the City Council is responsible for approving any special event that exceeds one day in duration; and

WHEREAS, the Xterra Triathlon Race has occurred annually in the Lake Sawyer Park since 2008; and

WHEREAS, Raise the Bar, LLC proposes to use the Lake Sawyer Park and adjoining private properties to hold the 4th Annual Xterra Black Diamond Triathlon on August 6-7, 2011;

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

Section 1. Special Event permit SEP11-0001 for Xterra Black Diamond is hereby approved.

Section 2. The Mayor is authorized to direct staff to issue the special event permit with appropriate conditions prior to the event.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 17TH DAY OF MARCH 2011.

CITY OF BLACK DIAMOND:

Rebecca Olness, Mayor

Attest:

Brenda L. Martinez, City Clerk



DEC 02 2010

RECEIVED SPECIAL EVENT APPLICATION

PERMIT# SEP11-0001

EVENT INFORMATION

EVENT NAME: XTERIA Black Diamond

EVENT LOCATION: Lake Sawyer Open Space (If structures will be erected and/or street ROW used, please attach (3) drawings noting locations and dimensions.)

EVENT TYPE: [] Exhibition [] Protest [x] Run/Walk [] Dance [] Festival [] Concert [] Party (Check all that apply) [] Wedding [] Drama [] Parade [] Other [] Triathlon

DATE OF EVENT: 8/7/2011 (Set-up 8/6) HOURS: 8/6: 9AM - 8/7 2PM

PURPOSE OF EVENT: OFF-Road triathlon & Kids Race

EST. ATTENDANCE: Participants 250 Spectators 200 Volunteers/Personnel 120 CITY BUS. LICENSE #: (participating commercial vendors will also require a City license)

PARKING PLANS: (Please provide a drawing unless you are using an existing parking lot with sufficient stalls.)

FACILITIES TO BE USED: [] City Park [x] Lake Sawyer [] Sidewalk [x] Street [x] Private Property (If using private property, you must provide proof that you have permission unless you are the owner.)

CITY ASSISTANCE REQUIRED: [x] Police [x] Fire [] Public Works [] Other Describe: letters attached (Police and Fire services require a written agreement that must be submitted with the event application.)

INSURANCE COMPANY: ESIX - Entertainment & Sports Insurance Experts (Proof of Ins. required naming City of Black Diamond as co-insured if event is taking place on City property.)

FOOD TO BE SERVED: [x] YES [] NO If yes, provide copy of Health Dept approval/license.

SOUND SYSTEM: [x] YES [] NO (If liquor and music are provided a Cabaret license may be required.)

SANITATION PLANS (Sani-cans, hand washing stations, etc): Sani-cans & handwashing station

PRODUCTS OR SERVICES TO BE SOLD: [] YES [x] NO If yes, what?

ADMISSION FEE: [x] YES [] NO If yes, how much? \$55 - \$120 depending upon division

HAS THE EVENT BEEN PREVIOUSLY PRODUCED? [x] YES [] NO PREVIOUS DATE: 8/3/2007, 8/2/2009, 8/1/2011

ANY CHANGES FROM PREVIOUS EVENT? [x] YES [] NO If yes, list changes: We will be offering a half-distance race concurrently. Race remains capped at 200 total athletes.

APPLICANT INFORMATION

APPLICANT: Patty Swedberg ORGANIZATION: Raise the Bar LLC

MAILING ADDRESS: 19621 SE 310 Pl, Rovington, WA, 98042

CONTACT PHONE 206-779-7727 FAX 253-631-7532

EMAIL ADDRESS: patty@weraisethebar.com

EMERGENCY CONTACT Toby Mollett PHONE 206-713-0680

Patty Sirely
SIGNATURE OF APPLICANT

12/2/2010
DATE

Additional information or requirements may be requested. Please allow 3 - 4 weeks for processing.



XTERRA Black Diamond 2011 Proposal

Raise the Bar respectfully requests the permission of the City of Black Diamond Council and Staff to produce the 4th Annual XTERRA Black Diamond scheduled for August 7, 2011. The 2011 event will feature the standard long course event and will add a half-distance race on the same course as well. A Kids Triathlon will also take place for a 3rd year. The intended use of the park land and surrounding private property is unchanged from previous years.

Location:

The race takes place on the City of Black Diamond's Lake Sawyer Park, and on the privately owned trails east of Lake Sawyer.

Date/Time:

Saturday, August 6, 2011 9am-overnight (for equipment and course preparation, provision of security, and camping for race staff and athletes traveling from out of town)

Sunday, August 7, 2011 5am-5pm (race day)

Schedule of Events:

August 6 : Course and transition/vendor area set-up , Athlete Camping

August 7th : 5:00 Preparation of venue, campers tear down campsites
6:00 Registration, Athlete race prep
9:00 Long Course Race Begins
9:30 Short Course Race Begins
9:50 Kids Rock Triathlon Begins
1:30 All athletes off the course, awards, food
2:30 Course Clean-up begins
5:00 Event Conclusion, exit park

Estimated Attendance

200 maximum adult athletes, 50-60 children, 200-300 family members, spectators, volunteers, staff.

Business Impact

Event Organizers will again be directing athletes to patronize Black Diamond businesses while in town. Business owners will have the opportunity to advertise their products/services on the race website and on site at the race venue.

Parking –

Event organizers would like to park no more than 100 staff, volunteer, and athlete vehicles within the park boundaries on race weekend. All other vehicles will park at Sawyer Woods Elementary School as contracted through the Kent School District. A Police Officer paid by Raise the Bar will provide traffic control on Sunday morning to assure the safety of pedestrians crossing 228th Ave. SE to access SE 312th St. Please see attached parking map which indicates room for more than 170 available, standard sized, 9' x 18' parking spaces with 24' foot travel lane.

COMMUNITY DEVELOP.

DEC 02 2010

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Overnight Security/Camping

As in previous years, event organizers request permission to stay overnight at the park to provide security for equipment and the race-setup. We also request permission for out-of-town athletes to camp overnight in the park, as overnight lodging is scarce in the Black Diamond area. Event Organizers will register campers and collect camping fees as determined and instructed by the City Code and will reimburse the city for this amount.

Sanitation –

Portable toilets and hand-washing stations will be on site to serve athletes, spectators, contracted and paid for by Raise the Bar

Athlete Safety –

Mountain View Fire and Rescue will provide medical care to athletes on race day. Certified lifeguards will be hired to provide water support during the swim portion. The Maple Valley Amateur Radio Club will provide communication assistance on race day to alert race staff and the medical team of any requirements to assist athletes on the course.

Insurance –

XTERRA Black Diamond is a race sanctioned by USA Triathlon, which provides an insurance policy for the race through the ESIX insurance company. The City of Black Diamond will be named as an “additional insured” on the policy as well as private property owners and other parties as requested.

Neighbor Impact and Notification

A letter will be delivered to each home on SE 312th St prior to the race alerting the neighbors of the weekend schedule and impact. In obedience to city code, cars will not be allowed to park on SE 312th street on either August 6th or August 7st.

Noise

A public address system will be in place Sunday morning broadcasting music and important announcements for athletes. Event Organizers respectfully request to begin announcements at 7:30AM

Managing Organization:

Raise the Bar LLC
19621 SE 310th Pl
Kent, WA 98042

Event owner, General Manager

Patty Swedberg
206-779-7727
patty@weraisethebar.com

Course Director

Toby Mollett
206-713-0080
toby@weraisethebar.com

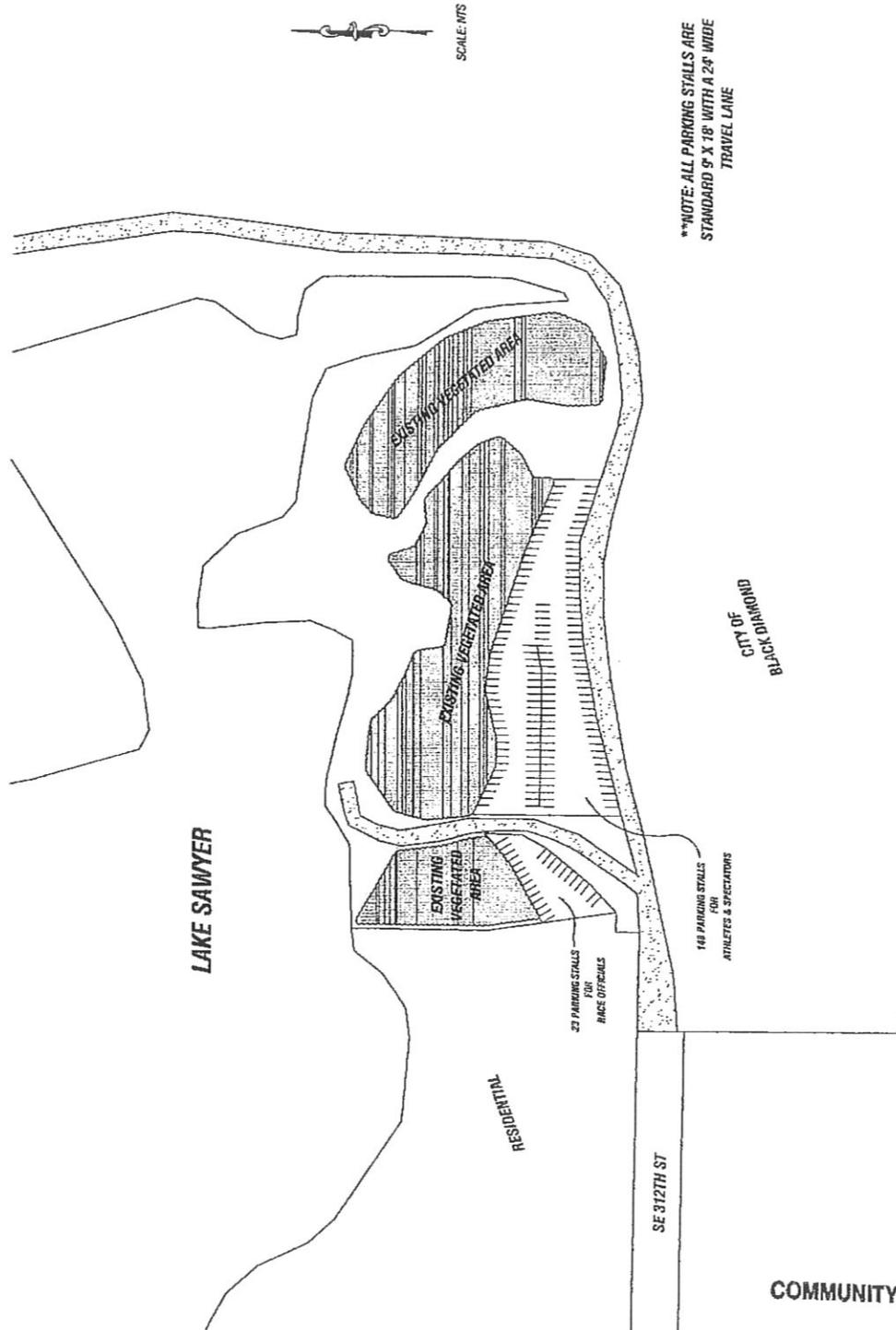
COMMUNITY DEVELOP.

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Xterra Black Diamond PARKING EXHIBIT



COMMUNITY DEVELOP.

DEC 02 2010

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Date: December 3, 2010

To: Robert Young
Mountain View Fire & Rescue

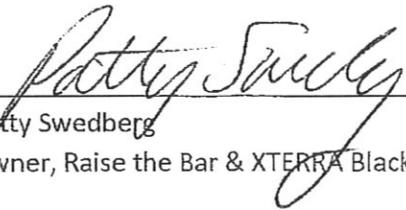
From: Patty Swedberg, Owner
Raise the Bar LLC & XTERRA Black Diamond

COMMUNITY DEVELOP.
DEC 02 2010
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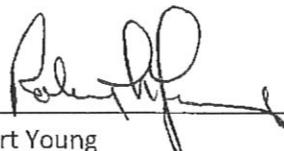
Subject: Medical Support, 2011 XTERRA Black Diamond

Raise the Bar requests Mountain View Fire and Rescue to provide medical support for the 2011 XTERRA Black Diamond off-road triathlon on August 7, 2011. We request the use of the special response unit and 3-4 EMT's to provide assistance. Exact amount to be determined closer to race day. Raise the Bar agrees to pay the current, designated rate for the services and appreciates the department's continued support of our event.

Respectfully,



Patty Swedberg
Owner, Raise the Bar & XTERRA Black Diamond



Robert Young
Mountain View Fire & Rescue



Date: December 3, 2010

To: Jamey Kiblinger, Commander
City of Black Diamond Police

From: Patty Swedberg, Owner
Raise the Bar LLC

COMMUNITY DEVELOP.
DEC 02 2010
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Subject: Police Support, 2011 XTERRA Black Diamond

Raise the Bar agrees to hire one off-duty police officer from the City of Black Diamond on August 7th, 2011 from 6:30-9:30AM to provide traffic control at the intersection of Lake Sawyer Road and SE 312th St. during the XTERRA Black Diamond off-road triathlon.

Raise the Bar is grateful to the City and the Police Department for their support of this event.

Respectfully,

A handwritten signature in cursive script, appearing to read 'Patty Swedberg', is written over a horizontal line.

Patty Swedberg
Owner, Raise the Bar & XTERRA Black Diamond

A handwritten signature in cursive script, appearing to read 'Jamey Kiblinger', is written over a horizontal line.

Jamey Kiblinger
Commander, Black Diamond Police Department



INTEROFFICE MEMORANDUM

TO: MAYOR AND COUNCIL MEMBERS
FROM: CITY STAFF
SUBJECT: XTERRA BLACK DIAMOND 2011, SPECIAL EVENT PERMIT
DATE: 3/10/11
CC:

The following information summarizes staff comments regarding the Xterra Black Diamond Race planned for August 6th & 7th. Some of these items will be conditions of approval. There are also additional application documents that will be required to be submitted prior to issuance of the special event permit.

At this time Xterra is seeking approval of the event so that they can effectively promote the race. One month prior to the event it will be required that all additional requested documents and information be submitted to the City. City staff will review these documents to make sure they meet any conditions set by the council or staff. If deemed sufficient, then we will issue the permit.

Conditions for Approval:

- Open fires are prohibited
- Within Lake Sawyer Regional Park, use less a staple gun or construction tape to attach course markers to trees. Where possible, use ground signs on stakes.
- Do not use paint to mark the course on City streets. Sidewalk Chalk or ground stake signs are suggested.
- No more than 100 cars for parking of participants shall be allowed within the Lake Sawyer Park area. Maintain a minimum 100' buffer between the lake edge and any parked vehicle. Spill response kits shall be made available for any cars leaking oil or other automotive fluids in order to prevent entry into Lake Sawyer.
- Overnight camping shall be limited to 20 tents. In addition, one (1) camping trailer is allowed, but must be self-contained with no discharge of grey water or wastewater allowed within the park area. Applicable overnight camping fees per the City's adopted fee schedule shall apply and shall be made payable to the City of Black Diamond prior to the event.
- Amplified music/ announcements shall be limited to the hours of 8:00 am – 10:00 pm. The volume shall not exceed that necessary to reach event participants and spectators.
- Mailed or hand-delivered advance notice of the event shall be provided to the potentially effected residents on 312th, 231st, and 230th at least two weeks prior to the event.

- Any food vendors shall provide proof of a license from the King County Department of Health.
- On-site EMS personnel will be required. The City has already received a signed agreement.
- A Police Officer is required to conduct traffic control at the intersection of 312th & 228th. Xterra shall pay for this service per the City's adopted fee schedule. The City has already received a signed agreement.
- Sawyer Woods Elementary shall be used for additional event parking. An alternative plan for additional parking shall be provided should the school not be available or if there is additional need.

Additional required documents/information prior to permit issuance:

- Provide information about the location and number of portable standard restrooms and accessible restrooms. Also provide number and location of hand washing stations.
- Provide emergency contact info regarding the use of the school parking lot for overflow.
- Prior to permit issuance, Xterra shall pay all required camping fees to the City of Black Diamond. No camping fees will be collected during the event.
- Any vendors at the event will be required to obtain a City of Black Diamond license unless they are exempt from the licensing requirements.
- Xterra shall obtain a City of Black Diamond business license.
- A copy of all private property special use agreements and insurance certificates shall be submitted.