



CITY OF BLACK DIAMOND
September 19, 2013 Council 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 360-886-5700. Thank you for attending.

PUBLIC HEARINGS:

- 1.) **AB13-069** – Proposed Ordinance Imposing a Six-Month Moratorium Prohibiting the Establishment, Location, Operation, Licensing, Maintenance, or Continuation of any Medical Cannabis Collective Garden or any Medical Marijuana Dispensary Mr. Bacha
- 2.) **AB13-070** – Proposed Ordinance Imposing a Six-Month Moratorium Prohibiting the Acceptance or Processing of Applications, or Issuance of Permits and Approvals, and Uses or Activities Associated with Production, Processing, and Retailing of Marijuana and Marijuana-Infused Products Mr. Bacha

APPOINTMENTS, PRESENTATIONS, ANNOUNCEMENTS:

Presentation - “Coverage is Here King County” – Public Health – Seattle & King County

UNFINISHED BUSINESS: None

NEW BUSINESS:

- 3.) **AB13-071** – Ordinance Imposing a Six-Month Moratorium Prohibiting the Establishment, Location, Operation, Licensing, Maintenance, or Continuation of any Medical Cannabis Collective Garden or any Medical Marijuana Dispensary Mr. Hoppen
- 4.) **AB13-072** – Ordinance Imposing a Six-Month Moratorium Prohibiting the Acceptance or Processing of Applications, or Issuance of Permits and Approvals, and Uses or Activities Associated with Production, Processing, and Retailing of Marijuana and Marijuana-Infused Products Mr. Hoppen
- 5.) **AB13-073** – Resolution Accepting RCO Grant for Lake Sawyer Boat Launch Mr. Nix
- 6.) **AB13-074** – Ordinance Amending Sign Regulation Code Ms. Welsh

DEPARTMENT REPORTS:

MAYOR’S REPORT:

COUNCIL REPORTS:

ATTORNEY REPORT:

PUBLIC COMMENTS:

CONSENT AGENDA:

- 7.) **Claim Checks** – September 19, 2013, Check No. 40000 through No. 40037 (void check nos. 39998-39999) in the amount of \$98,025.01
- 8.) **Payroll Checks**– September 19, 2013 No. 18113 through No. 18133 and ACH Pay in the amount of \$293,090.78
- 9.) **Minutes**– Regular Meeting Minutes of September 5, 2013

ADJOURNMENT:

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT:	Agenda Date: September 19, 2013	AB13-069
PUBLIC HEARING - Ordinance No. 13-1011, Imposing a moratorium upon Collective Gardens	Department/Committee/Individual	
	Mayor Rebecca Olness	
	City Administrator – Mark Hoppen	X
	City Attorney –Chris Bacha	X
	City Clerk – Brenda L. Martinez	
	Finance – May Miller	
	Natural Resources/Parks – Aaron Nix	
	PW/Ec. Dev. – Andy Williamson	
	Police – Jamey Kiblinger	
	Court – Stephanie Metcalf	
Comm. Dev. – Stacey Welsh		
Cost Impact:		
Fund Source:		
Timeline:		
Agenda Placement: <input type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair X City Administrator		
Attachments: Ordinance No. 13-1011; Public Hearing notice		
SUMMARY STATEMENT:		
<p>In 1998 Washington voters approved initiative Measure No. 692 now codified as Chapter 69.51A RCW. The law allows “collective gardens” that provide for growing and cultivating up to 45 plants to serve no more than 10 qualifying patients but also preserves the City’s authority to implement zoning requirements, business licensing requirements and health and safety requirements. The City requires time to conduct appropriate research to understand the impacts and potential liabilities under federal law, and to determine an appropriate regulatory framework for any new uses that may be allowed pursuant to RCW Ch. 69.51A. In particular, and without limitation, staff should analyze the impacts of allowing these uses and facilities in residential, retail and commercial zones as well as impacts arising from the proximity of these uses and facilities to schools, daycares, parks, religious and cultural facilities, jails and courthouses. The proposed ordinance would impose a moratorium upon on the establishment, location, operation, licensing, maintenance or continuation of medical cannabis collective gardens or dispensaries, asserted to be authorized or actually authorized under RCW Ch. 69.51A. Such a moratorium is authorized pursuant to RCW 35A.63.220 and RCW 36.70A.390, and may be in effect for no longer than six months, absent an additional extension(s).</p>		
COMMITTEE REVIEW AND RECOMMENDATION:		
<p>RECOMMENDED ACTION: Consideration of proposed ordinance and possible motion to adopt Ordinance No. 13-1011, relating to a moratorium within the City of Black Diamond upon the establishment, location, operation, licensing, maintenance or continuation of medical cannabis collective gardens or dispensaries, asserted to be authorized or actually authorized under E2SSB 5073, Chapter 181, Laws of 2011, Chapter 69.51A Revised Code of Washington, or any other laws of the State of Washington; establishing an effective date; and providing for severability.</p>		

RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
September 19, 2013		

CITY OF BLACK DIAMOND

WASHINGTON

ORDINANCE NO. 13-1011

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO A MORATORIUM; ADOPTING FINDINGS OF FACT AND A SIX-MONTH MORATORIUM WITHIN THE CITY OF BLACK DIAMOND UPON THE ESTABLISHMENT, LOCATION, OPERATION, LICENSING, MAINTENANCE OR CONTINUATION OF MEDICAL CANNABIS COLLECTIVE GARDENS OR DISPENSARIES, ASSERTED TO BE AUTHORIZED OR ACTUALLY AUTHORIZED UNDER E2SSB 5073, CHAPTER 181, LAWS OF 2011, CHAPTER 69.51A REVISED CODE OF WASHINGTON, OR ANY OTHER LAWS OF THE STATE OF WASHINGTON; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR SEVERABILITY.

WHEREAS, the possession or distribution of cannabis (marijuana) has been and continues to be a violation of federal law, through the Controlled Substances Act (“CSA”); and

WHEREAS, initiative Measure No. 692, approved by the voters of Washington State on November 30, 1998, and now codified as Chapter 69.51A RCW, created a limited defense to marijuana charges under state, not federal, law if the person charged could demonstrate that he or she was a qualifying patient or designated provider as those terms are defined in Ch. 69.51A RCW; and

WHEREAS, in 2007, the state legislature amended the law, and again in 2011, the state legislature passed a third amendment to the law, E2SSB 5073, Chapter 181, Laws of 2011, portions of which the Governor vetoed. The newly amended law took effect on July 22, 2011; and

WHEREAS, prior to issuing her partial veto, the Governor received a letter signed by Washington’s two U.S. Attorneys, Michael Ormsby and Jennifer Durkan. In their letter, they wrote that marijuana is a Schedule I controlled substance under federal law and, as such, “growing, distributing and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws permitting such activities”, and, concluded that “state employees who conducted activities mandated by the Washington legislative proposals would not be immune from liability under the CSA”; and

WHEREAS, because the Governor vetoed 36 of the 58 sections of the Legislature’s bill amending Chapter 69.51A RCW, the law, in its final form, understandably has inconsistencies and ambiguities. For example, certain sections that were not vetoed make reference to other sections that were vetoed; and

WHEREAS, the amendments to Chapter 69.51A RCW changed the scope and effect of the law. New sections affect the rights of qualifying patients and their designated providers. The law now allows “collective gardens” that provide for growing and cultivating up to 45 plants to serve no more than 10 qualifying patients. The law also provides other changes to the rights and responsibilities of medical marijuana patients and their designated providers; and

WHEREAS, the new law, however, clearly delegates to cities the authority to implement zoning requirements, business licensing requirements, health and safety requirements, and business taxes as those requirements and taxes relate to the production, processing, or dispensing of medical marijuana. In particular, local regulations could address ambiguities concerning the location and operation of collective gardens, and ensure that provisions related to designated providers are not used to establish a de facto dispensary when the authority for such uses was vetoed; and

WHEREAS, the City Council requires time to conduct appropriate research to understand the extent of the changes provided in the new law, to analyze impacts and potential liabilities under federal law, and to determine an appropriate regulatory framework for any new uses that are allowed under these laws; and

WHEREAS, the City must ensure that proposed locations for these operations are appropriate and that any potential secondary impacts arising from the operation of these uses or facilities are minimized and mitigated. These secondary impacts may include, but are not limited to, burglaries associated with the cash and marijuana maintained on the site, or an increase of other illegal activities, such as drug use, within the vicinity of these dispensaries; and

WHEREAS, in particular, and without limitation, staff should analyze the impacts of allowing these uses and facilities in residential zones as well as impacts arising from the proximity of these uses and facilities to schools, daycares, parks, religious and cultural facilities, jails and courthouses; and

WHEREAS, pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council held a public hearing on the 19th day of September, 2013, and took and considered public testimony regarding whether or not the City should establish and implement a moratorium upon the zoning, licensing, and permitting of medical marijuana dispensaries and collective gardens; and,

WHEREAS, after having considered the public testimony and based upon the foregoing, the city council finds that a zoning, licensing, and permitting moratorium should be established, pending local review of appropriate locations and design requirements of these operations, and impacts of the newly amended law and its interaction with federal law; and

WHEREAS, although the City Council determines that a moratorium is necessary for the reasons established above, the City Council emphasizes that it understands the needs of persons suffering from debilitating or terminal conditions, as well as the benefits that approved medical use of marijuana may provide these persons. Nevertheless, given the complex legal and regulatory framework surrounding this issue, a moratorium remains necessary until the City Council can adequately address the competing interests at play;

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

Section 1. Findings. The recitals and findings set forth above are hereby adopted as the City Council's findings in support of the moratorium imposed by this ordinance.

Section 2. – Moratorium Imposed. Pursuant to the provisions of Article 11, Section 11 of the Washington State Constitution, RCW 35A.63.220, and RCW 36.70A.390, a moratorium is hereby enacted prohibiting within the City of Black Diamond the establishment, location, operation, licensing, maintenance, or continuation of any medical cannabis collective garden or any medical marijuana dispensary, whether for profit or not for profit, asserted to be authorized or actually authorized under E2SSB 5073, Chapter 181, Laws of 2011, Chapter 69.51A RCW, or any other laws of the state of Washington. No building permit, occupancy permit, or other development permit or approval shall be issued for any of the purposes or activities listed above, and no business license shall be granted or accepted while this moratorium is in effect. Any land use permits, business licenses or other permits for any of these operations that are issued as a result of error or by use of vague or deceptive descriptions during the moratorium are null and void, and without legal force or effect. As used in this ordinance, medical marijuana dispensary and medical marijuana collective garden shall be defined as provided for in Chapter 69.51A RCW as currently enacted or thereafter amended. The moratorium imposed hereunder shall constitute a regulation within the meaning of Section 8.02.020 of the Black Diamond Municipal Code.

Section 3. – No Nonconforming Uses. No use that constitutes or purports to be a medical marijuana dispensary or medical marijuana collective garden as those terms are defined in this ordinance, that was engaged in that activity prior to the enactment of this ordinance shall be deemed to have been a legally established use under the provisions of the Black Diamond Municipal Code and that use shall not be entitled to claim legal nonconforming status.

Section 4. – Effective Period for Moratorium. The moratorium set forth in this ordinance shall be in effect for a period of six months from the date this ordinance is passed and shall automatically expire at the conclusion of that six-month period unless the same is extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the city council.

Section 5. – Referral to Staff. The City Administrator and/or his/her designee is hereby authorized and directed to develop appropriate land use regulations for review by the Planning Commission and recommendation to the City Council for inclusion in the zoning regulations or other provisions of the Black Diamond Municipal Code. The City Administrator and/or his/her

designee is hereby authorized and directed to develop appropriate business licensing and other regulations pursuant to the newly amended law for review and recommendation for inclusion in the zoning regulations or other provisions of the Black Diamond Municipal Code.

Section 6. – Severability. If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

Section 7. – Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

Section 8. – Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication. The City Clerk is directed to publish a summary of this ordinance at the earliest possible publication date.

**ADOPTED BY THE CITY COUNCIL OF BLACK DIAMOND,
WASHINGTON THIS 19TH DAY OF SEPTEMBER, 2013,**

APPROVED:

Rebecca Olness, Mayor

ATTEST/AUTHENTICATED:

Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:

Chris Bacha
Kenyon Disend, PLLC
City Attorney

Filed with the City Clerk:
Passed by the City Council:

Ordinance No.
Date of Publication:
Effective Date:



Please publish in the next two (2) consecutive editions of the Reporter

**CITY OF BLACK DIAMOND
NOTICE OF (2) PUBLIC HEARINGS**

Notice is hereby given that the Black Diamond City Council will be conducting two public hearings 1) regarding a proposed ordinance imposing a six-month moratorium prohibiting the establishment, location, operation, licensing, maintenance, or continuation of any medical cannabis collective garden or any medical marijuana dispensary, and 2) regarding a proposed ordinance imposing a six-month moratorium prohibiting the acceptance or processing of applications, or issuance of permits and approvals, and uses or activities associated with production, processing, and retailing of marijuana and marijuana-infused products. The hearings are scheduled for Thursday, September 19, 2013 at 7:00 p.m. at the Black Diamond City Council Chambers, 25510 Lawson Street, Black Diamond, WA. The purpose of the hearing is to hear public testimony on the proposed ordinances. Written comments may be submitted to the Clerk's office at 24301 Roberts Drive, PO Box 599, Black Diamond, WA, 98010 no later than 5:00 p.m. on September 19, 2013; otherwise, they must be submitted at the hearings. Information is also available on the City's website www.ci.blackdiamond.wa.us under "Public Notices." For further information please contact Mark Hoppen, City Administrator at 360-886-5700.

Dated this 29th day of August, 2013
Brenda L. Martinez, CMC
Asst. City Admin/City Clerk

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT:	Agenda Date: September 19, 2013	AB13-070
PUBLIC HEARING - Ordinance No. 13-1012, marijuana manufacturing and distribution moratorium	Department/Committee/Individual	
	Mayor Rebecca Olness	
	City Administrator – Mark Hoppen	X
	City Attorney –Chris Bacha	X
	City Clerk – Brenda L. Martinez	
	Finance – May Miller	
	Natural Resources/Parks – Aaron Nix	
	PW/Ec. Dev. – Andy Williamson	
	Police – Jamey Kiblinger	
Cost Impact:	Court – Stephanie Metcalf	
Fund Source:	Comm. Dev. – Stacey Welsh	
Timeline:		
Agenda Placement: <input type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input checked="" type="checkbox"/> City Administrator		
Attachments: Ordinance No. 13-1012; Public Hearing Notice		
SUMMARY STATEMENT:		
<p>Initiative 502 (I-502”) authorizes the manufacture, packaging, distribution and retail sale of marijuana and marijuana infused products for recreational purposes, subject to further promulgation of rules by the Washington State Liquor Control Board (WSLCB). The WSLCB has not yet adopted rules pertaining to licensing of the producers, processors, and retailers, but, is now scheduled to consider final adoption on October 16 whereupon the WSLCB will begin accepted applications for licensing of producers, processors, and retailers. In the absence of such final rules, the City has been unable to assess whether or not amendments to its land use code are necessary or desirable in response to I-502. The proposed ordinance would impose a moratorium upon on the acceptance or processing of applications, or issuance of permits and approvals, and uses or activities associated with production, processing, and retailing of marijuana and marijuana-infused products. The purpose of the moratorium would be to provide sufficient time to allow City staff, the City Planning Commission and the City Council, to consider amendments to the City land use code. Such a moratorium is authorized pursuant to RCW 35A.63.220 and RCW 36.70A.390, and may be in effect for no longer than six months, absent an additional extension(s).</p>		
COMMITTEE REVIEW AND RECOMMENDATION: No review by committee		
<p>RECOMMENDED ACTION: Consideration of proposed ordinance and possible motion to adopt Ordinance No. 13-1012, adopting a six-month moratorium within the City of Black Diamond on the acceptance or processing of applications, or issuance of permits and approvals, and uses or activities associated with production, processing, and retailing of marijuana and marijuana-infused products asserted to be authorized or actually authorized under Initiative Measure No. I-502, or any other laws of the State of Washington; providing for an effective date; and, providing for severability.</p>		

RECORD OF COUNCIL ACTION

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
September 19, 2013		

CITY OF BLACK DIAMOND
WASHINGTON
ORDINANCE NO. 13-1012

AN ORDINANCE OF THE CITY OF BLACK DIAMOND, WASHINGTON, ADOPTING A SIX-MONTH MORATORIUM WITHIN THE CITY OF BLACK DIAMOND ON THE ACCEPTANCE OR PROCESSING OF APPLICATIONS, OR ISSUANCE OF PERMITS AND APPROVALS, AND USES OR ACTIVITIES ASSOCIATED WITH PRODUCTION, PROCESSING, AND RETAILING OF MARIJUANA AND MARIJUANA-INFUSED PRODUCTS ASSERTED TO BE AUTHORIZED OR ACTUALLY AUTHORIZED UNDER INITIATIVE MEASURE NO. I-502, OR ANY OTHER LAWS OF THE STATE OF WASHINGTON; PROVIDING FOR AN EFFECTIVE DATE; AND, PROVIDING FOR SEVERABILITY

WHEREAS, cannabis remains a Schedule I controlled substance under the federal Controlled Substances Act (CSA), and possession, distribution and use of cannabis is still a violation of federal law; and

WHEREAS, representatives of the United States Department of Justice have stated that although state law may authorize the use and possession of cannabis, persons who are in the business of, or knowingly facilitate, the business of cultivating, selling or distributing marijuana are in violation of the Federal Controlled Substances Act, regardless of state law, and that, state laws and local ordinances are not a defense to criminal or civil enforcement of federal law with regard to such conduct; and

WHEREAS, despite such prohibition under federal law, the passage of Initiative 502 has legalized under Washington law the possession and private recreational use of marijuana and authorizes, subject to further promulgation of rules by the Washington State Liquor Control Board (WSLCB), the manufacture, packaging, distribution and retail sale of marijuana and marijuana infused products; and

WHEREAS the WSLCB has promulgated draft rules pertaining to licensing of the producers, processors, and retailers, and held public hearings throughout the state regarding the draft rules and is scheduled to adopt final rules on October 16 whereupon the WSLCB will begin accepted applications for licensing of producers, processors, and retailers; and

WHEREAS, the City Council understands that while the medical benefits of cannabis have been recognized by the state legislature and that the voters have approved amendments to state law to permit the limited manufacture, packaging, distribution, retail sale, and recreational use and possession of cannabis, cannabis remains a Schedule I controlled substance under the federal Controlled Substances Act (CSA), and possession, distribution and use of cannabis is still a violation of federal law; and

WHEREAS, the City Council finds that it is a public nuisance for a licensee to engage in, permit or acquiesce in the use the business premises for drug activity that is unlawful under federal law, even if such activity is or may be lawful under state law; and

WHEREAS, the City Council desires to adopt additional amendments clarifying that an applicant for a business license whose business activities, or proposed business activities, violate or are not in compliance with state, federal or local drug laws would be ineligible for a business license and further clarifying the conditions under which a business license may be suspended or revoked; and

WHEREAS, the enactment by the voters in November 2012 of Initiative 502 regarding limited marijuana possession and use has created additional uncertainty regarding the appropriate regulation of marijuana in the City because at least some or all of the provisions of Initiative 502 appear to be in conflict with federal law; and

WHEREAS, prior to issuing a license to a producer, processor, or retailer, the WSLCB must give notice of the application for a license to the City, and the City has the right to file written objections to issuance of the license, but the WSLCB makes the final decision whether to issue a license; and

WHEREAS, state law provides at RCW 69.51A.140 that cities may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction: zoning requirements, business licensing requirements, health and safety requirements, and business taxes; and

WHEREAS, the City Council requires time to analyze impacts and potential liabilities under federal law and to determine an appropriate regulatory framework for any new uses that are allowed under the above-stated laws; and

WHEREAS, pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council held a public hearing, at the City Council's regular meeting, at 7:00 p.m. in Council Chambers, on September 19, 2013, in order to take public testimony regarding the moratorium as set forth herein; and

WHEREAS, after having considered the public testimony and based upon the foregoing, the City Council believes a moratorium is needed to preserve the status quo until the WSLCB adopts rules as required by I-502 and to allow the City to study and draft potential comprehensive

plan amendments, zoning and development regulations, business licensing regulations, and other regulatory controls pertaining to marijuana producers, processors, and retailers who receive a license from the WSLCB; and

WHEREAS, the City is authorized pursuant to RCW 35A.63.220 and RCW 36.70A.390 to adopt moratoria to preserve the status quo while code or comprehensive plan amendments are developed, considered, and enacted; and

WHEREAS, a moratorium is needed because of the imminence of the WSLCB finalizing licensing rules and issuing licenses to producers, processors, and retailers of marijuana and marijuana-infused products; and

WHEREAS, a moratorium is in the best interests of the City and is needed to preserve the public health, safety and welfare of the residents of the City;

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

Section 1. Findings. The recitals and findings set forth above are hereby adopted as the City Council's findings in support of the moratorium imposed by this ordinance.

Section 2. Moratorium Imposed. Pursuant to the provisions of Article 11, Section 11 of the Washington State Constitution, RCW 35A.63.220, and RCW 36.70A.390, a moratorium is hereby enacted prohibiting, within the City of Black Diamond, the acceptance or processing of applications, or issuance of permits and approvals, and uses or activities associated with production, processing, and retailing of marijuana and marijuana-infused products. For purposes of this ordinance, marijuana, marijuana-infused products, and the production, processing, and retailing of marijuana and marijuana-infused products shall be defined as provided for in Chapter 69.50 RCW as currently enacted or thereafter amended. No building permit, occupancy permit, or other development permit or approval shall be issued for any of the purposes or activities listed above, and no business license shall be granted or accepted while this moratorium is in effect. Any land use permits, business licenses or other permits for any of these operations that are issued as a result of error or by use of vague or deceptive descriptions during the moratorium are null and void, and without legal force or effect. The moratorium imposed hereunder shall constitute a regulation within the meaning of Section 8.02.020 of the Black Diamond Municipal Code.

Section 3. No Nonconforming Uses. No use that constitutes or purports to be a medical marijuana dispensary or medical marijuana collective garden as those terms are defined in this ordinance, that was engaged in that activity prior to the enactment of this ordinance shall be deemed to have been a legally established use under the provisions of the Black Diamond Municipal Code and that use shall not be entitled to claim legal nonconforming status.

Section 4. Effective Period for Moratorium. The moratorium set forth in this ordinance shall be in effect for a period of six months from the date this ordinance is passed and shall automatically expire at the conclusion of that six-month period unless the same is extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the city council.

Section 5. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; and ordinance numbering and section/subsection numbering.

Section 6. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication. The City Clerk is directed to publish a summary of this ordinance at the earliest possible publication date.

Section 7. Severability. If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, ON THIS 19TH DAY OF SEPTMEBER, 2013.**

Rebecca Olness, Mayor

Attest/Authenticated:

Brenda L. Martinez, City Clerk

Approved as to Form:

Chris Bacha,
Kenyon Disend, PLLC
City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No.
Date of Publication:
Effective Date:

Please publish in the next two (2) consecutive editions of the Reporter

**CITY OF BLACK DIAMOND
NOTICE OF (2) PUBLIC HEARINGS**

Notice is hereby given that the Black Diamond City Council will be conducting two public hearings 1) regarding a proposed ordinance imposing a six-month moratorium prohibiting the establishment, location, operation, licensing, maintenance, or continuation of any medical cannabis collective garden or any medical marijuana dispensary, and 2) regarding a proposed ordinance imposing a six-month moratorium prohibiting the acceptance or processing of applications, or issuance of permits and approvals, and uses or activities associated with production, processing, and retailing of marijuana and marijuana-infused products. The hearings are scheduled for Thursday, September 19, 2013 at 7:00 p.m. at the Black Diamond City Council Chambers, 25510 Lawson Street, Black Diamond, WA. The purpose of the hearing is to hear public testimony on the proposed ordinances. Written comments may be submitted to the Clerk's office at 24301 Roberts Drive, PO Box 599, Black Diamond, WA, 98010 no later than 5:00 p.m. on September 19, 2013; otherwise, they must be submitted at the hearings. Information is also available on the City's website www.ci.blackdiamond.wa.us under "Public Notices." For further information please contact Mark Hoppen, City Administrator at 360-886-5700.

Dated this 29th day of August, 2013
Brenda L. Martinez, CMC
Asst. City Admin/City Clerk

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT:	Agenda Date: September 19, 2013	AB13-071
Ordinance No. 13-1011, Imposing a moratorium upon Collective Gardens	Department/Committee/Individual	
	Mayor Rebecca Olness	
	City Administrator – Mark Hoppen	X
	City Attorney –Chris Bacha	X
	City Clerk – Brenda L. Martinez	
	Finance – May Miller	
	Natural Resources/Parks – Aaron Nix	
	PW/Ec. Dev. – Andy Williamson	
Cost Impact:	Police – Jamey Kiblinger	
Fund Source:	Court – Stephanie Metcalf	
Timeline:	Comm. Dev. – Stacey Welsh	
Agenda Placement: <input type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input checked="" type="checkbox"/> City Administrator		
Attachments: Ordinance No. 13-1011:		
SUMMARY STATEMENT:		
<p>In 1998 Washington voters approved initiative Measure No. 692 now codified as Chapter 69.51A RCW. The law allows “collective gardens” that provide for growing and cultivating up to 45 plants to serve no more than 10 qualifying patients but also preserves the City’s authority to implement zoning requirements, business licensing requirements and health and safety requirements. The City requires time to conduct appropriate research to understand the impacts and potential liabilities under federal law, and to determine an appropriate regulatory framework for any new uses that may be allowed pursuant to RCW Ch. 69.51A. In particular, and without limitation, staff should analyze the impacts of allowing these uses and facilities in residential, retail and commercial zones as well as impacts arising from the proximity of these uses and facilities to schools, daycares, parks, religious and cultural facilities, jails and courthouses. The proposed ordinance would impose a moratorium upon on the establishment, location, operation, licensing, maintenance or continuation of medical cannabis collective gardens or dispensaries, asserted to be authorized or actually authorized under RCW Ch. 69.51A. Such a moratorium is authorized pursuant to RCW 35A.63.220 and RCW 36.70A.390, and may be in effect for no longer than six months, absent an additional extension(s).</p>		
COMMITTEE REVIEW AND RECOMMENDATION:		
<p>RECOMMENDED ACTION: Consideration of proposed ordinance and possible motion to adopt Ordinance No. 13-1011, relating to a moratorium within the City of Black Diamond upon the establishment, location, operation, licensing, maintenance or continuation of medical cannabis collective gardens or dispensaries, asserted to be authorized or actually authorized under E2SSB 5073, Chapter 181, Laws of 2011, Chapter 69.51A Revised Code of Washington, or any other laws of the State of Washington; establishing an effective date; and providing for severability.</p>		

RECORD OF COUNCIL ACTION

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
September 19, 2013		

CITY OF BLACK DIAMOND

WASHINGTON

ORDINANCE NO. 13-1011

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO A MORATORIUM; ADOPTING FINDINGS OF FACT AND A SIX-MONTH MORATORIUM WITHIN THE CITY OF BLACK DIAMOND UPON THE ESTABLISHMENT, LOCATION, OPERATION, LICENSING, MAINTENANCE OR CONTINUATION OF MEDICAL CANNABIS COLLECTIVE GARDENS OR DISPENSARIES, ASSERTED TO BE AUTHORIZED OR ACTUALLY AUTHORIZED UNDER E2SSB 5073, CHAPTER 181, LAWS OF 2011, CHAPTER 69.51A REVISED CODE OF WASHINGTON, OR ANY OTHER LAWS OF THE STATE OF WASHINGTON; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR SEVERABILITY.

WHEREAS, the possession or distribution of cannabis (marijuana) has been and continues to be a violation of federal law, through the Controlled Substances Act (“CSA”); and

WHEREAS, initiative Measure No. 692, approved by the voters of Washington State on November 30, 1998, and now codified as Chapter 69.51A RCW, created a limited defense to marijuana charges under state, not federal, law if the person charged could demonstrate that he or she was a qualifying patient or designated provider as those terms are defined in Ch. 69.51A RCW; and

WHEREAS, in 2007, the state legislature amended the law, and again in 2011, the state legislature passed a third amendment to the law, E2SSB 5073, Chapter 181, Laws of 2011, portions of which the Governor vetoed. The newly amended law took effect on July 22, 2011; and

WHEREAS, prior to issuing her partial veto, the Governor received a letter signed by Washington’s two U.S. Attorneys, Michael Ormsby and Jennifer Durkan. In their letter, they wrote that marijuana is a Schedule I controlled substance under federal law and, as such, “growing, distributing and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws permitting such activities”, and, concluded that “state employees who conducted activities mandated by the Washington legislative proposals would not be immune from liability under the CSA”; and

WHEREAS, because the Governor vetoed 36 of the 58 sections of the Legislature’s bill amending Chapter 69.51A RCW, the law, in its final form, understandably has inconsistencies and ambiguities. For example, certain sections that were not vetoed make reference to other sections that were vetoed; and

WHEREAS, the amendments to Chapter 69.51A RCW changed the scope and effect of the law. New sections affect the rights of qualifying patients and their designated providers. The law now allows “collective gardens” that provide for growing and cultivating up to 45 plants to serve no more than 10 qualifying patients. The law also provides other changes to the rights and responsibilities of medical marijuana patients and their designated providers; and

WHEREAS, the new law, however, clearly delegates to cities the authority to implement zoning requirements, business licensing requirements, health and safety requirements, and business taxes as those requirements and taxes relate to the production, processing, or dispensing of medical marijuana. In particular, local regulations could address ambiguities concerning the location and operation of collective gardens, and ensure that provisions related to designated providers are not used to establish a de facto dispensary when the authority for such uses was vetoed; and

WHEREAS, the City Council requires time to conduct appropriate research to understand the extent of the changes provided in the new law, to analyze impacts and potential liabilities under federal law, and to determine an appropriate regulatory framework for any new uses that are allowed under these laws; and

WHEREAS, the City must ensure that proposed locations for these operations are appropriate and that any potential secondary impacts arising from the operation of these uses or facilities are minimized and mitigated. These secondary impacts may include, but are not limited to, burglaries associated with the cash and marijuana maintained on the site, or an increase of other illegal activities, such as drug use, within the vicinity of these dispensaries; and

WHEREAS, in particular, and without limitation, staff should analyze the impacts of allowing these uses and facilities in residential zones as well as impacts arising from the proximity of these uses and facilities to schools, daycares, parks, religious and cultural facilities, jails and courthouses; and

WHEREAS, pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council held a public hearing on the 19th day of September, 2013, and took and considered public testimony regarding whether or not the City should establish and implement a moratorium upon the zoning, licensing, and permitting of medical marijuana dispensaries and collective gardens; and,

WHEREAS, after having considered the public testimony and based upon the foregoing, the city council finds that a zoning, licensing, and permitting moratorium should be established, pending local review of appropriate locations and design requirements of these operations, and impacts of the newly amended law and its interaction with federal law; and

WHEREAS, although the City Council determines that a moratorium is necessary for the reasons established above, the City Council emphasizes that it understands the needs of persons suffering from debilitating or terminal conditions, as well as the benefits that approved medical use of marijuana may provide these persons. Nevertheless, given the complex legal and regulatory framework surrounding this issue, a moratorium remains necessary until the City Council can adequately address the competing interests at play;

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

Section 1. Findings. The recitals and findings set forth above are hereby adopted as the City Council's findings in support of the moratorium imposed by this ordinance.

Section 2. – Moratorium Imposed. Pursuant to the provisions of Article 11, Section 11 of the Washington State Constitution, RCW 35A.63.220, and RCW 36.70A.390, a moratorium is hereby enacted prohibiting within the City of Black Diamond the establishment, location, operation, licensing, maintenance, or continuation of any medical cannabis collective garden or any medical marijuana dispensary, whether for profit or not for profit, asserted to be authorized or actually authorized under E2SSB 5073, Chapter 181, Laws of 2011, Chapter 69.51A RCW, or any other laws of the state of Washington. No building permit, occupancy permit, or other development permit or approval shall be issued for any of the purposes or activities listed above, and no business license shall be granted or accepted while this moratorium is in effect. Any land use permits, business licenses or other permits for any of these operations that are issued as a result of error or by use of vague or deceptive descriptions during the moratorium are null and void, and without legal force or effect. As used in this ordinance, medical marijuana dispensary and medical marijuana collective garden shall be defined as provided for in Chapter 69.51A RCW as currently enacted or thereafter amended. The moratorium imposed hereunder shall constitute a regulation within the meaning of Section 8.02.020 of the Black Diamond Municipal Code.

Section 3. – No Nonconforming Uses. No use that constitutes or purports to be a medical marijuana dispensary or medical marijuana collective garden as those terms are defined in this ordinance, that was engaged in that activity prior to the enactment of this ordinance shall be deemed to have been a legally established use under the provisions of the Black Diamond Municipal Code and that use shall not be entitled to claim legal nonconforming status.

Section 4. – Effective Period for Moratorium. The moratorium set forth in this ordinance shall be in effect for a period of six months from the date this ordinance is passed and shall automatically expire at the conclusion of that six-month period unless the same is extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the city council.

Section 5. – Referral to Staff. The City Administrator and/or his/her designee is hereby authorized and directed to develop appropriate land use regulations for review by the Planning Commission and recommendation to the City Council for inclusion in the zoning regulations or other provisions of the Black Diamond Municipal Code. The City Administrator and/or his/her

designee is hereby authorized and directed to develop appropriate business licensing and other regulations pursuant to the newly amended law for review and recommendation for inclusion in the zoning regulations or other provisions of the Black Diamond Municipal Code.

Section 6. – Severability. If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

Section 7. – Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

Section 8. – Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication. The City Clerk is directed to publish a summary of this ordinance at the earliest possible publication date.

**ADOPTED BY THE CITY COUNCIL OF BLACK DIAMOND,
WASHINGTON THIS 19TH DAY OF SEPTEMBER, 2013,**

APPROVED:

Rebecca Olness, Mayor

ATTEST/AUTHENTICATED:

Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:

Chris Bacha
Kenyon Disend, PLLC
City Attorney

Filed with the City Clerk:
Passed by the City Council:

Ordinance No.
Date of Publication:
Effective Date:

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT:	Agenda Date: September 19, 2013	AB13-072
Ordinance No. 13-1012, marijuana manufacturing and distribution moratorium	Department/Committee/Individual	
	Mayor Rebecca Olness	
	City Administrator – Mark Hoppen	X
	City Attorney –Chris Bacha	X
	City Clerk – Brenda L. Martinez	
	Finance – May Miller	
	Natural Resources/Parks – Aaron Nix	
	PW/Ec. Dev. – Andy Williamson	
	Police – Jamey Kiblinger	
	Court – Stephanie Metcalf	
Comm. Dev. – Stacey Welsh		
Cost Impact:		
Fund Source:		
Timeline:		
Agenda Placement: <input type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input checked="" type="checkbox"/> City Administrator		
Attachments: Ordinance No. 13-1012		
SUMMARY STATEMENT:		
<p>Initiative 502 (I-502”) authorizes the manufacture, packaging, distribution and retail sale of marijuana and marijuana infused products for recreational purposes, subject to further promulgation of rules by the Washington State Liquor Control Board (WSLCB). The WSLCB has not yet adopted rules pertaining to licensing of the producers, processors, and retailers, but, is now scheduled to consider final adoption on October 16 whereupon the WSLCB will begin accepted applications for licensing of producers, processors, and retailers. In the absence of such final rules, the City has been unable to assess whether or not amendments to its land use code are necessary or desirable in response to I-502. The proposed ordinance would impose a moratorium upon on the acceptance or processing of applications, or issuance of permits and approvals, and uses or activities associated with production, processing, and retailing of marijuana and marijuana-infused products. The purpose of the moratorium would be to provide sufficient time to allow City staff, the City Planning Commission and the City Council, to consider amendments to the City land use code. Such a moratorium is authorized pursuant to RCW 35A.63.220 and RCW 36.70A.390, and may be in effect for no longer than six months, absent an additional extension(s).</p>		
COMMITTEE REVIEW AND RECOMMENDATION: No review by committee		
<p>RECOMMENDED ACTION: Consideration of proposed ordinance and possible motion to adopt Ordinance No. 13-1012, adopting a six-month moratorium within the City of Black Diamond on the acceptance or processing of applications, or issuance of permits and approvals, and uses or activities associated with production, processing, and retailing of marijuana and marijuana-infused products asserted to be authorized or actually authorized under Initiative Measure No. I-502, or any other laws of the State of Washington; providing for an effective date; and, providing for severability.</p>		

RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
September 19, 2013		

CITY OF BLACK DIAMOND
WASHINGTON
ORDINANCE NO. 13-1012

AN ORDINANCE OF THE CITY OF BLACK DIAMOND, WASHINGTON, ADOPTING A SIX-MONTH MORATORIUM WITHIN THE CITY OF BLACK DIAMOND ON THE ACCEPTANCE OR PROCESSING OF APPLICATIONS, OR ISSUANCE OF PERMITS AND APPROVALS, AND USES OR ACTIVITIES ASSOCIATED WITH PRODUCTION, PROCESSING, AND RETAILING OF MARIJUANA AND MARIJUANA-INFUSED PRODUCTS ASSERTED TO BE AUTHORIZED OR ACTUALLY AUTHORIZED UNDER INITIATIVE MEASURE NO. I-502, OR ANY OTHER LAWS OF THE STATE OF WASHINGTON; PROVIDING FOR AN EFFECTIVE DATE; AND, PROVIDING FOR SEVERABILITY

WHEREAS, cannabis remains a Schedule I controlled substance under the federal Controlled Substances Act (CSA), and possession, distribution and use of cannabis is still a violation of federal law; and

WHEREAS, representatives of the United States Department of Justice have stated that although state law may authorize the use and possession of cannabis, persons who are in the business of, or knowingly facilitate, the business of cultivating, selling or distributing marijuana are in violation of the Federal Controlled Substances Act, regardless of state law, and that, state laws and local ordinances are not a defense to criminal or civil enforcement of federal law with regard to such conduct; and

WHEREAS, despite such prohibition under federal law, the passage of Initiative 502 has legalized under Washington law the possession and private recreational use of marijuana and authorizes, subject to further promulgation of rules by the Washington State Liquor Control Board (WSLCB), the manufacture, packaging, distribution and retail sale of marijuana and marijuana infused products; and

WHEREAS the WSLCB has promulgated draft rules pertaining to licensing of the producers, processors, and retailers, and held public hearings throughout the state regarding the draft rules and is scheduled to adopt final rules on October 16 whereupon the WSLCB will begin accepted applications for licensing of producers, processors, and retailers; and

WHEREAS, the City Council understands that while the medical benefits of cannabis have been recognized by the state legislature and that the voters have approved amendments to state law to permit the limited manufacture, packaging, distribution, retail sale, and recreational use and possession of cannabis, cannabis remains a Schedule I controlled substance under the federal Controlled Substances Act (CSA), and possession, distribution and use of cannabis is still a violation of federal law; and

WHEREAS, the City Council finds that it is a public nuisance for a licensee to engage in, permit or acquiesce in the use the business premises for drug activity that is unlawful under federal law, even if such activity is or may be lawful under state law; and

WHEREAS, the City Council desires to adopt additional amendments clarifying that an applicant for a business license whose business activities, or proposed business activities, violate or are not in compliance with state, federal or local drug laws would be ineligible for a business license and further clarifying the conditions under which a business license may be suspended or revoked; and

WHEREAS, the enactment by the voters in November 2012 of Initiative 502 regarding limited marijuana possession and use has created additional uncertainty regarding the appropriate regulation of marijuana in the City because at least some or all of the provisions of Initiative 502 appear to be in conflict with federal law; and

WHEREAS, prior to issuing a license to a producer, processor, or retailer, the WSLCB must give notice of the application for a license to the City, and the City has the right to file written objections to issuance of the license, but the WSLCB makes the final decision whether to issue a license; and

WHEREAS, state law provides at RCW 69.51A.140 that cities may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction: zoning requirements, business licensing requirements, health and safety requirements, and business taxes; and

WHEREAS, the City Council requires time to analyze impacts and potential liabilities under federal law and to determine an appropriate regulatory framework for any new uses that are allowed under the above-stated laws; and

WHEREAS, pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council held a public hearing, at the City Council's regular meeting, at 7:00 p.m. in Council Chambers, on September 19, 2013, in order to take public testimony regarding the moratorium as set forth herein; and

WHEREAS, after having considered the public testimony and based upon the foregoing, the City Council believes a moratorium is needed to preserve the status quo until the WSLCB adopts rules as required by I-502 and to allow the City to study and draft potential comprehensive

plan amendments, zoning and development regulations, business licensing regulations, and other regulatory controls pertaining to marijuana producers, processors, and retailers who receive a license from the WSLCB; and

WHEREAS, the City is authorized pursuant to RCW 35A.63.220 and RCW 36.70A.390 to adopt moratoria to preserve the status quo while code or comprehensive plan amendments are developed, considered, and enacted; and

WHEREAS, a moratorium is needed because of the imminence of the WSLCB finalizing licensing rules and issuing licenses to producers, processors, and retailers of marijuana and marijuana-infused products; and

WHEREAS, a moratorium is in the best interests of the City and is needed to preserve the public health, safety and welfare of the residents of the City;

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

Section 1. Findings. The recitals and findings set forth above are hereby adopted as the City Council's findings in support of the moratorium imposed by this ordinance.

Section 2. Moratorium Imposed. Pursuant to the provisions of Article 11, Section 11 of the Washington State Constitution, RCW 35A.63.220, and RCW 36.70A.390, a moratorium is hereby enacted prohibiting, within the City of Black Diamond, the acceptance or processing of applications, or issuance of permits and approvals, and uses or activities associated with production, processing, and retailing of marijuana and marijuana-infused products. For purposes of this ordinance, marijuana, marijuana-infused products, and the production, processing, and retailing of marijuana and marijuana-infused products shall be defined as provided for in Chapter 69.50 RCW as currently enacted or thereafter amended. No building permit, occupancy permit, or other development permit or approval shall be issued for any of the purposes or activities listed above, and no business license shall be granted or accepted while this moratorium is in effect. Any land use permits, business licenses or other permits for any of these operations that are issued as a result of error or by use of vague or deceptive descriptions during the moratorium are null and void, and without legal force or effect. The moratorium imposed hereunder shall constitute a regulation within the meaning of Section 8.02.020 of the Black Diamond Municipal Code.

Section 3. No Nonconforming Uses. No use that constitutes or purports to be a medical marijuana dispensary or medical marijuana collective garden as those terms are defined in this ordinance, that was engaged in that activity prior to the enactment of this ordinance shall be deemed to have been a legally established use under the provisions of the Black Diamond Municipal Code and that use shall not be entitled to claim legal nonconforming status.

Section 4. Effective Period for Moratorium. The moratorium set forth in this ordinance shall be in effect for a period of six months from the date this ordinance is passed and shall automatically expire at the conclusion of that six-month period unless the same is extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the city council.

Section 5. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; and ordinance numbering and section/subsection numbering.

Section 6. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication. The City Clerk is directed to publish a summary of this ordinance at the earliest possible publication date.

Section 7. Severability. If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, ON THIS 19TH DAY OF SEPTMEBER, 2013.**

Rebecca Olness, Mayor

Attest/Authenticated:

Brenda L. Martinez, City Clerk

Approved as to Form:

Chris Bacha,
Kenyon Disend, PLLC
City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No.
Date of Publication:
Effective Date:

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: Resolution No. 13-890, Recreation Conservation Office Grant for the design of a Boat Dock at Lake Sawyer for \$86,625	Agenda Date: September 19, 2013	
	AB13-073	
	Department/Committee/Individual	
	Mayor Rebecca Olness	
	City Administrator – Mark Hoppen	
	City Attorney –Chris Bacha	
	City Clerk – Brenda L. Martinez	
	Finance – May Miller	
	Natural Resources/Parks – Aaron Nix	X
	Economic Devel. – Andy Williamson	
Cost Impact: \$28,875.00 match	Police – Jamey Kiblinger	
Fund Source: Grant Matching Budget Line Item within the Park’s adopted Capital Improvement Plan.	Public Works – Seth Boettcher	
Timeline: Completion of design and bid documents by September 30, 2014	Comm. Dev. – Stacey Welsh	
Agenda Placement: <input type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input checked="" type="checkbox"/> City Administrator		
Attachments: Resolution No. 13-890, Grant Award Letter and the Boating Facilities Project Agreement (12-1089P) , Capital Improvement Sheet		
SUMMARY STATEMENT: Staff asked and was given direction by the Council to make application to the Washington State Recreation and Conservation Office in March of 2011, seeking funds for a boat dock to be added at the Lake Sawyer Boat Launch. On August 20, 2013, the Washington State Recreation Office informed City Staff that their application had been funded by the Washington State Legislature and that they were now authorized, subject to City Council approval, to move forward with the scope of work outlined within the project agreement. City Administration has assigned this project to the Public Works Division and they will administer work and provide grant management responsibilities associated with this project.		
COMMITTEE REVIEW AND RECOMMENDATION: N/A		
RECOMMENDED ACTION: MOTION to adopt Resolution No. 13-890, authorizing the Mayor to accept fund from the Washington State Recreation and Conservation Office, within the Boating Facilities Program, to design, permit, and prepare bid documents for a new boat dock at the Lake Sawyer boat launch.		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
September 19, 2013		

RESOLUTION NO. 13-890

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO ACCEPT FUNDS IN THE AMOUNT OF \$86,625.00 FROM THE WASHINGTON STATE RECREATION AND CONSERVATION OFFICE, WITHIN THE BOATING FACILITIES PROGRAM, TO DESIGN, PERMIT, AND PREPARE BID DOCUMENTS FOR A DOCK TO BE LOCATED AT THE LAKE SAWYER BOAT LAUNCH, IN ACCORDANCE WITH THE CITY'S ADOPTED PARKS, RECREATION AND OPEN SPACE PLAN.

WHEREAS, the Mayor was previously authorized to make formal application to the Washington State Recreation Office for a boat dock at the Lake Sawyer Boat Launch facility; and

WHEREAS, the City has planned for the eventual placement of a boat dock at the Lake Sawyer Boat Launch, in accordance with the City's adopted and State approved Parks, Recreation and Open Space Plan (December of 2008); and

WHEREAS, the Recreation and Conservation Office, through a detailed and lengthy application process, has awarded the City \$86,625.00, for a boat dock design, permitting and bid documents with a total project cost of \$115,500.00; and.

WHEREAS, the Council previously authorized an amount of \$28,875.00 to be earmarked from the City's grant matching fund, within the approved and adopted Parks Capital Improvement Plan and Final Budget for 2013;

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

Section 1. The Mayor is hereby authorized to sign the attached grant agreement from the Washington State Recreation and Conservation Office for the design, permitting and preparation of bid documents for a boat dock at the Lake Sawyer Boat Launch facility.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 19TH DAY OF SEPTEMBER, 2013.

CITY OF BLACK DIAMOND:

Attest:

Rebecca Olness, Mayor

Brenda L. Martinez, City Clerk

BFP Project Agreement Recreation Resource Account

Project Sponsor: City of Black Diamond

Project Number: 12-1089P

Project Title: Lake Sawyer Boat Launch Dock Design

Approval Date: 7/1/2013

A. PARTIES OF THE AGREEMENT

This project grant Agreement (Agreement) is entered into between the State of Washington by and through the Recreation and Conservation Funding Board (RCFB) and the Recreation and Conservation Office, P.O. Box 40917, Olympia, Washington 98504-0917 and City of Black Diamond (sponsor), PO Box 599, Black Diamond, WA 98010 and shall be binding on the agents and all persons acting by or through the parties.

B. PURPOSE OF AGREEMENT

This Agreement sets out the terms and conditions by which a grant is made from the Recreation Resource Account of the State of Washington. The grant is administered by the Recreation and Conservation Office (RCO) to the sponsor for the project named above.

C. DESCRIPTION OF PROJECT

The City of Black Diamond will use this planning grant to enhance access for motorized boaters on Lake Sawyer, located in southeast King County at the foothills of the cascade mountain range. This project will allow the City to provide a safe entry and exit of boats and other types of watercraft to Lake Sawyer. This will be done by completing construction drawings, engineering, environmental documentation and plan specifications for a dock. The primary recreation opportunity provided by this project is for motorized boating.

D. PERIOD OF PERFORMANCE

The project reimbursement period shall begin on August 15, 2013 and end on September 30, 2014. No expenditure made before or after this period is eligible for reimbursement unless incorporated by written amendment into this Agreement or specifically provided for by RCFB and/or SRFB policy or WAC.

Requests for time extensions are to be made at least 60 days before the Agreement end date. If the request is made after the Agreement end date, the time extension may be denied.

The sponsor has obligations beyond this period of performance as described in Section E.

E. ON-GOING OBLIGATION

The Project Sponsor's on-going obligation for the above project shall be the same as the Period of Performance identified in Section D.

F. PROJECT FUNDING

The total grant award provided by the funding board for this project shall not exceed \$86,625.00. The funding board shall not pay any amount beyond that approved for grant funding of the project and within the funding board's percentage as identified below. The sponsor shall be responsible for all total project costs that exceed this amount. The contribution by the sponsor toward work on this project at a minimum shall be as indicated below:

	Percentage	Dollar Amount
RCFB - Boating Facilities - Local	75.00%	\$86,625.00
Project Sponsor	25.00%	\$28,875.00
Total Project Cost	100.00%	\$115,500.00

G. RIGHTS AND OBLIGATIONS

All rights and obligations of the parties to this Agreement are subject to this Agreement and its attachments, as now existing or hereafter amended, including the sponsor's application, eligible scope activities, project milestones, and the Standard Terms and Conditions of the project Agreement, all of which are incorporated herein.

Except as provided herein, no amendment/deletions of any of the terms or conditions of this Agreement will be effective unless provided in writing. All such amendment/deletions must be signed by both parties except the RCO director may unilaterally make amendments to extend the period of performance. Period of performance extensions need only be signed by RCO's director or designee.

H. COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND RCFB-SRFB POLICIES

This agreement is governed by, and the sponsor shall comply with, all applicable state and federal laws and regulations, including Chapter 79A.25 RCW, Chapter 286 WAC, and published agency policies, which are incorporated herein by this reference as if fully set forth.

I. SPECIAL CONDITIONS

None

J. FEDERAL FUND INFORMATION

(none)

K. PROJECT GRANT AGREEMENT REPRESENTATIVE

All written communications and notices under this Agreement will be addressed and sent to at least the mail address or the email address listed below if not both:

Project Contact

Name: Seth Boettcher
Title: Public Works Director
Address:

Email: sboettcher@ci.blackdiamond.wa.us

RCFB

Recreation and Conservation Office
Natural Resources Building
PO Box 40917
Olympia, Washington 98504-0917

These addresses shall be effective until receipt by one party from the other of a written notice of any change.

L. ENTIRE AGREEMENT

This Agreement, with all amendments and attachments, constitutes the entire Agreement of the parties. No other understandings, oral or otherwise, regarding this Agreement shall exist or bind any of the parties.

M. EFFECTIVE DATE

This Agreement, for project 12-1089P, shall be subject to the written approval of the RCO's authorized representative and shall not be effective and binding until executed by both the Sponsor and the RCO. Reimbursements for eligible and allowable costs incurred within the period of performance identified in Section D above are allowed only when this Agreement is fully executed and an original is received by RCO.

The sponsor/s has read, fully understands, and agrees to be bound by all terms and conditions as set forth in this Agreement. The signators listed below represent and warrant their authority to bind the parties to this Agreement.

City of Black Diamond

By: _____
Name: (printed) _____
Title: _____

Date: _____

State of Washington

On behalf of the Recreation and Conservation Funding Board (RCFB)

By: _____
Kaleen Cottingham
Director

Date: _____

Pre-approved as to form:

By: _____ /s/ _____
Assistant Attorney General

Date: June 7, 2013

Standard Terms and Conditions of the Project Agreement

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Standard Terms and Conditions of the Project Agreement

Project Sponsor: City of Black Diamond

Project Number: 12-1089P

Project Title: Lake Sawyer Boat Launch Dock Design

Approval Date: 7/1/2013

SECTION 1. CITATIONS, HEADINGS AND DEFINITIONS

- A. Any citations referencing specific documents refer to the current version at the date of project Agreement and/or any revisions in the future.
- B. Headings used in this Agreement are for reference purposes only and shall not be considered a substantive part of this Agreement.
- C. Definitions. As used throughout this Agreement, the following terms shall have the meaning set forth below:
- acquisition** - The purchase of fee or less than fee interests in real property. These interests include, but are not limited to, conservation easements, access/trail easements, covenants, water rights, leases, and mineral rights.
- Agreement** - The accord accepted by all parties to the present transaction; this Agreement, any supplemental Agreements, any amendments to this Agreement and any intergovernmental Agreements.
- applicant** - Any agency or organization that meets the qualifying standards, including deadlines, for submission of an application soliciting a grant of funds from the funding Board.
- application** - The documents and other materials that an applicant submits to the RCO to support the applicant's request for grant funds; this includes materials required for the "Application" in the RCO's automated project information system, and other documents as noted on the application checklist including but not limited to legal opinions, maps, plans, evaluation presentations and scripts.
- asset** - Equipment purchased by the sponsor or acquired or transferred to the sponsor for the purpose of this Agreement. This definition is restricted to non-fixed assets, including but not limited to vehicles, computers or machinery.
- cognizant or oversight agency** - Federal agency responsible for ensuring compliance with federal audit requirements.
- contractor** - Shall mean one not in the employment of the sponsor who is performing all or part of the eligible activities for this project under a separate Agreement with the sponsor. The term "contractor" and "contractors" means contractor(s) in any tier.
- development** - The construction of or work resulting in new elements, including but not limited to structures, facilities, and/or materials to enhance outdoor recreation, salmon recovery or habitat conservation resources.
- director** - The chief executive officer of the Recreation and Conservation Office or that person's designee.
- elements, items and worktypes** - Components of the funded project as provided in the project description.
- funding board** - The board that authorized the funds in this Agreement, either the Recreation and Conservation Funding Board (RCFB) created under chapter 79A.25.110 RCW, or the Salmon Recovery Funding Board (SRFB) created under chapter 77.85.110 RCW.
- grantee** - The organizational entity or individual to which a grant (or cooperative agreement) is awarded and signatory to the Agreement which is responsible and accountable both for the use of the funds provided and for the performance of the grant-supported project or activities.
- landowner agreement** - A landowner agreement is required between a SRFB and/or RTP project sponsor and landowner for projects located on land not owned, or otherwise controlled, by the sponsor.
- lower tier participant** - refers to any sponsor receiving a federal grant through RCO. Lower tier participants also refer to any grantee, subgrantee, or contractor of any grantee or subgrantee from the original sponsor funded by RCO.
- milestone** - An important event with a defined deadline for an activity related to implementation of a funded project.
- period of performance** - The time period specified in the Agreement, under Section D, period of performance.
- project** - The undertaking that is the subject of this Agreement and that is, or may be, funded in whole or in part with funds administered by RCO on behalf of the funding board.
- RCO** - Recreation and Conservation Office - The state office that provides administrative support to the Recreation and Conservation Funding Board and Salmon Recovery Funding Board. RCO includes the director and staff, created by Chapters 79A.25.110 and 79A.25.150 RCW and charged with administering this Agreement by Chapters 77.85.110 and 79A.25.240 RCW.
- reimbursement** - Payment of eligible and allowable costs that have already been paid by the sponsor per the terms of the Agreement.
- renovation** - The activities intended to improve an existing site or structure in order to increase its service life or functions. This does not include maintenance activities.
- restoration** - Bringing a site back to its original function as part of a natural ecosystem or improving the ecological functionality of a site.
- RTP - Recreational Trails Program** - A federal grant program administered by RCO that allows for the development and maintenance of backcountry trails.
- secondary sponsor** - one of two or more eligible organizations that sponsors a grant-funded project. Of these two sponsors, only one - the primary sponsor - may be the fiscal agent.
- sponsor** - The eligible applicant who has been awarded a grant of funds and is bound by this executed Agreement; includes its officers, employees, agents and successors.
- subgrantee** - The government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

SECTION 2. PERFORMANCE BY THE SPONSOR

The sponsor, and secondary sponsor where applicable, shall undertake the project as described in this Agreement, post evaluation summary, the sponsor's application, and in accordance with the sponsor's proposed goals and objectives described in the application or documents submitted with the application, all as finally approved by the funding board. All submitted documents are incorporated by this reference as if fully set forth herein. The Order of Precedence is covered in Section 31.

Timely completion of the project and submission of required documents, including progress and final reports, is important. Failure to meet critical milestones or complete the project, as set out in this Agreement, is a material breach of the Agreement.

SECTION 3. ASSIGNMENT

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the sponsor without prior written consent of the Recreation and Conservation Office.

SECTION 4. RESPONSIBILITY FOR PROJECT

While the funding board undertakes to assist the sponsor with the project by providing a grant pursuant to this Agreement, the project itself remains the sole responsibility of the sponsor. The funding board undertakes no responsibilities to the sponsor, a secondary sponsor, or to any third party, other than as is expressly set out in this Agreement. The responsibility for the implementation of the project is solely that of the sponsor, as is the responsibility for any claim or suit of any nature by any third party related in any way to the project. When a project is sponsored by more than one entity, any and all sponsors are equally responsible for the project and all post-completion stewardship responsibilities.

SECTION 5. INDEMNIFICATION

The sponsor shall defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the actual or alleged acts, errors, omissions or negligence of, or the breach of any obligation under this Agreement by, the sponsor or the sponsor's agents, employees, subcontractors or vendors, of any tier, or any other persons for whom the sponsor may be legally liable.

Provided that nothing herein shall require a sponsor to defend or indemnify the State against and hold harmless the State from claims, demands or suits based solely upon the negligence of, or breach of any obligation under this Agreement by the State, its agents, officers, employees, subcontractors or vendors, of any tier, or any other persons for whom the State may be legally liable.

Provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the sponsor or the sponsor's agents, employees, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor is legally liable, and (b) the State its agents, officers, employees, subcontractors and or vendors, of any tier, or any other persons for whom the State may be legally liable, the indemnity obligation shall be valid and enforceable only to the extent of the sponsor's negligence or the negligence of the sponsor's agents, employees, subcontractors or vendors, of any tier, or any other persons for whom the sponsor may be legally liable.

This provision shall be included in any Agreement between sponsor and any subcontractor and vendor, of any tier.

The sponsor shall also defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the sponsor or the sponsor's agents, employees, subcontractors or vendors, of any tier, or any other persons for whom the sponsor may be legally liable, in performance of the Work under this Agreement or arising out of any use in connection with the Agreement of methods, processes, designs, information or other items furnished or communicated to State, its agents, officers and employees pursuant to the Agreement; provided that this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from State's, its agents', officers' and employees' failure to comply with specific written instructions regarding use provided to State, its agents, officers and employees by the sponsor, its agents, employees, subcontractors or vendors, of any tier, or any other persons for whom the sponsor may be legally liable.

The sponsor specifically assumes potential liability for actions brought by the sponsor's own employees or its agents against the State and, solely for the purpose of this indemnification and defense, the sponsor specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

The RCO is included within the term State, as are all other agencies, departments, boards, or other entities of state government.

SECTION 6. INDEPENDENT CAPACITY OF THE SPONSOR

The sponsor and its employees or agents performing under this Agreement are not officers, employees or agents of the funding board or RCO. The sponsor will not hold itself out as nor claim to be an officer, employee or agent of RCO, a funding board or of the state of Washington, nor will the sponsor make any claim of right, privilege or benefit which would accrue to an employee under Chapters 41.06 or 28B RCW.

The sponsor is responsible for withholding and/or paying employment taxes, insurance, or deductions of any kind required by federal,

state, and/or local laws.

SECTION 7. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, RCO may, in its sole discretion, by written notice to the sponsor terminate this Agreement if it is found after due notice and examination by RCO that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the sponsor in the procurement of, or performance under, this Agreement.

In the event this Agreement is terminated as provided above, RCO shall be entitled to pursue the same remedies against the sponsor as it could pursue in the event of a breach of the Agreement by the sponsor. The rights and remedies of RCO provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.

SECTION 8. ACKNOWLEDGMENT AND SIGNS

- A. **Publications.** The sponsor shall include language which acknowledges the funding contribution of the applicable grant program to this project in any release or other publication developed or modified for, or referring to, the project during the project period and in the future.
- B. **Signs.** The sponsor also shall post signs or other appropriate media during the project period and in the future at project entrances and other locations on the project which acknowledge the applicable grant program's funding contribution, unless exempted in funding board policy or waived by the director.
- C. **Ceremonies.** The sponsor shall notify RCO no later than two weeks before a dedication ceremony for this project. The sponsor shall verbally acknowledge the applicable grant program's funding contribution at all dedication ceremonies.
- D. **Federally Funded Projects.** When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing a project funded in whole or in part with federal money provided for in this grant, sponsors shall clearly state:
 1. The percentage of the total costs of the project that is financed with federal money;
 2. The dollar amount of federal funds for the project; and
 3. The percentage and dollar amount of the total costs of the project that is financed by nongovernmental sources.

SECTION 9. COMPLIANCE WITH APPLICABLE LAW

The sponsor will implement the Agreement in accordance with applicable federal, state, and local laws, regulations and RCO and funding board policies regardless of whether the sponsor is a public or non-public organization.

The sponsor shall comply with, and RCO is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, and/or policies, including, but not limited to: State Environmental Policy Act; Industrial Insurance Coverage; Architectural Barriers Act; permits (shoreline, Hydraulics Project Approval, demolition); land use regulations (critical areas ordinances, Growth Management Act); federal and state safety and health regulations (Occupational Safety and Health Administration/Washington Industrial Safety and Health Act); and Buy American Act.

Endangered Species

For habitat restoration projects funded in part or whole with federal funds administered by the SRFB the sponsor shall not commence with clearing of riparian trees or in-water work unless either the sponsor has complied with 50 CFR 223.203 (b)(8), limit 8 or until an Endangered Species Act consultation is finalized in writing by the National Oceanic and Atmospheric Administration. Violation of this requirement may be grounds for terminating this project Agreement. This section shall not be the basis for any enforcement responsibility by RCO.

Nondiscrimination Laws

The sponsor shall comply with all applicable federal, state, and local nondiscrimination laws and/or policies, including but not limited to: the Americans with Disabilities Act; Civil Rights Act; and the Age Discrimination Act. In the event of the sponsor's noncompliance or refusal to comply with any nondiscrimination law or policy, the Agreement may be rescinded, cancelled, or terminated in whole or in part, and the sponsor may be declared ineligible for further grant awards from the funding board. The sponsor is responsible for any and all costs or liability arising from the sponsor's failure to so comply with applicable law.

Wages and Job Safety

The sponsor agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety. The sponsor agrees when state prevailing wage laws (RCW 39.12) are applicable, to comply with such laws, to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this contract, and to file a statement of intent to pay prevailing wage with the Washington State Department of Labor and Industries as required by RCW 39.12.040. The sponsor also agrees to comply with the provisions of the Davis-Bacon Act, and other federal laws, and the rules and regulations of the Washington State Department of Labor and Industries.

Archaeological and Cultural Resources

The RCO reviews all applicable projects for potential impacts to archaeological sites and state cultural resources. The sponsor must comply with Executive Order 05-05 or the National Historic Preservation Act before initiating ground disturbing activity. The funding board requires documented compliance with Executive Order 05-05 or Section 106 of the National Historic Preservation Act, whichever is applicable to the project. If a federal agency declines to consult, the sponsor shall comply with the requirements of

Executive Order 05-05. In the event that archaeological or historic materials are discovered during project activities, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification must be provided to the following: concerned Tribes' cultural staff and cultural committees, RCO, and the State Department of Archaeology and Historic Preservation. If human remains are discovered during project activity, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification provided to the concerned Tribe's cultural staff and cultural committee, RCO, State Department of Archaeology, the coroner and local law enforcement in the most expeditious manner possible according to RCW 68.50

Restrictions on Grant Use

No part of any funds provided under this grant shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or any state legislature.

No part of any funds provided under this grant shall be used to pay the salary or expenses of any sponsor, or agent acting for such sponsor, related to any activity designed to influence legislation or appropriations pending before the U.S. Congress or any state legislature.

SECTION 10. HAZARDOUS SUBSTANCES

- A. Certification. The sponsor shall inspect, investigate, and conduct an environmental audit of the proposed acquisition site for the presence of hazardous substances, as defined in Chapter 70.105D.020 (10) RCW, and certify:
 - 1. No hazardous substances were found on the site, or
 - 2. Any hazardous substances found have been treated and/or disposed of in compliance with applicable state and federal laws, and the site deemed "clean."
- B. Responsibility. Nothing in this provision alters the sponsor's duties and liabilities regarding hazardous substances as set forth in Chapter 70.105D RCW.
- C. Hold Harmless. The sponsor will defend, protect and hold harmless RCO and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all costs of defense and attorneys' fees) and any and all loss of any nature from any and all claims or suits resulting from the presence of, or the release or threatened release of, hazardous substances on the property the sponsor is acquiring.

SECTION 11. RECORDS

- A. Maintenance. The sponsor shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Sponsor shall retain such records for a period of six years from the date RCO deems the project complete, as defined in Section 17(C) below. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- B. Access to records and data. At no additional cost, the records relating to the Agreement, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review or audit by RCO, personnel duly authorized by RCO, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or Agreement. This includes access to all information that supports the costs submitted for payment under the grant and all findings, conclusions, and recommendations of the sponsor's reports, including computer models and methodology for those models.
- C. Public Records. Sponsor acknowledges that the funding board is subject to chapter 42.56 RCW and that this Agreement and any records sponsor submits or has submitted to the State shall be a public record as defined in chapter 42.56 RCW. Additionally, in compliance with RCW 77.85.130(8), sponsor agrees to disclose any information in regards to expenditure of any funding received from the SRFB. By submitting any record to the state sponsor understands that the State may be requested to disclose or copy that record under the state public records law, currently codified at RCW 42.56. The sponsor warrants that it possesses such legal rights as are necessary to permit the State to disclose and copy such document to respond to a request under state public records laws. The Sponsor hereby agrees to release the State from any claims arising out of allowing such review or copying pursuant to a public records act request, and to indemnify against any claims arising from allowing such review or copying and pay the reasonable cost of state's defense of such claims.

SECTION 12. TREATMENT OF ASSETS

- A. Assets shall remain in the possession of the sponsor for the duration of the project or applicable grant program. When the sponsor discontinues use of the asset(s) for the purpose for which it was funded, RCO will require the sponsor to deliver the asset(s) to RCO, dispose of the asset according to RCO policies, or return the fair market value of the asset(s) to RCO. Assets shall be used only for the purpose of this Agreement, unless otherwise provided herein or approved by RCO in writing.
- B. The sponsor shall be responsible for any loss or damage to assets which results from the negligence of the sponsor or which results from the failure on the part of the sponsor to maintain and administer that asset in accordance with sound management practices.

SECTION 13. RIGHT OF INSPECTION

The sponsor shall provide right of access to the project to RCO, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Agreement.

If a landowner agreement or other form of control and tenure has been executed, it will further stipulate and define the funding board and RCO's right to inspect and access lands acquired or developed with funding board assistance.

SECTION 14. STEWARDSHIP AND MONITORING

Sponsor agrees to perform monitoring and stewardship functions as stated in policy documents approved by the funding boards or RCO. Sponsor further agrees to utilize, where applicable and financially feasible, any monitoring protocols recommended by the funding board.

SECTION 15. DEBARMENT CERTIFICATION

A. For Federally Funded Projects

By signing the Agreement with RCO, the sponsor certifies that neither it nor its principals nor any other lower tier participant are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Further, the sponsor agrees not to enter into any arrangements or contracts related to this Agreement with any party that is on the Office of Inspector General Suspension and Debarment List at <http://www.gsaig.gov/index.cfm?LinkServID=C4C89080-D2BE-D29A-96355D44A13E4356>.

The sponsor (prospective lower tier participant) shall provide immediate written notice to RCO if at any time the prospective lower tier participant learns that the above certification was not correct when submitted or has become erroneous by reason of changed circumstances.

B. For State Funded Projects

By signing the Agreement with RCO, the sponsor certifies that neither it nor its principals nor any other lower tier participant are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by Washington State Labor and Industries. Further, the sponsor agrees not to enter into any arrangements or contracts related to this Agreement with any party that is on the "Contractors not Allowed to Bid on Public Works Projects" list at <http://www.lni.wa.gov/TradesLicensing/PrevWage/AwardingAgencies/DebarredContractors/>

SECTION 16. PROJECT FUNDING

- A. **Additional Amounts.** The funding board shall not be obligated to pay any amount beyond the dollar amount as identified in this Agreement, unless an additional amount has been approved in advance by the funding board or director and incorporated by written amendment into this Agreement.
- B. **Before the Agreement.** No expenditure made, or obligation incurred, by the sponsor before the project start date shall be eligible for grant funds, in whole or in part, unless specifically provided for by funding board policy, such as a waiver of retroactivity or program specific eligible pre-Agreement costs. For reimbursements of such costs, this Agreement must be fully executed and an original received by RCO. The dollar amounts identified in this Agreement may be reduced as necessary to exclude any such expenditure from reimbursement.
- C. **After the period of performance.** No expenditure made, or obligation incurred, following the period of performance shall be eligible, in whole or in part, for grant funds hereunder. In addition to any remedy the funding board may have under this Agreement, the grant amounts identified in this Agreement shall be reduced to exclude any such expenditure from participation.

SECTION 17. PROJECT REIMBURSEMENTS

- A. This contract is administered on a reimbursement basis. The sponsors may only request reimbursement after eligible and allowable costs have already been paid by the sponsor and remitted to their vendors. RCO will then reimburse the sponsor for those costs based upon RCO's percentage as defined in Section F of the Project Agreement of the amount billed to RCO. RCO does not reimburse for donations which the sponsor may use as part of its percentage. All reimbursement requests must include proper documentation of expenditures as required by RCO.
- B. **Compliance and Payment.** The obligation of RCO to pay any amount(s) under this Agreement is expressly conditioned on strict compliance with the terms of this Agreement by the sponsor.
- C. **Compliance and Retainage.** RCO reserves the right to withhold disbursement of up to the final ten percent (10%) of the total amount of the grant to the sponsor until the project has been completed. A project is considered "complete" when:
 - 1. All approved or required activities outlined in the Agreement are done;
 - 2. On-site signs are in place (if applicable);
 - 3. A final project report is submitted to and accepted by RCO;
 - 4. Any other required documents are complete and submitted to RCO;
 - 5. A final reimbursement request is submitted to RCO;
 - 6. The completed project has been accepted by RCO;
 - 7. Final amendments have been processed; and
 - 8. Fiscal transactions are complete.

9. RCO has accepted a final boundary map, if required for the project, for which the Agreement terms will apply in the future.
- D. Reimbursement Request Frequency. Sponsors are encouraged to send RCO a reimbursement request at least quarterly. Sponsors are required to submit a reimbursement request to RCO, at a minimum for each project at least once a year for reimbursable activities occurring between July 1 and June 30. Sponsors must refer to the most recently published/adopted RCO policies and procedures regarding reimbursement requirements.

SECTION 18. ADVANCE PAYMENTS

Advance payments of or in anticipation of goods or services to be provided under this Agreement are limited to grants approved by the SRFB and must comply with SRFB policy. See WAC 420-12-060 (5).

SECTION 19. RECOVERY OF PAYMENTS

In the event that the sponsor fails to expend funds under this Agreement in accordance with state and federal laws, and/or the provisions of the Agreement, or meet its percentage of the project total, RCO reserves the right to recover grant award funds in the amount equivalent to the extent of noncompliance in addition to any other remedies available at law or in equity.

The sponsor shall reimburse RCO for any overpayment or erroneous payments made under the Agreement. Repayment by the sponsor of such funds under this recovery provision shall occur within 30 days of demand by RCO. Interest shall accrue at the rate of twelve percent (12%) per annum from the time that payment becomes due and owing.

SECTION 20. COVENANT AGAINST CONTINGENT FEES

The sponsor warrants that no person or selling agent has been employed or retained to solicit or secure this Agreement on an Agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the sponsor for the purpose of securing business. RCO shall have the right, in the event of breach of this clause by the sponsor, to terminate this Agreement without liability or, in its discretion, to deduct from the Agreement grant amount or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

SECTION 21. PROVISIONS APPLYING TO DEVELOPMENT, RENOVATION AND RESTORATION PROJECTS

The following provisions shall be in force only if the project described in this Agreement is for development, renovation and restoration of land or facilities for outdoor recreation, habitat conservation, or salmon recovery:

- A. Document Review and Approval. The sponsor agrees to submit one copy of all development, renovation, restoration or construction plans and specifications to RCO for review prior to implementation. Review and approval by RCO will be for compliance with the terms of this Agreement.
- B. Contracts for Development, Renovation, or Restoration. Sponsors must have a procurement process that follows applicable state and/or required federal procurement principles. If no such process exists the sponsor must follow these minimum procedures: (1) publish a notice to the public requesting bids/proposals for the project (2) specify in the notice the date for submittal of bids/proposals (3) specify in the notice the general procedure and criteria for selection; and (4) comply with the same legal standards regarding unlawful discrimination based upon race, ethnicity, sex, or sex-orientation that are applicable to state agencies in selecting a bidder or proposer. This procedure creates no rights for the benefit of third parties, including any proposers, and may not be enforced or subject to review of any kind or manner by any other entity other than the RCO. Sponsors may be required to certify to the RCO that they have followed any applicable state and/or federal procedures or the above minimum procedure where state or federal procedures do not apply.
- C. Contract Change Order. Only change orders that impact the amount of funding or changes to the scope of the project as described to and approved by the funding board or RCO must receive prior written approval.
- D. Control and Tenure. The sponsor must provide documentation that shows appropriate tenure (landowner agreement, long term lease, easement, or fee simple ownership) for the land proposed for development, renovation or restoration. The documentation must meet current RCO requirements.
- E. Nondiscrimination. Except where a nondiscrimination clause required by a federal funding agency is used, the sponsor shall insert the following nondiscrimination clause in each contract for construction of this project:
- "During the performance of this contract, the contractor agrees to comply with all federal and state nondiscrimination laws, regulations and policies."*
- F. Use of Best Management Practices. Project sponsors are encouraged to use best management practices developed as part of the Washington State Aquatic Habitat Guidelines (AHG) Program. The best management practices are described in three documents: "Stream Habitat Restoration Guidelines: Final Draft", 2004; "Design of Road Culverts for Fish Passage", 2003; and "Integrated Streambank Protection Guidelines", 2002. These documents and other information can be found on the AHG website.

SECTION 22. PROVISIONS APPLYING TO ACQUISITION PROJECTS

The following provisions shall be in force only if the project described in this Agreement is for the acquisition of interest in real property (including easements) for outdoor recreation, habitat conservation, salmon recovery purposes, or farmland preservation.

- A. Evidence of Land Value. Before disbursement of funds by RCO as provided under this Agreement, the sponsor agrees to supply documentation acceptable to RCO that the cost of the property rights acquired has been established according to funding board policy.

- B. Evidence of Title. The sponsor agrees to provide documentation that shows the type of ownership interest for the property that has been acquired. This shall be done before any payment of financial assistance.
- C. Legal Description of Real Property Rights Acquired. The legal description of the real property rights purchased with funding assistance provided through this project Agreement (and protected by a recorded conveyance of rights to the State of Washington) shall be incorporated into the Agreement before final payment.
- D. Conveyance of Rights to the State of Washington. Document securing long-term rights for the State of Washington. When real property rights (both fee simple and lesser interests) are acquired, the sponsor agrees to execute an appropriate document conveying certain rights and responsibilities to RCO, on behalf of the State of Washington. These documents include a Deed of Right, Assignment of Rights, Easements and/or Leases. The sponsor agrees to use document language provided by RCO, to record the executed document in the County where the real property lies, and to provide a copy of the recorded document to RCO. The document required will vary depending on the project type, the real property rights being acquired and whether or not those rights are being acquired in perpetuity.
 - 1. Deed of Right. The Deed of Right conveys to the people of the state of Washington the right to preserve, protect, and/or use the property for public purposes consistent with the fund source. Sponsors shall use this document when acquiring real property rights that include the underlying land. This document may also be applicable for those easements where the sponsor has acquired a perpetual easement for public purposes.
 - 2. Assignment of Rights. The Assignment of Rights document transfers certain rights such as access and enforcement to RCO. Sponsors shall use this document when an easement or lease is being acquired for habitat conservation or salmon recovery purposes. The Assignment of Rights requires the signature of the underlying landowner and must be incorporated by reference in the easement document.
 - 3. Easements and Leases. The sponsor may incorporate required language from the Deed of Right or Assignment of Rights directly into the easement or lease document, thereby eliminating the requirement for a separate document. Language will depend on the situation; sponsor must obtain RCO approval on the draft language prior to executing the easement or lease.
- E. Real Property Acquisition and Relocation Assistance
 - 1. When federal funds are part of this Agreement, the Sponsor agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1970)--Public Law 91-646, as amended by the Surface Transportation and Uniform Relocation Assistance Act, PL 100-17-1987, and applicable regulations and procedures of the federal agency implementing that Act.
 - 2. When state funds are part of this Agreement, the sponsor agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policy of the State of Washington, Chapter 8.26 RCW, and Chapter 468-100 WAC.
 - 3. Housing and Relocation. In the event that housing and relocation costs, as required by federal law set out in subsection (1) above and/or state law set out in subsection (2) above, are involved in the execution of this project, the sponsor agrees to provide any housing and relocation assistance required.
- F. Buildings and Structures. In general, grant funds are to be used for outdoor recreation, habitat conservation, or salmon recovery. Sponsors agree to remove or demolish ineligible structures. Sponsors must consult RCO regarding compliance with section 9 - Archaeological and Cultural Resources before structures are removed or demolished.

SECTION 23. RESTRICTION ON CONVERSION OF REAL PROPERTY AND/OR FACILITIES TO OTHER USES

The sponsor shall not at any time convert any real property or facility acquired, developed, renovated, and/or restored pursuant to this Agreement to uses other than those purposes for which funds were approved without prior approval of the funding board in compliance with applicable statutes, rules, and funding board policies. It is the intent of the funding board's conversion policy, current or as amended in the future, that all real property or facilities acquired, developed, renovated, and/or restored with funding assistance remain in the public domain in perpetuity unless otherwise identified in the Agreement or as approved by the funding board. Determination of whether a conversion has occurred shall be based upon applicable law and RCFB/SRFB policies.

For acquisition projects that are term limited, such as one involving a lease or a term-limited restoration, renovation, or development project or easement, this restriction on conversion shall apply only for the length of the term, unless otherwise provided in written documents or required by applicable state or federal law. In such case, the restriction applies to such projects for the length of the term specified by the lease, easement, deed, or landowner agreement.

When a conversion has been determined to have occurred, the sponsor is required to remedy the conversion per established funding board policies.

SECTION 24. CONSTRUCTION, OPERATION, USE AND MAINTENANCE OF ASSISTED PROJECTS

For acquisition, development, renovation and restoration projects, sponsors must ensure that properties or facilities assisted with funding board funds, including undeveloped sites, are built, operated, used, and maintained:

- A. According to applicable federal, state, and local laws and regulations, including public health standards and building codes.
- B. In a reasonably safe condition for the project's intended use.
- C. Throughout its estimated life so as to prevent undue deterioration.

- D. In compliance with all federal and state nondiscrimination laws, regulations and policies.

For acquisition, development, renovation and restoration projects, facilities open and accessible to the general public must:

- E. Be constructed and maintained to meet or exceed the minimum requirements of the most current local or state codes, Uniform Federal Accessibility Standards, guidelines, or rules, including but not limited to: the International Building Code, the Americans with Disabilities Act, and the Architectural Barriers Act, as updated.
- F. Appear attractive and inviting to the public except for brief installation, construction, or maintenance periods.
- G. Be available for use by the general public without reservation at reasonable hours and times of the year, according to the type of area or facility.

SECTION 25. INCOME AND INCOME USE

A. Income.

1. Compatible source. The source of any income generated in a funded project or project area must be compatible with the funding source and the Agreement.
2. Fees. User and/or other fees may be charged in connection with land acquired or facilities developed with funding board grants if the fees are consistent with the:
 - (a) Value of any service(s) furnished;
 - (b) Value of any opportunities furnished; and
 - (c) Prevailing range of public fees in the state for the activity involved.Excepted are Firearms and Archery Range Recreation Program safety classes (firearm and/or hunter) for which a facility/range fee must not be charged (Chapter 79A.25.210 RCW).

B. Income use. Regardless of whether income or fees in a project work site (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, etc.) are gained during or after the reimbursement period cited in the Agreement, unless precluded by state or federal law, the revenue may only be used to offset:

1. The sponsor's matching funds;
2. The project's total cost;
3. The expense of operation, maintenance, stewardship, monitoring, and/or repair of the facility or program assisted by the funding board grant;
4. The expense of operation, maintenance, stewardship, monitoring, and/or repair of other similar units in the sponsor's system; and/or
5. Capital expenses for similar acquisition and/or development.

SECTION 26. PREFERENCES FOR RESIDENTS

Sponsors shall not express a preference for users of grant assisted projects on the basis of residence (including preferential reservation, membership, and/or permit systems) except that reasonable differences in admission and other fees may be maintained on the basis of residence. Even so, the funding board discourages the imposition of differential fees. Fees for nonresidents must not exceed twice the fee imposed on residents. Where there is no fee for residents but a fee is charged to nonresidents, the nonresident fee shall not exceed the amount that would be imposed on residents at comparable state or local public facilities.

SECTION 27. PROVISIONS RELATED TO CORPORATE (INCLUDING NONPROFIT) SPONSORS

A corporate sponsor, including any nonprofit sponsor, shall:

- A. Maintain corporate status with the state, including registering with the Washington Secretary of State's office, throughout the sponsor's obligation to the project as identified in the Agreement.
- B. Notify RCO prior to corporate dissolution. Within 30 days of dissolution the sponsor shall name a qualified successor that will agree in writing to assume any on-going project responsibilities. A qualified successor is any party eligible to apply for funds in the subject grant program and capable of complying with the terms and conditions of this Agreement. RCO will process an amendment transferring the sponsor's obligation to the qualified successor if requirements are met.
- C. Sites or facilities open to the public may not require exclusive use, (e.g., members only).

SECTION 28. LIABILITY INSURANCE REQUIREMENTS FOR FIREARMS AND ARCHERY RANGE SPONSORS

- A. The sponsor of a firearms or archery range recreation project shall procure an endorsement, or other addition, to liability insurance it may currently carry, or shall procure a new policy of liability insurance, in a total coverage amount the sponsor deems adequate to ensure it will have resources to pay successful claims of persons who may be killed or injured, or suffer damage to property, while present at the range facility to which this grant is related, or by reason of being in the vicinity of that facility; provided that the coverage shall be at least one million dollars (\$1,000,000) for the death of, or injury to, each person.
- B. The liability insurance policy, including any endorsement or addition, shall name Washington State, the funding board, and RCO as additional insured and shall be in a form approved by the funding board or director.

- C. The policy, endorsement or other addition, or a similar liability insurance policy meeting the requirements of this section, shall be kept in force throughout the sponsor's obligation to the project as identified in this Agreement.
- D. The policy, as modified by any endorsement or other addition, shall provide that the issuing company shall give written notice to RCO not less than thirty (30) calendar days in advance of any cancellation of the policy by the insurer, and within ten (10) calendar days following any termination of the policy by the sponsor.
- E. The requirement of Subsection A through D above shall not apply if the sponsor is a federal, state, or municipal government which has established a program of self-insurance or a policy of self-insurance with respect to claims arising from its facilities or activities generally, including such facilities as firearms or archery ranges, when the applicant declares and describes that program or policy as a part of its application to the funding board.
- F. By this requirement, the funding board and RCO does not assume any duty to any individual person with respect to death, injury, or damage to property which that person may suffer while present at, or in the vicinity of, the facility to which this grant relates. Any such person, or any other person making claims based on such death, injury, or damage, must look to the sponsor, or others, for any and all remedies that may be available by law.

SECTION 29. REQUIREMENTS OF THE NATIONAL PARK SERVICE

If the project has been approved by the National Park Service, US Department of the Interior, for funding assistance from the federal Land and Water Conservation Fund (LWCF), the "Project Agreement General Provisions" in the LWCF State Assistance Program Federal Financial Assistance Manual are also made part of this Agreement. The sponsor shall abide by these LWCF General Provisions, in addition to this Agreement, as they now exist or are hereafter amended. Further, the sponsor agrees to provide RCO with reports or documents needed to meet the requirements of the LWCF General Provisions.

SECTION 30. FARMLAND PRESERVATION ACCOUNT

For projects funded through the Washington Wildlife and Recreation Program Farmland Preservation Account, the following sections will not apply if covered separately in a recorded RCO approved Agricultural Conservation Easement.

- Section 8 - Acknowledgement and Signs,
- Section 10 - Hazardous Substances,
- Section 14 - Stewardship and Monitoring
- Section 22 - Provisions Applying to Acquisition Projects, Sub-sections F and G.
- Section 23 - Restriction on Conversion of Real Property and/or Facilities to Other Uses,
- Section 24 - Construction, Operation, Use and Maintenance of Assisted Projects, Sub-sections E, F, G, and
- Section 25 - Income and Income Use

SECTION 31. ORDER OF PRECEDENCE

This Agreement is entered into, pursuant to, and under the authority granted by applicable federal and state laws. The provisions of the Agreement shall be construed to conform to those laws. In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute, rule, or policy or procedure, the inconsistency shall be resolved by giving precedence in the following order:

- A. Applicable federal and/or state statutes, regulations, policies and procedures including RCO/funding board policies and procedures, applicable federal Office of Management and Budget (OMB) circulars and federal and state executive orders;
- B. Project agreement including attachments;
- C. Special Conditions;
- D. Standard Terms and Conditions of the Project Agreement.

SECTION 32. AMENDMENTS

Amendments to this Agreement shall be binding only if in writing and signed by personnel authorized to bind each of the parties except period of performance extensions and minor scope adjustments need only be signed by RCO's director or designee.

SECTION 33. LIMITATION OF AUTHORITY

Only RCO or RCO's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by RCO.

SECTION 34. WAIVER OF DEFAULT

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such in writing, signed by the director, or the director's designee, and attached to the original Agreement.

SECTION 35. APPLICATION REPRESENTATIONS -- MISREPRESENTATIONS OR INACCURACY OR BREACH

The funding board and RCO rely on the sponsor's application in making its determinations as to eligibility for, selection for, and scope of, funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this Agreement.

SECTION 36. SPECIFIC PERFORMANCE

The funding board and RCO may enforce this Agreement by the remedy of specific performance, which usually will mean completion of the project as described in this Agreement. However, the remedy of specific performance shall not be the sole or exclusive remedy available to RCO. No remedy available to the funding board or RCO shall be deemed exclusive. The funding board or RCO may elect to exercise any, a combination of, or all of the remedies available to it under this Agreement, or under any provision of law, common law, or equity.

SECTION 37. TERMINATION

The funding board and RCO will require strict compliance by the sponsor with all the terms of this Agreement including, but not limited to, the requirements of the applicable statutes, rules and all funding board and RCO policies, and with the representations of the sponsor in its application for a grant as finally approved by the funding board

- A. For Cause. The funding board or the director may suspend or terminate the obligation to provide funding to the sponsor under this Agreement:
 - i. In the event of any breach by the sponsor of any of the sponsor's obligations under this Agreement; or
 - ii. If the sponsor fails to make progress satisfactory to the funding board or director toward completion of the project by the completion date set out in this Agreement. Included in progress is adherence to milestones and other defined deadlines

In the event this Agreement is terminated by the funding board or director, under this section or any other section after any portion of the grant amount has been paid to the sponsor under this Agreement, the funding board or director may require that any amount paid be repaid to RCO for redeposit into the account from which the funds were derived.

- B. Non Availability of Funds. The obligation of the RCO to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. If amounts sufficient to fund the grant made under this Agreement are not appropriated to RCO for expenditure for this Agreement in any biennial fiscal period, RCO shall not be obligated to pay any remaining unpaid portion of this grant unless and until the necessary action by the Legislature or the Office of Financial Management occurs. If RCO participation is suspended under this section for a continuous period of one year, RCO's obligation to provide any future funding under this Agreement shall terminate. Termination of the Agreement under this section is not subject to appeal by the sponsor.
- C. For Convenience. Except as otherwise provided in this Agreement, RCO may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part. If this Agreement is so terminated, RCO shall be liable only for payment required under the terms of this Agreement for services rendered or goods delivered prior to the effective date of termination.

SECTION 38. DISPUTE HEARING

Except as may otherwise be provided in this Agreement, when a dispute arises between the sponsor and the funding board, which cannot be resolved, either party may request a dispute hearing according to the process set out in this section. Either party's request for a dispute hearing must be in writing and clearly state:

- A. The disputed issues;
- B. The relative positions of the parties;
- C. The sponsor's name, address, project title, and the assigned project number.

In order for this section to apply to the resolution of any specific dispute or disputes, the other party must agree in writing that the procedure under this section shall be used to resolve those specific issues. The dispute shall be heard by a panel of three persons consisting of one person chosen by the sponsor, one person chosen by the director, and a third person chosen by the two persons initially appointed. If a third person cannot be agreed on, the third person shall be chosen by the funding board's chair.

Any hearing under this section shall be informal, with the specific processes to be determined by the disputes panel according to the nature and complexity of the issues involved. The process may be solely based on written material if the parties so agree. The disputes panel shall be governed by the provisions of this Agreement in deciding the disputes.

The parties shall be bound by the decision of the disputes panel, unless the remedy directed by that panel shall be without the authority of either or both parties to perform, as necessary, or is otherwise unlawful.

Request for a disputes hearing under this section by either party shall be delivered or mailed to the other party. The request shall be delivered or mailed within thirty (30) days of the date the requesting party has received notice of the action or position of the other party which it wishes to dispute. The written Agreement to use the process under this section for resolution of those issues shall be delivered or mailed by the receiving party to the requesting party within thirty (30) days of receipt by the receiving party of the request.

All costs associated with the implementation of this process shall be shared equally by the parties.

SECTION 39. ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

SECTION 40. GOVERNING LAW/VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. In the event of a lawsuit involving this Agreement, venue shall be in Thurston County Superior Court if legally proper; otherwise venue shall be in a county where the project is situated. The sponsor, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington.

In the cases where this Agreement is between the funding board and a federally recognized Indian Tribe, the following governing law/venue applies:

- A. Notwithstanding the above venue provision, if the State of Washington intends to initiate a lawsuit against a federally recognized Indian tribe relating to the performance, breach or enforcement of this Agreement, it shall so notify the Tribe. If the Tribe believes that a good faith basis exists for subject matter jurisdiction of such a lawsuit in federal court, the Tribe shall so notify the State within five days of receipt of such notice and state the basis for such jurisdiction. If the Tribe so notifies the State, the State shall bring such lawsuit in federal court; otherwise the State may sue the Tribe in the Thurston County Superior Court. Interpretation of the Agreement shall be according to applicable State law, except to the extent preempted by federal or tribal law. In the event suit is brought in federal court and the federal court determines that it lacks subject matter jurisdiction to resolve the dispute between the State and Tribal Party, then the parties agree to venue in Thurston County Superior Court.
- B. Any judicial award, determination, order, decree or other relief, whether in law or equity or otherwise, resulting from such a lawsuit shall be binding and enforceable on the parties. Any money judgment or award against a Tribe, tribal officers and members, or the State of Washington and its officers and employees may exceed the amount provided for in Section F- Project Funding of the Agreement in order to satisfy the judgment.
- C. The Tribe hereby waives its sovereign immunity for suit in state court for the limited purpose of allowing the State to bring such actions as it determines necessary to give effect to this section and to the enforcement of any judgment relating to the performance or breach of this Agreement. This waiver is not for the benefit of any third party and shall not be enforceable by any third party or by any assignee of the parties. In any enforcement action, the parties shall bear their own enforcement costs, including attorneys' fees.

For purposes of this provision, the State includes the RCO and any other state agencies that may be assigned or otherwise obtain the right of the RCO to enforce this Agreement.

SECTION 41. SEVERABILITY

The provisions of this Agreement are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

Eligible Scope Activities

Project Sponsor: City of Black Diamond

Project Number: 12-1089

Project Title: Lake Sawyer Boat Launch Dock Design

Project Type: Planning

Program: Boating Facilities - Local

Approval: 7/1/2013

Planning Metrics

Worksite #1, Black Diamond Boat Launch Park

Recreation Facility Design

Engineering/design of boating facilities

Select the type of boating facilities :

Acres designed for boating recreation:

Boarding float, Boat ramp, Pier
0.80

Recreation Facility Planning

Environmental documentation

Conduct a biological assessment

Cultural Resources

Cultural resources

Evaluate the site for any cultural resources

Permits

Obtain permits

Obtain permits

Milestone Report By Project

Project Number: 12-1089 P
Project Name: Lake Sawyer Boat Launch Dock Design
Sponsor: Black Diamond City of
Project Manager: Laura Moxham

X	!	Milestone	Target Date	Comments/Description
X	!	Cultural Resources Complete	07/10/2013	RCO has completed cultural resources consultation with Native American tribes and the Department of Archaeology and Historic Preservation. No further cultural resource investigation is required. DAHP Log No: 061013-03-RCFB
		Project Start	08/15/2013	
		Data Gathering Started	08/15/2013	
		Design Initiated	10/31/2013	Award design contract
	!	Progress Report Submitted	01/31/2014	
	!	Annual Project Billing	01/31/2014	
		Applied for Permits	02/28/2014	
		60% Plans to RCO	03/31/2014	
		All Bid Docs/Plans to RCO	04/30/2014	
		SEPA/NEPA Completed	08/30/2014	
	!	Agreement End Date	09/30/2014	
		Final Report in PRISM	11/15/2014	
		Final Plan to RCO	11/15/2014	
		Final Billing to RCO	11/30/2014	

X = Milestone Complete

! = Critical Milestone

August 20, 2013

Seth Boettcher
City of Black Diamond
24301 Roberts Dr
Black Diamond, WA 98010

RE: Lake Sawyer Boat Launch Dock Design, RCO #12-1089P

Dear Mr. Boettcher:

Congratulations on receiving a grant for the Lake Sawyer Boat Launch Dock Design project. Your grant is administered by the Recreation and Conservation Office (RCO) and attached are some grant contract materials you need to sign and return to us before your project may begin.

Attached you will find a contract called a project agreement, which includes the standard terms and conditions, a milestone report of your key deadlines, and an eligible scope activities report that describes what you can bill to us.

After reviewing these materials, please print two copies of the entire project agreement, have the appropriate person sign both, and return both signed copies within 60 days to PO Box 40917, Olympia, WA 98504-0917. Your project agreement will then be signed by RCO and a copy will be returned to you for your records. Once you've received a signed project agreement, you can begin implementing your grant project.

It is extremely important that you complete your project on time to ensure the continuing success and credibility of the Boating Facilities Program. Timely use of your grant helps demonstrate effective use of funding to citizens and policymakers.

We encourage you to contact the media about your project to help build public awareness of it and its benefits. Acknowledging grant funding helps increase the public's understanding of the value the funding provides to communities. Please notify your project manager of any event celebrating your project's beginning or completion. We'd love to help you celebrate!

As always, staff is available to answer your questions. If you need assistance, please contact Laura Moxham at (360) 902-2587, TDD (360) 902-1996, or laura.moxham@rco.wa.gov.

Thank you again for helping make this valuable investment in Washington's great outdoors.

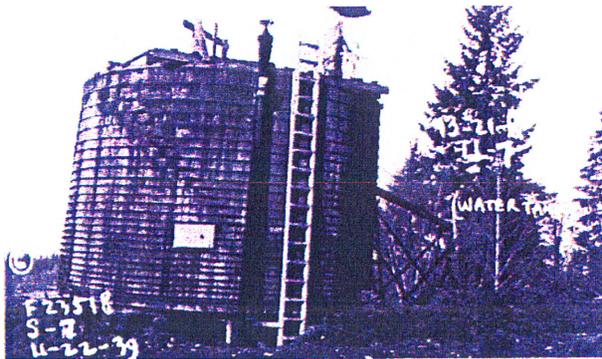
Sincerely,

Marguerite Austin
Rec. & Cons. Section Manager
PO Box 40917
Olympia WA 98504-0917
(360) 902-3016
marguerite.austin@rco.wa.gov

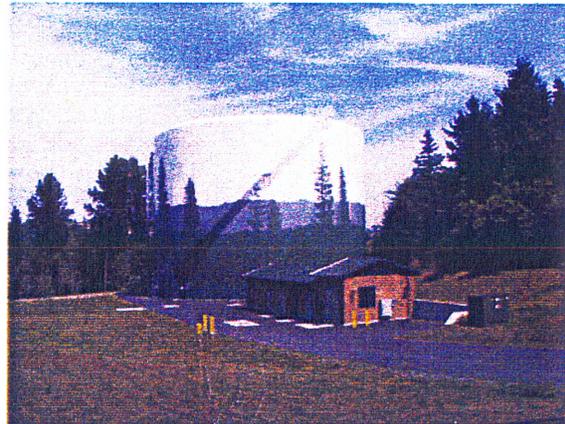
City of Black Diamond

2013 – 2018

Capital Improvement Plan



Old water tank in Black Diamond – photo from King County Assessors and provided by Palmer Coking Coal Company.



4.3 MG Water Reservoir

June 21, 2012

Parks Department CAPITAL PROJECT SUMMARY

Expenditure Summary by Project							
Project Name	Capital Plan 2013 - 2018						
	Total \$ Requested 2013-2018	2013	2014	2015	2016	2017	2018
P1 Lake Sawyer Boat Launch Improvements	715,000	115,000		200,000		100,000	300,000
P2 Lake Sawyer Aquatic Weed Study	40,000	40,000					
P3 Ginder Creek Easement	30,000	30,000					
P4 Ginder Creek Property Acquisition	150,000	150,000					
P5 Grant Matching Funds	60,000	10,000	10,000	10,000	10,000	10,000	10,000
P6 Mine Hazard Assessment Study/Map	15,000	15,000					
P7 Cemetery Waterline Replacement	5,200	5,200					
P8 Ginder Creek Trail Restoration	76,000	28,000	28,000	20,000			
P9 Tree Mitigation	6,000	1,000	1,000	1,000	1,000	1,000	1,000
P10 Regional Trail System Development	300,000				100,000	100,000	100,000
P11 Lake Sawyer Regional Park	3,085,000	10,000			75,000	250,000	2,750,000
P12 Union Stump Memorial Park	20,000					20,000	
P13 Parks Signage	15,000						15,000
PARKS DEPARTMENT TOTAL PROJECTS	4,517,200	404,200	39,000	231,000	186,000	481,000	3,176,000

Capital Improvement Plan 2013 - 2018

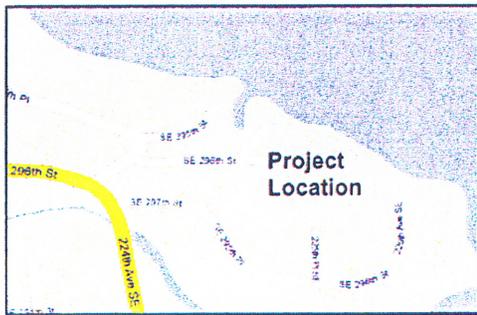
Project for the **Parks Department** **# P1**

PROJECT TITLE **Lake Sawyer Boat Launch Park Improvements**

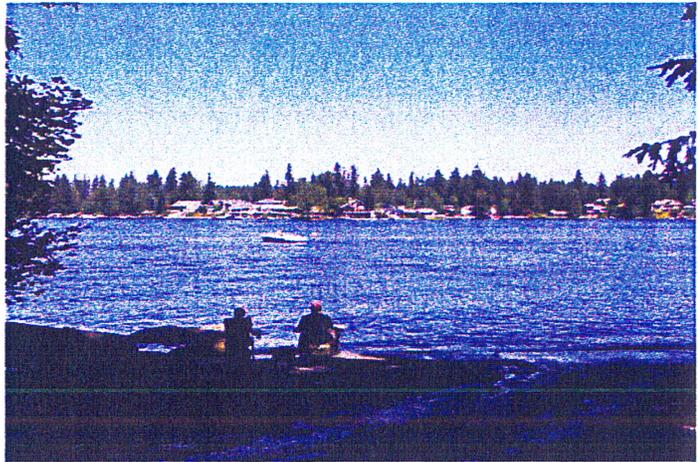
DESCRIPTION Existing boat launch facility on the west end of Lake Sawyer off of 296th Avenue.

BACKGROUND A low-impact parking addition was completed in 2009 with the use of grants awarded by King County and the King Conservation District. A small portion of City funds were utilized in order to complete the project. The ramp was repaired in the Summer of 2011 by the Public Works Department utilizing grant matching funds. Based on the conceptual site plan produced in 2009 by Anchor Environmental Services, items remaining to be completed include the addition of a pier, playground equipment, restrooms, slope stability issues and improvements to the trailer parking area.

		Capital Plan 2013 - 2018					
CAPITAL PROJECT COSTS	Total \$ Requested 2013-2018	2013	2014	2015	2016	2017	2018
Construction Costs	500,000			200,000			300,000
Design/Permitting Costs	215,000	115,000				100,000	
TOTAL COSTS	715,000	115,000	-	200,000	-	100,000	300,000
REQUESTED FUNDING	Total \$ Requested 2013-2018	2013	2014	2015	2016	2017	2018
King County Grant	280,000			200,000		80,000	
Grant Matching	50,000	30,000				20,000	
RCO Grant	385,000	85,000					300,000
TOTAL SOURCES	715,000	115,000	-	200,000	-	100,000	300,000



Lake Sawyer Boat Launch



CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: Ordinance No. 13-1013, relating to sign regulations applicable to non-residential zones.	Agenda Date: September 19, 2013	
	AB13-074	
	Department/Committee/Individual	
	Mayor Rebecca Olness	
	City Administrator – Mark Hoppen	
	City Attorney –Chris Bacha	
	City Clerk – Brenda L. Martinez	
	Finance – May Miller	
	Natural Resources/Parks – Aaron Nix	
	Economic Devel. – Andy Williamson	
Cost Impact: \$0	Police – Jamey Kiblinger	
Fund Source: n/a	Court – Stephanie Metcalf	
Timeline: n/a	Comm. Dev. – Stacey Welsh	X
Agenda Placement: <input type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input checked="" type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Ordinance No. 13-1013		
SUMMARY STATEMENT: City staff was approached by the owners of Diamond Square, seeking revisions to code to allow for greater signage opportunities for their property. Current restrictions have, in part, resulted in use of sandwich boards and banners. Staff drafted revisions to both the Gateway Corridor Overlay District (BDMC 18.76) and the Sign Code (BDMC 18.82). The proposed revisions will: <ol style="list-style-type: none"> 1. Remove the unique sign area limitation applicable to the Gateway Corridor Overlay District, instead deferring to whatever the underlying zoning allows per the Sign Code (18.82). 2. Within the Gateway Corridor Overlay District, allow signs to be internally illuminated. 3. Maintain the existing 50 sq. ft. sign limitation for ground signs within all non-residential zones. 4. Allow properties with significant street frontage (over 300 lineal feet) to have an additional ground sign, provided such signs are spaced a minimum of 150 ft. apart. 5. Allow all multi-tenant commercial/business centers (not just shopping centers) to have a larger ground sign (100 sq. ft. maximum). The Planning Commission held a public hearing on these potential amendments at their meeting on April 9, 2013. No public testimony was provided. The proposed Gateway and Sign code amendments would allow for greater signage opportunities in commercial properties throughout the city and within the Gateway Overlay District. The Planning Commission voted to recommend to the City Council to change the code in this manner.		
COMMITTEE REVIEW AND RECOMMENDATION: Discussed at the March 13 th & August 7, 2013 Planning & Community Services Committee.		
RECOMMENDED ACTION: MOTION to adopt Ordinance No. 13-1013, relating to sign regulations applicable to non-residential zones; amending the Gateway Corridor Overlay District BDMC 18.76.070 and the Sign Code 18.82.050; providing for severability; and establishing an effective date.		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
September 19, 2013		

CITY OF BLACK DIAMOND

WASHINGTON

ORDINANCE NO. 13-1013

**AN ORDINANCE OF THE CITY OF BLACK DIAMOND,
WASHINGTON, RELATING TO SIGN REGULATIONS
APPLICABLE TO NON-RESIDENTIAL ZONES;
AMENDING THE GATEWAY CORRIDOR OVERLAY
DISTRICT BDMC 18.76.070; AMENDING THE SIGN CODE
BDMC 18.82.050; PROVIDING FOR SEVERABILITY; AND
ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, the City adopted a new Zoning Code and Sign Code in June 2009; and

WHEREAS, current regulations restrict the size and number of ground signs within non-residential zones, with greater restrictions being imposed in areas situated within the Gateway Overlay; and

WHEREAS, the Planning Commission studied the matter and determined that allowing both larger and, in limited situations, additional ground signs would assist business owners without compromising community aesthetics; and

WHEREAS, the Planning Commission conducted a duly advertised public hearing on April 9, 2013, at which no public comment was provided; and

WHEREAS, the Planning Commission voted unanimously to recommend the City Council adopt the proposed amendments; and

WHEREAS, an Environmental Checklist for a non-project action was prepared under the State Environmental Policy Act (RCW Chapter 43.21.C), pursuant to Washington Administrative Code Chapter 197-11, and a Determination of Non-Significance (“DNS”) was issued on March 22, 2013; and

WHEREAS, in accordance with RCW 36.70A.106 and WAC 365-196-620, a notice of intent to adopt the proposed amendments was sent to the State of Washington Department of Commerce and to other state agencies to allow for a 60-day review and comment period, which comment period ended prior to adoption of this ordinance; and

WHEREAS, the proposed amendments are consistent with, and serve to implement, the City’s adopted Comprehensive Plan; and

WHEREAS, the City Council finds that the amendments to BDMC Ch. 18.76 and 18.82 are in the best interest of the public health, safety and welfare;

NOW, THEREFORE, the City Council of the City of Black Diamond, Washington, does ordain as follows:

Section 1. Amendment of BDMC 18.76.070 (Provisions regarding buildings and structures). Section 18.76.070 of the Black Diamond Municipal Code is hereby amended (*amendments shown in legislative revision marks*) to read as follows:

18.76.070 - Provisions regarding buildings and structures.

A. Building Height. No building or structure shall exceed the following heights limits, which are intended to create a "step-back" effect to preserve view sheds. Cross-section drawings demonstrating how proposed structures meet the height requirements may be required to ensure compliance with this section.

Distance from ROW	Description	Maximum Building Height if Permitted*
0 to 25'	Development Setback	Not permitted
Edge of setback	Development Area	15'
45' or more	Development Area	35'

* Additional height may be permitted if the applicant meets the sustainable technologies or public amenities incentives as described below.

B. Architectural Features. Building facade modulation is required for all facades facing a public street at intervals of no greater than thirty feet. Street-facing windows shall vary in size and height; clerestory and storefront windows are encouraged. Buildings shall have a minimum of fifty percent transparency into first floor commercial, working space or public area.

C. Utilities. All utility lines including electric, telephone, data and cable television, shall be installed underground. Underground utility trenches within landscaped areas must be revegetated. Utility boxes and cabinets that are now or must, by necessity, be located above ground, shall be shielded from view from the right-of-way with existing vegetation and/or revegetation. Any aboveground boxes and cabinets shall, in addition to the required vegetative screening, be painted black or an earth tone color to otherwise blend in with its surroundings.

D. Signage. Monument signs shall be permitted within the required development setback in accordance with provisions of this section and subject to the approval of the director. Pole signs are not permitted. Signs located beyond the setback area and not visible from the public right-of-way are not subject to the

requirements of this section, but shall comply with the requirements of the underlying zone.

1. The total allowed sign area of all signage permitted within the development setback on any one lot shall not exceed ~~fifty-four square feet~~ the standards of BDMC 18.82. A double-faced sign shall be considered a single sign. No more than two signs shall be permitted within the development setback area per lot, provided that this limitation shall not apply to signs pertaining to the identification of the corridor and those signs and/or interpretive panels identifying and directing the traveling public to archaeological sites, historic sites and other similar non-commercial places and features of interest.

2. All signage shall be designed with a theme compatible with the architectural style of the development and have a brick, stone or similar masonry base. Signs should be painted a single neutral or earth tone color as determined by the director to be compatible with the architectural theme or style of the development. ~~Signs may be indirectly lit.~~

3. Internally illuminated signs are allowed; however, no ~~In general, no internally illuminated signs shall be permitted, nor shall any flashing, blinking, fluctuating or otherwise changing light source is be permitted. Provided, an internally lit sign may be allowed if the sign face only allows light to illumine the lettering of the business or development name.~~

4. The main supporting structure of all signs shall be set back at least five feet from the edge of the public right-of-way.

5. If a business entrance opens onto the development setback, then a pedestrian oriented sign may be allowed, not to exceed twelve square feet, at the entrance to the business. These signs shall not be internally illuminated, but may be indirectly lit.

Section 2. Amendment of BDMC 18.82 (Signs). New Section 18.82.035 of the Black Diamond Municipal Code is hereby amended (*amendments shown in legislative revision marks*) to read as follows:

18.82.035 – Highway Advertising Control Act adopted.

In addition to and notwithstanding the provisions of this title, all signs shall comply with all other applicable regulations and authorities, including, but not limited to, Chapter 47.42 RCW – Highway Advertising Control Act – Scenic Vistas Act and Chapter 468-66 WAC – Highway Advertising Control Act.

In the case of conflict between the requirements of this chapter and a requirement of another applicable regulation or authority, the more restrictive requirement shall apply.

Section 3. Amendment of BDMC 18.82.050 (Signs). Section 18.82.050 of the Black Diamond Municipal Code is hereby amended (*amendments shown in legislative revision marks*) to read as follows:

18.82.050 - Sign standards and conditions.

A. General Regulations.

1. No sign or any part of a sign shall be designed or constructed to be moving by any means, and shall not contain items such as banners, ribbons, streamers and spinners, except as authorized for temporary signs.
2. Exposed braces and angle irons are prohibited. Guywires are prohibited unless there are no other practical means of supporting the sign.
3. No sign shall have blinking, flashing, fluttering or moving lights or other illuminating device which has a changing light intensity or color; provided, however, temperature and/or time signs that conform in all other respects to this chapter are allowed.
4. The structure and installation of all signs shall comply with the latest adopted edition of the Uniform Building Code.
5. Such sign shall meet all other applicable provisions of this chapter.
6. If more than one business in an immediate area has need for an off-premises directional sign, all must be identified on the same sign.
7. All signs, together with all of their supports, braces, guys and anchors, shall be maintained in good repair and in a safe, neat, clean and attractive condition.
8. The light directed on, or internal to, any sign shall be so shaded, shielded and/or directed so that the intensity or brightness shall not adversely affect safe vision of operators of vehicles moving on

private or public property or pedestrians on a public right-of-way. Electric signs shall not use incandescent bulbs for internal illumination. Lighted signs visible from nearby residences shall have low or soft illumination or be shielded in a manner to not adversely affect such residents.

9. Portable signs shall not exceed twelve square feet in sign area and no more than one such sign may be displayed per business. Portable signs must be located on the premise to which they relate, except real estate directional signs.
10. Abandoned signs shall be removed by the owner or lessee of the premises upon which the sign is located within ninety days after the business or service advertised is no longer conducted on the premises.

B. Freestanding and Ground Signs.

1. Sign height is the vertical distance from the highest point of the sign to the finished grade at the base of the supports.
2. Freestanding signs shall not be permitted in any zone.
3. Height standards:
All non-residential zone districts: Ground signs shall not exceed twelve feet in height.
Residential zones: Ground signs shall not exceed six feet in height.
4. Sign area standards:
All non-residential zone districts: Fifty square feet for a single side or one hundred square feet total both sides.
5. Location. Ground signs shall be set back a minimum of five feet from a front property line. Placements in these locations are subject to approval by the public works director. The placement of ground signs shall be in such a fashion and location as to not obstruct the view of signs of adjacent property owners.
6. Number. One ground sign shall be permitted on each street frontage of property on which the business is located; provided that, properties with more than 300 lineal feet of street frontage shall be allowed an additional ground sign. The minimum distance between ground signs on a single property shall be 150 lineal feet.
7. Landscaping:

- a. Each sign shall have a landscaped area at the base of the sign equal to twice the size of the sign area. The landscaping and sign base shall be protected from vehicles by substantial curbing.
- b. Permits for signs shall not be granted until required landscaping is installed or a bond or assigned funds in the amount of one hundred fifty percent of the estimated cost of the landscaping is provided.
- c. These requirements may be waived if the sign is located in an area that is part of an approved overall site landscape plan.

C. Wall-Mounted Signs.

1. Total Area. Painted or attached signs on any wall shall not exceed the following ratios:
 - a. Community Commercial District: Two square feet of sign area to one lineal foot of building front; provided, however, fifty square feet of sign area is guaranteed each business frontage. Those businesses with both a building front and one side wall exposure to vehicular and pedestrian traffic may, as an option for purposes of calculating total wall sign area, add the lineal footage of the building front and side wall then divide by two.
 - b. Town Center District: One and one-half square feet of sign area to one lineal foot of building front. Those businesses with both a building front and one side wall exposure to vehicular and pedestrian traffic may, as an option for purposes of calculating total wall sign area, add the lineal footage of the building front and side wall then divide by two.
 - c. Area 3 (all other non-residential zone districts or for non-residential uses in residential districts): One square foot of sign area for every lineal foot of wall upon which the sign is mounted or fifty square feet, whichever is less.
2. Wall signs shall not project above roof lines.

D. Window Signs.

1. Where a window sign is utilized in place of a wall sign, the area standards contained in subsection (C)(1) of this section shall apply.
2. In addition to the area requirements of subsection (D)(1) above, businesses are allowed one painted window sign identifying the business or proprietor and hours of business. The maximum area of these signs is six square feet.
3. Window signs above the first floor are not included in the maximum sign area of a site, and are allowed to businesses located above the first floor

with a maximum area of one square foot of sign area for each lineal foot of window frontage.

E. Projecting Signs.

1. Surface area:
 - a. Commercial zone districts: Thirty-two square feet total both sides.
 - b. All other non-residential districts: Eighteen square feet total both sides
2. All projecting signs must be at least eight feet above sidewalks and walkways and fifteen feet above vehicular ways.
3. Sign shall not project more than three feet or one-third the width of the sidewalk or walkway.
4. Businesses choosing to use projecting signs shall reduce the amount of allowable wall mounted or window sign area by the proportionate amount of sign area allowed under subsections (C)(1) and (D)(1) of this section.

F. Shopping or Business Center Identification Sign(s).

Each shopping center or other commercial property having eight or more tenants may be permitted one shopping center identification ground sign, not to exceed 100 sq. ft. in area. Any shopping or business center having eight or more ~~separate~~ tenants may have one center identification sign that includes identification of ~~each of the separate~~ multiple tenants, if and only if, all of the following conditions are met:

1. No other ground signs shall be allowed.
- ~~1-2.~~ All existing signs in the ~~shopping center~~ must be brought into conformance with the city sign standards in effect at the time of application, prior to issuance of a sign permit for the ~~shopping center~~ identification sign. ~~Provided, however, existing roof signs shall be removed within eighteen months from issuance of the shopping center identification sign;~~
- ~~2-3.~~ Individual tenants/businesses within a ~~shopping center~~ using a ~~shopping center~~ identification sign shall only be allowed to use wall signs;
- ~~3-4.~~ The ~~shopping center~~ identification sign shall be consistent with the city's adopted design standards and guidelines with regard to height, size and design;
- ~~4-5.~~ The sign may only contain the names of the tenant businesses, and the name of the ~~shopping center~~;
- ~~5-6.~~ The tenant business names shall be of uniform type and size; and
- ~~6-7.~~ The landscape requirements for ground signs shall be met.

G. Office Building Identification Sign. In addition to those signs permitted by this chapter, each office building consisting of at least four tenants may be permitted a

building identification sign. The sign shall be architecturally compatible with the design of the building to be identified. The office building identification sign shall be limited to one sign per street frontage, and subject to the height and size requirements of the zone in which the building is located. One such sign(s) shall be permitted per office building or any institutional use, and the copy shall include only the name of the office building or institutional use. A directory or other exclusively informational listing of tenant's names may be attached, provided the area does not exceed twelve square feet.

- H. Sandwich Board. In non-residential zones, one sidewalk or sandwich board sign per business shall be permitted subject to the following:
 - 1. Signs may be located on private property provided they do not interfere with the opening of car doors, bus stops, loading zones or pedestrian traffic, or create a traffic safety hazard by interfering with the vision of drivers entering or leaving the premises.
 - 2. Signs may be located in the public right-of-way directly adjacent to the property upon which the advertising business is located, provided that no sign shall: block a sidewalk; encroach into any portion of a required handicapped ramp; be located closer than two feet from the face of curb to the nearest sign edge; or, along roadways with no curbs, be located six feet from the edge of pavement to the nearest sign edge.
 - 3. Owners of such signs shall assume liability for damage resulting from their use.
 - 4. Maximum allowable sign area shall be six square feet per side. Maximum allowable sign height shall be thirty-six inches.
 - 5. Signs shall only be displayed during the hours the premises or business is open to the general public.
 - 6. There shall be no more than one sign per premises in non-residential zones and no more than three signs per premises in residential zones.
 - 7. The provisions of this subsection shall expire on December 31, 2010.

- I. Wall Graphics. There are no area restrictions on wall graphics if they do not constitute advertising of a business or product normally subject to the provisions for painted signs.

Section 4. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

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

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 19TH DAY OF SEPTEMBER, 2013.

CITY OF BLACK DIAMOND

Rebecca Olness, Mayor

ATTEST/AUTHENTICATED:

Brenda L. Martinez, City Clerk

Approved as to form:

Chris D. Bacha,
Kenyon Disend PLLC
City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No.
Date of Publication:
Effective Date: