



CITY OF BLACK DIAMOND
October 3, 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:

APPOINTMENTS, PRESENTATIONS, ANNOUNCEMENTS:

Presentation - "Bra's 4 the Cause"

Ms. Nickum

UNFINISHED BUSINESS:

1.) **AB13-071A** – 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

2.) **AB13-072A** – 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

3.) **AB13-073A** – Resolution Accepting RCO Grant for Lake Sawyer Boat Launch

Mr. Hoppen

NEW BUSINESS:

4.) **AB13-075** – Resolution Authorizing ILA with City of Auburn for Police IT Services

Chief Kiblinger

5.) **AB13-076** – Resolution Authorizing ILA with AWC Employee Benefit Trust

Mayor Olness

6.) **AB13-077** – Resolution Authorizing Cost Reimbursement Agreement for CFD

Mr. Bacha

DEPARTMENT REPORTS:

MAYOR'S REPORT:

COUNCIL REPORTS:

ATTORNEY REPORT:

PUBLIC COMMENTS:

CONSENT AGENDA:

7.) **Claim Checks** – October 3, 2013, Check No. 40038 through No. 40099 (void check nos. 39968, 40047, 40051) in the amount of \$77,486.26

8.) **Minutes**– Regular Meeting Minutes of September 19, 2013

ADJOURNMENT:

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT:	Agenda Date: October 3, 2013	AB13-071A
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	
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. 13-1011		
SUMMARY STATEMENT:		
At the September 19, 2013 meeting Council postponed action on this ordinance to the October 3, 2013 meeting.		
<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	Postponed to October 3 Council meeting.	4-0
October 3, 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 3RD DAY OF OCTOBER, 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: Ordinance No. 13-1012, marijuana manufacturing and distribution moratorium	Agenda Date: October 3, 2013	
	AB13-072A	
	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. 13-1012		
<p>SUMMARY STATEMENT: At the September 19, 2013 meeting Council postponed action on this ordinance to the October 3, 2013 regular Council meeting. Since then the proposed ordinance was revised to add a recital addressing the August 29th guidance memo from the Deputy US Attorney and revisions to the implementation schedule for the new regulations.</p> <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</p>		

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.

RECORD OF COUNCIL ACTION

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
September 19, 2013	Postponed to October 3 Council meeting.	4-0
October 3, 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, in a guidance memo dated August 29, 2013 addressed to all United States Attorneys, Deputy Attorney General James Cole stated that, the Justice Department will continue to enforce the federal prohibition against the illegal distribution and sale of marijuana consistent with certain enforcement priorities; that states that have enacted laws that authorize marijuana production, distribution, and possession pursuant to regulatory schemes that implement strong and effective regulatory and enforcement mechanisms consistent with these enforcement priorities are less likely to threaten federal enforcement priorities but that, such regulatory schemes remain subject to challenge by the federal government; and, that although federal prosecutors have discretion not to take enforcement action against persons operating pursuant to a state regulatory scheme, the guidance memo does not alter the United States Department of

Justice authority to enforce federal laws and is not a defense to violation of federal law, including any civil or criminal violation of the Controlled Substances Act; and

WHEREAS, the recently approved Initiative Measure No. 502 does not to change the basis for the analysis by the U.S. Attorneys, and any State or local officials who undertake marijuana regulatory activities remain subject to federal prosecution; 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 has provided notice of the following schedule for adoption and implementation of the new rules, acceptance of license applications and commencement of issuance of licenses:

October 9: Public hearing on proposed rules

October 16: Board adopts proposed rules (CR 103)

November 16: Rules become effective

November 18: WSLCB begins accepting applications for all license types; and

WHEREAS, the City Council understands that although 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, 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 requires time to analyze and determine the impacts and requirements of the new rules to be effective November 16th, to analyze the potential liabilities and limitations under federal law upon the production, processing, or dispensing of cannabis or cannabis products within the City, and to determine an appropriate regulatory and land use framework for any new uses that are allowed upon implementation of I-502; 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 the 19th day of September 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 time 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 3RD DAY OF OCTOBER, 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: October 3, 2013	
	AB13-073A	
	Department/Committee/Individual	
	Mayor Rebecca Olness	
	City Administrator – Mark Hoppen	X
	City Attorney –Chris Bacha	
	City Clerk – Brenda L. Martinez	
	Finance – May Miller	
	Natural Resources/Parks – Aaron Nix	
	Economic Devel. – Andy Williamson	
Police – Jamey Kiblinger		
Public Works – Seth Boettcher		
Comm. Dev. – Stacey Welsh		
Cost Impact: \$28,875.00 match		
Fund Source: Grant Matching Budget Line Item within the Park’s adopted Capital Improvement Plan.		
Timeline: Completion of design and bid documents by September 30, 2014		
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; Resolution No. 12-806		
SUMMARY STATEMENT: <p>Background The City was successful in securing a grant for the design and bid documents of a boat dock at the City’s boat launch. Currently boaters can have difficulty getting in and out of their boat from the shore or securing their boat while they park their vehicle and trailer. In March of 2011the Council directed staff to make grant application to the Washington State Recreation and Conservation Office for a boat dock to be added at the Lake Sawyer Boat Launch.</p> <p>Next Steps After approval of the grant agreement the City staff will prepare preliminary design documents and then begin the environmental approval process. Although the grant is for design, the goal is to construct a dock. Once the preliminary design is complete, the mitigation requirements are known and a project cost estimate is prepared, the staff will evaluate the budget to determine if it is feasible to amend the grant agreement from design to a design build contract. If there are not enough funds to move into construction the staff will complete the design and position the City for construction funding in the next round of RCO grant applications.</p>		
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		
Meeting Date	Action	Vote
September 19, 2013	Postponed to October 3 rd meeting.	Passed 4-0
October 3, 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 FROM THE WASHINGTON STATE RECREATION AND CONSERVATION OFFICE FOR THE BOAT LAUNCH DOCK PROJECT.

WHEREAS, the City Council authorized staff to apply for a Recreation and Conservation Office grant for the design of the boat launch dock through Resolution 12-806; 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, this project is in the Capital Improvement Plan; and

WHEREAS, the Recreation and Conservation Office has awarded the City a grant in the amount of \$86,625 for the boat launch dock project; and

WHEREAS, City staff will design and obtain the necessary permits to preserve funds and potentially shift these planning program grant funds for construction of a boat launch dock;

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 of 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 3RD DAY OF OCTOBER, 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

Certification of Applicant/Sponsor Match

Organization Name City of Black Diamond

Project Name(s) Lake Sawyer Boat Launch Dock Design

The source(s) and amount (s) of our matching share will be:

Source(s) of Match	Dollar Amount
General Fund - Grant Matching Line Item	\$28,875.00
Total	\$28,875.00

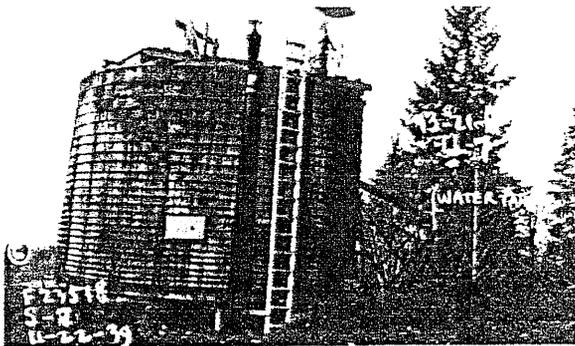
As the authorized financial representative for the above identified organization, I hereby certify that the sponsor matching resources are available for the project referenced above. I further acknowledge that our organization is responsible for supporting all non-cash commitments and donations should they not materialize.

Signature Mayene Miller
 Printed MAYENE MILLER
 Title Finance Director
 Date 05-07-2013

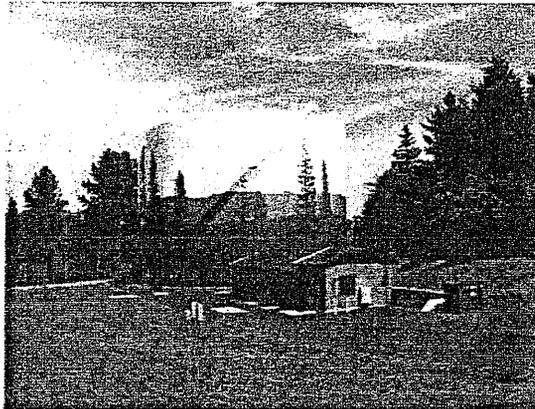
City of Black Diamond

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

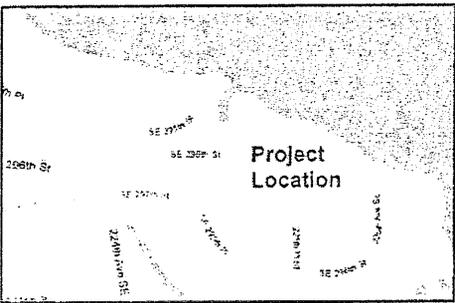
Project for the Parks Department # P1

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



RESOLUTION NO. 12-806

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO SUBMIT AN APPLICATION TO THE RECREATION AND CONSERVATION OFFICE THROUGH THE STATE OF WASHINGTON TOWARDS A PLANNING PROJECT IN COMPLETING DESIGN, PERMITTING AND CONSTRUCTION ENGINEERING MATERIALS FOR A SHOVEL READY PROJECT OF A PIER/DOCK AT THE LAKE SAWYER BOAT LAUNCH PARK. THE PROJECT IS HEREBY IDENTIFIED AS THE LAKE SAWYER BOAT LAUNCH DOCK DESIGN.

WHEREAS this a resolution that authorizes submitting application(s) for grant funding assistance for Boating Facilities Program project(s) to the Recreation and Conservation Office as provided in Chapter 79A.25 RCW, Boating Facilities Program, WAC 286 and subsequent Legislative action.

WHEREAS, our organization has approved a comprehensive parks and recreation plan that includes this project; and

WHEREAS, under the provisions of the Boating Facilities Program (BFP), state grant assistance is requested to aid in financing the cost of *planning*; and

WHEREAS, our organization considers it in the best public interest to complete the project described in the application;

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

Section 1. The Mayor is authorized to make formal application to the Recreation and Conservation Office for grant assistance.

Section 2. Any grant received will be used for direct costs associated with implementation of the project referenced above.

Section 3. Our organization hereby certifies that our matching share of project funding will be derived from our grant matching line item and that we are responsible for supporting all non-cash commitments to this project should they not materialize.

Section 4. We acknowledge that the grant assistance, if approved, will be paid on a reimbursement basis, meaning we will only request payment from the Recreation and Conservation Office after eligible and allowable costs have been incurred and payment remitted to our vendors, and that

the Recreation and Conservation Office will hold retainage until the project is deemed complete.

Section 5. This resolution becomes part of a formal application to the Recreation and Conservation Office for grant assistance.

Section 6. We provided appropriate opportunity for public comment on this application.

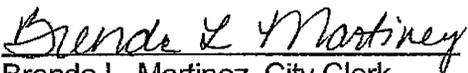
**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING IN CITY COUNCIL CHAMBERS
THEREOF, THIS 7TH DAY OF JUNE, 2012.**

CITY OF BLACK DIAMOND:



Rebecca Olness, Mayor

Attest:



Brenda L. Martinez, City Clerk

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: Resolution No. 13-891, authorizing the Mayor to enter into an Interlocal Agreement with the City of Auburn for Police IT Services	Agenda Date: October 3, 2013	
	AB13-075	
	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: \$3850.00 for 2013; \$4800 2014	Police – Jamey Kiblinger	X
Fund Source: Non-budgeted; monies will be used from training budget for current year 2013.		
Timeline:	Court – Stephanie Metcalf	
	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. 13-891; Interlocal Agreement		
SUMMARY STATEMENT: Due to ongoing issues with computer systems and programs throughout the department, the police department desires to have Auburn IT provide services that include a one-time startup fee (estimated to cost between \$1500-\$2250), which includes stabilizing police services, software and systems. Thereafter, a monthly fee of \$400.00 for general network and desktop maintenance and support; \$1600 for remainder of 2013. Next year’s estimate at \$400.00 per month totaling \$4800.00. Each year, the annual sum will also be increased by 2% or the most recent Seattle-Tacoma Consumer price Index, whichever is greater. Auburn utilizes most, if not all, of the same operating systems and has on-site staff who are specifically familiar with their functions, capabilities, and maintenance. Initial term of agreement is for 12 months and maybe extended by written agreement of the parties 60 days prior to the term end. Either party may also cancel this agreement upon 60 days written notice to the other part.		
COMMITTEE REVIEW AND RECOMMENDATION: Recommended for approval by the Public Safety Committee.		
RECOMMENDED ACTION: MOTION to adopt Resolution No. 13-891, authorizing the Mayor to execute an Interlocal Agreement with the City of Auburn for Police IT Servcies.		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
October 3, 2013		

RESOLUTION NO. 13-891

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO EXECUTE AN
INTERLOCAL AGREEMENT WITH THE CITY OF AUBURN
FOR POLICE IT SERVICES**

WHEREAS, the Black Diamond Police Department seeks professional information technology services; and

WHEREAS, the City of Auburn utilizes most, if not all, of the same operating systems and has on-site staff who are specifically familiar with their functions, capabilities, and maintenance; and

WHEREAS, the City of Auburn has the requisite skills, resources, and experience necessary to provide such services and is willing and agreeable to provide such services;

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

Section 1. The Mayor is hereby authorized to execute an Interlocal Agreement between the City of Auburn and the City of Black Diamond for Police Information Services Technology in the form substantially attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 3RD DAY OF OCTOBER,
2013.**

CITY OF BLACK DIAMOND:

Rebecca Olness, Mayor

Attest:

Brenda L. Martinez, City Clerk

EXHIBIT A

CITY OF AUBURN – CITY OF Black Diamond INTERLOCAL AGREEMENT FOR INFORMATION SERVICES TECHNOLOGY

THIS INTERLOCAL AGREEMENT made and entered into, pursuant to the Interlocal Cooperation Act, Chapter 39.34 of the Revised Code of Washington, on the 16th day of September, 2013, by and between the CITY OF AUBURN, a municipal corporation of the State of Washington (hereinafter referred to as "Auburn"), and the CITY OF Black Diamond, a municipal corporation of the State of Washington (hereinafter referred to as "Black Diamond"),

WITNESSETH:

WHEREAS, Black Diamond seeks professional information technology ("IT") services; and

WHEREAS, Auburn has the requisite skills, resources and experience necessary to provide such services and is willing and agreeable to provide such services upon the terms and conditions herein contained.

NOW THEREFORE in consideration of their mutual covenants, conditions and promises, the parties hereto do hereby agree as follows:

1. SCOPE OF SERVICES

Auburn agrees to perform for Black Diamond, in a good and professional manner the tasks specific to support the Black Diamond Police Department ("BDPD") described on Exhibit A which is attached hereto and by this reference made a part of this Agreement. (The tasks described on Exhibit A shall be individually referred to as a "task," and collectively referred to as the "services.") Auburn shall perform the services as an independent contractor and shall not be deemed, by virtue of this Agreement and the performance thereof, to have entered into any partnership, joint venture, employment or other relationship with Black Diamond. Auburn shall perform the services described in Exhibit A which is attached hereto and by this reference made a part of this Agreement.

2. AMENDMENT REQUIRED FOR ADDITIONAL SERVICES

In the event additional IT services are required by Black Diamond beyond those specified in Exhibit A and the compensation listed in this Agreement, and further provided that Auburn has the time and resources to provide such additional services and is willing to provide such services, a contract amendment shall be set forth in writing and shall be executed by the respective parties prior to Auburn's performance of the additional IT services, except as may be provided to the contrary in Section 3 of this Agreement. Upon proper completion and execution of an Amendment for additional services, such Amendment shall be incorporated into this Agreement and shall have the same force and effect as if the terms of such Amendment were a part of this

Agreement as originally executed. The performance of services pursuant to an Amendment shall be subject to the terms and conditions of this Agreement except where the Amendment provides to the contrary, in which case the terms and conditions of any such Amendment shall control. In all other respects, any Amendment shall supplement and be construed in accordance with the terms and conditions of this Agreement.

3. PERFORMANCE OF ADDITIONAL SERVICES PRIOR TO EXECUTION OF AN AMENDMENT

The parties hereby agree that situations may arise in which IT services other than those described on Exhibit A are desired by Black Diamond and the time period for the completion of such services makes the execution of Amendment impractical prior to the commencement of Auburn's performance of the requested services. Auburn hereby agrees that it shall perform such services upon the request of an authorized representative of Black Diamond at a rate of compensation to be mutually negotiated in connection therewith. Any such additional IT services shall be memorialized in a written amendment in accordance with Section 2 of this Agreement. The invoice procedure for any such additional services shall be as described in Section 6 of this Agreement.

4. Black Diamond'S RESPONSIBILITIES

Black Diamond shall do the following in a timely manner so as not to delay the services of Auburn:

- a. Designate in writing a person to act as Black Diamond's representative with respect to the services described in Exhibit A. Black Diamond's designee shall have complete authority to transmit instructions, receive information, interpret and define Black Diamond's policies and decisions with respect to the services, except in the event of an emergency as described in Exhibit A.
- b. Furnish Auburn with all information, criteria, objectives, schedules and standards for the services provided for herein.
- c. Arrange for access to the property or facilities as required for Auburn to perform the services provided for herein.
- d. Examine and evaluate all studies, reports, memoranda, plans, sketches, and other documents prepared by Auburn and render decisions regarding such documents in a timely manner to prevent delay of the services, including passwords, facility access and data systems to which Black Diamond is requesting support. Auburn shall use "remote access" technology to support Black Diamond systems where possible to limit onsite costs. Such examples include Firewall, router, computer, Domain controller, active directory, Spillman and secured/ encrypted access to systems designated by Black Diamond to be supported by Auburn.

f. BDPD must complete, and authorize necessary state documents related to "Agency Authorization" designating City of Auburn as IT Technical contact and complete a "Management Control Agreement" filed with WSP that will allow Auburn IT staff to work with CJIS and ACCESS information including SSID, Mneumonics and ORI information to support the system.

5. ACCEPTABLE STANDARDS

Auburn shall be responsible to provide, in connection with the services contemplated in this Agreement, work products and services of a quality and professional standard acceptable to Black Diamond.

6. COMPENSATION

Compensation for Auburn's performance of the services provided for herein are attached as Exhibit B. Annual sum shall be increased January 1, 2014 with advance notice given to Black Diamond, and each January 1 thereafter, by an amount equal to 2% or the most recent Seattle-Tacoma-Bremerton Consumer Price Index - U whichever is greater for the term of this Agreement.

Auburn shall submit to Black Diamond a monthly invoice and Black Diamond shall process the invoice or statement in the next billing/claim cycle following receipt of the invoice or statement, and shall remit payment to Auburn thereafter in the normal course, subject to any conditions or provisions in this Agreement or Amendment.

7. TIME FOR PERFORMANCE AND TERM OF AGREEMENT

Auburn shall perform the services provided for herein in accordance with the direction and scheduling provided in Exhibit A, unless otherwise agreed to in writing by the parties. The initial term of this agreement shall be twelve (12) months and may be extended thereafter by written agreement of the Parties 60 days prior to term end. It is provided, however, that either party may cancel this Agreement upon sixty (60) days written notice to the other party.

8. OWNERSHIP AND USE OF DOCUMENTS

All documents, reports, memoranda, diagrams, sketches, plans, design calculations, working drawings and any other materials created or otherwise prepared by Auburn as part of its performance of this Agreement (the "Work Products") shall be owned by and become the property of Black Diamond, and may be used by Black Diamond for any purpose beneficial to Black Diamond. Public records requests shall be the responsibility of Black Diamond, however Auburn may assist at Black Diamond request at hourly rates provided under exhibit B for onsite support.

9. RECORDS INSPECTION AND AUDIT

All compensation payments shall be subject to the adjustments for any amounts found upon audit or otherwise to have been improperly invoiced, and all records and books of accounts pertaining to any work performed under this Agreement shall be subject to inspection and audit by Black Diamond for a period of up to three (3) years from the final payment for work performed under this Agreement.

10. CONTINUATION OF PERFORMANCE

In the event that any dispute or conflict arises between the parties while this Contract is in effect, Auburn agrees that, notwithstanding such dispute or conflict, Auburn shall continue to make a good faith effort to cooperate and continue work toward successful completion of assigned duties and responsibilities. Provided that if Black Diamond fails to pay for the services provided by Auburn, Auburn can cease providing such services until payment is made.

11. ADMINISTRATION OF AGREEMENT

This Agreement shall be administered by Ron Tiedeman, Innovation & Technology Director or designee on behalf of Auburn, and by Mark E. Hoppen, City Administrator or designee on behalf of Black Diamond. Any written notices required by the terms of this Agreement shall be served on or mailed to the following addresses:

CITY OF AUBURN
Innovation & Technology
Ron Tiedeman
25 W Main St
Auburn, WA 98001-4998
Phone: 253-288-3160
Fax: 253-804-3116
E-mail: rtiedeman@auburnwa.gov

CITY OF BLACK DIAMOND
City Administration
Mark E. Hoppen
24301 Roberts Drive
Black Diamond, WA 98010
(360) 886-5700
mhoppen@ci.blackdiamond.wa.us

12. NOTICES

All notices or communications permitted or required to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person or deposited in the United States mail, postage prepaid, for mailing by certified mail, return receipt requested, and addressed, if to a party of this Agreement, to the address for the party set forth above.

Either party may change his, her or its address by giving notice in writing, stating

his, her or its new address, to the other party, pursuant to the procedure set forth above.

13. INSURANCE

Black Diamond shall maintain in full force throughout the duration of this Agreement comprehensive general liability insurance with a minimum coverage of \$1,000,000.00 per occurrence/aggregate for personal injury and property damage. This requirement shall be deemed satisfied by evidence of Black Diamond's membership in a municipal self-insurance pool, including evidence of limits of coverages, exclusions and limits of liability satisfactory to Auburn.

Auburn shall maintain in full force throughout the duration of this Agreement comprehensive general liability insurance with a minimum coverage of \$1,000,000.00 per occurrence/aggregate for personal injury and property damage. This requirement shall be deemed satisfied by evidence of Auburn's membership in a municipal self-insurance pool, including evidence of limits of coverages, exclusions and limits of liability satisfactory to Black Diamond.

14. INDEMNIFICATION

a. Black Diamond shall indemnify and hold Auburn and its agents, employees, and/or officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against Auburn arising out of, in connection with, or incident to the execution of this Agreement and/or Black Diamond's performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of Auburn, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of Black Diamond; and provided further, that nothing herein shall require Black Diamond to hold harmless or defend Auburn, its agents, employees and/or officers from any claims arising from the sole negligence of Auburn, its agents, employees, and/or officers. No liability shall attach to Auburn by reason of entering into this Agreement except as expressly provided herein.

b. Auburn shall indemnify and hold Black Diamond and its agents, employees, and/or officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against Black Diamond arising out of, in connection with, or incident to the execution of this Agreement and/or Auburn's performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of Black Diamond, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the

negligence of Auburn; and provided further, that nothing herein shall require Auburn to hold harmless or defend Black Diamond, its agents, employees and/or officers from any claims arising from the sole negligence of Black Diamond, its agents, employees, and/or officers. No liability shall attach to Black Diamond by reason of entering into this Agreement except as expressly provided herein.

15. WAIVER OF SUBROGATION

Black Diamond and Auburn hereby mutually release each other from liability and waive all right of recovery against each other for any loss caused by fire or other perils which can be insured against under fire insurance contracts including any extended coverage endorsements thereto which are customarily available from time to time in the State of Washington, provided, that this paragraph shall be inapplicable to the extent that it would have the effect of invalidating any insurance coverage of Black Diamond or Auburn.

16. COMPLIANCE WITH REGULATIONS AND LAWS

The parties shall comply with all applicable rules and regulations pertaining to them in connection with the matters covered herein.

17. ASSIGNMENT

The parties shall not assign this Agreement or any interest, obligation or duty therein without the express written consent of the other party.

18. ATTORNEYS' FEES

If either party shall be required to bring any action to enforce any provision of this Agreement, or shall be required to defend any action brought by the other party with respect to this Agreement, and in the further event that one party shall substantially prevail in such action, the losing party shall, in addition to all other payments required therein, pay all of the prevailing party's reasonable costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorney's fees in the trial court and in any appellate courts.

19. NONDISCRIMINATION

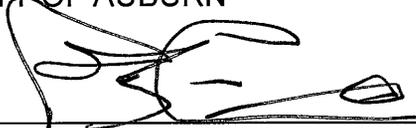
Each of the parties, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, sexual orientation, age, or the presence of any sensory, mental or physical handicap be discriminated against or receive discriminatory treatment by reason thereof.

20. MISCELLANEOUS

- a. All of the covenants, conditions and agreements in this Agreement shall extend to and bind the legal successors and assigns of the parties hereto.
- b. This Agreement shall be deemed to be made and construed in accordance with the laws of the State of Washington. Jurisdiction and venue for any action arising out of this Agreement shall be in King County, Washington.
- c. The captions in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.
- d. Unless otherwise specifically provided herein, no separate legal entity is created hereby, as each of the parties is contracting in its capacity as a municipal corporation of the State of Washington. The identity of the parties hereto is as set forth hereinabove.
- e. The performances of the duties of the parties provided hereby shall be done in accordance with standard operating procedures and customary practices of the parties. Semi-annual operational review and service meetings shall be held with representatives from both cities to review and discuss service and support delivery.
- f. No provision of this Agreement shall relieve either party of its public agency obligations and or responsibilities imposed by law.
- g. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable by a final decision of any court having jurisdiction on the matter, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect, unless such court determines that such invalidity or unenforceability materially interferes with or defeats the purposes hereof, at which time either party shall have the right to terminate the Agreement.
- h. This Agreement constitutes the entire agreement between the parties. There are no terms, obligations, covenants or conditions other than those contained herein. No modifications or amendments of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by both parties.
- i. Copies of this Agreement shall be listed by the parties on their websites as provided for in RCW 39.34.040.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF AUBURN



Peter B. Lewis
Auburn Mayor

CITY OF Black Diamond

Rebecca Olness
Black Diamond Mayor

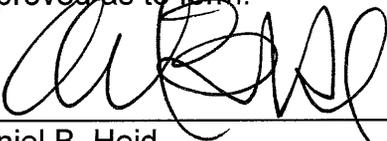
Attest:



Attest:

Brenda L. Martinez,
Black Diamond City Clerk

Approved as to form:



Daniel B. Heid
Auburn City Attorney

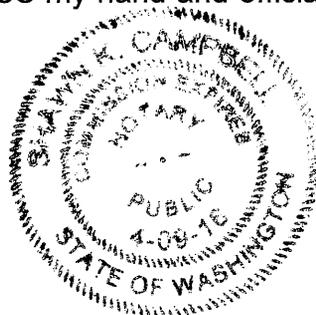
Approved as to form:

Print Name: _____
Title: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

ON THIS 16th day of September, ²⁰¹³2011, before me personally appeared Dete Lewis and _____ to me known to be the Mayor and _____ of The City of Auburn, a municipal corporation, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument, and the seat of said municipal corporation is affixed hereon.

WITNESS my hand and official seal hereto the day and year in this certificate first above written.



Shawn K. Campbell
NOTARY PUBLIC in and for the State of Washington, residing at King County
My Commission Expires: 4/9/2016

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

ON THIS _____ day of _____, 2011, before me personally appeared _____ and _____ to me known to be the _____ and _____ of _____, a municipal corporation, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument, and the seat of said municipal corporation is affixed hereon.

WITNESS my hand and official seal hereto the day and year in this certificate first above written.

NOTARY PUBLIC in and for the State of Washington, residing at _____
My Commission Expires: _____

**EXHIBIT A
SCOPE OF SERVICES**

Services Provided:

- General network and desktop support
- Application and software end user support
- Operating system patch management
- Technical recommendations

Requesting support:

All requests for service should be emailed to helpdesk@auburnwa.gov. The request will be forwarded to City of Auburn technical staff for resolution. Persons authorized to request support on a non-emergency basis are City of Black Diamond Police Department staff and designees.

Service levels:

For requests e-mailed Monday through Friday from 7:00 am to 5:00 pm, we will try to respond within 30 minutes. During high call volumes, we will assist you as soon as possible.

With authorization of Mayor, City Administrator or Police Chief, support outside regular business hours will be provided on an emergency basis. If you need an immediate response during off hours and have the appropriate authorization, please email helpdesk@auburnwa.gov with the name of authorizing person and nature of issue or call 253-876-1947. Your issue will be forwarded to the on-call technician for resolution.

Service Limitations:

- City of Auburn will assist and provide recommendations on network security but security remains the responsibility of City of Black Diamond.
- City of Auburn will document, and present information relevant to technical audits however compliance will be the responsibility of Black Diamond, including CJIS and ACCESS Audits.
- City of Auburn will assist and provide recommendations on hardware and software purchases. All hardware and software purchases are the responsibility of City of Black Diamond.
- Unless otherwise specified via addendum or SOW “additional services” identified below will be the responsibility of Black Diamond.

Additional Services:

Current IT support is based on needs and requests of Black Diamond Police. City of Auburn may provide City-wide support based on same hourly rate, however all non-police department support will be in addition to the basic services and support payment. Black Diamond representatives may negotiate to add interim city-wide support services or additional services to this ILA through an addendum process in the event additional ongoing services are needed while both parties seek appropriate Mayor and Council approval.

Additional services include but are not limited to:

GIS Services

Spillman hosting and support

Licensing Support : Netmotion and Virus Protection

Web Application and Design Services

Publishing and Design Services

Multimedia/ Film Services

Billing:

All service will be billed monthly according to Exhibit B. Services that are billed on an hourly basis will include a brief description of the service and the department where the service was performed. Monthly charges for service are based on an estimated 100 helpdesk requests annually. In the event annual helpdesk requests exceed 100 tickets, City of Black Diamond agrees to negotiate these additional services which may include mutually agreed adjustments to monthly service charges.

**EXHIBIT B
COST OF SERVICES**

Support Function	Operating Hours	Billing rate	Monthly cost
Project Specific one-time start-up Fees: Evaluation of current needs identifies upfront hours of support to stabilize Police services, software and systems. We estimate approximately 20-30 hours of onsite work to accomplish specific requests in a timely fashion. Estimate includes: Firewall and VPN configuration, Vehicle MDC reimaging, profile updates, State Link activation, and network administration	Staff will coordinate with Black Diamond on appropriate times to accomplish work onsite. Billing will be based on time spent, and billed for actual hours as they occur.	\$1500.00 - \$2250.00 plus mileage. First month will be prorated based on completion of 20-30 hours.	n/a
General Network and desktop maintenance and support including operating system patch management, virus system software management, general troubleshooting and problem resolution that can be via remote access/phone and minimal Black Diamond Auburn office visits where deemed possible allowing equipment drop off and minimal hands on configuration support.	M - F, 7 a.m. - 5 p.m. excluding holidays	\$400.00 / month effective October 1, 2013 and monthly thereafter	\$400.00
Network and desktop repair and maintenance that require onsite support.	M - F, 7 a.m. - 5 p.m. excluding holidays	\$75.00 / hour plus mileage based on IRS standard mileage rate	Per hour as required
All support responses by City of Auburn technical support staff. Note: COA technical support staff will not respond without authorization from City of Black Diamond Mayor, Police Chief or City Administrator.	Non business hours, afterhours, emergency response	\$110.00 / hour with one hour minimum plus mileage based on IRS standard mileage rate	Per incident as required
Netmotion Client Software	n/a	n/a	Per event
Virus Protection Software	n/a	n/a	Yearly

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: Resolution No. 13-892, authorizing the Mayor to enter into an Interlocal Agreement with AWC Employee Benefit Trust	Agenda Date: October 3, 2013	
	AB13-076	
	Department/Committee/Individual	
	Mayor Rebecca Olness	X
	City Administrator – Mark Hoppen	
	City Attorney –Chris Bacha	
	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: January 1, 2014	Comm. Dev. – Stacey Welsh	
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Resolution No. 13-892; Interlocal Agreement; Resource/History Page on Trust		
SUMMARY STATEMENT: Currently the City participates in and receives benefits (medical, dental, vision, etc) from AWC Employee Benefit Trust; however after months of research and consideration the Trust’s Board of Trustees voted to move from a fully insured benefit program to a self-insured model. Among a variety of advantages and opportunities that goes along with self-funding, is AWC’s projection of a 0% increase for the Trust’s Regency/Asuris Medical, Group Health Medical, WDS Dental, and VSP Vision self-insured plans for 2014. In order for the Trust to conduct business as a self-insured program, they are required to comply with RCW 48.62 and WAC 200-110. This involves following the state law and rules administered by the Washington State Risk Manager with one of those requirements being that each member must approve, by resolution, an Interlocal Agreement authorizing participation in the self-insured program. Interlocals need to be signed and sent to the Trust no later than November 15, 2013 to continue participation.		
COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: MOTION to adopt Resolution No. 13-892, authorizing the Mayor to enter into an Interlocal Agreement with AWC Employee Benefit Trust.		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
October 3, 2013		

RESOLUTION NO. 13-892

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE ASSOCIATION OF WASHINGTON CITIES EMPLOYEE BENEFIT TRUST

WHEREAS, the Association of Washington Cities Employee Benefit Trust (the "Trust") is an entity to which contributions by cities and towns and non-city entities organized and existing under the Constitution or laws of the State of Washington and who are members of the Trust ("Participating Cities and Towns," and "Participating Non-City Entities") and their employees can be paid and through which the Board of Trustees of the Trust (Trustees") provides one or more insured health and welfare benefit plans or programs to Participating Cities and Towns' and Non-City Entities' employees, their dependents and other beneficiaries ("Beneficiaries"), on whose behalf the contributions were paid; and

WHEREAS, the Trust qualifies as a voluntary employee beneficiary association within the meaning of Section of 501(c)(9) of the Internal Revenue Code, providing for the payment of life, sick, accident or other benefits to Beneficiaries; and

WHEREAS, the Trust and Participating Cities and Towns and Non-City Entities have determined that it is in the best interest of Participating Cities and Towns and Non-City Entities to jointly self-insure certain health benefit plans and programs for Beneficiaries through a designated account within the Trust, while at the same time having the Trust continue as the entity to which other insured health and welfare benefit program contributions are paid and through which insured health and welfare benefit plans and programs are provided to Beneficiaries; and

WHEREAS, it appears economically feasible and practical for the parties to do so; and

WHEREAS, Chapter 48.62 RCW provides that two or more local government entities may, by Interlocal agreement under chapter 39.34 RCW, jointly self-insure health benefit plans and programs, and/or jointly hire risk management services for such plans or programs by any one or more of certain specified methods; and

WHEREAS, the Association of Washington Cities Employee Benefit Trust Interlocal Agreement (the "Interlocal Agreement") attached hereto creates a joint self-insured health and welfare benefit program (the "Health Care Program") to be administered by the Trustees for the purposes of providing self-insured health benefits to Beneficiaries; and

WHEREAS, WAC 200-110-030 requires every local government entity participating in a joint self-insurance health and welfare benefit program to adopt such program by resolution; and

WHEREAS, Chapter 48.62 requires Health Care Program assets to be managed consistent with existing authority over use of municipal funds in RCW 35.39.030. The Trust will manage Health Care Program reserves in compliance with Chapter 48.62 RCW; RCW 35.39.030, and the Health Care Program Investment Policy; and

WHEREAS, all premium contributions for use in the Health Care Program are deposited into a designated account within the Trust, the Health Care Program Account (the "HCP Account"), and the HCP Account represents a pool of funds that is independent of all other Trust or AWC funds; and

WHEREAS, the Trust intends to manage the HCP Account assets in compliance with federal and state laws and the Interlocal Agreement; and

WHEREAS, the City of Black Diamond believes it is in the best interest of the Health Care Program to allow the Trust to manage the HCP Account;

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

Section 1. The Interlocal Agreement creating the Health Care Program is hereby adopted as attached hereto as Exhibit A.

Section 2. That by adopting such Agreement the City of Black Diamond acknowledges that it shall be subject to assessments as required by the Health Care Program

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 3RD DAY OF OCTOBER, 2013.

CITY OF BLACK DIAMOND:

Rebecca Olness, Mayor

Attest:

Brenda L. Martinez, City Clerk

<p>ASSOCIATION OF WASHINGTON CITIES EMPLOYEE BENEFIT TRUST HEALTH CARE PROGRAM INTERLOCAL AGREEMENT</p>
--

This Agreement is made and entered into in the State of Washington by and among the Association of Washington Cities Employee Benefit Trust (the "Trust") and cities and towns, and non-city entities organized and existing under the Constitution or laws of the State of Washington and who are members of the Trust ("Participating Cities and Towns," or "Participating Non-City Entities"), all of whom are signatories to this Agreement.

RECITALS

WHEREAS, the Trust is an entity to which contributions by Participating Cities and Towns and Non-City Entities (defined below) and Participating Employees (defined below) are paid and through which the Board of Trustees provides one or more insured health and welfare benefit plans or programs to Participating Employees, their covered dependents and other beneficiaries ("Beneficiaries"), on whose behalf the contributions were paid; and

WHEREAS, the Trust qualifies as a voluntary employee beneficiary association within the meaning of Section 501(c)(9) of the Internal Revenue Code ("VEBA"), providing for the payment of life, sick, accident or other benefits to Beneficiaries; and

WHEREAS, the Trust and the Participating Cities and Towns have determined that it is in the best interest of Participating Cities and Towns to jointly self-insure certain health benefit plans and programs for Beneficiaries through a designated account within the Trust, while at the same time having the Trust continue as the entity to which health and welfare benefit plan or program contributions are paid and through which insured health and welfare benefit plans and programs are provided to Beneficiaries; and

WHEREAS, it appears economically feasible and practical for the parties to this Agreement (defined below) to do so; and

WHEREAS, Chapter 48.62 RCW provides that two or more local government entities may, by Interlocal agreement under Chapter 39.34 RCW, jointly self-insure health benefit plans and programs, and/or jointly hire risk management services for such plans or programs by any one or more of certain specified methods; and

WHEREAS, each local government entity that is a signatory hereto, as required by WAC 200-110-030, acts upon the authority of a resolution adopting this Agreement and the Health Care Program (defined below) created herein;

NOW, THEREFORE, for and in consideration of all of the mutual benefits, covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

The following are definitions of terms used in the Agreement. Unless indicated otherwise, other terms are defined where they are first used. Defined terms are capitalized when used in the defined context.

- 1.1 **Agreement** means this Interlocal Agreement entered into under the authority of Chapter 39.34 RCW and as required by RCW 48.62.031(2) between the Trust and Participating Employers.
- 1.2 **Association of Washington Cities** or **AWC** means the Association of Washington Cities, a not-for-profit membership association established pursuant to the laws of the state of Washington for the purpose of providing various services to and on behalf of its member cities.
- 1.3 **Association of Washington Cities Employee Benefit Trust** or the **Trust** means the trust and all property and money held by such entity, including all contract rights and records, established for the sole purpose of providing life, sick accident or other health and welfare benefits to Participating Employees, their covered dependents and other beneficiaries, and which is approved by the Internal Revenue Service as a VEBA.
- 1.4 **Employee Benefits Advisory Committee** or **EBAC** means the committee defined in Article V of the Trust Agreement that may be delegated responsibility by the Board of Trustees, including but not limited to: overseeing the operations of the Health Care Program, analyzing and developing annual premium levels and benefit coverage changes for recommendation to the Board of Trustees and performing other duties necessary to ensure that the needs of Participating Employers are met and the long-term financial health of the Health Care Program is maintained.
- 1.5 **Health Care Program** means the joint self-insurance program offering self-insured health benefit options through the HCP Account.
- 1.6 **HCP Account** means a designated account within the Trust and created by this Agreement, the Trust Agreement and Trust Health Care Program policies all under the authority of Chapter 48.62 RCW to provide self-insured health benefits to Participating Employees, their covered dependents and other beneficiaries and further described in Article 6.
- 1.7 **Non-City Entity** means any public agency, public corporation, intergovernmental agency or political subdivision, within the state of Washington that meets the requirements of Article IX, Section 1(c)(ii) and (iii) of the Trust Agreement for participation in the Health Care Program.
- 1.8 **Participating City** means any city or town within the state of Washington that meets the requirements of Article IX, Section 1(a) or Section 1(b) of the Trust Agreement.

- 1.9 **Participating Employee** means any individual employed by a Participating Employer and for whom the Participating Employer makes contributions to the Trust, and any individual who may have been so employed but is subsequently laid off, terminated, or retired.
- 1.10 **Participating Employer** means a Participating City or Non-City Entity that is also a party to this Agreement.
- 1.11 **Resolution** means the resolution adopted by each Participating City or Non-City Entity that authorizes the Health Care Program.
- 1.12 **State Risk Manager** or **Risk Manager** means the risk manager of the Risk Management Division within the Department of Enterprise Services.
- 1.13 **Stop Loss Insurance** or **Reinsurance** means a promise by an insurance company that it will cover losses of the Health Care Program over and above an agreed-upon individual or aggregated amount, which definition shall be modified by any changes to the definition of stop loss insurance in WAC 200-110-020.
- 1.14 **Third-Party Administrator** means the independent association, agency, entity or enterprise which, through a contractual agreement, provides one or more of the following ongoing services to the Health Care Program: pool management or administration services, claims administration services, risk management services, or services for the design, implementation, or termination of an individual or joint self-insurance program.
- 1.15 **Trust Agreement** means the Trust Agreement Governing the Trust amended and restated July 1, 2013, and any subsequent amendments thereto.
- 1.16 **Trustees** or **Board of Trustees** means the following individuals and their successors, who together, govern the Trust and the Health Care Program:
- 1.16.1 the AWC President and the AWC Vice President;
- 1.16.2 the EBAC Chair and the EBAC Vice Chair; and
- 1.16.3 an individual elected pursuant to the procedures in Article III, Section 5 of the Trust Agreement to serve as the trustee from one of the following regions:
- (a) North East Region (known as the “North East Region Trustee”);
 - (b) North West Region (known as the “North West Region Trustee”);
 - (c) South East Region (known as the “South East Region Trustee”); and
 - (d) South West Region (known as the “South West Region Trustee”).

Individuals from Non-City Entities are not eligible to serve as Trustees.

ARTICLE 2

PURPOSE

This Agreement is entered into for the purpose of authorizing the Health Care Program created by the Trust to provide self-insured health benefits to Participating Employees, their covered dependents and other beneficiaries. The Health Care Program shall comply with the statutory provisions found in Chapters 48.62 and 39.34 RCW and the regulatory requirements contained in WAC 200-110 applicable to joint self-insurance programs.

ARTICLE 3

PARTIES

Each party to this Agreement certifies that it intends to participate in the Health Care Program. Participating Employers are signatories of this Agreement to become effective on a date to be mutually determined (the "Effective Date") and with such other Participating Cities and Non-City Entities as may later be added to and become signatories to this Agreement.

ARTICLE 4

DURATION OF AGREEMENT

- 4.1 This Agreement shall become effective on the Effective Date.
- 4.2 This Agreement shall have perpetual duration unless terminated as hereinafter provided.

ARTICLE 5

MEMBERSHIP COMPOSITION

The Health Care Program shall be open to Participating Cities and Non-City Entities. Participation in the Health Care Program is voluntary and not a requirement of AWC membership. The Board of Trustees shall provide for the reasonable admission of new Participating Cities and Non-City Entities.

ARTICLE 6

HCP ACCOUNT

- 6.1 All premium contributions by Participating Employers, Non-City Entities and Participating Employees for use in the Health Care Program are deposited into the HCP Account.
- 6.2 The HCP Account represents a pool of funds that is independent of all other Trust or AWC funds and independent of all other Participating Employer and Non-City Entity funds. The funds deposited into the HCP Account are held, managed and expended only for the Health Care Program and reasonable expenses, consistent with applicable state

and federal statutes and rules governing joint self-insurance programs and self-insurance programs generally.

- 6.3 The HCP Account is subject to audit by the State Auditor's Office.

ARTICLE 7

TRUSTEE POWERS RELATED TO HEALTH CARE PROGRAM

The Board of Trustees is provided with the powers and functions established under RCW 48.62.031 to accomplish the following:

- 7.1 Promote the economical and efficient means by which health benefits coverage is made available to Participating Employers and Non-City Entities and provided to Participating Employees, their covered dependents and other beneficiaries;
- 7.2 Protect the financial integrity of the Health Care Program through purchase of Stop Loss Insurance or Reinsurance in such form and amount as needed;
- 7.3 Contract for or otherwise provide risk management and loss control services;
- 7.4 Contract for or otherwise provide legal counsel for the defense of claims and other legal services;
- 7.5 Consult with the state insurance commissioner and the State Risk Manager;
- 7.6 Obligate the Participating Employers and Non-City Entities to pledge revenues or contribute money to secure the obligations or pay the expenses of the Health Care Program, including the establishment of a reserve or fund for coverage; and
- 7.7 Exercise all other powers and perform all other functions reasonably necessary to carry out the purposes of the Health Care Program, Chapter 48.62 RCW and Chapter 200-110 WAC.

ARTICLE 8

ORGANIZATION OF HEALTH CARE PROGRAM

- 8.1 The operations of the Health Care Program are managed by the Board of Trustees or its delegates. The Trustees or any delegates review and analyze Health Care Program-related matters and make operational decisions regarding premium contributions, reserves, plan options and benefits in compliance with Chapter 48.62 RCW.
- 8.2 The Board of Trustees has decision authority consistent with the Trust Agreement, Health Care Program policies, Chapter 48.62 RCW and Chapter 200-110 WAC.

ARTICLE 9

RESPONSIBILITIES OF THE TRUSTEES

- 9.1 The Board of Trustees shall discharge its responsibilities under this Agreement as follows:
 - 9.1.1 Provide for the efficient management and operation of the Health Care Program;
 - 9.1.2 Provide for health benefit coverage options for Participating Employees, their covered dependents and other beneficiaries;
 - 9.1.3 Determine the level of Stop Loss Insurance or Reinsurance coverage for claims expenses above the amounts deemed appropriate for self-insurance;
 - 9.1.4 Ensure that the Health Care Program meets required state and federal statutes and rules;
 - 9.1.5 Contract with vendors required to meet the responsibilities established by the Trust Agreement, Health Care Program policies, and applicable state and federal statutes and rules;
 - 9.1.6 Maintain the balance between meeting the Health Care Program needs of Participating Employers and the long-term financial integrity of the Health Care Program;
 - 9.1.7 Prepare an annual financial report on the operations of the Health Care Program; and
 - 9.1.8 Provide for other services deemed appropriate by the Board of Trustees to meet the purposes of this Agreement.
- 9.2 The Board of Trustees may delegate the responsibilities described in this Article 9 to the EBAC or other delegates at its complete discretion.

ARTICLE 10

RESPONSIBILITIES OF THE PARTICIPATING EMPLOYERS

In order to participate in the Health Care Program, Participating Employers shall:

- 10.1 Be a Participating City or Non-City Entity in good standing and comply with the requirements of admission or qualification as established by the Board of Trustees;
- 10.2 Adopt this Agreement by Resolution, agreeing to its terms and provisions;
- 10.3 Submit the Resolution and Agreement to the Trust;

- 10.4 Read the terms, conditions and representations set forth in the application agreement related to participation in the Health Care Program;
- 10.5 Designate an employee of the Participating Employer to be a contact person for all matters relating to the Participating Employer's participation in the Health Care Program;
- 10.6 Pay premiums for the Health Care Program to the Third-Party Administrator no later than the tenth day of the month in which the premium is due;
- 10.7 By formal action of the legislative body of the Participating Employer, approve policies and procedures necessary to secure protected health information ("PHI") in accordance with Chapter 70.02 RCW and the Health Insurance Portability and Accountability Act ("HIPAA") privacy and security rules, codified at 45 C.F.R. Parts 160-164;
- 10.8 Provide the Health Care Program with such information or assistance as is necessary for the Health Care Program to meet its responsibilities under this Agreement; and
- 10.9 Cooperate with and assist the Health Care Program and any insurer of Stop Loss Insurance or Reinsurance, in all matters relating to the administration and operation of the Health Care Program and all matters relating to this Agreement.
- 10.10 Comply with all bylaws, rules, regulations and policies adopted by the Board of Trustees relating to the Health Care Program.

ARTICLE 11

RESERVE FUND INVESTMENT

All reserve fund investments from the HCP Account shall be made in a manner that is consistent with RCW 48.62.111, Chapter 39.59 RCW, WAC 200-110-090 and the Health Care Program Investment Policy.

ARTICLE 12

FINANCIAL RECORDS

- 12.1 The Board of Trustees shall develop estimated revenue and expenditures to establish a budget for each fiscal year covering January 1 through December 31 annually. Actual Health Care Program revenues and expenditures shall be monitored monthly by the Board of Trustees and reported at its quarterly meetings.
- 12.2 The accounting records of the Health Care Program are maintained in accordance with methods prescribed by the State Auditor's office under the authority of Chapter 43.09 RCW. The Health Care Program also follows applicable accounting standards established by the Governmental Accounting Standards Board ("GASB"). Year-end financial reporting is done on an accrual basis and submitted to the Office of the State Auditor as required by Chapter 200-110 WAC. Once reviewed and approved by the

Office of the State Auditor the year-end financial report is transmitted to the Office of the State Risk Manager.

- 12.3 Financial records of the Health Care Program shall be subject to audit by the Office of the State Auditor. Year-end financial reports and audit results shall be made available to interested parties. The Health Care Program shall provide financial information as required by state statute and rule to the Office of the State Risk Manager.

ARTICLE 13

PARTICIPATING EMPLOYER TERMINATION AND WITHDRAWAL

- 13.1 A Participating Employer must remain in good standing with the Trust and adhere to the requirements of this Agreement. In the event that a Participating Employer fails to be a Participating City or Non-City Entity in good standing, participation in the Health Care Program shall automatically terminate without notice as shall all health and welfare benefits provided through the Health Care Program.
- 13.2 The Board of Trustees may take action to terminate membership or deny membership in the Health Care Program where it determines that such termination or denial is in the best interest of the Health Care Program
- 13.3 When a Participating Employer's eligibility in the Health Care Program is affected due to merger or annexation, the affected Participating Employer may petition the Board of Trustees to remain in the Health Care Program.
- 13.4 A Participating Employer may only withdraw its participation in the Health Care Program at the end of the calendar year and must provide written notice to the Trust at least thirty-one (31) days in advance of the end of the calendar year (December 31st).
- 13.5 In the event of withdrawal or non-renewal, the Health Care Program will cover any of the Participating Employer's remaining outstanding Health Care Program claims expenses incurred prior to the Participating Employer's withdrawal from or non-renewal in the Health Care Program.
- 13.6 No Participating Employer, because of withdrawal or any other reason, has any right or interest in the HCP Account because of its nature as a rate stabilization fund. In the event any Participating Employer withdraws from the Health Care Program, its Participating Employees, their covered dependents and other beneficiaries and any Consolidated Omnibus Budget Reconciliation Act of 1985 as amended (COBRA) participants and contract personnel and dependents approved by the Board of Trustees, shall forfeit all right and interest to the HCP Account.

ARTICLE 14

TERMINATION OF HEALTH CARE PROGRAM

- 14.1 In the event the Health Care Program is terminated, the Board of Trustees shall distribute the remaining funds in the HCP Account to the Trust or any successor association authorized by Chapter 39.34 RCW for like purposes for use in any program with similar purposes.
- 14.2 Upon termination, this Agreement and the HCP Account shall continue for the purpose of paying remaining outstanding claims and expenses and fulfilling all other functions necessary to complete the business of the Health Care Program.

ARTICLE 15

MEETINGS, NOTICES AND COMMUNICATIONS

- 15.1 The Board of Trustees and the EBAC, if any responsibilities for Trust management have been delegated thereto, shall provide notice of their regular and special meetings and hold their meetings in accordance with Chapter 42.30, RCW Open Public Meetings Act.
- 15.2 Communications with Participating Employers may occur using mail, email or posting on the Health Care Program website. The website shall be partitioned to provide information for the general public and information specific to Participating Employers and their employees.
- 15.3 Communications may come directly from the Health Care Program, through the Third-Party Administrator or through another vendor on behalf of the Health Care Program.

ARTICLE 16

AMENDMENTS TO INTERLOCAL AGREEMENT

- 16.1 The Board of Trustees shall review and analyze any proposed amendment to this Agreement. An amendment may be proposed for review by any party to this Agreement.
- 16.2 The Board of Trustees upon its discretion may take action by resolution on any amendment at any regular meeting of the Board of Trustees.

ARTICLE 17

PROHIBITION ON ASSIGNMENT

- 17.1 No Participating Employer may assign any right or claim of interest it may have under this Agreement.

- 17.2 No creditor, assignee or third-party beneficiary of any employer shall have the right, claim or title to any party, share, interest, premium or asset of the Trust, HCP Account or the Health Care Program.

ARTICLE 18

HEALTH CLAIM DISPUTES AND APPEALS

In the event that a dispute arises over a health claim, the procedures, adjudication requirements and administrative remedies shall be found in the Health Care Program's plan document applicable to the Health Care Program covering the claimant.

ARTICLE 19

PLAN ADMINISTRATION DISPUTES AND APPEALS

- 19.1 In the event that a dispute arises between a Participating Employer and the Health Care Program, the Participating Employer shall document the circumstances causing the dispute and submit a written request for review of the disputed circumstances to the Board of Trustees. Upon review of such information, the Board of Trustees shall attempt to resolve the dispute.
- 19.2 If the Board of Trustees' resolution to the dispute is deemed unsatisfactory, then alternative dispute resolution through mediation or binding arbitration may be necessary.

ARTICLE 20

ENFORCEMENT OF TERMS OF AGREEMENT

- 20.1 The Board of Trustees may enforce the terms of this Agreement.
- 20.2 In the event legal action is initiated to enforce any term or provision of this Agreement against any present or previous Participating Employer, the prevailing party shall receive such reimbursement of costs as the court deems reasonable for attorneys' fees and costs related to the relevant legal action.

ARTICLE 21

DEFAULT

- 21.1 If any Participating Employer fails to perform any term or condition of this Agreement and such failure continues for a period of sixty (60) days after the Board of Trustees has given the Participating Employer written notice describing such failure, the Participating Employer shall be considered in default.
- 21.2 Upon default, the Board of Trustees may immediately cancel the Participating Employer's participation in the Health Care Program without additional notice or exercise some other remedy otherwise provided by law.

21.3 The rights and remedies of the Board of Trustees are cumulative in nature and pursuit of any particular remedy shall not be deemed an election of remedies or a waiver of any other remedies available hereunder or otherwise available by law.

ARTICLE 22

NO WAIVERS

No waiver or forbearance of a breach of any covenant, term, or condition of this Agreement shall be construed to be a waiver or forbearance of any other or subsequent breach of the same or of any other covenant, term or condition, and the acceptance of any performance hereunder, or the payment of any sum of money after the same has become due or at a time when any other default exists hereunder, shall not constitute a waiver or right to demand payment of all sums owing or a waiver of any other default then or thereafter existing.

ARTICLE 23

CONTRACT MANAGEMENT

The Health Care Program shall designate a person to whom the State Risk Manager shall forward legal process served upon the Risk Manager; **The AWC Chief Executive Officer** (designee or successor). **The Health Care Program Director** shall be responsible for and shall be the contact person for all communications regarding the performance of this Agreement.

ARTICLE 24

SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

ARTICLE 25

COUNTERPART COPIES

This Agreement may be signed in counterpart or duplicate copies and any signed counterpart or duplicate copy shall be equivalent to a signed original for all purposes.

ARTICLE 26

HEADINGS

The Article and Section headings in this Agreement are inserted for convenience only and are not intended to be used in the interpretation of the contents of the Articles and Sections they introduce.

ARTICLE 27

AGREEMENT COMPLETE

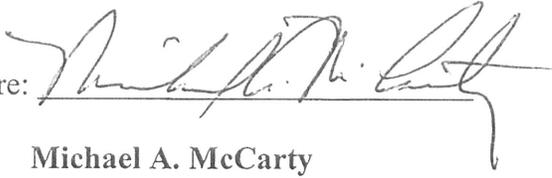
This Agreement and the documents referenced herein contains all the terms and conditions agreed to by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement.

Association of Washington Cities
Employee Benefit Trust

Participating Employer

Signature: 
Name: **Michael A. McCarty**

Signature: _____
Name (print): _____

Title: Chief Executive Officer
Date: August 30, 2013

Title: _____
Date: _____

Effective Date: January 1, 2014



Self-Funded Health Care Program

On August 26, 2013, the State Risk Manager approved the AWC Trust's application to self-insure the medical plans through Group Health and Regence Blue Shield, the Vision Service Plan, and Washington Dental Service plan effective January 1, 2014. The remaining insurance products will continue to be fully-insured. This fact sheet is intended to provide background of the Trust and insight into the Board of Trustee conversation ultimately leading to the decision to self-insure.

Trust history

The AWC Employee Benefit Trust is a Voluntary Employees' Beneficiary Association (VEBA), as defined in IRC 501 (c) (9). The Trust was formed in 1970 by the Association of Washington Cities to offer affordable coverage for its cities and towns with participants in Law Enforcement Officers and Fire Fighters Pension Plan 1 (LEOFF 1). Since that time, the Trust has broadened its insured membership to include all walks of municipal government and their families. Today, the Trust serves 275 participating entities and insures approximately 36,000 employees and family members.

The Trust currently offers medical, dental, vision, employee assistance program, life insurance, long-term disability insurance, and long-term care insurance.

In 1984, the Board of Trustees proved to be true visionaries in the health care industry and adopted an innovative health promotion project (wellness) as a cost containment tool. Today, the award-winning Total Health Management services of the Trust (available to Regence and Group Health medical subscribers) continues to reduce health care costs and improve quality of life for our insured members.

The AWC Trust, one of the first of its kind as a municipal league pool, is nationally recognized for excellence and innovation. Industry respect and long-term, stable relationships with insurance carriers, vendors, and consultants have benefited the pool members with quality health care programs, trust-worthy technical assistance and financial predictability. Customer advocacy and member-driven decisions continue to be the cornerstone of the Trust mission, vision and goals.

Planning retreat priority: self-insurance

As one of the highest priorities emerging from the 2011 Long Range Strategic Planning Retreat, the Trustees dedicated its 2013 meetings to learning about the world of self-insurance; hearing in-depth analysis from benefit, legal and actuarial consultants; and weighing the pros and cons of self-insuring the health care plans.

On July 25, Trustees instructed staff and consultants to proceed with a self-insurance application to the State Risk Manager. Approval was granted on August 26, and the Trust will transition its **Regence/Asuris, Group Health, WDS and VSP** plans to self-insurance effective January 1, 2014.

Self-Insurance means a formal program of advance funding and management of entity financial exposure to a risk of loss that is not transferred through the purchase of an insurance policy or contract.

Cost savings

One of the overriding factors in the decision is the potential for cost savings to members. Self-insurance allows the Trust to eliminate several taxes mandatory for fully insured plans including a 2% state tax and a 2% - 3% new 2014 federal insurer tax. While our retention and stop loss fees were extremely competitive as a fully insured plan, these fees were also lowered with the aid of a competitive self-insurance marketplace. Along with all these cost savings, we'll be able to focus on our own trend line, which has been lower than carriers' trends for many years. This bodes well for not only this year's rate projections, but future year's as well.

continued

The transition to self-insurance will not change the manner in which plans are rated (i.e., the Trust will continue to pool all member claims rather than develop rates based upon individual employer loss experience). However, the discussion of large city claims rating is slated to be discussed by the Board of Trustees in 2014, and being self-insured certainly enables a broader scope of analysis.

With all these factors considered, the Trust's 2014 rate projections are very favorable with 0% increase projected for most plans.

Self-insurance plans		Fully-insured plans	
Regence/Asuris Medical	0%	LEOFF I Medicare Advantage Plan	8%
Group Health Medical	0%	Willamette Dental	0%
WDS Dental	0%	Life & LTD	0%
VSP Vision	0%	EAP	0%

Final rates will be adopted by the Board of Trustees on September 26. Look to our website by end of day on Friday, September 27, for an updated posting.

WellCity rate impact

The WellCity discount is 2% less than the base rate. Ongoing WellCity Award recipients - your current rate will be 2% less than the base rate - which means your rate stays the same. For cities earning the 2013 WellCity Award for the first time, you'll get a 2% discount on the 2014 base rate, meaning your rate this year is actually a 2% savings from your 2013 rate.

Employee impacts

For now, know that the impact to employees and their family members is minimal to none:

- Benefit plan designs remain the same, including the mandated benefit changes under the ACA for 2014
- Employees have access to the same provider networks.
- Claims will be processed by the same carriers.
- It is possible that a new ID card will be generated.

Member employer impacts

Impact to employers is equally minimal:

- Members will still be part of the Trust's large pool, which will now be self-insured.
- The monthly bill will still be generated by NWA and due at the same time as current (by the 10th of the month).
- The most notable change for employers will be the council-adoption by resolution of an Interlocal Agreement between the jurisdiction and the AWC Trust.

Interlocal Agreement

RCW 48.62 authorizes local government entities to self-insure for health care benefits, and delegates rule-making authority and oversight to the Washington State Risk Manager. Chapter 200-110 Washington Administrative Code sets forth that members of the health care program (pool) must be a signatory to the health care program's Interlocal Agreement, and the Interlocal Agreement must be adopted by the local governing body by resolution.

In order for the Trust to meet the state deadlines, member jurisdictions must provide the adopted resolution and Interlocal Agreement no later than **November 15, 2013**.

AWC Employee Benefit Trust Health Care Program reserve funding

Self-insured health care programs must establish reserves necessary to fund the termination costs of the program and to insulate the program against unusual severity or frequency of claims. The Board of Trustees have pledged reserve funds pursuant to actuarially established amounts to satisfy this requirement.

Health Care Program 2014 financials at a glance	
Beginning program deposits/assets ¹	\$15,420,000
Projected employer contributions	\$174,672,167
Projected employee contributions	\$19,408,091
Other projected revenues	\$308,400
Total projected revenues	\$194,388,586
Projected claims payments	\$179,155,972
Projected operational expenses ²	\$12,334,777
Projected Stop Loss Insurance Policy	\$813,875
Projected Wellness Program expenses	\$1,775,561
Total projected annual expenses	\$194,080,186
Projected year-end program assets/reserves	\$15,728,400

¹Projected reserves as of December 31, 2013 are \$75,471,971 of which \$15,420,000 are pledged as beginning health care program assets.

²Includes claims adjudication, broker fee-for-service, actuary, legal, consultants, and operations.

Questions

As always, the Trust is committed to communicating with members. You can expect ongoing communications in upcoming **For Your Health** e-newsletters. If you have any questions regarding the Trust's decision to self-insure, the new rate projections, or the Interlocal Agreement feel free to contact an AWC Trust staff member at 1-800-562-8981 or benefitinfo@awcnet.org.

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: Resolution No. 13-893, authorizing the Mayor to execute a cost reimbursement agreement with BD Village Partners, LP and YarrowBay Development LLC for costs to the City for formation of the CFD.	Agenda Date: October 3, 2013	
	AB13-077	
	Department/Committee/Individual	
	Mayor Rebecca Olness	
	City Administrator – Mark Hoppen	
	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: \$00.00		
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: Resolution No. 13-893; Agreement		
<p>SUMMARY STATEMENT: On September 4, 2013, BD Village Partners, LP and YarrowBay Development LLC (hereafter the “Petitioners”) submitted their petition (hereafter the “Petition”) to King County Record and Licensing Services for certification of its petition for the formation of CFD No. 2013-1 (hereinafter “CFD No. 2013-1” or the “CFD”). The proposed district boundaries are located entirely within the corporate boundaries of the City of Black Diamond, King County, Washington.</p> <p>RCW 36.145.020(1)(6) provides that the Petitioners shall agree to pay for the costs to the City for formation of the CFD. The City has already incurred and will continue to incur costs and expenses related to this CFD petition, including by way of example and not limitation, labor and benefit costs for City Staff to the extent work is performed in furtherance of the CFD petition, and costs of legal services and other consultants to assist the City in the process of consideration or approval of the CFD petition.</p> <p>The purpose of this resolution is to consider authorizing the Mayor to execute a cost reimbursement agreement with the petitioner for the purpose of setting forth the terms and conditions upon which petitioner will reimburse the City for its administrative expenses. The obligation to reimburse the City will not be contingent upon approval of the petition for formation of the CFD.</p>		
COMMITTEE REVIEW AND RECOMMENDATION: N/A		
RECOMMENDED ACTION: MOTION to adopt Resolution No. 13- 893 authorizing the Mayor to execute a cost reimbursement agreement with BD Village Partners, LP and YarrowBay Development LLC.		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
October 3, 2013		

**CITY OF BLACK DIAMOND
WASHINGTON**

RESOLUTION NO. 13-893

**A RESOLUTION OF THE CITY OF BLACK DIAMOND,
WASHINGTON, ADOPTING AND AUTHORIZING
EXECUTION OF A COST REIMBURSEMENT
AGREEMENT WITH BD VILLAGE PARTNERS, LP, AND
YARROW BAY DEVELOPMENT, LLC**

WHEREAS, in year 2010 the Washington State Legislature enacted Engrossed Substitute Senate Bill 6241 (codified at RCW Ch. 36.145) authorizing legislative authorities, such as the Black Diamond City Council, to form special taxing districts known as Community Facilities Districts (“CFD”), to provide an option for landowners to voluntarily finance local improvements through special assessments upon their property; and

WHEREAS, the legislature found that such legislation was necessary because inadequate community facilities and infrastructure exist to support growth over the next 20 years and current financing options were not adequate or flexible enough to fund these needed facilities; and

WHEREAS, on September 4, 2013, BD Village Partners, LP and YarrowBay Development LLC (hereafter the “**Petitioners**”) submitted their petition (hereafter the “**Petition**”) to King County Record and Licensing Services for certification of its petition for the formation of CFD No. 2013-1 (hereinafter “**CFD No. 2013-1**” or the “**CFD**”) with its proposed district boundaries located entirely within the corporate boundaries of the City of Black Diamond, King County, Washington; and

WHEREAS, the City Council is authorized under state laws to approve or deny a CFD petition; and

WHEREAS, RCW 36.145.020(1)(6) provides that the Petitioners shall agree to pay for the costs of the CFD formation (“**Administrative Expenses**”); and

WHEREAS, the City has already incurred and will continue to incur Administrative Expenses related to this CFD petition, including by way of example and not limitation, labor and benefit costs for City Staff to the extent work is performed in furtherance of the CFD petition, and costs of legal services and other consultants to assist the City in the process of approving the CFD petition; and

WHEREAS, the City and Petitioner desire to enter into a cost reimbursement agreement for the purpose of setting forth the terms and conditions upon which Petitioner agrees to reimburse the City for its Administrative Expenses;

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,

WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. Approval of Cost Reimbursement Agreement. The Mayor of the City of Black Diamond is hereby authorized to execute the cost reimbursement agreement with Petition in substantially the form of agreement on file with the City Clerk.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 3RD DAY OF OCTOBER, 2013.

CITY OF BLACK DIAMOND

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:
Resolution No.:
Date Posted:

AGREEMENT FOR COST REIMBURSEMENT

CFD PETITION (2013-1)

This Cost Reimbursement Agreement (“**Agreement**”) is made this _____ day of _____, 2013, by and between the City of Black Diamond, Washington, a municipal corporation operating under the laws of the state of Washington (the “**City**”) and BD Village Partners, LP, a Washington limited partnership and Yarrow Bay Development, LLC, a Washington limited liability company (collectively, the “**Petitioner**”) for the purposes set forth herein.

RECITALS

WHEREAS the City is a municipal corporation operating as a non-charter code City under the laws of the State of Washington; and

WHEREAS Petitioner has petitioned the City to authorize the formation of a community facilities district entitled Black Diamond CFD No. 2013-1 (the “**CFD**”) pursuant to Ch. 36.145 RCW; and

WHEREAS the City Council is authorized under state laws to approve a CFD petition; and

WHEREAS RCW 36.145.020(1)(6) provides that the Petitioners shall agree to pay for the costs of the CFD formation (“**Administrative Expenses**”); and

WHEREAS the City has already incurred and will continue to incur Administrative Expenses related to this CFD petition, including by way of example and not limitation, labor and benefit costs for City Staff to the extent work is performed in furtherance of the CFD petition, and costs of legal services and other consultants to assist the City in the process of approving the CFD petition; and

WHEREAS the City and Petitioner desire to enter into this Agreement for the purpose of setting forth the terms and conditions upon which Petitioner agrees to reimburse the City for its Administrative Expenses;

TERMS

NOW, THEREFORE, in consideration of the following mutual promises and agreements, City and Petitioner agree as follows:

1. Incorporation of Recitals. The parties agree that the Recitals constitute the factual basis upon which the City and the Petitioner have entered into this Agreement. The City and the Petitioner each acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement as though fully set forth at length.

2. City to Retain Consultants. As a necessary and indispensable part of its process relating to its decision relative to the approval of a CFD for Petitioner, the City has retained, and may in the future retain, the services of consultants to provide advice as the City may deem necessary in its reasonable and sole discretion. The Petitioner agrees that, notwithstanding the Petitioner's reimbursement obligations under this Agreement, City consultants shall be the contractors exclusively of the City and not of the Petitioner. Except for those disclosures required by law, including, without limitation, the Public Records Act, all conversations, notes, memoranda, correspondence and other forms of communication by and between the City and its consultants shall be, to the extent permissible by law, privileged and confidential and not subject to disclosure to the Petitioner.

3. Petitioner's Obligations.

a. In accordance with the procedures outlined below, Petitioner shall pay for all Administrative Expenses the City has incurred prior to the effective date of this Agreement and for the Administrative Expenses it incurs thereafter reasonably related to the process for approval of the Petitioner's CFD. **Within fourteen (14) days of execution of this Agreement, City shall provide Petitioner with a statement identifying the City's reimburseable costs incurred prior to execution of this Agreement.** Petitioner's payment obligations hereunder include, without limitation, payment for all Administrative Expenses that the City incurs in holding the public hearing on the Petitioner's CFD Petition, the drafting of the resolution approving the Petitioner's CFD, including services performed by consultants retained by the City for engineering, peer review, environmental, legal, and other related disciplines associated with the review of the Petitioner's CFD petition.

b. Within ten (10) business days of full execution of this Agreement, Petitioner shall deposit with the City the sum of five thousand dollars (\$5,000.00) (the "**Administrative Expenses Fund**"), which the City may draw upon to pay for Administrative Expenses authorized for reimbursement by this Agreement. If the balance of the Administrative Expenses Fund falls below \$1000.00, Petitioner shall, within thirty (30) days of receipt of written request from the City, deposit such additional amount of money into the Administrative Expenses Fund as the parties agree is reasonably necessary, but no less than \$2500.00, for the continuing reimbursement of Administrative Expenses under this Agreement. Petitioner shall be entitled to a refund from the City of any unencumbered amounts remaining in the Administrative Expenses Fund within thirty (30) days of: (i) conclusion of the City's process for review and approval of the Petitioner's CFD petition; (ii) upon Petitioner's written notice of withdrawal of its CFD

petition; or (iii) termination of this Agreement as provided in Paragraph 4.

c. Upon request of the Petitioner, the City shall tender copies of receipts for all paid invoices for City consultants to Petitioner within fourteen (14) days of such request or fourteen (14) days of the date that City paid such invoices, whichever is earlier. Upon request of the Petitioner, City will provide Petitioner with a written statement of the balance of the Administrative Expenses Fund within fourteen (14) days of such request.

d. Any time Petitioner disputes an invoice, receipt, deposit or reimbursement request from the City, Petitioner shall make such disputed deposit in a timely manner, under protest, to the City according to the timeframes set forth in this Agreement. Following resolution of the dispute per the processes set forth in Paragraph 5, the City shall refund any over payment to Petitioner within thirty (30) days of final resolution. Nothing in this subsection (d) shall be construed as limiting Petitioner's ability to terminate this Agreement pursuant to the provisions of Paragraph 4.

The Petitioner acknowledges that the City has not made any representation or warranty with respect to the Petitioner's ability to obtain approval of its CFD petition. Nothing in this Agreement is intended or shall be construed to require that the City exercise its authority to approve the Petitioner's CFD petition. The outcome of the City's process for review and approval of a CFD petition is independent of and is in no way biased, prejudiced or predetermined in any way by this Agreement.

4. Duration of Agreement. This Agreement shall be in full force and effect for a period commencing with the full execution of this Agreement and terminating upon, (a) mutual agreement of the parties, (b) written notice of withdrawal of the CFD petition, or (c) upon approval or denial of the CFD petition by the City Council; provided, however, that Petitioner's right to so terminate this Agreement by withdrawal of the CFD petition is expressly contingent upon Petitioner satisfying both of the following: (1) Petitioner shall give City written notice; and (2) Petitioner shall satisfy all of its obligations under this Agreement up through the proposed effective date of termination. For purposes of this section, Petitioner's obligations shall include its obligation to reimburse the City for all Administrative Expenses incurred by the City provided prior receipt of the notice of withdrawal of the CFD petition, whether or not paid by the City to consultants prior to the date of termination. City shall provide Petitioner with an invoice or invoices that reasonably documents such Administrative Expenses.

The City may, in its reasonable and sole discretion, terminate this Agreement prior to the term set forth above, without cost or liability to the City, upon thirty (30) days prior written notice to the Petitioner in the event that Petitioner fails to satisfy any obligation of this Agreement and Petitioner fails to cure such default within thirty (30) days of receipt of notice from the City.

5. Dispute Resolution. The parties shall apply their best efforts to fairly resolve any disputes that may arise in regard to implementation of this Agreement. In the event the parties cannot agree on terms for resolving a dispute within twenty-one (21) days, they may mutually select a neutral third party to help facilitate such resolution. If resolution cannot be reached

within fourteen (14) days, they may agree to a schedule and process for continued efforts to resolve the dispute. Neither party shall file a lawsuit in court until they have completed at least one formal session of mediation or other alternative dispute resolution process.

6. Attorneys' Fees. In the event any action is brought in court to enforce, or on account of, this Agreement or any provision thereof, the substantially prevailing party shall be awarded its reasonable attorneys' fees together with reasonable expenses and costs incurred in connection with any such litigation. "Attorneys' Fees" shall include services rendered at both the trial and appellate levels as well as services rendered subsequent to judgment in obtaining execution thereon.

7. Assignment. This Agreement may be assigned only upon prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

8. Entire Agreement. This Agreement contains the entire agreement between the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties hereto. Either party may request changes to the Agreement. Proposed changes which are mutually agreed upon shall be incorporated by written amendments to this Agreement, signed by both parties.

9. Applicable Law: Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington; provided that, Petitioner's authority to enter into this agreement shall be subject to and construed under the laws of the Washington State. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be exclusively in King County, Washington. The substantially prevailing party in any such action shall be entitled to its reasonable attorneys' fees, expert witness fees, and costs of suit.

10. Warranty.

a. City. The City warrants that it has full right and authority to enter into and accept this Agreement in accordance with the terms hereof, and by entering into or performing this Agreement, City is not in violation of any law, regulation, or agreement by which it is bound or to which it is subject.

b. Petitioner. Petitioner warrants that it has full right and authority to enter into and accept this Agreement in accordance with the terms hereof, and by entering into or performing this Agreement, City is not in violation of any charter, by-law, law, regulation, or agreement by which it is bound or to which it is subject. Petitioner further warrants that, execution of this Agreement by and on behalf of Petitioner has been duly authorized by all requisite Board action, including but not limited to, the wavers, express or implied, set forth in sections 6, 9 and 10 herein, that the signatories for Petitioner hereto are authorized to sign this Agreement, and that the joinder or further consent of any other party, is not necessary to make valid and effective the execution, delivery, and performance of this Agreement.

11. Severability. If any section, sentence, clause or phrase of this Agreement is held to be invalid or unconstitutional by a court of competent jurisdiction, the portion declared invalid or unconstitutional shall be severed, and the City shall enforce the remaining provisions of this Agreement shall remain in full force.

12. No Joint Venture. Nothing contained in this Agreement shall constitute or be deemed or construed to create a partnership, joint venture or any agency relationship between the City and Petitioner.

13. Notices.

Notices to the City of City shall be sent to the following address:

City of Black Diamond
Attn: Andy Williamson, Economic Development Director
24301 Roberts Drive
PO Box 599
Black Diamond, WA 98010
(360) 886-2560 Ext. 215 Office

with a copy to:

Kenyon Disend, PLLC
City Attorney
Attn: Chris Bacha
11 Front Street
Issaquah, WA. 98027
(425) 392-7090 Office
Chris@kenyondisend.com E-mail

Notices to Petitioner shall be sent to the following address:

BD Village Partners, LP
c/o Yarrow Bay Holdings
Attn: Colin Lund
10220 NE Pointe Drive, Suite 310
Kirkland, WA 98033

with a copy to:

Yarrow Bay Holdings
Attn: Megan Nelson, Director of Legal Affairs
10220 NE Points Drive, Suite 310
Kirkland, WA 98033

CITY OF BLACK DIAMOND:

By _____ Date: _____
Rebecca Olness, Mayor

BD VILLAGE PARTNERS, LP:

By _____ Date: _____
Its:

YARROW BAY DEVELOPMENT, LLC:

By _____ Date: _____
Its:

Approved As To Form:

Chris Bacha
Kenyon Disend, PLLC
City Attorney