



CITY OF BLACK DIAMOND
July 24, 2014 Special Meeting Agenda- REVISED
25510 Lawson Street, Black Diamond, Washington

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

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

PUBLIC HEARINGS:

- 1) **AB14-066A** – Proposed Ordinance Amending BDMC regarding Development Agreements Ms. Morris
- 2) **AB14-067A** – Proposed Ordinance Amending BDMC re: SEPA Codes Ms. Morris

NEW BUSINESS:

- 3.) **AB14-070** – Ordinance Amending 2014 Budget Ms. Miller
- 4.) **AB14-071** – Resolution Authorizing Contract with Puget Paving & Construction for
2014 Roadway Grind and Patch Project Mr. Boettcher
- 5.) **AB14-072** – Resolution Awarding R.W. Scott Construction Co. low bid on the Lawson
Street Sidewalk Improvements Project Mr. Boettcher
- 6.) **AB14-073** – Resolution Authorizing Final Contract Amendment with Ogden Murphy Wallace
Councilor Benson

DEPARTMENT REPORTS:

MAYOR'S REPORT:

COUNCIL REPORTS:

A. Council Standing Committees and Regional Committees

- Councilmember Benson - Budget, Finance, Administration Committee; South County Area Transportation Board (SCATBd); South East Area Transportation Solutions (SEATS) Coalition; Mental Illness and Drug Dependency Oversight Committee
- Councilmember Edelman - Planning and Community Service Committee; Public Issues Committee (PIC)
- Councilmember Deady - Cemetery and Parks Committee; Growth Management Planning Council (GMPC)

- Councilmember Taylor, Chair - Public Works Committee; Public Safety Committee
- Councilmember Morgan - Water Resource Inventory Area Committee (WRIA 9)

ATTORNEY REPORT:

PUBLIC COMMENTS:

CONSENT AGENDA:

- 7) **Claim Checks** – July 24, 2014, No.41140 through No. 41209 in the amount of \$168,109.89
- 8) **Payroll Checks** – June 30, 2014 No.18349 through No. 18370 and ACH Pay in the amount of \$276,538.30

EXECUTIVE SESSION: To discuss with legal counsel potential litigation pursuant to RCW42.30.110(1)(i), possible action may follow.

ADJOURNMENT:

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION

SUBJECT: AB14-066A PUBLIC HEARING Repealing most of the City's code relating to development agreements and adopting new regulations for development agreements.	Agenda Date: July 17 , 2014		AB14-066A
	Mayor Dave Gordon		
	City Administrator		
	City Attorney Carol Morris		X
	City Clerk – Brenda L. Martinez		
	Community Development –		
	Finance – May Miller		
	Economic Development – Andy Williamson		
	Parks/Natural Resources – Aaron Nix		
	Police – Chief Kiblinger		
Public Works – Seth Boettcher			
Court Administrator – Stephanie Metcalf			

Agenda Placement: Mayor Two Councilmembers Committee Chair City Administrator

Attachments: Ordinance No. 14-1030, RCW 36.70B.170, BDMC Ch. 18.66

I. Background. State law allows a city to enter into a development agreement with a property owner for a number of reasons, such as annexation, mitigation of development impacts, phasing of a project, etc. RCW 36.70B.170(3). However, a development agreement “shall be consistent with applicable development regulations adopted by a local government” planning under the Growth Management Act. RCW 36.70B.170(1).

Development Agreement Execution Process. Before the City may enter into a development agreement with a property owner, a public hearing must be held and the agreement must be adopted by resolution or ordinance. RCW 36.70B.200. The development agreement must specify a term (or duration), and during this term, the development standards identified in the development agreement govern build-out. RCW 36.70B.180. After build-out and expiration of the agreement, the City can adopt new development regulations for the property. RCW 36.70B.180. (The City also may adopt new development regulations to apply to the property before the development agreement expires, if there is a serious threat to public health or safety. RCW 36.70B.170(4).) If an appeal is filed of the development agreement relating to a project, there could be a judicial appeal of the agreement and underlying permit application under chapter 36.70C RCW. Appeals of a development agreement relating to a legislative action (comp plan amendment as an example) would be filed with the Growth Management Hearings Board.

Development Regulation Adoption Process. The Growth Management Act requires the City to follow this procedure for amendments to development regulations: (A) the development regulation is drafted in a proposed ordinance; (B) the City's SEPA Responsible Official makes a threshold decision on the proposed ordinance (which can be appealed); (C) the proposed ordinance is sent to the Washington State Department of Commerce for comment, pursuant to RCW 36.70B.106; (D) a public hearing is held before the Planning Commission on the proposed ordinance (after public notice); (E) the Planning Commission sends its recommendation on the ordinance to the City Council; (F) the City Council considers the proposed ordinance during a regular meeting; (G) the City Council may be required to hold another public hearing on the proposed ordinance (*see*, RCW 36.70A.035(2)); (H) the final ordinance is published; and (G) a copy of the adopted ordinance is sent to the Department of Commerce under RCW

36.70A.106(2). An appeal of the adopted ordinance may be filed with the Growth Management Hearings Board, and the decision of that Board may be filed in court.

II. Need for Amendment and Procedure.

A. *Current code is inconsistent with Law.* The City's current code allows a developer to propose the execution of a development agreement with the City for the purpose of "modifying" existing development regulations. As you can see from the above, not only is this contrary to law (RCW 36.70B.170(1)), it eliminates a substantial amount of public participation in the adoption of development regulations. The fact that there is one public hearing on the development agreement does not cure this defect, as interested members of the public wouldn't anticipate that the City would violate state law by amending development regulations by contract. So, few would be watching for public notice of this hearing, which may or may not accurately describe the proposed development regulation amendments.

B. *Current Code doesn't clearly identify discretionary nature.* The City is not required to execute a development agreement with a property owner.

C. *Current Code doesn't clearly describe the contractual elements of a development agreement.* A development agreement is a contract. If the City decides to enter into a development agreement with a property owner, then the City needs to obtain consideration. For example, if a developer would like the City to extend the vesting of his/her project for 20 years so the developer can construct the project in 4 phases, then the developer needs to provide the City with some public amenities to make up for the fact that the City will be "freezing" its development regulations for 20 years for this development.

D. *The City must be consistent with development agreements.* The City could decide that it would only allow a vesting freeze for phased development for 20 years and no longer. The length of the agreement for a particular purpose should be identified in the code, so that the City's decisions on consistent with all developers. There may be reasons to vary from the outside limit (the amount and nature of the public amenities proposed as consideration), and the reasons should be specified in the agreement itself. For example, if a property owner asks the City to annex his or her property, but the City doesn't have sufficient water to serve the property at build-out, it may ask that the property owner pay for certain amenities, such as construction of water holding tanks and other water facilities, establishing a deadline for construction in the development agreement, and making annexation contingent upon construction of the facilities.

E. *The development agreement may be legislative or quasi-judicial.* For example, a property owner may ask for an area-wide rezone (usually more than two parcels), but the SEPA threshold decision on the comprehensive plan amendment may show that there will be a transportation concurrency issue if approved. The City may consider approval of the area-wide rezone contingent upon the developer's construction of a necessary transportation facility within six years. Or, a property owner may ask that the City approve a site specific rezone at the edge of a single family residential neighborhood to the lowest level business use. In order to ameliorate the negative impacts of this rezone, the City may approve it by eliminating certain allowed uses in the proposed business zone, or requiring that the property owner plant a wide vegetative screen as a buffer or other mitigation.

F. *Concurrent processing.* If a developer requests a development agreement, it must be processed with the associated permit application or approval. For example, if a developer requests a development agreement with a preliminary plat, the two must be processed concurrently, so that the decision-maker understands what conditions will be imposed on the application. If a developer requests a development agreement with a comprehensive plan amendment, the two must be processed concurrently, so that everyone – the public, Planning Commission and City Council, can evaluate the advantages and

disadvantages of the proposal prior to approval of the comprehensive plan amendment.

III. Recommendation. The City Attorney recommends approval of the attached ordinance, for all of the above reasons. The City Council needs to insert a deadline in Section 18.66.040(B) on page 4. I recommend that the Council make this number not more than twenty years.

FISCAL NOTE (Finance Department): N/A

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: **Discussion by the Planning & Community Services Committee at their June meeting.**

RECOMMENDED ACTION:

1. **MOTION to insert the word “twenty” in Section 18.66.040(B) in the blank.**
2. **MOTION to approve Ordinance No. 14-1030, relating to land use and zoning, amending the Black Diamond Municipal Code provisions relating to development agreements, requiring consistency between existing development regulations and development agreements, identifying the elements of an application of a development agreement, describing the procedure for processing development agreements, clarifying the effect, format, requirements for public hearing, recording and appeals; amending BDMC Section 18.66.010; repealing Section 18.66.020; adding new Sections 18.66.020, 18.66.030, 18.66.040 and 18.66.050 and establishing an effective date.**

RECORD OF COUNCIL ACTION

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
July 17, 2014	Continued to July 24 meeting due to technical difficulites	
July 24, 2014		

ORDINANCE NO. 14-1030

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING THE BLACK DIAMOND MUNICIPAL CODE PROVISIONS RELATING TO DEVELOPMENT AGREEMENTS, REQUIRING CONSISTENCY BETWEEN EXISTING DEVELOPMENT REGULATIONS AND DEVELOPMENT AGREEMENTS, IDENTIFYING THE ELEMENTS OF AN APPLICATION OF A DEVELOPMENT AGREEMENT, DESCRIBING THE PROCEDURE FOR PROCESSING DEVELOPMENT AGREEMENTS, CLARIFYING THE EFFECT, FORMAT, REQUIREMENTS FOR PUBLIC HEARING, RECORDING AND APPEALS; AMENDING BDMC SECTION 18.66.010; REPEALING SECTION 18.66.020; ADDING NEW SECTIONS 18.66.020, 18.66.030, 18.66.040 AND 18.66.050 AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the process in chapter 18.66 BDMC on the subject of development agreements is inconsistent with state law (RCW 36.70B.170(1)), which requires that “a development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter 36.70A RCW”; and

WHEREAS, state law does not allow the City’s development regulations to be “modified in the development agreement” (as currently provided in BDMC Section 18.66.020); and

WHEREAS, chapter 18.66 BDMC does not clearly state that development agreements are discretionary, the purpose for which such agreements should be used, the procedure for processing development agreements and the manner in which appeals of development agreement may be filed; and

WHEREAS, the SEPA Responsible Official has determined that this Ordinance is categorically exempt from SEPA as affecting only procedural and no substantive standards, pursuant to WAC 197-11-800(19); and

WHEREAS, the City Council considered this Ordinance during its regular City Council meeting on June 5, 2014;

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

Section 1. Amendment of Section 18.66.010. Section 18.66.010 of the Black Diamond Municipal Code is hereby amended to read as follows:

18.66.010 Intent and Discretionary Nature.

The purpose of this chapter is to authorize the use of development agreements, consistent with RCW 36.70B.170 through RCW 36.70B.210. ~~as authorized by state law, as a means to document conditions and procedures for certain types of development and to thereby provide greater certainty to the city, applicants and the public regarding how property will be developed. Development agreements may be used for any type of proposals but are anticipated to be applied most often to master planned development per chapter 18.98 and to other large, complex, phased, and/or sensitive development proposals where useful.~~

The City may, but under no circumstances is required to, enter into a development agreement with a person having ownership or control of real property within the City. The development agreement may address such project elements as those set forth in RCW 36.70B.170B(3). The development agreement shall be consistent with the applicable development regulations of the City. The consideration provided by the property owner for the City's decision to enter into the development agreement may vary, depending on the benefit the development agreement will provide to the City and/or the public in general.

Section 2. Repeal of Section 18.66.020. Section 18.66.020 of the Black Diamond Municipal Code is hereby repealed.

Section 3. Adoption of new Section 18.66.020. A new section 18.66.020 is hereby added to the Black Diamond Municipal Code:

18.66.020 Form of Agreement, Effect and General Provisions.

- A. Form. All development agreements shall be on the standard form approved in advance by the City Attorney for this purpose.
- B. Effect. Development agreements are not project permit applications and are not subject to the permit processing procedures in chapter 18.14 of the BDMC. A development agreement shall constitute a binding contract between the City and the property owner and the subsequent owners of any later-acquired interests in the property identified in the development agreement.
- C. Limitations. Any provision of the development agreement which requires the City to: (1) refrain from exercising any authority; (2) forego adoption of any development regulations affecting the property identified in the agreement; (3) allow vesting beyond the applicable deadlines for a phased development; shall be limited to a period of ____ () years. The development agreement shall also contain a proviso that the City may, without incurring any liability, engage in action that would otherwise be a breach if the City makes a determination on the record that the action is necessary to avoid a serious threat to public health and safety, or if the action is required by federal or state law.

D. Developer's Compliance. The development agreement shall include a clause stating that the City's duties under the agreement are expressly conditioned upon the property owner's substantial compliance with each and every term, condition, provision and/or covenant in the development agreement, all applicable federal, state and local laws and regulations and the property owner's obligations as identified in any approval or project permit for the property identified in the development agreement.

E. No Third Party Rights. Except as otherwise provided in the development agreement, the development agreement shall create no rights enforceable by any party who/which is not a party to the development agreement.

F. Liability. The development agreement shall include clause providing that any breach of the development agreement by the City shall give right only to damages under state contract law and shall not give rise to any liability under chapter 64.40 RCW, the Fifth and Fourteenth Amendments to the U.S. Constitution or similar state constitutional provisions.

Section 4. A new Section 18.66.030 is hereby added to the Black Diamond Municipal Code, which shall read as follows:

18.66.030 Application Requirements. A complete application for a development agreement shall consist of the following:

- A. Name, address, telephone number and e-mail address (if any) of the property owner. If the applicant is not the property owner, the applicant must submit a verified statement from the property owner that the applicant has the property owner's permission to submit the application;
- B. Address, parcel number and legal description of the property proposed to be subject to the development agreement;
- C. Recent title report confirming that the property identified in the application is owned by the applicant/property owner;
- D. Identification of any application (project permit application, comprehensive plan amendment application, development regulation amendment application) that is related to the proposed development agreement;
- E. SEPA Checklist;
- F. A completed application form and the application fee established by the City for this purpose; and
- G. Any other information requested by the Community Development Director relevant to the processing of the development agreement.

Section 5. A new Section 18.66.040 is hereby added to the Black Diamond Municipal Code, which shall read as follows:

18.66.040. Phasing.

A. In order to phase a project to extend the vested rights associated with an underlying project permit application, a development agreement is required. This ensures the availability of public facilities and services to all of the property in the identified individual phases, allows tracking of the available capacity of public facilities and utilities during each phase of construction, and with the extension of the vested rights associated with the project, provides certainty to the developer in the subsequent development approval process.

B. The deadlines in the City's code relating to each type of project permit application must be consulted to establish the baseline vesting period. The City is not required to extend the vesting period. If the City decides to do so through a development agreement, it must be in exchange for the property owner's provision of corresponding benefits to the City in the form of, for example, contributions to public facilities and amenities over and above what would normally be required. In any event, the City shall not allow vesting to extend beyond the established ____ (____) year period after approval of the project permit application.

C. A development agreement for a phased development (such as a subdivision) shall include (in addition to all of the information in Section 18.66.030), all of the following:

1. identification of the phasing schedule;
2. identification of the number of phases and all lots included in each phase;
3. identification of the approximate dates for construction of public streets, public utilities and other improvements in each phase;
4. identification of the approximate dates for commencement of development of each lot, lot sales and building occupancy;
5. identification of the benefits that the property owner will provide to the City in exchange for permission to phase the development according to the proposed schedule;
6. establishment of the deadline for the property owner to submit development applications, including building permit applications, for each phase;
7. a description of the manner in which each phase is designed such that all site requirements are satisfied independently of phases yet to be given final approval and constructed;
8. a description of the manner in which the property owner will ensure that adequate public facilities are available when the impact of development occurs. The property owner shall acknowledge in the development

agreement that if the demand for public facilities or services needed to accommodate a subsequent development phase increases following the issuance of a development permit for a prior phase in the approval process, or if public facilities or services included in a concurrency or SEPA determination are not constructed as scheduled in the City's capital facilities plan, final development approval may have to be delayed for future phases pending the achievement of the adopted levels of service.

Section 6. A new Section 18.66.050 is hereby added to the Black Diamond Municipal Code, which shall read as follows:

18.66.050 Processing Procedures.

A. Consolidation. Whenever possible, the development agreement shall be consolidated for processing with an underlying project permit application or other application for a legislative approval. If the development agreement is consolidated with a project permit application, the property owner must agree to waive the deadline in RCW 36.70B.080 and BDMC Section 18.14.020.A for issuance of a final decision on the underlying application, as well as the prohibition on no more than one open record hearing and one closed record hearing on the underlying project permit application in RCW 36.70B.060(3) and BDMC Sections 2.30.100 and 18.08.070.

B. Public Hearing. While the Hearing Examiner may provide a recommendation on a development agreement (even if the Hearing Examiner makes the final decision on the underlying project permit application), the City Council shall make the final decision whether to approve a development agreement by ordinance or resolution after a public hearing. Modifications to a development agreement shall be in writing, signed by the duly authorized representatives of the parties, be consistent with this chapter and follow the same procedures set forth in this chapter.

C. Appeal. A development agreement associated with an underlying project permit application may be appealed in the same manner and within the same deadline as the underlying project permit application. A development agreement associated with a legislative approval, such as a comprehensive plan amendment, may be appealed in the same manner and within the same deadline as the legislative approval.

4. Recording Against the Property. The City shall record the development agreement against the property with the real property records of the King County Department of Records and Elections. During the term of the agreement, it is binding upon the owners of the property and any successors in interest to such property.

Section 7. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 8. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 9. Effective Date. This Ordinance shall be effective five days after publication as provided by law.

PASSED by the Council and approved by the Mayor of the City of Black Diamond, this
24th day of July, 2014.

CITY OF BLACK DIAMOND

Mayor Dave Gordon

ATTEST/AUTHENTICATED:

Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Carol A. Morris, City Attorney

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO:

RCW 36.70B.170**Development agreements — Authorized.**

(1) A local government may enter into a development agreement with a person having ownership or control of real property within its jurisdiction. A city may enter into a development agreement for real property outside its boundaries as part of a proposed annexation or a service agreement. A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter 36.70A RCW.

(2) RCW 36.70B.170 through 36.70B.190 and section 501, chapter 347, Laws of 1995 do not affect the validity of a contract rezone, concomitant agreement, annexation agreement, or other agreement in existence on July 23, 1995, or adopted under separate authority, that includes some or all of the development standards provided in subsection (3) of this section.

(3) For the purposes of this section, "development standards" includes, but is not limited to:

(a) Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;

(b) The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;

(c) Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW;

(d) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;

(e) Affordable housing;

(f) Parks and open space preservation;

(g) Phasing;

(h) Review procedures and standards for implementing decisions;

(i) A build-out or vesting period for applicable standards; and

(j) Any other appropriate development requirement or procedure.

(4) The execution of a development agreement is a proper exercise of county and city police power and contract authority. A development agreement may obligate a party to fund or provide services, infrastructure, or other facilities. A development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

[1995 c 347 § 502.]

Notes:

Chapter 18.66

DEVELOPMENT AGREEMENTS

Sections:

18.66.010 Intent.

18.66.020 Applicability and procedures.

18.66.010 Intent.

The purpose of this chapter is to authorize the use of development agreements, as authorized by state law, as a means to document conditions and procedures for certain types of development and to thereby provide greater certainty to the city, applicants and the public regarding how property will be developed. Development agreements may be used for any type of proposals but are anticipated to be applied most often to master planned development, per Chapter 18.98, and to other large, complex, phased, and/or sensitive development proposals where useful.

(Ord. No. 909, § 2 (Exh. A), 6-18-2009)

18.66.020 Applicability and procedures.

A. The city may enter into development agreements with property owners as authorized by RCW 36.70B.170 et seq. Development agreements are intended to be used to address and establish development standards, mitigation requirements, vesting provisions and review procedures that will apply to and govern large, complex and/or phased development proposals located within the city during the term of any agreement.

B. Any development agreement shall be consistent with applicable city development regulations except as such regulations may be modified in the development agreement. For purposes of this chapter, "development standards" include but are not limited to:

1. Project elements such as uses, densities and intensities of land uses and buildings;

2. Mitigation measures, conditions and other requirements identified pursuant to SEPA (RCW 43.21 C);

3. Design standards such as maximum heights, setbacks, landscaping and other development features;

4. Road and sidewalk standards;

5. Affordable housing;

6. Water, sewer, storm drainage, water quality, and other infrastructure and utility requirements;

7. Parks and open space preservation, and recreation facilities;

8. Phasing of development and construction;

9. Development review processes, procedures and standards for implementing decisions, including methods of reimbursement to the city for review processes;

10. A build-out or vesting period for applicable development standards;

11. A process for amending the development agreement; and

12. Any other appropriate development requirement or procedure.

C. During the term specified in the development agreement, a development permit or approval issued by the city shall be consistent with the standards in such agreement. The standards contained in the development agreement shall govern during the term of the agreement and may not be subject to an amendment of city development standards or regulations adopted after the effective date of the development agreement. Provided, that the development agreement shall reserve to the city the authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

D. A development agreement shall be recorded with the real property documents of King County. During the term of the agreement, it shall be binding on the parties and their successors, including a city that assumes jurisdiction through incorporation or annexation of the area or property subject to the development agreement. Unless terminated, the agreement shall be enforceable by a party to the agreement.

E. A development agreement shall be reviewed and adopted following a public hearing pursuant to the procedures and requirements set forth in Chapter 18.08.

(Ord. No. 909, § 2 (Exh. A), 6-18-2009)

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

**CITY OF BLACK DIAMOND
NOTICE OF PUBLIC HEARING**

Notice is hereby given that the Black Diamond City Council will be conducting a public hearing regarding the proposed ordinance amending Black Diamond Municipal Code provisions relating to Development Agreements. The hearing will take place on Thursday, July 17, 2014 at 7:00 p.m. at the Black Diamond City Council Chambers, 25510 Lawson Street, Black Diamond, WA. The purpose of the hearing is to hear public testimony on the above listed subject. Written comments may be submitted to the Clerk's office at 24301 Roberts, Drive, PO Box 599, Black Diamond, WA, 98010 no later than 5:00 p.m. on July 17, 2014, otherwise they must be submitted at the hearing. Documents related to the hearing will be available for inspection or purchase at City Hall, 24301 Roberts Drive, or on the City's website www.ci.blackdiamond.wa.us under "Public Notices". For further information please contact Aaron Nix at 360-886-5700.

Dated this 27th day of June, 2014
Brenda L. Martinez
City Clerk

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION

SUBJECT: AB14-067 Public Hearing Repeal of City's outdated SEPA ordinance and adoption of a new SEPA ordinance.	Agenda Date: July 17, 2014		AB14-067^A
	Mayor Dave Gordon		
	City Administrator		
	City Attorney Carol Morris		X
	City Clerk – Brenda L. Martinez		
	Community Development – Stacey Welsh		
	Finance – May Miller		
	Economic Development – Andy Williamson		
	Parks/Natural Resources – Aaron Nix		
	Police – Chief Kiblinger		
Public Works – Seth Boettcher			
Court Administrator – Stephanie Metcalf			

Agenda Placement: Mayor Two Councilmembers Committee Chair City Administrator

Attachments: Ordinance No. 1031; SEPA Outline

SUMMARY STATEMENT:

I. Background.

See the attached outline describing the State Environmental Policy Act (SEPA), chapter 43.21C RCW.

II. Proposed Changes from Existing SEPA ordinance (chapter 19.04 of the Black Diamond Municipal Code).

The majority of the City's existing SEPA regulations in chapter 19.04 BDMC were adopted in 1984. Since that time, the State of Washington has updated the SEPA rules. The City needs to decide which of these rules it would like to adopt and enforce locally.

An update is also required because the City must rely upon policies adopted in the SEPA ordinance when it conditions or denies a proposal. The City has adopted a number of codes, regulations and plans since 1984 that must be incorporated into the new SEPA ordinance.

Another reason for the update is to change the SEPA administrative appeal process for legislative decisions. Currently, the hearing examiner renders a final decision on project permit applications, including SEPA appeals associated with such applications. The City Council renders a final decision on legislative actions such as amendments to the comprehensive plans and development regulations, after the Planning Commission holds an open record hearing. This latter process needs to be streamlined to allow the City Council to act on both the Planning Commission's recommendation and any SEPA appeals of legislative decisions. Involving the Hearing Examiner in an appeal of a legislative decision adds a third decision-maker, making the legislative procedure unnecessarily more complex and costly.

III. Proposed Action.

Hold a public hearing and take public testimony on the proposed ordinance. Repeal of existing chapter 19.04 of the Black Diamond Municipal Code and adoption of a new chapter 19.04 BDMC.

FISCAL NOTE (Finance Department):

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:

RECOMMENDED ACTION: **After the public hearing, the Council should take one of two actions:**

First alternative: MOTION to adopt Ordinance No. 1031, RELATING TO THE STATE ENVIRONMENTAL POLICY ACT (SEPA), REPEALING THE CITY'S CURRENT PROCEDURES FOR IMPLEMENTATION OF SEPA AND ADOPTING NEW PROCEDURES FOR REVIEW OF ALL "ACTIONS" UNDER SEPA, ISSUANCE OF THRESHOLD DECISIONS, PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS, PUBLIC NOTICE, COMMENT AND APPEALS; REPEALING CHAPTER 19.04 AND ADOPTING A NEW CHAPTER 19.04 OF THE BLACK DIAMOND MUNICIPAL CODE.

Second alternative: POSTPONE ACTION TO HAVE COUNCIL QUESTIONS ADDRESSED.

RECORD OF COUNCIL ACTION

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
July 17, 2014	Continued to July 24 meeting due to tech. diff.	
July 24, 2014		

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO THE STATE ENVIRONMENTAL POLICY ACT (SEPA), REPEALING THE CITY'S CURRENT PROCEDURES FOR IMPLEMENTATION OF SEPA AND ADOPTING NEW PROCEDURES FOR REVIEW OF ALL "ACTIONS" UNDER SEPA, ISSUANCE OF THRESHOLD DECISIONS, PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS, PUBLIC NOTICE, COMMENT AND APPEALS; REPEALING CHAPTER 19.04 AND ADOPTING A NEW CHAPTER 19.04 OF THE BLACK DIAMOND MUNICIPAL CODE.

WHEREAS, the City's Environmental Policy Code (chapter 19.04 BDMC) was adopted in 1984 and with the exception of Section 19.04.250 relating to appeals, has not been amended since that time; and

WHEREAS, most of chapter 19.04 BDMC involves the adoption of the State Environmental Policy Act (SEPA) Rules (Washington State Administrative Code chapter 197-11) by reference; and

WHEREAS, because the Washington State Legislature has adopted new SEPA Rules since 1984, these new Rules have not been incorporated by reference into the City's Environmental Policy Code chapter 19.04 BDMC; and

WHEREAS, the City's existing chapter on SEPA needs to be so extensively revised in order to incorporate the new SEPA Rules that the existing chapter should be completely repealed; and

WHEREAS, on June 30, 2014, the City's SEPA Responsible Official determined that the adoption of this Ordinance is categorically exempt under WAC 197-11-800(19) as an ordinance relating to procedures only; and

DRAFT June 30, 2014

WHEREAS, on _____, 2014, the City Council held a first reading of this Ordinance; and

WHEREAS, on _____, 2014, this Ordinance was considered by the City Council in a second reading; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Chapter 19.04 of the Black Diamond Municipal Code is hereby repealed.

Section 2. A new chapter 19.04 is hereby added to the Black Diamond Municipal Code, which shall read as follows:

Chapter 19.04

**ENVIRONMENTAL REVIEW
STATE ENVIRONMENTAL POLICY ACT (SEPA)**

Sections.

19.04.010	Authority.
19.04.020	Definitions adopted by reference.
19.04.030	Additional definitions.
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19.04.050	Designation of responsible official.
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19.04.090	Categorical exemptions – Determination.
19.04.100	Flexible thresholds for categorical exemptions.
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19.04.120	Integration of SEPA with project permit decisions.
19.04.130	Threshold determinations.
19.04.140	Environmental checklist.
19.04.150	Timing.
19.04.160	Mitigated DNS.
19.04.170	Environmental impact statement.
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19.04.190	Additional elements to be covered by EIS.
19.04.200	Commenting.
19.04.210	Public notice.
19.04.220	Designation of official to perform consulted agency responsibilities for the City.
19.04.230	Using existing environmental documents.
19.04.240	SEPA and agency decisions.
19.04.250	Substantive authority.
19.04.260	Appeals.
19.04.260	Notice/statute of limitations.
19.04.270	Agency compliance.
19.04.280	Critical areas.
19.04.290	Fees.
19.04.300	Adoption of forms by reference.

19.04.010 Authority. The City adopts this chapter under the State Environmental Policy Act (SEPA), RCW 43.21C.120 and the SEPA Rules, chapter 197-11 WAC. This ordinance contains the City's SEPA procedures and policies. The SEPA Rules, chapter 197-11 WAC must be used in conjunction with this chapter.

19.04.020 Definitions. This part contains the basic requirements that apply to the SEPA process. The City adopts the following sections of chapter 197-11 of the Washington Administrative Code by reference:

WAC

197-11-040	Definitions.
197-11-220	SEPA/GMA definitions.
197-11-700	Definitions.
197-11-702	Act.
197-11-704	Action.
197-11-706	Addendum.
197-11-708	Adoption.
197-11-710	Affected Tribe.
197-11-712	Affecting.
197-11-714	Agency.
197-11-716	Applicant.
197-11-718	Built Environment.
197-11-720	Categorical exemption.
197-11-721	Consolidated appeal.
197-11-724	Consulted agency.
197-11-726	Cost-benefit analysis.
197-11-728	County/city.
197-11-730	Decision-maker.
197-11-732	Department.

197-11-734	Determination of nonsignificance (DNS).
197-11-736	Determination of significance (DS).
197-11-738	EIS.
197-11-740	Environment.
197-11-742	Environmental checklist.
197-11-744	Environmental document.
197-11-746	Environmental review.
197-11-750	Expanded scoping.
197-11-752	Impacts.
197-11-754	Incorporation by reference.
197-11-756	Lands covered by water.
197-11-758	Lead agency.
197-11-760	License.
197-11-762	Local agency.
197-11-764	Major action.
197-11-766	Mitigated DNS.
197-11-768	Mitigation.
197-11-770	Natural environment.
197-11-772	NEPA.
197-11-774	Nonproject.
197-11-775	Open record hearing.
197-11-776	Phased review.
197-11-778	Preparation.
197-11-780	Private project.
197-11-782	Probable.
197-11-784	Proposal.
197-11-786	Reasonable alternative.
197-11-788	Responsible official.
197-11-790	SEPA.
197-11-792	Scope.
197-11-793	Scoping.
197-11-794	Significant.
197-11-796	State agency.
197-11-797	Threshold determination.
197-11-799	Underlying government action.

19.04.030 Additional definitions. In addition to those definitions contained with WAC 197-11-700 through 197-11-799 and 197-11-220, when used in this chapter, the following terms shall have the following meanings, unless the context indicates otherwise:

- A. "Department" means any division, unit or department of the City.
- B. "Ordinance" or "chapter" means the ordinance, resolution or other procedure used by the City to adopt regulatory requirements.

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C. "Early notice" means the City's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal (mitigated determination of nonsignificance (MDNS) procedures).

19.04.040. Process. The City adopts the following sections of Chapter 197-11 WAC by reference:

WAC

- 197-11-050 Lead Agency.
- 197-11-055 Timing of the SEPA Process.
- 197-11-060 Content of Environmental Review.
- 197-11-070 Limitations on actions during SEPA Process.
- 197-11-080 Incomplete or unavailable information.
- 197-11-090 Supporting documents.
- 197-11-100 Information required of applicants
- 197-11-158 GMA project review – reliance on existing plans, laws and regulations.
- 197-11-164 Planned actions – definitions and criteria.
- 197-11-168 Ordinances or resolutions designating planned actions.
- 197-11-172 Planned actions – project review.
- 197-11-210 SEPA/GMA integration.
- 197-11-228 Overall SEPA/GMA integration procedures.
- 197-11-230 Timing of an integrated GMA/SEPA process.
- 197-11-232 SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping.
- 197-11-235 Documents.
- 197-11-238 Monitoring.
- 197-11-250 SEPA/Model Toxics Control Act Integration.
- 197-11-253 SEPA Lead Agency for MTCA actions.
- 197-11-256 Preliminary evaluation.
- 197-11-259 Determination of nonsignificance and EIS for MTCA remedial actions.
- 197-11-265 Early scoping for MTCA remedial actions.
- 197-11-268 MTCA interim actions.

19.04.050 Designation of responsible official.

A. For those proposals for which the City is the lead agency, the responsible official shall be the Community Development Director.

B. For all proposals for which the City is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS) and perform any other functions assigned to the "lead agency" or responsible official"

by those sections of the SEPA rules that were adopted by reference in this chapter.

19.04.060 Lead agency determination and responsibilities.

A. The SEPA Responsible Official shall determine the lead agency for any application for or initiation of a proposal that involves a nonexempt action, as provided in WAC 197-11-050, unless the lead agency has been previously determined or if another agency is in the process of determining the lead agency.

B. When the City is the lead agency for a proposal, the SEPA Responsible Official shall supervise compliance with the necessary threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS.

C. When the City is not the lead agency for a proposal, all departments of the City shall use and consider, as appropriate, either the DNS or the final DIS of the lead agency in making decisions on the proposal. No City department shall prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the City may conduct supplemental environmental review under WAC 197-11-600.

D. If the City or any of its departments receives a lead agency determination made by any other agency that appears inconsistent with the criteria of WAC 197-11-253 or 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within fifteen days of receipt of the determination, or the City must petition the department of ecology for lead agency determination under WAC 197-11-946 within the fifteen day time period. Any such petition on behalf of the City may be initiated by the Community Development Director.

E. Departments of the City are authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944; PROVIDED, that the responsible official and any department that will incur responsibilities as the result of such agreement approve the agreement.

F. Any department making a lead agency determination for a private project shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal.

19.04.070. Transfer of lead agency status to a state agency. For any proposal for a private project where the City would be the lead agency and for which one or more state agencies have jurisdiction, the City's responsible official may elect to transfer the lead agency duties to a state agency. The state agency

with jurisdiction appearing first on the priority listing in WAC 197-11-936 shall be the lead agency and the City shall be an agency with jurisdiction. To transfer lead agency duties, the City's responsible official must transmit a notice of the transfer together with any relevant information available on the proposal to the appropriate state agency with jurisdiction. The responsible official of the City shall also give notice of the transfer to the private applicant and any other agencies with jurisdiction over the proposal.

19.04.080 Categorical exemptions – Adoption by reference. The City adopts the following rules for categorical exemptions from chapter 197-11 WAC:

WAC

- 197-11-300 Purpose of this part.
- 197-11-305 Categorical exemptions.
- 197-11-800 Categorical exemptions.
- 197-11-880 Emergencies.
- 197-11-890 Petitioning DOE to change exemptions.

19.04.080 Categorical exemptions – Determination. A. Each department within the City that receives an application for a license or, in the case of governmental proposals, the department initiating the proposal, shall determine whether the license, permit and/or proposal is exempt. The department's determination that a proposal is exempt shall be final and is not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this chapter apply to the proposal. The City shall not require completion of an environmental checklist for an exempt proposal.

B. In determining whether or not a proposal is exempt, the Department shall make certain that the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-070). If a proposal includes exempt and non-exempt actions, the Department shall determine the lead agency, even if the license application that triggers the Department's consideration is exempt.

C. If a proposal includes both exempt and nonexempt actions, the City may authorize exempt actions prior to compliance with the procedural requirements of this chapter, except that:

1. The City shall not give authorization for:
 - a. any nonexempt action;
 - b. any action that would have an adverse environmental
 - c. any action that would limit the choice of alternatives.

impact; or

2. The Department may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if the nonexempt action(s) were not approved; and

3. A department may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if the nonexempt actions were not approved.

The City will normally identify whether an action is categorically exempt within 2815 days of receiving a completed application. The Community Development Director shall certify when an application is complete based upon review of the environmental checklist, or for project permit applications, based on the requirements for a complete application set forth in the City's code for each permit type. If additional information is required to supplement the checklist, the application shall not be certified complete until the required information is received by the Director.

~~19.04.100 — Flexible thresholds for categorical exemptions. [this section is optional. The lowest level in the ranges below apply unless the City raises the level based on local conditions, such as previous DNSs on the activities or the City's development codes. Pursuant to WAC 197-11-800(1)(c), the City may raise the level for an exemption to any point up to the maximums specified in WAC 197-11-800(1)(d). Once levels are established in this ordinance, the City must apply a level to all projects within the geographic area. Make a choice to include this section.]~~

~~_____ A. _____ The City establishes the following exempt level for minor new construction under WAC 197-11-800(1)(b) based on local conditions:~~

~~_____ 1. _____ For residential dwelling units in 197-11-800(1)(b)(i) (NOTE: range 4-30 units) Up to _____ dwelling units.~~

~~_____ 2. _____ For multi-family dwelling units in 197-11-800(1)(b)(ii) (NOTE: range 4-60 units) Up to _____ multi-family dwelling units.~~

~~_____ 3. _____ For agricultural structures in WAC 197-11-800(1)(b)(iii) (NOTE: Range 10,000 to 40,000 square feet): Up to _____ square feet.~~

~~_____ 4. _____ For office, school, commercial, recreational, service or storage buildings in WAC 197-11-800(1)(b)(iv) NOTE: Range is 4,000 to 30,000 square feet and 20-90 parking spaces) Up to _____ square feet and up to _____ parking spaces.~~

~~_____ 5. _____ For landfills and excavations in WAC 197-11-800(1)(b)(v) (Note: Range is 100-1,000 cubic yards) Up to _____ cubic yards.~~

~~B. Whenever the City establishes new exempt levels under this section, it shall send them to the Department of Ecology, Headquarters Office, Olympia, WA 98504 under WAC 197-11-800(1)(c).~~

19.04.110 Integration with permit and land use decision. Under chapter 36.70B RCW, the procedure for review and processing of project permit applications shall be combined with the environmental review process, both procedural and substantive. The process under the State Environmental Policy Act (SEPA) and this chapter shall integrate the following procedures, insofar as possible, with any applicable process for decision-making on permit and land use applications:

A. Staff review of the application under City codes and regulations and the environmental review and determination thereon;

B. The staff report on the application, and the report or documentation concerning environmental review;

C. Hearings and other public processes, including required public notices, required by City code or regulation, and hearings and other public processes, including public notices and appeals, required or conducted under SEPA.

D. Such other review processes as determined by the Community Development Director.

19.04.120. Integration of SEPA with project permit decision-making. Under chapter 36.70B RCW, the procedure for review of project permit applications (as defined in RCW 36.70B.020) shall be combined with the environmental review process, both procedural and substantive.

19.04.130 Threshold determinations. This part contains the rules for deciding whether a proposal has a “probable, significant, adverse environmental impact” requiring an environmental impact statement to be prepared. This part also contains rules for evaluating the impacts of proposals not requiring an EIS. The City adopts the following sections by reference, as supplemented in this part:

WAC

- 197-11-310 Threshold determination required.
- 197-11-315 Environmental Checklist.
- 197-11-330 Threshold Determination Process.
- 197-11-335 Additional Information.
- 197-11-340 Determination of Significance (DS)
- 197-11-350 Mitigated DNS.

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- 197-11-355 Optional DNS process.
- 197-11-360 Determination of significance (DS)(initiation of scoping)
- 197-11-390 Effect of threshold determination

19.04.140 Environmental Checklist.

A. Except as provided in subsection (4) of this section, a completed environmental checklist (or a copy), in the form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license, certificate or other approval not specifically exempted in this chapter, except that a checklist is not needed if the City and applicant agree that an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The City shall use the environmental checklist to determine the lead agency, and if the City is the lead agency, for determining the responsible official and for making the threshold determinations.

B. For private proposals, the City will require the applicant to complete the environmental checklist, providing assistance as necessary. For City proposals, the Department initiating the proposal shall complete the environmental checklist for that proposal.

C. The City may require that it, and not the private applicant, will complete all or part of the environmental checklist for a private proposal, if either of the following occurs:

1. The City has technical information on a question or questions that are unavailable to the private applicant; or
2. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

D. For applications submitted as planned actions under WAC 197-11-164, the City shall use its existing environmental checklist form or may modify the environmental checklist form as provided in WAC 197-11-315. The modified environmental checklist form may be prepared and adopted along with or as part of a planned action ordinance; or developed after the ordinance is adopted. In either case, a proposed modified environmental checklist form must be sent to the Department of Ecology to allow at least a thirty-day review prior to use.

19.04.150 Timing. For those project permit applications that are not subject to chapter 36.70B RCW, the following will apply:

A. The City will attempt to issue a threshold determination on a completed application within ninety (90) days after the application and supporting documentation are complete.

B. A complete application for a threshold determination consists of the following information:

1. A description of the proposed action;
2. Site information, including site plans, vicinity maps and other information required for a land use certification or other application;
3. The environmental checklist;
4. Additional information/environmental checklist (WAC 197-11-335). The environmental checklist covers sixteen (16) subjects. If, after review of the environmental checklist, it is determined that there is insufficient information to make a threshold determination, additional information will be required using any one or more of the following:

- a. The applicant will provide more information on subjects in the checklist;
- b. The City makes its own further study;
- c. The City will consult with other agencies, requesting information on the proposal's probable or potential impacts which lie within the other agency's jurisdiction or expertise.

C. It is the policy of the City that adequate information must be provided before a threshold decision can be made. The City will not commence processing environmental checklists which are not complete.

19.04.160 Mitigated DNS.

A. As provided in this section and in WAC 197-11-350, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.

B. An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. The request must:

1. Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency; and
2. Precede the City's actual threshold determination for the proposal.

C. The responsible official should respond to the request for early notice within 15 [fill in] working days. The response shall:

1. Be written;

2. State whether the City currently considers issuance of a DS likely and if so, indicate the general or specific area(s) of concern that is/are leading the City to consider a DS; and

3. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

D. As much as possible, the City should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.

F. When an applicant submits a changed or clarified proposal, along with a revised or amended environmental checklist, the City shall base its threshold determination on the changed or clarified proposal and should make the determination within fifteen days of receiving the changed or clarified proposal;

1. If the City indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the City shall issue and circulate a DNS under WAC 197-11-340(2).

2. If the City indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the City shall make the threshold determination, issuing a DNS or DS as appropriate.

3. The applicant's proposed mitigation measures (clarifications, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent storm water runoff" are inadequate, whereas proposals to "muffle machinery to X decibel" or "construct 200-foot storm water retention pond at Y location" are adequate.

4. Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.

G. A mitigated DNS is issued under WAC 197-11-340(2), requiring a fourteen-day comment period and public notice. ~~Option 2 was eliminated~~

H. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by the City.

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I. If the City's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the City should evaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) (withdrawal of DNS).

J. The City's written response under subsection (B) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the City to consider the clarifications or changes in its threshold determination.

19.04.170 Environmental Impact Statement. This part contains the rules for preparing environmental impact statements. The City adopts the following sections by reference, as supplemented by this part:

WAC

197-11-400	Purpose of EIS
197-11-402	General Requirements
197-11-405	EIS types
197-11-406	EIS timing
197-11-408	Scoping
197-11-410	Expanded Scoping (Optional)
197-11-420	EIS preparation
197-11-425	Style and Size
197-11-430	Format
197-11-435	Cover letter or memo
197-11-440	EIS contents
197-11-442	Contents of EIS on nonproject proposals
197-11-443	EIS contents when prior nonproject EIS
197-11-444	Relationship of EIS to other considerations
197-11-450	Cost-benefit analysis
197-11-455	Issuance of DEIS
197-11-460	Issuance of FEIS

19.04.180 Preparation of EIS – Additional Considerations.

A. Preparation of draft and final EISs (DEIS and FEIS) and draft and final supplemental EISs (SEIS) is the responsibility of the City under the direction of the responsible official. Before the City issues an EIS, the responsible official shall be satisfied that it complies with this ordinance and chapter 197-11 WAC. When there is a project permit application, preparation of the EIS is the responsibility of the applicant, under direction of the responsible official. However, when there is no project permit application, the Community Development Director shall have the discretion to determine the responsibility for

preparation of the EIS, under the direction of the responsible official based on the circumstances.¹

B. The DEIS and FEIS or draft and final SEIS shall be prepared by the City staff, the applicant, or by a consultant selected by the City. If the responsible official requires an EIS for a proposal and determines that someone other than the City will prepare the EIS, the responsible official shall notify the applicant immediately after completion of the threshold determination. The responsible official shall also notify the applicant of the City's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

C. The City may require an applicant to provide information the City does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this chapter or that is being requested from another agency. However, this does not apply to information the City may request under another ordinance or statute.

D. Subject to delays caused by the applicant's failure to provide information requested by the City and other delays beyond the City's control, an EIS will be completed within one (1) year of the date of the declaration of significance, unless an appeal is filed or the City and applicant agree in writing to a different estimated time period for completion of the EIS.

19.04.190 Additional elements to be covered by EIS. The following additional elements are part of the environment for the purpose of EIS content, but do not add to the criteria for threshold determinations or perform any other function or purpose under this chapter: economy; social policy analysis and cost-benefit analysis.

19.04.200 Adoption by reference. This part contains rules for consulting, commenting and responding on all environmental documents under SEPA, including rules for public notice and hearings. The City adopts the following sections by reference, as supplemented by this part:

WAC

197-11-500	Purpose of this part
197-11-502	Inviting comment
197-11-504	Availability and cost of environmental documents
197-11-508	SEPA register
197-11-510	Public notice
197-11-535	Public hearings and meetings

¹ For example, if there are five comprehensive plan amendments submitted during the annual amendment process, four of which are submitted by private property owners and one from the City, the Community Development Director may allocate the financial responsibility for the EIS preparation between the property owners and the City.

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197-11-545 Effect of no comment
197-11-550 Specificity of comments
197-11-560 FEIS response to comments
197-11-570 Consulted agency costs to assist lead agency

19.04.210 Public notice.

A. Whenever the City issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3), the City shall give public notice as follows:

1. If public notice is required for a nonexempt license, the notice shall state whether a DS or DNS has been issued and when comments are due;

2. If no public notice is required for the permit or approval, the City shall give notice of the DNS or DS by: **[Select at least one of the following]**

- a. Posting the property, for a site-specific proposal;
- b. Publishing notice in a newspaper of general circulation in the county, city or general area where the proposal is located;
- c. Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;
- d. Notifying the news media;
- e. Placing notices in appropriate regional, neighborhood, ethnic or trade journals; and/or
- f. Publishing notice in agency newsletters and/or sending notice to agency mailing lists (either general lists or lists for specific proposals for subject areas); or
- g. Black Diamond's Website under Public Notices [any other method].

B. When the City issues a DS under WAC 197-11-360(3), the City shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.

C. Whenever the City issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by:

1. Indicating the availability of the DEIS in any public notice required for a nonexempt license; and **[use at least one of the following]:**

- a. Posting the property, for site-specific proposals;

- b. Publishing notice in a newspaper of general circulation in the County, City or general area where the proposal is located;
- c. Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;
- d. Notifying the news media;
- e. Placing notices in appropriate regional, neighborhood, ethnic or trade journals; and/or
- f. Publishing notice in agency newsletters and/or sending notice to agency mailing lists (general lists or specific lists for proposal or subject areas); and/or
- g. Black Diamond's Website under Public Notices [any other method].

D. Whenever possible, the City shall integrate the public notice required under this Section with existing notice procedures for the City's nonexempt permit(s) or approval(s) required for the proposal.

E. The City may require an applicant to complete the public notice requirements for the applicant's proposal at his/her expense.

19.04.220 Designation of official to perform consulted agency responsibilities for the City.

A. The Community Development Director shall be responsible for preparation of written comments for the City in response to a consultation requires prior to a threshold determination, participation in scoping, and reviewing a DEIS.

B. The Community Development Director shall be responsible for the City's compliance with WAC 197-11-440 whenever the City is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the City.

19.04.230 Using Existing Environmental Documents. This part contains rules for using and supplementing existing environmental documents prepared under SEPA or National Environmental Policy Act (NEPA) for the City's own environmental compliance. The City adopts the following sections by reference:

WAC

- 197-11-600 When to use existing environmental documents
- 197-11-610 Use of NEPA documents
- 197-11-620 Supplemental environmental impact statement – procedures

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197-11-625	Addenda – procedures
197-11-630	Adoption – procedures
197-11-635	Incorporation by reference – procedures
197-11-640	Combining documents

19.04.240 SEPA and Agency Decisions. This part contains rules (and policies) for SEPA's substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This part also contains procedures for appealing SEPA determinations to agencies or the courts. The City adopts the following sections by reference:

WAC

197-11-650	Purpose of this part
197-11-655	Implementation
197-11-660	Substantive authority and mitigation
197-11-680	Appeals

19.04.250 Substantive authority.

A. The policies and goals set forth in this ordinance are supplementary to those in the existing authorization of the City.

B. The City may attach conditions to a permit or approval for a proposal, so long as:

1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and
2. Such conditions are in writing; and
3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and
4. The City has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and
5. Such conditions are based on one or more policies in subsection (D) of this section and cited in the license or other decision document.

C. The City may deny a permit or approval for a proposal on the basis of SEPA so long as:

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1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this chapter; and

2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and

3. The denial is based on one or more policies identified in writing the decision document.

D. The City designates and adopts by reference the following policies as the basis for the City's exercise of authority pursuant to this section:

1. The City shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

a) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

b) assure for all people of Washington safe, healthful, productive and aesthetically and culturally pleasing surroundings;

c) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

d) preserve important historic, cultural and natural aspects of our national heritage;

e) maintain, wherever possible, an environment which supports diversity and variety of individual choice;

f) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

g) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources;

2. The City recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

3. The City adopts by reference the policies in the following City codes, ordinances, resolutions and plans, as they now exist or may hereafter be amended, as a possible basis for the exercise of substantive SEPA authority in the conditioning or denying of proposals:

- Act.
 - a. Chapter 43.21C RCW – State Environmental Policy
- Regulations.
 - b. Chapter 5.08 of the BDMC Business Licenses and
 - c. Chapter 6.04 of the BDMC – Animals.
 - d. Title 8 and 9 of the BDMC – Health and Safety.
 - e. Title 10 of the BDMC -- Vehicles and Traffic.
 - f. Title 12 of the BDMC -- Streets and Sidewalks.
 - g. Title 13 of the BDMC -- Water and Sewers.
 - h. Title 15 of the BDMC – Buildings and Construction.
 - i. Title 17 of the BDMC – Subdivisions.
 - j. Title 18 of the BDMC – Zoning.
 - k. Chapter 18.08 of the BDMC – Administration of
- Development Regulations.
 - l. The City of Black Diamond’s Comprehensive Plan.
 - m. The City of Black Diamond’s Shoreline Master
- Program.
 - n. The City’s Six Year Road Program.
 - o. The City’s Comprehensive Water Plan.
 - p. The City’s Comprehensive Sewer Plan.
 - q. Chapter 19.12 of the BDMC – Critical Areas.
 - r. City’s Public Works Standards.
 - s. City’s Storm Water Management Ordinance.
 - t. Comprehensive Parks Plan.
 - u. School District Capital Facilities Plan;

4. The City establishes the following additional policies:

- A. **Schools.** In order to ensure that adequate school facilities are available to serve new growth and development, as well as to ensure that such new growth and development provides mitigation for direct impacts on school facilities identified by the school district as a consequence of proposed development, the City may impose school mitigation fees, all as provided in RCW 82.02.020.
- B. **Police.** In order to ensure that the City’s acceptable level of service for police response is not diminished as a result of new growth and development and to ensure that new growth and development provides mitigation for the

direct impacts on the City's Police Department that are identified by the City as a consequence of proposed development, the City may impose Police and Emergency Response mitigation fees, all as provided in RCW 82.02.020.

- C. **Other City Services.** In order to that the City's acceptable level of service to citizens for all other government services and utilities is not diminished as a result of new growth and development, as well as to ensure that such new growth and development provides mitigation for direct impacts on school facilities identified by the school district as a consequence of proposed development, the City may impose mitigation fees, all as provided in RCW 82.02.020 for parks, and general governmental buildings.

19.04.260 Appeals.

The City establishes the following administrative appeal procedures under RCW 43.21C.075 and WAC 197-110-680:

A. Appealable Decisions.

1. Only the following decisions may be administratively appealed under this chapter: (a) Final threshold determination; (2) mitigation or failure to mitigate in the SEPA decision; (3) Final EIS; and (4) project denials.

2. If the City does not provide for a hearing or appeal on the underlying action/permit, then the SEPA administrative appeal on the decisions listed in Subsection 19.04.260(A)(1) above shall be the only hearing and appeal allowed on the underlying action/permit.

B. Notice of Decision.

1. In the Notice of Decision issued by the City pursuant to BCMC 18.08.150 and for every decision for which an appeal is available in this Section, the SEPA Responsible Official shall give official notice of the date and place for commencing an appeal. The notice shall include:

a) Notice that the SEPA issues must be appealed within the time limit set by statute or ordinance for appealing the underlying governmental action;

b) The time limit for commencing the appeal of the underlying governmental action and SEPA issues, and the statute or ordinance establishing the time limit;

c) Where the appeal may be filed.

2. Written notice shall be provided to the applicant, all parties to any administrative appeal and all persons who have requested notice of decisions concerning the project. Such notice may be appended to the permit, the decision documents, the SEPA compliance documents or may be printed separately.

C. Timing of Appeal. The appeal shall take place prior to the City's final decision on a proposed action. However, the SEPA open record appeal hearing may be consolidated with any other hearing on the underlying permit or action.

D. Number of Appeals: Only one administrative appeal to the City is allowed of the decisions listed in Subsection 19.04.260(A) above.

E. Consolidated Appeals. If the underlying action/permit requires a hearing, any SEPA appeal shall be consolidated with the hearing or appeal of the underlying action/permit into one simultaneous hearing, with the exception of the following:

1. An appeal of a determination of significance (DS);
2. An appeal of a procedural determination made by the City when the City is a project proponent, or is funding a project, and chooses to conduct its review under SEPA, including any appeals of its procedural determinations, prior to submitting an application for a project permit. Subsequent appeals of substantive determinations by an agency with jurisdiction over the proposed project shall be allowed under the SEPA appeal procedures of the agency with jurisdiction;
3. An appeal of a procedural determination made by the City on a nonproject action; and
4. An appeal to the City Council under RCW 43.21C.060.

F. Timing of Appeal.

1. *SEPA Decision issues at the same time as underlying action.* An appeal of a SEPA decision that issued at the same time as the decision on a project action shall be filed within fourteen days (14) days after issuance of a notice of decision under BDMC 18.08.150 (or RCW 36.70B.130), or after notice that a decision has been made and is appealable.

2. *SEPA Decision allows Public Comment.* For a DNS or MDNS for which public comment is required (under this chapter) the appeal period shall be extended for an additional seven days.

3. SEPA Threshold Decision issues prior to decision on underlying action. An appeal of a threshold decision issued prior to a decision on a project action shall be filed within fourteen (14) days after notice that the decision has been made and is appealable.

G. Consideration of SEPA Responsible Official's Decision. Procedural determinations made by the SEPA Responsible Official shall be entitled to substantial weight by the hearing examiner or city council in an appeal.

H. Administrative Record. An administrative record of the appeal must be provided, and the record shall consist of the following:

a. Findings and conclusions;
b. Testimony under oath; and
c. A taped or written transcript. [The City may require that the appellant provide an electronic transcript.]

I. Exhaustion of Administrative Remedies. The City's administrative appeal procedure must be used before anyone may initiate judicial review of any SEPA issue for which the City allows an appeal in this Section.

J. Content of Appeal. Every appeal must be in writing, and must include the following:

1. The applicable appeal fee, as established by Resolution of the City Council;
2. Appellant's name, address and phone number;
3. A statement describing the appellant's standing, or why the appellant believes that he or she is aggrieved by the decision appealed from;
4. Identification of the application and decision which is the subject of the appeal;
5. Appellant's statement of grounds for appeal and the facts upon which the appeal is based with specific references to the facts in the record;
6. The specific relief sought;
7. A statement that the appellant has read the appeal and believes the content to be true, followed by the appellant's signature.

K. Timeliness of Appeals. On receipt of a written notice of appeal, the SEPA Responsible Official shall forward the appeal to the hearing examiner or city council (whichever is the hearing officer/body on the appeal), who shall determine whether the appeal is timely prior to the scheduling of any appeal hearing or consolidated open record hearing on an underlying project permit. A written decision will issue if the appeal is untimely and the appeal will not proceed.

L. Hearing Examiner Appeals.

1. *Jurisdiction.* All administrative appeals relating to project permit applications or any type of quasi-judicial or ministerial development applications that are not appealable to the City Council (pursuant to subsection M below) shall be heard by the Hearing Examiner.

2. *Hearing.* The Hearing Examiner shall hold an open record public hearing on the appeal, as provided in BDMC 2.30.100.

2. *Date for Issuance of Decision.* The hearing examiner shall issue a decision on the appeal within the time period set forth in 2.30.110, unless a longer period is agreed to in writing by the applicant and hearing examiner.

3. *Appeals of Hearing Examiner's Decision.* The hearing examiner's decision on the timeliness of an appeal within his/her jurisdiction, and any other appeals allowed under this subsection within his/her jurisdiction shall be the final decision of the City. The hearing examiner's decision shall state that any appeal of the final decision shall be filed in Pierce County Superior Court (pursuant to chapter 36.70C RCW), or the Shorelines Hearings Board, if applicable.

M. City Council Appeals.

1. *Jurisdiction.* The City Council shall hear all administrative appeals relating to legislative actions and applications. In addition, the City Council shall hear appeals relating to any other applications that are appealable to the City Council (pursuant to 16.30.130).

2. *Hearing.* For all legislative actions and applications, the City Council shall hold a public hearing. For any SEPA appeals relating to applications for which the City Council has jurisdiction (legislative actions and applications), the City Council shall hold a public hearing.

3. *Record on Appeal.* The evidence and testimony received by the Council in a SEPA appeal shall be presented in an open record hearing.

4. *Appeals of City Council's Decision.* The City Council's decision on the timeliness of an appeal within its jurisdiction and any other appeals allowed under this subsection within its jurisdiction shall be the final decision of the City. The City Council's decision shall state that any appeal of the final decision may be filed in King County Superior Court within 21 days (if applicable) or within 60 days to the Growth Management Hearings Board, pursuant to RCW 36.70A.290(2).

N. Judicial Appeals.

1. When SEPA applies to a decision, any judicial appeal of that decision potentially involves both those issues pertaining to SEPA and those which do not. This Section and RCW 43.21C.075 establish the

time limits for raising SEPA issues, but existing statutes of limitation control the appeal of non-SEPA issues.

2. Appeals of the City's final decision shall be filed in superior court (or the Growth Management Hearings Board), but appellants must follow RCW 43.21C.075(6)(c), which provides that "judicial review under chapter 43.21C RCW shall without exception be of the governmental action together with its accompanying environmental determinations," which contemplates a single lawsuit.

19.04.260 Notice/statute of limitations.

A. The City, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.

B. The form of the notice shall be substantially in the form provided by WAC 197-11-990. The notice shall be published by the City Clerk or County Auditor, applicant or proponent, pursuant to RCW 43.21C.080.

19.04.270 Agency Compliance. This part contains rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, designating categorical exemptions that do not apply within critical areas, listing agencies with environmental expertise, selecting the lead agency and applying these rules to current agency activities. The City adopts the following sections by reference:

WAC	
197-11-900	Purpose of this part.
197-11-902	Agency SEPA policies.
197-11-916	Application to ongoing actions.
197-11-920	Agencies with environmental expertise.
197-11-922	Lead agency rules.
197-11-924	Determining the lead agency.
197-11-926	Lead agency for governmental proposals.
197-11-928	Lead agency for public and private proposals.
197-11-930	Lead agency for private projects with one agency with jurisdiction.
197-11-932	Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
197-11-934	Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
197-11-936	Lead agency for private projects requiring licenses from more than one state agency.
197-11-938	Lead agencies for specific proposals.
197-11-940	Transfer of lead agency status to a state agency.

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- 197-11-942 Agreements on lead agency status.
- 197-11-944 Agreements on division of lead agency duties.
- 197-11-946 DOE resolution of lead agency disputes.
- 197-11-948 Assumption of lead agency status.

19.04.280. Critical Areas. [optional]

A. ~~The City has selected certain categorical exemptions that will not apply in one or more critical areas identified in the critical areas identified in the critical areas ordinances required under RCW 36.70A.060. For each critical area listed below, the exemptions within WAC 197-11-800 that are in applicable for that area are:~~

~~_____ 1. _____ [list each critical area and exemptions that do not apply within that critical area; exemptions that do not apply can be chosen from the list in WAC 197-11-908]~~

~~_____ 2. _____.~~

~~B. The scope of environmental review of actions within these areas shall be limited to:~~

~~_____ 1. Documenting whether the proposal is consistent with the requirements of the critical areas ordinance; and~~

~~_____ 2. Evaluating potentially significant impacts on the critical area resources not adequately addressed by GMA planning documents and development regulations, if any, including any additional mitigation measures needed to protect the critical areas in order to achieve consistency with SEPA and with other applicable environmental review laws.~~

~~C. All categorical exemptions not listed in subsection (1) of this section apply whether or not the proposal will be located in a critical area.~~

19.04.290. Fees. ~~[this entire section is optional. Recommend that the actual fee amounts be included in a resolution. You may use any or none of the subsections 1, 2 or 4 of this section but you must use 3 if the other subsections are used.]~~

A. The City shall require the fees from the applicant for the following activities, in accordance with the provisions of this chapter:

1. Threshold determination: The City will review an environmental checklist when it is lead agency, and the City shall collect a fee from the proponent of the proposal prior to undertaking the threshold

determination. The time periods provided in this Chapter shall not begin to run until payment of the fee.

2. Environmental impact statement.

(a) When the City is the lead agency for a proposal requiring an EIS and the responsible official determines that the EIS shall be prepared by employees of the city, the city may charge and collect a reasonable fee from any applicant to cover the costs incurred by the city in preparing the EIS. The responsible official shall advise the applicant of the projected costs for the EIS prior to actual preparation; the applicant shall post bond or otherwise ensure payment of such costs.

(b) The responsible official may determine that the city will contract directly with a consultant for preparation of an EIS or a portion of the EIS, for activities initiated by some person or entity other than the City and may bill such costs and expenses directly to the applicant. The City may require the applicant to post bond or otherwise ensure payment of such costs. Such consultants shall be selected after input from the applicant, after a call for proposals. The City shall have the final decision on the selection of the consultant.

(c) If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under (a) or (b) of this subsection which remain after incurred costs are paid.

3. The City may recover its reasonable expenses of preparation of a nonproject environmental impact statement prepared under RCW 43.21C.229 and 43.21C.440 using the procedures set forth in RCW 43.21C.428.

4. The City may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this chapter relating to the applicant's proposal.

5. The City shall not collect a fee for performing its duties as a consulted agency.

6. The City may charge any person for copies of any document prepared under this chapter, and for mailing the document, in a manner provided by the City's resolution on public records disclosure.

19.04.300 Adoption by reference. The City adopts the following forms and sections by reference:

WAC

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197-11-960	Environmental checklist
197-11-965	Adoption notice
197-11-970	Determination of nonsignificance (DNS)
197-11-980	Determination of significance and scoping notice (DS)
197-11-985	Notice of assumption of lead agency status
197-11-990	Notice of action

Section 3. Severability. If any section, sentence, clause or phrase of this Ordinance shall be held to be unconstitutional or invalid by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 4. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Black Diamond City Council this ____th day of _____, 2014.

CITY OF BLACK DIAMOND

DAVE GORDON, MAYOR

ATTEST/AUTHENTICATED:

By: _____
BRENDA MARTINEZ, CITY CLERK

APPROVED AS TO FORM:

DRAFT June 30, 2014

By: _____
CAROL A. MORRIS, CITY ATTORNEY

FIRST READING:
DATE PASSED:
DATE OF PUBLICATION:
EFFECTIVE DATE:

The State Environmental Policy Act

SEPA – a basic primer

I. Purpose.

To assure for all people of Washington a safe, healthful, productive and aesthetically and culturally pleasing surroundings; attain the widest range of beneficial uses of the environment without degradation, risk to health or safety; preserve historic and cultural aspects of our national heritage; maintain environmental diversity; achieve a balance between population and resource use, and enhance the quality of renewable resources. RCW 43.21C.020.

II. Implementation.

A. The Washington State Department of Ecology has adopted the SEPA Rules (chapter 197-11 WAC) for use in implementing SEPA (chapter 43.21C RCW).

B. The City is required to adopt SEPA rules consistent with the state rules. WAC 197-11-020 and -918. If a local jurisdiction fails to adopt rules, then chapter 197-11 WAC applies.

C. Most local jurisdictions adopt the SEPA Rules in chapter 197-11 WAC by reference, with slight local variations allowed by law.

D. Local jurisdictions are also required to adopt SEPA policies, which serve as the basis for conditioning or denying proposals under SEPA. WAC 197-11-902. The policies are incorporated into regulations, plans or codes formally designated by the local jurisdiction as the possible bases for the exercise of substantive authority. RCW 43.21C.060.¹

III. SEPA's substantive authority and mitigation. SEPA does not demand a particular substantive result in governmental decision-making, rather, it ensures that environmental values are given appropriate consideration. *Moss v. Bellingham*, 109 Wn. App. 6, 31 P.3d 703 (2001). Any governmental action on public or private proposals that are not exempt

¹ The policies are adopted in the draft ordinance in Section 19.04.250(D).

may be conditioned or denied under SEPA to mitigate the environmental impacts (subject to the limitations in WAC 197-11-660).

A. What does it apply to? Any action may be conditioned or denied under SEPA. RCW 43.21C.060. "Action" is defined broadly in WAC 197-11-704. Actions fall into two categories: "project actions" which are decisions on specific projects, such as permitting of a particular project and "nonproject actions" include the adoption of ordinances, comprehensive plans, budgets, road and street plans, etc. WAC 197-11-704.

B. How do we know whether or not SEPA applies? The first step is to look at WAC 197-11-800, which describes the categorical exemptions from SEPA. Next, we review WAC 197-11-305, which explains how a categorically exempt action may still be subject to SEPA. If the action is categorically exempt, there is no need for further SEPA review of this action. The local jurisdiction is not required to document that a project action is categorically exempt. WAC 197-11-305.

C. When is a threshold determination required? A threshold determination, made by the local jurisdiction's SEPA Responsible Official of the lead agency for a project, is required for any action that is not categorically exempt.

D. What is a threshold determination? A threshold determination is a determination made by the local jurisdiction's SEPA Responsible Official that a project is or is not a major action significantly affecting the environment. RCW 43.21C.030(2)(c).

E. What is the effect of a threshold determination? If the SEPA Responsible Official decides that the project is a major action significantly affecting the quality of the environment, an Environmental Impact Statement must be prepared. WAC 197-11-330. Here's the process:

1. The SEPA Responsible Official looks at the SEPA checklist submitted by the applicant and other information reasonably sufficient to evaluate the environmental impacts of the proposal. WAC 197-11-315, -335. If the checklist does not contain sufficient information to make a threshold determination, the applicant may be required to submit additional information. WAC 197-11-335(1). The Responsible Official may

also consider mitigation measures an agency or the applicant will implement as part of the proposal. WAC 197-11-330(1)(c).

2. The Responsible Official may determine that the local jurisdiction's comprehensive plan and development regulations provide adequate analysis and mitigation for some or all of the project's adverse environmental impacts. WAC 197-11-158.

3. A local jurisdiction planning under the Growth Management Act may designate certain actions to be "planned actions" that have had the significant environmental impacts identified in environmental documents. WAC 197-11-164.

4. A threshold determination must be made by the SEPA Responsible Official within 90 days after the application for the proposal is determined complete. WAC 197-11-310(3).

5. If the SEPA Responsible Official determines that the proposal is not likely to have a significant adverse environmental impact, he/she issues a Determination of Nonsignificance (DNS). WAC 197-11-340.

6. If the SEPA Responsible Official determines that the proposal is likely to have a significant adverse environmental impact, the Official may contact the applicant to discuss whether certain aspects of the action or proposed mitigation can be changed to address these impacts so that an Environmental Impact Statement is not required. WAC 197-11-350(2). If mitigation measures will ameliorate the adverse environmental impacts of the proposal, the SEPA Responsible Official may issue a Mitigated Determination of NonSignificance (MDNS) for the proposal.

7. If the SEPA Responsible Official determines that the action is likely to have a significant adverse environmental impact, a Determination of Significance (DS) will issue. WAC 197-11-360.

F. Phased Review. The local jurisdiction determines the appropriate level of detail of environmental review to coincide with meaningful points in the planning and decision-making process. WAC 197-11-060(5). Phased review allows the local jurisdiction to focus environmental review on issues that are ready for decision and exclude

from consideration those issues that are not yet ready. Phased review is not always appropriate. See, WAC 197-11-060(5).

G. Limits on Action during SEPA process. Until the SEPA Responsible Official issues a final determination of nonsignificance or a final environmental impact statement, no action concerning the proposal can be taken, if it would have an adverse environmental impact or limit the choice of reasonable alternatives.

H. Environmental Impact Statements (EIS).

1. The purpose of an EIS is to provide an impartial discussion of significant environmental impacts and inform the decision-makers of reasonable alternatives, including mitigation measures. It allows the citizens to comment on the proposed action. It is used in conjunction with other related materials to plan actions and make decisions. WAC 197-11-400. The process includes a draft EIS and Final EIS.

2. The EIS is prepared by or under the direction of the SEPA Responsible Official. WAC 197-11-420.

3. Public comment is received on the draft EIS. WAC 197-11-502. Public hearings and meetings may be held on the EIS. WAC 197-11-535. The FEIS responds to the comments on the draft EIS. WAC 197-11-570.

I. Use of Existing Environmental Documents.

1. Sometimes, an existing environmental document may be used to meet all or a part of the local jurisdiction's responsibilities under SEPA. WAC 197-11-600.

2. A supplemental EIS or addendum may be prepared under certain circumstances. WAC 197-11-620 (supplemental EIS), WAC 197-11-625 (addenda).

J. Exercising Substantive SEPA Authority.

1. The local jurisdiction may exercise substantive SEPA authority to condition or deny proposals based on SEPA.

2. In order to impose mitigation or deny a proposal, the local jurisdiction must base its action on SEPA policies that have been designated as the basis for the use of SEPA authority.² WAC 197-11-660.

3. In order to mitigate proposals, the mitigation measures must be related to specific adverse environmental impacts clearly identified in an environmental document, and stated in writing by the decision maker. The SEPA policy must be identified by the decision maker when imposing mitigation. WAC 197-11-660.

4. Mitigation measures must be reasonable and capable of being accomplished. WAC 197-11-660.

5. To deny a proposal under SEPA, the local jurisdiction must find that the proposal would likely result in significant adverse environmental impacts identified in a final or supplemental environmental impact statement and that reasonable mitigation measures are insufficient to mitigate the identified impact. WAC 197-11-660(f).

K. Appeals.³

1. Under RCW 36.70B.060, the City's processing of a project permit application is limited to one open record hearing and one closed record hearing (or one closed record appeal hearing). There is one exception, and that is an appeal of a Determination of Significance. An open record hearing on a Determination of Significance may occur prior to the open record hearing on a project permit application.

2. Under RCW 43.21C.060, the City may allow an administrative appeal to the City Council of any decision that conditions or denies a proposal under SEPA. WAC 197-11-680(2). This is optional. Usually, this appeal is combined with the open record hearing on a project permit application, if the City issues a DNS or MDNS.

3. If the City allows an administrative appeal to the City Council, the following restrictions apply:

² See, Section 19.04.250(D) in the draft ordinance.

³ The appeal process is in Section 19.04.260 in the draft ordinance.

a. the City has to specify by rule or ordinance that an appeal is available;

b. certain intermediate steps may not be appealed to the City Council, such as draft EIS adequacy, etc. WAC 197-11-680(3)(i).

c. appeals on SEPA procedures are limited to review of the final threshold determination and final EIS.

d. the City must consolidate the SEPA appeal with the hearing or appeal on the underlying permit/action (except for the issues identified in WAC 197-11-680(3)(vi)).

e. the City's ordinance must provide that the SEPA Responsible Official's determination shall be entitled to substantial weight.

f. the City must provide for an administrative record (tape recording of full hearing so that it can be transcribed).

4. The SEPA decision may be appealed to court, together with the underlying permit/project action decision. WAC 197-11-660(4).

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT:	Agenda Date: July 24, 2014	AB14-070
AB14-070	Mayor Dave Gordon	
	City Administrator	
	City Attorney Carol Morris	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res– Aaron Nix	
	Finance – May Miller	X
	MDRT & Ec Dev– Andy Williamson	
Cost Impact (see also Fiscal Note):		
Fund Source: Various	Police – Chief Kiblinger	
Timeline: proposed adoption July 24, 2014	Public Works – Seth Boettcher	
	Court Administrator – Stephanie Metcalf	
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Proposed Ordinance 14-1032; Exhibit A, Salary Schedule; supporting materials		
<p>SUMMARY STATEMENT:</p> <p>Washington State Law requires that municipal budgets be amended by the City Council when revenues or expenditures are higher than budget amounts, or when budget authority is exhausted from any particular fund or when carry-over balances or Projects or Grants need to be added to the current year budget. The law does not require budget amendments for reductions, but those adjustments are included to clarify reporting and preparation of financial trend information.</p> <p>This is the first technical housekeeping budget change for 2014 and totals \$1,089,474. The budget change included two reclassifications between the REET I and REET II budget that were originally adopted in the General Government and public Works Capital Plans and should have been adopted separately. This has no net dollar impact.</p> <p>The Capital Project Budget changes total an additional \$1,031,934 of the budget change less the removal of the Jones Lake Project \$214,000 which did not receive a grant for net Capital Project budget change of \$817,934. This reflects 75% of the total budget change. Changes were needed to add the new grants for capital projects that were received after the budget was adopted last year, This includes the Rock Creek State Grant Project that was originally budgeted for \$125,000 but received approval for a total budget of \$474,000 and the TIP Grant project for Lawson Sidewalks for \$288,622. Other Capital Project budget changes are for projects approved in prior years but need to be carried-over as they are not complete or for adjustment to actual Grant amounts received.</p> <p>The balance of the budget change reflects adjusting the Beginning Cash & Investment Balance to the actual amount and some reallocations of expenditures within department budgets that did not require additional dollars.</p>		

Twenty five percent of the budget change is in the General Fund and includes adjusting the Beginning Cash & Investment Balance for both the General Government and Yarrow Bay portions by adding \$271,540. The expenditures were adjusted to reflect the audit costs not billed until 2014, adjusting Public Defender and Prosecution budgets to trend, adding budgets to cover legal costs for Public Disclosure, Cannabis Enforcement, Reserve at Woodlands, Legal Employment review, and Legal for three contract negotiations. The final adjustment for legal Investigations is for \$97,800 and was approved by council with resolutions, 14-928, 14-941, 14-944, 14-949, 14-940 and a final resolution on July 24, 2014. The legal budget changes were covered by some savings from the vacant City Administrator position, and reduction of General Government ending fund balance by \$64,979. After the budget change the ending fund balance will remain at \$565,453, which is 13% of adopted 2014 expenditures or 2% more than required by Finance Policy.

The 2014 salary schedule adjustment includes two title updates, Community Development/Natural Resources Director and MDRT and Economic Development Director. There is no fiscal impact from the title changes.

FISCAL NOTE (Finance Department): All budget changes are covered by Revenues or Ending Cash and Investment Fund Balances in each fund. There is no fiscal impact for the two salary title changes.

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: the Finance Committee has reviewed the 2014 Budget Change at their July 17, 2014 meeting.

RECOMMENDED ACTION: **MOTION to adopt Ordinance No. 14-1032, amending the 2014 Budget and Exhibit A, the salary schedule.**

RECORD OF COUNCIL ACTION

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
July 24, 2014		

ORDINANCE NO. 14-1032

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AMENDING THE BUDGET FOR CALENDAR YEAR 2014 AS ADOPTED BY ORDINANCE 13-1018 and 14-1019 for MEANS OF APPROPRIATIONS, ADJUSTMENTS AND TRANSFERS WITHIN VARIOUS FUNDS IN ACCOUNTS IN THE 2014 BUDGET AND THE UPDATE OF EXHIBIT A FOR TWO SALARY SCHEDULE TITLES

WHEREAS, the amounts of dollars actually received within the accounts of various funds in the 2014 budget vary from the amounts set forth in Ordinance No. 13-1018 and update two salary titles from Ordinance No 14-1019, Exhibit A: and

WHEREAS, it is necessary to make adjustments to those accounts and/or funds by means of appropriation adjustments and transfers to the 2014 Budget; and

WHEREAS, it is necessary to change two titles in the Salary Schedule Exhibit A:

WHEREAS, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, ORDAINS AS FOLLOWS;

Section 1. Section 2 of Ordinance 13-1018 and Exhibit A Salary Schedule are hereby amended with the following additions and reductions:

City of Black Diamond, Washington

A. Estimated Expenditures by Fund

Fund #	Fund Title	Ordinance 14-1032 Budget Amendment 2014
Fund 001	General Fund	271,540
Fund 101	Street Fund	865
Fund 107	Fire Impact Fee Fund	5,366
Fund 310	General Gov't CIP Fund	-219,166
Fund 311	REET I Fund	285,643
Fund 320	Public Works CIP Fund	359,949
Fund 321	REET II Fund	335,057
Fund 401	Water Fund	-12,432
Fund 402	Water Supply Facility Fund	60,000
Fund 404	Water Capital Fund	-131,465
Fund 407	Sewer Fund	-11,727
Fund 408	Wastewater Capital Fund	95,091
Fund 410	Stormwater Fund	20,201
Fund 510	Equipment Replacement Fund	30,552

Total

\$1,089,474

Section 2. This Ordinance shall be in full force and effect five days after its passage, approval, posting and publication in summary form as provided by law.

Introduced this 24th day of July, 2014.

Passed by a majority of the City Council at a special meeting held on the 24h day of July 2014.

Mayor Dave Gordon

Attest:

Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:

Carol Morris, City Attorney

Published: _____

Posted: _____

Effective Date: _____

2014 Salary Schedule	Step 1	Step 2	Step 3	Step 4	5 & On
City Administrator	9,345	9,649	10,112	10,478	10,848
Assistant City Administrator	8,033	8,435	8,837	9,238	9,640
Court Administrator	5,891	6,159	6,427	6,694	6,962
Interim Court Administrator	5,305	-	-	-	-
Court Clerk (50% hourly)	18.54	20.09	21.63	23.18	24.72
Accounts Payable Clerk (Hourly)	17.91	19.34	20.89	22.56	24.93
MDRT & Economic Director	7,498	7,899	8,301	8,703	9,104
Natural Resources/Parks Director	7,498	7,899	8,301	8,703	9,104
City Attorney	8,161	8,569	8,997	9,447	9,919
City Clerk/HR Manager	7,498	7,899	8,301	8,703	9,104
Deputy City Clerk	4,499	4,814	5,128	5,443	5,757
Finance Director	7,498	7,899	8,301	8,703	9,104
Deputy Finance Director	6,631	7,013	7,396	7,778	8,161
Utility Clerk	3,213	3,481	3,749	4,017	4,284
Senior Accountant 75% (hourly)	25.79	27.08	28.43	29.86	31.35
Accountant 1 Journey (hourly)	17	17	18	19	20
Administrative Assistant 2	3,213	3,481	3,749	4,017	4,284
Administrative Assistant 1	2,356	2,544	2,731	2,919	3,106
Information Services Manager	6,962	7,364	7,766	8,167	8,569
Police Chief	10,236	10,585	11,008	11,287	11,692
Police Commander	8,422	8,702	8,984	9,264	9,588
Police Sergeant	8,292	8,757	-	-	-
Police Officer	5,037	5,645	6,255	6,863	7,440
Police Records Coordinator	4,499	4,814	5,128	5,443	5,757
Police Clerk 62.5% (hourly)	15.05	16.51	17.96	18.98	20.87
Facilities Equipment Coordinator	4,499	4,814	5,128	5,443	5,757
Human Resources Director	7,498	7,899	8,301	8,703	9,104
Community Dev/Natural Resources Dir	7,498	7,899	8,301	8,703	9,104
Permit Center Supervisor	5,891	6,159	6,427	6,694	6,962
Permit Technician	4,499	4,814	5,128	5,443	5,757
Compliance Officer	4,499	4,814	5,128	5,443	5,757
Senior Planner	5,355	5,622	5,903	6,198	6,508
Planner	4,499	4,814	5,128	5,443	5,757
Associate Planner	4,482	4,707	4,942	5,189	5,448
Assistant Planner	4,181	4,391	4,610	4,840	5,082
Building Official	6,962	7,364	7,766	8,167	8,569
Parks Department Director	7,498	7,899	8,301	8,703	9,104
Public Works Director	7,498	7,899	8,301	8,703	9,104
Utilities Superintendent	6,962	7,364	7,766	8,167	8,569
Public Utilities Operator	4,713	4,794	4,889	4,982	5,076
Public Works Administrative Asst 3	4,250	4,463	4,686	4,920	5,167
Utility Worker-Facility/Eq/Utility Worker	3,323	3,644	3,965	4,287	4,629
Utility Worker Seasonal (hourly)	13.24	-	-	-	-

City of Black Diamond, Washington

July 2014 Budget Adjustment Summary

A. Estimated Expenditures by Fund

Fund #	Fund Title	Ordinance	Ordinance	Total Adj. Budget
		13-1018	14-XXXX, July 2014	
		Budget	Budget Adjustment	
		2014	2014	2,014
Fund 001	General Fund	5,817,350	271,540	6,088,890
Fund 101	Street Fund	346,242	865	347,107
Fund 107	Fire Impact Fee Fund	20,000	5,366	25,366
Fund 310	Capital Fund-Gen govt	645,738	(219,166)	97,304
Fund 311	REET I	0	285,643	614,911
Fund 320	Capital Fund -Public Works	800,498	359,949	827,029
Fund 321	REET II		335,057	668,475
Fund 401	Water Fund	935,690	(12,432)	923,258
Fund 402	Water Supply Facility Fund	105,180	60,000	165,180
Fund 404	Water Capital Fund	856,427	(131,465)	724,962
Fund 407	Wastewater Fund	933,739	(11,727)	922,012
Fund 408	Wastewater Capital Fund	869,767	95,091	964,858
Fund 410	Stormwater Fund	644,161	20,201	664,362
Fund 510	Equipment Replacement Fund	310,624	30,552	341,176
Total		\$ 12,285,416	\$ 1,089,474	13,374,890

Budget Change Detail Worksheet - July 2014

	<i>Res or Ord # or Type of Change</i>	REVENUE Change	EXPENSES Change
1 General Fund			
2 Beg C&I-amt over budget Gen Govt	Adj Beginning Balance	98,911	0
3 Beg C&I-Yarrow Bay-amt over budget	Adj Beginning Balance	172,629	0
4 Re-Org-CD/Perm/Nat Res.-Savings	Re-org-net zero		(123,361)
5 Re-Org Add MDRT Planner	Re-org-net zero		71,161
6 Re-Org Add CD Planner RPT	Re-org-net zero		52,200
7 Add RPT Finance A/P Clerk	Ord #14-1019		20,730
8 A/p Clerk Re-alloc I/T, C/S, animal C.	Ord #14-1019		(20,730)
9 Finance Audit Costs	Not billed until 2014		5,025
10 Court Public Defender	Trend Adjustment		19,000
11 Court Pros Attorney	Trend Adjustment		(6,000)
12 Legal-Public Disclosure	Trend Adjustment		3,500
13 Legal- Employment Issues	Trend Adjustment		21,850
14 Legal-Labor 3 Union Contract Neg	Adjustment		13,300
15 Legal-Res at Woodlands	Adjustment		5,000
16 Legal-Cannabis Enforcement	Adjustment		16,000
17 Legal-Investigation	Resolution 14-928		
18 Legal-Investigation	Resolution 14-941		
19 Legal-Investigation	Resolution 14-944		
20 Legal-Investigation	Resolution 14-949		
21 Legal-Investigation	Resolution 14-940		
22 Legal-Investigation-July 24, 2014	Resolution 14-XXX		
23 Total Legal Investigation per resolutions			97,800
24 Vacancy from City Adm	Adjustment		(11,585)
25 Sub Total		271,540	163,890
26 Ending C&I bal fr 630,432 to 565,453	Adj Ending Balance	0	(64,979)
27 End C&I bal-YB fr 126,500 to 299,129	Adj Ending Balance		172,629
28 Sub Total End C&I			107,650
29 Total General Fund		271,540	271,540
30 Street Fund 101			
31 Beg C&I-Amt over Budget	Adj Beginning Balance	865	0
32 Audit Costs	Not billed until 2014		1,730
33 Legal Costs	Trend Adjustment		2,400
34 A/P Clerk costs	Resolution #14-1019		1,350
35 End C&I bal fr 123,682 to 119,067	Adj End Fund Bal		(4,615)
36 Total Street Fund		865	865
38 Fire Impact Fee Fund 107			
39 Beg C&I-amt over Budget	Adj Beginning Balance	5,366	
40 Trf out to Fire Equip fund	Adjustment		5,366
41 Total Fire Impact Fee Fund		5,366	5,366
42 Gen Govt Capital Funds 310			
43 Split 310 & 311 Funds Revenue	Ord 13-1019	(329,268)	0
44 Split 310 & 311 Funds Exp	Ord 13-1019		(329,268)
45 Increase Campus Remodel Prj	Adjustment		16,500
46 Decrease Police Roof Proj	Adjustment		(16,500)
47 Increase Beg C&I to Actual-Trails	Adj Beginning Balance	563	
48 KC Tax \$ for Storm Pond Proj			7,000
49 KC Tax \$ for Storm Pond Ginder WetLan	Adjustment		7,500

Budget Change Detail Worksheet - July 2014

	<i>Res or Ord # or Type of Change</i>	REVENUE Change	EXPENSES Change
50	Decrease gen Trails \$ expditures Adj for Transfer & Beg		(13,937)
51	Increase Beg C&I to Actual-Grant Mtc Adj Beginning Balance	95	
52	Transfer to cover In Forest Costs Adjustment		15,000
53	Transfer to cover Makers GFC 1/2 Legal Adjustment		6,000
54	Decrease Grant Mtc Gen for Transfers Adjustment	0	(20,905)
55	Set Up In-Forest Project Adjustment	15,000	15,000
56	Set up Makers GFC Project Adjustment	6,000	6,000
57	Increase Beg C&I to Actual-Gen Gov Tec Adj Beginning Balance	19,257	
58	Adjust Gen Govt Tech to Actual amount Adjustment		19,257
59	Increase Beg C&I to Actual-Tree Mit Adj Beg Balance & Exp	(2,161)	(2,161)
60	Adj Beg C&A to Actual-KC Aq Grant Adjust Beginning Bal	(9,887)	
61	KC Aq Grant Rev & matching Adjustment	37,016	
62	KC Aq Grant Exp adjust Adjustment		27,129
63	Adj Beg C&A to Actual-Fire Equip Adj Beg Balance	44,219	
64	Transfer to Fire Equip Replace Fund Ajustment		44,219
65	Ending Fund Balance to 377,969 Adj Ending Balance	0	
66	Total Gen Govt Capital Improvement	(219,166)	(219,166)
67	REET I 311		
68	Split into 310 & 311 Funds Ord 13-1019	329,268	329,268
69	Adj Beg C & I to Actual-REET I Adjust Beginning Bal	(43,625)	
70	Adjust End FB fr 229,095 to 185,470 Adjust End Fund Bal		(43,625)
71	Total REET I	285,643	285,643
72	Capital Imp Fund 320		
73	Split 320 & 321 Funds Revenue Ord 13-1019	(333,418)	0
74	Split 320 & 321 Funds Exp Ord 13-1019		(333,418)
75	Adj Beg C&I to Actual-Street Pres Adj Beginning Balance	(14,916)	
76	Transfer Street Pres to Abrams Proj Transfer to Proj		17,417
77	Adj Street Pres for Beg & Trf Adjust Project		(32,333)
78	Adj Beg C&I to Actual-St Gr Mtc Adj Beginning Balance	(2,599)	0
79	Transfer Gr Mtc to Lawson Sidewalk Mtc Res 13-911 & 14-930		23,931
80	Transfer Gr Mtc to Storm Pond Gr Mtc Res 14-926		60,000
81	Adj Grant Match available by beg & Trf Addjust Project		(86,530)
82	Adj Beg C&I-288 Prj Adj Beginning Balance	7,025	
83	Carry over 288 Prj Bal Carrover from Prior Yr		7,025
84	Adj Beg C&I-Roberts Sidewalks Adj Beginning Balance	24,405	
85	Transfer Roberts Sidewalk & to Abrams Transfer to Proj		24,405
86	Adj Beg C&I to Actual-Abrams Adjust Beginning Balance	3,178	
87	Set up Proj Transf In fr St Pres & Rbts Adjust Transfers in	41,822	
88	Carry over abrams Prj-adj Beg & Trs Adjust Project		45,000
89	Set up Rock Creek Grant Proj-Grant Res 13-910	361,800	
90	Rock Creek Grant-Deve Cont Res 13-910	46,000	
91	Rock Creek Grant Match- Trf Res 13-910	41,200	
92	Rock Creek Grant Expenditures Adj Res 13-910		449,000
93	Street Traffic Sign Grant-Beg C&I Adj Beginning Balance	(8,027)	
94	Traffic Sign Grant Revenue Carryover from Prior Years	20,857	
95	Traffic Sign Grant Expenditures Carryover from Prior Years		12,830
96	Lawson Street TIB Grant Res 13-911 & 14-930	264,691	

Budget Change Detail Worksheet - July 2014

	<i>Res or Ord # or Type of Change</i>	REVENUE Change	EXPENSES Change
97	Lawson Street TIB Grant-Match	Res 13-911 & 14-930	23,931
98	Lawson Street TIB Grant-Expenditures	Res 13-911 & 14-930	288,622
99	Remove Jones Lake TIB Grant-Not Rec	Grant Not approved	(122,000)
100	Set up Makers GFC Project	Legal Review	6,000
101	Total PW Capt Imp 320	359,949	359,949
102	REET II 321		
103	Split into 320 & 321 Funds	Ord 13-1019	333,418
104	Adj Beg C & I to Actual-REET II	Adjust Beginning Bal	1,639
105	Transfer to Rock Cr Bridge Grant	Res 13-910	53,700
106	Transfer to Makers GFC Proj	Legal Review	6,000
107	Adjust End FB fr 213,418 to 155,357	Adjust End Fund Bal-for Trf	(58,061)
108	Total REET II	335,057	335,057
109	Water Fund 401		
110	Adj Beg C & I to Actual-Water	Adj Beginning Balance	(12,432)
111	Audit Costs	Not billed until 2014	4,200
112	Legal Costs	Trend Adjustment	5,200
113	A/P Clerk costs	Resolution #14-1019	3,800
114	Adjust End FB fr 132,898 to 107,266	Adj Ending Balance	(25,632)
115	Total Water Fund	(12,432)	(12,432)
116	WSFFA Fund 402		
117	Adj Beg C & I to Actual-WSFFA	Adj Beginning Balance	(42,329)
118	Developer Contribution	Adjust Revenue	102,329
119	Carry Over Project	Adjust Carry over	0
120	Total WSFFA Fund 402	60,000	60,000
121	Water Capt Fund 404		
122	Adj Beg C & I to Actual-Wtr Capt	Adj Beginning Balance	42,535
123	Carry over 5th Ave Wtr Proj	Carry over Project	21,254
124	Adj Water Rate Exp	Adjust Project	(1,719)
125	Carry over Replace Poles at Springs	Res 13-904	23,000
126	Adj Beg C & I to Actual-Paint Wtr Res	Res 14-927	21,800
127	Transfer fr Wtr Res to Paint Wtr Res	Adjust Project	18,200
128	Set up 2014 Wtr Res Eng	Res 14-927	40,000
129	Remove Sewer Loan to Paint Wtr Res	Res 14-947	(214,000)
130	Transfer from Wtr Res-to Paint Wtr Res	Res 14-927	18,200
131	Adjust End FB fr 304,427 to 286,227	Adj Ending Balance	0
132	Total Water Capt Fund 404	(131,465)	(131,465)
133	Sewer Fund		
134	Adj Beg C & I to Actual-Sewer	Adj Beginning Balance	(11,727)
135	Audit Costs	Not billed until 2014	4,200
136	Legal Costs	Trend Adjustment	5,300
137	A/P Clerk costs	Resolution #14-1019	4,000
138	Adjust End FB fr 142,475 to 117,248	Adj Ending Balance	(25,227)
139	Total Sewer Fund	(11,727)	(11,727)
140	Sewer Capt Fund 408		
141	Adj Beg C & I to Actual-Sewer Cpt	Adj Beginning Balance	95,091
142	Remove Loan to Wtr to Paint Res	Res 14-947	(214,000)
143	Adjust End FB fr 428,767 to 737,858	Adj Ending Balance	309,091
144	Total Sewer Capt Fund	95,091	95,091

Budget Change Detail Worksheet - July 2014

	<i>Res or Ord # or Type of Change</i>	REVENUE Change	EXPENSES Change
145	Stormwater Fund 410		
146	Adj Beg C & I to Actual-Storm Op Adj Beginning Balance	(16,799)	
147	Audit Costs Not billed until 2014		4,200
148	Legal Costs Trend Adjustment		4,300
149	A/P Clerk costs Resolution #14-1019		4,000
150	Adjust End FB fr 100,702 to 71,403 Adj Ending Balance		(29,299)
151	Adj Storm DOE Op Grant to actual Res 14-926	17,000	17,000
152	Adj Storm DOE St Pond Gr to actual Res 14-926	20,000	20,000
153	Total 410	20,201	20,201
154	Internal Service Fund 510		
155	Adj Beg C & I to Actual-Fire Eq Adj Beginning Balance	(44,218)	
156	Add Transfer In from Reet I Correction	44,218	
157	Add transfer In from Fire Impact Fees Transfer in	5,366	
158	Adjust Fire Equip Exp-fr Trf in Adjust Prj		5,366
159	Adj Beg C & I to Actual-PW Equip Adj Beginning Balance	13,793	
160	Carry over PW Radio Budget Carry over Budget		5,000
161	Carry over PW Mowers Budget Carry over Budget		8,793
162	Adj Beg C & I to Actual-Police Equip Adj Beginning Balance	4,493	
163	Sale of Police Surplus Add Revenue	6,900	
164	Police surplus Exp Add Exp		500
165	Police Car Conv & Police Shooter Exp Add Exp		10,893
166	Total 510	30,552	30,552
167			
168	Total BC	1,089,474	1,089,474

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION

SUBJECT:		Agenda Date: July 24, 2014	AB14-071
AB14-071 Award a construction contract to Puget Paving & Construction, Inc. for the 2014 Roadway Grind and Patch project in the amount of \$44,417.90 and authorize a 10% contingency (\$4,441.79).		Mayor Dave Gordon	
		City Administrator	
		City Attorney Carol Morris	
		City Clerk – Brenda L. Martinez	
		Com Dev/Nat Res – Aaron Nix	
		Finance – May Miller	
		MDRT/Ec Dev– Andy Williamson	
		Police – Chief Kiblinger	
		Public Works – Seth Boettcher	X
	Court – Stephanie Metcalf		
Cost Impact (see also Fiscal Note): \$48,859.69			
Fund Source: Street Maintenance Budget			
Timeline: Summer 2014			
Agenda Placement: <input type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator			
Attachments: Resolution No. 14-963, Puget Paving & Construction Bid, Bid Tabulation, Small Works Contract, Performance Bond, Maintenance Bond			
SUMMARY STATEMENT: The 2014 Roadway Grind and Patch project is a street maintenance project that has been planned and budgeted for. This project will provide for asphalt patches at various locations throughout the City as well as provide a new overlay in several locations. City staff solicited bids off the small works roster. The City received 5 bids. Puget Paving & Construction, Inc. was the low bidder at \$44,417.90. The engineer's estimate was \$55,579.68. Puget Paving & Construction, Inc. is from Lakewood, WA, is currently licensed, and appears to have the relevant qualifications and experience to successfully perform the work the project will require. FISCAL NOTE (Finance Department): The Grind and Patch project is well within the Budget amount of 71,036. This is an accumulation of REET II funds that have carried over from previous year.			
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: Public Works Committee is recommending approval.			
RECOMMENDED ACTION: MOTION to adopt Resolution No. 14-963, authorizing the Mayor to sign a \$44,417.90 contract with Puget Paving & Construction, Inc. for the 2014 Roadway Grind and Patch project and authorize a 10% contingency for potential change orders in the amount of \$4,441.79.			

RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
July 24, 2014		

RESOLUTION NO. 14-963

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AWARDING THE LOW BID ON THE 2014 ROADWAY
GRIND AND PATCH PROJECT TO PUGET PAVING AND
CONSTRUCTION, INC.**

WHEREAS, the City has planned and budgeted for the 2014 Roadway Grind and Patch Project; and

WHEREAS, the City has received bids on June 20, 2014; and

WHEREAS, Puget Paving and Construction, Inc. was the low bidder and has met all conditions of providing a responsible bid;

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

Section 1. Award the bid of the 2014 Roadway Grind and Patch Project to Puget Paving and Construction, Inc. in the amount of \$44,417.50 and authorize the Mayor to execute a contract for the same.

Section 2. Authorize a \$4,441.75 contingency fund for the 2014 Roadway Grind and Patch Project.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A SPECIAL MEETING THEREOF, THIS 24TH DAY OF JULY, 2014.**

CITY OF BLACK DIAMOND:

Dave Gordon, Mayor

Attest:

Brenda L. Martinez, City Clerk

ITEM NO.	SCOPE OF WORK	UNIT PRICE	QUANTITY	TOTAL
1	MOBILIZATION	2,000 ⁰⁰ /LS	1 LS	\$ 2,000.00
2	FLAGGERS AND SPOTTERS	55.00 ⁰⁰ /HR	16 HR	\$ 880.00
3	PROJECT TEMPORARY TRAFFIC CONTROL	1,000 ⁰⁰ /LS	1 LS	\$ 1,000.00
4	REMOVE ASPHALT CONCRETE PAVEMENT INCL. HAUL	10.00 ⁰⁰ /SY	1,200 SY	\$ 12,000.00
5	ADJUST EXISTING MANHOLE/ VALVE/ MONUMENT TO GRADE	100.00 ⁰⁰ /EA	3 EA	\$ 300.00
6	ROADWAY EXCAVATION INCL. HAUL	30.00 ⁰⁰ /CY	25 CY	\$ 750.00
7	CRUSHED SURFACING TOP COURSE	40.00 ⁰⁰ /TON	50 TON	\$ 2,000.00
8	HMA CL. 1/2 IN. PG 64-22 FOR PAVEMENT REPAIR	140.00 ⁰⁰ /TON	110 TON	\$ 15,400.00
9	HMA CL. 1/2 IN. PG 64-22 FOR OVERLAY	140.00 ⁰⁰ /TON	55 TON	\$ 7,700.00
10	CRACK SEALING	1.25 ⁰⁰ /LF	1,750	\$ 2,187.50
BASE BID TOTAL				\$ 44,217.50
ADDITIVE ALTERNATE				
ITEM NO.	SCOPE OF WORK	UNIT PRICE	QUANTITY	TOTAL
A-1	HMA CL. 1/2 IN. PG 64-22 FOR BERM FOR STORMWATER DIVERSION	/LF	30 LF	\$ 100.00
A-2	HMA CL. 1/2 IN. PG 64-22 FOR THICKENED EDGE ASPHALT REINFORCING	/LF	30 LF	\$ 100.00
BID ADDITIVE TOTAL				\$ 200.00
GRAND TOTAL (Base Bid plus Bid Additive)				\$ 44,417.50

Puget Paving & Const., Inc.
Bidder

6/19/2014
Date

PUGET PC 191LS
Contractor's License No.

*099032674
Contractor's DUNS No.

By 
Authorized Official

Address:

10817 26th Ave S
Lakewood, WA 98499

- NOTES: 1. If the bidder is a copartnership, so state, giving firm name under which business is transacted.
2. If the bidder is a corporation, this bid must be executed by its duly authorized officials.

CITY OF BLACK DIAMOND

Department of Public Works
P.O. Box 599 – 24301 Roberts Drive
Black Diamond, Washington 98010

**PUBLIC WORKS CONTRACT
SMALL WORKS**

1. **Contract and Parties.** This Public Works Contract-Small Works ("Contract") is between the CITY OF BLACK DIAMOND, King County, Washington ("City"), a Washington municipal corporation and _____ ("Contractor"). The City and Contractor are each a "Party" and together the "Parties" to the Contract. The Parties agree as follows.

2. **Project.** The Parties enter into this Contract for purposes of Contractor performing work for the City ("the Project"), generally described as:

2014 Black Diamond Roadway Grind and Patch Project.

3. **Effective date.** This Contract becomes effective and binding upon the Parties, including each Party's heirs, successors, and assigns, immediately upon execution of this contract by both parties.

4. **Notices to Parties.** Contractor agrees to accept notices under this Contract via facsimile or email. It is the responsibility of Contractor to notify the City in writing if any of the contact information appearing below should change. Any notices required shall be in writing and delivered to the following addresses. If notice by email, a hard copy shall be delivered or mailed the same date as email.

CITY:

CITY OF BLACK DIAMOND
P.O. Box 599 – 24301 Roberts Drive
Black Diamond, Washington 98010
Contact: Seth Boettcher
Phone: (253) 886-2560
Fax: (360) 886-2592
Email:

CONTRACTOR:

Tax I.D. # _____
Contact: _____
Phone: (_____) _____
Fax: (_____) _____
Email: _____

5. **Notice to Proceed.** Contractor shall provide a performance bond, insurance certificates, a City business license and statement of intent to pay prevailing wage rates within 10 days of receiving a notice of award. Upon timely receipt of the bond, insurance certificate, business license and statement of intent to pay prevailing wage rates, the City will thereafter have ten (10) days to issue a notice to proceed. The September 19, 2014

deadline for completion of all work in accordance with the terms and conditions of the Contract shall remain in effect provided that the notice to proceed is issued prior to August 14, 2014.

6. Obligations of Contractor. The following terms and conditions apply to this Contract:

A. *In general.*

- (1) Responsible for all labor and work. Contractor shall be solely responsible for furnishing all labor and performance of all work necessary to complete the Project as required.
- (2) Responsible for furnishing all materials and equipment. Contractor shall furnish all materials and equipment necessary to complete the Project, except for any materials expressly agreed in writing to be provided by the City.
- (3) Documents incorporated by reference. All terms and specifications contained in any Request for Proposals (RFP) that was issued by the City as part of determining the awarding of this Contract are hereby incorporated by reference and must be complied with by Contractor, unless one or more of such terms and specifications are expressly amended or waived in writing by the City.
- (4) Laws and regulations to be followed. Contractor, its employees, agents, and subcontractors, shall at all times fully comply with all applicable laws, regulations, and administrative rulings in performing work for the Project.
- (5) Work Hours. Contractor shall not work on weekends. On Mondays through Thursdays, Contractor shall not start work before 7:00 AM, and shall not work after 6:00 PM. Contractor shall not start work before 7:00 AM on Fridays. Contractor must be off the street and shall not work after 3:30 PM on Fridays.
- (6) Conditions of Work. By submitting a proposal in response to the City's solicitation for quotations, Contractor represents and warrants to the City that Contractor has fully informed itself of all conditions relating to the work involved for completing the Project. In prosecuting the work, Contractor shall employ such methods or means as will not interfere with or interrupt the work of the City or its agents, employees or contractors.
- (7) Contractor's Responsibility. Contractor will prosecute the work in accordance with instructions, descriptions and/or plans and specifications provided by the City. Contractor shall carry on the work at its own risk until the same is fully completed and accepted, and shall, in case of any accident, destruction or injury to the work and/or materials before its final completion and acceptance, repair or replace forthwith the work and/or materials so injured, damaged or destroyed, at his own expense and to the satisfaction of the City. When materials and equipment are furnished by others for installation or erection by Contractor, Contractor shall receive, unload, store and handle same at site and become responsible therefore as though such materials and/or equipment were being furnished by Contractor. Contractor shall procure all permits (unless permits are secured by the City) and

licenses, pay all charges, fees and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the work. Contractor shall be responsible for preparing working drawings and shall submit them to the City for approval prior to commencement of work. For purposes of this Contract, working drawings shall mean, shop drawings, shop plans, erection plans, falsework plans, framework plans, cofferdam, cribbing and shoring plans, or any other supplementary plans or similar data, including a schedule of submittal dates for working drawings where specified, which Contractor will rely on for purposes of conducting the work for the Project.

- (8) Contractor Clean-Up. Prior to physical completion, all debris resulting from Contractor's work, delivery or installation of equipment shall be disposed of entirely by Contractor in an efficient and expeditious manner as required and directed by the City.
- (9) Safety. Contractor and its subcontractors shall take all safety precautions and furnish and install all guards necessary for the prevention of accidents, and shall comply with all laws and regulations with regard to the prosecution of the work. Contractor agrees to furnish Material Safety Data Sheets (Form OSHA-20) applicable for hazardous or potentially hazardous products. Contractor agrees to comply with the conditions of the Washington Industrial Safety and Health Act of 1970, and standards and regulations issued thereunder, and certify that all items furnished and purchased will conform to and comply with said standards and regulations. Contractor further agrees to indemnify and hold harmless the City from damages assessed against the City because of Contractor's failure to comply with the Acts and the standards issued thereunder and for the failure of the items furnished under this order to so comply.

B. *Work Performance.*

- (1) Prevailing wages. Contractor shall pay prevailing wages, as that term is defined under the laws of the State of Washington, for all work performed on this Project by Contractor and by Contractor's employees, agents and subcontractors. Contractor is fully responsible for prevailing wage compliance.
For reference only, and without relieving any Contractor responsibility, the City notes the State of Washington prevailing wage rates for public works projects located in King County may be found at the following website address of the Department of Labor and Industries: <https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>. Based on the bid submittal deadline for this Project, the applicable effective date for prevailing wages for this Project is June 9, 2014. A copy of prevailing wage rates are also available for viewing at the office of the City, located at 24301 Roberts Drive, Black Diamond, WA 98010. Upon request, the City will mail a hard copy of the applicable prevailing wages for this Project.
- (2) Notice to City. Minimum 24-hours prior notice shall be given to the City's Department of Public Works prior to commencement of work under this Contract.
- (3) Approved Plans & Specifications to be followed. All work is to be performed to the City's satisfaction and in compliance with the Contract Documents, which include the

following: (a) the approved Plans & Specifications and/or Scope of Work, where applicable (collectively, "Plans"); the Standard Specifications for Road, Bridge and Municipal Construction, 2014 edition, as issued by the Washington State Department of Transportation (WSDOT) and the American Public Works Association (APWA), Washington State Chapter (hereinafter referred to as the "Standard Specifications"); (b) Modifications or Amendments to the Standard Specifications, included in the Special Provisions of the Bid Documents and RFP; (c) the Special Provisions; (d) the City of Black Diamond 2009 Engineering Design and Construction Standards; (e) Manual on Uniform Traffic Control Devices for Streets and Highways, currently adopted edition, with Washington State modifications, if any; and (f) the requirements contained in the bid documents, unless such requirements or specifications are expressly amended in writing by the City.

- (4) Schedule of Work to be followed. Time is of the essence in performing the work needed for this Project. Contractor shall diligently proceed with the work and shall assure that it, and its subcontractors, have adequate staffing at all times in order for Contractor to comply with any Schedule of Work agreed to by the Parties, and shall make all reasonable efforts to complete the work in a timely manner.
- (5) Duty to Correct. Contractor shall promptly correct work rejected by the City as failing to conform to the requirements of the Contract. The Contractor shall bear the cost of correcting such rejected work. In addition to the Contractor's other obligations under the Contract, the Contractor shall, for a period of one year after final acceptance of the Project by the City, correct work not conforming to the requirements of the Contract. If the Contractor fails to correct nonconforming work within a reasonable time, the City may correct it and Contractor shall reimburse the City for the cost of the correction.

A bond guaranteeing maintenance of all improvements for a period of twelve (12) months from acceptance of the work, a form approved by the City Attorney shall be submitted to the City in an amount to be determined by the City Engineer, which maintenance bond shall remain in effect during this period until released in writing by the City.

- (6) Project Administration/Notice to Proceed. The Public Works Director, or his or her designee, shall administer this Contract and shall have all authority provided for the City under this Contract including all project approvals, including change orders. Contractor shall not commence work until Notice to Proceed has been given by the City. All work performed under this Contract will be monitored and inspected by the Public Works Director or his or her designee, and accepted by same.

C. Non-Discrimination.

- (1) Contractor, Contractor's officers and employees, and its subcontractors and agents, shall not discriminate against any employee or applicant for employment or any other person in the performance of this Contract because of race, creed, color, national origin, marital status, sex, age, disability, or other condition prohibited by federal, state, or local law or ordinance, except where the condition constitutes a bona fide occupational qualification under law.

(2) Any violation of this Section shall be a material breach of this Contract and grounds for immediate cancellation, termination, or suspension of the Contract by the City, in whole or in part, and may result in Contractor being ineligible to perform further work for the City.

7. **Compensation.** Compensation shall be by Unit Price according to the Bid Schedule for each of the 11 categories of work as defined in the attached Bid Form/Scope of Work at the Bid Amounts.

8. **Payment**

A. Contractor shall request approval and acceptance of each category of work from the City. Contractor may not bill for the completed work until the City has accepted the completed work.

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

C. All invoices shall be submitted for work after it has been performed, and paid by City warrant within sixty (60) days of receipt of a proper invoice.

D. Failure to perform any of the obligations under the Contract by Contractor may be decreed by the City to be adequate reason for withholding any payments until compliance is achieved. Progress payments for work performed shall not be evidence of acceptable performance or an admission by the City that any work has been satisfactorily completed.

E. Payments received on account of work performed by a subcontractor are subject to the provisions of RCW 39.04.250.

9. **Performance Bond.** Contractor shall provide a performance and payment bond to the City prior to commencement of work for 100% of the bid amount including tax guaranteeing the full and faithful performance by Contractor of the terms and conditions of this Contract.

Initial: _____ (Contractor)

10. **Retainage.** Pursuant to Chapter 60.28 RCW, a sum of five percent (5%) of the monies earned by Contractor will be retained from progress payments. Such retainage shall be used as a trust fund for the protection and payment (1) to the State with respect to taxes imposed pursuant to RCW Title 82, and (2) the claims of any person arising under the Contract. No final payment or release of any retainage will be made until Contractor and each subcontractor has submitted an "Affidavit of Wages Paid" (LI 700-7 or other approved form) that has been certified by the industrial statistician of the Department of Labor and Industries. Also the retainage will not be released until the City has received certification that the Department of Revenue has received due payment of applicable

taxes. Once the City has received certification from appropriate departments of the state of Washington, 45 days has passed from the date of acceptance of the Project and the City has not received any claims against the Project, then the City will release the retainage.

11. **Changes.** After execution of the Contract, changes in the Project may be accomplished by change order. The City, without invalidating the Contract, may order changes in the Project within the general scope of the Contract consisting of additions, deletions or other revisions, the contract sum and Contract completion date being adjusted accordingly. Change orders shall be in writing signed by the Parties.
12. **Termination of Contract.** This Contract may be terminated by the City at any time upon the default of the Contractor or upon public convenience, in which Contractor shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination. Contractor shall not be entitled to any reallocation of cost, profit or overhead. Contractor shall not in any event be entitled to anticipated profit on work not performed because of such termination. Contractor shall use its best efforts to minimize the compensation payable under this Contract in the event of such termination. If the contract is terminated for default, Contractor shall not be entitled to receive any further payments under the Contract until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to Contractor. Contractor shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.
13. **Responsibility Criteria and Verification by Contractor.** Pursuant to Chapter 39.04 RCW, the following requirements are part of this Contract:
 - A. *Responsibility Criteria.*
 - (1) Eligibility to be awarded contract. Contractor hereby certifies that Contractor meets the following responsibility criteria:
 - a. Contractor has a certificate of registration in compliance with chapter 18.27 RCW;
 - b. Contractor has a current state unified business identifier number;
 - c. If applicable, Contractor has industrial insurance coverage for Contractor's employees working in Washington as required under Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW; and
 - d. Contractor is not disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).
 - B. *Requirement to verify subcontractors.* Contractor verifies the responsibility criteria contained above for each first tier subcontractor, and a subcontractor of any tier that

hires other subcontractors and that each subcontractor verify the responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350(1) and possesses an electrical contractor license, if required by chapter 19.28 RCW, or an elevator contractor license, if required by chapter 70.87 RCW. This verification requirement must be included in every subcontract of every tier.

14. Insurance.

- A. All employees, subcontractors, agents to be covered. Contractor shall procure and maintain for the duration of the Contract, and shall provide proof satisfactory to the City, insurance that covers Contractor and each of Contractor's employees, subcontractors or agents (who are not otherwise covered by Contractor's insurance) against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Contractor, its employees, subcontractors or agents.
- B. Lack of insurance grounds for termination of contract. Failure of Contractor to maintain insurance as required herein shall be grounds for immediate termination of this Contract by the City.
- C. Title 51 Industrial Insurance Waived. The Parties have specifically negotiated as a term of this Contract that Contractor has agreed to expressly waive immunity under Title 51 RCW, Industrial Insurance Law.
- D. Minimum Scope of Insurance. Contractor shall obtain insurance of the types described below:
 - 1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. The policy shall provide contractual liability coverage.
 - 2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.
 - 3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Builders Risk [when applicable] insurance covering interests of the City, Contractor, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance shall be on a all-risk policy form and shall insure against the perils of fire, flood, earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of Contractor. Higher deductibles for flood and earthquake perils may be accepted by the City upon written request by Contractor and written acceptance by the City. Any increased deductibles accepted by the City will remain the responsibility of Contractor. The Builders Risk insurance shall be maintained until final acceptance of the work by the City.

E. Minimum Amounts of Insurance. Contractor shall maintain the following insurance limits:

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

2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

3. Builders Risk insurance shall be written in the amount of the completed value of the Project with no coinsurance provisions.

E. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Commercial General Liability and Builders Risk insurance:

1. Contractor's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

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

3. Contractor, at the City's request, shall provide to the City a complete copy of requested policy(ies) and not just certificates.

F. Verification of Coverage. Contractor shall furnish the City with original certificates and a copy of all amendatory endorsements, naming the City as additional named insured, including but not necessarily limited to the additional insured endorsements evidencing the Automobile Liability and Commercial General Liability insurance of Contractor before commencement of the work. Before any exposure to loss may occur, Contractor shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this Project.

- G. Subcontractors. Contractor shall ensure that each subcontractor of every tier obtains at a minimum the same insurance coverage and limits as stated herein for Contractor (with the exception of Builders Risk insurance). Upon request of the City, Contractor shall provide evidence of such insurance.
- H. Contractor's Other Losses. Whether insured or not, Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, vehicles, equipment or other personal property; and Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by Contractor, or Contractor's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

15. Claims for damages.

- A. Excluded situations. The City shall not be responsible for delays caused by soil conditions; underground obstructions; labor disputes; fire; delays by third parties, including public and private utilities; or reasonably foreseeable delays.
- B. Liability limited to direct costs. Contractor agrees that the City's liability to Contractor for payment of claims or damages of any kind whatsoever related to this Contract shall be limited to direct costs as provided under the force account provisions of applicable standard specifications. Contractor expressly waives all claims for payment of damages that include or are computed on total costs of job performance, extended overhead, or other similar methods that are not specific as to the actual, direct costs of contract work as defined in the force account provisions of applicable standard specifications.
- C. "Damages" defined. For purposes of applying RCW 4.24.115 to this Contract, Contractor and the City agree that the term "damages" applies only to a finding in a judicial proceeding and is exclusive of third party claims for damage primarily thereto.
- D. Indemnification. The following provision shall control over any other indemnification provision in the Contract Documents. The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries or damages caused by the sole negligence of the City.

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

It is further agreed that claims for damages against the City for which Contractor's insurance carrier does not accept defense of the City may be tendered by the City to Contractor, who shall then accept and settle with the

claimant or defend the claim. The City retains the right to approve claims investigation and counsel assigned to said claims, and all investigation of legal work product regarding said claims shall be performed under a fiduciary relationship to the City.

It is further specifically and expressly understood that the indemnification provided herein constitutes Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Contract.

16. Assigning or Subcontracting. Contractor shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Contract without the express prior written consent of the City.

17. Independent Contractor. Contractor is and shall be at all times during the term of this Contract an independent contractor.

18. Disputes. Any action for claims arising out of or relating to this Contract shall be governed by the laws of the State of Washington. Venue shall be in King County Superior Court.

19. Attorneys Fees. In any suit or action instituted to enforce any right granted in this Contract, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorneys fees from the other party.

20. Extent of Contract/Modification. This Contract, together with attachments or addenda, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may be amended, modified or added to only by written instrument properly signed by both parties.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

BY ITS SIGNATURE BELOW, EACH PARTY ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE TERMS AND CONDITIONS OF THIS CONTRACT AND AGREES TO BE BOUND BY THEM.

CITY OF BLACK DIAMOND

CONTRACTOR

By: _____

By: _____

Print name: _____

Print name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attachments

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____ (*Corporate Officer (Not Contract Signer)*) certify that I am the _____ (*Corporate Title*) of the corporation named as Contractor in the Contract attached hereto; that _____, (*Contract Signer*) who signed said Contract on behalf of Contractor, was then _____ (*Corporate Title*) of said corporation; that said Contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

Corp. officer signature (not contract signer)

Printed

Title

State of _____

County of _____

_____, (*corporate officer (not contract signer)*) being duly sworn, deposes and says that he/she is _____ (*Corporate Title*) of _____ (*Name of Corporation*)

Subscribed and sworn to before me this _____ day of _____, 20_____

Notary Public (Signature)

Notary Public (Print)
My commission expires _____

**DECLARATION OF OPTION FOR MANAGEMENT
OF STATUTORY RETAINED PERCENTAGE**

Note: This form must be submitted at the time Contractor executes the contract. Contractor shall designate the option desired by checking the appropriate space.

Monies reserved under provisions of RCW 60.28, at the option of Contractor, shall be:

_____ (1) Retained in a fund by the City.

_____ (2) Deposited by the City in an interest-bearing account in a bank, mutual savings bank or savings and loan association.

_____ (3) Placed in escrow with a bank or trust company by the City. When the monies reserved are to be placed in escrow, the City will issue a check representing the sum of the monies reserved payable to the bank or trust company and Contractor jointly. Such check shall be converted into bonds and securities chosen by Contractor and approved by the City and the bonds and securities held in escrow. Contractor in choosing option (2) or (3) agrees to assume full responsibility to pay all costs which may accrue from escrow services, brokerage charges or both, and further agrees to assume all risks in connection with the investment of the retained percentages in securities.

Contractor Signature

Date

**CITY OF BLACK DIAMOND
PUBLIC WORKS PROJECT
PERFORMANCE BOND**

City Project #: _____
Surety Bond #: _____
DATE POSTED: _____
PROJECT COMPLETION DATE: _____

RE: Project Name: 2014 Black Diamond Roadway Grind and Patch Project
Owner: City of Black Diamond
Project Address: Various locations within the City of Black Diamond

KNOW ALL PERSONS BY THESE PRESENTS: That we, _____
_____ (hereinafter called the "Principal"), and _____
a corporation organized under the laws of the State of _____, and authorized
to transact surety business in the State of Washington (hereinafter called the "Surety"), are held and
firmly bound unto the City of Black Diamond, Washington, in the sum of
(\$ _____), lawful money of the United States of America, for the payment of which
sum we and each of us bind ourselves, our heirs, executors, administrators, successors and assigns,
jointly and severally, by these presents. THE CONDITIONS of the above obligation are such that:

WHEREAS, the above named Principal has entered into a certain agreement with the City,
to perform the following public works project within the City: _____
_____ ; and

WHEREAS, the agreement with the City requires that certain improvements be made as
part of the public works project; and that such improvements be constructed in full compliance with
City standards, and the plans and specifications as required by the City; and

WHEREAS, the agreement with the City requires that the improvements are to be made or
constructed within a certain period of time, unless an extension is granted in writing by the City; and

NOW, THEREFORE, it is understood and agreed that this obligation shall continue in effect
until released in writing by the City of Black Diamond, but only after the Principal has performed
and satisfied the following conditions:

A. Conditions.

1. The improvements to be constructed by the Principal include: (insert complete description here)

2. The Principal must construct the improvements to conform to the design, location, materials and other specifications for the indicated site improvements, as required by the City in the above-referenced project. In addition, the Principal must construct the improvements according to the applicable ordinances and standards of the City and/or state statutes, as the same now exist or are hereafter amended.
3. The Principal must have completed all improvements required by the above-referenced conditions, plans and City file within _____ which time period shall begin to run from the earlier of _____ unless an extension is granted by the City.
4. The Principal must have paid all sums owing to laborers, contractors, mechanics, subcontractors, materialmen and suppliers or others as a result of such work for which a lien against any City property has arisen or may arise.
5. The Principal must obtain acceptance by the City of the work completed, all on or before thirty (30) days after the completion date set forth in paragraph 3 above.

B. Default.

1. If the Principal defaults and does not perform the above conditions within the time specified, then the Surety shall, within twenty (20) days of demand of the City, make a written commitment to the City that it will either:
 - a). remedy the default itself with reasonable diligence pursuant to a time schedule acceptable to the City; or
 - b). tender to the City within an additional ten (10) days the amount necessary, as determined by the City, for the City to remedy the default, up to the total bond amount.

Upon completion of the Surety's duties under either of the options above, the Surety shall then have fulfilled its obligations under this bond. If the Surety elects to fulfill its obligation pursuant to the requirements of subsection B(1)(b), the City shall notify the Surety of the actual cost of the remedy, upon completion of the remedy. The City shall return, without interest, any overpayment made by the Surety, and the Surety shall pay to the City any actual costs, which exceeded the City's estimate, limited to the bond amount.

2. In the event the Principal fails to complete all of the above referenced improvements within the time period specified by the City, then the City, its employees and agents shall have the right at the City's sole election to enter onto said property described above for the purpose of completing the improvements. This provision shall not be construed as creating an obligation on the part of the City or its representatives to complete such improvements.

- C. Corrections. Any corrections required by the City shall be commenced within seven (7) days of notification by the City and completed within thirty (30) days of the date of

notification. If the work is not performed in a timely manner, the City shall have the right, without recourse to legal action, to take such action under this bond as described in Section B above.

- D. Extensions and Changes. No change, extension of time, alteration or addition to the work to be performed by the Principal shall affect the obligation of the Principal or Surety on this bond, unless the City specifically agrees, in writing, to such alteration, addition, extension or change. The surety waives notice of any such change, extension, alteration or addition thereunder.

- E. Enforcement. It is specifically agreed by and between the parties that in the event any legal action must be taken to enforce the provisions of this bond or to collect said bond, the prevailing party shall be entitled to collect its costs and reasonable attorney fees as a part of the reasonable costs of securing the obligation hereunder. In the event of settlement or resolution of these issues prior to the filing of any suit, the actual costs incurred by the City, including reasonable attorney fees, shall be considered a part of the obligation hereunder secured. Said costs and reasonable legal fees shall be recoverable by the prevailing party, not only from the proceeds of this bond, but also over and above said bond as a part of any recovery (including recovery on the bond) in any judicial proceeding. The Surety hereby agrees that this Agreement shall be governed by the laws of the State of Washington. Venue of any litigation arising out of this Agreement shall be in Pierce County Superior Court.

- F. Bond Expiration. This bond shall remain in full force and effect until the obligations secured hereby have been fully performed and a bond guaranteeing maintenance of all improvements for a period of twelve (12) months from acceptance has been submitted to the City in an amount to be determined by the City Engineer, in a form suitable to the City and until released in writing by the City.

DATED this _____ day of _____, 2014.

SURETY COMPANY
(Signature must be notarized)

DEVELOPER/OWNER
(Signature must be notarized)

By: _____
Its _____

By _____
Its _____

Print Name: _____

Print Name: _____

Business Name: _____

Business Name: _____

Business Address: _____

Business Address: _____

City/State/Zip Code: _____

City/State/Zip Code: _____

Telephone Number: _____

Telephone Number: _____

CITY OF BLACK DIAMOND

By: _____
Its: _____

Date: _____

P.O. Box 599 – 24301 Roberts Drive
Black Diamond, WA 98010
Contact: Seth Boettcher
Phone: (253) 886-5700
Fax: (360) 886-2592

APPROVED AS TO FORM:

Office of the City Attorney

CHECK FOR ATTACHED NOTARY SIGNATURE

_____ Individual (Form P-1)
_____ Corporation (Form P-2)

**CITY OF BLACK DIAMOND
MAINTENANCE BOND**

Project #: _____
Surety Bond #: _____
Date Posted: _____
Expiration Date: _____

RE: Project Name: 2014 Black Diamond Roadway Grind and Patch Project
Owner: City of Black Diamond
Project Address: Various locations throughout the City of Black Diamond

KNOW ALL PERSONS BY THESE PRESENTS: That we, _____
(hereinafter called the "Principal"), and _____, a corporation organized
under the laws of the State of _____, and authorized to transact surety business in
the State of Washington (hereinafter called the "Surety"), are held and firmly bound unto the City
of Black Diamond, Washington, in the sum of _____
dollars (\$ _____), lawful money
of the United States of America, for the payment of which sum we and each of us bind ourselves,
our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.
THE CONDITIONS of the above obligation are such that:

WHEREAS, the above named Principal has constructed and installed certain improvements
on public property in connection with a project as described above within the City of Black
Diamond; and

WHEREAS, in accordance with BMC _____, as a condition of approval, the developer is
required to post a bond for the 12 months following project completion in order to ensure that the
project does not contain defects that require repair and to cover the cost of repair during that 12-
month period; and

WHEREAS, in order to provide security for the obligation of the Principal to repair and/or
replace said improvements against defects in workmanship, materials or installation for a period of
twelve (12) months after written and final acceptance of the same and approval by the City;

NOW, THEREFORE, this Maintenance Bond has been secured and is hereby submitted to
the City. It is understood and agreed that this obligation shall continue in effect until released in
writing by the City, but only after the Principal has performed and satisfied the following
conditions:

A. The work or improvements installed by the Principal and subject to the terms and conditions
of this Bond are as follows: (insert complete description of work here)

MAINTENANCE BOND

(Rev. 06/09/14)

CAM.90402MUNX/F0008.180.002

B. The Principal and Surety agree that the work and improvements installed in the above-referenced project shall remain free from defects in material, workmanship and installation (or, in the case of landscaping, shall survive,) for a period of twelve (12) months after written and final acceptance of the same and approval by the Town. Maintenance is defined as acts carried out to prevent a decline, lapse or cessation of the state of the project or improvements as accepted by the City during the twelve (12) month period after final and written acceptance, and includes, but is not limited to, repair or replacement of defective workmanship, materials or installations.

C. The Principal shall, at its sole cost and expense, carefully replace and/or repair any damage or defects in workmanship, materials or installation to the City-owned real property on which improvements have been installed, and leave the same in as good condition as it was before commencement of the work.

D. The Principal and the Surety agree that in the event any of the improvements or restoration work installed or completed by the Principal as described herein, fail to remain free from defects in materials, workmanship or installation (or in the case of landscaping, fail to survive), for a period of twelve (12) months from the date of acceptance of the work by the Town, the Principal shall repair and/replace the same within ten (10) days of demand by the Town, and if the Principal should fail to do so, then the Surety shall:

1. Within twenty (20) days of demand of the City, make written commitment to the Town that it will either:
 - a). remedy the default itself with reasonable diligence pursuant to a time schedule acceptable to the City; or
 - b). tender to the City within an additional ten (10) days the amount necessary, as determined by the City, for the City to remedy the default, up to the total bond amount.

Upon completion of the Surety's duties under either of the options above, the Surety shall then have fulfilled its obligations under this bond. If the Surety elects to fulfill its obligation pursuant to the requirements of subsection D(1)(b), the Town shall notify the Surety of the actual cost of the remedy, upon completion of the remedy. The City shall return, without interest, any overpayment made by the Surety, and the Surety shall pay to the City any actual costs which exceeded the Town's estimate, limited to the bond amount.

2. In the event the Principal fails to make repairs or provide maintenance within the time period requested by the City, then the City, its employees and agents shall have the right at the City's sole election to enter onto said property described above for the purpose of repairing or maintaining the improvements. This provision shall not be construed as creating an obligation on the part of the Town or its representatives to repair or maintain such improvements.

MAINTENANCE BOND

(Rev. 06/09/14)

CAM.90402MUNX/F0008.180.002

- E. Corrections. Any corrections required by the City shall be commenced within ten (10) days of notification by the City and completed within thirty (30) days of the date of notification. If the work is not performed in a timely manner, the City shall have the right, without recourse to legal action, to take such action under this bond as described in Section D above.

- F. Extensions and Changes. No change, extension of time, alteration or addition to the work to be performed by the Principal shall affect the obligation of the Principal or Surety on this bond, unless the City specifically agrees, in writing, to such alteration, addition, extension or change. The surety waives notice of any such change, extension, alteration or addition thereunder.

- G. Enforcement. It is specifically agreed by and between the parties that in the event any legal action must be taken to enforce the provisions of this bond or to collect said bond, the prevailing party shall be entitled to collect its costs and reasonable attorney fees as a part of the reasonable costs of securing the obligation hereunder. In the event of settlement or resolution of these issues prior to the filing of any suit, the actual costs incurred by the City, including reasonable attorney fees, shall be considered a part of the obligation hereunder secured. Said costs and reasonable legal fees shall be recoverable by the prevailing party, not only from the proceeds of this bond, but also over and above said bond as a part of any recovery (including recovery on the bond) in any judicial proceeding. The Surety hereby agrees that this Agreement shall be governed by the laws of the State of Washington. Venue of any litigation arising out of this Agreement shall be in King County Superior Court.

- H. Bond Expiration. This bond shall remain in full force and effect until the obligations secured hereby have been fully performed and until released in writing by the City at the request of the Surety or Principal.

DATED this ____ day of _____, 2014.

SURETY COMPANY
(Signature must be notarized)

DEVELOPER/OWNER
(Signature must be notarized)

By: _____
 Its _____

By _____
 Its _____

Business Name: _____

Business Name: _____

Business Address: _____

Business Address: _____

City/State/Zip Code: _____

City/State/Zip Code: _____

Telephone Number: _____

Telephone Number: _____

MAINTENANCE BOND

CITY OF BLACK DIAMOND

By: _____
Dave Gordon, Mayor

Date: _____

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

APPROVED AS TO FORM:

Office of the City Attorney

CHECK FOR ATTACHED NOTARY SIGNATURE

- Individual (Form P-1)
 - Corporation (Form P-2)
 - Surety Company (Form P-2)
-

MAINTENANCE BOND

(Rev. 06/09/14)

CAM.90402MUNX/F0008.180.002

FORM P-2 / NOTARY BLOCK (Use For Partnership or Corporation Only)

(Developer/Owner)

STATE OF WASHINGTON)
) ss.
COUNTY OF)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged as the _____ of _____ that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

(print or type name)

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

(Surety Company)

STATE OF WASHINGTON)
) ss.
COUNTY OF)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged as the _____ of _____ that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

(print or type name)

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

MAINTENANCE BOND

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION

SUBJECT:		Agenda Date: July 24, 2014	AB14-072																												
AB14-072 Award a construction contract to R.W. Scott Construction Co. for the Lawson Street Sidewalk Improvements Project in the amount of \$213,724 and authorize a contingency of \$8,782).		Mayor Dave Gordon																													
		City Administrator																													
		City Attorney Carol Morris																													
		City Clerk – Brenda L. Martinez																													
		Com Dev/Nat Res– Aaron Nix																													
		Finance – May Miller																													
		MDRT/Ec Dev– Andy Williamson																													
Cost Impact (see also Fiscal Note): \$239,096.40																															
Fund Source: TIB Grant/Streets		Police – Chief Kiblinger																													
Timeline: August-October 2014		Public Works – Seth Boettcher	X																												
		Court – Stephanie Metcalf																													
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator																															
Attachments: Resolution No. 14-964, Bid Tab, R.W. Scott Construction Co. bid, Bid and Contract forms, CIP page																															
<p>SUMMARY STATEMENT: The Lawson Street Sidewalk Improvements project is a project that has been planned and budgeted for. This project will provide for new sidewalk and stormwater facilities between 3rd Avenue and 6th Avenue.</p> <p>The City solicited bids in the Voice of the Valley and the Daily Journal of Commerce. The City received 3 bids. R.W. Scott Construction Co. was the low bidder at \$213,724. The engineer's estimate was \$206,382.60. Funding for this project is from a Transportation Improvement Board grant (gas tax) and REET.</p> <p>R.W. Scott Construction Co. is from Auburn, WA, is currently licensed, and appears to have the relevant qualifications and experience to successfully perform the work the project will require.</p>																															
<p>FISCAL NOTE (Finance Department):</p> <table border="0"> <thead> <tr> <th>Budget</th> <th>Amount</th> <th>Current Estimated Expenses</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>Grant Funds</td> <td>\$264,691</td> <td>Parametrix (Design Contract)</td> <td>\$ 53,116</td> </tr> <tr> <td>City Share (REET)</td> <td>\$ 13,492</td> <td>RW Scott Construction (Contract)</td> <td>\$213,724</td> </tr> <tr> <td>Project Mgmt (Staff Labor)</td> <td>\$ 10,000</td> <td>Misc. Costs (Legal, Adv., etc)</td> <td>\$ 3,000</td> </tr> <tr> <td>TOTAL</td> <td>\$288,622</td> <td>Project Management (Staff Labor)</td> <td>\$ 10,000</td> </tr> <tr> <td></td> <td></td> <td>Construction Contingency</td> <td>\$ 8,782</td> </tr> <tr> <td></td> <td></td> <td>TOTAL</td> <td>\$288,622</td> </tr> </tbody> </table> <p>Grant funds will cover 95% of the project costs.</p>				Budget	Amount	Current Estimated Expenses	Amount	Grant Funds	\$264,691	Parametrix (Design Contract)	\$ 53,116	City Share (REET)	\$ 13,492	RW Scott Construction (Contract)	\$213,724	Project Mgmt (Staff Labor)	\$ 10,000	Misc. Costs (Legal, Adv., etc)	\$ 3,000	TOTAL	\$288,622	Project Management (Staff Labor)	\$ 10,000			Construction Contingency	\$ 8,782			TOTAL	\$288,622
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COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: Public Work Committee																															

recommends adoption.

RECOMMENDED ACTION: MOTION to adopt Resolution No. 14-964, authorizing the Mayor to execute a \$213,724.00 contract with R.W. Scott Construction Co. for the Lawson Street Sidewalk Improvements Project and authorize \$8,782.00 to cover potential change orders.

RECORD OF COUNCIL ACTION

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
July 24, 2014		

RESOLUTION NO. 14-964

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AWARDING THE LOW BID ON THE LAWSON STREET
SIDEWALK IMPROVEMENTS PROJECT TO R.W. SCOTT
CONSTRUCTION CO.**

WHEREAS, the City received a Transportation Improvement Board grant for the Lawson Street Sidewalk Improvements Project with an award amount of \$264,691; and

WHEREAS, the City has a match requirement of \$13,492; and

WHEREAS, the City has planned and budgeted for the Lawson Street Sidewalk Improvements Project; and

WHEREAS, the City has received bids on July 7, 2014; and

WHEREAS, R.W. Scott Construction Co. was the low bidder and has met all conditions of providing a responsible bid;

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

Section 1. Award the bid of the Lawson Street Sidewalk Improvements Project to R.W. Scott Construction Co. in the amount of \$213,724 and authorize the Mayor to execute a contract for the same.

Section 2. Authorize a contingency fund for the Lawson Street Sidewalk Improvements Project in the amount of \$8,782 to cover potential additional requests and/or change orders.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A SPECIAL MEETING THEREOF, THIS 24TH DAY OF JULY, 2014.**

CITY OF BLACK DIAMOND:

Dave Gordon, Mayor

Attest:

Brenda L. Martinez, City Clerk

STATEMENT OF BIDDER'S QUALIFICATIONS

Name of Contractor R.W. SCOTT Construction Co.

Address: 4005 West Valley Highway North
Auburn, WA 98001

Phone Number: (253) 351-0001 Fax Number: (253) 351-0055

Washington State Department of Labor and Industries Registration No.: 325,526-00

State Unified Business Identifier No.: 600 298 242
 Expiration Date: 5/31/15

Employment Security Department No.: 447718-00-5

State Excise Tax Registration No.: 600 298 242

Number of years the Contractor has been engaged in the construction business under the present firm name indicated: 42 years

Gross dollar amount of work under contract: see attached

Gross dollar amount of contracts not completed: see attached

Type of work generally performed by Contractor: Road construction and
under ground utilities

List of five public projects of a similar nature which have been completed by the Contractor within the last five years and the gross dollar amount of each project:

Project Title	Agency	Contact & Phone No.	Year Completed	Bid Amount
<u>see attached references</u>				

Bank References: KeyBank (Auburn) Janice Rindfleisch (253) 876-6626

Have you changed bonding companies within the last three years? NO

If so, why? (Optional): N/A

Have you been disqualified from bidding on any public works contract? NO

Have you ever sued or been sued by the client on any public works contract for a special district, municipality, county, or state government? NO

Who? N/A

For what reason? N/A

Disposition of case, if settled: N/A

Name of Superintendent to be used on the project and how long with your company:

Mark Hall - 13 years

R.W. Scott Construction Co.
Bidder

By [Signature]
Signature

vice president
Title

PROPOSAL

Bidder R.W. Scott Construction Co.

Date 7/7/14

Honorable Mayor and Council
City of Black Diamond
Black Diamond, Washington 98052

Gentlemen:

Pursuant to and in compliance with your invitation for bids for construction of **Lawson Street Sidewalk Improvements**, *Instructions to Bidders* and other documents relating thereto, the undersigned has carefully examined the drawings and specifications as well as the premises and conditions affecting the work and hereby proposes to furnish all labor and materials and to perform all work as required for construction of the improvement, in strict accordance with the contract documents, specifications and drawings, for the amount shown:

TOTAL _____ Dollars
(\$ _____)

If the undersigned is notified of the acceptance of this proposal within forty-five (45) days of the time set for the opening of bids, the undersigned agrees to execute a contract for the above work bid, in the form of the contract bound in these specifications, and to provide a surety bond as required by the specifications.

The undersigned further agrees that the proposal guaranty accompanying this proposal be left in escrow with the Owner; that the liquidated damages which the Owner will sustain by the failure of the undersigned to execute and deliver the above named contract and surety bond, for any or all units of this proposal accepted by the Owner, will be equal to five percent (5%) of the amount bid for such unit or units, and that if the undersigned defaults in executing that contract and in furnishing the surety bond within twenty (20) calendar days of the award of the contract, then the bid guaranty shall become the property of the Owner. If, however, this proposal or any part thereof is not accepted within forty-five (45) days of the times set for the opening of bids, or if the undersigned executes and delivers said contract and surety bond, the bid guaranty shall be returned to the bidder.

The party by whom this proposal is submitted and by whom the contract will be entered into, in case the award is made to him, is

R.W. Scott Construction Co.
Firm Name

Corporation ~~Partnership/Individual~~
(Circle One)

doing business at 4005 West Valley Highway North, Auburn, WA 98001
Address City, State Zip

which is the address to which all communications concerned with this proposal and contract should be sent.

The name of the president, treasurer, and manager of the bidding corporation, or the names of all persons and parties interested in this proposal as partners or principals are as follows:

Name	Address
<u>R.W. Scott, President</u>	_____
<u>Jeff Scott, Vice President</u>	_____
<u>Annette Scott, Treasurer</u>	<u>R.W. Scott Construction Co.</u>
<u>Mike Skagen, Project Manager</u>	<u>4005 West Valley Hwy North</u>
	<u>Auburn, WA 98001</u>

A proposal guaranty in an amount of five percent (5%) of the total bid, based upon the approximate estimate of quantities, at the prices submitted in the bid schedule and in the form as indicated below, is attached hereto:

- CASH IN THE AMOUNT OF \$ _____
- CASHIER'S CHECK IN THE AMOUNT OF \$ _____
- CERTIFIED CHECK \$ _____ PAYABLE TO THE CITY OF BLACK DIAMOND
- PROPOSAL BOND IN THE AMOUNT OF 5 PERCENT OF THE BID

PROPOSAL SIGNATURE SHEET

PROJECT: Lawson Street Sidewalk Improvements

July 7th, 20 14
Date

I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

1. That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.
2. That by signing the signature page of this proposal, I am deemed to have signed and have agreed to the provisions of this declaration.

R.W. SCOTT CONSTRUCTION CO.
Bidder

By: 
Authorized Official

JEFF SCOTT
Printed

Vice President
Title

Address: 4005 West Valley Highway North
Auburn, WA 98001

Receipt of Addenda numbered _____, _____, _____, _____ is hereby acknowledged.

- Note: (1) If the bidder is a co-partnership, so state, giving firm name under which business is transacted.
- (2) If the bidder is a corporation, this proposal must be executed by its duly authorized officials.

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BID BOND FORM

KNOW ALL MEN BY THESE PRESENTS:

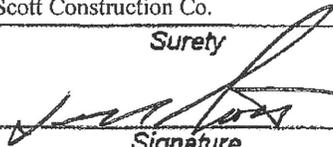
That we, R.W. Scott Construction Co., as Principal, and Fidelity and Deposit Company of Maryland, as Surety, are held firmly bound unto the City of Black Diamond, Washington, as Obligee, in the penal sum of Five Percent (5%) of Bid Amount Dollars, for the payment of which the successors and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

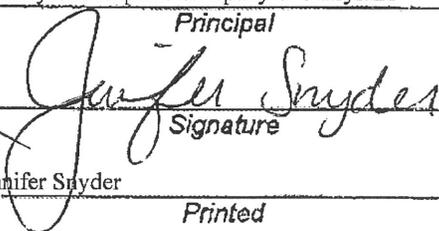
The condition of this obligation is such that if the obligee shall make any award to the Principal for Lawson Street Sidewalk Improvements, according to the terms of the proposal or bid made by the Principal therefore, and the Principal shall duly make and enter into a contract with the Obligee in accordance with the terms of said proposal or bid and award and shall give bond for the faithful performance thereof, with Surety or Sureties approved by the Obligee; or if the Principal shall, in case of failure to do so, pay and forfeit to the obligee the penal amount of the deposit specified in the call for bids, then this obligation shall be null and void; otherwise it shall be and remain in full force and effect and the Surety shall forthwith pay and forfeit to the Obligee, as penalty and liquidated damages, the amount of this bond.

SIGNED, SEALED AND DATED THIS 7th DAY OF July, 2014

R.W. Scott Construction Co.
Surety

Fidelity and Deposit Company of Maryland
Principal

By 
Signature

By 
Signature

Jeff Scott
Printed

Jennifer Snyder
Printed

Title Vice President

Title Attorney-in-Fact

DEPOSIT STATEMENT

Herewith find deposit in the form of certified check, cashier's check or cash in the amount of \$ _____, which amount is not less than five percent of the total bid.

Signature

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BID SCHEDULE

LAWSON STREET SIDEWALK IMPROVEMENTS

NOTE: Unit prices for all items, all extensions, and the total amount bid must be shown. All entries must be typed or entered in ink.

BID SCHEDULE - BASE BID						
Item No.	Spec. Section	Description	Unit	Quantity	Unit Price	Total Amount
1.	1-04	Minor Change	EST	1	\$15,000	\$15,000
2.	1-05	Surveying	LS	1	\$ 4000 ⁻	\$ 4000 ⁻
3.	1-07	SPCC Plan	LS	1	\$ 1000 ⁻	\$ 1000 ⁻
4.	1-07	Private Property Restoration	LS	1	\$ 5000 ⁻	\$ 5000 ⁻
5.	1-09	Mobilization	LS	1	\$18,000 ⁻	\$18,000 ⁻
6.	1-10	Project Temporary Traffic Control	LS	1	\$ 2500 ⁻	\$ 2500 ⁻
7.	1-10	Flaggers and Spotters, Min. Bid \$40	HR	480	\$ 50 ⁻	\$24,000 ⁻
8.	2-01	Clearing and Grubbing	LS	1	\$ 5000 ⁻	\$ 5000 ⁻
9.	2-02	Removal of Structure and Obstruction	LS	1	\$ 3500 ⁻	\$ 3500 ⁻
10.	2-02	Removing Cement Conc. Pavement	SY	35	\$ 25 ⁻	\$ 875 ⁻
11.	2-02	Removing Asphalt Conc. Pavement	SY	1,100	\$ 7 ⁻	\$ 7700 ⁻
12.	2-02	Removing Chain Link Fence	LF	140	\$ 5 ⁻	\$ 700 ⁻
13.	2-02	Adjust Existing Utility to Grade	EA	1	\$ 400 ⁻	\$ 400 ⁻
14.	2-03	Roadway Excavation Incl. Haul	CY	340	\$ 50 ⁻	\$17,000 ⁻
15.	2-03	Unsuitable Foundation Excavation Incl. Haul	CY	50	\$ 15 ⁻	\$ 750 ⁻
16.	2-03	Select Borrow Incl. Haul	TON	70	\$ 15 ⁻	\$ 1050 ⁻
17.	4-04	Crushed Surfacing Top Course	TON	350	\$ 22 ⁻	\$ 7700 ⁻
18.	5-04	HMA Cl. 1/2 In. PG 64-22	TON	175	\$ 175 ⁻	\$ 30,625 ⁻
19.	6-20	Conc. Block Wall	SF	250	\$ 30 ⁻	\$ 7500 ⁻
20.	7-04	12 In. Ductile Iron Storm Sewer Pipe Incl. Trench and Backfill	LF	156	\$ 65 ⁻	\$ 10,140 ⁻
21.	7-05	Catch Basin Type 1	EA	3	\$ 1000 ⁻	\$ 3000 ⁻
22.	7-05	Adjust Manhole	EA	1	\$ 400 ⁻	\$ 400 ⁻

BID SCHEDULE - BASE BID						
Item No.	Spec. Section	Description	Unit	Quantity	Unit Price	Total Amount
23.	7-08	Shoring or Extra Excavation Class B	LS	1	\$ 500 ⁻	\$ 500 ⁻
24.	8-01	Erosion/Water Pollution Control	LS	1	\$ 1000 ⁻	\$ 1000 ⁻
25.	8-01	Inlet Protection	EA	4	\$ 75 ⁻	\$ 300 ⁻
26.	8-01	Silt Fence	LF	200	\$ 7 ⁻	\$ 1400 ⁻
27.	8-01	Seeding, Fertilizing, and Mulching	ACRE	0.1	\$ 10,000 ⁻	\$ 1000 ⁻
28.	8-01	Biodegradable Erosion Control Blanket	SY	475	\$ 5.00 ⁻	\$ 2375 ⁻
29.	8-02	Topsoil Type A	CY	70	\$ 50 ⁻	\$ 3500 ⁻
30.	8-04	Cement Conc. Traffic Curb and Gutter	LF	442	\$ 15 ⁻	\$ 7072 ⁻
31.	8-04	Cement Conc. Pedestrian Curb	LF	150	\$ 15 ⁻	\$ 2250 ⁻
32.	8-04	Cement Conc. Extruded Curb	LF	93	\$ 20 ⁻	\$ 1860 ⁻
33.	8-06	Cement Conc. Driveway Entrance Type 1	SY	35	\$ 35 ⁻	\$ 1225 ⁻
34.	8-12	Chain Link Fence Type 6	LF	121	\$ 35 ⁻	\$ 4235 ⁻
35.	8-14	Cement Conc. Sidewalk	SY	500	\$ 25 ⁻	\$ 12,500 ⁻
36.	8-14	Cement Conc. Curb Ramp Type Parallel Curb Ramp A	EA	1	\$ 1000 ⁻	\$ 1000 ⁻
37.	8-14	Cement Conc. Curb Ramp Type Parallel Curb Ramp B	EA	1	\$ 1000 ⁻	\$ 1000 ⁻
38.	8-14	Cement Conc. Curb Ramp Type Single Direction Curb Ramp A	EA	3	\$ 1250 ⁻	\$ 3750 ⁻
39.	8-21	Permanent Signing	LS	1	\$ 1500 ⁻	\$ 1500 ⁻
40.	8-22	Removing Paint Line	LF	58	\$ 10 ⁻	\$ 580 ⁻
41.	8-22	Paint Line	LF	147	\$ 7 ⁻	\$ 1029 ⁻
42.	8-22	Painted Access Parking Space Symbol	EA	1	\$ 250 ⁻	\$ 250 ⁻
Bid Total:					\$ 214,166.00	

6630
514
CORO

CONTRACT

THIS AGREEMENT, made in four (4) copies, each of which shall be deemed original, and entered into as of the date hereinafter affixed, by and between the City of Black Diamond, Washington, hereinafter called the Owner, and

Contractor Name

HEREINAFTER called the Contractor.

WITNESSETH:

That in consideration of the terms and conditions contained herein and attached and made a part of this Agreement, the parties hereto covenant and agree as follows:

- I. The Contractor shall do all work and furnish all tools, materials and equipment for the construction of **Lawson Street Sidewalk Improvements**, in accordance with and as described in the Contract Documents, which shall include: plans, specifications, Addenda, the 2014 Washington State Department of Transportation *Standard Specifications for Road and Bridge Construction*, and all other documents submitted by the bidder in response to the City's bid, all of which are by this reference incorporated herein and made a part hereof, and shall perform any alterations in or additions to the work provided under this contract and every part thereof.

If said work is not completed within the time specified, the Contractor agrees to pay to the Owner the sum as specified in Section 1.08.9 of the 2014 WSDOT/APWA Standard Specifications for each and every working day said work remains uncompleted and after expiration of the specified time, as liquidated damages. The Contractor shall provide and bear the expense of all equipment, work and labor of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work provided for in this contract and every part thereof and shall guarantee said materials and work for a period of one year after completion of this contract by providing the City with a maintenance bond, in the form attached to the Bid Documents, except as may be modified by the plans, specifications, and/or contract documents.

- II. The City of Black Diamond, Washington, hereby promises and agrees with the Contractor to retain the Contractor to provide the materials and to perform the above described work and to complete and finish the same according to the attached plans and specifications and the terms and conditions herein contained and hereby contracts to pay for the same according to the attached specifications and the schedule of prices bid and hereto attached, at the time and in the manner and upon the conditions provided for in this contract.
- III. The Contractor for him/herself, and for his/her heirs, executors, administrators, successors, and assigns, does hereby agree to the full performance of all the covenants contained herein.

IV. It is further provided that no liability shall attach to the City of Black Diamond, Washington, by reason of entering into this contract, except as expressly provided herein.

V. No change order or combination of change orders which result in an increase or decrease of the total construction costs shall be binding upon the City until approved in writing by the Director of Public Works or a designate who is authorized to execute Change Orders.

COUNTERSIGNED:

this _____ day of _____, 20 ____

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed the day and year first herein above written.

CONTRACTOR

CITY OF BLACK DIAMOND, WASHINGTON

Signature

Mayor

Printed

Title

Federal Tax ID No. _____

Attested:

CITY CLERK

Approved as to form:

CITY ATTORNEY

City of Black Diamond
 PO Box 599
 Black Diamond, WA 98010

Project: Lawson Street Sidewalk Improvements
 Bid Opening: July 7, 2014

BASE BID

			Bidder & Address		R.W. Scott Const. Co. 4005 West Valley Hwy, A Auburn, WA 98001		MVG, LLC 22630 SE 268th Street Maple Valley, WA 98038		Road Const. NW, Inc. PO Box 188 Renton, WA 98057-0188		City Estimate	
Item	Section	Item Description	Unit	Qty.	Unit Bid	Amount	Unit Bid	Amount	Unit Bid	Amount	Unit Bid	Amount
1	1-04	Minor Change	EST	1	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00
2	1-05	Surveying	LS	1	\$4,000.00	\$4,000.00	\$5,000.00	\$5,000.00	\$4,200.00	\$4,200.00	\$5,000.00	\$5,000.00
3	1-07	SPCC Plan	LS	1	\$1,000.00	\$1,000.00	\$2,000.00	\$2,000.00	\$800.00	\$800.00	\$1,000.00	\$1,000.00
4	1-07	Private Property Restoration	LS	1	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$2,300.00	\$2,300.00	\$2,000.00	\$2,000.00
5	1-09	Mobilization	LS	1	\$18,000.00	\$18,000.00	\$15,500.00	\$15,500.00	\$17,000.00	\$17,000.00	\$18,466.60	\$18,466.60
6	1-10	Project Temporary Traffic Control, Min. \$1,000	LS	1	\$2,500.00	\$2,500.00	\$5,000.00	\$5,000.00	\$1,500.00	\$1,500.00	\$5,000.00	\$5,000.00
7	1-10	Flaggers and Spotters, Min. bid \$40	HR	480	\$50.00	\$24,000.00	\$40.00	\$19,200.00	\$40.00	\$19,200.00	\$42.00	\$20,160.00
8	2-01	Clearing and Grubbing	LS	1	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$11,000.00	\$11,000.00	\$2,500.00	\$2,500.00
9	2-02	Removal of Structure and Obstruction	LS	1	\$3,500.00	\$3,500.00	\$5,000.00	\$5,000.00	\$11,000.00	\$11,000.00	\$10,820.00	\$10,820.00
10	2-02	Removing Cement Conc. Pavement	SY	35	\$25.00	\$875.00	\$20.00	\$700.00	\$40.00	\$1,400.00	\$20.00	\$700.00
11	2-02	Removing Asphalt Conc. Pavement	SY	1100	\$7.00	\$7,700.00	\$5.00	\$5,500.00	\$9.00	\$9,900.00	\$5.00	\$5,500.00
12	2-02	Removing Chain Link Fence	LF	140	\$5.00	\$700.00	\$10.00	\$1,400.00	\$4.00	\$560.00	\$4.00	\$560.00
13	2-02	Adjust Existing Utility to Grade	EA	1	\$400.00	\$400.00	\$300.00	\$300.00	\$500.00	\$500.00	\$350.00	\$350.00
14	2-03	Roadway Excavation Incl. Haul	CY	340	\$50.00	\$17,000.00	\$20.00	\$6,800.00	\$26.00	\$8,840.00	\$15.00	\$5,100.00
15	2-03	Unsuitable Foundation Excavation Incl. Haul	CY	50	\$15.00	\$750.00	\$10.00	\$500.00	\$26.00	\$1,300.00	\$50.00	\$2,500.00
16	2-03	Select Borrow Incl. Haul	TON	70	\$15.00	\$1,050.00	\$25.00	\$1,750.00	\$25.00	\$1,750.00	\$30.00	\$2,100.00
17	4-04	Crushed Surfacing Top Course	TON	350	\$22.00	\$7,700.00	\$30.00	\$10,500.00	\$25.00	\$8,750.00	\$40.00	\$14,000.00
18	5-04	HMA Cl. 1/2" PG 64-22	TON	175	\$175.00	\$30,625.00	\$150.00	\$26,250.00	\$140.00	\$24,500.00	\$100.00	\$17,500.00
19	6-20	Conc. Block Wall	SF	250	\$30.00	\$7,500.00	\$10.00	\$2,500.00	\$35.00	\$8,750.00	\$25.00	\$6,250.00
20	7-04	12" Ductile Iron Storm Sewer Pipe Incl. Trech & Backfill	LF	156	\$65.00	\$10,140.00	\$80.00	\$12,480.00	\$80.00	\$12,480.00	\$65.00	\$10,140.00
21	7-05	Catch Basin Type I	EA	3	\$1,000.00	\$3,000.00	\$1,500.00	\$4,500.00	\$1,200.00	\$3,600.00	\$1,100.00	\$3,300.00
22	7-05	Adjust Manhole	EA	1	\$400.00	\$400.00	\$300.00	\$300.00	\$700.00	\$700.00	\$500.00	\$500.00
23	7-08	Shoring or Extra Excavation Cl. B	LS	1	\$500.00	\$500.00	\$1,000.00	\$1,000.00	\$200.00	\$200.00	\$750.00	\$750.00
24	8-01	Erosion/Water Pollution Control	LS	1	\$1,000.00	\$1,000.00	\$500.00	\$500.00	\$500.00	\$500.00	\$2,000.00	\$2,000.00
25	8-01	Inlet Protection	EA	4	\$75.00	\$300.00	\$100.00	\$400.00	\$80.00	\$320.00	\$150.00	\$600.00
26	8-01	Silt Fence	LF	200	\$7.00	\$1,400.00	\$5.00	\$1,000.00	\$4.00	\$800.00	\$5.00	\$1,000.00
27	8-01	Seeding, Fertilizing, and Mulching	ACRE	0.1	\$10,000.00	\$1,000.00	\$5,000.00	\$500.00	\$3,000.00	\$300.00	\$5,000.00	\$500.00
28	8-01	Biodegradable Erosion Control Blanket	SY	475	\$5.00	\$2,375.00	\$3.00	\$1,425.00	\$5.00	\$2,375.00	\$3.00	\$1,425.00

City of Black Diamond
 PO Box 599
 Black Diamond, WA 98010

Project: Lawson Street Sidewalk Improvements
 Bid Opening: July 7, 2014

BASE BID

			Bidder & Address		R.W. Scott Const. Co. 4005 West Valley Hwy, A Auburn, WA 98001		MVG, LLC 22630 SE 268th Street Maple Valley, WA 98038		Road Const. NW, Inc. PO Box 188 Renton, WA 98057-0188		City Estimate	
Item	Section	Item Description	Unit	Qty.	Unit Bid	Amount	Unit Bid	Amount	Unit Bid	Amount	Unit Bid	Amount
29	8-02	Topsoil Type A	CY	70	\$50.00	\$3,500.00	\$20.00	\$1,400.00	\$44.00	\$3,080.00	\$80.00	\$5,600.00
30	8-04	Cement Conc. Traffic Curb and Gutter	LF	442	*\$15.00	*\$6,630.00	\$30.00	\$13,260.00	\$30.00	\$13,260.00	\$25.00	\$11,050.00
31	8-04	Cement Conc. Pedestrian Curb	LF	150	\$15.00	\$2,250.00	\$20.00	\$3,000.00	\$30.00	\$4,500.00	\$20.00	\$3,000.00
32	8-04	Cement Conc. Extruded Curb	LF	93	\$20.00	\$1,860.00	\$15.00	\$1,395.00	\$15.00	\$1,395.00	\$20.00	\$1,860.00
33	8-06	Cement Conc. Driveway Entrance Type 1	SY	35	\$35.00	\$1,225.00	\$100.00	\$3,500.00	\$90.00	\$3,150.00	\$40.00	\$1,400.00
34	8-12	Chain Link Fence Type 6	LF	121	\$35.00	\$4,235.00	\$30.00	\$3,630.00	\$25.00	\$3,025.00	\$20.00	\$2,420.00
35	8-14	Cement Conc. Sidewalk	SY	500	\$25.00	\$12,500.00	\$50.00	\$25,000.00	\$33.00	\$16,500.00	\$25.00	\$12,500.00
36	8-14	Cement Conc. Curb Ramp Type Parallel Curb Ramp A	EA	1	\$1,000.00	\$1,000.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$2,500.00	\$2,500.00
37	8-14	Cement Conc. Curb Ramp Type Parallel Curb Ramp B	EA	1	\$1,000.00	\$1,000.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$2,500.00	\$2,500.00
38	8-14	Cement Conc. Curb Ramp Type Single Direction Curb Ramp A	EA	3	\$1,250.00	\$3,750.00	\$1,500.00	\$4,500.00	\$1,500.00	\$4,500.00	\$2,500.00	\$7,500.00
39	8-21	Permanent Signing	LS	1	\$1,500.00	\$1,500.00	\$2,500.00	\$2,500.00	\$1,000.00	\$1,000.00	\$900.00	\$900.00
40	8-22	Removing Paint Line	LF	58	\$10.00	\$580.00	\$10.00	\$580.00	\$5.00	\$290.00	\$3.00	\$174.00
41	8-22	Paint Line	LF	147	\$7.00	\$1,029.00	\$10.00	\$1,470.00	\$3.00	\$441.00	\$1.00	\$147.00
42	8-22	Painted Access Parking Space Symbol	E	1	\$250.00	\$250.00	\$500.00	\$500.00	\$250.00	\$250.00	\$110.00	\$110.00
TOTAL CONTRACT AMOUNT BID						* \$213,724.00		\$218,740.00		\$223,916.00		\$206,382.60

* denotes mathematical error, errors did not change the outcome of the bid

Capital Improvement Plan 2014 - 2019

Project for the

Street Department

T7

PROJECT TITLE

Lawson Street Sidewalk

13.05

DESCRIPTION

Construct 2150 feet of new 5 foot concrete sidewalk on the north side of Lawson Street to from SR 169 to the east boundary of Lawson Hill Estates. This project does not include curb gutter or street widening. Project cost \$850,000.

BACKGROUND

Lawson Hill Estates and the surrounding area is within 1 mile of the elementary school on Baker Street. The City is partnering with the School District to seek Safe Routes to School grants for this project. It is anticipated that additional funding will be needed to cover the entire cost. Transportation Improvement Board Funding and or potentially MPD mitigation funding may also be available. The City and the School District are planning to cooperate and jointly apply for this grant in 2014 for funding in 2015, and 2016.

COMMENTS

The timing of this project may have to wait for the pedestrian mitigation assistance from the Lawson Hills developer for this project. Other grant funding may also be available to complete the total funding.

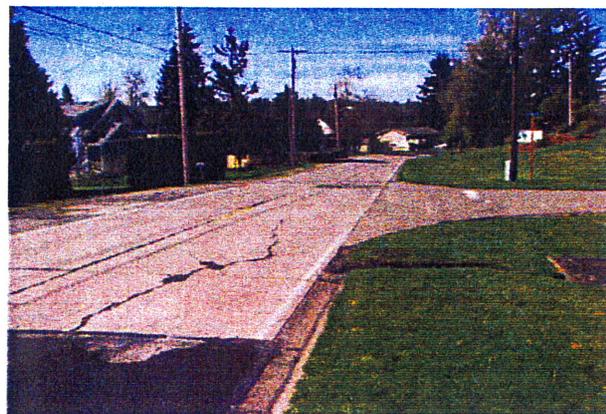
CAPITAL PROJECT COSTS

Land/Right of Way
Design Engineering
Construction Costs
TOTAL COSTS

		Capital Plan 2014 - 2019					
Total \$ Requested 2014-2019		2014	2015	2016	2017	2018	2019
Land/Right of Way	20,000		20,000				
Design Engineering	85,000		85,000				
Construction Costs	745,000			745,000			
TOTAL COSTS	850,000	-	105,000	745,000	-		
Total \$ Requested 2014-2019		2014	2015	2016	2017	2018	2019
Safe Route to School Grant	395,000			395,000			
TIB Pedestrian Grant	150,000			150,000			
Developer/Impact Fees/SEPA	305,000		105,000	200,000			
TOTAL SOURCES	850,000	-	105,000	745,000	-	-	-

REQUESTED FUNDING

Safe Route to School Grant
TIB Pedestrian Grant
Developer/Impact Fees/SEPA
TOTAL SOURCES



CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: AB14-073 Resolution authorizing the Mayor to execute the final amendment to the Ogden Murphy Wallace contract	Agenda Date: July 24, 2014	
	AB14-073	
	Mayor Dave Gordon	
	City Administrator	
	City Attorney Carol Morris	X
	City Clerk – Brenda L. Martinez	
	Community Development – Aaron Nix	
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	
	Parks/Natural Resources – Aaron Nix	
Cost Impact (see also Fiscal Note):	Police – Chief Kiblinger	
Fund Source: General Fund	Public Works – Seth Boettcher	
Timeline:	Court – Stephanie Metcalf	
Agenda Placement: <input type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input checked="" type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Resolution No. 14-965; final amendment		
SUMMARY STATEMENT: The City entered into a professional services agreement with Ogden Murphy Wallace relating to a sexual harassment complaint and public records requests, which have been amended twice. Costs associated with performing this work have exceeded the approved amount by \$5,000 and it is the desire of the parties to amend the agreement and increase the not-to-exceed amount by \$5,000 to cover the Attorney's final invoice. FISCAL NOTE (Finance Department): This resolution provided the needed increased authority to cover the costs of the Ogden Murphy Wallace invoices. A Budget change will be before council on July 24, 2014 to include all the budget authority resolutions related to the sexual harassment complaint.		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: Finance Committee Chair has reviewed and recommends approval by Council.		
RECOMMENDED ACTION: MOTION to adopt Resolution No. 14-965, authorizing the Mayor to execute the final amendment to the Ogden Murphy Wallace contract.		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
July 24, 2014		

RESOLUTION NO. 14-965

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO EXECUTE THE FINAL
CONTRACT AMENDMENT TO THE OGDEN MURPHY
WALLACE CONTRACT**

WHEREAS, the parties entered into an agreement for professional services relating to a sexual harassment complaint and public records requests, which has been amended twice; and

WHEREAS, the Attorney's final invoice has exceeded the authorized amount by \$5,000.00; and

WHEREAS, the parties wish to amend the Agreement to increase the not-to-exceed amount by \$5,000.00 to cover the Attorney's final invoice;

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

Section 1. The Mayor is hereby authorized to execute the final amendment to the Ogden Murphy Wallace, PLLC contract, substantially in the form attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A SPECIAL MEETING THEREOF, THIS 24TH DAY OF JULY,
2014.**

CITY OF BLACK DIAMOND:

Dave Gordon, Mayor

Attest:

Brenda L. Martinez, City Clerk

**FINAL AMENDMENT
TO AGREEMENT FOR ATTORNEY SERVICES**

THIS FINAL AMENDMENT to the Agreement for Attorney Services dated _____ is hereby executed by and between the City of Black Diamond, a Washington municipal corporation (hereinafter "the City"), and Ogden Murphy Wallace, PLLC (hereinafter "the Attorney").

WHEREAS, the parties entered into an agreement for professional services relating to a sexual harassment complaint and public records requests, which has been amended twice; and

WHEREAS, on June 12, 2014, the Attorney sent a final invoice to the City in the amount of \$7,981.10 for all work performed for the city which is \$5,000 more than has been provided for by contract to date; and

WHEREAS, the parties wish to amend the Agreement to increase the not-to-exceed amount by \$5,000.00 to cover the Attorney's final invoice; and

NOW, THEREFORE, the City and the Attorney in consideration of the mutual benefits to be derived and the promises contained herein, agree as follows:

1. The contract as amended ("Agreement") is hereby amended in, but only in, the following respect:

Compensation. The Attorney's final invoice under this Agreement for the identified scope of work, dated June 12, 2014 is \$5,000.00. By this Final Amendment, the City Council hereby increases the do-not-exceed amount of \$37,500 in the Agreement by an additional Five Thousand Dollars (\$5,000), to pay this final invoice, for a sum total of \$42,500. The Attorney has performed all Work contemplated by all of the Agreements between the parties, and the Attorney agrees that it will not send the City any additional invoices for this work.

2. In all other respects, the underlying Agreements between the parties remain in full force and effect.

DATED this _____ day of _____, 2014.

CITY OF BLACK DIAMOND

Mayor Dave Gordon

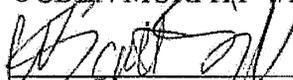
ATTEST:

Brenda Martinez, City Clerk

APPROVED AS TO FORM:

Carol A. Morris, City Attorney

OGDEN MURPHY WALLACE, PLLC



W. Scott Snyder, Special Counsel

OGDEN
MURPHY
WALLACE
ATTORNEYS

STATEMENT

FED ID 91-0344327

City of Black Diamond
c/o Mayene Miller
24301 Roberts Drive
P.O. Box 599
Black Diamond, WA 98010

June 12, 2014

Re: Todd Complaint

Matter No.: 13105.000001
Invoice No.: 712800 Billing Principal: W. Scott Snyder

For Professional Services Rendered Through June 12, 2014

04/30/14	WSS	Issues regarding sick leave (Todd); investigation - gather documents for investigator	.50	137.50
05/01/14	WSS	Letter from J. Downer; emails to and from C. Morris and N. Anderson	.70	192.50
05/02/14	WSS	Seven emails and responses - K. Cappel, Investigator and C. Morris; follow up to emails from N. Anderson and C. Morris regarding comments of Mayor	1.10	302.50
05/04/14	WSS	Telephone conference with and emails to and from K. Cappel	.60	165.00
05/06/14	WSS	Telephone conference with C. Morris, K. Cappel, S. DiJulio, C. Benson, A. Key; message and phone call; emails to and from K. Cappel, C. Benson and J. Downer	4.00	1100.00
05/07/14	WSS	Emails to and from N. Anderson and J. Downer regarding investigation, interviews and privilege issues; telephone conference with and email to and from K. Cappel; C. Benson and N. Anderson discussions regarding privilege waiver; final PRA request	3.80	1045.00

OGDEN
MURPHY
WALLACE
ATTORNEYS

STATEMENT

FED ID 91-0344327

City of Black Diamond
Matter Number: 13105.000001

June 12, 2014
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Invoice No.: 712800

05/08/14	WSS	Emails and telephone calls with J. Downer, B. Martinez, N. Anderson and C. Benson regarding records, investigations; emails and telephone conference with K. Cappel, S. Dijulio (15 total emails)	2.00	550.00
05/09/14	WSS	Emails S. Dijulio, B. Martinez, J. Downer; telephone conference with K. Cappel	1.20	330.00
05/12/14	WSS	Draft settlement proposal (1.0); contract issues, draft addendum (n/c .6); email S. Oak, respond regarding PRA (.6)	1.60	440.00
05/13/14	WSS	J. Downer and N. Anderson - negotiation and drafting; research - all regarding severance agreement; K. Cappel discussion regarding investigation	6.00	1650.00
05/14/14	WSS	Proof, revise and send Settlement Agreement to J. Downer; telephone conference regarding same	1.00	275.00
05/15/14	WSS	Negotiation, drafting emails regarding Severance Agreement (5.0) prepare for (draft resolution with options) meeting, travel to and attend Council meeting and executive session (5.0 total - n/c 1 hour of waiting) (10.0 total, bill 9.0)	9.00	2475.00
05/16/14	WSS	PRA requests (Oak); wind up investigation and severance agreement; telephone calls and multiple emails; J. Downer, N. Anderson, B. Martinez, C. Morris and M. Miller	5.80	1595.00
05/19/14	WSS	Emails to and from M. Miller and J. Downer	.40	110.00
05/19/14	BFP	Review email and documents on PRA request, and discuss with S. Snyder	.50	100.00
05/20/14	WSS	D. Ham, S. Oak, B. Martinez discussions regarding PRA requests; emails	1.30	357.50

OGDEN
MURPHY
WALLACE
ATTORNEYS

STATEMENT

FED ID 91-0344327

City of Black Diamond
Matter Number: 13105.000001

June 12, 2014
Page 3
Invoice No.: 712800

05/21/14 WSS Complete S. Oak record review; closing letter with transmittal of documents 2.50 687.50

05/30/14 WSS Telephone conference with B. Martinez and K. Keen regarding PRA request .30 82.50

Number of Hours Worked	42.30	For Services Rendered \$	11595.00
		Less Courtesy Discount \$	(3732.50)

Total Hours Billed	28.68	For Services Rendered \$	7862.50
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-----TIME AND FEE SUMMARY-----	RATE	HOURS	FEES
-----TIMEKEEPER-----			
W. Scott Snyder	275.04	28.34	7794.69
Bio Park	199.44	.34	67.81
TOTALS		28.68	7862.50

Reimbursable Costs

Document Reproduction	48.60
05/29/14 ABC Legal Services - Messenger Service - Order # 20780771 on 5/29/14	70.00

Total Reimbursable Costs \$ 118.60

OGDEN
MURPHY
WALLACE
ATTORNEYS

STATEMENT

FED ID 91-0344327

City of Black Diamond
Matter Number: 13105.000001

June 12, 2014
Page 4
Invoice No.: 712800

Total Amount Billed on This Invoice	\$	7981.10

Amount Due on This Invoice	\$	7981.10
		=====

If you have funds on deposit in our trust account and we do not have an agreement with you to the contrary, trust funds applied to this invoice will be credited to Ogden Murphy Wallace P.L.L.C. 15 days from the date of this invoice unless we hear from you.

OGDEN
MURPHY
WALLACE
ATTORNEYS

STATEMENT

FED ID 91-0344327

City of Black Diamond
Matter Number: 13105.000001

June 12, 2014
Page 5
Invoice No.: 712800

Total Amount Billed on This Invoice	\$	7981.10
Less Trust Applied	\$	0.00

Total Amount Now Due	\$	7981.10

=====

If you have funds on deposit in our trust account and we do not have an agreement with you to the contrary, trust funds applied to this invoice will be credited to Ogden Murphy Wallace P.L.L.C. 15 days from the date of this invoice unless we hear from you.

**** Please Remit This Page With Your Payment ****

Thank You!