

# CITY COUNCIL AGENDA BILL

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

| ITEM INFORMATION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                       |   |
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| <b>SUBJECT:</b><br><br><b>Resolution No. 15-1061, regarding consent to assignment of certain water supply agreements.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <b>Agenda Date: December 17, 2015</b> |   |
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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Mayor Carol Benson                    |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | City Administrator                    |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | City Attorney Carol Morris            | X |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | City Clerk – Brenda L. Martinez       |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Com Dev/Nat Res – Barb Kincaid        |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Finance – May Miller                  |   |
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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Police – Chief Kiblinger              |   |
| Cost Impact (see also Fiscal Note): \$                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Public Works – Seth Boettcher         |   |
| Fund Source: --                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Court – Stephanie Metcalf             |   |
| Timeline:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                       |   |
| <b>Agenda Placement:</b> <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                       |   |
| <b>Attachments: Resolution No. 15-1061; Memo; Letter from Public Works Director; Crown Letter</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                       |   |
| <b>SUMMARY STATEMENT</b><br>The Villages LP and Lawson LP (Collectively the Master Developer) have sold their Black Diamond assets to Crown Community Development Black Diamond Partners LLC (Assignee). On November 11, 2015, CC Black Diamond Partners asked the City to allow it to assume the rights and obligations of Villages LP and Lawson LP under a number of agreements that the latter two developers executed with the City. Some, but not all of these agreements require the City to provide its formal consent. For your information about the specific assignment clauses in each agreement, the City Attorney has drafted a memo (attached) which lists each of the agreements and the applicable clause.<br><br>City staff has determined that in order for CC Black Diamond Partners to assume the financial responsibilities under each of these agreements, that it would have to have \$2,888,300 in available funds. The proposed assignee has proposed that it provide the City with a letter of credit in this amount, to secure those obligations/responsibilities.<br><br>At this point in time, we do not have the letter of credit and the City Attorney has not yet approved the form of the letter of credit. However, we expect this to take place on or before December 15, 2015.<br><br>The Mayor and City staff has determined that the letter of credit in a form acceptable by the City Attorney will meet the requirements of the assignment clauses of these agreements, and recommend that the Council to vote on the attached resolutions to agree to and/or formalize the assignment of the agreements to CC Black Diamond Partners, LLC. |                                       |   |
| <b>FISCAL NOTE (Finance Department):</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                       |   |
| <b>COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                       |   |
| <b>RECOMMENDED ACTION: MOTION to adopt Resolution No. 15-1061, regarding consent to assignment of certain water supply agreements.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                       |   |

| <b>RECORD OF COUNCIL ACTION</b> |               |             |
|---------------------------------|---------------|-------------|
| <i>Meeting Date</i>             | <i>Action</i> | <i>Vote</i> |
| December 17, 2015               |               |             |
|                                 |               |             |

## RESOLUTION NO. 15-1061

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON REGARDING CONSENT TO ASSIGNMENT OF CERTAIN WATER SUPPLY AGREEMENTS

WHEREAS, in 2003, the City of Black Diamond entered a set of agreements known as (a) the Water Supply And Facilities Funding Agreement ("WSFFA") by and among the City of Black Diamond, Plum Creek Land Company, Palmer Coking Coal Co., and Black Diamond Associates, Ltd., (b) the Palmer Coking Coal Company In-City WSFFA, (c) the Plum Creek Land Company In-City WSFFA, and (d) the Three Party Agreement by and among Plum Creek Land Company, Black Diamond Associates, Ltd., and Palmer Coking Coal Company (collectively the "2003 Water Agreements"); and

WHEREAS, the 2003 Water Agreements addressed water supply for the City of Black Diamond generally, as well as water supply for future real estate development projects which are now known as The Villages and Lawson Hills Master Planned Developments; and

WHEREAS, the 2003 Water Agreements authorized the posting of Adequate Assurances, defined to mean adequate security interests to cover certain financial obligations; and

WHEREAS, CCD Black Diamond Partners LLC, a Delaware Limited Liability Company, is acquiring The Villages and Lawson Hills Master Planned Developments from BD Lawson Partners, LP and BD Village Partners, LP; and

WHEREAS, the Adequate Assurances posted by BD Village Partners, LP, BD Lawson Partners, LP or their predecessors shall remain with the City of Black Diamond for the benefit of CCD Black Diamond Partners LLC; and

WHEREAS, the 2003 Water Agreements authorize any party to assign all or a portion of their rights upon written notice to the other party, and provide that assignment must have the City's consent which "consent will not be unreasonably withheld," and include that the assignment will be effective within 60 days following notice by the assignor; and

WHEREAS, BD Lawson Partners, LP and BD Village Partners, LP seek City consent to assignment of the 2003 Water Agreements to CCD Black Diamond Partners LLC, together with release of BD Lawson Partners, LP and BD Village Partners, LP from all obligations under the 2003 Water Agreements and assumption of those obligations by CCD Black Diamond Partners LLC; and

WHEREAS, the City staff has determined that the financial obligations in these agreements can be secured by a letter of credit in the amount of \$2,888,300 and CCD Black Diamond Partners LLC provided such letter of credit to the City by December 17, 2015; and

WHEREAS, the City Council has reviewed this request for assignment and release from obligations, wishes to confirm that it has reviewed evidence that assignee CCD Black Diamond Partners LLC can financially perform the obligations under the 2003 Water Agreements, and wishes to confirm this Resolution as its final action related to the assignment;

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

Section 1. The City Council determines that, based on the above, the Council consents to assignment of all obligations of BD Lawson Partners, LP and BD Village Partners, LP by CCD Black Diamond Partners LLC in the 2003 Water Agreements.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 17TH DAY OF DECEMBER, 2015.**

CITY OF BLACK DIAMOND

\_\_\_\_\_  
Carol Benson, Mayor

Attest:

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Brenda L. Martinez, City Clerk