

RESOLUTION NO. 08-554

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO AMEND THE EXISTING INTERLOCAL AGREEMENT FOR FIRE PROTECTION AND RELATED EMERGENCY SERVICES BETWEEN KING COUNTY FIRE PROTECTION DISTRICT NO. 44 AND THE CITY OF BLACK DIAMOND BY ADOPTING A SECOND ADDENDUM TO THAT INTERLOCAL AGREEMENT

WHEREAS, the City and King County Fire Protection District No. 44 ("District 44") entered into an Interlocal Agreement dated April 6, 2006 which is still in effect, and under which fire prevention, education, suppression and emergency medical care services (collectively "Fire Department Services") are provided for the property and citizens within the City of Black Diamond; and

WHEREAS, since entering into this Agreement, an election was held in which the voters chose to merge King County Fire Protection District No. 17 ("District 17") with District 44, with the merger to become effective on January 1, 2009; and

WHEREAS, the existing Agreement needs to be amended to reflect the upcoming merger of these two fire districts; and

WHEREAS, the merger also provides an opportunity to simplify the provisions in the Agreement related to determining cost of service; and

WHEREAS, THE City is authorized under RCW 35A.11.040 and Chapter 39.34 RCW to enter into the Second Addendum. Therefore,

BE IT RESOLVED that the Mayor is hereby authorized to enter into the Second Addendum to the Interlocal Agreement for Fire Protection and Related Emergency Services, substantially in the form attached as Exhibit A;

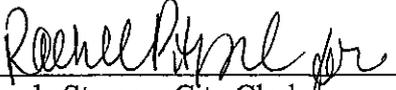
BE IT FURTHER RESOLVED that the Mayor is authorized to make minor changes to said Agreement in order to take into account scrivener's corrections or administrative matters that do not affect the substance of the Agreement and are within his authority as the City's Chief Administrative Officer.

ADOPTED by the City Council at an open public meeting held on the 20th day of November, 2008.



Mayor Howard Botts

Attest:



Brenda Streepy, City Clerk

VSIClient/BlackDiamondGeneral 18256/RESOL/Resol FireAddendum

ORIGINAL

When Recorded, Return To:

Loren D. Combs
VSI Law Group PLLC
3600 Port of Tacoma Road, Suite 311
Tacoma, WA 98424

**SECOND ADDENDUM
TO THE
INTERLOCAL AGREEMENT FOR FIRE PROTECTION
AND RELATED EMERGENCY SERVICES
BETWEEN
KING COUNTY FIRE PROTECTION DISTRICT NO. 44
AND THE CITY OF BLACK DIAMOND**

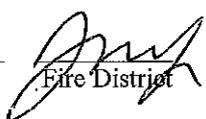
1. Date and Parties. This Second Addendum ("2nd Addendum") to the April 6, 2006 Interlocal Agreement for Fire Protection and Related Emergency Services between King County Fire Protection District No. 44 and the City of Black Diamond ("ILA"), for reference purposes only, is dated the 20 day of November, 2008 ("Effective Date"), and is entered into by and between KING COUNTY FIRE PROTECTION DISTRICT NO. 44, herein referred to as "District 44," and the CITY OF BLACK DIAMOND, herein referred to as the "City."

2. Authority.

2.1 The ILA was entered into by the City under the authority of RCW 35A.11.040 as authorized by the City Council on the 6th day of April, 2006 by the adoption of Resolution No. 399.

2.2 The ILA was entered into by District 44 under the authority of RCW 52.12.031 as authorized by its Board of Commissioners on the 28th day of March, 2006 by the adoption of Resolution No. 405 2006.


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2.3 The 2nd Addendum complies with the provisions of the Interlocal Cooperation Act as set forth RCW Chapter 39.34, which also provides additional authority for the contracting parties to enter into the 2nd Addendum.

2.4 The 2nd Addendum is entered into by the City under the authority of RCW 35A.11.040 as authorized by the City Council on the ___ day of _____, 2008 by the adoption of Resolution No. _____.

2.5 The 2nd Addendum is entered into by District 44 under the authority of RCW 52.12.031 as authorized by its Board of Commissioners on the 11 day of NOV, 2008 by the adoption of Resolution No. 08-434

3. General Recitals.

3.1 The City and King County Fire Protection District No. 17 ("District 17") entered into an agreement dated the 3rd day of October 2002, a true and correct copy of which is attached as Exhibit 1 to the 2nd Addendum ("District 17 Agreement"). The District 17 Agreement authorized the City to provide fire prevention, education, suppression and emergency medical care service (collectively "Fire Department Services") for the property and citizens within District 17.

3.2 The parties hereto entered into the ILA because; 1) District 44 had (and continues to have) a substantially larger staff than the City, and the economies of scale that would arise by it serving the City and District 17 service areas would allow it to provide better response times to the City and District 17, at a cost that is less than or equal to what was currently costing the City and District 17 to provide the current level of service and 2) it would allow District 44 to provide on behalf of the City and District 17 the Fire Department Services contemplated by the District 17 Agreement.

3.3 In anticipation of a vote by the citizens to authorize a merger of District 17 into District 44, the two districts and the City entered into a Memorandum of Agreement dated the 17th day of April, 2008 ("MOA").

3.4 The election to merge was held and the merger was approved, and the merger will become effective on January 1, 2009.

3.5 The merger necessitates the amendment of the ILA in order to eliminate the references to issues that are only relevant while District 17 continued to exist as a separate legal entity.



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3.6. Since the parties are intending to amend the ILA in order to make changes necessitated by the merger, and since both parties to the ILA are pleased with the existing relationship between they have also decided to add simplified provisions relating to determining the cost of service.

3.7 For ease of reference and ease of use, the parties have set forth in this Amendment all of the provisions of the ILA and the June 15, 2007 First Addendum to the ILA ("First Addendum") that will remain in effect, so that, except for historical purposes, it will no longer be necessary to refer back to the ILA or the First Addendum, but all operative provisions will be set forth in their entirety in this 2nd Addendum.

4. 2ND Addendum Term.

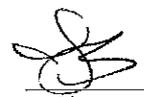
4.1 The ILA term commenced on the April 6, 2006, and the term of the 2nd Addendum, which incorporates the terms of the ILA, except as herein modified, shall remain in effect until terminated by operation of law, or in accordance with sections 4.2, 4.3 or 4.4 below.

4.2 The 2nd Addendum may be terminated by District 44 if the City fails to timely make payments required under the 2nd Addendum terms. District 44 may seek specific performance of the 2nd Addendum or such other equitable relief as may be deemed appropriate by the arbitrator.

4.3 The City may terminate the 2nd Addendum if District 44 fails to provide the services required to be provided as set forth in the 2nd Addendum. The City may seek specific performance of the 2nd Addendum or such other equitable relief as may be deemed appropriate by the arbitrator.

4.4 Either party may terminate the 2nd Addendum, but the effective date for termination shall be the 1st day of the calendar year that is at least 1095 days from the date that the written notice of intent to terminate is provided to the other party. The parties may agree, by subsequent written addendum to this 2nd Addendum, to an earlier termination date.

4.5 If either party seeks to terminate the 2nd Addendum pursuant to either paragraph 4.2 or 4.3, then they must first give the other party thirty (30) days notice of the intent to terminate and the reasons therefor. If the other party disputes the legitimacy of the grounds for termination under the terms of the 2nd Addendum, then the 2nd Addendum shall not terminate until such time as the dispute resolution process of paragraph 26 has been completed. If the matter proceeds to arbitration and arbitrator determines the grounds for termination are valid then the 2nd Addendum shall terminate thirty (30) days from the date of the arbitrator's decision.


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5. Services to be Provided by District 44 - Generally.

5.1 District 44 will provide to the City, and to the people and property within the City limits, the services provided within District 44's current service area, which includes fire suppression, emergency medical services, hazardous materials incident response, administrative services and dispatching services as further elaborated below. The response time level of service for fire suppression that is being used for purposes of this agreement, and the cost of services related thereto, is for that District 44 arrive at 80 percent of the calls within the City within 9 minutes of the call for service. If the City desires a higher level of service, then the parties will meet to negotiate the fair rate of compensation that will be needed to provide that level of service.

5.2 Such services shall be rendered on the same basis as such services are rendered to other areas within the District or with which the District has contracts, but the District assumes no liability for failure to do so by reason of any circumstances beyond its control. In the event of simultaneous fires or medical aid calls within the City and outside of the City whereby facilities of the District are taxed beyond its ability to render equal protection, then officers and agents of the District shall have discretion as to which call shall be answered first. The District shall be the sole judge as to the most expeditious manner of handling and responding to emergency calls. In such cases, mutual aid from nearby fire agencies shall be requested as per the King County Mutual Aid Agreement.

6. Dispatch Services.

6.1 Dispatch services shall be provided by District 44 through contract with Valley Communications. The fee for this service is included in the cost of service set forth in paragraph 14 below.

7. Fire Suppression Services.

7.1 District 44 shall provide the same fire suppression services it provides elsewhere in District 44 service area, subject to the staffing requirements and equipment requirements set forth below.

8. Fire Prevention Services.

8.1 District 44 will provide fire prevention and education services to the City and to the property owners, residents and businesses within the City. District 44 will provide a minimum of one full-time Public Education/Prevention specialist to assist in providing this service. This person is in addition to the current District staffing in District 44's Prevention Division.

8.2 It is anticipated that the City and District 44 will develop an implementation plan that will highlight the priority events for the City, and District 44 will then prioritize its staffing attention to accommodate that priority scheduling. It is assumed that District 44, will, throughout the year, receive from residents, property owners, and/or business people within the City, requests for other prevention and education services and District 44 will accommodate those requests, as staffing allows, as it would do under similar circumstances for requests within District 44 service area.

9. Emergency Medical Services.

9.1 District 44 will provide emergency medical service at a BLS level of service through the use of EMT certified personnel. In the event a private ambulance unit is needed for patient transport and it is not available, or the anticipated delay in arrival by the private transport would be, in the opinion of District personnel, detrimental to the patient's health and welfare, District 44 will transport the patient in a District aid car. Advance life support will be provided by King County Medic One.

10. Staffing for Emergency Medical Services and Fire Suppression Services.

10.1 District 44 shall provide a minimum staffing level within the City service area, at a City facility, a minimum of two (2) on duty personnel twenty-four hours a day, seven days per week. This shall be referred to as the minimum staffing level.

10.2 It is intended that the minimum staffing level will be met by a combination of career and volunteer personnel. However, District 44, if necessary to meet the minimum staffing level, shall use overtime career personnel at no additional cost to the City. There shall be a minimum of two (2) career personnel from 0600 hours to 1800 hours each day. It is anticipated that there would be a minimum of two (2) volunteer personnel from 1800 hours to 0600 hours each night. Each day from 0600 hours to 1800 hours there shall be at least one (1) career personnel stationed within the City with a rank no lower than lieutenant.

10.3 The minimum staffing personnel shall have the qualifications necessary to meet the emergency service level of service set forth in paragraph 9.1.

10.4 The City and District shall periodically review staffing level needs in order to take into account needed levels of service for the City as its population and commercial base increases.

11. Administrative Services.

11.1 All administrative services currently performed by District 44 for District operations shall also be performed relating to the services provided to the City pursuant to the terms of the 2nd Addendum.

12. Hazardous Materials Incident Response.

12.1 District 44 shall provide operational level hazardous materials response capabilities at the same level currently provided to its service area, either by District employees, or by contract. The service to be provided by District 44 does not include clean up, remediation or cost recovery from hazardous materials.

13. Fire Marshal Services.

13.1 District 44 agrees to provide the following Fire Marshal services within the boundaries of the City, utilizing State Codes and local ordinances as adopted by the City: to include, but not be limited to, Development plan review and approval; witness testing of sprinkler and other fire suppression systems and detection systems in new construction; witness testing of gas pipes in new construction; inspection and witness testing of fire flows in new construction; occupancy inspections; wood stove inspections; fireworks permit and other related permits; code interpretation and enforcement in conjunction with construction; inspection of commercial buildings, and testing of fire alarm systems for certification in new construction; and ongoing existing building, facilities and properties inspections. Such services shall also include periodic meetings with and consulting for appropriate City staff and officials.

13.2 The City shall designate the Fire Marshal for King County Fire District 44 as the Fire Marshal for the City of Black Diamond.

13.3 Code enforcement shall be the responsibility of the City through the City's code enforcement department and staff. District 44 shall report code enforcement violations and problems directly to the City.

13.4 The Fire Marshal will work closely with, consult and meet with City building, planning and code enforcement officials to ensure a coordinated effort.

13.5 All permits shall be issued by and under the authority of the City. District 44 shall work closely with the City as required in the issuance of permits related to fire prevention services.

13.6 Fire Marshall services provided herein shall not include fire investigation services. Fire investigation services will be provided in the City through the City contracting with another agency or providing fire investigation services through some other manner. District 44 will provide, upon request from the City, a copy of any investigation report it creates and will cooperate with the City and its investigators during the course of any and all fire investigations within the City.

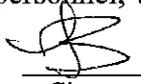
14. Cost of Services.

14.1 The City shall pay to District 44 the sum of four hundred thirty thousand eight hundred twenty nine dollars (\$430,829.00) for calendar year 2008, with the first payment required by paragraph 14.2 having been timely made prior to the execution of the 2nd Addendum. In addition, for calendar year 2008 only, the City shall pay two hundred thousand five hundred forty four dollars (\$200,544.00), one half of which has already been paid and the balance will be paid on November 15, 2008. This one-time payment is to reimburse District 44 for services to the District 17 service area in calendar year 2008, prior to its absorption into the District 44 service area that takes effect on January 1, 2009.

14.2 The fee for services for each calendar year shall be paid in equal installments, with the first payment due no later than May 15th of the calendar year in which services are provided, and the second payment due no later than November 15th in the calendar year in which service is provided.

14.3 Commencing with payment due for services in calendar year 2009, the cost of services shall be increased by the percentage increase in the All Urban Consumers Index (CPI-U) (1982-1984=100) for the Seattle-Tacoma-Bremerton area for that period from June to June of each year, commencing with the 2007-2008 cycle, as specified in the Bureau of Labor Statistics, United States Department of Labor, or its successor index. Provided, if the total amount of this increase would be less than the increase attributable to the total costs associated with increases in the cost of labor for services provided to the City, as a result of increases in a collective bargaining agreement taking effect after the effective date of this agreement, then the amount of increase shall be adjusted to take into effect this additional amount. In addition to any adjustments in the base price for services necessitated as a result of the City requesting a different level of service, or as a result of City growth, as addressed in section 14.6 below, the parties agree to meet in 2013, and each and every 5 years thereafter, to see if additional adjustments to the base rate are appropriate based upon the fair rate of compensation for such services in similarly situated service areas.

14.4 If any local, state, or federal requirements are enacted that will significantly increase the responsibilities to be provided by District 44 personnel, then the City,


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at least thirty (30) days before the effective date of the requirement, will meet with District 44 to discuss the financial impact of the new requirement, and shall adjust the fee to take into account the financial impact, if any.

14.5 As consideration for the provision of fire marshal services as described in Section 13 above, the City agrees to pay District 44 the sum of forty five dollars (\$45.00) per hour for services provided through December 31, 2008. Commencing calendar year 2008, the rate of compensation shall be adjusted annually as provided in Section 14.3 above.

14.6 If the nature and scope of fire prevention services increase significantly due to an increase in the size of the City and/or escalation in new construction, requiring District 44 to provide additional resources to perform the work, the City and District 44 shall negotiate an adjustment to the compensation rates to take into account the financial impact to District 44, if any.

14.7 Any other associated costs for fire prevention services for a building, operation or premises, other than those services described in Section 13, such as technical assistance requested by an owner or owner's agent, shall be paid by the owner or agent or as agreed by the City, without additional charge to the City or District as referenced in the International Fire Code.

14.8 There is currently a voted levy for EMS services that the citizens of Black Diamond approved, and the levy amount is currently being collected by King County and paid to the City. The City shall continue to be entitled to retain those funds to assist it in paying the cost of services provided by this agreement. This provision shall also apply to future levys approved by City of Black Diamond voters for EMS or other emergency services and/or equipment.

15. Consultation.

15.1 The Commissioners and the City Council shall meet as frequently as necessary, but no less than once per year, to discuss issues relating to this agreement.

15.2. The Fire Chief shall attend City Council meetings, on an as needed/requested basis in order to apprise the City of District activity and to consult with the City Council relative to the level of response times, service and programs being provided by District 44.

15.3 The City shall consult with District 44 regarding any proposed purchases of fire apparatus, as provided for in the 2nd Addendum, prior to making the decision to purchase


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the apparatus. It is intended that although the City shall be the ultimate decision-maker with regard to such matters that District 44 will have timely input with regard thereto.

16. Personnel.

16.1 All personnel associated with performing the services required to be performed by District 44, shall be District 44's responsibility, including managing and training volunteers. District 44 shall only allow personnel properly trained in their respective job duties and functions to perform services required by the 2nd Addendum.

16.2 The Fire Chief of District 44 is hereby designated and appointed the Fire Chief for the City for all intents and purposes.

17. Fire Stations – Staffing.

17.1 The City has two fire stations, Station 98 and Station 99. It is intended that Station 98 will be staffed 24 hours per day, seven days per week, and Station 99 will respond with volunteers.

17.2 If the City builds another Fire Station in the downtown Black Diamond area to replace Station 99, or substantially upgrades Station 99 so that full-time staffing and adequate equipment could be quartered at that station, then it is intended that Station 98 would become the all volunteer station and Station 99 would be staffed at all times.

18. Fire Stations – Maintenance.

18.1. District 44 shall be responsible for grounds maintenance, and normal routine maintenance and repair of all improvements at the Fire Stations, including fixtures and equipment and window and door replacement and repair. The City shall be responsible for major repairs to the structure, and replacement of the roof, unless the necessity for the repair is a result of the negligence of District 44 or its personnel. In the case of damage caused by the negligence of District 44 or its personnel, District 44 shall be required to repair the damage.

18.2 The parties acknowledge that the City may at some time choose to substantially remodel or replace Station 99. The cost of doing so shall solely be the responsibility of the City. District 44 will however, work cooperatively with the City, without additional charge, to provide input to the City and its chosen design team, on the design and equipping of a new or substantially remodeled station.

19. Fire Stations – Use and Control.

19.1 During the 2nd Addendum term, Stations 98 and Station 99 facilities shall be under the direction and control of District 44, subject to the City's right, with reasonable notice, to enter the premises to inspect the facilities and equipment, and to otherwise assure compliance with the terms of the 2nd Addendum and applicable laws and regulations, or to perform work required to be performed by the City pursuant to the 2nd Addendum terms. The City shall retain ownership of the facilities and the real property upon which they are situated, subject to the terms and conditions of the 2nd Addendum. Provided, if the City determines to relocate either Station, then District 44's right to use a facility shall be deemed terminated when the City ceases to authorize the facility's use for fire services.

20. Equipment-Rolling Stock

20.1 The City shall provide, for use by District 44, two engines, one aid car, one brush truck and two support vehicles. District 44 shall provide all other rolling stock necessary to provide acceptable levels of fire suppression services and emergency aid services.

20.2 The parties agree that City Engine 98, City Engine 981 and City Aid unit 98 are the engines and aid car that will be provided by the City to meet the requirements of paragraph 20.1. Each unit will also be equipped by the City with the standard complement of equipment as referenced by NPFA 1901 and WAC 296-305. This equipment shall be replaced at the City's expense when the parties agree that the equipment has reached the end of its useful life.

20.3 City Engine 99 will remain at Station 99 for the District's use, if the District chooses to use City Engine 99. If the City expands Station 99, or builds a new station within the City center to replace Station 99, then City Engine 99 shall be released to the City for disposal as the City deems appropriate. After the Effective Date all City Fire Department rolling stock not mentioned above will be disposed of by the City in such manner as the City deems appropriate.

20.4 All equipment shall be stationed at the fire station that the Fire Chief determines will provide the best coverage for the areas to be served. The Fire District may house other resources that are not the property of the City at City Fire Stations that the Fire Chief determines will best provide service to the areas served and complies with Paragraph 20.

20.5 If the City's growth results in the need for additional rolling stock, such as an engine or special apparatus to serve multiple story buildings, then the City shall be financially responsible for the acquisition of such equipment.


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20.6 District 44 shall be responsible for the routine repair and maintenance of all rolling stock.

21. Equipment –Other

21.1 District 44 shall be responsible for providing all other equipment necessary to provide the services contemplated hereunder, except for the equipment to be provided by the City pursuant to the provisions of paragraphs 21.2.

21.2 Any City equipment to be used by District 44 will be marked as City Equipment, but can be used by District 44 as it deems necessary and appropriate to effectively and efficiently provide service. The City equipment used by District 44 shall remain the property of the City. When District 44 determines that the City equipment has reached the end of its useful life, District 44 shall be responsible for replacing the equipment, and shall return City equipment to the City for further use or disposal. The replacement equipment and all other equipment and supplies purchased by District 44 during the term of this agreement shall then be the property of District 44.

22. Mapping for Streets and Hydrants.

22.1 The parties shall cooperatively work to create an accurate set of maps for streets and hydrants so that it can be integrated into District 44's mapping system.

22.2 The City will notify District 44 whenever new streets are added to the City transportation network, and when new hydrants are added to the system, or there is a change in status for an existing hydrant.

23. City Annexations.

23.1 District 44 shall provide the services provided for in the 2nd Addendum to any areas annexed into the City during the 2nd Addendum term.

23.3 The annual cost for services rate set forth in Section 14.1 will be increased according the following procedure. The cost for fire service under the 2nd Addendum per \$1000 of assessed value for the year prior to the year in which the annexation is effective would be determined. This "rate" would then be applied to the newly annexed areas assessed value on the date of annexation. The resulting amount would be the increase in the 2nd Addendum service fee, and that amount would be prorated for the year in which the annexation occurred.

24. Compliance with State Law.

24.1 The City and District 44 shall comply with all applicable laws in carrying out the terms of this agreement, including, but not limited to compliance with the Open Meetings Act.

25. Insurance.

25.1 District 44 shall be responsible for insuring all buildings, equipment, furniture and equipment that are included within the scope of this 2nd Addendum, and shall have the City named as an additional insured with regards thereto.

25.2 The insurance amounts and types shall be the amounts and types used by District 44 for all other property and equipment owned and operated by District 44.

25.3 District 44 shall provide the City with copies of all insurance policies and renewals thereof, showing the policy limits, types and terms, as well as proof that the City is an additional insured with regards thereto.

26. Dispute Resolution.

26.1 The parties are committed to working cooperatively in resolving all matters related to 2nd Addendum implementation and achieving the intent and purpose of the 2nd Addendum. If a dispute should arise, then the parties agree to meet on an informal basis and try to resolve the matter.

26.2 If the parties are unable to resolve their dispute on an informal basis, then the matter shall mediate the dispute using the services of the Washington Arbitration and Mediations Services (WAMS), with each paying one half of the WAMS fee and the mediator's fee. The provisions of paragraph 27.3 shall not apply to fees and costs incurred related to mediation.

26.3. Any dispute arising under the 2nd Addendum that has not been resolved pursuant to the processes set forth in paragraphs 27.1 or 27.2, will be resolved by binding arbitration by a single attorney arbitrator. If the parties cannot agree on the identity of such arbitrator, then either party may apply to the Superior Court of King County for appointment of an arbitrator pursuant to RCW 7.04. The parties shall split equally the arbitrator's fee and all arbitration expenses. The prevailing party at the arbitration is entitled to its costs and attorney fees, in the arbitrator's discretion. A judgment may be entered on the arbitrator's award, pursuant to RCW 7.04. The arbitrator shall include within his/her ruling a statement of the facts found by the arbitrator and the legal principles applied to those facts.


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27. Notices.

27.1 Written Notices: All Notices required by the 2nd Addendum shall be considered properly delivered (1) when personally delivered, or (2) when transmitted by facsimile showing date and time of transmittal, or (3) on the day following mailing, postage prepaid, certified mail, return receipt requested, or (4) one (1) day after depositing in overnight carrier, e.g. Federal Express to:

District: King County Fire Protection District No. 44
32316 148th Avenue S.E.
Auburn, WA 98092
Facsimile: 253-735-0287

With a copy to: Brian Snure
Snure Law Office, PSC
612 South 227th Street
Des Moines, WA 98198
Facsimile: (206) 824-9096

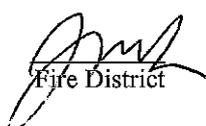
City: City of Black Diamond
Attention: City Administrator
P.O. Box 599
Black Diamond, WA 98010
Facsimile: (360) 886-2592

With a copy to: Loren D. Combs
VSI Law Group PLLC
3600 Port of Tacoma Road, Suite 311
Tacoma, WA 98424
Facsimile (253) 922-5464

28. Indemnification.

28.1 Each Party shall defend, indemnify, and hold harmless the other Party, its officers, officials, employees, agents, and volunteers from and against any and all claims, injuries, damages, losses or suits, including any attorney fees and legal costs and expenses, arising from its own negligent acts, errors, or omissions in performance of the 2nd Addendum. Further, each Party shall be responsible for any claims, injuries, damages, losses, or suits, including any attorney fees and legal costs and expenses, arising solely from its own negligent acts, errors, or omissions in performance of the 2nd Addendum. For the purposes of this indemnification, the Parties specifically and expressly waive any immunity granted under the


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Washington Industrial Insurance Act, Title 51 RCW. This waiver has been mutually negotiated and agreed to by the Parties. If a court of competent jurisdiction determines that the 2nd Addendum is subject to RCW 4.24.115, each Party's obligation to defend, indemnify, and hold harmless the other Party, its officers, officials, employees, agents, and volunteers shall be limited to the extent of each Party's negligence or the negligence of each Party's officers, officials, employees, agents, and volunteers. The provisions of this section shall survive the expiration or termination of the 2nd Addendum.

29. Integrated Document.

29.1 This document constitutes the entire agreement of the parties and supersedes any prior agreement or representation of any officer, agent or employee, written or oral, which shall have no effect.

30. Captions.

30.1 The captions in this agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

31. Governing Law.

31.1 This agreement shall be governed by and construed in accordance with the laws of the State of Washington.

32. Severability.

32.1 The invalidity or unenforceability of any particular provision of this agreement shall not affect the other provisions hereof, and the agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

33. Time of the Essence.

33.1 The time for performance of the parties hereunder is of the essence of the agreement.

34. Binding Effect.

34.1 The 2nd Addendum and the terms, covenants, benefits and duties set forth herein shall inure to the benefit of and be binding upon the parties, their heirs, successors, legal representatives and assigns of each of the parties.



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35. No Waiver.

35.1 No waiver of any default under the 2nd Addendum shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege or option under the 2nd Addendum shall constitute a waiver, abandonment or relinquishment thereof or prohibit or prevent any election under or enforcement or exercise of any right, privilege or option hereunder.

36. Recording 2nd Addendum.

36.1 In accordance with RCW 39.34.040 the parties acknowledge the Second Addendum, upon execution, will be recorded with the King County Recorder's Office.

37. No Third Party Beneficiary

37.1 The 2nd Addendum is entered into for the benefit of the parties to the 2nd Addendum only and shall confer no benefits, direct or implied, on any third persons.

38. Public Duty Doctrine.

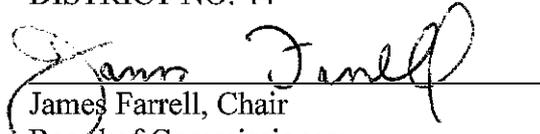
38.1 It is intended that the emergency services to be provided pursuant to the terms of the 2nd Addendum are services provided pursuant to the Public Duty Doctrine, and no special duty as to emergency services beyond that doctrine is created by the 2nd Addendum.

CITY OF BLACK DIAMOND



Howard Botts, Mayor

KING COUNTY FIRE PROTECTION DISTRICT NO. 44



James Farrell, Chair
Board of Commissioners

ATTEST:



Brenda Streepy, City Clerk

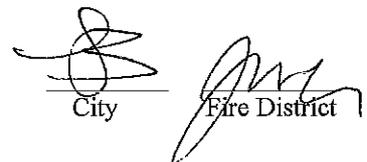


Gregory M. Smith, Fire Chief

Approved as to form:

Loren. D. Combs
City Attorney

2nd Addendum to Emergency Services Agreement
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City Fire District