

RESOLUTION NO. 09-589

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN THE FIRST AMENDMENT TO THE CITY OF BLACK DIAMOND STAFF AND FACILITIES FUNDING AGREEMENT WITH YARROW BAY COMMUNITIES

WHEREAS, the City entered into the Staff and Facilities Funding Agreement dated the 29th day of June, 2007; and

WHEREAS, the City wishes to pursue Economic Development Activities for community and economic development purposes. Yarrow Bay recognizes that these efforts are of value to Yarrow Bay because they will reduce the City's dependence upon funding from the Agreement; and

WHEREAS, The City and Yarrow Bay wish to increase the frequency of Yarrow Bay's payments under the Agreement from quarterly to monthly and agree to specify a minimum Working Capital Balance that must be available to the City to cover Supplemental Costs not requested through Net Monthly Core City Cost estimates; now, therefore

BE IT RESOLVED that the City Council hereby authorizes the Mayor to execute the First Amendment to the City of Black Diamond Staff and Facilities Funding Agreement, substantially in the form attached hereto.

ADOPTED by the City Council at an open meeting on the 16th day of April, 2009.



Howard Botts, Mayor

Attest:



Brenda L. Streepy, City Clerk

FIRST AMENDMENT TO
CITY OF BLACK DIAMOND STAFF AND FACILITIES FUNDING AGREEMENT

1. Date and Parties.

This First Amendment to City of Black Diamond Staff and Facilities Funding Agreement is dated the 16 day of April, 2009 and is entered into by and between BD Lawson Partners, LP and BD Village Partners, LP and the City of Black Diamond, a Washington municipal corporation.

2. Definitions. All definitions set forth in the City Of Black Diamond Staff and Facilities Funding Agreement dated the 29th day of June, 2007 (“Agreement”), as approved by City Resolution 07-451 are incorporated herein by reference. The following definitions are added to Agreement paragraph 2.

“Economic Development Activities” shall mean activities the purpose of which is to encourage or advance the City’s independent economic development. Economic Development Activities include, but are not limited to, citywide marketing, advertising and other collateral materials and associated distribution, dues and memberships, mapping of available properties, economic development seminars, conferences, training, and the creation of an economic development plan and implementing action items from that plan for the City.

“First Amendment” shall mean this First Amendment to City of Black Diamond Staff and Facilities Funding Agreement.

“Net Monthly Core City Cost Amount” shall mean the City’s estimate of Supplemental Costs (as amended by this First Amendment) for the calendar month to be funded.

“Miscellaneous Expenses” shall include training, travel and other expenses for community development staff that are pre-approved in writing by Yarrow Bay and are not already funded pursuant to the Agreement terms.

“Supplemental Costs” shall mean all expenditures addressed in the Agreement and the First Addendum that are beyond the financial obligations that the City could impose upon Yarrow Bay under City regulations existing as of the Agreement Date and the date of the First Amendment. Supplemental Cost include the costs of funding the Core City Staff, the City Code Consultants, the Facilities Costs, the Legal Costs, the amounts that Yarrow Bay has paid the City prior to the Agreement Date for the City Code Consultants, Miscellaneous Expenses, Economic Development Activities, and for the salary and benefits of the City’s former Community Development Director.



City



Yarrow Bay

“Working Capital Reserve” shall mean the amount of funding advanced by Yarrow Bay under the Agreement that is not specifically advanced to cover costs identified in the Net Monthly Core City Costs estimates. Working Capital shall be available to fund Supplement Costs not funded through prior estimates.

3. General Recitals.

A. The City wishes to pursue Economic Development Activities for community and economic development purposes. Yarrow Bay recognizes that these efforts are of value to Yarrow Bay because they will reduce the City’s dependence upon funding from the Agreement. In order to increase budgeting accuracy and provide for the future funding of pre-approved Economic Development Activities, the City and Yarrow Bay wish to add two new funding categories to the Agreement through this First Amendment,

B. The City and Yarrow Bay wish to increase the frequency of Yarrow Bay’s payments under the Agreement from quarterly to monthly and agree to specify a minimum Working Capital Balance that must be available to the City to cover Supplemental Costs not requested through Net Monthly Core City Cost estimates.

4. New Funding Categories.

A. Economic Development

Yarrow Bay shall pay the costs of pre-approved City Economic Development Activities pursuant to the following procedure. Prior to incurring any costs for Economic Development Activities, the City shall provide Yarrow Bay with written notification of the proposed activity or activities and the actual costs thereof. Where actual costs are not available, the City shall notify Yarrow Bay of estimated costs and shall provide Yarrow Bay with the basis, including documentation where available, for its estimate. Upon such notification, Yarrow Bay shall promptly review the proposed Economic Development Activities and provide the City with written notification if the proposed Economic Development Activity is approved, partially approved or disapproved. If approved or partially approved Yarrow Bay shall pay the actual or estimated costs of such activities, up to the approved amount, as set forth in Paragraph 4(C) below. The Parties acknowledge that Yarrow Bay’s approval of payment of costs for Economic Development Activities is in Yarrow Bay’s complete discretion.

B. Miscellaneous Expenses

Yarrow Bay shall pay the costs of Miscellaneous Expenses pursuant to the following procedure. Prior to incurring any Miscellaneous Expenses, the City shall provide Yarrow Bay with written notification of the proposed activity or activities and



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Yarrow Bay

the actual costs thereof. Where actual costs are not available, the City shall notify Yarrow Bay of estimated costs and shall provide Yarrow Bay with the basis, including documentation where available, for its estimate. Upon such notification, Yarrow Bay shall promptly review the proposed Miscellaneous Expense and provide the City with written notification if the proposed Miscellaneous Expense is approved, partially approved or disapproved. If approved or partially approved Yarrow Bay shall pay the actual or estimated costs of such activities, up to the approved amount, as set forth in Paragraph 4(C) below. The Parties acknowledge that Yarrow Bay's approval of payment of costs for Miscellaneous Expenses is in Yarrow Bay's complete discretion.

C. Amended Payment Procedure

Paragraph 4(E) of the Agreement shall be eliminated in its entirety and replaced with the following:

E. Payment Procedure. Yarrow Bay shall advance funds to the City on a monthly basis to pay Supplemental Costs pursuant to the following mechanism. The City shall provide Yarrow Bay with an estimate of the Net Monthly Core City Cost Amount for the month beginning in approximately 50 calendar days (the "Estimate"). Five working days before the start of the calendar month for which the Estimate applies, Yarrow Bay will deposit with the City funds in amount equal to the Estimate, less any credit for unexpended funds or debit for over-expenditures for the previous calendar month. By way of example, by the 10th day of March, the City will provide Yarrow Bay an Estimate for the month of May. Five days prior to the end of April, Yarrow Bay will deposit with the City funds equal to the Estimate for May, as submitted by the City in March. The minimum amount of working capital held by the City under the terms of the Agreement during any month will be \$150,000. At any time, should the City find itself with less than \$150,000 to cover Supplemental Costs, the City may make an immediate request of Yarrow Bay to deposit with the City amounts necessary to restore the working capital balance to \$150,000, within five working days of receipt of written notice.

5. Indemnity and Hold Harmless.

When the City imposes the surcharge referenced in Agreement paragraph 4 (M), Yarrow Bay agrees to pay the City's costs and attorney's fees associated with defending any challenge to the legality of the surcharge, and Yarrow Bay shall indemnify and hold the City harmless from any monetary judgment or award that results directly or indirectly from that challenge.

6. Agreement in Full Force and Effect.



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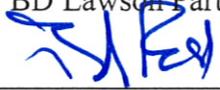


Yarrow Bay

The Agreement, except as expressly modified by the First Amendment terms, shall remain in full force and effect. The First Amendment terms are hereby incorporated into the Agreement. The First Amendment and the Agreement shall, to the fullest extent possible, be interpreted to be consistent. Provided, however, in case of conflict between the Agreement terms, and the First Amendment, the First Amendment provisions shall control.

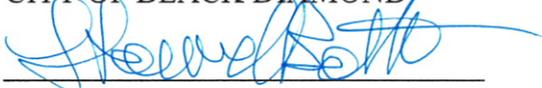
YARROW BAY COMMUNITIES

For BD Lawson Partners, LP and BD Village Partners, LP



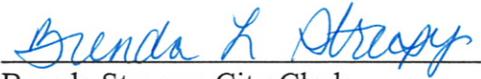
By: Brian Ross
Title: Managing Partner

CITY OF BLACK DIAMOND



Howard Botts, Mayor

Attest:



Brenda Streepy, City Clerk


City
Yarrow Bay