

RESOLUTION NO. 11-732

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON,  
AUTHORIZING THE MAYOR TO EXECUTE AN  
AGREEMENT WITH THE WASHINGTON STATE  
DEPARTMENT OF CORRECTIONS**

**WHEREAS**, due to increasing jail costs the City of Black Diamond has been investigating other viable alternatives to jail; and

**WHEREAS**, Workcrew has been identified as a viable option and has been very successful in other jurisdictions; and

**WHEREAS**, the City desires to participate in the Workcrew program with the Washington State Department of Corrections; and

**WHEREAS**, the intent of this agreement is to provide Community Restitution crew participation as an alternative for the City of Black Diamond Municipal Court sentences/restitutions;

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

**Section 1.** The City Council hereby authorizes the Mayor to execute an agreement between the Washington State Department of Corrections and the City of Black Diamond for Community Restitution crew participation, substantially in the form attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,  
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 20TH DAY OF  
JANUARY, 2011.**

CITY OF BLACK DIAMOND:



Rebecca Olness, Mayor

Attest:



Brenda L. Martinez, City Clerk

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE CITY OF BLACK DIAMOND  
AND  
THE WASHINGTON STATE DEPARTMENT OF CORRECTIONS**

**THIS MEMORANDUM OF AGREEMENT** is entered into this 1st day of January, 2011. The parties ("Parties") to this Agreement are the City of Black Diamond ("CBD"), and the Washington State Department of Corrections ("DOC").

**IT IS THE PURPOSE OF THIS AGREEMENT** to provide Community Restitution crew participation as an alternative for the CBD Municipal Court sentences/sanctions.

**THEREFORE, IT IS MUTUALLY AGREED THAT:**

**STATEMENT OF WORK**

The DOC and the CBD shall furnish the necessary personnel, equipment, material, and/or service(s) and otherwise do all things necessary for or incidental to the performance of the work set forth in Attachment "A", attached hereto and incorporated herein.

**PERIOD OF PERFORMANCE**

Subject to its other provisions, the period of performance of this Agreement shall commence on January 1, 2011 through December 31, 2012, unless terminated sooner as provided herein. Such term may be extended by the mutual agreement of the parties. Any such extension shall be evidenced by a properly completed written amendment to this Agreement.

**PAYMENT**

DOC shall receive \$15.00 per day for any crew day completed by a CBD worker on the Seattle DOC WORKCREW or for any CBD crew worker that "walks-away," is injured or is dismissed from crew after 12:00 Noon on any workday. The cost of Industrial Insurance coverage for each CBD Community Restitution crew worker is included in the daily reimbursement amount for a crew worker.

**BILLING PROCEDURE**

The DOC shall submit monthly invoices to the CBD by the 25<sup>th</sup> of the month detailing the CBD crew worker hours worked and the worker daily rate. Payment to the DOC for approved and completed work will be made by warrant or account transfer by the CBD within 30 days of receipt of the invoice. Upon expiration of the Agreement, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier.

**RECORDS MAINTENANCE**

The parties to this Agreement shall each maintain books, records, documents, and other evidence which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the service(s) described herein. These records shall be subject to

inspection, review, or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

### **RIGHTS IN DATA**

Unless otherwise provided, data which originates from this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the Department of Corrections. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

### **INDEPENDENT CAPACITY**

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

### **INDEMNIFICATION**

DOC, its agents, or employees assumes responsibility for any damages resulting solely from the negligence of DOC, its agents, or employees. To the extent permitted by law, DOC shall be required to indemnify, defend, and hold harmless CBD only to the extent the claim is caused solely by the negligent acts or omissions of DOC, its agents, or employees.

CBD, its agents, or employees assumes responsibility for any damages resulting solely from the negligence of CBD, its agents, or employees. To the extent permitted by law, CBD shall be required to indemnify, defend, and hold harmless the DOC to the extent the claim is caused solely by the negligent acts or omissions of CBD, its agents, or employees.

In accordance with the laws of the state of Washington, if both parties to this agreement are negligent and jointly liable, each party will assume responsibility for its own negligent acts or omissions.

### **AMENDMENTS**

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

## **TERMINATION**

Either party may terminate this Agreement by giving the other party ten (10) working days written notification. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

In addition, DOC may terminate this Agreement upon written notification and without the ten-day notice required if DOC is unable to perform the services herein due to a policy or procedure change by the Secretary of DOC, a change in the law, or judgment of any court.

## **TERMINATION FOR CAUSE**

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

## **DISPUTES**

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, agreement terms, and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

## **PUBLIC INFORMATION**

Neither party shall arrange for news media coverage relative to this Agreement that would specifically include offenders without the consent of the other party, nor shall either party release information to the news media relative to this Agreement concerning offenders without the consent of the other party to the extent allowed by law.

## **GOVERNANCE**

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable state and federal statutes and rules;
- b. Statement of Work; and

- c. Any other provisions of the agreement, including materials incorporated by reference.

### **ASSURANCES**

The parties agree that all activity pursuant to this Agreement will be in accordance with all applicable current or future federal, state, and local laws, rules, and regulations.

### **ASSIGNMENT**

The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

### **WAIVER**

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

### **SEVERABILITY**

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

### **ALL WRITINGS CONTAINED HEREIN**

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

### **CONTRACT MANAGEMENT**

The Program Manager for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

The Program Manager for the Department is:

James T. 'Jim' Thorburn, Program Manager  
Department of Corrections  
851 Poplar Pl. S.  
Seattle, WA 98144  
Telephone: (206) 726-6719  
E-Mail: [james.thorburn@doc.wa.gov](mailto:james.thorburn@doc.wa.gov)

The Program Manager for the CBD is:

Brenda L. Martinez, Assistant City Administrator/City Clerk  
City of Black Diamond  
PO Box 599  
Black Diamond, WA 98010  
Telephone: (360) 886-2560  
E-Mail: [bmartinez@ci.blackdiamond.wa.us](mailto:bmartinez@ci.blackdiamond.wa.us)

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF BLACK DIAMOND

STATE OF WASHINGTON  
DEPARTMENT OF  
CORRECTIONS

*Rebe Olum*      1-24-11  
Date

*Jay Banning* 2/3/11  
Gary Banning, Administrator  
Contracts and Legal Affairs

\_\_\_\_\_  
Date

THIS INTERAGENCY AGREEMENT HAS BEEN APPROVED  
AS TO FORM BY THE OFFICE OF THE ATTORNEY GENERAL

## ATTACHMENT A SCOPE OF WORK

### The DOC provides:

1. Crew supervision for CBD crew workers that have been officially referred to the DOC Seattle WORKCREW program. Crews operate 7:30am – 3:30pm, 7 days a week, excluding posted state holidays, staff meetings, mandatory staff training or temporary layoffs. CBD crew workers may report for crew by 7:30am at any designated WORKCREW pick-up location. A maximum of 7 CBD crew workers may participate on DOC crews on any single crew day without additional authorization by the DOC WORKCREW Program Manager.
2. Project coordination, record keeping and reporting, as defined in this Agreement, under Records Maintenance, through a Community Corrections Program Manager with assistance from clerical staff.
3. Written documentation to the CBD within 48 hours of any incident in which a CBD crew worker was dismissed from a DOC Community Restitution crew for disciplinary or safety reasons, and will include a recommendation for the temporary or permanent dismissal of the crew worker from further work crew participation.

*Note: DOC reserves the right to dismiss a CBD crew worker from a DOC Community Restitution work crew for disciplinary or safety reasons.*

### EQUIPMENT

4. Operating vehicles and shall maintain vehicles and equipment required to meet the scope of work.
5. Litterbags, and necessary tools, equipment and supplies to accomplish the scope of work.

### TRAINING

6. Training for Community Restitution crew worker, as necessary, in the handling of illegally dumped materials, or pertaining to watershed plantings, removals or cleanups.
7. Training for Correctional Officers, as follows:
  - Personnel Orientation
  - CPR
  - First Aid/Infectious Disease Control
  - Flag Person Certification
  - Defensive Driving
  - Record Keeping
  - Safety Meetings
  - Incident Review
8. Training for CBD Community Restitution crew workers, as follows:

- Orientation to work crew
- Safety orientation – comprised of a standard orientation to sharps, public contact, seat belts, and related safety issues.

## **RECORD KEEPING AND REPORTING REQUIREMENTS**

9. Records maintenance, detailing the daily participation of all CBD crew workers in Seattle Community Restitution crew activities. These shall be submitted to CBD on a monthly basis with the invoice, and shall include, but not be limited to the following:
  - Identify each CBD crew worker by name, CBD Court case number and dates worked.
  - Provide a total of CBD Community Restitution crew worker hours completed, supervisor hours and the daily Community Restitution crew worker rate.
10. Copies of any media reports, comments or written press reports regarding the work completed specific to this Agreement to the CBD.
11. The inspection and audit of all books and records of DOC which are pertinent to this Agreement, as the CBD deems necessary after the expiration or termination of this Agreement.

### **The CBD:**

12. Provides the initial screening for all perspective CBD crew workers for any physical or mental health limitations that would restrict a Community Restitution crew worker from participating on a DOC Community Restitution crew in a safe manner.
13. Completes the DOC Referral (to include required criminal history information) and screening Questionnaire with the CBD crew worker, and insure that these documents have been received by DOC prior to the crew worker's first Community Restitution crew day.
14. Reimburses DOC within thirty (30) days of receipt of the monthly DOC Invoice, after review and approval of DOC Invoice expenses.

### **CBD Community Restitution Crew Workers:**

Assist other Community Restitution crew workers in cleanups of litter and illegal dumping, vegetation cutting and/or removal, or other general labor as defined in the current Seattle DOC WORKCREW contract obligations or as requested and approved by the Program Manager.