

RESOLUTION NO. 13-859

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON,
AUTHORIZING THE MAYOR TO SIGN AN INTERLOCAL
AGREEMENT WITH THE CITY OF COVINGTON FOR
BUILDING CODE SERVICES**

WHEREAS, Black Diamond and Covington are public agencies as defined by Ch. 39.34 of the Revised Code of Washington ("RCW"), and are authorized to enter into interlocal agreements on the basis of mutual advantage and thereby to provide services and facilities in the manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs of local communities; and

WHEREAS, Covington's Community Development Department maintains a building division that regularly enforces and administers the building code requirements, reviews building permit applications, conducts building inspections, and engages in code enforcement activities; and

WHEREAS, there currently is not sufficient building permit activity within Black Diamond to allow the City to maintain employ a full-time building official/inspector; and

WHEREAS, the Cities of Black Diamond and Covington have an existing Interlocal Agreement for these services which will expire on March 22, 2013; and

WHEREAS, Black Diamond desires to continue to utilize the resources of Covington to assist Black Diamond in performing building code administration, plan review, and building inspections; and

WHEREAS, Black Diamond has agreed to compensate Covington for performing these services; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND HEREBY RESOLVES AS FOLLOWS:

Section 1. The Mayor is authorized to sign an interlocal agreement with the City of Covington for building code administration, plans examination, building inspection and code enforcement services substantially in the form attached as Exhibit A.

RESOLVED this 14th day of March, 2013 at Special Council meeting.

CITY OF BLACK DIAMOND



Mayor Rebecca Olness

ATTESTED BY:



Brenda L. Martinez, City Clerk

DATE OF PASSAGE BY THE CITY COUNCIL: 3/14/2013

DATE OF FILING WITH THE CITY CLERK: 3/15/2013

**INTERLOCAL AGREEMENT BETWEEN
THE CITIES OF BLACK DIAMOND & COVINGTON
RELATING TO BUILDING CODE ADMINISTRATION, PLANS EXAMINATION, &
BUILDING INSPECTIONS SERVICES**

THIS INTERLOCAL AGREEMENT, hereinafter "Agreement", is entered into between the CITY OF BLACK DIAMOND, WA hereinafter "Black Diamond", and the CITY OF COVINGTON, WA hereinafter "Covington".

WHEREAS, Black Diamond and Covington are public agencies as defined by Ch. 39.34 of the Revised Code of Washington ("RCW"), and are authorized to enter into interlocal agreements on the basis of mutual advantage and thereby to provide services and facilities in the manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs of local communities; and

WHEREAS, Covington's Community Development Department maintains a building division that regularly enforces and administers the building code requirements, reviews building permit applications, and conducts building inspections; and

WHEREAS, Black Diamond desires to utilize the resources of Covington to assist Black Diamond in performing building code administration, plan review, and building inspection; and

WHEREAS, Black Diamond has agreed to compensate Covington for performing these services; and

NOW THEREFORE, in consideration of the terms and provisions contained herein, it is agreed between Black Diamond and Covington as follows:

1. **Purpose.** It is the purpose of this Agreement to establish the framework to effectuate Black Diamond's desire to have Covington perform these services for payment.

2. **Services—Generally.**

2.1. **Approval and Priority.** All services provided by Covington to Black Diamond, as detailed in this Agreement, will be performed by Covington's building staff as approved and directed by Covington's Community Development Director (the "Director") or Covington's Building Official ("Building Official") and subsequent to regularly assigned duties for Covington staff.

2.2. **Request for Services.** Covington staff will maintain a regular schedule of office hours at Black Diamond. Unless otherwise provided for in this Agreement, Black Diamond shall submit all requests for additional hours of service in writing. Requests submitted via e-mail qualify as "in writing" for purposes of this Agreement.

3. **Building Official Services.** Covington will provide Building Official services in

accordance with the current construction codes as adopted and amended by the State of Washington and Black Diamond.

3.1 **Building Official.** Covington's Building Official will perform the duties of Building Official to enforce and administer the provisions of Black Diamond's building code and is authorized to render interpretations of the code in accordance with the adopted construction codes.

3.2 **Meetings.** Covington's Building Official will attend meetings as requested, such as pre-application meetings, pre-submission meetings, enforcement hearings, and City Council meetings, to represent Black Diamond in the role of Building Official.

3.3 **Inspections, Plan Review.** Covington's building staff will perform inspections and plan review, duties upon request by Black Diamond and pursuant to the procedures provided in this Agreement.

3.4 **Hours of Service.** In recognition of the mutual benefits of this Agreement, Covington's staff will provide a minimum of forty-five (45) hours of service per month. Black Diamond may request up to sixty-five (65) hours per month. Changes or alterations to the scheduled hours can be requested in writing by either party.

4. Building Plan Review Services. Covington Plan Review Staff will review plans for code compliance upon request and in accordance with the current construction codes as adopted and amended by the State of Washington and Black Diamond.

4.1. Black Diamond shall submit requests for any plan review services to the Building Official.

4.2. If corrections or additions are required, Covington Plan Review Staff will draft comments and send an electronic copy to Black Diamond within four (4) weeks of receipt. A longer timeline may be given to allow sufficient review of more time intensive projects, including but not limited to commercial and multi-family projects.

4.3. If approved, Covington Plan Review Staff will indicate in writing that the drawings have been reviewed for code compliance. Approved sets of plans shall be returned to Black Diamond for issuance. Denied or expired permit applications will be returned to Black Diamond after 180 days of inactivity on the application.

4.4. Covington Plan Review Staff will attend meetings upon request, such as pre-application meetings, pre-construction meetings, and enforcement hearings, to represent Black Diamond in the role of Plans Examiner.

5. Building Inspection Services. Covington Building Inspection Staff shall perform building inspections, including building, plumbing, and mechanical inspections, upon request. The governing codes used for inspection shall be the International Building Code, International Residential Code, International Mechanical Code and Uniform Plumbing Code as adopted by Black Diamond in the Black Diamond Municipal Code. Inspections will be performed according to the regular inspection schedule set by the Director or Building Official.

5.1. Black Diamond shall submit requests for inspections to the Building Official by 4:00 pm the business day prior of the requested inspection. Generally, inspections will not be conducted on Fridays, unless Covington notifies Black Diamond that staff will be available.

5.2. Covington Building Inspection staff shall maintain electronic records of inspections in Black Diamond's permit system software and provide Black Diamond with copies of any correction notices and the results of the inspections performed within one (1) business day of the date of the inspection. The correction notices may be provided in electronic or paper format.

5.3.

6. Term of Agreement. This Agreement shall become effective on the last date this Agreement is ratified by the legislative body of Covington and the legislative body of Black Diamond. Unless terminated by either party pursuant to the terms of this Agreement, this Agreement shall remain in full force and effect for two (2) years from the effective date. This Agreement may be extended by mutual written agreement of the parties subject to the ratification of such extension by the legislative body of each city.

7. Payment to Covington. In consideration of this Agreement and the services provided, Black Diamond shall pay Covington an hourly rate by specific Covington employee for all services provided by Covington under this Agreement, as listed in Exhibit A. In years subsequent to 2013, Covington and Black Diamond shall negotiate and set the hourly rate for the next year of service. A two (2) hour minimum shall be charged to Black Diamond for each date of any service by Covington. After the two (2) hour minimum is reached for a single date, Black Diamond shall pay for each fifteen (15) minute increment, which shall be rounded to the nearest fifteen (15) minute increment. Black Diamond shall be required to pay Covington regardless of whether Black Diamond is paid or collects fees for the services that involved the work of Covington. Payments for services rendered shall be made by Black Diamond each month within thirty (30) days of receipt of the billing statement from Covington.

7.1. **Billing Statement.** Covington shall submit a monthly statement to Black Diamond that shall contain the following:

Date of Service
Hours of work
Staff Name

7.2. **Billing Statement Dispute.** In the event that there is a dispute regarding the amount of money owed by Black Diamond to Covington, staff shall make every effort to resolve such dispute. In the event that there is no resolution to the dispute, the disputed amount shall be placed into the registry of the King County Superior Court until the dispute is resolved by agreement of the parties or in a court with jurisdiction over the subject matter of the dispute.

7.3. **Reconciliation of Amount Due After Termination or Expiration.** Within thirty (30) days of the effective date of this Agreement's expiration or earlier termination, Covington shall submit to Black Diamond a statement as described in subsection 7.1 of this Agreement for the past quarter or part thereof. Within thirty (30) days of submitting the statement, the parties shall reconcile the account and determine how much money Black Diamond

owes to Covington for unpaid services. Final payment and settlement of accounts shall occur within ninety (90) days of the effective date of termination of the Agreement.

8. Ownership of Property. The parties to this Agreement do not contemplate the acquisition of any property to carry out the purposes of this Agreement. Any property owned by Black Diamond shall remain the property of Black Diamond, and any property owned by Covington shall remain the property of Covington.

9. Independent Contractor. The Parties understand and agree that Covington is acting hereunder as an independent contractor and shall maintain control of all Covington employees, including but not limited to hiring, firing, discipline, evaluation, and establishment of standards of performance thereof. All Covington personnel rendering service hereunder shall be, for all purposes, employees of Covington, although they may from time to time act as officers of Black Diamond.

10. Termination.

10.1. Termination by Notice. This Agreement may be terminated by either party upon it providing the other party with sixty (60) days advance written notice of such termination.

10.2. Termination by Mutual Written Agreement. This Agreement may be terminated at any time by mutual written agreement of the parties.

10.3. Termination for Breach. Covington may terminate this Agreement with fourteen (14) days advance written notice upon the failure of Black Diamond to make payments as required by this Agreement. Black Diamond may terminate this Agreement upon fourteen (14) days advance written notice in the event Covington fails to provide services as required in this Agreement except disputes handled per Section 7.2.

11. Indemnification and Hold Harmless. Covington agrees to defend, indemnify, and hold harmless Black Diamond and each of its employees, officials, agents, and volunteers from any and all losses, claims, liabilities, lawsuits, or legal judgments arising out of any negligent or tortious actions or inactions by Covington or any of its employees, officials, agents, or volunteers, while acting within the scope of the duties required by this Agreement. All costs, including but not limited to attorneys fees, court fees, mediation fees, arbitration fees, settlements, awards of compensation, awards of damages of every kind, etc., shall be paid by Covington or its insurer. This provision shall survive the expiration of this Agreement. This provision shall also survive and remain in effect in the event that a court or other entity with jurisdiction determines that this interlocal Agreement is not enforceable.

Black Diamond agrees to defend, indemnify, and hold harmless Covington and each of its employees, officials, agents, and volunteers from any and all losses, damages, claims, liabilities, lawsuits, or legal judgments arising out of any negligent or tortious actions or inactions by Black Diamond or any of its employees, officials, agents, or volunteers, while acting within the scope of the duties required by this Agreement. All costs, including but not limited to attorneys fees, court fees, mediation fees, arbitration fees, settlements, awards of compensation, awards of damages of every kind, etc., shall be paid by Black Diamond or its insurer. This provision shall survive the expiration or earlier termination of this Agreement. This provision shall also survive and remain in

effect in the event that a court or other entity with jurisdiction determines that this interlocal Agreement is not enforceable.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES EACH PARTY'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY TO CARRY OUT THE PURPOSES OF THIS INDEMNIFICATION CLAUSE. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

12. Miscellaneous.

12.1. **Non-Waiver of Breach.** The failure of either party to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option conferred by this Agreement in one or more instances, shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

12.2. **Resolution of Disputes and Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If the parties are unable to settle any dispute, difference or claim arising from the parties' performance of this Agreement, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the King County Superior Court, King County, Washington, unless the parties agree in writing to an alternative dispute resolution process. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the parties' right to indemnification under this Agreement.

12.3. **Assignment.** Any assignment of this Agreement by either party without the prior written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent.

12.4. **Modification.** No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party and subject to ratification by the legislative body of each City.

12.5. **Compliance with Laws.** Each party agrees to comply with all local, federal and state laws, rules, and regulations that are now effective or in the future become applicable to this Agreement.

12.6. **Entire Agreement.** The written terms and provisions of this Agreement, together with any exhibits attached hereto, shall supersede all prior communications, negotiations, representations or agreements, either verbal or written of any officer or other representative of each party, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. All of the exhibits are hereby made part

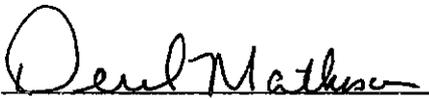
of this Agreement. Should any of the language of any exhibits to this Agreement conflict with any language contained in this Agreement, the language of this document shall prevail.

12.7. **Severability.** If any section of this Agreement is adjudicated to be invalid, such action shall not affect the validity of any section not so adjudicated.

12.8. **Interpretation.** The legal presumption that an ambiguous term of this Agreement should be interpreted against the party who prepared the Agreement shall not apply.

12.9. **Notice.** All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the Agreement, unless notified to the contrary. Any written notice hereunder shall become effective upon personal service or three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

IN WITNESS, the parties below execute this Agreement, which shall become effective on the last date entered below.

<p>COVINGTON:</p> <p>CITY OF COVINGTON:</p> <p>By: <u></u> (signature)</p> <p>Print Name: <u>Derek M. Matheson</u> Its <u>City Manager</u></p> <p>DATE: <u>3/12/13</u></p>	<p>BLACK DIAMOND:</p> <p>CITY OF BLACK DIAMOND:</p> <p>By: <u></u></p> <p>Print Name: <u>Rebecca Olness</u> Its <u>Mayor</u></p> <p>DATE: <u>3/15/2013</u></p>
<p>NOTICES TO BE SENT TO:</p> <p><u>Derek M. Matheson, City Manager</u> City of Covington 16720 SE 271st Street, Suite 100 Covington, WA 98042</p> <p>(253) 480-2494 (telephone) (253) 480-2401 (facsimile)</p>	<p>NOTICES TO BE SENT TO:</p> <p><u>Rebecca Olness, Mayor</u> City of Black Diamond PO Box 599 24301 Roberts Drive Black Diamond, WA 98042</p> <p>(360) 886-5700 (telephone) (360) 886-2592 (facsimile)</p>
<p>APPROVED AS TO FORM:</p> <p><u></u> City Attorney</p>	<p>APPROVED AS TO FORM:</p> <p>_____ City Attorney</p>

**A. EXHIBIT A
BUILDING DEPARTMENT SERVICES FEES**

2013-2014 Hourly Rates

Building Official\$86.00
Plans Examiner	...\$65.00