

RESOLUTION NO. 15-1008

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO ENTER INTO A INTERAGENCY DATA SHARING AGREEMENT WITH THE WASHINGTON STATE EMPLOYMENT SECURITY DEPARTMENT FOR INFORMATION IN EVALUATING STATISTICAL DATA AS PART OF THE CITY'S COMPREHENISVE PLAN UPDATE

WHEREAS, the City is required to update its' Comprehensive Plan and wants to utilize any and all information that is available in order to do a thorough job in moving forward with this update; and

WHEREAS, the Washington Employment Security Department (ESD) has made it clear that confidential information, that they are tasked in producing, is required to develop safeguards against unauthorized use and re-disclosure of confidential data by the City; and

WHEREAS, Staff and the City Attorney have reviewed the requirements associated within the attached (Attachment A) Interagency Data Sharing Agreement and concur with its' contents, as required by the ESD;

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

Section 1. The City Council for the City of Black Diamond, WA agrees to allow the Mayor to enter into the Interagency Data Sharing Agreement in order to allow staff the ability to utilize this data in the evaluation of helping Staff set direction with regard to the City's required Comprehensive Plan update, as mandated by the State of Washington through RCW 36.70A.130.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 15th DAY OF January, 2015.

CITY OF BLACK DIAMOND:



Carol Benson, Mayor

Attest:



Brenda L. Martinez, City Clerk

**INTERAGENCY DATA SHARING AGREEMENT
BETWEEN
WASHINGTON
EMPLOYMENT SECURITY DEPARTMENT
WASHINGTON
AND
CITY OF BLACK DIAMOND**

1. INTRODUCTION

This Agreement is made and entered into by and between the Washington State Employment Security Department (hereinafter "ESD") and the City of Black Diamond (hereinafter "City") pursuant to authority granted in chapters 39.34, 50.13 and 50.38 of the Revised Code of Washington (RCW), other relevant federal statutes, and related regulations.

2. DEFINITIONS

2.1 "Confidential Employment Data" or "UI data" or "Confidential Data" means information in the records of ESD collected from employers for the administration of the state unemployment insurance program as set forth in the federal law (20 CFR 603) and state statutes (chapter 50.13 RCW). "UI data" is classified as Category 4 data under Washington's OCIO Standards No. 141.10.

2.2 "Authorized user" means any City employee approved by both parties to receive confidential UI data.

3. PURPOSE

The purpose of this Agreement is to:

3.1 Set out the Terms and Conditions under which ESD will share confidential data with the City as set forth in the federal law (20 CFR 603) and states statutes (chapters 39.34, 50.38 and 50.13 RCW).

3.2 Define the safeguards against unauthorized use and re-disclosure of confidential data by the City.

4. STATEMENT OF WORK

4.1 The parties shall share data based on the specifications of the *Statement of Work* incorporated into this Agreement by reference as Exhibit A.

4.2 The *Statement of Work* shall specifically identify the data requested, the purpose for which it will be used, the legal authority for the disclosure by ESD to the City, and will be authorized and signed by both parties.

5. TERMS AND CONDITIONS

All rights and obligations of the parties to this Agreement shall be subject to and governed by the Terms and Conditions contained in this Agreement.

6. PERIOD OF PERFORMANCE

This Agreement shall commence on the date of execution of this Agreement and shall continue through June 30, 2015, unless terminated sooner as provided in this Interagency Data Sharing Agreement.

7. CONSIDERATION

If payment is required, ESD shall give advance notice to the City of the expected charges and an opportunity to approve the charges or to withdraw the data request.

8. AGREEMENT MANAGEMENT

The City staff member responsible for the management of this Agreement is:

Name:	Aaron Nix
Title:	Community Development/Natural Resources Director
Address:	24301 Roberts Drive City of Black Diamond, WA 98010
Phone Number:	360-886-5700 x5720
Email:	anix@ci.blackdiamond.wa.us

ESD staff member responsible for the management of this Agreement is:

Name:	Celia Nwankwo
Title:	Data Sharing and Security Administrator
Address:	Labor Market and Performance Analysis P.O. Box 9046 Olympia, WA 98507
Phone Number:	360-902-407-4798
Email:	cnwankwo@esd.wa.gov

The Agreement Manager or their successor shall provide the assistance and guidance necessary for the performance of this Agreement.

9. LIMITATION ON ACCESS AND USE

City agrees to the following limitations on the use of the information provided by ESD:

- 9.1 The information provided by ESD will remain the property of ESD and will be returned to ESD according to the following procedures when the work for which the information was required, as fully described in Exhibit A, Statement of Work, has been completed:
 - 9.1.1 All ESD data records or screen prints will be purged from mainframe systems and individual Personal Computers (PC).
 - 9.1.2 All paper or compact disc copies will be shredded to a size no larger than 1/8 by 1 1/8 inch size in a crosscut shredder or deposited into a locked shredder bin to be shredded by a state authorized company.
 - 9.1.3 The City shall be responsible for the destruction of confidential UI data after the work for which the data was required, as fully described in Exhibit A.
- 9.2 The information provided by ESD shall be used and accessed only for the limited purposes of carrying out activities pursuant to this Agreement as described in the Statement of Work.
- 9.3 The information provided by ESD will not be duplicated or re-disclosed without the written authority of ESD.
- 9.4 The City shall not use the information provided for any purpose not specifically authorized under this Agreement.
- 9.5 The City shall protect the confidentiality of the data as required by the laws cited in this Agreement. The City shall protect the confidentiality of the information when sharing employment data as provided under this Agreement.
- 9.6 The City shall notify ESD immediately of becoming aware of any unauthorized access, use or disclosure. If a breach of security occurs that meets the definition in RCW 42.56.590, Personal information – Notice of security breaches, The City is responsible for any notifications to the affected individuals as required by the law. Any breach of this clause may result in termination of this Agreement and the demand for return of all personal information. The City shall provide detailed information, including the nature of the unauthorized activity, names of individuals involved, work locations where the incident occurred, and the actions taken by the City. The information provided by the City will enable ESD to conduct its own investigation, if necessary.

10. PHYSICAL SAFEGUARDS

The City agrees to the following minimum safeguards for the information provided by ESD as follows:

- 10.1 Access to the information provided by ESD will be restricted to only those authorized users who need it to perform their official duties in the performance of the scope of work fully detailed in Exhibit A.
- 10.2 The information will be stored in areas that are safe from access by unauthorized persons during regular business hours as well as non-business hours or when not in use.
- 10.3 The information will be protected in a manner that prevents unauthorized persons from retrieving the information by means of computer, remote terminal or other means.
- 10.4 The City shall take precautions to ensure that only authorized users are given access to data files. Electronic access is to be authorized using hardened passwords that are changed at least every 90 days.
- 10.5 When applicable, the City shall furnish encryption and decryption software compatible with ESD's software to ensure security and confidentiality
- 10.6 The City will have up-to-date anti-virus software installed and shall be diligent in the timely updating of this software. This includes the timely installation of security patches for all information technology assets, hosts, and networks that process ESD confidential information.
- 10.7 The City shall establish an audit trail that logs the activities of authorized users. The City shall grant ESD access to the audit trail upon request for investigative and compliance monitoring purposes.
- 10.8 The City shall instruct all authorized users regarding the confidential nature of the information, the requirements of the LIMITATION ON ACCESS AND USE and PHYSICAL SAFEGUARDS clauses of this Agreement, and the sanctions specified in chapter 50.13 RCW and other federal and state laws against unauthorized disclosure of information covered by this Agreement.
- 10.9 Authorized users shall only access the confidential data provided through hardware owned by the City and located on local government premises. Data will not be accessed via the following devices, including but not limited to: cell phones, blackberries, or at wireless hotspots.

11. REDISCLOSURE OF INFORMATION

- 11.1 Redisdisclosure of confidential information received from ESD is prohibited by chapter 50.13 RCW unless authorized by ESD for the official purpose for which the information was originally requested.

- 11.2 Redisclosure of ESD confidential data is authorized for judicial, formal administrative, or discovery proceedings only by subpoena pursuant to RCW 50.13.070.
- 11.3 Parties or individuals redisclosing confidential information in violation of chapter 50.13 RCW are subject to civil penalty. ESD may pursue criminal charges against individuals engaged in unauthorized redisclosure of confidential UI data.
- 11.4 The City agrees to reimburse ESD for all costs associated with the criminal referral and conviction of any City employee engaged in any form of unauthorized redisclosure of confidential UI data.

12. DATA CLASSIFICATION

According to the Office of the Chief Information Officer (OCIO) Standard No.141.10, Section 4.2, agencies must classify data into categories based on the sensitivity of the data. Agency data classifications must translate to or include the following classification categories:

Category 1 – Public Information

Public information is information that can be or currently is released to the public. It does not need protection from unauthorized disclosure, but does need integrity and availability protection controls.

Category 2 – Sensitive Information

Sensitive information may not be specifically protected from disclosure by law and is for official use only. Sensitive information is generally not released to the public unless specifically requested.

Category 3 – Confidential Information

Confidential information is information that is specifically protected from disclosure by law. It may include but is not limited to:

- a. Personal information about individuals, regardless of how that information is obtained.
- b. Information concerning employee personnel records.
- c. Information regarding IT infrastructure and security of computer and telecommunications systems.

Category 4 – Confidential Information Requiring Special Handling

Confidential information requiring special handling is information that is specifically protected from disclosure by law and for which:

- a. Especially strict handling requirements are dictated, such as by statutes, regulations, or agreements.
- b. Serious consequences could arise from unauthorized disclosure, such as threats to health and safety, or legal sanctions.

The information provided to the City under this Agreement is classified as **Category 4 – Confidential Information Requiring Special Handling**.

13. NO GUARANTEE OF ACCURACY

ESD does not guarantee the accuracy of the data provided.

14. TERMINATION OF ACCESS

14.1 ESD may at its discretion disqualify any individual authorized by the City from gaining access to confidential UI data. Notice of termination of access to confidential UI data will be by written notice and become effective upon receipt by the City. Termination of access of one individual by ESD does not affect other individuals authorized under this Agreement.

14.2 ESD Agreement Manager identified in Section 8 of this Agreement shall be responsible for informing the City Agreement Manager of the termination of access.

15. NONDISCRIMINATION

No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any provision of this Agreement because of race, color, creed, marital status, religion, sex, national origin, Vietnam-Era or disabled veteran's status, age, the presence of any sensory, mental or physical disability, or political affiliation or belief, provided that the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents the individual from performing the essential functions of his or her employment position, even with reasonable accommodation. The parties agree to abide by the standards of responsibility toward the disabled as specified by the Americans with Disabilities Act and applicable state law. In the event that one of the parties refuses to comply with the above provision, this Agreement may be canceled, terminated, or suspended in whole or in part by the other party.

16. RECORDS MAINTENANCE

Both parties shall retain all records, books or documents related to this Agreement for six (6) years beyond the expiration/termination of this Agreement. Federal auditors and any persons duly authorized by the parties shall have full access to and the right to examine any of these materials during this period.

17. INDEMNIFICATION

Each party to this Agreement hereby assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omissions on the part of itself, its employees and its officers. Neither party assumes any responsibility to the other party for the consequences of any claim, act, or omission of any person, agency, firm, or corporation not a party to this Agreement.

18. DISPUTES

Except as otherwise provided in this Agreement, when a dispute arises between the parties and it cannot be resolved by direct negotiation, the parties agree to participate in mediation in good faith. The mediator shall be chosen by agreement of the parties. If the parties cannot agree on a mediator, the parties shall use a mediation service that selects the mediator for the parties. Nothing in this Agreement shall be construed to limit the parties' choice of a mutually acceptable alternative resolution method such as a disputes hearing, a Dispute Resolution Board, or arbitration. If both parties are state agencies, 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.

19. NONDISCLOSURE AGREEMENT

The City agrees that all their authorized personnel who will have access to the information provided by ESD will sign a Nondisclosure statement, identical to that in Exhibit B, Nondisclosure Statement. The statement is consistent with the chapter 50.13 RCW and the Terms and Conditions of this Agreement. No data may be released to any City personnel until ESD receives the completed Nondisclosure Statement for that individual. ESD agrees to provide a timely acknowledgement of receipt of nondisclosure statement

20. RIGHT OF INSPECTION

The City shall provide access to ESD, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government at all reasonable times, in order to monitor, evaluate and ensure the requirements of the state and federal statutes, related regulations, and this Agreement are being met. The City agrees to accommodate ESD's request for inspection, electronic monitoring, review, or audit and to allow on-site audits during regular business hours.

21. WAIVER

Any waiver by any party with regard to any of its rights shall be in writing and shall not constitute a waiver to any other or future rights of the party.

22. 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, and to this end the provisions of this Agreement are declared to be severable.

23. TERMINATION

23.1 This Agreement shall remain in full force and effect until terminated as provided in this Agreement. Either party may terminate this Agreement by giving ten (10) calendar days' written notice to the other party. The obligations of confidentiality shall continue and survive this Agreement.

23.2 In the event of termination of this Agreement, the City shall return confidential data to ESD on or before the effective date of termination, unless destroyed according to section 9.1 of this Agreement.

24. TERMINATION FOR CAUSE

Either party may terminate this Agreement in whole or in part at any time prior to the date of completion when it is determined that the other party has failed to comply with the conditions of this Agreement. The cancelling party shall immediately notify the other party in writing of the termination and the reasons for termination, together with the effective date of termination.

25. JURISDICTION

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any legal action pertaining to this Agreement shall be the Washington State Superior Court for Thurston County.

26. AGREEMENT AMENDMENTS

This Agreement may be waived, changed, modified, or amended only 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.

27. 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.

28. ASSIGNMENT

Neither party shall assign this Agreement in whole or in part.

29. ORDER OF PRECEDENCE

In the event of an inconsistency in this Agreement, unless otherwise provided, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable Federal and State Statutes and Regulations;
2. Terms and Conditions as contained in this Agreement;
3. Any other provisions of this Agreement, including the attached Exhibits.

30. ALL WRITINGS CONTAINED HEREIN

This Agreement sets forth in full the entire agreement of the parties; and any other agreement, representation, or understanding, verbal or otherwise, is hereby deemed null and void and of no force and effect whatsoever.

By signing this Agreement, both parties certify that their policies and procedures comply with the confidentiality requirements of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement.

**Washington State
Employment Security Department**

**Washington State
City of Black Diamond**

Cynthia Forland

Carol Benson

By

By (print name)

LMPA Director

Mayor

Title

Title

Signature

Signature

Date

Date

Cynthia Forland
1/27/15

Carol Benson
1/16/2015

EXHIBIT A

STATEMENT OF WORK

1. PURPOSE

This Statement of Work establishes the provisions under which ESD shall provide the City of Black Diamond (hereinafter "City") access to the confidential UI data In order to update the travel demand model of the Comprehensive Plan, pursuant to authority granted in chapters 39.34, 50.13 and 50.38 of the Revised Code of Washington (RCW),

This Statement of Work is subject to all the terms and conditions of the Interagency Data Sharing Agreement in which it is incorporated.

2. DATA ELEMENTS TO BE DISCLOSED

ESD will provide the following data elements to City:

- NAICS Code
- Company name
- Employee count
- Street address
- For 2013 (to be consistent with City of Black Diamond are and the most recent full year you available.

3. FREQUENCY OF DATA TRANSFER AND SECURITY

Confidential data will be provided to the City on a quarterly basis on a secured medium, such as a secured FTP server. Confidential data stored on the City's system will be maintained in a secured manner and destroyed after use as specified in Section 9, LIMITATION ON ACCESS AND USE of the Interagency Agreement.

4. NON DISCLOSURE STATEMENT

Authorized City staff that review or work with unemployment insurance data must read and sign the ESD Non-Disclosure statement prior to viewing or working with the data. Signed copies of Non-Disclosure statements shall be returned to ESD Statement of Work Manager. The ESD Non-Disclosure statement is attached hereto and incorporated by reference to this Agreement as Exhibit "B".

5. AUTHORIZATION TO REDISCLOSE CONFIDENTIAL DATA

- The City shall inform ESD before publication of any report including UI data and share any drafts of work products at least ten (10) working days prior to public release.

- Release of information derived from confidential ESD's data, other than to the authorized members or staff, must be aggregated in such a manner that individual or firm-level data cannot be identified in any grouping level. ESD approval is required.
- Groupings at any aggregate level must not include fewer than three employers and a single employer cannot represent more than 80 percent of employment.
- Groupings at any aggregate level must be in such a manner that when combined with other publicly available information would not reveal the name or any identifying particular about any individual or any past or present employer or employing unit.
- The City shall not share confidential information with any private contractor or consultant.

6. PERIOD OF PERFORMANCE

The Period of performance for this Statement of Work shall commence on the date of execution of this agreement and shall continue through June 30, 2015, unless terminated sooner as provided in the Interagency Data Sharing Agreement.

7. STATEMENT OF WORK AMENDMENTS

This Statement of Work may be waived, changed, modified, or amended only by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personal authorized to bind each of the parties.

8. CONSIDERATION

If payment is required, ESD shall give advance notice to the City of the expected charges and an opportunity to approve the charges or to withdraw the data request.

9. STATEMENT OF WORK MANAGEMENT

The work described herein shall be performed under the coordination of the following Statement of Work Managers or their successors, who will provide the assistance and guidance necessary for the performance of this Statement of Work.

The Citystaff member responsible for the management of this Statement of Work is:

Name:	Aaron Nix
Title:	Community Development/Natural Resources Director
Address:	24301 Roberts Drive City of Black Diamond, WA 98010
Phone Number:	360-886-5700 x5720
Email:	anix@ci.blackdiamond.wa.us

ESD staff member responsible for the management of this Statement of Work is:

Name: Jeff Robinson
Title: Manager Policy, Research and Forecasting
Address: P.O. Box 9046
Olympia, WA 98507
Telephone Number: (360) 902 9509
Email: JRobinson@esd.wa.gov

10. APPROVAL

Now, therefore, in consideration of the mutual promises and undertakings contained herein and in the Interagency Data Sharing Agreement it supplements, the parties hereto consent to the provisions of Exhibit A, Statement of Work.

**WASHINGTON STATE
EMPLOYMENT SECURITY
DEPARTMENT**

**WASHINGTON STATE
CITY OF BLACK DIAMOND**

Cynthia Forland

By:
Director, LMPA

Title
Cynthia Forland

Signature
1/27/15

Date

~~Aaron Nix~~ *Carol Benson*

By:
Community Development/Natural
Resources Director *Mayor*

Title
Carol Benson

Signature
1/16/2015

Date

EXHIBIT A

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4. NON DISCLOSURE STATEMENT

Authorized City staff that review or work with unemployment insurance data must read and sign the ESD Non-Disclosure statement prior to viewing or working with the data. Signed copies of Non-Disclosure statements shall be returned to ESD Statement of Work Manager. The ESD Non-Disclosure statement is attached hereto and incorporated by reference to this Agreement as Exhibit "B".

5. AUTHORIZATION TO REDISCLOSE CONFIDENTIAL DATA

- The City shall inform ESD before publication of any report including UI data and share any drafts of work products at least ten (10) working days prior to public release.

- Release of information derived from confidential ESD's data, other than to the authorized members or staff, must be aggregated in such a manner that individual or firm-level data cannot be identified in any grouping level. ESD approval is required.
- Groupings at any aggregate level must not include fewer than three employers and a single employer cannot represent more than 80 percent of employment.
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Name: Jeff Robinson
Title: Manager Policy, Research and
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Address: P.O. Box 9046
Olympia, WA 98507
Telephone Number: (360) 902 9509
Email: JRobinson@esd.wa.gov

10. APPROVAL

Now, therefore, in consideration of the mutual promises and undertakings contained herein and in the Interagency Data Sharing Agreement it supplements, the parties hereto consent to the provisions of Exhibit A, Statement of Work.

**WASHINGTON STATE
EMPLOYMENT SECURITY
DEPARTMENT**

**WASHINGTON STATE
CITY OF BLACK DIAMOND**

Cynthia Forland

By:
Director, LMPA

Title

Signature

Date

Aaron Nix

By:
Community Development/Natural
Resources Director

Title



Signature

1/27/2015

Date

EXHIBIT B

**WASHINGTON STATE EMPLOYMENT SECURITY DEPARTMENT
NOTICE OF NONDISCLOSURE**

As a non-Employment Security Department (ESD) employee, you may be given access to ESD records or information that is deemed private and confidential by statute.

You may not make any unauthorized disclosure of private or confidential information about employers, clients/claimants or employees to any person (including co-workers) or entity. Confidential information includes, but is not limited to, employee's wages or hours, unemployment insurance benefit records, and the North American Industrial Classification (NAICS) codes of individual employers.

The unauthorized disclosure or abuse of information deemed private and confidential may subject you to a civil penalty of Five Thousand dollars (\$5,000) and other applicable sanctions under state (chapter 50.13 RCW) and federal law.

I have read and understand the above Notice of Nondisclosure.

Aaron C. Nix

Printed Name

Aaron C. Nix

(Signature)

1/27/2015

(Date)

The above individual has been informed of the obligations of the above referenced Agreement and Statement of Work including any limitations, use or publishing of Confidential Data.

Carol Benson, Mayor

Agreement Manager Printed Name

Carol Benson 1/27/15

Agreement Manager Signature

(Date)

State Agency

(An original of this notice must be returned to the Employment Security Department.)