CITY OF BLACK DIAMOND

February 1, 2024 Regular Business Meeting Agenda – Revised 01/26/24
Council Chambers, 25510 Lawson St.
Black Diamond, WA 98010

THIS IS OFFERED AS A HYBRID MEETING AND MAY BE ATTENDED IN PERSON AT THE ABOVE NOTED ADDRESS OR BY JOINING VIRTUAL/TELEPHONICALLY. CALL IN AND JOINING INFORMATION FOLLOWS:

Zoom link to join meeting: https://zoom.us/j/4454477047?pwd=eGxRY3ZEeU14SVM2cGRBcUxCSjdmZz09
(Note: You do not need a web cam to join the meeting, but you will need audio to hear the proceedings.)
Meeting ID: 445 447 7047 Password: Council

Telephone dial in options: +1 253 215 8782 US (Tacoma) +1 206 337 9723 US (Seattle) Meeting ID: 445 447 7047

7:00 P.M. CALL TO ORDER, FLAG SALUTE, ROLL CALL

READING OF GUIDING PRINCIPLES:

AGENDA REVIEW AND APPROVAL:

PUBLIC COMMENTS: Persons wishing to address the City Council regarding items of new business are encouraged to do so at this time. When recognized by the Mayor, please come to the podium and clearly state your name. Please limit your comments to 3 minutes. If you desire a formal agenda placement, please contact the City Clerk at 360-851-4500. Thank you for attending.

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

CONSENT AGENDA:

1) **Claim Checks** – February 1, 2024, Check No. 53988 through Check No. 54055 in the amount of $266,387.66
2) **Minutes –** Special Meeting of January 11, 2024, Special Meeting of January 18, 2024, and Council Meeting of January 18, 2024

PUBLIC HEARINGS:

UNFINISHED BUSINESS:

3) **AB24-010** – Ordinance Regarding the Palmer Rezones 1, 2, and 3 — Mr. Linehan

NEW BUSINESS:

4) **AB24-011 –** Resolution Regarding US Bank Pershing Contract — Mr. Mason
5) **AB24-012** – Resolution Regarding Contract with AHBL, Inc. for Middle Housing Regulations — Ms. Davis
6) **AB24-013** – Resolution Authorizing the Mayor to Accept Grant Funds and Execute an Agreement With the Department of Commerce — Ms. Davis
7) **AB24-014** – Ordinance Repealing BDMC 9.90.020 to Comply with State Laws Regarding Use and Possession of Drug Paraphernalia — Chief Kiblinger
8) **AB24-015** – Resolution Regarding Professional Services Agreement with Parametrix, Inc. for On-Call Civil Engineering Services to the City — Mr. Hanis

9) AB24-016 – Resolution Regarding Professional Services Agreement with HWA GeoSciences, Inc. for On-Call Geotechnical Engineering Services to the City — Mr. Hanis

10) AB24-017 – Resolution Accepting SR 169 Northern Watermain Improvements Project by New X, Inc. as Complete — Mr. Hanis

11) AB24-018 – Resolution Regarding Amendment 1 to Funding Agreement with King County Flood Control District for the Covington Creek Culvert Replacement Project — Mr. Hanis

DEPARTMENT REPORTS:

MAYOR'S REPORT:

COUNCIL REPORTS:

- Councilmember Douglass
- Councilmember Smith
- Councilmember Mulvihill
- Councilmember de Leon
- Councilmember Jones
- Councilmember Page
- Councilmember Deady

ATTORNEY REPORT:

PUBLIC COMMENTS:

EXECUTIVE SESSION:

ADJOURNMENT:

CERTIFICATION

Finance Committee Meeting **January 25, 2024**
Council Date: **February 1, 2024**

Check No.'s / EFT	Batch Name	Check / EFT Date		Amount
53988 - 54021	Early 5th December Batch	1/19/2024	$	182,133.31
54022 - 54054	3rd January 2024 Batch	2/2/2024	$	70,147.93
54055	1st February 2024 Batch	2/2/2024	$	14,106.42
			$	
			$	
			$	
			$	
			$	
			$	
			$	
			$	
			$	
			$	
			$	
			$	
		TOTAL	$	266,387.66

I, THE UNDERSIGNED DO HEREBY CERTIFY UNDER THE PENALTY OF PERJURY, THAT THE MATERIALS HAVE BEEN FURNISHED, THE SERVICES RENDERED AND OR THE LABOR PERFORMED AS DESCRIBED HEREIN AND THAT THE CLAIM IS A JUST, DUE AND UNPAID OBLIGATION AGAINST THE CITY OF BLACK DIAMOND, AND THAT I AM AUTHORIZED TO AUTHENTICATE AND CERTIFY TO SAID CLAIM.

Xavier Mason

Xavier Mason, Finance Director or **CAROL BENSON, MAYOR**

DATE: 01/24/2024 **DATE**

Register

Fiscal: 2024, 2023
Deposit Period: 2024 - February, 2024 - January, 2023 - December
Check Period: 2024 - February - 1st February 2024 Batch, 2024 - January - 3rd January 2024 Batch, 2023 - December - Early 5th December 2023 Final 2023

Number	Name	Print Date	Clearing Date	Amount
Columbia Bank	**390562401**			
Check				
53988	AHBL, Inc.	1/19/2024		$56,631.31
53989	Black Diamond Auto Parts	1/19/2024		$125.94
53990	Carina Thornquist	1/19/2024		$1,200.00
53991	CHS/Cenex Inc	1/19/2024		$2,423.23
53992	City of Renton/EHD	1/19/2024		$120.00
53993	Cutters Supply Inc.	1/19/2024		$61.43
53994	DTPM	1/19/2024		$232.59
53995	Firestone Complete Auto Care	1/19/2024		$681.35
53996	HWA GeoSciences Inc.	1/19/2024		$900.00
53997	Jeffrey & Holly Altman	1/19/2024		$280.94
53998	Johnsons Home & Garden	1/19/2024		$9.77
53999	Kervin Broom	1/19/2024		$276.00
54000	King County Finance - I-Net	1/19/2024		$1,135.00
54001	Madrona Law Group LLC	1/19/2024		$19,335.98
54002	Michael & Julie Snooke	1/19/2024		$203.52
54003	Mountain View Fire & Rescue	1/19/2024		$7,051.85
54004	Palmer Coking Coal Company	1/19/2024		$301.12
54005	Parametrix, Inc.	1/19/2024		$20,442.16
54006	Paul & Kathleen Collins	1/19/2024		$113.10
54007	Perteet Inc.	1/19/2024		$2,330.00
54008	Puget Sound Energy	1/19/2024		$10,102.77
54009	Quan Phan & Jennifer Nguyen	1/19/2024		$57.01
54010	Republic Services #176	1/19/2024		$2,323.27
54011	RH2 Engineering Inc.	1/19/2024		$28,255.91
54012	Scheibmeir, Kelly & Satterfield	1/19/2024		$4,337.50
54013	Secure Pacific Corporation	1/19/2024		$453.83
54014	Sound Publishing Inc.	1/19/2024		$1,872.30
54015	South Correctional Entity	1/19/2024		$249.00
54016	State Auditor's Office	1/19/2024		$8,070.30
54017	Tarun Arora	1/19/2024		$145.00
54018	Utilities Underground Location Center	1/19/2024		$49.02
54019	Mathews, Marjorie H	1/19/2024		$238.93
54020	Valley Communications Center	1/19/2024		$11,731.18
54021	Water Management Laboratories, Inc.	1/19/2024		$392.00
54022	Amazon Capital Services, Inc.	2/2/2024		$1,107.01

Number	Name	Print Date	Clearing Date	Amount
54023	Art Gamblin Motors	2/2/2024		$924.73
54024	Association of Washington Cities	2/2/2024		$4,911.00
54025	Axon Enterprise, Inc.	2/2/2024		$9,391.68
54026	Black Diamond Municipal Court	2/2/2024		$92.58
54027	City of Enumclaw	2/2/2024		$7,860.00
54028	Comcast	2/2/2024		$24.35
54029	Confidential Data Disposal	2/2/2024		$90.00
54030	Fugate Ford	2/2/2024		$114.24
54031	HM Pacific Northwest. Inc	2/2/2024		$1,036.90
54032	Home Depot Credit Service	2/2/2024		$182.59
54033	Honey Bucket/Northwest Cascade Inc.	2/2/2024		$196.00
54034	International Institute of Municipal Clerks	2/2/2024		$185.00
54035	Johnsons Home & Garden	2/2/2024		$276.14
54036	Jose Luis Molnar	2/2/2024		$165.72
54037	King County Municipal Clerk's Association	2/2/2024		$85.00
54038	L.N. Curtis & Sons	2/2/2024		$103.31
54039	Leads Online LLC	2/2/2024		$2,588.00
54040	Office Products Nationwide	2/2/2024		$104.34
54041	Omiga Solutions LLC	2/2/2024		$2,000.00
54042	Palmer Coking Coal Company	2/2/2024		$24.52
54043	Benson, Kylie	2/2/2024		$30.00
54044	Reano Construction & Logging Inc.	2/2/2024		$9,783.00
54045	Seattle Times	2/2/2024		$417.50
54046	Secure Pacific Corporation	2/2/2024		$1,216.07
54047	SHI International Corp.	2/2/2024		$20,649.84
54048	Somer Johnson	2/2/2024		$344.29
54049	Sound Safety Products Inc	2/2/2024		$153.99
54050	Starwind Software, Inc	2/2/2024		$3,261.00
54051	Summit Law Group, PLLC	2/2/2024		$1,714.50
54052	TRM Wood Products Co. Inc.	2/2/2024		$366.56
54053	VenTek International	2/2/2024		$628.07
54054	W. Anneke Berry	2/2/2024		$120.00
54055	Sorci Family LLC	2/2/2024		$14,106.42
		Total	**Check**	**$266,387.66**
		Total	**390562401**	**$266,387.66**
		Grand Total		**$266,387.66**

Voucher Directory with Transaction Date

Vendor	Transaction Number	Transaction Reference	Account Number	Invoice Date	Fiscal Description	Name	Title	Void	Amount

AHBL, Inc.

53988	12/31/2023	2023 - December - Early 5th December 2023 Final 2023	
142833			
December 2023 Service			
001-000-257-558-70-49-00		MDRT - Planning Consultant	$27,140.00
Total 142833			**$27,140.00**
53988	12/31/2023	2023 - December - Early 5th December 2023 Final 2023	
142834			
December 2023 Service			
001-000-240-558-60-41-01		PLN - Prof Serv - Long Range Planning	$12,430.00
Total 142834			**$12,430.00**
53988	12/31/2023	2023 - December - Early 5th December 2023 Final 2023	
142921			
December 2023 Service			
310-000-038-594-58-62-00		Comp Pl Update-State DOE Grant	$17,061.31
Total 142921			**$17,061.31**
Total 53988			**$56,631.31**
Total AHBL, Inc.			**$56,631.31**

Amazon Capital Services, Inc.

54022	1/13/2024	2024 - January - 3rd January 2024 Batch	
14RJ-GQ3Y-XRXX			
CH - Supplies			
001-000-180-518-50-31-00		CEN SVCS - Operating & Office Supplies	$63.38
	Binders, Waste Toner Cartridge		
Total 14RJ-GQ3Y-XRXX			**$63.38**
54022	1/9/2024	2024 - January - 3rd January 2024 Batch	
161D-QKPT-9HLK			
CH - Supplies			
001-000-180-518-50-31-00		CEN SVCS - Operating & Office Supplies	$10.64
	City Hall Office Supplies		
Total 161D-QKPT-9HLK			**$10.64**

Vendor	Transaction Number	Transaction Reference	Account Number	Invoice Date	Fiscal Description	Name	Title	Void	Amount
	54022			**1/9/2024**	**2024 - January - 3rd January 2024 Batch**				
		16XS-CCPC-CPWG							
						PW - Supplies			
			101-000-000-542-30-31-00				STRT - Office Supplies		$9.13
			401-000-000-534-80-31-01				WTR - Operating Supplies		$0.00
			401-000-000-534-80-31-02				WTR - Office Supplies		$10.65
			407-000-000-535-80-31-02				SWR - Office Supplies		$6.09
			410-000-000-531-10-31-00				STRM - Office Supplies		$4.56
		Total 16XS-CCPC-CPWG							**$30.43**
	54022			**1/5/2024**	**2024 - January - 3rd January 2024 Batch**				
		19H9-937D-6N7J							
						Ch - Supplies			
			001-000-180-518-50-31-00				CEN SVCS - Operating & Office Supplies		$51.35
				City Hall Office Supplies					
			001-000-254-518-20-31-00				CH - Operating Supplies		$80.37
				Janitorial and Bld Maint Supplies					
		Total 19H9-937D-6N7J							**$131.72**
	54022			**1/9/2024**	**2024 - January - 3rd January 2024 Batch**				
		1F3R-1VWG-96N1							
						PW - Supplies			
			101-000-000-542-30-31-03				STRT - Operating Supplies		$49.77
				PW - Streets - Operating Supplies					
			401-000-000-534-80-31-01				WTR - Operating Supplies		$74.66
				PW - Water - Operating Supplies					
			407-000-000-535-80-31-01				SWR - Operating Supplies		$87.10
				PW - Sewer - Operating Supplies					
			410-000-000-531-10-31-01				STRM - Operating Supplies		$37.32
				PW - Storm - Operting Supplies					
		Total 1F3R-1VWG-96N1							**$248.85**
	54022			**1/18/2024**	**2024 - January - 3rd January 2024 Batch**				
		1FHF-H4V7-INVG							
						PW - Supplies			
			101-000-000-542-30-31-03				STRT - Operating Supplies		$36.79
				Streets - Supplies					
			401-000-000-534-80-31-01				WTR - Operating Supplies		$55.19
				PW - Water - Operating Supplies					
			407-000-000-535-80-31-01				SWR - Operating Supplies		$64.39
				PW - Sewer - Operating Supplies					

Vendor	Transaction Number / Transaction Reference / Account Number	Invoice Date	Fiscal Description / Name / Title	Void / Amount
	410-000-000-531-10-31-01		STRM - Operating Supplies	$27.59
			PW - Storm - Operting Supplies	
	Total 1FHF-H4V7-INVG			**$183.96**
	54022	**1/17/2024**	**2024 - January - 3rd January 2024 Batch**	
	1GV3-V6NH-TX1T			
	PW - Supplies			
	510-000-200-594-48-64-02		PW - Truck & Equip	$84.78
			Strobe Kight Bar for New Truck	
	Total 1GV3-V6NH-TX1T			**$84.78**
	54022	**1/4/2024**	**2024 - January - 3rd January 2024 Batch**	
	1JQH-RNNJ-69XH			
	PW- Supplies			
	101-000-000-542-30-31-00		STRT - Office Supplies	$7.52
			PW - Streets - Office Supplies	
	401-000-000-534-80-31-02		WTR - Office Supplies	$8.78
			PW - Water - Office Supplies	
	407-000-000-535-80-31-02		SWR - Office Supplies	$5.02
			PW - Sewer - Office Supplies	
	410-000-000-531-10-31-00		STRM - Office Supplies	$3.76
			PW - Strm - Office Supplies	
	Total 1JQH-RNNJ-69XH			**$25.08**
	54022	**1/15/2024**	**2024 - January - 3rd January 2024 Batch**	
	1M7N-FT3T-GXHN			
	CH - Supplies			
	001-000-180-518-50-31-00		CEN SVCS - Operating & Office Supplies	$6.49
			CH - Tacks	
	001-000-180-518-50-31-00		CEN SVCS - Operating & Office Supplies	$216.81
			City Hall - Paper	
	001-000-180-518-50-31-00		CEN SVCS - Operating & Office Supplies	$23.90
			CH Tape & Dispenser	
	001-000-254-518-21-31-00		MOD - Operating & Mtc. Supplies	$72.28
			Mod - Paper	
	Total 1M7N-FT3T-GXHN			**$319.48**
	54022	**1/23/2024**	**2024 - January - 3rd January 2024 Batch**	
	Invoice - 1/23/2024 3:15:45 PM			
	Crt - Supplies			
	001-000-120-512-51-49-02		CRT: Printing and Binding	$8.69
			Lables	
	Total Invoice - 1/23/2024 3:15:45 PM			**$8.69**

Vendor	Transaction Number	Transaction Reference	Account Number	Invoice Date	Fiscal Description	Name	Title	Void	Amount
	Total 54022								**$1,107.01**
Total Amazon Capital Services, Inc.									**$1,107.01**
Art Gamblin Motors									
	54023			**1/10/2024**	**2024 - January - 3rd January 2024 Batch**				
		433544							
			PD - Veh Maint						
			001-000-210-521-10-48-01			PD - Vehicle/Eq. Mtc. & Repair			$924.73
					Repair Airbag & Generator				
		Total 433544							**$924.73**
	Total 54023								**$924.73**
Total Art Gamblin Motors									**$924.73**
Association of Washington Cities									
	54024			**12/10/2023**	**2024 - January - 3rd January 2024 Batch**				
		121269							
			2024 Membership						
			001-000-180-518-50-49-09			CEN SVCS - AWC Membership			$4,911.00
		Total 121269							**$4,911.00**
	Total 54024								**$4,911.00**
Total Association of Washington Cities									**$4,911.00**
Axon Enterprise, Inc.									
	54025			**1/1/2024**	**2024 - January - 3rd January 2024 Batch**				
		INUS216417							
			Taser Certification 2024						
			001-000-210-521-10-35-00			PD - Firearms Program			$9,391.68
		Total INUS216417							**$9,391.68**
	Total 54025								**$9,391.68**
Total Axon Enterprise, Inc.									**$9,391.68**
Black Diamond Auto Parts									
	53989			**12/27/2023**	**2023 - December - Early 5th December 2023 Final 2023**				
		471152							
			MDRT - Veh Maint						
			001-000-246-558-70-48-00			MDRT - Vehicle Repair & Maintenance			$125.94
		Total 471152							**$125.94**
	Total 53989								**$125.94**
Total Black Diamond Auto Parts									**$125.94**

Vendor	Transaction Number / Transaction Reference / Account Number	Invoice Date	Fiscal Description / Name / Title	Void / Amount

Black Diamond Municipal Court

	54026	**1/19/2024**	**2024 - January - 3rd January 2024 Batch**	
	01192024 BDMC			
	Crt - Supplies			
	001-000-120-512-51-49-02		CRT: Printing and Binding	$92.58
		Deposit Tickets		
	Total 01192024 BDMC			**$92.58**
	Total 54026			**$92.58**
Total Black Diamond Municipal Court				**$92.58**

Carina Thornquist

	53990	**1/11/2024**	**2023 - December - Early 5th December 2023 Final 2023**	
	01112024 CT			
	AFLAC Reimbursement			
	001-000-900-588-10-00-01		ADM - AWC Lia. Bld. Equip Ins / Flex Reimbs	$1,200.00
	Total 01112024 CT			**$1,200.00**
	Total 53990			**$1,200.00**
Total Carina Thornquist				**$1,200.00**

CHS/Cenex Inc

	53991	**12/31/2023**	**2023 - December - Early 5th December 2023 Final 2023**	
	124244.122023CH			
	December 2023 Fuel			
	001-000-180-518-50-32-01		CEN SVCS - Fuel	$47.00
		Central Services - CH		
	001-000-181-518-30-32-00		FAC - MTC Fuel Costs	$289.77
		Facilities Clearing		
	001-000-240-558-51-32-00		COM DEV - Fuel	$114.72
		Com Dev / Inspections		
	001-000-246-558-70-32-00		MDRT - Fuel	$399.67
		MDRT		
	001-000-270-576-80-32-00		PRK - Fuel	$62.88
		PARKS 4%		
	001-000-280-536-20-32-00		CEM - Fuel	$31.44
		CEMETERY 2%		
	101-000-000-543-50-32-00		STRT - Fuel	$345.86
		STREETS 22%		
	401-000-000-534-80-32-00		WTR - Fuel	$377.30
		WATER 24%		

Vendor	Transaction Number	Transaction Reference	Account Number	Invoice Date	Fiscal Description	Name	Title	Void	Amount
			407-000-000-535-80-32-00				SWR - Fuel		$377.30
					SEWER 24%				
			410-000-000-531-10-32-00				STRM - Fuel		$377.29
					STORM WATER 24%				
		Total 124244.122023CH							**$2,423.23**
	Total 53991								**$2,423.23**
Total CHS/Cenex Inc									**$2,423.23**

City of Enumclaw

Vendor	Transaction Number	Transaction Reference	Account Number	Invoice Date	Fiscal Description	Name	Title	Void	Amount
	54027			**1/31/2024**	**2024 - January - 3rd January 2024 Batch**				
		06890							
			4th Qtr 2023 Service						
			001-000-211-523-60-49-00				PD - Jail Costs		$7,860.00
					92 days (Guaranteed Bed) 5 days additional beds				
		Total 06890							**$7,860.00**
	Total 54027								**$7,860.00**
Total City of Enumclaw									**$7,860.00**

City of Renton/EHD

Vendor	Transaction Number	Transaction Reference	Account Number	Invoice Date	Fiscal Description	Name	Title	Void	Amount
	53992			**12/31/2024**	**2023 - December - Early 5th December 2023 Final 2023**				
		59430							
			December 2023 Service						
			001-000-211-523-60-49-01				PD - Electronic Home Monitor Costs		$120.00
		Total 59430							**$120.00**
	Total 53992								**$120.00**
Total City of Renton/EHD									**$120.00**

Comcast

Vendor	Transaction Number	Transaction Reference	Account Number	Invoice Date	Fiscal Description	Name	Title	Void	Amount
	54028			**1/5/2024**	**2024 - January - 3rd January 2024 Batch**				
		01052024 COM PD							
			January 2024 Service						
			001-000-214-521-20-42-00				PD - Telephone / DSL / Radios / Air Cards		$12.19
					PD Cable 0152887				
		Total 01052024 COM PD							**$12.19**
	54028			**1/3/2024**	**2024 - January - 3rd January 2024 Batch**				
		8498 34 014 0155476 01.2024							
			January 2024 Service						
			001-000-191-525-60-31-00				EM - Supplies		$12.16

Vendor	Transaction Number	Transaction Reference	Account Number	Invoice Date	Fiscal Description	Name	Title	Void	Amount
					EM Cable 0125628				
		Total 8498 34 014 0155476 01.2024							**$12.16**
	Total 54028								**$24.35**
Total Comcast									**$24.35**

Confidential Data Disposal

Transaction Number	Transaction Reference	Account Number	Invoice Date	Fiscal Description	Name	Title	Void	Amount
54029			**1/15/2024**	**2024 - January - 3rd January 2024 Batch**				
	223333							
		January 2024 Service						
		001-000-120-512-51-49-04				CRT: Shredding Services		$15.00
		001-000-180-518-50-49-04				CEN SVCS - Shredding Services		$15.00
		001-000-210-521-10-49-05				PD - Shredding Services		$15.00
	Total 223333							**$45.00**
54029			**1/15/2024**	**2024 - January - 3rd January 2024 Batch**				
	223334							
		January 2024 Service						
		001-000-180-518-50-49-04				CEN SVCS - Shredding Services		$45.00
	Total 223334							**$45.00**
Total 54029								**$90.00**

Total Confidential Data Disposal **$90.00**

Cutters Supply Inc.

Transaction Number	Transaction Reference	Account Number	Invoice Date	Fiscal Description	Name	Title	Void	Amount
53993			**11/6/2023**	**2023 - December - Early 5th December 2023 Final 2023**				
	151544							
		PW - Equip Maint						
		101-000-000-542-30-48-04				PW - Clearing- Shared Veh/Equip Maint		$61.43
	Total 151544							**$61.43**
Total 53993								**$61.43**

Total Cutters Supply Inc. **$61.43**

Vendor	Transaction Number / Transaction Reference / Account Number	Invoice Date	Fiscal Description / Name / Title	Void / Amount
DTPM				
	53994	**12/12/2023**	**2023 - December - Early 5th December 2023 Final 2023**	
	86002			
	Crt - Supplies			
	001-000-121-512-51-41-01		CRT: AOC-Therapeutic Grant 07/01/2023 -	$232.59
	Total 86002			**$232.59**
	Total 53994			**$232.59**
Total DTPM				**$232.59**
Firestone Complete Auto Care				
	53995	**12/18/2023**	**2023 - December - Early 5th December 2023 Final 2023**	
	97011			
	PD - Veh Maint			
	001-000-210-521-10-48-01		PD - Vehicle/Eq. Mtc. & Repair	$681.35
		Tires		
	Total 97011			**$681.35**
	Total 53995			**$681.35**
Total Firestone Complete Auto Care				**$681.35**
Fugate Ford				
	54030	**1/16/2024**	**2024 - January - 3rd January 2024 Batch**	
	481957			
	PD - Veh Maint			
	001-000-210-521-10-48-01		PD - Vehicle/Eq. Mtc. & Repair	$114.24
		2020 Ford Exp # 712190		
	Total 481957			**$114.24**
	Total 54030			**$114.24**
Total Fugate Ford				**$114.24**
HM Pacific Northwest. Inc				
	54031	**1/10/2024**	**2024 - January - 3rd January 2024 Batch**	
	5951089			
	PW - Supplies			
	101-000-000-542-30-31-03		STRT - Operating Supplies	$1,036.90
		Sand		
	Total 5951089			**$1,036.90**
	Total 54031			**$1,036.90**
Total HM Pacific Northwest. Inc				**$1,036.90**

Vendor	Transaction Number / Transaction Reference	Invoice Date / Account Number	Fiscal Description / Name / Title	Void / Amount
Home Depot Credit Service				
	54032	**1/17/2024**	**2024 - January - 3rd January 2024 Batch**	
	0523991			
		PW - Supplies		
		101-000-000-542-30-31-03	STRT - Operating Supplies Streets - Operating Supplies	$32.61
		401-000-000-534-80-31-01	WTR - Operating Supplies Water - Operating Supplies	$32.61
		407-000-000-535-80-31-01	SWR - Operating Supplies Sewer - Operating Supplies	$32.61
		410-000-000-531-10-31-01	STRM - Operating Supplies Storm - Operating Supplies	$32.60
	Total 0523991			**$130.43**
	54032	**1/11/2024**	**2024 - January - 3rd January 2024 Batch**	
	6040675			
		PD - Supplies		
		001-000-212-521-50-48-02	PD - Bldg Repairs & Maintenance Heater, Dmmers	$52.16
	Total 6040675			**$52.16**
	Total 54032			**$182.59**
Total Home Depot Credit Service				**$182.59**
Honey Bucket/Northwest Cascade Inc.				
	54033	**1/2/2024**	**2024 - January - 3rd January 2024 Batch**	
	0553931130			
		January 2024 Service		
		001-000-270-575-70-41-01	Lake Sawyer: Portable Restroom Facility Parks-Boat Launch Rental: 145291	$98.00
	Total 0553931130			**$98.00**
	54033	**1/2/2024**	**2024 - January - 3rd January 2024 Batch**	
	0553931131			
		January 2024 Service		
		001-000-270-575-70-41-01	Lake Sawyer: Portable Restroom Facility Lake Sawyer Regional Park: 71400002	$98.00
	Total 0553931131			**$98.00**
	Total 54033			**$196.00**
Total Honey Bucket/Northwest Cascade Inc.				**$196.00**

Vendor				
Transaction Number	Invoice Date	Fiscal Description	Void	
Transaction Reference		Name		Amount
Account Number		Title		

HWA GeoSciences Inc.

53996	**12/31/2023**	**2023 - December - Early 5th December 2023 Final 2023**	
35308			
December 2023 Service			
001-000-257-558-70-41-05		MDRT - Geotech	$900.00
Total 35308			**$900.00**
Total 53996			**$900.00**
Total HWA GeoSciences Inc.			**$900.00**

International Institute of Municipal Clerks

54034	**1/10/2024**	**2024 - January - 3rd January 2024 Batch**	
01102024 IIMC			
2024 Membership			
001-000-137-514-21-49-02		CLK - Memberships	$185.00
Total 01102024 IIMC			**$185.00**
Total 54034			**$185.00**
Total International Institute of Municipal Clerks			**$185.00**

Jeffrey & Holly Altman

53997	**1/8/2024**	**2023 - December - Early 5th December 2023 Final 2023**	
5345.0			
Utility Refund			
401-000-000-343-40-00-01		Water Charges	$280.94
	Refund Closed Account		
Total 5345.0			**$280.94**
Total 53997			**$280.94**
Total Jeffrey & Holly Altman			**$280.94**

Johnsons Home & Garden

53998	**10/10/2023**	**2023 - December - Early 5th December 2023 Final 2023**	
475548			
PW - Supplies			
001-000-280-536-20-31-02		CEM - Operating Supplies	$9.77
	Caulking Cord		
Total 475548			**$9.77**
Total 53998			**$9.77**

Vendor	Transaction Number	Transaction Reference	Invoice Date	Account Number	Fiscal Description	Name	Title	Void	Amount
	54035		**1/10/2024**		**2024 - January - 3rd January 2024 Batch**				
		477280							
			PW - Supplies						
				101-000-000-542-30-31-04		Uniforms - Streets	STRT - Uniforms & Safety Supplies		$11.52
				101-000-000-542-30-48-00		Veh & Eq Maint - Streets	STRT - Repair and Maintenance		$15.77
				401-000-000-534-80-31-05		Uniforms - Water	WTR - Uniform Allowance		$17.28
				401-000-000-534-80-48-03		Veh & Eq Maint - Water	WTR - Vehicle Maintenance		$23.66
				407-000-000-535-80-31-04		Uniforms - Sewer	SWR - Uniform Allowance		$20.16
				407-000-000-535-80-48-04		Veh & Eq Naint - Sewer	SEW - Vehicle Maintenance		$27.61
				410-000-000-531-10-31-04		Uniforms - Storm	STRM - Uniforms and Safety Supplies		$8.64
				410-000-000-531-10-48-04		Veh & Equip Maint - Storm	STRM - Vehicle Maintenance & Repair		$11.83
		Total 477280							**$136.47**
	54035		**1/12/2024**		**2024 - January - 3rd January 2024 Batch**				
		477365							
			PD - Supplies						
				001-000-210-521-10-31-00		Sand Tubes for Veh.	PD - Operating Supplies		$16.60
		Total 477365							**$16.60**
	54035		**1/17/2024**		**2024 - January - 3rd January 2024 Batch**				
		477439							
			PW - Supplies						
				101-000-000-542-30-31-03		Operating Supplies - Streets	STRT - Operating Supplies		$30.77
				401-000-000-534-80-31-01		Operating Supplies - Water	WTR - Operating Supplies		$30.77
				407-000-000-535-80-31-01		Operating Supplies - Sewer	SWR - Operating Supplies		$30.76
				410-000-000-531-10-31-01		Operating Supplies - Storm	STRM - Operating Supplies		$30.77
		Total 477439							**$123.07**
	Total 54035								**$276.14**

Vendor	Transaction Number	Transaction Reference	Account Number	Invoice Date	Fiscal Description	Name	Title	Void	Amount
Total Johnsons Home & Garden									**$285.91**

Jose Luis Molnar

54036			**1/10/2024**	**2024 - January - 3rd January 2024 Batch**		
	4862					
		January 2023 Service				
		001-000-120-512-51-41-04			CRT: Interpreter	$165.72
	Total 4862					**$165.72**
Total 54036						**$165.72**
Total Jose Luis Molnar						**$165.72**

Kervin Broom

53999			**1/5/2024**	**2023 - December - Early 5th December 2023 Final 2023**		
	BLD23-0060					
		Permit Refund				
		410-000-000-369-91-04-00			Stormwater Drainage Plan review Fee	$138.00
		Permit not required				
		410-000-000-369-91-06-00			Storm Down Spout/Drain Insp Fee	$138.00
		Permit not required				
	Total BLD23-0060					**$276.00**
Total 53999						**$276.00**
Total Kervin Broom						**$276.00**

King County Finance - I-Net

54000			**12/31/2023**	**2023 - December - Early 5th December 2023 Final 2023**		
	11014257					
		December 2023 Service				
		001-000-145-518-80-42-00			IT - Telephone / DSL / Radios / Air Cards	$1,135.00
	Total 11014257					**$1,135.00**
Total 54000						**$1,135.00**
Total King County Finance - I-Net						**$1,135.00**

King County Municipal Clerk's Association

54037			**1/8/2024**	**2024 - January - 3rd January 2024 Batch**		
	01082024 KCM					
		2024 Membership				
		001-000-137-514-21-49-02			CLK - Memberships	$85.00

Martinez, Thornquist, Williamson

Total 01082024 KCM **$85.00**

Total 54037 **$85.00**

Total King County Municipal Clerk's Association **$85.00**

L.N. Curtis & Sons

54038 **1/10/2024** **2024 - January - 3rd January 2024 Batch**

INV781391

PD - Uniforms

001-000-210-521-10-31-04 PD - Uniform Allowance $29.95

Total INV781391 **$29.95**

54038 **1/12/2024** **2024 - January - 3rd January 2024 Batch**

INV782217

PD - Uniforms

001-000-210-521-10-31-04 PD - Uniform Allowance $73.36

Total INV782217 **$73.36**

Total 54038 **$103.31**

Total L.N. Curtis & Sons **$103.31**

Leads Online LLC

54039 **1/19/2024** **2024 - January - 3rd January 2024 Batch**

409489

3.2024 - 2.2025 Subscription

001-000-210-521-10-41-07 PD - Prof Serv / Leads Online - Pawn Shop $2,588.00

Service Package

Total 409489 **$2,588.00**

Total 54039 **$2,588.00**

Total Leads Online LLC **$2,588.00**

Madrona Law Group LLC

54001 **12/31/2023** **2023 - December - Early 5th December 2023 Final 2023**

12355

December 2023 Service

001-000-150-515-41-41-36 Legal - Code Enforcement $964.00

CD - Code Enforcement - Norwood

Total 12355 **$964.00**

Vendor Transaction Number Transaction Reference Account Number	Invoice Date	Fiscal Description Name Title	Void Amount
54001	12/31/2023	**2023 - December - Early 5th December 2023 Final 2023**	
12357			
December 2023 Service			
001-000-150-515-41-41-40		Legal Svs Development Permits	$704.00
		CD - Permit Review	
Total 12357			**$704.00**
54001	12/31/2023	**2023 - December - Early 5th December 2023 Final 2023**	
12358			
December 2023 Service			
001-000-150-515-41-41-01		Legal Services-General Govt	$2,407.95
		General City Billing	
101-000-000-542-30-41-15		STRT - Legal Costs	$535.10
		General City Billing	
401-000-000-534-80-41-04		WTR - Legal Svcs	$802.65
		General City Billing	
407-000-000-535-80-41-09		SEW - Legal Costs	$802.65
		General City Billing	
410-000-000-531-10-41-01		STRM - Legal Costs	$802.65
		General City Billing	
Total 12358			**$5,351.00**
54001	12/31/2023	**2023 - December - Early 5th December 2023 Final 2023**	
12359			
December 2023 Service			
001-000-150-515-41-41-36		Legal - Code Enforcement	$3,544.98
		CD - Code Enforcement - Gokey	
Total 12359			**$3,544.98**
54001	12/31/2023	**2023 - December - Early 5th December 2023 Final 2023**	
12360			
December 2023 Service			
001-000-257-558-70-41-00		MDRT - Legal Services	$8,248.00
		MDRT / OakPoint	
Total 12360			**$8,248.00**
54001	12/31/2023	**2023 - December - Early 5th December 2023 Final 2023**	
12361			
December 2023 Service			
001-000-150-515-41-41-17		Legal - Public Disc/Oth	$428.00
		Public Records Requsts Advice	
Total 12361			**$428.00**

Vendor Transaction Number Transaction Reference Account Number	Invoice Date	Fiscal Description Name Title	Void Amount
54001	**12/31/2023**	**2023 - December - Early 5th December 2023 Final 2023**	
12362			
December 2023 Service			
101-000-000-542-30-41-05		STRT - Professional Services	$96.00
		Rock Creek Sidewalk	
Total 12362			**$96.00**
Total 54001			**$19,335.98**
Total Madrona Law Group LLC			**$19,335.98**

Michael & Julie Snooke

54002	**1/8/2024**	**2023 - December - Early 5th December 2023 Final 2023**	
7404.0			
Utility Refund			
401-000-000-343-40-00-01		Water Charges	$203.52
		Refund Closed Account	
Total 7404.0			**$203.52**
Total 54002			**$203.52**
Total Michael & Julie Snooke			**$203.52**

Mountain View Fire & Rescue

54003	**1/17/2024**	**2023 - December - Early 5th December 2023 Final 2023**	
24-038			
3rd & 4th Qtr 2023 Service			
001-000-240-558-51-41-04		COM DEV - Fire Inspection & Plan Check	$3,529.97
		Fire Inspection & Plan Check - Fire Marshal Svc	
Total 24-038			**$3,529.97**
54003	**1/12/2024**	**2023 - December - Early 5th December 2023 Final 2023**	
24-040			
Bldg Rep & Maint			
001-000-530-522-10-48-00		FIRE - Repair & Mtc. of Bldg & Equip.	$3,521.88
		Roll Up Door Repair	
Total 24-040			**$3,521.88**
Total 54003			**$7,051.85**
Total Mountain View Fire & Rescue			**$7,051.85**

Vendor / Transaction Number / Transaction Reference / Account Number	Invoice Date	Fiscal Description / Name / Title	Void / Amount
Office Products Nationwide			
54040	**1/22/2024**	**2024 - January - 3rd January 2024 Batch**	
1229151-0			
PD - Supplies			
001-000-210-521-10-31-00		PD - Operating Supplies	$104.34
		PD Office Supplies	
Total 1229151-0			**$104.34**
Total 54040			**$104.34**
Total Office Products Nationwide			**$104.34**
Omiga Solutions LLC			
54041	**12/21/2023**	**2024 - January - 3rd January 2024 Batch**	
1107 OMI			
2024 OCourt Subscription			
001-000-120-512-51-41-04		CRT: Interpreter	$2,000.00
Total 1107 OMI			**$2,000.00**
Total 54041			**$2,000.00**
Total Omiga Solutions LLC			**$2,000.00**
Palmer Coking Coal Company			
54004	**12/29/2023**	**2023 - December - Early 5th December 2023 Final 2023**	
89632			
PW - Supplies			
410-000-000-531-10-31-01		STRM - Operating Supplies	$301.12
Total 89632			**$301.12**
Total 54004			**$301.12**
54042	**1/2/2024**	**2024 - January - 3rd January 2024 Batch**	
89642			
PW - Supplies			
410-000-000-531-10-31-01		STRM - Operating Supplies	$24.52
		Topsoil	
Total 89642			**$24.52**
Total 54042			**$24.52**
Total Palmer Coking Coal Company			**$325.64**

Vendor Transaction Number Transaction Reference Account Number	Invoice Date	Fiscal Description Name Title	Void Amount
Parametrix, Inc.			
54005	**1/11/2024**	**2023 - December - Early 5th December 2023 Final 2023**	
52137			
December 2023 Service			
001-000-257-558-70-41-03		MDRT - Traffic Engineering-Parametrix	$685.00
Total 52137			**$685.00**
54005	**1/11/2024**	**2023 - December - Early 5th December 2023 Final 2023**	
52138			
December 2023 Service			
001-000-257-558-70-41-03		MDRT - Traffic Engineering-Parametrix	$626.25
Total 52138			**$626.25**
54005	**1/11/2024**	**2023 - December - Early 5th December 2023 Final 2023**	
52139			
December 2023 Service			
001-000-257-558-70-41-03		MDRT - Traffic Engineering-Parametrix	$515.00
Total 52139			**$515.00**
54005	**1/11/2024**	**2023 - December - Early 5th December 2023 Final 2023**	
52140			
December 2023 Service			
001-000-257-558-70-41-03		MDRT - Traffic Engineering-Parametrix	$1,477.50
Total 52140			**$1,477.50**
54005	**1/11/2024**	**2023 - December - Early 5th December 2023 Final 2023**	
52141			
December 2023 Service			
001-000-257-558-70-41-03		MDRT - Traffic Engineering-Parametrix	$1,597.50
Total 52141			**$1,597.50**
54005	**1/11/2024**	**2023 - December - Early 5th December 2023 Final 2023**	
52142			
December 2023 Service			
001-000-257-558-70-41-03		MDRT - Traffic Engineering-Parametrix	$458.75
Total 52142			**$458.75**
54005	**1/11/2024**	**2023 - December - Early 5th December 2023 Final 2023**	
52143			
December 2023 Service			
001-000-257-558-70-41-03		MDRT - Traffic Engineering-Parametrix	$535.00
Total 52143			**$535.00**

Vendor Transaction Number	Transaction Reference	Invoice Date / Account Number	Fiscal Description / Name / Title	Void Amount
54005	52144	1/11/2024	**2023 - December - Early 5th December 2023 Final 2023**	
		December 2023 Service		
		401-000-400-534-80-41-10	PW - Reimburseable Permit Consultant Exp	$557.50
			Oakpoint Coffee	
	Total 52144			**$557.50**
54005	52145	1/11/2024	**2023 - December - Early 5th December 2023 Final 2023**	
		December 2023 Service		
		401-000-400-534-80-41-10	PW - Reimburseable Permit Consultant Exp	$350.00
			Diamond Market Gas	
	Total 52145			**$350.00**
54005	52146	1/11/2024	**2023 - December - Early 5th December 2023 Final 2023**	
		December 2023 Service		
		320-000-047-595-62-41-00	Downtown Ped & Bike Study	$775.00
	Total 52146			**$775.00**
54005	52177	1/11/2024	**2023 - December - Early 5th December 2023 Final 2023**	
		December 2023 Service		
		001-000-257-558-70-41-06	MDRT - Surveyor-Parametrix	$3,380.00
	Total 52177			**$3,380.00**
54005	52178	1/11/2024	**2023 - December - Early 5th December 2023 Final 2023**	
		December 2023 Service		
		001-000-257-558-70-41-06	MDRT - Surveyor-Parametrix	$482.50
	Total 52178			**$482.50**
54005	52179	1/11/2024	**2023 - December - Early 5th December 2023 Final 2023**	
		December 2023 Service		
		320-000-050-595-50-62-00	CIP - STRT - Covington Creek Bridge	$9,002.16
	Total 52179			**$9,002.16**
Total 54005				**$20,442.16**
Total Parametrix, Inc.				**$20,442.16**

Vendor	Transaction Number	Transaction Reference	Account Number	Invoice Date	Fiscal Description / Name / Title	Void	Amount

Paul & Kathleen Collins

54006 — **1/8/2024** — **2023 - December - Early 5th December 2023 Final 2023**
3724.0
Utility Refund
401-000-000-343-40-00-01 — Water Charges — $113.10
Refund Closed Account

Total 3724.0 — **$113.10**
Total 54006 — **$113.10**
Total Paul & Kathleen Collins — **$113.10**

PD - Transient Vendors

54043 — **1/9/2024** — **2024 - January - 3rd January 2024 Batch**
01092024 KB — **Kylie Benson**
Traffic School Reimbursement
001-000-210-342-10-01-00 — PD - Traffic School Fee — $30.00
Traffic School Reimbursement

Total 01092024 KB — **$30.00**
Total 54043 — **$30.00**
Total PD - Transient Vendors — **$30.00**

Perteet Inc.

54007 — **1/10/2024** — **2023 - December - Early 5th December 2023 Final 2023**
20170202.0018-2
December 2023 Service
001-000-257-558-70-41-04 — MDRT - Environmental Consultant-Perteet — $2,330.00

Total 20170202.0018-2 — **$2,330.00**
Total 54007 — **$2,330.00**
Total Perteet Inc. — **$2,330.00**

Puget Sound Energy

54008 — **12/31/2023** — **2023 - December - Early 5th December 2023 Final 2023**
300000007074 12.2023
December 2023 Service
001-000-212-521-50-47-00 — PD - Electric/gas — $298.31
220013379882: Police Storage
001-000-212-521-50-47-00 — PD - Electric/gas — $654.75
200009377470: PD/CT Elec
001-000-254-518-20-47-00 — CH - Utilities — $435.01
220029758004: CH - Rear 1/2 Both Floors

Vendor / Transaction Number / Transaction Reference / Account Number	Invoice Date	Fiscal Description / Name / Title	Void / Amount
001-000-254-518-20-47-00		CH - Utilities	($96.51)
	200008062016: City Hall Elec		
001-000-254-518-20-47-00		CH - Utilities	$19.70
	220029575798: CH - Front of Upper Floor		
001-000-254-518-20-47-00		CH - Utilities	$183.09
	200008061844: City Hall Elec		
001-000-254-518-21-47-00		MOD - Utility Expense	$931.05
	220013379841: CD/PW Mod Bldgs Elec		
001-000-270-575-30-47-00		PRK - Museum Electric/Gas	($22.48)
	220031492105: Old Fire Station 99		
001-000-270-575-30-47-00		PRK - Museum Electric/Gas	$423.84
	220013378793: Museum		
001-000-270-575-51-47-00		GYM - Electricity and Gas	$459.39
	220013379652: Gym		
001-000-270-576-80-47-00		PRK - Electric/Gas	$7.68
	220013379635: PW Shop-Parks 4%		
001-000-270-576-80-47-00		PRK - Electric/Gas	$12.69
	220013379221: Lake Sawyer Boat Launch		
001-000-280-536-20-47-00		CEM - Electric/Gas	$3.84
	220013379635: PW Shop-Cemetery 2%		
101-000-000-542-63-47-01		STRT - Street Lighting	$86.27
	220024468559: Roberts Dr & Bruckners Way		
101-000-000-542-63-47-01		STRT - Street Lighting	$13.10
	220019188881: Intersection Light 24430 Morgan St		
101-000-000-542-63-47-01		STRT - Street Lighting	$2,192.15
	220013397355: PSE Streetlights		
101-000-000-542-63-47-01		STRT - Street Lighting	$11.40
	220013379247: 216th Signal & Street Lights		
101-000-000-542-63-47-01		STRT - Street Lighting	$14.98
	220013379601: Baker St Crosswalk		
101-000-000-542-63-47-01		STRT - Street Lighting	$39.19
	220013379197: Cov Sawyer & 216th		
101-000-000-542-63-47-01		STRT - Street Lighting	$200.54
	220014704229: Intersection Light 219th & SE 296th St		
101-000-000-542-63-47-01		STRT - Street Lighting	$125.02
	220013379817: Ped Lighting Roberts		
101-000-000-542-63-47-01		STRT - Street Lighting	$10.60
	220024466751: 24619 Morgan St		
101-000-000-543-50-47-00		STRT - Electric/Gas	$42.24
	220013379635: PW Shop-Street 22%		
401-000-000-534-80-47-00		WTR - Electric/Gas	$46.08
	220013379635: PW Shop-Water 24%		

Vendor Transaction Number	Transaction Reference	Account Number	Invoice Date	Fiscal Description Name Title	Void	Amount
		401-000-000-534-80-47-00		WTR - Electric/Gas		$2,679.88
				220013378835: Booster Station		
		401-000-000-534-80-47-00		WTR - Electric/Gas		$1,017.64
				220013378868: 4.3 Mil Gal Resv		
		401-000-000-534-80-47-00		WTR - Electric/Gas		$35.81
				220013378850: .5 Mil Gal Resv		
		407-000-000-535-80-47-00		SEW - Electric/Gas		$131.71
				220013378819: Morganville Lift Station		
		407-000-000-535-80-47-00		SEW - Electric/Gas		$13.45
				220013379619: Sewer Pump		
		407-000-000-535-80-47-00		SEW - Electric/Gas		$46.08
				220013379635: PW Shop-Sewer 24%		
		407-000-000-535-80-47-00		SEW - Electric/Gas		$40.20
				220013379643: Diamond Glen Sewer		
		410-000-000-531-10-47-00		STRM - Electric/Gas		$46.07
				220013379635: PW Shop-Drainage 24%		
	Total 300000007074 12.2023					**$10,102.77**
Total 54008						**$10,102.77**
Total Puget Sound Energy						**$10,102.77**

Quan Phan & Jennifer Nguyen

Transaction Number	Transaction Reference	Account Number	Invoice Date	Fiscal Description Name Title	Void	Amount
54009			**1/9/2024**	**2023 - December - Early 5th December 2023 Final 2023**		
	6940.0					
		Utility Refund				
		401-000-000-343-40-00-01		Water Charges		$57.01
				Refund Closed Account		
	Total 6940.0					**$57.01**
Total 54009						**$57.01**
Total Quan Phan & Jennifer Nguyen						**$57.01**

Reano Construction & Logging Inc.

Transaction Number	Transaction Reference	Account Number	Invoice Date	Fiscal Description Name Title	Void	Amount
54044			**1/10/2024**	**2024 - January - 3rd January 2024 Batch**		
	2440					
		January 2024 Service				
		310-000-002-594-18-62-03		CIP - Gen Govt - Campus Improvements		$9,783.00
	Total 2440					**$9,783.00**
Total 54044						**$9,783.00**
Total Reano Construction & Logging Inc.						**$9,783.00**

Vendor Transaction Number Transaction Reference Account Number	Invoice Date	Fiscal Description Name Title	Void Amount
Republic Services #176			
54010	**12/31/2023**	**2023 - December - Early 5th December 2023 Final 2023**	
0176-007254666			
December 2023 Service			
001-000-254-518-20-47-01 CH		CH -Waste Disposal	$365.44
001-000-254-518-21-47-01 MOD		MOD - Waste Disposal	$121.82
Total 0176-007254666			**$487.26**
54010	**12/31/2023**	**2023 - December - Early 5th December 2023 Final 2023**	
0176-007260086			
December 2023 Service			
001-000-270-576-80-47-04 PW-Parks		PRK - Garbage & Waste Disposal	$331.69
001-000-280-536-20-47-04 PW-Cemetery		CEM - Waste Disposal	$26.54
101-000-000-543-50-47-04 PW-Street		STRT - Waste Disposal	$212.28
401-000-000-534-80-47-04 PW-Water		WTR - Waste Disposal	$252.08
407-000-000-535-80-47-04 PW-Sewer		SEW - Waste Disposal	$252.08
410-000-000-531-10-47-04 PW-Drainage		STRM - Waste Disposal	$252.09
Total 0176-007260086			**$1,326.76**
54010	**1/16/2024**	**2023 - December - Early 5th December 2023 Final 2023**	
0176-007260212			
December 2023 Service			
001-000-212-521-50-47-04 Police & Court		PD - Waste Disposal	$509.25
Total 0176-007260212			**$509.25**
Total 54010			**$2,323.27**
Total Republic Services #176			**$2,323.27**

Vendor Transaction Number	Transaction Reference	Invoice Date / Account Number	Fiscal Description / Name / Title	Void Amount
RH2 Engineering Inc.				
54011		**1/9/2024**	**2023 - December - Early 5th December 2023 Final 2023**	
	94237			
		December 2023 Service		
		404-000-016-594-34-63-00	Water Loop 169- Const	$2,288.34
	Total 94237			**$2,288.34**
54011		**1/9/2024**	**2023 - December - Early 5th December 2023 Final 2023**	
	94239			
		December 2023 Service		
		001-000-257-558-70-41-02	MDRT - Civil Engineering	$2,941.80
	Total 94239			**$2,941.80**
54011		**1/9/2024**	**2023 - December - Early 5th December 2023 Final 2023**	
	94240			
		December 2023 Service		
		101-000-000-542-30-41-05	STRT - Professional Services	$6.28
		101-000-000-542-30-41-13	STRT - Prof Serv - Eng. Civil Review	$2,421.06
		401-000-000-534-80-41-10	WTR - Prof Serv- Civil Eng	$6.28
		401-000-000-534-80-41-13	WTR - Prof Service-GIS	$2,421.06
		407-000-000-535-80-41-01	SEW - Prof Srvs-GIS & other review	$6.28
		407-000-000-535-80-41-13	SEW - Prof Service - Eng. Civil Review	$2,421.06
		410-000-000-531-10-41-13	STRM - Prof Service - Eng. Civil Review	$2,421.06
		410-000-000-531-10-41-13	STRM - Prof Service - Eng. Civil Review	$6.28
	Total 94240			**$9,709.36**
54011		**1/11/2024**	**2023 - December - Early 5th December 2023 Final 2023**	
	94270			
		December 2023 Service		
		404-000-011-534-80-41-00	WTR - Comp Plan	$13,316.41
	Total 94270			**$13,316.41**
Total 54011				**$28,255.91**
Total RH2 Engineering Inc.				**$28,255.91**
Scheibmeir, Kelly & Satterfield				
54012		**12/31/2023**	**2023 - December - Early 5th December 2023 Final 2023**	
	25430			
		December 2023 Service		
		001-000-257-558-70-42-02	MDRT - Hearing Examiner	$4,337.50

Vendor	Transaction Number	Transaction Reference	Account Number	Invoice Date	Fiscal Description / Name / Title	Void	Amount
			MDRT				
		Total 25430					**$4,337.50**
	Total 54012						**$4,337.50**
Total Scheibmeir, Kelly & Satterfield							**$4,337.50**
Seattle Times							
	54045			1/11/2024	2024 - January - 3rd January 2024 Batch		
		70126					
			Jan 2024 Service				
			001-000-180-518-50-41-75		CEN SVCS - Advertising		$43.75
			Ord 24-1200				
			401-000-000-534-80-41-75		WTR - Advertising		$43.75
			Ord 24-1201				
		Total 70126					**$87.50**
	54045			1/18/2024	2024 - January - 3rd January 2024 Batch		
		71508					
			Jan 2024 Service				
			001-000-240-558-60-41-75		PLN - Advertising - Long range planning		$330.00
			PLN 23-0064 / PLN 23- 0065/ PLN 23-066				
		Total 71508					**$330.00**
	Total 54045						**$417.50**
Total Seattle Times							**$417.50**
Secure Pacific Corporation							
	54013			11/30/2024	2023 - December - Early 5th December 2023 Final 2023		
		390932					
			PD - Security				
			310-000-002-594-18-62-03		CIP - Gen Govt - Campus Improvements		$453.83
			Prox card, Gate Clicker - PD				
		Total 390932					**$453.83**
	Total 54013						**$453.83**
	54046			1/1/2024	2024 - January - 3rd January 2024 Batch		
		390249					
			January 2024 Service				
			001-000-254-518-20-49-00		CH - Bldg Security		$695.89
			City Hall				

Vendor	Transaction Number	Transaction Reference	Invoice Date	Account Number	Fiscal Description	Name	Title	Void	Amount
				001-000-254-518-21-49-00			MOD - Security Costs		$231.96
				3. Com Dev - MOD					
		Total 390249							**$927.85**
	54046		**1/1/2024**		**2024 - January - 3rd January 2024 Batch**				
		392048							
				January 2024 Service					
				101-000-000-542-30-48-03			PW - Clearing-shared Shop Cost		$70.35
				4. Shop					
		Total 392048							**$70.35**
	54046		**1/1/2024**		**2024 - January - 3rd January 2024 Batch**				
		392050							
				January 2024 Service					
				001-000-270-575-51-49-00			GYM - Security		$217.87
		Total 392050							**$217.87**
	Total 54046								**$1,216.07**
Total Secure Pacific Corporation									**$1,669.90**
SHI International Corp.									
	54047		**1/2/2024**		**2024 - January - 3rd January 2024 Batch**				
		B17797626							
				IT - Software Subcription through 12.28.2026					
				001-000-145-518-80-41-14			IT - Security Software subscription		$20,649.84
				IT Security Software					
		Total B17797626							**$20,649.84**
	Total 54047								**$20,649.84**
Total SHI International Corp.									**$20,649.84**
Somer Johnson									
	54048		**1/16/2024**		**2024 - January - 3rd January 2024 Batch**				
		01162024 2 SJ							
				Reimbursement					
				001-000-121-512-51-41-01			CRT: AOC-Therapeutic Grant 07/01/2023 -		$298.35
				1/3 Cost of Case Mgmnt Syst					
		Total 01162024 2 SJ							**$298.35**
	54048		**1/16/2024**		**2024 - January - 3rd January 2024 Batch**				
		01162024 SJ							
				Reimbursement					
				001-000-121-512-51-41-01			CRT: AOC-Therapeutic Grant 07/01/2023 -		$45.94

Vendor / Transaction Number / Transaction Reference / Account Number	Invoice Date	Fiscal Description / Name / Title	Void	Amount
Bus. Cards & Brochures				
Total 01162024 SJ				**$45.94**
Total 54048				**$344.29**
Total Somer Johnson				**$344.29**
Sorci Family LLC				
54055	**1/16/2024**	**2024 - February - 1st February 2024 Batch**		
01162024 SFLLC				
Feb 2024 Rent				
001-000-254-518-20-45-06		CH - 2023 - Bldg Rent		$12,026.39
City Hall Building				
001-000-254-518-21-45-02		MOD - Land Rental		$2,080.03
Land Rental				
Total 01162024 SFLLC				**$14,106.42**
Total 54055				**$14,106.42**
Total Sorci Family LLC				**$14,106.42**
Sound Publishing Inc.				
54014	**11/8/2024**	**2023 - December - Early 5th December 2023 Final 2023**		
ECH986822				
November 2023 Service				
001-000-246-558-70-44-00		MDRT - Advertising		$210.75
Total ECH986822				**$210.75**
54014	**11/8/2023**	**2023 - December - Early 5th December 2023 Final 2023**		
ECH986823				
November 2023 Service				
001-000-246-558-70-44-00		MDRT - Advertising		$221.10
Total ECH986823				**$221.10**
54014	**11/29/2023**	**2023 - December - Early 5th December 2023 Final 2023**		
ECH987940				
November 2023 Service				
001-000-246-558-70-44-00		MDRT - Advertising		$221.10
Total ECH987940				**$221.10**

Vendor Transaction Number Transaction Reference	Invoice Date Account Number	Fiscal Description Name Title	Void Amount
54014	12/6/2023	2023 - December - Early 5th December 2023 Final 2023	
ECH988264			
	December 2023 Service		
	001-000-246-558-70-44-00	MDRT - Advertising	$366.00
Total ECH988264			**$366.00**
54014	12/6/2023	2023 - December - Early 5th December 2023 Final 2023	
ECH988265			
	December 2023 Service		
	001-000-246-558-70-44-00	MDRT - Advertising	$352.20
Total ECH988265			**$352.20**
54014	12/13/2023	2023 - December - Early 5th December 2023 Final 2023	
ECH988469			
	December 2023 Service		
	001-000-140-514-23-41-75	FIN - Advertising	$87.59
	Budget / Tax Levy		
	001-000-240-558-51-41-07	COM DEV - Advertising & other/reimb costs	$43.81
Total ECH988469			**$131.40**
54014	12/27/2023	2023 - December - Early 5th December 2023 Final 2023	
ECH989157			
	December 2023 Service		
	001-000-240-558-60-41-75	PLN - Advertising - Long range planning	$214.20
Total ECH989157			**$214.20**
54014	12/27/2023	2023 - December - Early 5th December 2023 Final 2023	
ECH989245			
	December 2023 Service		
	001-000-240-558-51-41-07	COM DEV - Advertising & other/reimb costs	$155.55
Total ECH989245			**$155.55**
Total 54014			**$1,872.30**
Total Sound Publishing Inc.			**$1,872.30**

Sound Safety Products Inc

54049	1/23/2024	2024 - January - 3rd January 2024 Batch	
279015/3			
	MDRT - Safety Supplies		
	001-000-246-558-70-35-00	MDRT - Small Tools and Safety Equipment	$153.99

Vendor / Transaction Number / Transaction Reference	Invoice Date / Account Number	Fiscal Description / Name / Title	Void / Amount
	6" Switchback		
Total 279015/3			**$153.99**
Total 54049			**$153.99**
Total Sound Safety Products Inc			**$153.99**
South Correctional Entity			
54015	**1/11/2024**	**2023 - December - Early 5th December 2023 Final 2023**	
7481			
	December 2023 Service		
	001-000-211-523-60-49-00	PD - Jail Costs	$249.00
	1 days		
Total 7481			**$249.00**
Total 54015			**$249.00**
Total South Correctional Entity			**$249.00**
Starwind Software, Inc			
54050	**12/14/2023**	**2024 - January - 3rd January 2024 Batch**	
307846			
	2024 Annual Support		
	001-000-145-518-80-41-18	IT - Misc software	$3,261.00
	VSAN Pro		
Total 307846			**$3,261.00**
Total 54050			**$3,261.00**
Total Starwind Software, Inc			**$3,261.00**
State Auditor's Office			
54016	**1/16/2024**	**2023 - December - Early 5th December 2023 Final 2023**	
L158521			
	Dec 2023 Service		
	001-000-140-514-23-41-01	FIN - State Auditor Services	$2,017.58
	101-000-000-542-30-41-14	STRT - State Auditor Services	$484.22
	401-000-000-534-80-41-03	WTR - State Auditor Services	$1,856.17
	407-000-000-535-80-41-07	SEW - State Auditor Services	$1,856.17

Vendor / Transaction Number / Transaction Reference	Invoice Date / Account Number	Fiscal Description / Name / Title	Void / Amount
	410-000-000-531-10-41-02	STRM - State Auditor Services	$1,856.16
Total L158521			**$8,070.30**
Total 54016			**$8,070.30**
Total State Auditor's Office			**$8,070.30**
Summit Law Group, PLLC			
54051	**1/17/2024**	**2024 - January - 3rd January 2024 Batch**	
151400			
	December 2023 Service		
	001-000-150-515-41-41-08 Teamsters	Legal Svcs-Union Contracts	$1,714.50
Total 151400			**$1,714.50**
Total 54051			**$1,714.50**
Total Summit Law Group, PLLC			**$1,714.50**
Tarun Arora			
54017	**1/5/2024**	**2023 - December - Early 5th December 2023 Final 2023**	
01052024 TA			
	Traffic School Refund		
	001-000-210-342-10-01-00 Ineligible to Attend	PD - Traffic School Fee	$145.00
Total 01052024 TA			**$145.00**
Total 54017			**$145.00**
Total Tarun Arora			**$145.00**
TRM Wood Products Co. Inc.			
54052	**1/19/2024**	**2024 - January - 3rd January 2024 Batch**	
430171			
	PW - Supplies		
	001-000-270-576-80-48-02	PRK - Maintenance & Repairs	$33.67
	101-000-000-542-30-31-03	STRT - Operating Supplies	$332.89
Total 430171			**$366.56**
Total 54052			**$366.56**
Total TRM Wood Products Co. Inc.			**$366.56**

Vendor Transaction Number Transaction Reference	Invoice Date Account Number	Fiscal Description Name Title	Void	Amount

Utilities Underground Location Center

54018	**12/31/2023**	**2023 - December - Early 5th December 2023 Final 2023**		
3120128				
	December 2023 Service			
	401-000-000-534-80-41-08 # locates	WTR - Locating Service		$49.02
Total 3120128				**$49.02**
Total 54018				**$49.02**
Total Utilities Underground Location Center				**$49.02**

Utility Refund - Itenerant Vendors

54019	**1/18/2024**	**2023 - December - Early 5th December 2023 Final 2023**		
3002.0		**Marjorie H Mathews**		
	Utility Refund			
	401-000-000-343-40-00-01 Refund Closed Account	Water Charges		$238.93
Total 3002.0				**$238.93**
Total 54019				**$238.93**
Total Utility Refund - Itenerant Vendors				**$238.93**

Valley Communications Center

54020	**12/31/2023**	**2023 - December - Early 5th December 2023 Final 2023**		
0027887				
	December 2023 Service			
	001-000-214-521-20-41-00 236.0 calls	PD - Valley Comm - Dispatch Service		$11,295.48
Total 0027887				**$11,295.48**
54020	**12/31/2023**	**2023 - December - Early 5th December 2023 Final 2023**		
0027907				
	4th Qtr 2023 Service			
	001-000-214-521-20-41-02	PD - Valley Comm - Access Charge		$435.70
Total 0027907				**$435.70**
Total 54020				**$11,731.18**
Total Valley Communications Center				**$11,731.18**

Vendor Transaction Number	Transaction Reference	Account Number	Invoice Date	Fiscal Description Name Title	Void Amount

VenTek International

54053			**1/1/2024**	**2024 - January - 3rd January 2024 Batch**	
	141681				
		January 2024 Service			
		001-000-270-575-70-41-00		Lake Sawyer: Ven Tek/Venvue Pay Station	$628.07
				Monthly Fee and Annual Fee for 2024	
	Total 141681				**$628.07**
Total 54053					**$628.07**
Total VenTek International					**$628.07**

W. Anneke Berry

54054			**1/10/2024**	**2024 - January - 3rd January 2024 Batch**	
	01232024 WAB				
		January 2024 Service			
		001-000-120-512-51-41-02		CRT: Protem Judge	$120.00
	Total 01232024 WAB				**$120.00**
Total 54054					**$120.00**
Total W. Anneke Berry					**$120.00**

Water Management Laboratories, Inc.

54021			**11/10/2023**	**2023 - December - Early 5th December 2023 Final 2023**	
	216213				
		November 2023 Service			
		401-000-000-534-80-41-02		WTR - Testing and Sampling	$28.00
	Total 216213				**$28.00**
54021			**11/20/2023**	**2023 - December - Early 5th December 2023 Final 2023**	
	216343				
		October 2023 Service			
		401-000-000-534-80-41-02		WTR - Testing and Sampling	$28.00
	Total 216343				**$28.00**
54021			**11/29/2023**	**2023 - December - Early 5th December 2023 Final 2023**	
	216574				
		November 2023 Service			
		401-000-000-534-80-41-02		WTR - Testing and Sampling	$28.00
	Total 216574				**$28.00**

Vendor	Transaction Number / Transaction Reference	Invoice Date / Account Number	Fiscal Description / Name / Title	Void / Amount
	54021	**12/6/2023**	**2023 - December - Early 5th December 2023 Final 2023**	
	216727			
		November 2023 Service		
		401-000-000-534-80-41-02	WTR - Testing and Sampling	$28.00
	Total 216727			**$28.00**
	54021	**12/8/2023**	**2023 - December - Early 5th December 2023 Final 2023**	
	216860			
		November 2023 Service		
		401-000-000-534-80-41-02	WTR - Testing and Sampling	$56.00
	Total 216860			**$56.00**
	54021	**12/18/2023**	**2023 - December - Early 5th December 2023 Final 2023**	
	217058			
		November 2023 Service		
		401-000-000-534-80-41-02	WTR - Testing and Sampling	$56.00
	Total 217058			**$56.00**
	54021	**12/19/2023**	**2023 - December - Early 5th December 2023 Final 2023**	
	217101			
		December 2023 Service		
		401-000-000-534-80-41-02	WTR - Testing and Sampling	$28.00
	Total 217101			**$28.00**
	54021	**12/29/2023**	**2023 - December - Early 5th December 2023 Final 2023**	
	217470			
		December 2023 Service		
		401-000-000-534-80-41-02	WTR - Testing and Sampling	$28.00
	Total 217470			**$28.00**
	54021	**12/30/2023**	**2023 - December - Early 5th December 2023 Final 2023**	
	217498			
		December 2023 Service		
		401-000-000-534-80-41-02	WTR - Testing and Sampling	$56.00
	Total 217498			**$56.00**
	54021	**11/20/2023**	**2023 - December - Early 5th December 2023 Final 2023**	
	217641			
		December 2023 Service		
		401-000-000-534-80-41-02	WTR - Testing and Sampling	$56.00
	Total 217641			**$56.00**
	Total 54021			**$392.00**

Vendor				
Transaction Number	Invoice Date	Fiscal Description	Void	
Transaction Reference		Name		Amount
Account Number		Title		
Total Water Management Laboratories, Inc.				**$392.00**

Vendor Count 65 **Grand Total $266,387.66**

BLACK DIAMOND CITY COUNCIL MINUTES
Council Special Meeting of January 11, 2024
Hybrid Meeting Via Zoom and In-Person
Council Chamber, 25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER:
Mayor Pro-Tem Deady called the special meeting to order at 6:00 p.m.

ROLL CALL:

PRESENT: Councilmembers Deady, Douglass (Zoom), Smith, Mulvihill (Zoom), de Leon (Zoom), Jones, Page

ABSENT: None

Staff present: Mona Davis, Community Development Director; Andrew Williamson, MDRT/Ec Dev Director; David Linehan, City Attorney; Rob Reed, IS Manager, and Brenda L. Martinez, City Clerk/HR

PUBLIC HEARING:

1) Quasi-Judicial Closed Record Hearing – Palmer Rezone Nos 1, 2, and 3

Mayor Pro-Tem Deady announced that the Black Diamond City Council will conduct a hybrid in-person and virtual/telephonic CLOSED RECORD HEARING on the proposed Palmer Rezone 1 (PLN22-045), Palmer Rezone 2 (PLN22-0022), and Palmer Rezone 3 (PLN22-047). Only parties of record who testified at the open-record hearing in front of the Hearing Examiner on November 6, 2023, may speak at the closed record hearing. All testimony is limited to discussion regarding the Hearing Examiner's recommendations. All arguments must be based on the factual record developed at the Hearing Examiner's open-record hearing on November 6, 2023. No additional documents or information may be presented or accepted.

The order of proceedings shall be as follows:

a) Mayor to state the hearing procedures and City Attorney Linehan inquired regarding appearance of fairness/conflicts of interest.

Mayor Pro-Tem Deady opened the closed record hearing on City File No. PLN 22-0045, PLN-22-0022, PLN 22-0047, which are applications from Palmer Coking Coal for Site Specific Rezone Variance parcels within the City of Black Diamond. She stated that rezone 1 proposes to rezone 20.63 acres from the R4 zone, single family residential to the MDR8 zone, medium density residential, rezone 2 proposes to rezone 25.46 acres from the business industrial park zone to the MDR8 residential zone, and rezone 3 proposes to rezone 27.96 acres from business industrial park to the MDR8 residential zone. All three zones consist of property that is designated medium density residential in the city's comprehensive plan.

Mayor Pro-Tem Deady stated that the city council will hear this matter in its quasi-judicial capacity and that site specific rezones are a type 4 decision under the municipal code, meaning that the city council makes the financial decision after a recommendation from the Hearing Examiner and a closed record hearing by the council. She further added that after hearing the presentation of the parties tonight, reviewing the evidence in record, and conducting deliberations, the city council will make the decision to either approve or deny the rezone applications.

Mayor Pro-Tem announced the following order for the proceedings that will used for this hearing:

- First, the Community Development Department will have 15 minutes to present its recommendations concerning the applications.

- Second, Applicant Palmer Coking Coal will have 15 minutes to present its arguments in favor of the rezone.

- Third, any member of the public who gave testimony at the open record hearing on November 6, 2023, will be allowed 5 minutes to speak.

- Fourth, City Staff will have 5 minutes to provide rebuttal comments.

- Fifth, the Applicant will have 5 minutes to provide rebuttal comments.

- Sixth, the public participants will then have 2 minutes to provide rebuttal comments and the council may choose to allow additional time for any of the speakers, as it deems appropriate.

Mayor Pro-Tem Deady stated that the council should be allowed to ask questions to the parties and asked the council if there were any objections to the order of these proceedings and there were no objections.

Mayor Pro-Tem announced that city attorney, David Linehan, will ask us about the appearance of fairness because this is a quasi-judicial proceeding.

City Attorney Linehan stated that the appearance of fairness doctrine requires government decision makers to conduct quasi-judicial hearings and proceedings in a way that is fair and unbiased in both appearance and in fact and added that he will ask a series of questions to the council members about personal or financial interests in the applicant's business or projects and proceeded to ask the following:

City Attorney Linehan proceeded to ask Councilmembers if they had:

1) A financial interest in the applicant's business that would be benefitted by the approval of the Rezones? **All Councilmembers responded no.**
2) An ownership interest in which the rezone is being requested? **All Councilmembers responded no.**
3) Business or financial interest that would be benefited by the approval or denial of the requested rezones? **All Councilmembers responded no.**
4) If any Councilmember owned any property that would be directly or uniquely benefited by the approval or denial of the rezones. **All Councilmembers responded no.**

Next, Attorney Linehan asked if any of councilmembers had any "exparte" contacts outside of the confines of today's hearing and Councilmember Page stated that residents reached out to her looking for clarification and she re-directed them to community development. She also added that Bernie O'Donnell sent an email to all councilmembers and that the email was added to the hearing record. Councilmember Page, de Leon, and Mulvihill all stated that they did have contacts, but this would not affect their ability to hear and consider the rezone in a fair and objective manner.

Finally, Mayor Pro-Tem Deady asked if there was any party or member of the public audience who wishes to challenge on appearance of fairness grounds any Councilmember's participation as a decision-maker in this matter? If so, she added for them to please identify themselves and include the reasons for their objection. **There were no challenges by any party or citizen on appearance of fairness.**

Mayor Pro-Tem Deady stated that all testimony in this quasi-judicial hearing must be taken under oath. She then asked those expected to testify to stand and raise their right hand and administered the oath.

b) City Staff presentation

Mayor Pro-Tem Deady announced that they will now proceed to the presentation of parties, beginning with Director Davis, concerning Rezone 1, 2, and 3.

Director Davis and Contract Planner, Andrew Love will report on the rezoning and Andrew Love will begin with Staff's presentation.

Mr. Love briefed Council on the application process and recommendations by the planning staff and the findings of the Hearing Examiner. He stated that there is no development activity proposed at this time on any of the parcels mentioned regarding the rezone applications. He added that any subsequent development applications will require an additional site plan or preliminary plat review at the time of application. He reported that the city's comprehensive plan designates all 7 parcels as medium density residential, and the proposed rezones are consistent with the city's adopted comprehensive plan. He expressed that the MDR8 zoning would allow for a diverse mix of housing. Staff provided its recommendations to the Hearing Examiner, supporting the approval of all three rezones without conditions on Monday, November 6, 2023, where public comments were also heard.. Written responses from the applicant and city staff were provided to the Hearing

Examiner on Monday, November 13, 2023. On November 28th, the Hearing Examiner made his written recommendation, concluding that the rezones are consistent with the comprehensive plan and suitable for development and concluded that there are adequate facilities for rezones 1 and 2. The Hearing Examiner did state that there are insufficient transportation facilities for proposed rezone 3 with the pipeline road not yet constructed. The Hearing Examiner concurred with the city and concluded that rezoning of 1, 2, and 3 will promote general health, safety, and welfare of the community.

Director Davis spoke and reiterated city staff's initial recommendation that rezone 3 be approved without conditions but stated that the rezone decisions are ultimately up to the city council. She ended by saying that staff are happy to answer any questions throughout the hearing.

c) Applicant spokesperson presentation

Mayor Pro-Tem Deady announced that the applicant will begin its presentation in support of the requested results.

Tara Aalmo, one of the five managing partners for Palmer Coking Coal, stated that their desire is to work with the city and its residents to develop their property so it will have a lasting impact on this community, and she believes that the Hearing Examiners decision is thorough and consistent with applicable code and state law. She also added that they completely agree with Ms. Davis and their proposed condition would be that the rezone was approved, and they would record a restrictive covenant on title that would prohibit the issuance of a building permit for rezone 3 and until such time there is a primary access point for their property through Sunny Lane or Bruckner's Way. She ended by adding that their transportation engineer is available for questioning regarding traffic analysis.

Mayor Pro-Tem Deady opened public comment testimony for anyone who testified at the open record hearing on November 6, 2023, allowing 5 minutes for their statements.

d) Presentations by other parties of record (if any).

Kristen Bryant, Bellevue, stated that the council should consider its evidence that refutes many of the examiners and deny all 3 rezones for lack of availability of public services and for failure to comply with the comprehensive plan. She added that the Hearing Examiner didn't fully summarize a lot of the public comments and one of the biggest points is that the growth targets set by the county-wide planning policies are violated by this rezone. She noted that the Puget Sound Regional Council denied certification because Black Diamond was not compliant with regional transportation plans.

Gary Jones, Black Diamond, commented on the recommendation from the Hearing Examiner that the city code requirements were met. He noted that it does not correctly address all the issues. He stated that Exhibit 30 shows that we can't keep up with the basic services for the growth of Black Diamond and there is not sufficient revenue to fund fire and police staff. He added that given the existing city infrastructure deficiencies, the Palmer rezone should be denied.

Phil Acosta, Black Diamond, announced that he would be testifying regarding his exhibit 27 about his concerns of increased traffic on the 288th corridor. He stated that nothing has been done to the existing roadways except to help people blend into the traffic and if Palmer wants this rezone, the Pipeline Road needs to be completed. He added that the Hearing Examiner missed something, and all 3 rezones are affected by Pipeline Road and Ten Trails.

Gary Kohl, Black Diamond, stated that the residents don't feel like the city is representing us and the city codes are not being met. He said that the need for other types of housing is not a reason to approve the rezones and therefore he is asking that Council deny the rezones. He added that we must work together to make a reasonable plan for the future of our children and us with proper planning in place first.

Roseanne McPherson, Black Diamond, commented that the comprehensive plan needs to be revisited to accommodate what Black Diamond needs, as far as services and infrastructure, and schools. She said she would not be voting for something that the city council may or may not approve of. She also stated that the city hasn't enforced their agreement or done what they said they were going to do.

Don McPherson, Black Diamond, stated that he spoke at the last hearing examiners, and he doesn't understand how they could come up with a recommendation where there is no adequate transportation. He says that it is dangerous to cross the street just to walk their dog and if Pipeline Road is not put in, all the trucks going 40mph will be on Bruckner's Way and Roberts Drive.

Ruslan Sorochuk, Black Diamond, reported that the water system plan is not current, as noted in his exhibit 22. He stated that the Department of Health commented that criteria failed to be met and there is not going to be enough water to serve the new developments. He spoke regarding the traffic issue and about the animal's living area being affected by the development of houses and how people are killing them with their cars.

Kristen Bryant, Bellevue, on behalf of her father, spoke regarding transportation and stated that the rezones fail to satisfy the requirements of subsections B4 & 7 (BDMC) due to inadequate transportation facilities needed to serve new residential use and exhibit 33 shows that all traffic estimates found in the current comp plan assume no traffic coming from the 3 rezone sites and they are not consistent with the comp plan, showing failures at one or more intersections even with additional residential development, as well as failures with the roundabout at Pipeline Road and others. She noted that BDMC 18.08.020.4 requires denial of these rezones. She stated that Black Diamond needs to accommodate some sort of planning document now.

e) Rebuttals

City:

Director Davis, responded to the testimony stating that several conversations have been had with Department of Commerce and the city does have growth targets with a great need for housing, with neighboring cities all facing the same situations of exceeding growth targets. She added the city doesn't have the current zoning right now to accommodate the types of housing that the Department of Commerce is requiring the city to build. She stated that in every jurisdiction that she has worked in, that if your comprehensive plan is inconsistent with your zoning maps, you approve the rezones or you recommend approval for rezones. She added that the UGA is every bit the place to put new growth and that we are not asking to expand the UGA by these rezones but rather put our growth within the growth area boundary of the city. She also stated that the traffic impacts were evaluated, and the applicant and their traffic engineer are here tonight, confirming that the overall traffic will be less associated with residential versus business and Industrial Park. Fish passage has created a ton of delay, and the city has been working diligently with WSDOT to try to build out the roads along with all the other commitments.

Applicant:

Ms. Balint spoke on behalf of the applicant Palmer, addressing Ms. Bryant's comments, stating that it is not appropriate to compare developed versus undeveloped because this is not about development right now. She stated that Palmer may be required to perform transportation improvements, but the time for that is not now; Palmer supports the construction of Pipeline Road and is willing to dedicate the right of way.

David Toyer, strategic advisor, and consultant for Palmer stated that an extensive policy analysis of both the county-wide planning policies as well as multi-county planning policies have been included. Usage rates were compared, and capacity differentials show it is sufficient as it exists at this time for development. He stated there is a two-part analysis that relates to rezones and to projects. Exhibit 36 shows a tremendous amount of detail regarding all the items that were raised on the public facilities and services side tonight.

Public:

Gary Jones, Black Diamond, announced that he has nothing against the construction in Black Diamond, but it should be responsible, and we should know where our taxes are going to be in the future.

Gary Kohl, Black Diamond, stated that planning is key and that we've already approved too much development and there is no reason to approve more. He said that we need to fix what we have done, and there is never going to be enough money for the infrastructure and compounding the problem is irresponsible.

Roseanne McPherson, Black Diamond, questioned how the Department of Commerce dictates that we need more housing. She stated that you can't just rezone and then plan later and compared that to letting the horse out of the barn.

Philip Acosta, Black Diamond, stated that it is really hard to believe that we need more housing. He said that we are building more than our share and he feels we need more transparency from Palmer on their commitment of when they will build the Pipeline Road.

William Bryant, Black Diamond, stated that Black Diamond's building requirements is 2,900 units and it seems like the city is jumping way ahead of everything. He commented on the traffic backed up down his road off highway 169, but stated he knew that was going to be fixed with a roundabout. He also commented on all the garbage in front of his house and how people are speeding down the roads and it seems like nobody cares.

Russel Sorchuk, Black Diamond, stated that some people say there are not enough affordable houses, but there is a lot of availability in Ten Trails, and it is pretty much affordable so he is not sure that we need a lot of housing.

Kristen Bryant stated that the city of Black Diamond is the only city in the Puget Sound Regional Council's jurisdiction that was denied approval for its comprehensive plan for exceeding growth targets. She stated that the Hearing Examiner is not in a position to give opinions on the prevalence of single-family homes in Black Diamond and without an independent financial analysis you can't just say what is a lot of acres for light industrial versus housing.

f) Council Questions

Councilmember de Leon asked for Ms. Davis to speak to the Muckleshoot comments and questions related to the water quality.

Director Davis responded noting that all the questions that came in with the rezone applications would be addressed at a future time with development and they would be re-routed to the Muckleshoots.

Councilmember Jones – what is the timeline and the next steps for this?

Director Davis responded stating that there is no specific timeline and that we need to try and process all land-use applications as quickly as possible so that we can come to a decision.

Mayor Pro-Tem Deady announced that the presentations have been concluded and the hearing is now closed, and no additional arguments will be heard. Closed hearing at 7:41 p.m.

g) Optional Executive Session for deliberations, consistent with RCW 42.30.140(2), with possible action to follow on Palmer Rezone 1, Palmer Rezone 2 and/or Palmer Rezone 3

Mayor Pro-Tem stated that the council will now retire to closed session and begin its deliberations.

Council went into closed session at 7:42 p.m. for 45 minutes with possible action to follow.

At 8:27 p.m. a 20-minute extension was announced.
At 8:47 p.m. a 10-minute extension was announced

At 8:57 p.m. Mayor Pro-Tem Deady called the meeting back to order.

Action: Councilmember Page **moved** to approve rezones 1 and 2 and adopt the findings and recommendations of the hearing examiner; **second** de Leon. Motion **passed** with all voting in favor (7-0).

Mayor Pro-Tem Deady stated that Council is still deliberating on rezone 3 and will get back to you when we figure that one out.

Council tasked the City Attorney to bring an ordinance back to the next available council meeting to document their decision this evening.

ADJOURNMENT:

Councilmember Smith **moved** to adjourn the meeting; **second** Councilmember Jones. Motion **passed** with all voting in favor (7-0). The meeting ended at 8:58 p.m.

ATTEST:

______________________________	______________________________
Carol Benson, Mayor	Brenda L. Martinez, City Clerk

BLACK DIAMOND CITY COUNCIL MINUTES
Council Special Meeting of January 18, 2024
Hybrid Meeting Via Zoom and In-Person
Council Chamber, 25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER:
Mayor Benson called the special meeting to order at 5:30 p.m.

ROLL CALL:

PRESENT: Councilmembers Deady, Douglass (Zoom), Smith (Zoom), Mulvihill, de Leon, Jones (Zoom), Page. Councilmember Smith entered the meeting in person at 5:47 p.m.

ABSENT: None

Staff Present: Jamey Kiblinger, Police Chief; Rob Reed, IS Manager; Xavier Mason, Finance Director; Andrew Williamson, MDRT/Ec Dev Director; and Brenda L. Martinez, City Clerk/HR

WORK SESSION:

1) Potential Levy Lid Lift Discussion, Review of Options

Mayor Benson introduced Martin Chaw of FCS Group who will be leading the discussion tonight regarding the general fund financial planning and the potential levy lid lift. He reviewed the agenda for tonight's discussion. Topics of discussion were:

- 2024 City Budget ($33M)
- 2024 General Fund Sources of Revenue ($9.8M)
- Property Taxes – Where does it go?
- Comparative Total Levy Rates - 2023
- Property Taxes and the Local $3.60/1K AV Limit
- Property Tax and Fire Services Survey (cities between 9K-10.5K) General Fund Levy only
- Public Safety Funding
- Utility Tax Options
- Levy Lid Lift
- Ballot Measure Timing – 2024 Gen. Election
- Levy Lid Lift Planning Schedule (Draft)
- Levy Lid Lift Ballot (Example)
- Fire Service Alternatives
- Council Discussion and Direction

(Councilmember Mulvihill left the meeting at 6:57p.m.)

Mayor Benson announced that Mr. Chaw will be following up with an email on the four questions the Council had tonight.

ADJOURNMENT:

Councilmember de Leon **moved** to adjourn the meeting; **second** Councilmember Deady. Motion **passed** with all voting in favor (6-0). The meeting ended at 6:58 p.m.

ATTEST:

____________________________________ ____________________________________

Carol Benson, Mayor Brenda L. Martinez, City Clerk

BLACK DIAMOND CITY COUNCIL MINUTES
Council Meeting of January 18, 2024
Hybrid Meeting Via Zoom and In-Person
Council Chamber, 25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER, FLAG SALUTE:

Mayor Benson called the regular meeting to order at 7:00 p.m. and led us all in the Flag Salute.

ROLL CALL:

PRESENT: Councilmembers Deady, Douglass (Zoom), Smith, Mulvihill, de Leon, Jones, Page

ABSENT: None

Staff present: Xavier Mason, Finance Director; Jamey Kiblinger, Police Chief, Andrew Williamson, MDRT/Ec Dev Director; Rob Reed, IS Manager; David Linehan, City Attorney; Brenda L. Martinez, City Clerk/HR Manager.

READING OF GUIDING PRINCIPLES

AGENDA REVIEW AND APPROVAL:

Councilmember Deady **moved** to add the Palmer Rezone 3 to the agenda for discussion with possible action; **second** Councilmember Page. Motion **passed** with all voting in favor (7-0).

Councilmember de Leon **moved** to approve the agenda as amended; **second** Councilmember Page. Motion **passed** with all voting in favor (7-0).

PUBLIC COMMENTS: None

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

CONSENT AGENDA:

Councilmember de Leon **moved** to approve the Consent Agenda; **second** Councilmember Deady. Motion **passed** with all voting in favor (7-0). The Consent Agenda was approved as follows:

1) **Claim Checks** – January 18, 2024, Check No. 53938 through Check No. 53987 (voids 53920, 53939) and EFTs in the amount of $467,069.68

2) **Payroll** – December 2023, Check No. 20365 through Check No. 20376 and ACHs

in the amount of $567,382.75

3) **Minutes –** Council Meeting of January 4, 2024

4) **AB24-009** – Ordinance Amending the 2024 Salary Schedule

PUBLIC HEARINGS: None

UNFINISHED BUSINESS: None

NEW BUSINESS:

Palmer Rezone 3– Councilmember Deady led the discussion on this item and asked Council if they would like a closed session to discuss a little further. There was Council consensus to do this.

At 7:07 p.m. Council recessed into a closed session pursuant to RCW 42.30.140(2) for 10 minutes with possible action to follow.

Mayor Benson called the meeting back to order at 7:17 p.m.

Councilmember Page **moved** to deny rezone #3 and to adopt the Findings and Conclusions of the Hearing Examiner; **second** Councilmember Deady. Motion **passed** with all voting in favor (7-0).

DEPARTMENT REPORTS: None

MAYOR'S REPORT: None

COUNCIL REPORTS: None

ATTORNEY REPORT:

City Attorney Linehan commented that he will consolidate tonight's decision with the other two decisions Council made at the last meeting in an ordinance and bring back at the first meeting in February for Council official action.

PUBLIC COMMENTS:

Kristen Bryant, Bellevue spoke to Council.

Councilmember Page reported on a Public Works item from their meeting regarding the Skatepark the cultural impact study. She also updated Council on an item on the Council Action Plan the land acknowledgement.

EXECUTIVE SESSION: None

ADJOURNMENT:

Councilmember de Leon **moved** to adjourn the meeting; **second** Councilmember Deady Motion **passed** with all voting in favor (7-0). The meeting ended at 7:22 p.m.

ATTEST:

Carol Benson, Mayor	Brenda L. Martinez, City Clerk

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION

SUBJECT:	Agenda Date: February 1, 2024	AB24-010
Ordinance Approving Palmer Site Specific Rezones 1 and 2; denying Palmer Site Specific Rezone 3; adopting the Hearing Examiner's Findings, Conclusions, and Recommendations; amending the Zoning Map.	Mayor Carol Benson	
	City Administrator	
	City Attorney David Linehan	X
	City Clerk – Brenda L. Martinez	
	Com Dev – Mona Davis	
	Finance – Xavier Mason	
	MDRT/Ec Dev – Andy Williamson	
Cost Impact (see also Fiscal Note):	Police – Chief Kiblinger	
Fund Source:	Public Works – Scott Hanis	
Timeline:	Court – Judge Swain/Tawnya Parks	

Agenda Placement: ☒ Mayor ☐ Two Councilmembers ☐ Committee Chair ☐ City Administrator

Attachments: Propose Ordinance and Exhibit A

SUMMARY STATEMENT:

FISCAL NOTE (Finance Department): N/A

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:

RECOMMENDED ACTION: **MOTION to approve Ordinance No. 24-1203 approving Palmer site specific Rezones 1 and 2; denying Palmer site specific Rezone 3; adopting the Hearing Examiner's Findings, Conclusions, and Recommendations; amending the Zoning Map; providing for severability; and establishing an effective date.**

RECORD OF COUNCIL ACTION

Meeting Date	*Action*	*Vote*
February 1, 2024		

ORDINANCE NO. 24-1203

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, APPROVING PALMER SITE-SPECIFIC REZONES 1 AND 2; DENYING PALMER SITE-SPECIFIC REZONE 3; ADOPTING THE HEARING EXAMINER'S FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS; AMENDING THE ZONING MAP; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the applicant Palmer Coking Coal Co. ("Palmer") has applied for site-specific zoning map amendments encompassing seven parcels of land owned by Palmer; and

WHEREAS, the first rezone application ("Palmer Rezone 1") was submitted on April 19, 2022, was re-submitted on July 13, 2022, was determined to be complete on August 8, 2022, and was assigned City File No. PLN22-0045 for review and processing; and

WHEREAS, Palmer Rezone 1 requests that King County Tax Parcel No. 102106-9010, consisting of 20.63 acres, be rezoned from the R4 single-family residential district to the MDR8 medium density residential district; and

WHEREAS, the City conducted a SEPA analysis of Palmer Rezone 1 under City File No. PLN22-0046, resulting in the issuance of a Determination of Non-Significance ("DNS") on June 14, 2023; and

WHEREAS, the second rezone application ("Palmer Rezone 2") was submitted on April 19, 2022, was re-submitted on July 13, 2022, was determined to be complete on August 8, 2022, and was assigned City File No. PLN22-0022 for review and processing; and

WHEREAS, Palmer Rezone 2 requests that the following five parcels consisting of 25.46 acres be rezoned from the Business/Industrial Park (B/IP) district to the MDR8 medium density residential district: King County Tax Parcel Nos. 152106-9110, 152106-9112, 152106-9113, 152106-9114, and 152106-9115; and

WHEREAS, the City conducted a SEPA analysis of Palmer Rezone 2 under City File No. PLN22-0023, resulting in the issuance of a DNS on June 14, 2023; and

WHEREAS, the third rezone application ("Palmer Rezone 3") was submitted on April 19, 2022, was re-submitted on July 13, 2022, was determined to be complete on

August 8, 2022, and was assigned City File No. PLN22-0047 for review and processing; and

WHEREAS, Palmer Rezone 3 requests that King County Tax Parcel No. 102106-9111, consisting of 27.96 acres, be rezoned from the Business/Industrial Park (B/IP) district to the MDR8 medium density residential district; and

WHEREAS, the City conducted a SEPA analysis of Palmer Rezone 3 under City File No. PLN22-0048, resulting in the issuance of a DNS on June 14, 2023; and

WHEREAS, the City received one appeal of the SEPA DNS for all three proposed rezones from the City of Maple Valley, and that appeal was subsequently dismissed by order of the Hearing Examiner dated August 31, 2023; and

WHEREAS, site-specific rezone requests must satisfy a seven-prong analysis set forth in section 18.12.020(B) of the Black Diamond Municipal Code (BDMC), with the applicant bearing the burden of proving that each of the prongs is satisfied; and

WHEREAS, site-specific rezones are considered Type 4 quasi-judicial decisions under the BDMC, which means that the Hearing Examiner holds an open-record public hearing on the rezone applications and then issues a recommendation to the City Council, which then makes the final decision after holding a closed-record hearing, as more fully set described and set forth in BDMC 18.08.070; and

WHEREAS, the City's Hearing Examiner held an open-record hearing on Palmer Rezone 1, 2, and 3 on November 6, 2023, beginning at 5:00 p.m., at which testimony from members of the public was received in oral and written format; testimony and other evidence from Palmer and City Staff was received; and the Hearing Examiner asked questions and reviewed the evidence both in favor of and in opposition to the proposed rezone applications; and

WHEREAS, the Hearing Examiner issued 58-page written report on November 28, 2023, titled "Findings of Fact, Conclusions of Law and Recommendations to the City Council" (hereafter referred to as the "Hearing Examiner's Report", see Exhibit A attached hereto), in which he summarized the evidence and testimony in detail; listed all of the exhibits submitted by the parties and the public; considered the evidence presented; reviewed the relevant criteria for zoning map amendments under the BDMC; and made detailed findings of fact and conclusions of law regarding how the evidence received either supported or did not support the approval of the requested rezone applications under the applicable rezone criteria; and

WHEREAS, on January 11, 2024, pursuant to BDMC 18.08.070(A)(2), the City Council held a closed-record public hearing on Palmer Rezones 1, 2, and 3, conducted quasi-judicial deliberations in closed session, and passed a motion to approve Palmer Rezone 1 and Palmer Rezone 2, adopting the findings and conclusions of the Hearing Examiner's Report with respect to Palmer Rezone 1 and Palmer Rezone 2; and

WHEREAS, on January 11, 2024, the City Council deferred final action on Palmer Rezone 3, pending further deliberations; and

WHEREAS, the City Council held a closed session at their regular business meeting on January 18, 2024, to continue their quasi-judicial deliberations on Palmer Rezone 3, and thereafter passed a motion to deny Palmer Rezone 3, adopting the findings and conclusions of the Hearing Examiner's Report and adopting the Hearing Examiner's recommendation that Palmer Rezone 3 not be approved on the ground that the applicant had not satisfied the requirement of BDMC 18.12.020(B)(4) to show adequate transportation facilities to serve the range of uses in the proposed MDR8 zone; and

WHEREAS, the City Council finds that the Hearing Examiner's Report is thorough, well-reasoned, and reaches appropriate and well-supported findings of fact and conclusions of law regarding Palmer's proposed site-specific rezone applications; and

WHEREAS, based on the evidence submitted to the Hearing Examiner in the open-record hearing held on November 6, 2023, the analysis contained in the Hearing Examiner's Report, and the arguments presented to the Council in the closed-record hearing held on January 11, 2024, the City Council is persuaded that the Hearing Examiner's recommendations are compelling and should be adopted by the City with respect to all three of the requested Palmer rezones;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Recitals Adopted. The foregoing recitals are hereby adopted as formal findings of the City Council.

Section 2. Palmer Rezone 1 Approved. Palmer Rezone 1 is hereby approved. Palmer has met its burden of demonstrating that all of the requirements of BDMC 18.12.020(B)(1) – (7) for a site-specific rezone have been met.

Section 3. Palmer Rezone 2 Approved. Palmer Rezone 2 is hereby approved. Palmer has met its burden of demonstrating that all of the requirements of BDMC 18.12.020(B)(1) – (7) for a site-specific rezone have been met.

Section 4. Palmer Rezone 3 Denied. Palmer Rezone 3 is hereby denied. Palmer has not met is burden of demonstrating that all of the requirements of BDMC 18.12.020(B)(1) – (7) for a site-specific rezone have been met—namely, Palmer has not met its burden with respect to BDMC 18.12.020(B)(4) regarding transportation facilities:

Section 5. Hearing Examiner Findings and Conclusions Adopted. The Hearing Examiner's Report, dated November 28, 2023, which is attached hereto as Exhibit A, is hereby adopted as the formal findings of fact and conclusions of law of the

City Council with respect to Palmer Rezone 1, Palmer Rezone 2, and Palmer Rezone 3. Furthermore, specifically with respect to Palmer Rezone 3, the City Council adopts the Hearing Examiner's recommendation to deny Rezone 3 outright, rather than deferring a decision on Palmer's application or conditioning approval on dedication of Pipeline Road.

Section 6. Zoning Map Amended. The City of Black Diamond zoning map is hereby amended by reclassifying the following parcels to be within the MDR8 medium density residential district: King County Tax Parcel Nos. 102106-9010, 152106-9110, 152106-9112, 152106-9113, 152106-9114, and 152106-9115. The zoning classification for King County Tax Parcel No. 102106-9111 (Palmer Rezone 3) shall remain unchanged as Business/Industrial Park.

Section 7. Severability. If any section, paragraph, sentence, clause, or phrase of this Ordinance, or its application to any person or circumstance, is declared unconstitutional or otherwise invalid for any reason, or if any portion of this Ordinance is pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 8. Publication, Effective Date, and Appeal. This Ordinance shall take effect and be in full force five days following publication in the City's official newspaper, in accordance with law. Any appeal shall be to the Superior Court under the Land Use Petition Act, Chapter 36.70C RCW, and must be filed within 21 days of the effective date of this Ordinance.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND AT A REGULAR MEETING THEREOF ON THE 1ST DAY OF FEBUARY, 2024.

CITY OF BLACK DIAMOND

____
Carol Benson, Mayor

Attest:

____
Brenda L. Martinez, City Clerk

Approved as to form:

____
David Linehan, City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No.
Date of Publication:
Effective Date:

BEFORE THE CITY OF BLACK DIAMOND HEARING EXAMINER

IN RE: PALMER REZONE 1 PALMER REZONE 2 PALMER REZONE 3	HEARING NO. PLN22-0045 HEARING NO. PLN22-0022 HEARING NO. PLN22-0047 FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS TO CITY COUNCIL

OWNER/APPLICANT: Palmer Coking Company, LLP
P. O. Box 10
Black Diamond, Washington 98010

REPRESENTATIVE: Jami Balint
Attorney at Law

OWNER'S REPRESENTATIVE: Whitney Welsh

OTHER REPRESENTATIVES: David Toyer, Toyer Strategic Advisors
Jeff Schramm, Transportation Engineering NorthWest

CITY'S REPRESENTATIVES: Andrew Love, Contract Planner
Mona Davis, Community Development Director
David Linehan City Attorney

PROJECT LOCATION:

Rezone 1: Parcel No. 102106-9010. 20.63 acres located off of Lake Sawyer Road SE and north of Roberts Drive and surrounding Lake Marjorie.

Rezone 2: Parcel Nos. 152106-9110, 1521106-9112, 152106-9113, 152106-9114, and 152106-9115. 25.46 acres again located off Lake Sawyer Road SE and north of Roberts Drive.

Rezone 3: Parcel No. 102106-9111. 27.96 acres located north of Fairfax Street and Dail Drive.

SUMMARY OF REQUEST:

The Applicant requests Site Specific Rezoning of the three properties: Rezone 1 proposes the rezoning of 20.63 acres from Single-Family Residential (R4) to Medium Density Residential (MDR8); Rezone 2 proposes the rezoning of 25.46 acres from Business/Industrial Park (B/IP) to Medium Residential (MDR8); and Rezone 3 proposes the rezoning of 27.96 acres from Business/Industrial Park (B/IP) to Medium Density Residential (MDR8). If all requested rezones are approved, all properties would be rezoned to MDR8. All three properties have a land use designation of Medium Density Residential (MDR) in the City's Comprehensive Plan.

CITY OF BLACK DIAMOND HEARING EXAMINER
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HEARING EXAMINER'S RECOMMENDATIONS:

Palmer Rezone 1: **Approve.**
Palmer Rezone 2: **Approve.**
Palmer Rezone 3: **Deny, defer or approve subject to conditions.**

BACKGROUND

This matter involves three separate applications by Palmer Coking Coal Company, LLP ("Palmer" or "Applicant") for the rezoning of properties to Medium Residential (MDR8) consistent with their land use designation of Medium Density Residential (MDR) in the City's Comprehensive Plan. The first application (Rezone 1) seeks the rezoning of 20.63 acres surrounding Lake Marjorie (Oak Lake). The second application (Rezone 2) seeks rezoning of 25.46 acres northeast of the intersection of Roberts Drive and Lake Sawyer Road. The third application (Rezone 3) seeks rezoning of 27.96 acres east of Lake Sawyer Road and just north of the Bruckner's Way/Sunny Lane Neighborhood. All three properties are part of Palmer's larger landholdings and were part of its historic coal and now gravel mining operations.

When the City updated its Comprehensive Plan in 2019 it designated all three properties as "Medium Density Residential" in the Future Land Use Map. The three properties' zoning designations were inconsistent with this land use designation at the time of the 2019 update and have remained inconsistent. The only zoning designation consistent with the MDR land use designation is MDR8 - the zoning designation sought by Palmer.

Site Specific Rezones such as this must undergo a seven-pronged analysis found in BDMC 18.12.020(B), with the Applicant having the burden of proving that all seven requirements are satisfied. Palmer asserts that all seven requirements have been met and that the requested rezones should be approved by City Council. City Staff agrees and concurs in the

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Phone: 360-748-3386/Fax: 748-3387

recommendation that all three rezones be approved without conditions. There has been significant public response to the request, mostly in opposition, and with most of that opposition arguing that the applications fail to satisfy BDMC 18.12.020(B)(4) and (7), although opponents cite to other requirements as not having been met as well.

The matter comes before the Hearing Examiner for the purpose of reviewing the applications and receiving public comment so as to then make recommendations to City Council.

PUBLIC HEARING

Prior to the public hearing the Hearing Examiner undertook an independent site inspection of the three properties to better understand site conditions and surrounding properties.

The public hearing commenced at 5:00 p.m. on Monday, November 6, 2023, at the City's Public Hearing Facility. The hearing lasted approximately four hours. City Staff appeared through Andrew Love, Contract Planner, along with Mona Davis, Community Development Director, and was represented by its City Attorney, David Linehan. Various other City Staff members were in attendance. The Applicant appeared through the Owner's Representative, Whitney Welsh, and its other representatives, David Toyer and Jeff Schramm, and was represented by its attorney, Jami Balint. A large crowd was in attendance and a significant number asked to testify. The hearing was recorded and all testimony was taken under oath. The hearing was conducted in a hybrid format whereby the public was encouraged to attend in person but could also attend remotely. Several members of the public participated remotely and at least two testified.

In advance of the public hearing Mr. Love prepared Staff Reports for each of the three applications, all bearing the date of October 26, 2023. In addition to these three Staff Reports, the record developed in advance of the hearing consisted of a significant number of other

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Phone: 360-748-3386/Fax: 748-3387

documents including various studies and reports as well as the cumulative public comment presented in advance of the hearing. All documents were identified as exhibits, with the entire list of exhibits attached to this Decision.

CITY'S PRESENTATION

The City's presentation was primarily made by Andrew Love, Contract Planner. In addition to his oral presentation, Mr. Love relied extensively upon his three Staff Reports and the accompanying PowerPoint presentations (Exhibits 13, 14 and 15). Mr. Love began by describing the three rezone properties:

- Rezone 1 consists of 20.63 acres and surrounds Lake Marjorie (Oak Lake) and adjoins Lake Sawyer Road SE a short distance north of its future intersection with the proposed Pipeline Road. The site is undeveloped and forested. Property to its north is zoned Public (Lake Sawyer Park); property to the east and south is zoned Business/Industrial Park (B/IP). Property west of Lake Sawyer Road lies in unincorporated King County and is zoned Rural 1 per 5 Acres. Property to the north and west has limited development while property to the south and east has undergone extensive coal/gravel mining.

- Rezone 2 consists of 25.46 acres lying northeast of the intersection of Lake Sawyer Road and Roberts Drive. It is currently zoned B/IP. It is undeveloped and forested. Property to its west is undergoing intensive development as part of the Ten Trails Master Planned Development. Property to the north is currently involved in the Applicant's gravel mining operations. Property to the east includes critical areas associated with Rock Creek and, further east, the Bruckner's Way/Sunny Lane Neighborhood. To the south, across Roberts Drive, is a mix of Ten Trails development and older City development.

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299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

- Rezone 3 consists of 27.96 acres consisting of a rectangular parcel immediately north of the Bruckner's Way/Sunny Lane Neighborhood but having no direct road connection to that neighborhood or to any other public road. The site slopes steeply downward from south to north. The upper, southerly portion, is forested while the northerly, lower portion is part of the Applicant's gravel mining operations. The site adjoins Rock Creek to the west and is surrounded on the west, north and east by the Applicant's gravel operations, and on the south by a mix of residential neighborhoods and critical areas. The site currently has no direct road access but adjoins the intended route for the Pipeline Road which is yet to be dedicated to the City or constructed. Like Rezone 2, it is currently zoned B/IP. About a third of the Rezone 2 property is covered by the "Mineral Extraction Overlay" while the Rezone 3 property is fully covered by this Overlay.

History of Properties and Their Land Use Designations. As everyone in Black Diamond knows, Palmer's coal mining and then gravel mining operations have been ongoing on these and surrounding properties for several generations. The three properties either touch on or are included in the area currently involved in gravel mining. As noted above, a portion of the Palmer Rezone 2 property is covered by the Mineral Extraction Overlay while all of Palmer Rezone 3 is covered by this Overlay. The three properties are just a small portion of Palmer's 569 acres in or near the City.

In the 1996 Comprehensive Plan these properties were given a mixed land use designation of partially Medium Density Residential and the remainder Business/Industrial Park, with all of the properties given a "Interim Mineral Extraction" overlay to allow for continued mining. The next Comprehensive Plan update (delayed until 2009) designated Rezone 1 as Low Density Residential and the remaining properties as Business Park and Light Industrial. The

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299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
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properties' zoning has remained consistent with these earlier land use designations. The City's most recent Comprehensive Plan update in 2019 changed the land use designation for all three parcels to Medium Density Residential (MDR) but there was no concurrent change in their zoning designation, leaving Rezone 1 as R4 - Single Family Residential and Rezones 2 and 3 as Business/Industrial Park.

In April 2022, Palmer applied for the rezoning of the three parcels to MDR8. This began an extensive and lengthy review by City Staff. The first public notice of the pending application was sent in August 2022, resulting in more than 60 public comments, mostly in opposition. Following these initial public comments, the City refined its review and requested additional information from the Applicant. On June 13, 2023, the City issued a SEPA Determination of Nonsignificance (DNS). The SEPA DNS was appealed by the City of Maple Valley but its Appeal was dismissed by the Hearing Examiner. There were no other appeals of the SEPA DNS and it is now final.

As the public hearing approached, additional public comments trickled in, many in support. All public comment will be discussed more fully later on.

As has been frequently pointed out by City Staff and the Applicant, these applications for rezoning to MDR8 *do not propose any development activity at this time.* If the rezones are granted, any subsequent development will require separate applications and more intensive review based upon the land use regulations then in effect.

Consistency with the City Comprehensive Plan. As earlier noted, in 2019 the City Council changed the land use designation in the Comprehensive Plan for these three properties to Medium Density Residential (MDR). The City's Comprehensive Plan describes the purpose of this land use designation:

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

> "The Medium Density Residential development designation provides for stable and attractive residential neighborhoods of small lot, single-family homes, or attached single-and multi-family residences on land suitable for these residential intensities. Medium Density Residential areas should be located near commercial services, employment, and arterial roads, and may also be in mixed-use developments. The base residential density in these areas is eight units per acre. Increased density may be approved up to twelve units per acre with the acquisition of TDRs."

[Please note that these three rezone properties are <u>not</u> eligible to receive TDRs. As a result, their maximum density is eight units per acres, not twelve. This is important when later discussing transportation impacts.]

When the City Council changed the land use designation to MDR in 2019 it did so pursuant to its established guidelines for what properties are best suited for the MDR designation. The Comprehensive Plan recognizes that the MDR designation is best applied to those properties where:

- Existing or planned public facilities are adequate to support residential development in this density.
- The area is free of significant amount of environmentally sensitive areas.
- The area fronts an arterial.
- The area is developed and consists of a mix of attached and detached housing types. A residential neighborhood that is primarily single-family with a strip of multi-family housing along an arterial does not meet this criteria.
- Medium density housing can be developed to be compatible with existing development.
- The area is identified as a receiving site for density under the TDR program.

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CHEHALIS, WASHINGTON 98532
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It is important to recognize that these are *general criteria* for areas to be designated as MDR, not *requirements*. Indeed, none of the three rezone parcels comply with every one of these criteria (e.g., none are receiving sites for TDRs), yet the City Council determined that the three parcels sufficiently qualified in order to be placed in the MDR land use designation.

Importantly, the only *zoning* designation that is consistent with the MDR land use designation in the Comprehensive Plan is MDR8. Neither the current R4 zoning for Rezone 1 or the current B/IP zoning for Rezones 2 and 3 is consistent with the MDR land use designation, and no other zoning designations are consistent except the MDR8 zoning. The current zoning designations are therefore inconsistent with the land use designations in the Comprehensive Plan.

In his Staff Reports, Mr. Love undertakes an extensive analysis of the proposed rezoning and its consistency with the Goals and Policies of the City's Comprehensive Plan to determine if the proposed rezoning is not only consistent with the MDR land use designation but with the Plan's many Goals and Policies. It is important to remember that it is difficult, if not impossible, for a project to be consistent with *all* Goals and Polices of the Plan as there is a natural tension among many of the Goals and Policies (for example, goals for increased economic development and industrial growth versus goals for environmental protection and retention of a "smalltown feel"). Nonetheless, City Staff believes that the rezones are consistent with multiple land use Goals and Policies including LU Goal 3 and Policy LU-10; LU Goal 6 and Policy LU-22; LU Goal 7 and Policy LU-28, 29 and 30; LU Goal 13; with Natural Environment Policies NE-8 and NE-35; with Housing Goal and Policy H-1, H-3 and H-4; Goal 2, Goal 3 and Policies H-23 and H-24, and Capital Facilities and Utilities Goal 1 and Policies U-15 and P-1. In summary, City Staff finds that the rezones are consistent with the Goals and Policies of the Comprehensive Plan as well as with the MDR land use designation.

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

Changes in Land Uses Resulting from Change in Zoning. Mr. Love's Staff Reports detail how each change in zoning would alter the allowed uses. As to Rezone 1, a change in zoning from R4 to MDR8 would allow the maximum number of units per acre to increase from four to eight. It would also allow for multi-family residential structures, cottage housing, senior housing, assisted elderly housing, manufactured home parks and group homes. None of these are currently allowed in the R4 zone. As to Rezones 2 and 3, a change from B/IP zoning to MDR8 would change the use from office, medical, wholesale and light industry to the type of residential uses described in the previous sentence. In addition, it would decrease maximum building coverage and maximum building height while increasing landscaping.

Traffic Impacts. Trip generation analyses have been prepared for all three projects *based solely on the change in zoning*. In other words, these analyses calculate the maximum possible traffic impacts resulting from rezoning from MDR8 as compared to the parcels' current zoning (Exhibit 5). These analyses also assume that development under MDR8 would allow up to *twelve* residential units per acre, but this number of units per acre is only allowed when Transfer Development Rights (TDRs) are allowed, and none of the three rezone parcels are approved to receive TDRs. Their maximum density per acre is therefore eight, not twelve. As a result, each of the trip generation analyses overestimates the traffic impacts of the rezoning.

As to Rezone 1, the analysis found that the proposed rezone would potentially increase the number of PM Peak Trips by 155 trips - again, based upon twelve units per acre, not eight. But even at an additional 155 PM Peak Trips, the analysis concludes that "the rezone is not expected to cause significant adverse impacts to the transportation system and no additional traffic analysis is needed at the time of the rezone." Mr. Love also notes that the Rezone 1 is adjacent to Lake Sawyer Road and therefore well connected to the transportation grid.

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

As to Rezone 2, the analysis found that the proposed rezone would reduce PM Peak Hour Trips significantly. As compared to industrial uses, the rezone would reduce PM Peak Hour Trips by 434. As compared to General Office, it would reduce PM Peak Hours by 1,597. Again, these analyses assume a higher residential density than allowed and thus the reduction in PM trips would actually be significantly greater. Similar to Rezone 1, Rezone 2 is adjacent to Lake Sawyer Road and is centrally located within the City's road system.

Similar to Rezone 2, Rezone 3 would result in a reduction in PM Peak Hour Trips ranging from 476 few trips when compared to Light Industrial and 1,754 few trips when compared to General Office - again assuming a maximum residential density of twelve lots per acre instead of the allowed eight.

Importantly, Mr. Love's Staff report does not discuss how traffic from Rezone 3 would access the City's road system. Rezone 3 is currently landlocked. It adjoins Bruckner's Way and Sunny Lane to the south but neither road extends into the project and the testimony presented during the hearing is that an extension of either road into the site would be practically impossible due to the steep change in grade. This leaves only access from the north by way of the proposed Pipeline Road which currently does not exist and its right-of-way has not yet been dedicated.

Mr. Love's Staff Reports note that none of these rezones would reserve any capacity in the transportation system and that any proposed development on any of the three sites would be reviewed at time of application to determine whether public utilities are available and sufficient or need upgrading. This applies not only to roads but to water, sewer and stormwater as well as to police, fire service and schools.

Analysis Under the Seven Criteria of BDMC 18.12.020(B). Pursuant to BDMC 18.12.020(B): "The City will consider the following criteria in reviewing applications for zoning classifications, *and may only approve an application if the applicant demonstrates that all of the criteria are met.*" Each of the Staff Reports analyzes the respective rezoning under these seven criteria and finds that all criteria have been satisfied:

B1. **The proposal is consistent with the Goals and Policies of the Comprehensive Plan and with the Future Land Use Map.**

Compliance with the Future Land Use Map is obvious as the MDR8 zoning is the only zoning consistent with the MDR designation in the Comprehensive Plan. Staff finds that the rezones are also consistent with the Goals and Policies of the Comprehensive Plan as earlier discussed. Most notably, rezoning would allow a greater variety of housing types and provide opportunity for housing available to a larger range of incomes while also creating more compact communities, all of which is consistent with the City's declared housing goals.

B2. **The subject property is suitable for development in conformance with the standards applicable to the requested zoning designation.**

City Staff finds that all three proposed rezones contain property that can be developed in conformance with development standards applicable to the MDR8 zoning designation. As earlier noted, any future development would go through additional review at the time of application and would be required to meet the then applicable regulations and demonstrate that adequate utilities are available or will be upgraded to accommodate the development.

B3. **The proposal will not be materially detrimental to properties in the immediate vicinity or the community based on the range of uses allowed in the proposed zoning classification.**

As to Rezone 1, City Staff notes that the rezone from R4 to MDR8 will not be materially detrimental as the property is adjacent to Lake Sawyer Road, near regional park facilities and

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

would serve as a transition from the Business/Industrial Park to the south and east. As to Rezone 2, Staff finds that the rezone from B/IP to MDR8 will not be materially detrimental; that the property is adjacent to arterial roads and the MDR8 zone would allow for transitional residential development between the Ten Trails development to the south and west and Business/Industrial Park development to the north, and that the site is ideal for transitional residential housing. As to Rezone 3, City Staff again notes that the site is adjacent to arterial roads (the proposed Pipeline Road) and that it would serve as an excellent transition from Business/Industrial Park properties to the north and the existing single-family residential neighborhoods immediately to the south, making it an ideal location for higher density residential development.

B4. **Adequate services and facilities, including transportation facilities, will be available to serve the range of uses permitted in the proposed zoning classification.**

As to Rezone 1, the site fronts Lake Sawyer Road and has existing utility services available to the site. As to Rezone 2, the site again fronts Lake Sawyer Road as well as Roberts Drive and has existing utilities available to the site. As to Rezone 3, there are currently no utilities connected to the site but there are utilities available along both Lake Sawyer Road and Roberts Drive capable of being extended to the site. Access is proposed via the future Pipeline Road which, as earlier noted, has not yet been constructed and its right-of-way has not been dedicated to the City.

The Staff Reports reiterate that any future developments at any of these sites would need to demonstrate capacity with respect to water, sewer, stormwater, transportation, schools, police and fire.

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
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B5. **The proposed reclassification is warranted because of a change in circumstances, <u>or</u> because of a demonstrated need for additional land within the proposed zoning classification.**

City Staff finds that the reclassification of all three sites as MDR in the 2019 Comprehensive Plan satisfies the requirement for a change in circumstances, as the MDR8 zoning designation is the only allowed zoning designation in this new land use. In addition, City Planning has long recognized that these properties would be transitioned away from their historic mining uses and Palmer has announced that it is in the process of winding up its gravel operations.

B6. **The reclassification does not reflect special treatment of the subject property.**

The requested rezones are consistent with the changes made to the three sites in the 2019 update of the Comprehensive Plan. Changing their zoning designation to adapt to their change land use designation is not special treatment but rather is consistent with the requirements of the Growth Management Act.

B7. **The reclassification will promote the general health, safety and welfare of the community.**

As to all three proposed rezones, City Staff notes that the City's current housing supply is overwhelmingly single-family with very limited affordable housing. There are limited opportunities for those who wish to rent; for those who seek assisted care; and for more elderly residents. Rezoning would allow for more diverse types of housing and would include cottage housing and multi-family development. All of this is consistent with the City's announced housing goals and therefore promotes the general health, safety and welfare of the community.

APPLICANT'S PRESENTATION

At the conclusion of the City's presentation the Applicant presented its own, similar presentation beginning with a few opening comments from its attorney, Jami Balint. Her comments were directed at the issue of access to Rezone 3 and whether it would be accessible from the south via Bruckner's Way or Sunny Lane. Ms. Balint wanted to assure the public that Palmer did not envision gaining access from this direction as it was regarded as highly impractical due to the steep slope separating the neighborhood to the south from the developable portion of Rezone 3. Instead, Palmer envisioned all of its traffic accessing the future Pipeline Road, with no connection to roads to the south.

Following Ms. Balint's opening statement, Whitney Welsh spoke as the Applicant representative. Ms. Welsh described herself as part of the fourth generation of family ownership of Palmer. As most everyone who lives in Black Diamond knows, Palmer undertook coal mining operations in the area for decades before winding down its coal operations in the mid-eighties. Since then it has been utilizing the same areas for gravel operations, but these operations are also ending their useful life and will soon be wound down. Once the gravel operations come to an end the properties will be put to new uses. Palmer hopes that the three rezone sites will be converted to Medium Density Residential development consistent with the City's Comprehensive Plan. Palmer regards the MDR8 zoning as an excellent transition between its remaining industrial properties zoned B/IP and the surrounding residential neighborhoods, while fulfilling the City's goals of more diverse and affordable housing. Ms. Welsh affirmed Ms. Balint's previous comments that Palmer envisions all traffic from Rezone 3 to rely on the future Pipeline Road, with none of it intended to connect to roads to the south due to the steep slope in between. She concluded her remarks by stating that Palmer regards the requested rezones as an

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299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
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appropriate way of transitioning these properties from their old use to a new, more thoughtful one that will serve as a helpful buffer between differing uses on each side.

Following Ms. Welsh's testimony the Applicant presented the testimony of David Toyer of Toyer Strategic Advisors, Inc., a land use and economic development consulting company. Mr. Toyer's presentation consisted of his oral testimony along with a PowerPoint presentation (Exhibit 17) and, most importantly, a lengthy and detailed "Technical Memorandum" dated November 6, 2023, prepared by Mr. Toyer (Exhibit 16). It provides an in-depth analysis of the impacts of the proposed rezoning. The following is the collective presentation made by Mr. Toyer through his testimony, PowerPoint presentation and Technical Memorandum.

Mr. Toyer began by noting that the sites' use for gravel mining will soon end and that a new use will be inevitable. The Applicant believes that the requested rezoning will allow for a new use that is more compatible with surrounding uses; provides greater environmental protection; and carries out the City's housing goals to provide more affordable and varied housing options. Further, the rezoning will avoid turning to industrial uses that will be more burdensome to surrounding properties without any added benefit to the City.

Mr. Toyer undertook an analysis of development under current zoning (R4 for Rezone 1, B/IP for Rezones 2 and 3). As compared to the current R4 zoning for Rezone 1, MDR8 would allow greater maximum building coverage and twice the number of units per acre (eight versus four). But, more importantly, would allow for a greater variety of housing including clustered housing, multi-family housing, and senior housing. This would allow for not only more diverse housing consistent with the City's housing goals but would also allow development to be clustered away from critical areas such as Lake Marjorie and Rock Creek. As compared to the B/IP zoning currently in place for Rezones 2 and 3, the MDR8 would reduce maximum building

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299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

height, reduce maximum building coverage, and increase landscaping while also providing a better transition between a residential neighborhood in one direction and industrial properties in the other.

Mr. Toyer confirmed that the Applicant does not envision attempting to connect development in Rezone 3 to the existing residential streets to the south, as the steep bluff (Exhibit 19) separating the two areas makes access impractical. Instead, the Applicant envisions all development in Rezone 3 to rely on the future Pipeline Road. Mr. Toyer also submitted schematics of how the Rezone 3 property might look if it was developed as currently allowed under the B/IP zoning as compared to its look should it be rezoned as MDR8 (Exhibit 17). The schematics emphasize that the B/IP zone would allow taller industrial buildings with limited aesthetics and large parking areas, while residential development under the MDR8 zoning would provide for lower buildings with less concentrated mass and greater open space.

Mr. Toyer then addressed the City's housing needs as envisioned by local, county and regional goals. He notes that our State has recognized a housing shortage and that our Legislature as well as Puget Sound Region governments have emphasized the need for more middle housing options to address both the shortage of residential units as well as the high cost of housing. The MDR8 zoning allows more middle housing types and more diverse housing options, including those that are more likely to attract a workforce to the City. According to the City's 2020 Housing Needs Assessment:

- Only 15% of the City's occupied housing units are rentals, and 71% of renter occupied units are single-family with another 25% being mobile homes.

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
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- Only 25% of the proposed housing within the City's Master Planned Developments will be multi-family, with Ten Trails limiting rental units to only 10% of the total number of housing units.
- Other data indicates that 97% of the City's residents are employed *outside* of the City while 90% of the jobs in the City are held by *nonresidents*. This strongly suggests that those working in Black Diamond simply cannot afford to live there. The City's 2020 Housing Needs Assessment recognizes that a more affordable workforce housing is critical.
- The MDR8 zoning would allow multi-family units, cottage housing, accessory dwelling units, assisted elderly housing, senior housing, manufactured housing parks and group homes. Most of these housing types are consistent with the City's Housing Needs Assessment, the City's Housing Action Plan, and recent State legislation promoting middle housing options.

Mr. Toyer's research also concludes that the B/IP zoning was not included in the City's capacity assumption for future employment growth. Thus, rezoning these properties to MDR8 will not affect the City's calculations for achieving future employment goals.

Mr. Toyer also undertook a detailed analysis as to whether the rezoning would have any negative impact on the City's tax revenues. He compared the tax revenue consequences from using this property to develop a commercial/industrial building to constructing a six-unit residential building. His analysis concludes that the residential building would result in *greater* tax revenues to the City than the commercial/industrial building, both in terms of one-time revenues as well as annual property taxes. Mr. Toyer adds that the current B/IP zoning for Rezones 2 and 3 generally prohibits retail activity and therefore will not result in sales tax. In summary, development under the MDR8 zoning is likely to create more tax revenue to the City than development under the B/IP zoning. In addition, MDR8 zoning would allow for increased

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

City population which, in turn, would increase the City's pro rata receipt of statewide shared revenues (liquor tax, etc.).

Mr. Toyer concluded his general comments by providing a list of benefits from rezoning to MDR8:

- It will improve transitioning and compatibility between surrounding land uses and offer a less intense next to use adjoining existing residential neighborhoods.
- It will provide greater housing variety with more housing options, including housing types needed to entice a future workforce.
- It will have no impact upon the City's employment targets or its anticipated future tax revenues.
- By providing additional housing opportunities for the City, it will increase the City's population which, in turn, will drive other commercial development opportunities and attract retail, restaurants, professional services and other businesses.

Mr. Toyer's presentation concluded with an analysis of the rezones compliance with the seven criteria found in BDMC 18.12.020(B)(1-7):

B1. **The proposal is consistent with the Goals and Policies of the Comprehensive Plan and with the Future Land Use Map.**

Mr. Toyer cites to more than 35 Goals and Policies found in the City's Comprehensive Plan which he believes are consistent with these rezones. Please refer to his Technical Memorandum, Appendix A for a full list of these Goals and Policies (Exhibit 16). He also asserts that the rezones are consistent with the Countywide Planning Policies including DP-2, DP-2, H-12, H-15, H-16, and H-18. In addition, he believes that the rezonings are consistent with Multi-County Planning Policies (PRSC "Vision 2050") including MPP-RGS-4,

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

MPP-RGS-5, MPP-RGS-6, MPP-DP-1, MPP-H-1, MPP-H-2, and MPP-H-3. In addition, he believes that the rezonings are consistent with the Goals 1-15 of the Growth Management Act. Mr. Toyer also notes that the MDR8 zone is the only implementing zone for the MDR land use designation and that the sites' current zonings are inconsistent with the MDR land use designation. The rezones are necessary to create consistency between the two.

B2. **The subject property is suitable for development in conformance with the standards applicable to the requested zoning designation.**

As to Rezone 1, the rezone would increase density and allow for cottage housing and multi-family units. It would also provide greater flexibility in site design and support clustering of housing to protect critical areas such as Lake Marjorie and Rock Creek. As to Rezones 2 and 3, the proposed rezone will allow for medium density residential development and a greater mix of housing unit types while providing a greater transition between existing residential neighborhoods and future B/IP zoned development.

B3. **The proposal will not be materially detrimental to properties in the immediate vicinity or the community based on the range of uses allowed in the proposed zoning classification.**

As to Rezone 1, the rezone would provide for a transition between the existing residential development to the west and future B/IP zoning to the east, while also being consistent with the adjacent park to the north. As to Rezone 2, the rezoning would provide a smoother transition from the Master Planned Development and R4 Single-Family zoning to the west, south and east and B/IP development to the north. It will also result in smaller building footprints and heights in the B/IP zoning thus reducing visual impacts to surrounding residential neighborhoods. As to Rezone 3, rezoning will provide a better transition between lower density residential

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299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

development to the south and future B/IP development to the north. And, because of the elevation change between the existing neighborhood to the south and this rezone site, the change will help reduce visual, noise and aesthetic impacts that otherwise would arise from uses allowed in the B/IP zone.

B4. **Adequate services and facilities, including transportation facilities, will be available to serve the range of uses permitted in the proposed zoning classification.**

As to Rezone 1, existing utilities are available within Lake Sawyer Road and will also be included in the future Pipeline Road. The adequacy of the public facilities and services will be more fully addressed during development review and site specific SEPA review to ensure that facility services are available at the time of any new development. The proposed rezone will result in more efficient land use while continuing to comply with environmental protections. The rezone will cause a slight increase in PM Peak Hour Trips but this increase is not expected to cause any intersections to fail or cause significant adverse impacts to the transportation system.

As to Rezone 2, the property will be accessed from Lake Sawyer Road where utilities exist and additional utilities will be extended with development of the Pipeline Road right-of-way. As with Rezone 1, the adequacy of public facilities and services will be further addressed during development review and site specific SEPA review to ensure concurrency. Even without this rezone, the property would require the extension of utilities for uses allowed in the B/IP zone. Additionally, the current zoning would have a greater impact on the transportation system such that the rezone would result in a reduction of PM Peak Hour Trips by at least 434 trips and as many as 1,310 trips or more.

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299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

As to Rezone 3, the property will be accessed from Lake Sawyer Road, where utilities exist, as well as additional utilities installed with the construction of the Pipeline Road. Again, the adequacy of public facilities and services will be further addressed during development review and site specific SEPA review to ensure concurrency. The rezone will result in more efficient use of land for housing while maintaining environmental protections. Even without the rezone, the current zoning would require the extension of utilities while having a greater impact on the transportation system. The rezone would result in a reduction of PM Peak Hour Trips by at least 470 trips and as many as 1,438 trips or more.

B5. **The proposed reclassification is warranted because of a change in circumstances, or because of a demonstrated need for additional land within the proposed zoning classification.**

As to all rezones, the 2019 update to the City's Comprehensive Plan is, itself, a sufficient change in circumstances to warrant the rezoning.

As to all rezones, the pending termination of mining operations is a change in circumstances justifying the change in zoning to be consistent with the sites' land use designation.

As to Rezone 1, the City faces an affordability crisis and the need for more diverse and affordable housing types as declared in the City's 2020 Housing Needs Assessment, citing to the statistics discussed earlier. The proposed MDR8 zoning will allow for cottage housing and multi-family structures to help increase the City's housing diversity and provide affordable rental and ownership options.

As to Rezone 2, nearby property to the south has undergone intensive development the past few years resulting in an increased need to assure appropriate transitioning between these

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299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

new residential neighborhoods and industrial/business development to the north. Similar to Rezone 1, this rezone would allow for more diverse affordable housing types as called for in the City's 2020 Housing Needs Assessment and the City's Housing Action Plan.

As to Rezone 3, the property lying south of this site was also extensively developed in the last few years into single-family neighborhoods which warrant rezoning this property to ensure an appropriate transition between those residential neighborhoods and business/industrial property to the north. As with Rezones 1 and 2, the rezone would allow for additional housing and more diverse affordable housing types as called for in the City's 2020 Housing Needs Assessment and the 2021 Housing Action Plan.

B6. **The reclassification does not reflect special treatment of the subject property**.

There is no special treatment. The rezone is required to address consistency of the sites' zoning with their future land use designation in the Comprehensive Plan.

B7. **The reclassification will promote the general health, safety and welfare of the community**.

As to Rezone 1, the rezone is consistent with and furthers the City's Comprehensive Plan; is consistent with and furthers the County-wide Planning Policies, the Multi-County Planning Policies and the Growth Management Act goals; addresses housing needs identified in the City's 2020 Housing Needs Assessment and the 2021 Housing Action Plan including the need to diversify the housing stock to allow increased rental-occupied housing; permits needed housing options such as multi-family housing, cottage housing and senior housing; there is a demonstrated need for housing locally, regionally, and statewide; added housing will encourage future investment and employment opportunities; and the rezone will create a better transition between residential properties to one side and future B/IP developed properties to the other.

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

As to Rezones 2 and 3, they will promote the general health, safety and welfare in the same ways as Rezone 1, and, in addition, significantly reduce PM Peak Hour Trips as compared to their current B/IP zoning.

The Applicant completed its presentation with the testimony of Jeff Schramm, a Traffic Engineer with 29 years experience. Mr. Schramm addressed transportation issues and confirmed that the Trip Generation Analyses performed for these properties were premised on the sites being allowed up to twelve lots per acre. As earlier noted, these properties have a maximum density of eight lots per acre as they are not receiving properties for TDRs. Mr. Schramm explained how this will significantly reduce the traffic impacts of the rezones. For example, Rezone 1 had been estimated to result in an additional 155 PM Peak Trips as compared to the site's current R4 zoning. When the calculations are adjusted for only eight lots per acre instead of twelve, the result is an increase of only 77 PM Peak Trips instead of 155. This small of an increase has no appreciable impact upon the City's transportation system. Similarly, Rezones 2 and 3 would have even greater reductions in traffic impact than had been earlier calculated, thus offering significant traffic benefits over their current B/IP zoning.

Mr. Schramm concluded his testimony by confirming that Rezone 3 is dependent upon construction of the Pipeline Road which, although it does not yet exist, is a requirement for further development of Ten Trails and is "certain to happen".

PUBLIC TESTIMONY

A considerable amount of public comment has been received in response to these applications, first in response to SEPA review and later in advance of and during the public hearing. Most comments have been in opposition to the rezonings.

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

All of the public comments received in response to SEPA review, as well as comments received in advance of the public hearing, are in writing. Similarly, virtually all of the comments received during the public hearing were presented in a written form as well as orally. As a result, the Council is able to review nearly all of these comments directly which allows the Hearing Examiner to describe them in less detail.

Comments Received During SEPA Review

A large number of written comments were received in August 2022 in response to SEPA review. Responses were generally in opposition but included some support:

Christy Sorenson and four others (Exhibit 4A.). Supports the proposed rezones. As an adjoining neighbor to the south, would prefer residential development over an industrial park next to the neighborhood. Also prefers the reduced traffic resulting from the change to residential use.

Allison Ostrer and eighteen others (Exhibit 4B). Oppose the rezones as inappropriate and having adverse impacts on Rock Creek and Lake Marjorie. Also have negative impacts on transportation, safety, schools, utilities, public services and environment. The parcels should remain lower density to benefit wildlife and maintain a smalltown feel.

Friends of Black Diamond and twenty-one others (4C). Oppose the rezones as they will negatively impact roads and pedestrian safety and further burden the proposed Pipeline Road and will cause adverse impacts to Rock Creek and Lake Marjorie.

Muckleshoot Tribe (Exhibit 4D). Concerns over water quality and the protection of Rock Creek as a salmon producing tributary to Lake Sawyer. Seeks assurance that stormwater will be properly managed so as to avoid environmental impacts.

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

City of Maple Valley (Exhibit 4E). Concerns with traffic impacts as most new residents will travel through Maple Valley on their way to and from work. [Note: Maple Valley later appealed the SEPA Determination but had their appeal dismissed by the Hearing Examiner.]

Friends of Black Diamond and seven others (Exhibit 4F). A 24-point argument in opposition to the rezoning for both procedural reasons (adequacy of the SEPA review process, inadequate notice, etc.) along with substantive reasons: impacts on the City's smalltown feel; preservation of rights-of-way for conversion to trail; protection of wildlife, habitat and open space; protection of sensitive areas, wetlands and streams; stormwater impacts; mine reclamation; geotechnical concerns; potential contaminations; impact on public services; maintaining a balance between housing and available jobs; impact upon public services including schools, government facilities, police, fire and others; impacts to parks; impacts to the transportation system both inside and outside the City; impacts to the neighborhood to the south of Rezone 3 if a road connection is made between the two; impacts to traffic on Roberts Drive; and added burden to the City's utilities.

Geoff Bowie (Exhibit 4G). Opposes the rezoning as the City already has more housing than it needs; the City has no jobs for new residents; the development will harm Lake Marjorie, Rock Creek and local wildlife; the rezoning will further burden the local transportation system, utilities and schools; and water and sewer service cannot be assured.

Cindy Wheeler (Exhibit 4J). Is opposed to Rezone 2 due to potential impacts to Lake Sawyer.

John Nelson and Stefan Cordova (Exhibit 4J). Are opposed to Rezone 3 to the extent that it might connect Bruckner's Way and Sunny Lane to the development.

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

Additional Pre-Hearing Comments

No additional public comments were received until shortly before the scheduled public hearing when additional comments began to be received mostly in support:

Bill Kombol (Exhibit 11). Supports the rezones as the City is well positioned to accept additional growth and construction of the Pipeline Road will provide the needed east-west arterial to service the new areas. Meanwhile, the current B/IP zoning is unhelpful as the City has large amounts of similar zoned property available yet little business/industrial development has occurred. The properties would be better used to increase population so as to then encourage business and industrial growth.

Gloria Ballastrasse. Submitted letters on October 23 (Exhibit 11) and October 24 (Exhibit 4I) supporting the rezoning on the basis that the City is not large enough to justify significant areas of business and industrial zoning especially given the current competition from Maple Valley and Covington. Utilizing these properties instead for medium density residential will help attract retail, dining and commercial activity.

Vinny Bevins (Exhibit 11). Supports the rezone as its residential development would provide a better view from his residence along Sunny Lane than would industrial development. It would also better transition between his residential neighborhood and industrial activity further north. He is concerned, however, that Sunny Lane might be connected to the development - something he would oppose.

Troy Box and Christy Box (Exhibit 11). Support the rezones as providing a better transition between residential neighborhoods to the south and future business and industrial development to the north. Even with the rezoning, the City will have nearly 300 acres of remaining B/IP zoning, or more than enough for anticipated commercial development. Added

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

population will also entice retailers and other business activity to come to the City, lessening the need to travel to Maple Valley for basic services.

Paul Engelhardt (Exhibit 11). Also supports the rezone as providing a better transition between residential and future industrial development; to increase the City's population in order to have a greater say in the regional school system; and as a means of encouraging retail development which, in turn, would produce needed sales tax.

Walter Nadybal (Exhibit 11). Is the owner of a local business and believes that his business and others are dependent upon population growth and he therefore supports the rezoning to assist in that need. He also believes that the area currently zoned for Business/Industrial Park is too large and would result in a eyesore as well as additional traffic problems, while rezoning would provide a better transition to surrounding residential neighborhoods. He adds that his employees cannot afford to live in the City and must commute due to limited housing opportunities.

Greg and Cecilia Morris (Exhibit 11). Support the rezones on the belief that the City simply has too much land zoned Business/Industrial Park and that it is underutilized and undesired. Instead, the City should strengthen and expand its retail opportunities through added population growth.

Sam and Linda Heather (Exhibit 11). Oppose the rezone as it will further burden local schools; use of the property for light industrial would help City revenues; the current Transportation Plan does not accommodate added residential growth; emergency services would be challenged and existing neighborhoods would be burdened by passthrough traffic.

Haley Platt (Exhibit 11). Supports the rezones. As a nearby resident, she is concerned that the existing zoning would allow much taller and less attractive buildings as well as

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

significantly greater traffic She doubts that the City is a sufficient draw for industrial development and the use of this property for residential purposes would help to encourage businesses and retailers to move to the area

Brett Morris (Exhibit 11). Supports the rezoning for many of the same reasons mentioned by Ms. Platt but adds that the type of industrial and business activity envisioned by the B/IP zoning designation would require greater infrastructure to support the movement of freight and heavy trucks - the kind of transportation grid the City currently does not have.

Public Hearing Comments

As noted earlier, a relatively large crowd attended the public hearing with seventeen members of the public asking to testify. The vast majority of witnesses offered written versions of their testimony as well. The testimony of witnesses who offered written exhibits is therefore abbreviated as the City Council is able to review their written comments. The testimony of those who did not leave written comments will be given greater detail. Notably, all those who wished to testify spoke in opposition to the project:

Rosanne and Donald McPherson (Exhibit 31). Oppose the rezoning as the City has not demonstrated managed or responsible growth and lacks the infrastructure and services for added population. Traffic is already problematic, crime is increasing, and the City does not have the schools, police, etc. for more residents.

Stefan Cordova (Exhibit 28). Is concerned that Rezone 3 would be allowed to connect to Bruckner's Way and Sunny Lane as this would overburden these streets and lead to unsafe conditions.

Susan Harvey (no written comments). Shares Maple Valley's concerns over impacts to regional traffic. Not enough attention is being given to how the City's development is affecting

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

neighboring cities. The City is already deeply impacted by the Ten Trails development, in effect, creating two different cities, and the proposed rezones will only add to this division.

Ruslan Sorochuck (Exhibit 22). Asserts that the rezonings fail to meet the requirements of BDMC 18.12.020(B)(4) and that the Applicant has not demonstrated adequate water services for this development, and that City Staff has not proven that water is available in sufficient quantities.

Anna Sorochuck (Ruslan's Spouse - Exhibit 22(A)). Believes that the Applicant has not demonstrated sufficient transportation grid for the added traffic; that it will overburden the police department; and that it will convert existing forested areas into developed neighborhoods resulting in impacts to local wildlife, all in violation of Natural Environment Policies NE-2 through NE-14 which discourage development causing impacts to wildlife.

Gretchen Buet (Exhibit 23). Believes that the rezonings fail to satisfy BDMC 18.12.020(B)(5) in that there is no "demonstrated need for additional land within the proposed zoning classification" as the City's growth plans already contain more residential areas than the City can manage and still remain compliant with regional and countywide planning policies. She also asserts that the rezonings fail to satisfy BDMC 18.12.020(B)(7) as the rezoning will not promote the general health, safety and welfare of the community as it will further worsen the City's need to establish emergency housing which is calculated upon its total population, that is, the greater the City's population the greater its need for the development of emergency housing yet the City is not prepared to develop this needed housing.

Tim O'Brien (no written comments). Is primarily concerned with traffic impacts. He is also worried that the City needs good jobs such as tech and that by allowing the rezones the City is surrendering opportunities for new business to come to town. Additional concerns include

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

impacts to schools; remaining environmental impacts of past mining operations; potential harm to critical areas from added development; and unresolved coal mine hazards.

Lisa Winters (no written comments). Fears that the rezoning will have tremendously negative impacts upon natural resources as well as wildlife. Lake Marjorie is likely to be impacted; existing wildlife will be pushed further away from the City; and Rock Creek will be threatened as will its supply of salmon. She contends that the rezoning would be inconsistent with the Natural Environment (NE) Goal of the Comprehensive Plan and Policies NE2-14.

Bernie O'Donnell (no written comments). Previously served as a council member and believes that the rezones do not satisfy all seven criteria. In particular, the rezones do not satisfy Subsection B(3) in that a lot of residents living near these properties will be negatively impacted by their development; the rezones do not satisfy Subsection B(4) as the City's transportation system is inadequate for the added traffic, and that it is not enough to say that this issue will be addressed at the development stage; and the rezoning does not satisfy Subsection B(5) as there has been no recent change in circumstances in the City that justifies additional residential development.

Geoff Bowie (no written comments but he presented 460 pages of attachments), (Exhibit 32). Previously served as a council member and notes that: Pipeline Road is not constructed and therefore cannot be relied upon to provide the required road system, especially for Rezone 3; the City's sewer system has limited capacity; the school district's voters have overwhelmingly rejected school bonds for needed additional schools; and the City's various agreements with developers, whether they be Ten Trails or the Applicant, have not been fulfilled and further development should not be allowed.

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

All remaining public testimony was presented by members of the Friends of Black Diamond in a well-organized and focused presentation wherein each member expressed a collective position in opposition but then addressed a specific, different issue justifying this opposition:

Kristen Bryan (Exhibit 24). Asserts that the rezoning fails to satisfy BDMC 18.12.020(B)(5) in that the Applicant has not shown "a demonstrated need for additional land within proposed zoning classification." She notes that the City has approved 6,050 units of housing in its Master Planned Developments with additional housing elsewhere. This exceeds regional growth targets and is causing regional infrastructure difficulties with roads, schools, and public services. Rather than add additional residential zoning, the City should focus on its existing residential zones and avoid worsening infrastructure problems.

Ms. Bryant also notes separately that the first clause of BDMC 18.12.020(B)(5) requires that the proposed reclassification be *warranted* due to a change in circumstances and that, while the 2019 update to the Comprehensive Plan designates these properties as MDR, their current rezoning to MDR8 is not *warranted* as the City lacks jobs and other reasons to encourage added population.

Ms. Bryant further asserts that the rezonings do not satisfy the requirements of Subsection B(1) in that they are not consistent with the Goals and Policies of the Comprehensive Plan. She asserts that the rezones are inconsistent with LU Goal 12; Policy LU-53; and LU-54, all relating to coordinating land use and development activities with regional jurisdictions in a manner consistent with the Growth Management Act and County-wide Planning Policies.

Ms. Bryant further argues that the rezonings fail to satisfy the requirements of Subsection B(7) as they do not promote the general health, safety and welfare of the community. Contrary

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

to the claims that rezoning would assure a more diverse housing inventory, neither the Applicant or the City have demonstrated that the new residential zones would be used to provide affordable housing, or to serve people with disabilities, or to assist seniors.

Gary Kohl (Exhibit 25). Contends that the rezonings fail to satisfy the requirements of Subsection B(4). In particular, he asserts that there has been no demonstration that the regional school system can support the added growth as new schools required by Master Planned Development Agreements have not be constructed, while the Enumclaw School District voters have failed to approve school bonds that would have aided in the construction of new schools in Black Diamond. The result is that no schools are presently funded for the Enumclaw School District and that its existing schools are at or near capacity.

Tom Ekberg (Exhibit 26). Contends that the rezonings fail to satisfy the requirements of Subsection B(4) as well as Subsection B(7) for the reason that the City does not have adequate fire protection, EMS service or law enforcement needed to serve this new development, nor does it have a plan as to how to increase its operational capacity to meet this future growth. He argues that the City's emergency services are already underfunded and that additional residential development will only exacerbate this problem. Added operational expenses that should have been borne by developers will instead be assumed by taxpayers.

Phil Acosta (Exhibit 27). Contends that the rezonings fail to satisfy the requirements of Subsections B(3), (4) and (6). These arguments are collectively premised on the fact that the Pipeline Road has not been constructed across the Applicant's property as has long been promised and that this is not the proper time to add residential zoning dependent upon that unbuilt road; that, even if constructed, the Pipeline Road was intended to service existing neighborhoods, not new ones; and that by allowing these rezones when the promised road has

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

not been constructed (or even dedicated), is granting the Applicant special treatment. Mr. Acosta notes in particular that the Ten Trails Development Agreement has recently been amended to defer dedication and construction of the Pipeline Road until a substantially later date than had earlier been agreed, such that these rezonings are proposed long before the Pipeline Road is likely to be dedicated and constructed

Renee Mix (Exhibit 29). Argues that the proposed amendments fail to satisfy the requirements of Subsections B(4) and (7) as the new residential zoning will generate significant additional traffic, making pedestrian travel even less safe and with no funds available to remedy this problem. She adds that it is inappropriate to compare the difference in traffic between the proposed new zoning and the existing zoning as the real comparison should be between the proposed new rezoning and there being no current use of the property. When measured that way, the rezones will increase overall traffic in a significant way and overburden the local transportation system.

Gary and Sherrie Jones (Exhibit 30). Assert that the zoning amendments fail to satisfy the requirements of Subsections B(3), (4), (5), (6) and (7) collectively on the basis that the City lacks the needed public services and capital facilities to provide for the additional growth, especially with respect to fire services.

William Bryant and Kelley Sauskojus (Exhibit 33). Contend that the rezonings fail to satisfy the requirements of Subsections B(4) and (7) due to inadequate transportation facilities needed to serve new residential use. Relying on a somewhat complicated analysis, they contend that all traffic estimates found in the current Comprehensive Plan assume no traffic coming from these three sites and that, even so, the Plan envisioned that one or more important regional intersections would operate at a failure level even without this additional residential development. They therefore argue that the traffic impacts should not be measured as the difference between the two zoning designations, but between there being no traffic (per the Comprehensive Plan) and the new traffic generated by MDR8 zoning. When this becomes the measurement, the Applicant cannot demonstrate that "adequate services and facilities, including transportation facilities, will be available to serve the range of uses permitted".

At the conclusion of all public comment the Hearing Examiner announced that the City and the Applicant would be given until the following Monday at 5:00 p.m. to provide written responses to all of the comments received.

Responses to Public Comment by the City and the Applicant.

As requested by the Hearing Examiner, the City and the Applicant provided detailed written responses to public comment within the allowed time.

City's Responses.

The City's response (Exhibit 35) begins by reiterating that the three rezones do not propose any development but merely seek rezoning in a manner consistent with their land use designation in the Comprehensive Plan.

- **Environmental Concerns**. Contrary to some arguments made by members of the public, the issue is not whether some specific development might have impact upon the environment but rather whether the requested rezoning is likely to have greater environmental impact than the current zoning. The City responds that it will not. Development under MDR8 standards is no less stringent than development under the property's current zoning designations, and sensitive environmental areas will be no less protected than if developed under their current zoning.

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

- **Housing.** Contrary to comments made by the public, Black Diamond will exceed its housing targets with the full buildout of the City's Master Planned Developments and is therefore in need of other housing opportunities Meanwhile, the State, the County, PSRC and the City are committed to meeting current and future housing needs, especially middle housing. Recent State legislation, Vision 2050, the City's Comprehensive Plan and the City's recently adopted Housing Action Plan all speak to the need for additional, varied and more affordable housing. Rezoning these three sites to MDR8 will allow for greater housing types while also creating additional opportunities for senior housing and other types of assisted care.

- **Infrastructure and Public Services.** City Staff reiterates that the three rezones will not cause any appreciable increase in traffic over their existing zoning and instead will result in significantly less traffic than development under the B/IP zoning in Rezones 2 and 3. Further traffic analyses will be required at the time any development is proposed. Importantly, the City adds that any application to develop any part of Rezone 3 would be conditioned on the developer dedicated and constructing the Pipeline Road if it has not already been constructed as required by The Villages MPD Development Agreement.

As to traffic and pedestrian safety, City Staff responds that its roads are safe for all users. Any future developments within the rezoned properties will be subject to transportation safety requirements.

City Staff echoes its earlier testimony and Staff Reports with respect to the adequacy of water, sewer and other utilities. The City announces that it has adequate water, adequate sewer and adequate stormwater for the anticipated development resulting from rezoning. The Applicant will not be reserved any of this capacity but must instead demonstrate its continued availability at time of development.

City Staff believes that adequate capacity within the Enumclaw School system has been demonstrated for purposes of this rezoning. At the time of any future development, the developer will be required to prove that adequate capacity continues to exist or else provide a suitable solution. The same is true of police and fire services. Each future development will be examined based upon its own specific impacts and will be conditioned accordingly.

In conclusion, City Staff continues to believe that all three requested rezones satisfy the seven criteria of BDMC 18.12.020(B)

Applicant's Response.

The Applicant's response to public comment is very detailed and includes many complex responses which are not easily summarized. The Hearing Examiner therefore invites the City Council to review the Applicant's response in its entirety (Exhibit 36). Nonetheless, the following is a summary of its key points:

- **School Capacity**. BDMC 18.12.020(B)(4) requires that the Applicant demonstrate that adequate services and facilities will be available to serve the range of uses permitted in the new zone. With respect to schools, this requires the Applicant to demonstrate that the Enumclaw School District has sufficient capacity for the additional students resulting from a rezoning to MDR8. The Applicant's response contains a three-page explanation of how this requirement is met. Briefly, the School District's Capital Facilities Plan identifies its total capacity being 5,127 students, with the current population being 4,236 students, leaving a current surplus of 913 students. This is sufficient capacity for the students projected to be added as a result of these rezones except for a very minor discrepancy in the middle school grades of just a few students. Whether that capacity will continue to exist at the time of proposed development is unclear but, if there is no longer sufficient capacity, the proposed development will either not be granted or will be required to provide a remedy. Data indicates that the more multi-family housing developed in these sites the fewer students per residential unit, suggesting that the rezones' impact on schools may be less than forecasted. In addition, any development within these properties is at least a few years away, allowing added time to address school needs. Again, the City Council is encouraged to examine the Applicant's response for additional detail.

- **Water**. The City has announced that it has adequate water capacity for this project. The Applicant is not required to prove that the City's water is currently available to the site but merely that it is generally available, which it is. The City's 2019 Comprehensive Plan declares that the City has a total water supply of 986.9 MG of water per year, while 2035 demand accounts for only 509.9 MG of use, leaving more than sufficient was capacity for the rezones. It should also be remembered that the appropriate analysis is the amount of water used if the property is rezoned as compared to the amount that might be used under the current zoning. The Applicant explains that water use under the MDR8 zoning would likely be *less* than what would be used by Business/Industrial Park.

- **Sewer**. Again, the City Staff has declared that the City has adequate sewer capacity for the rezones. The City's Comprehensive Plan confirms this and states that: "Routing new flows to the western portion of the City to meet growth will provide the system with adequate capacity to meet the needs of infill within areas currently served by sewer." Future development within the three rezones may require improvements to piping and other system components but that has no bearing on the sewer system's *capacity* to add the rezoned properties.

- **Housing**. Several members of the public have declared that the City has more than enough approved residential lots - indeed has too many lots - to meet its forecasted needs. The Applicant responds that the City's official position is far different: In 2020, the City

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
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completed a Housing Needs Assessment which then led to the City's Housing Action Plan, approved in 2021. Contrary to the assertions made by opponents, the Housing Action Plan declares that the City is in great need of new opportunities for affordable housing for all incomes, with senior housing having the greatest unmet need followed by housing for low income homeowners. The Plan further acknowledges the need to encourage more diverse types of housing development including various forms of middle housing. The MDR8 zoning proposed for these three sites will offer the greatest opportunity to achieve the Goal and Policies of the City's Housing Action Plan.

- **Changed Circumstances are Demonstrated**. The Applicant correctly notes that opponents have interpreted BDMC 18.12.020(B)(5) as requiring proof of both changed circumstances <u>and</u> the demonstrated need for additional land within the proposed zoning classification, but this criterion is clearly stated in the alternative, not the conjunctive, and only one of the requirements must be met, not both. Nonetheless, the Applicant asserts that both are satisfied: The requirement of changed circumstances is satisfied by the need to update the City's zoning to be consistent with the 2019 Comprehensive Plan. This alone is more than a sufficient change in circumstances. Even so, the winding down of mining operations and the need to put the property to a new use is an equally compelling change. Further, the recent rapid appreciation in housing prices is driving the need for more affordable options including those allowed in the MDR8 zone. Finally, the rapid development of new neighborhoods in adjoining properties increases the need for better transitional properties between those new neighborhoods and industrial properties to the north. The MDR8 zoning will provide this transition.

As to demonstrated need, please refer to the City's recently enacted Housing Action Plan discussed earlier. The Applicant adds that the City currently has almost no multi-family units

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and almost no rental properties such that those who work in the City cannot afford to live there. There is a clearly demonstrated need to remedy this problem.

- **Police and Fire.** The Applicant wishes to once again remind the City Council that when determining whether public services are adequate as required by BDMC 18.12.020(B)(4), the correct analysis is whether the rezoning will have a greater impact on public services than the current zoning. When examined in that manner, the proposed rezones are more likely to result in a *reduced* need for police and fire than what would be required under the properties' current zoning, as studies have demonstrated that police and fire services for commercial properties are likely to be greater than those for residential properties. In addition, development under the B/IP zoning would almost certainly require more specialized fire fighting equipment that would be unnecessary for residential development. And as has been stated many times, issues relating to police and fire should be addressed during any future development applications when the specifics of the proposed development are known and the actual impacts can be determined and mitigated.

- **BDMC 18.12.080(B)(7) - General Health, Safe and Welfare.** The Applicant again correctly notes that many public comments have compared the potential development under the proposed rezoning to the current undeveloped state of the properties in order to advance arguments that the rezoning will fail to promote the general health, safety and welfare of the community. This type of analysis is legally flawed: The proper, legal analysis is to determine whether the proposed rezones will promote the general health, safety and welfare of the community as compared to the properties' current zoning. When properly examined, the rezones are demonstrated to help solve the City's recognized housing issues and, at the same

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time, provide important transitional zones between residential neighborhoods and commercial properties, all in a manner that is beneficial to the public.

ANALYSIS

In 2019, the City Council declared in its updated Comprehensive Plan that the best use of these three properties would be for Medium Density Residential development. That determination is fixed for the purpose of this matter and is not subject to debate. As the City Council has also declared that the MDR8 zoning classification is the only zoning designation consistent with the MDR land use designation in the Comprehensive Plan, the issue is not *whether* these properties should be rezoned MDR8, but *when*. The current issue before the City Council, then, is whether the Applicant currently satisfies all seven criteria in BDMC 18.12.020(B) as to each of the three rezones. If so, the rezones must be approved. If all criteria are not currently met then the rezones must be deferred until the conditions are met - or until the City Council changes their land use designation.

The findings of the City's 2020 Housing Needs Assessment are, to the Hearing Examiner, staggering. The Hearing Examiner is unfamiliar with any other municipality where nearly all housing is single-family owner-occupied and where other, affordable alternatives are nearly nonexistent. Much like a Sun Valley, Idaho, those who work in the City cannot afford to live there, while those who live in the City work elsewhere. Recognizing these discrepancies, the City's 2021 Housing Action Plan calls for more varied housing; for senior housing; and for more affordable housing options. The MDR8 zoning designation is meant to address these types of housing issues.

But it is not enough that the proposed rezoning would help address the City's housing needs. New housing - even housing specifically designed to address current housing limitations

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CHEHALIS, WASHINGTON 98532
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- must be accompanied by sufficient infrastructure capacity so that one problem (the need for more diverse housing) is not simply replaced by another problem (overwhelmed infrastructure). Recognizing this, the City enacted BDMC 18.12.020(B) as a means of balancing the benefits and burdens of rezoning to better ensure that the end product is not simply a new problem.

Of the seven requirements for rezoning found in BDMC 18.12.020(B), the two most at issue are B(4) and B(7), both of which require evidence that the rezoning's benefits outweigh its burdens. They require a demonstration that, as compared to the property's current zoning, the new zoning will not overwhelm the City's infrastructure including its water, sewer, stormwater, transportation, schools, police, fire, etc. Opponents of the rezoning certainly recognize this and have focused their attentions primarily on these two criteria. Opponents argue that the City lacks sufficient water, sufficient sewer, sufficient transportation capacity, sufficient schools, and sufficient police and fire to handle more residential units - even ones that might otherwise assist with the City's Housing Action Plan.

After reviewing hundreds of pages of reports and technical memos prepared by City Staff and the Applicant, and after having reviewed hundreds more pages of public comments and attachments, the two clear issues are:

1. Is there adequate school capacity for the rezoning?
2. Is there an adequate road/transportation system for the rezoning?

Both will be discussed more fully below As to all other infrastructure issues (water, sewer, stormwater, police, fire) I conclude that there is adequate *capacity*. It is important to remember that "capacity" in the context of rezoning is viewed broadly: For example, water capacity does not require evidence that water is currently available to the site but rather that the City's water system has sufficient water which could be made available to the site if development

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CHEHALIS, WASHINGTON 98532
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is sought. Viewed in that context, the evidence demonstrates that the City does have adequate water, sewer and stormwater capacity, as well as the capacity to provide police, fire, parks, etc. Again, this leaves the issues of school capacity and transportation capacity.

1. **Is there adequate school capacity**?

Even the Applicant admits that the issue of school capacity is a close call. Evidence amply demonstrates that the Enumclaw School District would benefit from additional schools and yet voters are hostile to this idea, leaving existing schools to operate close to their capacity. But the Applicant's carefully prepared response demonstrates that the District has remaining capacity as required by these rezones. This does not guarantee that that remaining capacity will still exist when development of these properties is someday proposed. It merely finds that it currently exists as is required by BDMC 18.12.020(B)(4) and (7).

2. **Is there adequate capacity in the City's transportation system**?

The issue of transportation capacity has two subsections: (a) is there adequate capacity in the transportation network? and (b) are the properties sufficiently connected to this transport network?

(a) Is there sufficient capacity in the transportation network? City Staff and the Applicant have repeatedly pointed out that this question should be addressed in the context of whether the proposed rezoning has a greater impact than the current zoning. Measured in that context, Rezone 1 has only a slightly traffic impact, while Rezones 2 and 3 would have a significant beneficial impact. Opponents argue that the City's current planning doesn't recognize any traffic coming from these properties and so the proper measurement is between the current absence of traffic and that created by Medium Density Residential development. Viewed in that context, Rezone 1 would again have relatively little impact but Rezones 2 and 3 would have

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CHEHALIS, WASHINGTON 98532
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more significant impacts. I conclude that the City's analysis is correct and that, measured in this way, there is adequate transportation capacity.

(b) Are the rezones adequately connected to the transportation system? The final, and most troubling, question is whether all three rezones are adequately connected to the City's system of roads. Rezones 1 and 2 clearly are, both being adjacent to Lake Sawyer Road, an important arterial. Conversely, Rezone 3 is currently not connected to any road and, according to the Applicant, its connection to roads to the south (Bruckner's Way and Sunny Lane) is practically impossible due to the steep slope in between. This leaves only a connection to the proposed Pipeline Road, but the Pipeline Road does not exist and, more importantly, has not yet been dedicated to the City. As a result, its future is not certain, and is made less certain by the City's recent decision to amend the Ten Trails Development Agreement to substantially defer the date by which the Pipeline Road must be dedicated. In other words, under present City Planning Rezone 3 will not be connected to any dedicated public right-of-way for years to come. I conclude that this does not satisfy the requirements of BDMC 18.12.020(B)(4) with respect to Rezone 3.

City Staff and the Applicant may argue that there is simple remedy: As the land upon which Pipeline Road is to be constructed belongs to the Applicant, any proposed development within Rezone 3 can simply be conditioned upon dedicating and constructing the road in advance of Ten Trails doing so. While that may be a simple remedy, the fact remains that Rezone 3 presently has no connection to the City's transportation network and is not assured of a connection. And, nothing prevents the Applicant from splitting ownership of its properties such that the owner of Rezone 3 is not the owner of the Pipeline Road property, and cannot compel that owner to construct it. Further, although the Applicant declares that connecting to existing

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CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

roads to the south is practically impossible, it is not *physically* impossible and the Applicant could simply choose to undertake this engineering challenge in lieu of constructing the Pipeline Road.

For these reasons, it is the Hearing Examiner's recommendation to the City Council that is either deny Rezone 3 on the basis that it lacks a connection to the City's transportation grid or, in the alternative, that it (1) defer the Rezone 3 application until the Pipeline Road right-of-way has been dedicated, or (2) condition approval of Rezone 3 on it not being implemented until the Pipeline Road right-of-way has been dedicated.

The City Council may be sufficiently satisfied that the Pipeline Road is guaranteed to be dedicated and constructed that the Hearing Examiner's recommendation can be disregarded and Rezone 3 can be approved. If so, it is perhaps worth adding that Rezone 3 would appear to be the most beneficial of the three rezones in terms of providing a useful transition between residential development to the south and business/industrial development to the north, as evidenced by its support from many of the nearby residents to the south.

One final note regarding the public comment opposing rezoning on the basis that the property should be preserved in its current undeveloped state. This suggestion, while perhaps sounding appropriate, is unconstitutional. The City Council is not free to refuse a proposed rezoning application which is otherwise found to satisfy all criteria solely to ensure that it remains undeveloped. To do so would result in an unconstitutional taking of private property to achieve a public benefit.

In summary:

- Rezone 1 is straightforward and can easily be recommended for approval. It would serve as a useful transition between residential development to the west and north and

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CHEHALIS, WASHINGTON 98532
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industrial development to the east and south. It would also increase residential density in the manner proposed by the City's new Housing Action Plan. It would also offer the ability to cluster residential development in a manner that is more protective to Lake Marjorie. At the same time, its incremental increase in population would have no appreciable effect on infrastructure.

- Rezone 2 would offer a similar benefit in transitioning between surrounding single-family neighborhoods to the south, west and east and industrial development to the north. Its development would allow for more diverse housing consistent with the City's Housing Action Plan while also increasing the City's population which, in turn, may encourage more retail and other commercial development. As explained above, the City has sufficient capacity in its infrastructure to accommodate the rezone and it should therefore be approved.

- Rezone 3 would serve as a helpful transition between single-family residential neighborhoods to the south and industrial development to the north. It would also provide improved aesthetics over commercial uses allowed under the B/IP zone. Its development would offer the same benefits as Rezone 2. With the exception of the issue of access to the City's existing road system, its impacts would be the same as those resulting from Rezone 2 and can be accommodated by the City's infrastructure. But Rezone 3 lacks any assured access to public roads and, unless/until that access is assured, cannot be recommended for approval.

Based upon this Analysis, the Hearing Examiner makes the foregoing Findings of Fact and Conclusions of Law with respect to the seven criteria set forth in BDMC 18.12.020(B):

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

B1. **The proposal is consistent with the Goals and Policies of the Comprehensive Plan and with the Future Land Use Map.**

Findings of Fact:

1.1 The proposed rezone is clearly consistent with the Future Land Use Map. MDR8 is the only zoning classification consistent with the MDR land use designation in the Comprehensive Plan.

1.2 Opponents of the rezoning argue that it is inconsistent with the Goals and Policies of the Comprehensive Plan including all Goals and Policies relating to the Natural Environment as well as those requiring regional coordination in land use planning (LU Goal 12, Policies LU-53 and 54). Conversely, City Staff finds that the rezones are consistent with the long list of Goals and Policies listed earlier. The Applicant concurs with City Staff and asserts that an even longer list of Goals and Policies are consistent with the proposed rezones. The Hearing Examiner concurs with City Staff and finds that the proposed rezones are consistent with the Goals and Policies identified by City Staff.

Conclusions of Law:

1.1 Rezone 1 is consistent with the Goals and Policies of the Comprehensive Plan and with the Future Land Use Map.

1.2 Rezone 2 is consistent with the Goals and Policies of the Comprehensive Plan and with the Future Land Use Map.

1.3 Rezone 3 is consistent with the Goals and Policies of the Comprehensive Plan and with the Future Land Use Map.

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

B2. **The subject property is suitable for development in conformance with the standards applicable to the requested zoning designation.**

Findings of Fact:

2.1 City Staff finds that all three properties can be developed in conformance with development standards applicable to MDR8. Future development will have to go through additional review and will need to meet applicable sections of the code. This Finding is unchallenged.

Conclusions of Law:

2.1 Rezone 1 is suitable for development in conformance with the standards applicable to their requested zoning designation.

2.2 Rezone 2 is suitable for development in conformance with the standards applicable to their requested zoning designation.

2.3 Rezone 3 is suitable for development in conformance with the standards applicable to their requested zoning designation

B3. **The proposal will not be materially detrimental to properties in the immediate vicinity or the community based on the range of uses allowed in the proposed zoning classification.**

Findings of Fact:

3.1 Staff finds that the proposed rezones, including uses allowed in the MDR8 zone, will not be materially detrimental to properties in the immediate vicinity or the community.

3.2 Rezone 1 is adjacent to arterial roads and serves as a transition between existing residential neighborhoods and properties zoned Business/Industrial Park. Rezone 1 will improve the transition between these two conflicting zones.

3.3 Rezone 2 is adjacent to arterial roads and is located between residential neighborhoods to the west and south and properties zoned Business/Industrial Park to the north. The rezone will serve as a helpful transition between these conflicting zones while also reducing visual impacts otherwise caused by development as B/IP property.

3.4 Rezone 3 is located between residential neighborhoods to the south and properties zoned Business/Industrial Park to the north and will serve as a beneficial transition between the two conflicting zones. The rezone will also reduce visual impacts and noise as compared to the B/IP zone.

3.5 Opponents to the rezonings have generally not challenged compliance with this requirement with the exception that several individuals have voiced concern should Rezone 3 be connected to the existing residential streets to the south. The Applicant has indicated that it has no intention to connect Rezone 3 to roads to the south as the connection would be highly impractical due to the steep slope.

<u>Conclusions of Law</u>:

3.1 Rezone 1 will not be materially detrimental to properties in the immediate vicinity or the community based on the range of uses allowed in the MDR8 zoning classification.

3.2 Rezone 2 will not be materially detrimental to properties in the immediate vicinity or the community based on the range of uses allowed in the MDR8 zoning classification.

3.3 Rezone 3 will not be materially detrimental to properties in the immediate vicinity or the community based on the range of uses allowed in the MDR8 zoning classification.

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

B4. **Adequate services and facilities, including transportation facilities, will be available to serve the range of uses permitted in the proposed zoning classification.**

Findings of Fact:

4.1 Opponents argue that there are not adequate services and facilities, including transportation facilities, available to serve the rezones. They contend that the City has inadequate water and sewer services for the rezones; that the City has inadequate transportation facilities and that the City's transportation system cannot absorb the additional traffic; that the Enumclaw School District has inadequate capacity for additional students from the rezones; and that the City's police, fire and other emergency services cannot adequately address the added population resulting from the rezones.

4.2 City Staff finds that the City has adequate capacity in its water, sewer and stormwater systems to serve the range of uses permitted in the MDR8 zone. The Applicant provides further support of this Finding in its response to public comment (Exhibit 36). The Hearing Examiner concurs.

4.3 When compared to its existing R4 zoning, Rezone 1 would result in an increase of only 77 PM Peak Hour Trips. This minor increase will not cause significant adverse impacts to the transportation system.

4.4 When compared to its existing zoning of B/IP, Rezone 2 will result in a decease of PM Peak Hour Trips of at least 434 trips as compared to industrial uses and at least 1,597 trips as compared to General Office use. These calculations are based upon Rezone 2 being allowed 12 units per acre when it will only be allowed 8, and the resulting decrease in PM trips will be even greater than calculated.

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

4.5 When compared to its existing zoning of B/IP, Rezone 3 will result in a decease of PM Peak Hour Trips of at least 476 trips as compared to industrial uses and at least 1,754 trips as compared to General Office use. These calculations are based upon Rezone 3 being allowed 12 units per acre when it will only be allowed 8, and the resulting decrease in PM trips will be even greater than calculated.

4.6 Rezones 1 and 2 are adjacent to arterial roads and thus connected to the City's transportation system. Rezone 3 is not connected to any existing arterial road and is physically disconnected from adjoining roads to the south by a steep slope. The only means of access to Rezone 3 is by way of the proposed Pipeline Road which has yet to be dedicated or constructed. The City has recently approved an amendment to the Ten Trails Development Agreement which allows the dedication of the Pipeline Road to be deferred for a substantial period of time. Rezone 3 is therefore without any assured connection to the City's system of roadways as discussed more fully in the Analysis section.

4.7 City Staff finds that the Enumclaw School District has adequate capacity to serve the proposed rezones. The Applicant concurs and provides a detailed analysis in support (Exhibit 36). The Hearing Examiner concurs and adopts the Applicant's analysis as his own Findings.

4.8 City Staff finds that the City has adequate police, fire and other resources necessary to serve the rezones. The Applicant concurs and provides additional supporting evidence that fire and police services need for the MDR8 zoning are likely to be less than those required by development under the existing B/IP zoning, and with less specialized equipment needed to provide services (Exhibit 16). The Hearing Examiner concurs and adopts the Findings of both City Staff and the Applicant.

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

Conclusions of Law:

4.1 There are adequate services and facilities, including transportation facilities, available to serve the proposed MDR8 zoning classification for Rezone 1.

4.2 There are adequate services and facilities, including transportation facilities, available to serve the proposed MDR8 zoning classification for Rezone 2.

4.3 With the exception of transportation facilities, there are adequate services and facilities available to serve the proposed MDR8 zoning classification for Rezone 3. There are currently insufficient transportation facilities for the proposed Rezone 3 as it has no connection to the City's system of streets and the proposed Pipeline Road has yet to be dedicated or constructed, with the City having recently approved a substantial delay in its dedication.

B5. **The proposed reclassification is warranted because of a change in circumstances, or because of a demonstrated need for additional land within the proposed zoning classification.**

Findings of Fact:

5.1 Opponents have suggested that the rezones must satisfy both clauses of this requirement, that is, that the proposed classification be shown to be the result of a change in circumstances and that there is a demonstrated need for additional land within the MDR8 zoning classification. This interpretation is incorrect as this requirement is stated in the alternative and requires one or the other, but not both.

5.2 Opponents assert that, even if there has been a change in circumstances, the change does not *warrant* the rezone as additional housing is unnecessary.

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

5.3 Appellant's separately argue that the Applicant has failed to demonstrate need for additional land within the MDR8 zoning classification as the City already has a sufficient number of approved residential lots to meet its anticipated growth for the foreseeable future

5.4 The City finds that the 2019 update to the Comprehensive Plan in which the three properties were given a land use designation of MDR is, itself, a sufficient change in circumstances to warrant the requested rezones. The Applicant concurs. The Hearing Examiner concurs.

5.5 City Staff finds that the City is set to exceed its housing target with a full buildout of the City's Master Planned Developments while, at the same time, the State, county and regional governments, as well as the City, have committed to make sufficient provision for middle housing, all of which is confirmed in the City's Comprehensive Plan; the City's recent adopted Housing Action Plan, Vision 2050, and recent House Bill 1110. The MDR8 zoning classification would help the City meet these goals. The Hearing Examiner concurs.

5.6 The MDR8 zoning classification allows for a greater variety of housing types, multi-family housing, senior housing, assisted elderly housing, group homes, and cluster development. There is a demonstrated need for these additional types of housing as demonstrated by the Findings of the City's 2020 Housing Initiative and as declared in the City's 2021 Housing Action Plan.

<u>Conclusions of Law</u>:

5.1 Rezone 1 is warranted because of a change in circumstances. In addition, there is a demonstrated need for more land in the MDR zoning classification.

5.2 Rezone 2 is warranted because of a change in circumstances. In addition, there is a demonstrated need for more land in the MDR zoning classification.

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

5.3 Rezone 3 is warranted because of a change in circumstances. In addition, there is a demonstrated need for more land in the MDR zoning classification.

B6. **The reclassification does not reflect special treatment of the subject property.**

Findings of Fact:

6.1 Opponents have suggested that the proposed rezones reflect special treatment toward the Applicant but have not provided a factual support for this assertion.

6.2 The requested rezones are consistent with the 2019 update to the City's Comprehensive Plan and the properties' change in land use designation to MDR. The processing of applications needed to bring consistency between the land use designation and zoning designation does not constitute special treatment but is instead required.

Conclusions of Law:

6.1 The reclassification of Rezone 1 does not reflect special treatment of the subject property.

6.2 The reclassification of Rezone 2 does not reflect special treatment of the subject property.

6.3 The reclassification of Rezone 3 does not reflect special treatment of the subject property.

B7. **The reclassification will promote the general health, safety and welfare of the community.**

Findings of Fact:

7.1 Opponents argue that the proposed rezones will fail to promote the general health, safety and welfare of the community for the same reasons that they fail to satisfy the requirements of BDMC 18.12.020(B)(4). Opponents assert that the proposed rezones will overwhelm the City's infrastructure; will impair its water, sewer and stormwater facilities; will worsen the school district's challenges with finding sufficient facilities for its students; will threaten wildlife; will exceed the City's transportation capacity; and will overburden the City's police, fire and other emergency services.

7.2 The City Staff and the Applicant respond in the same manner as their response to compliance with Subsection B(4). The Hearing Examiner concurs.

7.3 City Staff finds, and the Applicant concurs, that the proposed rezones are consistent with and further the City's Comprehensive Plan and therefore promote the general health, safety and welfare of the community. The Hearing Examiner concurs.

7.4 City Staff finds, and the Applicant concurs, that the proposed rezones further implement County-wide Planning Policies, Multi-County Planning Policies, including Vision 2050, the Growth Management Act goals and most importantly, the goals of the 2021 Housing Action Plan. The Hearing Examiner concurs.

7.5 The rezones will permit greater housing options as noted earlier, consistent with the demonstrated needs shown by the City's 2020 Housing Needs Assessment.

7.6 As noted in earlier Findings, the rezones will provide improved transition between residential neighborhoods on one side and commercial development on the other while also offering improved aesthetics and less noise, all of which promotes the general health of the community.

7.7 The proposed Rezones 2 and 3 will also significantly reduce traffic resulting from their development as compared to development under the current B/IP zoning.

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299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

7.8 Any proposed development of the rezoned properties will undergo environmental and land use review to assure concurrency with needed infrastructure, compliance with environmental protections, and conformance with all land use regulations.

Conclusions of Law:

7.1 Reclassification of Rezone 1 will promote the general health, safety and welfare of the community.

7.2 Reclassification of Rezone 2 will promote the general health, safety and welfare of the community.

7.3 Reclassification of Rezone 3 will promote the general health, safety and welfare of the community.

Any other Findings of Fact contained in the foregoing sections of this Decision are hereby adopted by the Hearing Examiner as his own Findings of Fact.

Any other Conclusions of Law contained in the foregoing sections of this Decision are hereby adopted by the Hearing Examiner as his own Conclusions of Law.

FINAL CONCLUSIONS OF LAW

1. The Applicant has met its burden of demonstrating that all requirements of BDMC 18.12.020(B)1-7) have been met with respect to Rezone 1.

2. The Applicant has met its burden of demonstrating that all requirements of BDMC 18.12.020(B)(1-7) have been met with respect to Rezone 2.

3. The Applicant has met its burden of demonstrating that all requirements of BDMC 18.12.020(B)(1-7) have been met with respect to Rezone 3 **with the exception** that the Applicant has not adequately demonstrated that there are adequate transportation facilities to

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299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

serve the range and uses permitted by the proposed MDR8 zone for the reason that the property is not connected to the City's road system as more fully described above.

RECOMMENDATIONS

Based upon the foregoing discussion and the Hearing Examiner's Findings of Fact and Conclusions of Law, the Hearing Examiner recommends the following:

1. That Rezone 1 be **approved** without conditions.
2. That Rezone 2 be **approved** without conditions.
3. That Rezone 3 be: (a) **not approved** on the basis of not meeting all requirements of BDMC 18.12.020(B)(4) with respect to transportation facilities; or (b) that the application be **deferred** until such time as Pipeline Road has been dedicated; or (c) that the application be **approved but subject to the condition** that rezoning shall not be implemented until the Pipeline Road has been dedicated.

DATED this 28 day of November, 2023.

Mark C. Scheibmeir
City of Black Diamond Hearing Examiner

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

EXHIBIT "A"

Exhibit Number	Description
Exhibit 1A	Cover Letter for All Rezones
Exhibit 1B	Site Maps for All Rezones
Exhibit 1C – Rezone 1	SEPA Checklist for **Rezone 1 Only**
Exhibit 1C – Rezone 2	SEPA Checklist for **Rezone 2 Only**
Exhibit 1C – Rezone 3	SEPA Checklist for **Rezone 3 Only**
Exhibit 2A – Rezone 1	Notice of Application for **Rezone 1 Only**
Exhibit 2A – Rezone 2	Notice of Application for **Rezone 2 Only**
Exhibit 2A – Rezone 3	Notice of Application for **Rezone 3 Only**
Exhibit 2B – Rezone 1	Affidavit of Publication for Notice of Application for **Rezone 1 Only**
Exhibit 2B – Rezone 2	Affidavit of Publication for Notice of Application for **Rezone 2 Only**
Exhibit 2B – Rezone 3	Affidavit of Publication for Notice of Application for **Rezone 3 Only**
Exhibit 3	Noticing Map for All Rezones
Exhibit 4A	Public Comments for All Rezones – Letters of Support
Exhibit 4B	Public Comments for All Rezones – Emailed Comments Against Rezones
Exhibit 4C	Public Comments for All Rezones – Comment Letters Against Rezones
Exhibit 4D	Public Comments for All Rezones – Email Comments from DFW
Exhibit 4E	Public Comments for All Rezones – Comment Letter from Maple Valley
Exhibit 4F	Public Comments for All Rezones – Citizen Group Comment Letters
Exhibit 4G	Public Comments for All Rezones – Additional Public Comments
Exhibit 4H	Public Comments for All Rezones – Email Comment from King County Wastewater Treatment Division
Exhibit 4I	Public Comments for All Rezones – One Additional Letter of Support
Exhibit 4J – Rezone 2	Public Comments for **Rezone 2 Only**
Exhibit 4J – Rezone 3	Public Comments for **Rezone 3 Only**
NOTE: NO EXHIBIT 4J FOR REZONE 1, AS THERE WERE NO COMMENTS SPECIFIC TO REZONE 1	
Exhibit 5 – Rezone 1	Traffic Memo for **Rezone 1 Only**
Exhibit 5 – Rezone 2	Traffic Memo for **Rezone 2 Only**
Exhibit 5 – Rezone 3	Traffic Memo for **Rezone 3 Only**
Exhibit 6A – Rezone 1	Criteria for **Rezone 1 Only**
Exhibit 6A – Rezone 2	Criteria for **Rezone 2 Only**
Exhibit 6A – Rezone 3	Criteria for **Rezone 3 Only**
Exhibit 6B	Applicant Response to Public Comments for All Rezones
Exhibit 6C	TENW Memo for All Rezones
Exhibit 7A	Affidavit of Mailing for the three separate DNS for All Rezones
Exhibit 7B – Rezone 1	Affidavit of Publication for DNS for **Rezone 1 Only**
Exhibit 7B – Rezone 2	Affidavit of Publication for DNS for **Rezone 2 Only**
Exhibit 7B – Rezone 3	Affidavit of Publication for DNS for **Rezone 3 Only**
Exhibit 7C	Affidavit of Posting for the three separate DNS for All Rezones
Exhibit 8	Appeal of DNS for All Rezones
Exhibit 9	Order Dismissing Appeal on DNS for All Rezones
Exhibit 10A	Affidavit of Mailing for Notice of Public Hearing for All Rezones
Exhibit 10B – Rezone 1	Affidavit of Posting for Notice of Public Hearing for **Rezone 1 Only**
Exhibit 10B – Rezone 2	Affidavit of Posting for Notice of Public Hearing for **Rezone 2 Only**
Exhibit 10B – Rezone 3	Affidavit of Posting for Notice of Public Hearing for **Rezone 3 Only**
Exhibit 11	Public Comments Received 10/25/23 to 11/2/23 for All Rezones
Exhibit 12	Public Comments Received 11/3/23 to 11/6/23 for All Rezones
Exhibit 13	Staff Report for **Rezone 1 Only**

CITY OF BLACK DIAMOND HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

Exhibit 14	Staff Report for **Rezone 2 Only**
Exhibit 15	Staff Report for **Rezone 3 Only**
Exhibit 16	Applicant Technical Memorandum for All Rezones
Exhibit 17	Applicant Presentation for All Rezones
Exhibit 18	Southward Site Picture for **Rezone 3 Only**
Exhibit 19	Topographic Map for **Rezone 3 Only**
NOTE: NO EXHIBITS 18 AND 19 FOR REZONES 1 AND 2	
Exhibit 20	David Toyer Resume
Exhibit 21	Jeff Schramm Resume
Exhibit 22	Ruslan Sorochuk Comments for All Rezones
Exhibit 22A	Anna Sorochuk Comments for All Rezones
Exhibit 23	Gretchen Buet Comments for All Rezones
Exhibit 24	Kristen Bryant Comments for All Rezones
Exhibit 25	Gary Kohl Comments for All Rezones
Exhibit 26	Tom Ekberg Comments for All Rezones
Exhibit 27	Philip Acosta Comments for All Rezones
Exhibit 28	Stefan Cordova Comments for All Rezones
Exhibit 29	Renee Mix Comments for All Rezones
Exhibit 30	Gary Jones Comments for All Rezones
Exhibit 31	Donald McPherson Comments for All Rezones
Exhibit 32	Geoff Bowie Comments for All Rezones
Exhibit 33	William Bryant Comments for All Rezones
Exhibit 34	City's TDR Map
Exhibit 35	City Response to Public Hearing Testimony for All Rezones
Exhibit 36	Applicant Response to Public Hearing Testimony for All Rezones

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CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION

SUBJECT: **Resolution to open a brokerage account with U.S. Bank for the purpose of investments**	**Agenda Date: February 1, 2024**	**AB24-011**
	Mayor Carol Benson	
	City Administrator	
	City Attorney David Linehan	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Mona Davis	
	Finance – Xavier Mason	X
	MDRT/Ec Dev – Andy Williamson	
Cost Impact (see also Fiscal Note): Revenue Generation	Police – Chief Kiblinger	
Fund Source: -- N/A	Public Works – Scott Hanis	
Timeline: February 1, 2024	Court - Judge Swain/Tawyna Parks	

Agenda Placement: ☒ Mayor ☐ Two Councilmembers ☐ Committee Chair ☐ City Administrator

Attachments: Resolution; Authorization; Trust Fee Schedule; Investment Policy

SUMMARY STATEMENT:

This resolution would permit the Mayor to open a bank account with U.S. Bank, to hold the funds, and Pershing to purchase securities. The reason behind the selection of the U.S. Bank is because it is the bank used by the brokerage firm that the City of Black Diamond intends to utilize to sell and purchase various investment vehicles.

The advantage that this approach has over the LGIP is that the City can accrue higher interest rates for a longer period of time. Investments within the LGIP generally mature within 30-45 days, creating volatility in earnings due to the continuous change of interest rates. With the purchase of securities, via the brokerage firm, the City can lock in high interest rates for a maximum of five years. As with the LGIP, interest from the anticipated earnings would serve as a revenue source that will reduce costs to the community and overall investment risk within our portfolio of investments.

FISCAL NOTE (Finance Department): If approved, this ordinance would ultimately have a positive effect upon all funds that have investments. There is a fee schedule of approximately $1,500 per year; those costs are covered with the 2024 budget.

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:

RECOMMENDED ACTION: **MOTION to approve Resolution No. 24-1598 authorizing the opening of a new institutional brokerage account with Pershing/Concourse Financial Group; authorizing the Finance Director and Deputy Finance Director to make investments and disbursements from said account on behalf of the City of Black Diamond; and authoring the Mayor or her designee to execute a CIP Exempt Custody account application with U.S. Bank, Pershing, and all other forms necessary to open and manage said accounts.**

RECORD OF COUNCIL ACTION		
Meeting Date	***Action***	***Vote***
February 1, 2024		

RESOLUTION NO. 24-1598

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO OPEN A NEW INVESTMENT ACCOUNT WITH U.S. BANK; AUTHORIZING INVESTMENT OF EXCESS CITY FUNDS IN SAID ACCOUNT; AND DESIGNATING CERTAIN CITY PERSONNEL TO MAKE TRANSFERS AND DISBURSEMENTS TO AND FROM CITY ACCOUNTS FOR INVESTMENT PURPOSES

WHEREAS, RCW 35.39.030, 39.59.020, and 39.59.040 authorize municipalities and public entities within the State of Washington to invest any portion of their funds in excess of current needs in, among other things, United States government notes and bonds; U.S. government agency notes and bonds; Washington state and local government bonds; general obligation bonds of state and local governments that meet credit-rating criteria; utility revenue bonds of the cities and towns within the State of Washington; and other investments authorized by law for cities and other taxing districts; and

WHEREAS, from time to time it may be advantageous for the City of Black Diamond to invest excess funds in longer-term securities to benefit from higher interest rates over longer periods of time than what the City is currently able to realize on excess funds invested with the Local Government Investment Program (LGIP); and

WHEREAS, the City Council finds that it is in the best interests of the City to give the Mayor or her designee(s) the authority to establish a bank account for such investing purposes at U.S. Bank, with brokerage services to be provided through Pershing/Concourse Financial Group; and

WHEREAS, the interest from the anticipated earnings from investments made in such longer-term government securities through the U.S. Bank investment account would serve as a stable and recurring revenue source for the City that will reduce costs to the community and overall investment risk within the City's portfolio of investments; and

WHEREAS, the City Council find that it is appropriate to authorize the Finance Director and Deputy Finance Director to make investments and disbursements on behalf of the City by directing the transfer of City monies between and among the City's accounts with Umpqua Bank, LGIP, and the newly established account at U.S. Bank for purposes of securing longer-term interest income from securities made available through the City's brokerage services with Pershing/Concourse Financial Group;

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

Section 1. The City Council does hereby authorize the creation of an institutional brokerage account with U.S. Bank and authorizes the Mayor or her designee(s) to execute all necessary forms with U.S. Bank and Pershing/ Concourse Financial Group to open and manage such account for the benefit of the City of Black Diamond.

Section 2. The City Council hereby authorizes the transfer of funds between and among the City of Black Diamond's primary bank account at Umpqua Bank, the newly established brokerage account with U.S. Bank, and the City's LGIP account, as necessary and appropriate in the sound discretion of the Finance Director, all to be done in the manner prescribed by law, rule, and applicable policies and procedures for banking transactions.

Section 3. The City Council hereby approves the US Bank Trust Transaction Trading Authorization Form designating the Finance Director and Deputy Finance Director as authorized to make investments and disbursements on behalf of the City of Black Diamond and incorporates said Authorization Form into this Resolution by reference and does hereby affirm its accuracy.

Section 4. The City Council designates Carol Benson, Mayor, as the "authorized individual" to authorize all amendments, changes, or alterations to the Authorization Form or any other City of Black Diamond documentation, including designating other individuals to make transfers among and between the U.S. Bank brokerage account, the City's Umpqua Bank account, and the City's LGIP account on behalf of the City.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 1ST DAY OF FEBRUARY, 2024.

CITY OF BLACK DIAMOND:

____
Carol Benson, Mayor

Attest:

____
Brenda L. Martinez, City Clerk

CITY OF BLACK DIAMOND

24301 Roberts Drive ~ PO Box 599
Black Diamond, WA 98010

Phone: (360) 851-4500
Fax: (360) 851-4501

February 2, 2024

Account City of Black Diamond, Acct #5eq-_______________

The following people are authorized to make investments and disbursements on behalf of

City of Black Diamond:

Name:	Title:
Xavier Mason	Finance Director
Shane O'Neill	Deputy Finance Director

Sincerely,

____

Carol Benson, Mayor, City of Black Diamond

Fee Schedule for Clients of: Time Value Investments

Domestic Market Value Fees: 1 bps
Minimum Annual Account Fee: $1,500.00
Market Specific Global Fees priced separately

Custody Services

- Safekeeping of assets
- Transaction settlement
- Automated Cash Management (ACM) (Sweep)
- Online account access
- Corporate action processing
- Proxy distribution
- Securities pricing
- Consolidated accounting & reporting

Itemized fees

Domestic trades	Included
Mutual funds transactions	Included
Security holding fees	Included
Cash receipts and disbursements	Included
Outgoing foreign wires	$25.00 per wire

Service and Fee Assumptions

- The above description of custody services is provided for convenience only. For a complete description of services that USBNA expects to provide to the Account, see the Account's governing custody agreement. In the event of any inconsistency between the above description and such agreement, such agreement prevails with respect to the powers, rights, and duties of USBNA.
- Market value fees are charged to the Account monthly.
- The Account does not hold plan or IRA assets.
- USBNA does not have discretion to invest the Account's assets and does not provide recommendations on acquiring, holding, disposing of, or exchanging such assets or selecting investment advisers or managers with respect thereto. The Investment Adviser has sole discretion to invest the Account's assets and is (i) registered as an investment adviser with the U.S. Securities and Exchange Commission or state securities agency where it has its principal place of business or (ii) acting in a fiduciary capacity under 12 CFR Part 9 or state law.
- The sweep vehicle designated for the Account is a fund sponsored by a USBNA affiliate or is a USBNA deposit.
- USBNA may amend this Fee Schedule by delivering an amended and restated Fee Schedule or another written notice to the Account's owner (the "Customer"). Such amendment will be effective thirty (30) calendar days after such delivery.
- The Customer acknowledges that the Customer (i) has received, read, and understands USBNA's Mutual Fund Compensation Disclosure and a fully-executed copy of the Account's governing custody agreement and (ii) may contact the Customer's Relationship Manager at USBNA regarding that disclosure and agreement, this Fee Schedule, and any transaction reflected on an Account statement.
- For global accounts, proxy out of pocket fees are assessed to the account at the then current rate.

The Client hereby executes this Fee Schedule as of this _______ day of __________________, 20_____.

Client:

By: ____
(Signature of Client's authorized signer)

(Printed name of Client's authorized signer)

Its:

(Title of Client's authorized signer)

4/2020

	Departments Affected: Finance Department		
Index: Finance Number:	Title/Subject: Investment Policy		
Effective Date: 01/01/2024	Supersedes: N/A	Prepared by: Mason	Approved By: Chad Mason

Purpose

It is the policy of the City of Black Diamond ("the City") to invest public funds in a manner, which will provide the maximum security with a market rate of investment return, while meeting daily cash flow requirements, and conforming to all state statutes governing the investing of funds under control of the City.

1.0 Introduction

The intent of this Investment Policy is to define the parameters within which funds are to be managed. In methods, procedures, and practices, the policy formalizes the framework for the City's investment activities that must be exercised to ensure effective and judicious fiscal and investment management of the City's funds. The guidelines are intended to be broad enough to allow the investment officer to function properly within the parameters of responsibility and authority, yet specific enough to adequately safeguard the investment assets.

Cash Sufficiency: The City will at times maintain sufficient cash on hand to meet reasonably expected expenditures for the operating period. At any one time the City may have several million dollars in various funds that are not needed until some point in the future for operations, capital purchases or the repayment of debt. By placing revenues in the State's Local Government Investment Pool (LGIP) or a sweep account that accrues interest daily, until the funds are needed, the City is able to earn interest that in turn serves as a revenue source to reduce costs to the community. Cash and investment policies reduce the City's investment risk.

2.0 Governing Authority

The investment program shall be operated in conformance with federal, state, and other legal requirements, including the RCW.

3.0 Scope

This investment policy applies to all financial assets of the City. These funds are accounted for in the City's Annual Financial Report and include the following:

- General Fund
- Special Revenue Funds
- Debt Service Fund
- Capital Project Funds

- Enterprise Funds
- Internal Service Funds
- Trust and Agency Funds, and
- Any fund created after the initiation of this policy.

Pooling of Funds

Except where prohibited by statute, trust indenture, or other controlling authority, the City will consolidate cash and reserve balances from all funds to maximize investment earnings and to increase efficiencies with regard to investment pricing, safekeeping, and administration. Investment income will be allocated to the various funds based on their respective participation and in accordance with generally accepted accounting principles.

Each group of funds will be classified based on the objectives and requirements of the designated assets.

Liquidity	Investment Component
• Liquid Operating Cash Funds • Liquid Project Funds • Liquid Reserves	• Ongoing Operating Funds • Project Funds over three-year life • Reserves

4.0 Objectives

All funds will be invested in a manner that is in conformance with federal, state, and other legal requirements. In addition, the objectives, in order of priority, of the investment activities will be as follows:

Safety: Safety of principal is the primary objective of the City. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. To obtain this objective, funds will be diversified, utilizing highly rated securities, by investing among a variety of securities and financial institutions offering independent returns.

Liquidity: The investment portfolio will remain liquid to enable the City to meet all cash requirements that might reasonably be anticipated. Therefore, the investments shall be managed to maintain a balance to meet daily obligations.

Return on Investment: The investment portfolio will be structured with the objective of attaining a market rate of return throughout budgetary and economic cycles, commensurate with the investment risk parameters and the cash flow characteristics of the portfolio.

5.0 Standards of Care

5.1 Delegation of Authority:

Governing Body: the ultimate responsibility and authority for the investment of City funds resides with the Mayor who has the authority to direct the management of the City investment program.

Authority: Management responsibility for the investment program is hereby delegated to the Finance Director, who shall establish written procedures for the operation of the investment program, consistent with this investment policy. The Finance Director shall be responsible for all transactions undertaken and shall establish a system of control to regulate the activities of subordinate officials.

Investment Adviser: The City may engage the services of an external investment adviser to assist with the management of the City's investment portfolio in a manner that is consistent with the City's objectives. Such advisers may be granted the authority to purchase and sell investments in accordance with the Investment Policy. Such Advisers must be registered under the Investment Advisers Act of 1940.

5.2 Prudence:
The standard of prudence to be used by the Finance Director and any delegates in the context of managing the overall portfolio is the prudent person rule which states: *Investments will be made with judgement and care, under circumstance then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs* not in regard to speculation but in regard to the permanent disposition of the funds considering the probable income as well as the probable safety of the capital.

5.3 Ethics:
Officers and employees involved in the investment processes shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Employees and investment officials shall disclose to the Mayor any material financial interests in financial institutions that conduct business within this jurisdiction, and they shall further disclose any larger personal financial/investment positions that could be related to the performance of the City's portfolio. Employees and officers shall subordinate their personal investment transactions to those of the City of Black Diamond, particularly with regard to the time of purchases and sales.

6.0 Safekeeping, Custody, and Controls

6.1 Delivery vs. Payment:

All trades of marketable securities will be executed (cleared and settled) on a delivery vs. payment (DVP) basis to ensure that securities are deposited in the City's safekeeping institution prior to the release of funds.

6.2 Third Party Safekeeping:

The laws of the State of Washington and prudent treasury management require that all purchased securities be bought on a delivery versus payment (DVP) basis and be held in safekeeping by the City, an independent third-party financial institution, or the City's designated depository.

6.3 Internal Controls:
The Finance Director is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the City are protected from loss, theft, or misuse. Specifics for the internal controls shall be documented and be reviewed and updated periodically.

The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that the cost of a control should not exceed the benefits likely to be derived and the valuation of costs and benefits requires estimates and judgements by management. The internal controls shall address the following points at a minimum:

- Control of collusion

- Separation of transaction authority from accounting and recordkeeping
- Custodial safekeeping
- Avoidance of physical delivery securities
- Clear delegation of authority to subordinate staff members
- Written confirmation of transactions for investments and wire transfers
- Dual authorizations of wire transfers
- Staff training and
- Review, maintenance, and monitoring of security procedures both manual and automated

7.0 Authorized Financial Dealers

7.1 Broker/Dealers:

The Finance Director shall maintain a list of all authorized institutions and broker/dealers that are approved to transact with the City for investment purposes. Any firm is eligible to make an application to the City and upon due consideration and approval, will be added to the list. Additions and deletions to the list will be made at the City's discretion. Authorize brokers/dealer and financial institutions will be limited to those that meet one or more of the following: 1) financial institutions approved by the Washington PDPC (RCW 39.58) and meet all regulatory capital requirements, 2) primary dealers recognized by the Feder Reserve Bank, 3) non-primary dealers qualified under SEC rule 15C3-1 and a certified member of FINRA. This responsibility can be placed with the investment adviser and the approved list should be provided to the City as updates occur.

7.2 Investment Advisers:

The investment adviser firm must be registered with the Securities and Exchange Commission (SEC) and licensed by the State of Washington. All investment adviser firm representatives conducting investment transactions on behalf of the City must be registered representatives with the Financial Industry Regulatory Authority (FINRA).

The advisory contract must include authority to transact business with the adviser's approved broker/dealer list.

7.3 Bank Institutions

The City will only place funds exceeding the current FDIC insurance limits with banks who are currently participating in the Washington State PDPC program. Compliance/listing with the PDPC will be verified by the Finance Director or designee utilizing the Washington State Treasurer's website (https://www.tre.wa.gov/pdpc/pdpc-info/qualified-public-depositaries/).

8.0 Authorized and Suitable Investments

8.1 Authorized Investments

All investments of the City are limited by the RCW, principally RWE 35.39.03, 39.59.020, and 36.29.020

Additional Specifications:

- The State of Washington Local Government Investment Pool is the only government-sponsored pool approved for investment of funds.

- This policy recognizes S&P, Moody's, and Fitch as the major Nationally Recognized Statistical Ratings Operations (NRSRO).
- In the case of split rating, where the major NRSRO issue different ratings, the higher rating shall apply. Minimum credit ratings and percentage limitations apply to the item of purchase.

8.2 Suitable Investments

The City is empowered to invest in the following types of securities:

U.S. Treasury Obligations: Direct obligations of the United States Treasury.

U.S. Agency Obligations – Primary Issuers: Government Sponsored Enterprises (GSEs) – Federal Instrumentality Securities include but are not limited to Federal National Mortgage Association (FEMA), the Federal Home Loan Mortgage Corporation (FHLMC), Federal Home Loan Banks (FHLB), and the Federal Farm Credit Banks (FFCB).

U.S. Agency Obligations – Secondary Issuers: Other US government sponsored enterprises that are less marketable are considered GSEs. They include but are not limited to: Private Export Funding Corporation (PEFCO), Tennessee Valley Authority (TVA), Financing Corporation (FICO), and Federal Agricultural Mortgage Corporation, (Farmer Mac).

Municipal Debt Obligations: Bonds of the State of Washington and any local government in the State of Washington; at the time of investment the bonds must have a rating of AA- from S&P, Aa3 from Moody's or AA- by Fitch.

Certificates of Deposit: Non-negotiable Certificates of Deposit of financial institutions that are qualified public depositories as defined by RCW 39.58.010(2) and in accordance with the restrictions therein.

Local Government Investment Pool: Investment Pool managed by the Washington State Treasurer's Office.

9.0 Investment Parameters

9.1 Diversification:

It is the policy of the City to diversify its investment portfolio. Diversification is paramount to ensure potential losses on individual investments do not exceed income generated from the remainder of the portfolio.

9.2 Investment Maturity:

9.2.1 Investment Funds – Tier 1

Liquidity funds will be defined as those funds that are in the State LGIP pool, bank deposits, bank certificates of deposits or money market instruments and will be available for immediate use.

9.2.2 Investment Funds – Tier 2

Investment funds will be defined as the funds in excess of liquidity requirements and invested in authorized investments. The investments in this portion of the portfolio will have maturities out to 5 Years and will be only invested in higher quality and liquid (marketable) securities.

Maturity Constraints	**Minimum % of Total Portfolio**
Under 30 Days	5%
Under 1 year	
Under 5 years	
Maturity Constraints	**Maximum of Total Portfolio in Years**
Weighted Average Maturity	3.00 Years
Security Structure Constraint	**Maximum % of Total Portfolio**
Callable Agency Securities	25%

9.3 Prohibited Investments:

9.3.1 The City shall not lend securities nor directly participate in a securities lending or reverse repurchase program.

9.3.2 The City shall not invest in mortgage-backed securities.

10. Glossary of Terms

Agency Securities: Government sponsored enterprises of the U.S. Government.

Banker Acceptances: A time draft accepted (endorsed) by a bank or trust company. The accepting institution guarantees payment of the bill, as well as the issuer. Bas are short-term non-interest-bearing notes sold at a discount and redeemed by the accepting bank at maturity for full face value.

Bond: An interest-bearing security issued by a corporation, government, governmental agency, or other body. It is a form of debt with an interest rate, maturity, and face value, and specific assets sometimes secure it. Most bonds have a maturity of greater than one year and generally pay interest semiannually.

Broker: an intermediary who brings buyers and sellers together and handles their orders, generally charging a commission for this service. In contrast to a principal or a dealer, the broker does not own or take a position in securities.

Collateral: Securities or other property that a borrower pledges as security for the repayment of a loan. Also refers to securities pledged by a bank to secure deposits of public monies.

Commercial Paper: Short-term, unsecured, negotiable promissory notes issued by corporations.

Current Maturity: The amount of time left until an obligation matures. For example, a one-year bill issued nine months ago has a current maturity of three months.

CUSIO: A CUSIP number identifies securities. CUSIP stands for Commiyyee on Uniform Security Identification Procedures, which was established under the auspices of the American Bankers Association to develop a uniform method of identifying, municipal, U.S> government, and corporate securities.

Dealer: An individual or firm that ordinarily acts as a principal in security transactions. Typically, dealers buy for their own account and sell to a customer from their inventory. The dealer's profit is determined by the difference between the price paid and the price received.

Debenture: Unsecured debt backed only by the integrity of the borrower, not by collateral, and documented by an agreement called an indenture.

Delivery: Either of two methods of delivering securities: delivery vs. payment and delivery vs. receipt (also called "free"). Delivery vs. payment is delivery of securities with an exchange of money for the securities.

Duration: A measure used to calculate the price sensitivity of a bond or portfolio of bonds to change in interest rates. This equals the sum of the present value of future cash flows.

Full Faith and Credit: indicator that the unconditional guarantee of the United States government backs the repayment of the debt.

General Obligation Bonds (GOs): Bonds secured by the pledge of the municipal issuer's full faith and credit, which usually includes unlimited taxing power.

Government Bonds: Securities issued by the federal government; they are obligations of the U.S. Treasury; also known as "governments."

Interest: Compensation paid or to be paid for the use of money. The rate of interest is generally expressed as an annual percentage.

Investment Funds: Core funds are defined as an operating fund balance, which exceeds the City's daily liquidity needs. Core funds are invested out the yield curve to diversify maturity structure in the overall portfolio. Having longer term investments in a portfolio will stabilize the overall portfolio interest earning over interest rate cycles.

Investment Securities: Securities purchased for an investment portfolio, as opposed to those purchased for resale to customers.

Liquidity: The ease at which a security can be bought or sold (converted to cash) in the market. A large number of buyers and sellers and a high volume of trading activity are important components of liquidity.

Liquidity Component: A percentage of the total portfolio to reflect actual market price rather than book price, purchase price or some other valuation.

Mark to Market: Adjustment of an account or portfolio to reflect actual market price rather than book price, purchase price or some other valuation.

Municipals: Securities, usually bonds, issued by a state, its agencies, by cities or other municipal entities. The interest on "munis" is usually exempt from federal income taxes and state and local income taxes in the state of issuance. Municipal securities may or may not be backed by the issuing agency's taxation powers.

Par Value: The value of a security expressed as a specific dollar amount marked on the face of the security or the amount of money due at maturity. Par value should not be confused with market value.

Portfolio: A collection of securities held by an individual or institution.

Prudent Person Rule: A long-standing common-law rule that requires a trustee who is investing for another to behave in the same way as a prudent individual of reasonable discretion and intelligence who is seeking a reasonable income and preservation of capital.

Quotation or Quote: A bid to buy or the lowest offer to sell a security in any market at a particular time.

Repurchase Agreement: Range in maturity from overnight to fixed time to open end. Repos involve a simultaneous sale of securities by a bank or government securities dealer to an investor with an agreement for the bank or government securities dealer to an investor with an agreement for the bank or government securities dealer to repurchase the securities at a fixed date at a specified rate of interest.

TLGP – Temporary Liquidity Guarantee Program: Program created by the FDIC, in 2008, to strengthen the confidence and encourage liquidity in the banking system by guaranteeing newly issued senior unsecured debt of banks, thrifts and certain holding companies, and by providing full FDIC coverage of no-interest bearing deposit transaction accounts, regardless of dollar amount.

Treasury Bill (T-Bill): An obligation of the U.S. government with a maturity of one year or less. T-bills bear no interest but are sold at a discount.

Treasury Bonds and Notes: Obligations of the U.S. government that bear interest. Notes have maturities of one to ten years; bonds have longer maturities.

Yield: The annual rate of return on an investment, expressed as a percentage of the investment. Income yield is obtained by dividing the current dollar income by the current market price for the security. Net yield, or yield to maturity, is the current income yield minus any premium above par or plus any discount from par in the purchase price, with the adjustment spread over the period from the date of purchase to the date of maturity of the bond.

Yield to Maturity: The average annual yield on a security, assuming it is held to maturity; equals to the rate at which all principal and interest payments would be discounted to produce a present value equal to the purchase price of the bond.

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION		
SUBJECT:	**Agenda Date: February 1, 2024 AB24-012**	
Resolution authorizing the Mayor to execute a professional services contract with AHBL, Inc. to develop Middle Housing regulations	Mayor Carol Benson	
	City Administrator	
	City Attorney David Linehan	
	City Clerk – Brenda L. Martinez	
	Com Dev – Mona Davis	X
	Finance – Xavier Mason	
	MDRT/Ec Dev – Andy Williamson	
Cost Impact (see also Fiscal Note): $50,000	Police – Chief Kiblinger	
Fund Source: Commerce Grant	Public Works – Scott Hanis	
Timeline: Feb 2024-May 2025	Court – Judge Swain/ Tawnya Parks	

Agenda Placement: ☒ Mayor ☐ Two Councilmembers ☐ Committee Chair ☐ City Administrator

Attachments: Resolution; AHBL Consultant Services Contract; Exhibit A – Scope of Work; Exhibit B – Budget; 2024 AHBL Rate Table

SUMMARY STATEMENT:

Community Development is currently contracting with AHBL, Inc. to complete the periodic update of the Comprehensive Plan. The City was recently awarded $50,000 in grant funding from WA State Department of Commerce to update the Middle Housing development regulations in conjunction with the Housing Element of the Comprehensive Plan. Continuing to use existing planning resources from AHBL, with their extensive knowledge of the City's 2024 Comprehensive Plan requirements, will maximize accuracy of review of implementing new housing regulations and maintain efficiency in contractual deadlines.

This scope of work is distinct and separate from the Comprehensive Plan Periodic Update, which includes an update to the City's Housing Element. The work scope for the Housing Element updates was prepared prior to the passage of HB 1110 and therefore did not include any specific work on Middle Housing Analysis.

This resolution would authorize the Mayor to execute a contract with AHBL, Inc. to meet the Middle Housing Scope of Work. The costs are reimbursed by grant funding.

FISCAL NOTE (Finance Department): The Commerce grant will fund 100% of the AHBL contract.

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: Reviewed 1/25/24; recommend approval

RECOMMENDED ACTION: **MOTION to adopt Resolution No. 24-1599, authorizing the Mayor to execute a professional services contract with AHBL, Inc. to develop Middle Housing regulations pursuant to the Department of Commerce grant.**

RECORD OF COUNCIL ACTION		
Meeting Date	***Action***	***Vote***
February 1, 2024		

RESOLUTION NO. 24-1599

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A PROFESSIONAL SERVICES CONTRACT WITH AHBL, INC. TO DEVELOP MIDDLE HOUSING REGULATIONS PURSUANT TO THE DEPARTMENT OF COMMERCE GRANT

WHEREAS, the City is required to address the housing crisis with local actions and changes that could foster the development of middle housing under the State's Growth Management Act, pursuant to HB 1110; and

WHEREAS, the City has received a Middle Housing Grant from the State Department of Commerce to defray the costs of performing this work in the amount of $50,000 between February 1, 2024 and May 31, 2025; and

WHEREAS, to ensure the next periodic update of the comprehensive plan complies with all applicable laws, regulations, and requirements, the City contracted with the consulting firm AHBL, Inc. in 2022 to provide services to update the City's Comprehensive Plan for Community Development; and

WHEREAS, the AHBL planning consultants have extensive knowledge of the requirements imposed by the applicable periodic update to the Comprehensive Plan, Department of Commerce Middle Housing grant scope of work, and City codes; and

WHEREAS, continuing to use existing planning resources from AHBL to prepare Middle Housing regulations will maximize the accuracy of the City's review of the Comprehensive Plan for consistency and will maintain efficiency in processing development regulations that are aligned with goals and policies of the Housing Element in the Periodic Update to the Comprehensive Plan; and

WHEREAS, AHBL, Inc. is willing and able to provide the requested services on the terms and conditions set forth in the contract attached hereto and described in the Scope of Work as Attachment A and Budget in Attachment B;

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

Section 1. The Mayor is hereby authorized to execute a professional services contract between the City and AHBL, Inc., for planning services to develop Middle Housing regulations in an amount not to exceed $50,000, substantially in the form attached hereto as Attachment A.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 1ST DAY OF FEBRUARY, 2024.

CITY OF BLACK DIAMOND:

____
Carol Benson, Mayor

Attest:

____
Brenda L. Martinez, City Clerk

CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF BLACK DIAMOND AND
AHBL, INC. FOR PLANNING SERVICES

THIS AGREEMENT is made effective as of February 1, 2024, by and between the City of Black Diamond, a Washington municipal corporation (hereinafter the "City"), and AHBL, Inc. (hereinafter the “Consultant”), a corporation organized under the laws of the State of Washington, located and doing business at 2215 North 30th Street, Suite 300, Tacoma, WA 98403.

RECITALS

WHEREAS, the City is required to address the housing crisis with local actions and changes that could foster the development of middle housing (per the changes to the state’s Growth Management Act, pursuant to HB 1110); and

WHEREAS, the City has received a “Middle Housing Grant” from the state to defray the costs of performing this work. The funding from the state (Dept. of Commerce) will be $25,000 in the fiscal year that ends June 30, 2024 and the remaining $25,000 in the fiscal year that runs July 1, 2024 through June 30, 2025; and

WHEREAS, the Consultant was previously selected to provide planning services pursuant to previously executed contracts for the comprehensive plan; and

WHEREAS, the City desires for Consultant to continue providing similar planning services and Consultant has agreed to provide such services on the terms and conditions provided in this Agreement;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

I. Description of Work.

The Consultant shall provide land use planning services as specifically described in Exhibit A according to the budget set out in Exhibit B.

The Consultant represents and warrants that it and any staff member assigned to the work will have the requisite training, skill, and experience necessary to provide the services required by this Agreement and if required, are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant and its subconsultant(s) under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances. The Consultant shall not subcontract with any subconsultant for the performance of any work under this Agreement without prior written permission of the City.

II. Payment

A. The City shall pay the Consultant for the Scope of Work specified in Exhibit A in accordance with the amounts shown for each of the four Tasks listed in Exhibit B, with hourly rates of the Planner(s) and Project Manager(s), Principal or Associate Principal assigned to the project as described in the billing rates in Exhibit C. The payment made by the City to the Consultant shall not exceed $50,000 for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in Exhibit A and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amended or supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to suspend or terminate the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount.

B. The payments described in Exhibit B shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals needed to complete the work.

C. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this Agreement. The City shall pay the full amount of an invoice within sixty (60) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

D. The Consultant will not undertake any work or otherwise financially obligate the City in excess of the not-to-exceed amount in Section II(A) above, without a duly authorized amendment to this Agreement. The amount paid by the City for each invoice shall not exceed the amount in Section II(A) above and the Hourly Billing Rates set forth in Exhibit B, attached hereto.

III. Relationship of Parties

The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

IV. Duration of Work

This Agreement is effective as of February 1, 2024, and shall remain in effect until July 31, 2025, unless terminated by written notice in accordance with Section V, below. The Consultant shall not begin any work under this Agreement until an authorized Task Order has been agreed upon by the parties and the City has issued a Notice to Proceed. The parties agree that the individual projects assigned to the Consultant may have individual deadlines for completion that must be met, as described in the Task Orders.

V. Termination

A. Termination of Agreement. The City may terminate this Agreement for public convenience, the Consultant's default, the Consultant’s insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors, at any time prior to completion of the work described in Section I. Termination shall be effective immediately upon posting or transmission of written notice by the City, or on such date as stated in the City's notice, whichever is later.

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant’s possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise.

VI. Discrimination

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Consultant, its Subcontractors, or any person acting on behalf of such Consultant or sub-consultant shall not by reason of race, religion, color, sex, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

VII. Indemnification

The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, agents and Volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE OR EXTEND TO. ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

The provisions of this section shall survive the expiration or termination of this Agreement.

VIII. Insurance

A. The Consultant shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

B. Minimum Scope of Insurance. Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named by endorsement as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Professional Liability insurance appropriate to the Consultant's profession.

C. Minimum Amounts of Insurance. Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than $1,000,000 each occurrence, $2,000,000 general aggregate.

3. Professional Liability insurance shall be written with limits no less than $1,000,000 per claim and $1,000,000 policy aggregate limit.

D. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

3. The City will not waive its right to subrogation against the Consultant. The Consultant's insurance shall be endorsed acknowledging that the City will not waive its right to subrogation. The Consultant's insurance shall be endorsed to waive the right of subrogation against the City, or any self-insurance, or insurance pool coverage maintained by the City.

4. If any coverage is written on a "claims made" basis, then a minimum of three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided to the City.

D. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage. Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

IX. Exchange of Information

The City warrants the accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Agreement. The parties agree that the Consultant will notify the City of any inaccuracies in the information provided by the City as may be discovered in the process of performing the work, and that the City is entitled to rely upon any information supplied by the Consultant which results as a product of this Agreement.

X. Ownership and Use of Records and Documents

Original documents, drawings, designs and reports developed under this Agreement shall belong to and become the property of the City. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in Consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

XI. City's Right of Inspection

Even though the Consultant is an independent contractor with the authority to control and direct the performance, and details of the work authorized under this Agreement, the work must meet the applicable deadlines established by the City for completion, the work must meet the approval of the City, and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered hereby or accruing out of the performance of such operations.

XII. Consultant to Maintain Records to Support Independent Contractor Status

On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all Items of income and expenses of the Consultant's business, pursuant to the Revised Code of Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties which is subject to RCW Title 51, Industrial Insurance.

XIII. Work Performed at the Consultant's Risk

The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use In connection with the work.

XIV. Non-Waiver of Breach

The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options and the same shall be and remain in full force and effect.

XV. Resolution of Disputes and Governing Law

If any dispute, misunderstanding, or conflict arises as to the terms and conditions contained in this Agreement, the matter shall first be referred to the Mayor of the City of Black Diamond, who shall determine the term or provision's true intent or meaning. The Mayor of the City of Black Diamond shall also decide all questions that may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

If any dispute arises between the City and the Consultant under any of the provisions of this Agreement that cannot be resolved by the Mayor's determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, then any resulting litigation must be filed in King County Superior Court, King County, Washington, which shall be the exclusive venue for disputes relating to the interpretation, performance, or enforcement of this Agreement. This Agreement is governed by and shall be construed in accordance with the laws of the State of Washington, exclusive of its choice-of-law rules. The non-prevailing party in any action brought to enforce this Agreement shall pay the other party's expenses and reasonable attorney's fees.

XVI. Written Notice

Unless otherwise specified, any written notice required by this Agreement shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

CONSULTANT:

Attn: Wayne Carlson, FAICP, LEED AP
AHBL, Inc.
2215 North 30th Street
Suite 300
Tacoma, WA 98403

CITY:

Attn: Mona Davis
City of Black Diamond
PO Box 599
24301 Roberts Drive
Black Diamond, WA 98010

With a copy to the "City Clerk" at the same address.

XVII. Assignment

Any assignment of this Agreement by the Consultant without the written consent of the City is void. If the City gives its consent to any assignment, this paragraph shall continue in full force and effect and no further assignment may be made without the City's consent.

XVIII. Modification and Severability

No waiver, alteration, or modification of any of the provisions of this Agreement is binding unless in writing and signed by the duly authorized representatives of the City and the Consultant.

The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

XIX. Entire Agreement

The written provisions and terms of this Agreement, together with any Exhibits attached hereto, supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever this Agreement. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached hereto, which may or may not have been executed prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained herein, then this Agreement controls.

AGREED TO AND EXECUTED BY:

CONSULTANT

By: ____________________________
Wayne E. Carlson
Principal

CITY OF BLACK DIAMOND

By: ____________________________
Carol Benson
Mayor

Consultant:

AHBL, Inc.
2215 North 30th Street, Suite 300
Tacoma, WA 98403-3350

APPROVED AS TO FORM:

____
City Attorney

ATTEST:

____
City Clerk

EXHIBIT A
SCOPE OF WORK

Background: The City of Black Diamond is required to address the housing crisis with local actions and changes that could foster the development of middle housing (per the changes to the state's Growth Management Act, pursuant to HB 1110). The City has received a "Middle Housing Grant" from the state to defray the costs of performing this work. The funding from the state (Dept. of Commerce) will be $25,000 in the fiscal year that ends June 30, 2024 and the remaining $25,000 in the fiscal year that runs July 1, 2024 through June 30, 2025. This scope of work has been prepared to align with the grant award, both with respect to timing and funding (no work on tasks 2-4 will begin until on or after June 1, 2024).

Note: this scope of work is distinct and separate from a separate work scope for the Comprehensive Plan periodic update, which includes an update to the City's Housing Element. The work scope for the Housing Element updates was prepared prior to the passage of HB 1110 and therefore did not include any specific work on Middle Housing analysis.

Task 1: Prepare Draft Middle Housing Comprehensive Plan Policies

In Task 1 the City will establish approaches to foster middle housing development in relation to the Comprehensive Plan Periodic Update.

1.1: Middle Housing Options Memorandum (February 2024)

Based on the City's Housing Action Plan (which was adopted in 2021) and other resources such as guidance documents and materials from the State Dept. of Commerce, the Consultant will prepare a memorandum that identifies the menu of choices (Middle Housing Options Memo) that City decisionmakers can use to evaluate options to potentially accelerate the production of middle housing within the City of Black Diamond.

1.2: Presentation to City Council (April 2024)

The Consultant will present the memo from Task 1.1 to the Black Diamond City Council. The purpose of the meeting will be to review the memo and seek direction from the Council related to which strategies should be further developed.

1.3: Comprehensive Plan Policies (May 2024)

After receiving direction from the City Council, the Consultant will review the Land Use, Housing, and Capital Facilities and Utilities elements of the City's draft Comprehensive Plan to explore opportunities to remove impediments and incentivize the production of middle housing units within the City of Black Diamond. This may include removing, editing, or adding goals and policies.

Task 1 Deliverables:

- Middle Housing Options Memorandum in electronic format (February 2024)
- Draft Middle Housing Comprehensive Plan Policies (May 2024)

Task 2: Evaluate City Design Standards / Guidelines and Related Review Procedures

In Task 2 the City's Design Guidelines will be analyzed. The guidelines have not been updated since adoption in 2009. In particular, the Guidelines will be reviewed against the City's Housing Action Plan, State legislation, and drafted changes to the Comprehensive Plan. At this point, the Comprehensive Plan would still be under review. City procedures will also be analyzed.

2.1: Review Design Guidelines (July 2024)

The Consultant will review and evaluate the set of various Design Guidelines that apply to residential development as adopted in BDMC 18.74.010, together with the Gateway Overlay requirements. We will explore how the design standards and guidelines either hinder, or foster, middle housing development opportunities.

2.2: Review Procedures and Processes (July 2024)

The Consultant will review and evaluate the City's procedures and processes for review of permits for design standards and guidelines (as set out in BDMC 18.74.020 and 18.74.030 and other code sections where applicable) and recommend any changes that appear necessary or helpful.

2.3: Prepare Memo on Design Guidelines and City Process (August 2024)

The consultant will prepare a memo summarizing the findings and conclusions that result from the investigative work performed under Tasks 2.1 and 2.2. The memo will include the consultant's evaluation of how the City's procedures and guidelines do or do not comply with HB 1110 and ESHB 1293 (i.e., use of objective language).

2.4: Planning Commission Workshop (September 2024)

The Consultant will present the memo generated in Task 1.3 to the Planning Commission in a workshop setting; public comments will be solicited.

2.5: Draft Design Guidelines (November 2024)

The Consultant will prepare draft edits to the various Design Guidelines (that apply to residential development in the city) documents, as adopted in BDMC 18.74.010 as well as edits to those portions of the municipal code that set out procedures for the administration of the design review process to align with the requirements of HB 1110 and ESHB 1293.

Task 2 Deliverables:

- City Design Standards/Guidelines Evaluation Memorandum in electronic format (August 2024)
- Draft Design Guidelines (November 2024)

Task 3: Research and Prepare Draft Middle Housing Development Regulation Amendments

Whereas Task 2 involves an assessment of Design Guidelines and City procedures, in Task 3 the City will shift the focus to analyzing changes needed to development regulations so the City can meet objectives outlined in the Housing Action Plan, comply with upcoming State legislation with respect to housing, and align this work with the Periodic Update.

3.1: Review of Development Regulations (July 2024)

The Consultant will review and evaluate existing development regulations for ways to remove impediments to and incentivize the construction of middle housing using the Commerce *Middle Housing Model Ordinance*. We expect this to generally be limited to Title 18 BDMC.

3.2: Memorandum on Development Regulations/HAP Objectives (August 2024)

The Consultant will prepare a memo that outlines strategic objectives as identified in the City's recently adopted Housing Action Plan and analyzes how the City can meet its objectives. At minimum, the memo will address the following:

- Potential changes to development regulations of zones allowing residential in order to foster middle housing.
- Allowing duplexes outright in certain zones instead of conditionally.
- Recognizing if a need exists to consider special exceptions to the City's regulations for legal non-conforming uses to allow the expansion and/or modification of "grandfathered" homes and housing units.
- Identifying potential merits of the City exploring "how a form-based code with design guidelines reflective of the community's values can lead to favorable infill development."

3.3: Planning Commission and City Council Workshops (Fall 2024)

The Consultant will facilitate one meeting of the Black Diamond Planning Commission and one meeting of the City Council to review the memo on development regulations and Housing Action Plan objectives. Direction and feedback will be solicited to determine which strategies should be further developed.

3.4: Draft Code Amendments (December 2024)

The Consultant will prepare draft amendments to the Black Diamond Municipal Code to facilitate the production of middle housing in residential zones. We anticipate this will include Title 18, Zoning, and potentially Title 17, Divisions of Land. The work will be produced in legislative bill format (underline/strikeout) for subsequent consideration under Task 4 by the City Council.

Task 3 Deliverables:

- Code Evaluation Memorandum in electronic format
- Draft Middle Housing Ordinance in electronic format

Task 4: State Notice of Intention to Adopt, SEPA Environmental Review and Adoption

4.1: SEPA Addendum (January 2025)

The Consultant will transmit the draft Middle Housing Ordinance from Task 3.4 to the State for State agency review (RCW 36.70A.106) and issue a SEPA threshold determination. Note: we anticipate that an addendum to the SEPA environmental review used for the City's 2024 Periodic Update will be an option).

4.2: Planning Commission Briefing/Study Session (January 2025)

The Consultant will prepare for and attend one Planning Commission Briefing/Study Session to present the draft Middle Housing Ordinance before the Planning Commission. The study session will be used to answer questions and facilitate commission discussion and consideration.

4.3: Planning Commission Public Hearing (February 2025)

The Consultant will prepare for and attend one Planning Commission Public Hearing to present a revised draft of the Middle Housing Ordinance before the Planning Commission.

4.4: City Council Briefing/Study Session (April 2025)

The Consultant will prepare for and attend one City Council Briefing/Study Session to present the revised draft Middle Housing Ordinance before the Council. The study session will be used to answer questions and facilitate discussion and consideration amongst Councilmembers.

4.5: City Council Public Hearing – Adoption (May 2025)

The Consultant will prepare for and attend one City Council Public Hearing to present the final Middle Housing Ordinance.

Task 4 Deliverables:

- SEPA Addendum
- Revised draft(s) of Middle Housing Ordinance in electronic format (number of revised drafts will depend on the extent of Planning Commission and City Council feedback)
- Adopted Middle Housing Ordinance

EXHIBIT B
BUDGET

Task 1. Prepare Draft Middle Housing Comprehensive Plan Policies • Middle Housing Options Memorandum in electronic format • Draft Middle Housing Comprehensive Plan Policies	$ 25,000
Task 2: Evaluate City Design Standards / Guidelines and Related Review Procedures • City Design Standards/Guidelines Evaluation Memorandum in electronic format • Draft Design Guidelines	$ 7,500
Task 3: Research and Prepare Draft Middle Housing Development Regulation Amendments • Code Evaluation Memorandum in electronic format • Draft Middle Housing Ordinance in electronic format	$ 7,500
Task 4: State Notice of Intention to Adopt, SEPA Environmental Review and Adoption • SEPA Addendum • Revised draft(s) of Middle Housing Ordinance in electronic format (number of revised drafts will depend on the extent of Planning Commission and City Council feedback) • Adopted Middle Housing Ordinance	$ 10,000
Total:	$ 50,000

SCHEDULE OF CHARGES & COMPENSATION

Principal	260.00/Hour
Associate Principal	240.00/Hour
Senior Project Manager	215.00/Hour
Project Manager	205.00/Hour
Senior Planning Project Manager	195.00/Hour
Planning Project Manager	185.00/Hour
Survey Project Manager	185.00/Hour
Assistant Project Manager	145.00/Hour
Project Engineer 6	195.00/Hour
Project Engineer 5	185.00/Hour
Project Engineer 4	175.00/Hour
Project Engineer 3	155.00/Hour
Project Engineer 2	140.00/Hour
Project Engineer 1	120.00/Hour
Senior Engineer Technician	140.00/Hour
Engineer Technician 3	130.00/Hour
Engineer Technician 2	115.00/Hour
Engineer Technician 1	100.00/Hour
Engineer Technician	85.00/Hour
Project Administrator	115.00/Hour
Project Expeditor	90.00/Hour
Senior Urban Designer	165.00/Hour
Urban Designer	155.00/Hour
Planner 5	165.00/Hour
Planner 4	155.00/Hour
Planner 3	140.00/Hour
Planner 2	120.00/Hour
Planner 1	110.00/Hour
Planning Technician	85.00/Hour
Director of Landscape Architecture	185.00/Hour
Senior Landscape Architect	160.00/Hour
Landscape Architect 2	145.00/Hour
Landscape Architect 1	135.00/Hour
Senior Landscape Designer	135.00/Hour
Landscape Designer 3	125.00/Hour
Landscape Designer 2	115.00/Hour
Landscape Designer 1	105.00/Hour
Senior Landscape Technician	135.00/Hour
Landscape Technician 3	110.00/Hour
Landscape Technician 2	95.00/Hour
Landscape Technician 1	85.00/Hour
Project Surveyor	165.00/Hour
Senior Survey Technician	140.00/Hour
Survey Technician 3	130.00/Hour
Survey Technician 2	115.00/Hour
Survey Technician 1	100.00/Hour
Chief of Parties	175.00/Hour
Survey Crew	220.00/Hour
1-Person Survey Crew	130.00/Hour
Graphic Designer	120.00/Hour
Technical Editor	120.00/Hour
Word Processor/Sr. Administrative Asst.	90.00/Hour
Administrative Assistant	85.00/Hour
Outside Consultants	Separate Fee Proposal
Geotechnical Engineers	Separate Fee Proposal
Environmental Consultants	Separate Fee Proposal

Large Format Bond	0.50/sf
Large Format High Density Color Bond	2.00/sf
Large Format Mylar	2.00/sf
Small Format Color Bond 11 X 17	0.50/Sheet
Small Format Color Bond 8.5 X 11	0.40/Sheet

The Schedule of Charges and Compensation is subject to change.

Charges are made for technical typing, as in the preparation of reports, and for technical clerical services directly related to projects. Direct charges are not made for general secretarial services, office management, accounting, or maintenance.

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION			
SUBJECT: **Resolution authorizing the Mayor to accept grant funds and execute a grant Interagency Agreement with the Washington State Department of Commerce**	**Agenda Date: February 1, 2024 AB24-013**		
		Mayor Carol Benson	
		City Administrator	
		City Attorney David Linehan	
		City Clerk – Brenda L. Martinez	
		Com Dev – Mona Davis	X
		Finance – Xavier Mason	
		MDRT/Ec Dev – Andy Williamson	
Cost Impact (see also Fiscal Note): n/a		Police – Chief Kiblinger	
Fund Source:		Public Works – Scott Hanis	
Timeline: Feb 2024 – May 2025		Court – Judge Swain/Tawnya Parks	

Agenda Placement: ☒ Mayor ☐ Two Councilmembers ☐ Committee Chair ☐ City Administrator

Attachments: Resolution and Attachment (Department of Commerce Interagency Agreement)

SUMMARY STATEMENT:

The City has been awarded grant funding from the Washington State Department of Commerce in the amount of $50,000 to be utilized for activities that support the preparation and adoption of policies, codes, and other measures specific to implement middle housing in the next periodic update of the Comprehensive Plan by statutory deadlines. Accordingly, this resolution approves the mayor's execution of the Department of Commerce's approved Interagency Agreement.

FISCAL NOTE (Finance Department): N/A. The Washington State Department of Commerce will provide $50,000 in grant funds to complete the Scope of Work.

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: Reviewed 2-25-24; recommend Approval

RECOMMENDED ACTION: **MOTION to adopt Resolution No. 24-1600 approving the execution and filing of the Interagency Agreement form as required by the Washington State Department of Commerce.**

RECORD OF COUNCIL ACTION

Meeting Date	*Action*	*Vote*
February 1, 2024		

RESOLUTION NO. 24-1600

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, APPROVING THE EXECUTION OF AN INTERAGENCY GRANT AGREEMENT WITH THE WASHINGTON STATE DEPARTMENT OF COMMERCE FOR MIDDLE HOUSING DEVELOPMENT REGULATIONS

WHEREAS, the City of Black Diamond desires to seek additional grant funding from the Washington State Department of Commerce to implement the Middle Housing development regulations for the 2024 GMA Periodic Update to the City's Comprehensive Plan; and

WHEREAS, the Department of Commerce grant agreement allows for reimbursement of $50,000 for costs incurred by the City to implement and complete Middle Housing regulations work starting on February 1, 2024 through completion in May, 2025; and

WHEREAS, the City Council must approve the terms and conditions placed upon the award of grant funding by Commerce in order to receive the funds, with said terms and conditions reflected in the "Interagency Agreement" attached hereto;

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

Section 1. The City Council hereby approves the "Interagency Agreement" attached hereto, which sets forth certain terms and conditions applicable to the Middle Housing grant funding.

Section 2. The Mayor, or her designee, is authorized to execute, and file with the Department of Commerce the attached "Interagency Agreement" on behalf of the City, including completion of the contract identifying the persons authorized to sign the grant document identified therein.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 1ST DAY OF FEBRUARY, 2024.

CITY OF BLACK DIAMOND:

____
Carol Benson, Mayor

Attest:

____
Brenda L. Martinez, City Clerk

Washington State Department of Commerce

Interagency Agreement with

City of Black Diamond

through

Growth Management Services

Contract Number:

24-63336 -107

For

Middle Housing Grant

Dated:

Date of Execution

Table of Contents

Face Sheet

Contract Number: 24-63336 -107

Local Government Division Growth Management Services
Middle Housing Grants

1. Contractor City of Black Diamond PO Box 599 Black Diamond, WA-98101	**2. Regional Planner** Ted Vanegas Ted.Vanegas@commerce.wa.gov
3. Contractor Representative Mona Davis Director 360-851-4447 mdavis@blackdiamondwa.gov	**4. COMMERCE Representative** Anne Aurelia Fritzel Housing Planning Manager 360-259-5216 Anne.Fritzel@commerce.wa.gov 1011 Plum Street SE Olympia, WA 98504

5. Contract Amount	**6. Funding Source**	**7. Start Date**	**8. End Date**
$50,000	**Federal:** ☐ **State:** ☒ **Other:** ☐ **N/A:** ☐	Date of Execution	June 30, 2025

9. Federal Funds (as applicable)	**Federal Agency:**	**ALN**
N/A	N/A	N/A

10. Tax ID #	**11. SWV #**	**12. UBI #**	**13. UEI #**
N/A	0019081	601-140-632	N/A

14. Contract Purpose
For activities that support the preparation and adoption of policies and/or codes and other measures specific to implement middle housing (RCW 36.70A.030(26)) by applicable statutory deadlines.

COMMERCE, defined as the Department of Commerce, and the Contractor, as defined above, acknowledge and accept the terms of this Contract and Attachments and have executed this Contract on the date below and warrant they are authorized to bind their respective agencies. The rights and obligations of both parties to this Contract are governed by this Contract and the following documents incorporated by reference: Contractor Terms and Conditions including Attachment "A" – Scope of Work, and Attachment "B" – Budget.

FOR CONTRACTOR	**FOR COMMERCE**
______________________________ Carol Benson, Mayor	______________________________ Mark K. Barkley, Assistant Director Local Government Division
______________________________ Date	______________________________ Date
	APPROVED AS TO FORM ONLY **BY ASSISTANT ATTORNEY GENERAL** **APPROVAL ON FILE**

Special Terms and Conditions

1. AUTHORITY

COMMERCE and Contractor enter into this Contract pursuant to the authority granted by Chapter 39.34 RCW.

2. CONTRACT MANAGEMENT

The Representative 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 Contract.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Contract.
The Representative for the Contractor and their contact information are identified on the Face Sheet of this Contract.

3. COMPENSATION

COMMERCE shall pay an amount not to exceed $50,000 (fifty thousand dollars), for the performance of all things necessary for or incidental to the performance of work under this Contract as set forth in the Scope of Work.

4. BILLING PROCEDURES AND PAYMENT

COMMERCE will pay Contractor upon acceptance of deliverables provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE not more often than monthly nor less than quarterly.

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Contract Number 24-63336 -107.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

Invoices and End of Fiscal Year

Invoices are due on the 20th of the month following the provision of services.

Final invoices for a state fiscal year may be due sooner than the 20th and Commerce will provide notification of the end of fiscal year due date.

The Contractor must invoice for all expenses from the beginning of the contract through June 30, regardless of the contract start and end date.

Duplication of Billed Costs

The Contractor shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Contractor, if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for that service. Any payment made by COMMERCE for costs that are determined to be duplicate, in Commerce’s sole determination, shall be subject to recapture and may result in suspension or termination of this Contract.

Washington State Department of Commerce

Disallowed Costs

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

COMMERCE may, in its sole discretion, withhold ten percent (10%) from each payment until acceptance by COMMERCE of the final report (or completion of the project, etc.).

5. SUBCONTRACTOR DATA COLLECTION

Contractor will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Contract performed by subcontractors and the portion of Contract funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. “Subcontractors” shall mean subcontractors of any tier.

6. INSURANCE

Each party certifies that it is self-insured under the State's or local government self-insurance liability program, and shall be responsible for losses for which it is found liable.

7. LICENSE TO USE MATERIALS

Notwithstanding any other terms of this Contract, Contractor hereby reserves and COMMERCE hereby grants to Contractor a non-exclusive, worldwide license to use, reproduce, publish, distribute, adapt, modify, publicly display, and make derivative works from any and all Materials developed pursuant to this Contract.

8. FRAUD AND OTHER LOSS REPORTING

Contractor shall report in writing all known or suspected fraud or other loss of any funds or other property furnished under this Contract immediately or as soon as practicable to the Commerce Representative identified on the Face Sheet.

9. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget

General Terms and Conditions

1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

A. “Authorized Representative” shall mean the Director and/or the designee authorized in writing to act on the Director’s behalf.

B. “COMMERCE” shall mean the Washington Department of Commerce.

C. “Contract” or “Agreement” or “Grant” means the entire written agreement between COMMERCE and the Contractor, including any Attachments, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.

D. "Contractor" or “Grantee” shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.

E. “Personal Information” shall mean information identifiable to any person, including, but not limited to, information that relates to a person’s name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers, and “Protected Health Information” under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

F. “State” shall mean the state of Washington.

G. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms “subcontractor” and “subcontractors” mean subcontractor(s) in any tier.

2. ALL WRITINGS CONTAINED HEREIN

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

3. AMENDMENTS

This Contract 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.

4. ASSIGNMENT

Neither this Contract, work thereunder, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of COMMERCE.

5. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION

A. “Confidential Information” as used in this section includes:

i. All material provided to the Contractor by COMMERCE that is designated as “confidential” by COMMERCE;

ii. All material produced by the Contractor that is designated as “confidential” by COMMERCE; and

iii. All Personal Information in the possession of the Contractor that may not be disclosed under state or federal law.

B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Contractor shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

6. COPYRIGHT

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered “works for hire” under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

“Materials” means all items in any format and includes, but is not limited to, data, 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.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Contractor shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

7. 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 Dispute Board shall thereafter decide the dispute with the majority prevailing. 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.

8. GOVERNING LAW AND VENUE

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

9. INDEMNIFICATION

Each party shall be solely responsible for the acts of its employees, officers, and agents.

10. LICENSING, ACCREDITATION AND REGISTRATION

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

11. RECAPTURE

In the event that the Contractor fails to perform this Contract in accordance with state laws, federal laws, and/or the provisions of this Contract, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Contract.

12. RECORDS MAINTENANCE

The Contractor shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

The Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

13. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, COMMERCE may suspend or terminate the Contract under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

14. SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

15. SUBCONTRACTING

The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of COMMERCE.

If COMMERCE approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to COMMERCE for any breach in the performance of the Contractor's duties.

Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

16. SURVIVAL

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

17. TERMINATION FOR CAUSE

In the event COMMERCE determines the Contractor has failed to comply with the conditions of this contract in a timely manner, COMMERCE has the right to suspend or terminate this contract. Before suspending or terminating the contract, COMMERCE shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by COMMERCE to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of COMMERCE provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

18. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, COMMERCE may, by ten (10) business days' written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, COMMERCE shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

19. TERMINATION PROCEDURES

Upon termination of this contract, COMMERCE, in addition to any other rights provided in this contract, may require the Contractor to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

COMMERCE shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Contractor and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. COMMERCE may withhold from any amounts due the Contractor such sum as the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.

The rights and remedies of COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Contractor shall:

A. Stop work under the contract on the date, and to the extent specified, in the notice;

B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;

C. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;

E. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to COMMERCE;

F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and

G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which COMMERCE has or may acquire an interest.

20. TREATMENT OF ASSETS

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in COMMERCE upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

A. Any property of COMMERCE furnished to the Contractor shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.

B. The Contractor shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.

C. If any COMMERCE property is lost, destroyed or damaged, the Contractor shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.

D. The Contractor shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract.

E. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

21. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

Attachment A: Scope of Work

Grant Objective: (A) Complete research / analysis and conduct public engagement and public hearing(s) which will form a basis that the City will use to (**B)** Prepare and Adopt a Middle Housing Ordinance that implements the requirements of HB 1110 (Middle Housing)

Actions/Steps/ Deliverables	Description	Start Date	End Date
Action 1	**Prepare Draft Middle Housing Comprehensive Plan Policies**	**September 2023**	**May 2024**
Step 1.1	Based on the City's Housing Action Plan (which was adopted in 2021) and other resources such as Commerce materials, prepare a Middle Housing Options Memo that City decision-makers can use to evaluate options for the production of middle housing within the City of Black Diamond.		February 2024
Step 1.2	Present the Middle Housing Options memo to the Black Diamond City Council.		April 2024
Step 1.3	Review the land use, housing, and capital facilities elements of the City's draft Comprehensive Plan to explore opportunities to remove impediments and incentivize the production of middle housing units within the City of Black Diamond.		May 2024
Deliverable 1	**Middle Housing Options Memo and Draft Middle Housing Comprehensive Plan Policies**		**May 31, 2024**
Action 2	**Evaluate City Design Standards / Guidelines and Related Review Procedures**	**July 2024**	**November 2024**
Step 2.1	Review and evaluate how the design standards and guidelines either hinder, or foster, middle housing development opportunities.		July 2024
Step 2.2	Review and evaluate the city's procedures and processes for review of permits for design standards and guidelines relating to Middle Housing.		July 2024
Step 2.3	Prepare a memo summarizing the findings and conclusions that result from the investigative work conducted in Steps 2.1 and 2.2.		August 2024
Step 2.4	Present the memo generated in Step 2.3 to the Planning Commission in a workshop setting; public comments will be solicited.		September 2024

Actions/Steps/ Deliverables	Description	Start Date	End Date
Step 2.5	Prepare draft edits to the various design standards and guidelines that apply to residential development in the city.		November 2024
Deliverable 2	**City Design Standards/ Guidelines Evaluation Memo**		**November 30, 2024**
Action 3	**Research and Prepare Draft Middle Housing Development Regulation Amendments**	**July 2024**	**January 2025**
Step 3.1	Review and evaluate existing development regulations for ways to remove impediments and incentivize the construction of middle housing using the Commerce *Middle Housing Model Ordinance*.		July 2024
Step 3.2	Prepare a memo that evaluates the city's codes regarding development in the various residential zoning zones , together with the "Neighborhood Center" zone district (and, potentially the "Town Center" and "Community Commercial" zones) for potential changes that could foster an increase in middle housing development.		August 2024
Step 3.3	Facilitate a meeting of the Black Diamond Planning Commission (and/or City Council) to review the Middle Housing memo. Seek direction and feedback related to which strategies should be further developed.		September 2024
Step 3.4	Prepare draft amendments to the Black Diamond Municipal Code (Title 18 Zoning and Title 17 Divisions of Land, if applicable) to facilitate the production of middle housing in residential zones.		December 2024
Deliverable 3	**Code Evaluation Memorandum and Draft Middle Housing Ordinance**		**January 31, 2025**
Action 4	**Adopt Middle Housing development regulation amendments**	**January 2025**	**May 2025**
Step 4.1	Transmit draft Middle Housing ordinance to the State for State agency review (RCW 36.70A.106) and issue a SEPA Threshold determination (note: we anticipate that an addendum to the SEPA paperwork used for the City's Periodic update environmental review will be an option)		January 2025
Step 4.2	Planning Commission Briefing/Study Session		January 2025
Step 4.3	Planning Commission Public Hearing		February 2025
Step 4.4	City Council Briefing/Study Session		April 2025
Step 4.5	City Council Public Hearing (adoption)		May 2025
Deliverable 4	**Adopted Middle Housing Ordinance**		**May 31, 2025**

Attachment B: Budget

Grant Objective: (A) Complete research / analysis and conduct public engagement and public hearing(s) which will form a basis that the City will use to (B) Prepare and Adopt a Middle Housing Ordinance that implements the requirements of HB 1110 (Middle Housing)	Fiscal Year	Commerce Funds
Deliverable 1 Middle Housing Options Memo and Draft Middle Housing Comprehensive Plan Policies	FY1 – May 31, 2024	$ 25,000
Deliverable 2. City Design Standards/ Guidelines Evaluation Memo	FY2 – November 30, 2024	$ 7,500
Deliverable 3. Code Evaluation Memorandum and Draft Middle Housing Ordinance	FY2 – January 31, 2025	$ 7,500
Deliverable 4. Adopted Middle Housing Ordinance	FY2 – May 31, 2025	$ 10,000
Total		50,000

Funds must be invoiced in the appropriate fiscal year (FY1 or FY 2), or they may not be able to be paid. Please be sure to invoice for all FY 1 by June 30, 2024 and FY 2 by June 30, 2025.

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION			
SUBJECT: **Ordinance repealing BDMC 9.90.020 to comply with state laws regarding use and possession of drug paraphernalia.**	**Agenda Date: February 1, 2024**	**AB24-014**	
		Mayor Carol Benson	
		City Administrator	
		City Attorney David Linehan	
		City Clerk – Brenda L. Martinez	
		Com Dev – Mona Davis	
		Finance – Xavier Mason	
		MDRT/Ec Dev – Andy Williamson	
Cost Impact (see also Fiscal Note): n/a		Police – Chief Kiblinger	**X**
Fund Source:		Public Works – Scott Hanis	
Timeline:		Court – Judge Swain/Tawnya Parks	

Agenda Placement: ☒ Mayor ☐ Two Councilmembers ☐ Committee Chair ☐ City Administrator

Attachments: Ordinance

In July 2023, new state legislation took effect, establishing new regulations and criminal offenses pertaining to use and possession of controlled and counterfeit substances (drugs). The new law, SB 5536, also established new civil and criminal offenses relating to the use, possession, sharing, selling, delivering, giving, and disposal of drug paraphernalia. The Legislature stated in SB 5536 that its intention was to "fully occupy and preempt the entire field of drug paraphernalia regulation within the boundaries of the state," meaning that all inconsistent local regulations would be preempted and unenforceable.

BDMC 9.90.020, as originally adopted in 2009 and amended in 2013, contains a broad prohibition on the possession of drug paraphernalia. BDMC 9.90.020 conflicts with the new state drug paraphernalia regulations (including civil infractions and misdemeanors) established by SB 5536 and is therefore preempted and unenforceable. The Black Diamond Police Department recommends that BDMC 9.90.020 be repealed so that the code is consistent with state law.

Additionally, BDMC 9.90.010 should be amended to clarify that the RCWs incorporated by reference into the City code include any subsequently enacted revisions by the state Legislature.

FISCAL NOTE (Finance Department): n/a

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:

RECOMMENDED ACTION: **MOTION to approve Ordinance No. 24-1204, repealing BDMC 9.90.020 to comply with state law regarding drug paraphernalia; amending BDMC 9.90.010 for clarification; providing for severability; and establishing an effective date.**

RECORD OF COUNCIL ACTION		
Meeting Date	***Action***	***Vote***
February 1, 2024		

ORDINANCE NO. 24-1204

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, REPEALING SECTION 9.90.020 OF THE MUNICIPAL CODE TO COMPLY WITH STATE LAW REGARDING DRUG PARAPHERNALIA; AMENDING SECTION 9.90.010 FOR CLARIFICATION; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Washington State Legislature adopted SB 5536, which took effect on July 1, 2023, and established new state laws regulating the use and possession of controlled and counterfeit substances; and

WHEREAS, SB 5536 also changed state laws regarding drug paraphernalia, declaring that the state of Washington "fully occupies and preempts the entire field of drug paraphernalia regulation within the boundaries of the state, including regulation of the use, selling, giving, delivery, and possession of drug paraphernalia," subject only to limited exceptions for locally established "harm reduction services"; and

WHEREAS, section 9.90.020 of the Black Diamond Municipal Code (BDMC), which broadly prohibits possession of drug paraphernalia, now conflicts with state law as adopted by SB 5536 and is therefore preempted and unenforceable; and

WHEREAS, the City Council desires to clarify that the City's adoption of state criminal offenses into the City code includes any subsequently enacted changes to the referenced RCWs by the state Legislature;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Section 9.90.020 BDMC Repealed. Section 9.90.020 of the Black Diamond Municipal Code is hereby repealed in its entirety.

Section 2. Section 9.90.010 BDMC Amended. The introductory sentence of Section 9.90.010 of the Black Diamond Municipal Code, but not the table of RCW sections referenced therein, is hereby amended to read as follows:

> The following statutes regarding controlled substances and drug paraphernalia, as currently enacted or subsequently amended by the Washington State Legislature, are incorporated by reference:
>
> [Table of offenses follows]

Section 3. Severability. If any section, paragraph, sentence, clause, or phrase of this Ordinance, or its application to any person or circumstance, is declared unconstitutional or otherwise invalid for any reason, or if any portion of this Ordinance is pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 4. Publication and Effective Date. The Ordinance shall take effect and be in full force five days after the date of its publication in the City's official newspaper.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND AT A REGULAR MEETING THEREOF ON THE 1ST DAY OF FEBRUARY, 2024.

CITY OF BLACK DIAMOND

____
Carol Benson, Mayor

Attest:

____
Brenda L. Martinez, City Clerk

Approved as to form:

____
David Linehan, City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No.
Date of Publication: ________
Effective Date:

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

<table>
<tr><th colspan="3">ITEM INFORMATION</th></tr>
<tr><td rowspan="8">SUBJECT:
Resolution authorizing the Mayor to execute a professional services agreement with Parametrix, Inc. to provide on-call civil engineering services to the City.</td><td colspan="2">Agenda Date: February 1, 2024 AB24-015</td></tr>
<tr><td>Mayor Carol Benson</td><td></td></tr>
<tr><td>City Administrator</td><td></td></tr>
<tr><td>City Attorney David Linehan</td><td></td></tr>
<tr><td>City Clerk – Brenda L. Martinez</td><td></td></tr>
<tr><td>Com Dev – Mona Davis</td><td></td></tr>
<tr><td>Finance – Xavier Mason</td><td></td></tr>
<tr><td>MDRT/Ec Dev – Andy Williamson</td><td></td></tr>
<tr><td>Cost Impact (see also Fiscal Note): not to exceed $200,000</td><td>Police – Chief Kiblinger</td><td></td></tr>
<tr><td>Fund Source: Water/Sewer/Streets/Storm/ Developers</td><td>Public Works – Scott Hanis</td><td>X</td></tr>
<tr><td>Timeline: Two years</td><td>Court – Judge Swain/Tawnya Parks</td><td></td></tr>
<tr><td></td><td></td><td></td></tr>
<tr><td colspan="3">Agenda Placement: ☒ Mayor ☐ Two Councilmembers ☐ Committee Chair ☐ City Administrator</td></tr>
<tr><td colspan="3">Attachments: Resolution; Agreement with Exhibits</td></tr>
</table>

SUMMARY STATEMENT:

The City is in need of on-going civil engineering services. City staff sent out a Request for Qualifications (RFQ) from civil engineering firms. In reviewing the submittals and considering the services previously provided by Parametrix, Inc., City staff recommends executing a new agreement for on-call services.

The City has been using Parametrix for on-call tasks and has received responsive, technically sound engineering with accurate and clear billing. Parametrix is very familiar with the City's infrastructure.

Tasks under this agreement will be executed via an on-call task request (Exhibit B in the Agreement) according to adopted purchasing policies. Staff will use this agreement for initial study and investigation work for capital project development, operation and maintenance troubleshooting and assistance, and for serving development needs and plan review (reimbursable).

FISCAL NOTE (Finance Department): Task orders under this agreement cannot exceed $15,000. Task orders exceeding $15,000 will require City Council approval. Some expenses under this agreement will be reimbursable by developers.

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:

RECOMMENDED ACTION: **MOTION to approve Resolution No. 24-1601 authorizing the Mayor to execute a professional services agreement with Parametrix, Inc. to provide the City with on-call civil engineering services.**

RECORD OF COUNCIL ACTION

Meeting Date	*Action*	*Vote*
February 1, 2024		

RESOLUTION NO. 24-1601

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH PARAMETRIX, INC. TO PROVIDE THE CITY WITH ON-CALL CIVIL ENGINEERING SERVICES

WHEREAS, the City does not have sufficient staff resources to provide civil engineering services to meet the needs of the City; and

WHEREAS, the City advertised for civil engineering services and received Statements of Qualifications from interested consultants on December 21, 2023; and

WHEREAS, City staff recommends authorizing a professional services agreement with Parametrix, Inc. to be one of the consultants to provide on-call civil engineering services to the City;

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

Section 1. The Mayor is hereby authorized to execute a professional services agreement with Parametrix, Inc. to provide on-call civil engineering services to the City, significantly in the form attached hereto.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 1ST DAY OF FEBRUARY, 2024.

CITY OF BLACK DIAMOND:

____
Carol Benson, Mayor

Attest:

____
Brenda L. Martinez, City Clerk

CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT FOR CIVIL ENGINEERING SERVICES FOR STORMWATER, STREETS AND TRANSPORTATION, AND CITY PARKS

This Professional Services Agreement ("Agreement") is entered into by and between:

CITY OF BLACK DIAMOND, WASHINGTON (the "City")
Physical Address: 24301 Roberts Drive
Mailing Address: PO Box 599
Black Diamond, WA 98010
Contact: Scott Hanis Phone: 360-851-4521 Fax : 360-851-4501

and

PARAMETRIX, INC. ("Consultant")
Physical Address: 1019 39th Avenue SE, Suite 100
Puyallup, WA 98374
Mailing Address: Same as above
Contact: Austin Fisher, P.E. Phone: 253-604-6600 Fax: 855-542-6353
Tax ID No.: 91-0914810

for non-exclusive on-call professional civil engineering services related to the stormwater utility, streets/transportation, and parks for the City of Black Diamond Public Works and Community Development departments.

WHEREAS, the City has previously contracted with Consultant to provide the City with the same or substantially similar services for the Public Works and Community Development departments; and

WHEREAS, the City has conducted an RFQ and qualifications-based selection process for civil engineering services, and based on that process the City desires to continue working with the Consultant on Public Works and Community Development matters under the terms and conditions set forth herein; and

WHEREAS, the Consultant has agreed to provide the services described in Exhibit A (scope of work) under the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS AND CONDITIONS

1. <u>Services by Consultant</u>

1.1 Consultant has been retained by the City to provide professional civil engineering on-call services related to the stormwater utility, streets/transportation, and City parks, as generally described in the Scope of Work attached to this Agreement as Exhibit "A". The services performed by Consultant shall not exceed the Scope of Work nor shall the Consultant be entitled to a greater amount of compensation as that provided in this Agreement without the prior written authorization of the City.

1.2 The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to this Agreement.

1.3 Consultant represents and warrants that it, its staff to be assigned to the Project, and its subconsultants and their staff have the requisite training, skill, and experience necessary to provide the services required by this Agreement and are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant and its subconsultants under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

2. Schedule of Work

2.1 The City will issue on on-call task request for each project task for which the City requires Consultant services. No work shall be commenced by Consultant under this Agreement except pursuant to such an on-call task request issued by the City in the form attached as Exhibit “B.” Consultant shall perform the services described in the on-call task request in accordance with the schedule and scope of work set forth in the on-call task request (the “Task Scope of Work”).

2.2 Consultant will work within the project schedule set forth in the on-call task request and will diligently proceed with the work and shall assure that it, and its subconsultants, will have adequate staffing at all times in order to complete the Scope of Work in a timely manner. If factors beyond Consultant's control that could not have been reasonably foreseen as of the date of this Agreement cause delay, then the parties will negotiate in good faith to determine whether an extension is appropriate. The Consultant shall provide the City with written notice of any delay, or potential delay, that may trigger the need for a time extension within 3 business days after the Consultant becomes aware of the delay or potential delay.

2.3 Consultant is authorized to proceed with services upon receipt of a signed task order.

3. Compensation

3.1 Rates. Compensation for the services provided pursuant to each on-call task request shall be on a time and materials basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit “C”. Consultant may adjust the billing rates and reimbursable expenses once each calendar year on or after January 1st by providing the City with written notice of the adjusted rates and expenses no less than (30) thirty days prior to the effective date of such adjustment. The billing rates and reimbursable expenses for on-call task orders issued prior to receipt of written notice of the rate/expense adjustment by the City shall not be affected by the adjustment.

3.2 The City shall pay the Consultant an amount based on time and materials, not to exceed Two Hundred Thousand Dollars ($200,000.00) for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amendment to this Agreement.

3.3 Other. In the event that after commencement of work, the Consultant anticipates that the work for an on-call task request will exceed the initial amount authorized, Consultant shall promptly notify the City and provide the City with whatever documents or information is necessary to request approval of any amounts in excess thereof.

4. Payment

4.1 Consultant shall maintain time and expense records and provide them to the City monthly, along with monthly invoices, in a format acceptable to the City for work performed to the date of the invoice.

4.2 All invoices shall be paid by City warrant within sixty (60) days of actual receipt by the City of an invoice conforming in all respects to the terms of this Agreement.

4.3 Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Consultant shall make copies available to the City on request.

4.4 If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

5. Discrimination and Compliance with Laws

5.1 Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

5.2 Consultant and its subconsultants shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

5.3 Any violation of this Section 5 shall be a material breach of this Agreement and grounds for immediate cancellation, termination, or suspension of the Agreement by the City, in whole or in part, and may result in Consultant's ineligibility to conduct further work for the City.

6. Duration, Suspension, and Termination of Agreement

6.1 This Agreement takes effect on the date it has been signed by both parties, and it shall remain in effect for a period of two years, unless extended or terminated in writing pursuant to this Section 6.

6.2 The City reserves the right to terminate or suspend this Agreement at any time, with or without cause, by giving Consultant notice in writing no fewer than ten (10) days prior to the stated termination or suspension date. In the event of termination, all finished or unfinished reports, or other material prepared by Consultant pursuant to this Agreement, shall be submitted to the City. In the event the City terminates this Agreement prior to completion without cause, Consultant may complete such analyses and records as may be necessary to place its files in order. Consultant shall be entitled to compensation for any satisfactory work completed on the Project prior to the date of suspension or termination.

6.3 Any notice from the City to Consultant regarding the suspension of this Agreement shall specify the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to Consultant's reasonable expenses and shall be subject to verification. Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

6.4 Consultant may terminate this Agreement at any time for cause, so long as Consultant first gives the City at least 30 days' written notice of Consultant's intent to terminate and a reasonable opportunity for the City to cure the purported default. Consultant may terminate this Agreement without cause upon no fewer than 90 days' prior written notice to the City.

7. Standard of Care

7.1 Consultant represents and warrants that it has the requisite training, skill, and experience necessary to provide the services under this Agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services Consultant provides under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances. Consultant understands and agrees that the services rendered pursuant to this Agreement are for the sole exclusive benefit of the City and that no third party shall have authority to authorize, approve, direct or control any of the services rendered to the City pursuant to this Agreement.

8. Ownership of Work Product

8.1 Ownership of the originals of any reports, data, studies, surveys, charts, maps, drawings, specifications, figures, photographs, memoranda, and any other documents which are developed, compiled, or produced as a result of this Agreement, whether or not completed, shall be vested in the City and shall be submitted to the City upon termination of this Agreement. Consultant assigns to the City all of Consultant's right, title, and interest in any such documents.

Any reuse of these materials by the City for projects or purposes other than those that fall within the scope of this Agreement and the Project to which it relates, without written concurrence by Consultant, will be at the sole risk of the City.

8.2 The City acknowledges Consultant's documents as instruments of professional service. Nevertheless, the documents prepared under this Agreement shall become the property of the City upon completion of the work. The City agrees to hold harmless and indemnify Consultant against all claims made against Consultant for damage or injury, including defense costs, arising out of the City's reuse of such documents beyond the use for which they were originally intended without the written authorization of Consultant.

8.3 Methodology, software, logic, and systems developed under this Agreement are the property of Consultant and the City, and may be used as either Consultant or the City see fit, including the right to revise or publish the same without limitation.

9. Indemnification/Hold Harmless

9.1 Consultant shall defend, indemnify, and hold the City, its officers, officials, employees, volunteers, and agents harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising directly or indirectly out of or resulting from the acts, errors, or omissions of Consultant or its subconsultants in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. PROVIDED, HOWEVER, THAT IF ANY SUCH CLAIMS, INJURIES, DAMAGES, LOSSES OR SUITS RESULT FROM THE CONCURRENT NEGLIGENCE OF CONSULTANT AND THE CITY, IT IS EXPRESSLY AGREED THAT CONSULTANT'S OBLIGATIONS AND INDEMNITY UNDER THIS PARAGRAPH SHALL BE EFFECTIVE ONLY TO THE EXTENT OF CONSULTANT'S NEGLIGENCE.

9.2 The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

9.3 IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

9.4 The provisions of this Section 9 shall survive the expiration or termination of this Agreement.

10. Insurance

10.1 Consultant shall procure and maintain for the duration of the Agreement, and shall provide proof satisfactory to the City that such insurance is procured and maintained by each of its subconsultants, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, or employees.

10.2 Consultant shall procure and maintain the following types and amounts of insurance:

a. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage. This insurance shall have a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors, personal injury, and advertising injury. This insurance shall be written with limits no less than $2,000,000 each occurrence, $2,000,000 general aggregate.

c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

d. Professional Liability insurance appropriate to Consultant's profession, with limits no less than $2,000,000 per claim and $2,000,000 policy aggregate limit.

10.3 The Automobile Liability, Commercial General Liability, and Professional Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

a. Consultant's insurance coverage shall be primary insurance vis-à-vis the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess over Consultant's insurance and shall not contribute with it.

b. Consultant's insurance shall be endorsed to state that coverage shall not be cancelled, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

10.4 The City shall be named as an additional insured under Consultant's Automobile Liability and Commercial General Liability insurance policies with respect to the work to be performed for the City pursuant to this Agreement.

10.5 Insurance shall be placed with insurers with a current A.M. Best rating of not less than A:VII.

10.6 Declaration pages issued by the insurance carriers for the policies mentioned in this Section 10 showing such insurance to be in force shall be filed with the City not less than ten (10) days following both parties signing this Agreement and before commencement of the work. In addition, the City may request, in writing, a full copy from Consultant of any insurance policy Consultant must procure and maintain pursuant to this Agreement and Consultant must provide such copy to the City within ten (10) days of Consultant's receipt of the City's request. Any policy or required insurance written on a claims-made basis shall provide coverage as to all claims arising out of the services performed under this Agreement and for three (3) years following completion of the services to be performed. It shall be a material breach of this Agreement for Consultant to fail to procure and maintain the insurance required by this Section 10 or to provide the proof of such insurance to the City as provided for in this Agreement.

11. Assigning or Subcontracting

11.1 Consultant shall not assign, transfer, subcontract, or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld at the sole discretion of the City.

12. Independent Contractor

12.1 Consultant and its subconsultants are, and shall be at all times during the term of this Agreement, independent contractors. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

12.2 The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

13. Notice

13.1 All notices required by this Agreement shall be considered properly delivered when personally delivered by courier service, when received by facsimile, or on the third day following mailing, postage prepaid, certified mail, return receipt requested to:

City: Scott Hanis
City of Black Diamond
24301 Roberts Drive
P.O. Box 599
Black Diamond, WA 98010
Fax: 360-851-4501

With a copy to: City Clerk

Consultant: Brenna Tumbling
Senior Engineer
Parametrix, Inc.
1019 39th Avenue SE, Suite 100
Puyallup, WA 98374
Fax: 855-542-6353

14. Disputes

14.1 This Agreement, and any dispute arising out of or relating to the interpretation or enforcement of this Agreement, shall be governed by and construed according to the laws of the State of Washington, excluding its choice-of-law rules. Venue and personal jurisdiction shall lie exclusively in King County Superior Court, Kent, Washington.

15. Attorney Fees

15.1 In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney fees from the other party.

16. General Administration and Management on Behalf of the City

16.1 The Mayor of the City, or his/her designee (the contract Administrator) shall review and approve Consultant's invoices to the City under this Agreement and shall have primary responsibility for overseeing and approving work or services to be performed by Consultant. Consultant understands and agrees that any and all work to be performed pursuant to this Agreement must be approved in advance by the contract Administrator. No third party, including the project applicant, shall have any direct control or influence over the services performed under this Contract.

16.2 Even though the Consultant is an independent contractor with the authority to control and direct the performance, and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

16.3 The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options and the same shall be and remain in full force and effect.

17. Extent of Agreement/Modification

17.1 This Agreement, together with any attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may only be amended, modified, or added to by written instrument properly signed by both parties. The parties acknowledge the general contract rule that a clause in a contract, such as this one, prohibiting oral modifications is itself generally subject to oral modification. However, in order to ensure certainty as to the terms and conditions of this Agreement, the parties waive this general contract rule.

18. Conflict of Interest; Non-Collusion

18.1 No officer, employee or agent of the City, nor any member of the immediate family of any such officer, employee or agent, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The Consultant shall comply with all federal, state, and City conflict of interest laws, statutes and regulations. The Consultant represents that the Consultant presently has no interest and shall not acquire any interest, direct or indirect, in the project to which this Contract pertains which would conflict in any manner or degree with the performance of the Consultant's services and obligations hereunder. The contractor's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from the project applicant or any affiliate or agent of the project applicant.

18.2 The Consultant warrants and represents that the Consultant has not, nor has any other member, employee, representative, agent or officer of the Consultant, entered into or offered to enter into any combination, collusion or agreement with any person or entity to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of this Contract other than the consideration offered pursuant to the terms and conditions hereof.

AGREED TO BY:

CITY OF BLACK DIAMOND	CONSULTANT
By: ____________________	By: ____________________
Carol Benson	Austin Fisher
Its: Mayor	Its: Vice President
Date: ____________________	Date: ____________________

Attest:

By:

____

Brenda L. Martinez
City Clerk

APPROVED AS TO FORM:

____

David A. Linehan
City Attorney

EXHIBIT A

SCOPE OF SERVICES

Provide on-call engineering services to support the City of Black Diamond, including but not limited to, the following:

- Capital projects related to transportation, stormwater, and parks
- Community Development services
- Development review services related to transportation and stormwater
- Utility operations and maintenance needs related to stormwater
- Street Department needs
- Other City departmental needs
- Survey needs

EXHIBIT B

City of Black Diamond On-Call Task Request

Date: __________	City Staff Contact: __________
Task Name: __________	Phone: 360-851-4446
Consultant Project No.: __________	Fax: 360-851-4501
Consultant Contact Name: __________	
Consultant Phone: __________	
Consultant Fax: __________	

Scope of Task Request Including Deliverables and Schedule

Budget Estimate:

Task Request Approval:

City of Black Diamond:

Written Name	Title
Signature	Date

Consultant:

Written Name	Title
Signature	Date

*Costs are billed on a time and materials basis, the Consultant shall notify the City should additional funds be necessary to complete the task order. Additional work beyond that which is ordered by the City shall not commence until written notification is received from the City.

EXHIBIT C

(*Billing Rates and Reimbursable Expenses*)

Exhibit C

Parametrix Puget Sound Billing Rates - October 1, 2023 through September 30, 2024

Classification	Grade	Rate for Billing 2024	Classification	Grade	Rate for Billing 2024
CADD Operator I	8	$120	Jr. Planner	8	$120
CADD Operator II	9	$130	Planner I	10	$135
CADD Operator III	11	$145	Planner II	11	$145
CADD Supervisor/Technical Lead	12	$155	Planner III	12	$155
CADD Services Manager	14	$180	Planner III	13	$165
			Planner IV	14	$180
Jr. Designer	8	$120	Sr. Planner	15	$205
Designer I	10	$140	Sr. Planner	16	$225
Designer II	11	$150	Sr. Planner	17	$240
Designer III	12	$160			
Designer III	13	$170	Jr. Scientist/Biologist	8	$120
Designer IV	14	$180	Scientist/Biologist I	10	$135
Sr. Designer	15	$200	Scientist/Biologist II	11	$145
Sr. Designer	16	$220	Scientist/Biologist III	12	$155
Sr. Designer	17	$235	Scientist/Biologist III	13	$165
			Scientist/Biologist IV	14	$180
Jr. Engineer	8	$120	Sr. Scientist/Biologist	15	$200
Engineer I	10	$145	Sr. Scientist/Biologist	16	$225
Engineer II	11	$150	Sr. Scientist/Biologist	17	$240
Engineer III	12	$160			
Engineer III	13	$175	Environmental Technician I	7-8	$120
Engineer IV	14	$195	Environmental Technician II	9	$130
Sr. Engineer	15	$225	Environmental Technician III	10	$135
Sr. Engineer	16	$240			
Sr. Engineer	17	$260	Jr. Hydrogeologist	8	$120
Sr. Consultant	18	$300	Hydrogeologist I	10	$130
Sr. Consultant	19	$310	Hydrogeologist II	11	$145
			Hydrogeologist III	12-13	$160
Electrical Designer I	11	$155	Hydrogeologist IV	14	$185
Electrical Designer II	12	$170	Sr. Hydrogeologist	15	$200
Electrical Designer III	13	$185	Sr. Hydrogeologist	16	$220
Electrical Designer IV	14	$190	Sr. Hydrogeologist	17	$240
Sr. Electrical Designer	15-16	$225			
Sr. Electrical Designer	17	$245	GIS Technician	9	$130
Electrical Engineer I	11	$155	GIS Analyst	10	$135
Electrical Engineer II	12	$165	Sr. GIS Analyst	11	$145
Electrical Engineer III	13	$180			
Electrical Engineer IV	14-15	$210	Graphic Designer	10-11	$145
Sr. Electrical Engineer	16-17	$240	Sr. Graphic Designer	12-13	$160
Sr. Electrical Engineer	18	$285			
			Publications Specialist I	8	$110
Jr. Surveyor	8	$115	Publications Specialist II	9-10	$130
Surveyor I	9	$125	Sr. Publications Specialist	10-11	$145
Surveyor II	10	$130	Publications Supervisor	12-13	$155
Surveyor III	11	$150	Technical Editor	10-11	$145
Sr. Surveyor	12	$160	Sr. Technical Editor	12-13	$155
Sr. Surveyor	13	$185			
Survey Supervisor	14-15	$205	Technical Aide	7	$110
Survey Supervisor	16-17	$225	Sr. Technical Aide	8	$120
Survey Prevailing Wage*			Project Coordinator	9	$130
			Sr. Project Coordinator	10	$140
Jr. Inspector	8	$120	Project Controls Specialist	11	$150
Construction Inspector	10-11	$145	Sr. Project Controls Specialist	12-13	$165
Sr. Construction Inspector	12-13	$160			
Resident Engineer	13	$175	Project Accountant	9	$130
Resident Engineer	14	$185	Sr. Project Accountant	10-11	$145
Construction Manager I	12-14	$185	Accounting Specialist	9	$130
Construction Manager II	15-17	$200	Sr. Accounting Specialist	10-11	$140
Sr. Construction Manager	15	$220			
Sr. Construction Manager	16-17	$250	Admin Assistant	7	$110
Owner's Representative	18-19	$275	Sr. Admin Assistant	8	$120
			Office Administrator	10-11	$145
Division Manager	16-17	$250	Sr. Office Administrator	12-13	$155
Division Manager, Regional DM	18-19	$285	Office Administrative Manager	14-15	$185
Operations Manager	16-17	$250	Business Manager, Rgnl Off Mgr	15-16	$205
Operations Manager	18-19	$285	Sr. Contract Administrator	12-13	$165
Project Delivery Manager	18-20	$295	Director of Risk Management	20	$300
Principal Consultant	19	$300			
Principal Consultant	20	$320	UAV Pilot	12-13	$195
Vice President/Sr. Vice President	18-20	$320	Expert Witness		$400

* Prevailing Wage Rates apply to construction surveying on all Washington Public Works Projects.

ZWA 2023-2024
10/1/2023

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION			
SUBJECT: **Resolution authorizing the Mayor to execute a professional services agreement with HWA GeoSciences Inc. to provide on-call geotechnical engineering services to the City.**	**Agenda Date: February 1, 2024**	**AB24-016**	
		Mayor Carol Benson	
		City Administrator	
		City Attorney David Linehan	
		City Clerk – Brenda L. Martinez	
		Com Dev – Mona Davis	
		Finance – Xavier Mason	
		MDRT/Ec Dev – Andy Williamson	
Cost Impact (see also Fiscal Note): not to exceed $200,000		Police – Chief Kiblinger	
Fund Source: Water/Sewer/Streets/Storm/ Developers		Public Works – Scott Hanis	X
Timeline: Two years		Court – Judge Swain/Tawnya Parks	

Agenda Placement: ☒ Mayor ☐ Two Councilmembers ☐ Committee Chair ☐ City Administrator

Attachments: Resolution; Agreement with Exhibits

SUMMARY STATEMENT:

The City is in need of on-going geotechnical engineering services. City staff sent out a Request for Qualifications (RFQ) from engineering firms. In reviewing the submittals and considering the services previously provided by HWA GeoSciences Inc., City staff recommends executing an agreement for on-call services.

The City contracted with HWA for assistance following a watermain break on Morgan Street. They responded quickly and provided necessary information needed to keep the road open and to make the necessary repairs.

Tasks under this agreement will be executed via an on-call task request (Exhibit B in the Agreement) according to adopted purchasing policies. Staff will use this agreement for initial study and investigation work for capital project development, operation and maintenance troubleshooting and assistance, and for serving development needs, if needed (reimbursable).

FISCAL NOTE (Finance Department): Task orders under this agreement cannot exceed $15,000. Task orders exceeding $15,000 will require City Council approval. Some expenses under this agreement will be reimbursable by developers.

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:

RECOMMENDED ACTION: **MOTION to approve Resolution No. 24-1602 authorizing the Mayor to execute a professional services agreement with HWA GeoSciences Inc. to provide the City with on-call geotechnical engineering services.**

RECORD OF COUNCIL ACTION		
Meeting Date	***Action***	***Vote***
February 1, 2024		

RESOLUTION NO. 24-1602

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH HWA GEOSCIENCES INC. TO PROVIDE THE CITY WITH ON-CALL GEOTECHNICAL ENGINEERING SERVICES

WHEREAS, the City does not have sufficient staff resources to provide geotechnical engineering services to meet the needs of the City; and

WHEREAS, the City advertised for engineering services and received Statements of Qualifications from interested consultants on December 21, 2023; and

WHEREAS, City staff recommends authorizing a professional services agreement with HWA GeoSciences Inc. to be one of the consultants to provide on-call geotechnical engineering services to the City;

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

Section 1. The Mayor is hereby authorized to execute a professional services agreement with HWA GeoSciences Inc. to provide on-call geotechnical engineering services to the City, significantly in the form attached hereto.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 1ST DAY OF FEBRUARY, 2024.

CITY OF BLACK DIAMOND:

____
Carol Benson, Mayor

Attest:

____
Brenda L. Martinez, City Clerk

CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT
FOR CIVIL ENGINEERING SERVICES

This Professional Services Agreement ("Agreement") is entered into by and between:

CITY OF BLACK DIAMOND, WASHINGTON (the "City")
Physical Address: 24301 Roberts Drive
Mailing Address: PO Box 599
Black Diamond, WA 98010
Contact: Scott Hanis Phone: 360-851-4521 Fax : 360-886-2592

and

HWA GEOSCIENCES, INC. ("Consultant")
Physical Address: 21312 30th Drive SE, Suite 110
Bothell, WA 98021
Mailing Address: Same as above
Contact: Donald J. Huling, P.E. Phone: 425-774-0106 Fax: 425-774-2714
Tax ID No.: 91-0914810

for non-exclusive on-call geotechnical consulting services for the City of Black Diamond Public Works and Community Development.

WHEREAS, the City has previously contracted with Consultant to provide the City with substantially similar services; and

WHEREAS, the City has conducted an RFQ and qualifications-based selection process for civil engineering and geotechnical engineering services, and based on that process the City desires to work with the Consultant on Public Works and Community Development matters under the terms and conditions set forth herein; and

WHEREAS, the Consultant has agreed to provide the services described in Exhibit A (scope of work) under the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS AND CONDITIONS

1. <u>Services by Consultant</u>

1.1 Consultant has been retained by the City to provide professional civil engineering on-call services as generally described in the Scope of Work attached to this Agreement as Exhibit "A". The services performed by Consultant shall not exceed the Scope of Work nor shall the Consultant be entitled to a greater amount of compensation as that provided in this Agreement without the prior written authorization of the City.

1.2 The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to this Agreement.

1.3 Consultant represents and warrants that it, its staff to be assigned to the Project, and its subconsultants and their staff have the requisite training, skill, and experience necessary to provide the services required by this Agreement and are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant and its subconsultants under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

2. Schedule of Work

2.1 The City will issue on on-call task request for each project task for which the City requires Consultant services. No work shall be commenced by Consultant under this Agreement except pursuant to such an on-call task request issued by the City in the form attached as Exhibit "B." Consultant shall perform the services described in the on-call task request in accordance with the schedule and scope of work set forth in the on-call task request (the "Task Scope of Work").

2.2 Consultant will work within the project schedule set forth in the on-call task request and will diligently proceed with the work and shall assure that it, and its subconsultants, will have adequate staffing at all times in order to complete the Scope of Work in a timely manner. If factors beyond Consultant's control that could not have been reasonably foreseen as of the date of this Agreement cause delay, then the parties will negotiate in good faith to determine whether an extension is appropriate. The Consultant shall provide the City with written notice of any delay, or potential delay, that may trigger the need for a time extension within 3 business days after the Consultant becomes aware of the delay or potential delay.

2.3 Consultant is authorized to proceed with services upon receipt of a signed task order.

3. Compensation

3.1 Rates. Compensation for the services provided pursuant to each on-call task request shall be on a time and materials basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit "C". Consultant may adjust the billing rates and reimbursable expenses once each calendar year on or after January 1st by providing the City with written notice of the adjusted rates and expenses no less than (30) thirty days prior to the effective date of such adjustment. The billing rates and reimbursable expenses for on-call task orders issued prior to receipt of written notice of the rate/expense adjustment by the City shall not be affected by the adjustment.

3.2 The City shall pay the Consultant an amount based on time and materials, not to exceed Two Hundred Thousand Dollars ($200,000.00) for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amendment to this Agreement.

3.3 Other. In the event that after commencement of work, the Consultant anticipates that the work for an on-call task request will exceed the initial amount authorized, Consultant shall promptly notify the City and provide the City with whatever documents or information is necessary to request approval of any amounts in excess thereof.

4. Payment

4.1 Consultant shall maintain time and expense records and provide them to the City monthly, along with monthly invoices, in a format acceptable to the City for work performed to the date of the invoice.

4.2 All invoices shall be paid by City warrant within sixty (60) days of actual receipt by the City of an invoice conforming in all respects to the terms of this Agreement.

4.3 Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Consultant shall make copies available to the City on request.

4.4 If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

5. Discrimination and Compliance with Laws

5.1 Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

5.2 Consultant and its subconsultants shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

5.3 Any violation of this Section 5 shall be a material breach of this Agreement and grounds for immediate cancellation, termination, or suspension of the Agreement by the City, in whole or in part, and may result in Consultant's ineligibility to conduct further work for the City.

6. Duration, Suspension, and Termination of Agreement

6.1 This Agreement takes effect on the date it has been signed by both parties, and it shall remain in effect for a period of two years, unless extended or terminated in writing pursuant to this Section 6.

6.2 The City reserves the right to terminate or suspend this Agreement at any time, with or without cause, by giving Consultant notice in writing no fewer than ten (10) days prior to the stated termination or suspension date. In the event of termination, all finished or unfinished reports, or other material prepared by Consultant pursuant to this Agreement, shall be submitted to the City. In the event the City terminates this Agreement prior to completion without cause, Consultant may complete such analyses and records as may be necessary to place its files in order. Consultant shall be entitled to compensation for any satisfactory work completed on the Project prior to the date of suspension or termination.

6.3 Any notice from the City to Consultant regarding the suspension of this Agreement shall specify the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to Consultant's reasonable expenses and shall be subject to verification. Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

6.4 Consultant may terminate this Agreement at any time for cause, so long as Consultant first gives the City at least 30 days' written notice of Consultant's intent to terminate and a reasonable opportunity for the City to cure the purported default. Consultant may terminate this Agreement without cause upon no fewer than 90 days' prior written notice to the City.

7. Standard of Care

7.1 Consultant represents and warrants that it has the requisite training, skill, and experience necessary to provide the services under this Agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services Consultant provides under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances. Consultant understands and agrees that the services rendered pursuant to this Agreement are for the sole exclusive benefit of the City and that no third party shall have authority to authorize, approve, direct or control any of the services rendered to the City pursuant to this Agreement.

8. Ownership of Work Product

8.1 Ownership of the originals of any reports, data, studies, surveys, charts, maps, drawings, specifications, figures, photographs, memoranda, and any other documents which are developed, compiled, or produced as a result of this Agreement, whether or not completed, shall be vested in the City and shall be submitted to the City upon termination of this Agreement. Consultant assigns to the City all of Consultant's right, title, and interest in any such documents.

Any reuse of these materials by the City for projects or purposes other than those that fall within the scope of this Agreement and the Project to which it relates, without written concurrence by Consultant, will be at the sole risk of the City.

8.2 The City acknowledges Consultant's documents as instruments of professional service. Nevertheless, the documents prepared under this Agreement shall become the property of the City upon completion of the work. The City agrees to hold harmless and indemnify Consultant against all claims made against Consultant for damage or injury, including defense costs, arising out of the City's reuse of such documents beyond the use for which they were originally intended without the written authorization of Consultant.

8.3 Methodology, software, logic, and systems developed under this Agreement are the property of Consultant and the City, and may be used as either Consultant or the City see fit, including the right to revise or publish the same without limitation.

9. Indemnification/Hold Harmless

9.1 Consultant shall defend, indemnify, and hold the City, its officers, officials, employees, volunteers, and agents harmless from any and all claims, injuries, damages, losses or suits including reasonable attorney fees, arising directly or indirectly out of or resulting from the acts, errors, or omissions of Consultant or its subconsultants in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. PROVIDED, HOWEVER, THAT IF ANY SUCH CLAIMS, INJURIES, DAMAGES, LOSSES OR SUITS RESULT FROM THE CONCURRENT NEGLIGENCE OF CONSULTANT AND THE CITY, IT IS EXPRESSLY AGREED THAT CONSULTANT'S OBLIGATIONS AND INDEMNITY UNDER THIS PARAGRAPH SHALL BE EFFECTIVE ONLY TO THE EXTENT OF CONSULTANT'S NEGLIGENCE.

9.2 The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

9.3 IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

9.4 The provisions of this Section 9 shall survive the expiration or termination of this Agreement.

10. Insurance

10.1 Consultant shall procure and maintain for the duration of the Agreement, and shall provide proof satisfactory to the City that such insurance is procured and maintained by each of its subconsultants, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, or employees.

10.2 Consultant shall procure and maintain the following types and amounts of insurance:

a. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage. This insurance shall have a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors, personal injury, and advertising injury. This insurance shall be written with limits no less than $2,000,000 each occurrence, $2,000,000 general aggregate.

c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

d. Professional Liability insurance appropriate to Consultant's profession, with limits no less than $2,000,000 per claim and $2,000,000 policy aggregate limit.

10.3 The Automobile Liability, Commercial General Liability, and Professional Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

a. Consultant's insurance coverage shall be primary insurance vis-à-vis the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess over Consultant's insurance and shall not contribute with it.

b. Consultant's insurance shall be endorsed to state that coverage shall not be cancelled, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

10.4 The City shall be named as an additional insured under Consultant's Automobile Liability and Commercial General Liability insurance policies with respect to the work to be performed for the City pursuant to this Agreement.

10.5 Insurance shall be placed with insurers with a current A.M. Best rating of not less than A:VII.

10.6 Declaration pages issued by the insurance carriers for the policies mentioned in this Section 10 showing such insurance to be in force shall be filed with the City not less than ten (10) days following both parties signing this Agreement and before commencement of the work. In addition, the City may request, in writing, a full copy from Consultant of any insurance policy Consultant must procure and maintain pursuant to this Agreement and Consultant must provide such copy to the City within ten (10) days of Consultant's receipt of the City's request. Any policy or required insurance written on a claims-made basis shall provide coverage as to all claims arising out of the services performed under this Agreement and for three (3) years following completion of the services to be performed. It shall be a material breach of this Agreement for Consultant to fail to procure and maintain the insurance required by this Section 10 or to provide the proof of such insurance to the City as provided for in this Agreement.

11. Assigning or Subcontracting

11.1 Consultant shall not assign, transfer, subcontract, or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld at the sole discretion of the City.

12. Independent Contractor

12.1 Consultant and its subconsultants are, and shall be at all times during the term of this Agreement, independent contractors. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

12.2 The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

13. Notice

13.1 All notices required by this Agreement shall be considered properly delivered when personally delivered by courier service, when received by facsimile, or on the third day following mailing, postage prepaid, certified mail, return receipt requested to:

City: Scott Hanis
City of Black Diamond
24301 Roberts Drive
P.O. Box 599
Black Diamond, WA 98010

Fax: 360-851-4501

With a copy to: City Clerk

Consultant: Sandy Brodahl
President, Geotechnical Engineer
HWA GeoSciences Inc.
21312 30th Dr. SE, Ste. 110
Bothell, WA 98021
Fax: 425-774-2714

14. Disputes

14.1 This Agreement, and any dispute arising out of or relating to the interpretation or enforcement of this Agreement, shall be governed by and construed according to the laws of the State of Washington, excluding its choice-of-law rules. Venue and personal jurisdiction shall lie exclusively in King County Superior Court, Kent, Washington.

15. Attorney Fees

15.1 In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney fees from the other party.

16. General Administration and Management on Behalf of the City

16.1 The Mayor of the City, or his/her designee (the contract Administrator) shall review and approve Consultant's invoices to the City under this Agreement and shall have primary responsibility for overseeing and approving work or services to be performed by Consultant. Consultant understands and agrees that any and all work to be performed pursuant to this Agreement must be approved in advance by the contract Administrator. No third party, including the project applicant, shall have any direct control or influence over the services performed under this Contract.

16.2 Even though the Consultant is an independent contractor with the authority to control and direct the performance, and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

16.3 The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options and the same shall be and remain in full force and effect.

17. Extent of Agreement/Modification

17.1 This Agreement, together with any attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may only be amended, modified, or added to by written instrument properly signed by both parties. The parties acknowledge the general contract rule that a clause in a contract, such as this one, prohibiting oral modifications is itself generally subject to oral modification. However, in order to ensure certainty as to the terms and conditions of this Agreement, the parties waive this general contract rule.

18. Conflict of Interest; Non-Collusion

18.1 No officer, employee or agent of the City, nor any member of the immediate family of any such officer, employee or agent, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The Consultant shall comply with all federal, state, and City conflict of interest laws, statutes and regulations. The Consultant represents that the Consultant presently has no interest and shall not acquire any interest, direct or indirect, in the project to which this Contract pertains which would conflict in any manner or degree with the performance of the Consultant's services and obligations hereunder. The contractor's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from the project applicant or any affiliate or agent of the project applicant.

18.2 The Consultant warrants and represents that the Consultant has not, nor has any other member, employee, representative, agent or officer of the Consultant, entered into or offered to enter into any combination, collusion or agreement with any person or entity to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of this Contract other than the consideration offered pursuant to the terms and conditions hereof.

AGREED TO BY:

CITY OF BLACK DIAMOND	CONSULTANT
By: ____________________	By: ____________________
Carol Benson	Sandy Brodahl, PE
Its: Mayor	Its: President
Date: ________________	Date: 1.17.2024

Attest:

By:

____

Brenda L. Martinez
City Clerk

APPROVED AS TO FORM:

____

David A. Linehan
City Attorney

EXHIBIT A

SCOPE OF SERVICES

Provide on-call engineering services to support the City of Black Diamond, including but not limited to, the following:

- Capital projects
- Community Development services
- Development review services
- Utility operations and maintenance needs
- Street Department needs
- Other City departmental needs
- Mine hazard review
- All geotechnical needs

EXHIBIT B

City of Black Diamond On-Call Task Request

Date: ________________	City Staff Contact: ________________
Task Name: ________________	Phone: 360-851-4446
Consultant Project No.: ________________	Fax: 360-851-4501
Consultant Contact Name: ________________	
Consultant Phone: ________________	
Consultant Fax: ________________	

Scope of Task Request Including Deliverables and Schedule

Budget Estimate:

Task Request Approval:

City of Black Diamond:

Written Name	Title
Signature	Date

Consultant:

Written Name	Title
Signature	Date

*Costs are billed on a time and materials basis, the Consultant shall notify the City should additional funds be necessary to complete the task order. Additional work beyond that which is ordered by the City shall not commence until written notification is received from the City.

EXHIBIT C

(*Billing Rates and Reimbursable Expenses*)

21312 30th Drive SE, Ste. 110, Bothell, WA 98021-7010
Phone: 425.774.0106 | Fax: 425.774.2714
www.hwageo.com

HWA GEOSCIENCES INC.

Exhibit B - Compensation

2024 ANTE BILLING RATES BY CATEGORY

CLASSIFICATION TITLE	MIN BILLING RATE	MAX BILLING RATE
Administrative Support	$110.00	$120.00
CAD	$135.00	$155.00
Contracts Administrator	$110.00	$165.00
Geologist I	$85.00	$100.00
Geologist II	$95.00	$120.00
Geologist III	$120.00	$145.00
Geologist IV	$140.00	$175.00
Geologist V	$175.00	$180.00
Geologist VI	$180.00	$205.00
Geologist VII	$200.00	$231.00
Geologist VIII	$200.00	$305.00
Geotechnical Engineer I	$110.00	$130.00
Geotechnical Engineer II	$125.00	$155.00
Geotechnical Engineer III	$145.00	$160.00
Geotechnical Engineer IV	$160.00	$180.00
Geotechnical Engineer V	$180.00	$210.00
Geotechnical Engineer VI	$200.00	$240.00
Geotechnical Engineer VII	$240.00	$290.00
Geotechnical Engineer VIII	$295.00	$315.00
Hydrogeologist IV	$185.00	$190.00
Hydrogeologist V	$190.00	$200.00
Lab/Field Technician I	$60.00	$85.00
Lab/Field Technician II	$85.00	$90.00
Lab/Field Technician III	$90.00	$115.00
Lab/Field Technician IV	$115.00	$155.00
Lab/Field Technician V	$145.00	$160.00
Principal IX	$330.00	$345.00

Exhibit C-2

HWA GeoSciences Inc.
DBE/MWBE

STANDARD SCHEDULE OF FEES AND CHARGES

All prices are effective January 1, 2024 - December 31, 2024 and are subject to change without notice.

HWA GeoSciences Inc. is accredited by the American Association of State Highway and Transportation Officials (AASHTO R-18) for Aggregate, Asphalt Mixture, Concrete and Soil. We participate in the sample proficiency program from AMRL for soil classification and compaction, coarse and fine aggregates, Hot Mix Asphalt, California Bearing Ratio, and CCRL for concrete.

PROFESSIONAL SERVICES

Request Labor Rate Schedule

EXPENSES

All Outside Expenses
(i.e., airfare, subsistence, equipment rental, materials, reproduction, etc.) .... Cost plus 15%
Drilling & Chemical Laboratory Subcontractors.... Cost plus 15%

Mileage (*per mile*) .... Current IRS Rate
Tests Conducted on Contaminated Soils........... 50% surcharge
All contaminated soils will be returned to client for disposal

Special Sample Prep (including sample remolding, rock crushing, etc.).. $150/Hour
All Samples will be disposed of within 30 days of Final Report unless arrangements are made to return to the client.

LABORATORY TESTS

Soil Laboratory Tests

Atterberg Limits
Liquid Limit and Plastic Limit (ASTM D4318)
Three Point $260.00
California Bearing Ratio (ASTM D1883)
(Requires Moisture/Density Relationship Test)
One Point $285.00
Three Point $675.00
Consolidation Test Incremental Loading (ASTM D2435)
9 Loads, 0.125 KSF to 32 KSF, 4 Unloads $950.00
24 hour loads for Secondary Compression $1350.00
Each Additional Load $125.00
Grainsize Analysis
Passing #200 Sieve (ASTM D1140) $105.00
Sieve Analysis-Wet, Small Sample (ASTM D6913) ... $135.00
Combined Analysis (ASTM D6913/D7928)............. $275.00
Oversize Fee.. $75.00
(Particles greater than 2" or samples greater than 4000g)
Moisture/Density Relationship
Proctor - Cohesive (ASTM D698, D1557).............. $325.00
Proctor - Granular (ASTM D698, D1557).............. $285.00
Moisture Content w/Description............................ $25.00
One-Dimensional Swell (ASTM D4546) $975.00
Organic Content Test (ASTM D2974)......................... $75.00
Permeability Tests
Triaxial with Back Pressure (ASTM D5084)
Intact.. $585.00
Remolded.. $660.00
Falling Head Test (WSDOT 605)..................... $250.00

LABORATORY TESTS (*Continued*)

Permeability Tests (Con't)
Estimate of Effective Porosity $615.00
Minimum Relative Density (D4254)......................... $350.00
Shelby Tube Extrusion and Sample Description........... $100.00
Soil Corrosivity Tests
Soil Resistivity & pH (AASHTO T288/T289) $155.00
pH Only $50.00
Resistivity Only.. $115.00
Subcontracted Analyses (Chloride, Sulfate, CEC)
....*Inquire for details*
Specific Gravity Test (ASTM D854).......................... $160.00
Strength Testing
Direct Shear Strength (3 points) (ASTM D3080)
Intact.. $675.00
Remolded.. $765.00
Triaxial (c-u)(3 samples, 3 points)(ASTM D4767).......... $1700.00
Triaxial (c-u) (1 sample, 3 point Multistage) $1400.00
Triaxial (u-u) (ASTM D2850) $260.00
Compressive Strength (ASTM D2166) $170.00
Unit Weight
Percent of Solids Calculation $25.00
Porosity (includes specific gravity/unit weight) $225.00
Soil in Ring (ASTM D2937) $65.00
Soil in Shelby Tube (ASTM D2937) $80.00
Visual Soil Classification $20.00

Aggregate Quality Tests

Clay Lumps and Friable Particles (ASTM C142)........... $115.00
Fracture Face Count (ASTM D5821) (Requires Sieve)..... $65.00
Flat and Elongated (ASTM D4791) (Requires Sieve)....... $60.00
Bulk Grain Size (ASTM C136) $195.00
LA Abrasion (ASTM C131, C535)............................ $250.00
Organic Impurities (ASTM C40).............................. $90.00
Percentage of Material Passing #200 Sieve (ASTM C117) $105.00
Sand Equivalent (ASTM D2419).............................. $115.00
Specific Gravity Test
Coarse Aggregate (ASTM C127) $140.00
Fine Aggregate (minus #4 mesh) (ASTM C128) $215.00
Unit Weight by Dry Rodding (ASTM C29).................... $85.00
Uncompacted Voids Content of FA (ASTM C1252) $150.00

Concrete and Masonry Tests

Compression Testing of Concrete Cores
(includes trimming) (ASTM C42, C513) $100.00
Compression Testing of Concrete Cylinders (ASTM C39) . $35.00
Compression Testing Lightweight Concrete (e.g.cellcrete) ......
Set of 4.. $140.00
Concrete Beam Flexural Strength Test (ASTM C 78) $125.00

Concrete Cylinder Molds $5.00
Concrete Cylinders Sampled and Cured (not tested)......$35.00
Density Test
  Concrete Cylinders $45.00
  Light Weight Concrete Cylinders (set of 4) $140.00
End Trimming of Samples (per specimen).................. $20.00
Shotcrete Panel (coring & compression test).......... $350.00

Asphaltic Concrete Tests

Bitumen Content by Ignition
  Ignition only (ASTM D6307)...............................$160.00
  with Gradation (ASTM D5444, D6307) $225.00
  Oven Correction Factor (per point)...................$160.00
Bulk Specific Gravity and Density - SSD Method
  (per specimen) (ASTM D2726) $75.00
Bulk Specific Gravity and Density - Wax Method
  (per specimen) (ASTM D1188) $125.00
Marshall Compaction
  Volumetrics - 3 Specimens (ASTM D6926, D3203)...$550.00
  with Stability and Flow (ASTM D6927)................$725.00
Gyratory Compaction
  3 Specimens (ASTM D6925, D3203)....................$500.00
Percent Air Voids in Compacted or Open Bituminous Mixtures
  (ASTM D3203)...$150.00
Rice Density (ASTM D2041) $160.00

EQUIPMENT CHARGES

Labor will be charged in addition to equipment charges

Air Filters for Development (per day) $50.00
BK Development Pump/Surge Block (per day) $75.00
Carbon Filter (per day) $100.00
Coring
  Up to 6" diameter.............$75
  Up to 12" diameter...........$150

Barologger and Transducers (Piezometer Rental)........$600.00
Vibratory Wire Piezometer and Data Logger............ $1250.00
Falling Weight Deflectometer (per hour)................ $1000.00
Double Ring Infiltrometer.................................... $50.00
Dropweight Cone Penetrometer (per day)................ $250.00
GPS Unit Rental (per day)................................... $75.00
Water Level Indicator (per day)............................ $30.00
Geophysical Equipment Rental (per day)................. $500.00
Brush Clearing Equipment (per day)......................... $75.00
Hand Auger Equipment (per day).............................$75.00

Flow Monitoring Set
  Per day $105.00
  Per week $400.00
Grundfos Redi Flow II Pump and Generator
  Per day $225.00
  Per week $525.00
Inclinometer (Per day).......................................$250.00
Infiltration/Falling Head Meters (per day, per set up) ..$100.00
Level and Stadia Set.. $50.00
Nuclear Density Gauge (per day) $50.00
  Per month...$500.00
Peristaltic Sampling Pump
  Per day $50.00
  Per week $150.00
pH-Conductivity Temperature Meter
  Per day $40.00
  Per week $100.00
Photoionization Detector (Mini Rae / HNU / Microtip)
  Per day $125.00
  Per week $375.00
QED Bladder Pump Controller
  Per day $75.00
  Per week $225.00
Safety Equipment
  Level D (solvex gloves, disposable suit)............... $35.00
  Level C2 (above plus respirator) $50.00
  Level C1 (above plus chemical suit) $95.00
  Level B (above plus SCBA).............................$300.00
Sensidyne Monitoring Equipment *(does not include tubes)*.$15.00
Sediment Coring or Soil Sampling Kit
  (*does not include shelby tubes*) (per day)............ $50.00
Traffic Control Signs & Cones (per day)..................... $75.00
Turbidity Meter (per day) $40.00
Turbidity Meter (per week)..................................$150.00

Rush Testing available subject to availability for a 50% additional surcharge. Contact the Lab regarding scope of testing and availability.

For additional information:
Please contact 425.774.0106
www.hwageo.com

Sandy Brodahl, PE, for Geotechnical Services
(Ext 251, sbrodahl@hwageo.com)

Nicole Kapise, for GeoEnvironmental & Hydrogeology Services (Ext 254, nkapise@hwageo.com)

Nicholas Johnson for Laboratory Services
(Ext 240 or 261, njohnson@hwageo.com)

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION		
SUBJECT: **Resolution accepting the State Route 169 Northern Water Main Improvements Project**	**Agenda Date: February 1, 2024**	**AB24-017**
	Mayor Carol Benson	
	City Administrator	
	City Attorney David Linehan	
	City Clerk – Brenda L. Martinez	
	Com Dev – Mona Davis	
	Finance – Xavier Mason	
	MDRT/Ec Dev – Andy Williamson	
Cost Impact (see also Fiscal Note): $271,534.38	Police – Chief Kiblinger	
Fund Source: Water Capital	Public Works – Scott Hanis	X
Timeline:	Court – Tawnya Parks	

Agenda Placement: ☒ Mayor ☐ Two Councilmembers ☐ Committee Chair ☐ City Administrator

Attachments: Resolution

SUMMARY STATEMENT:

New X Inc. completed the required work for the State Route 169 Northern Water Main Improvements Project. Retainage of 5% has been held until release is received by the Department of Revenue, Department of Labor and Industries, and the Employment Security Department. Once release from these departments has been received, the City may release retainage to the contractor.

FISCAL NOTE (Finance Department): The State Route 169 Northern Water Main Improvements project was bid at $398,301.03 and was completed under budget due to two change orders: Change order 1, included the removal of the water main crossing under SR 169 and reduced the cost by $99,963.24. Change order 2 removed all planned project items to the north of the water valve cross at Summit Dr. due to schedule and reduced the cost by $26,802.89. This brings the total project cost to $271,534.38.

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:

RECOMMENDED ACTION: **MOTION to approve Resolution No. 24-1603 authorizing the Mayor to accept the SR 169 Northern Water Main Improvements Project by New X Inc. as complete according to the contract documents.**

RECORD OF COUNCIL ACTION

Meeting Date	***Action***	***Vote***
February 1, 2024		

RESOLUTION NO. 24-1603

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON REGARDING FINAL ACCEPTANCE OF THE STATE ROUTE 169 NORTHERN WATER MAIN IMPROVEMENTS PROJECT

WHEREAS, New X Inc. has completed the State Route 169 Northern Water Main Improvements project according to the contract; and

WHEREAS, RCW 60.28.011(2) allows a period of forty-five days to file any liens or claims with the City; and

WHEREAS, RCW 39.080.030 requires acceptance of a Public Works project as complete as a formal, public action in order to begin the forty-five day period;

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

Section 1. The City hereby accepts the State Route 169 Northern Water Main Improvements project as complete and as set forth in the contract with New X Inc.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 1ST DAY OF FEBRUARY, 2024.

CITY OF BLACK DIAMOND:

____

Carol Benson, Mayor

Attest:

____

Brenda L. Martinez, City Clerk

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION			
SUBJECT: **Amendment 1 to the funding agreement with the King County Flood Control District for the Covington Creek Culvert Replacement project**	**Agenda Date: February 1, 2024**	**AB24-018**	
		Mayor Carol Benson	
		City Administrator	
		City Attorney David Linehan	
		City Clerk – Brenda L. Martinez	
		Com Dev – Mona Davis	
		Finance – Xavier Mason	
		MDRT/Ec Dev – Andy Williamson	
Cost Impact (see also Fiscal Note): $475,000 revenue		Police – Chief Kiblinger	
Fund Source: King County Flood Control District		Public Works – Scott Hanis	X
Timeline: 2024-2025		Court – Judge Swain/Tawnya Parks	
Agenda Placement: ☒ Mayor ☐ Two Councilmembers ☐ Committee Chair ☐ City Administrator			
Attachments: Resolution; Amendment 1			

SUMMARY STATEMENT:
The King County Flood Control District and the City executed a funding agreement whereby the Flood Control District (FCD) would fund the Covington Creek Culvert Replacement project up to $2,293,500 (Resolution 21-1408).

The scope of the project has changed since the original funding agreement due to permit requirements, the desire to place a temporary bridge to allow at least emergency vehicles access through the project, and potential utility conflicts. This change in scope has increased the estimated cost of the project by up to $475,000. Public Works staff reached out to the FCD to see if additional funding could be granted. The FCD voted to approve additional funds. This amendment will officially add these funds to the project.

FISCAL NOTE (Finance Department): The increase in revenue matches the increase in estimated costs. Therefore, there aren't any budgetary changes necessary.

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:

RECOMMENDED ACTION: **MOTION to adopt Resolution No. 24-1604 accepting additional funds from the King County Flood Control District and authorizing the Mayor to execute Amendment 1 to the funding agreement with the King County Flood Control District to further fund the Covington Creek Culvert Replacement project.**

RECORD OF COUNCIL ACTION

Meeting Date	***Action***	***Vote***
February 1, 2024		

RESOLUTION NO. 24-1604

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXCUTE AMENDMENT 1 OF THE FUNDING AGREEMENT WITH THE KING COUNTY FLOOD CONTROL DISTRICT FOR THE COVINGTON CREEK CULVERT REPLACEMENT PROJECT

WHEREAS, the King County Flood Control District executed a funding agreement with the City to cover costs of the Covington Creek Culvert Replacement project; and

WHEREAS, changes in the scope of work have increased estimated costs for the project; and

WHEREAS, Public Works staff coordinated with the Flood Control District outlining the increase in estimated costs along with a request for more funding; and

WHEREAS, the Flood Control District authorized an increase for this project in the amount of $475,000; and

WHEREAS, both the Flood Control District and the City will need to execute Amendment 1 to the funding agreement to officially commit the additional funds;

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

Section 1. The City Council hereby accepts additional funding in the amount of $475,000 from the King County Flood Control District for the Covington Creek Culvert Replacement project.

Section 2. The Mayor is hereby authorized to execute Amendment 1 to the funding agreement with the King County Flood Control District for the Covington Creek Culvert Replacement project.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 1ST DAY OF FEBRUARY, 2024.

CITY OF BLACK DIAMOND:

____
Carol Benson, Mayor

Attest:

____
Brenda L. Martinez, City Clerk

FIRST AMENDMENT TO AGREEMENT
COVINGTON CREEK CULVERT REPLACEMENT PROJECT
BETWEEN THE KING COUNTY FLOOD CONTROL ZONE DISTRICT AND THE CITY OF BLACK DIAMOND

THIS AMENDMENT NO. 1 to the Agreement Regarding the Covington Creek Culvert Replacement Project ("Amendment No. 1") is entered into on the last date signed below, by and between the CITY OF BLACK DIAMOND, a Washington municipal corporation ("City"), and KING COUNTY FLOOD CONTROL ZONE DISTRICT, a quasi-municipal corporation of the State of Washington ("District") (collectively, the "Parties").

RECITALS

A. Pursuant to FCD Resolution FCD2021-03.1, the Parties entered into an Agreement regarding the COVINGTON CREEK CULVERT REPLACEMENT PROJECT ("Agreement") effective March 09, 2021.

B. The Agreement authorized the City to replace three failing culverts between Lake Sawyer and Covington Creek underneath 224th Avenue SE with a bridge which will allow for better salmon passage and eliminate risks to the roadway due to the chokepoint created by the culverts. The Agreement covers work necessary to design and construct the project, including but not limited to, City project management, consultant project management, surveying, site assessment and data collection, coordination with other agencies franchise utilities and stakeholders, hydrologic and hydraulic modeling, environmental documentation, permit coordination, public involvement/outreach, engineering reports, preliminary/conceptual design, cost estimate, and construction (the "Project").

C. The Project is located where Lake Sawyer empties into Covington Creek through three failing culverts underneath 224th Avenue SE.

D. As set out in the Agreement, the District agreed to reimburse the City for its actual costs incurred in completing the tasks described in the Agreement up to a maximum allowable reimbursement amount of $2,293,500. Since the Agreement's execution, the City identified increased costs necessary to perform the scope of work set out in the Agreement. The City has determined that the maximum allowable reimbursement amount authorized by the Agreement will be insufficient to reimburse the City for its estimated actual costs incurred to effectuate the Project.

E. The City presented the District with a revised estimate of project costs and associated request for an increase in funding for the Project by $475,000.

F. The District adopted Resolution FCD2023-10 on November 14, 2023, authorizing a continued partnership with the City for the Project, and increasing funding for the Project by $475,000 for a new total Project budget of $2,768,500 (including all monies paid prior to the adoption of Resolution FCD2023-10).

G. The parties desire to amend the Agreement to incorporate the additional funding allocation and associated terms.

AMENDMENT

NOW THEREFORE, in consideration of the mutual interest, desire, and promises of the parties and other good and valuable consideration, the Parties agree as follows:

Recitals Incorporated. All recitals above are hereby incorporated in and ratified as part of this Amendment No. 1.

Amendment. Section 7, Project Costs and Expenses, of the Agreement is amended to increase the maximum reimbursement for City costs and expenses from $2,293,500 to $2,768,500, which amount is intended to compensate the City for those reasonable City costs and expenses for the Project described in the Agreement, as amended. This new total maximum reimbursement amount applies to all costs and expenses paid to the City prior to this Amendment, as well as work subsequent thereto.

IN WITNESS WHEREOF the Parties have executed this Amendment No. 1, which shall become effective on the last date signed below.

KING COUNTY FLOOD CONTROL ZONE DISTRICT	CITY OF BLACK DIAMOND
By: ______________________________________	By: _____________________________________
Reagan Dunn, Chair	Carol Benson, Mayor
Date: ___________________	Date: ______________________
APPROVED AS TO FORM:	APPROVED AS TO FORM:
By: _____________________________________	By: _____________________________________
Charlotte Archer, District Legal Counsel	___________________________, City Attorney
Date: ___________________	Date: ___________________