

RESOLUTION NO. 15-1059

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON,
AUTHORIZING THE MAYOR TO SIGN AN INTERLOCAL
AGREEMENT WITH THE CITIES OF COVINGTON AND
MAPLE VALLEY FOR BUILDING DEPARTMENT RELATED
SERVICES

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

WHEREAS, Covington and Maple Valley maintain building division staff that regularly enforces and administers building code requirements, reviews building permit applications, conducts building inspections and engages in building-related code enforcement activities; and

WHEREAS, although building activity has been increasing, there is currently not enough building permit activity to allow the City to maintain a full-time official/inspector; and

WHEREAS, the City of Black Diamond currently utilizes building department related services from the Cities of Covington and Maple Valley under an existing Interlocal Agreement, which is slated to expire on December 31, 2015;

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

Section 1. The Mayor is authorized to sign an Interlocal Agreement with the Cities of Covington and Maple Valley for building code administration, plans examination, building inspection and building related code enforcement services, substantially in the form as Attachment A.

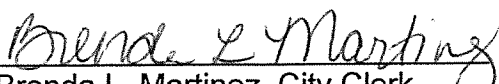
PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 17TH DAY OF DECEMBER, 2015.

CITY OF BLACK DIAMOND:



Carol Benson, Mayor

Attest:



Brenda L. Martinez, City Clerk

**INTERLOCAL AGREEMENT
BETWEEN
THE CITIES OF COVINGTON, MAPLE VALLEY, AND BLACK DIAMOND
FOR
BUILDING SERVICES**

RECITALS

THIS INTERLOCAL AGREEMENT (“Agreement”) is entered into between the City of Covington, a Washington municipal corporation (“Covington”), the City of Maple Valley, a Washington municipal corporation (“Maple Valley”), and the City of Black Diamond, a Washington municipal corporation (“Black Diamond”), (collectively the “Parties” or “Cities” or in the singular “Party” or “City”).

WHEREAS, the Parties are “public agencies” as defined by Chapter 39.34 of the Revised Code of Washington (RCW) and through the provisions of that chapter are authorized by state law to enter into interlocal agreements on the basis of mutual advantage and thereby to provide services and facilities in the manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs of local communities; and

WHEREAS, the Parties have similar building code administration, plans examination, and building inspection needs and each Party can realize certain economies from sharing resources, thereby providing savings to taxpayers through contracting for shared services; and

WHEREAS, each Party has agreed to compensate a Party for services offered under this Agreement;

NOW THEREFORE, in consideration of the mutual promises contained herein, it is agreed between the Parties as follows:

AGREEMENT

1. **Purpose.** It is the purpose of this Agreement to utilize the provisions of state law to enable the Parties to take advantage of economies of scale in sharing resources and by offering building code administration, plans examination, and building inspection services to the other Parties.
2. **Services.** Covington and Maple Valley (collectively the “Providing Parties” or individually a “Providing Party”) agree to offer the following services (“Offered Service(s)”) to the Parties upon request (collectively the “Requesting Parties” or individually a “Requesting Party”) pursuant to the following.

2.1. Offered Services.

2.1.1. Building Code Administration. Covington agrees to offer building code administration services, performed by Covington's Building Official, to Requesting Parties. Building code administration services includes building code enforcement actions respective to the Requesting Party's building code, as amended, and associated enforcement processes.

2.1.2. Plans Examination. Covington agrees to offer plans examination services, performed by Covington's Plans Examiner, to Requesting Parties.

2.1.3. Building Inspection. Maple Valley agrees to offer building inspection services, performed by Maple Valley's Building Inspectors, to Requesting Parties.

2.1.4. Warranty. The Providing Parties represent and warrant that each of their respective building officials, plans examiners, and building inspectors have the requisite licensing, certification, training, skill, and experience necessary to provide the services offered under this Agreement. The Providing Parties' building officials, plans examiners, and building inspectors, respectively, will perform the services under this Agreement in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

2.2. Requests for Offered Services. A Requesting Party shall submit a written request to the relevant Providing Party for performance of an Offered Service, including any and all needs, specifications, or standards that must be considered. Such written request must be made by the Requesting Party's Community Development Director or authorized designee. For the purposes of this sub-section, the Parties agree that a written request may be submitted by a Requesting Party to a Providing Party via email.

2.3. Acceptance of Request for Offered Services. The Providing Party shall promptly respond to a written request for an Offered Service with a written acceptance or denial within seventy-two (72) hours of receipt of a written request ("Response Period"). Weekends and legal holidays of the Providing Party shall not be calculated as part of the Response Period (*i.e.* a written request for services received by a Providing Party at 2pm on a Thursday shall be responded to by the Providing Party no later than 2pm on the following Tuesday). The Providing Party may deny a request for an Offered Service at its sole discretion and without reason. Such written acceptance or denial of a request for an Offered Service must be issued by the Providing Party's Community Development Director or authorized designee. For the purposes of this sub-section, the Parties agree that a written acceptance or denial may be issued by a Providing Party to a Requesting Party via email.

2.4. Providing Party Administrative Oversight. The Providing Party shall have administrative oversight of the Offered Service requested and shall be responsible for invoicing the Requesting Party for the Offered Service rendered pursuant to Section 4 herein.

3. Term of Agreement. This Agreement shall become effective as of the date this Agreement is approved by the legislative body of Covington and at least one additional Party and subsequently executed by those Parties according to each of those Parties' adopted policies and procedures. The remaining Party may enter into this Agreement at any time upon approval of their legislative body and subsequently executed according to that Party's policies and procedures. Unless terminated by all Parties pursuant to the terms of this Agreement, this Agreement shall remain in full force and effect until December 31, 2017.

This Agreement may be extended by written agreement of the Parties subject to the approval of such extension by each Party's legislative body.

4. Payment. Requesting Parties shall pay for Offered Services provided by Providing Parties pursuant to the following.

4.1. Payments for Offered Services. A Requesting Party shall pay for actual direct and related indirect costs, including any overhead and administrative charges, for Offered Services provided by the relevant Providing Party pursuant to the fees listed for each Providing Party in Exhibit A, attached hereto and incorporated herein by this reference (the "Service Fees).

4.1.1. Annual Adjustment of Service Fees. Providing Parties may annually adjust their respective Service Fees, beginning January 2017. Adjustments to Service Fees must be based on the local CPI-U January-to-January rate and/or changes in the local market that can be quantified. Adjustments may also be based on an annual cost study conducted by the respective Providing Party reflecting the increased cost to the Providing Party for the services provided to Requesting Parties under this Agreement. In no event may a Providing Party increase their Service Fees more than four percent (4%) each calendar year. The respective city manager, city administrator, or mayor of a Providing Party shall provide the other Parties with sixty (60) days advance written notice of the effective date of, and basis for, Service Fees adjusted pursuant to this subsection.

4.2. Billing. Each Providing Party shall submit a monthly invoice to each Requesting Party, which shall contain the amount of Offered Services provided during the preceding month. Payment shall be made by the Requesting Party within thirty (30) days of receipt of said invoice from a Providing Party.

4.3. Billing Disputes. In the event there is a dispute regarding an invoiced amount by a Providing Party, the Parties in dispute shall make every effort to resolve such dispute by mutual agreement. In the event there is no mutually agreed resolution to the dispute, the relevant Parties shall forward the dispute to each Party's City Manager/City Administrator/Mayor for resolution. In the event there is no resolution after review by the Parties' City Manager/City Administrator/Mayor, the Parties shall seek mediation through a mutually agreed mediation service and each Party shall bear its own costs for mediation. If mediation is unsuccessful, any Party may pursue any legal remedy available from a court of competent jurisdiction. Any dispute that has gone to mediation

and mediation was unsuccessful in resolving the dispute shall be grounds for any Party to terminate this Agreement for material breach.

5. Termination.

5.1. Termination by Notice. Any Party may terminate its participation in this Agreement by providing the other Parties with sixty (60) days advance written notice of the effective date of such termination. The Party providing such notice shall remain responsible for any costs incurred under this Agreement.

5.2. Termination by Mutual Written Agreement. This Agreement may be terminated in its entirety at any time by a written agreement executed by all of the Parties.

5.3. Termination for Breach. Any Party may terminate its participation in this Agreement for material breach of the terms of this Agreement upon fourteen (14) days advance written notice to the other Parties, provided that disputes regarding billing statements shall be handled pursuant to Subsection 4.3 and shall not be deemed a breach of this Agreement except as set forth in Subsection 4.3.

6. Indemnification and Hold Harmless.

6.1. Each Providing Party shall defend, indemnify and hold the City of Black Diamond, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Providing Party in performance of this Agreement, except for injuries and damages caused by the sole negligence of Black Diamond.

6.2. Each Providing Party shall hold harmless and indemnify each other Providing Party hereto, its elected officials, officers, employees, and agents (collectively the "Indemnitees") from and against any and all suits, actions, claims, liability, damages, judgments, costs, and expenses (including reasonable attorneys' fees) that result from or arise out of the acts or omissions of the respective Providing Party, its elected officials, officers, employees, and agents in connection with or incidental to the performance or non-performance of Offered Services, duties, and obligations under this Agreement.

6.3. 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 property caused by or resulting from the concurrent negligence of a Providing Party and the City of Black Diamond, its officers, officials, employees, and volunteers, the Providing Party liability, including the duty and cost to defend, hereunder shall be only to the extent of the Providing Party negligence. **It is further specifically and expressly understood that the indemnification provided herein constitutes the Providing Party's waiver of immunity under the Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.**

6.4. In the event the acts or omissions of the officials, officers, agents, and/or employees of a Party in connection with or incidental to the performance or non-performance of Offered Services, duties, or obligations under this Agreement are the subject of any liability claims by a third party, each Party shall each be liable for its proportionate concurrent negligence in any resulting suits, actions, claims, liability, damages, judgments, costs, and expenses and for their own attorneys' fees.

6.5. Nothing contained in this section or this Agreement shall be construed to create a right in any third party to indemnification.

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

7. Insurance. A Providing Party 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 Providing Party, its agents, representatives, or employees.

7.1. No Limitation. Providing Party maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Providing Party to the coverage provided by such insurance, or otherwise limit a Requesting Party's recourse to any remedy available at law or in equity.

7.2. Minimum Scope of Insurance. Each Providing Party shall obtain insurance of the types described below:

7.2.1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. If necessary, the policy shall be endorsed to provide contractual liability coverage.

7.2.2. General Liability insurance shall be written on an occurrence form and shall cover liability arising from premises, completed operations, independent contractors and personal injury and advertising injury.

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

7.3. Minimum Amounts of Insurance. Each Providing Party shall maintain the following insurance limits:

7.3.1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$5,000,000 Combined Single Limit per accident.

7.3.2. Commercial General Liability insurance shall be written with limits no less than \$5,000,000 each occurrence, \$10,000,000 general aggregate.

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

7.4.1. The Providing Party's insurance coverage shall be primary insurance as respect to a Requesting Party. Any insurance, self-insurance, or insurance pool coverage maintained by a Requesting Party shall be

excess of the Providing Party's insurance and shall not contribute with it.

- 7.4.2. The Requesting Party will not waive its right to subrogation against the Providing Party. The Providing Party's insurance shall be endorsed to waive the right of subrogation against the Requesting Party, or any self-insurance, or insurance pool coverage maintained by the Requesting Party.
- 7.4.3. The Providing Party's insurance shall not be cancelled by any party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the other Parties to this Agreement.
- 7.4.4. If any coverage is written on a "claims made" basis, then a minimum of a three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided to the other Parties to this Agreement.

7.5. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII, or as a risk pool, approved by and in good standing with the State of Washington Office of Risk Management.

7.6. **Verification of Coverage.** A Providing Party shall furnish the other Parties to this Agreement with proof of coverage evidencing the insurance requirements of the Providing Service provider before commencement of the Offered Service.

8. **Independent Service Provider.**

8.1. The Parties intend that an independent contractor relationship is created by this Agreement. In providing Offered Services under this Agreement, each Providing Party is an independent contractor and neither it nor its officers, agents, or employees are employees of a Requesting Party for any purpose, including responsibility for any federal or state tax, industrial insurance, or Social Security liability. Neither shall the provision of Offered Services under this Agreement give rise to any claim of career service or civil service rights, which may accrue to an employee of the Providing Party under any applicable law, rule, or regulation. Nothing in this Agreement is intended to create an interest in or give a benefit to third persons not signing as a party to this Agreement. As an independent contractor, each Providing Party shall be responsible for the reporting and payment of all applicable local, state, and federal taxes. No agent, employee, or representative of a Providing Party shall be deemed to be an employee, agent, or representative of a Requesting Party for any purpose, and the employees of a Providing Party are not entitled to any of the benefits that a Requesting Party provides for its employees.

8.2. In the performance of the Offered Services herein each Providing Party is an independent contractor with the authority to control and direct the performance of the details of the Offered Service; however, the results of the Offered Services herein must meet the approval of the Requesting Party and shall be subject to the Requesting Party's general rights of inspection and review to secure the satisfactory completion thereof.

Each Providing Party shall be solely and entirely responsible for its acts and for the acts of its agents, employees, or representatives performed within the authorized scope of its agents, employees, or representatives' duties during the performance of this Agreement.

9. Miscellaneous.

9.1. Notices. Notwithstanding Sub-sections 2.2 and 2.3 herein, notices to be provided pursuant to this Agreement shall be provided in writing to the person and address indicated below. Notices shall be deemed delivered three (3) days after placement of the notice in the U.S. Mail, first class postage pre-paid. Courtesy copies of notices may be provided via email transmission but shall not constitute delivery of written notice as set forth herein.

9.1.1. City of Covington
Community Development Director
16720 SE 271st St. Suite 100
Covington, WA 98042

9.1.2. City of Maple Valley
Community Development Director
22017 SE Wax Road, Suite 200
Maple Valley, WA 98038

9.1.3. City of Black Diamond
Community Development Director
24301 Roberts Drive
PO Box 599
Black Diamond, WA 98010

9.2. Non-Waiver of Breach. The failure of any Party to insist upon strict performance of any of the covenants and agreements contained in this Agreement shall not be construed to be a waiver or relinquishment of those covenants, agreements, or options, and the same shall be and remain in full force and effect.

9.3. Resolution of Disputes and Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Subject to Sub-section 4.3, if the Parties are unable to settle any dispute, difference, or claim arising from the Parties' performance of this Agreement, the exclusive means of resolving that dispute, difference, or claim shall only be by filing suit exclusively under the venue, rules, and jurisdiction of the King County Superior Court, King County, Washington, unless the relevant Parties agree in writing to an alternative dispute resolution process.

9.4. Assignment. This Agreement is not assignable by any Party, in whole or in part.

9.5. Modification. Except as provided for in Subsection 4.1.1, no waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless made in writing and approved by the legislative body of each city.

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

9.6.1. Nondiscrimination in Employment. In the performance of this Agreement, no Party will discriminate against any employee on the grounds of race, religion, creed, color, national origin, sex, marital status, disability, sexual orientation, age, or other basis prohibited by state or federal law unless based upon a bona fide occupational qualification. Each Party shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state, and federal laws prohibiting discrimination in employment.

9.6.2. Nondiscrimination in Services. No Party will discriminate against any recipient of any Services provided for in this Agreement on the grounds of race, religion, creed, color, national origin, sex, marital status, disability, sexual orientation, age, or other basis prohibited by state or federal law.

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

9.8. Severability. If any provision of this Agreement, in whole or in part, is adjudicated to be invalid, such action shall not affect the validity of any provision not so adjudicated.

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

9.10. No Third Party Beneficiaries. This Agreement is between the Parties and is not meant to benefit any third party.

9.11. Counterparts. This Agreement may be executed in multiple counterparts, any of which shall constitute an agreement by and among the Parties who have executed this Agreement, provided that each Party shall transmit to the attention of the Covington City Clerk an original, executed signature page of this Agreement. The Covington City Clerk shall cause a copy of this Agreement and a copy of each executed signature page of each party to be posted on the Covington City website pursuant to RCW 39.34.040.

IN WITNESS WHEREOF, the Parties below execute this Agreement, which shall become effective pursuant to the terms of Section 3, herein.

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| <p>CITY OF COVINGTON:</p> <p>By: _____ (signature) Print Name: <u>Regan Bolli</u> Its <u>City Manager</u></p> <p>DATE: _____</p> | <p>CITY OF MAPLE VALLEY:</p> <p>By: _____ (signature) Print Name: <u>David W. Johnston</u> Its <u>City Manager</u></p> <p>DATE: _____</p> |
| <p>ATTESTED BY:</p> <p>_____ Sharon Scott, City Clerk</p> | <p>ATTESTED BY:</p> <p>_____ City Clerk</p> |
| <p>APPROVED AS TO FORM ONLY:</p> <p>_____ Sara Springer, City Attorney</p> | <p>APPROVED AS TO FORM ONLY:</p> <p>_____ Patricia Taraday, City Attorney</p> |

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| <p>CITY OF BLACK DIAMOND:</p> <p>By: <u>Carol Benson</u> (signature) Print Name: <u>Carol Benson</u> Its <u>Mayor</u></p> <p>DATE: <u>12/18/15</u></p> |
| <p>ATTESTED BY:</p> <p><u>Brenda L. Martinez</u> City Clerk</p> |
| <p>APPROVED AS TO FORM ONLY:</p> <p>_____ City Attorney</p> |

EXHIBIT A
PROVIDING PARTIES' SERVICE FEES—2016 - 2017

- 1. Covington Service Fees**
 - (a) Building Administration Services of Building Official, including Project Review or Inspection--Hourly fee of \$89.00.**
 - (b) Building Plan Review Services of Plans Examiner--Hourly fee of \$75.00**
 - (c) Travel time will be billed at the same hourly fee for each service provider as indicated above.**

- 2. Maple Valley Service Fees**
 - (a) Building Inspection Services of Building Inspectors-Hourly fee of \$75.00, which includes vehicle and travel costs.**

- 3. Services Fees may be reviewed annually by each Providing Party pursuant to Subsection 4.1.1.**