

RESOLUTION NO. 13-872

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON CONFIRMING THE MAYOR'S APPOINTMENT OF MARK HOPPEN AS CITY ADMINISTRATOR AND AUTHORIZING THE MAYOR TO EXECUTE AN EMPLOYMENT AGREEMENT**

**WHEREAS**, during the 2013 Budget adoption Council approved the appropriation of funds for a City Administrator for the year 2013 as a contracted position; and

**WHEREAS**, since February 2013 Mark Hoppen has been serving as City Administrator through a contract with the Prothman Company; and

**WHEREAS**, the Mayor and City Council feel it would now benefit the City to make the City Administrator position an employee rather than contracted position; and

**WHEREAS**, the Mayor has appointed Mark Hoppen to the position of City Administrator and seeks City Council confirmation of this appointment and authority to execute an employment agreement; and

**WHEREAS**, the Council supports the Mayor's selection of Mr. Hoppen and finds the proposed contract to be fair and reasonable;

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

**Section 1.** The City Council hereby confirms the Mayor's appointment of Mark Hoppen as City Administrator and authorizes the Mayor, on behalf of the City, to execute the Employment Agreement substantially in the form of the agreement attached hereto as Exhibit A.

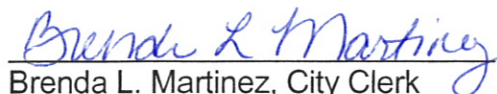
**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 2<sup>ND</sup> DAY OF MAY, 2013.**

CITY OF BLACK DIAMOND:



Rebecca Olness, Mayor

Attest:



Brenda L. Martinez, City Clerk

**EMPLOYMENT AGREEMENT  
BETWEEN  
CITY OF BLACK DIAMOND AND MARK HOPPEN  
REGARDING CITY ADMINISTRATOR POSITION**

1. Date and Parties. This agreement (“Agreement”), for reference purposes only, is dated the 2nd day of May, 2013, and is entered into between the City of Black Diamond, a Washington municipal corporation (“City”) and Mark Hoppen, (“Mr. Hoppen”) and shall be referred to as the “Agreement”.

2. Purpose. The purpose of this Agreement is to define the terms and conditions of Mr. Hoppen’s employment with the City of Black Diamond.

3. Appointment to City Administrator Position. Mr. Hoppen is hereby appointed, effective May 2, 2013, to the position of City Administrator and Mr. Hoppen hereby accepts that appointment.

4. Term. It is the desire of both parties that Mr. Hoppen shall continue to serve as the City’s City Administrator for a long period of time. The parties acknowledge, however, that the City Administrator position is an “at will” employment position, and the Mayor and Mr. Hoppen are at liberty to terminate his employment with the City at any time, subject only to the terms and conditions set forth in this Agreement.

5. Duties. Mr. Hoppen shall perform all duties and obligations of the City Administrator as required by law, and such other duties as are set forth in the City Code, or as assigned from time to time by the Mayor. Mr. Hoppen recognizes that the City Council is the legislative and policy making body of the City. The City Administrator, under the direction and control of the Mayor, is the individual responsible for administration of City Personnel, and for the administration and enforcement of the City’s ordinances, resolutions, policies and directives of the City Council. Mr. Hoppen shall attend all special and regular meetings of the City Council, unless excused, and such other meetings as required by the Mayor.

6. Work Schedule. The City and Mr. Hoppen acknowledge that the proper performance of the duties of the City Administrator will require Mr. Hoppen to generally observe normal business hours Monday through Thursday and attend regular and special meetings of the City Council, and will also sometimes require the performance of necessary services outside of this schedule. The City and Mr. Hoppen acknowledge and agree that the compensation herein provided includes compensation for the performance of all such services.

7. Salary. Mr. Hoppen’s starting salary shall be \$8,583.33 per month, plus any supplemental benefits that are set forth in the City’s Personnel Manual, as amended from time to time. His salary shall be paid in accordance with the procedures for other employees of the City. Mr. Hoppen’s salary shall be annually reviewed to determine whether or not an increase is appropriate, taking into account Mr. Hoppen’s performance, the prevailing compensation for

other City Administrators with similar responsibilities in the Puget Sound Region and such other factors as the Mayor and City Council deems appropriate. In addition, the City Administrator shall receive Cost of Living Adjustment (COLA) as otherwise provided to City Department Heads.

8. Benefits. All health care (medical, dental, and vision), leave (sick, vacation, administrative), disability insurance, and life insurance benefits applicable to City Department Director employees, as set forth in the City's Personnel Manual, as it now exists or may subsequently be amended, shall also be applicable to Mr. Hoppen, except as may be modified by this agreement. Mr. Hoppen shall further be entitled to the following:

a. Sick Leave. Mr. Hoppen shall immediately be credited with 10 days sick leave.

b. Vacation. Mr. Hoppen shall immediately be credited with 20 days vacation.

c. Retirement. Mr. Hoppen has elected not to participate in the Public Employees Retirement System (PERS) plan. The City agrees that, in lieu of Mr. Hoppen's participation in the PERS plan, the City will establish a retirement annuity (i.e. a tax-deferred investment product), at the direction of Mr. Hoppen, within 30 days of the effective date hereof. The City and Mr. Hoppen agree that the fees associated with the administration and management of the retirement annuity shall be funded from the contributions to the retirement annuity. The City agrees that it will contribute to the retirement annuity on a quarterly basis the equivalent of the rate that would be paid into the PERS plan by the City on behalf of Mr. Hoppen if he had elected to participate in the PERS plan.

d. Deferred Compensation. The City agrees that, in addition to the contributions to the retirement annuity established pursuant to Section 7(c) above, the City shall contribute an additional 25% match each month for contributions by Mr. Hoppen, up to \$25.00 per month total, with such payments coinciding with the schedule for payments into said retirement annuity pursuant to Section 7(c) above.

e. Membership Dues. The City shall pay membership dues for Mr. Hoppen's membership in the International City Managers Association (ICMA) and the Washington City/County Managers Association (WCCMA). The City shall pay for Mr. Hoppen's attendance at such conferences and for such other memberships, subscriptions, or dues, desirable for Mr. Hoppen's continued professional growth, advancement for the good of the City, and as shall be contained in the City's adopted annual budget.

f. Professional Development. The City agrees to budget for and pay for travel and subsistence expenses of Mr. Hoppen for professional and office travel, meetings and occasions adequate to continue the professional development of Mr. Hoppen and to adequately pursue necessary official functions for City, including, but not limited to the Association of Washington Cities, the Washington City/County Administrators Association and such other regional, state and local governmental groups and committees thereof which Mr. Hoppen serves as a member.

g. General Expenses. The City recognizes that certain expenses of a non-personal and generally job-affiliated nature are incurred by Mr. Hoppen, and agrees to reimburse or to pay said general expenses allowed by the laws of the State of Washington and City personnel manual and policies, and the Finance Director is authorized to disburse such monies upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits as approved by the City.

h. Car Allowance. The City shall pay a monthly allowance of \$200 for automobile expenses incurred by Mr. Hoppen using his personal vehicle for City related business. Said allowance is in lieu of the City otherwise providing Mr. Hoppen with use of a City vehicle on a regular basis. This allowance shall be adjusted annually, commencing January 1, 2014, in amount equal to the percentage increases to the Internal Revenue Service's motor vehicle mileage expense rate using 2013 as the base year. In addition to the foregoing, in the event that Mr. Hoppen, in the performance of his duties and obligations is required to use his automobile for travel outside the Puget Sound Region, Mr. Hoppen will be entitled to reimbursement for mileage incurred outside said Region at the City's adopted mileage reimbursement rate.

i. Civic Club Membership. The City recognizes the desirability of representation in local civic clubs and other organizations, and Mr. Hoppen is authorized to become a member of one (1) civic club for which the City shall pay dues and meeting expenses. Mr. Hoppen shall report to the City on membership he has taken at the City's expense.

9. Performance Review. Mr. Hoppen's performance shall be reviewed annually on or about the anniversary date of his commencement of employment. Provided, however, in the first year of Mr. Hoppen's employment the Mayor will conduct a facilitated review with Mr. Hoppen at the six-month anniversary of employment. The Mayor, as a part of the performance review process, shall define the goals and performance objectives which he determines necessary for the proper operation of the City and to attain the City's policy objectives. The Mayor, in consultation with Mr. Hoppen, will establish a priority amongst the various goals and objectives and said objectives and priorities shall be reduced to writing. Mr. Hoppen's salary and other benefits may be adjusted by mutual agreement of the parties during the review process as specified in this Agreement. In recognition of accomplishments and excellent performance, a merit increase may be granted to Mr. Hoppen.

10. Termination.

a. By the City. The parties recognize and acknowledge that the provisions of the City Personnel Manual, and paragraph 7 above notwithstanding, Mr. Hoppen is an "at will" employee and the Mayor may terminate Mr. Hoppen with or without cause at any time and for any reason,

b. Termination Pay and Termination Benefits. In the event the City elects to terminate Mr. Hoppen for any reason other than "cause", Mr. Hoppen shall receive a cash

payment equal to four (4) months of Mr. Hoppen's base rate and education incentives, plus a sum equal to the premiums for the City medical plan for four (4) months medical and dental for Mr. Hoppen and dependents ("Termination Pay"). Mr. Hoppen shall also receive payment for all accumulated vacation leave, administrative leave, and sick leave to the extent it is authorized by the City's Personnel Manual ("Termination Benefits"). Said sum shall be subject to applicable federal withholding taxes. In consideration of said payment, Mr. Hoppen agrees to execute a release of all claims against the City, its elected or appointed officers, employees or agents, for any claims arising out of Mr. Hoppen's employment or Mr. Hoppen's termination of employment with the City. Provided, if Mr. Hoppen is terminated for "cause", then Mr. Hoppen shall not be entitled to any Termination Pay, but will remain entitled to his Termination Benefits; provided that, such Termination Benefits shall only include payment for any remaining accrued sick leave and vacation leave that is in excess of the amount of sick leave and vacation leave provided as a credit pursuant to Sections 7(a) & (b) of this Agreement. For purposes of this Agreement, the term "cause" shall mean misfeasance, malfeasance, or nonfeasance in office.

c. Termination by Mr. Hoppen. In the event Mr. Hoppen elects to terminate his employment with the City, Mr. Hoppen agrees to provide the City with not less than sixty (60) days' notice prior to the effective date of said termination of employment. Notwithstanding the foregoing notice requirement, nothing shall prevent the Mayor, upon receiving Mr. Hoppen's notice of intent to terminate his employment, from compensating Mr. Hoppen at the rate of Mr. Hoppen's base salary for the unexpired portion of the sixty (60) days notice and releasing Mr. Hoppen prior to the expiration of said notice period. Mr. Hoppen shall not be entitled to Termination Pay, but shall receive Termination Benefits; provided that, such Termination Benefits shall only include payment for any remaining accrued sick leave and vacation leave that is in excess of the amount of sick leave and vacation leave provided as a credit pursuant to Sections 7(a) & (b) of this Agreement.

11. Indemnification. Mr. Hoppen shall be entitled to the benefits and subject to the responsibilities, set forth in Black Diamond Municipal Code Chapter 2.66.

12. Bonding. The City shall bear the full costs of any fidelity or other bonds required of Mr. Hoppen under any law or ordinance associated with performing the City Administrator duties.

13. Integration. This Agreement constitutes the entire agreement between the parties, and both parties acknowledge that there are no other agreements, oral or otherwise, that have not been fully set forth in the text of this Agreement.

14. Modification. The parties agree that this Agreement can be amended or modified only by written addendum to this Agreement, approved by the City Council, and signed by both parties.

15. Authorization. The Mayor's appointment of Mr. Hoppen to the position of City Administrator was confirmed by the City Council on the 2nd day of May, 2013 and the Mayor

was authorized by the City Council to execute this agreement by the adoption of Resolution number 13-872.

16. Review by Independent Legal Counsel. Mr. Hoppen represents and acknowledges that he has read this Agreement in its entirety and has had an opportunity to review the Agreement. He further represents and acknowledges that it is his understanding that this Agreement has been reviewed and approved by the City of Black Diamond Attorney on behalf of the City only, and not on behalf of Mr. Hoppen. By virtue of this passage, he further acknowledges that he has been advised that he has the right to consult independent counsel concerning this Agreement, and that by signing this Agreement he acknowledges that he has afforded himself the opportunity to do so, or hereby expressly waives his right to have the Agreement reviewed by independent legal counsel, and agrees to the terms hereof by signing the same.

CITY OF BLACK DIAMOND

By: Rebecca Olness  
Rebecca Olness, Mayor  
Date: May 3, 2013

Mark Hoppen  
Mark Hoppen  
Date: May 3, 2013

ATTEST:

By: Brenda L. Martinez  
Brenda L. Martinez, City Clerk

Approved as to form:

By: \_\_\_\_\_  
Chris Bacha, City Attorney