

**CITY OF BLACK DIAMOND
WASHINGTON**

RESOLUTION NO. 13-893

**A RESOLUTION OF THE CITY OF BLACK DIAMOND,
WASHINGTON, ADOPTING AND AUTHORIZING
EXECUTION OF A COST REIMBURSEMENT
AGREEMENT WITH BD VILLAGE PARTNERS, LP, AND
YARROW BAY DEVELOPMENT, LLC**

WHEREAS, in year 2010 the Washington State Legislature enacted Engrossed Substitute Senate Bill 6241 (codified at RCW Ch. 36.145) authorizing legislative authorities, such as the Black Diamond City Council, to form special taxing districts known as Community Facilities Districts (“CFD”), to provide an option for landowners to voluntarily finance local improvements through special assessments upon their property; and

WHEREAS, the legislature found that such legislation was necessary because inadequate community facilities and infrastructure exist to support growth over the next 20 years and current financing options were not adequate or flexible enough to fund these needed facilities; and

WHEREAS, on September 4, 2013, BD Village Partners, LP and YarrowBay Development LLC (hereafter the “**Petitioners**”) submitted their petition (hereafter the “**Petition**”) to King County Record and Licensing Services for certification of its petition for the formation of CFD No. 2013-1 (hereinafter “**CFD No. 2013-1**” or the “**CFD**”) with its proposed district boundaries located entirely within the corporate boundaries of the City of Black Diamond, King County, Washington; and

WHEREAS, the City Council is authorized under state laws to approve or deny a CFD petition; and

WHEREAS, RCW 36.145.020(1)(6) provides that the Petitioners shall agree to pay for the costs of the CFD formation (“**Administrative Expenses**”); and

WHEREAS, the City has already incurred and will continue to incur Administrative Expenses related to this CFD petition, including by way of example and not limitation, labor and benefit costs for City Staff to the extent work is performed in furtherance of the CFD petition, and costs of legal services and other consultants to assist the City in the process of approving the CFD petition; and

WHEREAS, the City and Petitioner desire to enter into a cost reimbursement agreement for the purpose of setting forth the terms and conditions upon which Petitioner agrees to reimburse the City for its Administrative Expenses;

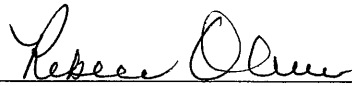
NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,

WASHINGTON, DOES IT SOLVE AS FOLLOWS:

Section 1. Approval of Cost Reimbursement Agreement. The Mayor of the City of Black Diamond is hereby authorized to execute the cost reimbursement agreement with Petition in substantially the form of agreement on file with the City Clerk.

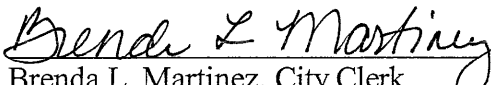
PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 3RD DAY OF OCTOBER, 2013.

CITY OF BLACK DIAMOND



Rebecca Olness, Mayor

ATTEST/AUTHENTICATED:



Brenda L. Martinez, City Clerk

Approved as to form:

Chris Bacha
Kenyon Disend, PLLC,
City Attorney

Filed with the City Clerk: 10/4/2013
Passed by the City Council: 10/3/2013
Resolution No.: 13-893
Date Posted: 10/4/2013

AGREEMENT FOR COST REIMBURSEMENT

CFD PETITION (2013-1)

This Cost Reimbursement Agreement (“**Agreement**”) is made this 14th day of October, 2013, by and between the City of Black Diamond, Washington, a municipal corporation operating under the laws of the state of Washington (the “**City**”) and BD Village Partners, LP, a Washington limited partnership and Yarrow Bay Development, LLC, a Washington limited liability company (collectively, the “**Petitioner**”) for the purposes set forth herein.

RECITALS

WHEREAS the City is a municipal corporation operating as a non-charter code City under the laws of the State of Washington; and

WHEREAS Petitioner has petitioned the City to authorize the formation of a community facilities district entitled Black Diamond CFD No. 2013-1 (the “**CFD**”) pursuant to Ch. 36.145 RCW; and

WHEREAS the City Council is authorized under state laws to approve a CFD petition; and

WHEREAS RCW 36.145.020(1)(6) provides that the Petitioners shall agree to pay for the costs of the CFD formation (“**Administrative Expenses**”); and

WHEREAS the City has already incurred and will continue to incur Administrative Expenses related to this CFD petition, including by way of example and not limitation, labor and benefit costs for City Staff to the extent work is performed in furtherance of the CFD petition, and costs of legal services and other consultants to assist the City in the process of approving the CFD petition; and

WHEREAS the City and Petitioner desire to enter into this Agreement for the purpose of setting forth the terms and conditions upon which Petitioner agrees to reimburse the City for its Administrative Expenses;

TERMS

NOW, THEREFORE, in consideration of the following mutual promises and agreements, City and Petitioner agree as follows:

1. Incorporation of Recitals. The parties agree that the Recitals constitute the factual basis upon which the City and the Petitioner have entered into this Agreement. The City and the Petitioner each acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement as though fully set forth at length.

2. City to Retain Consultants. As a necessary and indispensable part of its process relating to its decision relative to the approval of a CFD for Petitioner, the City has retained, and may in the future retain, the services of consultants to provide advice as the City may deem necessary in its reasonable and sole discretion. The Petitioner agrees that, notwithstanding the Petitioner's reimbursement obligations under this Agreement, City consultants shall be the contractors exclusively of the City and not of the Petitioner. Except for those disclosures required by law, including, without limitation, the Public Records Act, all conversations, notes, memoranda, correspondence and other forms of communication by and between the City and its consultants shall be, to the extent permissible by law, privileged and confidential and not subject to disclosure to the Petitioner.

3. Petitioner's Obligations.

a. In accordance with the procedures outlined below, Petitioner shall pay for all Administrative Expenses the City has incurred prior to the effective date of this Agreement and for the Administrative Expenses it incurs thereafter reasonably related to the process for approval of the Petitioner's CFD. **Within fourteen (14) days of execution of this Agreement, City shall provide Petitioner with a statement identifying the City's reimbursable costs incurred prior to execution of this Agreement.** Petitioner's payment obligations hereunder include, without limitation, payment for all Administrative Expenses that the City incurs in holding the public hearing on the Petitioner's CFD Petition, the drafting of the resolution approving the Petitioner's CFD, including services performed by consultants retained by the City for engineering, peer review, environmental, legal, and other related disciplines associated with the review of the Petitioner's CFD petition.

b. Within ten (10) business days of full execution of this Agreement, Petitioner shall deposit with the City the sum of five thousand dollars (\$5,000.00) (the "**Administrative Expenses Fund**"), which the City may draw upon to pay for Administrative Expenses authorized for reimbursement by this Agreement. If the balance of the Administrative Expenses Fund falls below \$1000.00, Petitioner shall, within thirty (30) days of receipt of written request from the City, deposit such additional amount of money into the Administrative Expenses Fund as the parties agree is reasonably necessary, but no less than \$2500.00, for the continuing reimbursement of Administrative Expenses under this Agreement. Petitioner shall be entitled to a refund from the City of any unencumbered amounts remaining in the Administrative Expenses Fund within thirty (30) days of: (i) conclusion of the City's process for review and approval of the Petitioner's CFD petition; (ii) upon Petitioner's written notice of withdrawal of its CFD

petition; or (iii) termination of this Agreement as provided in Paragraph 4.

c. Upon request of the Petitioner, the City shall tender copies of receipts for all paid invoices for City consultants to Petitioner within fourteen (14) days of such request or fourteen (14) days of the date that City paid such invoices, whichever is earlier. Upon request of the Petitioner, City will provide Petitioner with a written statement of the balance of the Administrative Expenses Fund within fourteen (14) days of such request.

d. Any time Petitioner disputes an invoice, receipt, deposit or reimbursement request from the City, Petitioner shall make such disputed deposit in a timely manner, under protest, to the City according to the timeframes set forth in this Agreement. Following resolution of the dispute per the processes set forth in Paragraph 5, the City shall refund any over payment to Petitioner within thirty (30) days of final resolution. Nothing in this subsection (d) shall be construed as limiting Petitioner's ability to terminate this Agreement pursuant to the provisions of Paragraph 4.

The Petitioner acknowledges that the City has not made any representation or warranty with respect to the Petitioner's ability to obtain approval of its CFD petition. Nothing in this Agreement is intended or shall be construed to require that the City exercise its authority to approve the Petitioner's CFD petition. The outcome of the City's process for review and approval of a CFD petition is independent of and is in no way biased, prejudiced or predetermined in any way by this Agreement.

4. Duration of Agreement. This Agreement shall be in full force and effect for a period commencing with the full execution of this Agreement and terminating upon, (a) mutual agreement of the parties, (b) written notice of withdrawal of the CFD petition, or (c) upon approval or denial of the CFD petition by the City Council; provided, however, that Petitioner's right to so terminate this Agreement by withdrawal of the CFD petition is expressly contingent upon Petitioner satisfying both of the following: (1) Petitioner shall give City written notice; and (2) Petitioner shall satisfy all of its obligations under this Agreement up through the proposed effective date of termination. For purposes of this section, Petitioner's obligations shall include its obligation to reimburse the City for all Administrative Expenses incurred by the City provided prior receipt of the notice of withdrawal of the CFD petition, whether or not paid by the City to consultants prior to the date of termination. City shall provide Petitioner with an invoice or invoices that reasonably documents such Administrative Expenses.

The City may, in its reasonable and sole discretion, terminate this Agreement prior to the term set forth above, without cost or liability to the City, upon thirty (30) days prior written notice to the Petitioner in the event that Petitioner fails to satisfy any obligation of this Agreement and Petitioner fails to cure such default within thirty (30) days of receipt of notice from the City.

5. Dispute Resolution. The parties shall apply their best efforts to fairly resolve any disputes that may arise in regard to implementation of this Agreement. In the event the parties cannot agree on terms for resolving a dispute within twenty-one (21) days, they may mutually select a neutral third party to help facilitate such resolution. If resolution cannot be reached

within fourteen (14) days, they may agree to a schedule and process for continued efforts to resolve the dispute. Neither party shall file a lawsuit in court until they have completed at least one formal session of mediation or other alterative dispute resolution process.

6. Attorneys' Fees. In the event any action is brought in court to enforce, or on account of, this Agreement or any provision thereof, the substantially prevailing party shall be awarded its reasonable attorneys' fees together with reasonable expenses and costs incurred in connection with any such litigation. "Attorneys' Fees" shall include services rendered at both the trial and appellate levels as well as services rendered subsequent to judgment in obtaining execution thereon.

7. Assignment. This Agreement may be assigned only upon prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

8. Entire Agreement. This Agreement contains the entire agreement between the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties hereto. Either party may request changes to the Agreement. Proposed changes which are mutually agreed upon shall be incorporated by written amendments to this Agreement, signed by both parties.

9. Applicable Law: Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington; provided that, Petitioner's authority to enter into this agreement shall be subject to and construed under the laws of the Washington State. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be exclusively in King County, Washington. The substantially prevailing party in any such action shall be entitled to its reasonable attorneys' fees, expert witness fees, and costs of suit.

10. Warranty.

a. City. The City warrants that it has full right and authority to enter into and accept this Agreement in accordance with the terms hereof, and by entering into or performing this Agreement, City is not in violation of any law, regulation, or agreement by which it is bound or to which it is subject.

b. Petitioner. Petitioner warrants that it has full right and authority to enter into and accept this Agreement in accordance with the terms hereof, and by entering into or performing this Agreement, City is not in violation of any charter, by-law, law, regulation, or agreement by which it is bound or to which it is subject. Petitioner further warrants that, execution of this Agreement by and on behalf of Petitioner has been duly authorized by all requisite Board action, including but not limited to, the waviars, express or implied, set forth in sections 6, 9 and 10 herein, that the signatories for Petitioner hereto are authorized to sign this Agreement, and that the joinder or further consent of any other party, is not necessary to make valid and effective the execution, delivery, and performance of this Agreement.

11. Severability. If any section, sentence, clause or phrase of this Agreement is held to be invalid or unconstitutional by a court of competent jurisdiction, the portion declared invalid or unconstitutional shall be severed, and the City shall enforce the remaining provisions of this Agreement shall remain in full force.

12. No Joint Venture. Nothing contained in this Agreement shall constitute or be deemed or construed to create a partnership, joint venture or any agency relationship between the City and Petitioner.

13. Notices.

Notices to the City of City shall be sent to the following address:

City of Black Diamond
Attn: Andy Williamson, Economic Development Director
24301 Roberts Drive
PO Box 599
Black Diamond, WA 98010
(360) 886-2560 Ext. 215 Office

with a copy to:

Kenyon Disend, PLLC
City Attorney
Attn: Chris Bacha
11 Front Street
Issaquah, WA. 98027
(425) 392-7090 Office
Chris@kenyondisend.com E-mail

Notices to Petitioner shall be sent to the following address:

BD Village Partners, LP
c/o Yarrow Bay Holdings
Attn: Colin Lund
10220 NE Pointe Drive, Suite 310
Kirkland, WA 98033

with a copy to:

Yarrow Bay Holdings
Attn: Megan Nelson, Director of Legal Affairs
10220 NE Points Drive, Suite 310
Kirkland, WA 98033

CITY OF BLACK DIAMOND:

By Rebecca Olness
Rebecca Olness, Mayor

Date: October 8, 2013

BD VILLAGE PARTNERS, LP:

By [Signature]
Its: Authorized Person

Date: 10-14-13

YARROW BAY DEVELOPMENT, LLC:

By [Signature]
Its: Authorized Person

Date: 10-14-13

Approved As To Form:

[Signature]

Chris Bacha
Kenyon Disend, PLLC
City Attorney