

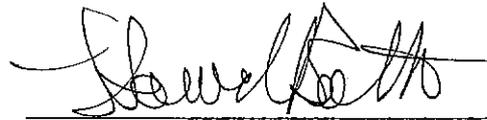
RESOLUTION NO. 07-419

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY AND RICK LUTHER FOR PROVIDING POLICE CHIEF/CITY ADMINISTRATOR SERVICES TO THE CITY OF BLACK DIAMOND

WHEREAS, the City has determined that this agreement is made and entered into for the purposes of providing Police Chief/City Administrator services to the City; now, therefore

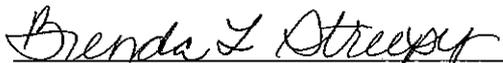
BE IT RESOLVED that the Mayor is hereby authorized to enter into an agreement with Rick Luther for the purposes of providing Police Chief/City Administrator services for the City of Black Diamond and said agreement to be substantially in the form attached hereto as Exhibit A and by reference incorporated herein.

ADOPTED by the City Council at an open public meeting held on the 4th day of January, 2007.



Howard Botts, Mayor

Attest:


Brenda L. Streepy, City Clerk

CITY OF BLACK DIAMOND
AGREEMENT FOR POLICE CHIEF/CITY ADMINISTRATOR SERVICES

THIS AGREEMENT is made and entered into as of the 4th day of January, 2007, by and between the City of Black Diamond, a Washington Municipal Corporation thereafter "Black Diamond" and Rick Luther (hereafter "Luther") for purposes of providing Police Chief/City Administrator services to the City of Black Diamond.

NOW, THEREFORE, the parties agree as follows:

Section 1. Intent. As Black Diamond has lost a significant number of key employees over the past months and Black Diamond recognizes Luther's value to Black Diamond in providing institutional knowledge as Black Diamond deals with major growth activity in the coming few years, Black Diamond has determined it is in the Black Diamond's best interest to enter into a contract for services.

Section 2. Scope of Services. Luther agrees to exercise best efforts in the capacity of Police Chief/City Administrator of Black Diamond, responsibilities and authorities shall include those duties and powers as enumerated in the City job descriptions of both the Police Chief and City Administrator.

Section 3. Employment Status. Luther's employment status for the term of this Agreement shall be as an employee of Black Diamond and not as an independent contractor. Luther's employment status as City Administrator shall be at will, subject to the terms of this Agreement, and shall commence on January 1, 2007. Luther's employment status as Police Chief is not modified by this Agreement and shall continue under applicable Civil Service Rules and Regulations and he shall continue to perform all the duties of Police Chief.

Section 4. Compensation and Benefits. Luther shall receive the following compensation and benefits:

a. **Salary.** Luther shall be paid his normal salary as Police Chief as approved through the 2007 Budget. Luther shall be reimbursed an additional \$2,000 per month for as long as he continues in the joint Police Chief / City Administrator role.

b. **Participation in Retirement System.** Luther shall continue to participate in the Law Enforcement/Fire Fighters Retirement Plan offered by the State of Washington LEOFF program. Black Diamond shall continue to fund the employer's share of the retirement contribution at the applicable LEOFF rate.

c. **Vacation Allowance.** Luther shall continue to accrue vacation leave at the current rate per the Black Diamond City Policy manual. Upon



Black Diamond



Luther

implementation of this contract 345 additional hours of vacation leave shall be placed in Luther's vacation bank and his new maximum accrual shall be raised to 633 hours.

d. Health Care Benefit: If Luther continues to fulfill both job duties as described in this contract until January 1st, 2010, Black Diamond shall pay Luther's personal health care benefits upon retirement until such time as he is eligible for Medicare medical insurance. If Luther leaves the Police Chief/City Administrator dual position, reverts back to stand-alone Police Chief, the Agreement expires by its own terms prior to that date, or he, for any reason, leaves city employment prior to that date, then he shall not be entitled to the extended health care benefit, or its financial equivalent.

e. Liability Protection: Black Diamond shall defend and hold Luther harmless as to any actions, or any conditions where he fails to act during the term of this Agreement, if said action, or failure to act is made in a good faith belief that the action or failure to act falls within the scope of his employment, even though such action or failure to act may subsequently be determined to be negligent.

Section 5. Compliance with Laws. Luther shall faithfully observe and comply with all federal, state and local laws, ordinances and regulations applicable to the services to be rendered under this Agreement.

Section 6. Term. The term of this Agreement shall run through December 31st, 2007 and may be renewed upon the mutual Agreement of the parties or Luther may also return to his position of full time Police Chief at that time.

Section 7. Emergency Clause. At the direction of the Mayor and concurrence of the City Council, Black Diamond may terminate this contract early and place Luther back into the position of City Police Chief. Luther shall retain any benefits that were earned during the performance of this contract upon his return to his former position.

Section 8. Termination. Black Diamond reserves the right to terminate this Agreement at any time. Luther reserves the right to terminate this Agreement with ninety (90) calendar days notice to the Black Diamond Mayor.

Section 9. Notice. Any written notices required to be given by Black Diamond to Luther or by Luther to Black Diamond shall be delivered to the following parties at the following addresses:

To Black Diamond: Mayor
City of Black Diamond
PO Box 599
Black Diamond, WA 98010



Black Diamond



Luther

With a copy to: Loren D. Combs
McGavick Graves, P.S.
1102 Broadway, Suite 500
Tacoma, WA 98402

To Luther: Rick A. Luther
P.O. Box 1101
Black Diamond, WA 98010

Any notices may be either delivered personally to the addresses of the notice or may be deposited in the United States mail, postage prepaid, to the address set above. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

Section 10. General Provisions.

a. This Agreement constitutes the entire Agreement between the parties, and both parties acknowledge that there are no other Agreements, oral or otherwise.

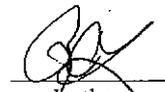
b. The parties hereby further agree that this Agreement cannot be amended or modified without the written concurrence of both parties.

c. Waiver by Black Diamond or Luther of any provision of this Agreement shall not constitute a waiver of any other provision.

d. If any provision or portion of this Agreement is held to be unconstitutional, invalid, or unenforceable, Black Diamond shall have the right, at its option, to declare the Agreement void and enter into negotiations with the Employee for execution of a new personal service Agreement. Neither party shall be liable to the other for the loss or modification of any benefits, rights or responsibilities that may occur as a result of entering into this Agreement, including, but not limited to loss or modification of retirement benefits.

e. Luther 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, Loren D. Combs of McGavick Graves, P.S. in their representation of the City only, and not on behalf of Luther. By virtue of this passage, Luther 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


Black Diamond


Luther

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

**POLICE CHIEF/
CITY ADMINISTRATOR**



Howard Botts, Mayor

1-4-07

Date

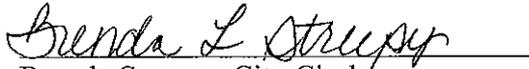


Rick Luther

1-5-07

Date

Attest:



Brenda Streepy, City Clerk

Approved as to form:

Loren Combs, City Attorney

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Black Diamond

Luther