

RESOLUTION NO. 08-478

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO ENTER INTO A
CONTRACT WITH CORDI & BEJARANO FOR PUBLIC
DEFENDER SERVICES**

WHEREAS, it is a constitutional requirement that each person charged with a crime punishable by incarceration or involved in certain other proceedings that may result in loss of liberty or loss of fundamental rights be provided with effective legal representation in order to ensure equal justice under the law without regard to ability to pay; and

WHEREAS, effective legal representation should be provided consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches; and

WHEREAS, the City of Black Diamond has a need to retain a qualified attorney to provide public defense services for indigent persons; and

WHEREAS, the City of Black Diamond's Municipal Court staff has recommended an agreement with Cordi & Bejarano based on the quality and breadth of services rendered and the costs as proposed;

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

Section 1. The Mayor is authorized to enter into a contract for public defense services with Cordi & Bejarano, Inc., for public defender services in the form attached hereto as Exhibit A.

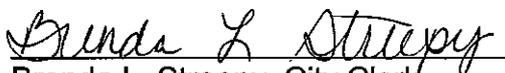
PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 17th DAY OF JANUARY, 2008.

CITY OF BLACK DIAMOND:



Howard Botts, Mayor

Attest:



Brenda L. Streepy, City Clerk

PUBLIC DEFENSE SERVICES CONTRACT
CITY OF BLACK DIAMOND, WASHINGTON

THIS AGREEMENT is made and entered into by the City of Black Diamond, hereinafter referred to as "City", and Cordi & Bejarano, Inc., P.S., hereinafter referred to as "public defender".

The parties hereby agree to the following terms and conditions:

I. APPOINTMENT OF DEFENDANTS FOR PUBLIC DEFENSE SERVICES

A. GENERAL. The City shall make public defense services available to all persons who so qualify after application to and approval of the Court or an independent public defense screener. Screening shall be made available on a regular basis at or near the City's municipal court which is held at City Hall. The cost of screening services shall be paid by the City. The City shall provide to the public defender, at no cost, copies of all discoverable materials regarding persons qualifying for public defense services.

B. Screening procedure.

1. The criteria for appointment of the public defender to represent indigent defendants shall be as follows:

- a) The defendant is charged with a criminal offense by the City under the ordinances of the City of Black Diamond;
- b) The offense is one for which a person can be imprisoned; and
- c) The defendant qualifies financially for public defender services pursuant to court rule and RCW 10.100.010, et seq.

2. Screening information shall be confidential and the defendant shall swear or certify under penalty of perjury that the information provided to the screener is true and complete. Upon appointment, the screener shall immediately deliver to the public defender the screener's documents on each case that is assigned. The screener shall be responsible for delivering a letter of introduction which has been provided by the public defender to every defendant who qualifies for and is appointed to be represented by the public defender. The screener shall obtain the defendant's mailing address and mail the letter of introduction to the defendant, if necessary.

C. Reporting procedures.

1. The screener shall file a weekly report with the Court which indicates the following:

- a) Number of defendants interviewed; and
- b) Number of appointments to the public defender.

2. The public defender shall file monthly reports with the City indicating the following:

- a) Each defendant who has been appointed and a Notice of Appearance filed; and
- b) Criminal charges and cause numbers of defendants represented. The report shall further designate whether the defendant was appointed by the Court or by the screener. All reports should be due on or before the 10th day of the month following the appointment and filing of the Notice of Appearance.

II. QUALIFICATION OF PUBLIC DEFENDER

A. The public defender shall be responsible to provide effective legal services to the defendants represented. The public defender shall employ and/or associate a sufficient number of attorneys and staff to provide such services. The City shall not incur any additional costs for the employed and/or associated attorneys. The public defender and each of the attorneys so employed and/or associated shall be an active member in good standing of the Washington State Bar Association. Any attorney employed and/or associated by the public defender who does not have at least three (3) years of experience shall practice under the supervision of an attorney who does have at least three years' experience. At a minimum, one-third of such experience shall emphasize the practice of criminal defense.

B. Caseloads of the public defender and any individual attorneys employed and/or associated therewith should be limited to that level of assignment which allows an attorney to give each defendant's case sufficient time and effort to assure effective representation.

III. SERVICES PROVIDED BY THE PUBLIC DEFENDER

A. Scope of service.

1. The public defender shall represent each defendant from the date of appointment through sentencing and the first appeal of right pursuant to the RALJ rules. If, in a particular case, no appeal is filed within thirty days after sentencing, the public defender's responsibility for that case shall end. If further services are required, the defendant shall be re-screened. The public defender or the City may request re-screening of a defendant whose case is on appeal. Appeals shall not be considered new case assignments. Such representation shall continue subsequent to termination of this contract.

2. A "defendant" is defined as "a single individual charged with a maximum of four criminal counts arising out of the same general course of conduct over a short period of time." Example: A single person charged with three different driving while license suspended charges on three different days would be counted as three separate clients because the charges necessarily took place at separate times. However, a single individual charged with reckless driving, DUI, hit and run attended and driving while license suspended, all of which arose out of one event, would be counted as one client.

3. Pursuant to Section IIA, the public defender may associate or employ additional or different attorneys to represent defendants at no extra cost to the City. Upon discovery of any conflict with the representation of a specific defendant by the public defender, the public defender shall inform the City, the Court and the defendant in writing of the conflict by issuing a Notice of intent to Withdraw. Upon receiving notice of a conflict and agreeing thereto, it will be the City's financial responsibility to pay alternative counsel to represent the defendant. However, if the City contests the Notice of Intent to Withdraw, then the City shall immediately file a Note for Motion regarding the propriety of the withdrawal and request that the Court notify the defendant and the public defender of the date, time and nature of the hearing. All parties will be bound by the Court's ruling or any appeal there from.

4. Office appointments for the defendants with the public defender shall be made available at least during regular business hours of 8:00 am, until 5:00 pm, Monday through Friday. Office appointments should be available within a reasonable distance from the Black Diamond Court and on a public transportation service route. Appointments shall be available at the courthouse for defendants who are otherwise unable to obtain

transportation to the public defender's office. Local non-service charge telephone service throughout the City of Black Diamond shall be available as well as toll free and collect telephone service from the Buckley, Enumclaw or King County jails.

5. Twenty-four hour emergency telephone service or pager service shall be provided through the City police department for emergency telephone contact with the public defender as required by statute, case law and applicable court rule. This 24 hour contact is necessary for all critical stage communication with the public defender.

6. The public defender shall provide to the screener for dissemination to every defendant a letter in plain, simple and concise language outlining the defendant's responsibilities with regard to the attorney-client relationship.

7. The public defender shall apply to the court for expert witness fees, translative, investigative, psychological and social services whenever the same is/are necessary to the defense of an individual defendant's case. The above mentioned services will be paid for, either partially or wholly, by the City in a prompt manner as the Court may order.

8. The public defender shall institute and maintain a procedure to review defendant's complaints concerning the public defender's services. Complaints which are not immediately resolved by the public defender shall be referred to the Black Diamond Court.

IV. COMPENSATION

Compensation for the public defense services shall be paid at the rate of \$125 per "defendant", as defined herein, for representation through the proceedings within the municipal court, and an additional \$125.00 for every jury trial in which testimony or evidence is admitted and for every RALJ appeal in which the public defender actually files an appellate brief. On cases where the Public Defender is appointed to represent a party in a post-conviction or review status shall be entitled to a fee of \$20.00 per "defendant".

V. TERM OF CONTRACT

1. The term of this contract shall commence on the day of Feb. 1st, 2008 and shall remain in effect through the last day of Dec. 31st, 2008.

2. This contract shall thereafter renew annually and automatically on the first day of January, commencing in the year 2009, unless

either party serves upon the other a sixty-day advance Notice of Termination or a Notice of Intent to Renegotiate Terms. Service of either Notice shall be accomplished by either personal service upon the recipient party, or by mailing the Notice to the affected party via certified mail, return receipt requested, to the party's last-known address.

3. In the case of either Notice being served upon the appropriate party, the present contract shall effectively terminate on the last day of December in the year at issue. In the case of a Notice of Intent to Renegotiate Terms, either party may offer to extend the duration of the present contract with all terms and conditions intact, through a specified number of days past the date of termination, or until agreement upon disputed terms is reached and new contract is implemented.

4. It shall be the responsibility of the public defender to remain as attorney of record for all parties who are appointed to the public defender prior to the expiration of the contract. The public defender shall remain responsible for providing RALJ appeal services for any defendant appointed prior to expiration of this contract.

5. Public Defender is and shall be at all times during the term of this Agreement an Independent Contractor, not an employee.

VI. POLICY AGAINST DISCRIMINATION

The public defender shall not discriminate in employment practices on the basis of race, creed, color, age, disability, religion, sex or sexual orientation. The public defender should comply with all local, state and federal laws regarding discrimination.

VII. PUBLIC DEFENSE STANDARDS

The public defender shall comply with the rules of professional conduct.

VIII. INSURANCE AND INDEMNIFICATION

A. The public defender shall secure and maintain a policy of professional liability insurance with an insurance company licensed to do business in the state of Washington. Said policy shall have limits of not less than \$1,000,000.00. Written proof of the insurance policy shall be filed with the City.

B. The public defender shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorneys fees, arising out of or resulting from the acts, errors or omissions of the public defender in performance of this Agreement, except for injuries and

damages caused by the sole negligence of the City.

IX. TERMINATION OF CONTRACT

A. Either the City or the public defender may terminate this contract upon 90 days written notice to the other, provided, however, either party may terminate this agreement on 7 days notice in the event of:

1. Breach of contract;
2. Violation of the rules of professional conduct; or
3. Good and sufficient cause.

B. Such termination is effective only if the party terminating the contract has provided written notice of the deficiency to the other party and such deficiency is not corrected in a timely manner to the reasonable satisfaction of the first party.

DATED this 18 day of JAN, 2007.

CITY OF BLACK DIAMOND:

CORDI & BEJARANO INC., PS


City Manager **MAYOR**


Michael Bejarano, President

AS TO FORM:

City Attorney

ADDENDUM "A" TO CONTRACT FOR PUBLIC
DEFENSE SERVICES

Cordi & Bejarano, Inc., P.S., agrees to provide "standby attorney" services at arraignment calendars at a rate of \$50.00 per arraignment calendar.

ADDENDUM "B" TO CONTRACT FOR PUBLIC
DEFENSE SERVICES
CORDI & BEJARANO, INC., P.S.

1. SCREENING SERVICES: The Court will be responsible for screening services; therefore, sections I (B) and (C) of the Public Defense Services Contract are stricken.
2. CONFLICT COUNSEL: Cordi & Bejarano, Inc., P.S. shall be responsible for securing conflict public defense counsel when the need arises. Conflict counsel shall be compensated at the same rates as primary counsel. Conflict counsel shall submit bills for services rendered directly to the City for payment.

ADDENDUM "C" TO BLACK DIAMOND PUBLIC DEFENSE CONTRACT
FULL DISCLOSURE

Cordi & Bejarano, Inc., P.S. provides prosecutorial services for the Cities of Pacific and Algona. As prosecutor, counsel had interacted with then Pacific Police Officers, now Black Diamond Officers, Volpone and Stephens. During said interactions, counsel is unaware of any disclosures and/or exchange of information which would compromise and/or interfere with counsel's ability to act as Public Defender for the City of Black Diamond.