

RESOLUTION NO. 08-550

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO EXECUTE AN
AGREEMENT WITH MOBERLY & ROBERTS FOR
PROSECUTING ATTORNEY SERVICES

WHEREAS, the City of Black Diamond finds it necessary to hire a prosecuting attorney to provide misdemeanor prosecutorial services, contested infraction hearing representation for police and forfeiture hearing services; and

WHEREAS, the City advertised for qualified firms and individuals to fill the position of prosecutor and a selection panel including the Mayor, City Attorney, Police Chief and City Administrator reviewed the proposals and interviewed three firms;

WHEREAS, the firm of Moberly & Roberts currently provides prosecutorial services for Kirkland, Clyde Hill, Medina, Woodinville, Newcastle, Snoqualmie, Issaquah, Shoreline and Lake Forest Park; and

WHEREAS, the panel recommends Moberly & Roberts as a firm qualified and willing to provide the necessary services; and

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

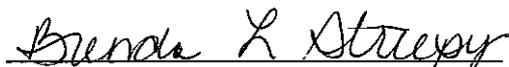
Section 1. The Mayor is hereby authorized to sign an agreement, substantially in the form attached as Exhibit A, for the purposes of obtaining prosecutorial services.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 6TH DAY OF NOVEMBER, 2008.

CITY OF BLACK DIAMOND:


Howard Botts, Mayor

Attest:


Brenda L. Streepy, City Clerk

CITY OF BLACK DIAMOND

P.O. Box 599 – 24301 Roberts Drive
Black Diamond, Washington 98010

**PROFESSIONAL SERVICES AGREEMENT
FOR PROSECUTION SERVICES**

1. Parties

This Agreement is entered into between the City of Black Diamond, King County, Washington ("City"), and Moberly and Roberts, PLLC ("Prosecutor"); collectively, the "Parties."

2. Effective date

This Agreement is effective as of the 1st day of December 2008.

3. General description of services

Prosecutor has been retained by the City to provide professional legal services in Black Diamond Municipal Court and other courts as required.

4. Scope of Work

- A. Prosecutor agrees to provide all necessary prosecution services to the City of Black Diamond, including:
- (1) Providing advice to Black Diamond Police Officers on matters relating to criminal law and proper procedures for enforcing the law;
 - (2) Reviewing police reports for determination of probable cause and charging;
 - (3) Drafting and filing criminal complaints and probable cause statements as necessary;
 - (4) Appearing at arraignments, pretrial hearings, and motions;
 - (5) Initiating settlement discussions and plea negotiations;
 - (6) Handling all phases of jury trials;
 - (7) Drafting briefs and motions;
 - (8) Appearing at sentencing and review hearings;
 - (9) Tracking case dispositions, including reasons for declining to prosecute particular cases;
 - (10) Appearing on infractions where the violator has retained legal counsel;
 - (11) Responding to and appearing on behalf of the City in RALJ appeals;
 - (12) Appearing at civil asset forfeiture hearings;
 - (13) Handling code enforcement cases as requested by the City.

- B. The services performed by Prosecutor shall not exceed the Scope of Work without prior written authorization from the City.
- C. The City may from time to time require changes or modifications in the Scope of Work. However, such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to this Agreement.

5. Schedule of Work and Continuity of Representation

- A. It is agreed by the parties that continuity of representation is very important for effective prosecution. Therefore, Mark Nelson shall be the primary person providing services under this Agreement and he shall make good faith efforts to be personally present for all court hearings unless he is unable to appear due to vacation, illness, emergency, or occasional scheduling conflicts. Permanent change of primary prosecutor shall be required whenever it becomes impossible for Mark Nelson to meet the obligations described in this section. Prosecutor shall make good faith efforts to ensure that there is continuity of representation in choice of substitute prosecutors.
- B. Prosecutor shall appear for all regularly scheduled court hearings in the Black Diamond Municipal Court to perform the services described in the Scope of Work.
- C. As of the effective date of this Agreement, Prosecutor shall be required to appear in Black Diamond Municipal Court for a minimum of two calendar days each month, and one day every-other-month for contested traffic infractions. Jury trials, motions, and other special hearings may require occasional additional appearances.
- D. Prosecutor agrees and understands that, while the City will make good faith efforts to consult with Prosecutor prior to changing the schedule of court hearings, and will take Prosecutor's needs into account, the City will have final discretion to alter the scheduling of court hearings and it shall be Prosecutor's responsibility to ensure such hearings are covered by Prosecutor.
- E. In the event the prosecution of any person would constitute a conflict of interest for the Prosecutor pursuant to the Washington State Bar Association Rules of Professional Conduct, the Prosecutor shall not prosecute such person and the City shall be responsible for the cost of outside legal representation for the City.

6. Compensation

- A. Base Rate. The City shall pay the Prosecutor a base rate of \$4,000 per month for performing all services necessary to effectively prosecute violations of the Black Diamond Municipal Code and for representing the City on infraction cases where the violator has retained counsel. This amount shall include compensation for out-of-court preparation time and all normal office expenses (including but not limited to clerical staff; office rent; photocopies and letters; mailing costs; telephone expenses).

B. Additional Compensation. In addition to the base rate of \$4,000 described above, the City shall pay additional compensation to Prosecutor for the following services:

- (1) Jury trials: Prosecutor shall receive a flat fee of \$500 for each jury trial that proceeds to trial; settlement of a case prior to jury selection shall not be considered proceeding to trial.
- (2) Appeals: Prosecutor shall receive a flat fee of \$500 for each criminal case that is appealed to Superior Court.
- (3) Code enforcement: Prosecutor shall be paid \$100 per hour for every code enforcement case Prosecutor is asked to handle in the municipal court.
- (4) Civil forfeiture hearings: Prosecutor shall be paid \$100 per hour for every civil forfeiture case Prosecutor is asked to handle.
- (5) Other special assignments: Prosecutor shall be paid \$100 per hour for other special assignments as requested by the City and accepted by Prosecutor.

7. Payment

- A. Base rate. Payment of the base rate shall be made on the fifteenth (15th) day of every month for the preceding month of services, unless the 15th falls on a weekend or holiday, in which case payment may be made on the first business day following. Should this Agreement be terminated before the end of a full month, the base rate shall be prorated by subtracting payment for any scheduled court days where Prosecutor failed to appear.
- B. Additional compensation. Prosecutor shall maintain time and expense records for any services that are eligible for additional compensation and shall provide an invoice to the City within thirty (30) days of performing the services. Such invoices shall be in a format acceptable to the City. All invoices for additional services shall be paid within sixty (60) days of receipt of a proper invoice.
- C. Records retention. Prosecutor shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Copies shall be made available on request.
- D. Dispute over services. If the services rendered do not meet the requirements of the Agreement, Prosecutor will correct or modify the work to comply with the Agreement. City may withhold payment for such work until the work meets the requirements of the Agreement.

8. Notices

All notices required by this Agreement shall be considered properly delivered when personally delivered, when received by facsimile, or on the third day following mailing, postage prepaid, certified mail, return receipt requested to:

CITY:

CITY OF BLACK DIAMOND
PO Box 599 – 24301 Roberts Drive
Black Diamond, Washington 98010
Contact:
Phone: 360-886-2560
Fax: 360-886-2592

PROSECUTOR:

Contact: _____
Tax I.D.# _____
Phone: _____
Fax: _____

It is the responsibility of Prosecutor to notify City in writing if any of the contact information appearing below should change.

9. Discrimination and Compliance with Laws

- A. Prosecutor agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.
- B. Prosecutor shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.
- C. Violation of Section 9 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by City, in whole or in part, and may result in ineligibility of Prosecutor to do further work for City.

10. Termination of Agreement

- A. Termination without fault. Either party may terminate this Agreement upon a minimum of ninety (90) days' advance notice to the other party. Such notice shall indicate the date of termination.
- B. Termination for cause. The City may terminate the Prosecutor's contract for "cause" (as defined in this Section) immediately upon written notice to the Prosecutor. Such notice shall specify in reasonable detail the nature of the cause. For purposes of this Agreement, "cause" shall include, without limitation: (1) material breach of this Agreement; (2) failure to satisfactorily perform his responsibilities and job duties; (3) unethical practices as set forth in the Rules of Professional Conduct; (4) loss of license to practice law in the state of Washington; or (4) fraudulent or dishonest conduct. The City shall have the sole discretion to determine whether there is cause to terminate the Prosecutor's services under this Agreement.

11. Standard of Care

Prosecutor represents and warrants that he or she, and any agents used to perform services under this Agreement, has the requisite training, skill and experience necessary to provide the services described herein and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided under this Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

12. Indemnification/Hold Harmless

Prosecutor 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 attorney fees, arising out of or resulting from the acts, errors or omissions of the Prosecutor in performance of this Agreement, provided however, that such provision shall not apply to the extent that damage or injury results from the fault of the City or its officers, other agents, or employees. "Fault" as used herein shall have the same meaning as set forth in RCW 4.22.015.

13. Insurance

The Prosecutor shall procure and maintain for the duration of the Agreement professional liability insurance with limits no less than \$500,000 per claim and \$500,000 policy aggregate limit. This policy shall be written to insure Prosecutor and its agents, representatives, and employees.

14. Assigning or Subcontracting

This agreement may not be assigned by either party without the express written consent of the other party, and said consent can be withheld in that parties' sole discretion.

15. Independent Contractor

Prosecutor is and shall be at all times during the term of this Agreement an independent contractor.

16. Governing Law and Venue for Disputes

Any action for claims arising out of or relating to this Agreement shall be governed by the laws of the State of Washington. Venue shall be in King County, Washington.

17. Attorneys' Fees

In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorneys' fees from the other party.

18. Extent of Agreement/Modification

This Agreement represents the entire Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended or modified only by express written consent of both parties. The headings in this Agreement are inserted for convenience only and shall not affect the interpretations of this Agreement.

19. Severability

If any term or provision of the Agreement is held invalid, the remainder of such terms or provisions of this Agreement shall not be affected, if such remainder would then continue to conform to the terms and requirements of applicable law.

20. Interpretation and Fair Construction of Contract

This Agreement has been reviewed and approved by each of the parties. In the event it should be determined that any provision of this Agreement is uncertain or ambiguous, the language in all parts of this Agreement shall be in all cases construed as a whole according to its fair meaning and not strictly construed for, nor against, either party.

21. Waiver of Breach

The failure of any Party hereto to insist upon strict performance of any of the covenants and agreements herein contained, or to exercise any option or right herein conferred, in any one or more instances, shall not be construed to be a waiver or relinquishment of any such option or right or of any other covenants or agreement, but the same shall be and remain in full force and effect.

BY ITS SIGNATURE BELOW, EACH PARTY ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE TERMS AND CONDITIONS OF THIS AGREEMENT AND AGREES TO BE BOUND BY THEM.

CITY OF BLACK DIAMOND

By: 

Print name: HOWARD BOTTS

Title: MAYOR

Date: 11-06-08

PROSECUTOR

MOBERLY AND ROBERTS, PLLC

By: _____

Print name: _____

Title: _____

Date: _____

MARK D. NELSON

121 Third Ave
Kirkland, wa. 98033
marknelson20@comcast.net
206.240.9169 voice

EDUCATION

Seattle University School of Law
Juris Doctor May 2006
2005 Fredric C. Tausend Moot Court Competition Participant
CALI Excellence for the Future Award—Legal Research Methods
Ronald A. Peterson Law Clinic—Trusts & Estates

University of Washington
Bachelor of Arts, Psychology, 1990
Alpha Sigma Phi Philanthropy: Fred Hutchinson Cancer Research Center

LEGAL EXPERIENCE

- May 2005-Present **Prosecuting Attorney, Moberly & Roberts, P.L.L.C.**
- ❖ Prosecuting Attorney for the City of Woodinville
 - ❖ Negotiate pretrial plea dispositions, and propose sentencing recommendations
 - ❖ Interview and prepare civilian and expert witnesses for trial
 - ❖ Analyze physical and forensic evidence from Washington State Patrol, King County Sheriff, Municipal Police Agencies, and Retail Loss Prevention Officers
 - ❖ Appellate work in King County Superior Court and Division One Court of Appeals
 - ❖ Conduct arraignments, bail hearings, evidentiary hearings, motion hearings, sentencings, probation hearings, and civil forfeitures in Municipal and District Court
 - ❖ Participant National College of District Attorneys 17th Annual Conference on Domestic Violence, Orlando, FL, October, 2007
 - ❖ Multiple bench and jury trials

REAL ESTATE AND CONSTRUCTION EXPERIENCE

- Jan 1993-Jun 2003 **Owner/Proprietor, MDN Construction**
- ❖ Managed a wide scope of residential construction projects
 - ❖ Drafted construction drawings for city engineers and plans examiners
 - ❖ Interfaced with municipal building, planning, fire, and public works departments to acquire building and land use permits, easements, and variances
 - ❖ Analyzed real estate market data, and negotiated property sales and purchases
 - ❖ Supervised sub-contractors and laborers, and approved bids and budgeting

ENTERTAINMENT EXPERIENCE

- Jan 1991-Present **Guitarist/Vocalist/Managing Partner, The Beatniks**
- ❖ Seventeen years of performance experience with regional 60/70's music group
 - ❖ Supervise and coordinate local and national booking agents and oversee negotiations with extensive list of corporate clients which includes: Microsoft, Seattle Seahawks, Nike, Seattle Mariners, American Express, AT&T, Costco, MCM, Experience Music Project, Intel, Washington Mutual, Getty Images, Nordstrom, Merrill Lynch, and Bank of America
 - ❖ Participation in charitable events: American Heart Association, City of Hope, United Cerebral Palsy, Bellevue Boys & Girls Club, United Way, Cystic Fibrosis Foundation, Leukemia Society of America, Seattle Emergency Housing
 - ❖ Manage business affairs as C.E.O., developed www.thebeatniks.com, and administered a 5000+ person marketing list

INTERESTS

Soccer, Vintage Guitars, Sign Language