

RESOLUTION NO. 09-642

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

WHEREAS, the Mayor has appointed Leonard Smith to the position of City Administrator and seeks City Council confirmation of the appointment and authority to execute an employment agreement; and

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

BE IT RESOLVED that the City Council hereby confirms the Mayor's appointment of Leonard Smith as City Administrator and authorizes the Mayor, on behalf of the City, to execute the attached Employment Agreement.

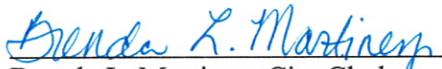
ADOPTED by the City Council on October 1, 2009 at an open public meeting.



---

Howard Botts, Mayor

Attest:



---

Brenda L. Martinez, City Clerk

**EMPLOYMENT AGREEMENT  
BETWEEN  
CITY OF BLACK DIAMOND AND LEONARD SMITH  
REGARDING  
CITY ADMINISTRATOR POSITION**

1. Date and Parties. This agreement ("Agreement"), for reference purposes only, is dated the 1 day of October, 2009, and is entered into between the City of Black Diamond, a Washington municipal corporation ("City") and Leonard Smith, ("Mr. Smith") and shall be referred to as the "Agreement".

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

3. Appointment to City Administrator Position. Mr. Smith is hereby appointed, effective September 28, 2009, to the position of City Administrator and Mr. Smith hereby accepts that appointment.

4. Term. It is the desire of both parties that Mr. Smith 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 City and Mr. Smith are at liberty to terminate his employment with the City at any time, subject only to the Agreement terms.

5. Duties. Mr. Smith 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. Smith 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. Smith shall attend all special and regular meetings of the City Council, unless excused, and such other meetings as required by the Mayor.

6. Salary. Mr. Smith's starting salary shall be \$9,626.00 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. Smith's salary shall be annually reviewed to determine whether or not an increase is appropriate, taking into account Mr. Smith'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. Thereafter, City agrees to increase said base salary and/or benefits of Mr. Smith in such amounts and to such extent as the Mayor and City Council may determine is desirable, on the basis of an annual performance evaluation and compensation review, or at such further times as circumstances warrant. In addition, the City Administrator shall receive any cost of living adjustments to his base salary in such amounts and at such times as are otherwise provided to all City department directors.

7. Benefits. All 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. Smith, except where expressly modified herein.

a. Sick Leave. Mr. Smith shall immediately be credited with 5 days sick leave.

b. Vacation. Mr. Smith shall immediately be credited with 10 days vacation.

c. Retirement. The City shall pay into the Washington State Department of Retirement Systems (DRS) Public Employees Retirement System (PERS) plan, for the benefit of Mr. Smith, in accordance with applicable state regulations. The City agrees to execute all necessary agreements provided by ICMA Retirement Corporation (ICMA-RC) for Mr. Smith's participation in said ICMA-RC retirement plan. Actual financial participation will be borne by Mr. Smith.

d. Deferred Compensation. The City shall contribute to Mr. Smith's Washington State Retirement System Deferred Compensation Account with a 25% match each month up to \$25.00 per month total, with such payments coinciding with the schedule for salary payments for employees of the City.

e. Membership Dues. The City shall pay membership dues for Mr. Smith's membership in the International City Managers Association (ICMA) and the Washington City/County Managers Association (WCCMA). The City shall pay for Mr. Smith's attendance at such conferences and for such other memberships, subscriptions, or dues, desirable for Mr. Smith'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. Smith for professional and office travel, meetings and occasions adequate to continue the professional development of Mr. Smith and to adequately pursue necessary official functions for City, including, but not limited to ICMA Annual Conference, the Association of Washington Cities, the Washington City/County Administrators Association and such other national, regional, state and local governmental groups and committees thereof which Mr. Smith 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. Smith, and agrees to reimburse or to pay said general expenses allowed by the laws of the State of Washington 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 \$400.00 for automobile expenses incurred by Mr. Smith using his personal vehicle for City related business. Said allowance is in lieu of the City otherwise providing Mr. Smith with use of a City vehicle on a regular basis. This allowance shall be adjusted annually, commencing January 1, 2010, in an amount equal to the percentage increases to the Internal Revenue Service's motor vehicle mileage expense rate using 2009 as the base year. In addition to the foregoing, in the event that Mr. Smith, in the performance of his duties and obligations is required to use his automobile for travel outside the Puget Sound Region, Mr. Smith 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. Smith is authorized to become a member of one (1) civic club for which the City shall pay dues and meeting expenses. Mr. Smith shall report to the City on membership he has taken at the City's expense.

8. Performance Review. Mr. Smith's performance shall be reviewed annually on or about the anniversary date of his commencement 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. Smith, will establish a priority amongst the various goals and objectives and said objectives and priorities shall be reduced to writing. Mr. Smith'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. Smith.

9. Termination.

a. By the City. The parties recognize and acknowledge that the provisions of the City Personnel Manual, and paragraph 8 above notwithstanding, Mr. Smith is an "at will" employee and the Mayor may terminate Mr. Smith 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. Smith for any reason other than "cause", Mr. Smith shall receive a cash payment equal to six (6) months of Mr. Smith's base rate and education incentives, plus a sum equal to the six (6) months premiums for the City medical, dental and visual plan for Mr. Smith and dependents ("Termination Pay"). Mr. Smith 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. Smith 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. Smith's employment or Mr. Smith's termination of employment with the City in a form to be approved by the City Attorney. Provided, if Mr. Smith is terminated for "cause", then Mr. Smith shall not be entitled to any Termination Pay, but will remain entitled to his Termination Benefits. For purposes of this Agreement, the term "cause" shall mean misfeasance, malfeasance, or nonfeasance in office.

c. Termination by Mr. Smith. In the event Mr. Smith elects to terminate his employment with the City, Mr. Smith 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. Smith's notice of intent to terminate his employment, from compensating Mr. Smith at the rate of Mr. Smith's base salary plus education incentives for the unexpired portion of the sixty (60) days notice and releasing Mr. Smith prior to the expiration of said notice period. Mr. Smith shall not be entitled to Termination Pay, but shall receive Termination Benefits.

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

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

12. 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.

13. 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.

14. Authorization. The Mayor's appointment of Mr. Smith to the position of City Administrator was confirmed by the City Council on the 1<sup>st</sup> day of October, 2009 and the Mayor was authorized by the City Council to execute this agreement by the adoption of Resolution number 09-642.

15. Review by Independent Legal Counsel. Mr. Smith 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 Loren D. Combs and VSI Law Group PLLC acting on behalf of the City of Black Diamond only, and not on behalf of Mr. Smith, that neither Loren D. Combs or anyone employed by VSI Law Group PLLC can give him legal advice regarding this Agreement, and that he will seek other legal counsel should he have any questions or concerns regarding this Agreement. By signing this Agreement he acknowledges that he has afforded himself of the opportunity to consult other legal counsel, or hereby expressly waives his right to have the Agreement reviewed by independent legal counsel, and agrees to the continued representation of the City by Loren D. Combs and VSI Law Group PLLC with regards to this Agreement and all matters related to Mr. Smith's employment with the City.

CITY OF BLACK DIAMOND

By:

  
Howard Botts, Mayor

  
Leonard Smith

ATTEST:

By:

  
Brenda L. Martinez,  
City Clerk/Assistant City Administrator

Approved as to form:

By:

\_\_\_\_\_  
Loren D. Combs, City Attorney