

RESOLUTION NO. 10-712

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE THE FIRST AMENDMENT TO AGREEMENT FOR HEARING EXAMINER SERVICES BY AND BETWEEN THE CITY OF BLACK DIAMOND AND OLBRECHTS AND ASSOCIATES, PLLC

WHEREAS, on June 19, 2008 the City entered into a professional services agreement with the law firm of Ogden, Murphy and Wallace, PLLC for Phil Olbrechts to provide hearing examiner services to the City; and

WHEREAS, Phil Olbrechts has left Ogden, Murphy and Wallace, PLLC and is now the managing member of Olbrechts and Associates, PLLC; and

WHEREAS, the City and the Law Firm have entered into an assignment and assumption agreement through which all rights, duties and obligations of Ogden, Murphy and Wallace, PLLC have been assigned to Olbrechts and Associates, PLLC; and

WHEREAS, the City and Olbrechts and Associates, PLLC desire to amend the Agreement to clarify and modify the terms and conditions upon which Olbrechts and Associates, PLLC will continue to provide hearing examiner services and further to identify those persons who may serve as a substitute for Phil Olbrechts as hearing examiner for the City of Black Diamond;

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

Section 1. The Mayor is hereby authorized to execute the First Amendment to Agreement for Hearing Examiner Services with Olbrechts and Associates, PLLC substantially 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 21ST DAY OF OCTOBER, 2010.

CITY OF BLACK DIAMOND:



Rebecca Olness, Mayor

Attest:



Brenda L. Martinez, City Clerk

**FIRST AMENDMENT TO AGREEMENT FOR
HEARING EXAMINER SERVICES
BY AND BETWEEN THE CITY OF BLACK DIAMOND
AND OLBRECHTS AND ASSOCIATES, PLLC**

THIS FIRST AMENDMENT (the “First Amendment”) to that certain professional services agreement (the “Agreement”) entered into by and between the **CITY OF BLACK DIAMOND**, a Washington State municipal corporation (hereinafter referred to as the “City”) and **OLBRECHTS AND ASSOCIATES, PLLC** (hereinafter referred to as “Consultant”) for Hearing Examiner services on the 19th day of June, 2008, is entered into by and between the City and Consultant on the 1st day of November, 2010 for the purposes as described herein.

RECITALS:

WHEREAS, prior on June 19, 2008 the City entered into a professional services agreement with the law firm of Ogden, Murphy and Wallace, PLLC (the “Law Firm”) for Phil Olbrechts to provide hearing examiner services to the City, and

WHEREAS, Phil Olbrechts has left the Law Firm and is now the managing member of Olbrechts and Associates, PLLC (hereinafter “OA”), and

WHEREAS, the City and the Law Firm have entered into an assignment and assumption agreement through which all rights, duties and obligations of the Law Firm have been assigned to OE, and

WHEREAS, the City and OA desire to amend the Agreement to clarify and modify the terms and conditions upon which OA will continue to provide hearing examiner services and further to identify those persons who may serve as a substitute for Phil Olbrechts as hearing examiner for the City of Black Diamond;

NOW THEREFORE, in consideration of the foregoing recitals, and the mutual promises and covenants contained herein, the parties hereby enter into this First Amendment, amending the Agreement, as follows:

Section 1. Amendment. The Agreement is amended as provided in numbered paragraphs 1 – 10 in Exhibit “A”, attached hereto and incorporated by this reference as though fully set forth herein. All other provisions of the Agreement shall remain in full force and effect.

This First Amendment being AGREED TO THIS 21st day of October, 2010 and being effective on November 1, 2010.

CITY OF BLACK DIAMOND

OLBRECHTS AND ASSOCIATES, PLLC



Mayor

Phil Olbrechts,

Approved as to form:

Chris Bacha
Kenyon Disend, PLLC
City Attorney

EXHIBIT A

(Clarifications/Modifications)

1. Subject to the Assignment and Assumption Agreement and except as modified below, the terms and conditions of the Existing Contract shall remain in place between OA and the City. All back-up examiners below may only conduct a hearing with the prior permission of City staff.
2. Phil Olbrechts shall remain the lead hearing examiner.
3. Millie Judge shall serve as a back-up to Phil Olbrechts. Ms. Judge currently serves as the hearing examiner for Snohomish County. She formerly headed the land use division of the Snohomish County Prosecuting Attorney's Office and also worked as an associate at OMW. Ms. Judge will subcontract with OA as needed to provide back-up services. Her subcontract will be subject to all the terms and conditions of the OA contract with the City.
4. Scott Snyder, a member (similar to partner in partnerships) of OMW, shall serve as another back-up to Phil Olbrechts. Mr. Snyder has over thirty years experience as a municipal attorney. He has also served as the managing member of OMW. Mr. Snyder will subcontract with OA as needed to provide back-up services. His subcontract will be subject to all the terms and conditions of the OA contract with the City.
5. Vicki Orrico will also be available for back-up Examiner services and assist in the writing of decisions. Ms. Orrico has been practicing law since 1986 and is a former of counsel to the municipal department of OMW. Ms. Orrico has served as a pro tem Hearing Examiner and has extensive experience in representing municipalities and private individuals in land use issues. Ms. Orrico will subcontract with OA as needed to provide back-up services. Her subcontract will be subject to all the terms and conditions of the OA contract with the City.
6. Emily Terrell will also serve as a back-up Examiner and assist in the writing of decisions for nonlegal cases and issues. Ms. Terrell is the former planning director of the City of Milton and also served as an AICP certified Senior Consultant with PMC, a planning consultant firm. Prior to that she served as a transportation planner and taught graduate planning courses at Clemson University. She has a Master of City and Regional Planning from Clemson University. Ms. Terrell will subcontract with OA as needed. Her subcontract will be subject to all the terms and conditions of the OA contract with the City and will be at 70% of the rate charged for member attorneys.
7. Ms. Judge, Mr. Snyder and Ms. Orrico will be charged at the member rate under the Existing Agreement. The use of any back-up examiner for a hearing shall be subject to the prior approval of City staff.

8. OA will also continue to subcontract with law students and other qualified individuals to write testimony summaries and assist in the preparation of draft decisions. OA will maintain the current charge structure for this service: around \$35/hour for most of these services with a maximum of \$65/hour. The amount charged to the City would be 10% above that paid to the decision writer and would also include any required taxes or other expenses incurred in compensating the writer. The use of these writers has enabled me to significantly reduce charges for my clients. The writers never write a final decision.

9. All invoice payment and contract notices should be sent to:

Olbrechts and Associates, PLLC
18833 N.E. 74th St.
Granite Falls, WA 98252

10. These amendments/clarifications to the Existing Agreement shall be effective on November 1, 2010