

RESOLUTION NO. 14-950

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE A SEVERANCE AGREEMENT AND TERMINATING AN INVESTIGATION BY ACTION OF THE CITY COUNCIL.

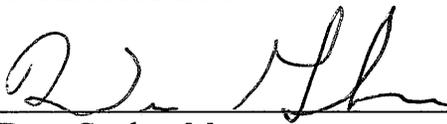
NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON DOES RESOLVE AS FOLLOWS:

Section 1. The Mayor Pro Tem is authorized to execute a Severance Agreement in the form attached hereto as Exhibit A.

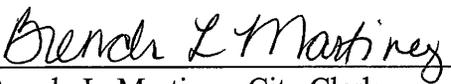
Section 2. As requested in the Agreement, the investigation referenced in Exhibit A is hereby terminated.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF THIS 15TH DAY OF MAY, 2014.

CITY OF BLACK DIAMOND

By: 
Dave Gordon, Mayor

ATTEST:

By: 
Brenda L. Martinez, City Clerk

**SEVERANCE AGREEMENT
WITH RELEASE AND INDEMNIFICATION**

The City of Black Diamond, Washington (hereinafter "the City"), and Christy Todd (hereinafter "the Employee"), have entered into this Agreement in consideration of the mutual benefits to be derived and the promises contained herein.

1. **PURPOSE.** The purpose of this Agreement is to define the terms and conditions of the Employee's resignation, the consideration for the resignation, and appropriate waivers and releases.

The Employee has voluntarily elected to resign from employment during the pendency of an investigation into allegations by the Employee relating to sexual harassment and retaliation. By her resignation and upon this Agreement being fully executed by all parties and in consideration of the promises contained in this Agreement, the Employee hereby requests termination of the ongoing investigation into her allegations of sexual harassment and retaliation, and expressly releases the City, its officers, agents and employees, as more fully provide in Section 2.3 below, from any obligation to continue with or otherwise pursue her complaint.

[In the event of her withdrawal from this Agreement within seven (7) calendar days of signature, this Agreement shall be null and void and the Employee shall immediately return any consideration paid.]

2. **UNDERTAKINGS OF EMPLOYEE.** The Employee, on behalf of herself, her successors, assigns and estate (hereinafter "the Employee") agrees as follows:

2.1 **Resignation.** By her signature below, the Employee irrevocably resigns from her employment as City Administrator of the City of Black Diamond, effective at 5:00 pm on July 31, 2014. The parties agree that the Employee will perform no services during the period between the execution of this Agreement and July 31, 2014, other than telephonic or email responses to inquiries relating to any ongoing matters; and the parties further agree that the Employee will continue to be paid her usual employee compensation and will retain all City benefits up to and through July 31, 2014. Employee's final compensation on July 31, 2014 shall include all accumulated vacation, sick leave and other pay pursuant to City policy as set forth in the City of Black Diamond Personnel Manual. Employee shall make arrangements with the City to obtain her personal belongings that reside in her City office, prior to July 31, 2014. On August 1, 2014, the Employee shall be eligible for COBRA benefits, and the City shall help facilitate Employee's eligibility for said benefits by providing the Employee with the necessary paperwork from Association of Washington Cities Employee Benefit Trust.

2.2 **Employee's Waiver, Release, Indemnification and Hold Harmless.** Provided there is no material breach of the promises by the City in this Agreement, especially as to subparagraph 3.6 herein, the Employee hereby fully and forever releases, waives and discharges any and all claims, demands, rights, causes of action, and compensation of every kind and nature, including but not limited to any violation or breach of contract, union agreement,

promissory estoppel, defamation, violation of any public policy, claims for personal injuries, emotional or mental distress of any kind or nature, claims for compensation of any kind or nature, harassment, wrongful discharge or discrimination claims, whether under the federal Age Discrimination in Employment Act 29 USC § 626, the federal Civil Rights Act, the federal Equal Pay Act, the Americans With Disabilities Act, the Laws Against Discrimination of the State of Washington, the Washington Equal Pay Act, RCW 49.32.020 *et seq.* and any other federal, State or local laws or regulations that may be applicable, and whether at this time known or unknown, anticipated or unanticipated, direct or indirect, fixed or contingent, relating to or arising directly or indirectly out of any aspect of the Employee's employment or termination of her employment with the City, and all claims that the Employee may have against the City, its employees, elected officials, officers, attorneys, agents and/or representatives (collectively hereinafter "Claims"). The Employee further agrees to indemnify and defend the City and its employees, elected officials, officers, attorneys, agents and/or representatives and hold them harmless from the Employee's claims, including claims by her spouse, marital community, successors, assigns and/or estate. The release, indemnification, defense and hold harmless set forth in this Paragraph does not apply to claims, demands, rights, causes of action and compensation arising after the effective date of the Employee's resignation.

2.3 Request to Terminate Investigation: Release of any Claim or Obligation Relating Thereto. The Employee requests that that investigation of her complaint, which is currently ongoing, be terminated immediately upon this Agreement being fully executed by all parties. The Employee expressly authorizes the City to terminate such investigation, and by way of illustration and not in limitation of Section 2.2, waives and releases any claim, loss or liability of any kind which she may have with respect to the conduct of such investigation.

2.4 Right of Indemnification. The Employee shall retain her right of indemnification pursuant to Ch. 2.66 Indemnification of Employees, Black Diamond Municipal Code, with respect to all acts taken within the scope of her employment by the City. In the event the Employee is called upon to testify in any matter relating to her defense, she shall do so without additional cause and shall cooperate fully with the City in her defense. In the event the Employee is requested to testify with respect to any matter which arose during her employment by the City, and at the City's request, the City shall reimburse her for any lost wages and/or pay her at the rate of \$45 per hour, in the event she is not employed at the date of the City's request.

3. UNDERTAKINGS OF THE CITY. The City hereby agrees to:

3.1 Payment of Salary and Benefits. The Employee will receive all salary and benefits payable under her written agreement with the City through July 31, 2014. Payments of these benefits include the one month of severance pay referenced in her underlying employment agreement with the City. Except to the limited extent expressly provided in Section 2.1, the Employee is not required to render services during the period from the date of execution of this Agreement through July 31, 2014.

3.2 Employment Security Benefits. The City agrees not to oppose any claim for unemployment benefits so long as the factual grounds stated are accurate and include a statement that the Employee voluntarily resigned from her employment.

3.3 Inquiries and Other Investigations. Inquiries by person or telephone regarding the Employee shall be forwarded and responded to by Carol Benson, the Mayor *Pro Tem* of the City, and Council President. The Mayor *Pro Tem*, in the absence of a written release from the Employee, will provide the Employee's dates of employment and final salary, as well as her job title.

3.4 Additional Responses. Section 3.3 and its undertakings are based upon the assumption that the Employee's representations to future employers, the media and public shall be limited to the Employee's resignation for the reasons stated above, and the information contained in this Agreement. Nothing herein shall be interpreted to limit the City's right and/or obligation to respond to a judicial or administrative subpoena, nor to limit its required lawful response to any public disclosure request. The parties acknowledge and understand that this Agreement is subject to release under the Washington Public Records Act, Ch. 42.56 RCW.

3.5 Third Party Investigations. Nothing in this Agreement limits either party's rights or duties in any criminal or other investigation conducted by any other governmental entity.

3.6 Disparagement. On behalf of its elected officials, and authorized speaking agents, the City and the Employee agree not to disparage each other by making any comment of any kind or nature regarding the Employee's employment other than as set forth herein, in subparagraphs 3.3 and 3.4. Elected officials, and authorized speaking agents of the City shall respond either that they are prohibited from response under the terms of this Agreement or that they decline to comment to any inquiry other than to say the matter is settled. In the event of any breach of subparagraph 3.6, the Employee's promises in subparagraph 2.2 shall be null and void and Employee shall have the right to sue the City or any of its elected officials, appointed officers, agents and employees for money damages. It is understood by the parties that the Agreement is subject to disclosure including without limitation pursuant to a public records request and that disclosure of the Agreement itself does not constitute a breach of this subparagraph 3.6.

3.7 Reimbursement of Attorneys Fees. The City agrees to pay to Lee Smart, P.S., Inc. the normal and reasonable costs and legal fees associated with the representation of the Employee with respect to its advice and representation of the Employee during the course of her sexual harassment claim, filed February 23, 2014 and her subsequent retaliation claims against the City, filed March 24, 2014, April 23, 2014, and May 1, 2014. The Employee's attorney shall maintain accurate billing records by the tenth (.10) of an hour, detailing its representation of the Employee. Such normal and reasonable costs are hereby stipulated to be approximately Thirty-Two Thousand Five Hundred Dollars and no/100 (\$32,500). The parties agree to compromise the amount of those costs, and pursuant to that compromise, the City agrees to pay up to Thirty Thousand Dollars and no/100 (\$30,000) directly to Trust Account of Lee Smart, P.S., Inc., attention Jeffrey P. Downer, no later than June 2, 2014. The City agrees to accept redacted invoices from Lee Smart, P.S., Inc., in order to protect the Employee's attorney client privilege and attorney work product.

3.8 Acknowledgement. The Mayor and City Council Members have each individually reviewed this Agreement, particularly the provisions of paragraph 3.6 relating to non-disparagement, and by their individual execution of the attached Exhibit A, acknowledge that they have been provided with a copy of this Agreement, and each of them individually agrees to abide by its provisions.

3.9 Third Party Disclosure. The City agrees to provide notification directly to the Employee whenever a request for records relating to her employment is received, pursuant to RCW 42.56.520 and to allow Employee a sufficient and reasonable time period to respond to the City's notification.

4. ENTIRE AGREEMENT. This is the entire Agreement between the parties. Any understanding, written or oral, relating to the termination of the Employee's employment, which arose on or before the date of execution of this Agreement, shall be deemed merged with its provisions.

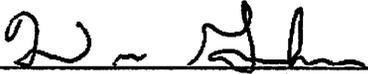
5. AMENDMENT. This Agreement shall not be amended except in writing with the express written consent of the parties hereto.

6. SEVERABILITY. To the fullest extent permitted by law, the various considerations and understandings contained in this Agreement shall be severable. In the event that any provision is struck down by a court of competent jurisdiction, the remaining provisions shall survive.

7. VENUE. In any action to enforce or interpret the terms of this Agreement, venue shall lay in King County, Washington, by the express stipulation of the parties hereto.

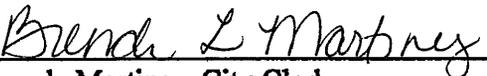
DATED this 15 day of May, 2014.

CITY OF BLACK DIAMOND



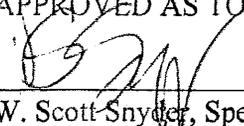
Mayor Dave Gordon

ATTEST:



Brenda Martinez, City Clerk

APPROVED AS TO FORM:



W. Scott Snyder, Special Counsel

EMPLOYEE

Christy Todd

APPROVED AS TO FORM:

Jeffrey P. Downer
LEE SMART, P.S., INC.

W. Scott Snyder, Special Counsel

EMPLOYEE

Christy Todd

Christy Todd

APPROVED AS TO FORM:

Jeffrey P. Downer

Jeffrey P. Downer
LEE SMART, P.S., INC.

EXHIBIT A

ACKNOWLEDGEMENT

THE UNDERSIGNED elected officials of the City of Black Diamond, Washington, acknowledge receipt of a copy of this Agreement, and the provisions of paragraph 3.6, which limit comment on this agreement and prohibiting disparagement of the Employee. The elected officials voluntarily agree to abide by its terms, and acknowledge that their failure to do so could impose significant cost and potential liability upon the City of Black Diamond.

DATED this 15 day of May, 2014.

CITY OF BLACK DIAMOND



Mayor Dave Gordon

Erika Morgan, Councilmember

Carol Benson, Mayor Pro Tem

Janie Edelman, Councilmember

Tamie Deady, Councilmember

Ron Taylor, Councilmember

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DATED this 16 day of May, 2014.

CITY OF BLACK DIAMOND

Mayor Dave Gordon

Carol Benson

Carol Benson, Mayor Pro Tem

Tamie Deady

Tamie Deady, Councilmember

Erika Morgan

Erika Morgan, Councilmember

Janie Edelman

Janie Edelman, Councilmember

Ron Taylor

Ron Taylor, Councilmember

Brenda Martinez

From: W. Scott Snyder <ssnyder@omwlaw.com>
Sent: Friday, May 16, 2014 10:20 AM
To: Brenda Martinez
Subject: FW: Attached Image

Here is the authorization, page to follow.

From: Jeffrey P. Downer [<mailto:Jpd@leesmart.com>]
Sent: Thursday, May 15, 2014 4:25 PM
To: W. Scott Snyder; Nancy Anderson (nanderson@grahamdunn.com)
Subject: RE: Attached Image

I did not mean to leave you hanging. This is acceptable to Christy Todd and me. You have our authorization to append our signatures to it.

From: W. Scott Snyder [<mailto:ssnyder@omwlaw.com>]
Sent: Thursday, May 15, 2014 2:49 PM
To: Jeffrey P. Downer; Nancy Anderson (nanderson@grahamdunn.com)
Subject: FW: Attached Image

Jeff and Nancy

Attached is the final, amended from Jeff's last version as shown on my prior email. We were able to paginate to match. I signed approved as to form, so Jeff you can either authorize me to attach the prior signature page or sign a new one. Nancy, if the mayor could sign the exhibit, please, and he can sign the original after council approval.

Thanks again for your attention and professionalism throughout
Scott

W. Scott Snyder | Attorney

Ogden Murphy Wallace P.L.L.C.
901 Fifth Avenue, Suite 3500
Seattle, WA 98164-2008

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Brenda Martinez

From: W. Scott Snyder <ssnyder@omwlaw.com>
Sent: Friday, May 16, 2014 10:31 AM
To: Brenda Martinez
Subject: FW: Christy Todd; City of Black Diamond
Attachments: MyScan.pdf

Signatures for attachment to the final.

From: Linda K. Bender [<mailto:lkb@leesmart.com>]
Sent: Wednesday, May 14, 2014 10:26 AM
To: ssnyder@omwlaw.com
Cc: jpd@leesmart.com
Subject: Christy Todd; City of Black Diamond

Encl. Signatures of Christy Todd and Jeffrey P. Downer

Linda K. Bender | | [VCard](#) | [Email](#)
Legal Assistant to Jeffrey P. Downer
and Michael P. Ryan

Lee Smart, P.S., Inc. | 1800 One Convention Place | 701 Pike St. | Seattle, WA 98101 | www.leesmart.com
Telephone 206.624.7990 | Toll-free 1.877.624.7990 | Fax 206.624.5944

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