

RESOLUTION NO. 15-1029

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT FOR ATTORNEY SERVICES WITH SUSAN DRUMMOND, PLLC TO ASSIST THE CITY WITH THE APPEAL OF THE UTRC DECISION IN THE DISPUTED 98 ACRES SERVICE AREA IN THE VILLIAGES AND THE ASSUMPTION OF THE DISPUTED 98 ACRES

WHEREAS, Susan Drummond, PLLC is currently working with the City on water rights and she has the expertise and familiarity necessary to provide this assistance; and

WHEREAS, City staff along with the City Attorney believes it is in the City's best interest and will provide cost savings to have Susan Drummond, PLLC preform this work; and

WHEREAS, the cost for this assistance is covered under the 2014/2015 MDRT budget;

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 an agreement for Attorney Services with Susan Drummond, PLLC to assist the City in the appeal of the UTRC decision and the assumption of the disputed 98 acres in the villages'

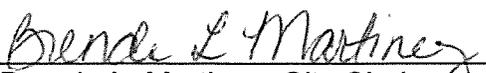
PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 4TH DAY OF JUNE, 2015.

CITY OF BLACK DIAMOND:



Carol Benson, Mayor

Attest:



Brenda L. Martinez, City Clerk

AGREEMENT FOR ATTORNEY SERVICES

THIS AGREEMENT, is made between the City of Black Diamond, a Washington municipal corporation (hereinafter the "City") and the Law Offices of Susan Elizabeth Drummond, PLLC, a limited liability corporation organized under the laws of the State of Washington, located and doing business at 5400 Carillon Point, Bldg. 5000, Ste. 476, Kirkland, WA 98033 (hereinafter the "Attorney").

Section 1. Purpose. The purpose of this Agreement is to ensure that the City receives professional services from the Attorney in an effective, timely and cost efficient manner while ensuring that the Attorney is appropriately and fairly compensated for services rendered.

Section 2. Scope of Service. The Attorney agrees to provide legal services, as requested by the City, in connection with: (1) the City's appeal of the King County Utilities Technical Review Committee Decision; and (2) the City's assumption of water utility service pursuant to Ch. 35.13A RCW, of the approximately 98 acres which was the subject of the UTRC proceeding. In summary, legal services may include representing the City with respect to the following:

- Hearing Examiner Appeal
- Assumption Proceedings

Section 3. Compensation. The City hereby agrees to pay Attorney for legal services at the rate of Two Hundred Twenty Dollars (\$220.00) per hour up to a not-to-exceed amount of nineteen thousand Dollars (\$19,000). This is the maximum amount to be paid under this Agreement for the services described in Section 2 above, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amendment to this Agreement. The Attorney agrees that the hourly rate charged for the Attorney's services contracted for herein shall remain locked in at the negotiated rate for a period of one (1) year from the effective date of this Agreement. Attorney agrees to use every appropriate method to contain her fees on these matters.

The charges for legal services provided will be based on actual time or based on increments which are no greater than 6 minutes. The Attorney may bill for travel time, but for no more than one hour from portal to portal during one day. No separate charges shall be paid for the following ordinary costs of doing business: local and long distance telephone costs and charges, postage, meals, clerical staff work, supplies and word processing. The City agrees to reimburse the extraordinary expenses incurred by Attorney, at cost with no mark-up as follows: legal messenger services, large volume photocopies prepared at the Attorney's office shall be reimbursed at the rate of \$.15 per page, large volume photocopies prepared by outside reproduction service shall be reimbursed at cost; computerized legal research over and above the Attorneys' monthly fee shall be reimbursed at cost but only when approved in advance by the City Attorney.

Section 4. Independent Contractor Status. It is expressly understood and agreed that Attorney, while engaged in carrying out and complying with any of the terms and conditions of this Agreement, is an independent contractor and is not an employee of the City. The parties agree that the Attorney has the ability to control and direct the performance and details of his work, the City being interested only in the results obtained.

Section 5. Billings. Attorney shall submit to the Black Diamond Economic Development and Master Planned Development Review Team Director ("MDRT Director"), Andy Williamson, monthly bills for the assigned matter describing the legal services provided during the previous month. Attorney shall not bill for duplicate services performed by more than one person or for services to correct Attorney errors or oversights. Attorney shall bill for only one participant in a conference or consultation between members of Attorneys' firm.

Attorneys' monthly bills shall include, at a minimum, the following information for each specific matter to which such services or costs pertain: the name of the matter; a brief description of the legal services performed; the date the services were performed; and the amount of time spent on each date services were performed and by whom. In addition to providing copies of all documents as specified below, Attorneys shall provide any information that will assist the City in performing a thorough review and/or audit of the billings, as may be requested by the City.

Unless the City objects to all or any portion of an invoice, the City shall pay the full amount within sixty (60) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Attorney of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

Any invoices reflecting separate charges for computerized legal research must include copies of the invoice for such computerized legal research associated with the services provided to the City.

Section 6. Advice and Status Reporting. Attorney shall provide the City Attorney and City Council with timely notice and advice of all significant developments arising during performance of her services hereunder, orally or in writing, as appropriate or as requested. Attorney shall provide the City Attorney and/or MDRT Director, Andy Williamson, with copies of all e-mails, pleadings, motions, discovery, correspondence, and other documents prepared by the Attorney, including research memoranda, or received by the Attorney unless they have been otherwise provided to the City.

Section 7. Communications. Attorney will communicate primarily with MDRT Director, Andy Williamson, and Carol Morris, City Attorney.

Section 8. Non-Assignment. The parties recognize hereto that a substantial inducement to the City for entering into this Agreement was, and is, the professional

reputation and competence of the Attorney. Neither this Agreement nor any interest therein may be assigned by Susan Drummond without the prior written approval of the City.

Section 9. Indemnification and Insurance.

A. The Attorney 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 Attorney in the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. Attorney's obligations and indemnity under this paragraph shall be effective only to the extent of Attorney's negligence. The provisions of this indemnification shall survive the termination or expiration of this Agreement. The indemnification clause is reciprocal, with City indemnifying Attorney consistent with the Attorney obligations set forth herein.

B. The Attorney shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the services provided by the Attorney, its agents, representatives or employees.

The Attorney's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Attorney to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

Minimum Scope of Insurance. The Attorney shall obtain insurance of the types and limits below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. There must be a minimum combined single limit for bodily injury and property damage of \$1,000,000.00 per accident, which may be met through umbrella coverage.

2. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

3. Professional Liability malpractice insurance, written with limits no less than \$1,000,000.00 per claim and \$1,000,000.00 policy aggregate limit.

The Attorney's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Attorney's insurance and shall not contribute with it.

The Attorney's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

Attorney shall furnish the City with certificates and any amendments before providing services under this Agreement.

Section 10. Licenses. Attorney warrants that she is a member in good standing with the Washington State Bar, and that any license or licenses that are required in order to perform the legal services under this Agreement have been obtained and are valid.

Section 11. Termination. This Agreement may be terminated by either party upon written notice with or without cause. In the event of termination, the Attorney shall be entitled to compensation as provided for in this Agreement, for services performed satisfactorily to the effective date of termination; provided, however, that the City may condition payment of such compensation upon Attorney's delivery to the City of any and all documents, photographs, computer software, video and audio tapes, and other materials provided to Attorney or prepared by or for Attorney or the City in connection with this Agreement.

Section 12. Notices. Notices required under this Agreement shall be personally delivered or mailed, postage prepaid, as follows:

Attorney: At the office address on the first page.

To the City: City of Black Diamond
24301 Roberts Dr.
P.O. Box 599
Black Diamond, WA 98010

And to: Carol Morris, City Attorney
Morris Law, P.C.
3304 Rosedale Street N.W., Suite 200
Gig Harbor, WA 98335

Notices given by personal delivery shall be effective immediately. Notices given by mail shall be deemed to have been delivered 72 hours after having been deposited in the United States mail.

Section 13. Ownership of Materials. Any and all documents, including draft documents where completed documents are unavailable, or materials prepared or caused to be prepared by Attorney pursuant to this Agreement shall be the property of the City at the moment of their completed preparation.

Section 14. Conflict of Interest. Attorney warrants and covenants that Attorney presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this Agreement a violation of any applicable state, local or federal law or any rule of professional conduct. In the event that any conflict of interest should nevertheless hereinafter arise, Attorney shall promptly notify the City of the existence of such conflict of interest.

Section 15. Time is of the Essence. Attorney agrees to diligently prosecute the services to be provided under this Agreement to completion and in accordance with any schedules specified herein. In the performance of this Agreement, time is of the essence.

Section 16. Confidentiality. Attorney agrees to maintain in confidence and not disclose to any person, association, or business, without prior written consent of the City, any secret, confidential information, knowledge or data relating to the products, process or operation of the City and/or any of its departments and divisions. Attorney further agrees to maintain in confidence and not disclose to any person, association, or business any data, information or material developed or obtained by Attorney during the term of this Agreement. The covenants contained in this paragraph shall survive the termination of this Agreement for whatever cause. This provision shall be interpreted to impose such duties only to the extent consistent with the Rules of Professional Conduct and applicable laws. This provision shall not be construed to prohibit the sharing of information as necessary to represent the City's interests, such as coordinating with technical consultants and attorneys representing other parties but on the same side as the City.

Section 17. Amendments. This Agreement is not subject to modification or amendment, except by a written authorization executed by both the Attorney and the duly authorized representative of the City, which written authorization shall expressly state that it is intended by the parties to amend the terms and conditions of this Agreement.

Section 18. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

Section 19. Severability. Should any part of this Agreement be declared by a final decision of a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of the Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

Section 20. Controlling Law. The laws of the State of Washington shall govern this Agreement and all matters relating to it.

Section 21. Whole Agreement. This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms

and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

Section 22. Disputes. In the event that the parties are unable to resolve any dispute regarding the performance of the legal services or this Agreement, any litigation brought to enforce the terms of this Agreement shall be filed in King County Superior Court. The prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the non-prevailing party.

IN WITNESS WHEREOF, Attorney and the City, by the signatures below, have executed this Agreement on the dates indicated below.

DATED this 4th day of June, 2015.

CITY OF BLACK DIAMOND

By: Carol Benson
Carol Benson, Mayor

ATTEST:

By: Brenda L Martinez
Brenda Martinez, City Clerk

APPROVED AS TO FORM:

By: [Signature]
Carol A. Morris, City Attorney

By: [Signature]
Susan Drummond