

RESOLUTION NO. 13-850

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, WASHINGTON AUTHORIZING THE
MAYOR TO EXECUTE A PROFESSIONAL SERVICE
AGREEMENT WITH DARCY MCPHERSON REGARDING
PUBLIC DEFENSE SERVICES**

WHEREAS, the city needs to provide for a continuation of public defense services; and


WHEREAS, the existing provider of public defense services, Darcy McPherson, has indicated a desire to continue to provide these services;

**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 a Professional Services Agreement with Darcy McPherson regarding Public Defense Services which is identified as Exhibit "A" and attached hereto.

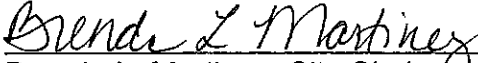
**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 3RD DAY OF JANAUARY,
2013.**

CITY OF BLACK DIAMOND:



Rebecca Olness, Mayor

Attest:



Brenda L. Martinez, City Clerk

**CITY OF BLACK DIAMOND CONTRACT
FOR PUBLIC DEFENSE SERVICES**

1. Parties. This Agreement is entered into between the City of Black Diamond, Washington ("City"), and Darcy D. McPherson and McPherson Law Office ("Attorney"); collectively, the "Parties."
2. Scope of Services.
 - a. Attorney shall provide public defender services for indigent criminal defendants charged in Black Diamond Municipal Court under ordinance of the City or laws of the state of Washington who qualify for counsel. Attorney shall provide legal representation for each of these defendants from the time of screening or appointment through trial, sentencing, and appeal to Superior Court, if necessary. Attorney shall be allowed to withdraw from representation upon disposition of a case or if allowed to withdraw upon motion to the Court. Compliance reviews and/or probation revocation hearings are also the responsibility of Attorney following appointment by the Court, but shall be subject to additional compensation outside of the per case flat rate as per Article 7, below.
 - b. Attorney shall provide standby representation to all in-custody defendants as well as general advice to unrepresented defendants at out-of-custody arraignments.
 - a. Attorney shall provide the Black Diamond Police Department with the telephone number or numbers at which the Attorney can be reached for critical stage advice to defendants during the course of police investigations and/or arrests twenty-four (24) hours each day. Attorney shall also provide the Black Diamond Police Department with the phone number and contact information for at least two (2) other back-up lawyers who are licensed in Washington State should Attorney be unreachable.
 - b. Attorney shall be available for next court day preliminary hearings. Attorney can appear by telephone/video conferencing for such hearings, if available. Attorney shall also provide the City with the phone number and contact information for at least two (2) other back-up lawyers who are licensed in Washington State should Attorney be unreachable for preliminary hearings.
 - c. The Attorney shall file monthly reports with the City delineating each client who has been appointed to the Attorney, including name(s), charge(s), case number (s), disposition, bench or jury trial (if applicable), and whether an appeal was filed. The report is due on or before the tenth (10th) day of the following month for services of the prior month.
 - d. The Attorney shall provide a letter of introduction to the screener to be handed out to each defendant who receives an appointment.
3. Applicant Screening. Determination of for eligibility of appointed counsel under this Agreement shall be determined by a screening process established by the Court. The Court shall be responsible for handling the screening process

4. Associated Counsel. The Attorney may associate or employ additional attorneys to represent defendants under this Agreement at Attorney's expense. All attorneys who provide public defense services under this Agreement with the City must be acceptable to the City and must be approved in advance by the City. No legal interns shall be used unless agreed to in advance by the City. Attorney shall be responsible for overseeing and approving services performed by other attorneys under this Agreement.

5. Term; Nunc-Pro Tunc. The provision of services under this agreement shall commence on January 1, 2013. This Agreement shall remain in full force and effect through December 31, 2013, unless terminated earlier pursuant to the terms hereof. This agreement may be extended for two (2) one-year periods by mutual agreement of the parties. In the event that this agreement is executed on or after January 1, 2013, the parties agree that the terms and conditions hereof shall be interpreted and applied as though the effective date hereof was January 1, 2013.

6. Case defined. A case is defined as the filing of a document with the court naming a person as defendant or respondent, to which an attorney is appointed in order to provide representation. As the Black Diamond Municipal Court is a court of limited jurisdiction, multiple citations from the same incident are counted as one case.

7. Compensation.

- a. Compensation for the services performed under this Agreement shall be a flat fee of \$150 per assigned case, for all services performed, until disposition of the case or when withdrawal of attorney from the case is allowed by the Court.
- b. Attorney shall be paid \$200 per month for coverage of arraignments, telephonic bail hearings, and review, revocation & probation hearings. Attorney shall be allowed to withdraw as attorney of record when each case reaches disposition (plea or other similar disposition, dismissal, verdict after trial or mistrial. Backup attorneys, as may be necessary, shall be paid for by the Contractor.
- c. This compensation covers all necessary preparation and hearings to resolve the issue(s) underlying a motion to revoke.
- d. The City shall pay Attorney an additional sum of \$350 for each jury trial in which testimony or evidence is admitted, and each appeal to Superior Court in which the Attorney actually files an appellate brief.
- e. Such fees shall include all overhead, costs and expenses of Attorney, except as otherwise set forth herein, and be Attorney's sole compensation. All compensation is inclusive of administrative costs as set forth in Standard 5.2 of the Washington State Supreme Court Standards for Indigent Defense issued on September 7, 2012.

8. Professional Liability Coverage. During the term of the Contract, the Attorney shall have professional liability coverage in a minimum amount of \$1,000,000 per claim and \$1,000,000 in general aggregate covering Attorney and Attorney's agents and employees providing services under this

Agreement. Proof of this coverage must be provided to the City prior mutual acceptance of this contract.

9. Indemnification/ Hold Harmless. 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, and Attorney's associates, agents and employees, in performance of this Agreement. To the extent that any of the damages referenced by this paragraph are caused by or resulting from the concurrent negligence of the City, its agents or employees, this obligation to indemnify, defend and hold harmless will be valid and enforceable only to the extent of the negligence of the Attorney, its associates, agents and employees.

10. Reimbursement of Certain Costs. The City shall reimburse the Attorney for reasonable expert witness fees if the court orders an expert witness upon motion of the Attorney. The City shall reimburse the Attorney for the costs of third party investigative services if the court orders the use of an investigator upon motion of the Attorney. The City shall reimburse the Attorney for the costs of appellate transcripts as required by court rules.

11. Discovery Provided. The City shall provide to the Attorney at no cost to the Attorney or the defendant one (1) copy of all discoverable materials concerning each assigned case with the exception of audio and video tapes which shall be made available for inspection in accordance with rules for discovery. Attorney will have fax and email available for transmission of discovery.

12. Interpreters. Attorney will meet with indigent clients who require interpreters at the court facility and/or jail at the City's expense. When special circumstances arise that may require a more extensive interview, Attorney will contract the Court to arrange for interpreting services.

13. Assignment or Subcontractors. The contract for public defense services may not be assigned or subcontracted without the prior written consent of the City.

14. Standard of Care. Attorney represents and warrants that 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. The Attorney shall comply with the applicable standards for public defense services pursuant to Chapter 10.101 RCW and in compliance with Standard 14 of the Washington State Supreme Court Standards for Indigent Defense issued on September 7, 2012.

15. Readiness. The Attorney is expected to be prepared to proceed at every stage of the criminal proceedings, unless restricted by circumstances outside of the Attorney's control. The Attorney will be expected to make every effort to come to scheduled court hearings and calendars prepared to proceed on all assigned cases.

16. Termination.

- a. Either party may terminate this Agreement without cause, by giving the other party ninety (90) days written notice.
- b. Either party may terminate this agreement on seven (7) days written notice in the event of (1) material breach of contract, (2) violation of the rules of professional conduct, or (3) unforeseen medical issues. Such termination is effective only if the party terminating has provided written notice of the deficiency to the other party and such deficiency is not corrected in a timely manner to the reasonable satisfaction of the terminating party.
- c. The City shall have the right to terminate this Agreement immediately if the license to practice law of Darcy D. McPherson is suspended or revoked. In the event of termination or expiration of the Agreement, the Attorney shall complete all pending cases if lawfully able to do so.

17. Attorney Conflict. In the event the Attorney must withdraw from a case because of a conflict of interest, the matter will be referred to the municipal court judge for a final decision. Upon the judge's determination that the Attorney cannot represent the assigned client, the Court shall appoint the client to appropriate conflict counsel.

18. Discrimination and Compliance with Laws.

- a. Attorney 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. Attorney shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

19. Records retention. Attorney 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 or the Rules of Professional Conduct. Copies shall be made available on request.

20. Independent Contractor. Attorney is and shall be at all times during the term of this Agreement an independent contractor. Nothing in this Agreement shall be considered to create an employment relationship between the parties. Neither Attorney nor any employee of Attorney shall be entitled to any benefits accorded City employees. Office space for meetings with clients is provided by the Contractor in Kitsap County, Washington or at another mutually-agreed location.

21. 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 Superior Court.

22. 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.

23. Entire 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.

24. Training. Attorneys and all attorney employees who regularly appear in the Black Diamond Municipal Court pursuant to this contract shall attend at least seven (7) continuing legal education hour credits approved by the Washington State Office of Public Defense annually.

25. Supervision of Contract and Professional Standard. Any defendant complaints regarding Attorney's services shall first be addressed by Attorney. If defendant this does not resolve defendant's complaint to defendant's satisfaction, Attorney shall report the complaint to the Judge of the Black Diamond Municipal Court within 5 business days and inform defendant in writing of defendant's right to notify the court of complaint.

26. Private Practice Case Load. Attorney shall maintain compliance with case load requirements as stated by the Supreme Court Order for Indigent Defense Standards and shall file certification as required by this Order.

27. Extraordinarily Complex Cases. Attorney may ask City for extra compensation in extraordinarily complex cases. In order to request such extra compensation, Attorney must make a written request to the Black Diamond Municipal Court for Extraordinary Compensation before extra work or costs are incurred. A copy of such request shall be provided to the Mayor prior to the Court hearing on the request. Such requests may be heard In Camera at Attorney's request. The parties to this contract agree that the Judge of the Black Diamond Municipal Court shall be the decision maker in such requests, and that the Judge's decision in such cases cannot be appealed unless the ruling could be detrimental to the defendant's right to due process or effective assistance of counsel.

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.

Dated this 4th day of January, 2013

CITY OF BLACK DIAMOND

By: Rebecca Olness
Rebecca Olness
Mayor

ATTORNEY
Darcy D. McPherson 12/26/12
Darcy D. McPherson
McPherson Law Office

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