

**RESOLUTION NO. 16-1091**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF BLACK DIAMOND, KING  
COUNTY, WASHINGTON APPROVING LEGAL  
SERVICES FOR THE CITY COUNCIL AND CITY  
IN CONNECTION WITH RESOLUTION 16-1089  
AND THE COUNCIL'S RULES OF PROCEDURE**

**WHEREAS**, The City Council at its Regular Council Meeting on April 7, 2016 approved Resolution 16-1089 which terminated the City's contract with Morris Law; and

**WHEREAS**, the Mayor refused to sign Resolution 16-1089, instead stamping it "Denied" and noting: "The Council does not have the authority to terminate contract legal services"; and

**WHEREAS**, city attorney Morris stated orally and in writing her belief that the Council does not have the authority to terminate the City's contract with her; and

**WHEREAS**, the Mayor has cited legal objections to the Council's Rules of Procedure as a basis for refusing to recognize the Council's Rules of Procedure; and

**WHEREAS**, The Council believes that its action to approve Resolution 16-1089 and to amend its Rules of Procedure was within its authority and appropriate; and

**WHEREAS**, The Council intends to defend its action to terminate the City's contract with Morris Law; and

**WHEREAS**, The Council needs to obtain legal services for the purpose of enforcing and implementing Resolution 16-1089; and

**WHEREAS**, the Council needs to obtain legal services for the purpose of reviewing and advising on the Council's Rules of Procedure.

**WHEREAS**, the Council and the firm of Talmadge, Fitzpatrick and Tribe wish to maintain the maximum independence both in fact and appearance in the firm's review of the City's authority.

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

**Section 1. The City Council hereby designates the firm of Talmadge, Fitzpatrick and Tribe to represent the City Council and City in all matters relating to Resolution 16-1089 and its Rules of Procedure; and**

**Section 2. The City Council approves the Professional Services Contract with the firm of Talmadge, Fitzpatrick and Tribe (attachment A).**

**Section 3. The City Council and the firm of Talmadge, Fitzpatrick and Tribe agree that the firm will not be considered for long term legal services.**

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THE 21<sup>ST</sup> DAY OF APRIL, 2016.**

**CITY OF BLACK DIAMOND**



**Carol Benson, Mayor**

**Attest:**



**Brenda L. Martinez, City Clerk**

P. Popen

### HOURLY FEE CONTRACT FOR LEGAL SERVICES

This is a contract for legal services between Black Diamond City Council ("Client") and Talmadge/Fitzpatrick/Tribe ("Attorneys") who are retained to provide legal services in connection with Black Diamond City Council controversy with City Attorney and Council rules ("matter").

**SERVICES**—Client grants Attorneys the authority to proceed with providing the services in this matter as Attorneys deem appropriate. Attorneys agree to keep Client informed of all significant developments. Client agrees to cooperate with and to aid Attorneys in the performance of the legal services.

Attorneys do not undertake to represent any other person or persons in this matter other than Client. If this matter is an appeal, Attorneys do not represent Client's trial counsel in any fashion, with respect to any potential negligence on the part of trial counsel or otherwise.

**PAYMENT OF FEES AND COSTS**—Client agrees to pay Attorneys' fees and all costs. Attorneys' fees will be based on the number of attorney hours spent on Client's behalf. Attorneys' billable time shall include all time spent by attorney, including, but not limited to, legal research and analysis, communication (with Client, counsel, and parties), inter-office consultation, drafts and revisions of documents, travel time, and all other activity incident to representation. Presently, Attorneys' time is billed at **\$400.00 per hour for Philip A. Talmadge, Thomas M. Fitzpatrick, and \$350 for Sidney Tribe**. Any assistant's or paralegal's time is billed at the rate of \$125.00 per hour. *Billable hours will be discounted at a rate of 10%.* Attorneys may periodically increase hourly rates, subject to 30-days notice to Client. Costs are out-of-pocket expenses such as court filing fees, deposition reporter fees, photocopying costs, travel and lodging costs, courier costs, long-distance telephone charges. Client agrees to pay in full within 30 days of receipt of the itemized monthly bill for services rendered and costs incurred. If any monthly billing remains unpaid thereafter, a late charge shall be made at the rate of one percent (1%) per month on the outstanding balance, until paid. If Client questions in good faith any item or items in any given itemized monthly billings, Client may withhold payment for that item or items *only*, until that question is reasonably resolved. Payment of the disputed sum, or of any adjustment thereof, shall be due within ten (10) days after resolution, with the service charge to be imposed thereafter. It is further understood and agreed that in the event there is a dispute between Client and Attorneys concerning the performance of any provision of this agreement, the prevailing party shall be entitled to recover all reasonable costs incurred in connection with the dispute, including court costs, Attorneys' fees, and other dispute-related expenses.

In certain instances, third parties apart from Client will pay Attorneys' bills. Regardless of who is paying Attorneys' bills, Attorneys' duty of representation is to Client. By entering into this agreement, Client consents to the payment of fees by said third party.

**CLIENT'S and ATTORNEYS' RIGHTS TO TERMINATE CONTRACT**—Client may terminate this contract at any time, with or without cause, subject to applicable rules of court, and statutory attorney liens. Upon termination, Client shall pay all fees and costs. Attorneys have the right to terminate services any time, subject to rules of court and the Rules of Professional Conduct. Client acknowledges Attorneys' right to terminate services if Client disregards any terms of this contract, including timely payment of all fees and costs or full cooperation.

If Client or Attorneys terminate this contract, Attorneys may retain copies of any materials relating to this matter. Client shall be responsible for the copying costs of any materials.

**REPRESENTATIONS**—Client acknowledges that Attorneys have made no representations or guarantees regarding the successful resolution of this matter and that all statements relating to the likelihood of success are statements of opinion only.

**COMMENCEMENT**—Client acknowledges Attorneys' services will not commence until a signed copy of this contract is returned, except if specifically asked to take immediate action.

**DISPUTE RESOLUTION**—If any dispute arises under the terms of this agreement, it shall be resolved by a court of competent jurisdiction with venue in King County, Washington. Washington law shall apply. By mutual agreement, the dispute may be submitted to alternative dispute resolution, including either mediation or arbitration, with Client paying no less than fifty percent of the fees and costs associated with the alternate dispute resolution procedure.

**INDEPENDENT COUNSEL**—Client is advised that Client has the right to have this agreement reviewed by independent counsel prior to the time it is entered into by Client.

I ACKNOWLEDGE THAT I HAVE READ THE FOREGOING CONTRACT FOR LEGAL SERVICES AND UNDERSTAND THE CONTENTS OF THE AGREEMENT.

TALMADGE/FITZPATRICK/TRIBE  
By: Philip Talmadge  
Dated: 4/21/16

CLIENT  
By: Erika Morzen  
Dated: 4/25/2016

### HOURLY FEE CONTRACT FOR LEGAL SERVICES

This is a contract for legal services between Black Diamond City Council ("Client") and Talmadge/Fitzpatrick/Tribe ("Attorneys") who are retained to provide legal services in connection with Black Diamond City Council controversy with City Attorney and Council rules ("matter").

**SERVICES**—Client grants Attorneys the authority to proceed with providing the services in this matter as Attorneys deem appropriate. Attorneys agree to keep Client informed of all significant developments. Client agrees to cooperate with and to aid Attorneys in the performance of the legal services.

Attorneys do not undertake to represent any other person or persons in this matter other than Client. If this matter is an appeal, Attorneys do not represent Client's trial counsel in any fashion, with respect to any potential negligence on the part of trial counsel or otherwise.

**PAYMENT OF FEES AND COSTS**—Client agrees to pay Attorneys' fees and all costs. Attorneys' fees will be based on the number of attorney hours spent on Client's behalf. Attorneys' billable time shall include all time spent by attorney, including, but not limited to, legal research and analysis, communication (with Client, counsel, and parties), inter-office consultation, drafts and revisions of documents, travel time, and all other activity incident to representation. Presently, Attorneys' time is billed at **\$400.00 per hour for Philip A. Talmadge, Thomas M. Fitzpatrick, and \$350 for Sidney Tribe**. Any assistant's or paralegal's time is billed at the rate of \$125.00 per hour. *Billable hours will be discounted at a rate of 10%*. Attorneys may periodically increase hourly rates, subject to 30-days notice to Client. Costs are out-of-pocket expenses such as court filing fees, deposition reporter fees, photocopying costs, travel and lodging costs, courier costs, long-distance telephone charges. Client agrees to pay in full within 30 days of receipt of the itemized monthly bill for services rendered and costs incurred. If any monthly billing remains unpaid thereafter, a late charge shall be made at the rate of one percent (1%) per month on the outstanding balance, until paid. If Client questions in good faith any item or items in any given itemized monthly billings, Client may withhold payment for that item or items *only*, until that question is reasonably resolved. Payment of the disputed sum, or of any adjustment thereof, shall be due within ten (10) days after resolution, with the service charge to be imposed thereafter. It is further understood and agreed that in the event there is a dispute between Client and Attorneys concerning the performance of any provision of this agreement, the prevailing party shall be entitled to recover all reasonable costs incurred in connection with the dispute, including court costs, Attorneys' fees, and other dispute-related expenses.

In certain instances, third parties apart from Client will pay Attorneys' bills. Regardless of who is paying Attorneys' bills, Attorneys' duty of representation is to Client. By entering into this agreement, Client consents to the payment of fees by said third party.

**CLIENT'S and ATTORNEYS' RIGHTS TO TERMINATE CONTRACT**—Client may terminate this contract at any time, with or without cause, subject to applicable rules of court, and statutory attorney liens. Upon termination, Client shall pay all fees and costs. Attorneys have the right to terminate services any time, subject to rules of court and the Rules of Professional Conduct. Client acknowledges Attorneys' right to terminate services if Client disregards any terms of this contract, including timely payment of all fees and costs or full cooperation.

If Client or Attorneys terminate this contract, Attorneys may retain copies of any materials relating to this matter. Client shall be responsible for the copying costs of any materials.

**REPRESENTATIONS**—Client acknowledges that Attorneys have made no representations or guarantees regarding the successful resolution of this matter and that all statements relating to the likelihood of success are statements of opinion only.

**COMMENCEMENT**—Client acknowledges Attorneys' services will not commence until a signed copy of this contract is returned, except if specifically asked to take immediate action.

**DISPUTE RESOLUTION**—If any dispute arises under the terms of this agreement, it shall be resolved by a court of competent jurisdiction with venue in King County, Washington. Washington law shall apply. By mutual agreement, the dispute may be submitted to alternative dispute resolution, including either mediation or arbitration, with Client paying no less than fifty percent of the fees and costs associated with the alternate dispute resolution procedure.

**INDEPENDENT COUNSEL**—Client is advised that Client has the right to have this agreement reviewed by independent counsel prior to the time it is entered into by Client.

I ACKNOWLEDGE THAT I HAVE READ THE FOREGOING CONTRACT FOR LEGAL SERVICES AND UNDERSTAND THE CONTENTS OF THE AGREEMENT.

TALMADGE/FITZPATRICK/TRIBE

By: Philip Talmadge

Dated: 4/21/16

CLIENT

By: Patricia C. Pepper

Dated: 4-21-16