

RESOLUTION NO. 16-1132

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, APPROVING A CONTRACT BETWEEN THE CITY OF BLACK DIAMOND AND LIGHTHOUSE LAW GROUP PLLC.

WHEREAS, CCD Black Diamond Partners LLC, recently filed a Complaint for Violations of the Open Public Meetings Act under King County Superior Court cause number 16-2-29091-4 (“the Lawsuit”); and

WHEREAS, the Lawsuit names as defendants the City of Black Diamond, the Black Diamond City Council, along with Councilmembers Erika Morgan, Pat Pepper, and Brian Weber, who are individually named (collectively “the Defendants”); and

WHEREAS, the City Council would like to exercise its authority under RCW 35A.11.010 to contract for legal services; and

WHEREAS, the City Council, by contract, would like to retain the services of Lighthouse Law Group PLLC (“Lighthouse”) to represent the Defendants in the Lawsuit; and

WHEREAS, at this time, the scope of the engagement of Lighthouse Law Group PLLC shall be limited to representing the Defendants in the Lawsuit; and

WHEREAS, the City Council reserves the right to contract with Lighthouse for additional legal services at a later date; and

WHEREAS, this resolution was introduced and approved by a majority of the whole membership of the city council during a regular meeting of the Black Diamond City Council on December 15, 2016; now therefore,

THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. ENGAGEMENT OF LIGHTHOUSE LAW GROUP PLLC. The Black Diamond City Council hereby engages Lighthouse to represent the Defendants in the Lawsuit and hereby approves the Professional Services Agreement with Lighthouse Law Group PLLC that is attached hereto as **Attachment A** and incorporated herein by this reference. The City of Black Diamond may terminate the Professional Services Agreement and discharge Lighthouse at any time, with or without cause, but only by the affirmative vote of at least a majority of the whole membership of the city council.

Section 2. CITY TO MAKE ADVANCE FEE DEPOSIT. The Black Diamond City Council hereby directs that an advance fee deposit in the amount of Ten Thousand Dollars (\$10,000) be paid from the City’s general fund and sent to Lighthouse Law Group PLLC, 1100 Dexter Avenue N, #100, Seattle, WA 98109, no later than December 22, 2016.

Section 3. KENYON DISEND PLLC DISCHARGED. In light of the engagement of Lighthouse, the services of Kenyon Disend PLLC will no longer be needed to defend the Lawsuit. Kenyon Disend PLLC is hereby discharged from representing the Defendants in the Lawsuit. Nothing in this paragraph should be construed as the City Council's acquiescence to the engagement of Kenyon Disend PLLC as the City Attorney.

RESOLVED this 15<sup>th</sup> day of December, 2016.

CITY OF BLACK DIAMOND

**DENIED** *CB*

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

*Council does not have contracting authority. A motion to provide legal defense & indemnification did not pass.*

\_\_\_\_\_  
CITY CLERK, BRENDA L. MARTINEZ

FILED WITH THE CITY CLERK:

December \_\_, 2016

PASSED BY THE CITY COUNCIL:

December 15, 2016

RESOLUTION NO. \_\_\_\_

**CITY OF BLACK DIAMOND  
AGREEMENT FOR PROFESSIONAL SERVICES  
WITH LIGHTHOUSE LAW GROUP PLLC**

This Agreement is entered into by and between the CITY OF BLACK DIAMOND, WASHINGTON, a municipal corporation hereinafter referred to as "City," and LIGHTHOUSE LAW GROUP PLLC, a Washington Professional Limited Liability Company, hereinafter referred to as "Service Provider."

**RECITALS**

WHEREAS, the BLACK DIAMOND CITY COUNCIL adopted Resolution \_\_\_\_ on December 15, 2016, approving this contract; and

WHEREAS, the City desires to provide for the defense of the Defendants in the lawsuit brought by CCD Black Diamond Partners LLC, King County Superior Court cause number 16-2-29091-4, represented by Service Provider;

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, the parties hereto agree as follows:

**TERMS**

**1. Scope of Services; Compliance with Law**

The Service Provider shall represent the Defendants in the lawsuit brought by CCD Black Diamond Partners LLC, King County Superior Court cause number 16-2-29091-4. The Service Provider, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances. The Service Provider shall perform the Work diligently and completely and in accordance with the Rules of Professional Conduct that apply to lawyers in the state of Washington.

**2. Compensation**

A. The City shall pay the Service Provider and the Service Provider shall invoice the City for work performed on an hourly basis in six-minute increments according to the applicable hourly rates for the following attorneys:

Jeff Taraday	\$300 per hour
Beth Ford	\$150 per hour
Patricia Taraday	\$225 per hour
Sharon Cates	\$225 per hour

B. In addition to fees for professional legal services, Service Provider may charge separately for some other services and expenses to the extent of their use. These charges include, but are not limited to, large copying projects, large mailings, specialized computer research, court filing fees, and other court-related expenditures including court reporter and transcription fees. Aside from our time, no separate charge is made for computer research that falls within our Westlaw subscription. Service Provider shall not charge for secretarial or word processing services; those costs are included within the above hourly rates.

C. Service Provider may need to advance costs and incur expenses on City's behalf on an ongoing basis, including, but not limited to, costs such as filing fees, or fees for necessary experts, consultants, or services related to this matter. These items are separate and apart from attorneys' fees. Generally, Service Provider will advance nominal costs and bill City for them at the end of the month. These additional costs including taxes will be included as a separate item on the monthly statement. City, as the client, is responsible for these costs. They are not the responsibility of Service Provider. City shall be responsible to reimburse the Service Provider for these advanced costs. If substantial costs arise, Service Provider may arrange for City to pay them in advance or be billed directly by the appropriate party.

D. Unless the Service Provider is holding in trust an advance fee deposit in a sufficient amount of City funds to cover the invoice, the City shall pay the Service Provider for services rendered and allowable expenses incurred no later than 30 days after receipt of an invoice separately detailing such services rendered and expenses incurred during the applicable period.

E. Upon approval of this Agreement, and prior to receiving any invoice, the City shall make an advance fee deposit to Service Provider in the amount of Ten Thousand Dollars (\$10,000). Upon receipt of the advance fee deposit, Service Provider agrees to open a trust account for the holding of this advance fee deposit. The advance fee deposit is a deposit against Service Provider's future services or costs. Until the fee is earned or the cost is incurred by the Service Provider, it shall be held in a trust account. Service Provider may withdraw fees and costs owing after such fees have been earned and incurred, based on the actual hours worked and invoiced and the actual costs incurred, PROVIDED THAT Service Provider shall not make such withdrawal any earlier than fifteen days after the invoice is sent by Service Provider, and FURTHER PROVIDED THAT Service Provider shall not make such withdrawal to the extent that all or any portion of the invoice is objected to by resolution approved by the affirmative vote of at least a majority of the whole membership of the city council. In such case, the resolution shall state the amount of the fee that the objection pertains to and the amount that may be withdrawn. The advance fee deposit shall not be construed as a cap on the amount of fees and costs that may be owed by the City. Service Provider may request additional advance fee deposits from time to time. Any such future advance fee deposits shall also be held in trust and be subject to these same terms.

F. Any change or modification to this Agreement for additional services shall be in writing and signed by the parties to this Agreement and approved by the affirmative vote of at least a majority of the whole membership of the city council. Any compensation due for the change or modifications shall be on the same terms and conditions as set forth in this section or in a manner otherwise mutually agreed to by the parties.

### **3. Termination**

A. The City reserves the right to terminate or suspend this Agreement at any time, with or without cause, by notifying the Service Provider with a copy of a resolution to that effect approved by the affirmative vote of at least a majority of the whole membership of the city council.

B. Upon such action, all fees and expenses incurred before the termination are due. If such termination occurs, City's original papers will be returned to City promptly upon receipt

of payment for outstanding fees and costs. If City wishes to have a copy of its file at the conclusion of our representation, Service Provider will provide it to City at cost.

C. Service Provider reserves the right to withdraw from representing the City and the other Defendants in the Lawsuit, if, for any reason, our fees are not timely paid in accordance with this agreement, or for any other appropriate cause.

#### 4. Duration

This Agreement shall be in full force and effect for the duration of the Lawsuit unless sooner terminated under the provisions of this Agreement. Time is of the essence for this Agreement in each and all of its provisions in which performance is required.

#### 5. Independent Service Provider

A. The parties intend that an independent contractor relationship will be created by this Agreement. The City will not exercise control and direction over the work of the Service Provider, and is interested primarily in the results to be achieved. Subject to paragraphs herein, the implementation of services pursuant to this Agreement will lie solely within the discretion of the Service Provider. No agent, employee, servant or representative of the Service Provider shall be deemed to be an employee, agent, servant or representative of the City for any purpose, and the employees of the Service Provider are not entitled to any of the benefits the City provides for its employees. The Service Provider will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives during the performance of this Agreement.

B. In the performance of the services herein contemplated the Service Provider is an independent contractor with the authority to control and direct the performance of the details of the work; however, the results of the work contemplated herein must meet the approval of the City and shall be subject to the City's general rights of inspection and review to secure the satisfactory completion thereof.

C. As an independent contractor, the Service Provider shall be responsible for the reporting and payment of all applicable local, state, and federal taxes.

#### 6. Notices

Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears below (as modified in writing from time to time by such party):

To the City:  
City of Black Diamond  
Brenda Martinez  
City Clerk  
24301 Roberts Drive  
PO Box 599  
Black Diamond, WA 98010  
[BMartinez@ci.blackdiamond.wa.us](mailto:BMartinez@ci.blackdiamond.wa.us)

To the Service Provider:  
Lighthouse Law Group PLLC  
Jeff Taraday  
1100 Dexter Avenue N, #100  
Seattle, WA 98109  
[jeff@lighthouselawgroup.com](mailto:jeff@lighthouselawgroup.com)

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

CITY OF BLACK DIAMOND

LIGHTHOUSE LAW GROUP PLLC

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: JEFF Taraday  
Title: Member

Date: \_\_\_\_\_

Date: December 15, 2016

Attest:

\_\_\_\_\_  
Brenda Martinez, City Clerk

Authorizing Resolution \_\_\_\_\_

**MOTION TO PROVIDE LEGAL DEFENSE AND INDEMNIFICATION**  
**Erika Morgan**

**MOTION:**

I MOVE, pursuant to the requirements of Black Diamond Municipal Code 2.66.020, that we APPROVE the retention of legal counsel to represent Councilmember Erika Morgan in the OPMA lawsuit that has been filed by CCD Black Diamond Partners against the City, the City Council, and three individual Councilmembers, AND FURTHER, that because of the actual or potential for conflict of interest between Councilmember Erika Morgan and the City, that this legal representation of Councilmember Erika Morgan be by an attorney other than the current City Attorney, who has already advised that his ethical obligations to the City likely prevent him from representing both the City and the individually named Councilmembers in the lawsuit.

**DISCUSSION (if seconded):**

I OPPOSE THIS MOTION AND BELIEVE IT SHOULD BE rejected pursuant to BDMC 2.66.030, which clearly states that "in no event shall protection be offered under this chapter by the city to: 1. Any dishonest, fraudulent, criminal, willful, intentional, or malicious act or course of conduct of any official or employee."

The claims asserted against Councilmember Erika Morgan are for alleged "willful" and "intentional" violations of the OPMA, not mere negligence or carelessness. This is the basis on which AWC RMSA denied insurance coverage for this lawsuit, and it only makes sense that the City also deny paying for the defense or indemnification of Councilmember Erika Morgan on this basis.

I will also note that under BDMC 2.66.040, the determination of whether a City official should be afforded a defense at City expense is a "legislative determination of the council," based on a "recommendation of the mayor". So before we call the vote on this motion, I would ask the Mayor for her recommendation whether the City should pay to defend or indemnify Councilmember Erika Morgan.

RECEIVED  
CLERK OFFICE

DEC 15 2016

BY: \_\_\_\_\_

**MOTION TO DISQUALIFY  
Erika Morgan**

**MOTION:**

I move PURSUANT TO Council Rule 8.5.2 that Councilmember Erika Morgan be disqualified from voting on the motion on whether to provide her legal representation at the City's expense in the OPMA lawsuit. Under Council 8.3.1 and 8.5.1, a Councilmember is required to abstain from voting when she has a conflict of interest and the City Attorney advises that abstention is required because of the conflict of interest.

**DISCUSSION (if seconded):**

When a Councilmember refuses to abstain from voting on a matter in which she has a monetary self-interest, despite the City Attorney's opinion that abstention is required, then Rule 8.5.2 allows the remaining Councilmembers to vote to disqualify the conflicted Councilmember from voting on the issue on which she has a conflict. Councilmember Erika Morgan may not vote on this motion to disqualify, as stated in Council Rule 8.5.2. And if we vote affirmatively on this motion to disqualify, then she will be disqualified from voting on the motion to provide legal representation.



**MOTION TO PROVIDE LEGAL DEFENSE AND INDEMNIFICATION**  
**Pat Pepper**

**MOTION:**

I MOVE, pursuant to the requirements of Black Diamond Municipal Code 2.66.020, that we APPROVE the retention of legal counsel to represent Councilmember Pat Pepper in the OPMA lawsuit that has been filed by CCD Black Diamond Partners against the City, the City Council, and three individual Councilmembers, AND FURTHER, that because of the actual or potential for conflict of interest between Councilmember Pat Pepper and the City, that this legal representation of Councilmember Pat Pepper be by an attorney other than the current City Attorney, who has already advised that his ethical obligations to the City likely prevent him from representing both the City and the individually named Councilmembers in the lawsuit.

**DISCUSSION (if seconded):**

I OPPOSE THIS MOTION AND BELIEVE IT SHOULD BE rejected pursuant to BDMC 2.66.030, which clearly states that "in no event shall protection be offered under this chapter by the city to: 1. Any dishonest, fraudulent, criminal, willful, intentional, or malicious act or course of conduct of any official or employee."

The claims asserted against Councilmember Pat Pepper are for alleged "willful" and "intentional" violations of the OPMA, not mere negligence or carelessness. This is the basis on which AWC RMSA denied insurance coverage for this lawsuit, and it only makes sense that the City also deny paying for the defense or indemnification of Councilmember Pat Pepper on this basis.

I will also note that under BDMC 2.66.040, the determination of whether a City official should be afforded a defense at City expense is a "legislative determination of the council," based on a "recommendation of the mayor". So before we call the vote on this motion, I would ask the Mayor for her recommendation whether the City should pay to defend or indemnify Councilmember Pat Pepper.

RECEIVED  
CLERK OFFICE

DEC 15 2016

BY: \_\_\_\_\_

**MOTION TO DISQUALIFY  
PAT PEPPER**

**MOTION:**

I move PURSUANT TO Council Rule 8.5.2 that Councilmember Pat Pepper be disqualified from voting on the motion on whether to provide her legal representation at the City's expense in the OPMA lawsuit. Under Council 8.3.1 and 8.5.1, a Councilmember is required to abstain from voting when she has a conflict of interest and the City Attorney advises that abstention is required because of the conflict of interest.

**DISCUSSION (if seconded):**

When a Councilmember refuses to abstain from voting on a matter in which she has a monetary self-interest, despite the City Attorney's opinion that abstention is required, then Rule 8.5.2 allows the remaining Councilmembers to vote to disqualify the conflicted Councilmember from voting on the issue on which she has a conflict. Councilmember Pat Pepper may not vote on this motion to disqualify, as stated in Council Rule 8.5.2. And if we vote affirmatively on this motion to disqualify, then she will be disqualified from voting on the motion to provide legal representation.

**MOTION TO PROVIDE LEGAL DEFENSE AND INDEMNIFICATION**  
**Brian Weber**

**MOTION:**

I MOVE, pursuant to the requirements of Black Diamond Municipal Code 2.66.020, that we APPROVE the retention of legal counsel to represent Councilmember Brian Weber in the OPMA lawsuit that has been filed by CCD Black Diamond Partners against the City, the City Council, and three individual Councilmembers, AND FURTHER, that because of the actual or potential for conflict of interest between Councilmember Brian Weber and the City, that this legal representation of Councilmember Brian Weber be by an attorney other than the current City Attorney, who has already advised that his ethical obligations to the City likely prevent him from representing both the City and the individually named Councilmembers in the lawsuit.

**DISCUSSION (if seconded):**

I OPPOSE THIS MOTION AND BELIEVE IT SHOULD BE rejected pursuant to BDMC 2.66.030, which clearly states that "in no event shall protection be offered under this chapter by the city to: 1. Any dishonest, fraudulent, criminal, willful, intentional, or malicious act or course of conduct of any official or employee."

The claims asserted against Councilmember Brian Weber are for alleged "willful" and "intentional" violations of the OPMA, not mere negligence or carelessness. This is the basis on which AWC RMSA denied insurance coverage for this lawsuit, and it only makes sense that the City also deny paying for the defense or indemnification of Councilmember Brian Weber on this basis.

I will also note that under BDMC 2.66.040, the determination of whether a City official should be afforded a defense at City expense is a "legislative determination of the council," based on a "recommendation of the mayor". So before we call the vote on this motion, I would ask the Mayor for her recommendation whether the City should pay to defend or indemnify Councilmember Brian Weber.

RECEIVED  
CLERK OFFICE

DEC 15 2016

BY: \_\_\_\_\_

**MOTION TO DISQUALIFY**  
**Brian Weber**

**MOTION:**

I move PURSUANT TO Council Rule 8.5.2 that Councilmember Brian Weber be disqualified from voting on the motion on whether to provide her legal representation at the City's expense in the OPMA lawsuit. Under Council 8.3.1 and 8.5.1, a Councilmember is required to abstain from voting when he has a conflict of interest and the City Attorney advises that abstention is required because of the conflict of interest.

**DISCUSSION (if seconded):**

When a Councilmember refuses to abstain from voting on a matter in which he has a monetary self-interest, despite the City Attorney's opinion that abstention is required, then Rule 8.5.2 allows the remaining Councilmembers to vote to disqualify the conflicted Councilmember from voting on the issue on which he has a conflict. Councilmember Brian Weber may not vote on this motion to disqualify, as stated in Council Rule 8.5.2. And if we vote affirmatively on this motion to disqualify, then he will be disqualified from voting on the motion to provide legal representation.