

RESOLUTION NO. 17-1182

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AUTHORIZING THE CITY COUNCIL TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH ANNE BREMNER, PC

WHEREAS, the Black Diamond City Council recognizes the need to obtain legal services; and

WHEREAS, the City Council finds the proposed professional services contract with Anne Bremner, PC to be fair and reasonable;

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

Section 1. The City Council hereby agrees to execute on behalf of the City, a professional services agreement with Anne Bremner, PC, substantially in the form attached hereto as Exhibit A.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 17th DAY OF AUGUST, 2017.

CITY OF BLACK DIAMOND:

DENIED

Pat Pepper, City Council President

Council has no contracting authority. CB

Attest:

Brenda L. Martinez, City Clerk

CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is entered into by and between:

CITY COUNCIL OF BLACK DIAMOND, WASHINGTON (the "Council")
Physical Address: 24301 Roberts Drive
Mailing Address: P.O. Box 599
Black Diamond, WA 98010
Contact: Pat Pepper, Council President

and

Anne Bremner ("Consultant")
Frey Buck, P.S.
1200 Fifth Avenue, Suite #1900
Seattle, WA 98101
Contact: Anne Bremner
Phone: (206) 486-1200
E-Mail: abremner@freybuck.com
Tax ID No.: 45-5045103

For professional services in connection with the provision of legal services.

TERMS AND CONDITIONS

1. Services by Consultant

1.1 Consultant shall perform the services described in the Scope of Work attached to this Agreement as Exhibit "A." The services performed by Consultant shall not exceed the Scope of Work nor shall the Consultant be entitled to a greater amount of compensation as that provided in this Agreement without the prior written authorization of the Council.

1.2 The Council may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to this Agreement.

1.3 Consultant represents and warrants that it, and its staff, have the requisite training, skill, and experience necessary to provide the services required by this Agreement and are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant under this Agreement will 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.

2. Schedule of Work

2.1 Consultant shall perform the services described in the Scope of Work as in Exhibit "A" in a timely manner.

2.2 Consultant is authorized to proceed with services upon execution of this Agreement.

3. Compensation and Payment

3.1 Hourly Fees. The Council shall pay the Consultant for work performed at the hourly rate of \$275.00. The hourly rate for Consultant's Associates is \$240.00.

3.2 Reimbursable Costs. The Consultant shall be reimbursed for costs and advances for such items, such as legal messenger services, court filing fees, large copying or mailing projects, and other similar expense items.

3.3 Consultant shall maintain time and expense records and provide them to the Council monthly, along with monthly invoices, in a format acceptable to the Council for work performed to that date of the invoice.

3.4 All invoices shall be paid by Council warrant within thirty (30) days of actual receipt by the Council of an invoice conforming in all respects to the terms of this Agreement. Unpaid invoices that have been approved by the Council will accrue interest at the rate of 1% per month.

3.5 Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by Council representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Consultant shall make copies available to the Council on request.

4. Term

4.1 This Agreement shall commence on the date this Agreement is executed by both parties.

5. Discrimination and Compliance with Laws

5.1 Consultant 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.

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

5.3 Any violation of this Section 5 shall be a material breach of this Agreement and grounds for immediate cancellation or termination of the Agreement by the City, in

whole or in part, and may result in Consultant's ineligibility to conduct further work for the City.

6. Termination of Agreement

6.1 Either party may terminate this Agreement with or without cause, by providing thirty (30) days written notice to the other party. The Council also reserves the right to terminate this Agreement at any time, without cause, by giving Consultant notice in writing ten (10) days prior to the termination date. In the event of termination, all finished or unfinished reports, or other materials prepared by Consultant pursuant to this Agreement, shall be submitted to the Council. Consultant shall be entitled to compensation for any satisfactory work completed on the project prior to the date of termination.

7. Standard of Care

7.1 Consultant represents and warrants that it has the requisite training, skill, and experience necessary to provide the services required by this Agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant under this Agreement will 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. Consultant understands and agrees that the services rendered pursuant to this Agreement are for the sole exclusive benefit of the Council and that no third party shall have authority to authorize, approve, direct, or control any of the services rendered to the Council pursuant to this Agreement.

8. Indemnification/Hold Harmless

8.1 Consultant shall indemnify, and hold the City, its officers, employees, agents and volunteers harmless from all reasonable claims, injuries, damages, losses, or suits, including attorney fees, arising directly or indirectly out of or resulting from the negligent acts, errors, or omissions of Consultant in performance of this Agreement, except for injuries and damages caused by the negligence of the City. Provided, however, that if any such claims, injuries, damages, losses or suits result from the concurrent negligence of Consultant and the City and the City's officers, employees, agents or volunteers, it is expressly agreed that Consultant's obligations and indemnity under this paragraph shall be effective only to the extent of Consultant's negligence.

9. Insurance

9.1 Consultant 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 work hereunder by Consultant, its agents, representatives, or employees.

9.2 Consultant shall procure and maintain the following types and amounts of insurance:

- a. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. If necessary, the policy shall be endorsed to provide contractual liability coverage. This insurance shall have a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- b. Worker's Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- c. Professional Liability insurance appropriate to Consultant's profession, with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

9.3 The Automobile Liability, Worker's Compensation, and Professional Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

- a. Consultant's insurance coverage shall be primary insurance vis-à-vis the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess over Consultant's insurance and shall not contribute with it.
- b. Consultant's insurance shall not be cancelled, except after thirty (30) days prior written notice by USPS Certified Mail or Priority Mail, return receipt requested, has been given to the City.

9.4 If allowed under Consultant's coverage for professional liability coverage, the City shall be named as an additional insured. The City shall be named as an additional insured under Consultant's Automobile Liability insurance policy with respect to the work to be performed for the City pursuant to this Agreement.

9.5 Declaration pages issued by the insurance carriers for the policies mentioned in this Section 9 showing such insurance to be in force shall be filed with the City not less than ten (10) days following both parties signing this Agreement and before commencement of work. In addition, the City may request, in writing, a full copy from Consultant of any insurance policy Consultant must procure and maintain pursuant to this Agreement and Consultant must provide such copy to the City within ten (10) days of Consultant's receipt of the City's request. Any policy or required insurance written on a claims-made basis shall provide coverage as to all claims arising out of the services performed under this Agreement, and for three (3) years following completion of the services to be performed. It shall be a material breach of this Agreement for Consultant to fail to procure and maintain the insurance required by this Section 9, or to provide the proof of such insurance to the City as provided for in this Agreement.

10. Assigning or Subcontracting

10.1 Consultant shall not assign, transfer, subcontract, or encumber any rights, duties, or interests accruing from this Agreement without the express prior written

consent of the Council, which consent may be withheld at the sole discretion of the Council.

11. Independent Contractor

11.1 Consultant and its sub-consultants are, and shall be at all times during the term of this Agreement, be independent contractors.

12. Notice

12.1 All notices required by this Agreement shall be considered properly delivered: when personally delivered, when received by facsimile, when received by e-mail, or on the third day following mailing, postage prepaid, USPS Certified or Priority Mail, return receipt requested, to:

Council: Pat Pepper, Council President
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
Fax: (360) 886-2592

Consultant: Anne Bremner
1200 Fifth Avenue, Suite #1900
Seattle, WA 98101
Phone: (206) 486-1200
E-Mail: abremner@freybuck.com

13. Disputes

13.1 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 King County Superior Court, Kent, Washington.

14. Attorney Fees

14.1 In any suit or action instituted to enforce any right granted in this Agreement, the prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney fees from the other party.

15. General Administration and Management

15.1 The Council President, or his/her designee (the Contract Administrator) shall review and approve Consultant's invoices to the Council under this Agreement. No third party shall have any direct control or influence over the services performed under this Agreement.

15.2 Equipment and Other Resources. The Consultant shall provide, at no cost to the Council, its own cell phone, access to standard on-line computer legal research databases, long distance telephone, cell phone service, mileage, etc. The Council shall provide office space to Consultant for its use while on Council premises to include a computer, a telephone, a desk, and access to a copy and fax machine.

16. Extent of Agreement/Modification

16.1 This Agreement, together with any attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may only be amended, modified, or added to by written instrument properly signed by both parties.

Accepted and agreed to:

CITY COUNCIL OF BLACK DIAMOND

FREY BUCK, P.S.

By: Pat Pepper
Pat Pepper, Council President

By: Anne Bremner
Anne Bremner

Date: 8-18-17

Date: August 16, 2017

Attest:

By: _____
Brenda L. Martinez
City Clerk

EXHIBIT A

Consultant's Scope of Work

- I. Duties.
 - A. Anne Bremner shall provide legal services to the City Council ("Attorney").
 - B. Attorney Anne Bremner shall be principally responsible for performing services related to actions beyond the scope of Mayor Benson's lawful authority and associated actions or failure to act.
 - D. Attorney's duties shall not include the following:
 1. Providing public defense services for indigent defendants;
 2. Providing criminal prosecution services;
 3. Providing legal services associated with union negotiations, personnel, or employment matters, including personnel disciplinary proceedings.
 4. Representing the Council in any legal matter where Attorney is prohibited from doing so as a result of a conflict of interest under the Rules for Professional Conduct, or other applicable law or regulation;
 5. Providing legal services where the Council has insurance coverage that provides for legal services to the Council, the Council has tendered the defense of the lawsuit to the insurance carrier, and the insurance carrier has assigned the lawsuit to an attorney other than the Attorney; provided however, that if the insurance carrier has assigned the lawsuit to an attorney other the Attorney, the Attorney may monitor the lawsuit, as requested by the Council, on a case-by-case basis. The Council acknowledges that the insurance carrier may retain the Attorney to provide legal services.