

RESOLUTION NO. 19-1327

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON,
APPROVING A CONTRACT WITH MADRONA LAW
GROUP, PLLC, FOR CITY ATTORNEY LEGAL SERVICES**

WHEREAS, Washington state law applicable to noncharter code cities states, "Provision shall be made for obtaining legal counsel for the city, either by appointment of a city attorney on a full-time or part-time basis, or by any reasonable contractual arrangement for such professional services"; and

WHEREAS, BDMC 2.14.020 authorizes the mayor to select the city attorney, subject to council confirmation; and

WHEREAS, BDMC 2.14.030 provides that city attorney shall be retained on a professional service contract on terms deemed appropriate by the mayor with any necessary approval for budget purposes by the council; and

WHEREAS, BDMC 2.14.030 further provides that the city attorney shall advise all duly appointed and elected officials and staff of the city; and

WHEREAS, pursuant to BDMC 2.14.030, the city attorney contract shall be for an initial term of two years, with any extensions beyond two years requiring council confirmation; and

WHEREAS, the appointed city attorney, David Linehan, has founded a new law firm, Madrona Law Group, PLLC, effective November 25, 2019, where he and his co-founders will continue to serve Washington cities on all facets of municipal law; and

WHEREAS, a new contract for city attorney legal services is needed with Madrona Law Group so that Mr. Linehan can continue his role as City Attorney for Black Diamond; and

WHEREAS, the City Council acknowledges that Mayor Benson has used her authority under the BDMC to execute a short-term contract with Madrona Law Group, with a spending cap of \$15,000, to provide for legal services from November 25 until a long-term contract could be presented to the City Council pursuant to BDMC 2.14.030; and

WHEREAS, the attached contract with Madrona Law Group is for a two-year term and otherwise complies with the requirements of BDMC 2.14.030; and

WHEREAS, the City Council finds the terms of the attached city attorney contract to be fair and reasonable, with no increase in Mr. Linehan's hourly rates for 2019 or 2020, and with additional cost savings to the City resulting from Madrona Law Group's policy of not charging the City for use of online legal research tools;

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

Section 1. Pursuant to BDMC 2.14.030, the Mayor is hereby authorized to execute a two-year contract for city attorney legal services with Madrona Law Group, PLLC, as shown in the Attachment hereto.

Section 2. Approval of the attached contract with Madrona Law Group, PLLC, will allow David Linehan to continue to serve as the city attorney with no gap in legal coverage. Any extension of the city attorney contract beyond December 9, 2021, will require confirmation by the City Council pursuant to BDMC 2.14.030.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 5TH DAY OF DECEMBER 2019.

CITY OF BLACK DIAMOND:



Carol Benson, Mayor

Attest:



Brenda L. Martinez, City Clerk

AGREEMENT FOR LEGAL SERVICES

This Agreement for Legal Services (“Agreement”) is made effective on the 9th day of December, 2019, between Madrona Law Group, PLLC (“Attorneys”) and the City of Black Diamond (“Client”).

SECTION 1. LEGAL SERVICES

Attorneys shall provide City Attorney legal services to Client under the primary direction of the Mayor. David Linehan will serve as the City Attorney and will serve at the pleasure of the Mayor. As City Attorney, Attorneys shall be principally responsible for performing all legal work for the Client, except for matters assigned to insurance counsel, criminal prosecution, matters in which Attorneys have a conflict, or matters assigned to other counsel by the Mayor.

SECTION 2. RESPONSIBILITIES OF ATTORNEYS AND CLIENT

Attorneys will perform the legal services called for under this Agreement in accordance with the rules of professional responsibility for attorneys in Washington State, keep Client informed of progress and developments, and respond promptly to Client’s inquiries and communications. Client will be truthful and cooperative with Attorneys, keep Attorney reasonably informed of developments, and timely make any payments required by this Agreement.

SECTION 3. COMPENSATION

- A. Client will pay Attorneys for the legal services provided under this Agreement pursuant to the fees listed in Exhibit A. Attorneys will charge in increments of one tenth of an hour, rounded off for each particular activity to the nearest one tenth of an hour. The minimum time charged for any particular activity will be one tenth of an hour. Attorneys will charge for all activities undertaken in providing legal services to Client under this Agreement, including, but not limited to, the following: attending meetings and conferences; appearing in court; preparing for and participating in depositions; reviewing and preparing correspondence and legal documents; performing legal research and writing legal opinions; drafting court papers, ordinances, and resolutions; and conducting telephone conversations. Attorneys will charge for their reasonable travel time at Attorneys’ normal hourly rates. When two or more of Attorneys’ personnel are engaged in working on a matter at the same time, such as in conferences between them, the time of each will be charged at his or her hourly rate.

- B. Fees and costs for Attorneys’ services when initially required to be paid to Client by permit applicants or other third parties pursuant to City ordinance, agreement, or other rule or regulation requiring reimbursement of City Attorney fees (“Pass-Through Fees”), may be subject to prior review for reasonableness by such third party. In the event that any third party challenges the reasonableness of Attorneys’ Pass-Through Fees, Client shall only be responsible to pay Attorneys for such portion of the challenged fees and costs as Client in its sole discretion deems reasonable.

C. If applicable, Client will pay Attorneys for services related to public records pursuant to the fees listed in Exhibit A and as further defined below:

- i. Attorneys shall be compensated at the "Attorney" hourly rates for reviewing public records for responsiveness and exemptions, redacting exempt records, reviewing exemption logs, and providing legal advice related to Public Records Act (Ch. 42.56 RCW) compliance.
- ii. Attorneys shall be compensated at the "Public Records Processing" rate for services such as, but not limited to, converting and deduplicating files, preparing exemption logs, downloading and transmitting files to and from Client, and other tasks typically performed by the Public Records Officer that do not call for the independent legal judgment of Attorneys.

D. Attorneys will review their hourly rates once per year. If, while this Agreement is in effect, Attorneys implement an increase in the hourly rates being charged to clients, that increase may be applied to fees incurred under this Agreement, but only with respect to services provided thirty (30) days or more after written notice of the increase is mailed to Client. If Client declines to accept the increased rates, the parties may negotiate an alternate rate, or Client may terminate this Agreement by written notice effective when received by Attorneys, provided Client executes and returns a substitution-of-attorney form immediately on its receipt from Attorneys if Attorneys are Client's attorney of record in any proceeding.

SECTION 4. COSTS

- A. Client will pay all costs in connection with Attorneys' representation of Client under this Agreement. Costs may be advanced by Attorney and then billed to Client. Costs include, but are not limited to, court filing fees, deposition costs, expert fees and expenses, investigation costs, messenger service fees, postage fees, photocopying expenses, and process server fees.
- B. Attorneys shall not charge Client for mileage nor for long-distance telephone charges. In addition, Attorneys shall not charge Client for legal research fees incurred by Attorneys as part of their standard use of any online legal research database. Extraordinary legal research costs may be billed to the Client upon Client's approval.
- C. Attorneys shall obtain, and maintain for the duration of this Agreement, a City business license at Attorneys' sole expense.

SECTION 5. STATEMENTS

- A. Attorneys shall render to Client a statement for fees, costs, and expenses incurred on a periodic basis (generally monthly). Such statement(s) shall indicate the basis of the fees,

including the hours worked, the hourly rate(s), and a brief description of the work performed. Separate billing categories can be established to track costs associated with Client funding categories or to track project costs, or such other basis as the Client may direct. Reimbursable costs shall be separately itemized.

- B. Payments shall be made by Client within thirty (30) days of receipt of the statement, except for those specific items on an invoice which are contested or questioned and are returned by Client with a written explanation of the question or contest, within thirty (30) days of receipt of the invoice. Payments made more than thirty (30) days after the due date shall draw interest at the rate of 12% per annum.

SECTION 6. INDEPENDENT CONTRACTOR

Attorneys shall perform all legal services required under this Agreement as an independent contractor of Client, and shall remain, at all times as to Client, a wholly independent contractor with only such obligations as are required under this Agreement. Neither Client, nor any of its employees, shall have any control over the manner, mode, or means by which Attorneys, its agents or employees, render the legal services required under this Agreement, except as otherwise set forth and as required by the rules of professional conduct applicable to Attorneys. Client shall have no voice in the selection, discharge, supervision or control of Attorneys' employees, servants, representatives, or agents, or in fixing their number, compensation, or hours of service.

SECTION 7. INSURANCE

Attorneys shall maintain for the duration of this Agreement professional liability insurance with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit. Attorneys shall provide Client with written notice of any policy cancellation within two business days of their receipt of such notice. Failure on the part of Attorneys to maintain the insurance as required shall constitute a material breach of contract, upon which Client may, after giving five business days' notice to Attorneys to correct the breach, immediately terminate the contract.

SECTION 8. NOTICES

Notices required pursuant to this Agreement shall be given by personal service upon the party to be notified, or by delivery of same into the custody of the United States Postal Service, or its lawful successor; postage prepaid and addressed as follows:

CLIENT:

City of Black Diamond
Attn: Mayor Carol Benson
P.O. Box 599
Black Diamond, WA 98010

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ATTORNEYS:

Madrona Law Group, PLLC
14205 SE 36th Street
Suite 100, PMB 440
Bellevue, WA 98006

Service of a notice by personal service shall be deemed to have been given as of the date of such personal service. Notice given by deposit with the United States Postal Service shall be deemed to have been given two (2) consecutive business days following the deposit of the same in the custody of said Postal Service. Either party hereto may, from time to time, by written notice to the other, designate a different address or person which shall be substituted for that specified above.

SECTION 9. TERM

- A. This Agreement shall be effective upon mutual execution by the parties, and shall remain in full force and effect for two years, unless renewed for an additional two-year period by the City Council prior to the expiration of any term or until terminated by either party hereto. Client may discharge Attorneys at any time. Attorneys may withdraw from Client's representation at any time, to the extent permitted by law, and the Rules of Professional Conduct, upon thirty (30) days' notice to City.

- B. In the event of such termination or withdrawal, Client will pay Attorneys professional fees and costs, in accordance with this Agreement, for all work done (and costs incurred) through the date of cessation of legal representation.

SECTION 10. CONFLICTS

Attorneys have no present or contemplated engagements which are adverse to the Client. Attorneys agree that they shall not represent any other client in a matter (either litigation or non-litigation) in which Attorneys' representation would be adverse the Client. If, in the future, the Client asks Attorneys to represent the Client in a matter that is adverse to another current or former client of Attorneys, Attorneys will determine whether and under what circumstances Attorneys may undertake such representation and, if appropriate, seek informed consent(s) from affected parties.

SECTION 11. GENERAL PROVISIONS

This Agreement sets forth the entire agreement of the parties. Any amendments must be in writing and signed by both parties. This Agreement shall be construed under the laws of the State of Washington. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the remaining portions of this Agreement shall remain in full force and effect and construed so as to best effectuate the original intent and purpose of this Agreement.

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AGREED TO AND ACKNOWLEDGED BY:

CITY OF BLACK DIAMOND

MADRONA LAW GROUP, PLLC

By: Carol Benson

Carol Benson, Mayor

By: _____

David Linehan, Member

Dated: 12/6/19

Dated: _____

ATTEST:

By: Brenda L Martinez

Brenda Martinez, City Clerk

Dated: 12/6/19

EXHIBIT A
MADRONA LAW GROUP, PLLC
2019-2020 HOURLY RATES

ATTORNEYS:

Eileen M. Keiffer	\$230
David A. Linehan	\$300
Kim Adams Pratt	\$300
Ann Marie J. Soto	\$230
Rachel B. Turpin	\$230

STAFF:

Paralegal	\$130
Legal Assistant	\$75

Public Records Processing	\$130
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