

RESOLUTION NO. 20-1337

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON,
APPROVING A CONTRACT WITH STEPHEN CAUSSEAUX
FOR PRO TEM HEARING EXAMINER SERVICES IN 2020**

WHEREAS, BDMC 2.30.010 creates the office of City Hearing Examiner consistent with the Washington State Constitution and the Revised Code of Washington to provide (i) an efficient and effective system for appeals of land use decisions, code enforcement violations, and other regulatory and administrative actions taken by the City; (ii) consistency and predictability in certain land use decision-making; (iii) clear and understandable rules for the application of policies and regulations adopted by the City; and (iv) fair and impartial determinations of appealed matters while ensuring procedural due process for City residents and other interested persons; and

WHEREAS, BDMC 2.30.030 authorizes the Mayor to select the Hearing Examiner, subject to City Council confirmation, to serve at the pleasure of the Mayor; and

WHEREAS, the City is currently without an appointed Hearing Examiner, but is conducting a search and selection process to fill the Hearing Examiner position; and

WHEREAS, under BDMC 2.30.030, a Pro Tem Hearing Examiner may be appointed to serve in the absence or unavailability of the Hearing Examiner; and

WHEREAS, in the absence of a permanent Hearing Examiner to make the appointment of a Pro Tem Hearing Examiner, the appointment necessarily falls to the Mayor, who, under BDMC 2.30.030, is empowered to confirm the appointment of a Pro Tem Hearing Examiner; and

WHEREAS, City Council confirmation of a Pro Tem Hearing Examiner is not required under BDMC 2.30.030; and

WHEREAS, BDMC 2.14.040 provides that hearing examiners shall be retained on a professional service contract on terms deemed appropriate by the Mayor with any necessary approval for budget purposes by the City Council; and

WHEREAS, the Mayor has indicated her intention to appoint Stephen K. Causseaux, Jr. to serve as the City's Pro Tem Hearing Examiner for the remainder of 2020, pending appointment of a permanent Hearing Examiner; and

WHEREAS, the City expects that the amount of compensation to be paid under the Pro Tem Hearing Examiner may exceed the sum of \$15,000, thereby triggering the need for City Council approval of the contract for budgetary purposes; and

WHEREAS, the attached contract with Stephen K. Causseaux, Jr. is for a term ending December 31, 2020; and

WHEREAS, the City Council finds the terms of the attached Pro Tem Hearing Examiner contract to be fair and reasonable;


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

Section 1. Pursuant to BDMC 2.30.040, the Mayor is hereby authorized to execute a contract for Pro Tem Hearing Examiner services with Stephen K. Causseaux, Jr. and/or his law firm, McCarthy & Causseaux, for the remainder of calendar year 2020, substantially in the form shown in the Attachment hereto.

Section 2. If a permanent Hearing Examiner is selected by the Mayor and confirmed by the City Council before December 31, 2020, it is understood and expected that the contract with Mr. Causseaux as approved by this Resolution will cover any pro tem hearing examiner work performed by Mr. Causseaux (and his associates or delegates at his law firm) at the request of the new, permanent Hearing Examiner following his or her appointment.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 6TH DAY OF FEBRUARY, 2020.

CITY OF BLACK DIAMOND:



Carol Benson, Mayor

Attest:



Brenda L. Martinez, City Clerk

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is entered into between the City of Black Diamond (“City”) and Stephen K. Causseux, Jr. (“Contractor”).

RECITALS

- a. The City desires certain services requiring specific skills, training, and other capabilities, as more specifically described below.
- b. Contractor represents that he is qualified and possesses sufficient skills, experience, and professional expertise to perform the services this Agreement requires and upon which the City is relying.
- c. The undersigned Mayor hereby appoints Contractor to the office of Hearing Examiner Pro Tem for the City for the Term described below.

Now, therefore, the parties agree as follows:

1. **Scope of Services.** Contractor shall provide the services described in Chapter 2.30 of the Black Diamond Municipal Code (“BDMC”), and as more particularly described in Attachment A, Scope of Services, which is incorporated herein.
2. **Term.** This Agreement shall commence on the date of execution of this Agreement by all parties, and shall continue for the remainder of calendar year 2020 (the “Term”) unless earlier terminated in accordance with Section 11, below.
3. **Compensation.** The City shall pay the Contractor for work performed upon timely submitted invoices detailing this work, and for expenses for which reimbursement is sought. Compensation during the Term shall be based on the hourly rates set forth in Attachment A, hereto. The City shall approve all invoices before payment is issued. Payment shall occur within thirty (30) days of receipt and approval of an invoice. No payment shall be made for any services or reimbursement of expenses except those services and expenses the Agreement provides for, unless approved through written supplemental agreement. *See* the attached Scope of Services for detail.
4. **Independent Contractor Relationship.** This Agreement creates an independent contractor relationship. No agent, employee, officer or representative of the Contractor shall be deemed to be an employee, agent, officer, or representative of the City for any purpose, and Contractor’s employees are not entitled to any benefits or privileges the City provides for its employees. The Contractor will be solely and entirely responsible for its acts and for the acts of its agents, employees, officers, subcontractors or representatives during Agreement performance.
5. **Insurance.** The Contractor shall maintain insurance against claims for injuries to persons or damage to property which may arise in connection with the performance of the work as set forth below.

- Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000. Aggregate coverage amount may be met through umbrella insurance.
- Commercial General Liability insurance with limits no less than \$1,000,000 each occurrence or \$2,000,000 aggregate.
- Professional Liability insurance with limits no less than \$1,000,000 per claim.

Contractor's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool coverage the City maintains shall be excess of the Contractor's insurance. Upon request, Contractor shall furnish the City with certificates of insurance coverage.

6. Indemnification.

6.1 The Contractor shall defend, indemnify, and hold harmless the City from all claims and causes of action for injuries to persons or damages to property, and all losses, damages, demands, suits, and judgments, including attorney fees, arising out of, or as a result of, or in connection with the work performed under this Agreement, but only to the extent such damages/injuries are caused or occasioned by reason of errors, negligent acts, or omissions of the Contractor or its subcontractors in the performance of this Agreement, and except for injuries and damages proximately caused by City negligence, or of its officers, employees, or agents. For purposes of this section, attorney invoices shall not be privileged, fees shall be reasonable, and the parties shall coordinate on counsel selection. This subsection shall not apply to allegations stemming from any act, error, or omission of Contractor in making a recommendation or a decision on an application or appeal or other matter as the Hearing Examiner. The indemnification is reciprocal.

6.2 The City is responsible for the appeal or defense of any Hearing Examiner decisions. If the Contractor is named in litigation over such decisions, Ch. 2.66 BDMC shall govern.

6.3 The indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification.

6.4 No liability shall attach to the parties by reason of entering into this Agreement except as expressly provided herein.

6.5 The parties have mutually negotiated the waiver, which shall survive Agreement termination or expiration.

7. Nondiscrimination. In Agreement performance, Contractor will not discriminate against any employee or employment applicant on grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap; provided that the prohibition against discrimination in employment because of handicap shall not apply if the disability prevents the proper performance of required work.

8. **Covenant Against Contingent Fees.** Other than its own employees, the Contractor warrants that it has not paid or agreed to pay any company, person, or firm any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. The City may terminate the Agreement if Contractor violates this warranty.

9. **Compliance with Law.** Contractor shall render services to the City in compliance with Chapter 2.30 BDMC and all other applicable provisions of the municipal code. Contractor shall comply with applicable laws including, those related to employment security and workers' industrial insurance.

10. **Assignment and Subcontracting.** The City has awarded this Agreement to Contractor due to its unique qualifications to perform these services, and Contractor serves at the Mayor's pleasure. Contractor shall not assign or subcontract Agreement performance without the City's prior written consent. Contractor may suggest appointment of an alternative examiner pro tem to the Mayor, to serve in the absence or disability, or in the event of a conflict of interest, of the Contractor.

11. **Termination.**

11.1 Either party may terminate this Agreement without cause upon giving the other party thirty (30) days' advance written notice.

11.2 This Agreement may be terminated immediately for cause, including any conduct which reasonably calls into question the professional integrity, candor, competence, and impartiality of the Contractor. Termination for cause shall be effected by serving a notice of termination on the Contractor setting forth the reason therefor. If the termination is based on a breach of this Agreement, Contractor shall have five (5) business days to cure the breach. If not cured within that time, the termination will take effect immediately without further notice.

11.3 The Contractor will only be paid for services and expenses complying with the Agreement and incurred before termination.

12. **Contact Information.**

For the City:

Carol Benson, or her designee

Title: Mayor

Address: P.O. Box 599

Black Diamond, WA 98010

E-Mail: cbenson@blackdiamondwa.gov

For the Contractor:

Stephen Causseaux
McCarthy & Causseaux PS
902 S 10th St
Tacoma, WA 98405-4537
Phone: (253) 272-2206
Fax: (253) 272-6439
E-mail: j.pelesky@mchlawoffices.com

- 13. **Laws.** This Agreement shall be governed by the laws of the State of Washington.
- 14. **Nonwaiver.** City waiver of any Agreement provision shall not constitute waiver of any other Agreement provision.
- 15. **Integration.** This Agreement consists only of this document, including Attachment A. Any Agreement revision shall be in writing and signed by both parties.
- 16. **Authorization.** By signature below, each party warrants it is authorized and empowered to execute this Agreement binding the City and Contractor respectively.

ACKNOWLEDGED AND AGREED TO BY:

<p>CONTRACTOR</p> <hr/> <p>Stephen K. Causseaux, Jr. McCarthy & Causseaux P.S.</p> <p>Date: _____</p>	<p>CITY OF BLACK DIAMOND</p> <p style="text-align: center;"><i>Carol Benson</i></p> <hr/> <p>Carol Benson, Mayor</p> <p>Date: <u>2/7/20</u></p>
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ATTEST:

By: Brenda L Martinez
Brenda Martinez, City Clerk

APPROVED AS TO FORM:

David A. Linehan, City Attorney

Attachment A
Scope of Services
Hearing Examiner Pro Tem

1. Contractor shall perform the work necessary to fulfill the assigned pro tem hearing examiner duties, per City Code, including Ch. 2.30 BDMC. Such work includes, but is not limited to, receiving and examining information presented in administrative proceedings under the BDMC; conducting public hearings in land use, code enforcement, and other administrative matters authorized under the BDMC; handling administrative appeals; and preparing written decisions and recommendations, all within the City's established time limits.

2. Contractor will work independently and without direct supervision of any City department or official, but will receive administrative assistance from the Department of Community Development, as needed. Contractor will remain fully knowledgeable of applicable laws affecting Contractor's duties.

3. Contractor shall conduct an orderly and impartial review, creating a professional and courteous environment for appellants, citizens and staff, and timely prepare a decision based on sound reasoning and applicable law.

4. Contractor shall provide the office space and equipment necessary to perform its obligations under this Contract and shall maintain an active e-mail address for electronic communications and transfer of information. The City shall provide a hearing room and arrange for recording of hearings, as is necessary.

5. For services rendered, the City agrees to compensate the Contractor at the following hourly rates:

Pro Tem Hearing Examiner Services: \$175.00.

Paralegal services (as needed): \$50.00.

Clerk services (if requested by the City): \$25.00.

Travel Expenses: \$75 flat rate per round-trip travel charge.

Routine costs, such as copying, phone, electronic legal research, and clerical support are not invoiced. The fee structure will remain in effect during the contract Term.