

RESOLUTION NO. 07-430

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH JEANETTE A. LINEBERRY FOR PROSECUTING ATTORNEY SERVICES FOR THE CITY FOR THE YEAR 2007

WHEREAS, the City of Black Diamond finds it necessary to hire a prosecuting attorney to provide misdemeanor prosecutorial services for the City; and

WHEREAS, the City has selected Jeanette A. Lineberry to provide such services and is qualified, willing and able to perform the necessary services identified herein; now, therefore

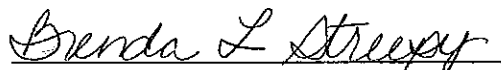
BE IT RESOLVED that the Mayor is hereby authorized to sign an agreement, substantially in the form attached as Exhibit A, for purposes of obtaining the services authorized by this resolution.

ADOPTED by the City Council at an open public meeting held on the 1st day of March, 2007.



Howard Botts, Mayor

Attest:


Brenda L. Streepy, City Clerk

**CITY OF BLACK DIAMOND
2007 AGREEMENT FOR
PROSECUTING ATTORNEY SERVICES**

THIS AGREEMENT is made this 10th day of April, 2007, by and between the **City of Black Diamond**, Washington (hereinafter "City") and **The Law Offices of Jeanette A. Lineberry** (hereinafter "Lineberry") (each a "Party" and collectively the "Parties").

WHEREAS, Lineberry and the City have agreed that Lineberry shall provide misdemeanor prosecutorial services for the City for the remainder of the year 2007 as herein described.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. **Scope of Work:** Lineberry shall provide full prosecutorial services for misdemeanor criminal violations of the laws of the State of Washington committed within the City for the remainder of the year 2007 to commence on April 10th. Said services shall include prosecution of all misdemeanors to completion from charging persons who violate City law, to prosecuting and sentencing them. This includes countersigning citations; authorizing signature on citations telephonically for in-custody bookings; drafting and filing complaints and probable cause statements at arraignment; releasing discovery documents to defense counsel; conducting arraignments, pretrial conferences, pre-trial motions and bargaining for pretrial disposition of cases where appropriate (which shall be determined in Lineberry's sole exercise of professional discretion); conducting trials, sentencing hearings, and review hearings; reporting dispositions to the City; explaining the reasons for declining to prosecute and/or amendment of charges; and responding to RALJ appeals.

In addition, Lineberry shall provide training or briefings for officers to keep abreast of changes in the law and to improve upon skills that involve prosecution of misdemeanor criminal violations.

2. **Compensation:** The City shall pay \$3,250.00 per month for prosecution services (the "Base Rate"), which includes two court days, thirteen hours of out of court preparation time, and all normal office clerical and administrative services and costs (such as secretarial, office rent, photocopies, mailing costs, telephone and facsimile expenses). Additional court days shall be paid at the rate of \$140.00 per hour, which shall also include RALJ appeals. Additional out of court preparation time exceeding thirteen hours in any given calendar month shall be paid at a rate of \$120.00 per hour. In the event out of court preparation time for any particular calendar month does not exceed thirteen hours the unused hours shall not be carried over to subsequent calendar months.

Lineberry will provide training or briefings to officers of the Black Diamond Police Department one hour per month free of charge. Such time will not be included in the calculation of hours worked per month as long as such training/briefings occur on a court

day, either before or after court or during the lunch hour. Lineberry's time preparing for such training or briefings shall also be free of charge. Lineberry shall coordinate training dates and times with the City's Chief of Police. In the event that training time is not scheduled for a particular month, or training time is scheduled but cancelled by an appropriate representative of the City's police department, in either event through no fault of Lineberry, there shall be no obligation to make up the training in a subsequent month.

The City shall pay Lineberry the Base Rate upon the first calendar day of any month. In the event that the first month of this Agreement is a partial month, the City shall pay Lineberry a prorated amount for that month. The prorated amount shall be an amount determined by multiplying \$3,250.00 times a fraction equal to the number of court days remaining in that month divided by 2.

Lineberry shall make a good faith accounting of time spent on City matters for each calendar month. Lineberry shall invoice the City for additional court days and out of court preparation time no later than 10 days following the end of each calendar month, and payment shall be due within 15 days after billing.

All payments to Lineberry shall be by check mailed to Lineberry at such address as she may provide or, at the City's option, may be electronically deposited into an account to be designated by Lineberry.

3. **Insurance:** Lineberry will maintain a current policy of malpractice liability insurance in the sum of at least \$500,000 during the term of the contract.

4. **Scheduling Conflicts:** Jeanette A. Lineberry will make a good faith effort to be personally present for all court days and to personally discharge all obligations described in Paragraph 1 and all obligations undertaken by Lineberry. In the event Jeanette A. Lineberry is unable to be personally present, she shall either (i) coordinate rescheduling court days with the City of Black Diamond municipal court, or (ii) arrange for a suitable substitute attorney to appear on her behalf at no extra cost to the City.

5. **Conflicts of Interest** Lineberry, and anyone working for or with a legal entity to which she is, or may become affiliated, as authorized in paragraph 9, shall not represent any person or other legal entity in any matter in which, under the Rules of Professional Conduct, there is, or in which it could be reasonably anticipated that there may be in the future, a conflict of interest, in any matter. In the event prosecution of a case would be a conflict of interest for Lineberry (eg, a criminal defendant is also a past or present client), the City will provide substitute counsel to prosecute such case at no cost to Lineberry, and Lineberry shall not represent the past or present client in the City Municipal Court.

6. **Applicable Law; Venue:** This Agreement shall be governed by the laws of Washington State. Venue for any action under this Agreement shall be in King County, Washington.

7. **Arbitration of Disputes:**

If it is a fee dispute, then the parties agree to submit it to the fee dispute resolution process of the Washington State Bar Association. If it is not a fee dispute, then the parties agree to meet and attempt to resolve the matter informally. If that is not successful, then the parties are free to use whatever legal remedies they deem appropriate under the circumstances.

If there is a dispute, claim or controversy, other than a fee dispute, that arises out of or relating to performance, or failure to perform under the terms of this Agreement, then the parties shall seek to choose a mutually agreeable arbitrator. If the parties are unsuccessful in doing so, then the arbitrator shall be selected and the arbitration shall be conducted, in accordance with the rules for arbitration set forth in Chapter 7.04 RCW.

8. **Severability:** If any term or provision of the Agreement is held invalid, the remainder of such terms or provision of this Agreement shall not be affected, if such remainder would then continue to conform to the terms and requirements of applicable law.

9. **Assignment:** This Agreement is personal to, and may not be assigned by, either Party without the express written consent of the other party.

10. **Entire Agreement; Amendments:** This Agreement represents the entire and integrated agreement between the City and Lineberry and supersedes all prior negotiations, representations, or agreements. This Agreement may be amended only by a written instrument signed by both the City and Lineberry. The headings in this Agreement are inserted for convenience only and shall not affect the interpretations of this Agreement.


11. **Term of Contract:** This contract shall become effective upon signature and shall remain in effect until terminated by either party. Either party may terminate upon providing 90 days advance notice to the other; provided, that if Lineberry becomes professionally disqualified from providing legal services, the contract may be terminated by either party without advance notice.

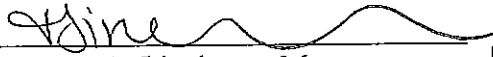
12. **Interpretation and Fair Construction of Contract:** This Agreement has been reviewed and approved by each of the Parties. In the event it should be determined that any provision of this Agreement is uncertain or ambiguous, the language in all parts of this Agreement shall be in all cases construed as a whole according to its fair meaning and not strictly construed for, nor against, either party.

13. **Waiver of Breach:** The failure of any Party hereto to insist upon strict performance of any of the covenants and agreements herein contained, or to exercise any option or right herein conferred, in any one or more instances, shall not be construed to be a waiver or relinquishment of any such option or right or of any other covenants or agreement, but the same shall be and remain in full force and effect.

City of Black Diamond

Law Offices of Jeanette A.
Lineberry

By: 
Name: Howard Botts
Title: Mayor


Jeanette A. Lineberry, Manager

Date: _____

Date: _____