

RESOLUTION NO. 15-1014

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO EXECUTE A LEASE FOR
REAL PROPERTY WITH THE SORCI FAMILY, LLC FOR
THE USE OF CITY OFFICE SPACE**

WHEREAS, the City entered into a lease agreement for real property with Sorci Family, LLC on June 19, 2008; and

WHEREAS, the City desires to continue to occupy the office space (City Hall) with the lease commencing on April 1, 2015 and ending on December 31, 2021; and

WHEREAS, Sorci Family, LLC has offered to continue to lease to the City property that is zoned for office use; said property being identified as King County Assessor's Parcel Number 1521069093 and legally described as Exhibit A in the lease agreement; and


WHEREAS, the City may elect to terminate this lease before the end of the lease term provided a minimum of 90 days written notification is provided, upon payment of the lease termination fee in accordance with Paragraph 4 of the lease;

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

Section 1. Authorizing the Mayor to execute the lease for real property with the Sorci Family, LLC for the use of City office space 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 19TH DAY OF FEBRUARY, 2015.

CITY OF BLACK DIAMOND:



Carol Benson, Mayor

Attest:



Brenda L. Martinez, City Clerk

After Recording Return to:

Loren D. Combs
VSI Law Group, PLLC
3600 Port of Tacoma Road, Suite 311
Tacoma, WA 98424


LEASE FOR REAL PROPERTY

1. Date and Parties. This Lease, for reference purposes only, is dated the 20 day of February, 2015, and is entered into by and between Sorci Family LLC, a Washington Limited Liability Company (“Lessor”) and the City of Black Diamond, a municipal corporation organized under the laws of the State of Washington, (“Lessee”).


2. Subject Property and Leased Premises. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the approximately 2,000 square feet of office space identified as Unit B (“Leased Premises”) in the office building located on the land legally described in Exhibit A attached hereto and commonly known as 24301 Roberts Drive, Black Diamond, Washington, King County Assessor’s number 1521069093.

3. Lease Term. The term of the Lease shall commence on the 1st day of April, 2015 and end on the 31st day of December, 2021. Lessee may extend the Lease for six (6) additional one (1) year terms, provided that written notice of the Lessee’s intent to extend is provided to Lessor at least ninety days prior to the end of the then-current term. If the notice is timely given and the Lessee is not in default under any of the Lease provisions, then the Term shall be extended for an additional one (1) year, upon the same terms and conditions, except for the adjustment of the lease amount as set forth in Paragraph 4 below. Notwithstanding the foregoing, at the time the new City Hall facilities are ready for occupancy, Lessee may terminate this Lease upon 90 days advance written notice, upon payment of the lease termination fee in accordance with Paragraph 4 below.

4. Rent. The monthly base rent for the first nine months of the Lease shall be \$0. Commencing January 1, 2016 the monthly base rent shall be Two Thousand and no/100 U.S. dollars (\$2,000.00) per month. The base rent payment shall be due by the 8th day of each month. The rent shall be increased each year to reflect the increase in the Consumer Price Index for urban workers (CPI-U) for the Seattle/Tacoma/Everett metropolitan area, as prepared by the US Department of Labor, from July to July in the preceding year. As additional rent the Lessee shall pay the leasehold tax against the subject property. In addition to the above referenced increases,



Lessor



Lessee

the rent shall be adjusted to the fair market rental value at the beginning of the first lease extension term, with CPI increases as set forth above for each subsequent extended term. The parties shall meet with 14 days of receipt of the notice to extend in an attempt to establish the fair market value. If the parties cannot agree, then the parties shall attempt to agree on a licensed appraiser to perform an appraisal. Each party shall be responsible for ½ of the appraisal cost. If the parties cannot agree on an appraiser then the parties shall each choose an appraiser and the two appraisers shall choose a third appraiser who shall then perform the appraisal. If the Lessee terminates the Lease under Paragraph 3 above within 36 months after commencement of the Lease term, the Lessee shall pay a lease termination fee of \$18,000. The termination fee shall be reduced by \$2000 per month thereafter, depending on the date that the Lessee provides to the Lessor of termination, as set forth below:

<u>Date of Termination Notice</u>	<u>Termination Fee</u>
April 2018 or earlier	\$18,000
May 2018	\$16,000
June 2018	\$14,000
July 2018	\$12,000
August 2018	\$10,000
September 2018	\$ 8,000
October 2018	\$ 6,000
November 2018	\$ 4,000
December 2018	\$ 2,000
January 2019 – April 2021	\$ 0

There shall be no lease termination fee for termination by the Lessee under Paragraph 3 more than 45 months after commencement of the lease term.

5. Charitable Donation. Lessee acknowledges the Lessor is donating the first nine months of rental to the Lessee, in an amount equal to the fair market rental value. Prior to commencement of the Lease term, Lessee shall provide Lessor with written acknowledgement of the donation, and provide such other information as Lessor may reasonably may require to document the donation for the IRS.

6. Utilities. Lessee agrees to pay for all utilities charges associated with Lessee's use of the Leased Premises. Provided, however, Lessor shall be responsible for any utility assessment charged to the Subject Property for system wide utility improvements, such as, but not limited to LID and ULID assessments. Lessee agrees to reimburse Lessor for one half of the municipal stormwater fees associated with the parcel that is subject to the Lease and one fourth of the sanitary sewer fees. Lessor agrees that it will invoice the Lessee for these amounts on a quarterly basis with amounts shall be paid by the Lessee within 30 days of receipt of such invoice.



Lessor



Lessee

7. Parking. Lessor shall be provided with a minimum of 15 parking stalls on the Subject Property. The Parking stalls shall not be reserved stalls, but will be undesignated stalls within the common surface parking area on the Subject Property, adjacent to the office building. Lessor agrees that he will not allow further uses on the Subject Property that would require the use of any of the 15 stalls in order to meet City of Black Diamond parking requirements, nor shall the Lessor enter into other contractual arrangements for parking that would require the use of the undesignated 15 stalls to meet the contractual obligation.

8. Indemnification and Insurance. Lessee shall defend, indemnify, and hold harmless the Lessor from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Lessee's negligent use of Leased Premises, or from the negligent conduct of Lessee's business, or from any activity, work or thing done, permitted, or suffered by Lessee in or about the Leased Premises, except only such injury or damage as shall have been occasioned by the sole negligence of the Lessor. In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Lessee and Lessor, the Lessee's liability hereunder shall be only to the extent of the Lessee's negligence.

The Lessee shall procure and maintain for the duration of the Lease, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Lessee's operation and use of the Leased Premises, with insurance limits to be approved by Lessor. Lessor approves the Lessee's current insurance limits. The Lessor shall insure the Leased Premises.

9. Assignment and Subletting. Lessee shall not assign this Lease nor sublet the leased premises without Lessor's written consent.

10. Waivers. One or more waivers of any covenants or conditions by either party shall not be construed as a waiver of a subsequent breach of the same covenant or condition or agreement.

11. Use of Premises. Lessee will not make any changes or alterations to the Property without Lessor's prior written consent, which consent will not be unreasonably withheld. Lessee agrees not to violate any law, ordinance, rule, or regulations of any governmental authority having jurisdiction of the leased premises. Provided, it is anticipated that the Lessee may desire to make improvements to the inside of the building in order to make it accommodate the intended purpose of using the building for City offices. The Lessor shall consent to such tenant improvements as necessary to carry out the purpose of the lease of the Leased Premises and cooperate in obtaining necessary permits, if necessary, to do so if all the following conditions are met:

- (1) Adequate assurances are provided to protect the Subject Property from any liens;
- (2) The permitting process and structure improvements are done at no expense to Lessor; and
- (3) The Lessee agrees to indemnify and hold the Lessor harmless from any claims relative to the building interior modifications.

12. Default. It is agreed that if any rent shall be due and unpaid, or if default is made of any of the covenants and agreements to be performed by Lessee as set forth herein, then the Lessor may, at his option, enter upon said premises and relet the same for such rent and upon such terms as Lessor may see fit; and if the full rental herein shall not be realized by Lessor over and above any expense to Lessor in such reletting, Lessee will pay any deficiency promptly upon demand, or the Lessor may declare this Lease terminated and forfeited and take possession of the said premises, and Lessee agrees to pay a reasonable attorney fee and the costs of any Court action should it be necessary to enforce any of Lessor's remedies in this paragraph contained if Lessor is the prevailing party. Lessor agrees to pay a reasonable attorney fee and the costs of any Court action if Lessee should be the prevailing party.

13. Right of First Refusal. Lessor hereby grants to Lessee, on the terms and conditions herein set forth, the Right of First Refusal to purchase (as that term is hereafter described) the property subject to this lease. In the event that, while this Lease is in effect, the Lessor has received an offer for the purchase of the leased property subject only to this right of First Refusal, then Lessor shall provide Lessee with a fully signed copy of that Offer. If Lessee desires to exercise this Right, then Lessee shall, within ten (10) days after delivery to it of a copy of such Offer, deliver to Lessor a written notice of exercise. Upon such notice of exercise having been delivered, the Sale to Lessee shall close upon all the terms and conditions contained in the offer, except that Lessee shall be substituted for the original purchaser. If the original proposed purchaser has deposited any earnest money, then Lessee must, in order to make his notice of exercise effective, tender to Lessor along with his notice of exercise, the same amount of earnest money in the same form. If the notice to exercise the Right of First Refusal is not timely received, then the right is automatically terminated, and the Lessor may sell the property on the terms and conditions set forth in the Offer. If the transaction is closed, then the lease shall automatically terminate on the date the conveyance document is recorded. For the purpose of this Right of First Refusal, an Offer to purchase shall mean not only an agreement for conveyance of title either immediately at closing, or upon payment in full of a real estate contract, but also any ground lease with an initial term of not less than twenty-five (25) years. Provided, however, nothing in this provision is to be construed as preventing the parties from negotiating in the future with regards to whether or not credit against the purchase price should be given for any or all of the authorized improvements Lessee may make to the Leased Premises.

14. Written Notices: All Notices required by this Agreement shall be considered properly delivered (1) when personally delivered, or (2) when transmitted by facsimile showing

date and time of transmittal, or (3) on the day of receipt of a mailing, postage prepaid, certified mail, return receipt requested, or (4) one (1) day after depositing in overnight carrier, e.g. Federal Express to:

Lessor: Sorci Family LLC
c/o Mario Sorci
Anesthesia Equipment Supply Inc.
24301 Roberts Drive
Black Diamond, WA 98010
Facsimile: (800) 568-1679


Lessee: City of Black Diamond
Attention: City Administrator
P.O. Box 599
Black Diamond, WA 98010
Facsimile: (360) 886-2592

15. Transfer of Lessor's Interest. This Lease shall be assignable by Lessor without the consent of Lessee. In the event of any transfer or transfers of Lessor's interest in the Leased Premises, other than a transfer for security purposes only, upon the assumption of this Lease by the transferee, Lessor shall be automatically relieved of obligations and liabilities accruing from and after the date of such transfer, including any liability for any retained security deposit or prepaid rent, for which the transferee shall be liable, and Lessee shall attorn to the transferee.


16. Entire Agreement. This Lease contains all of the covenants and agreements between the Lessee and Lessor relating to the Premises. No prior or contemporaneous agreements or understandings pertaining to this Agreement shall be valid or of any force and effect and the covenants and agreements in this Lease shall not be altered, modified or amended except in writing signed by the duly authorized representatives of the Lessee and Lessor.

17. Severability. The provisions of this Lease are declared to be severable. If any provision of this Lease is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or unconstitutionality of any other provision.

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Lessor



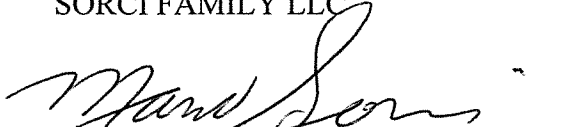
Lessee

18. Governing Law, Venue. This Lease shall be governed by and construed in accordance with the laws of the State of Washington. The jurisdiction and venue of any proceeding brought to enforce the terms of this Lease shall be in King County Superior Court, King County, Washington.

DATED this 10 day of February, 2015.


LESSOR:

SORCI FAMILY LLC

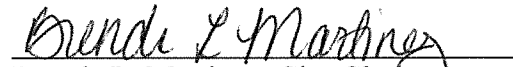

By: Mario Sorci

LESSEE:

CITY OF BLACK DIAMOND


By: Carol Benson
Its: Mayor

ATTEST:


Brenda L. Martinez, City Clerk

Approved as to Form:

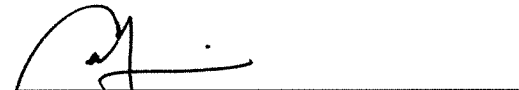

City Attorney


EXHIBIT A

LEGAL DESCRIPTION

POR NE 1/4 BEG NE COR TH S ALG E LN 1296.05 FT TH S 89-51-08 W 239.34 FT TAP ON E LN TR DESC AUD # 3031570 & TPOB TH N 87-45-28 W 238.48 FT TO W LN TR DESC AUD #1645619 TH N 3-30-28 W COMMON WITH LN DESC AUD #1645619 240.81 FT TH S 87-45-28 E 180.9 FT TH S 63-12-28 E TO NE COR TR DESC AUD #3031570 TH S 0-08-52 E COMMON WITH LN DESC AUD #3031570 TO TPOB AKA POR OF PCL 1 OF BLACK DIAMOND SP NO 78-007 RECORDING NO 7811039014 TGW N 93 FT OF FOLG DESC PCL - BEG NE COR SD SEC 15 TH S ALG E LN OF SEC 1915.41 FT TH S 89-51-08 W 440.67 FT TO SW COR OF TR CONV UNDER AUD #1645619 & TPOB TH N 03-30-28 W ALG W LN OF SD TR 630.39 FT M/L TO SW COR SD PCL 1 BD SP 78-007 REC #7811039014 TH S 87-45-28 E 178.48 FT M/L TAP 60 FT W FR TR DESC UNDER REC # 7501070376 TH S 0-08-52 E 320 FT M/L PLT W LN OF SD TR TAP 60 FT W FR SW COR THOF TH S 05-45-43 W 308 FT M/L TO SE COR OF TR DESC UNDER AUD #1656204 TH N 87-45-28 W ALG S LN OF TRS DESC UNDER AUD #1656204 & 1645619 DIST 110 FT TO TPOB - SD PCL CONTAINS ALL OF LOT B OF BLACK DIAMOND LLA #90-02 REC #9002280435



Lessor



Lessee