

RESOLUTION NO. 17-1195

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, CONFIRMING THE MAYOR'S APPOINTMENT OF KRISTA WHITE SWAIN AS MUNICIPAL COURT JUDGE AND AUTHORIZING THE MAYOR TO EXECUTE A JUDICIAL SERVICES AGREEMENT

WHEREAS, municipal court judges are appointed by the Mayor, subject to City Council confirmation, for four-year terms commencing on January 1 of the year; and

WHEREAS, the municipal court judge appointment expires on December 31, 2017; and

WHEREAS, staff was directed to advertise for this position and the City received eight applications; and

WHEREAS, a selection committee consisting of Mayor Carol Benson, Chief Jamey Kiblinger, Court Administrator Stephanie Metcalf, and City Clerk/HR Brenda L. Martinez conducted interviews and unanimously recommended Ms. Swain for this position; and

WHEREAS, the Mayor is seeking Council confirmation of her appointment of Krista White Swain as the City's Municipal Court Judge; and

WHEREAS, the Council supports the Mayor's appointment of Ms. Swain and finds the proposed agreement 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 of the City of Black Diamond, Washington, does hereby confirm the Mayor's appointment of Krista White Swain as Municipal Court Judge through December 31, 2021, and authorizes the Mayor, on behalf of the City, to execute a Judicial Services Agreement 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 16th DAY OF NOVEMBER 2017.

CITY OF BLACK DIAMOND:



Carol Benson, Mayor

Attest:



Brenda L. Martinez, City Clerk

COPY

MUNICIPAL COURT JUDICIAL SERVICES AGREEMENT

This agreement (the "Agreement") is by and between the City of Black Diamond, a municipal corporation operating as a non-charter code city under the laws of the state of Washington (the "City"), and Krista White Swain ("Contractor"), and is dated the _____ day of _____, 2017.

RECITALS

- A. The City operates a Municipal Court pursuant to BDMC Chapter 2.36 and RCW Ch. 3.50.
- B. The Contractor meets the judicial qualifications set forth at BDMC 2.36.030(C).
- C. The Contractor is willing and able to serve as the City's Municipal Court Judge for the four year term ending December 31, 2021.
- D. The City and Contractor desire to enter into an agreement setting forth the relative rights, duties and obligation of the parties;

Now, therefore, in consideration of the mutual promises and covenants set forth below, the sufficiency of which is acknowledged by the parties, it is agreed as follows:

1. **Appointment** - Effective January 1, 2018, and subject to confirmation by the Black Diamond City Council, Contractor is appointed to be the judge of the Black Diamond Municipal Court. Said term shall commence on January 1, 2018 and terminate on December 31, 2021, unless sooner terminated as may be provided by law.
2. **Term** – The term of this agreement shall be from January 1, 2018 through December 31, 2021.
3. **Duties** – Contractor agrees to serve as the Municipal Court Judge for the City of Black Diamond with all the powers, duties, privileges and obligations which said office confers and in accordance with this Agreement and as required by the City's ordinances, the constitutions and laws of the state of Washington and the United States, and all other applicable laws and treaties. Contractor shall abide by the Rules of Judicial Conduct as promulgated by the Washington Supreme Court. Contractor shall at all times maintain her status as a licensed attorney in the state of Washington in the status of either active or judicial. The services to be provided will

include regularly scheduled court sessions and any administrative work and out-of-court work done by the Municipal Court Judge, and all time expended for judicial education. In addition to regularly scheduled sessions of the Black Diamond Municipal Court, the Judge shall conduct arraignments, probable cause hearings, drug forfeiture hearings, bail hearings, jury trials, or other court hearings as may be necessary, and shall otherwise be available, as needed, to provide the Municipal Court services in accordance with BDMC Chapter 2.36 and state statute. Contractor shall also use her best efforts to improve the City's Court by advancing the causes of justice, impartiality, fairness and efficiency in all of the Court's business.

4. **Compensation** – The parties acknowledge that compensation is based upon the assumption that the Contractor will attend two regularly scheduled full-day court appearance calendars per month, provide office hours for two one-half days to perform administrative duties of the Court, in addition to occasional phone calls with court staff and the police department. Based upon the foregoing, the City shall compensate Contractor at the flat base rate of \$3,600 per month for all her time, both judicial and administrative. In the event that it is necessary for the Contractor to schedule additional court calendars or to accommodate a motion or trial that cannot be scheduled for a regularly scheduled court calendar, or to otherwise complete a trial, the City agrees to additionally compensate the Contractor in the amount of \$400 for each additional court calendar that is scheduled (\$400.00 per ½ day) up to a total of \$800 dollars per month as full compensation for all additional court calendars. The rate of compensation may be adjusted by the mutual agreement of the parties, in writing.
5. **Judges Pro Tem** – In the event the Contractor is unable to serve due to disability, illness and/or absence, an actual conflict, or an affidavit of prejudice, it shall be her responsibility to so notify the Court Administrator who shall make arrangements for the presence of a Judge pro tem. All Judges pro tem shall be qualified to hold the position of Judge of the Municipal Court, as provided herein. Judges pro tem shall be paid by the City. The City will be responsible for compensating the pro tempore judge; provided that, when a judge pro tempore serves when Contractor is unable to serve due to disability, illness and/or absence, the City shall deduct pro-tem costs dollar-per-dollar from the flat base rate of compensation per month paid to the judge.
6. **Status** – Contractor will be an independent contractor, and shall pay all of her own withholding taxes, social security taxes, and any other payroll taxes.
7. **Termination** – This agreement shall be in effect during the term specified in paragraph two unless terminated by mutual agreement or according to law. The City shall release Contractor from her obligations under this contract if Contractor

accepts a full-time judicial appointment, in which case Contractor will release the City from its obligations.

8. **General Rule 29** – The parties agree that the provisions of Washington State Rules of Court General Rule 29, which governs the election, term, vacancies, removal, selection, responsibilities and authorities of presiding judges in courts of limited jurisdiction, shall be applicable to all court operations and personnel.
9. **Qualification** – Contractor declares that she is, and shall at all times during the term of this Agreement be, qualified to serve as a Municipal Court Judge in that she is a citizen of the United States and of the State of Washington, resides in King County, and an attorney admitted to practice law before the courts of record of the State of Washington.
10. **Indemnity Agreement** – The City shall defend, indemnify and hold Contractor and/or pro tem judges that may serve in her absence, harmless from any and all claims arising out of the good faith performance of her duties and functions as the Black Diamond Municipal Court Judge.
11. **Mediation and Arbitration** – Should any dispute arise between the parties, the disputed matter shall be submitted to mediation using a mediator from JAMS (Seattle office), and following the mediator selection process and mediation rules followed by JAMS. The parties shall each pay their own costs associated with mediation and shall each pay one half of the JAMS and mediator's fees. If the mediation is unsuccessful, then the matter, at either party's request, shall be submitted to binding arbitration in accordance with the Uniform Arbitration Act, Chapter 7.04A RCW. The substantially prevailing party shall be entitled to recover their costs and attorney fees incurred in the arbitration, and the substantially non-prevailing party shall pay the cost of the arbitration, including the arbitrator's fee.

CONTRACTOR:

Krista White Swain

Date

CITY:

Carol Benson

Carol Benson, Mayor

11/20/17

Date