

RESOLUTION NO. 05-398

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO EXECUTE AN
AGREEMENT REGARDING THE PURCHASE OF THE IN-
CITY FOREST LAND, SURFACE AND TIMBER RIGHTS

WHEREAS, the City and Palmer Coking Coal Company, and others, entered into the Black Diamond Urban Growth Area Agreement ("BDUGAA") dated December 31, 1996; and

WHEREAS, pursuant to BDUGAA paragraph 4.2.2 the City was authorized to purchase the surface rights of the property, including timber rights; and

WHEREAS, pursuant to the BDUGAA provisions the parties implemented the value determination process for the timber and surface rights; and

WHEREAS, the parties disagreed with the resulting appraised value and thus a second appraisal was done; and

WHEREAS, rather than go through the process to contest the second appraisal the parties have agreed to the provisions set forth in the attached Agreement; now, therefore

BE IT RESOLVED that the Mayor is hereby authorized to enter into the Purchase and Sale Agreement, substantially in the form attached as Exhibit A;

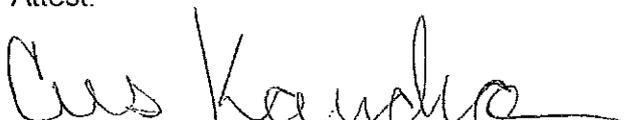
BE IT FURTHER RESOLVED that the Mayor is authorized to make minor changes to said Agreement in order to take into account scrivener's corrections or administrative matters that do not affect the substance of the Agreement and are within his authority as the City's Chief Administrative Officer; and

BE IT FURTHER RESOLVED that before the Mayor enters into the Agreement he shall have proof that the property owners executing the Agreement are in fact the legal owners of the property to which the Agreement applies.

ADOPTED by the City Council at an open public meeting held on the 8th day of December, 2005.


Howard Botts, Mayor

Attest:


Cris Kandior, City Clerk

PURCHASE AND SALE AGREEMENT

1. Date and Parties. This Agreement, for reference purposes only, is dated the ___ day of December, 2005, and is entered into by and between the City of Black Diamond, a Washington municipal corporation ("City"), and Palmer Coking Coal Company, a Washington partnership ("Palmer").

2. General Recitals.

a. The City, Palmer Coking Coal Company, and others, entered into the Black Diamond Urban Growth Area Agreement dated December 31, 1996 ("BDUGAA").

b. Pursuant to BDUGAA paragraph 4.2.2 the City was authorized to purchase the surface rights of the property, including timber rights.

c. Pursuant to the BDUGAA provisions the parties implemented the value determination process for the timber and surface rights.

d. The parties have reached an agreement with regards to value; and

e. The City and others have entered into an agreement entitled the Black Diamond Area Open Space Protection Agreement dated June 6, 2005 ("BDAOSPA"), for the purpose of providing for setting aside some of the open space contemplated under the BDUGAA;

f. Said agreement provides for the funding of the purchase of the In-City Forest surface and timber rights;

g. The parties having thus agreed to value are also agreeing to tie the closing of the transaction to the closing of the BDAOSPA Agreement.

3. Subject Property. The Subject Property is legally described in Exhibit A attached hereto and by reference incorporated herein.

4. Interest to be Purchased. The City is purchasing all timber and surface rights for the Subject Property as said rights are defined in the Statutory Warranty Deed attached hereto as Exhibit A.

5. Purchase Price. The Purchase Price for the above-referenced property interest is Three Hundred Thousand Dollars (\$300,000.00) to be paid upon the closing of the BDAOSPA, which is currently anticipated to be in February, 2006.

6. Title Insurance. Palmer shall cause to be furnished to Purchaser a current ALTA form of commitment for an owner's standard coverage policy of title insurance (the "Title

Commitment") issued by Chicago Title Insurance Company of Tacoma, Washington ("Chicago Title"), describing the Subject Property, listing the City as the prospective named insured and showing as the policy amount the Purchase Price for the Subject Property. At such time as Palmer causes the Title Commitment to be furnished to the City, Palmer shall further cause to be furnished to the City legible true copies of all instruments referred to in the Title Commitment as restrictions or exceptions to title to the Subject Property. The City my request that extended coverage be provided. The closing agent shall order of the title insurance on behalf of the parties

7. Closing Costs. Palmer shall be responsible for payment of title insurance premiums, (except the City shall be responsible for any increased premium as a result of an ALTA extended coverage), excise tax and one-half of the Closing Agent's fee. The City shall be responsible for the recording fees, one half of the Closing Agent's fee, and any increase in insurance premium as a result of the City's request for an ALTA extended coverage. The real estate taxes shall be prorated as of the date of closing.

8. Closing Agent. The Closing Agent shall be McGavick Graves, P.S., 1102 Broadway, Suite 500, Tacoma, Washington, telephone number (253) 627-1181.

9. Execution and Tender of the Deed. Palmer shall secure the original of the Statutory Warranty Deed attached hereto and place it in trust with Stewart Title Guaranty Company, Attn: Vicki Dorfman, 1000 Second Avenue, Suite 1620, Seattle, WA 98104, not to be released until the purchase price is released to McGavick Graves, P.S., in trust, for the purposes of closing this transaction.

10. Equal Bargaining. This Agreement has been drafted by the mutual efforts of the parties. Palmer and the City acknowledge and represent that each of them is fully competent to negotiate and to enter into this Agreement with the other and that they have freely entered into it with adequate opportunity for prior consultation with independent legal counsel of their choosing. All terms and provisions shall be given their fair and reasonable interpretation without reference to which party, or its counsel, drafted any particular term or provision in question.

11. Facsimile Transmission. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, or the Closing Agent, the parties will confirm facsimile transmitted signatures by signing an original document.

12. Notice. All notices required by this PSA shall be deemed delivered to the respective party on the date that it is personally delivered to the address set forth below, or two days after the document is mailed, Certified Mail, Return Receipt Requested by U.S. Mail to the address set forth below.

To City: City of Black Diamond
C/o Loren D. Combs
McGavick Graves, P.S.

1102 Broadway, Suite 500
Tacoma, WA 98402
Fax: (253) 627-2247

To Palmer: William Kombol
Palmer Coking Coal Co.
31407 Highway 169
Black Diamond, WA 98010
Fax: (425) 432-3883

13. Time is of the Essence. Time is of the essence as to each provision of this PSA. This provision has been negotiated by the parties and is material and substantial consideration.

14. Entire Agreement. The parties have negotiated in good faith with regards to each and every term of this PSA. This PSA embodies all agreements, representations and warranties to which the parties have agreed to be bound. This PSA shall be construed to accomplish the intent and purpose set forth herein, and shall be presumed to have been drafted by both parties hereto. There are no verbal or other agreements that modify or affect this PSA unless specifically referenced herein.

CITY OF BLACK DIAMOND

PALMER COKING COAL COMPANY

By: _____
Howard Botts, Mayor

By: _____
William Kombol
Its: Manager

ATTEST:

Cris Kandior, City Clerk

APPROVED AS TO FORM:

Loren D. Combs, City Attorney

AFTER RECORDING RETURN TO:

McGavick Graves, P.S.
Attn: Loren D. Combs
1102 Broadway, Ste 500
Tacoma, WA 98402

STATUTORY WARRANTY DEED

GRANTOR: PALMER COKING COAL COMPANY, a Washington partnership

GRANTEE: CITY OF BLACK DIAMOND, a municipal corporation

LEGAL DESCRIPTION: PTN SW4 S13 T21N R6E

Complete legal description is on page 3 of document

ASSESSOR'S TAX PARCEL ID#: 132106-9010; 132106-9011; 132106-9012; 132106-9009

THE GRANTOR, PALMER COKING COAL COMPANY, a Washington partnership, for and in consideration of Ten Dollars (\$10.00) and other valuable consideration, in hand paid, conveys and warrants to CITY OF BLACK DIAMOND, a municipal corporation, all surface rights, including timber rights, on the following described real estate, situated in the County of KING, State of Washington:

LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT A

SUBJECT TO: CITY OF BLACK DIAMOND AND PALMER COKING COAL COMPANY MAY SUBSEQUENTLY AGREE TO LIMITED USE OF THE SURFACE OF THIS LAND TO SUPPORT UNDERGROUND MINING EXTRACTION TECHNIQUES SO LONG AS THE PROPOSED USE DOES NOT DETRACT FROM THE OPEN SPACE AND VIEWSHED PURPOSES AND SUBJECT TO ADEQUATE MEASURES TO MITIGATE THE IMPACTS.

DATED this ____ day of _____, 20 ____.

PALMER COKING COAL COMPANY

By _____
William Kombol
Its Manager

STATE OF WASHINGTON)
) ss.
County of KING)

I certify that I know or have satisfactory evidence that WILLIAM KOMBUL is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the MANAGER of PALMER COKING COAL COMPANY to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

DATED: _____

NOTARY PUBLIC in and for the State of Washington
Print Name: _____
My appointment expires: _____

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EXHIBIT "A"

A PARCEL OF LAND IN THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 21 NORTH, RANGE 6 EAST, W.M., MORE SPECIFICALLY DESCRIBED AS FOLLOWS;

BEGINNING AT THE SOUTH QUARTER CORNER OF SAID SECTION 13;
THENCE NORTH 88°43'48" WEST, ALONG THE SOUTH LINE THEREOF, 413.56 FEET, TO A POINT ON A NON-TANGENT CURVE HAVING A RADIUS OF 2,814.93 FEET, AND TO WHICH POINT A RADIAL BEARS SOUTH 28°40'39" WEST;
THENCE ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 05°32'45" FOR A DISTANCE OF 272.47 FEET;
THENCE NORTH 55°46'36" WEST, 307.88 FEET TO THE BEGINNING OF A 5,679.65 FOOT RADIUS CURVE CONCAVE TO THE NORTHEAST;
THENCE ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 04°25'00" FOR A DISTANCE OF 437.82 FEET;
THENCE NORTH 51°21'36" WEST, 1,083.10 FEET TO THE BEGINNING OF A 1,482.68 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY;
THENCE ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 24°01'01" FOR A DISTANCE OF 621.50 FEET TO THE WEST LINE OF SAID SECTION 13;
THENCE NORTH 00°36'18" EAST, ALONG SAID WEST LINE, 781.40 FEET;
THENCE SOUTH 61°11'13" EAST, 558.15 FEET;
THENCE SOUTH 50°59'14" EAST, 525.00 FEET;
THENCE SOUTH 45°56'33" EAST, 400.00 FEET;
THENCE NORTH 40°09'30" EAST, 120.15 FEET;
THENCE SOUTH 53°29'45" EAST, 400.00 FEET;
THENCE SOUTH 39°53'59" WEST, 120.00 FEET;
THENCE SOUTH 56°42'50" EAST, 450.00 FEET;
THENCE SOUTH 83°12'58" EAST, 300.00 FEET;
THENCE NORTH 03°36'56" EAST, 128.63 FEET TO A POINT ON A 490.00 FOOT RADIUS NON-TANGENT CURVE, AND TO WHICH POINT A RADIAL BEARS SOUTH 03°36'56" WEST;
THENCE ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 64°40'27" FOR A DISTANCE OF 553.10 FEET TO THE NORTH-SOUTH CENTERLINE OF SAID SECTION 13;
THENCE, ALONG SAID CENTERLINE SOUTH 00°17'23" WEST, 1,300.66 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 13 AND THE POINT OF BEGINNING;

SITUATE IN THE CITY OF BLACK DIAMOND, COUNTY OF KING, STATE OF WASHINGTON.