

RESOLUTION NO. 07-424

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE AMENDMENT NO. 1 TO THE WHOLESALE WATER AGREEMENT BETWEEN CITY OF TACOMA AND CITY OF BLACK DIAMOND

WHEREAS, the City of Black Diamond and Tacoma entered into a Wholesale Water Agreement on August 1, 2003, under which, among other terms, Tacoma agreed to supply to Black Diamond 1,712,000 gallons per day (g.p.d.) of water for average day use, 3,852,000 g.p.d. for peak day use and 3,659,400 g.p.d. for four-day peak use, priced at Tacoma Water's wholesale water service rate as identified in the City of Tacoma Water Rates and Regulations, as amended, and

WHEREAS, the original Agreement provided that the City of Black Diamond may acquire an additional 500,000 g.p.d. capacity within 18 months of the Agreement Date, upon payment of the additional System Development Charge in effect at the time the City of Black Diamond provides the initial payment for the additional capacity, and

WHEREAS, by letter of April 15, 2005, Tacoma extended the time within which the City of Black Diamond could acquire the additional 500,000 g.p.d. capacity under the original Agreement, and

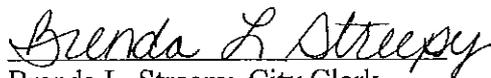
WHEREAS, the City of Black Diamond notified Tacoma in July 2006 of its intent to purchase the additional 500,000 g.p.d. capacity,

BE IT RESOLVED that the Mayor is hereby authorized to execute Amendment No. 1 to the Wholesale Water Agreement between the City of Black Diamond and the City of Tacoma, substantially in the form attached as Exhibit A;

ADOPTED by the City Council at an open public meeting held on the 3rd day of May, 2007.


Howard Botts, Mayor

Attest:


Brenda L. Streepy, City Clerk

AMENDMENT NO. 1 TO
WHOLESALE WATER AGREEMENT
BETWEEN CITY OF TACOMA
AND CITY OF BLACK DIAMOND

This Amendment No. 1 is made and entered into this 1st day of February, 2007, between the City of Tacoma, Department of Public Utilities, Water Division (d.b.a. Tacoma Water), a municipal corporation (hereafter "Tacoma"), and the City of Black Diamond (hereafter "Black Diamond"), or collectively referred to as "the parties."

A. RECITALS

WHEREAS Tacoma and Black Diamond entered into a Wholesale Water Agreement on August 1, 2003, under which, among other terms, Tacoma agreed to supply to Black Diamond 1,712,000 gallons per day (g.p.d.) of water for average day use, 3,852,000 g.p.d. for peak day use and 3,659,400 g.p.d. for four-day peak use, priced at Tacoma Water's wholesale water service rate as identified in the City of Tacoma Water Rates and Regulations, as amended, and

WHEREAS the original Agreement provided that Black Diamond may acquire an additional 500,000 g.p.d. capacity within 18 months of the Agreement Date, upon payment of the additional System Development Charge in effect at the time Black Diamond provides the initial payment for the additional capacity, and

WHEREAS by letter of April 15, 2005, Tacoma extended the time within which Black Diamond could acquire the additional 500,000 g.p.d. capacity under the original Agreement, and

WHEREAS Black Diamond notified Tacoma in July 2006 of its intent to purchase the additional 500,000 g.p.d. capacity,

NOW, THEREFORE, the parties agree that the following terms shall be added to the Agreement as follows:

Under Section C, CONDITIONS Subparagraph 1, the following language is added to existing language:

1. It is understood and agreed that Black Diamond is responsible for the provision of any additional contact time required for, and regulatory reporting of disinfection compliance under WAC 246-290-692.

Upon Black Diamond's payment of the system development charge of \$3,407,063 for the additional water requested, Tacoma will commit and agrees to supply to Black Diamond and additional 500,000 gallons per day (g.p.d.) of water for average day use, 1,125,000 g.p.d. for peak day use and 1,068,750 g.p.d. for four-day peak use. Black Diamond agrees to pay at least twenty percent (20%) of the SDC amount within thirty (30) days of the execution of this

Agreement, and the SDC balance shall be paid with interest over up to ten years as authorized by the Tacoma Municipal Code, as further set forth below.

The estimated commencement date for providing the additional wholesale water under this Amendment No. 1 is February 2007.

Black Diamond agrees to pay the additional SDC balance in ten annual installments commencing on February 1, 2008, the first annual anniversary date of this Amendment No. 1. In addition to the annual SDC installment, Black Diamond shall also pay interest, calculated on a monthly basis (the first day of every month) on the outstanding principal SDC balance amount at "prime" minus 2% interest rate, as reported by the Wall Street Journal ten days before the date that the monthly interest calculation is made. The interest amount paid by Black Diamond shall be paid to Tacoma along with the annual installment payment. Provided, however, Black Diamond may prepay (without penalty) a portion or all of the outstanding SDC amount, in which case the accrued interest to the date of such prepayment shall also be paid to Tacoma.

Except as specifically provided herein, all other provisions of the original Agreement remain unchanged.

IN WITNESS WHEREOF the parties hereto have executed this Amendment No. 1 to the Wholesale Water Agreement as of the day and year first written above.

CITY OF TACOMA
Department of Public Utilities
Water Division

CITY OF BLACK DIAMOND


John Kirner
Water Superintendent


Name:
Title: MAYOR

Date: 5/23/07

Date: 5-3-07

Approved as to form and legality:


Anne L. Spangler, Chief Assistant City Attorney