

RESOLUTION NO. 10-691

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING AN AGREEMENT WITH QWEST TO REIMBURSE THE CITY OF BLACK DIAMOND FOR ADDITIONAL STORM DRAINAGE COSTS ON THE MORGAN STREET SIDEWALK PHASE II PROJECT

WHEREAS, the City during the design of the Morgan Street Sidewalk Project determined that Qwest and PSE own underground facilities that are in conflict with a proposed storm drain line and catch basins; and

WHEREAS, Qwest cannot schedule fiber optic system outages without the coordination and approval of its customers; and

WHEREAS, Qwest must allow certain fiber optic commercial service contract holders six months to schedule outages and Qwest estimates it will take at least six months to relocate their facilities to eliminate the conflicts; and

WHEREAS, the City can avoid potential Project delays and resultant escalation of costs by contracting with Qwest to redesign and install non-standard drainage facilities to avoid Qwest's underground facilities; and

WHEREAS, Qwest desires to pay for the additional construction costs associated with modified drainage facilities that will avoid Qwest relocation costs;

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

Section 1. The Mayor is authorized to execute the attached Agreement with Qwest to reimburse the City of Black Diamond an amount up to \$80,000 for the relocation of storm drainage utilities on the Morgan Street Sidewalk Project as attached hereto as Exhibit A.

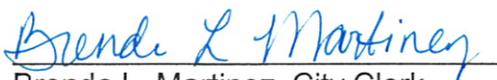
PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 17TH DAY OF JUNE, 2010.

CITY OF BLACK DIAMOND:



Rebecca Olness, Mayor

Attest:


Brenda L. Martinez, City Clerk

Revisions dated May 13th & 17, 2010 by CDB, KD, PLLC in consultation with S. Boettecher, Black Diamond Public Works Director

**AGREEMENT
BETWEEN THE CITY OF BLACK DIAMOND AND QWEST
TO REIMBURSE THE CITY FOR ADDITIONAL STORM DRAINAGE COSTS
ON THE MORGAN STREET SIDEWALK PROJECT**

THIS AGREEMENT is made and entered into this 17th day of June, 2010, by and between the City of Black Diamond (hereinafter "City") and Qwest Corporation, a Colorado corporation (hereinafter "Qwest"), collectively referred to herein as the "Parties".

WHEREAS, the City proposes to construct the Morgan Street and Roberts Drive sidewalks improvements (hereinafter "Project") based on public need and necessity; and

WHEREAS, Qwest provides telecommunications service in the general area of the Project in accordance with applicable Washington State and City laws and regulations; and

WHEREAS, in connection with the sidewalk improvements being undertaken by the City, Qwest owns underground facilities that are in conflict with a proposed storm drain line and catch basins proposed to be located under the new gutter on the north side of Morgan Street; and

WHEREAS, the Qwest underground facilities include dedicated fiber optic and copper lines used by commercial service contract holders; and

WHEREAS, Qwest cannot schedule fiber optic system outages without the coordination and approval of it's customers; and

WHEREAS, Qwest must allow certain fiber optic commercial service contract holders six months to schedule outages; and

WHEREAS Qwest estimates it will take at least six months to relocate their facilities to eliminate the conflicts; and

WHEREAS, the City can avoid potential Project delays and resultant escalation of costs by contracting with Qwest to redesign and install non-standard drainage facilities to avoid Qwest's underground facilities; and

WHEREAS, Qwest can achieve cost savings and uninterrupted fiber optic service by contracting with the City to redesign and install non-standard drainage facilities to avoid conflicts with Qwest's facilities; and

WHEREAS, placing the storm drain lines in a non standard location in the center of the road will cause multiple pavement cuts across and along the roadway such that an overlay will be required; and

WHEREAS, Qwest desires to pay for the additional construction costs associated with modified drainage facilities that will avoid Qwest relocation costs; and

WHEREAS, the City desires to avoid potential Project delays:

NOW, THEREFORE, in consideration of the mutual benefits to be achieved, and other good and valuable consideration as set forth herein, it is hereby covenanted and agreed by and between the Parties hereto as follows:

I. REDESIGN.

A. Qwest acknowledges that the City's consultant, Gray and Osborne Consulting Engineers, have redesigned the storm system to relocate the storm drainage to a non-standard location, where needed in order to avoid causing Qwest to relocate their facilities for the Project, in accordance with Exhibit A showing the non-standard storm drain location.

B. Qwest has provided information of sufficient detail to identify points of conflict between Qwest's facilities and the Project drainage facilities. When requested, Qwest will timely provide, so as not to delay the City's contractor, such additional information and pothole data that is necessary to describe facility depth, horizontal and vertical dimensions, and composition.

II. COSTS AND PAYMENT.

A. Qwest shall reimburse the City for the City's additional construction costs associated with the non-standard storm drain location all as ~~detailed in Exhibit B~~, including a full street overlay. The City and Qwest agree that the work and materials set forth in Exhibit B represent the City's best estimate of the additional work and materials for this Project made necessary as a result of altering the existing design to the non-standard storm drainage design. The quantities and costs as outlined in Exhibit B are estimated quantities and costs only and will be not be known until a contract is awarded and the work is completed. Further, Qwest agrees that it is difficult to quantify such additional costs as mobilization and demobilization, traffic control, additional potholing and construction management, and that Qwest will therefore reimburse the City an additional ten percent (10%) of the invoiced construction costs (the "Additional Costs"). Qwest shall only be obligated to pay the actual amount of the construction cost differential between the original storm drainage design under the north gutter and the modified non standard storm drainage design, plus the additional cost of the pavement overlay on Morgan Street. The above estimated numbers are based on recent bid amounts for similar projects. It is acknowledged that actual field conditions and unknown factors may influence the final costs. In the event that the actual amount of the construction cost differential

described in Exhibit A-1
Jeth RL

between the original storm drainage design and the modified non-standard storm drainagedesign, together with the Additional Costs, exceeds \$80,000 the City agrees that it will accept \$80,000 in full satisfaction of Qwest's reimbursement obligations set forth herein.

B. All payments shall be due from Qwest to the City within thirty (30) days after receipt of the City's invoice by Qwest. Amounts unpaid after said due date shall accrue interest at a rate of one (1) percent per month.

III. DURATION.

This agreement shall become effective immediately upon execution by both parties. This Agreement shall continue in force until Qwest makes the payment referenced in Section I(A) above.

IV. OTHER PROVISIONS.

A. All correspondence related to the contract will be directed to the following:

City of Black Diamond
Seth Boettcher
Public Works Director
(360) 886-2560
24301 Roberts Drive
Black Diamond, WA 98010

Qwest Corporation
Jeff Watson
Contract Manager
(253) 372-5358
23315 66th Ave. S.
Kent, WA 98032

B. Governing Law; Jurisdiction and Venue. This Agreement and all amendments thereof shall be governed by and construed in accordance with the laws of the State of Washington applicable to contracts made and to be performed therein, without giving effect to its conflicts of law provisions. In the event of any litigation hereunder, the Superior Court of King County, Washington shall have the exclusive jurisdiction and venue. The Parties agree to submit to the personal jurisdiction of that court.

C. Legal Relationships. No partnership, joint venture or joint undertaking shall be construed from this Agreement. This Agreement creates no right, interest, duty, obligation, or cause of action in any person or entity not a party to it.

IN CONSIDERATION of the mutual benefit accruing herein, the Parties hereto agree that the work, as set forth herein, will be performed by the City under the terms of this Agreement.

IN WITNESS WHEREOF the Parties hereto have hereunto set their hands and seals the day and year first above written.

CITY OF BLACK DIAMOND

Rebecca Olness

Rebecca Olness, Mayor

QWEST CORPORATION

Sue Anderson

Title

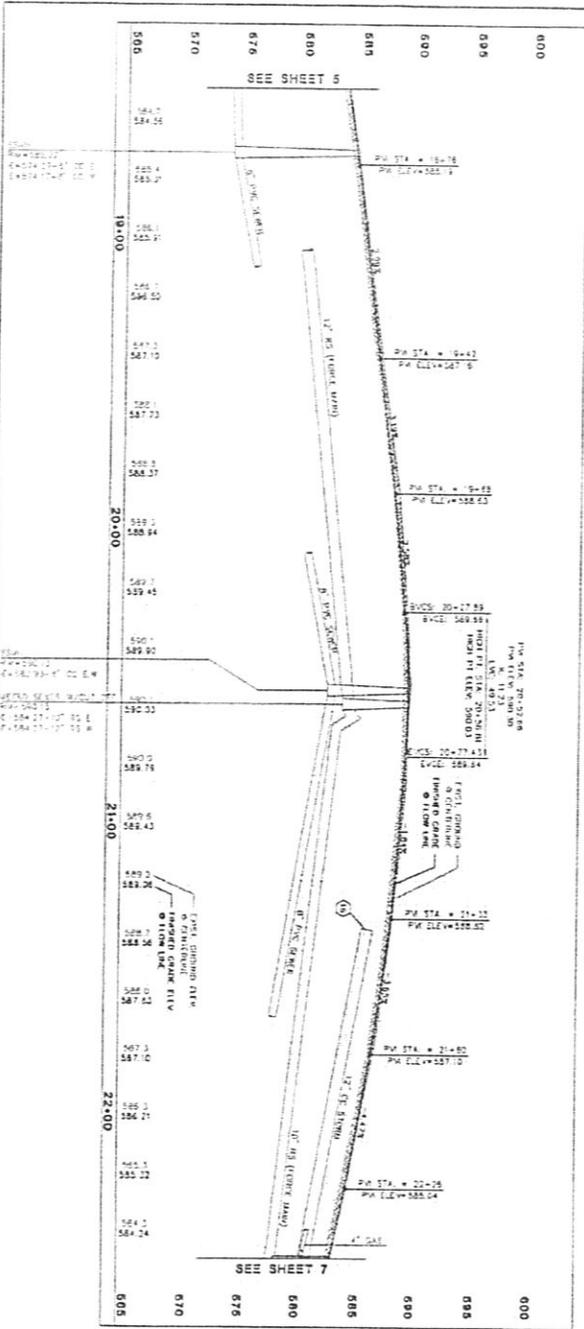
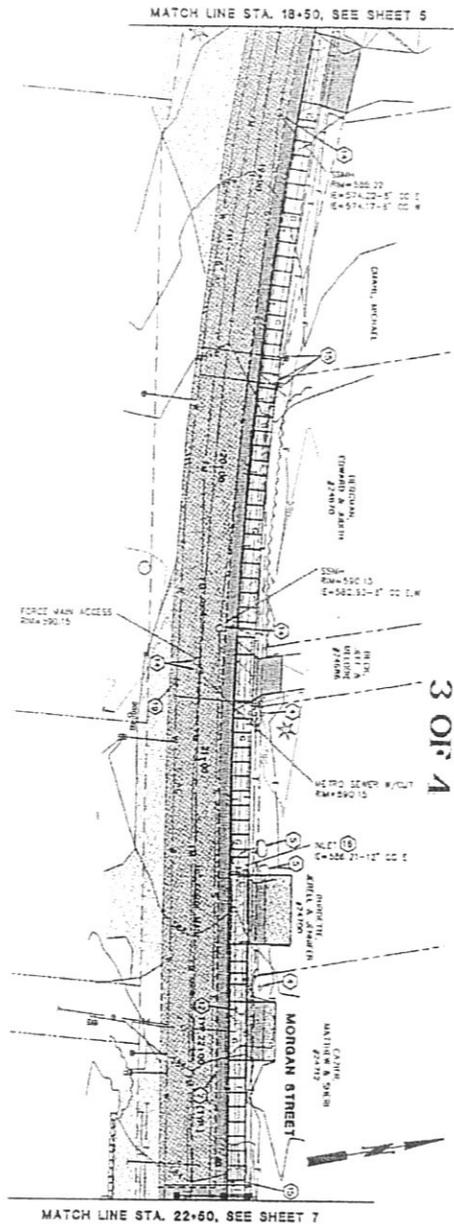
Director Network Ops
6/19/2010

ATTEST:

Brenda L Martinez

Brenda Martinez, City Clerk

EXHIBIT A 3 OF 4



CONSTRUCTION NOTES

- 1) EXISTING UTILITIES SHALL BE PROTECTED AND MAINTAINED THROUGHOUT CONSTRUCTION.
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POTHOLE DATA - GAS

STATION	DEPTH TO TOP OF GAS	DEPTH TO BOTTOM OF GAS
18+00	21.5	24.0
18+25	21.5	24.0
18+50	21.5	24.0
18+75	21.5	24.0
19+00	21.5	24.0
19+25	21.5	24.0
19+50	21.5	24.0
19+75	21.5	24.0
20+00	21.5	24.0
20+25	21.5	24.0
20+50	21.5	24.0
20+75	21.5	24.0
21+00	21.5	24.0
21+25	21.5	24.0
21+50	21.5	24.0
21+75	21.5	24.0
22+00	21.5	24.0

CITY OF BLACK DIAMOND
MORGAN STREET SIDEWALK PROJECT
ABRAMS AVENUE TO ROBERTS DRIVE

PLAN AND PROFILE

DATE: MAY 2010
SCALE: 1" = 20'
DRAWN: D.R.S.
CHECKED: T.L.S.

Gray & Osborne, Inc.
CONSULTING ENGINEERS
200 WEST AVENUE, SUITE 200
BLACK DIAMOND, WA 98010

EXHIBIT A-1

Non Standard Storm Drainage Layout and Pavement Overlay

See the Attached Plan and Profile Sheets showing the non-standard storm layout and the pavement overlay limits on Morgan Street. The storm drainage trunk line has been shifted to the center of Morgan Street, from the north curb line, in order to avoid parallel trenching conflicts with existing buried Qwest utilities. Concrete inlets have been substituted for catch basins along the curb line to minimize excavation depth and potential conflict with the existing buried Qwest utilities. Storm laterals from the concrete inlets to the non-standard storm trunk line have been added in order to minimize trenching near the existing buried Qwest utilities. Pavement overlay of Morgan Street is required due to the additional trench patches within the pavement section from the non-standard storm layout. Adjustment of castings to grade and restriping are required due to the pavement overlay.

EXHIBIT B

*ESTIMATED ADDITIONAL CONSTRUCTION COSTS FOR NON-STANDARD STORM
CONSTRUCTION AND PAVEMENT OVERLAY – MORGAN STREET SIDEWALK PROJECT*

NO.	ITEM	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1	HMA Cl. 1/2" PG 58-22 (S.P. 5-04.5)	480	TN	\$76.00	\$ 36,480.00
2	Cold Mix (S.P. 5-04.5)	90	TN	\$76.00	\$ 6,840.00
3	Planing Bituminous Pavement (S.P. 5-04.5)	325	SY	\$4.00	\$ 1,300.00
4	Adjust Catch Basin (5-04.5)	1	EA	\$325.00	\$ 325.00
5	Adjust Manhole (5-04.5)	9	EA	\$400.00	\$ 3,600.00
6	Adjust Water Valve (5-04.5)	5	EA	\$300.00	\$ 1,500.00
7	DI Storm Sewer Pipe, 8 In. Diam. (Incl. Bedding) (S.P. 7-04.5)	90	LF	\$35.00	\$ 3,150.00
8	Concrete Inlet (S.P. 7-05.5)	8	EA	\$800.00	\$ 6,400.00
9	Pavement Removal (Removal of Structures and Obstructions)	705	SY	\$4.00	\$ 2,820.00
10	Crushed Surfacing Top Course (S.P. 4-04.5)	200	TN	\$22.00	\$ 4,400.00
11	Paint Line (S.P. 8-22.5)	1,730	LF	\$1.00	\$ 1,730.00
12	Paint Line w/ RPM's (S.P. 8-22.5)	1,730	LF	\$1.20	\$ 2,076.00
13	Plastic Crosswalk Line (8-22.5)	80	SF	\$3.50	\$ 280.00
Subtotal					\$ 70,901.00
Estimated additional Mob/demob, traffic control, potholing, and CM due to centerline trench and overlay = 10%					\$ 7,090.10
Total Additional Cost					\$ 77,991.10