

RESOLUTION NO. 20-1374

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, APPROVING AMENDMENT NO. 2 TO THE WHOLESALE WATER AGREEMENT WITH THE CITY OF TACOMA DEPARTMENT OF PUBLIC UTILITIES TO ALLOW A SECOND INTERTIE WITH THE TACOMA WATER PIPELINE

WHEREAS, on August 1, 2003, the City of Black Diamond entered into a Wholesale Water Agreement with the City of Tacoma Department of Public Utilities, Water Division ("Tacoma Water") that remains in full effect; and

WHEREAS, On February 1, 2007, the City of Black Diamond and Tacoma Water executed Amendment No. 1 to the Wholesale Water Agreement providing for certain regulatory treatment and reporting requirements, and identifying additional quantities of wholesale water to be purchased by the City from Tacoma Water; and

WHEREAS, under the Wholesale Water Agreement and Amendment No.1 to the Wholesale Water Agreement, Black Diamond paid System Development Charges to purchase 2,212,000 gallons per day (gpd) for average day use, 4,977,000 gpd for peak day use and 4,728,150 gpd for four-day maximum use, which Tacoma committed for Black Diamond's immediate and permanent use and this remains in full effect; and

WHEREAS, the City of Black Diamond has requested an additional point of connection, or intertie, between the parties' systems, to provide system redundancy and to better support future growth in the City of Black Diamond; and

WHEREAS, Tacoma Water is willing to authorize design, engineering, and construction of a second intertie between its water system and the City of Black Diamond's water system on the terms and conditions and at the location described in the attached Amendment No. 2 to the Wholesale Water Agreement; and

WHEREAS, the City desires to design, engineer, and construct the second intertie on the terms and conditions described in the attached Amendment No. 2 to the Wholesale Water Agreement;

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

Section 1. The Mayor is hereby authorized to execute Amendment No. 2 to the Wholesale Water Agreement with the City of Tacoma Department of Public Utilities, Water Division, substantially in the form attached hereto.

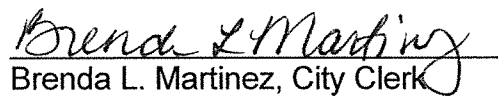
PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 20th DAY OF AUGUST,
2020.

CITY OF BLACK DIAMOND:



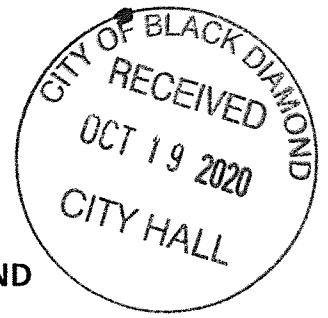
Carol Benson, Mayor

Attest:



Brenda L. Martinez, City Clerk

**AMENDMENT NO. 2 TO
WHOLESALE WATER AGREEMENT
BETWEEN CITY OF TACOMA AND CITY OF BLACK DIAMOND**



THIS AMENDMENT is made and entered into this 3rd day of September, 2020, by and 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, a municipal corporation (hereafter "Black Diamond"). Tacoma and Black Diamond collectively shall be referred to as the "Parties" or either Tacoma or Black Diamond may be referred to as "Party" when appropriate.

RECITALS

WHEREAS, On February 1, 2007, the Parties executed Amendment No. 1 to a Wholesale Water Agreement that stipulated certain regulatory treatment and reporting requirements, and identified additional quantities of wholesale water to be purchased and the terms of that purchase.

WHEREAS, On August 1, 2003, the Parties entered into a Wholesale Water Agreement that remains in full effect.

WHEREAS, the Parties are operating under a Franchise Agreement that specifies terms and conditions for operation of Tacoma owned pipelines and appurtenances in Black Diamond's rights-of-way, including a 40% Black Diamond cost share for required relocation of said pipelines and appurtenances;

WHEREAS, Through the Wholesale Water Agreement and Amendment No.1 to the Wholesale Water Agreement, Black Diamond paid System Development Charges to purchase 2,212,000 gallons per day (GPD) for average day use, 4,977,000 GPD for peak day use and 4,728,150 GPD for four-day maximum use, which Tacoma committed for Black Diamond's immediate and permanent use and this remains in full effect;

WHEREAS, Black Diamond has requested an additional point of connection, or intertie, between the Parties' systems, and approval for this additional point of connection was authorized by the Regional Water Supply Partners on January 8, 2016.

NOW, THEREFORE, in consideration of the mutual promises and obligations hereinafter set forth, the Parties agree as follows:

- 1. INTERTIE CONSTRUCTION.** As provided for in the Wholesale Water Agreement, the Parties shall design, construct, and install an additional point of connection or intertie between the Parties' systems at approximate Second Supply Pipeline (SSP) Station 1298+00 (hereafter "Project") per the details of this Amendment, and as shown in Exhibit B hereto. The Parties have agreed to design, engineer and construct the additional point of connection, or intertie,

between their systems as follows: (1) Black Diamond will design, engineer, and construct the infrastructure required to successfully complete the intertie, including all necessary facilities to meter, monitor and control the intertie, (2) Tacoma shall review and comment on Black Diamond's engineering plans and designs prior to construction, (3) Black Diamond will pay all the costs, including Tacoma's, for design, engineering and construction of the intertie.

2. CAPITAL COSTS. The Cost of Construction of the proposed intertie shall be the responsibility of Black Diamond. As used in this paragraph, "Cost of Construction" shall include, but not be limited to: (a) all facilities and equipment necessary to deliver water from the Second Supply Pipeline ("SSP") connection point; (b) the equipment and installation costs for the associated meter, vault, monitoring and control systems, and connection to Tacoma's Second Supply Pipeline; (c) all actual costs of labor, materials, permitting, equipment, engineering, legal, publications, inspection, and SEPA compliance; (d) any and all property rights necessary to complete construction, and (e) any costs customarily incurred in such projects.

3. DESIGN, ENGINEERING, AND CONSTRUCTION. Black Diamond will complete all engineering and construction work for the components of the additional intertie that Tacoma will own including the tap and stub off Tacoma's main, the meter and vault. Tacoma shall provide an estimate of fees for all Tacoma's engineering and inspection work associated with the Project. Black Diamond shall complete all engineering and construction work for the components of the additional intertie that Black Diamond will own. Ownership of components shall be as shown on Exhibit B hereto.

4. APPROVALS, FINAL ACCEPTANCE, AND OWNERSHIP. Prior to construction, Black Diamond will provide the design for the intertie to Tacoma for review and comment. Final acceptance of the physical point of connections, the connecting piping, the meter and vault up to the point of connection between facilities owned, or to be owned by Tacoma, control and monitoring systems, and facilities owned or to be owned by Black Diamond, will require approval by Tacoma and such approval shall not be unreasonably withheld.

5. WATER DELIVERY. Black Diamond agrees to water delivery at the below points of connection.

*Intertie Location	Intertie Type	Connection (Main Size)	Meter Size	**Meter Reading	***Zone Elevation		Max Flow Capacity***** (GPM)
					****Tacoma	Black Diamond	
SSP Sta. 1407+20 Existing Intertie (#1)	W	12"	8"	SCADA	839-874	850	3,456
~SSP Sta. 1298+00 Proposed Intertie (#2)	W	12"	8"	SCADA	818-874	850	3,456

* See Exhibits A and B for further detail.

** Meter reading shall be read through data transmitted electronically through the SCADA system to Tacoma Water and the City of Black Diamond. Meters may be converted to AMI in the future.

***The zone elevations vary in Tacoma's Pipeline based on the flow conditions in the SSP.

**** Tacoma's zone elevation is dependent on flows in the SSP. Tacoma cannot guarantee water to Black Diamond if the flow in the pipeline is outside of the hydraulic parameters necessary to supply water into their specified zones.

*****Max Flow Capacity represents the Tacoma system's ability to deliver flow at a specific flow rate from the SSP and at a specific HGL in Black Diamond's system. The intent of the second intertie is to match the 1st intertie (full redundancy). Black Diamond shall not exceed the maximum flow rates documented elsewhere in this agreement at any time.

6. INDEMNIFICATION. Each Party, to the extent provided by law, agrees to indemnify and hold the other harmless from any and all claims arising from their respective acts of negligence in the performance of their scope of work pursuant to this Amendment, including but not limited to the claims of the other Party's employees. Accordingly, the Parties waive the immunity provided by Chapter 51, RCW. This provision shall be deemed mutually negotiated.

7. INSURANCE REQUIREMENTS. Tacoma will require special provisions in contract specifications between Black Diamond and its contractor ensuring Tacoma is appropriately insured for all work in Black Diamond's right-of-way, or within Tacoma's easement.

Appropriately insured means:

- The City of Tacoma be named as an additional insured under the Contractor's Commercial General Liability policy;
- The coverage be primary and non-contributing to the City's insurance program;
- The coverage shall be no less than \$2,000,000 Combined Single Limit (CSL) per occurrence for bodily injury and property damage;
- The Contractor's Commercial General Liability Policy shall include Employer's Stop Gap coverage;
- The policy is not subject to a self-insured retained limit of more than \$10,000;
- The Contractor have in place a Commercial Auto Liability policy with policy limits of no less than \$2,000,000, and;
- A certificate of insurance shall be delivered to Tacoma Water's Project Manager prior to the start of construction reflecting the required coverage.
- The Contractor agrees to pay on behalf of the City any self-insured retained limit of liability required by the Commercial General Liability or Commercial Auto Policies required above.

8. EASEMENT. If the Intertie facilities agreed to by the Parties under this Amendment are to be constructed on property owned by Black Diamond then Black Diamond will provide

Tacoma an additional permanent easement that includes all Intertie facilities to be owned by Tacoma, and a minimum of 20 feet clearance around those facilities to ensure access for operation and maintenance purposes. Black Diamond's obligation to provide easements is limited to only those Intertie locations agreed to by the Parties and only when the Intertie will be located on property owned by Black Diamond. Any such required easement must be conveyed to Tacoma prior to final acceptance of the project, and approval for its use.

9. OPERATIONS. The Parties agree to jointly develop and maintain operating protocols for items including the scheduling of water supply to assure consistent flow control and treatment, routine operational communication, emergency shutdown, emergency contacts and other items the Parties determine appropriate ("Operating Protocols"). The Operating Protocols shall be subject to mutual agreement, which such approval shall not be unreasonably withheld, conditioned or delayed by either Party.

Black Diamond will be the owner of the valve of demarcation. Tacoma Water shall have the right to operate this valve, to be able to perform maintenance work on the meter, or isolate the turnout for any other reasons, if necessary. The right to operate the valve of demarcation includes the right to access the property owned by the City of Black Diamond. The right of entry shall be conveyed to Tacoma prior to final acceptance of the project, and approval for its use.

10. PARTIES' STATUS. This Amendment is not intended to create any partnership, joint venture, or other arrangement between the Parties. The Parties intend that the rights, obligations, and covenants in this Amendment shall be exclusively enforceable by the parties, their successors, and assigns. No term or provision of this Amendment is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation not a Party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder, except as may be otherwise provided herein.


11. CONTINUATION OF UNDERLYING AGREEMENTS. Except as otherwise modified in this Amendment No. 2, the previously executed Wholesale Water Agreement and Amendment No.1 to the Wholesale Water Agreement remain in full force and effect.

APPROVED AND AGREED BY:

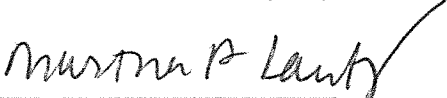
CITY OF TACOMA

By 
Water Superintendent

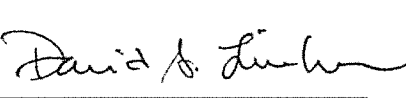
CITY OF BLACK DIAMOND

By 
Mayor

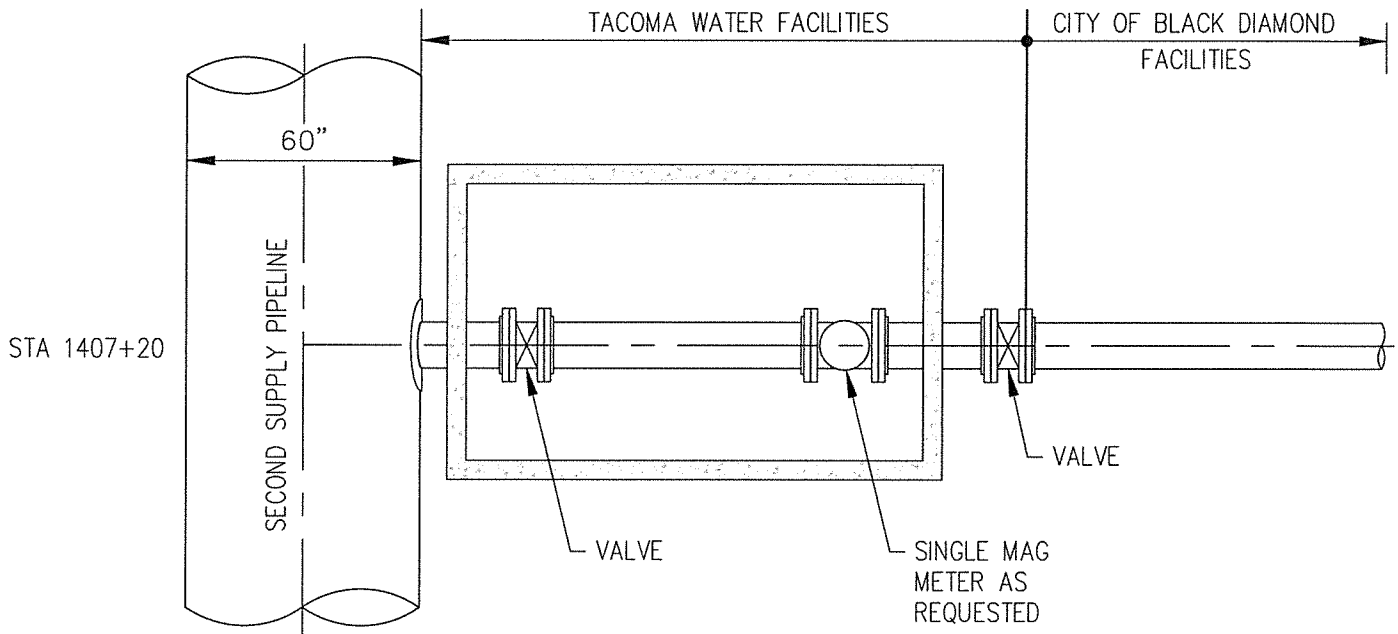
Approved as to Form & Legality:

By 
Deputy/Assistant City Attorney

Approved as to Form & Legality:

By 
City Attorney

EXISTING POINT OF DELIVERY
(FOR CITY OF BLACK DIAMOND)



PROPOSED POINT OF DELIVERY
(FOR CITY OF BLACK DIAMOND)

