



Control Number: 46245



Item Number: 609

Addendum StartPage: 0

APPLICATION OF DOUBLE § BEFORE THE STATE OFFICE COMMISSION
DIAMOND UTILITY COMPANY, INC. § OF FILING CLERK
FOR WATER AND SEWER § ADMINISTRATIVE HEARINGS
RATE/TARIFF CHANGE §

**WHITE BLUFF RATEPAYERS GROUP'S
MOTION TO COMPEL DOUBLE DIAMOND UTILITY, INC.
TO RESPOND TO WBRG'S FOURTH REQUESTS FOR INFORMATION**

White Bluff Ratepayers Group ("WBRG") files this motion to compel Double Diamond Utilities, Inc. ("Double Diamond"), to respond to WBRG's discovery requests and would show as follows.

I. INTRODUCTION

Double Diamond filed responses to WBRG's Fourth Requests for Information that included objections to some of the requests and contained representations that documents would be subsequently produced. Counsel for WBRG conferred with counsel for Double Diamond regarding the objections with diligence and in good faith, and Double Diamond did produce additional documents, but Double Diamond did not reply to WBRG's positions regarding the objections. WBRG therefore asks the ALJ to enter an order compelling Double Diamond to respond to WBRG's Fourth Request for Information.

II. MOTION TO COMPEL RESPONSES OVER OBJECTION

Pursuant to Commission rules, WBRG requested Double Diamond to respond to requests for information, including:

WBRG 4-3 Double Diamond's Consolidated Financial Statements on page DDU003577 states that "Costs that are directly identifiable with land development projects are capitalized." Please describe the costs relating to the White Bluff development that have been capitalized for purposes of determining the cost of lots sold at White Bluff.

Double Diamond responded stating that "[r]esponsive document will be produced." Double Diamond eventually produced some documents relating to its inventory analysis, but Double Diamond did not "describe the costs" that have been capitalized, other than identifying costs as "Land," and "Development Costs." Double Diamond did not produce information that

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could show whether Double Diamond capitalized any utility assets now included in the requested rate base as part of the basis for the lots. The issue of the amount of developer contributions is in dispute in this matter. WBRG has the right to discover information that might identify utility infrastructure that was capitalized as a land development cost.

WBRG 4-4 Please provide all ledger entries for the Balance Sheet Asset Account “Inventory” made during 1996.

Double Diamond objects that this request is irrelevant and over broad because “it is not relevant to the establishment of rates for the White Bluff utility systems.”¹ Double Diamond also responds “the ledger entries for the Balance Sheet Asset Account ‘Inventory’ relate to lot inventory within the development and are not relevant”²

WBRG asserts that the request is relevant because the amounts included by Double Diamond in “lot inventory within the development” could have included amounts associated with water or sewer utility infrastructure that Double Diamond now wants to include in rate base in this matter. If this is so, Double Diamond would be double recovering the cost of this infrastructure from its customers. In existing discovery in this docket, Double Diamond has produced depreciation sheets identifying water and sewer assets. How these assets, and the assets not identified in the schedules, were funded is critical to establishing the rate base in this case, particularly since the utility infrastructure was constructed by the developer and because the developer also controls the utility. If the flow of funds is not tracked properly, the utility customer/lot purchaser could pay for infrastructure twice—once in the purchase price of the lot, and a second time through water and sewer rates.³

The requested information is directly relevant to issues in dispute in this matter. The information could show whether Double Diamond capitalized any utility costs as part of the basis for the lots. WBRG has the right to discover information that might identify utility infrastructure accounted for as inventory within the development, and asserts that inventory is relevant to determination of rates in this proceeding.

¹ Double Diamond Utility Company, Inc.’s Response to White Bluff Ratepayers Group’s Fourth Request for Information WBRG 4-1 Through 4-19 at 3 (Sept. 29, 2017). (Double Diamond’s Response).

² Double Diamond’s Response at 3.

³ See *Sunbelt Util. v. Pub. Util. Comm’n*, 589 S.W.2d 392, 394 (Tex. 1979) (If developer recovers cost of utility system through purchase price of lots, utility not entitled to include system in rate base).

WBRG 4-8 Admit or deny. The value of the assets listed in the 2015 Depreciation and Amortization Report (DDU16-015470 – DDU16-015475) cannot be reconciled to the values of the assets listed in Exhibit DDU-6C. If your answer is anything other than an unqualified admit, please provide a reconciliation between the 2015 Depreciation and Amortization Report and Exhibit DDU-6C.

Double Diamond responded that it would provide a reconciliation upon completion. To date, no reconciliation has been provided. Double Diamond has provided no update on when such a reconciliation will be produced. The depreciation schedules produced by Double Diamond account for approximately \$4.6 million in utility assets for all of subdivisions served by Double Diamond. This rate case seeks to include more than \$9 million in utility assets just for two of Double Diamond’s subdivisions. A reconciliation of the \$4.6 million to the \$9 million should shed light on whether Double Diamond treated any of its investment in water and sewer infrastructure as part of the cost of the lots and to the issue of the original cost of the assets.

WBRG 4-13 Please provide copies of the current effective water and sewer tariff for Double Diamond that is applicable within the White Bluff Subdivision, and provide copies of all previous tariffs applicable within the White Bluff Subdivision.

Double Diamond objected to this request as irrelevant and overbroad, suggesting that “the requested information is not relevant to the establishment of rates for the White Bluff utility systems based upon the current test year.”⁴ The objection that the test year is the only timeframe of relevance is a red herring. Tariffs set out requirements for extensions of service, and as such, are useful as a review of the provisions were in effect when service was extended to the development. WBRG requested copies of previous tariffs because it seeks to discover the applicable tariff provisions existing at the time service was extended to the various phases of the development. If the tariff required the developer to pay the full cost of extending service to the development, then it can be presumed that the corresponding assets were developer contributed and not part of the utility’s investment.

Double Diamond also responded to this request: “Responsive documents will be produced for the most recent tariffs.”⁵ But the response is missing pages. Double Diamond produced only three pages of the current sewer tariff, when its table of contents clearly indicates

⁴ Double Diamond’s Response at 5.

⁵ Double Diamond’s Response at 5.

the tariff includes at least ten pages and contains two appendices.⁶ Similarly, Double Diamond produced only three pages of the current water tariff, when its table of contents shows it contains at least eighteen pages and two appendices.⁷ WBRG requested “copies of the current effective water and sewer tariff”—meaning complete copies, not excerpts of tariffs, which is what Double Diamond produced.

WBRG 4-18 Admit or Deny. On July 10, 1995, Double Diamond, Inc., submitted an application to the Texas Natural Resource Conservation Commission (Application No. 30885-R) to increase rates in the White Bluff subdivision.

WBRG 4-19 Admit or Deny. Double Diamond, Inc., has never submitted an application to the Public Utility Commission or predecessor agency seeking approval of the sale, transfer, or merger of the utility providing service in the White Bluff subdivision to Double Diamond Utilities pursuant to Texas Water Code §13.301. If you deny, please provide a copy of the application.

Double Diamond objected to both of these requests on the basis of relevance. The request is relevant because it goes to which entity should be filing the application to increase rates. Under Texas Water Code § 13.301, the Commission must review and approve the sale, transfer, or merger of a utility. As part of an application under §13.301, the Commission and its predecessor agencies required a listing of utility assets and contributions in aid of construction. Seeing what representations Double Diamond made in an STM application could shed light on the proper amount of developer contributions in this rate case.

Additionally, any sale, transfer, or merger that does not comply with the provisions of §13.301 is void.⁸ If Double Diamond Inc. was the utility providing service to White Bluff in 1995 and if Double Diamond, Inc., conveyed its systems to Double Diamond Utility, Inc., without complying with Texas Water Code §13.301, then the conveyance is void. If that conveyance is void, then the application to increase rates that is currently pending before the Commission should be dismissed because it has been filed by the wrong entity. As such, whether Double Diamond, Inc., submitted an application to the TNRCC in 1995, and whether an STM application was ever submitted to the appropriate agency, are relevant issues to this proceeding. The issue of which utility is legally entitled to serve White Bluff is relevant to this matter.

⁶ See Double Diamond’s Response to WBRG 4th RFI at DDU16-016130– DDU16-016132 (sewer).

⁷ See Double Diamond’s Response to WBRG 4th RFI at DDU16-016133– DDU16-016135 (water).

⁸ Texas Water Code §13.301(h).

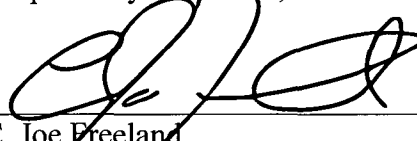
Double Diamond additionally responded that it “can neither admit nor deny” both requests. This response is disingenuous. An entity such as Double Diamond should have no difficulty determining whether it submitted a rate change application or an STM application to a state agency. To assist Double Diamond, WBRG is providing a copy of the TNRCC’s final order in SOAH Docket No. 582-95-1093, which was obtained from the Commission’s Interchange (Docket 44056).

III. REQUESTED RELIEF

WBRG requests that the Administrative Law Judge enter an order granting WBRG’s Motion to Compel and directing Double Diamond to provide substantive responses to all of WBRG’s discovery requests for which Double Diamond has not previously provided such a response, including the production of all requested documents, not previously provided.

Dated: October 10, 2017

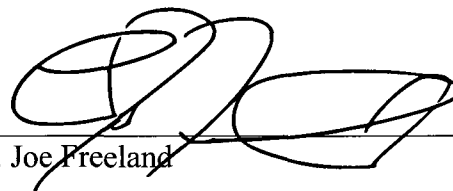
Respectfully submitted,



C. Joe Freeland
State Bar No. 07417500
Mathews & Freeland, LLP
8140 N. MoPac Expy, Suite 2-260
Austin, Texas 78759
(512) 404-7800
jfreeland@mandf.com
ATTORNEYS FOR
WHITE BLUFFS RATEPAYER GROUP

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading was served on all parties of record in this proceeding on October 10, 2017, by hand-delivery, facsimile, electronic mail, and/or First Class Mail.



C. Joe Freeland

THIS DOCUMENT CONTAINED A BAR CODE

UNABLE TO SCAN

TO VIEW DOCUMENT(S) PLEASE CONTACT
CENTRAL RECORDS (512)-936-7180

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



I hereby certify this is a true and correct copy of a Texas Natural Resource Conservation Commission document original of which is filed in the permanent records of the Commission

RECEIVED

Given under my hand and the seal of office on

2015 JAN -6 AM 7:20
FEB 12 1996

PUBLIC UTILITY COMMISSION
FILED @ EPA

Gloria A. Vasquez
Gloria A. Vasquez, Chief Clerk

Texas Natural Resource
Conservation Commission
BEFORE THE

Exhibit " A "

DOUBLE DIAMOND UTILITIES

3500 MAPLE AVENUE, SUITE 1400
DALLAS, TEXAS 75219

Question " 2 "

TNRCC Docket No. 95- 1182-UCR
SOAH DOCKET NO. 582-95-1093

IN THE MATTER OF THE APPLICATION
OF DOUBLE DIAMOND, INCORPORATED
WATER RATE TARIFF CHANGE
IN HILL, HOOD, AND PALO PINTO
COUNTIES, TEXAS

§
§
§
§
§

TEXAS NATURAL RESOURCE
CONSERVATION COMMISSION

ORDER

An application by Double Diamond, Inc. for an increase in retail water rates in Henderson, Hill, Hood, and Palo Pinto Counties and a memorandum reflecting the agreement between the designated parties and Double Diamond, Inc. pursuant to Sections 5.122 and 13.187 of the Texas Water Code ("Code") was presented to the Executive Director of the Texas Natural Resource Conservation Commission ("Commission").

Cynthia Hayes, an Administrative Law Judge with the State Office of Administrative Hearings, conducted a preliminary hearing on October 10, 1995 and designated the following parties: Randy Gracy, Vice President of Double Diamond, Inc., the Executive Director of the Commission, the Public Interest Counsel of the Commission; Bob Coleman, Pat Ascher (representing self and Canyon Creek Property Owners Association), Charles Stalmach, Don Fritz, Tommy Holbrook (representing self and Allan & Armindia Lane), David W. Huff (representing self and Oakwood Property Owners Association), Tommy P. Herring (representing group of White Bluff ratepayers), Robert G. Beberstein (representing self and group of White Bluff Ratepayers), and Rick Blake (representing self and Bluff Villas Council of Owners, Inc.).

Double Diamond
TNRCC Docket No. 95-11182-UCR
SOAH Docket No. 582-95-1093

Double Diamond, Inc. provides water service in Henderson, Hill, Hood, and Palo Pinto counties, and is a public utility as defined in Section 13.002(23) of the Code.

On July 10, 1995, the Commission received Application No. 30885-R from Double Diamond, Inc. for an increase in retail water rates charged to its customers in Henderson, Hill, Hood and Palo Pinto Counties, Texas. Notice of the water rate change with a proposed effective date of August 1, 1995, was provided to customers on June 30, 1995 by Double Diamond, Inc.. The notice of the proposed rate increases complied with the notice requirements of Section 13.187 of the Code and 30 Texas Administrative Code (TAC) Section 291.22, and was effective to place affected persons on notice regarding the proposed rate increases. Within 60 days of the effective date, at least 10 (ten) percent of the utility's customers had filed protests to the rate increases.

After informal negotiations, the designated parties negotiated a settlement, and the matter was remanded to the Commission for administrative disposition by the Executive Director pursuant to 30 TAC §265.41.

The rate structure agreed to by the designated parties, to be effective August 1, 1995, is just, reasonable and adequate to allow the utility to recover costs of providing water, as required by Sections 13.182 and 13.183 of the Code. Attached is a tariff reflecting the agreed upon rates.

Double Diamond
TNRCC Docket No. 95-11182-UCR
SOAH Docket No. 582-95-1093

B. Bring well capacity at Canyon Creek up to minimum standards by 8/1/96.

The Chief Clerk of the Texas Natural Resource Conservation Commission shall forward a copy of this Order and tariff to the Commission staff and to Double Diamond, Inc.. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issued date: **JAN 12 1996**

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



For the Commission

ATTEST:



Gloria A. Vasquez, Chief Clerk

Double Diamond
TNRCC Docket No. 95-11182-UCR
SOAH Docket No. 582-95-1093

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS NATURAL RESOURCE
CONSERVATION COMMISSION that:

1. A rate increase for Double Diamond, Inc. be approved as follows and shall be
effective as of August 1, 1995:

Monthly minimum metered rate (including 1,000 gallons):

5/8" or 3/4" meters	\$ 24.50
1" meters	\$ 40.90 ✓
1 and 1/2" meters	\$ 81.60 ✓
2" meters	\$130.60 ✓
2 and 1/2 " meters	\$196.00
3" meters	\$245.00
4" meters	\$408.00

Gallonage Charge for each 1,000 gallon unit over the minimum:

\$ 1.75

Tap Fee: \$350.00

Reconnect Fees:

Disconnected for non-payment \$ 25.00
Transfer \$ 25.00

Returned Check Fee \$ 10.00

Customer Deposit: -0-

Late Payment Penalty: \$2.00 or 5%

Meter test fee: -0-

2. Double Diamond, Inc. shall take the following action:
A. Install meters at all service connections by 1/1/96.

APPLICATION AND CONTRACT FOR WATER SERVICE

Date: _____, 19 _____

Name: _____ Telephone: (____) _____

Address: _____
(Street, Route or P.O. Box) (City, State, Zip)

(hereinafter referred to as "Applicant") requests water service be made available by Double Diamond, Inc., (hereinafter referred to as "Supplier") to Lot _____ of the _____ Subdivision.

Applicant agrees to pay Supplier a non-refundable water tap-on fee of \$350.00 (\$10.00 additional charge for faucet installation) prior to commencement of water service. Applicant further agrees to pay the Supplier a minimum of \$24.50 per month for 0 to 1,000 gallons per month. All water used in excess of 1,000 gallons will be billed at a cost of \$1.75 per 1,000 gallons, or prorated portion thereof. Usage fees must be paid within 5 days of receipt of the monthly statement.

Supplier agrees to install saddle tap corporation stop, curb stop, 5/8" water meter and meter box ("Equipment") at the front of Applicant's lot within 30 days of the date of this Application. Applicant agrees to have a licensed plumber install a service line from that point to Applicant's residence. The Equipment is and remains the property of Supplier, and any abuse of or tampering with the Equipment may result in immediate termination of service.

Applicant grants Supplier access to the water tap and all supply lines for purpose of repair, maintenance and readings. Supplier shall have the express right of inspecting, during reasonable hours, with or without notice, all plumbing or other connections located on Applicant's lot and Applicant agrees to allow such inspection and to disconnect immediately any connection apparatus which, in Supplier's opinion, creates any unsafe or unsanitary condition or potentially creates such a condition. Unsafe and prohibited activities or conditions include, without limitation, (i) cross-connection between supplier's water system and any private water well or system, (ii) pipe or pipe fittings installed by Applicant's plumber which contains more than 8.0% lead, (iii) use of solder or flux at any pipe connection which contains more than 0.2% lead, or (iv) any other activity prohibited by statute or ordinance. If Applicant fails to disconnect such connection or to correct such condition immediately, Supplier shall have the right to immediately terminate this Contract and discontinue service to Applicant until such condition is corrected. Upon reconnection, Applicant shall be required to pay Supplier's reconnection fee.

Supplier will turn off service to Applicant's lot upon written application and payment by Applicant of all charges accrued. Restoration of the service will be made upon payment of Supplier's standard reconnection fee of \$25.00, plus payment of any delinquent bills.

Applicant may not transfer any rights under this Contract without written consent of Supplier and payment of Supplier's transfer fee of \$25.00, payment of all previously accrued charges and execution by such transferee of an agreement to assume this Contract or execution of a new Application and Contract.

The Supplier hereby retains the right to cancel this Contract for failure to pay usage or transfer fees, effective thirty (30) days after Supplier places in the U.S. mail, postage prepaid, addressed to the Applicant at the above stated address, written notice of such cancellation. The rate and fees herein stated are subject to change to meet changes in costs of service. Any notice or other requirements of any applicable, governmental authority will be complied with in case of any rate or fee change.

This Contract supersedes, voids, cancels and nullifies any prior understandings, correspondence, representations and/or agreements, written or oral, between Applicant and Supplier or any representative of Supplier.

Date Service Desired: _____

Signature of Applicant - Lot Owner

Exhibit " A "
Question "2 "

SEWER UTILITY TARIFF
FOR

Double Diamond Inc.
(Utility Name)

3500 Maple Avenue, Suite 1400
(Business Address)

Dallas, Texas 75219
(City) (State) (Zip)

(214) 526-9801
(Area Code/Telephone Number)

This tariff is effective for utility operations under the following Certificate(s) of Convenience and Necessity:

20705

This tariff is effective in the following county(ies):

Hill and Palo Pinto

This tariff is effective in the following cities or unincorporated towns (if any):

None

This tariff is effective in the following subdivisions or systems:

The Cliffs and White Bluff

TEXAS NATURAL RESOURCE CONSERVATION BOARD
APPROVED
Date 5-31-96 Order 31137-5
File 20705 By VP ah
TARIFF CLERK

TABLE OF CONTENTS

The above utility lists the following sections of its tariff (if additional pages are needed for a section, all pages should be numbered consecutively):

SECTION	PAGE
1.0 RATE SCHEDULE	<u>2</u>
2.0 SERVICE RULES	<u>3</u>
3.0 EXTENSION POLICY	<u>9</u>
APPENDIX A SERVICE AGREEMENT	<u>-</u>

SECTION 1.0--RATE SCHEDULE

Section 1.01--Rates

MONTHLY SERVICE CHARGE: \$4.00

REGULATORY ASSESSMENT 1.0%
A REGULATORY ASSESSMENT, EQUAL TO ONE PERCENT OF THE CHARGE FOR RETAIL SEWER SERVICE ONLY, SHALL BE COLLECTED FROM EACH RETAIL CUSTOMER.

Section 1.02--Miscellaneous Fees

TAP FEE: The Cliffs Subdivision \$ 2,200.00
TAP FEE IS BASED ON THE AVERAGE OF THE UTILITY'S ACTUAL COST FOR MATERIALS AND LABOR FOR STANDARD RESIDENTIAL CONNECTION.

TAP FEE: White Bluff Subdivision \$ 1,800.00
TAP FEE IS BASED ON THE AVERAGE OF THE UTILITY'S ACTUAL COST FOR MATERIALS AND LABOR FOR STANDARD RESIDENTIAL CONNECTION.

RECONNECTION FEE

THE RECONNECT FEE WILL BE CHARGED BEFORE SERVICE CAN BE RESTORED TO A CUSTOMER WHO HAS BEEN DISCONNECTED FOR THE FOLLOWING REASONS:

- a) Non payment of bill (Maximum \$25.00) \$ -0-
- b) Refusal to correct unsafe/unsanitary condition \$ 20.00
OR OTHER REASONS LISTED UNDER SECTION 2.0 OF THIS TARIFF

TRANSFER FEE \$ 40.00
THE TRANSFER FEE WILL BE CHARGED FOR CHANGING AN ACCOUNT/NAME AT THE SAME SERVICE LOCATION WHEN THE SERVICE IS NOT DISCONNECTED.

LATE CHARGE \$ 2.00 OR 5%
A ONE TIME PENALTY MAY BE MADE ON DELINQUENT BILLS BUT MAY NOT BE APPLIED TO ANY BALANCE TO WHICH THE PENALTY WAS APPLIED IN A PREVIOUS BILLING.

RETURNED CHECK CHARGE \$ -0-

CUSTOMER DEPOSIT (Maximum \$50) \$ -0-

RATES LISTED ARE EFFECTIVE ONLY IF
THIS PAGE HAS TNRCC APPROVAL STAMP

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
30881 UCCN 20705 OCT 19'95
D.A. APPROVED TARIFF BY PH

APPLICATION AND CONTRACT FOR SEWER SERVICE

Date: _____

Name: _____

Telephone: () _____

Address: _____
(Street, Route or P.O. Box) (City, State, Zip)

(hereinafter referred to as the "Applicant") requests sewer service be made available by Double Diamond, Inc. (hereinafter referred to as the "Supplier") to Lot _____ of The Cliffs Subdivision _____.

Applicant agrees to pay Supplier a non-refundable sewer tap-on fee of \$2,200.⁰⁰ prior to commencement of sewer service. Applicant further agrees to pay the Supplier a \$4.⁰⁰ monthly usage fee within 5 days of receipt of the monthly statement.

Supplier agrees to install a submersible centrifugal wastewater grinder pump designed specifically for individual residential sewer applications, a holding tank, service lines from the sewer main to the holding tank, saddletap, check and ball valve and control panel ("Equipment"). Applicant agrees to have a sewer line from Applicant's residence to the pump basin installed by a licensed plumber and to have the control panel wired into Applicant's electrical system by a licensed electrician within thirty (30) days after the pump is installed, or prior to occupancy of the residence whichever occurs first. The Equipment is and remains the property of Supplier. Any abuse of or tampering with the Equipment may result in immediate termination of service.

Applicant grants Supplier access to the holding tank, service lines, and control panel located on Applicant's lot for purposes of repair and maintenance. Supplier shall have the express right of inspecting, during reasonable hours with or without notice, all plumbing or other connections Applicant agrees to allow such inspection and to disconnect immediately any connection or apparatus which, in Supplier's reasonable discretion, creates any unsafe or unsanitary condition or potentially creates such a condition. If Applicant fails to disconnect such connection or to correct such condition immediately Supplier shall have the right, at its option, to terminate this Contract and discontinue service to Applicant until such connection is corrected. Upon reconnection, Applicant shall be required to pay Supplier's reconnection fee of \$20.⁰⁰, plus payment of any delinquent bills.

Applicant may not transfer any rights under this Contract without express written consent of Supplier and payment of Supplier's transfer fee of \$40.⁰⁰, payment of any accrued charges and execution by such transferee of an agreement to assume this Contract or execution of a new Application and Contract.

The Supplier hereby retains the right to cancel this Contract for failure to pay usage or transfer fees, effective thirty (30) days after Supplier places in the U.S. Mail, postage prepaid, addressed to the Applicant at the above stated address, written notice of such cancellation. The rate and fees herein stated are subject to change to meet changes in costs of service. Any notice or other requirements of any applicable, governmental authority will be compiled within cases of any rate or fee change.

This Contract supersedes, voids, cancels and nullifies any prior understandings, correspondence, representations and/or agreements, written or oral, between Applicant and Supplier or any representative of Supplier.

Date Service Desired: _____

Signature of Applicant - Lot Owner

Tap-On Payment/Transfer Fee paid:

Amount \$ _____

Double Diamond, Inc.
Authorized Agent

Date: _____