

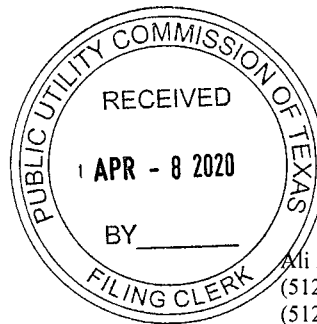


Control Number: 50702



Item Number: 4

Addendum StartPage: 0



Ali Abazari
(512) 236-2239 (Direct Dial)
(512) 391-2197 (Direct Fax)
aabazari@jw.com

April 8, 2020

Public Utility Commission of Texas
Attn: Central Records
1701 N Congress Avenue, Room 8-100
Austin, Texas 78701

RE: Docket No. 50702: Application of Double Diamond Properties Construction Co. for a Pass-Through Rate Change

The enclosed Wholesale Treated Water Supply Agreement between Double Diamond Properties Construction Co. and Northwest Grayson County Water Control and Improvement District No. 1 is hereby filed in the above-referenced docket.

Sincerely,

Ali Abazari

Enclosure

4

WHOLESALE TREATED WATER SUPPLY AGREEMENT

This Wholesale Treated Water Supply Agreement (the "Agreement") is made and entered into this 14 day of April, 2015 (the "Effective Date") by and between Northwest Grayson County Water Control and Improvement District No. 1 ("District") and Double Diamond Properties Construction Co., a Texas corporation. Collectively, the District and DDPC are sometimes referred to herein as the "Parties," and individually as a "Party."

RECITALS

WHEREAS, DDPC owns, operates and maintains a distribution system to furnish water service to the customers within its service area and desires to have a long term water supply source to provide potable water to its customers; and

WHEREAS, the District has available a supply of Treated Water, and owns, operates, and maintains facilities for storing, treating, and transmitting Treated Water; and

WHEREAS, it is deemed to be in the best interest of both DDPC and the District that said Parties enter into a mutually satisfactory agreement by means for which DDPC may obtain Treated Water from the District; and

NOW, THEREFORE, in consideration for the covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 Definitions

1.1 Definitions. The following terms and expressions used in this Agreement shall mean:

"Delivery Point(s)" means the point(s) at which the District agrees to deliver, and DDPC agrees to receive, Treated Water under this Agreement, which points are established as provided in Section 2.3 of this Agreement.

"Force Majeure" means acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States or the State of Texas, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals or other structures, partial or entire failure of water supply, or any other causes not reasonably within the control of the party claiming an inability to act by reason of force majeure.

"Meter(s)" means the metering facility or devices installed or to be installed at the Delivery Point(s) to measure the amount of Treated Water delivered to DDPC by the District as provided in this Agreement.

"Treated Water" means surface water or groundwater treated by the District so that it is potable water meeting the minimum quality requirements for human consumption as prescribed by the Texas Commission on Environmental Quality or other appropriate regulatory agency.

"Water Year" means the period of January 1 through December 31.

ARTICLE 2 Water Supply

2.1 Quantity. Except as limited in this Agreement, the District agrees to furnish and make available for sale Four Million and Six Hundred Thousand (4,600,000) gallons per year and Twelve Thousand Six Hundred (12,600) gallons per day of Treated Water in Water Year 1 to be delivered at the Delivery Point, or the prorated amount if delivery occurs after January 1 of Water Year 1. On September 1 of every Water Year, DDPC shall submit to the District the volume of Treated Water that shall be furnished for the ensuing Water Year, to be calculated as follows: seventy-five percent (75%) of the prior Water Year's residential consumption. The supply of water shall first commence on July 1, 2015, if the following conditions have been met: (a) a final and non-appealable Public Utility Commission ("PUC") Order or approval transferring the District's Certificate of Convenience and Necessity ("CCN") for the property subject to the Settlement Agreement, attached hereto as Exhibit A and incorporated herein for all intents and purposes has been issued; (b) DDPC has submitted an application to charge certain rates for the provision of water services and diligently prosecutes the application; and (c) a final and non-appealable Public Utility Commission ("PUC") Order or approval authorizing DDPC to charge any rate for the provision of water service, has been issued. If, however, a final and non-appealable PUC Order or authorization has not been issued by the above date, then supply of water shall first commence within fourteen (14) days after a final and non-appealable PUC Order or authorization transferring the District's CCN and authorizing certain rates for the provision of water service has been issued.

2.2 Interruption of Service or Maintenance. Notwithstanding anything in this Agreement to the contrary or any statutory or regulatory requirement that may be applicable to DDPC'S delivery of water to DDPC'S retail customers, the District shall be entitled at any and all times to install, repair, maintain, and replace such equipment or devices or to take any other action under emergency conditions (including reduction or cessation of water service to DDPC) as necessary or appropriate to allow the District at all times to maintain a minimum pressure as required by law at all retail service locations directly served by the District. The District may install at the metering location appropriate devices to monitor and enforce all or any of these limitations. The District agrees, to the extent reasonable under the circumstances of the interruption of service, that it will provide advance notice to DDPC of such interruption so that DDPC may better make allowance within its storage and delivery system to accommodate the interruption and that the District will use due diligence to restore service pursuant to this

Agreement. Nothing in this Agreement provides DDPC a guaranteed service pressure at the Delivery Point by the District.

2.3 Delivery Point. The District agrees to deliver Treated Water to DDPC at the Delivery Point specified in Exhibit B attached hereto and incorporated herein for all intents and purposes. The location of the Delivery Point specified in Exhibit B is mutually agreed upon by and between the Parties.

2.4 Valves at Delivery Point. All valves releasing water from the District's water system to DDPC shall be operated by the District. DDPC shall not obstruct or block access to those valves.

2.5 Back Flow Prevention. Installation of any metering facility by the District shall include a back flow device in order to prevent back flow of water into the District's system.

2.6 Pressure. The District shall furnish water delivered incident to this Agreement to a Delivery Point that contains an air gap. The District does not guarantee any water pressure at the Delivery Point.

2.7 Failure to Deliver. The District will, at all times, operate and maintain its system in an efficient manner and will take such action as may be necessary to furnish DDPC with quantities of water up to the maximums provided in Section 2.1. Temporary or partial failures to deliver water shall be remedied with due diligence.

ARTICLE 3

System Improvements and Metering

3.1 Delivery of Water to the Point of Delivery. The District shall undertake, either by its employees or by qualified contractors, to construct any necessary transmission line improvements necessary to supply treated water to the Point of Delivery as generally described in Exhibit B attached hereto and incorporated herein for all intents and purposes, and sufficient to supply to DDPC the quantity of water set forth herein. The District shall be responsible for the design, construction, installation, and operation of the equipment and transmission facilities up to the Point of Delivery. In performance of these activities, the District shall obtain bids from two qualified contractors recommended by DDPC. However, if required by law, the District shall comply with procurement laws as required by Texas law. DDPC shall compensate the District for the satisfactory performance of these activities, as described in the scope of work attached hereto and incorporated herein as Exhibit C, in an amount equal to the lowest bid. DDPC agrees to pay said costs to the District within fifteen (15) days of being billed by the District.

3.2 Easement. The District shall be responsible for obtaining necessary easements, or other interests in property, for the location of the transmission facilities necessary to transfer treated water to the Point of Delivery.

3.3 Metering. The volume of Treated Water purchased by DDPC shall be measured at the Point of Delivery. The District shall furnish and install any necessary metering equipment at the Point of Delivery for properly measuring the quantity of water delivered to DDPC. The District shall operate and maintain at its own expense at the Point of Delivery said metering equipment.

3.4 Calibration of Meters and Flow Control Devices.

(a) **Annual Testing.** Meters and flow control devices will be serviced and calibrated as necessary. Copies of the results of such calibration and all related information shall be provided to DDPC within ten (10) business days. DDPC shall have access to the Meter(s) and flow control devices at all reasonable times; provided, however, that any reading, calibration or adjustment to such Meter(s) and flow control devices shall be done by employees or agents of the District, or other mutually approved third party calibration agent, in the presence of representatives of DDPC and the District, if so requested by DDPC. Notification of any proposed test shall be provided to DDPC at least seventy-two (72) hours prior to such test being conducted and DDPC may observe such test, if so desired.

(b) **Inaccuracy.** Upon any calibration of a Meter, if it is determined that the accuracy envelope of such Meter(s) is found to be lower than ninety-five percent (95%) or higher than one hundred five percent (105%) expressed as a percentage of the full scale of the Meter(s), or Meter(s) fail to perform to American Water Works Association water metering standards, the registration of such Meter(s) shall be corrected according to this subsection. The registration of the flow as determined by such defective (Meter(s) shall be corrected for a period extending back one-half (1/2) of the time elapsed since the date of the last calibration, but in no event further back than a period of six (6) months. All Meter(s) will be properly sealed, and the seals shall not be broken unless representatives of both DDPC and the District have been notified and given a reasonable opportunity to be present.

(c) **Meter Out of Service – No Readings.** If any meter used to determine the flow of Treated Water to DDPC is out of service or out of repair so that the amount of Treated Water metered cannot be ascertained or computed from the reading thereof, the Treated Water delivered during the period such Meter is out of service or out of repair shall be estimated and agreed upon by DDPC and the District upon the basis of the best data available. The basis for estimating such flow includes, but is not limited to, extrapolation of past patterns of flow for said Meter under similar conditions. In the event that DDPC and the District cannot agree on the extrapolated estimate of Treated Water volume delivered before the payment due date, DDPC will make payment to the District based on the same month in the previous year on or before the payment due date. Notwithstanding anything in this Agreement to the contrary, only after making such payment, may DDPC request that a dispute under this Section be submitted to non-binding mediation. The District's acceptance of such payment does not waive the District's right to request that any remaining dispute regarding the amount of payment due be submitted at any time to non-binding mediation.

3.5 Meter Reading.

(a) The District will read all Meter(s) provided for herein at monthly intervals, and DDPC and the District shall have free access to read these respective Meter(s) daily, if either party so desires. It shall be the duty of both DDPC and the District to give immediate notice, each to the other should any Meter(s) be found to not be functioning properly. Upon such notice, the District shall make repairs to such Meter(s) promptly. The expense of such repairs shall be borne by the District.

(b) DDPC shall have access to records on the Meter(s) readings during reasonable business hours and shall be furnished a copy of readings upon request.

ARTICLE 4 **Fees, Billing and Payment**

4.1 Take or Pay Minimum Volume. In Water Year 1, DDPC will take or pay for Three Million One Hundred and Ninety Thousand (3,190,000) gallons of water at the Point of Delivery at the rate for Treated Water as set forth herein, or the prorated amount if delivery occurs after January 1 of Water Year 1. The annual volume of water subject to the take or pay minimum during each ensuing Water Year shall be seventy five percent (75%) of the prior Water Year's residential consumption. DDPC will submit documentation related to residential consumption to the District within twenty (20) days after the end of each Water Year. However, in no event shall DDPC ever purchase less than Three Million One Hundred and Ninety Thousand (3,190,000) gallons of water in any ensuing year.

4.2 Water Rate. DDPC agrees to pay the District for water metered to DDPC at the Point of Delivery at the initial rate of Seventy-Five Percent (75%) of the lowest volumetric rate charged by the District to its residential customers per one thousand (1000) gallons.

4.3 Adjustment of Rate. Beginning upon the expiration of the second Water Year, the District may adjust the Water Rate, to be effective sixty (60) days after each anniversary of the Effective Date of this Agreement, to be an amount such that the Water Rate does not exceed Seventy-Five Percent (75%) of the lowest volumetric rate charged by the District to its residential customers, but in no event shall any such increase result in a Water Rate that exceeds the rate charged by the District to any other wholesale water customer.

4.4 Billing and Payment. The District shall, on a monthly basis, upon reading the Meter in accordance with Section 3.5, submit an invoice to DDPC regarding the quantity of water metered to DDPC. DDPC's monthly payment shall be calculated by multiplying the metered volume times the Water Rate set out in Sections 4.2 or 4.3, if applicable. The take or pay minimum described in Section 4.1 shall be billed in equal monthly installments to DDPC. In addition to the volumetric rate described above, DDPC shall be billed a meter charge for the size meter at the Delivery Point, or its equivalent, based on the District's relevant tariffed rate. Subject to any provisions in this Agreement that render payment unnecessary, DDPC agrees to pay the District within twenty (20) days after delivery of the monthly billing. In the event DDPC's water usage is below the annual take or pay amount for the particular Water Year, then

DDPC shall pay the remainder amount to the District within twenty (20) days after receiving the last invoice of that Water Year.

ARTICLE 5

Terms of Agreement and Extension

5.1 **Term.** Unless otherwise terminated as provided in this Agreement, this Agreement shall extend for a term of twenty-five (25) years from the Effective Date and thereafter may be extended as provided in this Agreement. The parties agree that the terms and conditions of this Agreement are expressly conditioned upon the parties' performances under the Settlement Agreement, attached hereto as Exhibit A.

5.2 **Extension of Agreement.** DDPC may request an extension of this Agreement by providing notice to the District ninety (90) days prior to the termination of the initial twenty-five (25) year period. DDPC may request two extensions not to exceed ten (10) years each.

ARTICLE 6

Termination

6.1 **Termination by Mutual Consent.** This Agreement may be terminated in whole or in part, but only by the mutual written consent of both DDPC and the District. In the event of termination of this Agreement by mutual consent, all rights, powers, and privileges of DDPC hereunder shall cease and terminate without necessity of further action. Upon termination of this Agreement by mutual consent, DDPC shall have no right to receive Treated Water from the District and the District is permanently released from any and all obligations to make Treated Water available to DDPC.

ARTICLE 7

Notice and Delivery

7.1 **Manner of Giving Notice.** Unless the context requires immediate notice, which may be provided by telephone, any notice required under this Agreement shall be given to the respective parties at the following addresses by certified mail, return receipt requested, or by delivering the same to an officer of such party. Any such matter deposited in the mail in the manner hereinabove described shall become exclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the earlier of actual receipt of notice or the expiration of four (4) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified.

7.2 **Notice to the District.** Notice may be given to the District at:

Board President
Northwest Grayson County WCID No. 1
PO Box 715
Gordonville, Texas 76245

7.3 Notice to DDPC. Notice may be given to DDPC at:

Mr. Randy Gracy
President
Double Diamond Properties Construction, Co.
5495 Belt Line Rd., Suite 200
Dallas, Texas 75254

7.4 Delivery of Billing Statements. Delivery of a billing statement pursuant to Article 4 of this Agreement shall be considered effective on the earlier of the date that the District deposits such statement in the United States regular mail or the date such statement is actually delivered to DDPC by other means.

7.5 Change of Address. The Parties shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least five (5) days written notice to the other Party.

ARTICLE 8

General Terms and Conditions

8.1 Goods and Services. The Parties agree that this Agreement constitutes the legal, valid and binding obligation of each Party hereto, enforceable in accordance with its terms, and that each Party is entering into this Agreement in reliance upon the enforceability of this Agreement. DDPC acknowledges that the District is providing goods and services to DDPC under this Agreement pursuant to Section 271.151, Texas Local Government Code.

8.2 Governing Law. This Agreement shall be governed by the applicable law of the State of Texas and due performance by each party or any action arising under this Agreement shall lie in Grayson County, Texas. Jurisdiction and venue shall be in Grayson County, Texas, and each of the Parties submit to personal jurisdiction in the state district courts in such county.

8.3 Third Parties. The Parties agree that there are no third party beneficiaries to this Agreement. This Agreement shall not be construed as creating any rights in any third party or any duty to any third party. Affiliates of DDPC do not constitute a third party.

8.4 Regulatory Authorities. This Agreement is subject to all applicable laws and any applicable permits, ordinances, rules, orders, and regulations of any local, state, or federal governmental authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule, or regulation in any forum having jurisdiction.

8.5 Force Majeure. If by reason of Force Majeure either party shall be rendered in whole or in part unable to carry out its obligations under this Agreement, then if such party shall give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the

continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

8.6 Title to Water. Title to all Treated Water supplied hereunder shall be in the District up to the Point of Delivery, at which point title shall pass to DDPC if such water is used. The Parties shall save and hold each other harmless from all claims, demands, and causes of action that may be asserted by anyone on account of the transportation and delivery of said Treated Water while title remains in such party.

8.7 Remedies Upon Default. It is recognized that the Parties' undertaking as provided in this Agreement are obligations, the failure and performances of which cannot be adequately compensated in money damages. The Parties agree that, in the event of any default, the other party shall have available to it the equitable remedy of specific performance in addition to any other legal or equitable remedies (other than termination) which may be available to such party.

8.8 Entire Agreement; Supersedes All Others. This Agreement and any Exhibits hereto embody the entire Agreement and understanding of the parties hereto and supersede any and all prior agreements, arrangements, and understandings relating to the matters provided for herein. No amendment, waiver of compliance with any provision or condition hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of any amendment, waiver or consent is sought. This Agreement may not be amended or modified except in writing executed by all Parties and authorized by their respective governing bodies.

8.9 Successors and Assigns. This Agreement shall be binding upon the Parties hereto and their respective successors, heirs, representatives, and assigns. This Agreement may be assigned by any Party to any other entity upon written notice to the other Party.

8.10 Partial Invalidity. If any term of this Agreement is held to be invalid in any judicial action, the remaining terms will be unaffected.

8.11 Survival. Any provision that by its terms survives the termination of this contract shall bind the Parties, and their legal representatives and any successors or assigns.

8.12 Approvals or Consents. Whenever an approval or consent is referenced herein or such term is used in the Agreement, such approval or consent shall not be unreasonably withheld.

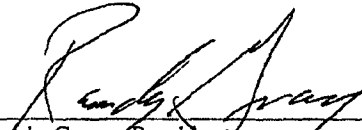
8.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

8.14 Authority. The respective signatories to this Agreement covenant that they are fully authorized to sign and execute this Agreement on behalf of their respective Party, and by such signature each such person represents that they have obtained all the necessary authority and approval, including the actual approval of their Board, to execute the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in multiple counterparts, each of which shall constitute an original.

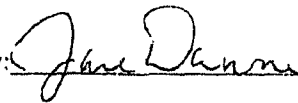
[Signature Pages Follow]

**DOUBLE DIAMOND PROPERTIES
CONSTRUCTION CO.**



Randy Gracy, President

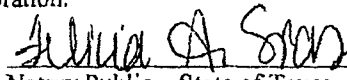
Attest:

By: 

THE STATE OF TEXAS

COUNTY OF DALLAS

This instrument was acknowledged before me on the 10th day of April, 2015,
by Randy Gracy, President of DOUBLE DIAMOND PROPERTIES
CONSTRUCTION CO., on behalf of said corporation.



Notary Public – State of Texas



NORTHWEST GRAYSON COUNTY
WATER CONTROL AND
IMPROVEMENT DISTRICT NO. 1

Name: Carol B. Anderson
Title: President, Board

Attest:

By: Ronald Chambers

THE STATE OF TEXAS

COUNTY OF GRAYSON

This instrument was acknowledged before me on the 14 day of April, 2015,
by Carol B. Anderson, on behalf of Northwest Grayson County
Water Control and Improvement District No. 1.

Karen B. Bomar
Notary Public - State of Texas

