

RESOLUTION NO. 18-1251

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
APPROVING THE ACQUISITION OF A UTILITIES
EASEMENT FOR WATER AT BLACK DIAMOND
ELEMENTARY**

WHEREAS, the Enumclaw School District has completed work at Black Diamond Elementary; and

WHEREAS, the Enumclaw School District was required in their permit to provide a utilities easement for water to the City; and

WHEREAS, the Enumclaw School District Board granted the utilities easement to the City in their May 21, 2018 meeting;

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

Section 1. The City hereby accepts a utilities easement from the Enumclaw School District as contained in the form attached hereto.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 7TH DAY OF JUNE 2018.

CITY OF BLACK DIAMOND:



Carol Benson, Mayor

Attest:



Brenda L. Martinez, City Clerk

UTILITIES EASEMENT

This Utilities Easement ("Easement") is made as of the date set forth herein, by and between Enumclaw School District, ("Grantor"), and the City of Black Diamond, ("Grantee") referred to herein collectively as "the Parties" and individually as termed above or as "Party."

RECITALS

WHEREAS, the Grantor warrants that it is the owner of the property commonly known as 25314 Baker St in the City of Black Diamond, and legally described on Exhibit A, which is attached hereto and incorporated herein by this reference (the "Property") to which the Grantor has good title; and

WHEREAS, the Grantor has agreed to dedicate an easement to the City on the Property to allow the City to operate and maintain public utilities, including public water mains and appurtenances, installed by the Grantor;

NOW, THEREFORE, in furtherance of the recitals set forth above, which are incorporated herein by reference, and in consideration of the mutual obligations and benefits created by this Easement for utilities, the sufficiency and receipt of which is hereby acknowledged, the Parties agree to the following:

1. **Grant of Perpetual Utilities Easement.** Grantor hereby grants and conveys a perpetual, non-exclusive easement for utilities over, across, under, and upon the Property to the City of Black Diamond, its successors, and assigns. The Easement is required for utility mains and appurtenances. The Easement Area is legally described in Exhibit B, and shown on the map in Exhibit C, both of which are attached hereto and incorporated herein by this reference. The Grantor shall bear all installation costs and expenses associated with the initial construction of the utility facilities installed in the Easement Area.
2. **Benefit of Easement.** The easement rights granted and conveyed hereunder shall be for the benefit of and use by the Grantee for conveying, storing, managing, operating, maintaining, constructing, improving, repairing, facilitating and constructing, improving, repairing, and maintaining utility mains, roadways, including road cuts and fills, sidewalks, other access infrastructure, and other utilities and utility systems as reasonably necessary, together with the right for Grantee to access, ingress and egress, across, over, under and upon the Easement Area for said purposes.
3. **Easement Area.** Grantee shall have the right to utilize all the Easement Area as necessary to accommodate all of the above public purposes, including any operation, repair, maintenance, and reinstallation of any utility facilities, without prior institution of suit or

proceeding at law, and at times as may be necessary, to enter upon the Property owned by the Grantor, its successors and assigns, and the Easement Area, in order to install, lay construct, renew, reconstruct, operate, repair, and maintain mains and necessary facilities and other equipment for the purposes of serving the property or other properties with utility service. No other easements for utilities shall be granted within the Easement Area except for necessary crossings as may be mutually approved by the Grantor and Grantee, and the Grantee shall have the exclusive right to construct and/or maintain City owned utilities within the easement area except for necessary crossings. In the event that the Grantee is required to totally replace the utility, the Grantor hereby grants a ten foot temporary construction easement on each side of the easement shown on the attached Exhibit C, to facilitate the replacement or repair work on the public water mains and appurtenances.

4. **Conditions.**

A. *Maintenance and Repair.* Grantee shall be solely responsible for the maintenance, operation, repair and reinstallation of the utilities in the Easement Area. If during the repair or replacement of the water utility facilities within the easement Grantor's surface improvements are damaged, the Grantee will be responsible for restoring the surface of the easement. Restoration will include re-leveling, raking, reseeding, spreading bark or gravel and patching asphalt or concrete. Some impact resulting from the City's right to access the utilities is expected and unavoidable. Grantee shall not be responsible for any damage caused by the Grantor or its agents.

B. *Egress and Ingress.* This Easement includes a right of egress and ingress in reasonable locations, for the Grantee to access the Easement. The Grantee shall exercise its rights under this Agreement so as to minimize interference with the Grantor's use of his/her Property. The Grantee shall have all necessary access to the Easement Area without prior notification to the Grantor.

C. *Conflicts and Additional Easements.* The Grantor agrees that he/she shall not interfere with the Grantee's use of the Easement for the purposes described herein. Grantor agrees that the Grantor shall not grant any additional easements within the Easement area to any other party, without the prior written consent of the Grantee (or as otherwise described in Section 3 herein). Grantor agrees that the following improvements are prohibited within the Easement Area: (1) Structures, permanent or temporary; (2) trees or shrubs; (3) terraced landscape; (4) irrigation systems; (5) landscape water features; (6) any surface improvement that will inhibit access to the utility provided for in the Easement; (7) fences along the easement that would narrow the access. The following surface improvements are allowed within the Easement Area: (1) natural native volunteer vegetation; (2) lawn; (3) bark or gravel surfacing; (4) asphalt or concrete; (5) a fence across the Easement Area will only be allowed by written permission from the City. Additional City terms and conditions may apply.

D. *Indemnity.* In the event of liability for damages arising out of bodily injury to persons or damages to property cause by or resulting from the actions of the Grantee, its officers, officials, employees or agents, the Grantee's liability shall be only to the extent of the Grantee's negligence.

5. **Attorneys' Fees.** In the event it is necessary for either party to initiate any legal proceeding to enforce any provision of this Easement agreement, the substantially prevailing party shall be entitled to an award of reasonable attorney fees, including costs and expert witness expenses.

6. **Termination.** This Easement agreement shall remain in effect perpetually unless a written termination agreement is executed by the Parties.
7. **Successors and Assigns.** This Easement agreement shall be recorded against the Property, and shall be a covenant running with the land, binding the heirs, successors and assigns of the Parties.
8. **Governing Law and Venue.** This Easement agreement shall be governed by and interpreted in accordance with Washington law. Any litigation arising out of or in connection with this Agreement shall be conducted in King County, Washington.
9. **Amendment.** This Easement agreement shall not be modified or amended except by written instrument executed by the duly authorized representatives of the Parties.
- DATED this 21st day of May, 2018.

GRANTEE:

CITY OF BLACK DIAMOND

By: _____

Title: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

The undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, affirms that _____ personally appeared before me, is known to be the _____ of the City of Black Diamond, a Washington municipal corporation, who executed the foregoing instrument, and acknowledged this instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

Given under my hand and official seal this _____ day of _____, 2018.

Notary Public in and for the State of Washington,
residing at _____
My appointment expires _____

GRANTOR:

By: William Hatzebeler
William Hatzebeler
Title: Director of Business & Operations

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

The undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, affirms that William Hatenbeler personally appeared before me, is known to be the ^{Director of} ~~Business + Operations~~ of the , a Washington municipal corporation, who executed the foregoing instrument, and acknowledged this instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

Given under my hand and official seal this 23 day of May, 2018.

Rachel L. McMullen
Notary Public in and for the State of Washington,
residing at Enumelaw, WA
My appointment expires May 11, 2020

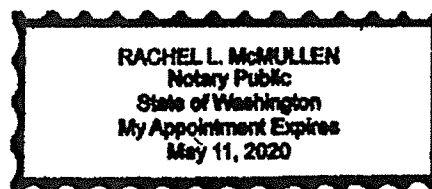


EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

LOT 10 AND 11, BLOCK 6, BLACK DIAMOND TOWNSITE, ACCORDING TO THE
PLAT THEREOF RECORDED IN VOLUME 35 OF PLATS, PAGE 23 TO 27
INCLUSIVE, RECORDS OF KING COUNTY, STATE OF WASHINGTON;

TOGETHER WITH VACATED STREETS AND/OR ROADS ADJOINING, IN
ACCORDANCE WITH ORDINANCE NO.V-758, DATED AUGUST 11, 1958.

SITUATE IN THE CITY OF BLACK DIAMOND, COUNTY OF KING, STATE OF
WASHINGTON.

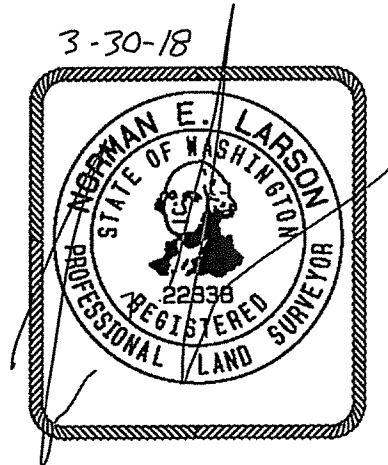


EXHIBIT "B"
LEGAL DESCRIPTION 15' WATERLINE EASEMENT

THAT PORTION OF THE FOLLOWING DESCRIBED PROPERTY:

LOT 10 AND 11, BLOCK 6, BLACK DIAMOND TOWNSITE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 35 OF PLATS, PAGE 23 TO 27 INCLUSIVE, RECORDS OF KING COUNTY, STATE OF WASHINGTON;

TOGETHER WITH VACATED STREETS AND/OR ROADS ADJOINING, IN ACCORDANCE WITH ORDINANCE NO.V-758, DATED AUGUST 11, 1958.

SITUATE IN THE CITY OF BLACK DIAMOND, COUNTY OF KING, STATE OF WASHINGTON.

LYING IN A STRIP OF LAND 15.00 FEET IN WIDTH BEING 7.5 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE(S):

COMMENCING AT THE SOUTHEAST CORNER OF THE ABOVE DESCRIBED PROPERTY;
THENCE NORTH 01°33'34" EAST, ALONG THE EAST LINE THEREOF, A DISTANCE OF 114.37 FEET TO A POINT HEREINAFTER REFERRED TO AS "POINT A";
THENCE CONTINUING NORTH 01°33'34" EAST, ALONG SAID EAST LINE, A DISTANCE OF 57.15;
THENCE CONTINUING ALONG SAID EAST LINE, NORTH 12°38'26" WEST, A DISTANCE OF 102.00 FEET TO A POINT HEREINAFTER REFERRED TO AS "POINT B";
THENCE CONTINUING ALONG SAID EAST LINE, NORTH 12°38'26" WEST, A DISTANCE OF 52.26 FEET TO THE **TRUE POINT OF BEGINNING**;
THENCE LEAVING SAID EAST LINE, NORTH 58°02'20" WEST, A DISTANCE OF 8.61 FEET;
THENCE SOUTH 76°56'16" WEST, A DISTANCE OF 212.43 FEET;
THENCE NORTH 57°59'12" WEST, A DISTANCE OF 22.60 FEET;
THENCE SOUTH 76°56'08" WEST, A DISTANCE OF 2.19 FEET TO A POINT HEREINAFTER REFERRED TO AS "POINT C";
THENCE CONTINUING SOUTH 76°56'08" WEST, A DISTANCE OF 43.99 FEET;
THENCE NORTH 80°32'20" WEST, A DISTANCE OF 25.06 FEET;
THENCE SOUTH 76°57'39" WEST, A DISTANCE OF 30.62 FEET TO THE WEST LINE OF SAID LOT 10 AND THE TERMINUS OF SAID LINE;

AND

BEGINNING AT THE AFOREMENTIONED "POINT A";
THENCE NORTH 81°00'25" WEST, A DISTANCE OF 7.50 FEET TO THE
TERMINUS OF SAID LINE;

AND

BEGINNING AT THE AFOREMENTIONED "POINT B";
THENCE SOUTH 76°58'25" WEST, A DISTANCE OF 7.50 FEET TO THE
TERMINUS OF SAID LINE;

AND

BEGINNING AT THE AFOREMENTIONED "POINT C";
THENCE NORTH 13°02'21" WEST, A DISTANCE OF 17.25 FEET TO THE
TERMINUS OF SAID LINE;

IT IS THE INTENT OF THIS EASEMENT THAT SIDELINES BE EXTENDED
TO AND/OR TRUNCATED AT PROPERTY LINES.

SITUATE IN THE CITY OF BLACK DIAMOND, COUNTY OF KING, STATE OF
WASHINGTON.

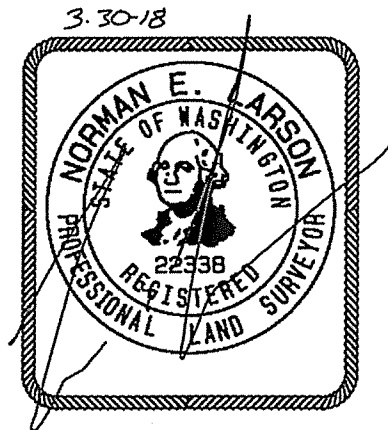
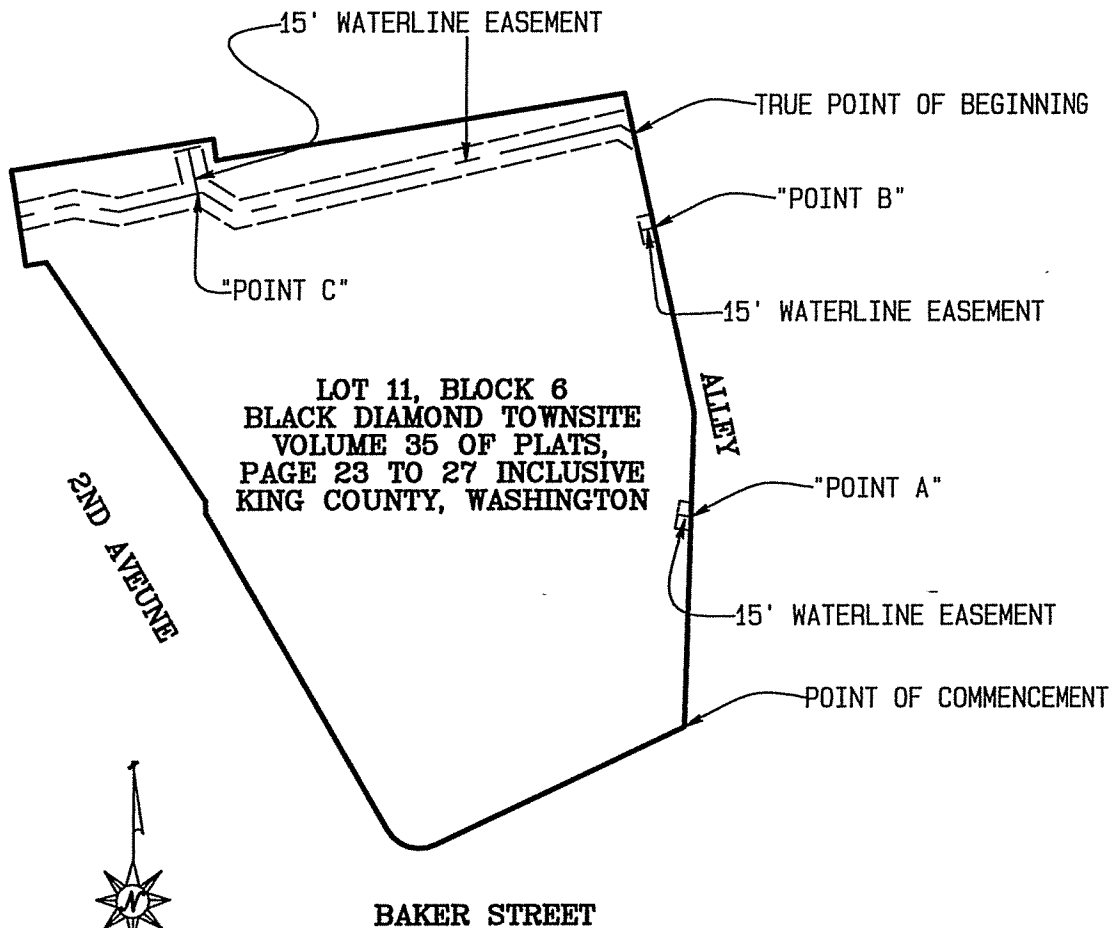


EXHIBIT "C"
15' WATER EASEMENT
SW-NE 14, T.21 N., R.6 E., W.M.



**CENTRE
POINTE**
Consultants, Inc., P.S.

14209 29th Street East, #105 - Sumner, WA 98390
253-987-5924 main 253-987-7859 fax

