

Idaho Public Utilities Commission
Office of the Secretary
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JUL 29 2004

Boise, Idaho

**WATER MAIN EXTENSION AGREEMENT
DIAMOND BAR ESTATES LLC**

THIS AGREEMENT is entered into on the date set forth below, by and between DIAMOND BAR ESTATES LLC, an Idaho limited liability company, dba DIAMOND BAR ESTATES WATER COMPANY located at P.O. Box 1870, Hayden, Idaho 83835 (herein referred to as "DIAMOND WATER") and WALTER AND GRACE SINGER, husband and wife at 11463 W. Riverview, Post Falls Idaho 83854 (herein referred to as "SINGER").

RECITALS:

A. DIAMOND WATER owns two wells and currently provides domestic water services to DIAMOND BAR ESTATES, and is a public utility governed by the Idaho Public Utility Commission (Commission).

B. SINGER is the owner of and is developing approximately 70 acres of land neighboring DIAMOND BAR ESTATES, LLC, and intends to plat 14 lots, more particularly described in Exhibit "A" (herein referred to as "BOEKEL ESTATES") all of which lots require domestic water service.

C. It is the purpose and intent of the parties that DIAMOND WATER will provide domestic water delivery and maintenance under the terms of this Agreement and the Commission's Customer Relation Rules and Diamond Bar's filed Tariffs.

D. This Agreement is subject to the Commission's Customer Relation Rules and Diamond Bar's filed Tariffs which rules shall apply to the expanded service territory.

NOW, THEREFORE, based on the agreements and covenants provided herein, it is agreed as follows:

1. DEFINITIONS

All definitions provided herein shall apply to this Agreement and the General Rules and Regulations Governing this Water Main Extension Agreement adopted hereunder.

1.1 "Adjusted Construction Cost", for the purposes of this Rule, shall be reasonable and shall not exceed the costs recorded in conformity with generally accepted water Utility accounting and sound engineering practices, and as specifically defined in the Uniform System of Accounts for Water Utilities prescribed by the Commission, of installing facilities of adequate capacity for the service requested. If the Utility, at its option, should install facilities with a larger capacity or resulting in a greater footage of extension than required for the service requested, the "adjusted construction cost", for the purposes of this

Rule, shall be determined by the application of an adjustment factor to actual construction cost of facilities installed. This factor shall be the ratio of estimated cost of required facilities to estimated cost of actual facilities installed.

1.2. "Agreement" and "Main Line Extension Contract" shall mean this Agreement between DIAMOND BAR ESTATES LLC, SINGER and his assigns, the future Customers in BOEKEL ESTATES.

1.3. "Commission" shall mean the Idaho Public Utilities Commission.

1.4. "Customer" or "all Customers" shall mean SINGER, for so long as Singer owns any lots in BOEKEL ESTATES, and the assigns of SINGER; all of which shall be water users in BOEKEL ESTATES.

1.5. "Main Line Extension Contract" shall mean this Agreement between DIAMOND BAR ESTATES LLC and SINGER and his assigns, the future Customers in BOEKEL ESTATES.

1.6. "Utility" shall mean DIAMOND BAR ESTATES LLC dba Diamond Bar Water Co. also referred to as DIAMOND WATER.

1.7. "Water System" or "Facilities" shall mean the main line(s) connections, easements and all necessary appurtenances supporting the water system constructed under this Agreement all of which is more particularly described in Exhibit "B" attached hereto and by this reference made a part hereof.

2. DOMESTIC WATER DELIVERY

2.1. DIAMOND WATER shall deliver domestic water to Customers of BOEKEL ESTATES for residential use under the terms and conditions set forth herein subject to the Commission's Customer Relation Rules and Diamond Bar's filed Tariffs.

2.2. SINGER, for so long as Singer owns any lots in BOEKEL ESTATES, and all Customers shall abide by this Agreement, the Commission's Customer Relation Rules and Diamond Bar's filed Tariffs.

2.3. DIAMOND WATER shall provide water to each lot in BOEKEL ESTATES at a tap-on location stubbed to the property line. The property owner shall be responsible for construction, maintenance and repair of the water service line and required cross-connection devices from the tap-on location to the point of ultimate use.

2.4. Water meters shall be installed by DIAMOND WATER. No meter shall be moved without the prior written consent of DIAMOND WATER.

2.5. Service lines and other associated facilities from the tap-on location to point of water usage shall be constructed at the sole expense and risk of the Customer. Construction criteria for service lines, back flow preventer(s), shut-off valve(s), reducing valve(s), and other necessary equipment shall be provided by owner pursuant to all federal, state and local standards.

2.6 DIAMOND WATER shall remedy defects in the system main lines, pumps and meters. Each Customer is responsible for repairs and maintenance of all service lines, cross-connection devices, valves, and equipment from the tap-on location to the point of ultimate usage.

2.7. Each Customer grants an irrevocable license on, over, under and across their property to DIAMOND WATER for the purpose of maintaining, expanding, repairing the Water System.

2.8 DIAMOND WATER reserves the right to sell or transfer (at its option) the Water System to a home owners association, legally organized water district, public corporation, non-profit corporation, private individual or corporation. DIAMOND WATER reserves the unqualified right to extend future water service using the Water System constructed for BOEKEL ESTATES.

2.9 No failure to enforce, delay or omission in the exercise of any right or remedy by DIAMOND WATER of any violation or default by Customer(s) shall impair such a right or remedy, or be construed as a waiver.

2.10 In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, unconscionable or unenforceable in any respect, such invalidity, illegality, unconscionability, or unenforceability shall not effect any other provision hereof and this Agreement and the Rules and Regulations shall be construed as if such invalid, illegal, unconscionable or unenforceable provision had never been contained herein, and all other terms and provisions hereof will nevertheless, remain effective and be enforced to the fullest extent permitted by law.

2.11 In addition to the remedies set forth above, DIAMOND WATER reserves the right to enforce any restrictions contained herein by any other appropriate action as allowed under the Commission's Customer Relation Rules and Diamond Bar's filed Tariffs.

2.12 DIAMOND WATER shall provide water for fire flow at the locations and in the amounts required by the Fire District.

2.13 DIAMOND WATER shall abide by all rules and regulations, including the testing requirements of the State of Idaho Department of Environmental Quality.

3. CONNECTIONS AND EASEMENT.

3.1. SINGER agrees and confirms that DIAMOND WATER is the owner of the Water System.

3.2. Prior to execution of this Agreement, DIAMOND WATER shall deliver to SINGER a copy of the plans and specifications which will be used to construct the WATER SYSTEM. SINGER shall deliver to DIAMOND WATER written documentation, recorded in the official records of the Recorder's Office, Kootenai County, Idaho, in form satisfactory to DIAMOND WATER, granting to SINGER and DIAMOND WATER a good and valid easement to that property identified and described in Exhibit "B". The purpose and terms of the easement should provide substantially as follows:

(Grant of) an easement to enter upon, over, across, through, and under the property and real estate more particularly described as set forth in Exhibit "A" to construct, reconstruct, operate, inspect, maintain, remove, replace and repair the pipeline, vaults, valving, meters and appurtenances of the Water System.

This easement shall be, at a minimum, five (5) feet each side of the pipe line location and is for the purpose of conveying water through the pipeline and includes the right of ingress and egress of persons, materials, vehicles and equipment. The timing, manner and use of the easement rights herein granted shall be at the sole discretion of DIAMOND WATER.

3.3. DIAMOND WATER is the sole OWNER and controller of the Water System which shall be, repaired, maintained, operated, replaced or reconstructed only under the direction and control of DIAMOND WATER. Such ownership and control by DIAMOND WATER shall survive any termination of this Agreement.

4. RESPONSIBILITY OF THE PARTIES.

4.1. Except in the case of an emergency, no one, except an authorized DIAMOND WATER representative, is allowed to turn-on or turn-off the water to BOEKEL ESTATES at the designated service connection.

4.2 DIAMOND WATER agrees to build water main extension and related Water System improvements to provide service to BOEKEL ESTATES, and repair, maintain and reconstruct the Water System improvements in accordance with standards set by local, state and federal agencies with legal jurisdiction over water delivery by DIAMOND WATER.

4.3 SINGER agrees to pay DIAMOND BAR WATER COMPANY for the costs of construction of the water main extension and related Water System improvements servicing BOEKEL ESTATES. Such costs are estimated to be \$129,323.00 J.W.S.

4.4 SINGER hereby contributes the water main extension and related Water System improvements servicing BOEKEL ESTATES built by DIAMOND BAR WATER COMPANY to DIAMOND BAR WATER COMPANY.

5. NOTICE

Unless either party provides notice to the other in writing of change of address as specified in this paragraph, any notice required by this Agreement shall be deemed sufficient if delivered personally or mailed, postage prepaid, to DIAMOND WATER or to SINGER as follows:

Diamond Bar Estates Water Company
P.O. Box 1870
Hayden, ID 83835-0081

Walter and Grace Singer
11463 W. Riverview
Post Falls Idaho 83854

6. PRIOR UNDERSTANDINGS AND AGREEMENTS NULL AND VOID.

6.1 This Agreement sets forth the entire Agreement between the parties. All prior Agreements including the WATER MAIN EXTENSION AGREEMENT DIAMOND BAR ESTATES LLC between the parties dated the 2nd day of June, 2004 are hereby revoked.

6.2 This Agreement may not be amended or modified except in writing signed by the parties.

7. CAPTIONS.

The paragraph heading are for convenience of reference only and shall not control or affect the meaning of any provision of this Agreement.

8. AUTHORITY TO EXECUTE AGREEMENT

All signatories to this Agreement warrant and represent that they have the power and authority to execute this Agreement and bind the entity they indicate they are representing.

9. AGREEMENT RUNS WITH THE LAND

This Agreement shall run with the land and shall be binding on and inure to the benefit of the future Customers of each lot in BOEKEL ESTATES. The easements and rights granted herein exist in perpetuity and shall inure to the benefit of and be binding upon the heirs, assigns and successors in interest of DIAMOND WATER and SINGER.

10. GOVERNING LAW

This agreement shall be governed by and construed in accordance with the laws of the State of Idaho.

11. INTERPRETATION

The parties agree in all cases that the language of this Agreement will be construed simply, according to its fair meaning, and not strictly for or against either party.

12. ATTORNEY'S FEES

In the event of any controversy, claim, or dispute relating to this Agreement or its breach, the prevailing party shall be entitled to recover reasonable expenses, attorney's fees and costs.

13. INDEPENDENT REVIEW

SINGER has been advised to seek review of this Agreement by independent legal counsel, and by his signature below, he represents that he fully understands and accepts the terms set forth herein.

IN WITNESS WHEREOF, the parties pursuant to authority of the respective entities have executed this Agreement on the dates set forth in the respective acknowledgments below.

