

RESOLUTION NO. 16-1088

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON FOR A CONTRACT WITH PUMPTECH, INC TO SUPPLY AND INSTALL A NEW ONSITE SODIUM HYPOCHLORITE GENERATION SYSTEM

WHEREAS, The existing on-site chlorine sodium hypochlorite generation system is beyond its useful life and will not produce enough chlorine for any higher daily pumping levels; and

WHEREAS, The upgrade of the chlorine system was included in the Springs Reconstruction project as funded by and contemplated in the City's Water Supply and Facilities Funding Agreement with the major land owners of the City; and

WHEREAS, The City has included the springs reconstruction in the City's Capital Improvement Plan; and

WHEREAS, The City has called for funds for this project and the City has received funds to cover 100% of the expense of this project; and

WHEREAS, The City has advertised and received bid proposals from three different vendors; and

WHEREAS, The City has evaluated the proposals and selected PumpTech Inc. to supply and install the equipment,

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

Section 1. The Mayor is hereby authorized to sign a \$61,175 plus applicable sales tax contract with PumpTech, Inc to supply and install a new 12 pound per day On-Site Sodium Hypochlorite Generation System for the City's water system.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 7TH DAY OF APRIL, 2016.

CITY OF BLACK DIAMOND:



Carol Benson, Mayor

Attest:



Brenda L. Martinez, City Clerk

CITY OF BLACK DIAMOND

Department of Public Works
P.O. Box 599 – 24301 Roberts Drive
Black Diamond, Washington 98010

**PUBLIC WORKS CONTRACT
SMALL WORKS (WITH BOND)**

1. **Contract and Parties.** This Public Works Contract-Small Works (“Contract”) is between the CITY OF BLACK DIAMOND, King County, Washington (“City”), a Washington municipal corporation and **PumpTech, Inc.** (“Contractor”), a corporation organized under the laws of the State of Washington, whose address is 12020 SE 32nd Street, Suite 2, Bellevue, WA 98005. The City and Contractor are each a “Party” and together the “Parties” to the Contract. The Parties agree as follows.

2. **Project.** The Parties enter into this Contract for purposes of Contractor providing the City with equipment and performing work for the City (“the Project”), generally described as:

Upgrade and Replacement of the City’s On-site Sodium Hypochlorite Generation System with a ClorTec OSHG System, as described in Exhibit “A” incorporated herein by this reference.

3. **Effective date.** This Contract becomes effective and binding upon the Parties, including each Party’s heirs, successors, and assigns, immediately upon execution of this contract by both parties.

4. **Notices to Parties.** Contractor agrees to accept notices under this Contract via facsimile or email. It is the responsibility of Contractor to notify the City in writing if any of the contact information appearing below should change. Any notices required shall be in writing and delivered to the following addresses. If notice by email, a hard copy shall be delivered or mailed the same date as email.

CITY CONTACT INFORMATION

CONTRACTOR CONTACT INFORMATION

CITY OF BLACK DIAMOND	PumpTech, Inc.
Mailing: P.O. Box 599	Doug Davidson
Delivery: 24301 Roberts Drive	12020 SE 32 nd Street, Suite 2
Black Diamond, Washington 98010	Bellevue, WA 98005
Contact: Seth Boettcher	Tax I.D. #
Phone: (360) 886-5700	Ph: 425-644-8501
Fax: (360) 886-2592	Fax: 425-5629213
Email: sboettcher@ci.blackdiamond.wa.us	e-mail: pumptech@pumptechnw.com

5. **Notice to Proceed.** Contractor shall provide a performance bond, insurance certificates, a City business license and statement of intent to pay prevailing wage rates within 10 days of receiving a notice of award. The City expects to issue a notice of award on or about April 8, 2016. Upon timely receipt of the bond, insurance certificate, business license and statement of intent to pay prevailing wage rates, the City will thereafter have ten (10) days to issue a notice to proceed. July 29, 2016 shall be the deadline for delivery of the equipment and completion of all work in accordance with the terms and conditions of the Contract. The deadline for completion of work ~~may~~^{shall} be extended, if the notice to proceed is delayed. The contract will stay in full force and effect until all obligations of the contract are satisfied.

6. **Obligations of Contractor.** The following terms and conditions apply to this Contract:

A. *In general.*

- (1) Responsible for all labor and work. Contractor shall be solely responsible for furnishing all labor and performance of all work necessary to complete the Project as required.
- (2) Responsible for furnishing all materials and equipment. Contractor shall furnish all materials and equipment necessary to complete the Project, except for any materials expressly agreed in writing to be provided by the City.

Documents incorporated by reference. All terms and specifications contained in any Request for Proposals (RFP) that was issued by the City as part of determining the awarding of this Contract are hereby incorporated by reference and must be complied with by Contractor, unless one or more of such terms and specifications are expressly amended or waived in writing by the City. The contract documents that the contractor shall comply with are: (1) this contract (2) the City's Construction Standards; (3) the WSDOT Standard Specs for Road, Bridge and Municipal Construction and (4) Exhibit A, attached hereto, which includes the following:

1. The advertisement for the equipment and installation.
2. The Request for Proposals
3. Vicinity Map
4. Mechanical Plan for Chlorine equipment placement
5. PumpTech Inc. Proposal
 - Tab 1 - Quote
 - Tab 2 - Warranty
 - Tab 3 - Customer Service Data
 - Tab 4 - Support Data
 - Tab 5 - De Nora Chlorotec Equipment Supplier Data
 - Tab 6 - References
 - Tab 7 - Life Cycle cost

- (3) Laws and regulations to be followed. Contractor, its employees, agents, and subcontractors, shall at all times fully comply with all applicable laws, regulations, and administrative rulings in performing work for the Project.

- (4) Work Hours. Contractor shall not work on weekends. On Mondays through Thursdays, Contractor shall not start work before 7:00 AM, and shall not work after 6:00 PM. Contractor shall not start work before 7:00 AM on Fridays. Contractor must be off the street and shall not work after 3:30 PM on Fridays.
- (5) Conditions of Work. By submitting a proposal in response to the City's solicitation for quotations, Contractor represents and warrants to the City that Contractor has fully informed itself of all conditions relating to the work involved for completing the Project. In prosecuting the work, Contractor shall employ such methods or means as will not interfere with or interrupt the work of the City or its agents, employees or contractors. The City will provide the Contractor with a gate key for access to the work site and pump house. The Contractor must keep the City's Utilities Superintendent, Dan DaSanto, (360-886-5712) informed as to the days that they will be working.
- (6) Contractor's Responsibility. Contractor will prosecute the work in accordance with instructions, descriptions and/or plans and specifications provided by the City. Contractor shall carry on the work at its own risk until the same is fully completed and accepted, and shall, in case of any accident, destruction or injury to the work and/or materials before its final completion and acceptance, repair or replace forthwith the work and/or materials so injured, damaged or destroyed, at his own expense and to the satisfaction of the City. When materials and equipment are furnished by others for installation or erection by Contractor, Contractor shall receive, unload, store and handle same at site and become responsible therefore as though such materials and/or equipment were being furnished by Contractor. Contractor shall procure all permits (unless permits are secured by the City) and licenses, pay all charges, fees and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the work. Contractor shall be responsible for preparing working drawings and shall submit them to the City for approval prior to commencement of work. For purposes of this Contract, working drawings shall mean, shop drawings, shop plans, erection plans, false-work plans, framework plans, cofferdam, cribbing and shoring plans, or any other supplementary plans or similar data, including a schedule of submittal dates for working drawings where specified, which Contractor will rely on for purposes of conducting the work for the Project.
- (7) Shipment time The contractor shall order the chlorine generation equipment within 5 days of receiving a notice to proceed. If the chlorine equipment is not delivered to the project site, as identified on the vicinity map in the attached Exhibit "A" and locked inside the pump house, within 18 weeks from the date of the notice to proceed, the City shall deduct \$1000 from the payment due the contractor in Section 7 herein, or, in the City's discretion, the City may terminate this contract as provided in Section 12 herein.
- (8) Contractor Clean-Up. Prior to physical completion, all debris resulting from Contractor's work, delivery or installation of equipment shall be disposed of entirely by Contractor in an efficient and expeditious manner as required and directed by the City.

- (9) Safety. Contractor and its subcontractors shall take all safety precautions and furnish and install all guards necessary for the prevention of accidents, and shall comply with all laws and regulations with regard to the prosecution of the work. Contractor agrees to furnish Material Safety Data Sheets (Form OSHA-20) applicable for hazardous or potentially hazardous products. Contractor agrees to comply with the conditions of the Washington Industrial Safety and Health Act of 1970, and standards and regulations issued thereunder, and certify that all items furnished and purchased will conform to and comply with said standards and regulations. Contractor further agrees to indemnify and hold harmless the City from damages assessed against the City because of Contractor's failure to comply with the Acts and the standards issued thereunder and for the failure of the items furnished under this order to so comply.

B. *Work Performance.*

- (1) Prevailing wages. Contractor shall pay prevailing wages, as that term is defined under the laws of the State of Washington, for all work performed on this Project by Contractor and by Contractor's employees, agents and subcontractors. Contractor is fully responsible for prevailing wage compliance.
For reference only, and without relieving any Contractor responsibility, the City notes the State of Washington prevailing wage rates for public works projects located in King County may be found at the following website address of the Department of Labor and Industries: <https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>. Based on the bid submittal deadline for this Project, the applicable effective date for prevailing wages for this Project is January 15th, 2016. A copy of prevailing wage rates are also available for viewing at the office of the City, located at 24301 Roberts Drive, Black Diamond, WA 98010. Upon request, the City will mail a hard copy of the applicable prevailing wages for this Project.
- (2) Notice to City. Minimum 24-hours prior notice shall be given to the City's Department of Public Works prior to commencement of work under this Contract.
- (3) Approved Plans & Specifications to be followed. All work is to be performed to the City's satisfaction and in compliance with the Contract Documents listed in section 6.3 above, unless such requirements or specifications are expressly amended in writing by the City.
- (4) Schedule of Work to be followed. The project shall be completed by July 29, 2016. Contractor shall diligently proceed with the work and shall assure that it, and its subcontractors, have adequate staffing at all times in order for Contractor to comply with any Schedule of Work agreed to by the Parties, and shall make all reasonable efforts to complete the work in a timely manner.
- (5) Duty to Correct. Contractor shall promptly correct work rejected by the City as failing to conform to the requirements of the Contract. The Contractor shall bear the cost of correcting such rejected work. If the Contractor fails to correct nonconforming work within a reasonable time, the City may correct it and Contractor shall reimburse the City for the cost of the correction.

- (6) Project Administration/Notice to Proceed. The Public Works Director, or his or her designee, shall administer this Contract and shall have all authority provided for the City under this Contract including all project approvals, including change orders. Contractor shall not commence work until Notice to Proceed has been given by the City. All work performed under this Contract will be monitored and inspected by the Public Works Director or his or her designee, and accepted by same.

C. *Non-Discrimination*.

- (1) Contractor, Contractor's officers and employees, and its subcontractors and agents, shall not discriminate against any employee or applicant for employment or any other person in the performance of this Contract because of race, creed, color, national origin, marital status, sex, age, disability, or other condition prohibited by federal, state, or local law or ordinance, except where the condition constitutes a bona fide occupational qualification under law.
- (2) Any violation of this Section shall be a material breach of this Contract and grounds for immediate cancellation, termination, or suspension of the Contract by the City, in whole or in part, and may result in Contractor being ineligible to perform further work for the City.
7. **Compensation.** Compensation shall be by Lump Sum of \$61,175.00 plus sales tax. The City shall pay the applicable sales tax to the contractor, and the contractor shall be responsible to pay the sales taxes to the state as required by law.
8. **Payment.**
- A. The City shall not be responsible for any payments to the contractor until the Clor Tech OSHG System is delivered to the City project site as identified on the vicinity map in the attached Exhibit "A" and locked within the pump house. Upon delivery, the contractor shall provide the City with the necessary documentation of ownership, including, but not limited to, a Bill of Sale (which will state that the equipment is fully paid for and that there are no liens on the equipment) and applicable warranty. Once these documents are delivered to the Public Works Director, the contractor may send an invoice to the City for the cost of the equipment delivered.
- B. The contractor shall submit a final invoice to the City for the balance of the full contract amount once the chlorine system is installed, operational and acceptable to the City.
- C. All invoices shall be submitted for work after it has been performed, and paid by City warrant within thirty (30) days of receipt of a proper invoice.
- D. Failure to perform any of the obligations under the Contract by Contractor may be decreed by the City to be adequate reason for withholding any payments until compliance is achieved. Progress payments for work performed shall not be evidence of

acceptable performance or an admission by the City that any work has been satisfactorily completed.

E. Payments received on account of work performed by a subcontractor are subject to the provisions of RCW 39.04.250.

9. **Performance and Payment Bond.** Contractor shall provide a performance and payment bond to the City prior to commencement of work for 100% of the bid amount including tax guaranteeing the full and faithful performance by Contractor of the terms and conditions of this Contract.

Initial: *DS* (Contractor)

10. **Retainage.** Pursuant to Chapter 60.28 RCW, a sum of five percent (5%) of the monies earned by Contractor will be retained from progress payments. Such retainage shall be used as a trust fund for the protection and payment (1) to the State with respect to taxes imposed pursuant to RCW Title 82, and (2) the claims of any person arising under the Contract. No final payment or release of any retainage will be made until Contractor and each subcontractor has submitted an "Affidavit of Wages Paid" (LI 700-7 or other approved form) that has been certified by the industrial statistician of the Department of Labor and Industries. Also the retainage will not be released until the City has received certification that the Department of Revenue has received due payment of applicable taxes. Once the City has received certification from appropriate departments of the state of Washington, 45 days has passed from the date of acceptance of the Project and the City has not received any claims against the Project, then the City will release the retainage.
11. **Changes.** After execution of the Contract, changes in the Project may be accomplished by change order. The City, without invalidating the Contract, may order changes in the Project within the general scope of the Contract consisting of additions, deletions or other revisions, the contract sum and Contract completion date being adjusted accordingly. Change orders shall be in writing signed by the Parties.
12. **Termination of Contract.** This Contract may be terminated by the City at any time upon the default of the Contractor or upon public convenience, in which Contractor shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination. Contractor shall not be entitled to any reallocation of cost, profit or overhead. Contractor shall not in any event be entitled to anticipated profit on work not performed because of such termination. Contractor shall use its best efforts to minimize the compensation payable under this Contract in the event of such termination. If the contract is terminated for default, Contractor shall not be entitled to receive any further payments under the Contract until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to Contractor. Contractor shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.

13. Responsibility Criteria and Verification by Contractor. Pursuant to Chapter 39.04 RCW, the following requirements are part of this Contract:

A. *Responsibility Criteria.*

(1) Eligibility to be awarded contract. Contractor hereby certifies that Contractor meets the following responsibility criteria:

- a. Contractor has a certificate of registration in compliance with chapter 18.27 RCW;
- b. Contractor has a current state unified business identifier number;
- c. If applicable, Contractor has industrial insurance coverage for Contractor's employees working in Washington as required under Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW; and
- d. Contractor is not disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).

B. *Requirement to verify subcontractors.* Contractor verifies the responsibility criteria contained above for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors and that each subcontractor verify the responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350(1) and possesses an electrical contractor license, if required by chapter 19.28 RCW, or an elevator contractor license, if required by chapter 70.87 RCW. This verification requirement must be included in every subcontract of every tier.

14. Insurance.

- A. All employees, subcontractors, agents to be covered. Contractor shall procure and maintain for the duration of the Contract, and shall provide proof satisfactory to the City, insurance that covers Contractor and each of Contractor's employees, subcontractors or agents (who are not otherwise covered by Contractor's insurance) against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Contractor, its employees, subcontractors or agents.
- B. Lack of insurance grounds for termination of contract. Failure of Contractor to maintain insurance as required herein shall be grounds for immediate termination of this Contract by the City.
- C. Title 51 Industrial Insurance Waived. The Parties have specifically negotiated as a term of this Contract that Contractor has agreed to expressly waive immunity under Title 51 RCW, Industrial Insurance Law.

D. Minimum Scope of Insurance. Contractor shall obtain insurance of the types described below and maintain such insurance for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives or employees as follows

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. The policy shall provide contractual liability coverage.

2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

E. Minimum Amounts of Insurance. Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

3. Builders Risk insurance shall be written in the amount of the completed value of the Project with no coinsurance provisions.

4. Employer's liability insurance each accident \$1,000,000; Employer's Liability Disease each employee \$1,000,000; and Employer's Liability Disease – policy limit \$1,000,000.

E. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Commercial General Liability, Employer's Liability and Builders Risk insurance:

1. Contractor's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool

coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

2. Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

3. Contractor, at the City's request, shall provide to the City a complete copy of requested policy(ies) and not just certificates.

4. The City will not waive its right to subrogation against the Contractor. The Contractor's insurance shall be endorsed acknowledging that the City will not waive its right to subrogation. The Contractor's insurance shall be endorsed to waive the right of subrogation against the City, or any self-insurance, or insurance pool coverage maintained by the City.

F. Verification of Coverage. Contractor shall furnish the City with original certificates and a copy of all amendatory endorsements, naming the City as additional named insured, including but not necessarily limited to the additional insured endorsements evidencing the Automobile Liability and Commercial General Liability insurance of Contractor before commencement of the work. Before any exposure to loss may occur, Contractor shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this Project.

G. Subcontractors. Contractor shall ensure that each subcontractor of every tier obtains at a minimum the same insurance coverage and limits as stated herein for Contractor (with the exception of Builders Risk insurance). Upon request of the City, Contractor shall provide evidence of such insurance.

H. Contractor's Other Losses. Whether insured or not, Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, vehicles, equipment or other personal property; and Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by Contractor, or Contractor's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

15. Claims for damages.

A. Excluded situations. The City shall not be responsible for delays caused by soil conditions; underground obstructions; labor disputes; fire; delays by third parties, including public and private utilities; or reasonably foreseeable delays.

B. Liability limited to direct costs. Contractor agrees that the City's liability to Contractor for payment of claims or damages of any kind whatsoever related to this Contract shall be limited to direct costs as provided under the force account provisions of applicable standard specifications. Contractor expressly waives all

claims for payment of damages that include or are computed on total costs of job performance, extended overhead, or other similar methods that are not specific as to the actual, direct costs of contract work as defined in the force account provisions of applicable standard specifications.

- C. "Damages" defined. For purposes of applying RCW 4.24.115 to this Contract, Contractor and the City agree that the term "damages" applies only to a finding in a judicial proceeding and is exclusive of third party claims for damage primarily thereto.
- D. Indemnification. The following provision shall control over any other indemnification provision in the Contract Documents. The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries or damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.

It is further agreed that claims for damages against the City for which Contractor's insurance carrier does not accept defense of the City may be tendered by the City to Contractor, who shall then accept and settle with the claimant or defend the claim. The City retains the right to approve claims investigation and counsel assigned to said claims, and all investigation of legal work product regarding said claims shall be performed under a fiduciary relationship to the City.

It is further specifically and expressly understood that the indemnification provided herein constitutes Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Contract.

16. Assigning or Subcontracting. Contractor shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Contract without the express prior written consent of the City.

17. Independent Contractor. Contractor is and shall be at all times during the term of this Contract an independent contractor.

18. Disputes. Any action for claims arising out of or relating to this Contract shall be governed by the laws of the State of Washington. Venue shall be in King County Superior Court.

19. Attorneys Fees. In any suit or action instituted to enforce any right granted in this Contract, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorneys fees from the other party.

20. Extent of Contract/Modification. This Contract, together with attachments or addenda, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may be amended, modified or added to only by written instrument properly signed by both parties. Should any language in any of the Exhibits or Contract Documents conflict with language contained in this Contract, the provisions of this Contract shall prevail.

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BY ITS SIGNATURE BELOW, EACH PARTY ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE TERMS AND CONDITIONS OF THIS CONTRACT AND AGREES TO BE BOUND BY THEM.

CITY OF BLACK DIAMOND

CONTRACTOR

By: *Carol Benson*

By: *D. W. Davidson*

Print name: *Carol Benson*

Print name: *DOUG W DAVIDSON*

Title: *Mayor*

Title: *President*

Date: *4/12/16*

Date: *4/20/16*

Attachments

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, Ramona E Olson (Corporate Officer (Not Contract Signer)) certify that I am the SECRETARY OF CORP. (Corporate Title) of the corporation named as Contractor in the Contract attached hereto; that DOUG BRITTON, (Contract Signer) who signed said Contract on behalf of Contractor, was then PRESIDENT (Corporate Title) of said corporation; that said Contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

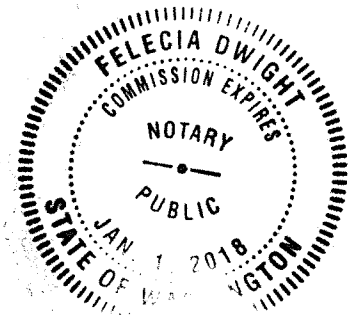
Ramona E Olson
Corp. officer signature (not contract signer)
RAMONA E OLSON
Printed
Secretary of Corporation
Title

State of Washington

County of King

Ramona Olson, (corporate officer (not contract signer)) being duly sworn, deposes and says that he/she is Secretary of Corp. (Corporate Title) of PumpTech, Inc. (Name of Corporation)

Subscribed and sworn to before me this 25th day of April 2010,
20_____



Felecia Dwight
Notary Public (Signature)

Felecia Dwight
Notary Public (Print)

My commission expires 1/1/2018

**DECLARATION OF OPTION FOR MANAGEMENT
OF STATUTORY RETAINED PERCENTAGE**

Note: This form must be submitted at the time Contractor executes the contract. Contractor shall designate the option desired by checking the appropriate space.

Monies reserved under provisions of RCW 60.28, at the option of Contractor, shall be:

 X (1) Retained in a fund by the City.

 (2) Deposited by the City in an interest-bearing account in a bank, mutual savings bank or savings and loan association.

 (3) Placed in escrow with a bank or trust company by the City. When the monies reserved are to be placed in escrow, the City will issue a check representing the sum of the monies reserved payable to the bank or trust company and Contractor jointly. Such check shall be converted into bonds and securities chosen by Contractor and approved by the City and the bonds and securities held in escrow. Contractor in choosing option (2) or (3) agrees to assume full responsibility to pay all costs which may accrue from escrow services, brokerage charges or both, and further agrees to assume all risks in connection with the investment of the retained percentages in securities.



Contractor Signature

 4/20/16
Date

PERFORMANCE AND PAYMENT BOND

**CITY OF BLACK DIAMOND
ON SITE SODIUM HYPOCHLORITE GENERATION SYSTEM
By Contract authorized by City resolution xxx**

Bond to City of Black Diamond, Washington

Bond No. 382121P

We, Pumptech, Inc., and Developers Surety and Indemnity Company,
(Principal) (Surety)

an Iowa Corporation, and as a surety corporation authorized to become a surety upon Bonds of Contractors with municipal corporations in Washington State, are jointly and severally bound to the City of Black Diamond, Washington ("Owner"), in the penal sum of Seventy two thousand one hundred forty nine dollars and 57/100ths Dollars (\$ 72,149.57), the payment of which sum, on demand, we bind ourselves and our successors, heirs, administrators, executors, or personal representatives, as the case may be. This Performance Bond is provided to secure the performance of Principal in connection with a contract dated 4-12-2016, 2016 by resolution xxx, 16-1088 ("Contract") between Principal and Owner for a project entitled Black Diamond On-Site Sodium Hypochlorite Generation System. The initial penal sum shall equal 100 percent of the Total Bid Price, including sales tax, as specified in the Proposal submitted by Principal.

NOW, THEREFORE, this Performance and Payment Bond shall be satisfied and released only upon the condition that Principal:

- Faithfully performs all provisions of the Contract and changes authorized by Owner in the manner and within the time specified as may be extended under the Contract;
- Pays all laborers, mechanics, subcontractors, lower tier subcontractors, material persons, and all other persons or agents who supply labor, equipment, or materials to the Project; and
- Pays the taxes, increases and penalties incurred on the Project under Titles 50, 51 and 82 RCW on: (A) Projects referred to in RCW 60.28.011(1)(b); and/or (B) Projects for which the bond is conditioned on the payment of such taxes, increases and penalties.

The surety shall indemnify, defend, and protect the Owner against any claim of direct or indirect loss resulting from the failure:

- Of the Principal (or any of the employees, subcontractors, or lower tier subcontractors of the Principal) to faithfully perform the contract, or
- Of the Principal (or any subcontractor or lower tier subcontractor of the Principal) to pay all laborers, mechanics, subcontractors, lower tier subcontractors, material person, or any other person who provides supplies or provisions for carrying out the work.

The liability of Surety shall be limited to the penal sum of this Performance and Payment Bond.

Principle and Surety agree that if the Owner is required to engage the services of an attorney in connection with enforcement of this bond each shall pay the Owner's reasonable attorney's fees, whether or not suit is commenced, in addition to the penal sum.

CITY OF BLACK DIAMOND
Contract authorized by Resolution xxx
Performance and Payment Bond

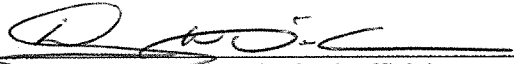
No change, extension of time, alteration, or addition to the terms of the Contract or to the Work to be performed under the Contract shall in any way affect Surety's obligation on the Performance Bond. Surety hereby waives notice of any change, extension of time, alteration, or addition to the terms of the Contract or the Work, with the exception that Surety shall be notified if the Contract time is extended by more than twenty percent (20%).

If any modification or change increases the total amount to be paid under the Contract, Surety's obligation under this Performance and Payment Bond shall automatically increase in a like amount. Any such increase shall not exceed twenty-five percent (25%) of the original amount of the Performance and Payment Bond without the prior written consent of Surety.

This Performance and Payment Bond shall be governed and construed by the laws of the State of Washington, and venue shall be in King County, Washington.

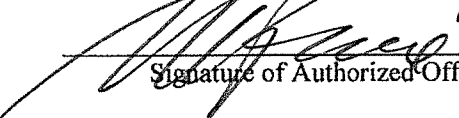
IN WITNESS WHEREOF, the parties have executed this instrument in two (2) identical counterparts this 18th day of April, 20 16.

Pumptech, Inc.
Principal


Signature of Authorized Official

David W. Davison, President
Printed Name and Title

Developers Surety and Indemnity Company
Surety


Signature of Authorized Official

By Mary L. Faure
Attorney in Fact (Attach Power of Attorney)
Mary L. Faure

Name and address of local office of
Agent and/or Surety Company:

Developers Surety and Indemnity Company

c/o 155 NE 100th Street, Suite 209

Seattle, WA 98125

Surety companies executing bonds must appear on the current Authorized Insurance List in the State of Washington per Section 1-02.7 of the Standard Specifications.

CITY OF BLACK DIAMOND
Contract authorized by Resolution xxx
Performance and Payment Bond

**POWER OF ATTORNEY FOR
DEVELOPERS SURETY AND INDEMNITY COMPANY
INDEMNITY COMPANY OF CALIFORNIA
PO Box 19725, IRVINE, CA 92623 (949) 263-3300**

KNOW ALL BY THESE PRESENTS that except as expressly limited, DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, do each hereby make, constitute and appoint:

*** Jessica L. Aplin, Nina G. Johnson, Ronda Barber, Mary L. Faure, Kris Romberg, Dorothy Leslie, Deborah Cook, jointly or severally***

as their true and lawful Attorney(s)-in-Fact, to make, execute, deliver and acknowledge, for and on behalf of said corporations, as sureties, bonds, undertakings and contracts of suretyship giving and granting unto said Attorney(s)-in-Fact full power and authority to do and to perform every act necessary, requisite or proper to be done in connection therewith as each of said corporations could do, but reserving to each of said corporations full power of substitution and revocation, and all of the acts of said Attorney(s)-in-Fact, pursuant to these presents, are hereby ratified and confirmed.

This Power of Attorney is granted and is signed by facsimile under and by authority of the following resolutions adopted by the respective Boards of Directors of DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, effective as of January 1st, 2008.

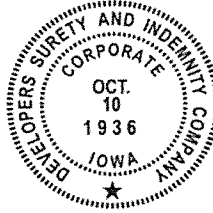
RESOLVED, that a combination of any two of the Chairman of the Board, the President, Executive Vice-President, Senior Vice-President or any Vice President of the corporations be, and that each of them hereby is, authorized to execute this Power of Attorney, qualifying the attorney(s) named in the Power of Attorney to execute, on behalf of the corporations, bonds, undertakings and contracts of suretyship; and that the Secretary or any Assistant Secretary of either of the corporations be, and each of them hereby is, authorized to attest the execution of any such Power of Attorney;

RESOLVED, FURTHER, that the signatures of such officers may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures shall be valid and binding upon the corporations when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached.

IN WITNESS WHEREOF, DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA have severally caused these presents to be signed by their respective officers and attested by their respective Secretary or Assistant Secretary this January 29, 2015.

By: *Daniel Young*
Daniel Young, Senior Vice-President

By: *Mark Lansdon*
Mark Lansdon, Vice-President



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Orange

On January 29, 2015 before me, Lucille Raymond, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Daniel Young and Mark Lansdon
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.
Signature *Lucille Raymond*
Lucille Raymond, Notary Public

CERTIFICATE

The undersigned, as Secretary or Assistant Secretary of DEVELOPERS SURETY AND INDEMNITY COMPANY or INDEMNITY COMPANY OF CALIFORNIA, does hereby certify that the foregoing Power of Attorney remains in full force and has not been revoked and, furthermore, that the provisions of the resolutions of the respective Boards of Directors of said corporations set forth in the Power of Attorney are in force as of the date of this Certificate.

This Certificate is executed in the City of Irvine, California, this 18th day of April, 2016 .

By: *Cassie J. Berrisford*
Cassie J. Berrisford, Assistant Secretary

ACKNOWLEDGEMENT

Corporation, Partnership, or Individual

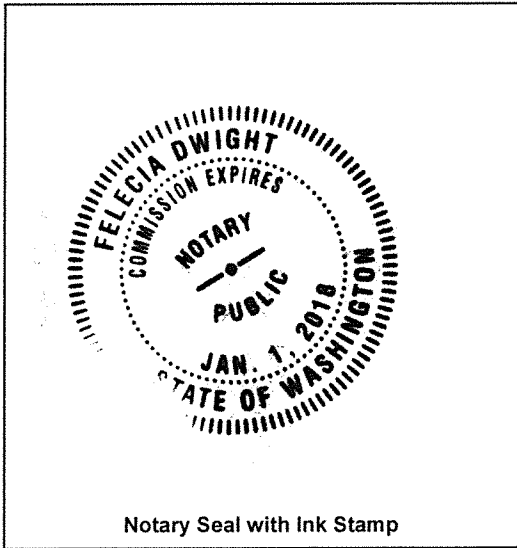
STATE OF Washington)
)ss.
COUNTY OF King)

On this 20th day of April, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Doug Davidson, to me known to be the (check one of the following boxes):

- _____ of PumpTech, Inc., the
corporation,
- _____ of _____, the
partnership,
- _____
individual,

that executed the foregoing instrument to be the free and voluntary act and deed of said corporation, partnership, individual for the uses and purposes therein mentioned, and on oath stated that he she was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.



Felecia Dwight

 Print or type name

NOTARY PUBLIC,
 in and for the State of Washington

Residing at Seattle

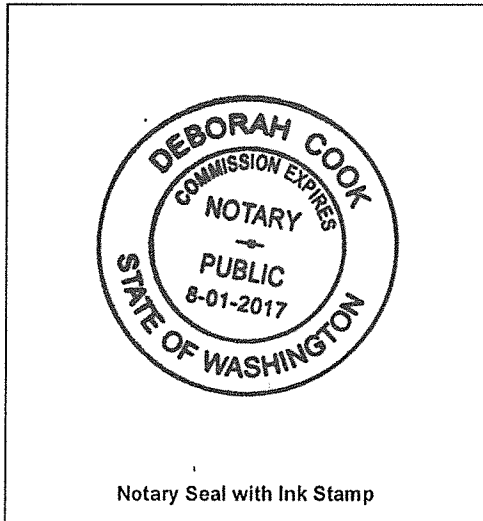
My Commission expires: 1/1/2018

SURETY ACKNOWLEDGEMENT

STATE OF Washington)
)ss.
COUNTY OF Snohomish)

On this 18th day of April, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Mary L. Faure', to me known to be the Attorney in fact of Developers Surety & Indemnity Co., the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he she was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.



Deborah Cook
Print or type name

NOTARY PUBLIC,
in and for the State of Washington

Residing at: Everett

My Commission expires: 8/1/2017