

RESOLUTION NO. 19-1296

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AWARDING THE LOW BID ON THE NEW SHOP FENCE
AND GATE REPAIRS PROJECT TO SOUTH SOUND
FENCING LLC**

WHEREAS, the City has planned and budgeted for the New Shop Fence and Gate Repairs project; and

WHEREAS, the City received 6 bids on January 17, 2019; and

WHEREAS, South Sound Fencing LLC was the lowest responsive bidder and has met all conditions of providing a responsible bid;

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

Section 1. The Mayor is hereby authorized to award the bid of the New Shop Fence and Gate Repairs project to South Sound Fencing LLC in the amount of \$54,207.69 for the construction of this project and authorize the Mayor to execute a contract for the same.

Section 2. Authorize a \$5,500 contingency fund to cover potential change orders and changes in quantities for the New Shop Fence and Gate Repairs project.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 7TH DAY OF FEBRUARY, 2019.

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

SMALL WORKS CONTRACT

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 SOUTH SOUND FENCING LLC (“Contractor”), a corporation organized under the laws of the State of Washington, whose address is 2661 N. Pearl St., PMB 368, Tacoma, WA 98407. 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, materials and performing work for the City (“the Project”), generally described as:

New Shop Fence and Gate Repairs Project.

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:

CONTRACTOR:

CITY OF BLACK DIAMOND
PO Box 599 – 24301 Roberts Drive
Black Diamond, Washington 98010
Contact: Scott Hanis
Phone: (360) 886-5700 ext. 5713
Fax: (360) 886-2592

SOUTH SOUND FENCING LLC
2661 N. Pearl St., PMB 368
Tacoma, WA 98407
Tax ID # _____
Contact: Ray Emerson
Phone: (253) 468-9791
Fax: (_____) _____

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 February 8, 2019. 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. April 30, 2019 shall be the deadline for completion of all work in accordance with the terms and conditions of the Contract. 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.

Contractor shall submit with the bid proposal a guarantee/warranty against faulty workmanship for a minimum of seven years.

- (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.

- (3) Documents incorporated by reference. All terms and specifications contained in any Request for Bids 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) Contractor's proposal; (4) the solicitation for bids.

- (4) 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.

- (5) 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.

- (6) 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. Ingress/egress shall not be obstructed into the police department/council chambers.

- (7) 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/her 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.

- (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 3, 2019. 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.A(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 March 29, 2019. 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 Unit Price for each of the 7 categories of work as defined in the attached Bid Form/Scope of Work at the bid amounts along with the 2 categories of work in the additive proposal if the City chooses to move forward with the additive work.

Compensation for services requested by the City beyond the defined Scope of Work shall be by the unit prices according to the bid or by change order.

8. Payment

- A. Contractor shall request approval and acceptance of each category of work from the City. Contractor may not bill for the completed work until the City has accepted the completed work.
- B. 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.
- C. 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.
- D. Payments received on account of work performed by a subcontractor are subject to the provisions of RCW 39.04.250.

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

Initial: _____ (Contractor)

In lieu of a performance and payment bond, the Contractor may request, in writing, that the City retain an additional 5% of the contract amount, on top of required retainage in item 10 below, until 30 days after the date of final acceptance, or until the receipt of all necessary releases from the Department of Revenue, Department of Employment Security, and Department of Labor and Industries, whichever is later.

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.
 - 4. Builders Risk [when applicable] insurance covering interests of the City, Contractor, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance shall be on a all-risk policy form and shall insure against the perils of fire, flood, earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of Contractor. Higher

deductibles for flood and earthquake perils may be accepted by the City upon written request by Contractor and written acceptance by the City. Any increased deductibles accepted by the City will remain the responsibility of Contractor. The Builders Risk insurance shall be maintained until final acceptance of the work by the City.

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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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: _____

Print name: Carol Benson

Print name: _____

Title: Mayor

Title: _____

Date: 2/8/19

Date: _____

APPROVED AS TO FORM:

Office of the City Attorney

Attachments

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____ (*Corporate Officer (Not Contract Signer)*) certify that I am the _____ (*Corporate Title*) of the corporation named as Contractor in the Contract attached hereto; that _____, (*Contract Signer*) who signed said Contract on behalf of Contractor, was then _____ (*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.

Corp. officer signature (not contract signer)

Printed

Title

State of _____

County of _____

_____, (*corporate officer (not contract signer)*) being duly sworn, deposes and says that he/she is _____ (*Corporate Title*) of _____ (*Name of Corporation*)

Subscribed and sworn to before me this _____ day of _____, 20_____

Notary Public (Signature)

Notary Public (Print)
My commission expires _____

**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:

_____ (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

Date

**CITY OF BLACK DIAMOND
PERFORMANCE BOND**

Surety Bond #: _____
DATE POSTED: _____
PROJECT COMPLETION DATE: _____

RE: Subdivision/Plat/Name: _____
Owner/Developer/Contractor: _____
Project Address: _____

KNOW ALL PERSONS BY THESE PRESENTS: That we, _____
_____ (hereinafter called the "Principal"), and _____
a corporation organized under the laws of the State of _____, and authorized
to transact surety business in the State of Washington (hereinafter called the "Surety"), are held and
firmly bound unto the City of Black Diamond, Washington, in the sum of _____
(\$ _____), lawful money of the United States of America, for the payment of which
sum we and each of us bind ourselves, our heirs, executors, administrators, successors and assigns,
jointly and severally, by these presents. THE CONDITIONS of the above obligation are such that:

WHEREAS, the above named Principal has entered into a certain agreement with the City,
or has been granted approval by the City, for _____,
within the City;

WHEREAS, the agreement or the approval granted by the City requires that certain
improvements be made in connection with construction of the project; and that such improvements
be constructed in full compliance with City standards, and the plans and specifications submitted
with the project, as required by the City; and

WHEREAS, the agreement or the approval granted by the City requires that the
improvements are to be made or constructed within a certain period of time, unless an extension is
granted in writing by the City; and

NOW, THEREFORE, it is understood and agreed that this obligation shall continue in effect
until released in writing by the City of Black Diamond, but only after the Principal has performed
and satisfied the following conditions:

A. Conditions.

1. The improvements to be constructed by the Principal include: (insert complete
description here)

2. The Principal must construct the improvements to conform to the design, location, materials and other specifications for the indicated site improvements, as required by the City in the above-referenced City file. In addition, the Principal must construct the improvements according to the applicable ordinances and standards of the City and/or state statutes, as the same now exist or are hereafter amended.
3. The Principal must have completed all improvements required by the above-referenced conditions, plans and City file within _____ which time period shall begin to run from the earlier of _____ unless an extension is granted by the City.
4. The Principal must have paid all sums owing to laborers, contractors, mechanics, subcontractors, materialmen and suppliers or others as a result of such work for which a lien against any City property has arisen or may arise.
5. The Principal must obtain acceptance by the City of the work completed, all on or before thirty (30) days after the completion date set forth in paragraph 3 above.

B. Default.

1. If the Principal defaults and does not perform the above conditions within the time specified, then the Surety shall, within twenty (20) days of demand of the City, make a written commitment to the City that it will either:
 - a). remedy the default itself with reasonable diligence pursuant to a time schedule acceptable to the City; or
 - b). tender to the City within an additional ten (10) days the amount necessary, as determined by the City, for the City to remedy the default, up to the total bond amount.

Upon completion of the Surety's duties under either of the options above, the Surety shall then have fulfilled its obligations under this bond. If the Surety elects to fulfill its obligation pursuant to the requirements of subsection B(1)(b), the City shall notify the Surety of the actual cost of the remedy, upon completion of the remedy. The City shall return, without interest, any overpayment made by the Surety, and the Surety shall pay to the City any actual costs, which exceeded the City's estimate, limited to the bond amount.

2. In the event the Principal fails to complete all of the above referenced improvements within the time period specified by the City, then the City, its employees and agents shall have the right at the City's sole election to enter onto said property described above for the purpose of completing the improvements. This provision shall not be construed as creating an obligation on the part of the City or its representatives to complete such improvements.

- C. Corrections. Any corrections required by the City shall be commenced within seven (7) days of notification by the City and completed within thirty (30) days of the date of

notification. If the work is not performed in a timely manner, the City shall have the right, without recourse to legal action, to take such action under this bond as described in Section B above.

D. Extensions and Changes. No change, extension of time, alteration or addition to the work to be performed by the Principal shall affect the obligation of the Principal or Surety on this bond, unless the City specifically agrees, in writing, to such alteration, addition, extension or change. The surety waives notice of any such change, extension, alteration or addition thereunder.

E. Enforcement. It is specifically agreed by and between the parties that in the event any legal action must be taken to enforce the provisions of this bond or to collect said bond, the prevailing party shall be entitled to collect its costs and reasonable attorney fees as a part of the reasonable costs of securing the obligation hereunder. In the event of settlement or resolution of these issues prior to the filing of any suit, the actual costs incurred by the City, including reasonable attorney fees, shall be considered a part of the obligation hereunder secured. Said costs and reasonable legal fees shall be recoverable by the prevailing party, not only from the proceeds of this bond, but also over and above said bond as a part of any recovery (including recovery on the bond) in any judicial proceeding. The Surety hereby agrees that this Agreement shall be governed by the laws of the State of Washington. Venue of any litigation arising out of this Agreement shall be in King County Superior Court.

F. Bond Expiration. This bond shall remain in full force and effect until the obligations secured hereby have been fully performed and a bond guaranteeing maintenance of all improvements for a period of twenty-four (24) months from acceptance has been submitted to the City in an amount to be determined by the City Engineer, in a form suitable to the City and until released in writing by the City.

DATED this _____ day of _____, 201____.

SURETY COMPANY
(Signature must be notarized)

DEVELOPER/OWNER
(Signature must be notarized)

By: _____
Its _____

By _____
Its _____

Print Name: _____

Print Name: _____

Business Name: _____

Business Name: _____

Business Address: _____

Business Address: _____

City/State/Zip Code: _____

City/State/Zip Code: _____

Telephone Number: _____

Telephone Number: _____

CITY OF BLACK DIAMOND

By: _____
Its: _____

Date: _____

The City of Black Diamond
24301 Roberts Drive
P.O. Box 599
Black Diamond, WA 98010

APPROVED AS TO FORM:

Office of the City Attorney

CHECK FOR ATTACHED NOTARY SIGNATURE

- _____ Individual (Form P-1)
- _____ Corporation (Form P-2)

FORM P-2 / NOTARY BLOCK - (Use For Partnership or Corporation Only)

STATE OF WASHINGTON)
) ss.
COUNTY OF)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged as the _____ of _____ that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

(print or type name)

NOTARY PUBLIC in and for the State of Washington, residing at: _____
My Commission expires: _____

(For Surety Company)

STATE OF WASHINGTON)
) ss.
COUNTY OF)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged as the _____ of _____ that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

(print or type name)
NOTARY PUBLIC in and for the State of Washington, residing at: _____
My Commission expires: _____

**CITY OF BLACK DIAMOND
MAINTENANCE BOND**

Surety Bond #: _____
Date Posted: _____
Expiration Date: _____

RE: Project Name: _____
Owner/Developer/Contractor: _____
Project Address: _____

KNOW ALL PERSONS BY THESE PRESENTS: That we, _____
(hereinafter called the "Principal"), and _____, a corporation organized
under the laws of the State of _____, and authorized to transact surety business in
the State of Washington (hereinafter called the "Surety"), are held and firmly bound unto the City
of Black Diamond, Washington, in the sum of _____
dollars (\$ _____), lawful money
of the United States of America, for the payment of which sum we and each of us bind ourselves,
our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.
THE CONDITIONS of the above obligation are such that:

WHEREAS, the above named Principal has constructed and installed certain improvements
on public property in connection with a project as described above within the City of Black
Diamond; and

WHEREAS, in accordance with BMC _____, as a condition of approval, or as a condition
of a contract with the City, the Principal is required to post a bond for the 24 months following
project completion in order to ensure that the project does not contain defects that require repair and
to cover the cost of repair during that 24-month period; and

WHEREAS, in order to provide security for the obligation of the Principal to repair and/or
replace said improvements against defects in workmanship, materials or installation for a period of
twenty-four (24) months after written and final acceptance of the same and approval by the City;

NOW, THEREFORE, this Maintenance Bond has been secured and is hereby submitted to
the City. It is understood and agreed that this obligation shall continue in effect until released in
writing by the City, but only after the Principal has performed and satisfied the following
conditions:

A. The work or improvements installed by the Principal and subject to the terms and conditions
of this Bond are as follows: (insert complete description of work here)

B. The Principal and Surety agree that the work and improvements installed in the above-referenced project shall remain free from defects in material, workmanship and installation (or, in the case of landscaping, shall survive,) for a period of twenty-four (24) months after written and final acceptance of the same and approval by the City. Maintenance is defined as acts carried out to prevent a decline, lapse or cessation of the state of the project or improvements as accepted by the City during the twenty-four (24) month period after final and written acceptance, and includes, but is not limited to, repair or replacement of defective workmanship, materials or installations.

C. The Principal shall, at its sole cost and expense, carefully replace and/or repair any damage or defects in workmanship, materials or installation to the City-owned real property on which improvements have been installed, and leave the same in as good condition as it was before commencement of the work.

D. The Principal and the Surety agree that in the event any of the improvements or restoration work installed or completed by the Principal as described herein, fail to remain free from defects in materials, workmanship or installation (or in the case of landscaping, fail to survive), for a period of twenty-four (24) months from the date of acceptance of the work by the City, the Principal shall repair and/replace the same within ten (10) days of demand by the City, and if the Principal should fail to do so, then the Surety shall:

1. Within twenty (20) days of demand of the City, make written commitment to the City that it will either:
 - a). remedy the default itself with reasonable diligence pursuant to a time schedule acceptable to the City; or
 - b). tender to the City within an additional ten (10) days the amount necessary, as determined by the City, for the City to remedy the default, up to the total bond amount.

Upon completion of the Surety's duties under either of the options above, the Surety shall then have fulfilled its obligations under this bond. If the Surety elects to fulfill its obligation pursuant to the requirements of subsection D(1)(b), the City shall notify the Surety of the actual cost of the remedy, upon completion of the remedy. The City shall return, without interest, any overpayment made by the Surety, and the Surety shall pay to the City any actual costs which exceeded the City's estimate, limited to the bond amount.

2. In the event the Principal fails to make repairs or provide maintenance within the time period requested by the City, then the City, its employees and agents shall have the right at the City's sole election to enter onto said property described above for the purpose of repairing or maintaining the improvements. This provision shall not be construed as creating an obligation on the part of the City or its representatives to repair or maintain such improvements.

- E. Corrections. Any corrections required by the City shall be commenced within ten (10) days of notification by the City and completed within thirty (30) days of the date of notification. If the work is not performed in a timely manner, the City shall have the right, without recourse to legal action, to take such action under this bond as described in Section D above.

- F. Extensions and Changes. No change, extension of time, alteration or addition to the work to be performed by the Principal shall affect the obligation of the Principal or Surety on this bond, unless the City specifically agrees, in writing, to such alteration, addition, extension or change. The surety waives notice of any such change, extension, alteration or addition thereunder.

- G. Enforcement. It is specifically agreed by and between the parties that in the event any legal action must be taken to enforce the provisions of this bond or to collect said bond, the prevailing party shall be entitled to collect its costs and reasonable attorney fees as a part of the reasonable costs of securing the obligation hereunder. In the event of settlement or resolution of these issues prior to the filing of any suit, the actual costs incurred by the City, including reasonable attorney fees, shall be considered a part of the obligation hereunder secured. Said costs and reasonable legal fees shall be recoverable by the prevailing party, not only from the proceeds of this bond, but also over and above said bond as a part of any recovery (including recovery on the bond) in any judicial proceeding. The Surety hereby agrees that this Agreement shall be governed by the laws of the State of Washington. Venue of any litigation arising out of this Agreement shall be in King County Superior Court.

- H. Bond Expiration. This bond shall remain in full force and effect until the obligations secured hereby have been fully performed and until released in writing by the City at the request of the Surety or Principal.

DATED this ____ day of _____, 2016.

SURETY COMPANY
(Signature must be notarized)

OWNER
(Signature must be notarized)

By: _____
 Its _____

By _____
 Its _____

Business Name: _____

Business Name: _____

Business Address: _____

Business Address: _____

City/State/Zip Code: _____

City/State/Zip Code: _____

Telephone Number: _____

Telephone Number: _____

CITY OF BLACK DIAMOND

By: _____
Mayor

Date: _____

City of Black Diamond
24301 Roberts Drive
P.O. Box 599
Black Diamond, WA 98010

APPROVED AS TO FORM:

Office of the City Attorney

CHECK FOR ATTACHED NOTARY SIGNATURE

- Individual (Form P-1)
- Corporation (Form P-2)
- Surety Company (Form P-2)

FORM P-2 / NOTARY BLOCK (Use For Partnership or Corporation Only)

(Developer/Owner)

STATE OF WASHINGTON)
) ss.
COUNTY OF)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged as the _____ of _____ that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

(print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing
at: _____
My Commission expires: _____

(Surety Company)

STATE OF WASHINGTON)
) ss.
COUNTY OF)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged as the _____ of _____ that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

(print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing
at: _____
My Commission expires: _____