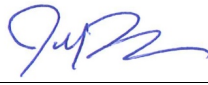


CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: June 14, 2021

AGENDA ITEM:	
Raney Well Pump & Motor Repair and Replacement	
PREPARED BY:	DIRECTOR APPROVAL:
Kim Bryant, Water Operations Supervisor	
DEPARTMENT:	
Public Works, Water Division	
ATTACHMENTS:	
Public Works Contract, Quote, Sole Source Justification	
BUDGET CODE:	AMOUNT:
40141580.541000.2103	\$92,178.92
SUMMARY:	

In August of 2020, one of two pumps failed at the Ranney Well. With only one pump, the amount of potable water generated by this source was cut in half. Additionally, redundancy was lost at the site. The pump was pulled by PumpTech in September 2020 at a cost of \$23,674.38. An evaluation determined the pump could not be repaired, it needed to be replaced. The evaluation also determined that the motor could be repaired. Finally, it was determined that the check valve had failed. Sole Source Justification is proposed to utilize PumpTech to have the motor repaired, then reinstall the new pump, check valve and motor. Utilizing Pump Tech will allow us to be able to complete the project within the limited time frame the caisson is accessible.

Staff is seeking approval to enter into a contract with PumpTech, Inc., to have the motor repaired, the check valve replaced and to have both the pump and motor reinstalled. Replacement of the failed pump and motor will provide the city with the ability to have the remaining pump at this site pulled and evaluated while still providing potable water. With the ultimate goal of being able to pump at full capacity from this source.

Cost to pull the pump and motor:	\$23,674.38 (paid with PO O9556 in 2020).
Cost to repair/replace:	\$92,178.92
Total Project Cost:	<u>\$115,853.30</u>

<p>RECOMMENDED ACTION: Staff recommends that Council authorize the Mayor to sign and execute the Ranney Well Pump & Motor Repair and Replacement contract with PumpTech, Inc. in the amount of \$92,178.92 as a legitimate sole source of supply for this service/product.</p> <p>RECOMMENDED MOTION: I move to authorize the Mayor to sign and execute the Ranney Well Pump & Motor Repair and Replacement contract with PumpTech, Inc. in the amount of \$92,178.92.</p>
--

SMALL PUBLIC WORKS CONTRACT

THIS SMALL PUBLIC WORKS CONTRACT (the “Contract”) is made and entered into as of the date of the last signature below, by and between the City of Marysville, a Washington State municipal corporation (the “City”), and PumpTech Inc, a Corporation, organized under the laws of the state of WA, located and doing business at 12020 SE 32nd St Ste 2, Bellevue, WA 98005 (the “Contractor”).

WHEREAS, the City desires Ranney Well Pump & Motor Repair and Replacement; and

WHEREAS, the Contractor represents that it is qualified and possesses sufficient skills and the necessary capabilities to perform, carry out, and complete the project and submitted a bid, proposal, or quote to the City to carry out the project; and

WHEREAS, the Contractor and the City desire to enter into this Contract for completion of the project in accordance with the terms and conditions of this Contract;

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performances contained herein, the City and the Contractor agree as follows:

1. Scope of Work—the Project.

The Contractor shall perform, carry out, and complete the Ranney Well Pump & Motor Repair and Replacement Project (the “Project”) more fully described in **EXHIBIT A** which is attached hereto and incorporated by this reference. Exhibit A may reference or include a description of the Project, the Contractor’s bid/proposal, plans, drawings, or technical specifications (collectively, with this Contract, the “Contract Documents”).

2. Term of Contract.

The term of this Contract shall commence upon full execution of this Contract by the City and the Contractor and shall terminate upon final payment by the City to the Contractor, unless sooner terminated by either party under Section 8 or another applicable provision of the Contract. The Project shall be completed no later than November 30, 2021.

3. Commencement of Work.

The Contractor shall not commence any work under this Contract until the City issues a Notice to Proceed. The City will not issue a Notice to Proceed until the Contractor satisfies the following conditions:

- a. The Contract has been signed and fully executed by the parties.
- b. The Contractor has provided the City with satisfactory documentation that the Contractor is licensed and bonded as a contractor in the State of Washington.
- c. The Contractor has obtained a City of Marysville Business License and a State of Washington Unified Business Identifier number.

- d. The Contractor has provided the City with satisfactory documentation that it has industrial insurance coverage as required by 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.
- e. The Contractor has provided the City with satisfactory documentation that it is not disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).
- f. The Contractor has provided the City with all certificates of insurance required under Section 13.

The Contractor must satisfy the proceeding conditions within fourteen (14) calendar days of the City providing the Contractor notice of the award of the Contract. The Contractor shall commence work on the Project within seven (7) calendar days of the City issuing the Notice to Proceed.

4. Payment for Project.

a. Total Contract Sum for the Project. The City shall pay the Contractor, for satisfactory completion of the Project, a Total Contract Sum not to exceed Ninety Two Thousand One Hundred Seventy Eight Dollars and Ninety Two Cents (\$92,178.92) including all applicable Washington State Sales Tax. The Total Contract Sum includes all expenses and costs incurred in planning, designing, and constructing the Project, including, but not limited to, applicable sales and use taxes, costs and expenses for overhead, profit, labor, materials, supplies, permits, subcontractors, consultants, and professional services necessary to construct and complete the Project in conformance with the Contract Documents.

b. Statement of Intent to Pay Prevailing Wages. The City will not make any payment to the Contractor prior to receiving a copy of Contractor's Intent to Pay Prevailing Wages (or a Combined Intent/Affidavit if approved by the City).

c. Payments. The City will only pay the Contractor for satisfactorily completed work on the Project within the scope of the Contract Documents. Progress payments shall be based on the timely submittal by the Contractor of an invoice in a form acceptable to the City. The form shall be appropriately completed and signed by the Contractor. Invoices not signed and/or completed shall be considered incomplete and ineligible for payment consideration. The City shall initiate authorization for payment after receipt of a satisfactorily completed invoice form and shall make payment to the Contractor within approximately thirty (30) calendar days thereafter. Progress payments shall be subject to retainage in accordance with subsection 7(b) below.

d. Withholding for Defective or Unauthorized Work. The City reserves the right to withhold payment from the Contractor for any defective or unauthorized work. Defective or unauthorized work includes, without limitation: work and materials that do not conform to the requirements of the Contract Documents; and extra work and materials furnished without the City's written approval. If, during the course of the Contract, the work rendered does not meet the requirements set forth in the Contract Documents, the Contractor shall correct or modify the work to comply with the requirements of the Contract Documents. The City shall have the right to

withhold payment for such work until it meets the requirements of the Contract Documents. The City's decision not to, or failure to, withhold payment shall not constitute a waiver of the City's right to final inspection and acceptance of the Project.

e. Final Acceptance. Final Acceptance of the Project is determined when the Project is accepted by the Public Works Director or designee as being one hundred percent (100%) complete.

f. Final Payment: Waiver of Claims. The Contractor must request all changes and equitable adjustments, as provided for in Section 6, prior to seeking final payment. The Contractor's acceptance of final payment shall constitute a waiver of the Contractor's claims, except those previously and properly made and identified by the Contractor as unsettled at the time final payment is made and accepted.

g. Maintenance and Inspection of Financial Records. The Contractor shall maintain reasonable books, accounts, records, documents, and other evidence pertaining to the costs and expenses incurred and the consideration paid under this Contract, in accordance with reasonable and customary accepted accounting practices. All such records and accounts shall be subject to inspection and audit by representatives of City and the Washington State Auditor at all reasonable times and the Contractor shall provide the City copies upon request. The Contractor shall preserve and make available all such records and accounts for a period of three (3) years after final payment under this Contract.

5. Time is of the Essence/Liquidated Damages.

Time is of the essence in the performance of this Contract. The Contractor shall diligently pursue the Project work to physical completion by the date specified in Section 2. If said work is not completed within the time specified, the City will suffer harm, and the Contractor agrees to pay the City, as liquidated damages and for each and every calendar day said work remains uncompleted after expiration of the specified time, the sum set forth in Section 1-08.9 of the 2016 WSDOT Standard Specifications for Road, Bridge, and Municipal Construction, published by the Washington State Department of Transportation and incorporated herein by this reference. This amount shall be fixed as liquidated damages that the City will suffer by reason of such delay and not as a penalty. The City will have the right to deduct and retain the amount of liquidated damages from any amounts due or to become due to the Contractor. The Contractor shall not be liable for liquidated damages if the delay was due to causes not reasonably foreseeable to the parties at the time of contracting or causes that are entirely beyond the control and without the fault or negligence of the Contractor.

6. Changes.

The City may issue a written change order for any change in the work specified in the Contract Documents during the performance of the Contract. If the Contractor determines, for any reason, that a change order is necessary, the Contractor must submit a written change order request to the City's Contract Representative within fourteen (14) calendar days of the date the Contractor knew or should have known of the facts and events giving rise to the requested change. If the

Contractor fails to request a change order within the time specified in this paragraph, the Contractor waives its right to make any claim or submit subsequent change order requests for that portion of the Project.

If the City determines that the change order increases or decreases the Contractor's costs or time for completion, the City will make an equitable adjustment. The City will attempt, in good faith, to reach agreement with the Contractor on all equitable adjustments. However, if the parties are unable to agree, the City will determine the equitable adjustment as it deems appropriate. The Contractor shall proceed with the change order work upon receiving either a written change order from the City or an oral order from the City before actually receiving the written change order.

The Contractor accepts all requirements of a change order by (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting it within five (5) business days. A change order that is accepted by the Contractor as provided in this section shall constitute full payment and final settlement of all claims for direct, indirect, and consequential costs, including costs of delays related to any work, either covered or affected by the change.

7. Bonding and Retainage.

a. Payment and Performance Bond. Pursuant to Chapter 39.08 RCW, the Contractor shall provide the City a payment and performance bond for the Total Contract Sum to be in effect until the later of: sixty (60) days after the date of Final Acceptance, receipt of all necessary releases from applicable state agencies, or until settlement of any liens filed under Chapter 60.28 RCW.

b. Retainage. The City shall withhold retainage in the amount of five percent (5%) of any and all payments made to the Contractor until the later of: sixty (60) days after the date of Final Acceptance, receipt of all necessary releases from applicable state agencies, or until settlement of any liens filed under Chapter 60.28 RCW. The amount retained shall be placed in a fund by the City pursuant to RCW 60.28.011(4)(a), unless otherwise instructed by the Contractor within fourteen (14) calendar days of Contractor's execution of this Contract.

8. Termination of Contract.

a. Termination. The City may terminate this Contract and take possession of the premises and all materials thereon and finish the Project by whatever methods it may deem expedient, by giving ten (10) business days written notice to the Contractor, upon the occurrence of any one or more of the following: (1) The Contractor makes a general assignment for the benefit of its creditors, has a receiver appointed as a result of insolvency, or files for bankruptcy; (2) The Contractor persistently or repeatedly refuses or fails to complete the work herein necessary to complete the Project; (3) The Contractor fails to make prompt payment to a subcontractor for material or labor; (4) The Contractor persistently disregards instructions of the City's Contract Representative or otherwise substantially violates the terms of this Contract; or (5) The Contractor persistently disregards federal, state, or local laws, ordinances, regulations, or codes.

b. Payment in the Event of Termination. In the event this Contract is terminated by either party, the Contractor shall not be entitled to receive any further amounts due under this Contract until the work specified in the Contract Documents is satisfactorily completed, as

scheduled, up to the date of termination. At such time, if the unpaid balance of the amount to be paid under this Contract exceeds the expense incurred by the City in finishing the Project and all damages sustained by the City or which may be sustained by reason of such refusal, neglect, failure, or discontinuance of performance, such excess shall be paid by the City to the Contractor. Such expense and damages shall include all reasonable legal expenses and costs incurred by the City to protect the rights and interests of the City under the Contract.

9. Contractor's Status as Independent Contractor.

The Contractor is a licensed, bonded, and insured contractor as required and in accordance with the laws of the State of Washington. The Contractor is acting as an independent contractor and has the ability to control and direct the performance and details of its work in the performance of each and every part of this Contract. Nothing contained herein shall be interpreted as creating a relationship of servant, employee, partnership, or agency between the Contractor and the City. No officer, employee, volunteer, agents, contractors, or subcontractors of the Contractor shall act on behalf of or represent him or herself as an agent or representative of the City. The Contractor and its officers, employees, volunteers, agents, contractors, and subcontractors shall not make a claim of City employment and shall not make a claim against the City for any employment related benefits, social security, and/or retirement benefits. The Contractor shall be solely responsible for compensating its officers, employees, volunteers, agents, contractors, and subcontractors and for paying all related taxes, deductions, and assessments, including, but not limited to, applicable use and sales taxes, federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Contract.

10. Prevailing Wages.

This Contract is subject to the requirement of Chapter 39.12 RCW and no worker, laborer, or mechanic employed in the performance of any part of this Contract shall be paid less than the prevailing rate of wage as determined by the Industrial Statistician of the Department of Labor and Industries for the State of Washington. The Contractor shall assure that it and any subcontractors fully comply with the requirements of Chapter 39.12 RCW, Chapter 49.28 RCW, and any further laws or regulations applicable because of federal funding.

The State of Washington prevailing wage rates for Snohomish County apply to work performed under this Contract. The applicable prevailing wage rates may be found at the following website address of the Department of Labor and Industries: <https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>
A copy of the applicable prevailing wage rates are available for viewing at the City and upon request, the City will mail a hard copy of the applicable prevailing wages.

11. Contractor's Risk of Loss.

The Contractor understands that the whole of the work under this Contract is to be done at the Contractor's risk. The Contractor is familiar with all existing conditions and other contingencies likely to affect the work on the Project, and has made its proposal, bid, or quote

accordingly. The Contractor assumes the responsibility and risk of all loss or damage to materials or work which may arise from any cause whatsoever prior to completion of the Project.

12. Indemnification and Hold Harmless.

a. 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 Contract, except for injuries and damages caused by the sole negligence of the City.

b. Should a court of competent jurisdiction determine that this Contract 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.

c. The Contractor specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW, as provided in RCW 4.24.115. The indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under workers compensation acts, disability benefits acts, or other employee benefits acts; provided the Contractor's waiver of immunity by the provisions of this paragraph extends only to claims against the Contractor by the City and does not include, or extend to, any claims by the Contractor's employees directly against Contractor. The obligations of the Contractor under this subsection have been mutually negotiated by the parties hereto, and the Contractor acknowledges that the City would not enter into this Contract without the waiver thereof of Contractor.

_____ (City Initials) _____ (Contractor Initials)

d. The provisions of this Section shall survive the expiration or termination of this Contract.

13. Insurance.

a. Insurance Term. The Contractor shall procure and maintain insurance, as required in this Section, without interruption from commencement of the Contractor's work through the term of the Contract and for thirty (30) days after the Final Acceptance date, unless otherwise indicated herein.

b. No Limitation. The Contractor's maintenance of insurance, its scope of coverage, and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance or otherwise limit the City's recourse to any remedy available at law or in equity.

c. Minimum Scope of Insurance. The Contractor's required insurance shall be of the types and coverage as stated below:

- i. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
- ii. Commercial General Liability insurance shall be at least as broad as 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 a per project general aggregate limit, using ISO form CG 25 03 05 09 or an equivalent endorsement. There shall be no exclusion for liability arising from explosion, collapse, or underground property damage. The City shall be named as an additional insured under the 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 at least as broad coverage.
- iii. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

d. Minimum Amounts of Insurance.

The Contractor shall maintain the following insurance limits:

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

e. City Full Availability of Contractor Limits. If the Contractor maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this Contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Contractor.

f. Other Insurance Provision. The Contractor's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

g. Contractor's Insurance for Other Losses. The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers, contractors, or subcontractors as well as to any temporary structures, scaffolding, and protective fences.

h. Waiver of Subrogation. The Contractor and the City waive all rights against each other, any of their subcontractors, sub-subcontractors, agents, and employees, each of the other, for damages caused by fire or other perils to the extent covered by other property insurance obtained pursuant to this Section or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

i. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

j. Verification of Coverage. The Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the Automobile Liability and Commercial General Liability insurance of the Contractor before commencement of the work. Upon request by the City, the Contractor shall furnish certified copies of all required insurance policies, including endorsements, required in this Contract and evidence of all subcontractors' coverage.

k. Subcontractors. The Contractor shall cause each and every subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by subcontractors. The Contractor shall ensure that the City is an additional insured on each and every subcontractor's Commercial General liability insurance policy using an endorsement at least as broad as ISO Additional Insured endorsement CG 20 38 04 13.

l. Notice of Cancellation. The Contractor shall provide the City and all additional insureds for this work with written notice of any policy cancellation within two business days of its receipt of such notice.

m. Failure to Maintain Insurance. Failure on the part of the Contractor to maintain the required insurance shall constitute a material breach of the Contract, upon which the City may, after giving five (5) business days' notice to the Contractor to correct the breach, immediately terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

14. Additional Responsibilities of the Contractor.

a. Permits. The Contractor will apply for, pay for, and obtain any and all City, county, state, or federal permits necessary to commence, construct, and complete the Project. All required permits and associated costs shall be included in the Total Contract Sum for the Project.

b. Work Ethic. The Contractor shall perform all work and services under and pursuant to this Contract in timely, professional, and workmanlike manner.

c. Safety. The Contractor shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of federal, state, and local laws, ordinances, regulations, and codes. The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of workers and the public and shall post danger signs warning against known and unusual hazards. The Contractor shall ensure that all trenches are provided with adequate safety systems as required by RCW Chapter 49.17 and WAC 296-155-650 and -655. The Contractor is responsible for providing the competent person and registered professional engineer required by WAC 296-155-650 and -655.

d. Warranty and Correction of Defects. The Contractor guarantees and warrants all its work, materials, and equipment provided and utilized for the Project to be free from defects, damage, or failure which the City may, in its sole discretion, determine is the responsibility of the Contractor, for a period of one (1) year from the date of Final Acceptance of the Project. The Contractor is liable for any costs, losses, expenses, additional damages including consequential damages suffered by the City resulting from defects in, damage, or failure of the Contractor's work, materials, or equipment including, but not limited to, cost of materials and labor expended by the City in making repairs and the cost of engineering, inspection, and supervision by the City.

i. The Contractor is responsible for correcting all defects in workmanship, materials, or equipment discovered within one (1) year after Final Acceptance.

ii. Within seven (7) calendar days of receiving notice of a defect, the Contractor shall start work to correct such defects and shall complete the work within a reasonable time. After performing corrections, the Contractor is responsible for defects in workmanship, materials, and equipment for one (1) year after the City's acceptance of those corrections.

iii. If damage may result from delay or where loss of service may result, the City may choose to complete such corrections by contract or any other means, in which case the costs associated with correcting the defects and any damages resulting from the defects shall be borne by the Contractor.

iv. If the Contractor fails to correct a defect after receiving notice of the defect from the City or fails to bear the costs associated with correcting a defect, the Contractor will thereafter be considered non-responsible with regards to all City projects for one (1) year following the notice of the defect.

e. Compliance with Laws. The Contractor shall perform all work and services under and pursuant to this Contract in full compliance with any and all federal, state, or local laws, ordinances, regulations, or codes. The Contractor shall obtain a City of Marysville Business License prior to commencement of work under this Contract.

f. Nondiscrimination. The Contractor agrees not to discriminate against any employee or applicant for employment or any other persons in the performance of this Contract because of

race, religion, creed, color, national origin, marital status, sex, sexual orientation, gender identity, age, disability, or other circumstances as may be defined by federal, state, or local law, ordinance, or regulation except for a bona fide occupational qualification.

15. City Ownership of Work Products.

All work products (reports, maps, designs, specifications, etc.) prepared by or at the request of the Contractor regarding the planning, design, and construction of the Project shall be the property of the City. The Contractor shall provide the City with paper and electronic copies of all work products in possession or control of Contractor at the time the Contractor requests final payment from or upon written request from the City.

16. Assignment and Subcontractors.

a. The Contractor shall not assign this Contract or any interest herein, nor any money due to or to become due hereunder, without first obtaining the written consent of the City.

b. The Contractor shall not subcontract any part of the work to be performed under this Contract without first obtaining the consent of the City and complying with the provisions of this Section.

c. In the event the Contractor does assign this Contract or employ any subcontractor, the Contractor agrees to bind in writing every assignee and subcontractor to the applicable terms and conditions of the Contract Documents.

d. The Contractor shall, before commencing any work, notify the City in writing of the names of any proposed subcontractors. The Contractor shall not employ any subcontractor or other person or organization (including those who are to furnish the principal items or materials or equipment), whether initially or as a substitute, against whom the City may have reasonable objection. Each subcontractor or other person or organization shall be identified in writing to the City by the Contractor prior to the date this Contract is signed by the Contractor. Acceptance of any subcontractor or assignee by the City shall not constitute a waiver of any right of the City to reject defective work or work not in conformance with the Contract Documents. If the City, at any time, has reasonable objection to a subcontractor or assignee, the Contractor shall submit an acceptable substitute.

e. The Contractor shall be fully responsible for all acts and omissions of its assignees, subcontractors and of persons and organization directly or indirectly employed by it and of persons and organizations for whose acts any of them may be liable to the same extent that it is responsible for the acts and omissions of person directly employed by it.

f. The Contract does not and shall not create or be construed to create any relationship, contractual or otherwise, between the City and any subcontractor or assignee. Nothing in the Contract shall create any obligation on the part of the City to pay or to assure payment of any monies due any subcontractor or assignee.

17. Notices and Contract Representatives.

All notices under this Contract shall be sent by registered or certified mail, postage prepaid, or hand-delivered to the addresses for each Contract Representative listed below. When hand delivered, notices are deemed effective on the date of receipt. When mailed, notices are deemed effective three (3) business days after deposit in the U.S. mail.

This Contract shall be administered for the City by the City's Contract Representative, Kim Bryant, and shall be administered for the Contractor by the Contractor's Contract Representative, Doug Davidson. The parties may designate different Contract Representatives by sending written notice to the other party.

To the City: Kim Bryant, Water Operations Supervisor
 City of Marysville
 80 Columbia Avenue
 Marysville, WA 98270

To Contractor: Doug Davidson, President
 PumpTech Inc.
 12020 SE 32nd St Ste 2
 Bellevue, WA 98005

18. Conflict and Severability.

If a court of competent jurisdiction holds any part, term, or provision of this Contract to be illegal or invalid, in whole or in part, the validity of the remaining parts, terms, or provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular part, term, or provision held to be invalid.

If any provision of this Contract is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

19. Integration, Supersession, and Modification.

This Contract, together with the Contract Documents, exhibits, and attachments represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may be amended, modified, or added to only by a written amendment properly executed by both parties.

20. Non-Waiver.

A waiver by either party of a breach by the other party of any covenant or condition of this Contract shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay, or failure of either party to insist upon strict performance of any agreement, covenant, or condition of this Contract, or to exercise any right herein given in any one

or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition, or right.

21. Survival.

Any provision of this Contract which imposes an obligation after termination or expiration of this Contract shall survive the term or expiration of this Contract and shall be binding on the parties to this Contract.

22. Third Parties.

The City and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide, any right or benefit, whether directly or indirectly or otherwise, to third persons.

23. Governing Law.

This Contract shall be governed by and construed in accordance with the laws of the State of Washington.

24. Venue.

The venue for any action to enforce or interpret this Contract shall lie in the Superior Court of Washington for Snohomish County, Washington.

25. Attorney Fees.

Should either the City or the Contractor commence any legal action relating to the provisions of this Contract or the enforcement thereof, the prevailing party shall be awarded judgment for all costs of litigation including, but not limited to, costs, expert witnesses, and reasonable attorney fees.

26. Authority to Bind Parties and Enter into Contract.

The undersigned represent that they have full authority to enter into this Contract and to bind the parties for and on behalf of the legal entities set forth herein.

27. Counterparts.

This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Contract.

DATED this _____ day of _____, 20_____.

CITY OF MARYSVILLE

By: _____
Jon Nehring, Mayor

DATED this _____ day of _____, 20_____.

_____(CONTRACTOR)

By: _____
_____(Name)
Its: _____(Title)

Attested/Authenticated:

_____, Deputy City Clerk

Approved as to form:

Jon Walker, City Attorney

EXHIBIT A
Scope of Work and Contract Documents

PumpTech Inc. is to purchase a replacement pump and have the motor refurbished as described in quote 0156404. They will then install said pump and motor into the Ranney Well. Upon installation of the pump and motor, the check valve and discharge piping is to be replaced as well. Startup services will be performed by contractor after installation.



Sales Quotation

TO:
 Kim Bryant
 Marysville, City of
 80 Columbia Ave
 Marysville, WA 98270
 Phone: 425-754-2597

Salesperson: Bellevue Shop / Nicholas Ringstar **Quote #:** 0156404
Lead Time: 8 weeks **Date:** 8/25/2020
FOB: FOB ORIGIN - FFA **Expires:** 6/30/2021
Ship Via: PUMPTECH TRUCK
Project Name: Ranney Well Motor Fail

Item		Price	Qty	Extend
Pump	Flowsolve Pump, 12EHL, 4 Stage, 100GPM @ 180ft, replacement to 00WS0037 to fit 10M BJ Motor	19966.00	1.00	19,966.00
Motor Refurb	10", 100HP BJ Motor Refurbishment, Disassemble, Clean, Inspect, Check rotor for straight and balance, replace all gaskets, filter and fluids, Reassemble, Test and Paint. New 20ft #2AWG pigtail, Rewind stator. Replacement of all bearings and convert to double mechanical seal from Mercury seal.	35296.67	1.00	35,296.67
12" M&H swing check valve	12" FLG SWING CHECK VALVE AWWA C508 RUBBER FACE M&H FIG 59-02, KENNEDY FIG 1106A, FUSION EPOXY IN AND OUT (774 LBS)	9645.14	1.00	9,645.14
Install Well	Install BJ Submersible Pump and Motor into Ranney Well. Includes mobilization of 40 Ton crane, 4-man Crane Crew, tools and gear to install. Est two days install, one day startup. Includes all Labor and travel. Startup services included	19660.00	1.00	19,660.00

The above order is subject to Pumptech Inc. standard terms and conditions and credit approval which are attached and made part of this agreement. We appreciate your interest in our products and services and if you have any questions on our offerings please do not hesitate to call.
 By signature below, I accept this offering:

Signed: _____
 Name: _____ Title: _____

SubTotal	84,567.81
Freight:	0.00
Sales Tax:	7,611.11
Total:	92,178.92



STANDARD TERMS AND CONDITIONS

FORMATION OF CONTRACT: These standard terms and conditions of sale ("Terms and Conditions") together with the sales covenants, the general specifications, the technical specifications, and any addendum thereto, including any acknowledgement by PUMPTTECH, INC., comprise the "Proposal" or "Sales Quotation" (collectively the "Quotation"), which upon acceptance by Purchaser become the "Agreement." Subject to prior credit approval by PUMPTTECH, INC. (see "Credit Approval and Payment Terms" section below), Purchaser may accept the Quotation through: (i) delivering a purchase order that incorporates the Quotation by reference and payment of the initial deposit; (ii) other written indication by Purchaser of its acceptance of the Quotation along with payment of the initial deposit; (iii) delivering a purchase order or other written indication by Purchaser of its acceptance of the Quotation and agreement by both parties on a standard progress payment plan that does not require an initial deposit (see "Credit Approval and Payment Terms" section below); or (iv) receipt by Purchaser of PUMPTTECH, INC.'s acknowledgement without notice of rejection. The effective date of the Agreement shall be the date that PUMPTTECH, INC. communicates to Purchaser via PUMPTTECH, INC.'s acknowledgement, in writing. PUMPTTECH, INC.'s obligations under the Quotation or the Agreement shall not commence until the effective date. The scope of work for the Agreement is limited to the equipment, machinery, goods, engineering services (if applicable) and/or related commissioning services (if applicable) specifically set forth in the Agreement ("Equipment"). The scope of work does not include installation or any on-site services unless specifically identified as being included in the price in the Agreement. Any terms and conditions contained in any purchase order, plans and specifications, correspondence, or accompanying payment for delivery of the Equipment, which are different from or in addition to the Terms and Conditions herein, shall not be binding on PUMPTTECH, INC., whether or not they would materially alter the Agreement, and PUMPTTECH, INC. hereby objects to and rejects the same unless such terms and conditions are delivered to PUMPTTECH, INC. prior to Quotation and referenced in the Quotation.

CREDIT APPROVAL AND PAYMENT TERMS: Credit approval is required by PUMPTTECH, INC. prior to release of order to manufacturer; however, submittal may begin at the time of receipt of purchase order. PUMPTTECH, INC.'s payment terms are net thirty (30) days from invoice date. In some circumstances PUMPTTECH, INC. may require progress payments. Progress payments are due and payable upon receipt of invoice. PUMPTTECH, INC.'s "Standard Progress Payment Plan" is defined as a payment plan that includes the following terms in the purchase order or the Agreement: 1st: fifteen percent (15%) upon receipt of approved drawings; 2nd: thirty percent (30%) upon order of major components; 3rd: twenty percent (20%) upon receipt of major components at PUMPTTECH, INC.'s facility; 4th: thirty percent (30%) upon shipment; and 5th: five percent (5%) on start-up. If not included within the Quotation, all applicable federal, state and local taxes will be added to each invoice. Time is of the essence with respect to all payments. Payments that are outstanding more than ten (10) days from their respective due date shall bear an interest rate of one and one-half percent (1.5%) per month (eighteen percent (18%) annually) until fully paid, including any interest accruing thereon. If PUMPTTECH, INC. chooses to turn any past-due balances over to a collection agency, Purchaser agrees to pay costs of the collection to the extent that is allowed by law for commercial accounts.

CHANGE ORDERS: Changes to the design, specifications, scope of supply, delivery schedule, Equipment demonstration site or date, shipping instructions of the Equipment, or any material term of the Agreement, may only be made upon execution by Purchaser and PUMPTTECH, INC. in writing ("Change Order"). Such Change Order shall state the parties' agreement on (i) change in the specifications, designs, scope of work, delivery schedule or shipping instructions for the Equipment, (ii) an adjustment to the purchase price, and (iii) an adjustment in the date of shipment of the Equipment and/or the period of performance. Both parties agree and acknowledge that unless a Change Order is agreed upon in writing by both parties, the Agreement shall not be modified in any manner. In addition, PUMPTTECH, INC. has the right to suspend performance of its obligations hereunder without liability during the period while the change is being evaluated and negotiated. In the event Purchaser has communicated proposed changes to PUMPTTECH, INC., PUMPTTECH, INC., at its sole discretion, shall either: (a) accept the Change Order; (b) reject the Change Order and continue performance under the existing Agreement; or (c) cancel the Agreement. In the event that PUMPTTECH, INC. elects (b) above, Purchaser shall either (i) agree to continued performance by PUMPTTECH, INC. pursuant to the Agreement or (ii) cancel the Agreement. In the event of (b)(ii), Purchaser shall pay PUMPTTECH, INC. for all amounts then due and owing under the Agreement plus all incurred costs not yet billed (e.g., labor and materials) plus fifteen percent (15%) for profit on all incurred costs not yet billed.

SHIPMENT: Estimated shipment from manufacturer can proceed as quoted after receipt of approved submittals and purchase order. Although PUMPTTECH, INC. shall use commercially reasonable efforts to have the Equipment delivered within the time estimated, any quoted shipment time is based on information from suppliers and is not intended to be an exact date or a guarantee. Any late delivery charges due to shipment beyond the estimated schedule will not be accepted.

WARRANTY: The only warranty/guarantee implied or applied to this Agreement are those as put forth by the original manufacturer. New equipment manufactured by PUMPTTECH, INC. are warranted to be free from defects in material and workmanship for a period of one (1) year from the date of shipment (ninety (90) days for repaired equipment) provided that the Purchaser has timely made all payments due under the Agreement and the product is properly installed, serviced, and operated under normal conditions. If within one (1) year of installation PUMPTTECH, INC. receives written notice from Purchaser of defective material or workmanship with respect to Equipment, PUMPTTECH, INC.'s sole obligation shall be, at PUMPTTECH, INC.'s option, either to (i) repair the Equipment, (ii) replace the Equipment, or (iii) refund the amount paid by Purchaser. PUMPTTECH, INC. shall have no other obligation or liability whatsoever with respect to any defective material(s) or service. Materials to be replaced or items for which services are to be re-performed shall be shipped by Purchaser to, PUMPTTECH, INC.'s shop in Bellevue, Washington or to such location as PUMPTTECH, INC. may designate. Purchaser is responsible for prepayment of freight and insurance of such shipment. Purchaser shall provide returned items to PUMPTTECH, INC. in such a state that PUMPTTECH, INC. may inspect the item immediately upon PUMPTTECH, INC.'s receipt thereof. If found to be defective, PUMPTTECH, INC. will prepay all freight and insurance costs of the return shipment of the repaired or replaced item. Any repaired or replaced items shall be warranted only for the remaining period of the original warranty. Expedited repairs are subject to expediting fees. Products inspected and proven to be non-defective are subject to service charges and will be returned to Purchaser at Purchaser's expense. THIS AGREEMENT DOES NOT GRANT ANY OTHER WARRANTY OR GUARANTEE OR MAKE ANY REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WHETHER ARISING BY LAW, CUSTOM, CONDUCT OR USAGE OF TRADE. THE RIGHTS AND REMEDIES PROVIDED HEREIN ARE EXCLUSIVE AND IN LIEU OF ANY OTHER RIGHTS OR REMEDIES. THIS WARRANTY SHALL NOT BE VALID IF THE ITEMS THAT ARE THE SUBJECT MATTER OF THIS AGREEMENT HAVE BEEN SUBJECT TO ABUSE, MISUSE, ACCIDENT, ALTERATION, MODIFICATION, NEGLIGENCE, UNAUTHORIZED REPAIR, OR EXPOSURE TO CONDITIONS BEYOND THE APPLICABLE ENVIRONMENT. THIS WARRANTY SHALL ALSO BE VOID IF THE ITEMS ARE ASSIGNED, SOLD OR TRANSFERRED TO AN ENTITY OTHER THAN PURCHASER.

LIMITATION OF LIABILITY: PUMPTTECH, INC.'s liability on any claim of any kind (excluding bodily injury or death) whether based on contract, warranty, tort (including negligence), strict liability or otherwise, for any loss or damage arising out of, connected with, or resulting from this Agreement, or from the performance or breach thereof, or from all services and Equipment covered by or furnished under this Agreement, shall in no case exceed the price of the specific service or Equipment which gives rise to the claim.

PURCHASER UNDERSTANDS AND ACKNOWLEDGES THAT IN NO EVENT WILL PUMPTTECH, INC. BE LIABLE FOR SPECIAL, DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, INCLUDING, BUT NOT LIMITED TO, THOSE FOR LABOR, EXPENSES, LOSS OF PROFITS OR REVENUE, LOST OPPORTUNITIES, OR SIMILAR DAMAGES OF ANY KIND.

INDEMNIFICATION: Purchaser agrees to defend, indemnify and hold harmless PUMPTTECH, INC. and its respective affiliates, officers, directors, employees, shareholders and agents from and against all losses, costs, expenses, damages, suits or liability of any nature incurred in whole or in part as a result of the conduct, negligence, or willful misconduct of Purchaser, its agents, servants, employees or customers or caused by Purchaser's property or property under the responsibility of Purchaser.

DISPUTE RESOLUTION: All claims, disputes or controversies (whether in contract or tort, pursuant to statute or regulation, or otherwise, and whether pre-existing, present or future) arising out of or relating to PUMPTTECH, INC.'s services and/or these Terms and Conditions (collectively "Claims") will be resolved, first, by a formal mediation conducted by an experienced mediator mutually agreed upon by PUMPTTECH, INC. and Purchaser, and, if mediation should fail to resolve the Claims, secondly, by reference to and determination by binding arbitration governed by the Federal Arbitration Act and administered by the American Arbitration Association under its rules for resolution of disputes, or under other mutually agreed procedures. The parties agree that any arbitration proceeding shall be presided over by a neutral arbitrator selected by the parties who shall have at least twenty (20) years of experience practicing law related to sales contract disputes. Any such proceedings under mediation or arbitration shall be conducted in Seattle, Washington. This provision shall survive the termination of the Agreement governed by these Terms and Conditions.

CHOICE OF LAW: This Agreement shall be construed in accordance with the laws of the State of Washington.

ATTORNEY FEES: In any litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded its reasonable attorney fees, and costs and expenses incurred.

FINAL AGREEMENT: This Agreement merges all prior discussions, whether written or oral, and is the entire understanding and agreement of the parties; neither party shall be bound by additional or other representations, conditions, or promises except as subsequently set forth in writing and signed by the party to be bound.

(Purchaser's signature)

Printed Name & Title

(Date)



SOLE SOURCE JUSTIFICATION

Department Head: ~~Kari Chermant~~ Jeff Laycock

Department: Water Operations

Sole Source for the Purchase of: Removal and Repair/Replacement of Ranney Well Pump and Motor

Supplier: Pump Tech

Cost Estimate: \$100,000

Sole source purchases are defined as being clearly and legitimately limited to a single supplier. Sole source purchases are normally not allowed except when based upon strong technological grounds such as operational compatibility with existing equipment and related parts, upon a clearly unique and cost effective feature requirement, or the basis of extraordinary market conditions. The use of sole source purchases shall be limited only to those specific instances which present the opportunity for extraordinary cost savings or are wholly justified to satisfy compatibility or technical performance needs.

STATEMENT OF NEED:

My department's recommendation for sole source purchase is based upon an objective review of the product/service required and appears to be in the best interest of the City. I know of no conflict of interest on my part or personal involvement in any way with this request. No gratuities, favors, or compromising action have taken place. My personal familiarity with particular brands, type of equipment, materials, or firms has not been a deciding influence on my request to sole source this purchase when there are other known suppliers to exist.

1. Please describe the item and its function:

We have a potable water source located in the Stillaguamish River called the Ranney Well. This well site has a caisson that is down on the river bed, and approximately 9 months a year it is under the river and not accessible. Inside the caisson there are two pumps and motors as well as piping. In August of 2020 we had one of those pumps/motor fail. We had a very limited amount of time to have someone pull the pump and motor before the caisson was under water and inaccessible. The location of the pump and access to it makes this an out of the ordinary process. If we were unable to get someone in quickly, that could access the caisson on the river bed, we would have had to wait a year for the caisson to be accessible again. Pump Tech had worked at this site in the past and has the 40 ton truck needed, and because of that coupled with the extremely limited amount of time we had to access it, we called Pump Tech and had them pull the pump and motor. This was considered an emergency situation. They have since evaluated the pump, and it needs to be replaced. Additionally, they have sent the motor to be evaluated, and it can be rebuilt. We would like to have Pump Tech complete this project by replacing the pump and reinstalling the rebuilt motor associated with the pump. If completion of this project is put out to bid we anticipate missing the short time period during which the caisson is not under water, which means the work could not be completed in 2021.

2. This is a sole source* because:

- sole provider of a licensed or patented good or service
- sole provider of items that are compatible with existing equipment, inventory, systems, programs or services
- sole provider of goods and services for which the City has established a standard**
- sole provider of factory-authorized warranty service
- sole provider of goods and services that will meet the specialized needs of the City or perform the intended function (please detail below or in an attachment)
- sole provider possesses an item which represents a special bargain (surplus item, auction item, used item, "opened box," or similar special bargains) (please provide supporting material such as price comparison)

- sole provider can satisfy unique delivery schedule which did not result from City inaction
- sole provider is taking part in a trial or evaluation project

3. What necessary features does this vendor provide which are not available from other vendors? Please be specific.

They had the known ability and equipment to access the pump and motor on the riverbed in the extremely limited amount of time we had to get it pulled. More specifically, this vendor owns a 40 ton truck that is readily accessible and has prior knowledge and experience working on this equipment at this location.

4. What steps were taken to verify that these features are not available elsewhere?

- Other brands/manufacturers that were examined (please list phone numbers and names, and explain why these were not suitable).

- Other vendors that were contacted (please list phone numbers and names, and explain why these were not suitable).

*Sole Source: only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation.

**Procurements of items for which the City has established a standard by designating a brand or manufacturing or by pre-approving via a testing shall be competitively bid if there is more than one vendor of the item.

Requestor

Kim Bryant / 4/21/21
Signature Date

Department Head

[Signature] / 05/25/21
Signature Date

City Attorney

[Signature] / 4/21/2021
Jon Walker Date

Routing Instructions:

1. Route completed form and any supporting documents to City Attorney for review.
2. If service/product exceeds \$100,000 the executed form must be included in packet for Council.
3. Include the following sentence in the "recommended action" section on the agenda bill:

"I move to approve the contract for [insert description] in the amount of [insert dollar amount] as a legitimate sole source of supply for this service/product."