


**CITY OF MARYSVILLE AGENDA BILL**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE: February 14, 2022**

<b>AGENDA ITEM:</b>																			
Contract Award - Downtown Stormwater Treatment Project																			
<b>PREPARED BY:</b>	<b>DIRECTOR APPROVAL:</b>																		
Steven Miller, Senior Project Manager																			
<b>DEPARTMENT:</b>																			
Public Works, Engineering																			
<b>ATTACHMENTS:</b>																			
Certified Bid Tab, Contract, Sole Source Approval																			
<b>BUDGET CODE:</b>	<b>AMOUNT:</b>																		
40250594.563000, D1802	\$X																		
<b>SUMMARY:</b>																			
<p>Council approved grant agreements with the Department of Ecology on July 9, 2018 and December 13, 2021 to design and construct a stormwater treatment facility located on the Geddes property. The project will treat stormwater within the Downtown area, approximately 460 acres, before discharging to the Ebey Slough. To solicit competitive bids, a bid alternate A has been included to allow the City the option to use an alternate Ecology approved stormwater treatment media that offers similar performance with less effective treatment area. To assure consistency with City needs, sole sourcing of certain electrical, instrumentation, control, pump, stormwater treatment, and other products has been requested. The attached approval includes a breakdown and discussion of necessary sole source items required for successful performance and maintenance of the facility.</p> <p>The project was advertised for a February 9, 2022 bid opening. The City received X bids as shown on the attached bid tabulation. X has been identified as the lowest responsive bidder for with a contract bid of \$ _____ for the base bid / bid alternate A. The base bid / bid alternate A was selected because _____, and is % ___ over/under the Engineer's Estimate of \$10,400,000. References have been checked and found to be satisfactory. The project construction cost requested and net cost to the City is given below:</p> <table border="0" style="margin-left: auto; margin-right: auto;"> <tr> <td style="padding-right: 20px;">Contract Bid (incl. WSST):</td> <td style="text-align: right;">\$ X</td> </tr> <tr> <td>Management Reserve:</td> <td style="text-align: right;">\$ X</td> </tr> <tr> <td>Total Allocation:</td> <td style="text-align: right;">\$ X</td> </tr> <tr> <td colspan="2"> </td> </tr> <tr> <td>Ecology Grant (2018)</td> <td style="text-align: right;">\$ 4,140,000</td> </tr> <tr> <td>Ecology Grant (2021)</td> <td style="text-align: right;">\$ 2,493,527</td> </tr> <tr> <td>Total Ecology Grant (Construction)</td> <td style="text-align: right;">\$ 6,633,527</td> </tr> <tr> <td colspan="2"> </td> </tr> <tr> <td>Total Net City Cost:</td> <td style="text-align: right;">\$ X</td> </tr> </table>		Contract Bid (incl. WSST):	\$ X	Management Reserve:	\$ X	Total Allocation:	\$ X			Ecology Grant (2018)	\$ 4,140,000	Ecology Grant (2021)	\$ 2,493,527	Total Ecology Grant (Construction)	\$ 6,633,527			Total Net City Cost:	\$ X
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<b>RECOMMENDED MOTION:</b>																			
<p>I move to authorize the Mayor to sign and execute the Downtown Stormwater Treatment Project contract with X in the amount of \$X (including WSST), and to approve a management reserve of \$X, for a total allocation of \$X.</p>																			

## PUBLIC WORKS CONTRACT

**THIS 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 \_\_\_\_\_ (Contractor), a \_\_\_\_\_, organized under the laws of the State of Washington, located and doing business at \_\_\_\_\_, (the “Contractor”).

WITNESSETH:

Whereas, the City desires to have certain public work performed as hereinafter set forth, requiring specialized skills and other supportive capabilities; and

Whereas, the Contractor represents that it is qualified and possesses sufficient skills and the necessary capabilities to perform the services set forth in this Contract.

NOW, THEREFORE, in consideration of the terms, conditions, and agreements contained herein, the parties hereto agree as follows:

- I. SCOPE OF WORK.** The Contractor agrees to do all work and furnish all labor, tools, materials, equipment, and supplies required to build and construct and to build and construct in a workmanlike manner the work, improvements, and appurtenances in order to accomplish the following project:

### DOWNTOWN STORMWATER TREATMENT PROJECT (D1802)

All such work, labor, tools, materials, equipment, and supplies to be procured and furnished in accordance with the following documents (the “Contract Documents”) which are incorporated by reference and are hereby made a part of this Contract:

- A. This Contract;
- B. The Call for Bids, Information for Bidders, and Bidder’s Checklist;
- C. 2022 Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction;
- D. General Special Provisions
- E. Plans, Drawings, Project and CSI Special Provisions;
- F. WSDOT Standard Plans
- G. City Standard Plans
- H. Appendices
- I. Addenda
- J. Contractor's Proposal/Bid
- K. Payment Bond and Performance Bond; and
- L. All provisions required by law whether set forth and reproduced herein or not.

and shall perform any alterations in or additions to the work provided under this Contract and every part thereof.

The Contractor shall provide and bear the expense of all equipment, work, and labor of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work provided for in this Contract, except as may otherwise be provided in the Contract Documents.

The Contractor shall guarantee said materials and work for a period of one year after completion of this Contract.

- II. TIME FOR COMPLETION & LIQUIDATED DAMAGES.** Substantial completion shall be achieved within three hundred (300) working days of the effective date of the Notice to Proceed. If said work is not completed within the time specified, the Contractor agrees to pay the City liquidated damages as provided in Section 1-08.9 of the Standard Specifications.
  
- III. COMPENSATION AND METHOD OF PAYMENT.** The lump sum/total itemized amount of the Contract is [Contract Amount] (\$ \_\_\_\_\_) including Washington State Sales Tax. The total Project cost includes all costs associated with the Project work, including, but not limited to labor, materials, overhead, and administrative, permit, and regulatory costs, unless otherwise agreed in writing. The Project cost is based on the proposal/bid submitted by the Contractor dated \_\_\_\_\_. The basis for final payment will be the actual amount of work performed according to the Contract Documents and payments, whether partial or final, shall be made as specified therein.
  
- IV. 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.
  
- V. INDEMNIFICATION.** In addition to any other obligations contained in the Contract Documents,
  - 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 Contractor under this subsection have been mutually negotiated by the parties hereto, and 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 with respect to any event occurring prior to such expiration or termination.

**VI. CONTRACT ADMINISTRATION.**

This Contract shall be administered \_\_\_\_\_ (Contractor Representative) on behalf of the Contractor and by \_\_\_\_\_ (City Representative) on behalf of the City. Any written notices required by the terms of this Contract shall be served or mailed to the following addresses:

<u>Contractor:</u>	<u>City:</u>
_____	City of Marysville
_____	Public Works – Attn: _____
_____	80 Columbia Ave
_____	Marysville, WA 98270

**VII. PREVAILING WAGES.** The Contractor shall comply with all state and federal laws relating to the employment of labor and wage rates to be paid.

**VIII. THIRD PARTY BENEFICIARY.** All parties agree that the State of Washington shall be, and is hereby, named as an express third-party beneficiary of this contract, with full rights as such.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

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





**CONTRACTOR'S DECLARATION OF OPTION FOR MANAGEMENT OF  
STATUTORY RETAINED PERCENTAGE**

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

Select one:

- (1) Retained in a fund by the City.** No interest will be earned on the retained percentage amount under this election.
  
- (2) Deposited in an Interest-Bearing Account.** Deposited by the City in an interest-bearing account in a bank, mutual savings bank, or savings and loan association. Funds may not be withdrawn until sixty (60) days after the completion date of the work and must be in accordance with Chapters 60.28 and 39.12 RCW. Interest on such account will be paid to the Contractor. Fees incurred shall be the responsibility of the Contractor.

*If this option is selected, the Contractor must complete the attached "Assignment of Savings or Time Deposit Escrow Retained Percentage Holding Account" form.*

- (3) Placed in an Escrow Account Chosen by Contractor.** 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 the Contractor jointly. Such check shall be converted into bonds and securities chosen by the Contractor and approved by the City and the bonds and securities held in escrow. The Contractor is solely responsible for all costs which may accrue from escrow services, brokerage costs, or both, and assumes all risks in connection with the investment of the retained percentages in securities.

*If this option is selected, the Contractor must complete two copies of the attached "Retainage Escrow Agreement" form.*

- (4) Bond in Lieu of Retainage.** In lieu of the City withholding retainage, the Contractor will submit a Retainage Bond which must be effective until sixty (60) days following the completion date of the work and in accordance with Chapters 60.28 and 39.12 RCW.

*If this option is selected, the Contractor must complete the attached "Retainage Bond" form.*

Contractor

\_\_\_\_\_  
Contractor's Signature

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**Assignment of Savings or Time Deposit Escrow  
Retained Percentage Holding Account**

The undersigned \_\_\_\_\_ hereby referenced to as "Contractor" has directed CITY OF MARYSVILLE herein referred to as "Agency" to deliver its warrants or checks payable to \_\_\_\_\_, herein after the "Bank" and the Contractor jointly. Such warrants or checks shall be deposited to Account # \_\_\_\_\_ as an Escrow Retained Percentage Holding Account.

All deposits to the account shall not be subject to withdrawal until the Bank is notified by the Agency, in writing, authorizing the release of such funds. All interest earned on this account shall be paid to the Contractor. Any costs or fees incurred as a result of placing the said retained percentage funds in this account shall be paid by the Contractor.

<p>_____ <b>Contractor</b></p>	<p><b>Agency: City of Marysville</b></p>
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Address: _____	Address: _____
_____	_____
Date: _____	Date: _____

\_\_\_\_\_  
**Bank**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Date: \_\_\_\_\_



<b>Project</b>	
<b>Contractor</b>	
<b>Bank</b>	

The Undersigned, \_\_\_\_\_, hereinafter referred to as the Contractor, and the City of Marysville, hereinafter referred to as the City, have entered into a public works construction contract.

Under the terms of the Contract, and pursuant to Chapter 60.28. RCW, the Contractor and the Public Body have agreed to deposit any and all retainage from the Contract into an interest bearing depository account (the “Retainage Account”) with \_\_\_\_\_ (the “Bank”), subject to the following instructions:

**RETAINAGE ESCROW AGREEMENT AND INSTRUCTIONS**

- 1. Escrow Agreement.** The Contractor on a public improvement project for the City exercised its option pursuant to RCW 60.28.011 (1994) to place Retainage in escrow with the Bank. This Agreement constitutes both the escrow agreement between the City and Contractor and instructions to the Bank for handling of the Escrow Account. This Agreement is not effective until (a) the Agreement has been signed by the Contractor, Bank and City and (b) Contractor, Bank and City have entered the appropriate information in Exhibit A.
- 2. Check Issuance, Endorsement, and Deposit.** From time to time, the City will issue a Check payable to the Bank and Contractor jointly. Contractor expressly authorizes and grants the power to the Bank to endorse the check on its behalf, to negotiate the check, collect the funds represented by the Check, and to deposit the funds so collected into the Escrow Account. These powers shall be deemed to be powers coupled with an interest and shall be irrevocable during the term of this escrow.
- 3. Investment of Funds.** Funds and cash balances in the Escrow Account may be invested in Eligible Securities at the direction of the Contractor. For purchase of Eligible Securities, the Bank may follow the last written direction it received from the Contractor, provided such direction provides for investment in Eligible Securities. The Bank shall not invest any funds, cash balances, or proceeds of sale of Eligible Securities in any securities, bonds or accounts that are not Eligible Securities. Eligible Securities purchased pursuant to this Agreement shall be held by the Bank as custodian as part of this escrow. Eligible Securities shall be held in the Bank’s name. Interest on the purchased Eligible Securities, if any, shall be paid to Contractor when, as and if any accrued interest is received by the Bank.
- 4. Eligible Securities.** The following securities are deemed Eligible Securities, and the Bank may invest funds and cash balances in such securities at the direction of Contractor without further approval of the City, provided that any maturity dates are no later than twenty-five (25) calendar days after the Completion Date and provided they are held in a manner and form that allows Bank alone to liquidate the securities as provided for in the Agreement.

- A. Bills, certificates, notes or bonds of the United States;
- B. Other obligations of the United States or its agencies;
- C. Obligations of any corporation wholly owned by the Government of the United States;
- D. Indebtedness of the Federal National Mortgage Association;
- E. Time deposits in commercial banks; and
- F. Mutual funds, pools, or investment trusts, provided the investments of the fund, pool or trust consists solely of securities listed in herein.

Other securities may be deemed Eligible Securities upon the written request of the Contractor and written approval of the City, provided the City has the staff assistance and expertise which will permit it to exercise sound judgment in assessing the security. The City shall consider probable safety, risk to principal, liquidity and any other factor the City deems reasonable to consider. Nothing herein obligates the City to incur any expense or charge to assess the appropriateness of a proposed security. The City has no obligation to consider a proposed security if the City would incur expenses, charges or fees in its assessment of the appropriateness of the security as an investment. If the proposed security has a maturity date, the security must mature on or before the Completion Date. The Contractor expressly acknowledges that any investment in securities involves risks, including, but not limited to, the risks of loss or diminution of principal and failure to realize anticipated or expected appreciation, dividends, interest, or other gain. Contractor expressly waives and releases both City and Bank from any and all liability associated with, or arising out of, these and all market risks.

**5. Bank Duties and Responsibilities.** Although the Bank will be a joint payee of any Check, the Bank shall only have (a) those duties and responsibilities that a depository bank would have pursuant to Article 4 of the Uniform Commercial Code of the State of Washington for an item deposited to Bank and (b) those duties and responsibilities created by this Agreement. The Bank must not deliver to the Contractor all or any part of the securities or money held by the Bank pursuant to this Agreement (or any proceeds from the sale of such securities, or the negotiation of the City's warrants or checks) except in accordance with written instructions from the City. The City Clerk is authorized to give written instructions and the Finance Director or Treasurer (or its designee) is authorized to give written approval of securities. Written instructions and written approval of securities must be countersigned by the City Attorney. The City may designate different authorized persons from time to time by notifying the Bank in writing of the change, which notice must be countersigned by the City Attorney.

**6. Change of Completion Date.** Upon written request by the Bank, City shall advise the Bank in writing of any change in the Completion Date. If the changed Completion Date is later than the original Completion Date, the Bank may reinvest any funds on hand, cash balances or proceeds of Eligible Securities with maturities, reverse loads, etc. consistent with the later Completion Date. If the changed Completion Date is earlier than the original Completion Date,

the Bank shall execute such transactions as are commercially reasonable to liquidate Eligible Securities in the Escrow Account no later than twenty-five (25) calendar days after the earlier Completion Date.

7. **Return of Funds to City.** At the City’s sole option and notwithstanding any other provision of this Agreement, the City may direct the Bank in writing to liquidate any and all Eligible Securities held in or for the Escrow Account and to deliver all funds, cash, accrued interest and proceeds in the Escrow Account to the City. Such liquidation shall occur within thirty-five (35) calendar days of receipt of the written direction.

8. **Compensation of Bank.** Contractor shall be solely responsible for, and shall pay separately to the Bank, any and all fees, charges, or commissions of the Bank relating to the Escrow Account. No fees, charges or commissions of any kind may be deducted by the Bank from any property, funds, proceeds or Eligible Securities in the Escrow Account until and unless the City directs the release of the Escrow Account to the Contractor, in which case the Bank is hereby granted a lien upon the property, proceeds or Eligible Securities in the Escrow Account for the entire amount of unpaid Bank fees, costs or charges arising out of or relating to the Escrow Account. Said lien arises and is effective upon the City’s written direction to release the Escrow Account to the Contractor. The City shall not be liable for any fees, charges, expenses or commissions relating to the Escrow Account or any Eligible Securities.

9. **Termination of Escrow By Bank.** Bank may terminate the escrow by giving written notice to the City and Contractor. Within twenty (20) calendar days of the receipt of such notice, the City and Contractor shall jointly appoint a successor escrow holder and instruct Bank to deliver all securities and funds of the Escrow Account to said successor. If Bank is not so notified of the appointment of a successor escrow holder, Bank may return all funds, securities and contents of the Escrow Account to the City.

#### 10. **Definitions**

“*Agreement*” shall mean this document, including exhibit A when completely executed by the City, Contractor and Bank.

“*Bank*” shall mean that national or state chartered bank identified in Exhibit A that holds the escrow.

“*Check*” shall mean a check or warrant payable jointly to the Bank and Contractor, representing accrued Retainage.

“*City*” shall mean the City of Marysville, a municipal corporation of the State of Washington.

“*Completion Date*” shall mean that date occurring immediately after the expiration of the project duration (as defined by the contract for the public improvement), including any agreed extensions thereof. The initial Completion Date can be found in Exhibit A.

"*Contractor*" shall mean the undersigned contractor.

“*Escrow Account*” shall mean the escrow created by this Agreement.

“*Eligible Securities*” are those bonds and securities identified in the paragraph 4 above.

“Retainage” shall mean moneys reserved by the City under the provisions of a public improvement contract.

11. *Miscellaneous.*

A. With the possible exception of any agreement between the Bank and Contractor regarding amount and payment of fees, commissions and charges related to the Escrow Account, this document contains the entire agreement between the Bank, Contractor and the City with respect to this Escrow Account.

B. This Agreement binds the assigns, successors, personal representatives and heirs of the parties hereto. Those persons executing this Agreement represent and warrant they are duly authorized to bind their principals to this Agreement and to execute this Agreement on their behalf.

C. Venue for any dispute arising out of, or related to, this Agreement shall be Snohomish County, Washington.

D. This Agreement shall be executed in triplicate, each of which shall be deemed to be an original.

<p>AGREED AND ACCEPTED this the __ day of _____, 20__.</p> <p>_____</p> <p>CONTRACTOR</p> <p>By: _____</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>Address: _____</p> <p>City: _____</p> <p>State: _____ Zip: _____</p> <p>Tax ID #: _____</p>	<p>AGREED AND ACCEPTED this the __ day of _____, 20__.</p> <p>CITY OF MARYSVILLE</p> <p>By: _____</p> <p>Jon Nehring, Mayor</p> <p>ATTEST:</p> <p>By: _____</p> <p>_____, Deputy City Clerk</p>
<p>AGREED AND ACCEPTED this the __ day of _____, 20__.</p> <p>_____</p> <p>BANK</p> <p>By: _____</p> <p>Printed name: _____</p> <p>Its: _____</p>	<p>APPROVED AS TO FORM:</p> <p>By: _____</p> <p>Jon Walker, City Attorney</p>

## EXHIBIT A

**City Supplied Information.** The City provides the following information:

Project	
<b>Project</b>	Name
	Work Order # (if applicable)
<b>Contractor</b>	
<b>Bank</b>	
<b>Completion Date</b>	

**Bank Supplied Information.** Bank provides the following information:

Bank		
<b>Bank</b>	Name	
	Branch	
	Address/Phone	
	Contact Person/Account Officer	
<b>Escrow Account</b>	Account Name	
	Bank Account #	

**Contractor Supplied Information.** Contractor provides the following information:

Contractor		
<b>Contractor</b>	Name	
	Address/Phone	
	Representative Authorized to Direct Investment	

**RETAINAGE BOND**

Bond No. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_ (Contractor), a corporation organized under the laws of the State of \_\_\_\_\_, and registered to do business in the State of Washington as a contractor, as Principal, and \_\_\_\_\_ (Surety), a corporation organized under the laws of the State of \_\_\_\_\_ and registered to transact business in the in the State of Washington as surety, as Surety, their heirs, executors, administrators, successors, and assigns, are jointly and severally held and bound to the City of Marysville, Washington, hereinafter called "City", and are similarly held and bound unto the beneficiaries of the trust fund created by RCW Chapter 60.28, in the sum of \_\_\_\_\_ and \_\_\_/100's Dollars (\$\_\_\_\_\_), or five percent (5%) of all monies now or hereafter earned by the Principal in connection with the below-referenced Contract, the payment of which, well and truly to be paid, we bind ourselves, our heirs, executors and successors, jointly and severally, formally by these presents.

THE CONDITIONS OF THE ABOVE OBLIGATION ARE THAT:

WHEREAS, on \_\_\_\_\_, 20\_\_\_\_, the Principal executed a contract (the "Contract") with the City known as:

Project Name: \_\_\_\_\_

Contract Number: \_\_\_\_\_

And,

WHEREAS, said Contract and RCW Chapter 60.28 require the City to withhold from the Principal the sum of five percent (5%) from monies earned by the Principal during the progress of the construction, hereinafter referred to as "earned retained funds"; and

WHEREAS, the Principal has requested that the City accept a retainage bond and release earned retained funds to the Principal, as allowed under RCW Chapter. 60.28;

NOW, THEREFORE, the condition of this obligation is such that the Surety is held and bound to the City to indemnify, defend, and hold the City harmless from any and all loss, costs or damages that the City may sustain by reason of release of said earned retained funds to Principal, then this obligation to be null and void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, it is expressly understood and agreed that:

1. Any suit or action under this bond must be instituted within the time period provided by applicable law. The bond shall be subject to all claims and liens provided for by law or Contract against the earned retained funds and in the same manner and priority as set forth for retained percentages in RCW Ch. 60.28 and the Contract.

2. The Surety hereby consents to and waives notice of any extension in the time for performance of the Contract, assignment of obligations under the Contract, or Contract alteration, termination, amendment or change order. This expressly includes, but is not limited to, consent to and waiver of any notice with respect to increases in the Contract price by change









## SOLE SOURCE JUSTIFICATION

Department Head: Jeff Laycock      Department: Engineering and Transportation Services  
Sole Source for the Purchase of: Materials and Equipment for the Downtown Stormwater Treatment Project  
Supplier: See attached      Cost Estimate: \$2,678,624.63

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:

See attached spreadsheets - Electrical and Non-Electrical.

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.

See attached spreadsheets.

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).

See attached spreadsheets.

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

See attached spreadsheets.

\*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

  
\_\_\_\_\_/ 11/16/2021  
Signature **Steve Miller** Date

Department Head

  
\_\_\_\_\_/ 11/17/2021  
Signature Date

City Attorney

  
\_\_\_\_\_/ 11/17/2021  
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."*

Downtown Stormwater Treatment Project  
 Sole Source Justification  
 11/16/2021

**Sole Source Justification Table - Electrical Equipment**

v 2021

Item No.	Part Description	Sole Source Discussion	Sole Source Type	Materials and Equipment			Line \$	Section Price	
				Quantity	Unit	Unit Cost			City Adjust 1.070
<b>Electrical</b>									
<b>Item No.</b>	<b>Equipment</b>							<b>\$46,411.25</b>	
E-1	VFD, Allen-Bradley Powerflex 755, 100HP	Single VFD manufacturer specified to match existing equipment, to provide for ease of operation and maintenance. Communications Protocol Required.	Sole provider of items that are compatible with existing equipment.	2	EA	\$14,400.00	\$15,408.00	\$19,260.00	\$38,520.00
E-2	UPS, APC Smart-UPS, 750VA	Single manufacturer specified to match existing equipment, to provide for ease of operation and maintenance. Provides required signals.	Sole provider of items that are compatible with existing equipment.	2	EA	\$700.00	\$749.00	\$936.25	\$1,872.50
E-3	Flexible LED, Q-Tran KURV-SW	Unique product needed to provide strip lighting for a very specific application in the treatment unit walls. Identified by the architect as best suited for this application.	Sole provider of goods and services that will meet the specialized needs of the City.	900	LF	\$5.00	\$5.35	\$6.69	\$6,018.75
<b>Instrumentation and Control</b>									
<b>Equipment</b>									
									<b>\$70,218.75</b>
E-4	HMI, Allen-Bradley Panelview 5510, 15"	To reduce training and support needs, City staff recommend that this HMI be specified for ease of programming for maintenance needs. Already included in City's Technical Support Contract. Programming software already licensed.	Sole provider of items that are compatible with existing programs and services.	2	EA	\$4,500.00	\$4,815.00	\$6,018.75	\$12,037.50
E-5	Ethernet Switch, Moxa EDS-510E	Need to specify the Moxa switch due to need for fiber networking with fiber connectors compatible with existing City patch panels and network switches.	Sole provider of items that are compatible with existing equipment.	2	EA	\$1,700.00	\$1,819.00	\$2,273.75	\$4,547.50
E-6	Flowmeter, Siemens SITRANS FM MAG 3100 element, MAG 5000 transmitter	Single manufacturer specified to match existing equipment, to provide for ease of operation and maintenance, and existing spare parts. Siemens SITRANS Magmeter and transmitter selected. Flowtube dimensions are specific to the project. "Ready" signals are required.	Sole provider of items that are compatible with existing equipment.	2	EA	\$11,000.00	\$11,770.00	\$14,712.50	\$29,425.00
E-7	Level Transmitter, VEGA Vegapuls C23 element, Vegadis 82 transmitter	The VEGA was found to be the only radar transmitter that didn't need a combined transmitter/transducer, which wouldn't be ideal for the wet well. "Ready" signals are required.	Sole provider of goods and services that will meet the specialized needs of the City.	3	EA	\$2,000.00	\$2,140.00	\$2,675.00	\$8,025.00
E-8	Pressure Transmitter, Foxboro IGP10	Single manufacturer specified to match existing equipment, to provide for ease of operation and maintenance, and existing spare parts. Foxboro transmitter- needs a "ready" signal. The isolation glands may also be unique.	Sole provider of items that are compatible with existing equipment.	2	EA	\$2,500.00	\$2,675.00	\$3,343.75	\$6,687.50
E-9	PESD, Grace	Grace is the only company found to provide permanent electrical safety devices.	Sole provider of goods and services that will meet the specialized needs of the City.	1	EA	\$400.00	\$428.00	\$535.00	\$535.00
E-10	Power Meter, Schneider PowerLogic	Supported Communications Protocol required.	Sole provider of goods and services that will meet the specialized needs of the City.	1	EA	\$6,700.00	\$7,169.00	\$8,961.25	\$8,961.25

**Sole Source Justification Table - Electrical Equipment**

v 2021

Item No.	Part Description	Sole Source Discussion	Sole Source Type	Materials and Equipment			Line \$		
				Quantity	Unit	Unit Cost	City Adjust 1.070	Mat'l Cost w/ OH & Profit 15% 10%	Total
E-10	<b>PLC</b>	To reduce training and support needs, City staff recommend that this PLC be specified for ease of programming for maintenance needs and existing spare parts. Already included in City's Technical Support Contract. Programming software already licensed.	Sole provider of items that are compatible with existing programs and services.						\$14,177.50
E-10.1	CPU, Allen-Bradley CompactLogix 1769-L32ERM	Part of lump sum PLC item. See above.		1	EA	\$3,800.00	\$4,066.00	\$5,082.50	\$5,082.50
E-10.2	PSU, Allen-Bradley CompactLogix 1769-PB4, 24VDC	Part of lump sum PLC item. See above.		2	EA	\$800.00	\$856.00	\$1,070.00	\$2,140.00
E-10.3	Ethernet, Allen-Bradley CompactLogix 1769-AENTR	Part of lump sum PLC item. See above.		1	EA	\$1,200.00	\$1,284.00	\$1,605.00	\$1,605.00
E-10.4	AI16, Allen-Bradley CompactLogix 1769-IF16C	Part of lump sum PLC item. See above.		1	EA	\$1,500.00	\$1,605.00	\$2,006.25	\$2,006.25
E-10.5	DI16, Allen-Bradley CompactLogix 1769-IQ16, 24VDC	Part of lump sum PLC item. See above.		4	EA	\$500.00	\$535.00	\$668.75	\$2,675.00
E-10.6	DO8, Allen-Bradley CompactLogix 1769-OW8, 24VDC	Part of lump sum PLC item. See above.		1	EA	\$500.00	\$535.00	\$668.75	\$668.75
<b>TOTALS</b>									
<b>Totals (Mat'ls &amp; Equipment / Labor)</b>									
<b>Supervision @ 15% of labor</b>									\$0.00
<b>Totals (Mat'ls &amp; Equipment and Labor)</b>									
<b>Electrical SubTotal</b>									<b>\$130,807.50</b>

**Notes:**  
 Means provides national average material costs. Use this adjustment to modify for geographic cost variations. Refer to the City Cost Indexes at the back of Means.  
 Cost estimates based on Means Electrical Cost Data version 2021.

Downtown Stormwater Treatment Project  
 Sole Source Justification  
 11/16/2021

**Sole Source Justification Table - Non-Electrical Equipment**

v 2021

Item No.	Part Description	Sole Source Discussion	Sole Source Type	Quantity	Unit	Materials and Equipment			Line \$	Section Price
						Unit Cost	City Adjust 1.070	Mat'l Cost w/ OH & Profit 15% 10%	Total	
<b>Pump Station</b>										
<b>Equipment</b>										\$334,375.00
PS-1	Submersible Screw Centrifugal Pumps with Pre-rotation Basin	Pump by Hidrostal. Product includes screw centrifugal impeller with self-cleaning prerotation basin to avoid and minimize clogging. This matches other pumps the City operates and maintains.	Sole provider of items that are compatible with existing equipment.	2	EA	\$125,000.00	\$133,750.00	\$167,187.50	\$334,375.00	
<b>Civil</b>										
<b>Equipment</b>										\$1,827,840.88
C-1	Nutrient Separating Baffle Box by Suntree Technologies	This device was identified as specifically needed for ease of maintenance and uniquely suitable for the amount of flow and rated for pretreatment needed for this application. This device is also planning to be tested for GULD rating by Ecology next year, making it a reimbursible cost under the project grants.	Sole provider of goods and services that will meet the specialized needs of the City.	2	EA	\$145,000.00	\$155,150.00	\$193,937.50	\$387,875.00	
C-2	36" Ultraflex CheckMate Check Valve by Tideflex	Valve is specialized for inline application and was identified as specifically suited for tidal applications, and to protect the media against fouling from backwater.	Sole provider of goods and services that will meet the specialized needs of the City.	2	EA	\$10,000.00	\$10,700.00	\$13,375.00	\$26,750.00	
C-3	60" Ultraflex CheckMate Check Valve by Tideflex	Valve is specialized for inline application and was identified as specifically suited for tidal applications, and to protect the media against fouling from backwater.	Sole provider of goods and services that will meet the specialized needs of the City.	2	EA	\$44,000.00	\$47,080.00	\$58,850.00	\$117,700.00	
C-4	Nyoplast PVC Basin with Domed Beehive Grate - 10"	Grate is specifically suited for non-clogging application to allow overflow drainage and to prevent washout of the media. Approved equal acceptable.	Sole provider of goods and services that will meet the specialized needs of the City.	15	EA	\$1,080.00	\$1,155.60	\$1,444.50	\$21,667.50	
C-5	Nyoplast PVC Basin with Domed Beehive Grate - 18"	Grate is specifically suited for non-clogging application to allow overflow drainage and to prevent washout of the media. Approved equal acceptable.	Sole provider of items that are compatible with existing equipment.	1	EA	\$2,410.00	\$2,578.70	\$3,223.38	\$3,223.38	
C-6	Treatment Media - Filterra or BioScape	Contech (Filtrerra) and Oldcastle (BioScape) are the only (2) manufacturers on the market with GULD approved treatment media, with infiltration rates high enough to meet the performance needs for the DSTP facility.	Sole provider of goods and services that will meet the specialized needs of the City.	1	LS	\$950,000.00	\$1,016,500.00	\$1,270,625.00	\$1,270,625.00	
<b>Architectural</b>										
<b>Equipment</b>										\$381,588.75
A-1	Perforated Metal Cladding including Gate by BOK Modern	Specifically selected by Architect to meet unique aesthetic, durability, and functional characteristics needed at this location.	Sole provider of goods and services that will meet the specialized needs of the City.	1	LS	\$90,000.00	\$96,300.00	\$120,375.00	\$120,375.00	
A-2	KURV-SW Wall lights including remote drivers by Q-Tran	Specifically selected by Architect as uniquely suited for external wall application. Has dry and wet rating at output needed for the wall lengths in our project.	Sole provider of goods and services that will meet the specialized needs of the City.	1	EA	\$80,000.00	\$85,600.00	\$107,000.00	\$107,000.00	

**Sole Source Justification Table - Non-Electrical Equipment**

v 2021

Item No.	Part Description	Sole Source Discussion	Sole Source Type	Quantity	Unit	Materials and Equipment			Line \$ Total	Section Price
						Unit Cost	City Adjust 1.070	Mat'l Cost w/ OH & Profit 15% 10%		
A-3	Skateblocks by Kenall	Specified by Architect for reliable, durable and aesthetic use and for consistency with future park project.	Sole provider of goods and services that will meet the specialized needs of the City.	1	LS	\$11,000.00	\$11,770.00	\$14,712.50	\$14,712.50	
A-4	Benches by Wishbone	Specified by Architect to meet current standard for benches along the Ebey waterfront trail, and at other locations. These receptacles are also consistent with the future park plan.	Sole provider of goods and services that will meet the specialized needs of the City.	2	EA	\$2,900.00	\$3,103.00	\$3,878.75	\$7,757.50	
A-5	Trash Receptacle by Wishbone	Specified by Architect to meet current standard for benches along the Ebey waterfront trail, and at other locations. These receptacles are also consistent with the future park plan.	Sole provider of goods and services that will meet the specialized needs of the City.	2	EA	\$2,250.00	\$2,407.50	\$3,009.38	\$6,018.75	
A-6	Bollards by Tournesol	Removable bollards by Tournesol were specified to be consistent with the Civic Center. This model also does not have protruding hardware and is better suited for walkways that also serve as vehicular drive paths.	Sole provider of goods and services that will meet the specialized needs of the City.	1	LS	\$14,000.00	\$14,980.00	\$18,725.00	\$18,725.00	
A-7	Grates at Distribution Channels	Specified by Architect to provide safety, durability and aesthetic needs for this visible grate.	Sole provider of goods and services that will meet the specialized needs of the City.	1	LS	\$80,000.00	\$85,600.00	\$107,000.00	\$107,000.00	
<b>Structural</b>										
<b>Equipment</b>										\$4,012.50
S-1	Absorbinator Hill System Fall Protection Lines by Guardian	Energy absorbing system specified by Architect as suitable for this application and needed for consistency with aesthetic cladding treatments.	Sole provider of goods and services that will meet the specialized needs of the City.	1	LS	\$3,000.00	\$3,210.00	\$4,012.50	\$4,012.50	
<b>TOTALS</b>										
<b>Totals (Mat'ls &amp; Equipment / Labor)</b>										
<b>Supervision @ 15% of labor</b>										\$0.00
<b>Totals (Mat'ls &amp; Equipment and Labor)</b>										
<b>Electrical SubTotal</b>										<b>\$2,547,817.13</b>

**Notes:**  
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 Cost estimates based on Means Electrical Cost Data version 2021.