

**SECTION 00 52 00 - AGREEMENT BETWEEN BUYER AND SELLER
FOR PROCUREMENT CONTRACT**

TABLE OF CONTENTS

	Page
Article 1— Procurement Contract	1
1.01 <i>Goods and Special Services</i>	1
1.02 <i>The Project</i>	1
1.03 <i>Engineer</i>	1
1.04 <i>Point of Destination</i>	1
Article 2— Procurement Contract Times	1
2.01 <i>Time of the Essence</i>	1
2.02 <i>Schedule of Procurement Contract Times</i>	1
2.03 <i>Shop Drawings and Product Data</i>	2
2.04 <i>Liquidated Damages</i>	2
Article 3— Procurement Contract Price	3
3.01 <i>Procurement Contract Price and Total Price—Based on Attached Bid</i>	3
Article 4— Payment Procedures	3
4.01 <i>Submittal and Processing of Applications for Payment</i>	3
4.02 <i>Progress Payments; Final Payment</i>	3
4.03 <i>Interest</i>	4
Article 5— Assignment of Procurement Contract	4
Article 6— Procurement Contract Documents	6
6.01 <i>List of Procurement Contract Documents</i>	6
Article 7— Seller’s Representations and Certifications	7
7.01 <i>Seller’s Representations</i>	7
7.02 <i>Seller’s Certifications</i>	8
Article 8— Confidentiality	8
8.01 <i>Confidential Information</i>	8
8.02 <i>Disclosure of Confidential Information</i>	9
8.03 <i>Waiver of Immunity</i>	9
Article 9— Mutual Waiver	9
9.01 <i>Mutual Waiver of Consequential Damages</i>	9
Exhibit A— Assignment of Procurement Contract, Consent to Assignment, and Acceptance of Assignment.....	12
Exhibit B— Surety’s Consent to Assignment.....	13

AGREEMENT BETWEEN BUYER AND SELLER FOR PROCUREMENT CONTRACT

This Procurement Agreement is by and between the City of Stevenson ("Buyer") and _____ ("Seller").

Terms used in this Procurement Agreement have the meanings stated in the General Conditions of the Procurement Contract and the Supplementary Conditions of the Procurement Contract.

Buyer and Seller hereby agree as follows:

ARTICLE 1—PROCUREMENT CONTRACT

1.01 *Goods and Special Services*

- A. Seller shall furnish the Goods and Special Services as specified or indicated in the Procurement Contract Documents. The Goods and Special Services are generally described as follows: _____.

1.02 *The Project*

- A. The Project, of which the Goods and Special Services are a part, is generally described as follows: Wastewater Treatment Plant Improvements – Phase 1.

1.03 *Engineer*

- A. Buyer has retained Wallis Engineering ("Engineer"), to prepare Procurement Contract Documents and act as Buyer's representative. Engineer assumes all duties and responsibilities and has the rights and authority assigned to Engineer in the Procurement Contract Documents in connection with Seller's furnishing of Goods and Special Services.

1.04 *Point of Destination*

- A. The Point of Destination is designated as: Wastewater Treatment Plant, 686 Southwest Rock Creek Drive, Stevenson, WA 98648.

ARTICLE 2—PROCUREMENT CONTRACT TIMES

2.01 *Time of the Essence*

- A. All time limits for Milestones, including the submittal of Shop Drawings and Samples, the delivery of Goods, and the furnishing of Special Services as stated in the Procurement Contract Documents, are of the essence of the Procurement Contract.

2.02 *Schedule of Procurement Contract Times*

- A. The following schedule sets forth the Procurement Contract Times:

Milestone	Date or Days	Notes
Submit Shop Drawings and Product Data	42 days	After Contract Times commence.
Submit Revisions or Additions to Shop Drawings and Product Data	14 days	After receipt of each Engineer's Review.
Deliver acceptable Goods to Point of Destination	154 days	After approval of shop drawings. Delivery may be made in the 15-day period before delivery date.
Commence Special Services for Goods	14 days	After delivery, date of Buyer's acknowledgment of receipt.
Complete Special Services and Readiness for Final Inspection and Acceptance of Goods and Special Services	14 days	After commencement of Special Services.

2.03 *Shop Drawings and Product Data*

- A. *Submittal of Shop Drawings and Product Data:* Seller shall submit all Shop Drawings and Samples required by the Procurement Contract Documents to Engineer for its review and approval.
- B. *Engineer's Review:* It is the intent of the parties that Engineer will conduct its review of Shop Drawings and Samples and issue its approval, or a denial accompanied by substantive comments regarding information needed to gain approval, within 14 days after Seller's submittal of such Shop Drawings and Samples, or within such longer period that is needed because of the quantity and quality of such submittals. Resubmittals will be limited whenever possible.

2.04 *Liquidated Damages*

- A. Buyer and Seller recognize that time is of the essence as stated in Paragraph 2.01, and that Buyer will suffer financial and other losses if the Goods are not delivered to the Point of Destination and ready for receipt of delivery by Buyer within the time specified in Paragraph 2.02, plus any extensions thereof allowed in accordance with this Procurement Contract. The parties also recognize that the timely performance of services by others involved in the Project is materially dependent upon Seller's specific compliance with the delivery requirements of Paragraph 2.02. Further, the parties recognize the time, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the loss (whether direct, consequential, or otherwise) suffered by Buyer if complete, acceptable Goods are not delivered on time. Accordingly, instead of requiring any such proof, Buyer and Seller agree that as liquidated damages for delay (but not as a penalty) Seller shall pay Buyer \$1,000 for each day that expires after the time specified in Paragraph 2.02 for submission of Shop Drawings and Product Data and delivery of acceptable Goods. Seller's obligation to pay liquidated damages shall be limited to an amount equal to ten percent (10%) of the Seller's Contract Price.

ARTICLE 3—PROCUREMENT CONTRACT PRICE

3.01 *Procurement Contract Price and Total Price—Based on Attached Bid*

- A. For furnishing the Goods and Special Services in accordance with the Procurement Contract Documents, Buyer shall pay Seller the prices stated in Seller’s Bid, attached hereto as an exhibit, subject to final adjustments for Unit Price Goods and Special Services and Buyer’s Contingency Allowance, if any, and subject to the following Buyer-accepted alternates: Not Applicable.

ARTICLE 4—PAYMENT PROCEDURES

4.01 *Submittal and Processing of Applications for Payment*

- A. Seller shall submit Applications for Payment in accordance with Article 13 of the General Conditions and the following paragraphs. Engineer and Buyer will process such Applications for Payment in accordance with said Article 13.

4.02 *Progress Payments; Final Payment*

- A. Seller may submit an Application for Payment requesting the stated percentage of Procurement Contract Price upon attainment of each of the following Payment Line Items:

Payment Line Item (Lump Sum)	Percentage of Lump Sum
1. Receipt of Approval of Shop Drawings and Product Data	10
2. Completion of acceptable factory testing (if any)]	5
3. Delivery of Goods to Point of Destination in accordance with the Procurement Contract Documents	70
4. Completion of Special Services in accordance with Procurement Contract Documents	10
5. Final Payment: Correction of non-conformities, provision of final Operations and Maintenance manuals, submittal of warranties and other final documentation required by the Procurement Contract Documents	5
Total Procurement Contract Price (Lump Sum)	100

- B. For Unit Price Goods and Special Services, if any, or for payments owed to Seller as a result of authorizations by Buyer under the Buyer’s Contingency Allowance (if any), Seller shall submit a separate Application for Payment, no more frequently than monthly, that states (1) the actual quantities of such Unit Price Goods and Special Services that have been furnished, and the applicable unit prices; and (2) the services or items performed or furnished under the Buyer’s Contingency Allowance, and the amounts owed. If practical, and at Seller’s option, Seller may apply for such unit price and Buyer’s Contingency Allowance payments in a separate section of an Application for Payment submitted under Paragraph 4.02.A for lump sum items.

- C. Buyer shall pay Seller the amount owed under an Application for Payment within 30 days after Engineer's presentation to Buyer of the Application for Payment and Engineer's recommendation.

4.03 *Interest*

- A. All amounts not paid when due will bear interest at the state statutory rate.

ARTICLE 5—ASSIGNMENT OF PROCUREMENT CONTRACT

- A. Buyer has the right to assign this Procurement Contract for furnishing Goods and Special Services, but only to a person or entity with sufficient apparent ability to satisfy all of Buyer's obligations under this Procurement Contract, and Seller hereby consents to such assignment. Forms documenting the assignment of the Procurement Contract, and consent of Seller's surety to the assignment, have been executed by Buyer, Seller, and Seller's surety, and are attached as exhibits to this Procurement Agreement. If so, assigned the following provisions apply:
 - 1. The Procurement Contract is initially executed in the name of the entity identified herein as Buyer, and will be assigned by such Buyer (as assignor) to a construction contractor (Contractor/Assignee) designated by such Buyer. The assignment will occur on the effective date of the construction contract between such Buyer (Project Owner) and the Contractor/Assignee, which is expected to occur on or about 3/1/2022. Commencing on the date of acceptance of assignment by the Contractor/Assignee, all references in the Procurement Contract to "Buyer" shall mean the designated Contractor/Assignee.
 - 2. The assignment of this Procurement Contract relieves the assignor from all further obligations and liabilities under this Procurement Contract. After assignment, Seller shall become a subcontractor or supplier to the Contractor/Assignee and, except as noted herein, all rights, duties, and obligations of Buyer under the Procurement Contract become the rights, duties, and obligations of the Contractor/Assignee.
 - 3. After assignment:
 - a. The Procurement Drawings and Procurement Specifications, and any modifying Addenda will become "Contract Documents" under the construction contract.
 - b. If the Procurement Drawings or Procurement Specifications, as "Contract Documents" under the construction contract, are duly modified under such construction contract, then Seller and Contractor/Assignee shall enter into a corresponding Change Order under the applicable provisions of this Procurement Contract.
 - c. The Procurement Drawings and Procurement Specifications may not be modified by Seller or Contractor/Assignee, singly or in tandem, except as such Procurement Drawings or Procurement Specifications, as "Contract Documents" under the construction contract, have been duly modified under such construction contract.
 - d. All performance warranties, guarantees, and indemnifications required by the Procurement Contract will continue to run for the benefit of assignor (Project

Owner) and, in addition, for the benefit of the Contractor/Assignee. However, if assignor (Project Owner) and Contractor/Assignee make the same warranty or guarantee claim, then Seller shall only be liable once for such claim. Other than its remedies under such warranties, guarantees, and indemnifications, assignor will not retain direct rights under this Procurement Contract, but will have rights and remedies as a party to the construction contract, whose scope of work will encompass the Procurement Drawings, Procurement Specifications, and modifying Addenda; provided, however, that any limitations on Seller's liability in this Procurement Contract will continue to bind the original Buyer (assignor) after assignment.

- e. The Contractor/Assignee shall have all the rights of the Buyer under the Performance Bond and Payment Bond.
- f. Seller shall submit all Applications for Payment directly to Contractor/Assignee.
 - 1) Contractor/Assignee shall review each Application for Payment promptly, determine the amount that Contractor/Assignee approves for payment, and then include the amount approved in the next application for payment submitted to Project Owner (or Engineer) under the construction contract.
 - 2) Contractor/Assignee shall pay Seller within **30** days of receipt of payment from the Project Owner under the construction contract.
 - 3) After assignment Engineer will review, approve, or deny the content of Applications for Payment under the Procurement Contract only to the extent that Contractor/Assignee, as construction contractor, has incorporated such content into payment applications that Engineer reviews under the construction contract.
- g. The Contractor/Assignee shall have all the rights of the Buyer under any pending Claim by Buyer.
- h. All Claims and supporting documentation will be submitted directly by the claimant party (either Contractor/Assignee or Seller), to the other party, without submittal to Engineer.
 - 1) The other party will render a response in writing within 30 days of receipt of the last submittal of claimant.
 - 2) If the other party does not render a written response to a Claim within 30 days after receipt of the last submittal of the claimant, the other party shall be deemed to have approved the Claim in its entirety.
 - 3) The other party's written response to a Claim, or the approval of the Claim in its entirety as a function of failure to respond within 30 days, will be final and binding upon Buyer and Seller 30 days after it is issued, unless within such 30 days of issuance either Buyer or Seller appeals the result by initiating the mediation of the Claim in accordance with the dispute resolution procedures set forth in Paragraph 12.02 of the General Conditions.

- 4) Any Claim by Seller that Contractor/Assignee may choose to submit, present, or forward to Project Owner must be submitted to Buyer within sufficient time for Contractor/Assignee to preserve its rights under the construction contract, notwithstanding any procedures or time limits in this Procurement Contract.
 - i. Seller's recovery of additional cost, time, or both cost and time for any Claim attributable to the Project Owner will be limited to the proportionate recovery by Contractor/Assignee against Project Owner for such Claim. Seller will cooperate and assist Contractor/Assignee in pursuing any Claim by Contractor/Assignee against Project Owner on behalf of Seller, including the timely preparation and delivery of supporting documentation.
 - j. If the pursuit of any claim by Contractor/Assignee against Project Owner on Seller's behalf requires the expenditure by Contractor/Assignee of legal or consulting fees, or results in litigation, arbitration, or any dispute resolution procedures, Seller agrees to pay for a proportionate share of attorneys' fees, consultant fees, and litigation, arbitration, and other resolution costs incurred by Contractor/Assignee in pursuing the claim on behalf of Seller, based upon the amount claimed by Seller as compared to the total value of the claim pursued by the Contractor/Assignee.
 - k. All rights, duties, and obligations of Engineer to Contractor/Assignee and Seller under this Procurement Contract will cease.
 - l. Subject to the foregoing provisions, all references in the Procurement Contract to submitting items to Engineer, or to Engineer having tasks or obligations, will be read after such an assignment as requiring submittal to Contractor/Assignee, or as Contractor/Assignee having such tasks or obligations (which Contractor/Assignee may delegate when appropriate).
 - m. If the Procurement Contract includes a Buyer's Contingency Allowance, upon assignment such allowance will be automatically reduced to the amount previously authorized by Buyer (Project Owner), and cease to be operational.
- B. No other assignment by a party hereto of any rights under or interests in the Procurement Contract will be binding on another party hereto without the written consent of the party sought to be bound. Specifically, but without limitation, Procurement Contract payments or other money that may become due, and Procurement Contract payments or other money that are due, may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by Laws and Regulations). Unless specifically stated to the contrary in any written consent to such an assignment, such an assignment will not release or discharge the assignor from any duty or responsibility under the Procurement Contract Documents.

ARTICLE 6—PROCUREMENT CONTRACT DOCUMENTS

6.01 *List of Procurement Contract Documents*

- A. The Procurement Contract Documents consist of the following:
 1. This Procurement Agreement.

2. General Conditions of the Procurement Contract.
 3. Supplementary Conditions of the Procurement Contract.
 4. Procurement Specifications as listed in the Procurement Specifications table of contents.
 5. Procurement Drawings.
 6. Addenda Numbers 1 to 1 inclusive.
 7. Bonds:
 - a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
 8. Exhibits to this Procurement Agreement (enumerated as follows):
 - a. Exhibit, Assignment of Contract, Consent to Assignment, and Acceptance of Assignment
 - b. Exhibit, Surety's Consent to Assignment
 - c. Exhibit A, Seller's Bid, solely as to the prices set forth therein (pages 1 to 5, inclusive); and
 9. The following which may be delivered or issued on or after the Effective Date of the Procurement Contract and are not attached hereto:
 - a. Change Orders;
 - b. Change Directives; and
 - c. Field Orders.
- B. The documents listed in Paragraph 6.01.A are attached to this Procurement Agreement (except as expressly noted otherwise above).
- C. There are no Procurement Contract Documents other than those listed above.
- D. The Procurement Contract Documents may only be amended or supplemented as provided in Paragraph 11.01 of the Procurement General Conditions.

ARTICLE 7—SELLER'S REPRESENTATIONS AND CERTIFICATIONS

7.01 *Seller's Representations*

- A. In order to induce Buyer to enter into this Procurement Agreement, Seller makes the following representations:
1. Seller has examined and carefully studied the Procurement Contract Documents.
 2. If required by the Instructions to Bidders to visit the Point of Destination and the site where the Goods are to be installed or Special Services will be provided, or if, in Seller's judgment, any observable local or site conditions may affect the delivery, cost, progress, or furnishing of the Goods and Special Services, then Seller has visited the Point of Destination and site where the Goods are to be installed or Special Services will be

provided (as applicable) and become familiar with and is satisfied as to the observable local and site conditions that may affect delivery, cost, progress, and furnishing of the Goods and Special Services.

3. Seller is familiar with and is satisfied as to all Laws and Regulations that may affect the cost, progress, and performance of Seller's obligations under the Procurement Contract.
4. Seller has carefully studied, considered, and correlated the information known to Seller with respect to the effect of such information on the cost, progress, and performance of Seller's obligations under the Procurement Contract.
5. Seller has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Seller has discovered in the Procurement Contract Documents, and the written resolution (if any) thereof by Engineer is acceptable to Seller.
6. The Procurement Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance of Seller's obligations under the Procurement Contract.
7. Seller's entry into this Procurement Contract constitutes an incontrovertible representation by Seller that without exception all prices in the Procurement Agreement are premised upon furnishing the Goods and Special Services as required by the Procurement Contract Documents.

7.02 *Seller's Certifications*

- A. Seller certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Procurement Contract. For the purposes of this Paragraph 7.02:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Procurement Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Procurement Contract to the detriment of Buyer, (b) to establish bid or contract prices at artificial non-competitive levels, or (c) to deprive Buyer of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Buyer, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Procurement Contract.

ARTICLE 8—CONFIDENTIALITY

8.01 *Confidential Information*

- A. Confidential information is information in documents submitted by Seller that Seller clearly and prominently labels in writing to be a trade secret, proprietary, or confidential. Such

documents, if any, will be maintained in a manner that endeavors to avoid disclosing confidential information to third parties, to the extent allowed by Laws and Regulations.

- B. Seller shall clearly and prominently mark confidential information with the word “CONFIDENTIAL” on each page or sheet or on the cover of bound documents. Place “CONFIDENTIAL” stamps or watermarks so that they do not obscure any of the required information on the document, either in the original or in a way that would obscure any of the required information in a photocopy of the document.

8.02 *Disclosure of Confidential Information*

- A. If Buyer is requested to disclose confidential information, or becomes legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil or criminal investigative demand, public information requests, or other requests under Laws and Regulations) to disclose confidential information, or is required by a regulatory body, governing agency, or controlling authority to disclose confidential information, or make any other disclosure that is prohibited or otherwise constrained by the Procurement Contract, Buyer will provide Seller with prompt notice so Seller may seek an appropriate protective order or other remedy. Seller will be solely responsible for submitting to the regulatory body, governing agency, or controlling authority any arguments, briefs, memoranda, motions, authorities, or other information in opposition to disclosure.
- B. Buyer’s obligations with respect to confidential information are nullified by the following exceptions:
 - 1. Confidential information becomes a part of the public domain through publication or otherwise, through no fault of the Buyer;
 - 2. Buyer can demonstrate through suitable documentation that the confidential information was already in the Buyer’s possession, and not previously marked as confidential, or was otherwise publicly available prior to the Effective Date of the Procurement Contract;
 - 3. The confidential information is subsequently and independently disclosed to the Buyer by a third party who has a lawful right to disclose such information;
 - 4. Buyer has a good faith belief that disclosure is required or justified; or
 - 5. Buyer is required to disclose the confidential information by court order or by applicable Laws and Regulations.

8.03 *Waiver of Immunity*

- A. Notwithstanding any other provision of the Procurement Contract, it is stipulated and agreed that by accepting confidential information, Buyer has not and does not waive its legal immunity (if any) from suit or liability.

ARTICLE 9—MUTUAL WAIVER

9.01 *Mutual Waiver of Consequential Damages*

- A. Buyer and Seller waive against each other, and against the other’s officers, directors, members, partners, employees, agents, consultants, and subcontractors, any and all claims

for or entitlement to incidental, indirect, or consequential damages arising out of, resulting from, or related to the Procurement Contract. If Buyer (Project Owner) assigns this Procurement Contract to a construction contractor (Contractor/Assignee), then the terms of this Paragraph 9.01.A will be binding upon the Contractor/Assignee with respect to Seller and assignor. The terms of this mutual waiver do not apply to or limit any claim by either Buyer or Seller against the other based on any of the following: (a) contribution or indemnification, (b) liquidated damages, (c) costs, losses, or damages attributable to personal or bodily injury, sickness, disease, or death, or to injury to or destruction of the tangible property of others, (d) intentional or reckless wrongful conduct, or (e) rights conferred by any bond provided by Seller under this Procurement Contract.

EXHIBIT A—ASSIGNMENT OF PROCUREMENT CONTRACT, CONSENT TO ASSIGNMENT, AND ACCEPTANCE OF ASSIGNMENT

This assignment will be effective on the effective date of the construction contract between Buyer (as “Owner”) and Contractor/Assignee (as “Contractor”).

The Procurement Contract between [insert name of original Buyer] (“Buyer”) and [insert name of Seller] (“Seller”) for furnishing Goods and Special Services entitled [insert name/designation of Procurement Contract] (Procurement Contract) is hereby assigned, transferred, and set over to Contractor/Assignee, as assignee, by Buyer, as assignor. Upon assignment the Contractor/Assignee shall have the duties, rights, and obligations of Buyer under the terms of the Procurement Contract, and will be responsible to Owner under the construction contract for the performance of obligations by Seller, which will become a Subcontractor or Supplier to Contractor/Assignee. Buyer, Seller, and Contractor/Assignee hereby acknowledge and agree to be bound by the terms and conditions of assignment set forth in Article 5 of the Agreement Between Buyer and Seller for Procurement Contract.

Assignment Made by Buyer

City of Stevenson

(typed or printed name of organization)

By: _____ Date: _____
(individual’s signature) (date signed)

Name: _____ Title: _____
(typed or printed) (typed or printed)

If Buyer is a corporation, attach evidence of authority to sign. If Buyer is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Buyer-Seller Agreement.

Assignment Acknowledged and Accepted by Seller

(typed or printed name of organization)

By: _____ Date: _____
(individual’s signature) (date signed)

Name: _____ Title: _____
(typed or printed) (typed or printed)

If Seller is a corporation, attach evidence of authority to sign.

Assignment Accepted by Contractor/Assignee

(typed or printed name of organization)

By: _____ Date: _____
(individual’s signature) (date signed)

Name: _____ Title: _____
(typed or printed) (typed or printed)

If Contractor/Assignee is a corporation, attach evidence of authority to sign.

EXHIBIT B—SURETY’S CONSENT TO ASSIGNMENT

Surety hereby acknowledges, agrees, and consents that the Procurement Contract for furnishing Goods and Special Services entitled **[Name of Procurement Contract]** by and between **[Name of Buyer]** (“Buyer”) and **[Name of Seller]** (“Seller”) may be assigned, transferred, and set over to **[Name of Contractor/Assignee]** (“Contractor/Assignee”), in accordance with Article 5 and Exhibit A of the Agreement between Buyer and Seller for Procurement Contract.

Surety further agrees that, upon assignment of the Procurement Contract, the Contractor/Assignee shall have all the rights of the Buyer under the Procurement Performance Bond and Procurement Payment Bond.

Agreement to Assignment Acknowledged and Accepted by Surety

(typed or printed name of organization)

By: _____ Date: _____
(individual’s signature) *(date signed)*

Name: _____ Title: _____
(typed or printed) *(typed or printed)*

Attach Power of Attorney.