

**City of Oak Harbor  
City Council Agenda Bill**

Bill No. b.  
Date: May 3, 2016  
Subject: Clean Water Facility - KBA, Inc  
- Contract Amendment No. 2  
for Construction management  
Services

**FROM: Cathy Rosen, Public Works Director and Joe Stowell, City Engineer**

**INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:**

- Bob Severns, Mayor
- Doug Merriman, City Administrator
- Patricia Soule, Finance Director
- Nikki Esparza, City Attorney, as to form

**RECOMMENDED ACTION**

It is recommended that the City Council Authorize the Mayor to sign Contract Amendment No. 2 with KBA, Inc. in the amount of \$2,812,000 increasing the total contact amount from \$805,500 to \$3,617,500.

**BACKGROUND / SUMMARY INFORMATION**

The City of Oak Harbor is undertaking the largest public works project in the city's history by building a new membrane bioreactor wastewater treatment plant. While the city has a strong General Contractor /Construction Management (GC/CM) team with Carollo Engineers and Hoffman Construction, the project demands strong City oversight and control

KBA is providing on-site construction period services including project administration, resident engineering, neighborhood relations, quality assurance, special inspections/materials testing, regulatory compliance, and cost review. KBA will also provide overall GC/CM services including independent cost review, GC/CM contract negotiations, schedule review, project close out, and risk assessment.

The original KBA contract and amendments provided construction management services to completion of the outfall and the Site Preparation phases of the construction project. With initiation of the Deep Foundation Package (GMP #3) portion of the project, KBA's services need to be contracted through project completion. This amendment provides the necessary contracted services through December of 2018.

The attached Contract Amendment no. 2 extends KBA's scope of work and shall be paid on a time and materials basis not to exceed \$2,812,000 bringing the total contract amount to \$3,617,500.

**FISCAL IMPACT**

Funds Required: \$2,812,000

Appropriation Source: Wastewater Fund

**PREVIOUS COUNCIL / BOARD / CITIZEN INPUT  
CITY COUNCIL WORKSHOP**

This contract amendment for KBA was discussed at the April 27, 2016 City Council Workshop.

**CITY COUNCIL PREVIOUS ACTIONS**

*May 5, 2015-* The City Council authorized the Mayor to sign a Profession Service Agreement with KBA, Inc. for an amount not to exceed \$295,500.

*October 20, 2015-* The City Council authorized the Mayor to sign Amendment No. 1 to Profession Service Agreement with KBA, Inc. for an amount not to exceed \$510,000, increasing the total contract amount to \$805,500.

**ATTACHMENTS**

1. [Attachment A - PSA Amendment No. 2 with KBA, Inc.](#)
2. [Attachment B - Fee Estimate](#)
3. [Attachment C - Consultant Original PSA & Previous Amendments](#)

<b>Professional Services Agreement Amendment Number: 2</b>	Organization and Address: City of Oak Harbor 865 SE Barrington Drive Oak Harbor, WA 98239	
Original Agreement Title:	Phone: (360) 279-4500	
<b>WWTP Construction Management Services</b>	Execution Date 10/20/2015	Completion Date 12/31/18
Project Number: Eng-15-02 (previously ENG-13-05)	New Maximum Amount Payable  \$3,617,500	
Project Title: City of Oak Harbor Wastewater Treatment Plant		
Description of Work: Continue to provide construction administration services for the Clean Water Facility – Ph III.		

The Local Agency of City of Oak Harbor desires to supplement the agreement entered into with KBA, Inc. and executed on May 5, 2015 and identified as Professional Services Agreement with KBA, Inc.

All provisions in the basic agreement remain in effect except as expressly modified by this supplement.

The changes to the agreement are described as follows:

SCOPE OF WORK is hereby changed to read:  
See attached Exhibit A – Supplement 2.


TIME FOR BEGINNING AND COMPLETION IS AMENDED to read: Time of completion for this Agreement is 12/31/18.

PAYMENT shall be amended as follows:  
Amendment 2 reflects the additional effort necessary for Phase III services. The Maximum Amount Payable under this Agreement is increased from \$805,500 to \$3,617,500, an addition of \$2,812,000 for Phase III services, as shown in the attached Exhibit B – Supplement 2.

If you concur with this amendment and agree to the changes as stated above, please sign in the appropriate spaces and return to this office for final action.

By: KBA, Inc.

By: \_\_\_\_\_

  
\_\_\_\_\_  
Consultant Signature

\_\_\_\_\_  
Approving Authority Signature

\_\_\_\_\_  
Date

**EXHIBIT A – SUPPLEMENT 2**  
**SCOPE OF SERVICES**  
***Construction Administration Consultant***  
***for***  
***Oak Harbor Clean Water Facility***  
***City Project No. ENG-15-02***

KBA, Inc., the Construction Administration Consultant (Consultant) will continue to provide Construction Administration services to the City of Oak Harbor (Client), for the Project known as the Oak Harbor Clean Water Facility. These services include consultation, contract administration, field observation, documentation, and material testing, as required during the construction of the Project.

Exhibit A – Supplement 2 – Scope of Services adds the following services: Grant reimbursement documentation, providing breakdown information to the Client for fund distribution.

The original Exhibit A - Scope of Services is still in effect, with the following revisions/additions:

**SECTION I**

1. With completion of Phase 1 and Phase 2 services, Section I title is revised to include Phase 3 – Construction Administration Services. Everything else in this section remains the same.
2. With completion of Phase 1 and Phase 2 services, Section I.C and I.D titles are revised to include Phase 3 – Construction Administration Services. Everything else in this section remains the same.
3. Section I.E.1.a is revised to include the following:
  - o Staffing levels for Phase III services are anticipated in accordance with the budget estimate attached as Exhibit B – Supplement 2, and assumes staff shown will be on-site through the month of October 2018.

Everything else in Section I remains the same.



Project Name: Clean Water - Ph III CM Svcs

Client Project No.: ENG-15-02
KBA Project No.: 015011-02
Contract Type: Cost Plus Net Fee
Date Prepared: 4/17/2016
Prepared by: K. Adams
Salary Escalation: 4% for budget purposes only

Determination of Hours table with columns for Month, Days/Mo, Hr/Mo, Extra Work, Adj Hr/Mo, and monthly totals from Jun-16 to Oct-18.

KBA Labor Hours PHASE III SERVICES Closeout table with columns for Employee, Title, 2015-2018 Rates, Total Hours, and monthly totals from Jun-16 to Oct-18.

Direct Expenses table with columns for Item, Total Costs, 2016-2018 Totals, and monthly totals from Jun-16 to Oct-18.

Subconsultant(s) table with columns for Subconsultants, Total Costs, 2016-2018 Totals, and monthly totals from Jun-16 to Oct-18.

Combined Costs table with columns for Employee, Title, 2015-2018 Rates, Total DSC, Total DSC + OH, Fee, and monthly totals from Jun-16 to Oct-18.

\* Displayed fields are rounded to the nearest dollar in Excel. Column/Row totals may be over/under by \$1 if checking whole number totals by hand.
\*\*October 2015 services are covered with original contract budget.

CONFIDENTIAL AND PROPRIETARY TO KBA, INC.

**PROFESSIONAL SERVICES AGREEMENT BETWEEN  
CITY OF OAK HARBOR  
AND KBA, INC.  
FOR CONSULTANT SERVICES**

**THIS AGREEMENT** (“Agreement”) is made and entered into by and between the City of Oak Harbor, a Washington State municipal corporation (“City”), and KBA, Inc., a Washington Corporation (“Consultant”).

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

**ARTICLE I. PURPOSE**

The purpose of this Agreement is to provide the City with Construction Administration services for the Clean Water Facility Project (“Project”) as described in Article II. The general terms and conditions of the relationship between the City and the Consultant are specified in this Agreement.

**ARTICLE II. SCOPE OF SERVICES**

The Scope of Services is attached hereto as **Exhibit “A”** and incorporated herein by this reference (“Scope of Services”). All services and materials necessary to accomplish the tasks outlined in the Scope of Services shall be provided by the Consultant unless noted otherwise in the Scope of Services or this Agreement. All such services shall be provided in accordance with the standards of the Consultant’s profession.

**ARTICLE III. OBLIGATIONS OF THE CONSULTANT**

**III.1 MINOR CHANGES IN SCOPE.** Minor changes, amendments, or revision in the detail of the Scope of Services as may be required by the City, with no impact to service costs or proposed schedules, shall be discussed and agreed upon between the Consultant and the City. Extra work, if any, involving substantial changes and/or changes in cost or schedules will be addressed as follows:

**Extra Work.** The City may desire to have the Consultant perform work or render services in connection with the Project in addition to or other than work provided for by the expressed intent of the Scope of Services, or as noted in the Scope of Services. Such work will be considered as Extra Work and will be specified in a written supplement to the scope of services, to be signed by both parties, which will set forth the nature and the scope thereof. All proposals for extra work or services shall be prepared by the Consultant at no cost to the City. Work under a supplemental agreement shall not proceed until executed in writing by the parties.

**III.2 WORK PRODUCT AND DOCUMENTS.** The work product and all documents produced under this Agreement shall be furnished by the Consultant to the City, and upon completion of the work shall become the property of the City, except that the Consultant may retain one copy of the work product and documents for its records. The Consultant will be responsible for the accuracy of the work, even though the work has been accepted by the City.

In the event that the Consultant shall default on this Agreement or in the event that this Agreement shall be terminated prior to its completion as herein provided, all work product of the Consultant, along with a summary of work as of the date of default or termination, shall become the property of the City. Upon request, the Consultant shall tender the work product and summary to the City. Tender of said work product shall be a prerequisite to final payment under this Agreement. The summary of work done shall be prepared at no additional cost to the City.

Consultant will not be held liable for reuse of documents produced under this Agreement or modifications thereof for any purpose other than those authorized under this Agreement without the written authorization of Consultant.

**III.3 TERM.** The term of this Agreement shall commence on May 18, 2015 and shall terminate at midnight, December 31, 2015. The parties may extend the term of this Agreement by written mutual agreement.

**III.4 NONASSIGNABLE.** The services to be provided by the Consultant shall not be assigned or subcontracted without the express written consent of the City.

**III.5 EMPLOYMENT.** Any and all employees of the Consultant, while engaged in the performance of any work or services required by the Consultant under this Agreement, shall be considered employees of the Consultant only and not of the City, and any and all claims that may or might arise under the Workman's Compensation Act on behalf of any said employees while so engaged, and any and all claims made by any third party as a consequence of any negligent act or omission on the part of the Consultant or its employees while so engaged in any of the work or services provided herein shall be the sole obligation of the Consultant.

**III.6 INDEMNITY.** Indemnification/Hold Harmless Consultant 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 resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. The provisions of this section shall survive the expiration or termination of this Agreement.

### III.7 INSURANCE.

a. **Minimum Limits of Insurance.** The Consultant shall procure, and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work and services hereunder by the Consultant, its agents, representatives, employees or subcontractors. The Consultant shall, before commencing work under this agreement, file with the City certificates of insurance coverage and the policy endorsement to be kept in force continuously during this Agreement, in a form acceptable to the City. Said certificates and policy endorsement shall name the City, its officers, elected officials, agents and/or employees as an additional named insured with respect to all coverages except professional liability insurance and workers' compensation. The minimum insurance requirements shall be as follows:

(1) Comprehensive General Liability. \$1,000,000 combined single limit per occurrence for bodily injury personal injury and property damage; \$2,000,000 general aggregate.

(2) Automobile Liability. \$300,000 combined single limit per accident for bodily injury and property damage.

(3) Workers' Compensation. Workers' compensation limits as required by the Workers' Compensation Act of Washington.

(4) Consultant's Errors and Omissions Liability. \$1,000,000 per occurrence and as an annual aggregate.

b. **Notice of Cancellation.** In the event that the Consultant receives notice (written, electronic or otherwise) that any of the above required insurance coverage is being cancelled and/or terminated, the Consultant shall immediately (within forty-eight (48) hours) provide written notification of such cancellation/termination to the City.

c. **Acceptability of Insurers.** Insurance to be provided by Consultant shall be with a Bests rating of no less than A:VII, or if not rated by Bests, with minimum surpluses the equivalent of Bests' VII rating.

d. **Verification of Coverage.** In signing this agreement, the Consultant is acknowledging and representing that required insurance is active and current. Further, throughout the term of this Agreement, the Consultant shall provide the City with proof of insurance upon request by the City.

e. **Insurance shall be Primary.** The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.



f. **No Limitation.** Consultant's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance or otherwise limit the recourse to any remedy available at law or in equity.

g. **Claims-made Basis.** Unless approved by the City all insurance policies shall be written on an "Occurrence" policy as opposed to a "Claims-made" policy. The City may require an extended reporting endorsement on any approved "Claims-made" policy.

**III.8 DISCRIMINATION PROHIBITED AND COMPLIANCE WITH EQUAL OPPORTUNITY LEGISLATION.** The Consultant agrees to comply with equal opportunity employment and not to discriminate against client, employee, or applicant for employment or for services because of race, creed, color, religion, national origin, marital status, sex, sexual orientation, age or handicap except for a bona fide occupational qualification with regard, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or any recruitment advertising; layoff or terminations; rates of pay or other forms of compensation; selection for training, rendition of services. The Consultant further agrees to maintain (as appropriate) notices, posted in conspicuous places, setting forth the provisions of this nondiscrimination clause. The Consultant understands and agrees that if it violates this nondiscrimination provision, this Agreement may be terminated by the City, and further that the Consultant will be barred from performing any services for the City now or in the future, unless a showing is made satisfactory to the City that discriminatory practices have been terminated and that recurrence of such action is unlikely.

**III.9 UNFAIR EMPLOYMENT PRACTICES.** During the performance of this Agreement, the Consultant agrees to comply with RCW 49.60.180, prohibiting unfair employment practices.

**III.10 LEGAL RELATIONS.** The Consultant shall comply with all federal, state and local laws and ordinances applicable to work to be done under this Agreement. The Consultant represents that the firm and all employees assigned to work on any City project are in full compliance with the statutes of the State of Washington governing activities to be performed and that all personnel to be assigned to the work required under this Agreement are fully qualified-and properly licensed to perform the work to which they will be assigned. This Agreement shall be interpreted and construed in accordance with the laws of Washington. Venue for any litigation commenced relating to this Agreement shall be in Snohomish County Superior Court.

**III.11 INDEPENDENT CONTRACTOR.**

a. The Consultant and the City understand and expressly agree that the Consultant is an independent contractor in the performance of each and every part of this Agreement. The Consultant expressly represents, warrants and agrees that his status as an independent contractor in the performance of the work and services required under this Agreement is consistent with and meets the six-part independent contractor test set forth in

RCW 51.08.195 or as hereafter amended. The Consultant, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the services required under this Agreement. The Consultant shall make no claim of City employment nor shall claim any related employment benefits, social security, and/or retirement benefits.

b. The Consultant shall be solely responsible for paying all taxes, deductions, and assessments, including but not limited to 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 Agreement. In the event the City is assessed a tax or assessment as a result of this Agreement, the Consultant shall pay the same before it becomes due.

c. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

d. Prior to commencement of work, the Consultant shall obtain a business license from the City.

**III.12 CONFLICTS OF INTEREST.** The Consultant agrees to and shall notify the City of any potential conflicts of interest in Consultant's client base and shall obtain written permission from the City prior to providing services to third parties where a conflict or potential conflict of interest is apparent. If the City determines in its sole discretion that a conflict is irreconcilable, the City reserves the right to terminate this Agreement.

**III.13 CITY CONFIDENCES.** The Consultant agrees to and will keep in strict confidence, and will not disclose, communicate or advertise to third parties without specific prior written consent from the City in each instance, the confidences of the City or any information regarding the City or services provided to the City.

**III.14 SUBCONTRACTORS/SUBCONSULTANTS.**

a. The Consultant shall be responsible for all work performed by subcontractors/subconsultants pursuant to the terms of this Agreement.

b. The Consultant must verify that any subcontractors/subconsultants they directly hire meet the responsibility criteria for the Project. Verification that a subcontractor/subconsultant has proper license and bonding, if required by statute, must be included in the verification process. The Consultant will use the following subcontractors/subconsultants or as set forth in Exhibits A and B: GeoTest Services Inc. (Materials Testing & Special Inspection).

c. The Consultant may not substitute or add subcontractors/subconsultants without the written approval of the City.

d. All subcontractors/subconsultants shall have the same insurance coverages and limits as set forth in this Agreement and the Consultant shall provide verification of said insurance coverage.

## **ARTICLE IV. OBLIGATIONS OF THE CITY**

### **IV.1 PAYMENTS.**

a. The Consultant shall be paid by the City on a time and materials basis for services rendered under this Agreement as described in the Scope of Services and as provided in this section. In no event shall the compensation paid to Consultant under this Agreement exceed \$295,500.00 without the written agreement of the Consultant and the City. Such payment shall be full compensation for work performed and services rendered and for all labor, materials, supplies, equipment and incidentals necessary to complete the work. In the event the City elects to expand the scope of services from that set forth in Exhibit A, the City shall pay Consultant a mutually agreed amount.

b. The Consultant shall submit a monthly invoice to the City for services performed in the previous calendar month. At a minimum, invoices shall include (1) a summary of previous invoices; (2) current invoice amount; (3) total current monthly billing; (4) amount authorized under this agreement; and (5) total authorized amount still remaining under the agreement. The Consultant shall maintain time and expense records and provide them to the City upon request.

c. The City will pay timely submitted and approved invoices received before the 20th of each month within thirty (30) days of receipt.

**IV.2 CITY APPROVAL.** Notwithstanding the Consultant's status as an independent contractor, results of the work performed pursuant to this Agreement must meet the approval of the City, which shall not be unreasonably withheld if work has been completed in compliance with the Scope of Services and City requirements.

**IV.3 MAINTENANCE/INSPECTION OF RECORDS.** The Consultant shall maintain all books, records, documents and other evidence pertaining to the costs and expenses allowable under this Agreement in accordance with generally accepted accounting practices. All such books and records required to be maintained by this Agreement shall be subject to inspection and audit by representatives of the City and/or the Washington State Auditor at all reasonable times, and the Consultant shall afford the proper facilities for such inspection and audit. Representatives of the City and/or the Washington State Auditor may copy such books, accounts and records where necessary to conduct or document an audit. The Consultant shall preserve and make available all such books of account and records for a period of three (3) years after final payment under this Agreement. In the event that any audit or inspection identifies any discrepancy in such financial records, the Consultant shall provide the City with appropriate clarification and/or financial adjustments within thirty (30) calendar days of notification of the discrepancy.

## **ARTICLE V. GENERAL**

**V.1 NOTICES.** Notices to the City shall be sent to the following address:

**Brett Arvidson, PE, Project Engineer  
City of Oak Harbor  
865 SE Barrington Drive  
Oak Harbor, WA 98277-4092  
360-279-4521  
barvidson@oakharbor.org**

Notices to the Consultant shall be sent to the following address and/or email address:

**K. Adams, PE, Project Manager  
KBA, Inc.  
11000 Main Street  
Bellevue, WA 98004  
425-455-9720 x212  
kadams@kbacm.com**

Receipt of any notice shall be deemed effective three (3) days after deposit of written notice in the U.S. mail with proper postage and address, and/or via email communication with delivery and read receipts.

**V.2 TERMINATION.** The right is reserved by the City to terminate this Agreement in whole or in part at any time upon ten (10) calendar days' written notice to the Consultant.

If this Agreement is terminated in its entirety by the City for its convenience, the City shall pay the Consultant for satisfactory services performed through the date of termination in accordance with payment provisions of Section VI.1.

**V.3 DISPUTES.** The parties agree that, following reasonable attempts at negotiation and compromise, any unresolved dispute arising under this Agreement may be resolved by a mutually agreed-upon alternative dispute resolution of arbitration or mediation.

**V.4 EXTENT OF AGREEMENT/MODIFICATION.** This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

### **V.5 SEVERABILITY**

a. If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining

provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

b. If any provision of this Agreement 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.

**V.6 NONWAIVER.** A waiver by either party hereto of a breach by the other party hereto of any covenant or condition of this Agreement 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 Agreement, 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.

**V.7 FAIR MEANING.** The terms of this Agreement shall be given their fair meaning and shall not be construed in favor of or against either party hereto because of authorship. This Agreement shall be deemed to have been drafted by both of the parties.

**V.8 GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

**V.9 VENUE.** The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Snohomish County, Washington.

**V.10 COUNTERPARTS.** This Agreement 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 Agreement.

**V.11 AUTHORITY TO BIND PARTIES AND ENTER INTO AGREEMENT.** The undersigned represent that they have full authority to enter into this Agreement and to bind the parties for and on behalf of the legal entities set forth below.

DATED this 5<sup>th</sup> day of May, 2015.

CITY OF OAK HARBOR

KBA, INC.

By Donny Paggaw, Mayor Pro Tem  
\_\_\_\_\_, Mayor

By Kristen A. Betty 4.27.15  
\_\_\_\_\_  
Kristen A. Betty, President

Approved as to form:

[Signature]  
\_\_\_\_\_  
City Attorney

**EXHIBIT A**  
**SCOPE OF SERVICES**  
**Construction Administration Consultant**  
**for**  
**Oak Harbor Clean Water Facility**  
**City Project No. \_\_\_\_\_**

KBA, Inc., the Construction Administration Consultant (Consultant) will provide Construction Administration services to the City of Oak Harbor (Client), for the Project known as the Oak Harbor Clean Water Facility. These services will include consultation, contract administration, field observation, documentation, and material testing, as required during the construction of the Project, as detailed below.

**Project Description:** The work consists of replacing two aging wastewater treatment facilities with a new plant that meets modern standards for capacity, reliability and performance. The Client has elected to use Heavy Civil General Contractor/Construction Manager (GC/CM) methods for project delivery, and has contracted with Carollo Engineers as the Designer of Record on this project, and with Hoffman Construction as the GC/CM contractor for pre-construction services.

This Project will have an approximate 36 month construction schedule, completed in phases of work. Phase I - Preconstruction Services for Consultant is included in this Scope of Services with the intent, at the option of the Client, to negotiate and authorize subsequent phases and additional services by Supplement(s) to this Agreement at a later date.

**I. CONSTRUCTION ADMINISTRATION - PRECONSTRUCTION SERVICES**

**A. Consultant Administration Management.** Provide overall day-to-day management of the Construction Administration Consultant contract and staff, including:

- Decide on best modes and frequency of communication with Client and other contracted parties, and use them. Liaison and coordinate with Client on a regular basis to discuss Project issues and status.
- Review monthly expenditures and Consultant Administration team scope activities. Prepare and submit to Client monthly, an invoice and progress report describing services provided that month.

*Deliverables*

- Monthly invoices and progress reports

**B. Preconstruction Services**

1. Contribute to the development of a finalized matrix of team roles and responsibilities.
2. Project Planning and Project Oversight.
  - a. Review Plans, Permits, Contracts, and other documents to familiarize team with Project requirements and decisions made to date.
  - b. Review Project Funding and Reporting Requirements.
  - c. Review and comment on current Project Scope and Budget.
    - i. Participate in formal and informal value engineering to reduce scope and contain cost.
    - ii. Negotiate resolution of cost estimate differentials between GC/CM and Engineer.
    - iii. Contribute to development of Risk Register, Contingencies, and Risk Allocations

- d. Review and comment on current Project Schedule.
- e. Prepare a Construction Administration Plan (CA) for the Project. The CA Plan will cover at least the following:
  - i. Define Administration Requirements of the GC/CM Agreement
  - ii. Determine information Management System(s) and implement selected document control plan(s)
  - iii. Prepare Project procedures and forms
  - iv. Develop Reporting procedures and Reports

*Deliverables*

- Comments on current Project Scope, Budget and Schedule
- Completed CA Plan

3. GC/CM Team Procurement.

- a. Review and assist in negotiation of the Subcontracting/Buyout plan.
- b. Assist in the review and negotiation of self-performed work terms.
- c. Prepare independent estimates for elements of Self-Performed work.
- d. Review proposed Guaranteed Maximum Price (GMP) Package.

*Deliverables*

- Independent estimates

**C. Construction Administration Services (Outfall)**

**Construction Phase Services – Contract Administration for Outfall**

1. Liaison with the Client, construction contractor, Designer, appropriate agencies, property owners, and utilities.
2. Provide the Client with brief monthly construction progress reports, highlighting progress and advising of issues which are likely to impact cost, schedule, or quality/scope.
3. Schedule Review:
  - a. Review construction contractor's schedules for compliance with Contract Documents.
  - b. Monitor the construction contractor's conformance to schedule and require revised schedules when needed. Advise Client of schedule changes.
4. Progress Meetings. Participate and/or lead progress meetings with the construction contractor, including Client pre-briefing. Track outstanding issues on a weekly basis.
5. Update CA Plan as needed to reflect changes in policy and/or procedure that occur during the Project, and orient CA Team to the changes.
6. Manage Submittal Process. Track and review, or cause to be reviewed by other appropriate party, work plans, shop drawings, samples, test reports, and other data submitted by the construction contractor, for general conformance to the Contract Documents.
7. Record of Materials. Provide Record of Materials indicating anticipated material approvals, material compliance documentation, and materials testing requirements. Maintain records of material compliance documentation received and advise of any known deficiencies.
8. Manage RFI (Request for Information) process. Track and review/evaluate, or cause to be reviewed/evaluated by other appropriate party, RFIs. Manage responses to RFIs.

9. **Change Management.** Evaluate entitlement, and prepare scope, impact, and independent estimate for change orders. Facilitate resolution of change orders. Assist with evaluating responsible funding contingencies.
10. **Monthly Pay Requests.** Review with the Client monthly requests for payment and/or review payment requests submitted by the construction contractor. Review with Client and construction contractor, and recommend approval, as appropriate.
11. **Evaluate construction contractor's Schedule of Values for lump sum items.** Review the Contract Price allocations and verify that such allocations are made in accordance with the requirements of the Contract Documents.
12. **Prevailing Wage Monitoring: Monitor Payroll Compliance.** Review Statements of Intent to Pay Prevailing Wage against the Contract Document requirements. Collect, record, and check weekly certified payrolls and conduct on-site wage interviews, both at a frequency documented in the CA Plan.
13. **Assist the Client in the investigation of malfunctions or failures during construction.**
14. **Public Information.** Provide information for Client to prepare media communications and public notices on Project status. Provide information for Client's inclusion into a Project website and/or newsletters, if requested. Assist the Client in providing information to the Client's Public Outreach consultant.
15. **Record Drawings.** Review not less than monthly, the construction contractor's redline set of contract plans. Maintain a CA Team set of conformed drawings tracking plan changes, location of discovered anomalies and other items, as encountered by the CA team. Use these markups to check the progress of the Contractor-prepared Record Drawings.
16. **Document Control.** Establish and maintain document filing and tracking systems, following Client guidelines and meeting funding agency and project delivery requirements. Collect, organize, and prepare documentation on the Project.
  - a. One hard copy of files will be kept in the Project field office.
  - b. Electronic documentation will be stored in a Project Website.

#### *Deliverables*

- Monthly Construction Progress Reports
- Schedule Review Comments
- Meeting Agendas and Notes
- Submittal Log
- Record of Materials
- RFI Log
- Change Order(s)
- Progress Pay Requests
- Certificates of Completion
- Final records – hard copy and electronic

#### **D. Construction Phase Services – Field Services for Outfall**

1. Observe the technical conduct of the construction, including providing day-to-day contact with the construction contractor, Client, utilities, and other stakeholders, and monitor for adherence to the Contract Documents in a Quality Assurance role.
2. Observe material, workmanship, and construction areas for compliance with the Contract Documents and applicable codes, and notify construction contractor of noncompliance. Advise the Client of any non-conforming work observed during site visits.



3. Prepare daily construction reports, recording the construction contractor's operations as actually observed by the Consultant; includes quantities of work placed that day, contractor's equipment and crews, and other pertinent information.
4. Interpret Contract Documents, in coordination with Client, GC/CM and Designer.
5. Decide questions which may arise as to the quality and acceptability of material furnished, work performed, and rate of progress of work performed by the construction contractor.
6. Assist in monitoring contractor compliance with permit requirements during construction, and coordinate with Client's staff and other consultants who may be monitoring compliance in their areas of expertise.
7. Prepare field records and documents to help assure the Project is administered in accordance with funding agency and project delivery requirements.
8. Attend and actively participate in regular on-site meetings.
9. Take periodic digital photographs during the course of construction. Photographs to be labeled and organized as detailed in the CA Plan.
10. Punch List. Upon substantial completion of work, coordinate with the Client and affected agencies, to prepare a 'punch list' of items to be completed or corrected. Coordinate final inspection with the Client and those agencies.
11. Testing. Conduct or cause to be conducted, materials and laboratory tests. Coordinate the work of the Field Representative(s) and testing laboratories in the observation and testing of materials used in the construction; document and evaluate results of testing; and inform Client and construction contractor of deficiencies.

#### *Deliverables*

- Daily Construction Reports with Project photos – submitted on a weekly basis
- Punch List(s)
- Test reports

#### **E. Assumptions**

1. Budget:
  - a. Staffing levels are anticipated in accordance with the attached budget estimate, and assumes the Resident Engineer, and Administrative Specialist will be on-site, full time from May 18, 2015 through September 25, 2015, and supplemented with QA Inspection services, Managerial and Project Cost, Schedule services, and a Change Management Specialist, as shown and as requested, in response to the work.
  - b. Consultant will work up to the authorized budget amount. If Client determines that the level of effort needs to be increased or decreased from this estimate, Client and Consultant will negotiate a supplement to this Agreement.
  - c. The budget allocations shown are itemized to aid in Project planning purposes only. The budget may be transferred between tasks or people, or between labor and expenses, or between months, provided the total contracted amount is not exceeded without prior written authorization.
2. Items and Services Client will provide:
  - a. Meeting arrangements and facilities for preconstruction meeting. Prepare and distribute meeting notes from pre-bid meeting(s), if any.
  - b. Project office, including:
    - i. workstations (desk, chair, and storage) for 4 staff
    - ii. conference table and chairs

- iii. combination printer/copier/scanner machine with these capabilities: 11x17 size, color
  - iv. hi-speed data connection (minimum 2 MB/s upload/download speed)
  - v. utilities and sanitary facilities
- c. Retain Engineer of Record, to be available as needed.
  - d. Coordination with and enforcement of utility franchise agreements and/or contracts and schedules for services related to this Project.
  - e. Verify that the required permits, bonds, and insurance have been obtained and submitted by the construction contractor. Obtain all permits not required to be provided by construction contractor.
  - f. Construction Survey. Provide project control survey and staking that is not already assigned to the construction contractor.
  - g. Archaeological Services. All archaeological services are to be provided for, and administered, by Client. Consultant will not be responsible for direct or indirect results of archaeologist's observations, interpretations, understandings, or recommendations.
  - h. Permitting. All necessary project permits have been obtained by Client and/or the Designer. Consultant will be responsible for monitoring contractor's compliance with conditions set forth in said permits.
3. Scope:
- a. Should KBA's SharePoint tool be used on this Project; it is proprietary to the Consultant (KBA, Inc.), and may not be used by any other party or on any other project without the written permission and involvement of KBA, Inc.
  - b. Consultant will provide Quality Assurance observation services for the days/hours that its' Inspector(s) personnel is/are on-site. The Inspector(s) will not be able to observe or report construction activities, or collect documentation, during the time they are not on-site.
  - c. The Consultant's monitoring of the construction contractor's activities is to ascertain whether or not they are performing the work in accordance with the Contract Documents; in case of noncompliance, Consultant will reject non-conforming work and pursue the other remedies in the interests of the Client, as detailed in the Contract Documents. The Consultant cannot guarantee the construction contractor's performance, and it is understood that Consultant shall assume no responsibility for proper construction means, methods, techniques, Project site safety, safety precautions or programs, or for the failure of any other entity to perform its work in accordance with laws, contracts, regulations, or Client's expectations.
  - d. Definitions and Roles. The use of the term "inspect" in relation to Consultant services is synonymous with "construction observation, and reference to the "Inspector" role is synonymous with "Field Representative," and means: performing on-site observations of the progress and quality of the Work and determining, in general, if the Work is being performed in conformance with the Contract Documents; and notifying the Client if Work does not conform to the Contract Documents or requires special inspection or testing. Where "Specialty Inspector" or "specialty inspection" is used, it refers to inspection by a Building Official or independent agent of the Building Official, or other licensed/certified inspector who provides a certified inspection report in accordance with an established standard.
  - e. Because of the prior use of the Project site, there is a possibility of the presence of toxic or hazardous materials. Consultant shall have no responsibility for the discovery, presence, handling, removal or disposal of toxic or hazardous materials, or for exposure of persons to toxic or hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB), or other toxic

substances. If the Consultant suspects the presence of hazardous materials, they will notify the Client immediately for resolution.

- f. Review of Shop Drawings, samples, and other submittals will be for general Quality Assurance conformance with the design concept and general compliance with the requirements of the contract for construction. Such review will not relieve the Contractor from its responsibility for performance in accordance with the contract for construction, nor is such review a guarantee that the work covered by the shop drawings, samples and submittals is free of errors, inconsistencies or omissions.
- g. Any opinions of probable construction cost provided by the Consultant will be on the basis of experience and professional judgment. However, since Consultant has no control over competitive bidding or market conditions, the Consultant cannot and does not warrant that bids or ultimate construction costs will not vary from these opinions of probable construction costs.
- h. Development of construction schedules and/or sequencing, and/or reviewing and commenting on contractor's schedules, is for the purpose of estimating number of days to complete a project, and for identifying potential schedule and coordination challenges and determining compliance with the construction contract. It is not a guarantee that a construction contractor will complete the Project in that sequence or timeline, as means and methods are the responsibility of the construction contractor.
- i. Consultant is not responsible for any costs, claims or judgments arising from or in any way connected with errors, omissions, conflicts or ambiguities in the Contract Documents prepared by others. The Consultant does not have responsibility for the professional quality or technical adequacy or accuracy of the design plans or specifications, nor for their timely completion by others.
- j. If Consultant provides Value Analysis or Value Engineering services, it is understood that any ideas, advice, or recommendations generated by the Consultant are made based only on the information presented to them, and need engineering analysis by the Designer to verify; Consultant is not responsible for the final design product.
- k. RCW 4.24.115 is applicable to Consultant's services provided under this Agreement.
- l. Services provided by the Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances, in the same geographical area and time period.
- m. Because data stored on electronic media can deteriorate undetected or can be modified without Consultant's knowledge, Client agrees that Consultant will not be held liable for the completeness, correctness, readability, or compatibility of any electronic media submitted to Client, after an acceptance period of 30 days after delivery of the electronic files.
- n. Consultant will not be liable for any damage to the field office premises or utilities provided by Client, unless caused by Consultant's own negligence.

## II. OPTIONAL SERVICES

All services not detailed above, are considered Optional Services, which, along with any other Extra Work requested by the Client, will be performed only when a mutually negotiated Supplement to this Agreement is executed, specifying scope of services and budget.

<b>Professional Services Agreement Amendment Number: 1</b>	Organization and Address: City of Oak Harbor 865 SE Barrington Drive Oak Harbor, WA 98239	
Original Agreement Title:	Phone: (360) 279-4500	
<b>WWTP Construction Management Services</b>	Execution Date 5/5/2015	Completion Date 6/1/2016
Project Number: Eng-15-02 (previously ENG-13-05)	New Maximum Amount Payable	
Project Title: City of Oak Harbor Wastewater Treatment Plant	\$805,500	
Description of Work: Provide construction management services for the Clean Water Facility.		

The Local Agency of City of Oak Harbor desires to supplement the agreement entered into with KBA, Inc. and executed on May 5, 2015 and identified as Professional Services Agreement with KBA, Inc.

All provisions in the basic agreement remain in effect except as expressly modified by this supplement

The changes to the agreement are described as follows:

SCOPE OF WORK is hereby changed to read:

See attached Scope of Work and Fee Estimate. Contract is amended to include the attached SRF Engineering Services insert.

TIME FOR BEGINNING AND COMPLETION IS AMENDED to read: Time of completion is 6/1/2016.

PAYMENT shall be amended as follows:

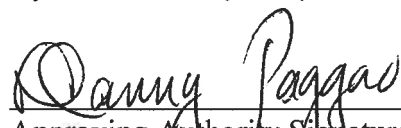
Amendment reflects the additional effort necessary for the Site Prep B GMP for the proposed wastewater treatment plant property. The maximum amount payable under the contract is changed from \$295,500 to \$805,500, an increase of \$510,000.

If you concur with this amendment and agree to the changes as stated above, please sign in the appropriate spaces and return to this office for final action.

By: Roger Smith, Principal, KBA, Inc.

  
\_\_\_\_\_  
Consultant Signature

By: Scott Dudley, Mayor

  
\_\_\_\_\_  
Approving Authority Signature

10/20/2015  
\_\_\_\_\_  
Date

**EXHIBIT A – SUPPLEMENT 1**  
**SCOPE OF SERVICES**  
**Construction Administration Consultant**  
**for**  
**Oak Harbor Clean Water Facility**  
**City Project No. ENG-15-02**

KBA, Inc., the Construction Administration Consultant (Consultant) will continue to provide Construction Administration services to the City of Oak Harbor (Client), for the Project known as the Oak Harbor Clean Water Facility. These services include consultation, contract administration, field observation, documentation, and material testing, as required during the construction of the Project.

Exhibit A – Supplement 1 – Scope of Services adds the following services: Site Prep A and Site Prep B services, observation of sheet and micro pile installations and soil stabilization with rock columns, assistance with grant funding and documentation, cost analysis and cost comparison, as well as scheduling verification.

The original Exhibit A - Scope of Services is still in effect, with the following revisions/additions:

**SECTION I**

1. With completion of Phase 1 - Preconstruction Services, Section I title is revised to include Phase 2 - General Services. Everything else in this section remains the same.
2. Section I.B services are complete.
3. With completion of Phase 1 - Outfall services, Section I.C and I.D titles are revised to include Phase 2 - General Services. Everything else in this section remains the same.
4. Section I.E.1.a is revised to include the following:
  - o Staffing levels for Phase II services are anticipated in accordance with the budget estimate for Phase II, and assumes staff shown will be on-site through the month of May 2016.

Everything else in Section I remains the same.





**Project Name:** Clean Water - Ph II CM Svcs  
 Client Project No.: ENG-15-02  
 KBA Project No.: 015011-02  
 Contract Type: Cost Plus Net Fee  
 Date Prepared: 10/6/2015  
 Prepared by: K. Adams  
 Salary Escalation: 4%

Determination of Hours	Month	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16	Apr-16	May-16
	Days/Mo	20	22	22	21	21	22	19	22	20	21	23	21	21
	Hr/Mo	160	176	176	168	168	176	152	176	160	168	184	168	168
	Extra Work	12%	12%	12%	12%	12%	11%	10%	4%	6%	8%	10%	11%	12%
	Adj Hr/Mo	179	197	197	188	188	195	167	183	170	181	202	186	188

**KBA Labor Hours**

**PHASE II Services**

Employee	Title	2015 Rate	2016 Rate	Total Hours	2015 Total	2016 Total	Schedule																
							WORK COMPLETE					PH I SERVICES					PH II SERVICES						
							Start-Up					Ph I Ends											
							May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16	Apr-16	May-16				
K. Adams	(M3) Project Manager	\$80.00	\$83.20	168	48	120							24	24	24	24	24	24					
Kris Betty	(M5) Principal Advisor	\$82.60	\$85.90	56	16	40							8	8	8	8	8	8					
Dan Williams	(E6) Resident Eng	\$57.68	\$60.00	1,176	328	848						152	176	160	168	184	168	168					
Chris Carille	(P4) Admin Specialist	\$32.50	\$33.80	1,176	328	848						152	176	160	168	184	168	168					
TBD	(E3) QA Inspector	\$45.00	\$46.80	1,024	176	848							176	160	168	184	168	168					
Michelle Leviant	(E4) Proj Controls Spec.	\$47.80	\$49.70	-	-	-																	
Chad Oxford	(E5) Sched/Cost Est	\$52.92	\$55.00	100	32	68						16	16	16	12	12	12	12					
Deborah Ottum	(M1) Contract Admin	\$48.00	\$49.90	14	4	10						2	2	2	2	2	2	2					
<b>Subtotal - KBA Labor Hours</b>													354	578	530	554	598	550	550				

**Direct Expenses**

Item	Total Costs	2015 Total	2016 Total	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16	Apr-16	May-16
Vehicle for QA Inspector @ \$54.90/day	\$ 7,027	1,208	5,819								1,208	1,098	1,153	1,263	1,153	1,153
Mileage @ IRS Mileage Rate of \$0.575/mile	\$ 1,642	469	1,173							235	235	235	235	235	235	235
Lodging @ \$65/night	\$ 910	260	650							130	130	130	130	130	130	130
Misc. Supplies, Equipment, Postage, Copies	\$ 49	14	35							7	7	7	7	7	7	7
<b>Subtotal - Direct Expenses</b>	<b>\$ 9,628</b>	<b>1,951</b>	<b>7,677</b>							372	1,579	1,470	1,525	1,634	1,525	1,525

**Subconsultant(s)**

Subconsultants	Total Costs	2015 Total	2016 Total	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16	Apr-16	May-16
Geotest Services, Inc. - Materials Testing (not to exceed amount)	\$ 10,000	2,858	7,142							1,430	1,428	1,428	1,428	1,428	1,428	1,430
5% mark-up on Subconsultant	\$ 500	143	357							72	71	71	71	71	71	72
<b>Subtotal - Subconsultant Costs</b>	<b>\$ 10,500</b>	<b>3,001</b>	<b>7,499</b>							1,502	1,499	1,499	1,499	1,499	1,499	1,502

**Combined Costs**

Employee	Title	2015 Rate	2016 Rate	Total DSC	2015 Total	2016 Total	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16	Apr-16	May-16
K. Adams	(M3) Project Manager	\$80.00	\$83.20	\$ 13,824	3,840	9,984							1,920	1,920	1,997	1,997	1,997	1,997	1,997
Kris Betty	(M5) Principal Advisor	\$82.60	\$85.90	\$ 4,758	1,322	3,436							661	661	687	687	687	687	687
Dan Williams	(E6) Resident Eng	\$57.68	\$60.00	\$ 69,799	18,919	50,880							8,767	10,152	9,600	10,080	11,040	10,080	10,080
Chris Carille	(P4) Admin Specialist	\$32.50	\$33.80	\$ 39,322	10,660	28,662							4,940	5,720	5,408	5,678	6,219	5,678	5,678
TBD	(E3) QA Inspector	\$45.00	\$46.80	\$ 47,606	7,920	39,686								7,920	7,488	7,862	8,611	7,862	7,862
Michelle Leviant	(E4) Proj Controls Spec.	\$47.80	\$49.70	\$ -	-	-								-	-	-	-	-	-
Chad Oxford	(E5) Sched/Cost Est	\$52.92	\$55.00	\$ 5,433	1,693	3,740							847	847	880	880	660	660	660
Deborah Ottum	(M1) Contract Admin	\$48.00	\$49.90	\$ 691	192	499							96	96	100	100	100	100	100
<b>Direct Salary Costs</b>				<b>\$ 181,434</b>	<b>44,546</b>	<b>136,888</b>							17,231	27,315	26,160	27,285	29,314	27,065	27,065
<b>Overhead @ 140.00%</b>				<b>\$ 254,007</b>	<b>62,365</b>	<b>191,643</b>							24,123	38,241	36,624	38,198	41,040	37,890	37,890
<b>Subtotal (DSC + OH)</b>				<b>\$ 435,441</b>	<b>106,911</b>	<b>328,531</b>							41,354	65,556	62,784	65,483	70,354	64,955	64,955
<b>Fee (on DSC only) @ 30.00%</b>				<b>\$ 54,430</b>	<b>13,364</b>	<b>41,066</b>							5,169	8,195	7,848	8,185	8,794	8,119	8,119
<b>Subtotal (DSC + OH + Fee)</b>				<b>\$ 489,871</b>	<b>120,274</b>	<b>369,597</b>							46,523	73,751	70,631	73,668	79,148	73,074	73,074
<b>Direct Expenses (No Mark-up)</b>				<b>\$ 9,628</b>	<b>1,951</b>	<b>7,677</b>							372	1,579	1,470	1,525	1,634	1,525	1,525
<b>Subconsultant(s) + Mark-up</b>				<b>\$ 10,500</b>	<b>3,001</b>	<b>7,499</b>							1,502	1,499	1,499	1,499	1,499	1,499	1,502
<b>Management Reserve - upon client approval only</b>				<b>\$ -</b>	<b>-</b>	<b>-</b>							-	-	-	-	-	-	-
<b>TOTAL ESTIMATED COSTS</b>				<b>\$ 510,000</b>	<b>125,226</b>	<b>384,774</b>							48,396	76,830	73,600	76,692	82,282	76,098	76,100

\* Displayed fields are rounded to the nearest dollar in Excel. Column/Row totals may be over/under by \$1 if checking whole number totals by hand.

\*\*October 2015 services is covered with original contract budget.

CONFIDENTIAL AND PROPRIETARY TO KBA, INC.



**WASHINGTON STATE DEPARTMENT OF ECOLOGY  
WATER POLLUTION CONTROL REVOLVING FUND**

**ENGINEERING SERVICES INSERT**

Revised 10/24/14

The following clauses will be incorporated into contracts for engineering services receiving financial assistance from the Washington State Department of Ecology Water Pollution Control Revolving Fund. In the event of conflict within the contract these clauses shall take precedence

**Compliance with State and Local Laws**

The engineering services provider (CONTRACTOR) shall assure compliance with all applicable federal, state, and local laws, requirements, and ordinances as they pertain to the design, implementation, and administration of the approved project.

**State Interest Exclusion**

Partial funding of this project is being provided through the Washington State Department of Ecology Water Pollution Control Revolving Fund. Neither the State of Washington nor any of its departments or employees are, or shall be, a party to this contract or any subcontract.

**Third Party Beneficiary**

Partial funding of this project is being provided through the Washington State Department of Ecology Water Pollution Control Revolving Fund. 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.

**Cost Basis of Contract**

No contract may be written for "cost-plus-a-percentage-of-cost" or "percentage of construction cost." The cost basis for this contract must be cost-reimbursement, unit price, fixed-price, time and materials, or any combination of these four methods.

**Funding Recognition**

Documents produced under this agreement shall inform the public that the project received financial assistance from the Washington State Water Pollution Control Revolving Fund. Washington State Department of Ecology's and the EPA's logos must be on all signs and documents. Logos will be provided as needed.

**Access to the work site and to records**

The CONTRACTOR shall provide for access to their records by Washington State Department of Ecology and Environmental Protection Agency (EPA) personnel.

The CONTRACTOR shall maintain accurate records and accounts to facilitate the Owner's audit requirements and shall ensure that all subcontractors maintain auditable records. These records shall be separate and distinct from the CONTRACTOR's other records and accounts.

All such records shall be available to the Owner and to Washington State Department of Ecology and EPA personnel for examination. All records pertinent to this project shall be retained by the CONTRACTOR for a period of three (3) years after the final audit.

### **Certification Regarding Suspension, Debarment, Ineligibility Or Voluntary Exclusion**

1. The CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The CONTRACTOR shall provide immediate written notice to the Washington State Department of Ecology if at any time the CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the Washington State Department of Ecology for assistance in obtaining a copy of the regulations.
4. The CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "Certification Regarding Suspension, Debarment, Ineligibility Or Voluntary Exclusion" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. The CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. The CONTRACTOR agrees to keep proof in its agreement file that it and all lower tier



recipients or contractors are not suspended or debarred and will make this proof available to the Washington State Department of Ecology upon request. The RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov/> and print a copy of completed searches to document proof of compliance.

This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

## **Disadvantaged Business Enterprises**

### **General Compliance (40 CFR Part 33).**

The CONTRACTOR shall comply with the requirements of the Environmental Protection Agency's Program for Participation By Disadvantaged Business Enterprises (DBE) 40 CFR Part 33.

### **Non-discrimination Provision (40CFR Appendix A to Part 33).**

The CONTRACTOR shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The CONTRACTOR shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the CONTRACTOR to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

### **Six Good Faith Efforts (40 CFR Part 33 Subpart C).**

The CONTRACTOR agrees to make the following good faith efforts whenever procuring subcontracts, equipment, services and supplies. The CONTRACTOR shall retain records documenting compliance with the following six good faith efforts.

1. Ensuring Disadvantaged Business Enterprises are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing Disadvantaged Business Enterprises on solicitation lists and soliciting them whenever they are potential sources. Qualified Women and Minority business enterprises may be found on the Internet at [www.omwbe.wa.gov](http://www.omwbe.wa.gov) or by contacting the Washington State Office of Minority and Women's Enterprises at (866) 208-1064.
2. Making information on forthcoming opportunities available to Disadvantaged Business Enterprises and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by Disadvantaged Business Enterprises in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of thirty (30) calendar days before the bid or proposal closing date.
3. Considering in the contracting process whether firms competing for large contracts could subcontract with Disadvantaged Business Enterprises. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by Disadvantaged Business Enterprises in the competitive process.
4. Encourage contracting with a consortium of Disadvantaged Business Enterprises when a

contract is too large for one of these firms to handle individually.

5. Using services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
6. If the prime contractor awards subcontracts, requiring the subcontractors to take the six good faith efforts in paragraphs 1 through 5 above.