

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

Bill No. C/A 4.e  
Date: January 5, 2016  
Subject: Perkins Coie, LLP Engagement  
Letter - Legal Counsel for the  
Clean Water Facility

**FROM: Cathy Rosen, Public Works Director**

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

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

**RECOMMENDED ACTION**

Authorize the Mayor to sign the engagement letter with Perkins and Coie LLP for legal counsel services related to equipment procurement for the Clean Water Facility.

**BACKGROUND / SUMMARY INFORMATION**

The purpose of this agenda bill is to seek City Council's approval for renewing legal services with Perkins and Coie LLP related to the Clean Water Facility.

On December 3, 2013, City Council adopted Resolution 13-32 directing staff to pursue the alternative project delivery method of General Contractor/Construction Manager (GC/CM) for delivery of the new wastewater treatment plant (WWTP).

In an effort to streamline the GC/CM contracting process, outside legal counsel specializing in GC/CM contracting was recommended.

On March 18, 2014, City Council authorized the Mayor to sign an engagement letter with Perkins and Coie LLP to provide initial legal assistance with drafting the GC/CM contract, assisting in the RFQ and RFP, and assisting in minor contracts and advice not to exceed \$30,000. On September 18, 2014 the Council approved additional services with Perkins and Coie LLP in the amount of \$20,000. On February 3, 2015 the Council approved additional services with Perkins and Coie LLP in the amount of \$50,000 bringing the total contracted amount to \$100,000.

Perkin and Coie LLP continues to provide legal services in relation to the project, but the contract has expired. Perkins and Coie LLP has \$44,841 remaining on the original amendment amounts. This contract amendment does not increase the contract amount, but allows for the Perkins and Coie LLP 2016 rates.

The attached engagement letter is for review of the procurement documents largely related to the

procurement Guaranteed Maximum Prices periodically presented to Council. Perkins and Coie LLP will be reviewing the procurement plan and documents against, Oak Harbor Municipal Code, Revised Code of Washington, Washington Administrative Code and Federal procurement regulations related to our Clean Water State Revolving Fund.

Staff will be returning to City Council at a later date if Perkins and Coie LLP's contract to include amendments to the Guaranteed Maximum Price (GMPs) and legal support during construction exceed the contract amount.

## **LEGAL AUTHORITY**

## **FISCAL IMPACT**

### **PREVIOUS COUNCIL / BOARD / CITIZEN INPUT**

March 18, 2014 - City Council authorized the Mayor to sign an engagement letter with Perkins and Coie LLP to provide initial legal assistance with drafting the GC/CM contract, assisting in the RFQ and RFP, and assisting in minor contracts and advice not to exceed \$30,000.

September 18, 2014 - City Council approved additional services with Perkins and Coie LLP in the amount of \$20,000, raising the total contracted amount to \$80,000.

February 4, 2015 - City Council approved additional services with Perkins and Coie LLP in the amount of \$50,000, raising the total contracted amount to \$100,000.

## **ATTACHMENTS**

1. [Perkins and Coie LLP Engagement Letter](#)
2. [DOE Terms and Conditions](#)

December 28, 2015

Graehm C. Wallace  
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D. +1.206.359.3921  
F. +1.206.359.4921

**VIA E-MAIL**

Mr. Joe Stowell  
Ms. Nikki Esparza  
City of Oak Harbor  
865 SE Barrington Drive  
Oak Harbor, WA 98277

**Re: Legal Representation**

Dear Joe and Nikki:

Thank you for selecting Perkins Coie LLP to represent City of Oak Harbor in connection with construction-related advice for the water treatment plant project for the years 2016 and 2017.

The principal factors in determining our fees will be the time and effort devoted to the matter and the hourly rates of the lawyers and paralegals involved. Dick Prentke and I will have primary oversight for Perkins Coie’s representation of City of Oak Harbor, but we assign other firm lawyers and paralegals when necessary, beneficial or cost-effective and when desirable to meet the time constraints of the matter.

We have agreed to provide you with a discount of approximately 15% from our regular rates. The current hourly rates of the partners most likely to work on these matters are:

<u>Name</u>	<u>2016 Regular Rate</u>	<u>Discounted Rate</u>
Dick Prentke	\$630	\$535
Graehm Wallace	\$565	\$480
Brendan Peters	\$525	\$445
Andrew Greene	\$525	\$445
Scott Siekawitch	\$350	\$295

These rates are adjusted at least annually, usually on January 1. Services performed starting in January 2017 will be charged at the new applicable rates.

Inclusive of this current and the previous three engagement letters, we have agreed that our fees will not exceed \$100,000 without prior agreement by the City of Oak Harbor. As of the December 15, 2015 invoice, our fees over the life of this engagement have totaled \$55,159, leaving \$44,841 of this \$100,000 remaining. This is not an agreement to cap all fees at \$100,000

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as neither party yet knows the extent that our services will be requested, but simply an agreement to not bill any amount above \$100,000 without first obtaining the City's agreement. If we are nearing this \$100,000 fee amount, we will provide you with sufficient advance email notice so that you can seek permission from the City Council to determine if the City is willing to increase this \$100,000 amount and to continue using our services.

The magnitude of costs will depend in large part on the extent to which you seek our involvement. We try to issue invoices for our fees and disbursements on a monthly basis. These invoices include detail that most of our clients find sufficient, but please let me know at any time if more detailed information is needed on our invoices. Please also refer to the enclosed Information for Clients for specifics regarding fees, disbursements, billing, payment, and termination of our representation should payment not be made or other circumstances warrant.

Our representation of the City does not include acting as counsel for any entity in which the City holds equity or any subsidiary, affiliate, equity-holder, employee, family member or other person (collectively, "Affiliates"), unless such additional representation is separately and clearly undertaken by us. If in the future we and the City mutually agree to expand our representation of the City to include any of the City's Affiliates, it is agreed that the terms, conditions and consents contained herein will apply to such representation(s).

Perkins Coie represents many other companies, individuals and government agencies ("clients"). During the time we are representing the City we may be asked to represent:

- (1) other present or future clients in transactions, litigation or other disputes directly adverse to the City that are not substantially related to our representation of the City; and/or
- (2) parties who are considered directly adverse parties in matters we handle for the City. Our work for these directly adverse parties would be in matters that are not substantially related to our work for the City; and/or
- (3) the City in future transactions, litigation or other disputes directly adverse to other firm clients in matters not substantially related to our work for the other firm clients.

We request the City's consent to allow Perkins Coie to undertake such future representations without the need to obtain any further or separate approval from the City, as long as those representations described in (1) and (2) above are not substantially related to work Perkins Coie has done, or is doing, for the City. Your signature below constitutes the City's consent to such representation(s). We agree not to use any proprietary or other confidential nonpublic information concerning the City acquired by us as a result of our representation of the City in

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connection with any litigation or other matter in which we represent a party directly adverse to the City.

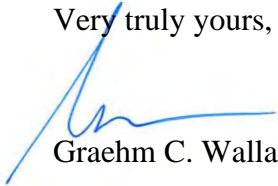
During our representation of the City, there may from time to time be issues that raise questions as to our duties under the rules of professional conduct that apply to lawyers. These might include, e.g., conflict of interest issues, and could even include issues raised because of a dispute between us and a client over the handling of a matter. Under normal circumstances when such issues arise we would seek the advice of our Professional Standards Counsel, Loss Prevention partners or Professional Standards Conflicts Attorneys who are experts in such matters. Historically, we have considered such consultations to be attorney-client privileged conversations between firm personnel and the counsel for the firm. In recent years, however, there have been judicial decisions indicating that under some circumstances such conversations involve a conflict of interest between the client and Perkins Coie and that our consultation with Perkins Coie's counsel may not be privileged, unless we either withdraw from the representation of the client or obtain the client's consent to consult with Perkins Coie's counsel.

We believe that it is in our clients' interests, as well as Perkins Coie's interest, that in the event legal ethics or related issues arise during a representation, we receive expert analysis of our obligations. Accordingly, as part of our agreement concerning our representation of the City, you agree that if we determine in our own discretion during the course of the representation that it is either necessary or appropriate to consult with our firm counsel (either Perkins Coie's internal counsel or, if we choose, outside counsel) we have your consent to do so and that our representation of you shall not, thereby, waive any attorney-client privilege that Perkins Coie may have to protect the confidentiality of our communications with counsel. The costs associated with such legal counsel will be paid by Perkins Coie.

This letter, along with the enclosed Information for Clients, confirms the terms and conditions under which Perkins Coie LLP will provide legal services to the City. Unless otherwise agreed in writing, the terms of this letter and the enclosed Information for Clients will also apply to any additional matters that we undertake at the City's request. If you agree that this letter correctly describes the terms of our engagement, please sign and date a copy of this letter and return it to me. Should you have any questions about this letter, our services or fees, or if you have any other concerns, please call me at any time. We look forward to working with you and are gratified by your confidence in Perkins Coie.

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Very truly yours,



Graehm C. Wallace

GCW:kjs

Enclosure: Information for Clients

ACCEPTED AND AGREED:

CITY OF OAK HARBOR

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

Its: \_\_\_\_\_

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

## Information for Clients

Perkins Coie LLP is pleased to serve you. The following information explains the terms that apply to our engagements (except to the extent that you have reached a different written understanding with us about particular terms) for legal services provided by Perkins Coie LLP. No changes or additions to these terms will be binding unless confirmed in writing sent by us or signed by us. We encourage you to discuss this information with our lawyers at the inception of a matter and whenever you have questions during the course of that matter. Section headings are for convenience of reference only and not intended to affect the interpretation of the provisions of such sections.

**Personnel.** We generally assign one lawyer primary responsibility for seeing that your requests for legal services are met, but additional lawyers may assist in rendering the most appropriate and efficient legal services. We attempt to assign personnel to each matter based on the nature and scope of the issues raised by the matter and our lawyers' experience and expertise.

**Basis for Fees.** We charge for legal services rendered by our firm at applicable hourly rates. Each attorney, paralegal, and other timekeeper records time at assigned billing rates. Because hourly rates vary among personnel, each statement typically reflects a composite of several hourly rates. Those rates are reviewed periodically and change at least annually (usually on January 1) based on economic factors and the changing experience levels of our personnel. Services performed after the effective date of the new rates will be charged at the new rates.

**Disbursements and Other Charges.** In the course of performing legal services for you, various services may be provided by third parties. Examples include messenger and courier charges, filing and recording fees, foreign agent fees, court reporters and transcript costs, expert and other witness fees, charges for outside consultants and research services, and travel expenses. You are responsible for these third-party charges, and we reserve the right to forward their invoices directly to you for payment. For administrative ease, however, we may advance payment to the third-party provider and include the charge on our invoice to you, with no markup for handling. We will retain and not allocate to clients relatively insignificant discounts we receive for prompt payment or volume usage. For patent, trademark and other matters that may involve significant third-party payments, you may be required to maintain a minimum balance in a trust account to fund such payments. You will be advised of any such requirements, and we will not be obligated to request or pay for third-party services not fully covered by such deposits.

We will also charge you for certain internal services we provide in connection with our legal services. As noted below, because we both invest in specialized equipment and commit to long-term contracts with computer research vendors (such as Westlaw), long-distance telephone carriers, and others, we achieve savings in exchange for guaranteed payment, usage or other obligations undertaken at our risk. This allows us to charge our clients for certain computer research services and most long-distance telephone calls at rates discounted below standard rates. However, the payments we receive from clients for these services may exceed our total payments to the vendors. This excess is used to partially offset the costs we incur for related equipment and personnel and the risks we assume in entering into these contracts.

We currently charge specific internal costs in the following manner:

- 1. Photocopying, Printing, and Facsimile.** In our U.S. offices, clients are charged ten cents per page for photocopying. These charges are higher in our non-U.S. offices. We do not charge for facsimiles sent or received.
- 2. Computer Research.** There is no extra charge to clients for our use of the firm's internal work product retrieval system. Clients are charged for computer-assisted research from outside services, other than many Westlaw Services, at the vendors' standard rates. For many services from Westlaw, our primary outside computer-research source, we are able to charge clients just 37% of Westlaw's standard rates as of 2012 because we committed to a long-term contract with monthly minimum payments. We may occasionally be able to pass along other discounted rates for computer-assisted research from outside sources when we can negotiate volume discounts.

**3. Telecommunications.** We do not charge for local calls or for any email communications. In the United States, where we have been able to install special equipment and negotiate volume discounts, we share our savings with clients by charging long-distance calls at 50% of the AT&T tariff for direct-dial long-distance calls, plus applicable taxes. In our non-U.S. offices, long-distance calls are charged at the carrier's tariff for such calls, plus applicable taxes. Credit card and cell phone calls necessitated by work on your matters are charged at our actual cost.

**4. Mail/Messengers.** In our larger offices, we may use firm messengers whenever appropriate to shorten delivery times and offer greater flexibility. Charges for such internal messengers are equal to or below rates charged by outside messengers for similar services. We do not charge for regular mail. Bulk mailings, packages, overnight deliveries, and special postal services are charged at our actual cost.

**5. Overtime.** Clients are charged for staff overtime, meals, and transportation only when (a) the client specifically requests after-hours effort or (b) the nature of the work necessitates overtime and such work could not have been done during normal work hours.

**6. Document Services and Database Hosting.** Certain matters, particularly large-scale litigation, may require optical character recognition ("OCR") services. We currently charge 5 cents per page for OCR. Clients may also require hosting and support of discovery databases. We currently charge \$10/GB per month to host discovery databases on internal firm servers.

**Invoices and Payment.** We typically bill monthly, and payment is due upon receipt of the invoice. Payment of an invoice will reflect your agreement to the amount charged on that invoice, and you must bring any misbilling or other charge that you believe is inappropriate to our attention within 45 days of presentation of the invoice. To the fullest extent permitted by law, you agree that we have an attorneys' lien (including, without limitation, in the results of our services) to secure payment of the obligations owed us and that we may take steps to inform others of any attorneys' lien rights we might have. For accounts not paid within 30 days of the invoice date, we add a late payment charge of 1% per month (or such lower rate as required by applicable law) on unpaid balances from the invoice date. Unless otherwise agreed upon, we may apply payments first to our own attorneys' fees and costs of collection, second to our late charges, third to our invoiced fees, and finally to our invoiced disbursement charges. Our election not to exercise any rights or not to require punctual performance of each provision of this agreement will not be construed as a waiver or relinquishment of our rights. We do not and cannot guarantee the outcome of any matter or particular results, and payment of our fees and disbursements is not conditioned on any particular outcome. If we are required to bring an action or proceeding to collect fees or disbursements due us, we will also be entitled to recover certain fees and costs. These include, but are not limited to, our own outside attorneys' fees, expert witness fees, other costs of collection billed to us, and the value of legal services Perkins Coie's own attorneys perform in analyzing or prosecuting a collection action if such circumstances arise on your account. You consent to venue and jurisdiction wherever we have an office with attorneys who worked on your behalf. Also, if we are required to testify, produce documents, or respond to other requests in connection with litigation or other proceedings commenced by third parties that relate to our representation of you, you will pay us our reasonable fees and costs incurred in connection with such activities. For matters handled by our New York lawyers, the client may have a right to arbitrate fee disputes under Part 137 of the Rules of the Chief Administrator of the New York Supreme Court, Appellate Division.

**Insurance Coverage.** You may have insurance policies relating to a matter for which you engage us that might cover, among other things, reimbursement of attorneys' fees and costs. If coverage is potentially available, including coverage for our fees and costs, your appropriate insurance company must be notified as soon as possible. We can advise you on the availability of insurance coverage only if you expressly and timely request that we do so, we do not have a conflict of interest, and we agree to undertake such additional work. You would then need to furnish us copies of all relevant insurance policies and related documents. Regardless whether, when, and to what the extent insurance coverage might be available to reimburse all or a portion of our fees and costs, you nevertheless remain primarily obligated for amounts owed us, including any late charges that accrue during any delay in payment by others.

**Advance Payments and Estimates.** We may require advance payments before working or continuing work on a matter. Of course, the amount of work we are called upon to perform may subsequently exceed our prior



expectations. Regardless of whether you make an advance payment, you agree that any budget, estimate, or similar range for potential charges is nothing more than a forecast based on then-current assumptions, and any such forecast may be high or low due to changed or unforeseen circumstances. We reserve the right, as a condition of providing additional services, to require an increase in any advance payment.

**Legal Service Provider.** We provide strictly legal services to you in connection with this agreement. You are not relying on us for any services other than legal services, and we are specifically not providing any business, investment, insurance, or accounting advice or any investigation of the character or credit of persons with whom you may be dealing.

**Identity of Client.** You confirm that we are being engaged by you and not any of your subsidiaries, affiliates, equityholders, employees, members of your family, or other persons (collectively, "Affiliates"), unless we separately and explicitly undertake such representation. You also expressly confirm that, as our representation is limited to you and does not include acting as counsel for your Affiliates, we may represent other clients adverse to your Affiliates without disclosing those matters to you or obtaining your consent. If in the future we agreed to expand our representation of you to include one or more of your Affiliates, you, and Affiliate(s), agree that the terms, conditions and consents contained in our engagement letter with you will apply to such representation(s).

**Conflicts of Interest.** We have performed a search of our other clients to determine whether representing you might create a potential conflict of interest with any other clients. That check was done using your name and any other names you gave us. Please inform us immediately if you use other names or have affiliated companies that we should enter into our conflicts system.

**Cooperation/Reliance on Accurate Information.** To enable us to represent you effectively, you will cooperate fully with us in your matter(s). You and your agents will fully and accurately disclose to us all facts and documents that may be relevant to a matter we undertake or which we may otherwise request. This information will form the basis of our legal advice.

**Email Communication Disclaimer.** Many of our legal professionals receive hundreds of email messages per day (in addition to spam). Although email is an efficient method for many communications, it can also be delayed in transit or otherwise missed (e.g., blocked by our anti-spam software). If you have not received a response or acknowledgement of receipt of an email, please notify the intended recipient.

**Termination of Services.** We retain the right to cease performing legal services and to terminate our legal representation for any reason consistent with ethical rules, including conflicts of interest or your failure to pay our legal fees and expenses when due. Our representation in any matter will also cease on completion of our work on that matter unless you ask us to perform additional work that we agree to undertake. Performing additional services for you on the same or any other matter is subject to these terms and conditions, our mutual concurrence and clearance of conflicts, if any. We are unable to assure you that matters for other clients will not conflict us out of additional matters you might later ask us to undertake. On completion of a matter, we may close our files and, absent a specific written undertaking to do so, will not thereafter be obligated to docket milestones, make additional or continuation filings, pursue appeals, take other steps on your behalf on the matter, or monitor or advise you with respect to changes in the law or circumstances that might bear upon or adversely affect the completed matter. If you wish to have us return material from your files after the conclusion of a particular matter, we will provide you such material at your request and expense. Some of our practice groups consider our electronic records to be the official client file. Thus, requests for copies of client files may be provided in electronic form only. We will have no obligation to retain client files more than one year after the conclusion of a particular matter or our representation. Our representation of you will be deemed concluded at the time that we have rendered our final bill for services on the matter described in our engagement letter or any such additional matters that are clearly undertaken by us. Whether we will undertake any further matters and form an attorney-client relationship again will depend upon your request, our performance of a conflicts check and our expression to you of our willingness to accept any further matters.

**Alliances/Other Counsel.** Many of our clients also have international or other legal needs we cannot fulfill. This causes us from time to time to establish ongoing working relationships or strategic alliances with law firms in other jurisdictions. While our close relationships with our legal colleagues at these firms have helped us provide

coordinated representation for many of our clients, these firms (and other firms we may recommend to our clients) are separate from and independent of Perkins Coie. We do not share personnel or fees, do not have common operations beyond occasional joint seminars and presentations, and must check any other firm's conflicts of interest before that firm's lawyers may jointly represent any of our clients. Under rules in certain jurisdictions where we practice, we must advise you that you may consult independent counsel to advise you regarding these documents governing our relationship, and we encourage you to do so if you like. Also, you retain the right to consult with independent counsel at any time while we represent you. However, we are not responsible for any advice an independent counsel may give you, and such consultation will be entirely at your expense.

**Questions.** We endeavor to deliver legal services effectively and efficiently and to render accurate and understandable billings. Please direct any questions about services or billing practices to your client service lawyer. Questions regarding the billing or payment status of your account may also be directed to the Client Accounting Department in our Seattle office at 1-800-261-3143 (206-359-3143 in the Seattle area).



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**

*6cw* ~~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.