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

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:  

Scott Dudley, Mayor  
Larry Cort, City Administrator  
Doug Merriman, Finance Director  
Nikki Esparza, City Attorney, as to form  

PURPOSE  
The purpose of this agenda bill is to seek City Council approval of Professional Services Agreement Amendment No. 2 with Equinox Research and Consulting International (ERCI) for Archaeological Services related to the new Wastewater Treatment Plant.  

FISCAL IMPACT DESCRIPTION  
Funds Required: $21,660.50  
Appropriation Source: Wastewater Fund  

SUMMARY STATEMENT  
The City is actively pursuing the replacement of two aging wastewater treatment plants with a new membrane bioreactor facility in the Windjammer Vicinity.  

On May 7, 2013, City Council approved a contract with Equinox Research and Consulting International (ERCI) to provide archaeological services related to the siting of the new treatment plant in the Windjammer Vicinity. ERCI successfully completed that work which provided the City with enough information to suggest the Whidbey Island Bank property was worth pursuing over other properties in the Windjammer Vicinity.  

On December 17, 2013, City Council authorized Amendment No 1 to the contract with ERCI. This was a substantial amendment that resulted in a detailed cultural resources survey of the Whidbey Island Bank property and the areas surrounding the existing wastewater treatment plant. Results from this cultural resource survey were used to help the City determine the proposed site layout for the new plant which was approved by City Council through Resolution 14-28 on August 6, 2014.  

Resolution 14-28 also provided our design team with the direction they needed to move forward with design and permitting. ERCI is a critical part of that permitting process. The attached amendment to ERCI’s contract provides the necessary funds and scope for their support preparing and submitting the cultural resources portion of the permit.
The permit conditions will likely include monitoring and reporting requirements during construction. Once those requirements have been identified, staff will return to City Council for an amendment to ERCI’s contract to provide services during construction.

ERCI’s proposed scope of services for the permitting process is as follows –

- Prepare for and participate in project planning/orientation meetings with the City of Oak Harbor and the Department of Ecology, and individual meetings with affected federally recognized Tribes.
- The Final Section 106 documents for the Department of Ecology may include:
  - Unanticipated Discoveries Protocol
  - Monitoring Plan with contingencies for unexpected deposits
  - Memorandum of Agreement should Historic Properties be affected by the project
  - Background research on project and study area
  - Field and lab methods delineation and standards for field work at all sites
  - Analysis and reporting standards and deliverables, including schedules for evaluative points for each step of project implementation
  - Correspondence related to curation of documents and reburial of recovered objects

**CITY COUNCIL WORKSHOP**
This item has not been discussed at a City Council Workshop.

**CITY COUNCIL PREVIOUS ACTIONS**
*December 17, 2013* – City Council authorized the Mayor to sign Amendment No. 1 to the Professional Services Agreement with Equinox Research Consulting International for Archaeological Services related to the new wastewater treatment plant in the amount of $198,520 increasing the total contract amount from $16,332.98 to $214,852.98.

*May 7, 2013* – City Council authorized the Mayor to sign a Professional Services Agreement with Equinox Research Consulting International for Archaeological Services related to the new wastewater treatment plant in the amount of $14,332.98 and a management reserve of $2,000.00.

**RECOMMENDED ACTION**
Authorize the Mayor to sign Amendment No. 2 to the Professional Services Agreement with Equinox Research Consulting International for Archaeological Services related to the new wastewater treatment plant in the amount of $214,660.50 increasing the total contract amount from $214,852.98 to $236,513.48.

**ATTACHMENTS**
- Draft Amendment Number 2
- Amendment Number 1 – December 17, 2013
- Professional Services Agreement - May 7, 2013
Professional Services Agreement

Amendment Number 2

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<tr>
<td>City of Oak Harbor</td>
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<td>865 SE Barrington Drive</td>
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<td>Oak Harbor, WA 98239</td>
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<table>
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<th>Original Agreement Title:</th>
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<td>WWTP Archaeological Services</td>
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<th>Execution Date</th>
<th>Completion Date (Prior)</th>
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<td>ENG-13-05</td>
<td>5/7/2013</td>
<td>12/31/2014</td>
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<th>Project Title</th>
<th>New Maximum Amount Payable</th>
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<tbody>
<tr>
<td>City of Oak Harbor Wastewater Treatment Plant</td>
<td>$236,513.48</td>
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<table>
<thead>
<tr>
<th>Description of Work</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide archaeological services related to the new wastewater treatment plant.</td>
</tr>
</tbody>
</table>

The City of Oak Harbor desires to supplement the agreement entered into with Equinox Research and Consulting International and executed on 5/7/2013 and identified as Professional Services Agreement with Equinox Research and Consulting International.

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 amended to add the following:

See attached scope of work and fee.

**SCOPE OF WORK** is hereby changed and supplemented with the following:

NO CHANGE.
PROJECT COMPLETION DATE AMENDED TO: December 31, 2015

PAYMENT shall be amended as follows:
Amendment reflects the additional effort necessary to assist in the permitting process for the proposed wastewater treatment plant property. The maximum amount payable under the contract is increased by $21,660.50, from $214,852.98 to $236,513.48.

Payment shall be made in accordance with the terms and conditions described in the original contract.

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: ____________________________  By: ____________________________

Consultant Signature  Approving Authority Signature

Date
September 26, 2014

Joe Stowell, City Engineer
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

Re: Scope and Budget for Planning and Permitting Process for the WWTP Phase II, Oak Harbor, Washington

Dear Mr. Stowell:

Thank you for considering Equinox Research and Consulting International Inc. (ERCI) for your cultural resource management needs. ERCI provides a full service cultural resource management program and we look forward to providing you timely and professional fieldwork and reporting.

Section 106 of the National Historic Preservation Act (NHPA), SEPA, Executive Order 05-05 and a number of state RCW regulations require agencies to consider the effects of their actions on historic properties and to consult with others in carrying out historic preservation activities. In providing cultural resource management services for clients, Equinox Research and Consulting International Inc. (ERCI) works in accordance with all applicable laws and regulations.

We understand that the State Department of Ecology is the Lead Agency for Cultural Resources and that your funding is in part coming through the EPA. We expect that permitting documents may include a Monitoring Plan, Unanticipated Discoveries Protocol, Memorandum of Agreement or other plans.

- Prepare for and participate in project planning/orientation meetings with the City of Oak Harbor and the Department of Ecology, and individual meetings with affected federally recognized Tribes.
- The Final Section 106 documents for the Department of Ecology may include:
  o Unanticipated Discoveries Protocol
  o Monitoring Plan with contingencies for unexpected deposits
  o Memorandum of Agreement should Historic Properties be affected by your project.
background research on project and study area
field and lab methods delineation and standards for field work at all sites
Analysis and reporting standards and deliverables, including schedules for evaluative points for each step of project implementation.
Correspondence related to curation of documents and reburial of recovered objects.

Qualifications:

- 13 years experience working in Western Washington.
- Principal investigator and 4 senior archaeologists meet the Secretary of Interior’s professional qualification standards for archaeology
- Expertise on prehistoric and historic archaeology of Western Washington
- Experience in State Laws, SEPA and permitting, Executive Order 05-05, NHPA Section 106 work and meshing with NEPA.
- Positive working relationship with federally recognized Tribes who are consulting parties on this project.
- Experience in processes that balance competing resource needs
- Strong record of completing work on time within budget

The following budget covers all costs associated with the consultation, correspondence, and research and writing of the archaeological permit application required to complete the planning process for the WWTP Phase II.

The following costs are not included in this estimate:

- None of the field work, reporting or public outreach is included in this estimate. This is a stand alone budget just for the archaeological permitting.

The team at ERCI is comprised of individuals with strong personal research specialties who pride themselves on efficiency, performance and integrity. We provide the highest quality product in a timely fashion. Please check out our web site for additional details; www.equinoxerci.com.

Thank you for the opportunity to provide excellent heritage planning services for this recovery work and we look forward to working with you.

Regards,

Kelly R. Bush
Equinox Research and Consulting International Inc. (ERCI)
<table>
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<tr>
<th>Description</th>
<th>Units</th>
<th>Rate/HR</th>
<th>Sub Total</th>
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<td>Project Orientation and planning; logistical planning and methods; meetings for/with The City of Oak Harbor.</td>
<td>30.00</td>
<td>143.75</td>
<td>4,312.50</td>
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<td>Archival background research for permit: Previous Archaeology, History, Geomorphology</td>
<td>6.00</td>
<td>97.75</td>
<td>586.50</td>
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<td>Consultation with affected Tribes regarding methods and other permit issues.</td>
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<td>Consultation with Agencies regarding permit including methods.</td>
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<td>3,450.00</td>
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<td>Document control for eventual curation, transcriptions of field and meeting notes, photo logs, site forms for outliers for permit application.</td>
<td>16.00</td>
<td>63.25</td>
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<td>Document Editing and Formal Review</td>
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<td>Writing of Agreement Documents and associated correspondence</td>
<td>40.00</td>
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<td>Travel (travel to Oak Harbor and tribal offices)</td>
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<td>34.50</td>
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<td><strong>SUB TOTAL</strong></td>
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<td><strong>GRAND TOTAL</strong></td>
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<td></td>
<td><strong>21,660.50</strong></td>
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**Professional Services Agreement**  
**Amendment Number 1**

| Organization and Address | City of Oak Harbor  
|--------------------------|---------------------  
| WWTP Archaeological Services  
| Phone: 360-279-4539  
| Project Number: ENG-13-05  
| Execution Date 5/7/2013  
| Completion Date (Prior) 12/31/2013  
| Project Title City of Oak Harbor Wastewater Treatment Plant  
| New Maximum Amount Payable $214,852.98  
| Description of Work  
| Provide archaeological services related to the new wastewater treatment plant.  

The City of Oak Harbor desires to supplement the agreement entered into with Equinox Research and Consulting International and executed on 5/7/2013 and identified as Professional Services Agreement with Equinox Research and Consulting International.

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 amended to add the following:  
See attached scope of work and fee.

**SCOPE OF WORK** is hereby changed and supplemented with the following:  
NO CHANGE.
PROJECT COMPLETION DATE AMENDED TO: December 31, 2014

PAYMENT shall be amended as follows:
Amendment reflects the additional effort necessary to perform due diligence on the proposed wastewater treatment plant property. The maximum amount payable under the contract is increased by $198,520.00, from $16,332,98 to $214,852.98, as outlined in the attached scope of work.

Payment shall be made in accordance with the terms and conditions described in the original contract.

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: [Signature]
Consultant Signature

By: [Signature]
Approving Authority Signature

[Date]

Amendment No. 1 12/30/13 Page 2 of 2
November 21, 2013

Joe Stowell, City Engineer  
City of Oak Harbor Public Works  
1400 NE 16th Avenue  
Oak Harbor, WA 98277

Re: Intensive Field Survey for the Wastewater Treatment Plant Facilities, Oak Harbor, Washington

Dear Mr. Stowell:

Thank you for considering Equinox Research and Consulting International Inc. (ERC I) for your cultural resource management needs. ERCI provides a full service cultural resource management program and we look forward to providing you timely and professional fieldwork and reporting.

Section 106 of the National Historic Preservation Act (NHPA), SEPA and Executive Order 05-05 requires agencies to consider the effects of their actions on historic properties and to consult with others in carrying out historic preservation activities. The State of Washington also has a series of RCWs and associated WACs concerning cultural resources that we are guided by. In providing cultural resource management services for clients, Equinox Research and Consulting International Inc. (ERC I) works in accordance with all applicable laws and regulations.

This project currently has no Federal nexus and so we expect that we will require a permit from the State Department of Archaeology and Historic Preservation to carry out this survey work as we expect to encounter disturbed shell midden deposits and we may encounter intact shell midden deposits and will want to test and evaluate these deposits.

This scope doesn’t include safety fencing and we believe that during the testing in Windjammer Park that will be a significant issue. Although, fewer people use the park in winter it is still difficult to keep people back from our testing trenches. We hope the City will provide some assistance with this challenge.

We are providing this scope and budget for approximately 2000 feet of machine testing and approximately 75 shovel test holes in the attached APE. We understand that you are in the buy/sell phase of land acquisition and that this is the final site selection for the new WWTP facility. The data we collect during this intensive testing will be used as the identification and evaluation phase of the project for cultural resources. Should any cultural material be encountered, our permit application would allow us to test and evaluate that material and collect data useful in adding to a mitigation data recovery plan and to evaluate and cultural resources for eligibility to the National Register.

The Scope activities include:

- Write a permit application for the Washington State DAHP
- Carry out machine testing with approximately 2000 feet of machine testing as per the attached map.
- Carry out supplementary shovel testing up to 75 shovel test holes.
• Provide a preliminary analysis of all historic and pre-contact artifacts and prepare them for curation at the Burke Museum. This includes up to 5 boxes of artifacts including any faunal remains.
• Provide report to state and federal standards
• Provide a backhoe and operator for the machine trenching

Assumptions:
• Human remains will be encountered only once during the testing program.
• Only 5 boxes of artifacts and faunal material will be encountered during the testing.
• No additional plans or protocols are included in this scope. Should we need to file an amended permit for additional data recovery that would be outside this scope.
• Costs associated will completing an HPIF (historic property inventory form) for the existing facilities is outside this scope.

Qualifications:
• Experience working in Puget Sound and on projects associated with public works systems and infrastructure.
• Principal investigator meets the Secretary of Interior’s professional qualification standards for archaeology.
• Expertise on prehistoric and historic archaeology of Western Washington.
• Experience in Executive Order 05-05 and NHPA Section 106 work and in working with additional state laws related to historic preservation and human remains.
• Positive working relationship with federally recognized Tribes in and adjacent to the project area and experience in tribal consultation.
• Experience in processes that balance competing resource needs.
• Strong record of completing work on time within budget.

We expect the field work to take approximately 5 weeks from start to finish. We will need 3 days to set up the testing area. Then we will have a full crew for 20 days and then a smaller crew for an additional 5 days that includes final mapping and clean up. We will not be working weekends unless weather becomes the critical success/failure element and we have windows of clear weather that allows us to proceed. Based on our experience last year – weather is a critical player in visibility and will certainly be an issue for this more precise work.

The team at ERCI is comprised of individuals with strong personal research specialties who pride themselves on efficiency, performance and integrity. We provide the highest quality product in a timely fashion. Please check out our web site for additional details www.equinoxerci.com.

Thank you for the opportunity to provide excellent heritage planning services for the City of Oak Harbor.

Regards,

Kelly R. Bush
Equinox Research and Consulting International Inc. (ERCI)
Figure 1: Proposed/approximate testing trench locations in yellow.
<table>
<thead>
<tr>
<th>Description</th>
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<td>Historic, geoarch and archival background research</td>
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<td>Coordinate with governments of affected Tribes.</td>
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<td>Determine Eligibility of identified historic properties for listing in the National Register of Historic Places.</td>
<td>2.00</td>
<td>143.75</td>
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<td>Consider the effects of Project alternatives on all cultural resources and provide recommendations about how to avoid, minimize, or mitigate the adverse effect.</td>
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PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, is made and entered into in duplicate this 17th day of May, 2013, by and between the CITY OF OAK HARBOR, a Washington municipal corporation, hereinafter referred to as the "CITY" and Equinox Research and Consulting International, hereinafter referred to as the "SERVICE PROVIDER".

WHEREAS, the CITY desires to have certain services and/or tasks performed as set forth below requiring specialized skills and other supportive capabilities; and

WHEREAS, sufficient CITY resources are not available to provide such services; and

WHEREAS, the SERVICE PROVIDER represents the SERVICE PROVIDER is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, where required, to perform the services and/or tasks set forth in this Agreement.

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

1. Scope of Services.

The SERVICE PROVIDER shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as SERVICE PROVIDER responsibilities throughout this Agreement and as detailed in Exhibit "A" attached hereto and incorporated herein (the "Project").

2. Term.

The Project shall begin on May 7, 2013, and shall be completed no later than December 31, 2013, unless sooner terminated according to the provisions herein.

3. Compensation and Method of Payment.

3.1 Payments for services provided hereunder shall be made following the performance of such services, unless otherwise permitted by law and approved in writing by the CITY.

3.2 No payment shall be made for any service rendered by the SERVICE PROVIDER except for services identified and set forth in this Agreement.

3.3 The CITY shall pay the SERVICE PROVIDER for work performed under this Agreement as follows:$14,332.98

4. Reports and Inspections.
4.1 The SERVICE PROVIDER at such times and in such forms as the CITY may require, shall furnish to the CITY such statements, records, reports, data, and information as the CITY may request pertaining to matters covered by this Agreement.

4.2 The SERVICE PROVIDER shall at any time during normal business hours and as often as the CITY or State Auditor may deem necessary, make available for examination all of its records and data with respect to all matters covered, directly or indirectly, by this Agreement and shall permit the CITY or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The CITY shall receive a copy of all audit reports made by the agency or firm as to the SERVICE PROVIDER'S activities. The CITY may, at its discretion, conduct an audit at its expense, using its own or outside auditors, of the SERVICE PROVIDER'S activities that relate, directly or indirectly, to this Agreement.

5. Independent Contractor Relationship.

5.1 The parties intend that an independent SERVICE PROVIDER/CITY relationship will be created by this Agreement. The CITY is interested primarily in the results to be achieved; subject to paragraphs herein, the implementation of services will lie solely with the discretion of the SERVICE PROVIDER. No agent, employee, servant or representative of the SERVICE PROVIDER shall be deemed to be an employee, agent, servant or representative of the CITY for any purpose, and the employees of the SERVICE PROVIDER are not entitled to any of the benefits the CITY provides for its employees. The SERVICE PROVIDER will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives during the performance of this Agreement.

5.2 In the performance of the services herein contemplated, the SERVICE PROVIDER is an independent contractor with the authority to control and direct the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of the CITY and shall be subject to the CITY'S general rights of inspection and review to secure the satisfactory completion thereof.

6. Service Provider Employees/agents.

The CITY may at its sole discretion require the SERVICE PROVIDER to remove an employee(s), agent(s) or servant(s) from employment on this Project. The SERVICE PROVIDER may, however, employ that (those) individual(s) on other non-CITY related projects.
7. **Hold Harmless/Indemnification.**

7.1 SERVICE PROVIDER 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.

7.2 For purposes of this indemnification and hold harmless agreement, the Contractor waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The parties expressly agree that this waiver of workers' compensation immunity has been negotiated.

7.3 No liability shall attach to the CITY by reason of entering into this Agreement except as expressly provided herein.

8. **Insurance.**

The SERVICE PROVIDER 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 hereunder by the SERVICE PROVIDER, its agents, representatives, or employees.

8.1 **Minimum Scope of Insurance.** SERVICE PROVIDER shall obtain insurance of the types described below:

a. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the SERVICE PROVIDER'S Commercial General Liability insurance policy with respect to the work performed for the City.

c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

d. Professional Liability Insurance appropriate to the SERVICE PROVIDER'S profession.
8.2 Minimum Amounts of Insurance. SERVICE PROVIDER shall maintain the following insurance limits:

a. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of One Million Dollars ($1,000,000) per accident.

b. Commercial General Liability insurance shall be written with limits no less than One Million Dollars ($1,000,000) each occurrence, Two Million Dollars ($2,000,000) general aggregate.

c. Professional Liability insurance shall be written with limits no less than One Million Dollars ($1,000,000) per claim and One Million Dollars ($1,000,000) policy aggregate limit.

8.3 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

a. The SERVICE PROVIDER’S insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the SERVICE PROVIDER’S insurance and shall not contribute with it.

b. The SERVICE PROVIDER’S insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

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

8.5 Verification of Coverage. SERVICE PROVIDER shall furnish the City with original certificates and a copy of the amendatory endorsements including, but not necessarily limited to, the additional insured endorsement, evidencing the insurance requirements of the SERVICE PROVIDER before commencement of the work.


Title to all property furnished by the CITY shall remain in the name of the CITY and the CITY shall become the owner of the work product and other documents, if any, prepared by the SERVICE PROVIDER pursuant to this Agreement.
10. **Compliance with Laws.**

10.1 The SERVICE PROVIDER, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

10.2 The SERVICE PROVIDER specifically agrees to pay any applicable business and occupation (B&O) taxes that may be due on account of this Agreement.

11. **Nondiscrimination.**

11.1 The CITY is an equal opportunity employer.

11.2 Nondiscrimination in Employment. In the performance of this Agreement, the SERVICE PROVIDER will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability, or the use of a trained dog guide or service animal by a person with a disability; provided that the prohibition against discrimination in employment because of disability, or the use of a trained dog guide or service animal by a person with a disability, shall not apply if the particular disability prevents the proper performance of the particular worker involved. The SERVICE PROVIDER shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a person with a disability. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. The SERVICE PROVIDER shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

11.3 Nondiscrimination in Services. The SERVICE PROVIDER will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a person with a disability.

11.4 If any assignment and/or subcontracting has been authorized by the CITY, said assignment or subcontract shall include appropriate safeguards against
discrimination. The SERVICE PROVIDER shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

12. **Assignment/subcontracting.**

12.1 The SERVICE PROVIDER shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the CITY, and it is further agreed that said consent must be sought in writing by the SERVICE PROVIDER not less than thirty (30) days prior to the date of any proposed assignment. The CITY reserves the right to reject without cause any such assignment.

12.2 Any work or services assigned hereunder shall be subject to each provision of this Agreement and proper bidding procedures where applicable as set forth in local, state and/or federal statutes, ordinances and guidelines.

12.3 Any technical/professional service subcontract not listed in this Agreement, must have express advance approval by the CITY.

13. **Changes.**

Either party may request changes to the scope of services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Such amendments shall be attached to and made part of this Agreement.

14. **Maintenance and Inspection of Records.**

14.1 The SERVICE PROVIDER shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit, by the CITY, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

14.2 The SERVICE PROVIDER shall retain all books, records, documents and other material relevant to this Agreement, for six (6) years after its expiration. The SERVICE PROVIDER agrees that the CITY or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.
15. **Other Provisions.**

The following additional terms shall apply: It is agreed between the parties that pursuant to changes in state law necessitating that services hereunder be expanded, the parties shall negotiate an appropriate amendment. If after thirty (30) days of negotiation, agreement cannot be reached, the CITY may terminate this Agreement no sooner than sixty (60) days thereafter.

16. **Termination.**

16.1 **Termination for Convenience.** The CITY may terminate this Agreement, in whole or in part, at any time, by giving at least thirty (30) days' written notice to the SERVICE PROVIDER. Upon such termination for convenience, the City shall pay the SERVICE PROVIDER for all services provided under this Agreement through the date of termination.

16.2 **Termination for Cause.** If the SERVICE PROVIDER fails to perform in the manner called for in this Agreement, or if the SERVICE PROVIDER fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within five (5) days' written notice thereof, the CITY may terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the SERVICE PROVIDER setting forth the manner in which the SERVICE PROVIDER is in default. The SERVICE PROVIDER will only be paid for services performed in accordance with the manner of performance set forth in this Agreement through the date of termination.

17. **Notice.**

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the parties on the last page of this Agreement.

18. **Attorneys Fees and Costs.**

If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

19. **Jurisdiction and Venue.**

19.1 This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.
19.2 Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Island County, Washington.

20. Severability.

20.1 If, for any reason, any part, term or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

20.2 If it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, said provision that may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provisions.

21. Entire Agreement.

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute a material breach of contract and be cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

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

CITY:

CITY OF OAK HARBOR
865 SE Barrington Drive
Oak Harbor, WA 98277

Scott Dudley, Mayor

Attest:
Valerie Loffler, City Clerk

SERVICE PROVIDER:

Equinox Research & Consulting International
41507 South Skagit Highway
Concrete, WA 98237

Kelly Bush, President