

CONSULTANT: HAB Aquatic Solutions, LLC  
CONTACT PERSON: John Holz  
ADDRESS: 735 S. 56<sup>th</sup> Street, Suite 2  
Lincoln, NE 68510  
FEDERAL TAX ID NUMBER/U.B.I. NUMBER: 27-4482931 / 603380796  
TELEPHONE: 402-430-0352  
COUNTY DEPT: Conservation & Natural Resources  
DEPT. CONTACT PERSON: Marisa Burghdoff  
TELEPHONE: 425-388-3204  
PROJECT: Lake Ketchum Alum Treatment Services  
AMOUNT: \$101,863.00  
FUND SOURCE: SWM Funds  
CONTRACT DURATION: Execution through December 31, 2023,  
unless extended or renewed pursuant to  
Section 2 hereof

### AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT (the “Agreement”) is made by and between SNOHOMISH COUNTY, a political subdivision of the State of Washington (the “County”) and HAB AQUATIC SOLUTIONS, LLC, a Nebraska Limited Liability Corporation (the “Contractor”). In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. Purpose of Agreement; Scope of Services. The purpose of this Agreement is for Lake Ketchum Alum Treatment Services. The scope of services is as defined in Schedule A attached hereto and by this reference made a part hereof. This Agreement is the product of County RFP No. RFP-004-20BC.

The services shall be performed in accordance with the requirements of this Agreement and with generally accepted practices prevailing in the western Washington region in the occupation or industry in which the Contractor practices or operates at the time the services are performed. The Contractor shall perform the work in a timely manner and in accordance with the terms of this Agreement. Any materials or equipment used by the Contractor in connection with performing the services shall be of good quality. The Contractor represents that it is fully qualified to perform the services to be performed under this Agreement in a competent and professional manner.

The Contractor will prepare and present status reports and other information regarding performance of the Agreement as the County may request.

2. Term of Agreement; Time of Performance. This Agreement shall be effective upon Execution (the “Effective Date”) and shall terminate on December 31, 2023, PROVIDED, HOWEVER, that the term of this Agreement may be extended or renewed for up to two (2) additional one (1) year terms, at the sole discretion of the County, by written notice from the County to the Contractor. The Contractor shall commence work upon the Effective Date and shall complete the work required by this Agreement no later than December 31, 2023, PROVIDED, HOWEVER, that the County’s obligations after December 31, 2021 are contingent upon local legislative appropriation of necessary funds for this specific purpose in accordance with the County Charter and applicable law.

3. Compensation.

a. Services. The County will pay the Contractor for services as and when set forth in Schedule B, which is attached hereto and by this reference made a part of this Agreement.

b. Expenses. The Contractor’s compensation for services as set forth in Schedule B includes Contractor’s expenses. The County will reimburse the Contractor for only those expenses set forth in Schedule C attached hereto and by this reference made a part of this Agreement.

c. Invoices. The Contractor shall submit properly executed invoices to the County. Each invoice shall include an itemization of the dates on which services were provided, including a brief description of the work performed on each such date. Each invoice shall also include an itemization of any reimbursable expenses incurred by the Contractor during the time period covered by the invoice, together with reasonable documentation substantiating such expenses, all in accordance with this Section 3 and Schedule C. Subject to Section 8 of this Agreement, the County will pay such invoices within thirty (30) calendar days of receipt.

d. Payment. The County’s preferred method of payment under this contract is electronic using the County’s “e-Payable” system with Bank of America. The Contractor is highly encouraged to take advantage of the electronic payment method.

In order to utilize the electronic payment method, the Contractor shall email [SnocoEpaybles@snoco.org](mailto:SnocoEpaybles@snoco.org) and indicate it was awarded a contract with Snohomish County and will be receiving payment through the County’s e-Payable process. The Contractor needs to provide contact information (name, phone number and email address). The Contractor will be contacted by a person in the Finance Accounts Payable group and assisted with the enrollment process. This should be done as soon as feasible after County award of a contract or purchase order, but not exceeding ten (10) business days.

Department approved invoices received in Finance will be processed for payment within seven calendar days for e-Payable contractors. Invoices are processed for payment by Finance two times a week for contractors who have selected the e-Payable payment option.

In the alternative, if the Contractor does not enroll in the electronic (“e-Payable”) payment method described above, contract payments will be processed by Finance with the

issuance of paper checks or, if available, an alternative electronic method. Alternative payment methods, other than e-Payables, will be processed not more than 30 days from receipt of department approved invoices to Finance.

THE COUNTY MAY MAKE PAYMENTS FOR PURCHASES UNDER THIS CONTRACT USING THE COUNTY'S VISA PURCHASING CARD (PCARD).

Upon acceptance of payment, the Contractor waives any claims for the goods or services covered by the Invoice. No advance payment shall be made for the goods or services furnished by Contractor pursuant to this Contract.

e. Payment Method. In addition to Payment section above, the County may make payments for purchases under this contract using the County's VISA purchasing card (PCARD).

Are you willing to accept PCARD payments without any fees or surcharges?

Yes  No

f. Contract Maximum. Total charges under this Agreement, all fees and expenses included, shall not exceed **\$101,863.00** for the initial term of this Agreement (excluding extensions or renewals, if any).

4. Independent Contractor. The Contractor agrees that Contractor will perform the services under this Agreement as an independent contractor and not as an agent, employee, or servant of the County. This Agreement neither constitutes nor creates an employer-employee relationship. The parties agree that the Contractor is not entitled to any benefits or rights enjoyed by employees of the County. The Contractor specifically has the right to direct and control Contractor's own activities in providing the agreed services in accordance with the specifications set out in this Agreement. The County shall only have the right to ensure performance. Nothing in this Agreement shall be construed to render the parties partners or joint venturers.

The Contractor shall furnish, employ and have exclusive control of all persons to be engaged in performing the Contractor's obligations under this Agreement (the "Contractor personnel"), and shall prescribe and control the means and methods of performing such obligations by providing adequate and proper supervision. Such Contractor personnel shall for all purposes be solely the employees or agents of the Contractor and shall not be deemed to be employees or agents of the County for any purposes whatsoever. With respect to Contractor personnel, the Contractor shall be solely responsible for compliance with all rules, laws and regulations relating to employment of labor, hours of labor, working conditions, payment of wages and payment of taxes, including applicable contributions from Contractor personnel when required by law.

Because it is an independent contractor, the Contractor shall be responsible for all obligations relating to federal income tax, self-employment or FICA taxes and contributions, and all other so-called employer taxes and contributions including, but not limited to, industrial insurance (workers' compensation). The Contractor agrees to indemnify, defend and hold the County harmless from any and all claims, valid or otherwise, made to the County because of these obligations.

The Contractor assumes full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes, fees, licenses, excises or payments required by any city, county, federal or state legislation which are now or may during the term of the Agreement be enacted as to all persons employed by the Contractor and as to all duties, activities and requirements by the Contractor in performance of the work under this Agreement. The Contractor shall assume exclusive liability therefor, and shall meet all requirements thereunder pursuant to any rules or regulations that are now or may be promulgated in connection therewith.

5. Ownership. Any and all data, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Agreement shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Agreement but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.

6. Changes. No changes or additions shall be made in this Agreement except as agreed to by both parties, reduced to writing and executed with the same formalities as are required for the execution of this Agreement.

7. County Contact Person. The assigned contact person (or project manager) for the County for this Agreement shall be:

Name: Marisa Burghdoff  
Title: Water Quality Specialist III  
Department: Conservation and Natural Resources  
Telephone: (425) 388-3204  
Email: Marisa.Burghdoff@snoco.org

8. County Review and Approval. When the Contractor has completed any discrete portion of the services, the Contractor shall verify that the work is free from errors and defects and otherwise conforms to the requirements of this Agreement. The Contractor shall then notify the County that said work is complete. The County shall promptly review and inspect the work to determine whether the work is acceptable. If the County determines the work conforms to the requirements of this Agreement, the County shall notify the Contractor that the County accepts the work. If the County determines the work contains errors, omissions, or otherwise fails to conform to the requirements of this Agreement, the County shall reject the work by providing the Contractor with written notice describing the problems with the work and describing the necessary corrections or modifications to same. In such event, the Contractor shall promptly remedy the problem or problems and re-submit the work to the County. The Contractor shall receive no additional compensation for time spent correcting errors. Payment for the work will

not be made until the work is accepted by the County. The Contractor shall be responsible for the accuracy of work even after the County accepts the work.

If the Contractor fails or refuses to correct the Contractor's work when so directed by the County, the County may withhold from any payment otherwise due to the Contractor an amount that the County in good faith believes is equal to the cost the County would incur in correcting the errors, in re-procuring the work from an alternate source, and in remedying any damage caused by the Contractor's conduct.

9. Subcontracting and Assignment. The Contractor shall not subcontract, assign, or delegate any of the rights, duties or obligations covered by this Agreement without prior express written consent of the County. Any attempt by the Contractor to subcontract, assign, or delegate any portion of the Contractor's obligations under this Agreement to another party in violation of the preceding sentence shall be null and void and shall constitute a material breach of this Agreement.

10. Records and Access; Audit; Ineligible Expenditures. The Contractor shall maintain adequate records to support billings. Said records shall be maintained for a period of seven (7) years after completion of this Agreement by the Contractor. The County or any of its duly authorized representatives shall have access at reasonable times to any books, documents, papers and records of the Contractor which are directly related to this Agreement for the purposes of making audit examinations, obtaining excerpts, transcripts or copies, and ensuring compliance by the County with applicable laws. Expenditures under this Agreement, which are determined by audit to be ineligible for reimbursement and for which payment has been made to the Contractor, shall be refunded to the County by the Contractor.

11. Indemnification.

To the maximum extent permitted by law and except to the extent caused by the sole negligence of the County and, if any funds for this Agreement are provided by the State, the State, the Contractor shall indemnify and hold harmless the County and the State, their officers, officials, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature arising out of, in connection with, or incidental to the services and/or deliverables provided by or on behalf of the Contractor. In addition, the Contractor shall assume the defense of the County and, if applicable, the State and their officers and employees in all legal or claim proceedings arising out of, in connection with, or incidental to such services and/or deliverables and shall pay all defense expenses, including reasonable attorneys' fees, expert fees and costs incurred by the County and, if applicable, the State, on account of such litigation or claims.

The above indemnification obligations shall include, but are not limited to, all claims against the County and, if applicable, the State by an employee or former employee of the Contractor or its subcontractors, and the Contractor, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects only the County and, if applicable, the State, under any industrial insurance act, including Title 51 RCW, other worker's compensation act,

disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim.

In the event that the County or, if applicable, the State incurs any judgment, award and/or cost including attorneys' fees arising from the provisions of this section, or to enforce the provisions of this section, any such judgment, award, fees, expenses and costs shall be recoverable from the Contractor.

In addition to injuries to persons and damage to property, the term "claims," for purposes of this provision, shall include, but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in an unfair trade practice.

The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Agreement.

Nothing contained within this provision shall affect or alter the application of any other provision contained within this Agreement.

12. Insurance Requirements. The Contractor shall procure by the time of execution of this Agreement, and maintain for the duration of this Agreement, (i) insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the services hereunder by the Contractor, its agents, representatives, or employees, and (ii) a current certificate of insurance and additional insured endorsement when applicable.

a. General. Each insurance policy shall be written on an "occurrence" form, except that Professional Liability, Errors and Omissions coverage, if applicable, may be written on a claims made basis. If coverage is approved and purchased on a "claims made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the work which is the subject of this Agreement.

By requiring the minimum insurance coverage set forth in this Section 12, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Agreement. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

b. No Limitation on Liability. The Contractor's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or in equity.

c. Minimum Scope and Limits of Insurance. The Contractor shall maintain coverage at least as broad as, and with limits no less than:

1) Commercial General Liability (CGL) or Marine General Liability covering bodily injury including wrongful death, third party property damage including loss of use thereof, premises/operations liability, products/completed operations, personal/advertising injury, contractual liability, stop gap or employer's liability (for monopolistic state projects), fire damage legal liability, action over indemnity, sudden and accidental pollution, amended exclusions for care, custody and control and watercraft liability to cover work related to this project. Coverage also to extend to cover stevedores legal liability, wharfinger's legal liability, terminal operator's liability and charterer's legal liability, when applicable. Coverage shall be on an occurrence basis and limits of liability shall not be less than \$1 million per occurrence and \$2 million in the aggregate. The General Aggregate limit is to apply separately to each project. Protection and Indemnity may be used for the marine exposures.

2) Hull and Machinery Insurance covering all owned and/or operated watercraft used in performing work and/or services related to this project. Such coverage shall be written on the American Institute Hull Clauses (6/2/1977) or equivalent and shall include full collision and tower's liability, if not provided under the Protection and Indemnity coverage. Amount of coverage shall be equal to the fair market value of the hull and machinery. Any "as owner" or "other than owner" limitations of liability are to be deleted or amended not to apply to County. Navigation warranties shall be sufficient to cover the work performed under this contract.

3) Protection and Indemnity Insurance covering all owned or operated watercraft used in performing work and/or services related to this project. Such coverage shall be written on the SP23 (1956) Form or equivalent and shall include full collision and tower's liability, if not provided in the Hull and Machinery coverage. Coverage also to include contractual liability extension, crew liability (if not in the Maritime Employer's Liability coverage) and excess collision and tower's liability (excess of any collision and tower's liability provided in the Hull and Machinery coverage). Limits of liability shall not be less than \$1 million each vessel separately insured. Any "as owner" or "other than owner" limitations of liability are to be deleted or amended not to apply to project owner. Navigation warranties shall be sufficient to cover the work performed under this contract. Coverage for all crew members is to be included, if not included elsewhere.

4) Charterer's Legal Liability (if not included in #1 above), if applicable, for any chartered, leased or borrowed watercraft used in performing work and/or services related to this project. Such coverage shall include but not be limited to third party bodily injury and property damage, including damage to the chartered, leased or borrowed watercraft and including damage to cargoes carried on said watercraft. Coverage to also include pollution liability. Limit of liability shall not be less than \$1,000,000 per occurrence.

5) As applicable and determined by the Contractor: Statutory Workers' Compensation, Employer's Liability Insurance, Jones Act Liability and Maritime

Employers Liability extended to include coverage for U. S. Longshore & Harbor Workers Act. Policy shall contain an Alternate Employers endorsement in favor of County. Such insurance shall provide statutory limits for compensation coverage and with minimum limits of \$1,000,000.00 for employers and maritime employer's liability.

6) Bumbershoot or Excess CGL Umbrella Liabilities covering excess liabilities for the CGL coverages. Such coverage shall be on a follow-form basis with a drop-down provision where primary coverage is aggregated. Total limits of liability shall not be less than \$5 million, for any combination of primary and excess/umbrella/bumbershoot.

7) Environmental Pollution / Contractor's Pollution Liability / Pollution Liability policy form or other policy form acceptable to owner providing coverage for liability caused by pollution conditions arising out of the operations of Contractor. Coverage shall apply to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. The policy limit shall be no less than \$5 million per claim and \$6 million general aggregate. All activities contemplated in the Contract shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the Project site to the final disposal location, including non-owned disposal sites. There shall be no exclusion for work in, on, or under water. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using Subcontractors the policy must include work performed "by or on behalf" of the insured. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to County or any employee or agent of County. The policy coverage term shall be equal to the total period of services.

8) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. CA 0001 current edition, Symbol 1, or equivalent;

d. Other Insurance Provisions and Requirements. The insurance coverages required in this Agreement for policies, except #6 above, if applicable, must contain, or must be endorsed to contain, the following provisions:

(i) The County, its officers, officials, employees and agents are to be covered as additional insureds/assured as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Agreement. Such coverage shall be primary and non-contributory insurance as respects the County, its officers, officials, employees and agents.

(ii) The Contractor's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.



(iii) Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor.

(iv) Insurance coverage must be placed with insurers with a Best's Underwriting Guide rating of no less than A-:VII, or, if not rated in the Best's Underwriting Guide, with minimum surpluses the equivalent of Best's surplus size VIII. Any exception must be approved by the County.

(v) Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits until after 30 calendar days' prior written notice has been given to the County.

(vi) Failure of Insurance. In the event a party fails to procure and/or maintain an insurance as required above, an insurance fails for any reason (including, without limitation, breach of policy condition or warranty), and/or an insurer otherwise refuses or is unable to pay, the party required to procure that insurance shall be deemed an insurer or self-insurer, shall accept and pay claims which would have otherwise been submitted to the failed insurance and shall indemnify and hold harmless (including legal fees and costs) the other party of and from any loss, damage, expense, claim, liability and/or suit resulting from such failure.

e. Subcontractors. The Contractor shall include all subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each subcontractor. **Insurance coverages provided by subcontractors instead of the Contractor as evidence of compliance with the insurance requirements of this Agreement shall be subject to all of the requirements stated herein.**

13. County Non-discrimination. It is the policy of the County to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, 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 as provided in Washington's Law against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts.

The Contractor shall comply with the substantive requirements of Chapter 2.460 SCC, which are incorporated herein by this reference. Execution of this Agreement constitutes a certification by the Contractor of the Contractor's compliance with the requirements of Chapter 2.460 SCC. If the Contractor is found to have violated this provision, or to have furnished false or misleading information in an investigation or proceeding conducted pursuant to this Agreement or Chapter 2.460 SCC, this Agreement may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect the Contractor's obligations under other federal, state, or local laws against discrimination.

14. Federal Non-discrimination. Snohomish County assures that no persons shall on the grounds of race, color, national origin, or sex as provided by Title VI of the Civil Rights Act

of 1964 (Pub. L. No. 88-352), as amended, and the Civil Rights Restoration Act of 1987 (Pub. L. No. 100-259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any County sponsored program or activity. Snohomish County further assures that every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs and activities are federally funded or not.

15. Employment of County Employees. SCC 2.50.075, “Restrictions on future employment of County employees,” imposes certain restrictions on the subsequent employment and compensation of County employees. The Contractor represents and warrants to the County that it does not at the time of execution of this Agreement, and that it shall not during the term of this Agreement, employ a former or current County employee in violation of SCC 2.50.075. For breach or violation of these representations and warranties, the County shall have the right to terminate this Agreement without liability.

16. Compliance with Other Laws. The Contractor shall comply with all other applicable federal, state and local laws, rules, and regulations in performing this Agreement.

17. Compliance with Grant Terms and Conditions. The Contractor shall comply with any and all conditions, terms and requirements of any federal, state or other grant, if any, that wholly or partially funds the Contractor’s work hereunder.

18. Prohibition of Contingency Fee Arrangements. The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the County shall have the right to terminate this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

19. Force Majeure. If either party is unable to perform any of its obligations under this Agreement as a direct result of an unforeseeable event beyond that party’s reasonable control, including but not limited to an act of war, act of nature (including but not limited to earthquake and flood), embargo, riot, sabotage, labor shortage or dispute (despite due diligence in obtaining the same), or governmental restriction imposed subsequent to execution of the Agreement (collectively, a “force majeure event”), the time for performance shall be extended by the number of days directly attributable to the force majeure event. Both parties agree to use their best efforts to minimize the effects of such failures or delays.

20. Suspension of Work. The County may, at any time, instruct the Contractor in writing to stop work effective immediately, or as directed, pending either further instructions from the County to resume the work or a notice from the County of breach or termination under Section 21 of this Agreement.

21. Non-Waiver of Breach; Termination.

a. The failure of the County to insist upon strict performance of any of the covenants or agreements contained in this Agreement, or to exercise any option conferred by this Agreement, in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

b. If the Contractor breaches any of its obligations hereunder, and fails to cure the same within thirty (30) business days of written notice to do so by the County, the County may terminate this Agreement, in which case the County shall pay the Contractor only for the services and corresponding reimbursable expenses, if any, accepted by the County in accordance with Sections 3 and 8 hereof.

c. The County may terminate this Agreement upon five (5) business days' written notice to the Contractor for any reason other than stated in subparagraph b above, in which case payment shall be made in accordance with Sections 3 and 8 hereof for the services and corresponding reimbursable expenses, if any, reasonably and directly incurred by the Contractor in performing this Agreement prior to receipt of the termination notice.

d. Termination by the County hereunder shall not affect the rights of the County as against the Contractor provided under any other section or paragraph herein. The County does not, by exercising its rights under this Section 21, waive, release or forego any legal remedy for any violation, breach or non-performance of any of the provisions of this Agreement. At its sole option, the County may deduct from the final payment due the Contractor (i) any damages, expenses or costs arising out of any such violations, breaches or non-performance and (ii) any other set-offs or credits including, but not limited to, the costs to the County of selecting and compensating another contractor to complete the work of the Agreement.

22. Notices. All notices and other communications shall be in writing and shall be sufficient if given, and shall be deemed given, on the date on which the same has been mailed by certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the County:                      Snohomish County  
    Department of Conservation and Natural Resources  
    3000 Rockefeller Ave, M/S 303  
    Everett, Washington 98201  
    Attention:     Marisa Burghdoff

If to the Contractor:                HAB Aquatic Solutions, LLC  
    735 56<sup>th</sup> Street, Suite 2  
    Lincoln, NE 68510  
    Attention:     John Holz

The County or the Contractor may, by notice to the other given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

23. Confidentiality. The Contractor shall not disclose, transfer, sell or otherwise release to any third party any confidential information gained by reason of or otherwise in connection with the Contractor's performance under this Agreement. The Contractor may use such information solely for the purposes necessary to perform its obligations under this Agreement. The Contractor shall promptly give written notice to the County of any judicial proceeding seeking disclosure of such information.

24. Public Records Act. This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

25. Interpretation. This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the parties. The language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the parties hereto. The captions and headings of this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

26. Complete Agreement. The Contractor was selected through the County's RFP identified in Section 1. The RFP and the Contractor's response are incorporated herein by this reference. To the extent of any inconsistency among this Agreement, the RFP, and the Contractor's response, this Agreement shall govern. To the extent of any inconsistency between the RFP and the Contractor's response, the RFP shall govern.

27. Conflicts between Attachments and Text. Should any conflicts exist between any attached exhibit or schedule and the text or main body of this Agreement, the text or main body of this Agreement shall prevail.

28. No Third-Party Beneficiaries. The provisions of this Agreement are for the exclusive benefit of the County and the Contractor. This Agreement shall not be deemed to have conferred any rights, express or implied, upon any third parties.

29. Governing Law; Venue. This Agreement shall be governed by the laws of the State of Washington. The venue of any action arising out of this Agreement shall be in the Superior Court of the State of Washington, in and for Snohomish County.

30. Severability. Should any clause, phrase, sentence or paragraph of this agreement be declared invalid or void, the remaining provisions of this Agreement shall remain in full force and effect.

31. Authority. Each signatory to this Agreement represents that he or she has full and sufficient authority to execute this Agreement on behalf of the County or the Contractor, as the case may be, and that upon execution of this Agreement it shall constitute a binding obligation of the County or the Contractor, as the case may be.

32. Survival. Those provisions of this Agreement that by their sense and purpose should survive expiration or termination of the Agreement shall so survive.

33. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.

SNOHOMISH COUNTY:

HAB AQUATIC SOLUTIONS, LLC:

\_\_\_\_\_  
County Executive Date

\_\_\_\_\_  
\_\_\_\_\_  
Date

Approved as to insurance  
and indemnification provisions:

Approved as to form only:

\_\_\_\_\_  
Risk Management Date

\_\_\_\_\_  
Legal Counsel to the Contractor Date

Approved as to form only:

\_\_\_\_\_  
Deputy Prosecuting Attorney Date

Schedule A  
Scope of Services

The Contractor shall conduct a whole-lake, surface application of aluminum sulfate (alum) and sodium aluminate to Lake Ketchum for the purpose of phosphorus control at Lake Ketchum according to the following specifications and requirements.

**A. Schedule**

The Contractor shall conduct lake treatments between mid-March and Mid-April of years 2021, 2022 and 2023 and treatments shall occur on a Tuesday, Wednesday or a Thursday. Deviations to this schedule must be approved, in writing, by both parties.

The Contractor shall provide the County with the planned treatment dates at least three weeks in advance of the treatment to ensure that the County has adequate time to send notifications.

**B. Permitting**

1. Washington State Aquatic Plant and Algae Management General Permit (a combined National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge General Permit)

The Contractor shall be responsible for adhering to all permit conditions in the Washington State Aquatic Plant and Algae General Management Permit (effective April 1, 2016 and modified effective July 5, 2019) and future revisions of that permit, except for those obligations identified and described in the table below. The County shall provide to the Contractor a copy of the current permit, the County’s letter of coverage under the permit, and the associated Discharge Management Plan for Lake Ketchum. The parties are aware that the State of Washington expects to issue an updated Aquatic Plant and Algae General Management Permit in March 2021 and anticipate that the updated permit’s section numbering and obligations will remain substantially similar to the permit effective April 1, 2016 and modified effective July 5, 2019. In the event of a permit update, the parties may revisit allocation of responsibility in the table below and will document any mutually agreed upon changes as specified in Section 6 of this Agreement (“Changes”).

Table 1

Permit Section	Description of County Responsibilities
S5.A	Ecology Notification Requirements: 1) Pre- and post-treatment notification requirements and 2) Adverse incidents or spills
S5.B	Ecology Inspection Coordination Requirements
S5.C	Residential and Business Notification
S5.D	Shoreline Recreational Facilities Notification Requirements
S5.E	Shoreline Posting Requirements
S6.B.1.a.ii	Application of Phosphorus Inactivation Product – The County will responsible for the 24-hour post-treatment monitoring ONLY – all other

	requirements in this section are the responsibility of the Contractor.
S7	Reporting and Recordkeeping Requirements of the Aquatic Plant Management General Permit

2. Washington Department of Fish and Wildlife Use Permit

The County shall be responsible for obtaining a Temporary Use Permit from the Washington Department of Fish and Wildlife. The permit provides for authorization to use the Lake Ketchum boat launch for the duration of the alum treatment. The County will provide a copy of the permit to the Contractor. The County and the Contractor will be responsible for adhering to all requirements in the permit.

**C. Chemical Specifications:**

a. Chemical Quantities

The initial application is anticipated to be 3,200 gallons of alum and 1,600 gallons of sodium aluminate as specified below. However, the amount of chemicals may vary each year. The County shall send a final written quantity of chemicals by February 15<sup>th</sup> each year except in 2021. In 2021, the County shall send a written quantity within one week of the contract execution date. The Contractor shall not order chemicals prior to receiving the final quantity of chemicals requested by the County for that year’s treatment.

b. Alum (Aluminum Sulfate) Specifications

Upon approval by the County each year, the Contractor shall provide the specified gallons of liquid aluminum sulfate ( $Al_2(SO_4)_3 \cdot 14H_2O$ ) the annual treatment. Alum shall meet the following specifications:

Grade = Drinking Water Treatment Grade;

pH = 2.0 to 2.4;

Specific Gravity at 70°F = 1.333 to 1.337;

Freezing Point = -16°C;

Boiling Point = 101°C (214°F);

Total Water-Soluble Aluminum of 4.2 – 4.4% or as  $Al_2O_3$ , 8.0 to 8.4%

The total water-soluble iron (expressed as  $Fe_2O_3$ ) content of aluminum sulfate shall be no more than 0.02 percent, on a basis of 8.1 percent  $Al_2O_3$  in liquid alum. In liquid alum, the water-insoluble matter shall not exceed 0.02 percent. At a minimum, aluminum sulfate shall conform with the “American National Standards Institute/National Sanitation Foundation” (ANSI/NSF) Standard 60 Drinking Water Treatment Chemicals – Health Effects (2005 and previous), or Standard 61 Drinking Water System Components – Health Effects (2005 and previous) for use in drinking water.

The aluminum sulfate supplied shall contain no soluble mineral or organic substances in quantities that are capable of producing deleterious or injurious effects on public health or water quality, and shall be drinking water treatment grade.

The Contractor shall provide Snohomish County with the manufacturer's material quality assurance certification with each truck delivery to show that procurement meets specifications. The alum in each delivery shall be approved by Snohomish County on-site prior to applying the alum in Lake Ketchum.

c. Sodium Aluminate Specifications

Upon approval by the County each year, the Contractor shall provide for each treatment the specified gallons of sodium aluminate. Sodium aluminate ( $\text{NaAlO}_2$ ) is produced from the reaction of alumina trihydrate with caustic soda. The sodium aluminate shall meet the following specifications:

Liquid sodium aluminate shall contain a minimum of 32% available soluble sodium aluminate to a maximum of 38%. It shall contain no more than 0.5 percent insoluble matter. Liquid sodium aluminate shall have excess sodium oxide of at least 4 percent to ensure complete combination with the aluminum oxide.

The sodium aluminate supplied in accordance with this standard shall contain no substances in quantities capable of producing deleterious or injurious effects on public health or water quality, and shall be water treatment grade and be NSF certified.

The Contractor shall provide Snohomish County with the manufacturer's material quality assurance certification with each truck delivery to show that procurement meets specifications. The sodium aluminate in each delivery shall be approved by Snohomish County on site prior to applying the material in Lake Ketchum.

d. Alum and Sodium Aluminate Storage Tanks Specifications

The use of temporary on-shore storage tanks for staging the chemicals is not required. However, if on-shore storage tanks are used, separate tanks shall be provided for each chemical. All on-shore storage tanks shall be fabricated out of HDPE or other suitable material, i.e. stainless steel.

The Contractor shall check and confirm the volume of alum/sodium aluminate required for the specified dose prior to procurement of any storage tanks.

The Contractor shall provide secondary containment to help prevent spills or uncontrolled leakage of materials from on-shore storage facilities. Spill containment must provide the following features and be equal to or better than "Spill Guards":

- i. Puncture resistant;
- ii. One piece, no assembly required;
- iii. Wind resistant;



- iv. Approved for a temperature range of -40 to 160 degrees Fahrenheit.

#### **D. Equipment Specifications:**

The Contractor shall provide all equipment, labor, and materials necessary to perform the work, including application, mobilization and demobilization. This shall include:

- a. The specified amounts and qualities of aluminum sulfate and sodium aluminate.
- b. A treatment barge (or boat) with on-board chemical storage tanks and other equipment for uniform chemical distribution. The system of chemical distribution shall have a minimum application rate of at least 7,000 gallons per day of combined alum and sodium aluminate.
- c. A GPS-linked computer system for barge (boat) guidance together with real-time bathymetric measurements to provide chemical dosing control for both aluminum sulfate and sodium aluminate pumping rates and allow the Contractor to map the treated areas.
- d. Alum and sodium aluminate distribution lines, pumps, injector units, and all other pertinent equipment necessary. All piping shall be heavy duty HDPE tubing or appropriate material to avoid dissimilar metals corrosion and to provide safety relative to temperature and potential tubing leaks. Type 316 stainless-steel fittings shall be used in areas where contact with liquid alum and/or sodium aluminate is anticipated. All couplings and connectors used for alum and sodium aluminate distribution lines, storage tank, pumps, and injector units must meet corrosion resistance standards for alum, i.e. type 316 stainless-steel fittings at minimum.
- e. A boom system for chemical distribution shall be substantially similar to the illustration in Exhibit C to control and evenly distribute chemical dosing for both liquid aluminum sulfate and sodium aluminate simultaneously so that the chemicals mix immediately upon entering the water but not before. Both chemicals are to be delivered to the lake water with a preferable depth of 6 to 8 inches and a minimum depth of 1 to 2 inches below the water surface from a minimum of 12 pairs, up to a maximum of 25 pairs, of alum and sodium aluminate injection tubes (nozzles or small hoses) spaced 8 to 12 inches between pairs and with the alum and sodium aluminate injection tubes within each pair spaced 2 to 4 inches apart. The injection tubes shall be alternating so that the closest tubes in each direction are always tubes of the other chemical. Treatment shall not begin until the boom system is approved on-site by Snohomish County.
- f. Trained staff to safely and effectively implement the alum treatment, including but not limited to reading and following the safety data sheets.

#### **E. Application Specifications**

The contractor shall meet all of the following specifications for the application of alum and sodium aluminate to the lake in addition to the specifications provided in the Washington State Department of Ecology Aquatic Plant and Algae Management General Permit:

- a. The full chemical allotment, as defined above, shall be applied in a ratio of 2 gallons alum to 1-gallon sodium aluminate (assuming 38% concentration) with an accuracy of  $\pm 3$

percent. Prior to beginning each treatment (0.5 to 24 hours before), the Contractor will conduct the permit-required jar test using the delivered alum and sodium aluminate at a concentration of 4.1 mg Al/L and at a ratio of 2:1 (alum to sodium aluminate) to verify that treated water remains above pH 6.0 after addition and mixing (0.25 to 0.5 hours after being dosed). If the tests indicate that the 2:1 ratio results in unacceptable pH changes, the County may require the Contractor to adjust the chemical ratio for the application. The Contractor may not begin work until the jar test is complete, the County has reviewed the results, and the equipment has been calibrated for the appropriate ratio of chemicals. The County may opt to perform the jar test instead of the Contractor and will notify the Contractor of this change.

- b. The chemicals must be simultaneously distributed so that the entire treatment area is uniformly covered and so the two chemicals mix immediately after entering the water but not before. GPS, depth measurements, barge/boat speed, and pumping rates shall be adjusted to ensure that the chemicals are distributed simultaneously and in the correct ratio. Treatment should be immediately stopped in the event of equipment failure to ensure chemicals are not being independently released.
- c. The Contractor shall apply the full chemical allotment of alum and sodium aluminate as defined above. If there is a remaining supply of chemical after the Contractor has applied the specified dose due to minor deviations in dosage, lake bathymetry, or chemical ratio, the Contractor shall apply the remaining amount of chemicals to the lake uniformly in areas exceeding 2 meters (6.5 feet) in depth at the specified ratio, if directed to do so by the County. No individual chemical (alum or sodium aluminate) should be applied in the absence of the other chemical to the lake at any time.
- d. Per permit requirements, the Contractor will monitor the lake pH the morning before application begins, and one hour following application each day and as needed during the treatment application. Work may not begin each morning until pH measurements are taken. The County will be responsible for the post-treatment pH monitoring in the 24 hours following treatment completion.
- e. Environmental conditions may exist at Lake Ketchum that may require delay or temporary interruption of work on the project. The Contractor will immediately alert the County if they observe any of the conditions listed below. The Snohomish County project manager will make a final determination on whether to initiate, suspend, or re-start treatment, based on having acceptable environmental conditions for treatment. Delays or postponements may be measured in hours or days, depending on the length of time necessary for conditions to improve. These conditions shall include but are not limited to:
  - i. the water temperature is less than 42° F throughout the water column
  - ii. the wind speed is greater than 15 mph at the lake surface.
  - iii. the pH of lake water is consistently less than 6.0 ( $\pm$  0.05) or greater than 8.5 ( $\pm$  0.05) based on the lake average. The threshold for re-starting treatment shall be a pH between 6.2 and 8.4 ( $\pm$  0.05).

- iv. Fish appear to be in distress or dead fish are observed during the treatment. If this occurs, the Contractor must immediately notify the County.
  - v. Other environmental factors including dissolved oxygen, and phytoplankton blooms.
- f. Barring delays from environmental conditions, the treatment from start to finish shall be completed within one full day. One additional day for mobilization and another additional for demobilization may also be used as needed.
- g. The County will notify the Contractor in the event of an inspection by the Washington State Department of Ecology. If an inspection occurs, the Contractor may not apply chemicals until Ecology staff is present, unless they do not arrive within 30 minutes of the scheduled start time and the County indicates they may proceed.

#### **F. Preparation**

The Contractor shall protect structures, utilities, sidewalks, roadways, pavements, and other facilities from damage caused by settlement, lateral movement, undermining, washout, or other hazards created by work associated with the application of liquid alum and sodium aluminate, including but not limited to, the transport and delivery of chemicals, chemical storage tanks, and chemical spills. During and at the completion of the application of liquid alum and sodium aluminate, the Contractor shall conduct all operations in such a way as to:

- i. Comply with any and all permit conditions for this project;
- ii. Prevent damage to the lake, equipment, and surrounding properties;
- iii. Prevent damage to the aquatic environment by using a biodegradable hydraulic fluid;
- iv. Prevent damage to the lake by ensuring that no aquatic invasive species are introduced into the lake. This shall include decontaminating all equipment and gear that will come into contact with lake water prior to bringing such equipment to the staging area.
- v. Maintain orderly appearance at the work site while the treatment is occurring;
- vi. Prevent damage to the aquatic environment by implementing temporary erosion and sediment control measures, if directed by Snohomish County; and
- vii. Prevent damage to the aquatic environment if temporary on-shore storage tanks are used.

#### **G. Staging Area**

The Contractor shall be responsible for all staging area setup, security, cleanup, and restoration to its original condition following completion of the application. The staging area will be left in the same condition as before the operation began, photo-documented and verified by Snohomish County prior to the acceptance of work.

The staging area is located at the Washington State Department of Fish and Wildlife public access boat ramp (see Exhibit B). The staging area is located within a residential area. The Contractor shall take steps to minimize impacts to residents and lake users in noise, parking, safety, equipment and supply storage, smells, and general condition of the site. The Contractor shall ensure that security fencing is in place around all equipment and storage

tanks remaining on-site during non-working hours. Work on-site shall generally occur between 7 AM and 7 PM, Monday thru Friday. Work on weekend days and holidays shall not be allowed.

## **H. Deliverables**

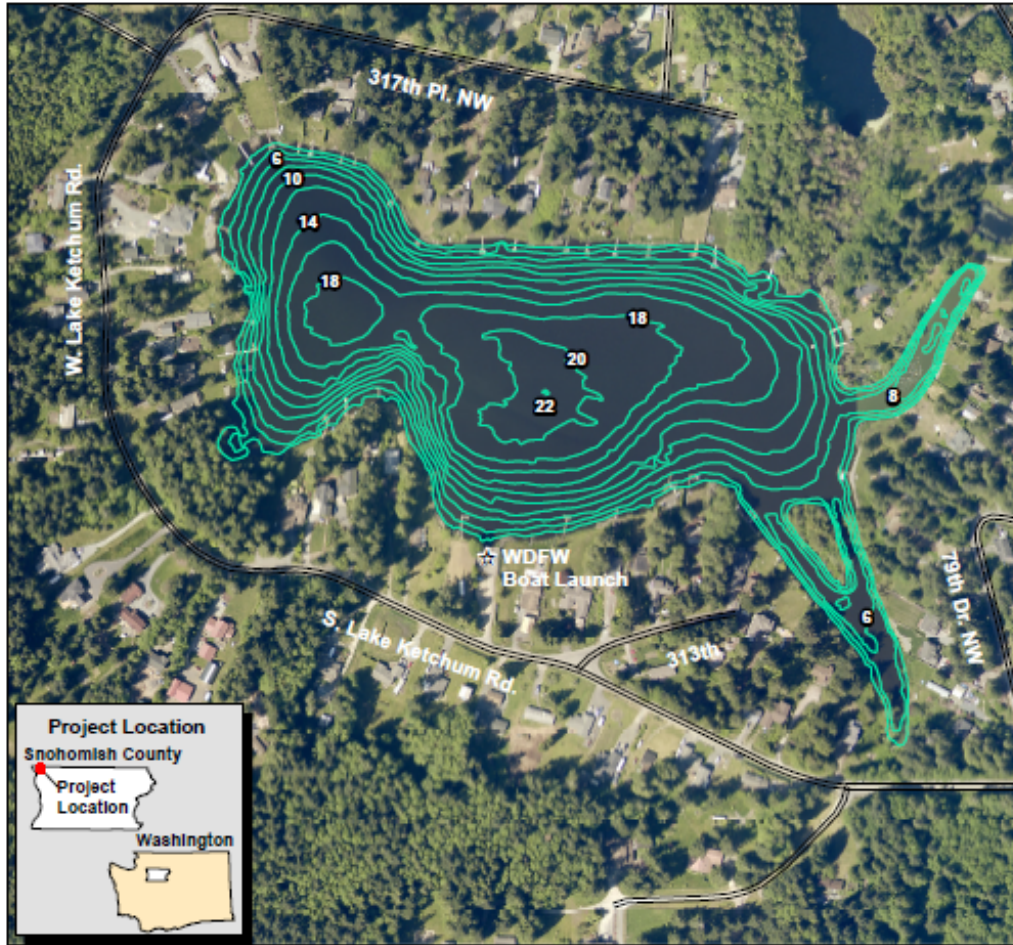
The Contractor shall submit the following for review and approval by Snohomish County following the treatment:

- a. Application Log – Shall include, at a minimum, the following items:
  - i. Date of work;
  - ii. Daily starting time and ending time;
  - iii. Copies of bill of lading with chemical specifications;
  - iv. Quantity of material applied in gallons;
- b. Map of completed treatment – a GIS map and/or associated files showing the GPS tracks of the application boat or barge.

## **I. Hazards**

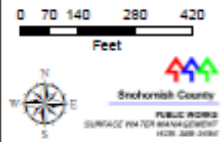
Because the chemicals used in this treatment (aluminum sulfate and sodium aluminate) are considered hazardous and the application will take place in a lake, several potential hazards exist. These hazards may include but are not limited to exposure to chemicals, physical hazards like docks and boats, and underwater hazards such as sunken logs, debris, boats, or utilities. Therefore, the Contractor should use caution and good judgment during the application. The Contractor should provide the proper personal protective equipment and have a plan to address any hazardous conditions or other unforeseen site conditions that may be encountered. The Contractor is responsible and holds sole liability for safe execution of the alum treatment.

# Exhibit A: Lake Ketchum Bathymetry



- Legend**
- ☆ Public Access Point
  - Depth Contours (ft)
  - == Roads

Depth Contour Source:  
Snohomish County  
Surface Water Management  
February 26, 2014



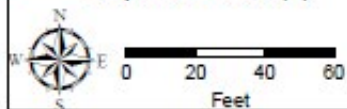
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**Legend**

- ☆ Public Access Point
- Depth Contours (ft)



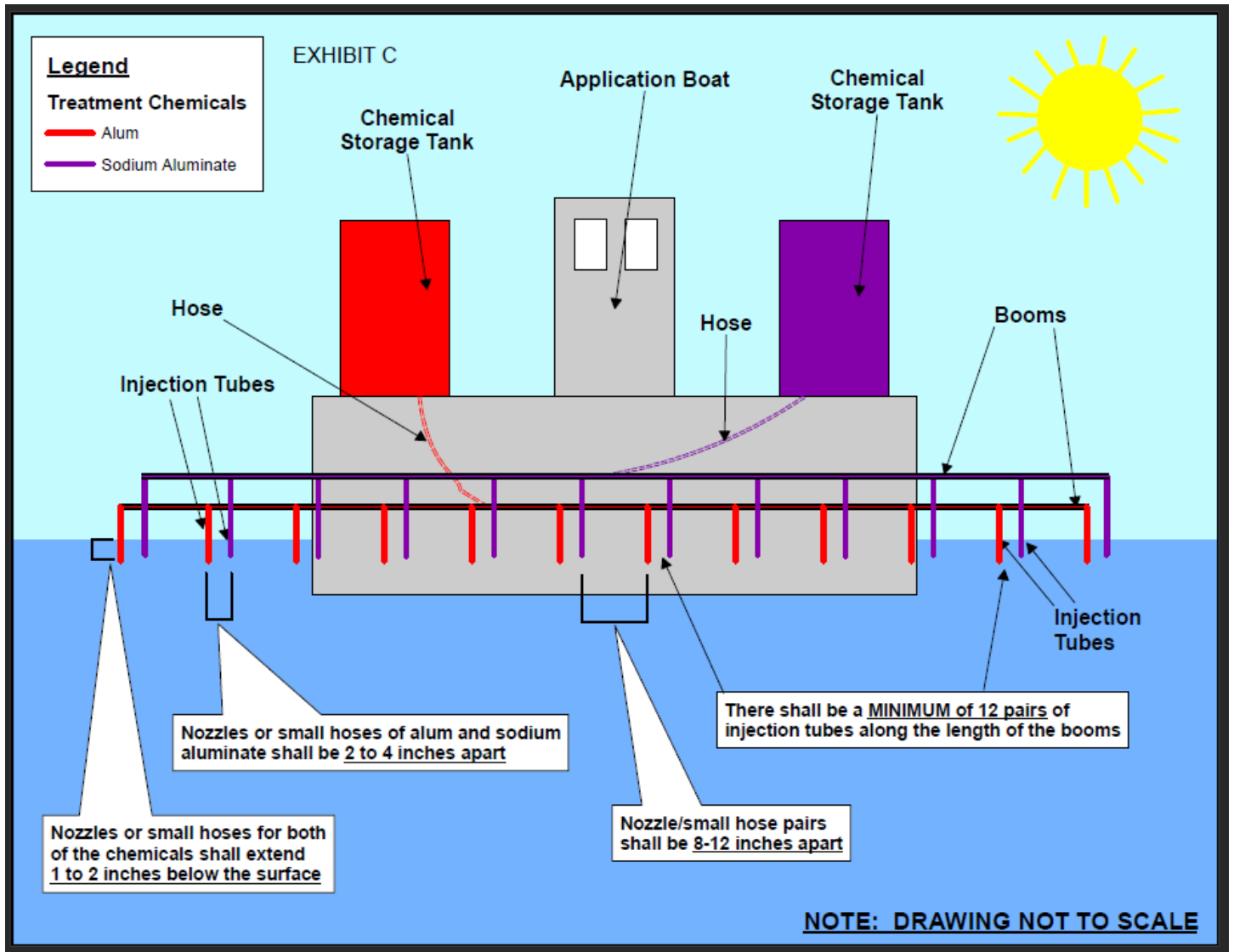
**Lake Ketchum: Exhibit B**



Snohomish County

PUBLIC WORKS  
SURFACE WATER MANAGEMENT  
(425) 380-3454

All maps, data, and information set forth herein ("Data"), are for illustrative purposes only and are not to be considered an official citation to, or representation of, the Snohomish County Code. Amendments and updates to the Data, together with other applicable County Code provisions, may apply which are not depicted herein. Snohomish County makes no representation or warranty concerning the content, accuracy, currency, completeness or quality of the Data contained herein and expressly disclaims any warranty of merchantability or fitness for any particular purpose. All persons accessing or otherwise using this Data assume all responsibility for use thereof and agree to hold Snohomish County harmless from and against any damages, loss, claim or liability arising out of any error, defect or omission contained within said Data. Washington State Law, Ch. 42.56 RCW, prohibits state and local agencies from providing access to lists of individuals intended for use for commercial purposes and, thus, no commercial use may be made of any Data comprising lists of individuals contained herein.



Schedule B  
Compensation

The County will compensate the Contractor for its services through an annual lump sum payment in the amounts listed below. The lump sum amounts include Contractor's expenses, except as described in Schedule C.

Item #	Items	Qty.	
1	2021 Treatment of Lake Ketchum	Lump Sum	\$ 30,269.00
2	2022 Treatment of Lake Ketchum	Lump Sum	\$ 31,586.00
3	2023 Treatment of Lake Ketchum	Lump Sum	\$ 31,858.00
	Three Year Total		\$101,863.00



Schedule C  
Expenses

The Contractor's expenses are included in the lump sum amounts described in Schedule B. However, if within a calendar year the County directs the Contractor to apply more than 3,200 gallons of aluminum sulfate or 1,600 gallons of sodium aluminate, the County will reimburse the Contractor for the costs for additional quantities of aluminum sulfate and sodium aluminate at the price per gallon (including application) provided below.

Item #	Unit Pricing - Price Per Gal. including application		
1	Aluminum Sulfate	Per/Gal	\$2.78
2	Sodium Aluminate	Per/Gal	\$7.57