

154 E Bingen Point Way Ste. A Bingen, WA 98605 509-493-1655

Contract

2012-04 Bingen Lake Water Quality Testing

January 25, 2012

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Klickitat County Port District No. 1

Contract

2012-04 - Bingen Lake Water Quality Testing

This Contract is between **Klickitat County Port District No. 1**, a Washington municipal corporation (hereinafter "**Port**"), and **J-U-B Engineers, Inc.**, an Idaho corporation (hereinafter "**Provider**"), and is effective as of **May 12, 2011**.

WITNESSETH

1. AFFIRMATIVE ACTION

Respondent shall take affirmative action in complying with all Federal and State requirements concerning fair employment and shall not discriminate by reason of age, race, color, gender, religion, national origin, or physical handicap.

2. ASSIGNMENT AND SUBCONTRACTS

No portion of this Contract, or the Work described therein, may be assigned, subcontracted, or transferred to a party other than the Provider except as described in Provider's Personnel Roster or as approved by the Port in writing. Provider shall ensure the provisions of this Contract are incorporated into its contracts with any subproviders and shall provide a copy of all such contracts, excluding financial information, to the Port. Port reserves the right to require the substitution of any subprovider. Provider agrees that it shall remain fully responsible for the acts and omissions of subproviders, if any, used to complete the Work of this Contract.

3. AUDITING

Provider shall keep and maintain accurate books, records, and documents showing all charges, disbursements, or expenses made or incurred by Provider in the performance of this Contract for no less than three (3) years after the termination of this Contract. Port or its duly authorized agent shall have the right, upon ten (10) working days notice, to audit all such records including Provider's direct costs, timesheets, expense reports, and logs pertaining to this Contract.

4. BACKGROUND

The Port's permit for infrastructure and grading work requires that a water quality baseline be established for Bingen Lake before any work may proceed within 100 feet of the wetland boundary. In addition, water quality testing must be performed when any subsequent work is conducted within 100 feet of the wetland boundary.

5. CHANGES

All changes and claims for extra cost shall be in writing by amendment and approved by Port in advance.

6. COMPENSATION

6.1 **A**MOUNT

As full compensation for the performance of the obligations of this Contract and the services to be provided, Port shall pay Provider up to a maximum of Eighteen Thousand Dollars and 00 Cents (\$18,000.00 USD) for a Quality Assurance Project Plan (aka Water Quality Monitoring Plan), baseline water quality sampling, a Baseline Report, and analytical lab fees as described in the Scope of Work shown in Exhibit A and made a part of this contract by reference. For three years from the date of this contract, Port, in its sole discretion, may request that Provider perform the work necessary to meet the post-construction requirements of the Shoreline Conditional Use Permit including sampling, lab analysis, and sample report. Costs for said work shall be paid on a time-and-materials basis (estimated at \$8,100 per post-construction event) with a maximum cost of Nine Thousand Dollars and 00 Cents (\$9,000.00) per post-construction event. Provider's expenses will be reimbursed at cost, with the exception of all third party costs which will be reimbursed at cost plus a markup of ten percent (10%).

6.2 PAYMENTS

Provider shall submit detailed numbered invoices showing the description and cost/price of work items being invoiced, work order number (if applicable), title of project, total invoice amount, hours and hourly rate (if applicable), and an itemized list of any authorized expenses with backup documentation. Invoices must be received by the 10th day of the month and will be paid at the end of that month. No payment in advance or in anticipation of services or supplies to be provided under this Contract shall be made by Port.

6.3 RETAINAGE

Port shall pay ninety percent (90%) of each invoice presented by Provider, retaining the remaining ten percent (10%) until completion and acceptance of all work performed under this Contract. Upon completion and acceptance, Port shall pay to Provider the balance of all amounts due.

7. COMPLIANCE WITH LAWS

Provider agrees to fully comply with all local, state, tribal, and federal laws and regulations applicable to the services provided, including Washington business registration, taxes, employee safety, and employment eligibility. Provider shall secure, at its own expense, all licenses and permits required to complete the Work described herein.

8. CONFLICTS OF INTEREST

Provider warrants that it has no direct or indirect economic interest which conflicts in any manner with its performance of the services required under this Contract. Provider warrants that is has not retained any person to solicit this Contract and has not agreed to pay such person any compensation or other consideration contingent upon the execution of this Contract.

9. Costs and Disbursements

Provider shall pay all costs and disbursements required for the performance of its services under this Contract.

10. DISCLOSURE

All information developed by Provider or made available to Provider by Port and all analyses or opinions reached by Provider shall be confidential and shall not be disclosed by Provider without the written consent of Port, under a court order, or to satisfy the requirements of any local, state or federal law regarding the reporting of such information to a regulatory agency.

11. DELIVERABLES

All tangible materials produced as a result of this Contract shall be prepared as specified by Port's Representative and this Contract. Delivery of materials produced shall consist of both the tangible materials and one electronic copy of any computer file used in the creation of the tangible product in an Acrobat PDF formatted file or other format agreeable to Port. Port may offset from Provider's fee any expense incurred by Port in correcting deliverables not prepared in accordance with this paragraph.

12. DISPUTES

The parties agree to make a good faith effort to settle any claims, disputes or other matters in question between Provider and Port arising out of or relating to this Contract or the breach thereof through direct negotiation.

12.1 MEDIATION

If a dispute arises that cannot be settled through direct negotiation, the parties agree to endeavor to settle the dispute through a mediator acceptable to both parties, the cost of which shall be divided equally. Port reserves the right to join any dispute under this Contract with any other claim in litigation or other dispute resolution forum, and Provider agrees to such joinder, so that all disputes related to the project may be consolidated and resolved in one forum.

12.2 ACTION FILED

If a dispute cannot be resolved through mediation, and in case suit or action is instituted to interpret or enforce compliance with any of the provisions of this Contract, the losing party agrees to pay such sum as the trial court may adjudge reasonable as attorney's fees and associated fees and expenses to be allowed the prevailing party in such suit or action. In the event any appeal is

taken from any judgment or decree in such suit or action, the losing party agrees to pay such further sum as the appellate court shall adjudge reasonable as prevailing party's attorney's fees and associated fees and expenses on such appeal.

12.3 ATTORNEY'S FEES

For purposes of this Contract, the term "attorney's fees" shall include all charges of the prevailing party's attorneys and their staff (including, without limitation, legal assistants, paralegals, word processors, court fees, and other support personnel) and the term "fees and expenses" shall include, but is not limited to, long-distance telephone charges; expenses of facsimile transmission; expenses for postage (including costs of registered or certified mail and return receipts), express mail, or parcel delivery; mileage and all deposition charges; and costs incurred in searching records.

13. INDEMNIFICATION

To the maximum extent permitted by law, Provider shall indemnify and hold Port and its officers, agents, and employees harmless from any and all suits, claims, penalties, or damages arising from Provider's negligent act or omission, willful misconduct, or use of any copyrighted or non-copyrighted composition, secret process, article, or application except to the extent caused by the negligence or willful misconduct of Port. The provisions of this paragraph shall survive the termination of this Contract.

14. INSURANCE

Provider must obtain, and maintain in force at all times during the term of this Contract, insurance for Worker's Compensation, General Liability, Auto Liability, and Professional Liability (aka Errors & Omissions). Except for Professional Liability insurance, Port shall be named as an Additional Insured.

14.1 COVERAGE

Prior to the commencement of services, Provider shall secure, and maintain at all times, such insurance as will protect it from claims under Title 51 RCW (Industrial Insurance) and providing the following:

- a. Commercial General Liability coverage with limits of \$1,000,000 per occurrence and \$2.000.000 aggregate:
- b. Automobile Liability coverage for owned, non-owned and hired vehicles of \$1,000,000 combined single limit per accident; and
- c. Professional Liability not less than \$1,000,000 per claim and in the aggregate with a retroactive date before the date of notice to proceed. Coverage shall remain in effect for the term of this Contract plus three years.

14.2 ISSUING COMPANY

All policies shall be issued by responsible insurance companies authorized to issue insurance in the State of Washington and rated "A-" (Excellent) or better and be of financial size category "VII" (\$50-\$100 million policyholders' surplus) or equivalent successor rating as defined by A.M. Best Company or a national, commercially-accepted successor rating agency. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled or reduced in coverage or limits except after thirty (30) days prior written notice has been give to Port. Except for professional liability, Port shall be named as an additional insured on all policies.

14.3 Proof of Insurance

Upon execution of this Contract, Provider shall deliver to Port a Coverage Summary, Binder, or other similar document showing the carrier, policy number, name of the insured, effective period, coverage, limits of liability, and, if applicable, the project name and/or number. Furthermore, where it is required to name Port as an "Additional Insured", Provider shall also deliver to Port an endorsement showing the policy number and name of the additional insured. ACORD forms shall not be acceptable.

15. KEY PERSONNEL

Provider and/or its subproviders' key personnel, as listed on the Personnel Roster submitted with its response, shall remain assigned for the duration of the Project unless otherwise agreed to by the Parties in a written amendment to this Contract.

16. NONDISCRIMINATION

During the performance of this Contract, Provider shall comply with all applicable state and federal nondiscrimination laws, regulations and policies. Provider shall not discriminate against any employee, applicant for employment, vendor, or customer/client because of race, color, sex, religion, national origin, creed, marital status, or mental or physical handicap.

17. Non-waiver

No failure of either party to insist upon the strict performance of any provision in this Contract shall be construed as depriving that party of the right to insist on strict performance of such provision or any other provision in the future. No waiver by either party of any provision of this Contract shall be deemed to have been made unless expressed in writing and signed by the party who is alleged to have waived a right. No payment to Port from Provider after any breach shall constitute a waiver of any such breach or any other breach.

18. Notices

Representatives for the parties to this Contract and the address to be used for notices and other official communications between the parties shall be as follows:

Port: Port of Klickitat

Marc Thornsbury

154 E Bingen Point Way Ste. A

Bingen, WA 98605 509-493-1655

Provider: J-U-B Engineers, Inc.

Ben Volk

2810 W Clearwater Ave. Ste. 201

Kennewick, WA 99336

509-783-2144

Guidance or direction shall be valid only when communicated through these representatives or their designated agents, provided that written notification of such designation is provided to the other party. Notices and all other written communication shall be mailed or delivered to the intended recipient at the address specified. Either party may change its address by written notice within ten (10) calendar days to the other party.

19. OTHER WORK

Port shall have the right to perform, or have performed, similar or such other work as it may desire while Provider is performing work. Provider shall coordinate its work with that of others when required. Any claim of interference or delay due to other work must be made to Port within ten (10) calendar days of occurrence or such claim shall be deemed waived.

20. OWNERSHIP

20.1 MATERIALS

All documents, plans, specifications, and other materials furnished to Provider by Port shall remain the exclusive property of Port. By executing this Contract, Provider agrees that such materials shall be used for no other purpose than for the Work under this Contract.

20.2 SERVICES

The services to be performed by Provider shall be deemed instruments of service (aka "works for hire") for the purposes of the copyright laws of the United States. Port has ownership rights to the work products prepared by Provider in performing these services including, but not limited to, reports, documents, surveys, maps, studies, and advertising materials, except where the product is an artistic work or computer program incorporating commercially available software in which case the Provider assigns to Port an irrevocable license to use and reuse, for any lawful purpose, the work products created by Provider in the course of executing this Contract.

Provider shall have free right to retain, copy, and use any tangible materials or information produced only for its own internal purposes. The use of documents or other materials prepared

under this Contract for promotional purposes shall require Port's prior consent. Any reuse of work products by the Port for any use other than the intended project shall be at the Port's sole risk and without liability or legal exposure to Provider.

21. PARTIAL INVALIDITY

If any term or provision of this Contract or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Contract, or any application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Contract shall be valid and be enforced as written to the fullest extent permitted by Law.

22. PERIOD OF PERFORMANCE

Unless otherwise extended by written notice, the period of performance under this Contract shall be from the date of signing through August 30, 2011 unless terminated as provided herein.

23. PROJECT COMPLETION

Upon completion, Provider shall furnish to Port, at not additional charge, all closeout documentation including any project-related instruction, training, and support materials, any licenses, and all other required deliverables.

24. PROVIDER'S RESPONSIBILITY

The Provider certifies that he/she has fully acquainted himself/herself with all conditions, limitations, restrictions, requirements, plans, specifications, and other information described in, or provided as part of, this Contract.

25. Publicity

Provider shall not refer to the award of this contract in any commercial advertising in such manner as to state or imply that the products or services provided are endorsed or preferred by Port.

26. RELATIONSHIP OF THE PARTIES

Provider, including its employees and subproviders, is an independent contractor and nothing contained herein shall be deemed to create a relationship of employer and employee or of principal and agent between Port and Provider.

27. SCOPE OF WORK

Provider shall perform the following services as described in the Scope of Work shown in Exhibit A and made a part of this contract by reference:

- a. Quality Assurance Project Plan (aka Water Quality Monitoring Plan)
- b. Baseline Water Quality Sampling
- c. Lab Analysis & Testing
- d. Baseline Report
- e. Additional Water Quality Sampling, Analysis, and Reporting as requested by Port

28. STANDARD OF CARE

28.1 Professional Standards

Provider shall perform its work to conform to generally accepted professional standards. Provider shall be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all plans, designs, drawings and specifications prepared under this Contract. Provider shall, without additional compensation, correct or revise any errors or omissions in such work.

28.2 PROVIDER ERRORS

Port's approval of plans, drawings and specifications shall not relieve Provider of responsibility for the adequacy and accuracy thereof. Provider shall remain liable for damages and costs incurred by Port arising from Provider's errors, omissions or negligent performance of services furnished under this Contract.

29. TERMINATION

29.1 FAILURE TO PERFORM

Port may terminate this Contract if Provider substantially fails to fulfill its obligations under this Contract through no fault of Port or in the event Provider shall materially breach the terms of this Contract. Any payment due for services satisfactorily performed prior to termination may be offset by Port's anticipated additional costs incurred because of Provider's default. No payment shall be made for anticipated profit on unperformed work.

29.2 GOVERNMENT CONVENIENCE

Port may terminate this Contract, in whole or in part, at any time for government convenience in which case it shall provide written notice to Provider and reimburse Provider for its costs and fees incurred prior to the notice of termination except unabsorbed overhead or anticipatory profit. Upon receipt of such notice, Provider shall immediately discontinue services to the extent specified in the notice.

29.3 DELIVERABLES

Upon receipt of a termination notice Provider shall promptly deliver to Port all data and deliverables developed while performing this Contract whether completed or in progress.

29.4 REMEDIES

The rights and remedies of Port provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

29.5 PROCEDURE

Upon termination of this Contract, Provider shall stop all work pertaining to the fulfillment of this Contract, place no further orders or subcontracts for materials or services, and transfer to Port title and possession of any and all property fully or partially completed under the terms of this Contract and for which Provider has been compensated.

30. MISCELLANEOUS PROVISIONS

30.1 CAPTIONS AND CONSTRUCTION

The captions and paragraph headings in this Contract are for the convenience of the reader and are not to be considered in the interpretation or construction of its terms.

30.2 ENTIRE AGREEMENT

This Contract contains the undertakings between the parties. Each party represents that no promises, representations, or commitments (hereinafter "Promises") have been made by the other as a basis for this Contract which have not been reduced to writing herein. No oral Promises, now or in the future, shall be binding upon either party unless such Promises are reduced to writing in the form of a modification to this Contract executed with all necessary legal formalities.

30.3 FORCE MAJEURE

Provider shall not be liable for any excess costs if the failure to perform arises out of cause beyond the control and without the fault or negligence of the Provider. Such causes may include, but are not limited to, fire, flood, quarantine, or unusually severe weather.

30.4 GOVERNING LAW/VENUE

This Contract shall be governed in accordance with the laws of the State of Washington and venue shall be in Klickitat County, Washington. Provider, by execution of this Contract, acknowledges the jurisdiction of the courts of the State of Washington.

30.5 NUMBER; GENDER; PERMISSIVE VERSUS MANDATORY USAGE

Where the context permits, references to the singular shall include the plural and vice versa, and references to the neuter gender shall include the feminine and masculine. Use of the word "may" shall denote an option or privilege and shall impose no obligation upon the party which may exercise such option or privilege. Use of the word "shall" shall denote a duty or an obligation.

30.6 TIME

Time is of the essence in the performance by Provider of the services required by this Contract. Provider shall complete its services within the milestones set forth in the project schedule (if specified). At the end of each month, Provider shall submit to Port an updated schedule showing current progress and a description of the work accomplished to date, the status of all project milestones, and any known issues that might result in completion beyond the established schedule or budget.

The signatures below acknowledge agreement to the entire Contract and have the authority to sign for their respective entities.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed on January 25, 2012.

J-U-B Engineers, Inc.

Ben Volk, Area Manager

Klickitat County Port District No. 1

Marc Thornsbury, Executive Director

STATE OF Washington) ss County of Benton)
County of Benton
On this 23 day of
IN WITNESS WHEREOF, I have hereunder set my hand and affixed my seal the day and year last written above with ER W Supplies of the State of WASHINGTON My Commission Expires: 10.15.14
STATE OF WASHINGTON)
County of Klickitat)
On this
IN WITNESS WHEREOF, I have hereunder set my hand and affixed my seal the day and year last written above.

Notary Public State of Washington MARGIE K. ZIEGLER MY COMMISSION EXPIRES June 9, 2014 Notary Public in and for the State of Washington

My Commission Expires:

Exhibit A



SCOPE OF WORK BINGEN LAKE WATER QUALITY MONITORING Environmental Services Support Contract No. 30-12-007

Project Description

The Port of Klickitat (Client) has requested that J-U-B Engineers, Inc. (J-U-B) provide water quality monitoring services, engage an accredited lab, and provide the proper documentation to meet the requirements and conditions set forth in the Shoreline Conditional Use Permit (# 2009-CS-10379-1) for Bingen Lake. More specifically, JUB intends to develop the Water Sampling Plan expected to obtain the baseline water quality data, as well as the monitoring aspects to be implemented post construction. Post construction monitoring will for the duration of the current permit, potentially a period of 3 years or as required. Due to the type of project and proposed schedule, JUB's services are outlined in the following tasks. Tasks 1 through 4 are Lump Sum with the post construction monitoring being supplemental based on Time and Material as needed.

TASK OUTLINE

Task 1 – BASELINE WATER QUALITY SAMPLING

Lump Sum \$3,200.00

Fieldwork to Collect the Baseline Water Samples: To establish the background or baseline water quality data, the following sampling strategy will be implemented:

- Sample surface waters from Bingen Lake for the 9 listed analytes (outlined in the attached Anatek Labs Quotation);
- Collect the samples from 3 separate sampling sites (illustrated on the attached exhibit and labeled as sites A through C); and
- Collect the baseline samples during 3 separate sampling events, spaced out at least 14 days apart. The 3 sampling events will aid to strengthen or narrow-in a baseline or background level for each of the 9 listed analytes.

Task assumptions: This task assumes 24 hours for J-U-B Biologist to complete the field work, travel to the site, and expenses.

Task 2 – BASELINE REPORT

Lump Sum \$5,300.00

Baseline Report Development: The sampling data yielded from task 1 will be integrated into a report and submitted to the Department of Ecology. This task incorporates a single draft report iteration based

on comments from the client and DOE collectively. Comments will be incorporated and a final report will be issued to DOE.

Task assumptions: This task assumes 32 hours for J-U-B Biologist to write and oversee the report, 6 hours for a Design Drafter for exhibits, and 4 hours of QA/QC by Project Manager and others as needed to compile information and develop the baseline report. Any Permit fees will be paid by the Client.

Task 3 – ANALYTICAL LAB FEES

Lump Sum \$3,200.00

Analytical Lab fees: The basis of the fee associated with the lab sampling costs will be lab costs plus 10% for lab coordination efforts. The estimated total costs associated with Task 1 = \$3,201.00 (this assumes 10 samples (9 samples + 1 duplicate sample; see attached Anatek Labs Quotation).

Task assumptions: See attached Anatek Lab Quote. This task assumes a total of 10 samples and 10% markup for J-U-B to coordinate with the Anatek and manage this task.

<u>Task 4 – QUALITY ASSURANCE PROJECT PLAN (QAPP)</u>

Lump Sum \$6,300.00

Quality Assurance Project Plan (QAPP): This task will guide the development of a QAPP for the projected water quality monitoring plan. The QAPP will be submitted to the Department of Ecology. This task incorporates two draft report iterations, based on comments from the client and DOE collectively. Comments will be incorporated and a final QAPP will be issued to DOE.

Task assumptions: This Task includes 40 hours for J-U-B Biologist to develop the QAPP, 8 hours Design Drafter, and 4 hours of Project Manager for QA/QC.

TOTAL TASKS 1 - 4 \$18,000 Lump Sum

SUPPLEMENTAL TASKS:

The following are additional services anticipated for the yearly quarterly reports anticipated for future construction activities. For budgeting purposes we estimated the cost to provide these services assuming a Time and Material basis.

YEARLY WATER QUALITY REPORTS Estimated \$8,100 Time & Materials Per Year as needed

This task covers all of the post construction work required to conform to the conditions of the Shoreline Conditional Use Permit. This estimated fee is based on a year duration with the following yearly breakdown. This duration may be shortened with DOE approval pending satisfactory test results.

•	Fieldwork Sampling Estimated	\$2,800
•	Yearly Sample Report Estimated	\$3,100
•	Lab Fees 6 + 1 duplicate sample & 10% Markup	\$2,200

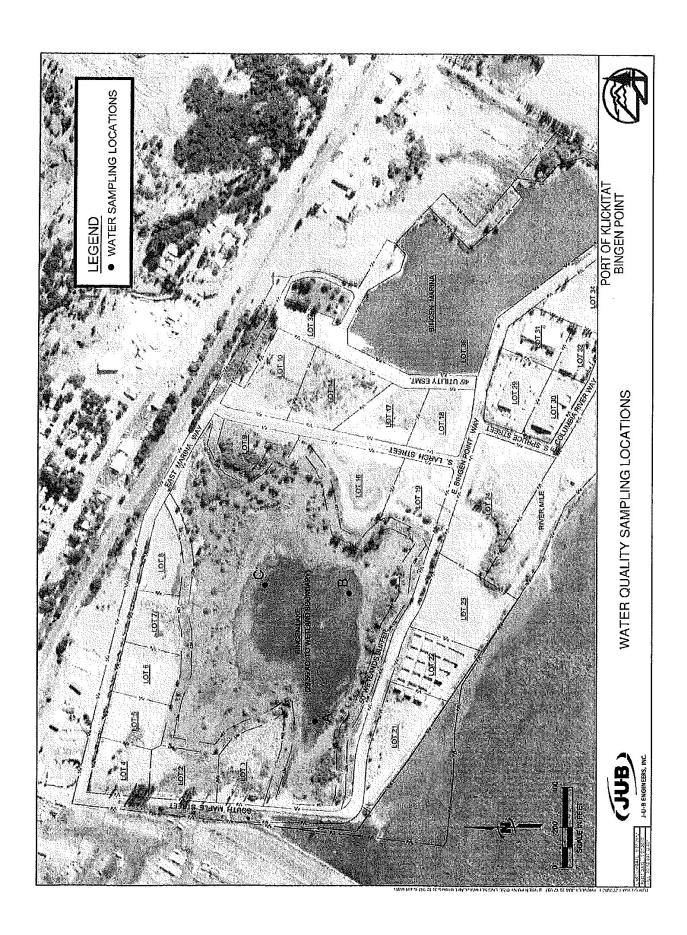
Fieldwork to collect the water samples post construction in accordance with the QAPP: Consistent with The Baseline Sample Task 1 the following sampling (i.e. fieldwork) will take place:

 Sample surface waters from Bingen Lake for the 9 listed analytes (outlined in the attached Anatek Labs Quotation);

- Collect the samples from 3 separate sampling sites (illustrated on the attached exhibit and labeled as sites A through C); and
- Collect the water monitoring samples during 2 separate sampling events per year, spaced out at least 30 days apart. The 2 sampling events (per year) will take place during the growing season (i.e. April through October) and timed to coincide with storm events.

Development of Yearly Sampling Reports: The sampling data yielded from this task will be integrated into a yearly report (for a period up to three consecutive years) and submitted to the Department of Ecology.

Analytical Lab fees: The basis of the fee associated with the lab sampling costs will be lab costs plus 10%. See attached Anatek Labs Quotation.



Anatek Labs, Inc.

1282 Alturas Dr. Moscow, ID 83843 (208) 883-2839 Fax (208)882-9246 moscowlab@anateklabs.com E. 504 Sprague Ave. Spokane, WA 99202 (509) 838-3999 Fax (509) 838-4433 spokanelab@anateklabs.com

Quotation For Analytical Services

Attn:

Vince Barthels

Phone: Date:

509-458-3727 1/25/2012

Email:

vbarthels@jub.com

Quotation Number:

120125JUBS

Anal <u>yte</u>	Method	TAT	<u>Per Sample</u>
Total Phosphorus	SM4500P F	7-10 days	\$30.00
Total Nitrogen(TKN+NO2+NO3+NH3)	SM4500NH3/EPA300.0	7-10 days	\$75.00
Total Metals (Cu, Zn, Cd, Hg)	EPA 200.8	7-10 days	\$66.00
Turbidity	EPA 180.1	7-10 days	\$15.00
Conductivity	EPA 120.1	7-10 days	\$10.00
pH	EPA 150.1	7-10 days	\$10.00
Color	SM2120B	7-10 days	\$10.00
TSS-Total Suspended Solids	SM2540 D	7-10 days	\$15.00
FOG (Fats, Oils, and Grease)	EPA 1664	7-10 days	\$60.00

\$291,00 Total

Anatek Labs will provide the sampling containers and cooler. Thank you for considering Anatek Labs for your analytical needs.

Rush charges are as follows:

Rush Charges

7-10 Working Days 7-10 Days Listed Price

6 Days

5 Days

Add 25%

Add 35%

4 Day

Add 50%

3 Day

Add 60%

2 Day

Add 80%

Next Day

Same Day

Add 100%

Add 200%

Please let me know if there is anything else that you need.

Sincerely,

Melissa Lewis 509-838-3999 melissa@anateklabs.com