



Professional Services Agreement

Project Name:	2019 Outfall Inspections
Otak Project No.:	019308.000
Otak Project Contact:	Trista Kobluskie
Client Name:	City of Camas
Client Mailing Address:	616 NE 4 th Avenue, Camas, WA 98607
Project Street Address or Description:	Camas, WA
Property Owner (if different from Client):	City of Camas

We appreciate the opportunity to submit this Professional Services Agreement for your Project. Below please find our proposed scope of work and fee, as well as our standard terms and conditions. If agreed, please sign below, keep a copy for your records, and return a copy to us. This Agreement will be effective as of the last date of signature below, and we will proceed upon receipt unless you request we await a Notice to Proceed.

Thank you for this opportunity. We look forward to working with you on this project.

Signed:

Signed:

Printed:

Printed:

Title:

Title:

Company:

Company:

Date:

Date:

SCOPE attached as Exhibit A

FEE attached as Exhibit B

Scope and Fee Conditions and Assumptions

Our scope of services and fees, as outlined herein, are based on the following assumptions and conditions:

1. The proposed fee does not include fees for subconsultants or reimbursable expenses. Any subconsultant fees or reimbursable expenses will be added with a 10% handling, coordination, and integration markup.

TERMS and CONDITIONS

Compensation

1. Client agrees to compensate Otak for the Services as provided above. Hourly rates are subject to change.
2. Otak will not exceed the estimated fee without Client's prior written authorization.
3. On signing, Client shall pay Otak the following amount to be applied against the last invoice: \$0.
4. Outsourced expenses will be invoiced as provided above, and if silent above, at cost plus 10%.
5. Estimated fees are only for Services identified above. If Client changes the Project or changes the scope, manner, or timing of Otak's professional services, the parties shall negotiate an adjustment to the terms, compensation, and/or schedule. All unadjusted terms of this Agreement shall continue to apply.
6. Client shall pay each invoice within thirty (30) days of the date of the invoice. Failure to then pay shall constitute default, and interest at the higher of 18% per annum or the legal rate shall accrue. On default, Otak may suspend all Services until Client pays in full and may terminate this Agreement as of the 30th day of default. Otak shall not be liable for any damages or costs incurred by Client, its subcontractors, agents, employees, or assigns because of any suspension or termination, including but not limited to indirect, incidental, consequential, punitive or economic damages. On suspension or termination, Otak may require an additional deposit to resume performance, to be applied to the last invoice and any excess returned.
7. If the Project is idle more than sixty (60) cumulative days, Otak may re-estimate its fees and scope of work.
8. Client shall also pay Otak at its then-applicable hourly rates, and reimburse all actual costs, to comply with demands for documents or testimony involving the Project in any proceeding where Otak is not a party.
9. Disputes or questions regarding an invoice or portion thereof shall not be cause for Client to withhold payment for other portions due. No deductions, offsets, or withholdings shall be made for any reason unless Otak agrees in advance to such adjustments or has been found to be legally liable for such amounts, nor shall payment to Otak be withheld, postponed, or contingent upon receipt by the Client of offsetting reimbursement or credit from the contractor or other parties causing additional expenses.

Insurance

10. Client understands and agrees that Otak's errors and omissions professional liability insurance is a policy under which the costs of defense, including attorneys' fees, are deducted from the policy principal.
11. If Client offers insurance specific to the Project, Client shall offer Otak the option to enroll if applicable.
12. The Client and Otak waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent covered by any property or other insurance. The Client and Otak shall each require similar waivers from their contractors, consultants, and agents.
13. If the Client requires types and limits of insurance in addition to the types and limits Otak normally maintains, Client shall pay Otak for costs incurred for the additional coverages.

Standard of Care; Information; Safety; Schedule; Submitted Information; Confidentiality

14. The standard of care for all professional services by Otak will be the skill and care used by members of the same profession performing similar services and practicing under similar circumstances at the same time and in the same locale. Otak makes no warranties, express or implied, as to Otak's services.
15. Otak may rely without liability on the accuracy and completeness of information provided by Client, its consultants and contractors, and information from public records, without independent verification.
16. Otak shall have no responsibility for, or control over, the construction means, manner, methods, techniques, or safety precautions employed by others in the development or construction of the Project.

17. If Otak's duties include Project site observation or visits, Otak shall visit the site as described above to become generally familiar with the quality and progress of the Project. Otak shall not be required to make continuous or exhaustive inspections to check the quality or quantity of the work being done on the Project.
18. Otak's review of a contractor's submittal, shop drawings, product data, or samples is only for general conformance with the information given in the contract documents. It is not conducted to determine the accuracy of details such as dimensions or quantities, or for substantiating instructions for installation or performance of equipment or systems. The contractor(s) remain responsible for accurate content in submitted documents, coordination of their work with other trades, and confirming and correlating dimensions. Review is not approval of safety precautions, construction means, methods, techniques, sequences, or procedures.
19. Client agrees that Otak does not have access to Client's customer or other partner information. Otak agrees to not disclose confidential or proprietary information received from Client if marked as "Confidential" or "Proprietary." Otak will not use such information for its own benefit, or disclose to any third party without Client's written consent. This shall not apply to any information (a) in the public domain at the time disclosed, (b) already known without restriction to the party receiving it at the time disclosed, (c) lawfully learned from a third party, or (d) required by law to be disclosed.

Limitations of Liability

20. **No control over markets:** Otak does not have control over market conditions, or contractors' methods of pricing or performance, including the cost of labor, material, equipment, or services furnished by others, which may affect any opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions, and utilitarian considerations of operations and maintenance costs.
21. **Certification limitation:** Otak shall not certify or warrant conditions Otak cannot ascertain.
22. **Limitation of liability:** The total aggregate liability of Otak and its officers, directors, employees, agents, and consultants to Client and anyone claiming through Client for any and all injuries, claims, losses, expenses, or damages related to the Services, the Project, or this Agreement, from any cause or causes whatsoever arising in tort, statute, or contract, shall not exceed the lesser of Otak's total compensation for the Services or Otak's applicable insurance.
23. **Waiver of consequential damages:** Neither party shall be liable to the other for incidental, indirect, or consequential damages arising out of, or connected in any way to the Project or this Agreement. This includes, but is not limited to, loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action arising in tort, statute, or contract.
24. **No liability for Client actions:** Otak shall not be responsible for a Client's directive, substitution, or acceptance of non-conforming work made or given without Otak's written approval.
25. **No individual liability:** No shareholder, principal, member, officer, director, partner, employee, or other representative of Otak shall have personal liability to Client, or any other party, relating to this Agreement.
26. **Force majeure:** Otak shall not be liable for delay or failure outside of Otak's reasonable control, including without limitation inclement weather, strikes, lockouts, labor troubles, accidents, fire, earthquake, civil commotion, war or consequences of war, government acts, restrictions or requisitions, failure of manufacturers or suppliers, suspension of shipping facilities, or any act or default of a carrier. In such a situation, Client shall accept the Services and pay for the same when provided, so long as a mutually acceptable revision is made to the scope of services and compensation.
27. **Accrual of claims:** Any cause of action between the parties to this Agreement arising out of any damages caused by the performance of, or failure to perform under, this Agreement, shall be deemed to have accrued, and all statutes of limitations and repose shall commence to run by the earlier of the date of substantial completion of the Project or 30 days following the date of Otak's final invoice.

Dispute Resolution

28. **Termination:** Either party may terminate this Agreement with ten (10) calendar days' written notice. If Client terminates, Client shall pay Otak for Services performed to the date of termination plus termination expenses, such as but not limited to reassignment of personnel, subcontract termination costs, and related closeout costs. If Otak terminates, Client shall pay Otak for Services performed to the date of termination when Otak delivers all Instruments of Service as defined below completed in whole or in part.
29. **Mediation:** Before initiating any legal proceeding, the parties agree to submit all claims or disputes to non-binding mediation with an agreed mediator by written request to the other party. This shall survive completion or termination of this Agreement, but neither party may call for mediation if time-barred under applicable law. Client agrees to provide for Otak's review a claim validation or other expert opinion satisfying any "certificate of merit" statutes under the law of the Project's location.
30. **Law and Venue:**
 - a. This Agreement shall be construed according to the state law of the Project's location.
 - b. Any litigation between Otak and Client related to this Agreement shall occur in Multnomah County, Oregon, or the Oregon federal district court in Portland, Oregon.

c. This paragraph shall not apply to lien foreclosure proceedings by Otak where the Project is located.

31. **Indemnification:**

- a. Client shall indemnify Otak and its related companies, and their respective officers, directors, and employees, from and against all damages arising out of or relating to the following: (a) damages caused by the negligence or willful misconduct of Client and/or its principals, employees, or subcontractors; (b) Client's use of information prepared by Otak other than for the Project without Otak's written consent; (c) hazardous substances at or adjacent to the Project; (d) any certificate regarding the Project by Otak for a government entity, lender, or other third party, except as to Otak's negligence; (e) Otak's use of intellectual property provided by Client.
- b. Otak shall indemnify Client and its officers, directors, and employees from and against damages arising out of or relating to Otak's work on the Project to the extent such damages are caused by the negligence of Otak, and/or its officers, directors, or employees in performing the Services.
- c. Neither indemnification obligation shall extend beyond the date when legal or equitable proceedings would be time-barred.

Intellectual property

32. Otak and its consultants shall be deemed the authors and owners of their respective reports, notes, drawings, specifications, data, calculations, and other documents, including those in electronic form ("Instruments of Service") and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet regulatory requirements is not publication in derogation of the reserved rights.
33. Otak grants to Client a nonexclusive license to use Otak's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering, and adding to the Project, provided Client has performed under this Agreement. Otak shall obtain similar nonexclusive licenses from its consultants. If Otak suspends or terminates this Agreement, this license shall terminate. Otak shall not assign, delegate, sublicense, pledge, or transfer such license to another party without Client's prior written agreement. Unauthorized use of the Instruments of Service is at the Client's risk without liability to Otak.
34. If Client uses Instruments of Service without retaining their author(s) or beyond the scope of Client's license, Client releases Otak and its consultant(s) and shall defend, indemnify, and hold harmless Otak and its consultants from all costs and expenses of claims asserted by any third party from such use.

Electronic Media Release

35. Client may request Otak to provide it plans, specifications, Building Information Model files, or other electronic files in electronic form (collectively "electronic media" or "EM").
36. Client acknowledges that the EM are supplemental information provided only for convenience. The EM are not legally binding contract documents; may not be reliable; are not for fabrication or construction; may not include all revisions; may be inaccurate from electronic storage, transmission, or technology incompatibility; may be revised by others without Otak's consent; may vary when plotted; or may corrupt the Client's data.
37. Any use and/or change to the EM including by Client, its subcontractors, and consultants will be at Client's sole risk, and without liability, risk, or expense to Otak. Any altered EM shall have all indices of Otak's ownership, professional name, and/or involvement in the Project removed.
38. Client agrees to release, defend, indemnify, and hold harmless Otak, its consultants, and their respective officers and employees from and against any and all claims, demands, losses, expenses, damages, penalties, and liabilities including, without limitation, attorneys' fees including pre-claim and on appeal, arising from reliance on, use of, or change to the EM, and to require this of any agent to which Client provides EM.
39. Otak makes no warranties, either expressed or implied, as to the EM, including but not limited to warranties of merchantability or of fitness for any particular purpose.

Hazardous materials

40. Except to the extent of its gross negligence or willful misconduct, Otak has no liability or responsibility for any hazardous materials including but not limited to identification, handling, mitigation, and/or disposal.

The contract documents

41. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written and oral, courses of dealing, or other understandings between the parties. No modification of this Agreement shall be binding unless acknowledged by both parties.
42. There are no third-party beneficiaries to this Agreement.
43. Neither party shall assign the entire Agreement without the other's written consent.
44. Any term or provision of this Agreement held unenforceable shall be stricken with no effect on the remainder.



Exhibit A

City of Camas Illicit Discharge Detection and Elimination Field Screening Scope of Work Otak Project #: 19308 May 6, 2019

Project Description

The City of Camas (City) is regulated by the Washington State Department of Ecology (Ecology) National Pollutant Discharge Elimination System (NPDES) Phase 2 Municipal Stormwater Permit (Permit). The City has requested Otak's assistance in measures required to meet the conditions of section S5.C.3.c.i Illicit Discharge Detection and Elimination (IDDE). The City has identified an inventory of 124 outfalls for inspection in 2019. Otak will work with the City to refine the inventory, if necessary, and then conduct field screening of outfalls.

Scope of Work

Task 1 – Project Management

The Project team will plan, manage, and execute the tasks described herein in accordance with the schedule, budget, and quality expectations. This project management task includes the following work activities:

- Manage the quality control review of all work activities and project deliverables
- Prepare and submit a monthly invoice and progress report
- Monthly project coordination, telephone conversations, and email correspondence

Task 2 – IDDE Field Screening

Task 2.1 – Inventory Review and Field Mapping

Otak staff will review the City's outfall inventory to establish an approved inspection list and field map prior to beginning field work. The inventory review and field mapping will include the following tasks:

- Set up SharePoint site to transfer as-built and GIS data to and from the City
- Review existing outfall information including as-built plans, existing GIS data, and inventory data
- Meetings with City staff to approve inventory and field map

Task 2.2 – Fieldwork

Otak staff will conduct field screening using outfall inspection as the methodology. Screening will include the following tasks:

- Field-verify outfall location using GPS
- Photograph outfalls
- Inspect outfalls for indications of illicit discharges, including flow, odor, discoloration, oil sheens, etc.
 - If flow is detected, the field crew will collect flow rate, temperature, pH and ammonia using portable equipment and supplies, such as thermometer and test strips
- Characterize outfalls with respect to presence of an illicit discharge as unlikely, potential, suspect or obvious, based on field observations

- If an obvious illicit discharge is present, Otak will record any observations of a source if one appears to be in the immediate vicinity
- Record notes about access issues, or inability to access an outfall, when pertinent

Field procedures will be guided by *Illicit Connection and Illicit Discharge Field Screening and Source Tracing Guidance Manual* (by Herrera Environmental Consultants, Inc. for Department of Ecology, 2013). For outfalls with potential or suspected illicit discharges, Otak will refer inspection reports to the City's Project Manager within one business day.

Task 2.3 – Data Management & Summary Report

Once field screening is complete, Otak will upload the collected information into Google Earth or GIS Database and provide the data to the City. Otak will prepare a summary report to assist the City in documenting the process for its NPDES annual report.

Task 2 Assumptions

- Fieldwork preparation is included, such as setting up GPS equipment and obtaining supplies
- A crew of two staff will conduct the screening fieldwork
- Field investigations will take place between July and the end of September
- Field screening will be scheduled only on dry days preceded by a 48-hour dry period
- We will attempt to inspect 124 outfalls one time each, assuming an average of about 10 outfalls per field day
- Otak will inspect as many outfalls as possible until the Task 2.2 contracted budget is reached

Task 2 Deliverables

- Digital outfall location data and photographs
- Hard copy or scanned outfall data sheets
- Timely referrals of potential or suspected illicit discharges to the City's PM by email
- Summary report, including list of outfalls where illicit discharges were suspected

Schedule

All field screening will take place during the dry season, July through September. The completed data, outfall data sheets, and summary report will be provided to the City by December 1, 2019.

Exclusions

The scope of work does not include sample collection for laboratory analysis or source tracing of potential or suspected illicit discharges.

Exhibit B

City of Camas IDDE Field Screening

Fee Estimate

Otak, Inc.

Otak Project 19308

Task	Primary Services	Civil Engineer VIII	Engineering Designer IV	Planner Associate IV	Planner Associate II	Project Admin. Asst	Total Hours	Total Budget by Task
TASK 1: PROJECT MANAGEMENT								
	Project Management	4		10		1	15	\$1,741.00
TASK 2: FIELD SCREENING								
2.1	Inventory Review and Field Mapping	1	16	8	40		65	\$5,826.00
2.2	Fieldwork	1	80	16	96	4	197	\$17,766.00
2.2	Data Management and Summary Report	1	40	24	96	2	163	\$14,576.00
	<i>Total Hours</i>	7	136	58	232	7	440	
	<i>Billing Rate</i>	\$154	\$97	\$105	\$82	\$75		
	<i>Total Labor Cost</i>	\$1,078	\$13,192	\$6,090	\$19,024	\$525		\$39,909.00
	<i>Direct Expenses (3%)</i>							\$1,200.00
	Total	\$1,078	\$13,192	\$6,090	\$19,024	\$525		\$41,109.00