

**PROFESSIONAL SERVICES AGREEMENT FOR ILLICIT
DISCHARGE DETECTION AND ELIMINATION FIELD SCREENING
BETWEEN CITY OF CAMAS AND OTAK, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT is made by and between **The City of Camas, Washington**, (hereinafter referred to as "City"), whose address is 616 4th Street, Camas, Washington 98607 and **Otak, Inc.** (hereinafter referred to as "Consultant"), of 700 Washington Street, Vancouver, WA 98660-3306.

City and Consultant agree to the terms itemized below and the attached Terms and Conditions, identified on Exhibit "A".

1. Scope Of Services.

Consultant agrees to perform the field screening services, identified on Exhibit "B" attached hereto, including the provision of all labor, materials, equipment, supplies and expenses in an amount not to exceed \$59,027.10.

2. Payment.

Payment for the work provided by Consultant shall be made as provided on Exhibit "C" (Fee Estimate) attached hereto, and the total payment to Consultant shall not exceed the total amount shown in Exhibit "C", inclusive of labor, materials, equipment, supplies, and expenses, without written approval from the City of Camas.

3. The end date for this agreement is December 31, 2018.

DATED: _____, 2018

OTAK, INC.

CITY OF CAMAS

Ryan Makie, PE

Steve Wall -Public Works Director



Professional Services Terms and Conditions

TERMS and CONDITIONS

Compensation

1. Client agrees to compensate Otak for the Services as provided above. Hourly rates may be adjusted.
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.
6. 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.
7. 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.
8. If the Project is idle more than sixty (60) days, Otak may revise its estimate of fees and scope of work.
9. 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.
10. 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

11. 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.
12. If Client offers insurance specific to the Project, Client shall offer Otak the option to enroll if applicable.
13. 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.
14. 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

15. 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.
16. 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.
17. 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.
18. 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.
19. 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.
20. 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

21. **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.
22. **Certification limitation:** Otak shall not certify or warrant conditions Otak cannot ascertain.
23. **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 greater of Otak's total compensation for the Services or Otak's applicable insurance.
24. **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 under any theory.
25. **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.
26. **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.
27. **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.
28. **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

29. **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.
30. **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.
31. **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.
32. **Indemnification:**
 - a. Client shall indemnify and hold harmless Otak and its related companies, and their respective officers, directors, employees and subcontractors, from and against all damages arising out of or relating to the following: (a) development of the Project where such damages are 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; and (d) any certificate regarding the Project by Otak for a government entity, lender, or other third party, except as to Otak's negligence.
 - b. Otak shall indemnify and hold harmless 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. This indemnification obligation shall not extend beyond the date when legal or equitable proceedings would be time-barred.

Intellectual property

33. 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.
34. 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, if Client substantially performs 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.
35. 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

36. 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").
37. 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.
38. 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.
39. 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.
40. 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

41. 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

42. 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.
43. There are no third-party beneficiaries to this Agreement.
44. Neither party shall assign the entire Agreement without the other's written consent.
45. Any term or provision of this Agreement held unenforceable shall be stricken with no effect on the remainder.

ACKNOWLEDGED AND AGREED:

Signed: _____

Printed: _____

Title: _____

Date: _____



Exhibit B

City of Camas Illicit Discharge Detection and Elimination Field Screening Scope of Work Otak Project #: 18917 July 10, 2018

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). On April 30, 2018, the City submitted a G20 Non-Compliance Notification to Ecology reporting the City had not met the conditions of section S5.C.3.c.i Illicit Discharge Detection and Elimination (IDDE). That Permit condition requires the City to complete field screening for at least 40% of the MS4 no later than December 31, 2017. The Permit also requires the City to screen an additional 12% each year after 2017. As of April 30, 2018, the City had not recently field screened any of the outfalls from the City's storm drainage system.

The City has a 'Storm Drainage System' map dated March 2016 that includes the locations of 107 outfalls. The City is coordinating with a consultant to update the map and has asked Otak to assist in field screening the known 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 – 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

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- 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 two business days.

Task 2.2 – Data Management

Once field screening is complete, Otak will upload the collected information into Google Earth or GIS Database and provide the data to the City.

Task 2 Assumptions

- Fieldwork preparation is included, such as setting up GPS equipment, mapping routes, and obtaining supplies
- A crew of two staff (planning associates and/or engineering designers) will conduct the screening fieldwork
- A scientist will accompany the field crew on one full day and be available for questions and troubleshooting
- 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
- A crew can inspect approximately 10 outfalls per day, but difficult conditions may reduce the number
- Otak will inspect as many outfalls as possible until the contract maximum dollar amount 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
- List of outfalls where illicit discharges were suspected

Task 3 – Contingency

Task 3 is a contingency to be used only with written authorization, which includes e-mail, from an authorized City representative.

Schedule

All field screening will take place during the dry season, July through September. The completed data and outfall data sheets will be provided to the City by December 1, 2018.

Exclusions

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

Exhibit C

City of Camas IDDE Field Screening

Fee Estimate

Otak, Inc.

Otak Project 18917

Task	Primary Services	Civil Engineer VIII	Engineering Designer III	Planner Associate IV	Planner Associate II	Scientist IV	Project Admin. Asst	Total Hours	Total Budget by Task
TASK 1: PROJECT MANAGEMENT									
	Project Management	4		8	2		1	15	\$1,756.40
TASK 2: FIELD SCREENING									
2.1	Fieldwork	1	90	84	180	24	4	383	\$36,718.35
2.2	Data Processing	1	40	8	16			65	\$6,052.35
TASK 3: CONTINGENCY - PRIOR AUTHORIZATION REQUIRED									
	Contingency								\$10,000.00
	Total Hours	6	130	100	198	24	5	463	
	Billing Rate	\$156	\$91	\$110	\$86	\$139	\$79		
	Total Labor Cost	\$938	\$11,830	\$11,000	\$17,028	\$3,336	\$395		\$44,527.10
	Direct Expenses (10%)								\$4,500.00
	Total	\$938	\$11,830	\$11,000	\$17,028	\$3,336	\$395		\$59,027.10