



# Professional Services Agreement

Project Name:	Dorcas Lane & 4 <sup>th</sup> Street Reconstruction Project
Otak Project No.:	019778.A00
Otak Project Contact:	Kyle Ayers, PE
Client Name:	City of Manzanita
Client Mailing Address:	PO Box 129 Manzanita, OR 97130
Project Street Address or Description:	Dorcas Lane & 4 <sup>th</sup> Street Manzanita, Oregon

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: Mike Peebles, PE		Printed: _____	
Title: Principal		Title: _____	
Company: Otak, Inc.		Client: _____	
Date: October 7, 2020		Date: _____	

## SCOPE and FEE

### Introduction

We appreciate the opportunity to submit this proposal for additional professional services regarding the Dorcas Lane Storm Collection System. The preliminary schematic design has been completed and the City is looking in 2 separate options for the construction phase of this project. The 2 options are as follows:

Option 1: Construct the storm main only that begins at the Classic Street & Dorcas Intersection and extends West to 4<sup>th</sup> Street and south to the unimproved Edmunds right-of-way, then proceeds west and connects into the Third Street storm system. This design would contain minimal new catch basins and connections to the existing storm system and would allow the City to connection into the storm system on future projects. This option is essentially a transmission pipeline that transports existing storm water at Classic Street and Division Street to the Third Street Storm System. The storm main will be open trenched in the existing asphalt roadway, which will require a substantial amount of asphalt trench patching on the existing deteriorated roadway. The preliminary construction cost estimate for this project is \$828,100.

Option 2: Construct a new roadway including concrete gutters, storm main and water main for a complete roadway reconstruction project. The limits of the project are the same as described in Option 1 above and will include the roadway and intersections where the new storm main alignment has been determined in the Schematic Design Phase. The preliminary construction cost for this project is \$1,122,500.

### **TASK 1: Right-of-Way Research, Topographic Surveying and Base Map**

Onion Peak staff has already completed a topographic survey and map of the public project limits where the above referenced utilities are to be installed for Option 1 only. If Option 2 is requested, Onion Peak will complete a supplementary topographic survey for the complete roadway reconstruction project. This survey will assist in designing the proposed improvements in accordance with the most accurate topographic information available. By completing this work, Otak's design staff can prepare the engineering design and quantity estimates for use in calculating the cost estimates and bid sheets.

### **TASK 2: Engineering Design, Plans and Specifications**

Following the completion of the topographic base map, Otak will prepare engineering plans and specifications for the proposed street and utility improvements as per the Scope of Work. In general, these documents will consist of the following information:

- Storm Drainage Plan, Profile & Details (Options 1 and 2)
- Road Plan, Profile & Cross-Sections (Option 2 Only)
- Water System Plan, Profile & Details (Option 2 Only)
- Quantities, Units and Cost Estimate (Options 1 and 2)
- Technical Specifications (Options 1 and 2)

The plans and specifications will be routed to the necessary agencies for review and approval. The City of Manzanita is responsible for all application and permit fees.

### **TASK 3: Construction Administration & Bidding**

Otak is prepared to accept and review bids on behalf of the City of Manzanita. This item of work includes preparation of a set of construction contract documents on the City's behalf and the preparation of the required notices to the selected contractor. In addition, our staff will also review monthly pay requests from the contractor and prepare payment recommendations for the City.

In the event of changes in scope during construction, our project engineer will make modifications to the original plans and issue change orders to the Contractor (assumes up to 4 change orders). Our engineering staff will submit the final certifications following completion of construction, in accordance with state and local ordinances. Finally, Otak will prepare 'record' drawings for the City of Manzanita for their individual records.

### **TASK 4: Construction Staking**

At the request of the contractor and as approved by the City of Manzanita, Onion Peak will provide one set of construction stakes needed for the road alignment, concrete gutters, relocating water utilities and new storm sewer piping. The amount of staking will vary with each individual contractor with the approval of the City. All re-staking or additional staking beyond the original scope will be billed as additional work to the contractor.

### **TASK 5: Construction Observation**

Otak's project engineers will conduct periodic observations and specified testing of the construction work to determine compliance with the plans and specifications. The project engineer will complete the approval letters, or note the repairs needed. Our engineering staff will prepare and submit the final construction certificate that is required by the State Department of Human Resources, Drinking Water Section, following completion of construction, in accordance with state and local ordinances in effect at the time the design is completed.

**Schedule**

Task Description	Start Date	Completion Date
1. Topographic Survey & Base Map	October 2020	November 2020
2. Engineering Design, Plans & Specifications	October 2020	January 2021
3. Construction Administration & Bidding	January 2021	TBD
4. Construction Staking	TBD	TBD
5. Construction Observation	TBD	TBD

We are prepared to begin work, based upon the schedule submitted above, upon receiving signed approval. In order to meet the above schedule, we will need to receive the signed agreement no later than October 12, 2020.

**Proposed Fee Summary**

- OPTION 1 ..... \$126,000
- OPTION 2 ..... \$160,000

Please indicate your selection of engineering services by checking the desired box above. Otak proposes completing the above work on a **time-and-materials** basis for the amount of the selection indicated. All in-house reimbursable costs, such as copies, reproductions, facsimiles, etc., are included in the contract amount. Copies of direct expense vouchers are not provided with the invoices. Subconsultants, and any other out-of-house direct costs, will be invoiced at cost plus 10 percent and are included in the contract amount.

**Deliverables**

- Topographic survey basemap – Paper copy & Electronic copy (PDF)
- Civil engineering plan set – Paper copy & Electronic copy (PDF)
- Contract Documents & Specifications – Paper copy & Electronic copy (PDF)
- Project Record Drawings – Paper copy & Electronic copy (PDF)

**Scope and Fee Conditions and Assumptions**

Conditions/Assumptions

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

1. Storm drainage system is to be designed in conjunction with the Update of the City of Manzanita Storm Drainage Master Plan, being performed by Otak. As this project was significantly different as proposed in the 2005 Storm Drainage Master Plan, the basins will have to be reconfigured & recalculated to fit this new design layout. This design does not include the design of any storm treatment system.
2. City Right-of-Way research will not include the submission of any Boundary or Record Survey. Any Right-of-Way survey requested beyond the Tillamook County GIS tax lot data will be considered additional services.
3. Deliverables will be submitted directly to the Public Works Department. No City Council meetings or public presentations are included with this proposal.
4. Based upon the direction given for the project, the followings items are not required to complete the proposed project and have not been accounted for in the proposed fees. If any of these are required, they will be considered additional services:
  - a. Geotechnical engineering
  - b. Landscape planning
  - c. Traffic study
  - d. Structural/architectural design or demolition plan for private improvements
  - e. Retaining walls
5. Any work proposed by the City, or adjacent property owners that changes the scope of the project will be considered additional services.
6. Slope easements or construction easements along private property are not included in this proposal. Easements will be considered additional services.

## 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 30<sup>th</sup> 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.

**[END of PROFESSIONAL SERVICES AGREEMENT]**