

**RESOLUTION NO. 3005**

**A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH DOWL TO PROVIDE ENGINEERING CONSULTING SERVICES FOR THE WILLAMETTE WATER SUPPLY PLM 1.3: CONSTRUCTION INSPECTION OF CITY INFRASTRUCTURE PROJECT (CAPITAL IMPROVEMENT PROJECT NO. 1127).**

WHEREAS, Willamette Water Supply System (WWSS) Commission intends to pump raw water through a raw water pipeline from the Willamette River through the Willamette River Water Treatment Plant (WRWTP) Willamette Intake Facilities (WIF) to its new water treatment plant to be built near the intersection of SW 124<sup>th</sup> Avenue and SW Tualatin-Sherwood Road in Washington County; and

WHEREAS, on May 1, 2017, the City of Wilsonville entered into Ground Lease Agreement for Raw Water Pipeline (Lease) with the City of Hillsboro and Tualatin Valley Water District (TVWD), leasing an area of land in which to place an approximately 6-foot (6') diameter raw water pipeline approximately eight feet (8') underground, stretching for approximately three (3) miles through the City of Wilsonville for a period of 99 years; and

WHEREAS, pursuant to Section 20.2 of the Lease, City of Hillsboro, TVWD, and the City of Beaverton have formed the WWSS Commission, an ORS Chapter 190 entity, by agreement effective July 1, 2019, which agreement assigned all of Hillsboro's and TVWD's rights under the Lease to the WWSS Commission; and

WHEREAS, the Lease includes an additional consideration, six (6) Right-of-Way Enhancement Projects and Deficiencies (Enhancement Projects), representing significant improvements to City infrastructure, which will benefit Wilsonville; and

WHEREAS, on September 20, 2021, the City of Wilsonville and the WWSS Commission agreed to the First Amendment to the Lease (Resolution 2919), amending the Enhancement Projects; and

WHEREAS, the City desires to perform independent construction inspection of the City infrastructure restoration associated with the raw water pipeline construction and construction of the Enhancement Projects to ensure compliance with Wilsonville Public Works Standards; and

WHEREAS, the City solicited proposals from qualified consulting firms for the construction inspection services that duly followed State of Oregon Public Contracting Rules and the City of Wilsonville Municipal Code; and,

WHEREAS, DOWL submitted a proposal on October 12, 2022, and was subsequently evaluated and determined to be the most qualified consultant to perform the work; and

WHEREAS, following the qualifications based selection process and under the direction of the City, a detailed scope of work was prepared, and the fee for the scope was negotiated and found to be acceptable and appropriate for the services to be provided.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

Section 1. The procurement process for the Project duly followed Oregon Public Contracting Rules, and DOWL has provided a responsive and responsible proposal for engineering consulting services.

Section 2. The City Council, acting as the Local Contract Review Board, authorizes the City Manager to enter into and execute, on behalf of the City of Wilsonville, a Professional Services Agreement with DOWL for a not-to-exceed amount of \$734,340, which is substantially similar to **Exhibit A** attached hereto.

Section 3. WWSS will reimburse the City of Wilsonville for all costs associated with construction inspection services to be performed by DOWL under this Professional Services Agreement in accordance with the Lease.

Section 4. Effective Date. This Resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 21<sup>st</sup> day of November, 2022, and filed with the Wilsonville City Recorder this date.

DocuSigned by:  
*Julie Fitzgerald*  
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JULIE FITZGERALD, MAYOR

ATTEST:

DocuSigned by:  
*Kimberly Veliz*  
E781DE10276B498...

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Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Fitzgerald	Yes
Council President Akervall	Excused
Councilor Lehan	Yes
Councilor West	Excused
Councilor Linville	Yes

EXHIBIT:

- A. WWSP PLM\_1.3 Inspection of City Infrastructure Professional Services Agreement

## EXHIBIT A

Contract No. 230920

CIP No. 1127

**CITY OF WILSONVILLE  
PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (“Agreement”) for the Willamette Water Supply PLM 1.3: Construction Inspection of City Infrastructure Project (“Project”) is made and entered into on this \_\_\_\_\_ day of November 2022 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **DOWL, LLC**, a Delaware limited liability company (hereinafter referred to as “Consultant”).

**RECITALS**

WHEREAS, the City requires services which Consultant is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, Consultant represents that Consultant is qualified to perform the services described herein on the basis of specialized experience and technical expertise; and

WHEREAS, Consultant is prepared to provide such services as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

**AGREEMENT****Section 1. Scope of Work**

Consultant shall diligently perform the construction inspection services according to the requirements and deliverable dates identified in the Scope of Work for the Project, attached hereto as **Exhibit A** and incorporated by reference herein (the “Services”).

**Section 2. Term**

The term of this Agreement shall be from the Effective Date until all Services required to be performed hereunder are completed and accepted, or no later than December 31, 2024, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City.

**Section 3. Consultant’s Services**

3.1. All written documents, drawings, and plans submitted by Consultant in conjunction with the Services shall bear the signature, stamp, or initials of Consultant’s authorized Project Manager. Any documents submitted by Consultant that do not bear the signature, stamp, or initials of Consultant’s authorized Project Manager, will not be relied upon by the City. Interpretation of plans and answers to questions regarding the Services or Scope of Work given by Consultant’s Project Manager may be verbal or in writing, and may be relied upon by the City, whether given verbally or

in writing. If requested by the City to be in writing, Consultant's Project Manager will provide such written documentation.

3.2. Consultant will not be deemed to be in default by reason of delays in performance due to circumstances beyond Consultant's reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or other unavoidable delays or acts of third parties not under Consultant's direction and control ("Force Majeure"). In the case of the happening of any Force Majeure event, the time for completion of the Services will be extended accordingly and proportionately by the City, in writing. Lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

3.3. The existence of this Agreement between the City and Consultant shall not be construed as the City's promise or assurance that Consultant will be retained for future services beyond the Scope of Work described herein.

3.4. Consultant shall maintain the confidentiality of any confidential information that is exempt from disclosure under state or federal law to which Consultant may have access by reason of this Agreement. Consultant warrants that Consultant's employees assigned to the Services provided in this Agreement shall be clearly instructed to maintain this confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Agreement.

#### **Section 4. Compensation**

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Consultant on a time and materials basis, guaranteed not to exceed SEVEN HUNDRED THIRTY-FOUR THOUSAND THREE HUNDRED FORTY DOLLARS (\$734,340), for performance of the Services ("Compensation Amount"). Any compensation in excess of the Compensation Amount will require an express written Addendum to be executed between the City and Consultant.

4.2. During the course of Consultant's performance, if the City, through its Project Manager, specifically requests Consultant to provide additional services that are beyond the Scope of Work described on **Exhibit A**, a written Addendum to this Agreement must be executed in compliance with the provisions of **Section 17**.

4.3. Except for amounts withheld by the City pursuant to this Agreement, Consultant will be paid for Services for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice. In that instance, the undisputed portion of the invoice will be paid by the City within the above timeframe. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Consultant as promptly as is reasonably possible.

4.4. The City will be responsible for the direct payment of required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, permitting, and all other similar fees resulting from this Project, that are not specifically covered by **Exhibit A**.

4.5. Consultant's Compensation Amount and Rate Schedule are all inclusive and include, but are not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit,

pension benefits and similar contributions and benefits, technology and/or software charges, licensing, trademark, and/or copyright costs, office expenses, travel expenses, mileage, and all other indirect and overhead charges, including, but not limited to, the recently enacted Oregon Corporate Activity Tax (CAT).

## **Section 5. City's Rights and Responsibilities**

5.1. The City will designate a Project Manager to facilitate day-to-day communication between Consultant and the City, including timely receipt and processing of invoices, requests for information, and general coordination of City staff to support the Project.

5.2. Award of this contract is subject to budget appropriation. Funds are approved for Fiscal Year 2022-23. If not completed within this fiscal year, funds may not be appropriated for the next fiscal year. The City also reserves the right to terminate this contract early, as described in **Section 15**.

## **Section 6. City's Project Manager**

The City's Project Manager is Andrew Barrett. The City shall give Consultant prompt written notice of any re-designation of its Project Manager.

## **Section 7. Consultant's Project Manager**

Consultant's Project Manager is Jason Kelly. In the event that Consultant's designated Project Manager is changed, Consultant shall give the City prompt written notification of such re-designation. Recognizing the need for consistency and knowledge in the administration of the Project, Consultant's Project Manager will not be changed without the written consent of the City, which consent shall not be unreasonably withheld. In the event the City receives any communication from Consultant that is not from Consultant's designated Project Manager, the City may request verification by Consultant's Project Manager, which verification must be promptly furnished.

## **Section 8. Project Information**

Except for confidential information designated by the City as information not to be shared, Consultant agrees to share Project information with, and to fully cooperate with, those corporations, firms, contractors, public utilities, governmental entities, and persons involved in or associated with the Project. No information, news, or press releases related to the Project, whether made to representatives of newspapers, magazines, or television and radio stations, shall be made without the written authorization of the City's Project Manager.

## **Section 9. Duty to Inform**

If at any time during the performance of this Agreement or any future phase of this Agreement for which Consultant has been retained, Consultant becomes aware of actual or potential problems, faults, or defects in the Project or Scope of Work, or any portion thereof; or of any nonconformance with federal, state, or local laws, rules, or regulations; or if Consultant has any objection to any decision or order made by the City with respect to such laws, rules, or regulations, Consultant shall give prompt written notice thereof to the City's Project Manager. Any delay or failure on the part of the City to

provide a written response to Consultant shall neither constitute agreement with nor acquiescence to Consultant's statement or claim, nor constitute a waiver of any of the City's rights.

## **Section 10. Subcontractors and Assignments**

10.1. Consultant shall not subcontract with others for any of the Services prescribed herein. Consultant shall not assign any of Consultant's rights acquired hereunder without obtaining prior written approval from the City, which approval may be granted or denied in the City's sole discretion.

10.2. The City shall have the right to enter into other agreements for the Project, to be coordinated with this Agreement. Consultant shall cooperate with the City and other firms, engineers or subcontractors on the Project so that all portions of the Project may be completed in the least possible time and within normal working hours. Consultant shall furnish other engineers, subcontractors and affected public utilities, whose designs are fitted into Consultant's design, detail drawings giving full information so that conflicts can be avoided.

## **Section 11. Consultant Is Independent Contractor**

11.1. Consultant is an independent contractor for all purposes and shall be entitled to no compensation other than the Compensation Amount provided for under **Section 4** of this Agreement. Consultant will be solely responsible for determining the manner and means of accomplishing the end result of Consultant's Services. The City does not have the right to control or interfere with the manner or method of accomplishing said Services. The City, however, will have the right to specify and control the results of Consultant's Services so such Services meet the requirements of the Project.

11.2. No subcontracting or assignment of this Agreement is allowed.

11.3. Consultant shall be responsible for, and defend, indemnify, and hold the City harmless against, any liability, cost, or damage arising out of Consultant's use of such subcontractor(s) and subcontractor's negligent acts, errors, or omissions. Unless otherwise agreed to, in writing, by the City, Consultant shall require that all of Consultant's subcontractors also comply with, and be subject to, the provisions of this **Section 11** and meet the same insurance requirements of Consultant under this Agreement.

## **Section 12. Consultant Responsibilities**

12.1. Consultant must make prompt payment for any claims for labor, materials, or services furnished to Consultant by any person in connection with this Agreement as such claims become due. Consultant shall not permit any liens or claims to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of Consultant. If Consultant fails, neglects, or refuses to make prompt payment of any such claim, the City may, but shall not be obligated to, pay such claim to the person furnishing the labor, materials, or services and offset the amount of the payment against funds due or to become due to Consultant under this Agreement. The City may also recover any such amounts directly from Consultant.

12.2. Consultant must comply with all applicable Oregon and federal wage and hour laws, including BOLI wage requirements, if applicable. Consultant shall make all required workers compensation and medical care payments on time. Consultant shall be fully responsible for payment

of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Consultant shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions, and all other charges on account of any employees. Consultant shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of assistants or employees shall be Consultant's responsibility. Consultant shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses.

12.3. No person shall be discriminated against by Consultant in the performance of this Agreement on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Agreement, in whole or in part, by the City.

### **Section 13. Indemnity**

13.1. Indemnification. Consultant acknowledges responsibility for liability arising out of the performance of this Agreement, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Consultant's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Agreement, or from Consultant's failure to perform its responsibilities as set forth in this Agreement. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Consultant shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Consultant of its responsibility to perform in full conformity with the City's requirements, as set forth in this Agreement, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Consultant's negligent performance of this Agreement, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 13.2**. For those claims based on professional liability (as opposed to general liability or automobile liability), Consultant shall not be required to provide the City's defense, but will be required to reimburse the City for the City's defense costs incurred in any litigation resulting from negligent acts, omissions, errors, or willful or reckless misconduct by Consultant. As used herein, the term "Consultant" applies to Consultant and its own agents, employees, and suppliers.

13.2. Standard of Care. In the performance of the Services, Consultant agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Consultant's profession practicing in the Portland metropolitan area. Consultant will re-perform any Services not meeting this standard without additional compensation. Consultant's re-performance of any Services, even if done at the City's request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Consultant's failure to perform in accordance with the applicable standard of care of this Agreement and within the prescribed timeframe.

### **Section 14. Insurance**

14.1. Insurance Requirements. Consultant shall maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Agreement. Such insurance shall cover



all risks arising directly or indirectly out of Consultant's activities or work hereunder. The amount of insurance carried is in no way a limitation on Consultant's liability hereunder. The policy or policies maintained by Consultant shall provide at least the following minimum limits and coverages at all times during performance under this Agreement:

14.1.1. Commercial General Liability Insurance. Consultant shall obtain, at Consultant's expense, and keep in effect during the term of this Agreement, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Agreement and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Agreement.

14.1.2. Professional Errors and Omissions Coverage. Consultant agrees to carry Professional Errors and Omissions Liability insurance on a policy form appropriate to the professionals providing the Services hereunder with a limit of no less than **\$2,000,000** per claim. Consultant shall maintain this insurance for damages alleged to be as a result of errors, omissions, or negligent acts of Consultant. Such policy shall have a retroactive date effective before the commencement of any work by Consultant on the Services covered by this Agreement, and coverage will remain in force for a period of at least three (3) years after termination of this Agreement.

14.1.3. Business Automobile Liability Insurance. If Consultant will be using a motor vehicle in the performance of the Services herein, Consultant shall provide the City a certificate indicating that Consultant has business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

14.1.4. Workers Compensation Insurance. Consultant and all employers providing work, labor, or materials under this Agreement that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Consultants who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than **\$500,000** each accident.

14.1.5. Insurance Carrier Rating. Coverages provided by Consultant must be underwritten by an insurance company deemed acceptable by the City, with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

14.1.6. Additional Insured and Termination Endorsements. The City will be named as an additional insured with respect to Consultant's liabilities hereunder in insurance coverages. Additional Insured coverage under Consultant's Commercial General Liability, Automobile Liability, and Excess Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: "The City of Wilsonville, its elected and appointed officials, officers, agents, employees, and volunteers." An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days' written notification of any termination or major modification of the insurance policies required hereunder.

14.1.7. Certificates of Insurance. As evidence of the insurance coverage required by this Agreement, Consultant shall furnish a Certificate of Insurance to the City. This Agreement shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Consultant agrees that it will not terminate or change its coverage during the term of this Agreement without giving the City at least thirty (30) days' prior advance notice and Consultant will obtain an endorsement from its insurance carrier, requesting the carrier to notify the City of any termination or change in insurance coverage, as provided above.

14.2. Primary Coverage. The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Consultant shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are "Claims Made" policies, Consultant will be required to maintain such policies in full force and effect throughout any warranty period.

## **Section 15. Early Termination; Default**

15.1. This Agreement may be terminated prior to the expiration of the agreed upon terms:

15.1.1. By mutual written consent of the parties;

15.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Consultant by mail or in person; or

15.1.3. By Consultant, effective upon seven (7) days' prior written notice in the event of substantial failure by the City to perform in accordance with the terms through no fault of Consultant, where such default is not cured within the seven (7) day period by the City. Withholding of disputed payment is not a default by the City.

15.2. If the City terminates this Agreement, in whole or in part, due to default or failure of Consultant to perform Services in accordance with the Agreement, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Consultant shall be liable for all costs and damages incurred by the City as a result of the default by Consultant,

including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Agreement. This Agreement shall be in full force to the extent not terminated by written notice from the City to Consultant. In the event of a default, the City will provide Consultant with written notice of the default and a period of ten (10) days to cure the default. If Consultant notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Agreement and seek remedies for the default, as provided above.

15.3. If the City terminates this Agreement for its own convenience not due to any default by Consultant, payment of Consultant shall be prorated to, and include the day of, termination and shall be in full satisfaction of all claims by Consultant against the City under this Agreement.

15.4. Termination under any provision of this Section shall not affect any right, obligation, or liability of Consultant or the City that accrued prior to such termination. Consultant shall surrender to the City items of work or portions thereof, referred to in **Section 19**, for which Consultant has received payment or the City has made payment.

## **Section 16. Suspension of Services**

The City may suspend, delay, or interrupt all or any part of the Services for such time as the City deems appropriate for its own convenience by giving written notice thereof to Consultant. An adjustment in the time of performance or method of compensation shall be allowed as a result of such delay or suspension unless the reason for the delay is within Consultant's control. The City shall not be responsible for Services performed by any subcontractors after notice of suspension is given by the City to Consultant. Should the City suspend, delay, or interrupt the Services and the suspension is not within Consultant's control, then the City shall extend the time of completion by the length of the delay.

## **Section 17. Modification/Addendum**

Any modification of the provisions of this Agreement shall not be enforceable unless reduced to writing and signed by both the City and Consultant. A modification is a written document, contemporaneously executed by the City and Consultant, which increases or decreases the cost to the City over the agreed Compensation Amount in **Section 4** of this Agreement, or changes or modifies the Scope of Work or the time for performance. No modification shall be binding or effective until executed, in writing, by both Consultant and the City. In the event Consultant receives any communication of whatsoever nature from the City, which communication Consultant contends gives rise to any modification of this Agreement, Consultant shall, within five (5) days after receipt, make a written request for modification to the City's Project Manager in the form of an Addendum. Consultant's failure to submit such written request for modification in the form of an Addendum shall be the basis for refusal by the City to treat said communication as a basis for modification or to allow such modification. In connection with any modification to this Agreement affecting any change in price, Consultant shall submit a complete breakdown of labor, material, equipment, and other costs. If Consultant incurs additional costs or devotes additional time on Project tasks, the City shall be responsible for payment of only those additional costs for which it has agreed to pay under a signed Addendum. To be enforceable, the Addendum must describe with particularity the nature of the change, any delay in time the Addendum will cause, or any increase or decrease in the Compensation

Amount. The Addendum must be signed and dated by both Consultant and the City before the Addendum may be implemented.

**Section 18. Access to Records**

The City shall have access, upon request, to such books, documents, receipts, papers, and records of Consultant as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts during the term of this Agreement and for a period of four (4) years after termination of the Agreement, unless the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Agreement.

**Section 19. Property of the City**

19.1. Originals or certified copies of the original work forms, including but not limited to documents, drawings, tracings, surveying records, mylars, spreadsheets, charts, graphs, modeling, data generation, papers, diaries, inspection reports, and photographs, performed or produced by Consultant under this Agreement shall be the exclusive property of the City and shall be delivered to the City prior to final payment. Any statutory or common law rights to such property held by Consultant as creator of such work shall be conveyed to the City upon request without additional compensation.

19.2. Consultant shall not be held liable for any damage, loss, increased expenses, or otherwise, caused by or attributed to the reuse by the City or its designees of all work performed by Consultant pursuant to this Agreement without the express written permission of Consultant.

**Section 20. Notices**

Any notice required or permitted under this Agreement shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of Wilsonville  
Attn: Andrew Barrett, PE, Capital Projects Manager  
29799 SW Town Center Loop East  
Wilsonville, OR 97070

To Consultant: DOWL, LLC  
Attn: Jason Kelly, PE  
5 Centerpointe Drive, Suite 350  
Lake Oswego, OR 97035

**Section 21. Miscellaneous Provisions**

21.1. Integration. This Agreement, including all exhibits attached hereto, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these or any other documents, the

provisions of this Agreement shall control, and the terms most favorable to the City, within the City's sole discretion, will apply.

21.2. Legal Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Agreement may be enforced by an action at law or in equity.

21.3. No Assignment. Consultant may not assign this Agreement, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

21.4. Adherence to Law. In the performance of this Agreement, Consultant shall adhere to all applicable federal, state, and local laws (including the Wilsonville Code and Public Works Standards), including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Consultant is required by law to obtain or maintain in order to perform the Services described on **Exhibit A**, shall be obtained and maintained throughout the term of this Agreement.

21.5. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein.

21.6. Jurisdiction. Jurisdiction and venue for any dispute will be in Clackamas County Circuit Court.

21.7. Legal Action/Attorney Fees. Except with regard to Consultant's defense obligations in **Section 13.1**, if a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, each party shall be responsible for its own attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Agreement, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

21.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Agreement shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

21.9. Severability. If any provision of this Agreement is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Agreement shall remain in full force and effect, to the greatest extent allowed by law.

21.10. Modification. This Agreement may not be modified except by written instrument executed by Consultant and the City.

21.11. Time of the Essence. Time is expressly made of the essence in the performance of this Agreement.

21.12. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Agreement, the first day from which the designated period of time begins to run shall not be included.

21.13. Headings. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

21.14. Number, Gender and Captions. In construing this Agreement, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.

21.15. Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of where this Agreement gives the City “sole discretion” or the City is allowed to make a decision in its “sole judgment.”

21.16. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

21.17. Interpretation. As a further condition of this Agreement, the City and Consultant acknowledge that this Agreement shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the Agreement, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

21.18. Entire Agreement. This Agreement and all documents attached to this Agreement represent the entire agreement between the parties.

21.19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement but all of which together shall constitute one and the same instrument.

21.20. Authority. Each party signing on behalf of Consultant and the City hereby warrants actual authority to bind their respective party.

The Consultant and the City hereby agree to all provisions of this Agreement.

**CONSULTANT:**

**CITY:**

DOWL, LLC

CITY OF WILSONVILLE

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

As Its: \_\_\_\_\_

As Its: \_\_\_\_\_

EIN/Tax I.D. No.: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Ryan Adams, Assistant City Attorney  
City of Wilsonville, Oregon

# SCOPE OF WORK

## **Contract Statement of Work Delivery Schedule and Summary of Estimate for Services**

### **Willamette Water Supply PLM\_1.3 Construction Inspection of City Infrastructure City Project #1127 Amendment N/A**

City of Wilsonville  
Project Manager: Andrew Barrett  
29799 SW Town Center Loop East  
Wilsonville, OR 97070  
503-570-1567  
[abarrett@ci.wilsonville.or.us](mailto:abarrett@ci.wilsonville.or.us)

DOWL, LLC  
Project Manager: Jason Kelly  
5 Centerpointe Dr, Suite 350  
Lake Oswego, Oregon 97035  
971-634-2022  
[jkelly@dowl.com](mailto:jkelly@dowl.com)

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#### **Scope of Work**

The following is a proposed scope of work for the inspection and observation of the construction of City of Wilsonville (City) public infrastructure associated with the Willamette Water Supply Program (WWSP).

PLM 1.3 Project. The Consultant shall perform inspection tasks as outlined to verify City construction standards, among others, are met.

#### **Construction Schedule**

The construction timeframe is anticipated to be approximately 2 years and as of October 2022, the contractor has not begun work. The project also has a warranty period of 12-months and work to support that inspection effort has been included as a contingency task.

#### **TASK 1 PROJECT MANAGEMENT AND COORDINATION**

##### **Task 1.1 – Project Management**

Consultant shall provide project management for work associated with this Project, including managing Consultant's staff and any subconsultants as needed throughout construction.

Consultant shall communicate with the City's Project Manager the construction status on a regular basis and project issues as concerns arise. Consultant shall also provide quality assurance such that all deliverables have been peer reviewed prior to submittal to the City.

Consultant shall submit monthly invoices; unless no work is performed in a given month. Monthly invoices shall indicate dollars and percent expended during current billing period and total to date per task and subtask. Monthly invoices are on a time and materials basis per task and subtask. Monthly invoices are subject to City review and approval.



Consultant shall prepare monthly progress reports summarizing tasks performed in the previous month by each inspector, hours billed by each inspector, and other general project tasks performed. Monthly progress reports shall also discuss anticipated tasks in the upcoming month of construction.

**Task 1.1 Deliverables - Consultant shall provide:**

- Monthly invoices
- Monthly progress reports

**Assumptions for budgeting:**

- 26 monthly invoices with their associated progress reports will be submitted taking 1 hour each for the PM and project controller
- The Project Manager will spend on average 1.5 hour per week for ~2 years (104 weeks) performing this task
- The project Controller will spend on average 1 hour per week supporting the PM and inspection staff on all other task deliverables

**Task 1.2 – Project Meetings**

Consultant shall attend construction meetings occurring both weekly and at non-reoccurring times. Meetings will likely be held at the Construction Management Office in Wilsonville with provisions for online meetings as needed.

Consultant shall document topics discussed at each attended meeting and provide meeting minutes to City staff within two business days if City staff could not attend that meeting, and five business days if City staff did attend.

**Task 1.1 Deliverables - Consultant shall provide:**

- Meeting minutes for each attended meeting

**Assumptions for budgeting:**

- 1 consultant staff will attend the weekly meeting (102 each) plus an additional 20 each technical specific project meetings. 90 meetings are budgeted for each meeting

**TASK 2 INSPECTION**

**Task 2.1 – General Inspection and Observation**

Consultant shall perform general inspection and observation for all public infrastructure improvements performed by the Prime Contractor, subcontractors, or any other company impacting existing or constructing new public infrastructure. Any inspection or observation shall be documented as part of the Daily Inspection Report. The scope of the inspection would start above the WWSP pipe zone material and include all City infrastructure above it.

General inspection and observation will include, but is not limited to:

- Removal and replacement of concrete street panels

- Removal and replacement of asphalt pavement
- Removal and replacement of standard concrete curb and curb and gutter
- Removal and replacement of concrete sidewalk
- Installation of storm facilities, including manholes, pipeline, and curb inlets
- Installation of water distribution pipeline and appurtenances
- Installation of fiber conduit and vaults
- Installation of streetlights
- Assessment of striping and signage and necessary repairs

**Task 2.1 Deliverables - Consultant shall provide:**

- Electronic copies (PDF) of Daily Inspection Reports, submitted within seven (7) calendar days of performed inspection(s) or observation(s)

**Assumptions for budgeting:**

- We assume the Project on average will be require 0.75 FTE of general inspection & observation over the 2-year construction schedule, flexing between 0.25 FTE's and 1.5 FTE's depending on the work being performed onsite
- 2/3 of the observation will be performed by a Field Project Representative 2 and 1/3 performed by a Field Project Representative 4

**Task 2.2 – Erosion and Sediment Control Inspection and Documentation**

Consultant's CESCL-certified inspector shall perform initial, monthly, and final erosion and sediment control (ESC) inspections for all project phases. Inspector to make recommendations for adjustments to ESC BMPs throughout construction as needed. Inspector to keep make observations on the ESC when onsite and provide that information in their daily report under task 2.1.

**Task 2.2 Deliverables - Consultant shall provide:**

- Initial, monthly, and final ESC inspection reports for all project phases

**Assumptions for budgeting:**

- 1 Certified Erosion Sediment Control Lead (CESCL) staff member will perform 26 site visits, which require 10 hours each for inspection and reporting
- Senior environmental staff will QC reports before submitting
- CESCL hours are included in this task, but Inspector time and reporting is included in Task 2.1

**Task 2.3 – Traffic Control Inspection**

Consultant shall confirm traffic control device types, counts, and placements match approved project plans. Consultant shall coordinate with Prime Contractor with the adjustment of devices to match approved project plans. Deviation from approved project plans will require approval from applicable City staff.

**Task 2.3 Deliverables - Consultant shall provide:**

- This task deliverable will be included with Task 2.1 Deliverables

**Assumptions for budgeting:**

- 1 consultant staff will spend on average 2 hours per week monitoring traffic control

**Task 2.4 – Curb Ramp Inspection and Documentation**

Consultant shall inspect formwork prior to concrete pour. Consultant shall coordinate with Contractor in the adjustment of formwork to match projects plans and adhere to PROWAG/ADAAG standards.

After curb ramp concrete has been poured, Consultant shall use Wilsonville ADA Curb Ramp Inspection Forms and inspect all project constructed curb ramps. Inspector of curb ramps shall have an ODOT ADA Curb Ramp Inspector Certification.

**Task 2.4 Deliverables - Consultant shall provide:**

- Completed City ADA Curb Ramp Inspection Form(s) for each project constructed curb ramp

**Assumptions for budgeting:**

- 1 consultant staff will spend on average 4 hours per curb ramp. Assuming 42 ramps total

**Task 2.5 – Traffic and Pedestrian Signal Improvement Inspections**

Consultant shall schedule, facilitate, and coordinate inspections of traffic and pedestrian signal infrastructure with Clackamas County Transportation staff. City traffic and pedestrian signals are maintained by Clackamas County therefore these facilities are inspected and approved by County staff.

Inspections shall include, but are not limited to:

- Signal Pole Foundation Formwork, Rebar, and Concrete
- Signal Pole, Signal, and Sign Installation
- Junction Box and Conduit Installation
- Pedestrian Signal Installation
- Pedestrian Pushbutton Post and Pushbutton Installation

**Task 2.5 Deliverables - Consultant shall provide:**

- Inspection documentation as part of Daily Inspection Reports, as described in Task 2.1

**Assumptions for budgeting:**

- This task assumes 1 hour per week aggregate for the life of the Project on average.

### **TASK 3 FIELD TESTED MATERIALS**

#### **Task 3.1 – Materials and Special Testing Coordination and Observation**

Consultant shall coordinate with the Prime Contractor, subcontractors, and WWSP staff on the scheduling of materials and other special testing for City infrastructure. WWSP holds the contract with the testing company but testing times will need to be coordinated with the Consultant.

Consultant shall observe materials and other special testing to confirm that testing is being performed per City Standards and other Project Specifications. As part of Daily Inspection Reports, Consultant shall document testing types, locations, depths, and frequencies, and other notable information.

##### **Task 3.1 Deliverables – Consultant shall provide:**

- Testing types, locations, depths, and other notable information related to the type of testing, summarized in a table
- Testing observation notes included in Daily Inspection Reports as part of task 2.1

##### **Assumptions for budgeting:**

- This task assumes 1 hour per week for the life of the Project on average for DOWL's Quality Control and Compliance Specialist (QCCS)
- Inspector coordination of testing with WWSP effort and deliverables is included in task 2.1

### **TASK 4 PROJECT COMPLETION**

#### **Task 4.1 – Final Inspection and Project Closeout**

Upon stated substantial completion by the Prime Contractor, Consultant shall schedule a project walkthrough of City public infrastructure improvements with applicable City staff, the Prime Contractor, and consultant's inspectors that performed throughout the project.

##### **Task 4.1 Deliverables – Consultant shall provide:**

- Project Corrections List and Redlined Project Plan
- Revisions to Project Corrections List

##### **Assumptions for budgeting:**

- This task assumes 2 site visits, 1 substantial and 1 final inspection for 2 consultant staff for a total of 10 hours

#### **Task 4.2 – Warranty Period Inspection (Contingency task)**

DOWL staff will assist the City during the first 12-months of the 2-year warranty period following final completion. DOWL staff will inspect the site for compliance with the Contract documents and provide feedback to the City and WWSP on non-compliant items.

##### **Task 4.2 Deliverables - Consultant shall provide:**

- Consultant will provide up to 4 warranty inspection memorandums summarizing the deficient items not in compliance with the Contractor's Contract

**Assumptions for budgeting:**

- DOWL will complete 4 warranty inspections plus 4 follow-up inspections to observe completion of the deficiencies
- This task also includes effort to manage this contract during that period

**EXHIBIT B**  
**WWSP PLM\_1.3 CONSTRUCTION INSPECTION OF CITY INFRASTRUCTURE**  
 Fee Proposal

October 31, 2022

**DOWL, LLC**  
**CITY OF WILSONVILLE**

DOWL Project 2647.80449.00

TASK	Task	Employee	Senior Manager II	Field Project Representative IV	Field Project Representative IV	Field Project Representative IV	Environmental Specialist VIII	Environmental Specialist I	Field Project Representative II	Project Controller	TOTAL HOURS	TOTAL DOWL \$	Sub 1	Sub 2	Sub 3	TASK BUDGET	
TASK 1	Project Management and Coordination	Project Management	260							L. Lyding	468	\$ 94,900.00	\$0	\$0	\$0	\$94,900.00	
		Project Meetings	153	30						C. Coombe	183	\$ 42,585.00	\$0	\$0	\$0	\$42,585.00	
		<b>Task Subtotal</b>	<b>413</b>	<b>30</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>208</b>	<b>\$137,485.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$137,485.00</b>	
TASK 2	Inspection	General Inspection and Observation									31.40	\$ 439,350.00	\$0	\$0	\$0	\$439,350.00	
		Erosion and Sediment Control Inspection and Documentation									10	\$ 39,980.00	\$0	\$0	\$0	\$39,980.00	
		Traffic Control Inspection									10	\$ 16,030.00	\$0	\$0	\$0	\$16,030.00	
		Curb Ramp Inspection and Documentation									10	\$ 30,060.00	\$0	\$0	\$0	\$30,060.00	
		Traffic and Pedestrian Signal Improvement Inspections									11.4	\$ 23,080.00	\$0	\$0	\$0	\$23,080.00	
<b>Task Subtotal</b>	<b>52</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>60</b>	<b>\$468,500.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$468,500.00</b>			
TASK 3	Field Tested Materials	Materials and Special Testing Coordination and Observation									11.4	\$ 191,800.00	\$0	\$0	\$0	\$191,800.00	
		<b>Task Subtotal</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>11.4</b>	<b>\$ 191,800.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$191,800.00</b>	
TASK 4	Project Completion	Final Inspection and Project Closeout									30	\$ 5,075.00	\$0	\$0	\$0	\$5,075.00	
		<b>Task Subtotal</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>278</b>	<b>\$0</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	
<b>AVERAGE HOURLY RATES</b>			\$245.00	\$170.00	\$170.00	\$215.00	\$105.00	\$125.00	\$150.00			\$705,165.00	\$0.00	\$0.00	\$0.00	\$705,165.00	
<b>TOTAL LABOR ESTIMATE</b>			\$113,925	\$17,280	\$222,380	\$11,180	\$27,400	\$370,000	\$41,700			\$705,165.00	\$0.00	\$0.00	\$0.00	\$705,165.00	
<b>Total Estimated Non-Contingency Costs =</b>												<b>\$712,477.50</b>					
<b>TOTAL ESTIMATED PROJECT COST (Base and Contingency) =</b>												<b>\$734,340.00</b>					
TASK 4	Contingency Tasks	Design										\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
		Construction										\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
		<b>Task Subtotal</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	
		<b>AVERAGE HOURLY RATES</b>											\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
		<b>TOTAL LABOR ESTIMATE</b>											\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Total Estimated Contingency Costs =</b>												<b>\$21,862.50</b>					
<b>DOWL EXPENSES</b>																	
Task 1.1 Mileage \$0.625 per mile, 18 miles round trip																	
Task 1.2 Mileage \$0.625 per mile, 18 miles round trip, 102 trips																	
Task 2.1 Mileage \$0.625 per mile, 18 miles round trip, 520 trips																	
Task 2.2 Mileage \$0.625 per mile, 18 miles round trip, 26 trips																	
Task 2.3 Mileage \$0.625 per mile, 18 miles round trip (see 2.1)																	
Task 2.4 Mileage \$0.625 per mile, 18 miles round trip (see 2.1)																	
Task 2.5 Mileage \$0.625 per mile, 18 miles round trip (see 2.1)																	
Task 4.1 Mileage \$0.625 per mile, 18 miles round trip, 2 trips																	
<b>Totals</b>																	
<b>Design</b>																	
<b>Construction</b>																	
<b>Subtotal</b>																	
<b>DOWL BASE LABOR COSTS =</b>												<b>\$712,477.50</b>					
<b>DOWL BASE LABOR COSTS =</b>												<b>\$712,477.50</b>					
<b>SUBCONSULTANT 5% MARK-UP =</b>												<b>\$0.00</b>					
<b>Total Estimated Contingency Costs =</b>												<b>\$21,862.50</b>					
<b>TOTAL ESTIMATED PROJECT COST (Base and Contingency) =</b>												<b>\$734,340.00</b>					
TASK 4	Contingency Tasks	Design										\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
		Construction										\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
		<b>Task Subtotal</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	
		<b>AVERAGE HOURLY RATES</b>											\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
		<b>TOTAL LABOR ESTIMATE</b>											\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Total Estimated Contingency Costs =</b>												<b>\$21,862.50</b>					
<b>DOWL EXPENSES</b>																	
Task 4.2 Mileage \$0.625 per mile, 18 miles round trip, 10 trips																	
<b>Totals</b>																	
<b>Design</b>																	
<b>Construction</b>																	
<b>Subtotal</b>																	
<b>DOWL BASE LABOR COSTS =</b>												<b>\$712,477.50</b>					
<b>DOWL BASE LABOR COSTS =</b>												<b>\$712,477.50</b>					
<b>SUBCONSULTANT 5% MARK-UP =</b>												<b>\$0.00</b>					
<b>Total Estimated Contingency Costs =</b>												<b>\$21,862.50</b>					