

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Professional Services	_____	Briefing	COUNCIL BILL #	_____
Agreement with Otak, Inc. for	_____	Proposed Action	Originating Department	Public Works
the Diking Improvement	_____	Consent	Contact Person	Halley Kimball
District No. 5 Dike Repair	_____	Action	Phone Number	(425)257-8946
Design	_____	First Reading	FOR AGENDA OF	August 3, 2016
	_____	Second Reading		
	_____	Third Reading		
	_____	Public Hearing		
	_____	Budget Advisory	Initialed by:	
			Department Head	_____
			CAA	<i>db</i>
			Council President	<i>jm</i>

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
Smith Island –from I-5 to SR 529		Map, Professional Services Agreement	Public Works, Legal

Amount Budgeted	\$	Accounted for within Utilities Sewage Treatment Budget
Expenditure Required	\$240,000	Costs to be reimbursed by District
Budget Remaining	--	
Additional Required	--	

DETAILED SUMMARY STATEMENT:

Smith Island is protected from flooding by dikes. These dikes protect multiple businesses and the Everett Water Pollution Control Facility. The Corps of Engineers routinely inspects the dikes. The Corps provides flood fighting services to dikes that meet their standards. The 2015 Corps inspection found that the dike between I-5 and SR 529 was unacceptable and requires repairs to be kept in the Corps' program. The portion needing repairs is about half inside the city limits and about half within the service boundary of Diking Improvement District No. 5 (DD5). The District considers the whole section to be vital to protect the area and its constituents, and has authorized the repairs needed.

The DD5 Commissioners have requested that the City of Everett act as their agent and provide project management services for the project, and have approved the District to reimburse the City for costs relating to this project.

Through the City selection process, Otak, Inc. was selected as the design consultant. This Professional Services Agreement for Phase 1 of the project provides the surveying, geotechnical, permitting support, and pre-design services necessary to select the final design for this dike segment.

RECOMMENDATION:

Authorize the Mayor to sign the Professional Services Agreement with Otak, Inc. for the Diking Improvement District No. 5 Dike Repair Design in the amount of \$240,000, to be reimbursed by the District.

DD5 Dike Repair Project Extent

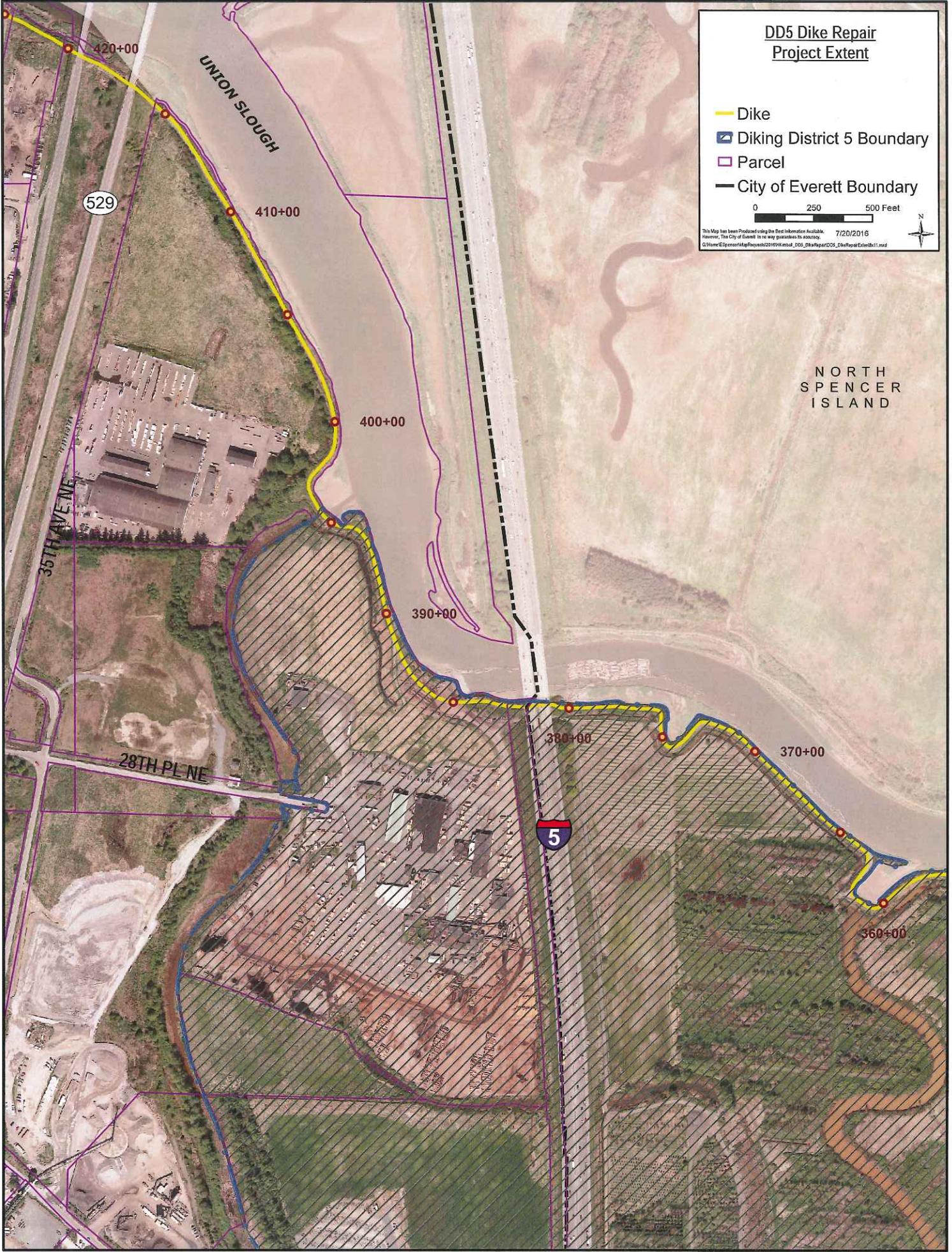
-  Dike
-  Diking District 5 Boundary
-  Parcel
-  City of Everett Boundary



This Map has been Produced using the Best Information Available.
However, The City of Everett in no way guarantees its accuracy.
G:\Home\GIS\project\MapDocs\021616\mxd\DD5_DikeRepair\DD5_DikeRepairExtent1.mxd 7/20/2016



NORTH
SPENCER
ISLAND



Letter of Transmittal

Transmitted By...

- Mail
- Courier
- Will Call
- Hand Deliver

Date: July 25, 2016

Project No.: 32431A

Project: Diking District 5 / Dike Repairs and Improvements

To: Halley Kimball

Address: City of Everett
3200 Cedar Street
Everett, WA 98201



Hanmi Global Partner
11241 willows road ne
suite 200
redmond, wa 98052
phone (425) 822-4446
fax (425) 827-9577

We Are Sending You...

- Drawings
- Specifications
- Copy of Letter
- Change Order
- Prints
- Plans
- Samples
- Agreement

Transmitted...

- For Approval
- As Requested
- For Your Use
- For Comment

Copies Page No. Description

2	ea	<i>PSA between City of Everett and Otak, Inc. for the Diking District 5 / Dike Repairs and Improvements</i>

Items Are...

- Attached
- Under Separate Cover via

Remarks

From Greg Laird, Principal
cc Project File

**CITY OF EVERETT
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT made and entered into on this day of , 2016, by and between the **CITY OF EVERETT**, a municipal corporation under the laws of the State of Washington, hereinafter referred to as the "City," and Otak, Inc, whose address is 11241 Willows Road, NE, Suite 200, Redmond, Washington 98052, hereinafter referred to as the "Service Provider."

WHEREAS, the City desires to engage the Service Provider to perform engineering consulting services for dike repairs on Smith Island for the City of Everett; and

WHEREAS, Service Provider represented, and by entering into this Agreement now represents, that it is fully qualified to perform the work to be performed hereunder in a competent and professional manner;

NOW, THEREFORE, the parties herein do mutually agree as follows:

1. **Engagement of Service Provider.** The City hereby agrees to engage the Service Provider, and the Service Provider hereby agrees, to perform the work in a competent and professional manner and provide the services described in the attached "Exhibit A - Scope of Work". The Scope of Work so identified is hereafter referred to as "Work". Without a written directive of an authorized representative of the City, the Service Provider shall not perform any services that are in addition to, or beyond the scope of, the Work. If the Service Provider's proposal is attached as an exhibit, and if such proposal contains or incorporates any conditions or terms in addition to or different from the terms of this Agreement, then the Service Provider expressly agrees that such conditions or terms are neither incorporated nor included into this Agreement between the City and Service Provider. If, and to the extent, the Work includes the design of a public work or improvement, in whole or in part, Service Provider's design shall be reasonably accurate, adequate and suitable for its intended purpose.

2. **Intellectual Property Rights.** Reports, drawings, plans, specifications and any other intangible property created in furtherance of the Work are property of the City for all purposes, whether the project for which they are made is executed or not, and may be used by the City for any purpose. Unless otherwise expressly agreed in writing, all intellectual property rights in such documents or intangible property created pursuant to this Agreement, or for the City of Everett, belong to the City of Everett. Service Provider retains any intellectual property rights in documents and intangible property created by Service Provider prior to engagement, or not created by Service Provider for its performance of this Agreement.

3. **Time of Beginning and Completion of Performance.** This Agreement shall commence as of the date of execution of this Agreement and shall be completed by December 31, 2018.

4. **Compensation.**

A. The City shall pay the Service Provider only for completed Work and for services actually rendered which are described herein. Such payment shall be full compensation for Work performed or services rendered, including, but not limited to, all labor, materials, supplies, equipment and incidentals necessary to complete the Work.

B. The Service Provider shall be paid such amounts and in such manner as described in Exhibit B.

C. Service Provider may receive payment as reimbursement for Eligible Expenses actually incurred. "Eligible Expenses" means those types and amounts of expenses either listed in Exhibit C or such expenses as are approved for reimbursement by the City in writing prior to the expense being incurred. If Exhibit C is either blank or not attached, expenses may not be reimbursed unless prior written approval was obtained from the City. An expense shall not be reimbursed if: (1) the expense is not identified in Exhibit C; (2) the expense exceeds the per item or cumulative limits for such expense if it is identified in Exhibit C; or (3) the expense was not approved in writing by an authorized City representative prior to the Service Provider incurring the expense. If, and to the extent, overnight lodging in western Washington is authorized, Service Provider is strongly encouraged to lodge within the corporate limits of City. When authorized, Service Provider will be reimbursed 100% of lodging expense, if lodged within the corporate limits of the City, but Service Provider will be reimbursed 50% of lodging expense when lodged outside the corporate limits of the City. If authorized, the City may (at its sole option) obtain or arrange air travel for the Service Provider.

D. Total compensation, including all services and expenses, shall not exceed a maximum of two-hundred twenty seven thousand one-hundred fifty-two Dollars (\$227,152).

E. If Service Provider fails or refuses to correct its work when so directed by the City, the City may withhold from any payment otherwise due an amount that the City in good faith believes is equal to the cost to the City of correcting, re-procuring, or remedying any damage caused by Service Provider's conduct.

5. **Method of Payment.**

A. To obtain payment, the Service Provider shall (a) file its request for payment, accompanied by evidence satisfactory to the City justifying the request for payment; (b) submit a report of Work accomplished and hours of all tasks completed; (c) to the extent reimbursement of Eligible Expenses is sought, submit itemization of such expenses and, if requested by the City, copies of receipts and invoices; and (d) comply with all applicable provisions of this Agreement. Service Provider shall be paid no more often than once every thirty days.

B. All requests for payment should be sent to:

City of Everett
Attn.: Halley Kimball
Everett Public Works Department, 3200 Cedar Street
Everett, WA 98201

6. **Submission of Reports and Other Documents.** The Service Provider shall submit all reports and other documents as and when specified in Exhibit A. Said information shall be subject to review by the City, and if found to be unacceptable, Service Provider shall correct and deliver to the City any deficient Work at Service Provider's expense with all practical dispatch. Service Provider shall abide by the City's determinations concerning acceptability of Work.

7. **Termination of Contract.** City reserves the right to terminate this Agreement at any time by sending written notice of termination to Service Provider ("Notice"). The Notice shall specify a termination date ("Termination Date") at least fourteen (14) days after the date the Notice is issued. The Notice shall be effective ("Notice Date") upon the earlier of either actual receipt by Service Provider (whether by fax, mail, delivery or other method reasonably calculated to be received by Service Provider in a reasonably prompt manner) or three calendar days after issuance of the Notice. Upon the Notice Date, Service Provider shall immediately commence to end the Work in a reasonable and orderly manner. Unless terminated for Service Provider's material breach, the Service Provider shall be paid or reimbursed for: (a) all hours worked and Eligible Expenses incurred up to the Notice Date, less all payments previously made; and (b) those hours worked and Eligible Expenses incurred after the Notice Date, but prior to the Termination Date, that were reasonably necessary to terminate the Work in an orderly manner. Notices under this Section 7 shall be sent by the United States Mail to Service Provider's address provided herein, postage prepaid, certified or registered mail, return receipt requested, or by delivery. In addition, Notices may also be sent by any other method reasonably believed to provide Service Provider actual notice in a timely manner, such as fax. The City does not by this Section 7 waive, release or forego any legal remedy for any violation, breach or non-performance of any of the provision of this Agreement. At its sole option, City may deduct from the final payment due the Service Provider (a) any damages, expenses or costs arising out of any such violations, breaches, or non-performance and (b) any other backcharges or credits.

8. **Changes.** The City may, from time to time, unilaterally change the scope of the services of the Service Provider to be performed hereunder. Such changes, including any increase or decrease in the scope of work (and resulting increase or decrease in compensation), shall: (a) be made only in writing and signed by an authorized City representative, (b) be explicitly identified as an amendment to this Agreement and (c) become a part of this Agreement.

9. **Subletting/Assignment of Contracts.** Service Provider shall not sublet or assign any of the Work without the express, prior written consent of the City.

10. **Indemnification.** Except as otherwise provided in this Section 10, the Service Provider hereby agrees to defend and indemnify the City from any and all Claims arising out of, in

connection with, or incident to any negligent or intentional acts, errors, omissions, or conduct by Service Provider (or its employees, agents, representatives or subcontractors/subconsultants) relating to this Agreement, whether such Claims sound in contract, tort, or any other legal theory. The Service Provider is obligated to defend and indemnify the City pursuant to this Section 10 whether a Claim is asserted directly against the City, or whether it is asserted indirectly against the City, e.g., a Claim is asserted against someone else who then seeks contribution or indemnity from the City. The Service Provider's duty to defend and indemnify pursuant to this Section 10 is not in any way limited to, or by the extent of, insurance obtained by, obtainable by, or required of the Service Provider. The Service Provider's obligations under this Section 10 shall not apply to Claims caused by the sole negligence of the City. If (1) RCW 4.24.115 applies to a particular Claim, and (2) such Claim is caused by or results from the concurrent negligence of (a) the Service Provider, its employees, subcontractors/subconsultants or agents and (b) the City, then the Service Provider's obligations under this Section 10 shall apply only to the extent allowed by RCW 4.24.115. Solely and expressly for the purpose of its duties to indemnify and defend the City, the Service Provider specifically waives any immunity it may have under the State Industrial Insurance Law, Title 51 RCW. The Service Provider recognizes that this waiver of immunity under Title 51 RCW was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. As used in this Section 10: (1) "City" includes the City, the City's officers, employees, agents, and representatives and (2) "Claims" include, but is not limited to, any and all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damages, irrespective of the type of relief sought or demanded, such as money or injunctive relief, and irrespective of whether the damage alleged is bodily injury, damage to property, economic loss, general damages, special damages, or punitive damages. If, and to the extent, Service Provider employs or engages subconsultants or subcontractors, then Service Provider shall ensure that each such subconsultant and subcontractor (and subsequent tiers of subconsultants and subcontractors) shall expressly agree to defend and indemnify the City to the extent and on the same terms and conditions as the Service Provider pursuant to this Section 10.

11. Insurance.

A. Service Provider shall comply with the following conditions and procure and keep in force during the term of this Agreement, at Service Provider's own cost and expense, the following policies of insurance with companies authorized to do business in the State of Washington, which are rated at least "A" or better and with a numerical rating of no less than seven (7), by A.M. Best Company and which are acceptable to the City.

1. Workers' Compensation Insurance as required by Washington law and Employer's Liability Insurance with limits not less than \$1,000,000 per occurrence. If the City authorizes sublet work, the Service Provider shall require each subcontractor to provide Workers' Compensation Insurance for its employees, unless the Service Provider covers such employees.

2. Commercial General Liability Insurance on an occurrence basis in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the annual aggregate,

including but not limited to: premises/operations (including off-site operations), blanket contractual liability and broad form property damage.

3. Business Automobile Liability Insurance in an amount not less than \$1,000,000 per occurrence, extending to any automobile. A statement certifying that no vehicle will be used in accomplishing this Agreement may be substituted for this insurance requirement.

4. Professional Errors and Omissions Insurance in an amount not less than \$1,000,000 per occurrence and \$1,000,000 in the annual aggregate. Such coverage may be written on a claims made basis. If both parties agree that the Work does not warrant Service Provider providing Professional Errors and Omissions Insurance, this Section 11.A.4 may be stricken and initialed by both parties.

B. The above liability policies shall be primary as to the City and shall contain a provision that the policy shall not be canceled or materially changed without 30 days prior written notice to the City. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of the Service Provider to furnish the required insurance during the term of this Agreement.

C. Upon written request by the City, the insurer or his/her agent will furnish, prior to or during any Work being performed, a copy of any policy cited above, certified to be a true and complete copy of the original.

D. Prior to the Service Provider performing any Work, Service Provider shall provide the City with a Certificate of Insurance acceptable to the City Attorney evidencing the required insurance. Service Provider shall provide the City with either (1) a true copy of an endorsement naming the City of Everett, its officers, employees and agents as Additional Insureds on the Commercial General Liability Insurance policy and the Business Automobile Liability Insurance policy with respect to the operations performed and services provided under this Agreement and that such insurance shall apply as primary insurance on behalf of such Additional Insureds or (2) a true copy of the blanket additional insured clause from the policies. Receipt by the City of any certificate showing less coverage than required is not a waiver of the Service Provider's obligations to fulfill the requirements.

E. If the policy listed in Section 11.A.4. above, Professional Errors and Omissions Insurance, is on a claims made policy form, the retroactive date on the policy shall be the effective date of this Agreement or prior. The retroactive date of any subsequent renewal of such policy shall be the same as the original policy provided. The extended reporting or discovery period on a claims made policy form shall not be less than 36 months following expiration of the policy. (This Section 11.E shall not apply if Section 11.A.4. above is stricken.)

F. Service Provider certifies that it is aware of the provisions of Title 51 of the Revised Code of Washington that requires every employer to be insured against liability of Workers' Compensation, or to undertake self-insurance in accordance with the provisions of that Title.

Service Provider shall comply with the provisions of Title 51 of the Revised Code of Washington before commencing the performance of the Work. Service Provider shall provide the City with evidence of Workers' Compensation Insurance (or evidence of qualified self-insurance) before any Work is commenced.

G. In case of the breach of any provision of this Section 11, the City may, at its option and with no obligation to do so, provide and maintain at the expense of Service Provider, such types of insurance in the name of the Service Provider, and with such insurers, as the City may deem proper, and may deduct the cost of providing and maintaining such insurance from any sums which may be found or become due to Service Provider under this Agreement or may demand Service Provider to promptly reimburse the City for such cost.

12. Independent Contractor.

A. This Agreement neither constitutes nor creates an employer-employee relationship. Service Provider must provide services under this Agreement as an independent contractor. Service Provider must comply with all federal and state laws and regulations applicable to independent contractors including, but not limited to, the requirements listed in this Section 12. Service Provider agrees to indemnify and defend the City from and against any claims, valid or otherwise, made against the City because of these obligations.

B. In addition to the other requirements of this Section 12, if Service Provider is a sole proprietor, Service Provider agrees that Service Provider is not an employee or worker of the City under Chapter 51 of the Revised Code of Washington, Industrial Insurance for the service performed in accordance with this Agreement, by certifying to the following:

(1) Service Provider is free from control or direction over the performance of the service; and

(2) The service performed is outside the usual course of business for the City, or will not be performed at any place of business of the City, or Service Provider is responsible for the costs of the principal place of business from which the service is performed; and

(3) Service Provider is customarily engaged in an independently established business of the same nature as the service performed, or has a principal place of business for the service performed that is eligible for a business deduction for federal income tax purposes; and

(4) On the effective date of this Agreement, Service Provider is responsible for filing a schedule of expenses, for the next applicable filing period, with the internal revenue service for the type of service performed; and

(5) By the effective date of this Agreement or within a reasonable time thereafter, Service Provider has established an account with the department of revenue and other state agencies, where required, for the service performed for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington; and

(6) By the effective date of this Agreement, Service Provider is maintaining a separate set of records that reflect all items of income and expenses of the services performed.

C. Any and all employees of the Service Provider, while engaged in the performance of any Work, shall be considered employees of only the Service Provider and not employees of the City. The Service Provider shall be solely liable for any and all claims that may or might arise under the Worker's Compensation Act on behalf of said employees or Service Provider, while so engaged and for any and all claims made by a third party as a consequence of any negligent act or omission on the part of the Service Provider's employees, while so engaged on any of the Work

D. Service Provider shall comply with all applicable provisions of the Fair Labor Standards Act and other legislation affecting its employees and the rules and regulations issued thereunder insofar as applicable to its employees and shall at all times save the City free, clear and harmless from all actions, claims, demands and expenses arising out of said act, and rules and regulations that are or may be promulgated in connection therewith.

E. Service Provider assumes full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes (such as state and, city business and occupation taxes), fees, licenses, excises or payments required by any city, federal or state legislation which are now or may during the term of the Agreement be enacted as to all persons employed by the Service Provider and as to all duties, activities and requirements by the Service Provider in performance of the Work and Service Provider shall assume exclusive liability therefore, and meet all requirements thereunder pursuant to any rules or regulations that are now or may be promulgated in connection therewith.

13. Employment. The Service Provider warrants that he had not employed or retained any company or person, other than a bona fide employee working solely for the Service Provider, to solicit or secure this Agreement and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Service Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

14. Audits and Inspections. At any time during normal business hours and as often as the City may deem necessary, the Service Provider shall make available to the City for the City's examination all of the Service Provider's records and documents with respect to all matters covered by this Agreement and, furthermore, the Service Provider will permit the City to audit, examine and make copies, excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

15. City of Everett Business License. Service Provider agrees to obtain a City of Everett business license prior to performing any work pursuant to this Agreement.

16. **State of Washington Requirements.** Service Provider agrees to register and obtain any State of Washington business licenses, Department of Revenue account and/or unified business identifier number as required by RCW 50.04.140 and 51.08.195 prior to performing any work pursuant to this Agreement.

17. **Compliance with Federal, State and Local Laws.** Service Provider shall comply with and obey all federal, state and local laws, regulations, and ordinances applicable to the operation of its business and to its performance of work hereunder.

18. **Compliance with the Washington State Public Records Act.** Service Provider acknowledges that the City is subject to the Public Records Act, chapter 42.56 RCW (the "Act"). All records owned, used or retained by the City are public records subject to disclosure unless exempt under the Act, whether or not such records are in the possession or control of the City or Service Provider. Service Provider shall cooperate with the City so that the City may comply with all of its obligations under the Act. Within ten (10) days after receipt of notice from the City, Service Provider shall deliver to the City copies of all records relating to this Agreement or relating to the Work that the City determines qualify as the City's public records under the Act. If the City receives a public records request relating to this Agreement or relating to the Work, the City shall seek to provide notice to Service Provider at least ten (10) days before the City releases records pursuant to such public records request, but in no event will the City have any liability to Service Provider for any failure of the City to provide such notice. In addition to its other indemnification and defense obligations under this Agreement, Service Provider shall indemnify and defend the City from and against any and all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damage arising from or relating to any failure of Service Provider to comply with this Section 18.

19. **Compliance with Grant Terms and Conditions.** Service Provider shall comply with any and all conditions, terms and requirements of any federal, state or other grant that wholly or partially funds Service Provider's work hereunder.

20. **Equal Employment Opportunity.** Service Provider shall not discriminate against any employee, applicant for employment, independent Service Provider, or proposed independent Service Provider, on the basis of race, color, religion, sex, age, disability, marital state, or national origin.

21. **Waiver.** Any waiver by the Service Provider or the City or the breach of any provision of this Agreement by the other party will not operate, or be construed, as a waiver of any subsequent breach by either party or prevent either party from thereafter enforcing any such provisions.

22. **Complete Agreement.** This Agreement contains the complete and integrated understanding and Agreement between the parties and supersedes any understanding, Agreement or negotiation whether oral or written not set forth herein.

23. **Modification of Agreement.** This Agreement may be modified as provided in ¶8, or by a writing explicitly identified as a modification of this Agreement that is signed by authorized representatives of the City and the Service Provider.

24. **Severability.** If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void, insofar as it is in conflict with said laws, and the remainder of the Agreement shall remain in full force and effect.

25. **Notices.**

A. Notices to the City of Everett shall be sent to the following address:

City of Everett
Attn.: Halley Kimball
Everett Public Works Department, 3200 Cedar Street
Everett, WA 98201

B. Notices to the Service Provider shall be sent to the following address:

Otak, Inc. c/o Greg Laird, P.E.
11241 Willows Road, NE, Suite 200
Redmond, Washington
98052

26. **Venue.** Venue for any lawsuit arising out of this Agreement shall be in the Superior Court of Snohomish County, Washington.

27. **Governing Law.** The laws of the State of Washington, without giving effect to principles of conflict of laws, govern all matters arising out of or relating to this Agreement.

IN WITNESS WHEREOF, the City and Service Provider have executed this Agreement as of the date first above written.

**CITY OF EVERETT,
WASHINGTON**

Ray Stephanson, Mayor

Date

ATTEST:

APPROVED AS TO FORM:

Sharon Fuller, City Clerk

James D. Iles, City Attorney

Date

Date

SERVICE PROVIDER: Please fill in the spaces and sign in the box appropriate for your business entity.

Corporation	<u>Atak, Inc.</u> [Service Provider's Complete Legal Name] By: <u>[Signature]</u> Typed/Printed Name: <u>Gregory S. Baird</u> Its: <u>Principal</u> Date: <u>7-25-16</u>
Partnership (general)	_____ [Service Provider's Complete Legal Name] a Washington general partnership By: _____ Typed/Printed Name: _____ General Partner Date: _____
Partnership (limited)	_____ [Service Provider's Complete Legal Name] a Washington limited partnership By: _____ Typed/Printed Name: _____ General Partner Date: _____
Sole Proprietorship	_____ Typed/Printed Name: _____ Sole Proprietor: Date: _____
Limited Liability Company	_____ [Service Provider's Complete Legal Name] a Washington limited liability company By: _____ Typed/Printed Name: _____ Managing Member Date: _____

EXHIBIT A
SCOPE OF WORK

Attached separately

Diking District 5
Dike Repairs and Improvements Project
Phase 1 - Evaluation of Alternatives
Otak Project No. 32758
Proposal for Professional Services
July 2016

Background Information

This project is located northeast of the City of Everett (the City), within the Snohomish River Estuary on the northern side of Smith Island. Smith Island is located between the Snohomish River to the west and Union Slough to the east. There is a system of dikes around Smith Island that protect the island from much of the flooding that can occur due to high tides and river discharges. Much of the dike system on Smith Island is currently within Diking District 5 (DD5). Portions of the dike system along Union Slough within the district, and portions within the city but outside the district boundary are in need of repair in accordance with the Army Corps of Engineers' 2015 inspection, due to erosion and scour along the slope of the dike facing the slough. These portions of the dike system outside of the district boundaries also provide protection to the District, thus the District considers them vital to protect the district and will make the repairs.

The dike repairs can potentially span approximately 5,200 feet from the tie in of the Snohomish County set back dike to State Route 529. Along this span DD5 noted that there are three common types of erosion that have caused significant damage to the dike - erosion of the last foot to two feet of the dike toe above the Ordinary High Water Mark (OHWM), erosion of the dike toe to a vertical where re-establishing the toe would require extending below the OHWM, and slumping of the riverward top of the dike where erosion below the OHWM has destabilized the dike toe.

While this project will be repairing the riverward toe and slope of the dike, DD5 is considering establishing the dike crown at an elevation of 15 feet and widening the dike where necessary to remain drivable (15 feet wide). The project will provide for scour protection along the riverward slope. Part of the consulting effort will be to determine the permitting and approvals for the implementation of these repairs and if there are different permit requirements for any element. Therefore, this initial work scope will evaluate the engineering and permitting requirements for the repairs, and if the permitting requirements for the repairs appear similar to what may be necessary for the dike improvements, we will add the analysis of the improvements as a future supplement. This work is expected to be completed in two phases. The first phase will include survey and mapping, geotechnical investigation and analyses, environmental studies, and engineering analyses to provide DD5 with a comparison of alternatives for the repairs, and improvements (if requested by

Exhibit A

Continued

DD5 through separate contract supplement). The second phase would include the design and permitting of the selected alternative.

This scope of work will assist DD5, through a contract with the City of Everett, to evaluate alternatives for repairing the dike. This scope includes surveying, preliminary geotechnical investigations, environmental studies, and civil engineering. The following sections describe the tasks required to complete this project.

Project Approach

Otak with its subconsultant, Cornforth (the Otak team), will complete field investigations, environmental studies, and engineering analyses to support the design of the dike repairs and dike improvements. The following tasks are included in this Scope of Services for Phase 1 of the DD5 Dike Repairs and Improvements Project.

- Task 1 – Project Management and Coordination
- Task 2 – Topographic Survey and Basemap Preparation
- Task 3 – Geotechnical Investigation and Design Recommendations
- Task 4 – Environmental Studies and Permitting Requirements
- Task 5 – Design Development and Analysis

The Scope of Services will begin in the summer of 2016 and be completed approximately Spring 2017. A schedule of services will be provided by Otak and agreed to by the DD5 at the outset of the project. This Scope of Services will be completed through a contract with the City of Everett – acting on behalf of DD5.

Task 1—Project Management and Coordination

1.1 Monthly Project Status Report and Invoices

Brief project status reports will be submitted to the City that summarize tasks accomplished during the month, tasks projected for the next month, information or actions necessary to maintain project schedule, any potential issues or observations that could impact the project, and a schedule and budget status. The status reports may be conveyed during phone conversations or accompany the monthly invoices. We will submit monthly invoices including the percent of work completed, hours billed, and percent of budget remaining for each task in the format supplied by the City to facilitate reporting to DD5.

Deliverables

- Monthly written status reports

Exhibit A

Continued

- Monthly invoices

1.2 Project Coordination

The Otak team will attend four project meetings with DD5 to discuss findings and progress of the project. The first meeting will be a kick-off meeting and include field reconnaissance of the dike to identify all known erosion problems. The second meeting will occur upon completion of the geotechnical investigation. The third meeting will discuss the environmental studies, and the fourth meeting will discuss the presentation of alternatives.

Assumptions

- The kickoff meeting and field reconnaissance will be attended by four Otak team members.
- The City will lead the Otak team on the field reconnaissance to identify all current and previous erosion problems.
- The three other coordination meetings will be at the City's office and attended by three Otak team members.

Task 2—Topographic Survey and Base Map Preparation

Prior to the kickoff meeting and field reconnaissance (Task 1.2) the City will provide a preliminary base map including, as available:

- Surface contours based on 2009 (or most recent) LiDAR surface
- Bathymetry of Union Slough
- Surveyed wetlands and ditches throughout the property
- Surveyed tide gates and culvert inverts
- Surveyed utilities. (Will need to verify that all the utilities were located)
- Surveyed well locations
- Surveyed cross sections on the existing dike taken by City and County staff
- Centerline and easement of the Puget Sound Energy (PSE) pipeline
- Undercut locations and extent on existing dike
- Utility and easement records from the City in the vicinity of the project

2.1 Supplemental Topographic Survey and Base Map Preparation

To assist in the Geotechnical Investigation and Analysis (Task 3) and Design Development and Analysis (Task 5), existing site topography, utilities, and critical areas (wetlands and OHWM) need to be clearly identified and shown on the project base map. The extent of field survey required for the preparation of the base map may be adjusted after review of the preliminary base map and the review of survey-grade GPS cross-sections obtained by Snohomish County. For the purposes of this scope of services, we propose to obtain cross sections of the existing dike extending from water's edge landward to approximately 25 feet beyond the edge of the ditches along the toe of the dike.

Exhibit A

Continued

This survey will utilize GPS real-time kinematic (RTK) equipment and/or conventional total station instruments.

Any features noted during the Site Reconnaissance (Task 3.2) will be surveyed and included in the project base map. Field boundaries of OHWM on the waterward side of the dike will be surveyed with survey-grade equipment. The field boundaries of wetlands will be located with resource-grade GPS equipment. These boundaries will be incorporated into the project base map after these boundaries are flagged (Task 4).

This field survey data, in addition to the City's GIS data and LIDAR will be utilized by the Otak team to create a base map sufficient for evaluating alternatives for repairs and improvements. The map will show planimetric features, wetland boundaries, ordinary high water, surveyed cross section points along the top of the dike, and site topography of the identified distressed areas noted during the site reconnaissance (Task 3.2).

The base map will include right-of-way margins, parcel lines, (taken from the County's assessor's maps and other record data) and easements within the project area.

Deliverables

- Site survey base map stamped by Professional Land Surveyor, registered in the State of Washington.
- The base map will show 2-foot contour intervals with elevations referenced to the North American Vertical Datum 1988 (NAVD88).
- The map will be referenced to the Washington State Plane Coordinate System.
- AutoCAD/CIV3D base map drawing (*.dwg) file of project survey with topographic (digital terrain model – DTM) surface of surveyed area.

Assumptions

- Preliminary base map CAD files to be provided by the City.
- The County's bathymetric survey of Union Slough will be provided by the City.
- Access and rights-of-entry will be provided by the City.
- As-builts, utility records, easements records, survey control and existing CAD design files for the project area will be provided by the City.
- Estimates of survey and mapping are based on no more than 20 areas identified as distress area requiring survey and mapping of these features.

Task 3—Geotechnical Investigation and Design Recommendations

Exhibit A

Continued

The USACE's Levee Safety Program requires that the levee must achieve a "minimally acceptable" or "acceptable" rating on the FDR Inspection Report to remain eligible for USACE's PL84-99 program. The Otak team will compile existing geotechnical exploration data, and perform additional field geotechnical explorations to characterize subsurface conditions in support of preliminary design for levee modifications to meet the PL84-99 objective. Design recommendations will be provided with the intent of addressing levee deficiencies and achieving an acceptable rating from the USACE, and with the understanding that geotechnical information is needed for dike design purposes, but not a requirement of eligibility for the PL84-99 program. The geotechnical dike evaluation and analysis will be performed in general accordance with the following U.S. Army Corps of Engineers (USACE) publications:

- EM 500-1-1 "Civil Emergency Management Program" PL84-99 requirements
- EM 1110-2-1913 "Design and Construction of Levees"
- EM 1110-2-1902 "Slope Stability"
- ER 1110-2-1806 "Earthquake Design and Evaluation for Civil Works Projects"
- ETL 1110-2-569 "Design Guidance for Levee Underseepage"
- EC 1110-2-6067 "Engineering and Design: USACE Process for the National Flood Insurance Program (NFIP) Levee System Evaluation"
- ETL 1110-2-6-571 "Guidelines for Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures"

3.1 Report, Mapping and Data Review

The Otak team will review historic and current aerial photographs provided by the City. Snohomish County has performed a number of borings, test pits and well installations in the project vicinity associated with their Smith Island Restoration Project. Cornforth will review the final geotechnical report completed for the Smith Island Restoration Project and will review construction records (if any) to establish the historical dike footprint.

Assumptions

- The City will provide existing reports, surveys, aerial photographs, data, engineering studies, and construction records for the dike and other construction activities near the site.

3.2 Site Reconnaissance

In addition to the field reconnaissance performed during the kickoff meeting (Task 1.2), the Otak team will tour the site by foot and by boat (performed at low tide). The site tour will explore and map distressed areas (slope failures, scour, settlement, and seepage) with GPS. The site tour will evaluate construction access routes, staging, and stockpile areas. The tour will check utility crossings (previously identified on the preliminary base map) and note additional utilities that should be included on the project base map (Task 2.1).

Exhibit A

Continued

3.3 Phase 1 Subsurface Investigation

The Otak team will perform supplemental field explorations along the dike alignment. Six (6) boreholes will be drilled along the dike at 1,000-foot intervals. The boreholes will be drilled through the centerline of the dike using a track-mounted drill rig. Five (5) of these borings will use a mud-rotary drilling technique, and the remaining boring will be performed using hollow-stem auger operated by the rig used for the mud rotary drilling. Soil samples will be collected at 2.5-foot intervals to a depth below ground surface (bgs) of 15 feet, then at 5-foot intervals to the bottom of the boring. Borehole depths will be to 50 feet bgs in 5 of the locations and to 80 feet bgs in the remaining location. Samples will be obtained with Standard Penetration Tests (SPTs), and with an occasional Shelby tube for undisturbed samples. All boreholes will be backfilled with cement-bentonite grout. The boring locations will be identified and marked during drilling for field survey by the Otak team.

In the hollow-stem auger hole, a falling-head permeability test will be performed in the embankment and foundation soils.

The soil samples collected from the borings will be brought to Cornforth's laboratory for geologic interpretation and testing. A geologist will review each sample and prepare a log for each boring.

3.4 Phase 1 Laboratory Testing

The City will contract with an independent laboratory to complete the testing of samples obtained by Cornforth collected during the subsurface investigations. Cornforth will coordinate with the soils laboratory to perform basic geotechnical index tests on samples, including:

- Water content tests for most samples (up to 80 tests)
- Minimum 1 grain-size and 1 fines content (% passing #200 sieve) for each boring, plus other selected samples of interest (up to 6 tests)
- 2 Atterberg Limits for each boring (12 tests)
- 1 Organic Content of a sample selected from each boring (6 tests)

Assumptions

- The City will provide a boat for the site reconnaissance.
- The City will obtain all permission and access to drill the borings.
- The Otak team will call the Underground Utilities Location Center (UULC) and private utility locator to locate underground utilities prior to drilling the borings. The fee is assumed to be \$1,000 for a private utility locator.
- The City will coordinate and obtain drilling permits (including the shoreline exemption for exploratory drilling) and will notify the Otak team about permit conditions.
- The City will contract with an independent soils laboratory to complete the geotechnical testing.

Exhibit A

Continued

- Soil cuttings and drilling mud will be handled by the City.
- Soils are assumed to be non-contaminated. Any soil cuttings suspected to be contaminated, based on field observations, will be placed into 55 gallon drums and disposed of by the City.
- The borings will be completed during workday hours over a period of ten business days. Drilling equipment will remain on site for the duration of exploration activities.
- No site restoration of vegetation will be required for minimal disturbance necessary to conduct work.

3.5 Geotechnical Analyses

The Otak team will evaluate geotechnical conditions along the dike alignment based on the existing and new subsurface data. Based on the review of the existing erosion and scour problems, the existing problems will be categorized into reaches of similar characteristics (except 4 for scoping purposes). For each reach, a geologic cross-section will be prepared to illustrate the existing conditions and up to two potential repair concepts. The Otak team will develop concepts for raising the dike. For each of these improvement (dike raising) concepts, the Otak team will complete the following engineering evaluations.

- Slope stability
- Seepage
- Settlement
- Scour
- Freeboard
- Interior Drainage

The Otak team will confirm that all options will meet the U.S. Army Corps of Engineers (USACE) PL 84-99 eligibility requirements.

Deliverables

- The Otak team will prepare a draft geotechnical report presenting the results of the field explorations, laboratory testing, geotechnical analyses and design recommendations. The geotechnical report will include, as applicable, the following:
 - Summarize site investigation program, subsurface conditions and lab testing
 - Summarize conceptual options and engineering evaluations
 - Site plan showing locations of new borings
 - Summary boring logs
 - Laboratory test results
 - Geotechnical analysis results

Assumptions

Exhibit A

Continued

- A Draft Geotechnical Report will be provided in electronic format (Word) only and submitted to the City for review. The revised (and final) report will be submitted as an appendix to the Phase 1 Design Alternatives Technical Memo (Task 5).

Task 4 – Environmental Studies to Support Regulatory Compliance

During Phase 1 of the project, the Otak team will conduct data collection and field work necessary to establish baseline environmental conditions in the project area. Environmental data collected will be used to prepare Phase 1 environmental reports and documentation to inform proposed project alternatives analyses, and will be used to support the City on the permit applications and/or demonstrate regulatory compliance required for Phase 2 of the project.

The anticipated permits and required compliance applicable to this project include:

- U.S. Army Corps of Engineers (Army Corps) Section 404 permit
- U.S. Army Corps Section 10 permit
- Endangered Species Act compliance
- Magnuson-Stevens Act compliance
- National Historic Preservation Act (Section 106) compliance
- State Environmental Policy Act (SEPA) compliance
- Historic and Archaeological Resources (Exec. Order 05-05) compliance
- Washington Department of Fish and Wildlife Hydraulic Project Approval (HPA)
- Washington Dept. of Ecology Section 401 water quality certification
- Coastal Zone Management consistency
- Shoreline development compliance
- Flood Hazard Regulations
- Critical Areas Ordinances/Regulations compliance (City of Everett and Snohomish County)

Task 4.1 Conduct Data Collection and Fieldwork

Wetland delineations will be conducted to meet the requirements of the City of Everett and Snohomish County Critical Areas ordinances and regulations, and federal and state agencies, including the Army Corps and Washington State Department of Ecology (Ecology). Otak staff will conduct the wetland delineation in the field using the three-parameter approach detailed in the USACE Wetland Delineation manual (USACE 1987) and the Regional Supplement to the USACE Wetland Delineation Manual: Western Mountain, Valleys, and Coast Region (USACE 2010).

Wetlands present within the project area of potential impact will be flagged during the delineation and subsequently surveyed to incorporate in the project base map.

A field investigation of the Snohomish River and any nearby streams/ditches will be conducted to assess existing conditions within the project area, and upstream and downstream sufficiently to establish baseline conditions. Information on areas/habitat of primary association and other relevant

Exhibit A

Continued

fish and wildlife habitat conservation areas will be collected. Ordinary high water marks (OHWM) will be determined per both Ecology and the Army Corps methodologies along Union Slough and associated ditches in the project area of potential impact. The OHWM will be flagged and surveyed to incorporate in the project base map.

Data sheets and photographs documenting the wetland and stream field work will be compiled and included in the Critical Area Study report. Wetlands will be rated according to the 2014 Ecology *Washington State Wetland Rating System for Western Washington* methodology and the City and County's rating requirements. Streams will be rated per Washington Department of Natural Resources criteria. Buffer widths for wetlands and streams will be established per City and County Critical Areas Ordinances.

Assumptions:

- Wetland delineations and stream/ditch characterizations will be conducted from the surface water line of the Snohomish River (including wetland areas along the waterward side of the dike), and extending laterally for 50 feet from the landward toe of the dike in the project area of potential impact. Any critical areas beyond 50 feet will be estimated and noted in the report.
- The City will notify private property owners of scheduled field work and gain right-of-entry as necessary.
- Wetland flags will be located with a resource-grade GPS unit with sub-meter accuracy, and OHWM flags along Union Slough will be located with survey-grade equipment.
- Geotechnical data/information on geologically hazardous areas will be collected under Task 3.1.
- Data on groundwater and/or critical aquifer recharge areas will be collected under Task 3.1.

Task 4.2 Prepare Environmental Baseline Documentation

A Critical Areas Study (CAS) will be prepared for wetlands, streams, and other fish and wildlife habitat conservation areas. The CAS will include all information required for compliance with both the City of Everett Critical Areas Ordinances and Snohomish County Critical Areas Regulations, including: Wetland Determination Data Forms, Wetland Rating Forms (and figures), photographs, and supporting figures. The CAS will incorporate any relevant background information and previous studies completed for the project area as provided by the City.

Assumptions:

- City will provide copies of previously completed environmental documentation for the project area, if available.
- City will provide comments on the Draft CAS during one round of review prior to Otak completing the Final CAS.

Deliverables:

- Draft and Final Critical Areas Study

Task 5 – Design Development and Alternatives Evaluation

The Otak team will prepare site plans and details of up to 3 alternatives for repairing the erosion and scour problems. For each alternative, materials will be identified and quantified, and estimates of the construction costs will be provided. The recommendations for managing interior drainage will be described. The environmental impacts will be described, and the potential permitting implications (on schedule and mitigation requirements) will be estimated. Constructability issues will be evaluated. The utilities potentially impacted by the project will be listed, the potential impacts described, and the concerns/constraints of each utility presented. The design development will be presented in a report with drawings showing the areal extent of the various alternatives, details of each alternative, and a description of the basis of the cost opinions. Recommendations for Phase 2 final design, including geotechnical analyses will be included. The final Phase 1 geotechnical report will be provided as an appendix.

Deliverables

- The Otak team will prepare a Phase 1 Design Alternatives Technical Memo.

Assumptions

- The DRAFT Design Alternatives Technical Memo will be submitted to DD5 prior to the fourth coordination meeting (Task 1.2), and the FINAL Design Alternatives Technical Memo will be submitted within two weeks of receiving DD5 comments on the draft memo.
- The City will provide information on previous Army Corps authorizations and maintenance activities along this portion of the dike to identify the historical dike footprint. Identification of the historical dike footprint will support the analyses of agency permitting requirements.

**EXHIBIT B
COMPENSATION**

ALTERNATE A [HOURLY RATE UP TO A MAXIMUM AMOUNT]

The City shall pay the Service Provider a sum equal to the amount of hours actually worked multiplied by the rate identified herein for the staff performing the Work, subject to the maximum stated in ¶4(D) of this Agreement.

Name	Responsibility	Rate
See Attached		

ALTERNATE B [LUMP SUM]

The City shall pay Service Provider _____ dollars (\$) upon the completion of the Work, subject to the maximum stated in ¶4(D) of this Agreement.

ALTERNATE C [PROGRESS PAYMENTS]

The City shall pay the Service Provider the following amounts upon the completion of the following tasks, subject to the maximum stated in ¶4(D) of this Agreement:

Task	Amount Paid upon Completion of Task

ALTERNATE D [BASE REGISTRATION]

The City shall pay the Service Provider such amounts and in such manner as follows:
 Fee for service shall be _____ percent _____ % of the base registration fees collected by the City.
 Additional fees and/or surcharges levied by the City will be retained 100% by the City.
 Payments shall be made as stated in Exhibit A – Scope of Work. The base registration fee is listed in Exhibit A – Scope of Work. Compensation shall not exceed _____ dollars (\$ _____).

EXHIBIT C
REIMBURSABLE EXPENSES

Type of Expense	Maximum Per Item	Cumulative Maximum
Parking		
Meals		
<i>See Attached Exhibit C</i>		

Task Description	Senior Associate Engineer	Senior Associate Geologist	Associate Engineer	Project Engineer	Senior Drafter	Secretary	Total Labor Hours	CCI Labor Cost	Estimated Direct Expenses	Subcontractors	Task Total
Task 1 Project Management and Coordination											
1.1 Monthly Project Status Report and Invoices	18		20	2		6	20	\$ 3,232.20	\$ 523.50	-	\$ 3,755.70
1.2 Project Coordination			20				46	\$ 8,099.48	-	-	\$ 8,099.48
Task 2 Topographic Survey and Base Map Preparation											
2.1 Supplemental Topographic Survey and Base Map Preparation			2		4		6	\$ 644.90	-	-	\$ 644.90
Task 3 Geotechnical Investigation and Design Recommendations											
3.1 Report, Mapping and Data Review	1		8	8			17	\$ 2,586.66	-	-	\$ 2,586.66
3.2 Site Reconnaissance			20	90			20	\$ 3,232.20	\$ 523.50	-	\$ 3,755.70
3.3 Phase 1 Subsurface Investigation			6	31			96	\$ 12,896.46	\$ 1,573.20	\$ 21,400.00	\$ 35,869.66
3.4 Phase 1 Laboratory Testing			3	106	38	16	34	\$ 4,592.95	-	-	\$ 4,592.95
3.5 Geotechnical Analyses	26	12	120	26			318	\$ 46,258.00	-	-	\$ 46,258.00
Task 5 Design Development and Alternatives Evaluation											
Direct Labor (hrs):	45	16	231	263	42	24	621				
Rate per hour (\$):	\$ 233.62	\$ 219.06	\$ 161.61	\$ 132.52	\$ 80.42	\$ 66.18					
Labor Cost by Discipline:	\$ 10,512.90	\$ 3,504.96	\$ 37,331.91	\$ 34,862.76	\$ 3,377.64	\$ 1,588.32	\$ 91,168.49	\$ 91,168.49	\$ 2,620.20	\$ 21,400.00	\$ 115,188.69

DD5 - Dike Repair and Improvements Project Phase 1

Fee Estimate

Otak, Inc., Project 32758

Exhibit C

Estimate of Direct Costs

Description	Task 1	Task 2	Task 3	Task 4	Task 5
Outside Reproduction			\$100.00	\$100.00	
Postage and Courier					
Mileage and Parking	\$160.00	\$600.00	\$80.00	\$160.00	
Equipment Rental				\$400.00	
Miscellaneous	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00
	\$210.00	\$650.00	\$230.00	\$710.00	\$50.00
					\$1,850.00

STATE RETIREMENT SYSTEMS FORM
ATTACHMENT TO PROFESSIONAL SERVICES AGREEMENT
ALL SERVICE PROVIDERS MUST COMPLETE AND SIGN THIS FORM

1. Does Service Provider have twenty-five (25) or more employees? Yes No
IF YES: SKIP QUESTION 2, SKIP QUESTION 3, AND SIGN BELOW.
IF NO: ANSWER QUESTIONS 2 AND 3.

2. If a Service Provider employee will perform Work under this Professional Services Agreement, did that employee retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), Teachers' Retirement System (TRS), or Law Enforcement Officers and Fire Fighters plan (LEOFF)? Yes No

3. Answer the appropriate question below for Service Provider's business organization:

Sole Proprietor. Did Service Provider retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), Teachers' Retirement System (TRS), Law Enforcement Officers and Fire Fighters plan (LEOFF)? Yes No

Partnership. If a partner will perform Work under this Professional Services Agreement, did that partner retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), Teachers' Retirement System (TRS) or Law Enforcement Officers and Fire Fighters plan (LEOFF)? Yes No

Limited Liability Company. If a member will perform Work under this Professional Services Agreement, did that member retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), Teachers' Retirement System (TRS) or Law Enforcement Officers and Fire Fighters plan (LEOFF)? Yes No

Corporation. If a shareholder will perform Work under this Professional Services Agreement, did that shareholder retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), Teachers' Retirement System (TRS), or Law Enforcement Officers and Fire Fighters plan (LEOFF)? Yes No

IF THERE IS A "YES" ANSWER TO ANY PART OF QUESTIONS 2 OR 3, AN ADDITIONAL QUESTIONNAIRE (AVAILABLE FROM HR OR LEGAL) MUST BE FILLED OUT AND SUBMITTED WITH THE CONTRACT.

Service Provider Name: _____

Signature:

Printed Name:

Title:



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
7/22/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER JD Fulwiler & Co. Insurance, Inc. 5727 SW Macadam Ave PO Box 69508 Portland OR 97239	CONTACT NAME: Peggy MacMillan PHONE (A/C, No, Ext): (503) 293-8325 E-MAIL ADDRESS: pmacmillan@jdfulwiler.com	FAX (A/C, No): (503) 293-5418
	INSURER(S) AFFORDING COVERAGE	
INSURED Otak Inc. 808 SW 3rd Ave Ste 300 Portland OR 97204	INSURER A: Travelers Indemnity Co of CT INSURER B: Travelers Indemnity Co of Am INSURER C: Saif Corporation INSURER D: Beazley Insurance Company Inc INSURER E: Allianz Global Risk US Insurance INSURER F:	NAIC # 25682 25666 36196

COVERAGES **CERTIFICATE NUMBER:** 15/16 Gen USE **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> WA Stop Gap Liability GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:			6801497P251	12/9/2015	12/9/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Employee Benefits \$ 1,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			BA1502P892	12/9/2015	12/9/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Towing \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CUP5C8570811247	12/9/2015	12/9/2016	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N N N/A	**OREGON** 487431 OTAK INC 967262 OTAK Architects Inc	4/1/2016 4/1/2016	4/1/2017 4/1/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	A&E Prof'l w/Pollution			V10267150701	12/9/2015	12/9/2016	Limit per claim/Agg/Ded \$2m/\$4m/\$200K
E	Inland Marine			MXI93070328	12/9/2015	12/9/2016	Misc Unscheduled Items/Ded \$100,00/\$5k

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: DD5 Dike Repair Otak Project #32758; naming the City of Everett, its officers, employees and agents are included as additional insureds on the general liability and auto liability with regard to operations of the named insured subject to policy terms, conditions and exclusions per attached forms CGD381 & CAT4370808; It is further agreed that coverage is primary and non-contributory; Cancellation provisions apply per attached form IL316;

CERTIFICATE HOLDER HKimball@everettwa.gov City of Everett Public Works 3200 Cedar St Everett, WA 98201	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE P MacMillan/TMAYDA <i>Peggy MacMillan</i>
--	---

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Additional Named Insureds

Other Named Insureds

HLB Otak Inc., an Oregon Corporation

OTAK Architects Inc, a Washington Corporation

Otak Architects Inc., an Oregon Corporation

Otak Engineering, Inc., an Oregon Corporation

Otak International (Caymen Islands)

Otak Nevada, LLC, an Oregon Limited Liability Co

Otak, Inc. 401K Employee Savings Plan

Otak, Inc., a Colorado Corporation

Otak, Inc., an Washington Corporation

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

The following is added to the **Section II – Liability Coverage, Paragraph A.1. Who Is An Insured** Provision:

Any person or organization that you are required to include as additional insured on the Coverage Form in

a written contract or agreement that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period is an "insured" for Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following is added to WHO IS AN INSURED (Section II):

Any person or organization that you agree in a "contract or agreement requiring insurance" to include as an additional insured on this Coverage Part, but only with respect to liability for "bodily injury", "property damage" or "personal injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations;
- b. In connection with premises owned by or rented to you; or
- c. In connection with "your work" and included within the "products-completed operations hazard".

Such person or organization does not qualify as an additional insured for "bodily injury", "property damage" or "personal injury" for which that person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- d. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.
- e. This insurance does not apply to the rendering of or failure to render any "professional services".
- f. The limits of insurance afforded to the additional insured shall be the limits which you agreed in that "contract or agreement requiring insurance" to provide for that additional insured, or the limits shown in the Declarations for this Coverage Part, whichever are less. This endorsement does not increase the limits of insurance stated in the **LIMITS OF**

INSURANCE (Section III) for this Coverage Part.

B. The following is added to Paragraph a. of 4. Other Insurance in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

However, if you specifically agree in a "contract or agreement requiring insurance" that the insurance provided to an additional insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have entered into that "contract or agreement requiring insurance". But this insurance still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured when the insured is an additional insured under any other insurance.

C. The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

We waive any rights of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, under a "contract or agreement requiring insurance" with that person or organization. We waive these rights only where you have agreed to do so as part of the "contract or agreement requiring insurance" with such person or organization entered into by you before, and in effect when, the "bodily

COMMERCIAL GENERAL LIABILITY

injury" or "property damage" occurs, or the "personal injury" offense is committed.

D. The following definition is added to **DEFINITIONS (Section V)**:

"Contract or agreement requiring insurance" means that part of any contract or agreement under which you are required to include a person or organization as an additional insured on this Cov-

erage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed:

- a. After you have entered into that contract or agreement;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

COMMON POLICY CONDITIONS WASHINGTON

All Coverage Parts included in this policy are subject to the following conditions.

The conditions in this endorsement replace any similar conditions in the policy that are less favorable to the insured.

A. CANCELLATION

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy or any Coverage Part by mailing or delivering to the first Named Insured and the first Named Insured's agent or broker written notice of cancellation, including the actual reason for the cancellation, to the last mailing address known to us, at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 45 days before the effective date of cancellation if we cancel for any other reason,

except as provided in paragraphs 3. and 4. below.

3. We may cancel the Commercial Property Coverage Part, if made a part of this policy, by mailing or delivering to the first Named Insured and the first Named Insured's agent or broker written notice of cancellation at least 5 days before the effective date of cancellation for any structure where 2 or more of the following conditions exist:
 - a. Without reasonable explanation, the structure is unoccupied for more than 60 consecutive days, or at least 65% of the rental units are unoccupied for more than 120 consecutive days unless the structure is maintained for seasonal occupancy or is under construction or repair;
 - b. Without reasonable explanation, progress toward completion of permanent repairs to the structure has not occurred within 60 days after receipt of funds following satisfactory adjustment or adjudication of loss resulting from a fire;

- c. Because of its physical condition, the structure is in danger of collapse;
- d. Because of its physical condition, a vacation or demolition order has been issued for the structure, or it has been declared unsafe in accordance with applicable law;
- e. Fixed and salvageable items have been removed from the structure, indicating an intent to vacate the structure;
- f. Without reasonable explanation, heat, water, sewer, and electricity are not furnished for the structure for 60 consecutive days; or
- g. The structure is not maintained in substantial compliance with fire, safety and building codes.

4. If:

- a. You are an individual
- b. A covered "auto" you own is of the "private passenger type"; and
- c. The policy does not cover garage, automobile sales agency, repair shop, service station or public parking place operation hazards,

we may cancel the Commercial Auto Coverage Part by mailing or delivering to the first Named Insured and the first Named Insured's agent or broker written notice of cancellation, including the actual reason for cancellation, to the last mailing address known to us:

- a. At least 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
- b. At least 10 days before the effective date of cancellation for any other reason if the policy is in effect less than 30 days; or
- c. At least 20 days before the effective date of cancellation for other than nonpayment if the policy is in effect 30 days or more; or
- d. At least 20 days before the effective date of cancellation if the policy is in effect for 60 days or more or is a renewal or continuation policy, and the reason for can-

cancellation is that your driver's license or that of any driver who customarily uses a covered "auto" has been suspended or revoked during the policy period.

5. We will also mail or deliver to any mortgage holder, pledgee or other person shown in this policy to have an interest in any loss which may occur under this policy, at their last mailing address known to us, written notice of cancellation prior to the effective date of cancellation. If cancellation is for reasons other than those contained in paragraph A.3. above, this notice will be the same as that mailed or delivered to the first Named Insured. If cancellation is for a reason contained in paragraph A.3. above, we will mail or deliver this notice at least 20 days prior to the effective date of cancellation.
6. Notice of cancellation will state the effective date of cancellation. If the policy is cancelled, that date will become the end of the policy period. If a Coverage Part is cancelled, that date will become the end of the policy period as respects that Coverage Part only.
7. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund will be at least 90% of the pro rata refund unless the following applies:
 - a. If:
 - (1) You are an individual;
 - (2) A covered auto you own is of the "private passenger type";
 - (3) The policy does not cover garage, automobile sales agency, repair shop, service station or public parking place operations hazards; and
 - (4) The first Named Insured cancels, the refund will be not less than 90% of the unearned portion not exceeding \$100, plus 95% of any unearned portion over \$100 but not exceeding \$500 and not less than 97% of any unearned portion in excess of \$500.

The cancellation will be effective even if we have not made or offered a refund.
8. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. CHANGES

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

C. EXAMINATION OF YOUR BOOKS AND RECORDS

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

D. INSPECTION AND SURVEYS

1. We have the right to:
 - a. Make inspections and surveys at any time;
 - b. Give you reports on the conditions we find; and
 - c. Recommend changes.
2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
 - a. Are safe or healthful; or
 - b. Comply with laws, regulations, codes or standards.
3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

E. PREMIUMS

1. The first Named Insured shown in the Declarations:
 - a. Is responsible for the payment of all premiums; and

3. Standard Property forms including, but not limited to, the following:

- a. Building and Personal Property Coverage Form;
- b. Business Income Coverage Form;
- c. Commercial Property Conditions;
- d. Condominium Association Coverage Form;
- e. Condominium Commercial Unit-Owners Coverage Form;
- f. Causes of Loss Basic Form;
- g. Causes of Loss Special Form; and
- h. Causes of Loss Earthquake Form.

Endorsements referencing the Commercial Property Coverage Part or the Standard

Property Forms referenced above apply to the Businessowners Property Coverage Special Form in the same manner as they apply to the forms they reference.

Endorsements referencing the Commercial General Liability Coverage Part apply to the Commercial General Liability Coverage Form (included in the Businessowners Coverage Part) in the same manner as they apply to the form they reference.

I. INSURANCE UNDER TWO OR MORE COVERAGE PARTS

If two or more of this policy's Coverage Parts apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

This policy consists of the Common Policy Declarations and the Coverage Parts and endorsements listed in that declarations form.

In return for payment of the premium, we agree with the Named Insured to provide the insurance afforded by a Coverage Part forming part of this policy. That insurance will be provided by the company indicated as insuring company in the Common Policy Declarations by the abbreviation of its name opposite that Coverage Part.

The companies listed below (each a stock company) have executed this policy, but it is valid only if countersigned on the Common Policy Declarations by our authorized representative.

The Travelers Indemnity Company (IND)

The Phoenix Insurance Company (PHX)

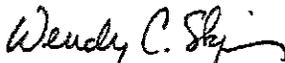
The Charter Oak Fire Insurance Company (COF)

Travelers Property Casualty Company of America (TIL)

The Travelers Indemnity Company of Connecticut (TCT)

The Travelers Indemnity Company of America (TIA)

Travelers Casualty Insurance Company of America (ACJ)


Secretary


President

**CITY OF EVERETT
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT made and entered into on this _____ day of _____, 2016, by and between the **CITY OF EVERETT**, a municipal corporation under the laws of the State of Washington, hereinafter referred to as the "City," and Otak, Inc, whose address is 11241 Willows Road, NE, Suite 200, Redmond, Washington 98052, hereinafter referred to as the "Service Provider."

WHEREAS, the City desires to engage the Service Provider to perform engineering consulting services for dike repairs on Smith Island for the City of Everett; and

WHEREAS, Service Provider represented, and by entering into this Agreement now represents, that it is fully qualified to perform the work to be performed hereunder in a competent and professional manner;

NOW, THEREFORE, the parties herein do mutually agree as follows:

1. **Engagement of Service Provider.** The City hereby agrees to engage the Service Provider, and the Service Provider hereby agrees, to perform the work in a competent and professional manner and provide the services described in the attached "Exhibit A - Scope of Work". The Scope of Work so identified is hereafter referred to as "Work". Without a written directive of an authorized representative of the City, the Service Provider shall not perform any services that are in addition to, or beyond the scope of, the Work. If the Service Provider's proposal is attached as an exhibit, and if such proposal contains or incorporates any conditions or terms in addition to or different from the terms of this Agreement, then the Service Provider expressly agrees that such conditions or terms are neither incorporated nor included into this Agreement between the City and Service Provider. If, and to the extent, the Work includes the design of a public work or improvement, in whole or in part, Service Provider's design shall be reasonably accurate, adequate and suitable for its intended purpose.

2. **Intellectual Property Rights.** Reports, drawings, plans, specifications and any other intangible property created in furtherance of the Work are property of the City for all purposes, whether the project for which they are made is executed or not, and may be used by the City for any purpose. Unless otherwise expressly agreed in writing, all intellectual property rights in such documents or intangible property created pursuant to this Agreement, or for the City of Everett, belong to the City of Everett. Service Provider retains any intellectual property rights in documents and intangible property created by Service Provider prior to engagement, or not created by Service Provider for its performance of this Agreement.

3. **Time of Beginning and Completion of Performance.** This Agreement shall commence as of the date of execution of this Agreement and shall be completed by December 31, 2018.

4. **Compensation.**

A. The City shall pay the Service Provider only for completed Work and for services actually rendered which are described herein. Such payment shall be full compensation for Work performed or services rendered, including, but not limited to, all labor, materials, supplies, equipment and incidentals necessary to complete the Work.

B. The Service Provider shall be paid such amounts and in such manner as described in Exhibit B.

C. Service Provider may receive payment as reimbursement for Eligible Expenses actually incurred. "Eligible Expenses" means those types and amounts of expenses either listed in Exhibit C or such expenses as are approved for reimbursement by the City in writing prior to the expense being incurred. If Exhibit C is either blank or not attached, expenses may not be reimbursed unless prior written approval was obtained from the City. An expense shall not be reimbursed if: (1) the expense is not identified in Exhibit C; (2) the expense exceeds the per item or cumulative limits for such expense if it is identified in Exhibit C; or (3) the expense was not approved in writing by an authorized City representative prior to the Service Provider incurring the expense. If, and to the extent, overnight lodging in western Washington is authorized, Service Provider is strongly encouraged to lodge within the corporate limits of City. When authorized, Service Provider will be reimbursed 100% of lodging expense, if lodged within the corporate limits of the City, but Service Provider will be reimbursed 50% of lodging expense when lodged outside the corporate limits of the City. If authorized, the City may (at its sole option) obtain or arrange air travel for the Service Provider.

D. Total compensation, including all services and expenses, shall not exceed a maximum of two-hundred twenty seven thousand one-hundred fifty-two Dollars (\$227,152).

E. If Service Provider fails or refuses to correct its work when so directed by the City, the City may withhold from any payment otherwise due an amount that the City in good faith believes is equal to the cost to the City of correcting, re-procuring, or remedying any damage caused by Service Provider's conduct.

5. **Method of Payment.**

A. To obtain payment, the Service Provider shall (a) file its request for payment, accompanied by evidence satisfactory to the City justifying the request for payment; (b) submit a report of Work accomplished and hours of all tasks completed; (c) to the extent reimbursement of Eligible Expenses is sought, submit itemization of such expenses and, if requested by the City, copies of receipts and invoices; and (d) comply with all applicable provisions of this Agreement. Service Provider shall be paid no more often than once every thirty days.

B. All requests for payment should be sent to:

City of Everett
Attn.: Halley Kimball
Everett Public Works Department, 3200 Cedar Street
Everett, WA 98201

6. **Submission of Reports and Other Documents.** The Service Provider shall submit all reports and other documents as and when specified in Exhibit A. Said information shall be subject to review by the City, and if found to be unacceptable, Service Provider shall correct and deliver to the City any deficient Work at Service Provider's expense with all practical dispatch. Service Provider shall abide by the City's determinations concerning acceptability of Work.

7. **Termination of Contract.** City reserves the right to terminate this Agreement at any time by sending written notice of termination to Service Provider ("Notice"). The Notice shall specify a termination date ("Termination Date") at least fourteen (14) days after the date the Notice is issued. The Notice shall be effective ("Notice Date") upon the earlier of either actual receipt by Service Provider (whether by fax, mail, delivery or other method reasonably calculated to be received by Service Provider in a reasonably prompt manner) or three calendar days after issuance of the Notice. Upon the Notice Date, Service Provider shall immediately commence to end the Work in a reasonable and orderly manner. Unless terminated for Service Provider's material breach, the Service Provider shall be paid or reimbursed for: (a) all hours worked and Eligible Expenses incurred up to the Notice Date, less all payments previously made; and (b) those hours worked and Eligible Expenses incurred after the Notice Date, but prior to the Termination Date, that were reasonably necessary to terminate the Work in an orderly manner. Notices under this Section 7 shall be sent by the United States Mail to Service Provider's address provided herein, postage prepaid, certified or registered mail, return receipt requested, or by delivery. In addition, Notices may also be sent by any other method reasonably believed to provide Service Provider actual notice in a timely manner, such as fax. The City does not by this Section 7 waive, release or forego any legal remedy for any violation, breach or non-performance of any of the provision of this Agreement. At its sole option, City may deduct from the final payment due the Service Provider (a) any damages, expenses or costs arising out of any such violations, breaches, or non-performance and (b) any other backcharges or credits.

8. **Changes.** The City may, from time to time, unilaterally change the scope of the services of the Service Provider to be performed hereunder. Such changes, including any increase or decrease in the scope of work (and resulting increase or decrease in compensation), shall: (a) be made only in writing and signed by an authorized City representative, (b) be explicitly identified as an amendment to this Agreement and (c) become a part of this Agreement.

9. **Subletting/Assignment of Contracts.** Service Provider shall not sublet or assign any of the Work without the express, prior written consent of the City.

10. **Indemnification.** Except as otherwise provided in this Section 10, the Service Provider hereby agrees to defend and indemnify the City from any and all Claims arising out of, in

connection with, or incident to any negligent or intentional acts, errors, omissions, or conduct by Service Provider (or its employees, agents, representatives or subcontractors/subconsultants) relating to this Agreement, whether such Claims sound in contract, tort, or any other legal theory. The Service Provider is obligated to defend and indemnify the City pursuant to this Section 10 whether a Claim is asserted directly against the City, or whether it is asserted indirectly against the City, e.g., a Claim is asserted against someone else who then seeks contribution or indemnity from the City. The Service Provider's duty to defend and indemnify pursuant to this Section 10 is not in any way limited to, or by the extent of, insurance obtained by, obtainable by, or required of the Service Provider. The Service Provider's obligations under this Section 10 shall not apply to Claims caused by the sole negligence of the City. If (1) RCW 4.24.115 applies to a particular Claim, and (2) such Claim is caused by or results from the concurrent negligence of (a) the Service Provider, its employees, subcontractors/subconsultants or agents and (b) the City, then the Service Provider's obligations under this Section 10 shall apply only to the extent allowed by RCW 4.24.115. Solely and expressly for the purpose of its duties to indemnify and defend the City, the Service Provider specifically waives any immunity it may have under the State Industrial Insurance Law, Title 51 RCW. The Service Provider recognizes that this waiver of immunity under Title 51 RCW was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. As used in this Section 10: (1) "City" includes the City, the City's officers, employees, agents, and representatives and (2) "Claims" include, but is not limited to, any and all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damages, irrespective of the type of relief sought or demanded, such as money or injunctive relief, and irrespective of whether the damage alleged is bodily injury, damage to property, economic loss, general damages, special damages, or punitive damages. If, and to the extent, Service Provider employs or engages subconsultants or subcontractors, then Service Provider shall ensure that each such subconsultant and subcontractor (and subsequent tiers of subconsultants and subcontractors) shall expressly agree to defend and indemnify the City to the extent and on the same terms and conditions as the Service Provider pursuant to this Section 10.

11. Insurance.

A. Service Provider shall comply with the following conditions and procure and keep in force during the term of this Agreement, at Service Provider's own cost and expense, the following policies of insurance with companies authorized to do business in the State of Washington, which are rated at least "A" or better and with a numerical rating of no less than seven (7), by A.M. Best Company and which are acceptable to the City.

1. Workers' Compensation Insurance as required by Washington law and Employer's Liability Insurance with limits not less than \$1,000,000 per occurrence. If the City authorizes sublet work, the Service Provider shall require each subcontractor to provide Workers' Compensation Insurance for its employees, unless the Service Provider covers such employees.

2. Commercial General Liability Insurance on an occurrence basis in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the annual aggregate,

including but not limited to: premises/operations (including off-site operations), blanket contractual liability and broad form property damage.

3. Business Automobile Liability Insurance in an amount not less than \$1,000,000 per occurrence, extending to any automobile. A statement certifying that no vehicle will be used in accomplishing this Agreement may be substituted for this insurance requirement.

4. Professional Errors and Omissions Insurance in an amount not less than \$1,000,000 per occurrence and \$1,000,000 in the annual aggregate. Such coverage may be written on a claims made basis. If both parties agree that the Work does not warrant Service Provider providing Professional Errors and Omissions Insurance, this Section 11.A.4 may be stricken and initialed by both parties.

B. The above liability policies shall be primary as to the City and shall contain a provision that the policy shall not be canceled or materially changed without 30 days prior written notice to the City. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of the Service Provider to furnish the required insurance during the term of this Agreement.

C. Upon written request by the City, the insurer or his/her agent will furnish, prior to or during any Work being performed, a copy of any policy cited above, certified to be a true and complete copy of the original.

D. Prior to the Service Provider performing any Work, Service Provider shall provide the City with a Certificate of Insurance acceptable to the City Attorney evidencing the required insurance. Service Provider shall provide the City with either (1) a true copy of an endorsement naming the City of Everett, its officers, employees and agents as Additional Insureds on the Commercial General Liability Insurance policy and the Business Automobile Liability Insurance policy with respect to the operations performed and services provided under this Agreement and that such insurance shall apply as primary insurance on behalf of such Additional Insureds or (2) a true copy of the blanket additional insured clause from the policies. Receipt by the City of any certificate showing less coverage than required is not a waiver of the Service Provider's obligations to fulfill the requirements.

E. If the policy listed in Section 11.A.4. above, Professional Errors and Omissions Insurance, is on a claims made policy form, the retroactive date on the policy shall be the effective date of this Agreement or prior. The retroactive date of any subsequent renewal of such policy shall be the same as the original policy provided. The extended reporting or discovery period on a claims made policy form shall not be less than 36 months following expiration of the policy. (This Section 11.E shall not apply if Section 11.A.4. above is stricken.)

F. Service Provider certifies that it is aware of the provisions of Title 51 of the Revised Code of Washington that requires every employer to be insured against liability of Workers' Compensation, or to undertake self-insurance in accordance with the provisions of that Title.

Service Provider shall comply with the provisions of Title 51 of the Revised Code of Washington before commencing the performance of the Work. Service Provider shall provide the City with evidence of Workers' Compensation Insurance (or evidence of qualified self-insurance) before any Work is commenced.

G. In case of the breach of any provision of this Section 11, the City may, at its option and with no obligation to do so, provide and maintain at the expense of Service Provider, such types of insurance in the name of the Service Provider, and with such insurers, as the City may deem proper, and may deduct the cost of providing and maintaining such insurance from any sums which may be found or become due to Service Provider under this Agreement or may demand Service Provider to promptly reimburse the City for such cost.

12. Independent Contractor.

A. This Agreement neither constitutes nor creates an employer-employee relationship. Service Provider must provide services under this Agreement as an independent contractor. Service Provider must comply with all federal and state laws and regulations applicable to independent contractors including, but not limited to, the requirements listed in this Section 12. Service Provider agrees to indemnify and defend the City from and against any claims, valid or otherwise, made against the City because of these obligations.

B. In addition to the other requirements of this Section 12, if Service Provider is a sole proprietor, Service Provider agrees that Service Provider is not an employee or worker of the City under Chapter 51 of the Revised Code of Washington, Industrial Insurance for the service performed in accordance with this Agreement, by certifying to the following:

(1) Service Provider is free from control or direction over the performance of the service; and

(2) The service performed is outside the usual course of business for the City, or will not be performed at any place of business of the City, or Service Provider is responsible for the costs of the principal place of business from which the service is performed; and

(3) Service Provider is customarily engaged in an independently established business of the same nature as the service performed, or has a principal place of business for the service performed that is eligible for a business deduction for federal income tax purposes; and

(4) On the effective date of this Agreement, Service Provider is responsible for filing a schedule of expenses, for the next applicable filing period, with the internal revenue service for the type of service performed; and

(5) By the effective date of this Agreement or within a reasonable time thereafter, Service Provider has established an account with the department of revenue and other state agencies, where required, for the service performed for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington; and

(6) By the effective date of this Agreement, Service Provider is maintaining a separate set of records that reflect all items of income and expenses of the services performed.

C. Any and all employees of the Service Provider, while engaged in the performance of any Work, shall be considered employees of only the Service Provider and not employees of the City. The Service Provider shall be solely liable for any and all claims that may or might arise under the Worker's Compensation Act on behalf of said employees or Service Provider, while so engaged and for any and all claims made by a third party as a consequence of any negligent act or omission on the part of the Service Provider's employees, while so engaged on any of the Work

D. Service Provider shall comply with all applicable provisions of the Fair Labor Standards Act and other legislation affecting its employees and the rules and regulations issued thereunder insofar as applicable to its employees and shall at all times save the City free, clear and harmless from all actions, claims, demands and expenses arising out of said act, and rules and regulations that are or may be promulgated in connection therewith.

E. Service Provider assumes full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes (such as state and, city business and occupation taxes), fees, licenses, excises or payments required by any city, federal or state legislation which are now or may during the term of the Agreement be enacted as to all persons employed by the Service Provider and as to all duties, activities and requirements by the Service Provider in performance of the Work and Service Provider shall assume exclusive liability therefore, and meet all requirements thereunder pursuant to any rules or regulations that are now or may be promulgated in connection therewith.

13. Employment. The Service Provider warrants that he had not employed or retained any company or person, other than a bona fide employee working solely for the Service Provider, to solicit or secure this Agreement and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Service Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

14. Audits and Inspections. At any time during normal business hours and as often as the City may deem necessary, the Service Provider shall make available to the City for the City's examination all of the Service Provider's records and documents with respect to all matters covered by this Agreement and, furthermore, the Service Provider will permit the City to audit, examine and make copies, excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

15. City of Everett Business License. Service Provider agrees to obtain a City of Everett business license prior to performing any work pursuant to this Agreement.

16. **State of Washington Requirements.** Service Provider agrees to register and obtain any State of Washington business licenses, Department of Revenue account and/or unified business identifier number as required by RCW 50.04.140 and 51.08.195 prior to performing any work pursuant to this Agreement.

17. **Compliance with Federal, State and Local Laws.** Service Provider shall comply with and obey all federal, state and local laws, regulations, and ordinances applicable to the operation of its business and to its performance of work hereunder.

18. **Compliance with the Washington State Public Records Act.** Service Provider acknowledges that the City is subject to the Public Records Act, chapter 42.56 RCW (the "Act"). All records owned, used or retained by the City are public records subject to disclosure unless exempt under the Act, whether or not such records are in the possession or control of the City or Service Provider. Service Provider shall cooperate with the City so that the City may comply with all of its obligations under the Act. Within ten (10) days after receipt of notice from the City, Service Provider shall deliver to the City copies of all records relating to this Agreement or relating to the Work that the City determines qualify as the City's public records under the Act. If the City receives a public records request relating to this Agreement or relating to the Work, the City shall seek to provide notice to Service Provider at least ten (10) days before the City releases records pursuant to such public records request, but in no event will the City have any liability to Service Provider for any failure of the City to provide such notice. In addition to its other indemnification and defense obligations under this Agreement, Service Provider shall indemnify and defend the City from and against any and all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damage arising from or relating to any failure of Service Provider to comply with this Section 18.

19. **Compliance with Grant Terms and Conditions.** Service Provider shall comply with any and all conditions, terms and requirements of any federal, state or other grant that wholly or partially funds Service Provider's work hereunder.

20. **Equal Employment Opportunity.** Service Provider shall not discriminate against any employee, applicant for employment, independent Service Provider, or proposed independent Service Provider, on the basis of race, color, religion, sex, age, disability, marital state, or national origin.

21. **Waiver.** Any waiver by the Service Provider or the City or the breach of any provision of this Agreement by the other party will not operate, or be construed, as a waiver of any subsequent breach by either party or prevent either party from thereafter enforcing any such provisions.

22. **Complete Agreement.** This Agreement contains the complete and integrated understanding and Agreement between the parties and supersedes any understanding, Agreement or negotiation whether oral or written not set forth herein.

23. **Modification of Agreement.** This Agreement may be modified as provided in ¶8, or by a writing explicitly identified as a modification of this Agreement that is signed by authorized representatives of the City and the Service Provider.

24. **Severability.** If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void, insofar as it is in conflict with said laws, and the remainder of the Agreement shall remain in full force and effect.

25. **Notices.**

A. Notices to the City of Everett shall be sent to the following address:

City of Everett
Attn.: Halley Kimball
Everett Public Works Department, 3200 Cedar Street
Everett, WA 98201

B. Notices to the Service Provider shall be sent to the following address:

Otak, Inc. c/o Greg Laird, P.E.
11241 Willows Road, NE, Suite 200
Redmond, Washington
98052

26. **Venue.** Venue for any lawsuit arising out of this Agreement shall be in the Superior Court of Snohomish County, Washington.

27. **Governing Law.** The laws of the State of Washington, without giving effect to principles of conflict of laws, govern all matters arising out of or relating to this Agreement.

IN WITNESS WHEREOF, the City and Service Provider have executed this Agreement as of the date first above written.

**CITY OF EVERETT,
WASHINGTON**

Ray Stephanson, Mayor

Date

ATTEST:

APPROVED AS TO FORM:

Sharon Fuller, City Clerk

James D. Iles, City Attorney

Date

Date

Diking District 5
Dike Repairs and Improvements Project
Phase 1 - Evaluation of Alternatives
Otak Project No. 32758
Proposal for Professional Services
July 2016

Background Information

This project is located northeast of the City of Everett (the City), within the Snohomish River Estuary on the northern side of Smith Island. Smith Island is located between the Snohomish River to the west and Union Slough to the east. There is a system of dikes around Smith Island that protect the island from much of the flooding that can occur due to high tides and river discharges. Much of the dike system on Smith Island is currently within Diking District 5 (DD5). Portions of the dike system along Union Slough within the district, and portions within the city but outside the district boundary are in need of repair in accordance with the Army Corps of Engineers' 2015 inspection, due to erosion and scour along the slope of the dike facing the slough. These portions of the dike system outside of the district boundaries also provide protection to the District, thus the District considers them vital to protect the district and will make the repairs.

The dike repairs can potentially span approximately 5,200 feet from the tie in of the Snohomish County set back dike to State Route 529. Along this span DD5 noted that there are three common types of erosion that have caused significant damage to the dike - erosion of the last foot to two feet of the dike toe above the Ordinary High Water Mark (OHWM), erosion of the dike toe to a vertical where re-establishing the toe would require extending below the OHWM, and slumping of the riverward top of the dike where erosion below the OHWM has destabilized the dike toe.

While this project will be repairing the riverward toe and slope of the dike, DD5 is considering establishing the dike crown at an elevation of 15 feet and widening the dike where necessary to remain drivable (15 feet wide). The project will provide for scour protection along the riverward slope. Part of the consulting effort will be to determine the permitting and approvals for the implementation of these repairs and if there are different permit requirements for any element. Therefore, this initial work scope will evaluate the engineering and permitting requirements for the repairs, and if the permitting requirements for the repairs appear similar to what may be necessary for the dike improvements, we will add the analysis of the improvements as a future supplement. This work is expected to be completed in two phases. The first phase will include survey and mapping, geotechnical investigation and analyses, environmental studies, and engineering analyses to provide DD5 with a comparison of alternatives for the repairs, and improvements (if requested by

Exhibit A

Continued

DD5 through separate contract supplement). The second phase would include the design and permitting of the selected alternative.

This scope of work will assist DD5, through a contract with the City of Everett, to evaluate alternatives for repairing the dike. This scope includes surveying, preliminary geotechnical investigations, environmental studies, and civil engineering. The following sections describe the tasks required to complete this project.

Project Approach

Otak with its subconsultant, Cornforth (the Otak team), will complete field investigations, environmental studies, and engineering analyses to support the design of the dike repairs and dike improvements. The following tasks are included in this Scope of Services for Phase 1 of the DD5 Dike Repairs and Improvements Project.

- Task 1 – Project Management and Coordination
- Task 2 – Topographic Survey and Basemap Preparation
- Task 3 – Geotechnical Investigation and Design Recommendations
- Task 4 – Environmental Studies and Permitting Requirements
- Task 5 – Design Development and Analysis

The Scope of Services will begin in the summer of 2016 and be completed approximately Spring 2017. A schedule of services will be provided by Otak and agreed to by the DD5 at the outset of the project. This Scope of Services will be completed through a contract with the City of Everett – acting on behalf of DD5.

Task 1—Project Management and Coordination

1.1 Monthly Project Status Report and Invoices

Brief project status reports will be submitted to the City that summarize tasks accomplished during the month, tasks projected for the next month, information or actions necessary to maintain project schedule, any potential issues or observations that could impact the project, and a schedule and budget status. The status reports may be conveyed during phone conversations or accompany the monthly invoices. We will submit monthly invoices including the percent of work completed, hours billed, and percent of budget remaining for each task in the format supplied by the City to facilitate reporting to DD5.

Deliverables

- Monthly written status reports

Exhibit A

Continued

- Monthly invoices

1.2 Project Coordination

The Otak team will attend four project meetings with DD5 to discuss findings and progress of the project. The first meeting will be a kick-off meeting and include field reconnaissance of the dike to identify all known erosion problems. The second meeting will occur upon completion of the geotechnical investigation. The third meeting will discuss the environmental studies, and the fourth meeting will discuss the presentation of alternatives.

Assumptions

- The kickoff meeting and field reconnaissance will be attended by four Otak team members.
- The City will lead the Otak team on the field reconnaissance to identify all current and previous erosion problems.
- The three other coordination meetings will be at the City's office and attended by three Otak team members.

Task 2—Topographic Survey and Base Map Preparation

Prior to the kickoff meeting and field reconnaissance (Task 1.2) the City will provide a preliminary base map including, as available:

- Surface contours based on 2009 (or most recent) LiDAR surface
- Bathymetry of Union Slough
- Surveyed wetlands and ditches throughout the property
- Surveyed tide gates and culvert inverts
- Surveyed utilities. (Will need to verify that all the utilities were located)
- Surveyed well locations
- Surveyed cross sections on the existing dike taken by City and County staff
- Centerline and easement of the Puget Sound Energy (PSE) pipeline
- Undercut locations and extent on existing dike
- Utility and easement records from the City in the vicinity of the project

2.1 Supplemental Topographic Survey and Base Map Preparation

To assist in the Geotechnical Investigation and Analysis (Task 3) and Design Development and Analysis (Task 5), existing site topography, utilities, and critical areas (wetlands and OHWM) need to be clearly identified and shown on the project base map. The extent of field survey required for the preparation of the base map may be adjusted after review of the preliminary base map and the review of survey-grade GPS cross-sections obtained by Snohomish County. For the purposes of this scope of services, we propose to obtain cross sections of the existing dike extending from water's edge landward to approximately 25 feet beyond the edge of the ditches along the toe of the dike.

Exhibit A

Continued

This survey will utilize GPS real-time kinematic (RTK) equipment and/or conventional total station instruments.

Any features noted during the Site Reconnaissance (Task 3.2) will be surveyed and included in the project base map. Field boundaries of OHWM on the waterward side of the dike will be surveyed with survey-grade equipment. The field boundaries of wetlands will be located with resource-grade GPS equipment. These boundaries will be incorporated into the project base map after these boundaries are flagged (Task 4).

This field survey data, in addition to the City's GIS data and LIDAR will be utilized by the Otak team to create a base map sufficient for evaluating alternatives for repairs and improvements. The map will show planimetric features, wetland boundaries, ordinary high water, surveyed cross section points along the top of the dike, and site topography of the identified distressed areas noted during the site reconnaissance (Task 3.2).

The base map will include right-of-way margins, parcel lines, (taken from the County's assessor's maps and other record data) and easements within the project area.

Deliverables

- Site survey base map stamped by Professional Land Surveyor, registered in the State of Washington.
- The base map will show 2-foot contour intervals with elevations referenced to the North American Vertical Datum 1988 (NAVD88).
- The map will be referenced to the Washington State Plane Coordinate System.
- AutoCAD/CIV3D base map drawing (*.dwg) file of project survey with topographic (digital terrain model – DTM) surface of surveyed area.

Assumptions

- Preliminary base map CAD files to be provided by the City.
- The County's bathymetric survey of Union Slough will be provided by the City.
- Access and rights-of-entry will be provided by the City.
- As-builts, utility records, easements records, survey control and existing CAD design files for the project area will be provided by the City.
- Estimates of survey and mapping are based on no more than 20 areas identified as distress area requiring survey and mapping of these features.

Task 3—Geotechnical Investigation and Design Recommendations

Exhibit A

Continued

The USACE's Levee Safety Program requires that the levee must achieve a "minimally acceptable" or "acceptable" rating on the FDR Inspection Report to remain eligible for USACE's PL84-99 program. The Otak team will compile existing geotechnical exploration data, and perform additional field geotechnical explorations to characterize subsurface conditions in support of preliminary design for levee modifications to meet the PL84-99 objective. Design recommendations will be provided with the intent of addressing levee deficiencies and achieving an acceptable rating from the USACE, and with the understanding that geotechnical information is needed for dike design purposes, but not a requirement of eligibility for the PL84-99 program. The geotechnical dike evaluation and analysis will be performed in general accordance with the following U.S. Army Corps of Engineers (USACE) publications:

- EM 500-1-1 "Civil Emergency Management Program" PL84-99 requirements
- EM 1110-2-1913 "Design and Construction of Levees"
- EM 1110-2-1902 "Slope Stability"
- ER 1110-2-1806 "Earthquake Design and Evaluation for Civil Works Projects"
- ETL 1110-2-569 "Design Guidance for Levee Underseepage"
- EC 1110-2-6067 "Engineering and Design: USACE Process for the National Flood Insurance Program (NFIP) Levee System Evaluation"
- ETL 1110-2-6-571 "Guidelines for Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures"

3.1 Report, Mapping and Data Review

The Otak team will review historic and current aerial photographs provided by the City. Snohomish County has performed a number of borings, test pits and well installations in the project vicinity associated with their Smith Island Restoration Project. Cornforth will review the final geotechnical report completed for the Smith Island Restoration Project and will review construction records (if any) to establish the historical dike footprint.

Assumptions

- The City will provide existing reports, surveys, aerial photographs, data, engineering studies, and construction records for the dike and other construction activities near the site.

3.2 Site Reconnaissance

In addition to the field reconnaissance performed during the kickoff meeting (Task 1.2), the Otak team will tour the site by foot and by boat (performed at low tide). The site tour will explore and map distressed areas (slope failures, scour, settlement, and seepage) with GPS. The site tour will evaluate construction access routes, staging, and stockpile areas. The tour will check utility crossings (previously identified on the preliminary base map) and note additional utilities that should be included on the project base map (Task 2.1).

3.3 Phase 1 Subsurface Investigation

The Otak team will perform supplemental field explorations along the dike alignment. Six (6) boreholes will be drilled along the dike at 1,000-foot intervals. The boreholes will be drilled through the centerline of the dike using a track-mounted drill rig. Five (5) of these borings will use a mud-rotary drilling technique, and the remaining boring will be performed using hollow-stem auger operated by the rig used for the mud rotary drilling. Soil samples will be collected at 2.5-foot intervals to a depth below ground surface (bgs) of 15 feet, then at 5-foot intervals to the bottom of the boring. Borehole depths will be to 50 feet bgs in 5 of the locations and to 80 feet bgs in the remaining location. Samples will be obtained with Standard Penetration Tests (SPTs), and with an occasional Shelby tube for undisturbed samples. All boreholes will be backfilled with cement-bentonite grout. The boring locations will be identified and marked during drilling for field survey by the Otak team.

In the hollow-stem auger hole, a falling-head permeability test will be performed in the embankment and foundation soils.

The soil samples collected from the borings will be brought to Cornforth's laboratory for geologic interpretation and testing. A geologist will review each sample and prepare a log for each boring.

3.4 Phase 1 Laboratory Testing

The City will contract with an independent laboratory to complete the testing of samples obtained by Cornforth collected during the subsurface investigations. Cornforth will coordinate with the soils laboratory to perform basic geotechnical index tests on samples, including:

- Water content tests for most samples (up to 80 tests)
- Minimum 1 grain-size and 1 fines content (% passing #200 sieve) for each boring, plus other selected samples of interest (up to 6 tests)
- 2 Atterberg Limits for each boring (12 tests)
- 1 Organic Content of a sample selected from each boring (6 tests)

Assumptions

- The City will provide a boat for the site reconnaissance.
- The City will obtain all permission and access to drill the borings.
- The Otak team will call the Underground Utilities Location Center (UULC) and private utility locator to locate underground utilities prior to drilling the borings. The fee is assumed to be \$1,000 for a private utility locator.
- The City will coordinate and obtain drilling permits (including the shoreline exemption for exploratory drilling) and will notify the Otak team about permit conditions.
- The City will contract with an independent soils laboratory to complete the geotechnical testing.

Exhibit A

Continued

- Soil cuttings and drilling mud will be handled by the City.
- Soils are assumed to be non-contaminated. Any soil cuttings suspected to be contaminated, based on field observations, will be placed into 55 gallon drums and disposed of by the City.
- The borings will be completed during workday hours over a period of ten business days. Drilling equipment will remain on site for the duration of exploration activities.
- No site restoration of vegetation will be required for minimal disturbance necessary to conduct work.

3.5 Geotechnical Analyses

The Otak team will evaluate geotechnical conditions along the dike alignment based on the existing and new subsurface data. Based on the review of the existing erosion and scour problems, the existing problems will be categorized into reaches of similar characteristics (expect 4 for scoping purposes). For each reach, a geologic cross-section will be prepared to illustrate the existing conditions and up to two potential repair concepts. The Otak team will develop concepts for raising the dike. For each of these improvement (dike raising) concepts, the Otak team will complete the following engineering evaluations.

- Slope stability
- Seepage
- Settlement
- Scour
- Freeboard
- Interior Drainage

The Otak team will confirm that all options will meet the U.S. Army Corps of Engineers (USACE) PL 84-99 eligibility requirements.

Deliverables

- The Otak team will prepare a draft geotechnical report presenting the results of the field explorations, laboratory testing, geotechnical analyses and design recommendations. The geotechnical report will include, as applicable, the following:
 - Summarize site investigation program, subsurface conditions and lab testing
 - Summarize conceptual options and engineering evaluations
 - Site plan showing locations of new borings
 - Summary boring logs
 - Laboratory test results
 - Geotechnical analysis results

Assumptions

Exhibit A

Continued

- A Draft Geotechnical Report will be provided in electronic format (Word) only and submitted to the City for review. The revised (and final) report will be submitted as an appendix to the Phase 1 Design Alternatives Technical Memo (Task 5).

Task 4 – Environmental Studies to Support Regulatory Compliance

During Phase 1 of the project, the Otak team will conduct data collection and field work necessary to establish baseline environmental conditions in the project area. Environmental data collected will be used to prepare Phase 1 environmental reports and documentation to inform proposed project alternatives analyses, and will be used to support the City on the permit applications and/or demonstrate regulatory compliance required for Phase 2 of the project.

The anticipated permits and required compliance applicable to this project include:

- U.S. Army Corps of Engineers (Army Corps) Section 404 permit
- U.S. Army Corps Section 10 permit
- Endangered Species Act compliance
- Magnuson-Stevens Act compliance
- National Historic Preservation Act (Section 106) compliance
- State Environmental Policy Act (SEPA) compliance
- Historic and Archaeological Resources (Exec. Order 05-05) compliance
- Washington Department of Fish and Wildlife Hydraulic Project Approval (HPA)
- Washington Dept. of Ecology Section 401 water quality certification
- Coastal Zone Management consistency
- Shoreline development compliance
- Flood Hazard Regulations
- Critical Areas Ordinances/Regulations compliance (City of Everett and Snohomish County)

Task 4.1 Conduct Data Collection and Fieldwork

Wetland delineations will be conducted to meet the requirements of the City of Everett and Snohomish County Critical Areas ordinances and regulations, and federal and state agencies, including the Army Corps and Washington State Department of Ecology (Ecology). Otak staff will conduct the wetland delineation in the field using the three-parameter approach detailed in the USACE Wetland Delineation manual (USACE 1987) and the Regional Supplement to the USACE Wetland Delineation Manual: Western Mountain, Valleys, and Coast Region (USACE 2010). Wetlands present within the project area of potential impact will be flagged during the delineation and subsequently surveyed to incorporate in the project base map.

A field investigation of the Snohomish River and any nearby streams/ditches will be conducted to assess existing conditions within the project area, and upstream and downstream sufficiently to establish baseline conditions. Information on areas/habitat of primary association and other relevant

Exhibit A

Continued

fish and wildlife habitat conservation areas will be collected. Ordinary high water marks (OHWM) will be determined per both Ecology and the Army Corps methodologies along Union Slough and associated ditches in the project area of potential impact. The OHWM will be flagged and surveyed to incorporate in the project base map.

Data sheets and photographs documenting the wetland and stream field work will be compiled and included in the Critical Area Study report. Wetlands will be rated according to the 2014 Ecology *Washington State Wetland Rating System for Western Washington* methodology and the City and County's rating requirements. Streams will be rated per Washington Department of Natural Resources criteria. Buffer widths for wetlands and streams will be established per City and County Critical Areas Ordinances.

Assumptions:

- Wetland delineations and stream/ditch characterizations will be conducted from the surface water line of the Snohomish River (including wetland areas along the waterward side of the dike), and extending laterally for 50 feet from the landward toe of the dike in the project area of potential impact. Any critical areas beyond 50 feet will be estimated and noted in the report.
- The City will notify private property owners of scheduled field work and gain right-of-entry as necessary.
- Wetland flags will be located with a resource-grade GPS unit with sub-meter accuracy, and OHWM flags along Union Slough will be located with survey-grade equipment.
- Geotechnical data/information on geologically hazardous areas will be collected under Task 3.1.
- Data on groundwater and/or critical aquifer recharge areas will be collected under Task 3.1.

Task 4.2 Prepare Environmental Baseline Documentation

A Critical Areas Study (CAS) will be prepared for wetlands, streams, and other fish and wildlife habitat conservation areas. The CAS will include all information required for compliance with both the City of Everett Critical Areas Ordinances and Snohomish County Critical Areas Regulations, including: Wetland Determination Data Forms, Wetland Rating Forms (and figures), photographs, and supporting figures. The CAS will incorporate any relevant background information and previous studies completed for the project area as provided by the City.

Assumptions:

- City will provide copies of previously completed environmental documentation for the project area, if available.
- City will provide comments on the Draft CAS during one round of review prior to Otak completing the Final CAS.

Deliverables:

- Draft and Final Critical Areas Study

Task 5 – Design Development and Alternatives Evaluation

The Otak team will prepare site plans and details of up to 3 alternatives for repairing the erosion and scour problems. For each alternative, materials will be identified and quantified, and estimates of the construction costs will be provided. The recommendations for managing interior drainage will be described. The environmental impacts will be described, and the potential permitting implications (on schedule and mitigation requirements) will be estimated. Constructability issues will be evaluated. The utilities potentially impacted by the project will be listed, the potential impacts described, and the concerns/constraints of each utility presented. The design development will be presented in a report with drawings showing the areal extent of the various alternatives, details of each alternative, and a description of the basis of the cost opinions. Recommendations for Phase 2 final design, including geotechnical analyses will be included. The final Phase 1 geotechnical report will be provided as an appendix.

Deliverables

- The Otak team will prepare a Phase 1 Design Alternatives Technical Memo.

Assumptions

- The DRAFT Design Alternatives Technical Memo will be submitted to DD5 prior to the fourth coordination meeting (Task 1.2), and the FINAL Design Alternatives Technical Memo will be submitted within two weeks of receiving DD5 comments on the draft memo.
- The City will provide information on previous Army Corps authorizations and maintenance activities along this portion of the dike to identify the historical dike footprint. Identification of the historical dike footprint will support the analyses of agency permitting requirements.

SERVICE PROVIDER: Please fill in the spaces and sign in the box appropriate for your business entity.

<p>Corporation</p> <p><u>Otak, Inc.</u> [Service Provider's Complete Legal Name]</p> <p>By: <u>[Signature]</u> Typed/Printed Name: <u>Gregory S. Haurd</u> Its: <u>Principal</u> Date: <u>7-25-16</u></p>
<p>Partnership (general)</p> <p>_____ [Service Provider's Complete Legal Name] a Washington general partnership</p> <p>By: _____ Typed/Printed Name: _____ General Partner Date: _____</p>
<p>Partnership (limited)</p> <p>_____ [Service Provider's Complete Legal Name] a Washington limited partnership</p> <p>By: _____ Typed/Printed Name: _____ General Partner Date: _____</p>
<p>Sole Proprietorship</p> <p>_____ Typed/Printed Name: _____</p> <p>_____ Sole Proprietor: Date: _____</p>
<p>Limited Liability Company</p> <p>_____ [Service Provider's Complete Legal Name] a Washington limited liability company</p> <p>By: _____ Typed/Printed Name: _____ Managing Member Date: _____</p>

EXHIBIT A
SCOPE OF WORK

Attached separately

EXHIBIT B
COMPENSATION

ALTERNATE A [HOURLY RATE UP TO A MAXIMUM AMOUNT]

The City shall pay the Service Provider a sum equal to the amount of hours actually worked multiplied by the rate identified herein for the staff performing the Work, subject to the maximum stated in ¶4(D) of this Agreement.

Name	Responsibility	Rate
See Attached		

ALTERNATE B [LUMP SUM]

The City shall pay Service Provider _____ dollars (\$) upon the completion of the Work, subject to the maximum stated in ¶4(D) of this Agreement.

ALTERNATE C [PROGRESS PAYMENTS]

The City shall pay the Service Provider the following amounts upon the completion of the following tasks, subject to the maximum stated in ¶4(D) of this Agreement:

Task	Amount Paid upon Completion of Task

ALTERNATE D [BASE REGISTRATION]

The City shall pay the Service Provider such amounts and in such manner as follows:
 Fee for service shall be _____ percent _____ % of the base registration fees collected by the City.
 Additional fees and/or surcharges levied by the City will be retained 100% by the City.
 Payments shall be made as stated in Exhibit A – Scope of Work. The base registration fee is listed in Exhibit A – Scope of Work. Compensation shall not exceed _____ dollars (\$ _____).

EXHIBIT C
REIMBURSABLE EXPENSES

Type of Expense	Maximum Per Item	Cumulative Maximum
Parking		
Meals		
See Attached Exhibit C		

Task Description	Senior Associate Engineer	Senior Associate Geologist	Associate Engineer	Project Engineer	Senior Drafter	Secretary	Total Labor Hours	CCI Labor Cost	Estimated Direct Expenses	Subcontractors	Task Total
Task 1 Project Management and Coordination											
1.1 Monthly Project Status Report and Invoices	18		20	2		6	20	\$ 3,232.20	\$ 523.50	\$ -	\$ 3,755.70
1.2 Project Coordination			20				46	\$ 8,069.48	\$ -	\$ -	\$ 8,069.48
Task 2 Topographic Survey and Base Map Preparation											
2.1 Supplemental Topographic Survey and Base Map Preparation			2		4		6	\$ 644.90	\$ -	\$ -	\$ 644.90
Task 3 Geotechnical Investigation and Design Recommendations											
3.1 Report, Mapping and Data Review	1		8	8			17	\$ 2,586.66	\$ -	\$ -	\$ 2,586.66
3.2 Site Reconnaissance			20				20	\$ 3,232.20	\$ 523.50	\$ -	\$ 3,755.70
3.3 Phase 1 Subsurface Investigation			6	90			96	\$ 12,896.46	\$ 1,573.20	\$ 21,400.00	\$ 36,869.66
3.4 Phase 1 Laboratory Testing			3	31			34	\$ 4,592.95	\$ -	\$ -	\$ 4,592.95
3.5 Geotechnical Analyses	26	12	120	106	38	16	318	\$ 46,258.00	\$ -	\$ -	\$ 46,258.00
Task 6 Design Development and Alternatives Evaluation											
Direct Labor (hrs):	45	4	32	26		2	64	\$ 9,625.64	\$ -	\$ -	\$ 9,625.64
Rate per hour (\$):	\$ 233.62	\$ 219.06	\$ 161.61	\$ 132.52	\$ 80.42	\$ 66.18	621				
Labor Cost by Discipline:	\$ 10,512.90	\$ 3,504.96	\$ 37,331.91	\$ 34,852.76	\$ 3,377.64	\$ 1,588.32	\$ 91,168.49	\$ 91,168.49	\$ 2,620.20	\$ 21,400.00	\$ 115,188.69

DD5 - Dike Repair and Improvements Project Phase 1

Fee Estimate

Otak, Inc., Project 32758

Exhibit C

Estimate of Direct Costs

Description	Task 1	Task 2	Task 3	Task 4	Task 5
Outside Reproduction			\$100.00	\$100.00	
Postage and Courier					
Mileage and Parking	\$160.00	\$600.00	\$80.00	\$160.00	
Equipment Rental				\$400.00	
Miscellaneous	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00
	<u>\$210.00</u>	<u>\$650.00</u>	<u>\$230.00</u>	<u>\$710.00</u>	<u>\$50.00</u>

\$1,850.00

STATE RETIREMENT SYSTEMS FORM
ATTACHMENT TO PROFESSIONAL SERVICES AGREEMENT
ALL SERVICE PROVIDERS MUST COMPLETE AND SIGN THIS FORM

1. Does Service Provider have twenty-five (25) or more employees? Yes No
IF YES: SKIP QUESTION 2, SKIP QUESTION 3, AND SIGN BELOW.
IF NO: ANSWER QUESTIONS 2 AND 3.

2. If a Service Provider employee will perform Work under this Professional Services Agreement, did that employee retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), Teachers' Retirement System (TRS), or Law Enforcement Officers and Fire Fighters plan (LEOFF)? Yes No

3. Answer the appropriate question below for Service Provider's business organization:

Sole Proprietor. Did Service Provider retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), Teachers' Retirement System (TRS), Law Enforcement Officers and Fire Fighters plan (LEOFF)? Yes No

Partnership. If a partner will perform Work under this Professional Services Agreement, did that partner retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), Teachers' Retirement System (TRS) or Law Enforcement Officers and Fire Fighters plan (LEOFF)? Yes No

Limited Liability Company. If a member will perform Work under this Professional Services Agreement, did that member retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), Teachers' Retirement System (TRS) or Law Enforcement Officers and Fire Fighters plan (LEOFF)? Yes No

Corporation. If a shareholder will perform Work under this Professional Services Agreement, did that shareholder retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), Teachers' Retirement System (TRS), or Law Enforcement Officers and Fire Fighters plan (LEOFF)? Yes No

IF THERE IS A "YES" ANSWER TO ANY PART OF QUESTIONS 2 OR 3, AN ADDITIONAL QUESTIONNAIRE (AVAILABLE FROM HR OR LEGAL) MUST BE FILLED OUT AND SUBMITTED WITH THE CONTRACT.

Service Provider Name: _____

Signature:

Printed Name:

Title:



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/22/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER JD Fulwiler & Co. Insurance, Inc. 5727 SW Macadam Ave PO Box 69508 Portland OR 97239	CONTACT NAME: Peggy MacMillan	
	PHONE (A/C No. Ext): (503) 293-8325 FAX (A/C. No): (503) 293-5418 E-MAIL ADDRESS: pmacmillan@jdfulwiler.com	
INSURED Otak Inc. 808 SW 3rd Ave Ste 300 Portland OR 97204	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Travelers Indemnity Co of CT	25682
	INSURER B: Travelers Indemnity Co of Am	25666
	INSURER C: Saif Corporation	36196
	INSURER D: Beazley Insurance Company Inc	
	INSURER E: Allianz Global Risk US Insurance	
INSURER F:		

COVERAGES CERTIFICATE NUMBER: 15/16 Gen USE REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> WA Stop Gap Liability GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:		6801497P251	12/9/2015	12/9/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Employee Benefits \$ 1,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		BA1502P892	12/9/2015	12/9/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Towing \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000		CUP5C8570811247	12/9/2015	12/9/2016	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N N/A	**OREGON** 487431 OTAK INC 967262 OTAK Architects Inc	4/1/2016 4/1/2016	4/1/2017 4/1/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	A&E Prof'l w/Pollution		V10267150701	12/9/2015	12/9/2016	Limit per claim/Agg/Ded \$2m/\$4m/\$200K
E	Inland Marine		MXI93070328	12/9/2015	12/9/2016	Misc Unscheduled Items/Ded \$100,00/\$5k

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: DD5 Dike Repair Otak Project #32758; naming the City of Everett, its officers, employees and agents are included as additional insureds on the general liability and auto liability with regard to operations of the named insured subject to policy terms, conditions and exclusions per attached forms CGD381 & CAT4370808; It is further agreed that coverage is primary and non-contributory; Cancellation provisions apply per attached form IL316;

CERTIFICATE HOLDER HKimball@everettwa.gov City of Everett Public Works 3200 Cedar St Everett, WA 98201	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE P MacMillan/TMAYDA <i>Peggy MacMillan</i>
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Additional Named Insureds

Other Named Insureds

HLB Otak Inc., an Oregon Corporation

OTAK Architects Inc, a Washington Corporation

Otak Architects Inc., an Oregon Corporation

Otak Engineering, Inc., an Oregon Corporation

Otak International (Caymen Islands)

Otak Nevada, LLC, an Oregon Limited Liability Co

Otak, Inc. 401K Employee Savings Plan

Otak, Inc., a Colorado Corporation

Otak, Inc., an Washington Corporation

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:

- BUSINESS AUTO COVERAGE FORM
- MOTOR CARRIER COVERAGE FORM
- TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

The following is added to the **Section II – Liability Coverage, Paragraph A.1. Who Is An Insured** Provision:

Any person or organization that you are required to include as additional insured on the Coverage Form in

a written contract or agreement that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period is an "insured" for Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following is added to WHO IS AN INSURED (Section II):

Any person or organization that you agree in a "contract or agreement requiring insurance" to include as an additional insured on this Coverage Part, but only with respect to liability for "bodily injury", "property damage" or "personal injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations;
- b. In connection with premises owned by or rented to you; or
- c. In connection with "your work" and included within the "products-completed operations hazard".

Such person or organization does not qualify as an additional insured for "bodily injury", "property damage" or "personal injury" for which that person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- d. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.
- e. This insurance does not apply to the rendering of or failure to render any "professional services".
- f. The limits of insurance afforded to the additional insured shall be the limits which you agreed in that "contract or agreement requiring insurance" to provide for that additional insured, or the limits shown in the Declarations for this Coverage Part, whichever are less. This endorsement does not increase the limits of insurance stated in the **LIMITS OF**

INSURANCE (Section III) for this Coverage Part.

B. The following is added to Paragraph a. of 4. Other Insurance in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

However, if you specifically agree in a "contract or agreement requiring insurance" that the insurance provided to an additional insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have entered into that "contract or agreement requiring insurance". But this insurance still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured when the insured is an additional insured under any other insurance.

C. The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

We waive any rights of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, under a "contract or agreement requiring insurance" with that person or organization. We waive these rights only where you have agreed to do so as part of the "contract or agreement requiring insurance" with such person or organization entered into by you before, and in effect when, the "bodily

COMMERCIAL GENERAL LIABILITY

injury" or "property damage" occurs, or the "personal injury" offense is committed.

D. The following definition is added to **DEFINITIONS (Section V)**:

"Contract or agreement requiring insurance" means that part of any contract or agreement under which you are required to include a person or organization as an additional insured on this Cov-

erage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed:

- a. After you have entered into that contract or agreement;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

COMMON POLICY CONDITIONS WASHINGTON

All Coverage Parts included in this policy are subject to the following conditions.

The conditions in this endorsement replace any similar conditions in the policy that are less favorable to the insured.

A. CANCELLATION

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy or any Coverage Part by mailing or delivering to the first Named Insured and the first Named Insured's agent or broker written notice of cancellation, including the actual reason for the cancellation, to the last mailing address known to us, at least:

- a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
- b. 45 days before the effective date of cancellation if we cancel for any other reason,

except as provided in paragraphs 3. and 4. below.

3. We may cancel the Commercial Property Coverage Part, if made a part of this policy, by mailing or delivering to the first Named Insured and the first Named Insured's agent or broker written notice of cancellation at least 5 days before the effective date of cancellation for any structure where 2 or more of the following conditions exist:

- a. Without reasonable explanation, the structure is unoccupied for more than 60 consecutive days, or at least 65% of the rental units are unoccupied for more than 120 consecutive days unless the structure is maintained for seasonal occupancy or is under construction or repair;
- b. Without reasonable explanation, progress toward completion of permanent repairs to the structure has not occurred within 60 days after receipt of funds following satisfactory adjustment or adjudication of loss resulting from a fire;

- c. Because of its physical condition, the structure is in danger of collapse;
- d. Because of its physical condition, a vacation or demolition order has been issued for the structure, or it has been declared unsafe in accordance with applicable law;
- e. Fixed and salvageable items have been removed from the structure, indicating an intent to vacate the structure;
- f. Without reasonable explanation, heat, water, sewer, and electricity are not furnished for the structure for 60 consecutive days; or
- g. The structure is not maintained in substantial compliance with fire, safety and building codes.

4. If:

- a. You are an individual
- b. A covered "auto" you own is of the "private passenger type"; and
- c. The policy does not cover garage, automobile sales agency, repair shop, service station or public parking place operation hazards,

we may cancel the Commercial Auto Coverage Part by mailing or delivering to the first Named Insured and the first Named Insured's agent or broker written notice of cancellation, including the actual reason for cancellation, to the last mailing address known to us:

- a. At least 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
- b. At least 10 days before the effective date of cancellation for any other reason if the policy is in effect less than 30 days; or
- c. At least 20 days before the effective date of cancellation for other than nonpayment if the policy is in effect 30 days or more; or
- d. At least 20 days before the effective date of cancellation if the policy is in effect for 60 days or more or is a renewal or continuation policy, and the reason for can-

cancellation is that your driver's license or that of any driver who customarily uses a covered "auto" has been suspended or revoked during the policy period.

5. We will also mail or deliver to any mortgage holder, pledgee or other person shown in this policy to have an interest in any loss which may occur under this policy, at their last mailing address known to us, written notice of cancellation prior to the effective date of cancellation. If cancellation is for reasons other than those contained in paragraph A.3. above, this notice will be the same as that mailed or delivered to the first Named Insured. If cancellation is for a reason contained in paragraph A.3. above, we will mail or deliver this notice at least 20 days prior to the effective date of cancellation.
6. Notice of cancellation will state the effective date of cancellation. If the policy is cancelled, that date will become the end of the policy period. If a Coverage Part is cancelled, that date will become the end of the policy period as respects that Coverage Part only.
7. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund will be at least 90% of the pro rata refund unless the following applies:
 - a. If:
 - (1) You are an individual;
 - (2) A covered auto you own is of the "private passenger type";
 - (3) The policy does not cover garage, automobile sales agency, repair shop, service station or public parking place operations hazards; and
 - (4) The first Named Insured cancels,
the refund will be not less than 90% of the unearned portion not exceeding \$100, plus 95% of any unearned portion over \$100 but not exceeding \$500 and not less than 97% of any unearned portion in excess of \$500.

The cancellation will be effective even if we have not made or offered a refund.
8. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. CHANGES

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

C. EXAMINATION OF YOUR BOOKS AND RECORDS

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

D. INSPECTION AND SURVEYS

1. We have the right to:
 - a. Make inspections and surveys at any time;
 - b. Give you reports on the conditions we find; and
 - c. Recommend changes.
2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
 - a. Are safe or healthful; or
 - b. Comply with laws, regulations, codes or standards.
3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

E. PREMIUMS

1. The first Named Insured shown in the Declarations:
 - a. Is responsible for the payment of all premiums; and

3. Standard Property forms including, but not limited to, the following:

- a. Building and Personal Property Coverage Form;
- b. Business Income Coverage Form;
- c. Commercial Property Conditions;
- d. Condominium Association Coverage Form;
- e. Condominium Commercial Unit-Owners Coverage Form;
- f. Causes of Loss Basic Form;
- g. Causes of Loss Special Form; and
- h. Causes of Loss Earthquake Form.

Endorsements referencing the Commercial Property Coverage Part or the Standard

Property Forms referenced above apply to the Businessowners Property Coverage Special Form in the same manner as they apply to the forms they reference.

Endorsements referencing the Commercial General Liability Coverage Part apply to the Commercial General Liability Coverage Form (included in the Businessowners Coverage Part) in the same manner as they apply to the form they reference.

I. INSURANCE UNDER TWO OR MORE COVERAGE PARTS

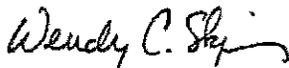
If two or more of this policy's Coverage Parts apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

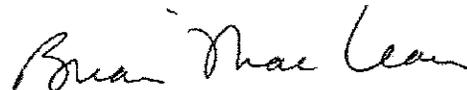
This policy consists of the Common Policy Declarations and the Coverage Parts and endorsements listed in that declarations form.

In return for payment of the premium, we agree with the Named Insured to provide the insurance afforded by a Coverage Part forming part of this policy. That insurance will be provided by the company indicated as insuring company in the Common Policy Declarations by the abbreviation of its name opposite that Coverage Part.

The companies listed below (each a stock company) have executed this policy, but it is valid only if countersigned on the Common Policy Declarations by our authorized representative.

- The Travelers Indemnity Company (IND)
- The Phoenix Insurance Company (PHX)
- The Charter Oak Fire Insurance Company (COF)
- Travelers Property Casualty Company of America (TIL)
- The Travelers Indemnity Company of Connecticut (TCT)
- The Travelers Indemnity Company of America (TIA)
- Travelers Casualty Insurance Company of America (ACJ)


Secretary


President

