

City of Bonney Lake, Washington
City Council Agenda Bill (AB)

Department/Staff Contact: PS / John Woodcock	Meeting/Workshop Date: 26 April 2022	Agenda Bill Number: AB22-66
Agenda Item Type: Resolution	Ordinance/Resolution Number: 3042	Sponsor:

Agenda Subject: Approval of the Supplement to the Professional Services Agreement to KPG Psomas Inc. to provide Construction Management Support for the Public Works Center.

Full Title/Motion: A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing Approval Of The Supplement To The Professional Services Agreement To KPG Psomas Inc. To Provide Construction Management Support For The Public Works Center.

Administrative Recommendation: Approve

Background Summary: Due to unforeseen events in the PWC construction effort the original construction management estimate and the first supplement to that agreement has been expended.

This supplement will continue to support the City with meeting agendas and notes, monthly pay estimates, schedule review comments, keep the submittal log, RFI log, cost projection, as-built correspondence and final project documents.

It is anticipated that this contract will get us to construction completion which is anticipated to end in June 2022.

Attachments: Resolution, Contract. Map

BUDGET INFORMATION				
Budget Amount	Current Balance	Required Expenditure	Budget Balance	Fund Source
\$14,040,000	\$1,555,217	\$55,584	\$1,499,633	<input type="checkbox"/> General <input checked="" type="checkbox"/> Utilities <input type="checkbox"/> Other
Budget Explanation: Utilities - Public Works Center CIP - 303.000.034.594.34.62.01				

COMMITTEE, BOARD & COMMISSION REVIEW			
Council Committee Review:	Community Development	<i>Approvals:</i>	Yes No
	Date: 19 April 2022	Chair/Councilmember Dan Swatman	<input checked="" type="checkbox"/> <input type="checkbox"/>
		Councilmember Kelly McClimans Sr	<input checked="" type="checkbox"/> <input type="checkbox"/>
		Councilmember Tom Watson	<input checked="" type="checkbox"/> <input type="checkbox"/>
	Forward to:	Consent Agenda:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Commission/Board Review:			
Hearing Examiner Review:			

COUNCIL ACTION	
Workshop Date(s): April 19, 2022	Public Hearing Date(s):
Meeting Date(s): April 26, 2022	Tabled to Date:

APPROVALS		
Director: <i>Ryan Johnstone</i>	Mayor: <i>Michael McCullough</i>	Date Reviewed by City Attorney: (if applicable)

RESOLUTION NO. 3042

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AUTHORIZING APPROVAL OF A SUPPLEMENT TO THE PROFESSIONAL SERVICES AGREEMENT TO KPG PSOMAS INC. TO PROVIDE CONSTRUCTION MANAGEMENT SUPPORT FOR THE CONSTRUCTION OF THE PUBLIC WORKS CENTER.

WHEREAS, the City of Bonney Lake intends to construct a Public Works Center on the Peaking Storage Tank site; and

WHEREAS, in anticipation of constructing a Public Works Center it was necessary break the project out into phases; and

WHEREAS, the third phase of the Public Works Center- On-Site Improvements in the CIP to the 2021-2022 budget provides funding for construction management and inspection services; and

WHEREAS, the Public Services Department does not have the personal to perform all of the Construction Management Services necessary for the Construction of the Public Works Center; and

WHEREAS, on January 26th, 2021, Council approved Resolution 2902 to increase the Professional Services Agreement with KPG by \$193,624 to cover added work due to ongoing changes to the project scope; and

WHEREAS, due to more changes to the plans and subsequent extension to the working days of the contract more time to the Construction Management portion of the effort is necessary; and


WHEREAS, on December 14th, 2021, Council approved Resolution 2996 to increase the Professional Services Agreement with KPG by \$71,224 to cover added work due to ongoing changes to the project scope; and

WHEREAS, due to Covid related issues and subsequent supply chain delays that have required subsequent extension to the working days of the contract more time to the Construction Management portion of the effort is necessary; and

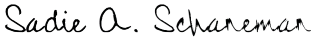
WHEREAS, KPG Psomas Inc. Engineering has submitted a supplement to the Professional Services Agreement with a scope of work to continue to provide Construction Management Support for the construction of the Public Works Center; and

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Bonney Lake does hereby authorize the Mayor to sign the attached Professional Services Agreement with KPG Psomas Inc. for the project in the amount of \$55,584.00.

Passed by the City Council this 26th day of April, 2022.

DocuSigned by:

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Michael McCullough, Mayor

AUTHENTICATED:

DocuSigned by:

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Sadie Schaneman, CMC, City Clerk

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into this 26th day of April, 2022, by and between the City of Bonney Lake (“City”) and KPG Psomas Inc. (“Consultant”).

The parties hereby agree as follows:

- 1. Scope of Work.** The Consultant shall perform all work and provide all materials described in the Scope of Work set out in Exhibit A attached hereto and incorporated herein by this reference. Such work shall be performed using facilities, equipment and staff provided by Consultant, and shall be performed in accordance with all applicable federal, state and local laws, ordinances and regulations. The Consultant shall exercise reasonable care and judgment in the performance of work pursuant to this Agreement. The Consultant shall make minor changes, amendments or revisions in the detail of the work as may be required by the City, such work not to constitute Extra Work under this Agreement.
- 2. Ownership of Work Product.** Documents, presentations and any other work product produced by the Consultant in performance of work under this Agreement shall be tendered to the City upon completion of the work, and all such product shall become and remain the property of the City and may be used by the City without restriction; *provided*, that any such use by the City not directly related to the particular purposes for which the work product was produced shall be without any liability whatsoever to the Consultant.
- 3. Payment.** The Consultant shall be paid by the City for completed work and services rendered under this Agreement pursuant to the rates and charges set out in Exhibit B, attached hereto and incorporated herein by this reference. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. All billings for compensation for work performed under this Agreement shall list actual time and dates during which the work was performed and the compensation shall be figured using the rates set out in Exhibit B; *provided*, that payment for work within the Scope of Work (Exhibit A) shall not exceed the fee/hour estimate set out in Exhibit A without written amendment to this Agreement, agreed to and signed by both parties.

Acceptance of final payment by the Consultant shall constitute a release of all claims, related to payment under this Agreement, which the Consultant may have against the City unless such claims are specifically reserved in writing and transmitted to the City by the Consultant prior to acceptance of final payment. Final payment shall not, however, be a bar to any claims that the City may have against the Consultant or to any remedies the City may pursue with respect to such claims.

The Consultant and its sub consultants shall keep available for inspection, by the City, for a period of three years after final payment, the cost records and accounts pertaining to this Agreement and all items related to, or bearing upon, such records. If any litigation, claim or audit is started before

the expiration of the three-year retention period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The three-year retention period shall commence when the Consultant receives final payment.

4. **Changes in Work.** The Consultant shall make all revisions and changes in the work completed under this Agreement as are necessary to correct errors, when required to do so by the City, without additional compensation.

5. **Extra Work.** The City may desire to have the Consultant perform work or render services in addition to or other than work provided for by the expressed intent of the Scope of Work. Such work will be considered Extra Work and will be specified in a written supplement which will set forth the nature and scope thereof. Work under a supplement shall not proceed until authorized in writing by the City. Any dispute as to whether work is Extra Work or work already covered by this Agreement shall be resolved before the work is undertaken. Performance of the work by the Consultant prior to resolution of any such dispute shall waive any claim by the Consultant for compensation as Extra Work.

6. **Employment.** Any and all employees of Consultant, while engaged in the performance of any work or services required by the Consultant under this Agreement, shall be considered employees of the Consultant only and not of the City, and any and all claims that may or might arise under the Workman's Compensation Act on behalf of said employees, while so engaged; any and all taxes arising out of Consultant's or Consultant's employees' work under this Agreement; and any and all claims made by a third party as a consequence of any acts, errors, or omissions on the part of the Consultant's employees, while so engaged, shall be the sole obligation and responsibility of the Consultant, except as provided in Section 12 of this agreement. The Consultant's relation to the City shall at all times be as an independent contractor.

7. **Nondiscrimination and Legal Compliance.** Consultant agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, gender, age or handicap except for a bona fide occupational qualification with regard to, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or any recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and rendition of services. The consultant represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Reform and Control Act of 1986, including but not limited to the provisions of the Act prohibiting the hiring and continued employment of unauthorized aliens and requiring verification and record keeping with respect to the status of each of its employees' eligibility for employment. The consultant shall include a provision substantially the same as this section in any and all contracts with sub consultants performing work required of the contractor under this contract. The consultant agrees to indemnify and hold the City harmless from any and all liability, including liability for interest and penalties, the City may incur as a result of the consultant failing to comply with any provisions of the Immigration Reform and Control Act of 1986. Consultant understands and agrees that if it violates this section, this Agreement may be terminated by the City, and that Consultant shall be barred from performing any services for the

City in the future unless and until a showing is made satisfactory to the City that discriminatory practices have terminated and that recurrence of such action is unlikely.

8. **Term.** This Agreement shall become effective upon the day of its execution by both parties, and shall terminate upon completion of the work and delivery of all materials described in Exhibit A.

9. **Termination by City.** The City may terminate this Agreement at any time upon not less than ten (10) days written notice to Consultant, subject to the City's obligation to pay Consultant in accordance with subsections A and B below.

A. In the event this Agreement is terminated by the City other than for fault on the part of the Consultant, a final payment shall be made to the Consultant for actual cost of work complete at the time of termination of the Agreement. In addition, the Consultant shall be paid on the same basis as above for any authorized Extra Work completed. No payment shall be made for any work completed after ten (10) days following receipt by the Consultant of the termination notice. If the accumulated payment(s) made to the Consultant prior to the termination notice exceeds the total amount that would be due as set forth in this subsection, then no final payment shall be due and the Consultant shall immediately reimburse the City for any excess paid.

B. In the event the services of the Consultant are terminated by the City for fault on the part of the Consultant, subsection A of this section shall not apply. In such event the amount to be paid shall be determined by the City with consideration given to the actual costs incurred by the Consultant in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or of a type which is usable by the City at the time of termination, the cost to the City of employing another person or firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the City of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made if subsection A of this section applied.

C. In the event this Agreement is terminated prior to completion of the work, the original copies of all work products prepared by the Consultant prior to termination shall become the property of the City for its use without restriction; *provided*, that any such use by the City not directly related to the particular purposes for which the work product was produced shall be without any liability whatsoever to the Consultant.

10. **Termination by Consultant.** Consultant may terminate this Agreement only in response to material breach of this Agreement by the City, or upon completion of the work set out in the Scope of Work and any Extra Work agreed upon by the parties.

11. **Applicable Law; Venue.** The law of the State of Washington shall apply in interpreting this Agreement. Venue for any lawsuit arising out of this Agreement shall be in the Superior Court of the State of Washington, in and for Pierce County.

12. Indemnification / Hold Harmless

Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees arising out of or resulting from the negligent acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

Insurance

The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

13. **Subletting or Assigning.** The Consultant shall not sublet or assign any of the work covered by this Agreement without the express written consent of the City.

14. **Entire Agreement.** This Agreement represents the entire Agreement between the parties. No change, termination or attempted waiver of any of the provisions of the Agreement shall be binding on any party unless executed in writing by authorized representatives of each party. The agreement shall not be modified, supplemented or otherwise affected by the course of dealing between the parties.

15. **Waiver.** Failure by any party to this Agreement to enforce any provision of this Agreement or to declare a breach shall not constitute a waiver thereof, nor shall it impair any party's right to demand strict performance of that or any other provision of this Agreement any time thereafter.


16. **Severability.** If any provision of this Agreement or its application is held invalid, the remainder of the Agreement or the application of the remainder of the Agreement shall not be affected.


17. **Execution and Acceptance.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The Consultant hereby ratifies and adopts all statements, representations, warranties, covenants, and agreements contained in the supporting materials submitted by the Consultant, and does hereby accept the Agreement and agrees to all of the terms and conditions thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF BONNEY LAKE

CONSULTANT

DocuSigned by:

By: _____
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Michael McCullough, Mayor


By: _____
Terry Wright, PS

Attachments:

Exhibit A: Scope of Work/Deliverables/Fee

Exhibit B: Rates

EXHIBIT A: SCOPE OF WORK

The Consultant shall perform the following services as directed by the City:

EXHIBIT A

Construction Management Services

Scope of Work

April 2022

City of Bonney Lake

Public Works Center

This supplement will provide construction management services for the construction contract to complete the Bonney Lake Public Works Center (hereinafter called “Project”). These services will include project management and coordination during the construction of the project, as detailed below. KPG Psomas Inc. (“Consultant”) will provide to the City of Bonney Lake, Washington (“City”) limited construction management for the project. A detailed scope for the Contract follows:

I. INTRODUCTION

The following scope of services and associated costs are based upon the Contractor’s revised schedule to completion showing the project being completed in June 2022.

II. SCOPE OF WORK

The objective and purpose of this Construction Management Services Agreement Supplement is for the Consultant to help deliver the construction of the Project with the City by ensuring that the site improvements are constructed in accordance with the approved Plans and Specifications, as may be amended or revised during construction, so that all the required Project documentation is accounted for, and ultimately that the City of Bonney Lake receives a successful completed Project.

TASK 1 – MANAGEMENT/COORDINATION/ADMINISTRATION

1.1 Monthly Expenditures: Review monthly expenditures and CM team scope activities. Prepare and submit project progress letters to the City along with invoices describing CM services provided each month. Review monthly expenditures and CM team scope activities.

TASK 1 Deliverables:

- Monthly expenditure report

EXHIBIT A

TASK 2 – CONSTRUCTION SERVICES – OFFICE

2.1 Document Control. Original documentation will be housed at the Consultant’s office and filed in accordance with standard filing protocol. Document Control will consist of the following:

- Final Estimate (Approving Authority File)
- Comparison of Preliminary and Final Quantities (Approving Authority File)
- Final Records (Approving Authority File)
- Record of Material Samples and Tests
- Release for the Protection of Property Owners and General Contractor
- Project Coordination: Liaison with City, Contractor, Designer, Utilities and property owners as needed/ requested by City to discuss project issues and status.
- Certified Payrolls: KPG will track certified payroll for the City.

2.2 Plan Interpretations: Provide technical interpretations of the drawings, specifications, and Contract Documents, and evaluate requested deviations from the approved design or specifications as related to the civil scope. Coordinate with City for resolution of issues involving scope, schedule, and/or budget changes.

2.3 Weekly Meetings: Consultant will lead weekly meetings through completion of the project, including preparation of agenda, meeting minutes, and distribution of minutes to attendees. Outstanding issues to be tracked on a weekly basis.

2.4 Schedule Review: Perform detailed schedule review of Contractor provided CPM for conformance with the Contract Documents.

2.5 Submittals: Submittals will be logged, distributed, and tracked as they are received. Distribute as necessary to the appropriate representatives for review and approval.

2.6 Request for Information (RFI): shall be logged and tracked by the Consultant.

2.7 Monthly Pay Requests: Prepare monthly requests for payment based on inspection staff (KPG and City) provided documentation, review with the City, ARC, and Contractor. City to approve and distribute. Utilize City-provided format for pay estimates, or Consultant format.

2.8 Cost Projections: Prepare cost projections for the project. Projections to be based on the current amount paid to date, pending change orders, quantity projections, and other information provided by City staff on site upon request.

2.9 Change Management: Develop and track RFP’s, field work directives, and change orders and provide technical assistance to negotiate changes and assist in resolution of disputes which may occur during the course of the project. Change management will be logged and tracked by Consultant.

2.10 Record Drawings: Review record drawings to be prepared by the Contractor. Upon project completion, Contractor-provided markups will be verified for completeness and supplemented with inspection information.

2.11 Project Closeout: Transfer all project documents to the City for permanent storage.

EXHIBIT A

TASK 2 Deliverables:

- Meeting agendas and notes
- Monthly pay estimates
- Schedule review comments
- Submittal log
- RFI log
- Cost projection
- Change management
- Certified payroll verification
- As-built correspondence
- Final project documents
- Final estimate

ADDITIONAL SERVICES

Additional services requested by the City will be performed only when authorized by the City. Authorization to perform additional services will be in writing, specifying the work to be performed, and basis of payment. Items such as Community Outreach Public Meetings, Ribbon Cutting Ceremony, claims analysis, surveying, services during shutdown periods of non-working days, and services for extended working days are examples of possible additional services.

EXHIBIT B: RATES

Exhibit B		Labor Hour Estimate			Total Hours and Labor Fee Estimate by Task	
PRIME CONSULTANT COST COMPUTATIONS		Construction Manager	Project Engineer	Documentation Specialist		
Client: City of Bonney Lake			Project Surveyor	Sr. Admin		
Project: Public Works Building			Sr. Resident Engineer			
KPG PROJECT NUMBER: 20041						
DATE: 4/12/2022						
Task No.	Task Description	\$188	\$155	\$122	Hours	Fee
Task 1 - MANAGEMENT/COORDINATION/ADMINISTRATION						
	Monthly Expenditures	8			8	\$ 1,504
		0			0	\$ -
					0	\$ -
Task Total		8	0	0	8	\$ 1,504
Task 2 - CONSTRUCTION SERVICES – OFFICE ADMINISTRATION						
	Part Time RE (12 hrs/wk) 10 weeks		120		120	\$ 18,600
	Part Time Documentation (15 hrs/wk) 10 weeks			150	150	\$ 18,300
	Payroll (5 hrs/week) 10 weeks			50	50	\$ 6,100
	Post Construction Closeout - 1 week		40	40	80	\$ 11,080
Task Total		0	160	240	400	\$ 54,080
Total Labor Hours and Fee		8	160	240	408	\$ 55,584
Subconsultants						
					Materials Testing (N/A)	\$ -
					Total Subconsultant Expense	\$ -
Reimbursable Direct Non-Salary Costs						
					Mileage at current IRS rate	
					Reproduction Allowance	\$ -
					Total Reimbursable Expense	\$ -
					Total Estimated Budget	\$ 55,584

