PROFESSIONAL SERVICES AGREEMENT

FOR

PROFESSIONAL ENGINNERING & PLANNING SERVICES

THIS AGREEMENT made and entered into this 24th day of October 2017, by and between the CITY OF BETHEL and DOWL LLC, a Limited Liability Company.

Section 01 Definition

In this Agreement:

A. The term "City" means the City of Bethel.

B. The term "Consultant" means DOWL LLC.

C. The term "Manager" means the manager of the City of Bethel or their authorized representative.

Section 02 Engagement of Consultant

The City hereby agrees to engage the Consultant and the Consultant hereby agrees to perform the services hereafter set forth.

Section 03 Scope of Services

The Consultant shall perform all the services customary to civil engineering and planning on an as-needed basis pursuant to this Agreement and as mutually agreed to and described in provided for by this Agreement which are described with particularity in Exhibit "A, # ___," entitled Scope of Services, to be attached to each project.

Section 04 Availability of Consultant

Consultant's occasional unavailability or inability to assist with a particular project shall not be considered a breach of this Agreement. In the situation where Consultant is unavailable or unable to perform the requested as-needed services, Consultant shall decline the work, in writing, within five (5) calendar days of the request for assistance. In such situation, the City may contact another firm to perform the declined services without being in breach of this Agreement. City's use of the alternate firm shall be limited to those situations where Consultant provides written notice of unavailability or inability to assist.

Section 05 Personnel

Personnel shall be limited to employees of DOWL, LLC.

Section 06 Term of Engagement

The services of the Consultant shall be on an as-needed basis by the City from the period of October 25, 2017 through June 30, 2022.

Section 07 Compensation

A. Subject to the provisions of this Agreement, the City shall pay the Consultant for all services and expenses for the term of this Agreement the sums as set forth in Exhibit "B," attached hereto and incorporated herein by reference, for services requested under this Agreement.
B. Travel or per diem Exhibit "B."
C. Except as otherwise provided in this Agreement, the City shall not provide any additional compensation, payment, use of facilities, service or other thing of value to the Consultant in connection with performance of Agreement duties. The parties understand and agree that, except as otherwise provided in this section, administrative overhead and other indirect or direct costs the Consultant may incur in the performance of its obligations under this Agreement have already been included in computation of the Consultant's fee and may not be charged to the City.
D. It is understood the sums stated in this Agreement are the per/hour fees for service and the rates for certain items such as travel, lodging, photocopies, etc., and are not inclusive of the total cost of each project.
E. It is understood the total cost of each project shall be negotiated in advance of each project and attached to this Agreement as Exhibit "C, # ___."

Section 08 Method and Time of Payment

A. The City will pay to the Consultant the amounts set forth in Exhibit "C" which shall constitute the full and complete compensation for the Consultant's professional services. That sum will be paid on receipt of billings submitted pursuant to a schedule set forth in Exhibits "B and C." If not identified within Exhibit "B," normal billing cycle is 30 calendar days from receipt of an approved invoice. A billing is a summary of expenditures to date by line item categories (*e.g.*, Personal Services, Travel, Contractual, Commodities and Equipment). Documentation of expenditures need not be submitted with billings but must be retained by the Consultant in the event the City requests said documentation. Funds for this agreement are subject to appropriation by the Bethel City Council.
B. No payment will be disbursed until the completed task and associated expenditures have been approved by the City.
C. All invoices must be submitted in duplicate and addressed as follows:

City of Bethel
Attn: City Manager
PO Box 1388
Bethel AK 99559-1388

Section 09 Termination of Agreement for Cause

If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner the obligations under this Agreement or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such

termination. All finished or unfinished documents, data, studies, surveys and reports or other material prepared by the Consultant under this Agreement are the property of the City and shall be delivered to the City by or upon the effective date of termination. The Consultant shall be entitled to receive compensation in accordance with the payment provisions of Exhibit "B" of this Agreement only for work completed to the City's satisfaction in accordance with Exhibit "A" of this Agreement and the other terms of this Agreement.

Section 10 Termination for Convenience of City

The City may terminate this contract at any time by giving written notice to the Consultant of such termination and specifying the effective date of such termination. All finished or unfinished documents and other materials as described in Section 8 above are the property of the City and shall be delivered to the City by or upon the effective date of execution of this section. The Consultant shall be entitled to receive compensation in accordance with the payment provisions of Exhibit "B" of this Agreement only for work completed to the City's satisfaction in accordance with Exhibit "A" of this Agreement and the other terms of this Agreement. If this Agreement is terminated due to the fault of the Consultant, Section 8 of this Agreement shall govern the rights and liabilities of the parties.

Section 11 Causes Beyond Control

In the event the Consultant is prevented by a cause or causes beyond control of the Consultant from performing any obligation of this Agreement, non-performance resulting from such cause or causes shall not be deemed to be a breach of this Agreement which will render the Consultant liable for damages or give rights to the cancellation of the Agreement for cause. However, if and when such cause or causes cease to prevent performance, the Consultant shall exercise all reasonable diligence to resume and complete performance of the obligation with the least possible delay. The phrase "cause or causes beyond control," as used in this section, means any one or more of the following causes which are not attributable to the fault or negligence of the Consultant and which prevent the performance of the Consultant: fire, explosions, acts of God, war, orders or law of duly constituted public authorities, and other major uncontrollable and unavoidable events, all of the foregoing which must actually prevent the Consultant from performing the terms of the Agreement as set forth herein. Events which are peculiar to the Consultant and would not prevent another Consultant from performing, including, but not limited to financial difficulties, are not causes beyond the control of the Consultant. The City will determine whether the event preventing the Consultant from performing is a cause beyond the Consultant's control.

Section 12 Modifications

A. The parties may mutually agree to modify the terms of the Agreement. Modifications to the Agreement shall be incorporated into the Agreement by written amendments.
B. It is expressly understood that the City may require changes in the scope of services and an unreasonable refusal by the Consultant to agree to modification in the scope of services will be the basis for termination of the Agreement for cause. It is expressly understood that the total amount of compensation for successful performance of the

Agreement will not be modified, under any circumstances, without prior written approval of the City.

Section 13 Equal Employment Opportunity

A. The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical handicap, age, status as a disabled veteran, or veteran of the Vietnam war era. The Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, national origin, physical handicap, age, status as a disabled veteran, or veteran of the Vietnam war era. Such actions shall include, but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; selection for training, including apprenticeship; and participation in recreational and educational activities. The Consultant agrees to post in conspicuous places available for employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, physical handicap, age, or status as a disabled veteran, or veteran of the Vietnam war era. The Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement.

B. The Consultant shall keep such records and submit such reports concerning the equal opportunity employment provisions set forth in subsection 12(A) for applicants for employment and employees as the City may require.

Section 14 Interest of Members of City and Others

No officer, member or employee of the City and no member of its governing body, and no other public official of the governing body shall participate in any decision relating to this Agreement which affects their personal interest or the interest of any corporation, partnership or association in which they are, directly or indirectly, interested or having any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

Section 15 Assignability

A. The Consultant shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of the City, thereto; provided, however that claims for money due or to become due to the Consultant from the City under this Agreement may be assigned by court order or to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City, or the Consultant shall be responsible to the City for any moneys due the assignee of this Agreement which are paid directly to the Consultant.

B. The Consultant shall not delegate duties or otherwise subcontract work or services under this Agreement without the prior written approval of the City.

Section 16 Interest of Consultant

The Consultant covenants, that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed.

Section 17 Findings Confidential

To the extent permitted or required by law any reports, information, data, etc., given to or prepared or assembled by the Consultant under this Agreement which the City requests to be kept confidential shall not be made available to any individual or organization by the Consultant without the prior written approval of the City.

Section 18 Publication, Reproduction and Use of Materials

No material produced, in whole or in part, under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement. Such documents are not intended or represented to be suitable for reuse by the City or others on extensions of the Project or on any other project. Any reuse without written verification of Consultant will be at the City's sole risk and the Consultant or any of Consultant's subcontractors shall not be liable for any claims, damages, losses or expenses arising out of or resulting from such unauthorized use.

Section 19 Audits and Inspections

At any time during normal business hours and as often as the City or the Comptroller General of the United States may deem necessary, there shall be made available for examination all of its records with respect to all matters covered by this Agreement and will permit representatives of the City or the Comptroller General to audit, examine, and make 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.

Section 20 Jurisdiction; Choice of Law

Any civil action arising from this Agreement shall be brought in the Superior Court for the Fourth Judicial District of the State of Alaska at Bethel. The law of the State of Alaska shall govern the rights and obligations of the parties.

Section 21 Non-Waiver

The failure of the City at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provisions, nor in any way affect the validity of this Agreement or any part thereof, or the right of the City thereafter to enforce each and every protection hereof.

Section 22 Permits, Laws and Taxes

The Consultant shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to the performance under this Agreement. All actions taken by the Consultant under this Agreement shall comply with all applicable statutes, ordinances, rules and regulations. The Consultant shall pay all taxes pertaining to its performance under this Agreement.

Section 23 Relationship of the Parties

The Consultant shall perform its obligations hereunder as an independent Consultant of the City. The City may administer this Agreement and monitor the Consultant's compliance with this Agreement but shall not supervise or otherwise direct the Consultant except to provide recommendations and to provide approvals pursuant to this Agreement.

Section 24 Agreement Administration

A. The City Manager, or their designee, will be the representative of the City administering this Agreement.
B. The services to be furnished by the Consultant shall be administered, supervised, and directed by Aaron Christie, Project Manager. In the event that the individual named above or any of the individuals identified in the proposal to perform work under the Agreement is unable to serve for any reason, the Consultant shall appoint a successor in interest subject to a written approval of the City of Bethel.

Section 25 Integration

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties. To the extent they are not inconsistent with the terms of this Agreement, the following documents are incorporated by reference into this Agreement as if fully set forth herein:

1. Request for Proposal for Engineering and Planning Services
2. Proposal Submitted by DOWL, LLC
3. Fee Proposal submitted by DOWL, LLC

Section 26 Defense and Indemnification

The Consultant shall indemnify, hold harmless, and defend the City from and against any claim of, or liability for wrongful or negligent acts, errors or omissions of the Consultant under this Agreement, including, but not limited to, costs, attorneys' fees, expenses and claims. The Consultant shall not be required to indemnify the City for a claim of, or liability for, the independent negligence of the City. If there is a claim of, or liability for, the joint negligent error or omission of the Consultant and the independent negligence of the City, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "Consultant" and "City," as used within this article, include the employees, agents and other Consultants/contractors who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in the City's selection, administration,

monitoring, or controlling of the Consultant and in approving or accepting the Consultant's work. The indemnification obligation under this Agreement shall not be limited in any way by any restriction on the amount or type of damages, compensation, or benefits payable to or for any third party, or any employee under any worker's compensation act, disability benefit act, or other employee benefit act. Entitlement to recovery of costs, attorneys' fees and expenses under the indemnification obligation shall include all fees, costs, and expenses incurred in good faith by the City.

Section 27 Interpretation and Enforcement

This Agreement is being executed by the parties following negotiations between them. It shall be construed according to the fair intent of the language as a whole, not for or against any party. The titles of sections in this Agreement are not to be construed as limitations or definitions but are for identification purposes only.

Section 28 Insurance

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of the Agreement to create in the public or any member thereof a third party benefit hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

The Consultant shall purchase from and maintain in a company or companies lawfully authorized to do business in the State of Alaska as admitted insurers or surplus lines insurers approved by Bethel, such insurance as will protect the Consultant from claims set forth below and others, which may arise out of or as a result from the Consultant's operations under this contract, whether such operations are by the Consultant or by a sub-Consultant or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Restrictions, conditions or exclusions contained in the insurance policies shall not reduce the obligations of the Consultant under this contract.

a. Claims under worker's compensation, employers liability, disability benefits, and other similar employee benefit acts which are applicable to the work to be performed under this Agreement.

   Claims for damages because of bodily injury, mental anguish, sickness, disease or death of any person other than the Consultant's employees.

   Claims for damages insured by usual personal injury liability insurance coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to the employment of such person by the Consultant, or (2) by any other person or entity.

   Claims for damages, other than to the product supplied, or to the services performed, itself because of damage to or destruction of tangible property, including loss of use resulting therefrom.

Claims for damages because of bodily injury, including death of a person, or damage to property arising out of the ownership, maintenance or use of any motor vehicle.

Claims involving the Consultant's Contractual obligations and assumption of liability under this Agreement.

Liability insurance shall include at a minimum, all major divisions of coverage and be on a commercial general liability form including:

Premises/Operations Liability
Products/Completed Operations Liability
Personal/Advertising Injury Liability
Fire Damage Liability
Medical Payments
Professional (Errors & Omissions) Liability (may be a separate policy)

b. The insurance required in II including subsection (a.), shall be written for not less than the limits listed in (c.) below or those limits required by law, whichever limit is higher. Insurance, whether written on an occurrence, or a claims-made basis, shall be maintained without interruption from the date of commencement of the work to the date of final payment, or termination of any insurance required to be maintained after final payment.

c. The insurance required in II including subsection (a.) shall be written for not less than the following limits:

1. Worker's Compensation Insurance:

Statutory Requirements of the State of Alaska, and Employer Liability Insurance limits of:

$500,000.00 each accident.
$500,000.00 disease each employee.
$500,000.00 disease policy limit.

2. Commercial General Liability Insurance: Form CG0001 04/13 or equivalent.
$1,000,000.00 Combined Single Limit of Liability per Occurrence
$1,000,000.00 Personal/Advertising Injury Limit of Liability per Occurrence
$2,000,000.00 Annual General Aggregate Limit of Liability
$2,000,000.00 Annual Products/Completed Operations Aggregate Limit of Liability
$100,000.00 Fire Damage Limit of Liability Any One Fire
$5,000.00 Medical Payment Limit Any One Person

3. Commercial Automobile Liability Insurance: Form CA0001 03/10 or equivalent.

$1,000,000.00 Combined Single Limit of Liability per Accident for all Owned, Hired, and Non-Owned Vehicles.

4. Professional (Errors & Omissions) Liability Insurance:
$1,000,000.00 Limit of Liability per Claim.
$2,000,000.00 Limit of Liability Annual Aggregate for all Claims.

Retroactive date: Prior to effective date of contract.

Effective date: Prior to effective date of contract, and for at least 24 months after completion of contract.

d. Worker's compensation insurance and employers liability insurance shall be in compliance with the statutory requirements of the State of Alaska, and any other statutory obligation, whether federal or state pertaining to compensation of injured employees. The worker's compensation insurance and employers liability insurance shall contain a waiver of subrogation provision in favor of Bethel.

e. The commercial general liability insurance shall name Bethel as an additional insured as respects this contract.

f. Consultant's required insurance is subject to review and adjustment by Bethel, who may require reasonable changes in the amounts and types of insurance based upon changes of risk. Consultant shall be provided a written explanation for any such changes.

g. Certificates of insurance acceptable to Bethel shall be filed with Bethel prior to the commencement of the beginning of any services by the Consultant. These certificates and the insurance policies shall contain a provision that the policy shall not be canceled until prior written notice has been sent to the insured (Consultant).

If any of the insurance policies required above are canceled for any reason, the Consultant shall provide immediate notice to Bethel of the cancellation and either provide: evidence of replacement or notice of reinstatement. Immediately in this section means within five (5) business days of receipt of cancellation by the Consultant.

Failure to maintain these insurance provisions required of the Consultant or failure to immediately notify Bethel of cancellation shall be considered a material breach of this contract by the Consultant, subject to termination provisions of this contract.

Immediate notice described above shall be by confirmed delivery to the following location:
City of Bethel
Attn: Finance Director
P.O. Box 1388
Bethel, AK 99559

Section 29 Severability

If any section or clause of this Agreement is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of this Agreement shall remain in full force and effect.

Section 30 Understanding

The Consultant acknowledges that the Consultant has read and understands the terms of this Agreement, has had the opportunity to review the same with counsel of their choice, and is executing this Agreement of their own free will.

Section 31 Notices

Any notice required pertaining to the subject matter of the Agreement shall be personally delivered or mailed by prepaid first-class, registered or certified mail to the following address:

City:	City of Bethel Attn: Legal Department PO Box 1388 Bethel AK 99559-1388
Consultant:	DOWL, LLC Attn: Aaron R. Christie, P.E. 4041 B Street Anchorage AK 99503

Section 32 Engineers' Violations of Tax Obligations

A. Any Consultant in arrears on a City obligation, including, but not limited to tax, assessment, lease, sale, or rental payments, whether as an individual, or as a representative of a business, organization, firm, corporation, or partnership, shall not be awarded the Agreement if the delinquency is not cured within ten calendar days of receipt of written notice sent by the City of the delinquency.

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B. This Agreement can be terminated for cause, pursuant to Section 8, if it is determined that the Consultant whether the amounts owed are in the name of the Consultant as an individual or as a representative of a firm, business, corporation, or partnership, is in arrears of any taxation, lease or rental agreement that is due to the City that is not remedied within 10 calendar days of notification by regular mail.

C. The City reserves any right it may have to offset amounts owed by an individual, firm, corporation or business for delinquent City taxes, moneys owed on sales, assessments, leases and rental agreements, against any amount owing to the same under an Agreement between the City and the same.

CITY OF BETHEL	DOWL, LLC
Peter A. Williams	
Peter A. Williams City Manager	Aaron R. Christie, P.E. Contract Manager