

Professional Services Agreement

Project Name:	City of St. Helens Public Safety Building Construction
Otak CPM Project No.:	
Otak CPM Project Contact:	David (Dave) Lintz
Client Name:	City of St. Helens
Client Mailing Address:	265 Strand Street, St. Helens, OR 97051
Project Street Address or Description:	150 S 13 th St., St. Helens, OR 97051
Property Owner (if different from Client):	
Attachment A:	Otak CPM original / accepted proposal, if any is separate
Attachment B:	Otak's Certificate of Insurance for the Client

We appreciate the opportunity to submit this Professional Services Agreement for your Project. Below please find our proposed scope of work and fee, as well as our standard terms and conditions. If agreed, please sign below, keep a copy for your records, and return a copy to us. This Agreement will be effective as of the last date of signature below, and we will proceed upon receipt unless you request, we await a Notice to Proceed.

Thank you for this opportunity. We look forward to working with you on this project.

Signed:

Signed:

Name: Doug Garland

Name: John Walsh

Title: Practice Area Manager

Title: City Manager

Company: Otak CPM, abn, Otak, Inc.

Company: City of St. Helens Oregon

Date:

Date:

Scope and Fee

Proposed Fee Summary

Proposed fee	\$110,734
Reimbursable Expenses.....	\$5,537
Proposed Fee Total	\$116,271

Scope and Fee Conditions and Assumptions

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

1. Helping the city manage the remaining design, construction, move in and close out of the Public Safety building.
2. The proposed fee does not include fees for subconsultants or reimbursable expenses. Any subconsultant fees or reimbursable expenses will be added with a 10% handling, coordination, and integration markup.
3. The Client will secure and pay for all necessary approvals, permits, licenses and consents necessary to the performance of the contractors and services.
4. The Client will furnish Otak CPM with right-of-access to the site to conduct the contracted services.
5. Otak CPM will take all reasonable precautions to avoid or minimize any damage to the property during construction. The Client understands that in the normal course of work some damage may occur, the restoration if needed is not part of this agreement.

Terms and Conditions

Compensation

1. Client agrees to compensate Otak CPM for the Services as provided above. Hourly rates are subject to change.
2. Otak CPM will not exceed the estimated fee without Client's prior written authorization.
3. On signing, Client shall pay Otak CPM the following amount to be applied against the last invoice: \$0.
4. Outsourced expenses will be invoiced as provided above, and if silent above, at cost plus 10%.
5. Estimated fees are only for Services identified above. If Client changes the Project or changes the scope, manner, or timing of Otak CPM's services, the parties shall negotiate an adjustment to the terms, compensation, and/or schedule. All unadjusted terms of this Agreement shall continue to apply.
6. Client shall pay each invoice within thirty (30) days of the date of the invoice. Failure to then pay shall constitute default, and interest at the higher of 18% per annum or the legal rate shall accrue. On default, Otak CPM may suspend all Services until Client pays in full and may terminate this Agreement as of the 30th day of default. Otak CPM shall not be liable for any damages or costs incurred by Client, its subcontractors, agents, employees, or assigns because of any suspension or termination, including but not limited to indirect, incidental, consequential, punitive or economic damages. On suspension or termination, Otak CPM may require an additional deposit to resume performance, to be applied to the last invoice and any excess returned.
7. If the Project is idle more than sixty (60) cumulative days, Otak CPM may re-estimate its fees, schedule, and scope of work. The proposed fee, scope, and schedule provided to the Client shall be valid for fourteen (14) calendar days from the date of the proposal, after which Otak reserves the right to adjust fee, scope, and schedule.
8. Client shall also pay Otak CPM at its then-applicable hourly rates, and reimburse all actual costs, to comply with demands for documents or testimony involving the Project in any proceeding where Otak CPM is not a party.
9. Disputes or questions regarding an invoice or portion thereof shall not be cause for Client to withhold payment for other portions due. No deductions, offsets, or withholdings shall be made for any reason unless Otak CPM agrees in advance to such adjustments or has been found to be legally liable for such amounts, nor shall payment to Otak CPM be withheld, postponed, or contingent upon receipt by the Client of offsetting reimbursement or credit from the contractor or other parties causing additional expenses.

Insurance

10. Client understands and agrees that Otak CPM's errors and omissions liability insurance is a policy under which the costs of defense, including attorneys' fees, are deducted from the policy principal.
11. If Client offers insurance specific to the Project, Client shall offer Otak CPM the option to enroll if applicable.
12. The Client and Otak CPM waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent covered by any property or other insurance. The Client and Otak CPM shall each require similar waivers from their contractors, consultants, and agents.
13. If the Client requires types and limits of insurance in addition to the types and limits Otak CPM normally maintains, Client shall pay Otak CPM for costs incurred for the additional coverages.
14. Client agrees to require the general contractor, if there is one, to name "Otak, Inc. dba Otak CPM," as an "Additional Insured" under its general liability insurance or other relevant project insurance.

Standard of Care; Information; Safety; Schedule; Submitted Information; Confidentiality

15. The standard of care for all services by Otak CPM will be the skill and care used by members of the same profession performing similar services and practicing under similar circumstances at the same time and in the same locale. Otak CPM makes no warranties, express or implied, as to Otak CPM's services.
16. Otak CPM may rely without liability on the accuracy and completeness of information provided by Client, its consultants and contractors, and information from public records, without independent verification.

17. Otak CPM shall have no responsibility for, or control over, the construction means, manner, methods, techniques, or safety precautions employed by others in the development or construction of the Project.
18. If Otak CPM's duties include Project site observation or visits, Otak CPM shall not be required to make continuous or exhaustive inspections to check the quality or quantity of the work being done on the Project.
19. Otak CPM's review of materials prepared by contractors is not conducted to determine the accuracy of details such as dimensions or quantities, or for substantiating instructions for installation or performance of equipment or systems. The contractor(s) remain responsible for accurate content in submitted documents, coordination of their work with other trades, and confirming and correlating dimensions. Review is not approval of safety precautions, construction means, methods, techniques, sequences, or procedures.
20. Client agrees that Otak CPM does not have access to Client's customer or other partner information. Otak CPM agrees to not disclose confidential or proprietary information received from Client if marked as "Confidential" or "Proprietary." Otak CPM will not use such information for its own benefit or disclose to any third party without Client's written consent. This shall not apply to any information (a) in the public domain at the time disclosed, (b) already known without restriction to the party receiving it at the time disclosed, (c) lawfully learned from a third party, or (d) required by law to be disclosed.

Limitations of Liability

21. No control over markets: Otak CPM does not have control over market conditions, or contractors' methods of pricing or performance, including the cost of labor, material, equipment, or services furnished by others, which may affect any opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions, and utilitarian considerations of operations and maintenance costs.
22. Certification limitation: Otak CPM shall not certify, or warrant conditions Otak CPM cannot ascertain.
23. Limitation of liability: The total aggregate liability of Otak CPM and its officers, directors, employees, agents, and consultants to Client and anyone claiming through Client for any and all injuries, claims, losses, expenses, or damages related to the Services, the Project, or this Agreement, from any cause or causes whatsoever arising in tort, statute, or contract, shall not exceed the lesser of \$250,000, Otak CPM's total compensation for the Services actually paid and received, or the proceeds of Otak CPM's applicable insurance.
24. Waiver of consequential damages: Neither party shall be liable to the other for incidental, indirect, or consequential damages arising out of, or connected in any way to the Project or this Agreement. This includes, but is not limited to, loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action arising in tort, statute, or contract.
25. No liability for Client actions: Otak CPM shall not be responsible for a Client's directive, substitution, or acceptance of non-conforming work made or given without Otak CPM's written approval.
26. No individual liability: No shareholder, principal, member, officer, director, partner, employee, or other representative of Otak CPM shall have personal liability to Client, or any other party, relating to this Agreement.
27. Force majeure: Otak CPM shall not be liable for delay or failure outside of Otak CPM's reasonable control, including without limitation delays due to pandemic or other public health concern, inclement weather, strikes, lockouts, labor troubles, accidents, fire, earthquake, civil commotion, war or consequences of war, government acts, restrictions or requisitions, failure of manufacturers or suppliers, suspension of shipping facilities, or any act or default of a carrier. In such a situation, Client shall accept the Services and pay for the same when provided, so long as a mutually acceptable revision is made to the scope of services and compensation.
28. Accrual of claims: Any cause of action between the parties to this Agreement arising out of any damages caused by the performance of, or failure to perform under, this Agreement, shall be deemed to have accrued, and all statutes of limitations and repose shall commence to run by the earlier of the date of substantial completion of the Project or 30 days following the date of Otak CPM's final invoice.
29. Construction defects: Client understands that Otak CPM is providing project coordination services and does not make or have authority to make design changes or provide installation directions to

the Design Team, General Contractor, or Subcontractors on the project. Client relieves and agrees to protect and hold harmless Otak CPM from any current or future liability associated with construction defect claims for this project.

30. Right to review contractor change orders: Client shall provide to Otak CPM for its review any construction change orders affecting Otak CPM's work prior to performance by the contractor, and Client agrees to waive any claim against Otak CPM for contribution to construction change orders not provided to Otak CPM for review.

Dispute Resolution

31. Termination: Either party may terminate this Agreement with ten (10) calendar days' written notice. If Client terminates, Client shall pay Otak CPM for Services performed to the date of termination plus termination expenses, such as but not limited to reassignment of personnel, subcontract termination costs, and related closeout costs. If Otak CPM terminates, Client shall pay Otak CPM for Services performed to the date of termination when Otak CPM delivers all Instruments of Service as defined below completed in whole or in part. Delivery of all Instruments of Service completed in whole or in part shall be the limit of Otak CPM's liability in the event of such termination.
32. Mediation: Before initiating any legal proceeding, the parties agree to submit all claims or disputes to non-binding mediation with an agreed mediator by written request to the other party. This shall survive completion or termination of this Agreement, but neither party may call for mediation if time-barred under applicable law. Client agrees to provide for Otak CPM's review a claim validation or other expert opinion satisfying any "certificate of merit" statutes under the law of the Project's location.
33. Law and Venue:
- a. This Agreement shall be construed according to the state law of the Project's location.
 - b. Any litigation between Otak CPM and Client related to this Agreement shall occur in Multnomah County, Oregon, or the Oregon federal district court in Portland, Oregon.
 - c. This paragraph shall not apply to lien foreclosure proceedings by Otak CPM where the Project is located.
34. Indemnification:
- a. Client shall indemnify Otak CPM and its related companies, and their respective officers, directors, and employees, from and against all damages arising out of the following: (a) damages to the extent caused by the negligence or willful misconduct of Client and/or its principals, employees, or subcontractors; (b) Client's use of information prepared by Otak CPM other than for the Project without Otak CPM's written consent; (c) hazardous substances at or adjacent to the Project; (d) any certificate regarding the Project by Otak CPM for a government entity, lender, or other third party, except as to Otak CPM's negligence; (e) Otak CPM's use of intellectual property provided by Client.
 - b. Otak CPM shall indemnify Client and its officers, directors, and employees from and against damages arising out of Otak CPM's work on the Project to the extent such damages are caused by the negligence of Otak CPM, and/or its officers, directors, or employees in performing the Services.
 - c. Neither indemnification obligation shall extend beyond the date when legal or equitable proceedings would be time-barred.
35. Additional Insured: To the extent available, Client agrees to include in its contract with the general contractor the requirement that the general contractor name Otak CPM as an "Additional Insured" on the insurance policies of the general contractor.
36. Joinder: Each party agrees to make every effort to join, and not object to such joinder by another, such other parties in any stage of dispute resolution as the other party may reasonably request.

Intellectual Property

37. Otak CPM and its consultants shall be deemed the authors and owners of their respective reports, notes, drawings, specifications, data, calculations, and other documents, including those in electronic form ("Instruments of Service") and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet regulatory requirements is not publication in derogation of the reserved rights.
38. Otak CPM grants to Client a nonexclusive license to use Otak CPM's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering, and adding to the Project, provided Client has performed under this Agreement. Otak CPM shall obtain similar nonexclusive licenses from its consultants. If Otak CPM suspends or terminates this Agreement,

this license shall terminate. Otak CPM shall not assign, delegate, sublicense, pledge, or transfer such license to another party without Client's prior written agreement. Unauthorized use of the Instruments of Service is at the Client's risk without liability to Otak CPM.

39. If Client uses Instruments of Service without retaining their author(s) or beyond the scope of Client's license, Client releases Otak CPM and its consultant(s) and shall defend, indemnify, and hold harmless Otak CPM and its consultants from all costs and expenses of claims asserted by any third party from such use.
40. Client agrees that Otak CPM may use and publish Client's name, general description and related photographs of the Project, in describing Otak CPM's experience to other clients or potential clients, in any manner.

Electronic Media Release

41. Client may request Otak CPM to provide it plans, specifications, Building Information Model files, or other electronic files in electronic form (collectively "electronic media" or "EM").
42. Client acknowledges that the EM are supplemental information provided only for convenience. The EM are not legally binding contract documents; may not be reliable; are not for fabrication or construction; may not include all revisions; may be inaccurate from electronic storage, transmission, or technology incompatibility; may be revised by others without Otak CPM's consent; may vary when plotted; or may corrupt the Client's data.
43. Any use and/or change to the EM including by Client, its subcontractors, and consultants will be at Client's sole risk, and without liability, risk, or expense to Otak CPM. Any altered EM shall have all indices of Otak CPM's ownership, professional name, and/or involvement in the Project removed.
44. Client agrees to release, defend, indemnify, and hold harmless Otak CPM, its consultants, and their respective officers and employees from and against any and all claims, demands, losses, expenses, damages, penalties, and liabilities including, without limitation, attorneys' fees including pre-claim and on appeal, arising from reliance on, use of, or change to the EM, and to require this of any agent to which Client provides EM.
45. Otak CPM makes no warranties, either expressed or implied, as to the EM, including but not limited to warranties of merchantability or of fitness for any particular purpose.

Hazardous Materials/Safety

46. Except to the extent of its gross negligence or willful misconduct, Otak CPM has no liability or responsibility for any hazardous materials including but not limited to identification, handling, mitigation, and/or disposal. It shall be the duty of the Client to advise and clearly define to Otak CPM of any known or suspected hazardous substances which are or may be related to the services provided. Such hazardous substances include but are not limited to products, materials, byproducts, wastes or samples of known or unknown origins. If Otak CPM observes or suspects the existence of unanticipated hazardous materials during the course of providing contracted services, Otak CPM may at its option terminate or suspend its further work until the condition is rectified. If the conditions cannot be rectified to the satisfaction of Otak CPM, Otak, at its option may terminate the agreement forthwith.
47. Otak CPM will comply with all on-site safety procedures as established by the Contractor and/or the Client. It will be the responsibility of the Client to furnish all on-site safety plans and regulations to Otak CPM prior to commencement of services. Otak CPM will at no time be responsible for the monitoring, reporting or management of the on-site safety program for the Client or any contractor.

The Contract Documents

48. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written and oral, courses of dealing, or other understandings between the parties. No modification of this Agreement shall be binding unless acknowledged by both parties.
49. There are no third-party beneficiaries to this Agreement.
50. The Client agrees to notify Otak CPM of any assignment of its rights, interests or obligations under the Agreement.
51. Any term or provision of this Agreement held unenforceable shall be stricken with no effect on the remainder.

Last updated March 2, 2023

City of St Helens Public Safety Building Construction

Contractor Howard S Wright
Architect McKenzie Architects
Total Project budget \$ 12,668,060.00
Project SF 11,100
Otak's proposed Mgmt fee \$ 110,733.84
Reimbursable expenses (5%) \$ 5,536.69
Total project mgmt budget \$ 116,270.53
Duration (months) 24

Design Development

Construction Documents

Permitting

Construction

Move / Close

Project Manager		Move / Close																											
		Year								Year	2024												Year	2025					TOTALS
		Quarter	Q3				Q4			Quarter	1Q			2Q			3Q			4Q			Quarter	1Q			2Q		
		Month	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Month	J	F	M	A	M	J	J	A	S	O	N	D	Month	J	F	M	A	M	
			5	4	4	5	4	4	5		4	4	5	4	5	4	4	4	5	4	5	4		4	4	5	4	5	
Rate Adj.										Rate Adj.																			
		Rate								Est. 5%													Est. 5%						
SPM Construction		\$173.25	20	16	16	20	16	16	20	\$ 181.91	16	16	20	16	20	16	16	20	16	20	16	20	\$ 191.01	16	16	20	16	20	76,130
Project Manager		\$163.80	-	-	-	-	-	-	-	\$ 171.99	-	-	-	-	-	-	-	-	-	-	-	-	\$ 180.59	-	-	-	-	-	0
Project Coordinator		\$105.00	15	12	12	15	12	12	15	\$ 110.25	12	12	15	12	15	12	12	12	15	12	15	12	\$ 115.76	12	12	15	12	15	34,604
Technical Resource - Scheduling		\$126.00								\$ 132.30													\$ 138.92						0
Technical Resource - FFE		\$126.00								\$ 132.30													\$ 138.92						0
Subtotal			35	28	28	35	28	28	35		28	28	35	28	35	28	28	35	28	35	28	28		28	28	35	28	35	110,734
Staff levels measured as FTEs			0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.0	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.0	0.2	0.2	0.2	0.2	0.2	
OTAK CPM Fee schedule \$			5,040	4,032	4,032	5,040	4,032	4,032	5,040		4,234	4,234	5,292	4,234	5,292	4,234	4,234	4,234	5,292	4,234	5,292	4,234		4,445	4,445	5,557	4,445	5,557	110,734

Total Hours

June 12, 2023

John Walsh
City Administrator
City of St. Helens Oregon
265 Strand Street
St. Helens, OR 97051

***Re: Project Management for the Construction of a new Public Safety Building
Otak Project No. 020996.000***

Dear John:

Thank you for offering Otak CPM the opportunity to be a part of the programming and design phases of the new Public Safety Building for City of St. Helens. Knowing the many years St. Helen's has worked on this project, we're excited to help you bring this building to realization. We're also honored to be asked to support the city through construction of the building. We estimate Dave Lintz and Julie Bollermann will each spend approximately 15 to 20 hours a month for the next 24 months helping the city manage the remaining design, construction, move in and close out of the Public Safety building. The estimated cost for their services is \$110,734.00. An additional 5% in reimbursable expenses brings the total we requesting to \$116,270.00.

If this meets with your approval, we've attached a Professional Services Agreement for your signature.

Sincerely,

Dave Lintz
Senior Project Manager
Otak CPM