

## Services Agreement

Project Name:	City of St. Helens Public Safety Building
Otak CPM Project No.:	020996.000
Otak CPM Project Contact:	David Lintz
Client Name:	City of St. Helens
Client Mailing Address:	265 Strand Street, St. Helens, OR 97051 US
Project Street Address or Description:	150 S 13th St, St Helens, OR 97051
Property Owner (if different from Client):	

We appreciate the opportunity to submit this 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:



Printed: Henry Alaman

Printed: John Walsh

Title: Senior Vice President

Title: City Manager

Company: Otak, Inc., dba Otak CPM

Company: City of St. Helens Oregon

Date:

Date:

10 - 13 - 2022

### SCOPE and FEE

#### Project Understanding and Description

The City of St. Helens contemplates the construction of a new approximately 22,000 SF single floor Public Safety Building. This project is to provide facilities for the City Police Department, City Council Chambers and Municipal Court. The Approximate Cost is \$20,000,000 with a project construction duration of 15 months. The project Architect is McKenzie Architects, Adrienne Linton project architect. The Contractor is yet to be determined.

**Scope of Work Narrative**

Exhibit A – project Management Services (attached)

Owner's representation and construction management services through occupancy

Otak CPM shall not engage any sub-consultants without the express written permission of The City of St. Helens. Otak CPM shall not incur any reimbursable expense in excess of \$500 without consent.

**Scope of Work Schedule**

Phase 1 : Estimated time beginning November 1, 2022 through March 31, 2023.

**Proposed Fee Summary**

Proposed Fee Phase 1 .....	\$50,000
Reimbursable Expenses .....	\$250

***Proposed Fee Total..... \$50,250***

**Scope and Fee Conditions and Assumptions**

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

1. The proposed fee does not include fees for subconsultants. Any subconsultant fees will be added with a 10% handling, coordination, and integration markup.
2. The Client will secure and pay for all necessary approvals, permits, licenses and consents necessary to the performance of the contractors and services.
3. The Client will furnish Otak CPM with right-of-access to the site to conduct the contracted services.
4. 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.

## 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 30<sup>th</sup> 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 CPM, abn Otak, Inc." 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.

### **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, or the limits 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.



## ***Terms and Conditions***

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.

### **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. Neither party shall assign this Agreement nor any of the rights, interests or obligations under the Agreement shall be assigned, in whole or in part, by operation of law or otherwise, without the prior written consent of the other party.
51. Any term or provision of this Agreement held unenforceable shall be stricken with no effect on the remainder.

**SCOPE OF SERVICES**  
**City of St. Helens**

General Duties And Responsibilities

- a) Act on behalf of the [CLIENT] as the Owner's Representative/Project Manager for the entire project;
- b) Develop, maintain and monitor the project's master budget;
- c) Develop, maintain and monitor the project's master schedule
- d) Take lead on establishment and procurement of alternative methods of construction such as the CM/GC method via Oregon State Law 279A,B,C
- e) Set up office systems, project files, project management systems, storage and archiving systems, logging and retrieval systems, where applicable;
- f) Oversee construction estimates, budgets and schedules;
- g) Consult with, advise, assist and provide recommendations to Owner and Architect/Engineers/Consultants on pertinent aspects of the planning, design, and proposed construction;
- h) Participate in reviews of the evolving design and provide value engineering
- i) Assist with meetings related to construction project and ensure that agendas and architect/contractor developed meeting minutes are distributed to stakeholders
- j) Assist with all permit applications and communications with permitting agencies that the architects, engineers, and consultants are leading and tracking;
- k) Assist with construction change directives and contract amendments to all the contracts; review and recommend approval of payments to consultants, architects and engineers; assist with building commissioning
- l) Assist with coordinate of project close-out (final inspection, receipt of warranty, releasing retainage final invoicing, record drawings, etc.);
- m) Assist with the results of delays, bad weather, or emergencies at construction sites

Pre-Bid and Project Award Phase

- a) Assist the architect and engineers in pre-bid or RFP selection activities to include obtaining general building permit, updating project schedule and cost estimates;
- b) Assist the architect and engineers during project bidding or RFP phases and attend pre-bid or RFP related meetings;
- c) If CM/GC method of contracting is used, we will develop the RFP and lead the process of CM/GC procurement through contract finalization;
- d) Assist in preparation of RFP addenda where applicable;
- e) Assist in bid or proposal evaluations;
- f) Assist with responses to bid or proposal protests
- g) Assist in the preparation, approval, and execution of construction and other related project contracts which may include such contracts as those for furniture and fixtures, training, move-out and move-in, etc...

Pre-Construction Phase

- a) Review applicable contracts (recommend changes if necessary or possible); establish reporting procedures
- b) Assist with, establish and implement procedures for tracking, expediting and processing all submittals, change orders, and requests for information and quotations;



## ***Terms and Conditions***

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- c) Meet with [CLIENT] Board or Commission, City Planning & Building Departments to initiate project; coordinate review and approvals by other public agencies, if and as needed
- d) Review and comment on current set of construction documents and specifications;
- e) Assist with the solicitation of proposals and establish contracts with third-parties such as environmental consultants, special inspections, geotechnical and testing, traffic studies, etc.; and

### Construction Phase

- a) Review and monitor the contractor's construction schedule against the established cash flow projection;
- b) Provide value engineering, aggressive cost control and cost savings ideas as appropriate
- c) Provide construction observation, monitoring and oversight;
- d) Attend, or as needed, weekly Construction Coordination Meetings which are initiated by the architect/engineers;
- e) Review and recommend payments to all applicable invoices for the contractors, architect, engineers and third-party consultants and vendors;
- f) Assist with all third-party contract work, such as water and marine testing, geotechnical investigations, testing and special inspections

### Project Close-Out

- a) Develop with the architect and Contractor a punch listing plan and inspection schedule;
- b) Assist inspections for Occupancy Permits and move-in plan with the owner, users and Contractor;
- c) Provide oversight in the assembly of Operations & Maintenance Manuals, Record Drawings and Specifications for all functions not provided by the architect and/or general contractor; conduct a coordinated review of these documents;
- d) Assist contractor and facilitate and schedule and coordinate owner training, including video-taping
- e) Prepare a Final Monthly Report as needed;
- f) Ensure that Contractor provides the Project Record Manual consisting of:
  - Copies of all licenses, permits, Certificate of Occupancy, Certificate of Substantial Completion
  - Copies of all Construction Administration Documents and Logs
  - Copies of the Project Manager Daily Report
  - Project Photographs
  - Copies of all Pre-Construction Coordination and Construction Coordination Meeting Minutes
  - Copies of all Project Manager Pay Applications and invoices for the architect and third-party Project Managers
  - Copies of Contracts for Construction, the Architect, the Project Manager, and all third parties
  - Copies of all documentation of prevailing wage rate certification records and warranties
  - Copies of Final Monthly Report, Final Budget Status Report and As-Built Project Schedule; and
- g) Recommend procedures for the warranty period

### Additional Services upon Request

- Assist with acquisition of miscellaneous construction services, furnishings, fixtures, and equipment