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**TO:** Kent Studebaker, Mayor  
Members of the City Council

**FROM:** Anthony Hooper, Support Services Supervisor  
Public Works Department

**SUBJECT:** Award of a Contract for Owner’s Representative Services for the Operations Center Construction Project

**DATE:** March 9, 2015

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#### **ACTION**

Award a contract to Day CPM Services, LLC for a not-to-exceed amount of \$242,500 to provide Owner’s Representative and Construction Management Services for the Operations Center Construction Project at 5705 Jean Road.

#### **INTRODUCTION/BACKGROUND**

In November 2014, the City solicited and received statements of interests from 20 Owner’s Representative/Construction Management firms pursuant to the required Qualification Based Selection (QBS) process, to provide Owner’s Representative Services to the City of Lake Oswego. From this list, the City requested proposals from the six firms that had experience constructing general-purpose buildings. In late February 2015, a selection committee evaluated the proposals based upon the solicitation ranking criteria and determined that Day CPM was the initially-preferred submitter because it was the highest-ranked qualified firm.

Following the selection as the initially-preferred submitter, Day CPM and the City proceeded to the Compensation and Refinement of Scope of Services Negotiation phase. Day CPM submitted a proposal to dedicate 2,040 hours of work to complete all tasks within the Scope of Work. The Scope of Work can viewed in exhibit A of attachment 1. Based upon the estimated hours of each respective person to complete the Scope of Work, the cost would be \$242,500. (It is important to note that Day CPM will only be compensated for services rendered as based on hours completed and that \$242,500 is the contract’s “not-to-exceed” ceiling.) Subject to Council Approval, Day CPM is anticipated to start this month and complete their work in April 2017.

**Table 1: Day CPM Team with Estimated Hours and Cost over the Next 25 Months**

Name	Role	Est. Hrs.	\$ per Hr.	Total Est. Cost
Joshua Dodson	Project Oversight/Front End	640	\$125	\$80,000
Eric Eckfield	Project Manager	1,375	\$115	\$158,125
Lou Ann McCormic	Administration	25	\$55	\$1,375
<b>Total</b>		<b>2,040</b>		<b>NTE \$242,500</b>

## DISCUSSION

### What will Day CPM do for the City?

Staff is operating close to capacity with currently assigned projects and day-to-day activities. Even with the Owner's Representative onboard, staff will be substantially involved and will dedicate more than one thousand hours towards the project over the next two years. There is not enough available existing staff capacity to take on the Owner's Representatives proposed workload of 2,040 hours of work over the next two years.

In addition, Day CPM specializes in construction management and can provide a level of oversight that will allow the City to minimize risks, prevent problems, control expenditures through suggested construction specifications, methodology, and phasing, and provide construction oversight. In addition, Day CPM has expertise in alternative delivery methods and will be a critical resource should the City decide to go with the Construction Manager/General Contractor project delivery method in lieu of the traditional design-bid-build method. For a project update and more information on CM/GC, please see attachment 2.

It is expected that the contract cost of Day CPM will more than be recovered in overall project cost savings through effective and efficient project management. For example, if by having Day CPM provide Owner's Representative and Construction Management services, the City can avoid just 5% on change orders on \$9 to \$10 million of construction activity, then that would translate to \$450,000 to \$500,000 of avoided project costs. Day CPM could save the City from additional costs by helping in the selection of the most appropriate architect and engineering firm for this project, finding a top-notch general contractor and negotiating the lowest construction price for the project.

## ALTERNATIVES & FISCAL IMPACT

The contract is proposed to be paid out of 670-671-431000-0000 (Misc. Professional & Technical), which is within the Operations Services & Motor Pool Fund.

There are two alternatives for Council to consider:

- 1) Reject the Contract and direct staff to proceed without an Owner's Representative firm. Staff believes that this would likely lead to a more costly project and a substantially longer timeline for project delivery.

- 2) Provide direction to staff to reduce the Scope of Work of the Owner's Representative. Although this would decrease the cost of the Owner's Representative and Construction Management services, staff believes that a reduction in Day CPM oversight during negotiations, design, engineering, and construction could lead to increased overall costs. In addition, a reduced scope of work would likely extend the delivery schedule by transferring additional tasks from Day CPM to staff.

#### **RECOMMENDATION**

Staff recommends that Council award the contract to Day CPM Services, LLC in the amount of \$242,500 for Owner's Representative and Construction Management Services.

#### **ATTACHMENTS**

1. Contract for Owner's Representative Services
2. Memorandum: Project Update and CM/GC Project Delivery Method Information



**CITY OF LAKE OSWEGO**  
**Standard Personal Service Contract**

**Owner's Representative/Construction Management Services**  
**Operations Center Construction Project**

<b>Contractor:</b>	<b>DAY CPM Services, LLC</b>	<b>Date of Contract:</b>	<b>March 18, 2015</b>
<b>Mailing Address:</b>	<b>12745 SW Beaverdam Rd, #120 Beaverton, OR 97005</b>	<b>Date of Completion:</b>	<b>April 30, 2017</b>

**WITNESSETH:**

Contractor and the City of Lake Oswego, a municipal corporation, mutually covenant and agree to and with each other as follows:

**1. SCOPE OF WORK AND CONTRACT DOCUMENTS.** The Contractor shall perform the Project as outlined in this Contract. The contract documents shall consist of, and any conflicts shall be resolved in the following priority:

- A. This Contract;
- B. The City of Lake Oswego Standard Public Contract Provisions, which are attached and hereby incorporated by reference;
- C. The exhibit(s) to this Contract in the following order of priority:  
Exhibit A – Scope of Work.  
Exhibit B – Compensation Schedule
- D. Contractor's proposal.

This contract shall supersede any prior representation or contract, written or oral.

**2. DURATION OF CONTRACT.** This Contract shall become effective on the date this Contract has been signed by every party hereto. Contractor acknowledges that no work has been or will be performed for the project under this Contract until this Contract is fully executed and effective. Contractor shall complete performance of this contract on or before the Date of Completion stated above.

**3. PAYMENT.**

**A. Amount of Payment.** Contractor shall be compensated for all goods, materials, expenses, and services as follows: payment based on lump-sum payment tasks, reimbursement of expense costs, and Contractor's rate schedule, as set forth on Exhibit B; provided however that the contract amount shall not exceed Two Hundred Forty-Two Thousand Five Hundred Dollars, (\$242,500.00).

**B. Manner of Payment.** Payment shall be due to the contractor, in accordance with the subsection Date of Payment below, upon the following: monthly, with an invoice being submitted by contractor within the first 30 days of the start of Work and continuing each month thereafter until completion or termination.

**C. Taxpayer Identification Report / Date and Method of Payment.** No payment shall be due to the Contractor until the Contractor has submitted to the City's Finance Department IRS Form W-9 Request for Taxpayer Identification and Certification (<http://www.irs.gov/pub/irs-pdf/fw9.pdf>). The City prefers to pay contractors by electronic fund transfer; the contractor may submit the EFT agreement (<http://tinyurl.com/LO-EFT>) to the City's Finance Department. Payment shall be tendered, when due within 30 days from the date of receipt of the invoice.

**4. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence under this Contract.

**5. TERMINATION.**

**A. Parties' Right to Terminate for Convenience.** This Contract may be terminated at any time by mutual written consent of the parties.

**B. City's Right to Terminate for Convenience.** City may, at its sole discretion, terminate this Contract, in whole or in part, upon 10 days notice to Contractor.

**C. City's Right to Terminate for Cause.** City may terminate this Contract, in whole or in part, immediately upon notice to Contractor, or at such later date as Public Contracting Officer may establish in such notice, upon the occurrence of any of the following events:

(i) City fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Contractor's Work;

(ii) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Work under this Contract is prohibited or City is prohibited from paying for such Work from the planned funding source;

(iii) Contractor no longer holds any license or certificate that is required to perform the Work; or

(iv) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 5 business days after delivery of Public Contracting Officer's notice, or such longer period as Public Contracting Officer may specify in such notice.

**D. Contractor's Right to Terminate for Cause.** Contractor may terminate this Contract upon 30 days' notice to Public Contracting Officer if City fails to pay Contractor pursuant to the terms of this Contract and City fails to cure within 30 business days after receipt of Contractor's notice, or such longer period of cure as Contractor may specify in such

notice.

**E. Remedies.** In the event of termination pursuant to subsections B, C(i), C(ii) or D, Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by Public Contracting Officer, less previous amounts paid and any claim(s) which City has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor shall pay any excess to the City upon demand.

In the event of termination pursuant to subsection C(iii) or C(iv), City shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under subsection C(iii) or C(iv), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to subsection B.

**F. Contractor's Tender upon Termination.** Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless Public Contracting Officer expressly directs otherwise in such notice of termination.

Upon termination of this Contract, Contractor shall deliver to Public Contracting Officer all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. Upon Public Contracting Officer's request, Contractor shall surrender to anyone Public Contracting Officer designates, all documents, research or objects or other tangible things needed to complete the Work.

**6. INSURANCE.** The Contractor will not perform any work under this contract until the City has received copies of applicable insurance policies or acceptable evidence that the insurance indicated as required in subsection D below is in force.

**A. Scope of Insurance.** The Contractor shall obtain prior to the commencement of the Contract, and shall maintain in full force and effect for the term of this contract, at the Contractor's expense, the policies indicated below in subsection D for the protection of the Contractor. The Contractor shall not undertake any acts that shall affect the coverage afforded by the above policy. If the insurance policy is issued on a "claims made" basis, then the Contractor shall continue to obtain and maintain coverage for not less than three years following the completion of the contract.

If no automobile liability insurance policy is required in subsection D, Contractor expressly acknowledges and agrees that City is not providing any automobile insurance to Contractor and that as to the City and any third parties, Contractor bears sole liability for claims, damages, injury (including death) and losses, arising out of or resulting from Contractor's operation of Contractor's automobile or any other automobile, whether or not such use is related to Contractor's work under this contract, and Contractor shall make no claim against the City for any claim, damage, injury, or loss resulting thereby.

**B. Coverage Amount.** The policies shall be issued by a company authorized to do

business in the State of Oregon, protecting the Contractor or subcontractor or anyone directly or indirectly employed by either of them against liability for the loss or damage of personal and bodily injury, contractual liability, death and property damage, and any other losses or damages above mentioned with limits not less than as stated in subsection D below or the limit of public liability contained in ORS 30.260 to 30.300 for any policy, whichever is greater.

**C. Certificate of Insurance / Additional Insured Endorsement.** The Contractor shall cause the insurance company to provide the City with: (i) a certificate of insurance and, (ii) if an additional insured endorsement is indicated as required in subsection D below, an endorsement thereto naming the City, its officers, agents, and employees as an additional primary insured for those policies indicated above. The Contractor shall provide the City written notice of cancellation or material modification of the insurance contract for not less than the following notice for the purposes stated: 30 days prior notice for reasons other than non-payment; 10 days prior notice for non-payment.

The Contractor shall further cause a certificate of insurance to be issued every 6 months by the Contractor’s insurance company or companies during the term of the Work, to assure that the required insurance is maintained.

**D. Insurance Policy Requirements.**

Required?	Type of Insurance	Minimum Coverage	City named as Additional Insured
Yes	Comprehensive general or commercial general liability	\$1,500,000 per occurrence and \$3,000,000 in the aggregate	Yes
No	Protection and Indemnity US L&H	\$2 million per accident \$2 million per person per accident	Yes
Yes	Automobile liability	\$1,500,000 per occurrence-combined single limit or \$1,500,000 bodily injury and \$1,000,000 property damage	Yes
Yes	Professional liability	\$2,000,000 per claim	No
Yes Or No (if initialed)	Workers Compensation Employer’s Liability  _____ [ ] Contractor Initial if Exempt from Worker Comp Coverage	Statutory Coverage \$1 million per person per accident  _____ Contractor warrants and represents contractor does not employ any persons that would require contractor to provide workers compensation insurance benefits.	No

\* The amounts may be achieved by a combination of base coverage and umbrella coverage.

**DAY CPM Services, LLC**

By: \_\_\_\_\_

Name: Joshua Dodson

Title: Principal

Date: March 18, 2015

Check one:

Sole Proprietor

Partnership

Corporation

Limited Liability Company

Limited Liability Partnership

Other: \_\_\_\_\_

Domicile, if other than Oregon: \_\_\_\_\_

**CITY OF LAKE OSWEGO, an Oregon Municipal Corporation**

\_\_\_\_\_  
Scott Lazenby, City Manager

Date: \_\_\_\_\_

Public Contracting Officer

380 A Avenue

PO Box 369

Lake Oswego, OR 97034

Date Authorized by Council, if applicable:

\_\_\_\_\_.

APPROVED AS TO FORM:

\_\_\_\_\_  
Evan P. Boone,  
Deputy City Attorney



**CITY OF LAKE OSWEGO STANDARD PUBLIC CONTRACT PROVISIONS FOR PERSONAL SERVICE / SERVICE CONTRACT  
(3/13)**

The following City of Lake Oswego Standard Public Contract provisions are made a part of the Contract between City and Contractor by reference. Where the Lake Oswego Redevelopment Agency (LORA) is the contracting party, "City" shall refer to LORA.

**CHANGES**

This contract, including all attachments and exhibits annexed hereto, shall not be subject to modification or amendment except in writing, executed by both parties. This contract and any substantive changes to the scope of work or changes to the contract costs will not be effective until approved in writing by the City's Public Contracting Officer (PCO).

**INDEPENDENT CONTRACTOR STATUS**

The Contractor agrees and certifies that:

A. The Contractor is engaged as an independent contractor. Although the PCO reserves the right (i) to determine (and modify) the delivery schedule for the Work to be performed and (ii) to evaluate the quality of the completed performance, City cannot and will not control the means or manner of Contractor's performance, nor provide any tools or equipment for the performance of the Work, except as provided elsewhere in this Contract. Contractor is responsible for determining the appropriate means and manner of performing the Work.

B. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, City will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations.

C. The Contractor will not, on account of any payments made under this contract, be eligible for any benefit from federal social security, workers' compensation, unemployment insurance, or the Public Employee's Retirement System, except as a self-employed individual;

D. Contractor is not currently an employee of the federal government or the State of Oregon; and

E. The Contractor is not a contributing member of the Public Employee's Retirement System.

F. Contractor is not an "officer," "employee," or "agent" of the City, as those terms are used in ORS 30.265.

**OTHER CONTRACTORS**

The City may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with such other contractors and with any City employees concerned with such additional or related work, and shall coordinate its performance under this contract with such additional or related work. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by City employees.

**SUBCONTRACTORS AND ASSIGNMENT**

Except as set forth in Contractor's proposal or otherwise in this Contract, no subcontract shall be made by the Contractor with any other party for furnishing any of the work or services herein contracted without obtaining the prior written consent of the City, which City may withhold without cause. In addition to any other provisions PCO may require, Contractor shall include in

any permitted subcontract under this Contract a requirement that the subcontractor be bound by the following sections of this Contract as if the subcontractor were the Contractor: Independent Contractor Status; Other Contractors; Hours of Labor; Ownership of Work; Indemnity and Hold Harmless; Records; Attorney Fees; Compliance with Laws. PCO's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

This contract is not assignable by the Contractor, either whole or in part, unless Contractor has obtained the prior written consent of the City.

City and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any enforceable benefit or right, whether directly, indirectly or otherwise, to third persons.

**HOURS OF LABOR**

For those employees of Contractor covered or subject to Oregon employment laws, the Contractor shall pay employees for overtime work performed under the public contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 USC 201 et seq.).

**ERRORS**

The Contractor shall perform such additional work as may be necessary to correct Contractor's errors in the work required under this contract without undue delays and without additional cost.

**REPRESENTATIONS AND COVENANTS**

A. Contractor's Representations. Contractor represents and covenants to City that:

(1) Contractor has the power and authority to enter into and perform this Contract,

(2) This Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms, and if Contractor is a partnership, corporation or other form of business entity, this contract was duly approved and executed pursuant to authority of the governing body or parties of the Contractor,

(3) Contractor is not in violation of any Oregon tax laws.

(4) Upon acceptance of each project, the Contractor warrants that it will carefully examine, as necessary, the site of the work contemplated and any plans, specifications, and contract documents pertaining to work, with the exception of unknown physical conditions at the work site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided herein..

(5) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work.

(6) Contractor will accomplish the work using a standard of performance and care that is currently accepted by other contractors engaged in similar work, under similar conditions and at the date the services are provided in the Portland metropolitan area (Standard of Care).

(7) Contractor's invoices shall describe all work performed with particularity, by whom it was performed, and shall

itemize and explain all expenses for which reimbursement is claimed. Contractor shall send invoices to City's Project Manager.

(8) Contractor's completion shall not extinguish or prejudice City's right to enforce this Contract with respect to any breach of Contractor warranty or any default or defect in Contractor performance (defect is defined herein as services that do not conform to the Standard of Care (Section 6) in the performance of the Contract).

(9) Contractor has no present interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its Work, and that in the performance of this contract no person having any such interest shall be employed.

(10) Contractor has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of contractor's services, and in the performance of this contract no person having any such interest shall be employed.

B. Cumulative. The representations and covenants set forth in this section are in addition to, and not in lieu of, any other representations and covenants provided.

#### **OWNERSHIP OF WORK**

All work products of the Contractor, including background data, documentation and staff work that is preliminary to final reports, which result from this contract are the exclusive property of the City. If this contract is terminated by either party or by default, the City following payment as required by the Contract, in addition to any other rights provided by this contract, may require the Contractor to transfer and deliver such partially completed reports or other documentation that the Contractor has specifically developed or specifically acquired for the performance of this contract.

The reports and all material contained in the reports (graphics, photos, etc.) shall become the property of the City; the City may reproduce and distribute the reports, or any part thereof, in such form as the City desires.

#### **ELECTRONIC VERSION OF REPORTS**

Unless otherwise stated in the Scope of Work or separately waived in writing, all final reports, including reports of phases of the project and of the entire project, shall be provided in both written and electronic format. Electronic format shall be in a format coordinated with the PCO and shall be fully compatible with such software programs specified by the PCO, .e.g. Microsoft Word, Microsoft Excel, Microsoft PowerPoint, Microsoft Access, Microsoft Publisher, Adobe Creative Suite, Adobe PDF, or such other software program as specified by the PCO.

#### **INDEMNITY AND HOLD HARMLESS**

The Contractor shall defend, indemnify, and hold the City, its officers, agents and employees, harmless against all liability, loss, or expenses, including reasonable attorney's fees, and against all claims, actions or judgments based upon or arising out of damage or injury (including death) to persons or property, but only to the proportionate extent caused by or resulting from any negligent or willful act, error, or omission (excepting professional services performed under this Contract) of an act sustained in connection with the performance of this contract or

by conditions created thereby, or based upon Contractor's violation of any statute, ordinance or regulation.

With respect to professional services performed under this Contract, Contractor shall defend, indemnify, and hold the City, its officers, agents and employees, harmless against all liability, loss, or expenses, including reasonable attorney's fees, and against all claims, actions or judgments based upon or arising out of damage or injury (including death) to persons or property, but only to the proportionate extent caused by any negligent act, error, or omission of an act sustained in connection with the performance of this contract or by conditions created thereby, or based upon violation of any statute, ordinance or regulation.

#### **RECORDS**

Contractor shall have access to the books, documents, papers and records of the City as necessary for Contractor's performance of the work. The Contractor shall not disclose all or any part of such records to any other person, firm, corporation, association or other entity except as reasonably necessary to carry out the Work, without the consent of the Public Contracting Officer.

The Contractor agrees that the City and its authorized representatives shall have access to the books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcripts.

Contractor shall maintain all fiscal records directly relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that City's duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of Contractor that are pertinent to this Contract to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

#### **PUBLICATION RIGHTS/RIGHTS IN DATA**

To the extent the Work Product consists of material capable of publication, all publication rights in the product produced by the Contractor in connection with the work provided for under this contract, whether in preliminary draft or final form, shall be vested in the City.

The Contractor shall not publish any of the results of the work without the prior written permission of the City.

All original written material and other documentation, including background data, documentation, and staff work that is preliminary to final reports, originated and prepared for the City pursuant to this contract, shall become exclusively the property of the City. The ideas, concepts, know-how or techniques relating to data processing development during the course of this contract by the Contractor or City personnel, or jointly by the Contractor and

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(3/13)**

City personnel, can be used by either party in any way it may deem appropriate.

Material already in the Contractor's possession, independently developed by the Contractor outside the scope of this contract or rightfully obtained by the Contractor from third parties, shall belong to the Contractor. However, the Contractor grants to the City a nonexclusive, irrevocable and royalty-free license to use such material to the extent such material is incorporated into the Work.

This contract shall not preclude the Contractor from developing materials that are competitive, irrespective of their similarity to materials which might be delivered to the City pursuant to this contract. The Contractor will not, however, use any written materials developed under this contract in developing materials for others, except as provided in this section.

**CONFIDENTIALITY**

No reports, information and/or data given to or prepared or assembled by the Contractor under this contract shall be made available to any individual or organization by the Contractor without the prior written approval of the City.

**MEDIATION / VENUE**

In the event a dispute shall arise between the parties to this contract, and prior to the commencement of any suit or action, the parties agree to participate in mediation in accordance with the mediation procedures of the Oregon Mediation Service, or such other procedures as the parties agree. The parties agree to share equally in the costs of the mediator. The mediator shall be selected by the parties, either upon mutual agreement within 15 days written notice by one party to the other requesting mediation, or if the parties are not able to agree upon a mediator within said period, the mediator shall be chosen by the City Manager from the list of mediators maintained by the Oregon Mediation Service (<http://omEDIATE.org>).

Any action or suits involving any question arising under this contract must be brought in Clackamas County Circuit Court.

**SEVERABILITY**

The parties agree that if any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

**COMPLIANCE WITH LAWS**

The provisions of this contract shall be construed in accordance with the provisions of the laws of the State of Oregon and ordinances of the City of Lake Oswego, Oregon.

The Contractor shall comply with all federal, state and local laws and ordinances, applicable to public contracts relating to Contractor's obligations and performance, and to the work to be done under this contract.

The Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations on nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, sexual orientation, gender identity, marital status, age,

medical condition, or disability.

**WAIVER**

The failure of the City to enforce any provision of this contract shall not constitute a waiver by the City of that or any other provision.

**INTEGRATION**

This contract represents the entire and integrated agreement between the Contractor and the City, and supersedes all prior negotiations, representations or agreements, either written or oral.

**Exhibit A**  
**City of Lake Oswego Operations center**  
**Scope of Work**

The Owner's Representative shall serve as the City's (Owner's) principal point of contact and liaison between the Architect, the General Contractor ("GC") and other consultants, contractors and vendors throughout the project. The Owner's Representative shall advocate for the Owner's interests of quality, timely and cost-effective construction of the Operations Center project while maintaining professional relationships with contractors. The Owner's Representative will be responsible for monitoring progress on all aspects of the project in every phase and ensuring the project is completed at the lowest possible cost and highest degree of functionality and quality.

This position will provide administrative, management and related services as required to coordinate work of the contractors with each other and with the activities and responsibilities of the Owner's Representative, the Owner and Architect.

**A. Core Services**

The Owner's Representative will be tasked with completing the project in accordance with the Owner's objectives for cost, time and quality, and shall provide services including:

1. General Services
  - a. Schedule and conduct meetings to discuss such matters as procedures, progress, issues, problems, and scheduling.
  - b. Attend a progress meeting every two weeks prior to construction to provide project updates to Owner.
  - c. Attend weekly progress meetings during construction and provide progress meeting minutes provided by GC.
  - d. Provide review comments to Architect, Owner and GC.
  - e. Enrollment of the buildings in an Energy Trust of Oregon incentive program if applicable.
  - f. Evaluation of the existing condition of the Operations Center facilities and equipment.
  - g. Evaluate aspects of the proposed buildings related to sustainability.
  
2. Conceptual Services
  - a. Develop conceptual / preliminary budget.
  - b. Prepare conceptual activities and "Milestone" schedule.

- c. Recommend project delivery system traditional design/bid/build, modified design/bid/build with prequalified construction firms, Construction Manager/General Contractor (CM/GC), or design/build.
  - d. If an alternative bidding process is selected, successfully complete the necessary documents such as "Finding of Fact."
  - e. Interface with the City of Lake Oswego's Planning and Engineering Departments regarding planning and permits (i.e. land use) and attend all associated meetings.
  - f. Review "Constructability" and "Construction Phasing" issues.
3. Architectural Design & Engineering Firm Selection
- a. Assist Owner in writing Request for Qualifications (RFQ) for Architectural & Engineering Services and help define scope of services.
  - b. Participate in selection committee and assist Owner in selecting three qualified Architect/Engineer Firms from the RFQ submittals.
  - c. Assist Owner in writing a Request for Proposals for Architectural & Engineering Services.
  - d. Assist Owner in evaluation and selection of Architect/Engineer.
  - e. Participate in negotiation with highest ranked proposer.
4. Design & Engineering Development
- a. Coordinate with design team
  - b. Assist with design cost reviews
  - c. Assist with constructability reviews
  - d. Assist with value engineering studies
  - e. Assist with obtaining building permits
  - f. Review/recommend Architectural/Engineering payment requests and contract modifications
  - g. Review cost estimates at schematic, design development, and completion at various milestones of completion.
  - h. Review/refine project "Milestone" schedule and prepare "Master Project Schedule."
5. Contract Management
- a. Review/advise on preparation of construction contracts.
  - b. Review/prepare bid packages.
  - c. Develop scheduling and contract administration clauses for inclusion into the contract documents.

6. Bidding Phase
  - a. Pre-qualification of construction contractors.
  - b. Compare and analyze bids and proposals.
  - c. Assist in construction contractor selection and award.
  - d. Assist in contract negotiations with construction firm.
  
7. Inspections
  - a. Monitor construction progress and quality on-site through day-to-day observation/inspection of work. Or as needed
  - b. Make reasonable efforts to guard against defects and deficiencies in the work of the GC and ensure that provisions of the contract documents are being fulfilled.
  - c. Prepare inspection reports documenting observed construction activities and provide written recommendations regarding defects and deficiencies in the work.
  - d. Provide digital photographs providing documentation of construction activities.
  - e. Determine, in general, that the work of each contractor is being performed in accordance with the requirements of the contract documents.
  - f. Promptly inform the Architect and the Owner of work which does not conform to the requirements of the contract documents and should be rejected by the Architect or the Owner.
  
8. General Construction Oversight & Coordination
  - a. Review and process vendor insurance certificates, invoices, payment applications, surety bonds, sworn statements and waivers for contract compliance.
  - b. Monitor and enforce GC's compliance with contract and specifications.
  - c. Coordinate contractor and vendor activities with the Architect and GC.
  - d. Review test reports submitted by others to substantiate contract compliance and identify non-conforming issues that require follow-up and resolution.
  - e. Recommend courses of action to Owner when requirements of any contracts are not being fulfilled.
  - f. Identify actual and potential problems associated with the construction project and consult with the Architect and Owner.
  - g. Maintain an awareness of safety and health requirements and notify GC of apparent violations of applicable regulations and contract provisions for the protection of the public and project personnel.
  - h. Assist GC in coordination of special requirements and inspections for public right of way work.

## 9. Requests for Information (RFIs)

- a. Assist Architect in preparation of responses to RFI related construction issues.
- b. Transmit design-related RFIs to Architect. RFI process is between GC and A/E where DAY will monitor process flow and ensure RFIs are being addressed
- c. Conduct meetings with the GC and other parties as needed to discuss and resolve RFIs.

## 10. Change Orders

- a. Evaluate any project changes as they arise and recommend necessary or desirable changes to the Architect and the Owner, and if they are accepted, collaborate with the Architect to prepare change orders for the Architect's and contractor's signatures and Owner authorization.
- b. Implement change order procedures.
- c. Review requests for changes.
- d. Assist in negotiating contractor's proposals for change orders.
- e. Facilitate change order tracking and facilitate issue resolution. Perform quantity and cost analysis as required for negotiation of change orders.
- f. Analyze additional compensation claims that are submitted during the construction period and prepare responses.
- g. Perform claims administration including coordinating and monitoring claims responses, logging claims and tracking claim status. Claims are an unknown timeframes so claims administration should be negotiated on a case-by-case basis.

## 11. Applications for Payment

- a. Develop and implement procedures for the review and processing applications for payment by GC for progress and final payments. Make recommendations and provide advice to the Architect for certification to the Owner for payment.
- b. Review certified payroll records for compliance with State BOLI requirements.

## 12. Submittals

- a. In collaboration with the Architect, establish and implement procedures for submittals and expediting the processing and approval of shop drawings and samples.
- b. Maintain logs, files, and other necessary documentation relating submittals.
- c. Provide advice on submittals, coordinate them with information contained in related documents, and transmit them to the Architect for review.
- d. Monitor Architect's responses to submittals for timeliness and help expedite responses.

### 13. Reporting

- a. Prepare and distribute project status reports as requested by the Owner.
- b. Prepare and distribute change order reports on a monthly basis, or as required, to provide information pertaining to proposed and executed change orders and their effect on the budget and schedule.
- c. Prepare and regularly update a comprehensive issue list identifying all unresolved issues, responsible parties, resolution steps and dates.
- d. Assist Owner in preparing documentation and reports for City Council at key milestones throughout the project.

### 14. Schedule

- a. Ensure the GC procures long lead-time equipment at the proper time to avoid delays.
- b. Review updated construction schedules and maintain records.
- c. Compare work progress with planned schedule, identify potential variances between scheduled and probable completion dates, and notify the Architect, Owner and GC of any project slippage.
- d. Review the Contractor's plan to get back on schedule.
- e. Review schedule for work not started or incomplete and recommend to Owner and GC adjustments in the schedule to meet their required completion date.
- f. Obtain monthly updates from the GC of construction schedule incorporating actual progress, weather delays and change order impacts.
- g. Negotiate time extensions due to change orders or other delays.

### 15. Budget

- a. Create, maintain, reconcile and track the project budget and schedule.
- b. Assist in monthly progress payment recommendations.
- c. Monitor project budget, including costs outside of the GC contract, including security and access contract, low voltage contract, permits, testing, and other incidentals, and provide anticipated final cost report to Owner on monthly basis showing actual costs for activities in progress and estimates for uncompleted tasks. Identify variances between actual and budgeted or estimated costs, and advise Owner whenever projected costs are anticipated to exceed budgets or estimates.

### 16. Project Closeout



- a. Develop an occupancy checklist (punch list) and schedule. To be done by GC where DAY will ensure lists are developed and tracked.
- b. Assist the Architect in conducting close-out inspections. Participate in Project inspection(s) for Substantial Completion(s) and warranty inspections.
- c. Make written recommendations to the Architect as to the status of punch list items and when work is ready for final inspection. Assist the Architect in conducting final inspections.
- d. Coordinate building systems functional testing and performance verification with the GC, the Owner's maintenance personnel and the Architect, observe each contractor's check-out of utilities, operational systems and equipment for readiness and assist in equipment initial start-up and testing. Commissioning responsibility where DAY will ensure process is flowing.
- e. Participate in any building commissioning and provide documented confirmation that building systems function according to criteria set forth in the project documents.
- f. Assist the Owner in obtaining a Certificate of Occupancy, which may encompass accompanying government officials during inspections of the project, assisting in preparing and submitting proper documentation to the appropriate agencies and assisting in final testing and other such activities.
- g. Coordinate staff training on building systems. GC responsibility but DAY will ensure process flows.
- h. Assist the Owner with warranty problem resolution and other claims against any contractor(s) for defective work or performance after completion of the construction. Claims oversight should be negotiated on a case by case basis as timing is unknown.
- i. Collaborate with the Architect to collect and submit the following close-out documentation to the Owner:
  1. Operations and Maintenance data for equipment as required by the Contract Documents for the project.
  2. Record drawings for the project showing, among other things, deviations from the original plans and drawings for the project made during construction, details in the construction not previously shown on such plans or drawings, changes to existing conditions or existing conditions found to differ from those shown on the original plans and drawings, the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings and stub outs, and such other information as the Owner, Architect or Inspector may reasonably request from time to time.

3. Warranties and bond for equipment put into service.
4. Keys, Tools, spare parts and maintenance materials.
5. A list of all construction contractors, vendors and material persons of every tier providing services, equipment and/or materials in connection with the project, in formal adequately bound, catalogued form, which shall include the names, addresses, telephone numbers and fax numbers of such persons, and shall further include notices as to where pertinent persons can and may be reached for emergency service, inclusive of nights, weekends and holidays.
6. All guaranties and warranties from all construction contractors as required by the Contract Documents for the project.

**B. Additional Services**

The Owner's Representative shall perform Additional Services upon authorization in writing from the Owner and shall be paid for as provided in this Agreement:

1. Consultation on replacement of work damaged by fire or other cause during construction, and furnishing services in conjunction with the replacement of such work.
2. Services made necessary by the default of a contractor.
3. Providing any other services not otherwise included in this Agreement.
4. Services after Final Completion (defined as the date of final payment to the Contractor).

# Exhibit B City of Lake Oswego Operations Center FEE PROPOSAL



DAY CPM SERVICES, LLC  
**Lake Oswego Operations Center**  
 FEE ESTIMATE  
**Service Period**  
 Services per RFP

March 2015- April 2017

BY JAD  
 DATE 2/4/2015

	Project Oversight /Front End- Joshua Dodson		Project Manager		Project Assistant		Administration		Total Proposed
RATE		\$125.00		\$115.00		\$75.00		\$55.00	
MONTH	HRS		HRS		HRS		HRS		
<b>JAN. 2015</b>	0	\$0	0	\$0	0	\$0	0	\$0	\$0
FEB.	0	\$0	0	\$0	0	\$0	0	\$0	\$0
MAR.	50	\$6,250	50	\$5,750	0	\$0	0	\$0	\$12,000
APR.	80	\$10,000	80	\$9,200	0	\$0	1	\$55	\$19,255
MAY	60	\$7,500	60	\$6,900	0	\$0	1	\$55	\$14,455
JUN.	20	\$2,500	60	\$6,900	0	\$0	1	\$55	\$9,455
JULY	20	\$2,500	60	\$6,900	0	\$0	1	\$55	\$9,455
AUG.	20	\$2,500	60	\$6,900	0	\$0	1	\$55	\$9,455
SEPT.	20	\$2,500	60	\$6,900	0	\$0	1	\$55	\$9,455
OCT.	20	\$2,500	60	\$6,900	0	\$0	1	\$55	\$9,455
NOV.	20	\$2,500	60	\$6,900	0	\$0	1	\$55	\$9,455
DEC.	20	\$2,500	60	\$6,900	0	\$0	1	\$55	\$9,455
<b>JAN. 2016</b>	20	\$2,500	60	\$6,900	0	\$0	1	\$55	\$9,455
FEB.	20	\$2,500	60	\$6,900	0	\$0	1	\$55	\$9,455
MAR.	20	\$2,500	60	\$6,900	0	\$0	1	\$55	\$9,455
APR.	20	\$2,500	60	\$6,900	0	\$0	1	\$55	\$9,455
MAY	20	\$2,500	60	\$6,900	0	\$0	1	\$55	\$9,455
JUN.	20	\$2,500	60	\$6,900	0	\$0	1	\$55	\$9,455
JULY	20	\$2,500	60	\$6,900	0	\$0	1	\$55	\$9,455
AUG.	20	\$2,500	65	\$7,475	0	\$0	1	\$55	\$10,030
SEPT.	20	\$2,500	40	\$4,600	0	\$0	1	\$55	\$7,155
OCT.	20	\$2,500	40	\$4,600	0	\$0	1	\$55	\$7,155
NOV.	20	\$2,500	40	\$4,600	0	\$0	1	\$55	\$7,155
DEC.	20	\$2,500	40	\$4,600	0	\$0	1	\$55	\$7,155
<b>JAN. 2017</b>	20	\$2,500	40	\$4,600	0	\$0	1	\$55	\$7,155
FEB.	20	\$2,500	40	\$4,600	0	\$0	1	\$55	\$7,155
MAR.	20	\$2,500	20	\$2,300	0	\$0	1	\$55	\$4,855
APR.	10	\$1,250	20	\$2,300	0	\$0	1	\$55	\$3,605
MAY	0	\$0	0	\$0	0	\$0	0	\$0	\$0
JUN.	0	\$0	0	\$0	0	\$0	0	\$0	\$0
JUL.	0	\$0	0	\$0	0	\$0	0	\$0	\$0
AUG.	0	\$0	0	\$0	0	\$0	0	\$0	\$0
									\$239,500.00
	640	80000	1375	158125	0	0	25	1375	239500
Total Hours	2040								

Reimbursibles: mileage, meals, cell, office supplies billed at actual cost up to NTE=

\$3,000.00

TOTAL=

\$242,500.00

Notes: Services shall be billed hourly up to the not to exceed price. Only services rendered shall be billed and all savings revert back to the City. Any additional services requested will be billed at the hourly rates shown above.



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**TO:** Kent Studebaker, Mayor  
Members of the City Council

**FROM:** Anthony Hooper, Support Services Supervisor  
Public Works Department

**SUBJECT:** Operations Center Project Update and Information about the Construction Manager/General Contractor Project Delivery Method

**DATE:** March 10, 2015

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### **Project Update**

*Budget.* The project is still estimated to cost \$13 million. One of the first tasks of Day CPM will be to confirm or decrease the budget costs. This will be completed by the end of March.

*Schedule.* The project is anticipated to be fully constructed by the end of 2017. Day CPM will complete a detailed schedule by the end of March.

*220 Foothills Rd.* Parks Maintenance has successfully moved into 220 Foothills Rd. The site looks full and is completely occupied by vehicles, equipment, and storage materials.

*Master Plan Review.* Staff will work with Day CPM to review the contents of the Master Plan and to contract with a firm to modify the site plan.

*Architectural and Engineering.* A team is expected to be selected in June/July.

### **Construction Manager/General Contractor Project Delivery Method**

Staff is considering the alternative contracting method of CM/GC. Pending the approval for the Owner's Representative Contract, Day CPM will be helping the City choose whether CM/GC is the right project delivery method. Included below is information about CM/GC.

As messaged by the State of Oregon, the CM/GC contracting method utilizes an integrated "Team" approach applying modern management techniques to the planning, design, and construction of a project in order to control time and cost, and to assure quality for the project owner. The "Team" consists of the City/Owner's Representative, an A&E firm (retained by the City), and the CM/GC. The CM/GC method includes both pre-construction and construction

phase services. The traditional linear approach to delivering public projects has been the “design-bid-build” (low bid or hard-bid). These systems work very well on conventional projects that do not require complex, innovative approaches to the design and construction phases of the projects. There are certain types of projects that require a unique approach to construction management; projects that are better managed in a non-linear approach. These types of projects can be identified by the following criteria:

- Innovative funding scenarios, where multiple stakeholders may dictate final project criteria, land sales, and cash flow needs.
- Unknown land use and permitting with the conditions imposed thereof.
- Complex construction phase, where the actual contractors timely input is invaluable
- Projects where limiting budgets threaten the delivery of the project and where CM/GC alternatives can help to contain costs.
- Other projects where construction input is required during early phases of project design.

Additional differences are outlined in Table 2 below.

**Table 2: Contracting Method Comparison**

	CM/GC		Design-Bid-Build (Hard Bid)	
1	Collaborative partnering philosophy	+	Adversarial contract delivery	-
2	Team Building: Integrated Project Delivery	+	Contentious	-
3	Constructability: Highest Quality Design, Construct	+	Plans and Specs: Minimum Quality	-
4	Guaranteed Maximum Price	+	Guaranteed Minimum Price: Higher risk for c/o's and claims	-
5	Budget mgt. and Change control	+	Claims management / Litigation	-
6	Schedule control / adherence strong mgt. tools	+	Schedule delays claims: Higher risk for delays	-
7	Scope Management and Value Engineering	+	Construct per plans & specs: Scope creep: no bgt. Controls	-
8	Shared Risk: Collaborative and managed	+	Risk shift to Owner/ claims and litigation	-
9	Contingency: Shared management	+	Owner Controlled: Manage claims for delays and scope creep	-
10	VE and Cost Savings: Benefit to owner	+	Plan spec: Cost savings & VE: benefit Contractor	-
11	Managed Bidding and sub procurement	+	Low bid: no controls over contractor selection	-
12	Scope gap coverage of design phase	+	Scope plans and Specs: Not on the documents: C/O or claim	-
13	Site logistic planning and Execution	+	No control of work plan execution, Means & Methods	-
14	Comprehensive planning w/ A/E team	+	No precon support or planning	-
15	Support w/ Agencies: permitting: AHJ	+	minimum contract req. agency or AHJ support coordination	-
16	Comprehensive management oversight	+	Minimum staff required to execute the work	-
17	Cost control managed approach as a team	+	Adversarial contract delivery w/claims for changes	-
18	Time Savings and schedule innovation	+	Schedule delays and extensions: Time creep	-
19	Dispute Resolution: Partnering approach	+	mediation and litigation: Contentious	-
20	Liability: CM/GC at risk, but collaborative	+	Contractor risk: Higher risk of litigation for claims	-
21	Fees: Cost Plus Not to Exceed price: Open book	+	Lump Sum Bid: Low responsive & responsible bid: closed book	-
22	Flexibility in contract adjustments, scope	+	Rigid requirements for increases in time and Cost	-
23	Does not require airtight design	+	Requires air tight design	-
24	Intent of design documents	+	Only what is listed on design documents	-
25	Flexible bid timeline, less risk of missing window	+	Bid timeline rigidity, risk for missing 2010 in water window	-

The Operations Center Project appears to lend itself perfectly to the CM/GC method for the following reasons:

- **Complexity.** The project requires that construction is completed in phases to allow staff to continue to operate out of the existing facility.
- **Budget.** Staff and Council have made it a priority for the project to not exceed \$13 million. As noted, it is expected that the CM/GC will allow the City to provide cost containment since this method allows for a Guaranteed Maximum Price for Construction, which prohibits the contractor from submitting change orders. Only the City may cause a change order by adding something to the building and these change orders will come from a contingency that will be part of the Guaranteed Maximum Price.
- **Schedule.** The CM/GC method will allow for construction to occur prior to the Architectural Design & Engineering being 100% completed, which will allow the project to be finished quicker than the traditional method.

#### Exemption Process to Utilize an Alternative Method of Contracting

In order to contract with a construction contractor in an alternative form from traditional design-bid-build (DBB), the City of Lake Oswego must prove via findings to do so. These are called Findings of Fact (FOF) and require a public notice period and hearing. The findings are the “reasons” that Lake Oswego is choosing to use an alternative method.