



**CITY OF VANCOUVER
SERVICES AGREEMENT No. C-101611
OWNER'S REPRESENTATIVE SERVICES**

This Services Agreement (hereinafter referred to as the "Agreement") is entered into by and between the City of Vancouver, Washington, a municipal corporation organized under the laws of the State of Washington, (hereinafter referred to as the "City") and OAC Services, Inc. (hereinafter referred to as the "Contractor"). The City and Contractor may be collectively referred to herein as the "parties" or individually as a "party".

WHEREAS, the City desires to engage the Contractor to perform services as described in this Agreement; and

WHEREAS, the City advertised and issued a Request for Proposal, numbered 1-24 (hereinafter referred to as the "solicitation") and after evaluation of the Contractor's responsive proposal, found the Contractor be capable of performing the required services; and

WHEREAS, the Contractor represents by entering into this Agreement that it is fully qualified to perform the services described herein in a competent and professional manner, and to the full satisfaction of the City.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

- 1. SCOPE OF WORK:** The Contractor agrees to provide the City all services and materials set forth in the scope of work identified in Attachment "A", and as further described in the City's solicitation, and the Contractor's responsive proposal to the City's solicitation, (collectively referred to herein as the "work") which are each incorporated herein by this reference, and made a part of this Agreement as if fully set forth herein.

All work must be authorized and approved by the City's Project Manager before any work can begin. The Contractor shall approach each project in a manner consistent with its usual customary business practices. The Contractor shall actively seek collaborative input from City staff.

2. **COMPENSATION:** Payment to the Contractor for the work described in this Agreement shall not exceed \$ 1,000,000.00 USD.

This payment shall be maximum compensation for the work and for all labor, materials, supplies, equipment and incidentals necessary to complete the work as set forth herein, and it shall not be exceeded without the City's prior written authorization in the form of a negotiated and executed amendment.

Compensation is limited to the amount specified for each specific task and/or sub-task, unless amended in writing. The City requires the Contractor to complete the work stated within the number of hours stated for each task, and/or sub-task, or the lump sum amount. If compensation is made on an hourly basis and the work requires fewer hours than those estimated, the Contractor will be paid for the actual worked hours necessary to complete that task and/or sub-task. If the Contractor underestimated the number of hours required to perform the work, the Contractor shall be paid up to the maximum number of hours stated for the task and/or sub-task. Compensation may be amended, at the City's sole discretion, for documentable circumstances not reasonably foreseeable to either party at the time the task and/or subtask is initiated, or for changes to the scope of work or deliverables requested by the City. All deliverables must be acceptable to the City, at the sole discretion of the City.

Travel expenses are limited to airfare, or mileage at the current IRS rate, and lodging at the U.S. General Services Administration rates. The Contractor is solely responsible for its staff's travel time, including travel to and from the City of Vancouver. The City will reimburse only pre-approved miscellaneous Contractor expenses at-cost upon submission of receipts to City.

3. **PAYMENT FOR CONTRACTOR SERVICES:** The Contractor shall submit monthly invoices to City covering both professional fees and project expenses, if any, for fees and expenses from the previous month. Payments to Contractor shall be net thirty (30) days.

The City reserves the right to correct any invoices paid in error. The Contractor shall be paid according to the rates set forth in Attachment "B", incorporated herein by this reference, and made a part of this Agreement as if fully set forth herein.

City and Contractor agree that any amount paid in error by City does not constitute a rate change in the amount of the contract. The City's contract/purchase order (PO) number given on the notice to proceed must be referenced on any invoice submitted for payment.

4. **TERM OF AGREEMENT:** The term of this Agreement shall commence on May 1, 2024 and continue until April 30, 2029. Unless directed otherwise by the City, Contractor shall perform the work in accordance with any schedules made a part of this Agreement.

5. **ORDER OF PRECEDENCE:** Where there is a conflict among or between any of these documents, the controlling documents shall be the first listed in the following sequence: Amendments to this Agreement; this Agreement; Contract Purchase Orders; the Contractor's responsive proposal to the City's solicitation, and the City's solicitation.
6. **RELATION OF PARTIES:** The Contractor, and its subcontractors, agents, employees, or other vendors contracted by the Contractor to provide services or other work for the purpose of meeting the Contractor's obligations under this agreement (collectively referred to as "subcontractors"), are independent contractors performing professional services for the City and are not employees of the City. The Contractor and its subcontractors shall not, as a result of this Agreement, accrue leave, retirement, insurance, bonding or any other rights, privileges, or benefits afforded to City employees. The Contractor and its subcontractors shall not have the authority to bind City in any way except as may be specifically provided herein.
7. **E-VERIFY:** The Contractor shall enter into and register a Memorandum of Understanding with the Department of Homeland Security E-Verify program within sixty (60) days after execution of this Agreement. The Contractor shall ensure all Contractor employees and any subcontractors assigned to perform work under this Agreement are eligible to work in the United States. The Contractor shall provide verification of compliance upon the request of the City. Failure by the Contractor to comply with this subsection shall be considered a material breach.
8. **DELAYS AND EXTENSIONS OF TIME:** If the Contractor is delayed at any time in the progress of the work covered by this Agreement, by any causes beyond Contractor's control, the time for performance may be extended by such time as shall be mutually agreed upon by the Contractor and the City and shall be incorporated in a written amendment to this Agreement. Any request for an extension of time shall be made in writing to the City.
9. **OWNERSHIP OF RECORDS AND DOCUMENTS:** Any and all work product prepared by the Contractor in the course of performing this Contract shall immediately become the property of the City. In consideration of the compensation provided for by this Agreement, the Contractor hereby further assigns all copyright interests in such work product to the City. A copy may be retained by the Contractor. Previously owned intellectual property of Contractor, and any know-how, methodologies or processes used by the Contractor to provide the services or project deliverables under this Agreement shall remain property of the Contractor.
10. **TERMINATION FOR PUBLIC CONVENIENCE:** The City, at its sole discretion, may terminate this contract for convenience at any time for any reason deemed appropriate. Termination is effective immediately upon notice of termination given by the City.

In the event this Agreement is terminated prior to the completion of work, the Contractor will only be paid for the portion of the work completed at the time of termination of the Agreement.

- 11. TERMINATION FOR DEFAULT:** If the Contractor defaults by failing to perform any of the obligations of the Agreement, including violating any law, regulation, rule or ordinance applicable to this Agreement, or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the City may, by depositing written notice to the Contractor in the U.S. mail, postage prepaid, terminate the Agreement, and at the City's option, obtain performance of the work elsewhere.

If the Agreement is terminated for default, the Contractor shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the City in completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.

If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for public convenience paragraph herein.

- 12. OPPORTUNITY TO CURE:** The City at its sole discretion may in lieu of a termination allow the Contractor to cure the defect(s), by providing a "Notice to Cure" to Contractor setting forth the remedies sought by City and the deadline to accomplish the remedies. If the Contractor fails to remedy to the City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within the time stated time, the City shall have the right to terminate the Contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against the Contractor and its sureties for said breach or default, including but not limited to termination of this Contract for convenience.

- 13. COMPLIANCE WITH THE LAW:** The Contractor agrees to comply with all relevant, Federal, State, and Municipal laws, rules, policies, regulations or ordinances in the performance of work under this Agreement.

- 14. CITY BUSINESS AND OCCUPATION LICENSE:** The Contractor, at no expense to the City, shall be responsible to obtain all necessary licenses, permits, and similar legal authorizations required to perform the work associated with this Agreement. The Contractor will be required to hold a city business license if working within Vancouver city limits. The Contractor shall apply for city license via the State of Washington Department of Revenue (DOR), Business Licensing Service (BLS), at: <https://secure.dor.wa.gov/>. For application

assistance, contact DOR BLS at 360-705-6741. For more information about city business license regulations and fees, see: www.cityofvancouver.us/businesslicense or call 360-487-8410 option 3.

15. LIABILITY AND HOLD HARMLESS: The Contractor agrees to indemnify, defend, save and hold harmless the City, its officials, employees and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, of whatsoever kind or nature (including patent infringement or copyright claims) to the extent arising out of, or in connection with, or incident to, the negligent performance or willful misconduct pursuant to this Agreement. This indemnity and hold harmless shall include any claim made against the City by an employee of Contractor or subcontractor or agent even if Contractor is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 Revised Code of Washington (RCW), except to the extent that such liability arises from the concurrent negligence of both the City and the Contractor, such costs, fees and expenses shall be shared between the City and the Contractor in proportion to their relative degrees of negligence. The Contractor specifically acknowledges the provisions contained herein have been mutually negotiated by the parties and it is the intent of the parties that the Contractor provide the broadest scope of indemnity permitted by RCW 4.24.115. The Contractor is an independent contractor and responsible for the safety of its employees.

16. INSURANCE: The Contractor shall obtain and keep in force during the entire term of this agreement, liability insurance against any and all claims for damages to person or property which may arise out of the performance of this Contract whether such work shall be by the Contractor, subcontractor or anyone directly or indirectly employed by either the Contractor or a subcontractor.

All liability insurance required herein shall be under a Comprehensive or Commercial General Liability and business policies.

| COVERAGE | LIMITS OF LIABILITY |
|---|---------------------|
| I. Commercial General Liability: | |
| Policy shall include Bodily Injury, Property Damage, Personal Injury and Broad Form Contractual Liability | |
| Each Occurrence | \$1,000,000 |
| General Aggregate Per Occurrence | \$2,000,000 |
| Products & Completed Operations Aggregate | \$2,000,000 |
| Personal and Advertising Injury | \$1,000,000 |
| Blanket Contractual Liability | \$1,000,000 |

| | |
|--|-------------|
| II. Commercial Automobile Liability | |
| Policy shall include Bodily Injury and Property Damage, for any owned, Hired, and/or Non-owned vehicles used in the operation, installation and maintenance of facilities under this agreement. Combined Single Limit | \$1,000,000 |
| III. Workers' Compensation (applicable to the State of Washington) | |
| Per Occurrence | |
| Employer's Liability | \$1,000,000 |
| Disease Each Employee | \$1,000,000 |
| Disease Policy Limit | \$1,000,000 |
| Each Claim | \$1,000,000 |
| Annual Aggregate | \$1,000,000 |
| V. Professional Liability | |
| Policy shall include coverage against any and all claims for damages to person or property which may arise out of the performance of this Contract whether such work shall be by the Contractor, subcontractor or anyone directly or indirectly employed by either the Contractor or a subcontractor | \$2,000,000 |

In addition to the coverage and limits listed above the Contractor's insurance must all contain the following:

- a. City Listed as an Additional Insured. The City of Vancouver, its Agents, Representatives, Officers, Directors, Elected and Appointed Officials, and Employees must be named as an additional insured. The required Additional Insured endorsements shall be at least as broad as ISO CG 20 10 11 85, or its equivalent CG 20 10 07 04 and CG 20 37 07 04 must be included with the Certificate of Insurance.
- b. Either the Commercial General Liability or the Workers' Compensation policy must be endorsed to include "Washington Stop Gap" insurance. The limits and aggregates referenced must apply to the Stop Gap coverage as well and must be indicated on the certificate.
- c. Employment Security. The Contractor shall comply with all employment security laws of the State in which services are provided and shall timely make all required payments in connection therewith.
- d. The City of Vancouver shall be listed on the Certificate as the Certificate Holder.
- e. Coverage Trigger: The insurance must be written on an "occurrence" basis. This must be indicated on the Certificate.

Contractor shall provide evidence of all insurance required, at the City's request, by submitting an insurance certificate to the City on a standard "ACORD" or comparable form.

All policies shall be issued by an insurance company licensed to do business in the State of Washington. The City of Vancouver may inspect all policies and copies shall be provided to the City upon request.

17. NOTICES: All notices which are given or required to be given pursuant to this Agreement shall be hand delivered, mailed postage paid, or sent by electronic mail as follows:

For the City:

Anna Vogel

City of Vancouver

415 W 6th Street

P O Box 1995

Vancouver WA 98668-1995

Email: anna.vogel@cityofvancouver.us

For the Contractor:

Diana Brown

OAC Services, Inc.

2200 1st Ave S, Suite 200

Seattle WA 98134

Email: dbrown@oacsvcs.com

Either party may change the designated contact or any information listed above by giving advance notice in writing to the other party.

18. AMENDMENTS: All changes to this Agreement, including changes to the scope of work and compensation sections, must be made by written amendment and signed by all parties to this Agreement.

19. SCOPE OF AGREEMENT: This Agreement incorporates all the agreements, covenants and understanding between the parties hereto and are merged into this written Agreement. No prior agreement or prior understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless set forth in this Agreement.

20. RATIFICATION: Acts taken pursuant to this Agreement but prior to its effective date are hereby ratified and confirmed.

21. GOVERNING LAW/VENUE: This Agreement shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to the principles of conflict of laws. Any action or suit brought in connection with this Agreement shall be brought in the Superior Court of Clark County, Washington.

- 22. COOPERATIVE PURCHASING:** The Washington State Inter-local Cooperation Act, Ch. 39.34 RCW, authorizes public agencies to cooperatively purchase goods and services if all parties agree. By having executed this Agreement, the Contractor agrees that other public agencies may purchase goods and services under this solicitation or contract at their own cost and without the City incurring any financial or legal liability for such purchases. The City agrees to allow other public agencies to purchase goods and services under this solicitation or contract, provided that the City is not held financially or legally liable for purchases and that any public agency purchasing under such solicitation or contract file a copy of this invitation and such contract in accordance with RCW 39.34.040.
- 23. PUBLIC DISCLOSURE COMPLIANCE:** The parties acknowledge that the City is an “agency” within the meaning of the Washington Public Records Act, Chapter 42.56 RCW, and that materials submitted by the Contractor to the City become public record. Such records may be subject to public disclosure, in whole or part and may be required to be released by the City in the event of a request for disclosure. In the event the City receives a public record request for any data or deliverable that is provided to the City and that is licensed from the Contractor, the City shall notify the Contractor of such request and withhold disclosure of such information for not less than five (5) business days, to permit the Contractor to seek judicial protection of such information, provided that the Contractor shall be responsible for attorney fees and costs in such action and shall save and hold harmless the City from any costs, attorney fees or penalty assessment under Chapter 42.56 RCW for withholding or delaying public disclosure of such information.
- 24. DEBARMENT:** The Contractor certifies that that it is not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any Federal, State or local department or agency.
- 25. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT:** Supplier must agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 26. BYRD ANTI-LOBBYING AMENDMENT:** Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Suppliers that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

27. PROCUREMENT OF RECOVERED MATERIALS: Supplier must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

28. WARRANTIES: All products shall be warranted against defects or faulty workmanship and materials by the Supplier for one (1) year following inspection and acceptance of the products by the City. Warranty shall include all costs incurred, including shipping, for repair or replacement except that which is damaged by misuse or abuse. This one-(1) year warranty shall in no way affect normal extended or manufacturer's warranty exceeding this one (1) year period. Supplier warrants that all goods and services furnished under this Contract are new, conform strictly to the specifications herein, are merchantable, good workmanship, free from defect, comply with all applicable safety and health standards established for such products, all goods are properly packaged, and all appropriate instructions or warnings are supplied. If a defect is found, a component failure occurs, or workmanship is found to cause failure, the Vendor shall replace the product at their own expense, including shipping charges. Any replacement product will be warrantied for one (1) year from the date it is delivered. All implied and expressed warranty provisions of the Uniform Commercial Code are incorporated into this Contract.

29. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY: During the term of this Contract, the Supplier agrees as follows: The Supplier will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Supplier will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The undersigned, as the authorized representatives of the City and Contractor respectively, agree to all of the terms and conditions contained in this Agreement, as of the dates set forth below.

CITY OF VANCOUVER

A municipal corporation

CONTRACTOR:

OAC Services, Inc.

Eric Holmes, City Manager

Signature

Date

Printed Name /Title

Attest:

Date

Natasha Ramras, City Clerk

Approved as to form:

Jonathan Young, City Attorney

Attachment A

Scope of Work

Work under this contract will include, but not be limited to:

1. Write and submit the General Contractor/Construction Manager (GC/CM) Washington State Portfolio Review Committee (PRC) Application. Create and present necessary documentation to the PRC.
2. Help the City obtain PRC approval for the City to proceed with GC/CM construction project delivery method, project specific, per the governing RCWs.
3. Assist the City with the development of a contract for GC/CM. Participate in reviews of the draft contract prior to issuance of the RFP for the GC/CM Services.
4. Lead the development of the scope for a Request for Proposals (RFP) for General Contractor/Construction Manager Services. The Consultant shall work with the City and design team to develop a RFP that represents the subject project, reflects the project's target goals, visions/values of the City, and structures a collaborative project delivery team.
5. Assist in developing a RFP scoring methodology and proposal scoring, and assist in identifying attributes of qualified GC/CM Contractors based on experience.
6. Evaluate and score proposals received from GC/CM contractors as part of the City's evaluation team.
7. Assist in interview format and question development. Attend interviews, in person or remote, with the GC/CM RFP Contractors as part of the interview panel.
8. Assist in the development of the Phase 1: pre-construction services Contract (Construction Management Services) between the City and the selected Contractor. The Consultant shall serve as the owner's representative, as needed, for management of GC/CM services and represent the City in negotiating final Contract terms for the Phase 1: GC/CM pre-construction contract and the Phase 2: GC/CM physical construction contract. This will require in person attendance in meetings and site visits during physical construction.
9. Participate and lead negotiations, in person or remotely, between the City and the selected Phase 1 Contractor for Phase 2. If determined that a new solicitation for Phase 2 work is required, participate and lead, as needed, in that process.
10. Support, in conjunction with City departments, the development of the Phase 2 Contract: GC/CM physical construction (Construction Services) including construction management, material, equipment and labor procurement, physical construction, and all work elements necessary to deliver the entire Construction Project within the required schedule, including warranty periods, at the agreed upon Guaranteed Maximum Price (GMP). Assist in the development of the Maximum Allowable Construction Cost (MACC), reviewing contractor's bid items and creating the Total Contract Cost. The Consultant shall participate and attend any negotiations, in person or remotely, among the City and GC/CM Contractor as to the Contract terms and conditions. The Consultant shall

represent the City and provide recommendations based on the Consultant's experience and knowledge in the field of GC/CM administration and contracting. The Consultant shall inform the City of best practices, risks and mitigation typical of these types of Contracts.

11. After execution of the GC/CM Contract, monitor contractor's competitively bid processes for each of the various subcontracts and equipment bid packages through public advertisement. Confirming responsible low bids are selected. Throughout the Contract, monitor that the Contractor is not self-performing more than 30% of the MACC. Monitor that Contractor is complying with terms and conditions of the GC/CM contract and applicable RCW sections.
12. Participate in and, if necessary, lead the management of contract contingency and contractual allowances. Participate and, if necessary, lead the contract close out process per the contract and applicable RCW sections.
13. Assist the City to develop appropriately project scaled risk registers, risk quantification, and management plans during the design, construction and close out phases of the project. Following guidance from the State of Washington OFM, the risk management should be used to inform contingency allocations and establish a process for routinely re-evaluating risks or uncertainties on projects. Consultant will identify and document key risks, characterizing their impact, and describing the planned approach to mitigating them. Risk management evaluations may include research and information gathering on innovative products, equipment, systems and construction techniques and/or any products, equipment, systems or construction techniques new to the City's projects.
14. Perform other project management or construction management services if needed to supplement internal City staff.

Deliverables:

- A. The Consultant shall provide the City three (3) hardcopies of the PRC Application and one PDF format electronic copy.
- B. The Consultant shall provide the City three (3) hardcopies of the PRC presentation documents and one PDF format electronic copy.
- C. Consultant comments and contract language for GC/M preconstruction services contract as well as GC/CM physical construction services (MACC) contract.
- D. The Consultant shall provide the City the Final GC/CM RFP scope with supporting documents, recommended announcements, and distribution list in the current Microsoft Word format for publishing by the City.
- E. Meeting minutes and action items during development of application, contracts, and contractor evaluation materials.
- F. The Consultant shall provide interview questions and meeting agenda in electronic format.
- G. Contract monitoring updates and progress reports throughout the duration of construction and contract closeout.

H. Risk register, risk quantifications, risk management plan, risk monitoring updates and contingency evaluations.

Attachment B
Rates

| OAC Services | | |
|----------------------------|--|-----------------|
| Diana Brown | Program Executive | \$240.00 |
| Phil Iverson, Adam Johnson | Senior PM / Alternate Delivery Advisor | \$225.00 |
| Alana Schutt | Sustainability Advisor | \$225.00 |
| Cynthia Balzarini | Project controls & FFE Advisor | \$170.00 |
| | Senior Building Envelope Specialist | \$195.00 |
| | Assistant PM | \$160.00 |
| | Senior Project Coordinator | \$160.00 |

| Subconsultant - Otak | | |
|-----------------------------|------------------------|-----------------|
| Sarah Oaks | Principal in Charge | \$200.00 |
| Kevin Moisan, John Guiher | Senior Project Manager | \$170.00 |
| | Project Manager III | \$160.00 |
| | Project Manager II | \$150.00 |
| Alex Cettie | Project Manager I | \$130.00 |
| | Project Coordinator | \$105.00 |