

BOULDER COUNTY CONTRACT

SUMMARY	
Contract Identification	
Oracle Contract Number	303350
Contract Name	Otak, Inc. CPP On Call Transportation Planning Services
County Information	
Office or Department	Community Planning and Permitting
Division/Program	Transportation Planning
Mailing Address	PO Box 471 Boulder, CO 80306
Project Manager Name and Email	Stacey Proctor, sproctor@bouldercounty.gov
Contact Name and Email	Stacey Proctor, sproctor@bouldercounty.gov
Office or Department Accounting Email	cppinvoices@bouldercounty.gov
Vendor Information	
Vendor Legal Name	Otak, Inc.
Vendor d/b/a	
Vendor Business Address	808 SW Third Avenue, Suite 800 Portland, OR 97204-0000
Vendor Mailing Address	LB 1507 PO Box 35142 Seattle, WA 98124-5142
Vendor Signer Name and Email	David S. Johnson dave.johnson@otak.com
Vendor Contact Name and Email	Kevin Dooley kevin.dooley@otak.com
Vendor Invoicing Email	shannon.spolek@otak.com
Contract Dates	
Authorization to Start Work	Informal Project Bid May be Required
End Date	1/31/2028
Contract Amount	
Contract Not to Exceed	\$ 4,000,000.00
Contract Documents	
<input checked="" type="checkbox"/> Exhibit A: Insurance Requirements <input checked="" type="checkbox"/> Exhibit B: Scope of Work and Fee Schedule <input type="checkbox"/> Exhibit C: Boulder County Data and Cyber Security Requirements <input type="checkbox"/> Exhibit D: _____ <input type="checkbox"/> Exhibit E: _____ <input type="checkbox"/> Exhibit F: _____	

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Purchasing Details – County Internal Use Only	
Grant funded	Yes - Funds not yet available
If no Bid Number, bid process used	Bid Number Provided (award info attached in supporting documents)
Bid Number (if awarded)	SOQ 7398-22
Award Date (if awarded)	2/15/2023
Project #	
Does this include new FTE's or require additional budget approval?	No
Highest Annual Contract Amount	\$ 1,000,000.00
Accounting Details	

THIS CONTRACT ("Contract") is entered into by and between the Board of County Commissioners on behalf of the County of Boulder, State of Colorado, a body corporate and politic, for the benefit of Community Planning and Permitting ("County") and Otak, Inc. ("Contractor" or "Vendor"). County and Contractor are each a "Party," and collectively the "Parties."

In consideration of the mutual covenants contained in this Contract, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation into Contract: The **Summary** is incorporated into this Contract. The **Contract Documents** are incorporated into this Contract by reference, except to the extent that contractor-drafted documents, if any are incorporated, contain any obligations placed upon County and not otherwise contained in this Contract. In the event of any conflict between any **Contract Documents** incorporated into this Contract, the language shall be interpreted in favor of the County.

2. Authorization to Start Work:

Contractor acknowledges that this Contract does not constitute a guarantee that Contractor will be awarded any projects or work of any kind. County may enter into agreements with other contractors who may compete with Contractor to receive individual projects. If Contractor is selected, whether through an informal bid process, quotes, or otherwise, County will assign work to Contractor through a written task order. The task order may be a purchase order or purchase orders. The task order will list which of the services set forth in Exhibit B – Scope of Work are to be provided by Contractor at that time. County will provide notice of the task order to Contractor at the Vendor Contact Name and Email.

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3. Scope of Work: The Scope of Work is defined in Exhibit B – Scope of Work, which is incorporated by reference (“**Work**”). Contractor will provide all labor and equipment and do all tasks necessary and incidental to performing the **Work**. Contractor will perform all **Work** (a) in a good and workmanlike manner, (b) at its own cost and expense, (c) in accordance with recognized industry standards of care, skill, and diligence for the type of work being performed, and (d) in strict accordance with the Contract.

4. Time to Complete Work: Contractor must complete all **Work** before the **End Date** of this Contract and in compliance with any additional timing requirements identified in Exhibit B – Scope of Work. Any extension of the **End Date** requires a written amendment, which may require the approval of the Board of County Commissioners, the County Administrator, or County Department Heads/Elected Officials. Any amendment may require the Contractor to provide a then-current Certificate of Insurance to the County that complies with the Insurance Requirements identified in Exhibit A of this Contract.

5. Payment for Work Performed: In consideration of the **Work** performed by Contractor, and subject to conditions contained in this Contract, County will pay an amount not to exceed the **Contract Not to Exceed** amount identified above to Contractor in accordance with the **Contract Documents**.

6. Invoicing: Contractor will promptly provide a copy of its Form W-9 and invoice template to County upon request. Contractor must submit an invoice to the County by the fifteenth (15th) day of the month for completion of any part of the **Work** performed in the prior calendar month. All invoices submitted require the following components: Contractor’s name and address (submitted W-9 address must match remit address), detailed description of services, dates of services, itemization of labor and materials costs, “Bill to: Boulder County” language, payment remittance address, date of invoice, unique invoice number, and total amount due. Contractor must send all completed invoices to the **Office or Department Accounting Email** in the **Summary**. Failure to submit invoices in a timely manner and in accordance with the terms of this Contract will relieve County of its obligation to make timely payment. Further, County will have no liability for any financial obligations under this Contract if Contractor fails to submit an accurate invoice to the County by January 15th of any calendar year for Work performed in the previous calendar year. County may recoup any damages incurred because of Contractor’s failure to submit invoices pursuant to the terms of this paragraph. County’s acceptance or payment of an invoice will not constitute acceptance of any **work** performed under this Contract.

7. No Additional Services: In order for Contractor to provide additional services for additional compensation beyond the initial **Contract Not to Exceed** amount, the Parties must first execute a written amendment before the then-current **End Date**. A written amendment may require the approval of the Board of County Commissioners, the County Administrator, or County Department Heads/Elected Officials. If necessary, the written amendment will incorporate an updated Scope of Work and/or updated Insurance Requirements.

8. Schedule of Work: County may designate the hours (on a daily or weekly basis) during which Contractor may perform the **Work** strictly for the purposes of minimizing inconvenience to the County and interference with County operations.

9. Indemnity: Contractor will indemnify and hold harmless County, its elected officials and appointed department heads, and its employees, agents and representatives (the “indemnified parties”), from any and all liability, claims, demands, actions, damages, losses, judgments, costs

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or expenses, including attorneys' fees, which may be made or brought or which may result against any of the indemnified parties as a result or on account of the actions or omissions of Contractor, its employees, agents or representatives, or other persons acting under Contractor's direction or control. This indemnification obligation will extend to claims based on Contractor's unauthorized use or disclosure of confidential information and intellectual property infringement. County will not be obligated to indemnify or defend Contractor under any circumstances. Contractor's obligations under this provision shall survive expiration or termination of this Contract. Nothing contained in this Contract or the **Contract Documents** is intended to limit or restrict the indemnification rights or obligations of any Party under this provision, or damages available for breaches of the obligations herein.

10. Nondiscrimination: Contractor will comply with the Colorado Anti-Discrimination Act, C.R.S. § 24-34-401, et seq., as amended, and all applicable local, State and Federal laws concerning discrimination and unfair employment practices. County prohibits unlawful discrimination on the basis of race, color, religion, gender, gender identity, national origin, age 40 and over, disability, socio-economic status, sexual orientation, genetic information, or any other status protected by applicable Federal, State or local law. Contractor must require that its subcontractors, if any, similarly comply with all applicable laws concerning discrimination and unfair employment practices.

11. Information and Reports: Contractor will provide to authorized County, State, and Federal government representatives all information and reports that may be required for any purpose authorized by law. Contractor will permit access to such representatives to Contractor's facilities, books, records, accounts, and any other relevant sources of information. Where information required by a representative is in the exclusive possession of a person or entity other than Contractor, Contractor must so certify to the County and explain what efforts it has made to obtain the information.

12. Independent Contractor: **Contractor is an independent contractor for all purposes in performing the Work. None of Contractor, its agents, personnel or subcontractors are employees of the County for any purpose, including the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the Colorado Workers' Compensation Act, the Colorado Unemployment Insurance Act, and the Public Employees Retirement Association. Accordingly, County will not withhold or pay any income tax, payroll tax, or retirement contribution of any kind on behalf of Contractor or Contractor's employees. As an independent contractor, Contractor is responsible for employing and directing such personnel and agents as it requires to perform the Work. Contractor will exercise complete authority over its personnel and agents and will be fully responsible for their actions.**

13. Termination

a. Breach: Either Party's failure to perform any of its material obligations under this Contract, in whole or in part or in a timely or satisfactory manner, will be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) days after the institution of such proceeding, will also constitute a breach. In the event of a breach, the non-breaching Party may provide written notice of the breach to the other Party. If the breaching Party does not cure the breach, at its sole

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expense, as reasonably determined by the non-breaching Party in its sole discretion, within thirty (30) days after delivery of notice, the non-breaching Party may exercise any of its remedies provided under this Contract or at law, including immediate termination of this Contract.

b. Non-Appropriation: The other provisions of this Contract notwithstanding, County is prohibited by law from making commitments beyond the current fiscal year. Payment to Contractor beyond the current fiscal year is contingent on the appropriation and continuing availability of funding in any subsequent year. County has reason to believe that sufficient funds will be available for the duration of the Contract. Where, however, funds are not allocated for any fiscal period beyond the current fiscal year, County may terminate this Contract without penalty by providing seven (7) days' written notice to Contractor.

c. Convenience: In addition to any other right to terminate under this Section 13, County may terminate this Contract, in whole or in part, for any or no reason, upon seven (7) days' written notice to Contractor.

14. Contractor Obligations upon Termination or Expiration: By the **End Date** or effective date of termination, if earlier, Contractor must (1) remove from County property all of its personnel, equipment, supplies, trash and any hazards created by Contractor, (2) protect any serviceable materials belonging to the County, and (3) take any other action necessary to leave a safe and healthful worksite. Any items remaining on County property after the **End Date** or the effective date of termination, if earlier, will be deemed abandoned by Contractor.

15. Payable Costs in Event of Early Termination: If County terminates this Contract before the **End Date**, Contractor's payments (and any damages associated with any lawsuit brought by Contractor) are limited to only (1) payment for **Work** satisfactorily executed and fully and finally completed, as determined by County in its sole discretion, prior to delivery of the notice to terminate, and (2) the reasonable and actual costs Contractor incurred in connection with performing the Work prior to delivery of the notice to terminate. Contractor explicitly waives all claims it may have against the County for any other compensation, such as anticipatory profits or any other consequential, special, incidental, punitive or indirect damages.

16. Remedies for Non-Performance: If Contractor fails to perform any of its obligations under this Contract, County may, at its sole discretion, exercise one or more of the following remedies (in addition to any other remedies provided by law or in this Contract, including in Exhibit B – Scope of Work), which shall survive expiration or termination of this Contract:

a. Suspend Performance: County may require that Contractor suspend performance of all or any portion of the Work pending necessary corrective action specified by the County and without entitling Contractor to an increase in compensation or extension of the performance schedule. Contractor must promptly stop performance and incurring costs upon delivery of a notice of suspension by the County.

b. Withhold Payment Pending Corrections: County may permit Contractor to correct any rejected Work at the County's discretion. Upon County's request, Contractor must correct rejected work at Contractor's sole expense within the time frame established by the County. Upon full and final completion of the corrections satisfactory to the County, County will remit payment to Contractor.

c. Deny Payment: County may deny payment for any Work that does not comply with the requirements of the Contract or that Contractor otherwise fails to provide or fully and finally complete, as determined by the County in its sole discretion. Upon County request, Contractor will promptly refund any amounts prepaid by the County with respect to such non-compliant Work.

d. Removal: Upon County's request, Contractor will remove any of its employees or agents from performance of the Work, if County, in its sole discretion, deems any such person to be incompetent, careless, unsuitable, or otherwise unacceptable.

17. Binding Arbitration Prohibited: County does not agree to binding arbitration by any extra-judicial body or person.

18. Conflicts of Interest: Contractor may not engage in any business or personal activities or practices or maintain any relationships that conflict in any way with the full performance of Contractor's obligations.

19. Notices: All notices provided under this Contract must be in writing and sent by Certified U.S. Mail (Return Receipt Requested), electronic mail, or hand-delivery to the other Party's **Contact Name and Email** specified in the **Summary**. For certified mailings, notice periods will begin to run on the day after the postmarked date of mailing. For electronic mail or hand-delivery, notice periods will begin to run on the date of delivery.

20. Statutory Requirements: This Contract is subject to all statutory requirements that are or may become applicable to counties or political subdivisions of the State of Colorado generally, including but not limited to: C.R.S. § 38-26-107, which requires withholding funds where the County receives a claim for payment from a supplier or subcontractor of Contractor upon notice of final settlement (required for public works contracts that exceed \$150,000); C.R.S. § 8-17-101 et seq.; C.R.S. § 18-8-301, et seq.; and C.R.S. § 18-8-401, et seq.

21. No Suspension or Debarment: Contractor certifies and warrants for the duration of the **Work** and the duration of the Contract, that neither it nor its principals nor any of its subcontractors are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any Federal or State department or agency. Contractor shall comply, and shall require its subcontractors to comply, with subpart C of 2 C.F.R. § 180.

22. Entire Agreement/Binding Effect/Amendments: This Contract represents the complete agreement between the Parties and is fully binding upon them and their successors, heirs, and assigns, if any. This Contract terminates any prior agreements, whether written or oral in whole or in part, between the Parties relating to the Work. This Contract may be amended only by a written agreement signed by both Parties.

23. Assignment/Subcontractors: This Contract may not be assigned or subcontracted by Contractor without the prior written consent of the County. If Contractor subcontracts any of its obligations under this Contract, Contractor will remain liable to the County for those obligations and will also be responsible for subcontractor's performance under, and compliance with, this Contract.

24. Governing Law/Venue: The laws of the State of Colorado govern the construction, interpretation, performance, and enforcement of this Contract. Any claim relating to this Contract or breach thereof may only be brought exclusively in the Courts of the 20th Judicial District of the State of Colorado and the applicable Colorado Appellate Courts.

25. Breach: The failure of either Party to exercise any of its rights under this Contract will not be deemed to be a waiver of such rights or a waiver of any breach of the Contract. All remedies available to a Party in this Contract are cumulative and in addition to every other remedy provided by law.

26. Severability: If any provision of this Contract becomes inoperable for any reason but the fundamental terms and conditions continue to be legal and enforceable, then the remainder of the Contract will continue to be operative and binding on the Parties.

27. Third-Party Beneficiary: Enforcement of the terms and conditions and all rights and obligations of this Contract are reserved to the Parties. Any other person receiving services or benefits under this Contract is an incidental beneficiary only and has no rights under this Contract. Notwithstanding, where the beneficiary Department or Office is led by an Elected Official, such Elected Official shall be considered a third-party beneficiary.

28. Colorado Open Records Act: County may disclose any records that are subject to public release under the Colorado Open Records Act, C.R.S. § 24-72-200.1, et seq.

29. Conflict of Provisions: If there is any conflict between the terms of the main body of this Contract and the terms of any of the **Contract Documents**, the terms of the main body of the Contract will control.

30. Governmental Immunity: Nothing in this Contract shall be construed in any way to be a waiver of the County's immunity protection under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended.

31. Representations and Warranties: Contractor represents and warrants the following:

a. Execution of this Contract and performance thereof is within Contractor's duly authorized powers;

b. The individual executing this Contract is authorized to do so by Contractor;

c. Contractor is authorized to do business in the State of Colorado and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Work and the Contractor; and

d. Contractor and its subcontractors, if any, are financially solvent, able to pay all debts as they mature, and have sufficient working capital to complete the Work and perform all obligations under the Contract.

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32. Legal Compliance: Except as otherwise specified in Exhibit B – Scope of Work, Contractor assumes full responsibility for obtaining and maintaining any permits and licenses required to perform the Work. Contractor is solely responsible for ensuring that its performance under this Contract and the Work itself will comply with all Federal, State, and local laws, regulations, ordinances and codes. County approval of the Work or any aspect of Contractor’s performance, such as plans, designs, or other Contractor-drafted documents, shall not be interpreted to mean that Contractor has satisfied its obligations under this Section.

33. Litigation Reporting: Contractor represents that Contractor is not currently involved in any action before a court or other administrative decision-making body that could affect Contractor’s ability to perform the Work. Contractor will promptly notify the County if Contractor is served with a pleading or other document in connection with any such action or initiates any action impacting this Contract or the Work contemplated by this Contract.

34. Tax Exemption: County is exempt from payment of Federal, State, and local government taxes. Contractor shall collect no tax from the County, and the County shall not be liable to pay any taxes imposed on Contractor. County shall provide its tax exemption status information to Contractor upon request.

35. Delegation of Authority: The Parties acknowledge that the Board of County Commissioners has delegated authority to the Department Head or Elected Official that leads the beneficiary Department or Office and their designees to act on behalf of the County under the terms of this Contract, including but not limited to the authority to terminate this Contract.

36. Ownership of Work Product: All work product, property, data, documentation, information or materials conceived, discovered, developed or created by Contractor pursuant to this Contract (“Work Product”) will be owned exclusively by the County. To the extent possible, any Work Product will be deemed to be a work made for hire. Contractor unconditionally and irrevocably transfers and assigns to the County all right, title and interest in and to any Work Product.

37. Publicity Releases: Contractor will not refer to this Contract or the County in commercial advertising without prior written consent of the County. This provision shall survive expiration or termination of this Contract.

38. Execution by Counterparts; Electronic Signatures: This Contract may be executed in multiple counterparts, each of which will be deemed an original, but all of which will constitute one agreement. The Parties approve the use of electronic signatures, governed by the Uniform Electronic Transactions Act, C.R.S. §§ 24 71.3 101 to 121. The Parties will not deny the legal effect or enforceability of this Contract solely because it is in electronic form or because an electronic record was used in its creation. The Parties will not object to the admissibility of this Contract in the form of electronic record, or paper copy of an electronic document, or paper copy of a document bearing an electronic signature, because it is not in its original form or is not an original.

39. Limitation on Public Statements and Lobbying Activity. Contractor may receive from the County its confidential data, work product, or other privileged or confidential information that is

protected by law. To maintain the fact and appearance of absolute objectivity, Contractor shall not, without the prior written consent of the County, which shall not be unreasonably withheld, do any of the following: (a) disclose information obtained because of this contractual relationship to any third party; (b) lobby any State or Federal agency on any pending matter while this Contract is effective; or (c) make any public statements or appear at any time to give testimony at any public meeting on the subject matters regarding which Contractor is or was retained by the County. County may set reasonable conditions on any disclosure authorized by the County under this provision. Notwithstanding, Contractor may make disclosures as required by law, and to law enforcement officials in connection with any criminal justice investigation.

40. Sustainability: County encourages Contractor to consider the procurement and use of environmentally preferable products and services while performing services under this Contract. “Environmentally preferable purchasing” means making purchasing choices for products and services that have a lesser or reduced adverse effect on human health and the environment when compared with competing products and services that serve the same purpose. Environmentally preferable purchasing is consistent with the County’s commitment to protecting our air, water, soil, and climate for current and future generations. County encourages Contractor to incorporate the following actions into Contractor’s performance of the Work: environmentally preferable supplies and services; conservation of water; efficient energy use; waste prevention; reuse and recycle construction and de-construction materials in a manner that maximizes reuse of materials; sustainable transportation choices, including consideration to business communication software alternative to air travel and public transit or carpooling for in-person meetings; pollution prevention; low toxicity for public health & safety; and reduced emissions to address climate change.

41. Limitation of Liability: COUNTY SHALL NOT BE LIABLE TO CONTRACTOR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES ARISING FROM OR RELATING TO THIS CONTRACT, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. COUNTY’S AGGREGATE LIABILITY, IF ANY, ARISING FROM OR RELATED TO THIS CONTRACT, WHETHER IN CONTRACT, OR IN TORT, OR OTHERWISE, IS LIMITED TO, AND SHALL NOT EXCEED, THE AMOUNTS PAID OR PAYABLE HEREUNDER BY COUNTY TO CONTRACTOR. ANY CONTRACTUAL LANGUAGE LIMITING CONTRACTOR’S LIABILITY SHALL BE VOID.

42. Legal Interpretation. Each Party recognizes that this Contract is legally binding and acknowledges that it has had the opportunity to consult with legal counsel of its choice about this Contract. The rule of construction providing that any ambiguities are resolved against the drafting Party will not apply in interpreting the terms of this Contract.

43. Insurance: Prior to commencing the **Work**, Contractor will provide a Certificate of Insurance to the County demonstrating adequate insurance coverage for each type of insurance identified in Exhibit A. All policies evidencing coverage required by the Contract will be issued by insurance companies satisfactory to the County. Contractor will forward Certificates of Insurance directly to the **County Contact Name and Email** listed in the **Summary**.

[Signature Page to Follow]

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IN WITNESS WHEREOF, the Parties have executed and entered into this Contract as of the latter day and year indicated below.

SIGNED for and on behalf of Boulder County	SIGNED for and on behalf of Contractor
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:
↓↓ <i>For Board-signed documents only</i> ↓↓	
Attest:	<i>Initials</i>
Attestor Name:	
Attestor Title:	