

TOWN OF SUPERIOR
RESOLUTION NO. R-35
SERIES 2020

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF
SUPERIOR APPROVING AN AGREEMENT WITH OTAK, INC. FOR
DESIGN SERVICES ON THE US 36 BIKEWAY EXTENSION PROJECT

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF
SUPERIOR, COLORADO, as follows:


Section 1. The Agreement between the Town of Superior
and OTAK, Inc. for Design Services on the US 36 Bikeway
Extension Project is hereby approved in substantially the same
form as attached hereto, subject to final approval by the Town
Attorney.

ADOPTED this 11th day of May, 2020.



Clint Folsom, Mayor

ATTEST



Phyllis L. Hardin, Town Clerk-Treasurer

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this 22nd day of May, 2020 (the "Effective Date"), by and between the Town of Superior, a Colorado municipal corporation with an address of 124 East Coal Creek Drive, Superior, Colorado 80027 (the "Town"), and Otak, Inc., an independent contractor with a principal place of business at 371 Centennial Parkway, Suite 210, Louisville, Colorado 80027 ("Consultant") (each individually a "Party" and collectively the "Parties").

WHEREAS, the Town requires professional services; and

WHEREAS, Consultant has held itself out to the Town as having the requisite expertise and experience to perform the required professional services.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. SCOPE OF SERVICES

A. Consultant shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in **Exhibit A**, attached hereto and incorporated herein by this reference.

B. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Consultant proceeds without such written authorization, Consultant shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the Town is authorized to modify any term of this Agreement, either directly or implied by a course of action.

II. TERM AND TERMINATION

A. This Agreement shall commence on the Effective Date, and shall continue until Consultant completes the Scope of Services to the satisfaction of the Town, or until terminated as provided herein.

B. Either Party may terminate this Agreement upon 30 days advance written notice. The Town shall pay Consultant for all work previously authorized and completed prior to the date of termination. If, however, Consultant has substantially or materially breached this Agreement, the Town shall have any remedy or right of set-off available at law and equity.

III. COMPENSATION

A. In consideration for the completion of the Scope of Services by Consultant, the Town shall pay Consultant an amount not to exceed \$188,642. This amount shall include all fees, costs and expenses incurred by Consultant, and no additional amounts shall be paid by the Town

for such fees, costs and expenses. Consultant shall not be paid until the Scope of Services is completed to the satisfaction of the Town.

B. Notwithstanding the maximum specified in the Section, Consultant shall be paid only for work performed at rates and terms set forth in **Exhibit B**. If Consultant completes the Scope of Services for less than the maximum amount, Consultant shall be paid the lesser amount, not the maximum amount.

IV. PROFESSIONAL RESPONSIBILITY

A. Consultant hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law. The work performed by Consultant shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community. The work and services to be performed by Consultant hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

B. The Town's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

V. OWNERSHIP

Any materials, items, and work specified in the Scope of Services, and any and all related documentation and materials provided or developed by Consultant shall be exclusively owned by the Town. Consultant expressly acknowledges and agrees that all work performed under the Scope of Services constitutes a "work made for hire." To the extent, if at all, that it does not constitute a "work made for hire," Consultant hereby transfers, sells, and assigns to the Town all of its right, title, and interest in such work. The Town may, with respect to all or any portion of such work, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or change such work without providing notice to or receiving consent from Consultant.

VI. INDEPENDENT CONTRACTOR

Consultant is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Consultant to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Consultant for all purposes. Consultant shall make no representation that it is a Town employee for any purposes.

VII. INSURANCE

A. Consultant agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Consultant pursuant to this Agreement. At a minimum, Consultant shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.
2. Commercial General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.
3. Professional liability insurance with minimum limits of \$1,000,000 each claim and \$2,000,000 general aggregate.

B. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees or its contractors shall be excess and not contributory insurance to that provided by Consultant. Consultant shall be solely responsible for any deductible losses under any policy.

C. Consultant shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

VIII. INDEMNIFICATION

A. Consultant agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Consultant, any subcontractor of Consultant, or any officer, employee, representative, or agent of Consultant, or which arise out of a worker's compensation claim of any employee of Consultant or of any employee of any subcontractor of Consultant. Consultant's liability under this indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Consultant, any subcontractor of Consultant, or any officer, employee, representative, or agent of Consultant or of any subcontractor of Consultant.

B. If Consultant is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Consultant's obligation to indemnify and hold harmless the Town may be determined only after Consultant's liability or fault has been determined by

adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

IX. ILLEGAL ALIENS

A. **Certification.** By entering into this Agreement, Consultant hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Consultant will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement.

B. **Prohibited Acts.** Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement, or enter into a contract with a subcontractor that fails to certify to Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. **Verification.**

1. If Consultant has employees, Consultant has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

2. Consultant shall not use the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If Consultant obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under this Agreement, Consultant shall: notify the subcontractor and the Town within 3 days that Consultant has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under this Agreement; and terminate the subcontract with the subcontractor if within 3 days of receiving the notice required pursuant to subsection 1 hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under this Agreement; except that Consultant shall not terminate the subcontract if during such 3 days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien who is performing work under this Agreement.

D. **Duty to Comply with Investigations.** Consultant shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Consultant is complying with the terms of this Agreement.

E. **Affidavits.** If Consultant does not have employees, Consultant shall sign the "No Employee Affidavit" attached hereto. If Consultant wishes to verify the lawful presence of newly

hired employees who perform work under the Agreement via the Department Program, Consultant shall sign the "Department Program Affidavit" attached hereto.

X. REQUIRED STATE PROVISIONS

A. The design work under this Agreement shall be compatible with the requirements of the contract between the Town and the State of Colorado (the "State") for the design/construction of the project, which contract is incorporated herein by this reference. The State is an intended third-party beneficiary of this Agreement for that purpose.

B. Upon advertisement of the project work for construction, Consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.

C. Consultant shall review the construction contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work.

D. The State, in its sole discretion, may review construction plans, special provisions and estimate and may require the Town to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

XI. MISCELLANEOUS

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. Third Parties. Except as expressly provided herein, there are no intended third-party beneficiaries to this Agreement.

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

I. Governmental Immunity. The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

J. Rights and Remedies. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

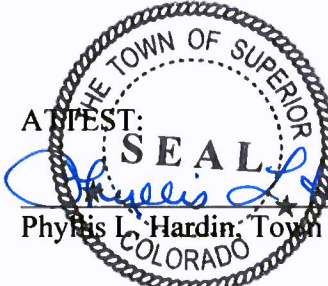
K. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TOWN OF SUPERIOR, COLORADO

Clint Folsom

Clint Folsom, Mayor

ATTEST:

Phyllis L. Hardin
Phyllis L. Hardin, Town Clerk

CONTRACTOR

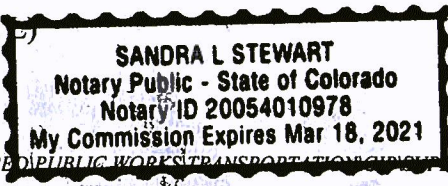
By: *Scott Belonger* 
Digitally signed by Scott Belonger
Date: 2020.05.11 07:55:37-06'00'

STATE OF COLORADO)
) ss.
COUNTY OF Boulder)

The foregoing instrument was subscribed, sworn to and acknowledged before me this 11th day of MAY, 2020, by SCOTT J. BELONGER as SENIOR PROJECT MANAGER of Otak, Inc.

My commission expires: 03/18/2021

(S E A L)


SANDRA L. STEWART
Notary Public - State of Colorado
Notary ID 20054010978
My Commission Expires Mar 18, 2021

Sandra L. Stewart
Notary Public

EXHIBIT A SCOPE OF SERVICES

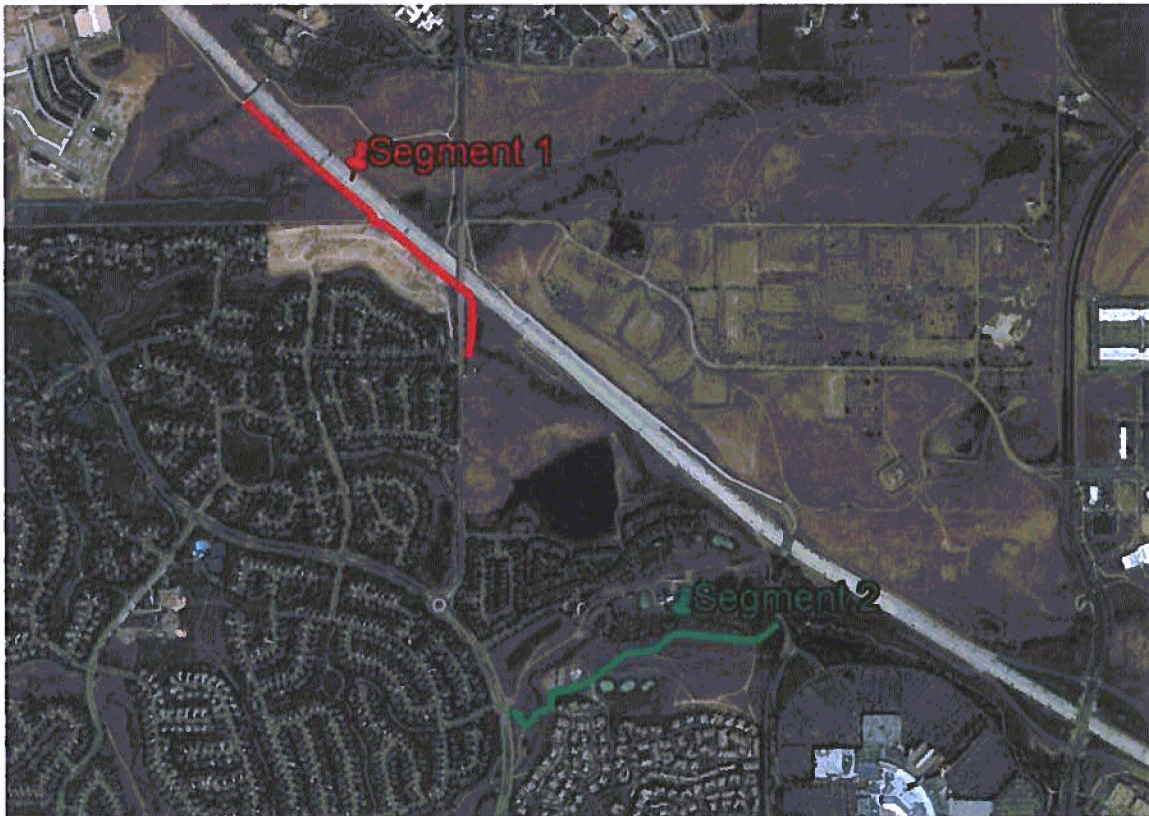
Consultant's Duties

During the term of this Agreement, Consultant shall design a multi-use trail, as follows:

There are two separate segments to the Project. The first segment begins at the US 36 Bikeway—near Avista Hospital, and then continues eastward along the south side of US 36 before turning south along the east side of 88th Street for a few hundred feet, connecting to 88th Street. The second segment runs through Autrey Park, from Rock Creek Parkway to West Flatiron Crossing Drive, at which point users can connect to the existing US 36 Bikeway.

US 36 Bikeway Extension

Conceptual Alignment



The Project consists of the preliminary and final design services for the trail. The Project is expected to be constructed within CDOT and Town rights-of-way, with the potential of entry into private property. If any right-of-way or easements are needed from private property, the preparation of right-of-way/easement plans/acquisitions will be negotiated separately.

Consultant shall coordinate all activities, tasks, meetings, communications and deliverables with the Town's designated Project Manager.

1. PROJECT MANAGEMENT

- a. Consultant shall create and provide a Project Management Plan which outlines an approach for managing the project including involved staff, key team members, schedule, reviews and other project needs.
- b. Consultant shall prepare agendas and lead periodic progress meetings with the Town.
- c. Consultant shall coordinate work activities with other consultants and Town staff.
- d. Consultant shall complete project closeout including delivery of all project documentation to the Town.

2. PRELIMINARY DESIGN

- a. Consultant shall conduct a visual site inspection of the corridor , taking photographs and videos as appropriate, and documenting the general site setting, such as current environmental constraints of the subject property and adjoining properties, and topographic features. Consultant shall provide current mapping showing ownership of the land within or near the trail alignment.
- b. Consultant shall obtain relevant CAD files for the recently completed US 36 managed lanes project for the project area.
- c. Consultant shall create a working electronic base map of the general area where the trail may be located, including 1' contours, salient surface features, utilities, rights-of-way and easements.
- d. Consultant shall consult and coordinate with the Town's Parks, Recreation and Open Space (PROS) Department, specifically regarding the second trail segment that runs through PROS-administered property.
- e. Consultant shall provide preliminary design alternatives generation and analysis, including the creation of preliminary design alternatives for discussion/vetting and evaluation of alternatives including preliminary cost estimates and pros/cons.
- f. Consultant shall select a preferred alternative.
- g. Consultant shall provide preliminary design drawings.

3. FINAL DESIGN

Upon approval of the Preliminary design option, Consultant shall prepare plans, specifications, detailed cost estimates, additional surveys (if necessary) and geotechnical investigations, and assist the Town in coordination efforts with the relocation of private utilities, if necessary, including the following:

- a. Preliminary design (30%) and Field Inspection Review ("FIR") meeting
 - i. Background information (geotechnical, civil, drainage)
 - ii. Design surveying, base mapping and right-of-way mapping
 - iii. Preliminary plans and cost estimate
 - iv. Right-of-way and easement acquisition, if required
 - v. Three meetings with relevant agencies and personnel

- b. "Pre-Final" Design and Final Office Review ("FOR") Meeting (90%)
 - i. Complete all right-of-way/easement acquisitions
 - ii. FOR plans (traffic, structural, SWMP, drainage, landscaping, irrigation, details), specifications and cost estimate
- c. Final design (100% complete)
 - i. Advertisement/bid plans, specifications, cost estimate
 - ii. Colorado professional engineer stamped record set (8.5" x 14")
 - iii. Colorado professional engineer stamped record set (11" x 17")
 - iv. Assistance during the construction phase

EXHIBIT B COMPENSATION

Consultant shall be paid on an hourly basis for the time spent by Consultant's employees performing the work described in **Exhibit A**, Scope of Services. Consultant shall provide itemized invoices detailing the work performed, and shall bill in increments of not less than 15 minutes. Subconsultants shall be billed at their direct costs. Such invoices shall be submitted to the Town on a monthly basis. Actual charges shall be based upon the following Billing Rate Schedule:

CATEGORY NAME	BILLING RATE
<i>Engineering</i>	
Sr. PIC/Sr. PM Civil	\$272
PIC/Sr. PM Civil	\$231
Civil Engineer X	\$201
Civil Engineer IX	\$184
Civil Engineer VIII	\$166
Civil Engineer VII	\$151
Civil Engineer VI	\$141
Civil Engineer V	\$134
Civil Engineer IV	\$123
Civil Engineer III	\$109
Civil Engineer II	\$96
Civil Engineer I	\$88
Engineering Designer V	\$119
Engineering Designer IV	\$104
Engineering Designer III	\$94
Engineering Designer II	\$88
Engineering Designer I	\$79
Engineering Tech VIII	\$168
Engineering Tech VII	\$146
Engineering Tech VI	\$126
Engineering Tech V	\$115
Engineering Tech IV	\$93
Engineering Tech III	\$83
Engineering Tech II	\$72
Engineering Tech I	\$64
<i>Construction Management</i>	
PIC/Sr. CM	\$208
Construction Manager VI	\$189
Construction Manager V	\$173
Construction Manager IV	\$160
Construction Manager III	\$145
Construction Manager II	\$134
Construction Manager I	\$118
Field Representative VII	\$160
Field Representative VI	\$139
Field Representative V	\$128
Field Representative IV	\$105

Field Representative III	\$97
Field Representative II	\$86
Field Representative I	\$80
CM Documentation Specialist III	\$115
CM Documentation Specialist II	\$102
CM Documentation Specialist I	\$90
<i>Planning & Design</i>	
Sr. PIC/Sr. PM LA/Mst Pln	\$226
PIC/Sr. PM LA/Master Plan	\$208
Landscape Architect VI	\$152
Landscape Architect V	\$133
Landscape Architect IV	\$123
Landscape Architect III	\$111
Landscape Architect II	\$103
Landscape Architect I	\$91
Landscape Technician III	\$95
Landscape Technician II	\$84
Landscape Technician I	\$70
PIC/Sr. PM Urban Design	\$192
Urban Designer V	\$178
Urban Designer IV	\$160
Urban Designer III	\$136
Urban Designer II	\$119
Urban Designer I	\$104
PIC/Sr. PM Planner	\$240
Sr. PM – Planner II	\$176
Sr. PM – Planner I	\$162
Planner III	\$134
Planner II	\$123
Planner I	\$97
Planner Associate IV	\$127
Planner Associate III	\$98
Planner Associate II	\$86
Planner Associate I	\$70
Sr. GIS Specialist Planner	\$104
GIS Specialist - Planner	\$90
Planning/GIS Intern	\$75

Scientist IV	\$139
Scientist III	\$121
Scientist II	\$93
Scientist I	\$80
Environmental Specialist	\$123
<i>Other</i>	
Contract Administrator	\$112
Project Coordinator	\$114
Project Admin. Asst	\$79
Graphics Specialist	\$112

Mileage	Per the IRS Allowable	
Copies	Color 8 1/2 x 11 = \$0.50 Color 11 x 17 = \$1.00	B/W 8 1/2 x 11 = \$0.10 B/W 11 x 17 = \$0.20
Plots for Submittals (per sqft)	\$5.50 bond Color \$0.25 Bond B/W \$3.50 mylar	

NO EMPLOYEE AFFIDAVIT

[To be completed only if Consultant has no employees]

1. Check and complete one:

I, _____, am a sole proprietor doing business as _____. I do not currently employ any individuals. Should I employ any employees during the term of my Agreement with the Town of Superior (the "Town"), I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

OR

I, _____, am the sole owner/member/shareholder of _____, a _____ [specify type of entity – *i.e.*, corporation, limited liability company], that does not currently employ any individuals. Should I employ any individuals during the term of my Agreement with the Town, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

2. Check one.

I am a United States citizen or legal permanent resident.

The Town must verify this statement by reviewing one of the following items:

- *A valid Colorado driver's license or a Colorado identification card;*
- *A United States military card or a military dependent's identification card;*
- *A United States Coast Guard Merchant Mariner card;*
- *A Native American tribal document;*
- *In the case of a resident of another state, the driver's license or state-issued identification card from the state of residence, if that state requires the applicant to prove lawful presence prior to the issuance of the identification card; or*
- *Any other documents or combination of documents listed in the Town's "Acceptable Documents for Lawful Presence Verification" chart that prove both Consultant's citizenship/lawful presence and identity.*

OR

I am otherwise lawfully present in the United States pursuant to federal law.

Consultant must verify this statement through the federal Systematic Alien Verification of Entitlement ("SAVE") program, and provide such verification to the Town.

Signature

Date

DEPARTMENT PROGRAM AFFIDAVIT

[To be completed only if Consultant participates in the Department of Labor Lawful Presence Verification Program]

I, SCOTT J. BELONGER, as a public contractor under contract with the Town of Superior (the "Town"), hereby affirm that:

1. I have examined or will examine the legal work status of all employees who are newly hired for employment to perform work under this public contract for services ("Agreement") with the Town within 20 days after such hiring date;

2. I have retained or will retain file copies of all documents required by 8 U.S.C. § 1324a, which verify the employment eligibility and identity of newly hired employees who perform work under this Agreement; and

3. I have not and will not alter or falsify the identification documents for my newly hired employees who perform work under this Agreement.

Scott Belonger

Digitally signed by Scott Belonger
Date: 2020.05.11 07:57:46-08'00'

05/11/2020

Signature

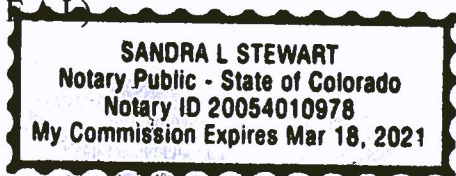
Date

STATE OF COLORADO)
) ss.
COUNTY OF Boulder)

The foregoing instrument was subscribed, sworn to and acknowledged before me this 11th day of MAY, 2020, by SCOTT J. BELONGER as SR. PROJECT MANAGER of OTAK, INC.

My commission expires: 03/18/2021

(S F A I)



Sandra L. Stewart
Notary Public