

**SUBJECT: APPROVAL OF CONTRACT FOR FINAL GRADING
 INSPECTIONS OF MARSHALL FIRE LOTS WITH OTAK, INC**

DATE: APRIL 16, 2024

PRESENTED BY: KURT KOWAR, DIRECTOR OF PUBLIC WORKS AND UTILITIES

SUMMARY:

Staff recommends approval of a contract with the engineering on-call consultant Otak, Inc for Marshall Fire final grading inspection services in the amount of \$129,146. This will cover final grading inspections of the remaining 375 Marshall Fire lots through 2025.

BACKGROUND:

The Engineering staff is over capacity with work load as Marshall Fire final grading inspection requests increase with completion of rebuild homes. There are on average 12 inspections per week that take approximately 45 minutes each that the Engineering team have been attempting to absorb. The frequency of the final grading inspections is anticipated to remain steady in the coming months as many residents are completing their homes. Addition of resources is necessary in order to maintain project delivery of the City's annual Capital Improvement Program and maintain responsive services for rebuild home owners.

Services include performing final lot grading inspections (and anticipated re-inspections) of Marshall Fire lots to ensure compliance with approved lot grading plans.

Otak is part of a group of on-call consultants for the City that were selected through a Request for Proposals process based on qualifications and rates in 2021, and was selected due to the proximity of Otak to the burn areas (Louisville office). Having a local office in Louisville reduces costs related to travel time and mileage.

FISCAL IMPACT:

The building permit fees from the Marshall Fire will cover the costs of the review of the permits. The account is 101530-540140 Prof Services – Plan Review/Inspection. A budget amendment will be required to add this contract to that account.

PROGRAM/SUB-PROGRAM IMPACT:

This effort supports recovery efforts for the Marshall Fire for final grading inspection services.

RECOMMENDATION:

Staff recommends City Council authorize the Mayor to execute a proposed contract with Otak, Inc for Marshall Fire final grading inspections of Marshall Fire lots through December 2025 in an amount not to exceed \$129,146.

SUBJECT: FINAL GRADING INSPECTION SERVICES CONTRACT**DATE: APRIL 16, 2024****PAGE 2 OF 2****ATTACHMENT(S):**

1. Contract

STRATEGIC PLAN IMPACT:

☒	 Financial Stewardship & Asset Management	☒	 Reliable Core Services
☒	 Vibrant Economic Climate	☒	 Quality Programs & Amenities
☐	 Engaged Community	☒	 Healthy Workforce
☐	 Supportive Technology	☐	 Collaborative Regional Partner

**AN AGREEMENT BY AND BETWEEN THE CITY OF LOUISVILLE
AND OTAK, INC.
FOR CONSULTING SERVICES**

1.0 PARTIES

This AGREEMENT FOR CONSULTING SERVICES (this "Agreement") is made and entered into this 16th day of April, 2024 (the "Effective Date"), by and between the **City of Louisville**, a Colorado home rule municipal corporation, hereinafter referred to as the "City", and Otak, Inc a Colorado Corporation hereinafter referred to as the "Consultant".

2.0 RECITALS AND PURPOSE

- 2.1 The City desires to engage the Consultant for the purpose of providing Marshall Fire Grading Inspection services as further set forth in the Consultant's Scope of Services (which services are hereinafter referred to as the "Services").
- 2.2 The Consultant represents that it has the special expertise, qualifications and background necessary to complete the Services.

3.0 SCOPE OF SERVICES

The Consultant agrees to provide the City with the specific Services and to perform the specific tasks, duties and responsibilities set forth in Scope of Services/Fees attached hereto as Exhibit "A" and incorporated herein by reference.

4.0 COMPENSATION

- 4.1 The City shall pay the Consultant for services under this agreement a total not to exceed the amounts set forth in Exhibit "A" attached hereto and incorporated herein by this reference. The City shall not pay mileage and other reimbursable expenses (such as meals, parking, travel expenses, necessary memberships, etc.), unless such expenses are (1) clearly set forth in the Scope of Services, and (2) necessary for performance of the Services ("Pre-Approved Expenses"). The foregoing amounts of compensation shall be inclusive of all costs of whatsoever nature associated with the Consultant's efforts, including but not limited to salaries, benefits, overhead, administration, profits, expenses, and outside consultant fees. The Scope of Services and payment therefor shall only be changed by a properly authorized amendment to this Agreement. No City employee has the authority to bind the City with regard to any payment for any services which exceeds the amount payable under the terms of this Agreement.
- 4.2 The Consultant shall submit monthly an invoice to the City for Services rendered and a detailed expense report for Pre-Approved Expenses incurred during the previous month. The invoice shall document the Services provided during the

preceding month, identifying by work category and subcategory the work and tasks performed and such other information as may be required by the City. The Consultant shall provide such additional backup documentation as may be required by the City. The City shall pay the invoice within thirty (30) days of receipt unless the Services or the documentation therefor are unsatisfactory. Payments made after thirty (30) days may be assessed an interest charge of one percent (1%) per month unless the delay in payment resulted from unsatisfactory work or documentation therefor.

5.0 PROJECT REPRESENTATION

- 5.1 The City designates Cameron Fowlkes as the responsible City staff to provide direction to the Consultant during the conduct of the Services. The Consultant shall comply with the directions given by Cameron Fowlkes and such person's designees.
- 5.2 The Consultant designates Tim Rohan as its project manager and as the principal in charge who shall be providing the Services under this Agreement. Should any of the representatives be replaced, particularly Tim Rohan and such replacement require the City or the Consultant to undertake additional reevaluations, coordination, orientations, etc., the Consultant shall be fully responsible for all such additional costs and services.

6.0 TERM

- 6.1 The term of this Agreement shall be from the Effective Date to December 31, 2025, unless sooner terminated pursuant to Section 13, below. The Consultant's Services under this Agreement shall commence on the Effective Date and Consultant shall proceed with diligence and promptness so that the Services are completed in a timely fashion consistent with the City's requirements.
- 6.2 Nothing in this Agreement is intended or shall be deemed or construed as creating any multiple-fiscal year direct or indirect debt or financial obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20 or any other constitutional or statutory provision. All financial obligations of the City under this Agreement are subject to annual budgeting and appropriation by the Louisville City Council, in its sole discretion. Notwithstanding anything in this Agreement to the contrary, in the event of non-appropriation, this Agreement shall terminate effective December 31 of the then-current fiscal year.

7.0 INSURANCE

- 7.1 The Consultant agrees to procure and maintain, at its own cost, the policies of insurance set forth in Subsections 7.1.1 through 7.1.4. The Consultant shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant

to this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types. The coverages required below shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained from the date of commencement of services hereunder. The required coverages are:

- 7.1.1 Workers' Compensation insurance as required by the Labor Code of the State of Colorado and Employers Liability Insurance. Evidence of qualified self-insured status may be substituted.
- 7.1.2 General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate. The policy shall include the City of Louisville, its officers and its employees, as additional insureds, with primary coverage as respects the City of Louisville, its officers and its employees, and shall contain a severability of interests provision.
- 7.1.3 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than FOUR HUNDRED THOUSAND DOLLARS (\$400,000) per person in any one occurrence and ONE MILLION DOLLARS (\$1,000,000) for two or more persons in any one occurrence, and auto property damage insurance of at least FIFTY THOUSAND DOLLARS (\$50,000) per occurrence, with respect to each of Consultant's owned, hired or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. If the Consultant has no owned automobiles, the requirements of this paragraph shall be met by each employee of the Consultant providing services to the City of Louisville under this Agreement.
- 7.1.4 Professional Liability coverage with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate.
- 7.2 The Consultant's general liability insurance, automobile liability and physical damage insurance, and professional liability insurance shall be endorsed to include the City, and its elected and appointed officers and employees, as additional insureds, unless the City in its sole discretion waives such requirement. Every policy required above shall be primary insurance, and any insurance carried by the City, its officers, or its employees, shall be excess and not contributory insurance to that provided by the Consultant. Such policies shall contain a severability of interests provision. The Consultant shall be solely responsible for any deductible losses under each of the policies required above.

- 7.3 Certificates of insurance shall be provided by the Consultant as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City. No required coverage shall be cancelled, terminated or materially changed until at least 30 days' prior written notice has been given to the City. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- 7.4 Failure on the part of the Consultant to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the City may immediately terminate this Agreement, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Consultant to the City upon demand, or the City may offset the cost of the premiums against any monies due to Consultant from the City.
- 7.5 The parties understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to the City, its officers, or its employees.

8.0 INDEMNIFICATION

To the fullest extent permitted by law, the Consultant agrees to indemnify and hold harmless the City, and its elected and appointed officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the services hereunder, if and to the extent such injury, loss, or damage is caused by the negligent act, omission, or other fault of the Consultant or any subcontractor of the Consultant, or any officer, employee, or agent of the Consultant or any subcontractor, or any other person for whom Consultant is responsible. The Consultant shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands. The Consultant shall further bear all other costs and expenses incurred by the City or Consultant and related to any such liability, claims and demands, including but not limited to court costs, expert witness fees and attorneys' fees if the court determines that these incurred costs and expenses are related to such negligent acts, errors, and omissions or other fault of the Consultant. Notwithstanding the foregoing, Consultant's duty to defend, indemnify and hold harmless the City, and its elected and appointed officials and employees as set forth in this section shall only arise upon determination, by adjudication, alternative dispute resolution, or mutual agreement between Consultant and the City, of the Consultant's liability or fault. The City shall be entitled to its costs and attorneys' fees incurred in any action to enforce the provisions of this Section 8.0. The Consultant's indemnification obligation shall not be

construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the City.

9.0 QUALITY OF WORK

Consultant's professional services shall be in accordance with the prevailing standard of practice normally exercised in the performance of services of a similar nature in the Denver metropolitan area.

10.0 INDEPENDENT CONTRACTOR

It is the expressed intent of the parties that the Consultant is an independent contractor and not the agent, employee or servant of the City, and that:

- 10.1. Consultant shall satisfy all tax and other governmentally imposed responsibilities including but not limited to, payment of state, federal, and social security taxes, unemployment taxes, worker's compensation and self-employment taxes. No state, federal or local taxes of any kind shall be withheld or paid by the City.
- 10.2. **Consultant is not entitled to worker's compensation benefits except as may be provided by the Consultant nor to unemployment insurance benefits unless unemployment compensation coverage is provided by the Consultant or some entity other than the City.**
- 10.3. Consultant does not have the authority to act for the City, or to bind the City in any respect whatsoever, or to incur any debts or liabilities in the name of or on behalf of the City.
- 10.4. Consultant has and retains control of and supervision over the performance of Consultant's obligations hereunder and control over any persons employed by Consultant for performing the Services hereunder.
- 10.5. The City will not provide training or instruction to Consultant or any of its employees regarding the performance of the Services hereunder.
- 10.6. Neither the Consultant nor any of its officers or employees will receive benefits of any type from the City.
- 10.7. Consultant represents that it is engaged in providing similar services to other clients and/or the general public and is not required to work exclusively for the City.
- 10.8. All Services are to be performed solely at the risk of Consultant and Consultant shall take all precautions necessary for the proper and sole performance thereof.

- 10.9. Consultant will not combine its business operations in any way with the City's business operations and each party shall maintain their operations as separate and distinct.

11.0 ASSIGNMENT

Except as provided in section 22.0 hereof, Consultant shall not assign or delegate this Agreement or any portion thereof, or any monies due or to become due hereunder without the City's prior written consent.

12.0 DEFAULT

Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default.

13.0 TERMINATION

- 13.1 This Agreement may be terminated by either party for material breach or default of this Agreement by the other party not caused by any action or omission of the other party by giving the other party written notice at least thirty (30) days in advance of the termination date. Termination pursuant to this subsection shall not prevent either party from exercising any other legal remedies which may be available to it.

- 13.2 In addition to the foregoing, this Agreement may be terminated by the City for its convenience and without cause of any nature by giving written notice at least fifteen (15) days in advance of the termination date. In the event of such termination, the Consultant will be paid for the reasonable value of the services rendered to the date of termination, not to exceed a pro-rated daily rate, for the services rendered to the date of termination, and upon such payment, all obligations of the City to the Consultant under this Agreement will cease. Termination pursuant to this subsection shall not prevent either party from exercising any other legal remedies which may be available to it.

14.0 INSPECTION AND AUDIT

The City and its duly authorized representatives shall have access to any books, documents, papers, and records of the Consultant that are related to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

15.0 DOCUMENTS

All computer input and output, analyses, plans, documents photographic images, tests, maps, surveys, electronic files and written material of any kind generated in the

performance of this Agreement or developed for the City in performance of the Services are and shall remain the sole and exclusive property of the City. All such materials shall be promptly provided to the City upon request therefor and at the time of termination of this Agreement, without further charge or expense to the City. Consultant shall not provide copies of any such material to any other party without the prior written consent of the City.

16.0 ENFORCEMENT

- 16.1 In the event that suit is brought upon this Agreement to enforce its terms, the prevailing party shall be entitled to its reasonable attorneys' fees and related court costs.
- 16.2 This Agreement shall be deemed entered into in Boulder County, Colorado, and shall be governed by and interpreted under the laws of the State of Colorado. Any action arising out of, in connection with, or relating to this Agreement shall be filed in the District Court of Boulder County of the State of Colorado, and in no other court. Consultant hereby waives its right to challenge the personal jurisdiction of the District Court of Boulder County of the State of Colorado over it.

17.0 COMPLIANCE WITH LAWS

- 17.1 Consultant shall be solely responsible for compliance with all applicable federal, state, and local laws, including the ordinances, resolutions, rules, and regulations of the City; for payment of all applicable taxes; and obtaining and keeping in force all applicable permits and approvals.
- 17.2 Consultant acknowledges that the City of Louisville Code of Ethics provides that independent contractors who perform official actions on behalf of the City which involve the use of discretionary authority shall not receive any gifts seeking to influence their official actions on behalf of the City, and that City officers and employees similarly shall not receive such gifts. Consultant agrees to abide by the gift restrictions of the City's Code of Ethics.

18.0 INTEGRATION AND AMENDMENT

This Agreement represents the entire Agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.

19.0 NOTICES

All notices required or permitted under this Agreement shall be in writing and shall be given by hand delivery, by United States first class mail, postage prepaid, registered or certified, return receipt requested, by national overnight carrier, or by facsimile transmission, addressed to the party for whom it is intended at the following address:

If to the City:

City of Louisville
Attn: City Manager
749 Main Street
Louisville, Colorado 80027
Telephone: (303) 335-4533
Fax: (303) 335-4550

If to the Consultant:

Otak, Inc.
371 Centennial Parkway, Suite 210
Louisville, CO 80027
Telephone – (303) 444-2073

Any such notice or other communication shall be effective when received as indicated on the delivery receipt, if by hand delivery or overnight carrier; on the United States mail return receipt, if by United States mail; or on facsimile transmission receipt. Either party may by similar notice given, change the address to which future notices or other communications shall be sent.

20.0 EQUAL OPPORTUNITY EMPLOYER

- 20.1 Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability or national origin. Consultant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, age, sex, disability, or national origin. 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. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity Laws.
- 20.2 Consultant shall be in compliance with the applicable provisions of the American with Disabilities Act of 1990 as enacted and from time to time amended and any other applicable federal, state, or local laws and regulations. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the life of this Agreement or any renewal thereof.

21.0 NO THIRD PARTY BENEFICIARIES

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to City and Consultant, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than City or Consultant receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

22.0 SUBCONTRACTORS

Consultant may utilize subcontractors identified in its qualifications submittal to assist with non-specialized works as necessary to complete projects. Consultant will submit any proposed subcontractor and the description of its services to the City for approval. The City will not work directly with subcontractors.

23.0 AUTHORITY TO BIND

Each of the persons signing below on behalf of any party hereby represents and warrants that such person is signing with full and complete authority to bind the party on whose behalf of whom such person is signing, to each and every term of this Agreement.

In witness whereof, the parties have executed this Agreement to be effective on the date first above written.

CITY OF LOUISVILLE,
a Colorado Municipal Corporation

By: _____
Mayor

Attest: _____
Meredyth Muth, City Clerk

CONSULTANT:

By: _____
Title: _____

Exhibit A – Scope of Services/Fees



April 2, 2024

Cameron Fowlkes
City of Louisville, Public Works Department
749 Main Street.
Louisville, CO 80027

**RE: Marshall Fire Reconstruction – Final Grading Inspections
Otak Project No. 020108.E00**

Dear Mr. Fowlkes,

As requested, Otak has prepared this proposal to provide “extension of staff” services to help the City of Louisville (City) conduct final grading inspections prior to granting Certificates of Occupancy for houses being reconstructed after the Marshall Fire. Otak inspectors/engineers will follow the attached “Louisville Lot Grading Checklist,” which was provided to Otak on February 23, 2024, to conduct inspections assigned to us by the City.

These services will be provided on a time and materials basis for an estimated total of \$129,146. Otak will invoice monthly in accordance with our on-call engineering services contract with the City. Our fee estimate is outlined below.

Assumptions:

- For each inspection, we assume:
 - 0.25 hours of prep time (scheduling with the City, downloading approved plans, confirming travel route)
 - 0.75 hours of travel time per inspection, and
 - 0.25 hours of follow-up communication with builders.
- The fee was estimated using an average rate of \$145/hour. Actual staff time will be billed in accordance with the 2024 On-Call rates.
- Average 5% labor rate escalation for 2025. Actual staff time will be billed in accordance with the 2025 On-Call rates, once established.
- No charge for mileage (built into our rates).
- Approximately 4 hours per month of project management, invoicing, and coordination time
- Services to be provided through 12/31/2025.
- The City will contact the Otak Project Manager (Tim Rohan) to request/coordinate inspections.

Fee Estimate

		2024	1st Inspection	Follow up Inspection	2024 Total		2025	1st Inspection	Follow up Inspection	2025 Total
Number of Lots for Inspection	375	200	200	150			175	175	131	
Fee for Initial Inspection		\$ 200	\$ 40,000		\$ 40,000		\$ 210	\$ 36,750		\$ 36,750
Fee for Follow-up Inspection (assume 75% reinspection rate)		\$ 145		\$ 21,750	\$ 21,750		\$ 152		\$ 19,983	\$ 19,983
				2024 Total =	\$ 61,750				2025 Total =	\$ 56,733

Task	Fee
Project Management & Coordination	\$10,663
2024 Inspections	\$61,750
2025 Inspections	\$56,733
Total	\$129,146

Thank you for the opportunity to continue in service to the City and the residents committed to rebuilding after the destructive Marshall Fire.

If you have any questions, please do not hesitate to call me at 720.758.7729.

Sincerely,



Matthew Marshall
Interim Regional Manager
matt.marshall@otak.com



Tim Rohan
Project Engineer
timothy.rohan@otak.com

City of Louisville Lot Grading Inspection Checklist

Before going out:

- Download or print the approved grading plan from here (Approved folder):
[\\COL-FS01\\City_Share\\$\\Building_Dept\\Plan_Reviews\\03_MARSHALL_FIRE_REBUILDS\\01_APPROVED_PLANS\\ALREADY_REVIEWED](\\COL-FS01\\City_Share$\\Building_Dept\\Plan_Reviews\\03_MARSHALL_FIRE_REBUILDS\\01_APPROVED_PLANS\\ALREADY_REVIEWED)
- If you can't find the address check here:
[\\COL-FS01\\City_Share\\$\\Building_Dept\\Plan_Reviews\\03_MARSHALL_FIRE_REBUILDS\\02_PERMITTED_REVISIONS\\APPROVED](\\COL-FS01\\City_Share$\\Building_Dept\\Plan_Reviews\\03_MARSHALL_FIRE_REBUILDS\\02_PERMITTED_REVISIONS\\APPROVED)

Water Meter

- Verify meter lid is good condition.
- If meter is in driveway, make sure the lid can be removed. Clean off all concrete from lid.

Curb Stop

- Verify cap is in good condition
- If curb stop is in driveway, make sure the lid can be removed. Clean off all concrete from lid.
 - Make sure curb stop has extra valve box if installed in driveway.

Grading

- Verify grading matches approved plan.
- Make sure swale and high points are installed correctly.
- Make sure there are no low spot near the foundation
- Make sure water does not flow into the neighbor's lot. May need to require a small berm if the lot next door is not built yet or in construction.
- Verify Sump pit drain location
- Make sure nothing is piped right behind the walk (should be at least 10 feet from the walk).
- Verify downspouts are all accessible
- Verify no trespassing on City Property. If this occurs, contact code enforcement (Susan 720-636-3473 or Nancy 720-355-5041) and text photos. Do not approve until this is resolved or open space has given you the ok.

Erosion control

- Erosion control must be installed until landscaping is done (silt fence or waddles)

ROW Damages

- Verify from Mark if there are any ROW damages. They must get a ROW permit and inspection for the repairs.
- If the contractor can produce photos before construction of the home that prove it was damaged prior, they do not have to repair.

If corrections are needed

- Send text message to contact with all corrections. Make sure to include address.
- Identify if reinspection is required or if photos are ok.

When approved

- Sign and date the inspection card under ROW/Grading inspection (near bottom of card).