



AGENDA ITEM REQUEST FORM
Communication to Board of County Commissioners

To: Chair Sandy Hollingsworth, Commissioner Web Sill, and Commissioner Linda Isenhart

From: Sarah Baciak
Name

Paralegal, County Attorney's Office
Title

Today's Date: 3/23/2022

BoCC Meeting Date: 4/5/2022

Does this item require a PUBLIC HEARING? No.

Item: Agreement for Professional Surveying Service (Flatirons Inc.)

Request or Issue: Approval and signature of Agreement.

Recommended Action / Next Step: Approval of Agreement.

Financial Impact(s): Have you spoken to the Finance Director about this expense/revenue? No, but Flatirons, Inc.'s rates are listed in Appendix 1 of the attached Agreement.

Grant Apps: N/A

Associated Agencies: Flatirons Inc.

Background Information: Contract to work with Flatirons Inc. in regard to Surveying Services.

Amount of agenda time needed: 10 mins.

Is this item time sensitive: No deadline.

Contact for Follow Up: Bradford Benning, County Attorney.

AGREEMENT FOR PROFESSIONAL SURVEYING SERVICES

THIS AGREEMENT FOR PROFESSIONAL SURVEYING SERVICES (“Agreement”), made this 14th day of March, 2022, by and between Flatirons, Inc., a Colorado Corporation, having its principal business located at 3825 Iris Ave., Ste. 395, Boulder, Colorado 80301 (“FSI”), and, Gilpin County, a Colorado statutory county, whose address is 203 Eureka St., Central City, Colorado 80427 (“County”). FSI and County may be collectively referred to herein as the “Parties”. For and in consideration of the following terms, conditions, covenants, and agreements set forth herein, the Parties hereto agree as follows:

1. EACH PARTY’S CONTACT INFORMATION

Each Party’s main contact for the exchange of information and proceeding under this Agreement is set forth below. Either party may change their contact information upon prior notice to the other party.

1.1. County Contact: County Attorney, Brad Benning; Email: bbenning@gilpincounty.org; Telephone: 303-582-2510; Cell Phone; Physical Address: 203 Eureka St., Central City, CO 80427 (deliveries); Mailing Address: P.O. Box 366, Central City, CO 80427.

1.2. FSI Contact: Jess Kuntz, FSI Vice President; Email: jkuntz@flatironsinc.com; Telephone: 303-443-7001 ext. 294; Cell Phone: 303-809-4107; Physical and Mailing Address: 655 4th Avenue, Longmont, Colorado 80501.

1.3. FSI Alternate Contact: Zack Gowan, PLS, CFedS, Vice President; Email zgowan@flatironsinc.com; Telephone: 303-443-7001 ext. 683; Physical and Mailing Address: 3825 Iris Ave., Ste. 395, Boulder, Colorado 80301.

2. SERVICES TO BE RENDERED.

FSI shall perform on call survey services for the County including without limitation the following services (“Services”):

- 2.1.** All matters included in C.R.S. §30-10-903(1) and (2)
- 2.2.** Prepare legal descriptions, plats and maps for subdividing property
- 2.3.** Perform boundary line adjustments
- 2.4.** Replace lost or obliterated property corners
- 2.5.** Set boundary markers or property corners, also known as monuments
- 2.6.** Retrace boundaries for fences and other purposes
- 2.7.** Locate, relocate, establish, reestablish, or retrace any property line or boundary of any parcel of land, right-of-way, easement, or alignment of those lines or boundaries
- 2.8.** Prepare legal descriptions and information shown with the description of any deed or other title document
- 2.9.** Prepare maps or plats
- 2.10.** Prepare Record of Surveys

- 2.11. Review maps and/or surveys such as Parcel Maps, Final Maps, or Tentative Maps
- 2.12. Investigate boundary discrepancies

FSI shall provide these services at the hourly rates identified in the attached **Appendix 1** and shall provide a fixed estimate for each Project. FSI shall not be obligated to County for the provision of any services of any nature whatsoever not specifically set forth in Section 1 unless otherwise agreed to in writing by the Parties. A list of excluded Services is attached as **Appendix 2**. An amendment to this Agreement is required for any Services not provided herein.

3. **TERM OF AGREEMENT.**

This Agreement shall commence on the date it is executed by both parties and shall be in effect until December 31, 2022. The Parties may renew the Agreement for additional one-year terms (each calendar year) upon written agreement of the parties.

4. **PROJECT WORK ORDERS.**

For each project for which Services are requested (“Project”), County shall provide FSI with a work order (“Work Order”) describing the Project and the property (“Property”) that is the subject of the Project. The Work Order shall include details and information material to the Project. The parties or their designated agents shall sign the Work Order authorizing the FSI to undertake the Project. For each Project, the Work Order shall include the following:

- 4.1. Identification of the Property location including the County Assessor Schedule and Parcel Nos., address, and Property owner’s name;
- 4.2. Project completion deadline and, if applicable, Project timeline or schedule;
- 4.3. Description of access to Property or how access will be obtained. If Property is not owned by County and County does not otherwise provide FSI with written authorization from Property owner allowing access, FSI shall proceed in accordance with Colorado law including without limitation pursuant to C.R.S. §18-4-515;
- 4.4. Proposed Budget for the Surveyor’s completion of the Project;
- 4.5. Any additional information the FSI may reasonably request or which the Parties believe is helpful or necessary to completion of the Project.

A sample Work Order template is attached as **Appendix 3**.

5. **DUTIES AND PERFORMANCE**

FSI shall complete each Project in accordance with this Agreement and Work Orders subject to the following qualifications.

- 5.1. Not all conditions that are discovered in the field or by research can be anticipated prior to commencement of work, therefore pricing is based on typical conditions found for a majority of surveys. In the event that, upon commencement of the work, any unforeseen boundary discrepancy, dispute, conflicting boundary evidence, or parcel description ambiguity is discovered, FSI reserves the right to suspend work on the Project, notify the

the County of the added scope and then proceed in the following manner: (1) FSI will describe the discrepancy, dispute, conflicting boundary evidence, or parcel description ambiguity, and make recommendations for resolution of same, with an estimate of cost; (2) an invoice will be prepared for time spent to the date of cessation of work; and (3) upon resolution and agreement with the County regarding the discrepancy, dispute, conflict, or parcel description ambiguity, FSI will complete the Project.

5.2. Certain procedures and results are beyond the control of FSI, such as real estate closing transactions, and obtaining acceptance or approval by a governing body or others, and County agrees that such procedures and results do not constitute conditions precedent to payment by County, nor a requirement for successful completion of performance on the part of FSI. FSI is not responsible for delay, nor shall FSI be responsible for damages, or be in default by reason of lockouts, accidents or acts of God; or the failure of the County to furnish timely information or to approve or disapprove FSI's work; or delay or faulty performance by County, other contractors or governmental agencies; or any other delays beyond FSI's control. FSI shall not be liable for damages resulting from the actions or inactions of governmental agencies including, but not limited to permit processing, environmental impact reports, dedication, general plans and amendments thereto, zoning matters, annexations or consolidations, use or conditional use permits and building permits.

6. FEE PAYMENT

Invoices will be billed at completion of performance of services as set forth in Paragraph 2 above, or at the end of the calendar month for on-going projects. Invoices are due upon receipt. Timely payments to FSI shall not be affected by real estate closing transactions or governmental acceptances or approvals. Invoices are past due thirty days after the date of the invoice. Past due invoices will be charged a late payment charge of one- and one-half percent per month until all invoices are paid in full. If County disagrees with the invoice, County agrees to inform FSI in writing within ten days after receipt of the invoice. In the event of non-payment which requires collection efforts, County agrees to pay all expenses of collection, late payment charges and reasonable attorney's fees. County also agrees to pay to FSI interest on all past due balances at the rate of 1.5% per month.

7. DEFAULT - STOP WORK

In the event the County fails to pay FSI within thirty (30) days after invoices are rendered, County agrees that FSI shall have the right to consider that event a total breach of this Agreement. FSI may, upon default of any of the terms of this contract by County, cease performance under this Contract, and the Contract may be terminated at the option of FSI upon ten (10) days written notice to the County. Upon termination due to default of this Contract, FSI is entitled to all reasonable expenses resulting from such termination, including, but not limited to, all costs, attorney fees and charges to the date of termination and County shall promptly pay FSI for all of the fees, charges, and services provided by FSI.

8. SURVEYOR'S COMPLIANCE WITH ALL LAWS, REGULATIONS, PROFESSIONAL STANDARDS, AND STANDARD OF CARE

FSI shall comply with all laws, regulations and professional standards applicable to the survey work performed for County. Surveyor's Services shall be conducted in accordance with all laws applicable to such work and with the same level and degree of skill ordinarily exercised by members of its profession operating in a similar locality, at a similar time and under similar conditions and circumstances. FSI represents that FSI has all required up to date professional licenses and certifications to complete the Survey.

9. ACCESS TO PROPERTIES TO BE SURVEYED

FSI shall confer with County regarding how access to a Property is to be obtained prior to undertaking survey work. If the Property to be surveyed is not owned by County, FSI shall consult with County regarding obtaining access from the Property owner. If written or verbal permission to enter the Property is not obtained from the Property owner, FSI shall comply with C.R.S. §18-4-515, which provides an exception to criminal trespass for professional land surveyors licensed pursuant to C.R.S. §12-25-214 or those acting under their direct supervision as an employee, agent or representative if the notice and other requirements of C.R.S. 18-4-515 are met.

10. PROPERTY USE DISRUPTION

County agrees and acknowledges that the services provided by FSI commonly require certain activities that may disrupt the use of the Property Location and may cause minor disturbance, alteration, or damage to the terrain and vegetation thereabout and that FSI will not restore the property to its original state. FSI shall use its best efforts to avoid or minimize any such disruptions, disturbance, alteration, or damage. To the extent possible, FSI shall consult with County prior to undertaking any actions that cause disruptions, disturbances, alterations, or damage and obtain County's consent.

11. REPORTS AND DOCUMENTS.

In connection with the Services provided by Surveyor, FSI shall deliver one or more printed, non-electronic and/or electronic surveys, reports, blueprints, or other documents (collectively "Documents") reflective of the Services provided and the results thereof. Any Documents provided to County by FSI in connection with the Project are intended for the sole and exclusive use of County and its agents and employees, for the Project at the Project Location. FSI shall also provide draft documents to County at County's request from time to time for its information. However, County shall only rely upon Documents provided in printed, non-electronic format, which are duly marked with the original seal of the Surveyor. In the event that a discrepancy exists between Documents provided in electronic format and Documents provided in printed, non-electronic format, the latter shall govern and control. Documents provided to County in electronic format are only for the convenience of the parties hereto, and any conclusion or information obtained or derived from such electronic Documents will be at County's or other user's sole risk. To the extent Documents are required by law to be filed with

the Gilpin County Surveyor's Office, Clerk & Recorder's Office, or other designated Gilpin County office, FSI shall provide copies of those original Documents to the County.

12. INSURANCE.

12.1. FSI shall maintain at its own expense the following insurance and shall provide Certificates to County upon written request.

12.1.1. Worker's Compensation Insurance, in the form and amounts required by statute or other applicable law;

12.1.2. Employer's General Liability Insurance with a minimum combined single limit of \$1,000,000.00 for each occurrence and \$2,500,000 aggregate.

12.1.3. Commercial Automobile Liability Insurance with a minimum combined single limit of \$1,000,000.00 for each occurrence and \$2,000,000 aggregate.

12.1.4. Professional Liability Insurance with a minimum combined single limit of \$1,000,000.00 for each occurrence and \$2,000,000 aggregate.

12.2. The policy(ies) required shall be endorsed to include County as an additional insured. Every policy required above shall be primary insurance and any insurance carried by County, its officers, or its employees, or carried by or provided through any insurance pool of County, shall be excess and not contributory insurance to that provided by Surveyor. No additional insured endorsement to any policy shall contain any exclusion for bodily injury or property damage arising from completed operations. FSI shall be solely responsible for any deductible losses under any policy required above.

12.3. The certificate of insurance provided by FSI shall be completed by FSI's insurance agent as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by County prior to commencement of the Contract. No other form of certificate shall be used. The certificate shall identify this Contract and shall provide that the coverage afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to County. The completed certificate of insurance shall be sent to OWNER.

13. CORRECTION OF WORK.

FSI shall correct any work that fails to conform to the requirements of this Agreement or the law, and shall remedy any defects or errors.

14. TERMINATION OF AGREEMENT

This Agreement may be terminated during its term by either party for any reason upon 30 days written notice prior to termination subject to the following caveats.

14.1. Either Party may terminate this Agreement immediately if the other party is in breach of this Agreement.

14.2. If the County is not in breach of the Agreement, FSI shall not terminate while a Project is pending completion unless the County wants immediate termination.

15. BREACH OF CONTRACT

If County fails to timely pay FSI through no fault of the Surveyor, FSI may terminate the Agreement and recover from the County payment for all Work executed and for any proven loss sustained upon any materials, equipment tools, and construction equipment and machinery, including reasonable profit and damages.

16. INDEPENDENT CONTRACTOR

FSI is an independent contractor and not an employee of Gilpin County.

17. MISCELLANEOUS PROVISIONS

17.1. **Governmental Immunity.** The parties hereto understand and agree that County is relying on, and does not waive or intend to waive by any provision of this Contract, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§24-10-101 *et seq.*, as from time to time amended, or otherwise available to County, its officers, or its employees.

17.2. **Governing Law and Venue.** This Agreement shall be governed by the law of the state of Colorado and venue for any dispute after arbitration shall lie in the County of Gilpin, State of Colorado.

17.3. **Not Assignable.** FSI shall not assign this Contract without the express written consent of the County. Upon an approved assignment, the provisions of the Contract are binding on the heirs, successors or assignees of the parties.

17.4. **No Third-Party Beneficiary.** Nothing contained in this Agreement shall be deemed to create any contractual or third-party beneficiary relationship between any parties other than Owner and Contractor.

17.5. **Contract Rights Cumulative.** The rights and remedies available under this Contract shall be in addition to any rights and remedies allowed by law.

17.6. **Non-Waiver.** No failure to enforce any provision of the Contract on account of any breach thereof, shall be considered as a waiver of any right to enforce provisions

of this Contract concerning any subsequent or continuing breach.

- 17.7. Survival Clause.** The terms of this Agreement that contemplate rights beyond the final payment shall remain in full force and effect following final payment.
- 17.8. Severable Contract.** If any provision of this is held invalid, such invalidity shall not affect other provisions or applications of this Contract that can be given effect without the invalid provision or application if the fundamental purposes of the Contract remain intact. To this end the provisions of this Contract are severable.
- 17.9. Binding Dispute Resolution.** For any claim, dispute or controversy arising out of or relating to this Agreement, not otherwise resolved by informal mediation which shall be completed within 30 days of either party requesting mediation by written notice, the method of binding dispute resolution shall be as follows: Binding arbitration conducted by Judicial Arbiters' Group (JAG), Denver CO. The prevailing party in any arbitration proceeding or related court proceeding shall be awarded reasonable costs and attorney fees.
- 17.10. Invalidity of Any Provision.** Should any portion of this Agreement at any time during its effective term be in conflict with any applicable law, then such provision shall continue in effect only to the extent permitted by law. The invalidity of any one or more of the covenants, phrases, sentences, clauses or provisions of this Agreement or any part thereof, shall not affect the remaining portions of this Agreement or any part thereof, and in the event any one of the same shall be declared invalid, this Agreement shall be construed as if such invalid portion had not been inserted, provided the same does not work a substantial injustice.
- 17.11. Counterparts.** This Agreement may be executed in counterparts, in which case each counterpart shall constitute one and the same instrument.
- 17.12. Joint Drafting.** The parties hereto expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either party but shall be construed in a neutral manner.
- 17.13. Illegal Aliens.**
- 17.13.1.** FSI shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. FSI shall, within twenty (20) days of hiring a new employee during the term of this Agreement, cause a written,

notarized copy of its affirmation of said employee's status to be sent to the County.

17.13.2. FSI hereby affirms that it has confirmed or attempted to confirm the employment eligibility of all employees who are newly hired for employment in the United States through participation in the e-verify program, ("e-verify program" means the employment verification program authorized in 8 U.S.C. 1324a, as amended, that is administered by the United States Department of Homeland Security, or the "department program"). If the FSI is not accepted into the e-verify program, prior to entering into this Agreement, the FSI shall apply to participate in the e-verify program every three (3) months until the FSI is accepted or this Agreement has been completed, whichever is earlier. FSI is prohibited from using the e-verify program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed. This subparagraph 27.2 shall not be effective if the e-verify program is discontinued. FSI shall certify to County if it chooses to participate in the "department program".

17.13.3. If the CONTRACTOR obtains actual knowledge that a Subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the CONTRACTOR shall be required to:

- (a) notify the Subcontractor and the OWNER within three (3) days that the CONTRACTOR has actual knowledge that the Subcontractor is employing or contracting with an illegal alien; and
- (b) terminate the subcontract with the Subcontractor if within three (3) days of receiving the notice required pursuant to section (a) of this subparagraph, if the Subcontractor does not stop employing or contracting with the illegal alien; except that the CONTRACTOR shall not terminate the contract with the Subcontractor if during such three (3) days the Subcontractor provides information to establish that the Subcontractor has not knowingly employed or contracted with an illegal alien.

17.13.4. FSI Compliance with Requests from State. FSI shall comply with any reasonable request by the applicable State agency or department made in the course of an investigation that said agency or department is undertaking pursuant to its lawful authority. If FSI violates a provision of this Section 10, County may terminate this Agreement for material breach. If this Agreement is so terminated, FSI shall be liable for actual and consequential damages to County. County is required by State law to notify the Office of the Secretary of State if FSI violates a provision of this Section

10, and County terminates this Agreement for that reason.

18. Indemnification. FSI agrees to indemnify and hold harmless County, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, 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 Contract, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of the FSI or any officer, employee, representative, or agent of the Surveyor, or which arise out of any worker's compensation claim of any employee of the Surveyor. The FSI agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Surveyor, or at the option of County, agrees to pay County or reimburse County for the defense costs incurred by FSI in connection with, any such liability, claims, or demands. The FSI also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent. The obligation of this Section 11 shall not extend to any injury, loss, or damage, which is caused solely by the act, omission, or other fault of the County, its officers, or its employees.

19. Effective Date of Agreement. This Agreement shall be effective as of the date it is finally signed by both Parties.

APPENDIX 1

Rates for scope of services

Our standard hourly rates are as follows:

Land Surveying Services

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One-Man Field Crew \$125 per hour

Two-Man Field Crew \$155 per hour

CAD Drafting Technician \$85 per hour

Survey Project Manager \$97 per hour

Licensed Professional Land Surveyor \$135 per hour

LiDAR Scanning/ Aerial Photogrammetry / Sonar

Ground-based LiDAR Field Crew \$175 per hour

Aerial Photogrammetry Field Crew \$225 per hour

Bathymetric Surveying / Sonar Field Crew \$175 per hour

Office Technician / 3D Modeling / Photogrammetry Processing \$105 per hour

Project Manager \$125 per hour

Miscellaneous Rates

Expert: Licensed Professional Testimony, Reporting and Research \$300 per hour

Trained Mediation Services \$350 per hour

Secretarial / Administration \$45 per hour

In most cases, our estimator can prepare a detailed work order that defines the scope and provides a fixed estimate of cost.

APPENDIX 2

EXCLUSIONS TO SERVICES:

Specific exclusions to the scope of work are as follows:

1. Resetting or upgrading lost or obliterated boundary or aliquot section corner monuments, unless specifically included in the scope of services.
2. Revisions to original tasks outlined by County.
3. Meetings or preparation time for meetings.
4. In the event that any staking is destroyed by an act of God or parties other than FSI, the cost of restaking shall be paid by County as an extra to the contract.
5. The County shall pay the costs of inspection fees, zoning and annexation application fees, assessment fees, soils engineering fees, soils testing fees, aerial topography fees, and all other fees, permits, bond premiums, blueprints and reproductions, and all other charges not specifically covered by the terms of this agreement.
6. Any tasks related to ordering, coordinating or obtaining utility locator services.
7. Any construction staking, unless specifically included in the scope of services.
8. Boundary determination, unless specifically included in the scope of services.
9. Design and/or layout of landscaping, irrigation systems, lighting, retaining walls, park facilities, off-site work, investigational studies, or other work determined by the governing agencies, unless specifically included in the scope of services.
10. Lift station or Force main design, or offsite sewer studies.
11. Revisions to plans requested by the client, client's consultants, or municipal entity.
12. Coordination of subcontractor services, unless specifically included in the scope of services.
13. Delays and trip charges when unable to complete requested tasks due to obstructions or activities on the site.
14. Quantities are based on information provided by the client. Variance in excess of 5% from those quantities is excluded, and will be billed as an extra to the contract.
15. Survey control destroyed during construction will be re-set as an extra to the contract.
16. Construction As-Built surveying or drawings, unless specifically included in the scope of services.

Any tasks not included in the scope of work can be completed on a time basis at our standard rates (attached).

APPENDIX 3 TO AGREEMENT

WORK ORDER No. 1

This Work Order is subject to and made pursuant to the _____, 2022 Agreement for Professional Surveying Services ("Agreement") between Flatirons, Inc., a Colorado Corporation, having its principal business located at 3825 Iris Ave., Ste. 395, Boulder, Colorado 80301 ("FSI"), and, Gilpin County, a Colorado statutory county, whose address is 203 Eureka St., Central City, Colorado 80427 ("County"). This Work Order is for certain Services involving the Project described below.

Project:

1. Identification of the Property location including the County Assessor Schedule and Parcel Nos., address, and Property owner's name:

2. Services to be provided by FSI for Project:

3. Fixed cost estimate for FSI's completion of the Project including, if applicable, itemized cost estimate for each service to be performed on Project: The fixed cost estimate will be considered a not to exceed amount.

4. Project completion deadline and, if applicable, Project timeline or schedule:

5. Description of access to Property or how access will be obtained. (If Property is not owned by County and County does not otherwise provide FSI with written authorization from Property owner allowing access, FSI shall proceed in accordance with Colorado law including without limitation pursuant to C.R.S. §18-4-515):

6. Any additional information the FSI may reasonably request or which the Parties believe is helpful or necessary to completion of the Project:

AUTHORIZATION: By executing this Work Order No. 1, the FSI and County agree respectively to proceed with completion of this Work Order No. 1 and payment for the same in accordance with its terms and those of the Agreement, which is incorporated herein by reference.

FSI – Flatirons Inc.

Gilpin County

By: _____ Date: _____

By: _____ Date: _____

Its: _____ Its: _____