

September 12, 2024
Lakewood, Colorado


Miller & Associates
CONSULTING ENGINEERS, P.C.
12640 West Cedar Drive, Suite C
Lakewood, CO 80228
Tel: 303-985-4204
www.miller-engineers.com

Mr. David Johnson
Grand Lake Water Superintendent
1026 Park Avenue
Grand Lake, CO 80447-0099

Re: GIS Mapping Services

Dear Mr. Johnson:

Presented herewith is an Agreement for GIS mapping services for the Town of Grand Lake for a lump sum of \$21,000.

Data collection of water valves, hydrants, and other surface infrastructure was performed under the company name of Diamondback Engineering. The services proposed herein include post-processing of existing data, training, and procurement of equipment necessary to utilize the proposed GIS tools.

Following your review and subsequent approval of the scope and associated fee, please sign both copies, retain one copy for your files, and return the remaining copy to our office.

We appreciate the opportunity to provide mapping services for your project.

Respectfully,
MILLER & ASSOCIATES
CONSULTING ENGINEERS, P.C.



Lauren Benton, P.E.
Project Manager

Enclosures: Agreement for the Provision of Limited Professional Services

An Agreement for the Provision of Limited Professional Services

Design Professional Firm: MILLER & ASSOCIATES,
CONSULTING ENGINEERS, P.C.
12640 West Cedar Drive, Suite C
Lakewood, CO 80228
Attn: Lauren Benton
lbenton@miller-engineers.com
(hereinafter called *CONSULTANT*)

Client: TOWN OF GRAND LAKE
1026 Park Avenue
Grand Lake, CO 80447-0099
Attn: David Johnson
djohnson@toglco.com
(hereinafter called *CLIENT*)

Date: September 12, 2024

Project No.

Project Name/Location: Water System GIS Mapping - Grand Lake, Colorado

Scope/Intent and Extent of Services: The CONSULTANT will assist the CLIENT with purchasing GNSS equipment, GNSS GPS system setup, GPS data collection setup utilizing ArcGIS Online, initial ArcGIS Online setup and licensing fees, training on GPS collection data management, and setup of Base maps with existing CAD Data.

CONSULTANT will perform the following services:

TASK 1 – Equipment Purchase – Purchase the following equipment:

- a. (1) Bad Elf Flex L1 GNSS (sub Meter GPS receiver)
- b. (1) Poles
- c. (1) Mounting attachments to survey pole for Apple iPad
- d. CLIENT will be responsible for purchasing: Apple iPad with radio/cellular service, and any protective equipment for iPad .

TASK 2 - ArcGIS Online BASE MAP and Initial Setup – Utilize previously collected survey data and set up of feature classes for data collection including the following components:

- a. Data Collection Feature Layers for Water Distribution - Hydrants, Valves, and Appurtenances. Previously collected data includes hydrants and valve boxes. Previously collected data did not include attributes such as installation year, size, type, material, etc.
- b. CONSULTANT makes no warranties, either expressed or implied, concerning the accuracy, completeness, reliability, or suitability of the prior imported CAD data.

TASK 3 – Training and Delivery – Conduct one preliminary web conference with the CLIENT to review and discuss format and data to be collected of sample features and attribute schematics. Provide one onsite visit to set up equipment and train staff in data collection and entry. CLIENT will perform all attribute entry of previously collected data (installation year, size, type, material, etc) and future collection of additional data including curb stops, meters, etc. CONSULTANT will incorporate final comments and suggestions from the CLIENT.

TASK 4 – License Maintenance – Licensing and backup fees for the first year are included in this task. Renewal and subsequent fees will be billed annually.

- CONSULTANT will purchase initial ArcGIS Online license fees for one user.

The creator License rental fees are \$700.00 per license, per year as of July 2024. ArcGIS Online works on a credit/token system, and if credit usage exceeds 100 credits additional credits may need to be purchased in blocks of 1,000 credits for \$120.00. Generally, 100 credits are not used. You can find additional information on credits on the following links:

<https://doc.arcgis.com/en/arcgis-online/administer/credits.htm>

<https://www.esri.com/en-us/arcgis/products/credits/buy>

- CONSULTANT will back up hosted ArcGIS online Grand Lake Water GIS data on a quarterly basis, to be billed at cost which is currently \$700.00 annually.

TASK 5 – Technical Assistance – Provide technical assistance on an hourly basis plus direct costs such as fees, regeneration costs, etc. throughout the year.

Schedule: Training and delivery are anticipated in November of 2024.

Fee Arrangement: Services for Tasks 1 through 4 will be invoiced on a lump sum fee basis as follows:

TASK 1 – Equipment Purchase	\$ 3,500.00
TASK 2 - ArcGIS Online BASE MAP and Initial Setup	\$11,200.00
TASK 3 – Training and Delivery	\$ 4,800.00
TASK 4 – License Maintenance	\$ 1,500.00
TOTAL LUMP SUM FEE (Tasks 1 – 4):	\$21,000.00

Services for TASK 5 will be performed on a Time and Materials basis. The following rates will apply until December 31, 2024:

Description	Rate
Professional Engineer	\$150.00/hour
Design Engineer	\$115.00/hour
GIS Analyst	\$105.00/hour
Senior Designer Technician	\$90.00/hour
Survey Crew	\$125.00/hour
Drone w/Operator	\$130.00/hour
Funding Specialist	\$75.00/hour
CADD Designer	\$70.00/hour
Support Staff	\$50.00/hour
Mileage	IRS Rate
Reproduction / Shipping Services	@ Cost

With the growing GIS science industry, many additional services may be added at a later time that are not listed above. These services may be provided, on a time and materials basis, as requested by the CLIENT.

Excluded Services: The following services are not included in the Lump Sum Fee:

- 1) Creation of Wall Maps, Map Book or Reproduction Services of said maps
- 2) Plat Map Corrections or Legal Survey Additions
- 3) Property Ownership Feature Classes or Data
- 4) Entry of Attribute Data for Existing Data
- 5) Annual User License Renewal Fees
- 6) Specialized Analysis and Additional ArcGIS Online Application Services

Offered by:

 9/12/2024
signature *date*

Lauren Benton, Project Manager
printed name/title
Miller & Associates
Consulting Engineers, P.C.
name of design professional firm

Accepted by:

signature *date*

printed name/title
Town of Grand Lake
name of client

The Terms and Conditions on the following pages are a part of this Agreement.

GENERAL TERMS AND CONDITIONS

Consultant Responsibilities

STANDARD OF CARE: Consultant shall perform its services consistent with the professional skill and care ordinarily provided by consultants practicing in the same or similar locality under the same or similar circumstances ("Standard of Care"). The Consultant shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. Except as stated in the foregoing sentences, Consultant makes no warranties or guarantees, express or implied, under this Agreement or otherwise in connection with Consultant's services Notwithstanding any other representations made elsewhere in this Agreement or in the execution of the Project, this Standard of Care shall not be modified.

CODE COMPLIANCE: Consultant shall review applicable laws, codes, and regulations and, in the provision of its Services, shall respond to such requirements imposed by the governmental authorities having jurisdiction over the Project and reasonably known to Consultant at the time services are provided. Client acknowledges that the requirements of the federal, state and local laws, rules, codes, ordinances, and regulations, including the Americans with Disabilities Act, are subject to various and possible contradictory interpretations and requirements.

COST EVALUATION: Evaluations of Client's budget for the Cost of the Work, the preliminary opinions of the Cost of the Work, and updated opinions of the Cost of the Work prepared by Consultant, represent Consultant's judgment as a design professional. It is recognized, however, that neither Consultant nor Client has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, Consultant cannot and does not warrant or represent that bids or negotiated prices will not vary from Client's budget for the Cost of the Work or from any opinion of the Cost of the Work or evaluation prepared or agreed to by Consultant.

DELIVERABLES (PER SCOPE OF SERVICES): Consultant shall provide deliverables, including drawings, specifications, reports, and studies, as defined in the Scope of Services section.

Client Responsibilities

PROJECT SCOPE AND BUDGET: Client shall define the scope and budget of the Project and, when applicable, periodically update the Project budget, including that portion allocated for the Cost of the Work. The Project budget shall include contingencies for design development and, when required by the scope of the Project, construction of the project. Client shall not significantly increase or decrease the overall Project scope, the portion of the budget allocated for the Cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of Consultant to a corresponding change in the Project scope, quality, schedule, and compensation of Consultant.

DESIGNATED CLIENT REPRESENTATIVE: Client shall identify an individual ("Designated Representative") authorized to act on its behalf with respect to the Project. Client or its Designated Representative shall render decisions and approve Consultant's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of Consultant's services and Project schedule.

ACCESS TO SITE: Unless otherwise stated, Consultant will have access to the site for activities necessary for the performance of the services. The Consultant will take precautions to minimize damages due to these activities, but the cost of restoration of any resulting damage has not been included in the fee.

CLIENT PROVIDED SERVICES AND INFORMATION : Client has the right to retain its own consultants and contractors ("Client's Consultants") to perform services on the Project. In addition, Client shall furnish the services of design professionals other than those designated as the responsibility of Consultant in this Agreement or authorize Consultant to furnish them as an Additional Service, when Consultant requests such services and demonstrates that they are reasonably required by the scope of the Project.

Consultant shall be entitled to rely on the accuracy, completeness, and timeliness of services and information furnished by Client, its Designated Representative, and Client's Consultants. Consultants shall have no responsibility for the technical content of Client's, its Designated Representative's, and Client's Consultants' services and information but shall provide prompt written notice to Client if Consultant becomes aware of any error, omission, or inconsistency in such services or information.

CONSTRUCTION CONTRACTS & RESPONSIBILITIES: When applicable to the scope of the Project, Client shall retain a qualified contractor, licensed in the jurisdiction of the Project ("Contractor"), to implement the construction of the Project ("Work") utilizing a construction contract based on General Conditions of the Contract for Construction. In the construction contract, Client shall require Contractor to: (1) obtain Commercial General Liability Insurance and name Client, Consultant, and Consultant's employees and subconsultants as additional insureds of that policy; and (2) indemnify and hold harmless Client, Consultant, and Consultant's employees and subconsultants from and against any and all claims, damages, losses, and expenses ("Claims"), including but not limited to reasonable attorneys' fees and economic or consequential damages, arising in whole or in part out of any negligent act or omission of the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them.

Client understands and acknowledges that (1) Consultant has no control over, charge of, or responsibility for construction activities or jobsite safety on the Project; (2) Contractor shall coordinate, supervise, and direct all portions of the Work and shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, jobsite safety, and security; and (3) Consultant shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents.

CLIENT'S REDUCTION OF SCOPE OF SERVICES: If Client elects to terminate, modify, or reduce any portion of Consultant's Services under this Agreement, Client shall indemnify and hold Consultant and its subconsultants harmless from and against damages, losses, and judgments arising from claims by Client or any third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, related to the services or activities Consultant did not provide or in which Consultant did not participate.

General Provisions

LIMITATION OF LIABILITY: The Services covered by this Agreement are of a preliminary or limited nature; therefore, neither Consultant, Consultant's subconsultants (if any), nor their agents or employees shall be jointly, severally, or individually liable to Client in excess of compensation to be paid pursuant to the Agreement, by reason of any act or omission, in tort or contract, including breach of contract, breach of warranty, or negligence.

OWNERSHIP OF DOCUMENTS: All documents prepared or furnished by Consultant pursuant to this Agreement are instruments of Consultant's professional service, and Consultants and Client shall retain joint ownership and property interest therein, including all copyrights, upon payment in full for services rendered. Reuse or modification of any such documents by Client, without Consultant's written permission, or use of documents after termination, shall be at Client's sole risk, and Client agrees to indemnify, defend, and hold Consultant harmless from

all claims, damages, and expense, including attorneys' fees, arising out of such reuse by Client or by others acting through Client. Notwithstanding the foregoing, the Consultant acknowledges the Client is subject to the Colorado Open Records Act and obligated to comply with all of its requirements set forth in C.R.S. § 24-72-201 *et. seq.*

USE OF CONSULTANT-PROVIDED INFORMATION: The information provided by Consultant is intended for the exclusive use of Client for the Scope of Services defined herein, and is not to be transmitted for the use of any other party nor used for any other project. To the extent permitted by law, Client agrees to defend, indemnify, and hold Consultant harmless from any claims, costs, and expenses, including attorneys' fees and costs of litigation, which result from any unauthorized or unintended use of Consultant-provided information, or transmission by Client to others of the information resulting from Consultant's Scope of Services.

MUTUAL INDEMNIFICATION: To the extent permitted by law, Consultant and Client each agree to indemnify the other against liability, damages, costs, and expenses including reasonable attorneys' fees and expenses recoverable under applicable law (collectively "Damages") that are caused to the other due to the negligence of the indemnifying party, but only to the extent of the indemnifying party's negligence. Neither Consultant nor Client shall be required to indemnify the other to the extent Damages arise from or are caused by the indemnified party's own negligence (whether sole, concurrent or contributory). Neither Consultant nor Client shall have a duty to provide the other an up-front defense of any claim.

MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES: Consultant and Client waive consequential damages (such as lost profits, lost revenue, loss of use, loss of financing, and loss of reputation) for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages whether arising in contract, warranty, tort (including negligence), strict liability, or equity, or that might arise out of the parties' indemnification obligation.

DISPUTE RESOLUTION : Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to a session as a condition precedent to mediation.

Client and Consultant shall endeavor to resolve claims, disputes, and other matters in question during the meet-and-confer session. The meet-and-confer session shall be attended by Client and Consultant or their authorized representatives who shall have the authority to bind the parties. The meet-and-confer session shall take place within thirty (30) days after unless the parties mutually agree otherwise. Prior to the meet-and-confer session, the parties shall exchange relevant information that will assist in resolving the claim, dispute or controversy. If the parties reach a mutually acceptable resolution, they shall prepare appropriate documentation memorializing the resolution. If the parties cannot reach a mutually acceptable resolution, they shall proceed to mediation as a condition precedent to binding dispute resolution. If the parties do not resolve a dispute through mediation, the parties shall seek a method of binding dispute resolution, or litigation in a court of competent jurisdiction.

HAZARDOUS MATERIALS: Consultant shall have no responsibility for the discovery, presence, handling, removal, or disposal of, or exposure of persons to hazardous materials or toxic substances in any form located on the Project site. If hazardous materials are present, Client shall be responsible to remove them from the Project site in the manner that will not adversely affect the health of any person and comply with applicable governmental laws and regulations. Client shall indemnify and hold Consultant harmless from any liability, loss, damage, or expense arising out of or with respect to the presence of hazardous materials on the Project site. The presence or discovery of any hazardous or toxic substance on the site shall be cause for extension of the schedule of Consultant's services and equitable adjustment of fees for Consultant as mutually agreed by the parties.

EXISTING CONDITIONS: Documents prepared by Consultant will be prepared based upon reasonable assumptions derived from existing information provided by Client and from observations of the existing conditions by Consultant without the benefit of field measurements and invasive investigation made undesirable by expense and inconvenience to Client. It is understood and agreed that unforeseen conditions uncovered during the progress of the Work may require changes in the Work resulting in additional cost and delay for which Client shall maintain sufficient contingency. Services required by such changes shall be provided as additional services per this Agreement.

DISCLAIMER OF THIRD-PARTY RELIANCE: Nothing contained in the Agreement shall create a contractual relationship or a cause of action in favor of a third party against either the Client or Consultant.

GOVERNING LAW: This Agreement for Professional Services shall be governed by, and performed in compliance with the laws of the state where the Project is located. Any mediation or litigation will reside in Colorado.

ASSIGNMENT: Client and Consultant, respectively, bind themselves, their partners, successors, assigns and legal representatives to the Agreement. Neither Client nor Consultant shall assign the Agreement without the written consent of the other, except that Client may assign this Agreement to a lender providing financing for the Project, provided that all monies owed Consultant are paid prior to the date of assignment.

PROJECT SCHEDULE : In the event Consultant is hindered, delayed, or prevented from performing its obligations under this Agreement as a result of any cause beyond its reasonable control, including but not limited to delays due to power or data system outages, acts of nature, public health emergencies including but not limited to infectious disease outbreaks and pandemics, governmental orders or direct failure of any governmental or other regulatory authority to act in a timely manner, failure of the Client to furnish timely or approve or review Consultant's services or design documents, or delays caused by faulty performance by Client consultants, the time for completion of Consultant's services shall be extended by the period of resulting delay equitably adjusted. Client agrees that Consultant shall not be responsible for damages, nor shall the Consultant be deemed in violation of this Agreement due to such delays.

PAYMENTS DUE: Consultant shall present monthly invoices or an invoice upon completion of the project for Professional Services earned and reimbursable expenses incurred, and Client shall pay the full amount thereof within sixty (60) days after presentation. Any charges held to be in dispute by Client shall be identified in writing to Consultant within fourteen (14) days of presentation of Consultant's invoice or shall be paid in full per the terms of the Agreement. If payment in full is not received per the terms of this Agreement, Consultant shall have the right to suspend Services and withhold all documents until payment is received and apply a one percent (1%) per month delinquency charge on the unpaid balance from the date of the invoice.

SUSPENSION AND TERMINATION: In the event of suspension of Services, as outlined above or for any other reason beyond Consultant's control, Consultant will have no liability to Client for delay or damage resulting from such suspension. Prior to resuming Services, Consultant shall be paid all fees earned prior to suspension together with all reimbursable expenses then due, along with any costs and expenses, including attorneys' fees, incurred collecting delinquent payments. In addition, Consultant's fees for remaining Services and associated time schedules will also be equitably adjusted.

The Agreement may be terminated for cause after a ten (10) day cure period by either party or for convenience with written notice by Client. Upon termination, all invoices presented by Consultant for Services provided, including reimbursable expenses then due and any costs incurred in pursuit of delinquent payments, shall become immediately due and payable. In the event of termination for convenience, Client shall pay to Consultant a termination fee of ten percent (10%) of fees not yet earned.