



**TOWN OF MILLIKEN
TOWN BOARD
AGENDA MEMORANDUM**

To: Mayor Tokunaga and Members of the Board of Trustees		Meeting Date:	
From: Kent Brown, Town Administrator		December 23, 2015	
Agenda Item #	Action: X	Discussion:	Information:
Agenda Title: Authorization of the Town Administrator to Sign the Contract for Engineering Services for the Josephine Storm Sewer Project.			
Attachments: RFP #07-2015 and Rating Sheet for Firms that Submitted RFP.			

PURPOSE

To Authorize the Town Administrator to sign the contract for Engineering Services for the Josephine Storm Sewer Project.

BACKGROUND INFORMATION

On November 5, 2015 the Town of Milliken issued an advertisement for a RFP to provide preliminary engineering design and finalize the project scope for the Josephine Storm Sewer Improvements Project.

Five engineering firms submitted an RFP for engineering services. The RFP was advertised in the Johnstown Breeze and posted on the Rocky Mountain E-Purchasing System Website <http://www.rockymountainbidsystem.com/Bids/ViewOpenSolicitations.asp> . Included as an attachment are a summary of Engineering Firms that submitted an RFP for services.

BUDGET IMPLICATIONS

The Town has received Phase I approval from FEMA and the State on 11/12/2015 to hire a firm and proceed with the preliminary engineering component of the project. For Phase I the Town received a FEMA Hazard Mitigation Grant in the amount of \$82,875 and a \$13,812 grant from the State. The local share for Phase I is \$13,813. Once Phase I is approved by FEMA and the State. The Town shall be able to begin Phase II which shall involve final design and project construction.

STAFF RECOMMENDATION

Staff recommends that the Town Board award the engineering services contract for the Josephine Storm Sewer Improvements Project to Icon Engineering, Inc. In addition to their proposal, ICON Engineering Inc. also assisted the Town with the development of the FEMA Hazard Mitigation Application for the Josephine Storm Water Project and developed the Town's Storm Water Master Plan. Ayers Associates finished a close second in regards to the scoring of the proposals.

SUGGESTED MOTION

"I move to approve the contract with ICON Engineering, Inc. for engineering services for the Josephine Storm Sewer Improvements Project and authorize the Town Administrator to sign the contract."

Town of Milliken

Purchasing Services
1101 Broad Street
Milliken, Colorado 80543
Phone: (970) 660-5049
Fax: (970) 587-2678
www.millikenco.gov



Request for Proposal: RFP #07-2015
Date: November 5, 2015

Proposal Deadline: 4:00 p.m., December 10, 2015, in the Office of the Town of Milliken. Electronic submittals are accepted, sent to CDiller@millikenco.gov prior to the deadline.

REQUEST FOR PROPOSALS

The Town of Milliken as a part of a two phased project is requesting written proposals from qualified firms to provide preliminary engineering design and finalize the project scope for the Josephine Strom Sewer Improvements Project. Once the preliminary engineering/project scope and Benefit Cost Analysis (BCA) is approved by FEMA, the second phase shall consist of finalizing the project design and bidding the project. For this project the Town will be utilizing Federal Emergency Management Agency (FEMA) Hazard Mitigation Grant Program (HMGP) funding.

The location of the proposed project is Central Milliken along Josephine Avenue from Lola Park to the Little Thompson River. A basic drawing of the project is attached for reference. Consultant and or team of consultants responding to this request should have successful experience in the completion of civil engineering design as it pertains to storm water improvements.

Interested consulting firms are required to submit four (4) copies of their technical proposal for the project or an electronic submittal to the email address as stated above. **Hard copies will be accepted by the Receptionist located at, 1101 Broad Street, Milliken, Colorado 80543, until 4:00 p.m., December 10, 2015. No late proposals will be considered.** Additional proposal requirements are provided in Section II, Proposal Submittal Requirements.

Pre-Proposal Conference

A pre-proposal conference has been scheduled for November 23, 2015 at 2:00 PM at Town Hall (1101 Broad Street, Milliken, CO). If interested consultants have questions on the scope of services, email questions to Seth Hyberger at SHyberger@millikenco.gov. If questions are received before November 30, 2015 then an addenda will be available for the interested consultants.

A TENTATIVE SCHEDULE of key dates for the project has been established as follows:

Josephine Avenue Storm Sewer Improvements Project

Date:	Activity:
11/23/2015	Pre-Proposal Conference at 2:00 PM at Town Hall
11/30/2015	Deadline for written questions
12/10/2015	Proposals due by 4:00 pm at Milliken Town Hall or electronic submittal
12/23/2015	Award of contract and notice to proceed
6/1/2016	Final Deliverable to Town
6/5/2016	Submitting of Preliminary Design and Final Project Scope to FEMA for Approval
7/15/2016	Begin work on Final Design once FEMA approval has been granted for the Second Phase.

12/15/2016	Complete Final Design for the Josephine Storm Sewer Project
1/15/2017	Bid Josephine Strom Water Improvements for Project Construction
2/15/2017	Award of contract and notice to proceed for project construction
9/30/2018	Complete Project Construction

Solicitation Process

Due to the aggressive schedule the successful contractor will be selected shortly after the proposal due date. Once the contractor is selected and the contract finalized, then the contractor shall begin work. In the event the Town Milliken and the selected contractor are unable to negotiate and reach a final agreement then the Town will commence with the second ranked firm. This process will continue until a satisfactory contract is negotiated, or the Town exercises its right to reject all proposals.

Confidentiality

Proposals submitted to the Town of Milliken for consideration shall be subject to the Colorado Open Records Act and Colorado Statute C.R.S Sec 24-92-103(4) after award is made. Any confidential information in a proposal shall be identified as such by the submitting firm. Proposals submitted and terms and conditions specified in each firm's response shall remain the property of the Town of Milliken.

Licenses

The successful offeror, without additional expense to the Town, shall be responsible for obtaining any necessary licenses and for complying with any applicable federal, state, and municipal laws, codes and regulations in connection with the execution of the requested services.

Amendments to the Request for Proposal

The Town of Milliken reserves the right to amend this Request For Proposal (RFP) by an addendum at any time prior to the date set for receipt of proposals. Addenda or amendments will be provided to the bid holders list as soon as available and shall be the responsibility of the offeror to obtain all addenda. If revisions are of such a magnitude to warrant, in the Town of Milliken's opinion, the postponement of the date for receipt of proposals, an addendum will be issued announcing the new date.

Additional Information

Proposals will be considered only from firms or individuals that are established in an appropriate business, who are financially responsible, and who have the resources and ability to offer services in a professional and expedient manner. The Town may request additional information as deemed necessary prior to selection. Failure to provide such additional information may result in the proposer being considered non-responsive.

Four (4) copies of the technical proposals will be required. The technical proposals shall be retained by the Town of Milliken and cannot be returned.

The Town of Milliken reserves the right to reject any and all proposals, to waive any informalities in the proposals received, and to accept the proposal deemed most advantageous to the best interest of the Town.

Questions regarding this Request for Proposals shall be addressed to Seth Hyberger, Community Engagement Specialist/Planner, Town of Milliken, 1101 Broad Street, Milliken, Colorado 80543, by calling (970) 660-5038 or by email at SHyberger@millikenco.gov.

NO OTHER CONTACT SHALL BE MADE REGARDING THIS REQUEST FOR PROPOSAL WITH ANY OTHER TOWN OF MILLIKEN STAFF. DURING THE REQUEST FOR PROPOSAL PHASE NO CONTACT SHALL BE MADE REGARDING THIS PROJECT WITH REPRESENTATIVES OF OTHER TOWN, COUNTY, REGIONAL, STATE OR FEDERAL AGENCIES. FAILURE TO COMPLY WITH THIS REQUIREMENT WILL RESULT IN THE OFFENDING FIRM BEING REMOVED FROM CONSIDERATION.

Consultant Acceptance of the Request for Proposals

By submitting a proposal in response to this Request for Proposals, the Consultant accepts all of the conditions described in this Request for Proposals, including the Professional Design Services Agreement and agrees to abide by all final decisions made by the Town.

Respectfully,

Kent Brown
Town Administrator, Town of Milliken

Attachments:	Section I	Scope of Services
	Section II	Proposal Submittal Requirements
	Section III	Special Conditions
	Attachment 1	Proposal Acknowledgement
	Attachment 2	Open Records Requests
	Attachment 3	Preliminary Engineering Exhibit
	Attachment 4	Standard Services Agreement

SECTION I SCOPE OF SERVICES

Phase 1 - Preliminary Engineering Design and Finalize Project Scope, Phase 2 – Completing Final Design and Bidding the Project

PROJECT DESCRIPTION

The information requested will assist the Town in meeting preliminary engineering requirements and finalize the project scope for the Josephine Storm Sewer Improvements Project. The Federal Emergency Management Agency's Hazard Mitigation Grant Program will be providing funding for this project. The project will be undertaken in two phases. The first phase of the project consists of completing the preliminary engineering design and finalizing the project scope. The second phase shall consist of finalizing the project design and bidding the project.

EXISTING CONDITIONS

The Lola Park Tributary is a 3,000 acre (4.7 sq. mi) basin that discharges storm water directly through Old Town Milliken and later conveys into the Little Thompson River. While other drainage basins to the east or west have developed in a more modern era, the Lola Tributary basin development dates back to the Town of Milliken's origin in 1910. Consequently, this central drainage basin currently contains significantly undersized storm water infrastructure at a critical low point in the Little Thompson watershed. This low point is further constrained by railroad embankments, an irrigation ditch, and a state highway. The 2014 Milliken Stormwater Master Plan studied multiple project alternatives for storm water management in the Town. Two alternatives specifically investigated public improvements in the Lola Park Tributary basin.

Lola Tributary's existing outfall to the Little Thompson River occurs on unimproved agricultural private property. Upstream of the outfall are twin 54" CMP culverts at the Union Pacific crossing that convey water to the Little Thompson River. Continuing south of the Union Pacific culverts is an improvised broad crested concrete weir structure that only allows a fraction of Lola Tributary major event stormwater to cross over the Platte Thompson Irrigation Ditch. This stormwater bottleneck results in stormwater ponding near the two mobile home parks that later combines with additional surface flows ponded in the low points to the east. This complicated network of backwater eventually overflows the abandoned rail spur, ditch, and active railroad embankment.

Continuing upstream of the ditch, stormwater is conveyed across the surface of Josephine Avenue right-of-way which serves as the single point of public and emergency access for over two dozen mobile homes. A portion of major storm flows are conveyed under Broad Street in two elliptical concrete culverts draining from the "Fireman's Park" pond, a pond with inconsequential detention features. During localized flooding events stormwater not contained by Fireman's Park pond flows across nearly every side street in Old Town Milliken. Sheet flow across Broad Street extends for five blocks. Upstream of Fireman's Park pond, there are concrete box culverts, grass lined channels, and roadway culverts draining down from Lola Park. This system changes directions four times as it zig-zags through residential development and the local Fire Station. The actual Lola Park is an important community amenity adjacent to the middle school, with a focus on the bridge crossing the tributary drainage bisecting the park from southwest to northeast. Upstream of the park, the Lola Park tributary drains approximately 110 acres of undeveloped land and another 100 acres of single family residential development.

The existing conditions of Lola Tributary drain a central basin of Town through a conglomeration of conveyance features, past schools, fire station, and homes with a downstream degradation of capacity and function that spreads surface flows across several city blocks before it can drain over and under the state highway, over the Platte Thompson Irrigation Ditch, under the railroad through twin culverts, and eventually into the Little Thompson River.

PROPOSED JOSEPHINE AVENUE STORMWATER PROJECT

The first phase of the project shall consist of finalizing the preliminary design and the project scope. The engineering for the proposed project is currently only at the conceptual phase. The second phase shall involve completing the design work for the project and putting the project out to bid. The proposed Josephine Storm Sewer Improvements are the preferred alternative to intercept, convey, and effectively outfall storm water for this important drainage basin in the central business district of the Town of Milliken.

The proposed project aims to capture existing and future stormwater discharges and convey those flows safely to the Little Thompson River. The conceptual designs have determined a storm sewer improvement and channel improvements start at Lola Park. The storm sewer improvements will collect additional surface flows on the cross streets. The channel improvements will clear and stabilize the existing channel. The crossing at Broad Street will require coordination between the channel and storm sewer improvements. The channel or storm sewer downstream of Broad Street will be coordinated with road improvements. The Platte Thompson ditch crossing will be coordinated with the ditch company. Downstream of the ditch crossing, the natural channel will be improved and outlet at the existing culverts beneath the railroad. Improvements downstream of the railroad will ensure effective conveyance into the Little Thompson River.

The Josephine Storm Sewer Improvements project installs a storm sewer outfall system very similar to the newer and successful Quentine Avenue and Alice Avenue outfall systems that were constructed with the more recent developments on the east and west flanks of Old Town Milliken. The Josephine Avenue project also improves the existing channel and affords an opportunity for additional greenway, open space planning to connect Lola Park with the Old Town business district. All the while, dangerous storm flows are safely conveyed underground, through existing crossings, and into the Little Thompson River.

SCOPE OF SERVICES

The Town will be utilizing The Federal Emergency Management Agency's Hazard Mitigation Grant Program funding for this two phased project. The first phase consists of completing the preliminary engineering and finalizing the project scope by 6/1/2016. Once FEMA approves the preliminary design and project scope, the second phase will consist of finalizing engineering design, putting the project to bid, and completing project services. **Familiarity with FEMA's Benefit Cost Analysis is also required. The preliminary design and final design must prove to be cost effective according to FEMA's HMGP Benefit Cost Analysis standards.**

PROJECT SCHEDULE

The selected firm shall complete the preliminary design and finalize the project scope no later than June 1, 2016. The second phase of the project will commence upon FEMA approval for the work completed for Phase 1. The stated deadline includes time for review and approval by the Town and other jurisdictions for adherence to standards and specifications.

ELEMENTS OF THE SCOPE OF SERVICES

Project Management

As a part of the Towns Project Management philosophy, the consultant will, at a minimum, attend scheduled meetings and coordinate with Kent Brown and Seth Hyberger, as appropriate to identify and facilitate milestone meetings and workshops; and submit schedule, budget, and project status reports. Status reports shall be submitted in hard copy as well as electronically. Schedules shall be prepared and submitted in Microsoft Project (.mpp) format.

**SECTION II
PROPOSAL SUBMITTAL REQUIREMENTS**

Limit the TOTAL LENGTH of the core proposal to twenty (20) pages maximum, which does not include cover letter; index and/or table of contents, front and back covers, title page, separation tabs, and resumes (keep resumes to 2 pages each, maximum). Consultant must use a 10 point font or larger. Use of figures, photographs, or other graphics within the page constraints indicated is up to the discretion of the consultant. The Town cannot guarantee review of voluminous firm-specific or other information contained as an appendix. The qualified firm's proposal shall include at a minimum the following information:

1. Statements of Qualifications including:
 - General firm information including both local and firm-wide resources pertinent to this project
 - Resumes of key personnel and percent of team that is local
 - Location of key personnel and availability
 - Consultants demonstrated experience in civil design, cost estimation and feasibility report preparation.
2. Proposed project team including Project Manager, QA/QC and technical resources, and discipline-specific leads and support staff and proposed sub consultants, if any (include information on firm(s), including sub-consultant personnel who will be working on the project), and their specific roles.
3. Project descriptions and references from at least three projects with similar size, type and scope. These projects should demonstrate the experience of the project team and need to have been completed within the past five years.
4. Approach to completing the project, including addressing the Elements of the Scope of Services contained within this RFP, and any additional anticipated issues and proposed strategies for addressing the issues based on additional insight, capabilities or perspectives of the consultant. This includes addressing coordination with other entities and defining project milestones, including project meetings.

The Town reserves the right to obtain financial data or other supplemental information concerning the firm and/or its sub consultants.

SECTION III SPECIAL CONDITIONS

GENERAL INFORMATION

Reimbursement will not be made for costs incurred prior to a formal Award. The proposal must be comprehensive and specify how the consultant would complete all of the elements of the "Scope of Services".

SAMPLE PROFESSIONAL DESIGN SERVICES CONTRACT

Included in this package is a sample of the standard "Professional Design Services Contract", used by the Town. Prospective consultants are requested to review this document and comment on any areas of objections in their technical proposals.

INSURANCE REQUIREMENTS

Attached to the sample "Professional Design Services Contract" is a copy of the Town's current insurance requirements.

INDEPENDENT CONTRACTOR AFFIDAVIT

The successful consultant is required to sign and notarize an affidavit stating that they are an independent contractor. **THE INDEPENDENT CONTRACTOR IS NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS. AN INDEPENDENT CONTRACTOR IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONIES EARNED PURSUANT TO THE CONTRACT RELATIONSHIP. ADDITIONALLY, IT IS UNDERSTOOD THAT THE INDEPENDENT CONTRACTOR IS NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS UNEMPLOYMENT COMPENSATION COVERAGE IS PROVIDED BY THE INDEPENDENT CONTRACTOR OR SOME ENTITY OTHER THAN THE TOWN OF MILLIKEN, COLORADO.**

CONFIDENTIALITY

Proposals submitted to the Town for consideration shall be subject to the Colorado Open Records Law, Section 24-72-201, et seq., C.R.S. Any confidential information in the Offeror's proposal shall be identified as such. If any information is considered to be confidential, the Offeror shall agree to indemnify the Town of Milliken for any and all attorney fees that the Town may incur in defending the withholding of such information by signing and returning the letter found at Attachment -2 of this RFP. Should the Town receive a request for the release of any information in the Offeror's proposal in accordance with the open records law, the Town will release only that information which has not been identified as confidential so long as Attachment - 2 has been signed and returned by the Offeror along with the proposal. Should the Offeror choose not to sign and return Attachment - 2, all information in the Offeror's proposal shall be considered releasable by the Town. Offerors will not be notified of any open records requests prior to the release of such information. If, in the opinion of Town's legal counsel, the Town is nonetheless compelled to disclose any portion of such information to anyone or else stand liable for contempt or suffer censure or penalty, the Town may disclose such information without liability.

SUBLETTING OF CONTRACT

The selected Consulting Firm agrees not to assign or sublet the whole or any part of the contract without the prior written consent of the Town of Milliken.

CHANGES IN SCOPE OF SERVICES

The Project Manager will agree that any change of scope in the work to be performed after the original contract has been signed shall be documented as a written change order, be accepted by all parties, and made a part of the original contract by addendum.

**ATTACHMENT 1
PROPOSAL ACKNOWLEDGEMENT**

In submitting this proposal, it is understood that the right is reserved by the Town of Milliken to reject any and all proposals, and to waive any informalities in submitted proposals.

The undersigned states that this proposal is made in good faith and is not founded on, or in consequence of, any collusion, agreement or understanding between oneself or any other interested party.

OFFICIAL ADDRESS:

PHONE: _____

(FIRM NAME)

(TYPE OR PRINT PRINCIPAL'S NAME)

(SIGNATURE OF PRINCIPAL)

(TITLE)

(DATE)

(PHONE)

(FAX)

(EMAIL)

ATTACHMENT 2 OPEN RECORDS REQUEST

Town of Milliken

Purchasing Services
1101 Broad Street
Milliken, Colorado 80543
Phone: (970) 660-5049
Fax: (970) 587-2678
www.millikenco.gov



Re: **Request under the Colorado Open Records Act**
Request for Proposal Number R-1486

Proposals submitted by offerors in response to the Town of Milliken's Request for Proposal R-1486 are subject to the Colorado Open Records Act. The Town agrees not to release any information that is clearly marked as confidential and/or proprietary in your proposal pursuant to C.R.S. 24-72-201.

By having an authorized officer of the company sign below, offeror agrees to indemnify the Town of Milliken for any and all attorney fees that the Town may incur in defending the withholding of such information.

OFFEROR

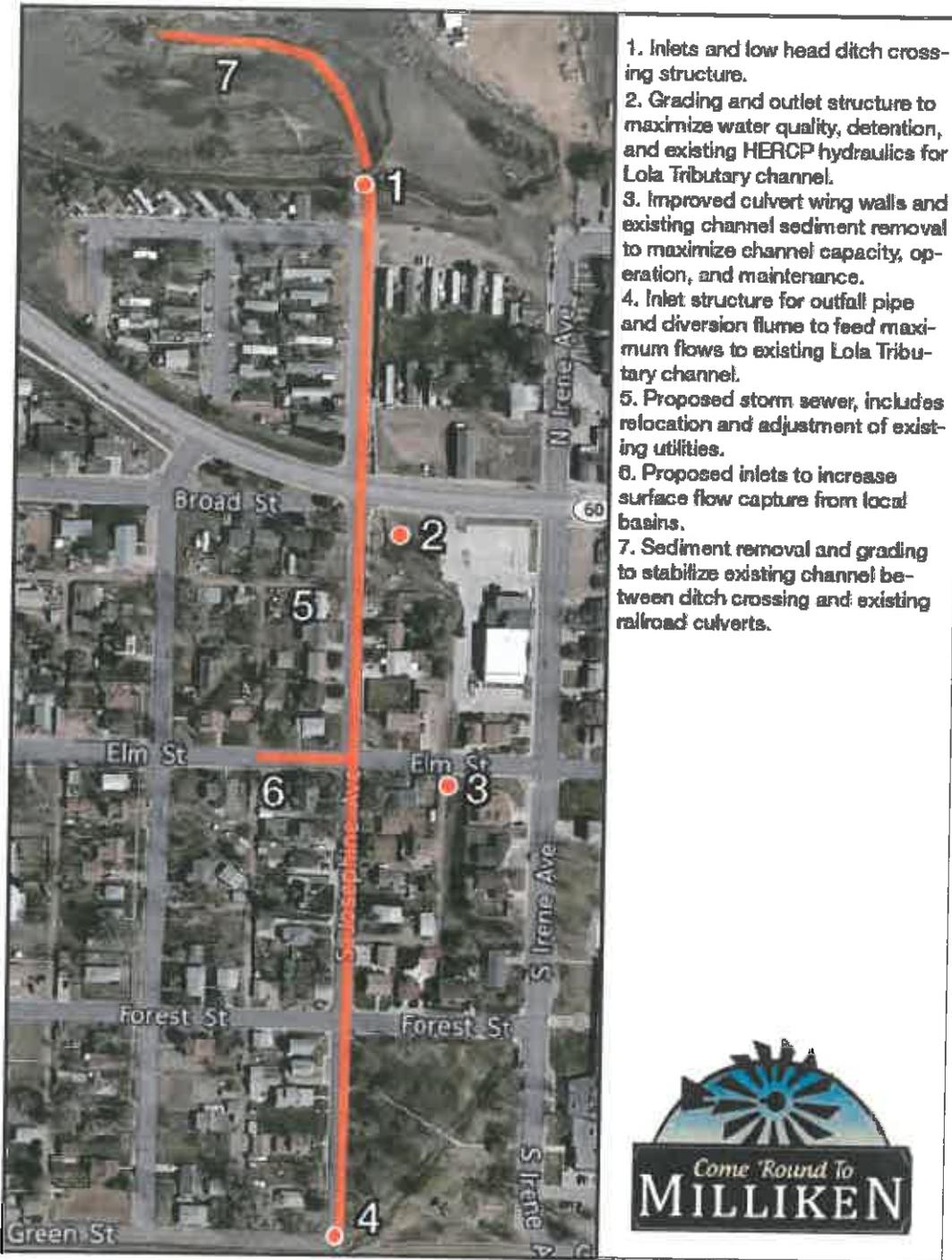
By: _____
Signature

Name (Type or Print)

Title

Date

ATTACHMENT 3 PROJECT EXHIBIT



ATTACHMENT 4
STANDARD SERVICES AGREEMENT

Town of Milliken
PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this ____ day of _____ 20__, by and between the TOWN OF MILLIKEN, COLORADO, a municipal corporation of the State of Colorado, with offices at 1101 Broad Street, Milliken, Colorado 80543 (the "Town"), and _____ with offices at _____ (the "Contractor").

WITNESSETH

WHEREAS, the Town requires certain professional services as more fully described in **Exhibit A**;

WHEREAS, the Town issued a Request for Proposals for the services which are the subject of this Agreement; and

WHEREAS, the time for submittal of proposals has passed, and the Town has evaluated the proposals submitted against previously established criteria; and

WHEREAS, the Town has identified the Contractor as the most qualified responsible bidder; and

WHEREAS, the Contractor represents that it possesses the necessary qualifications to perform these services; and

WHEREAS, the Town desires to contract with the Contractor subject to the terms of this Agreement.

NOW, THEREFORE, for the consideration herein expressed, it is agreed as follows by and between the Town and the Contractor that the Contractor shall perform the following:

1.0 SERVICES AND PURPOSE OF AGREEMENT

- 1.1 **Services**. The Town desires to achieve, secure, receive, or obtain certain service(s) or work product(s) as more specifically described in **Exhibit A** (the "Services"). **Exhibit A** describes the requirements and deliverables required by this Agreement and is incorporated herein by reference. As an independent contractor, the Contractor offers and agrees to perform and/or deliver the Services in accordance with the terms and conditions of this Agreement. The Parties recognize and acknowledge that, although the Town has requested certain general services to be performed or certain work product to be produced, the Contractor has offered to the Town the process, procedures, terms, and conditions under which the Contractor plans and proposes to achieve or produce the services and/or work product(s) and the Town, through this Agreement, has accepted such process, procedures, terms, and conditions as binding on the Parties.

- 1.2 Party Representatives. The Town assigns the Town Administrator as the Town Representative for this Agreement. The Town Representative will monitor the Contractor's progress and performance under this Agreement and shall be available to the Contractor to respond to questions, assist in understanding Town policies, procedures, and practices, and supervise the performance of any Town obligations under this Agreement. The Contractor designates _____ as the Contractor's Representative for this Agreement, who shall be primarily responsible for coordinating the services of the Contractor and maintaining communications with the Town. The Contractor shall not change the Project Representative without the consent of the Town.
- 1.3 Changes to Services. Any changes to the Services that are mutually agreed upon between the Town and the Contractor shall be made in a formal writing referencing this Agreement and, only upon execution by both Parties of such formal writing, shall become an amendment to the Services described in this Agreement. To be effective, any written change must be signed by the Contractor and by the Town or by a person expressly authorized in writing to sign on behalf of the Town. Changes to the Services or to this Agreement shall not be made through oral agreement or electronic mail messages.
- 1.4 Meeting Attendance. The Contractor shall attend such meetings of the Town relative to the Scope of Work set forth in Exhibit A as may be requested by the Town. Any requirement made by the named representatives of the Town shall be given with reasonable notice to the Contractor so that a representative may attend.
- 1.5 Agreement to Comply with Requisite Provisions Based On Funding Source. If checked below, the Town will pay in whole or in part for the Services rendered hereunder with federal or State based grant funding. Contractor agrees to comply with all provisions set forth in any Attachment as noted and if checked)
 - Attachment A, Federal Emergency Management Agency's ("FEMA") Grant Program Requirements for Procurement Contracts if FEMA funding is used for the Work
 - Attachment B, Colorado Community Development Block Grant Disaster Recovery Program funds (hereinafter referred to as CDBG-DR funds) Requirements for Contracts if CDBG-DR funding is used for the Work
- 1.6 Lawful Performance. It is further agreed that no party to this Agreement will perform contrary to any state, federal, or county law, or any of the ordinances of the Town of Milliken, Colorado.

2.0 COMPENSATION

- 2.1 Commencement of and Compensation for Services. Following execution of this Agreement by the Town, the Contractor shall be authorized to and shall commence performance of the Services as described in **Exhibit A**, subject to the requirements and limitations on compensation as provided by this Section 2.0 and its subsections. Compensation to be paid hereunder shall not exceed [Written Not to Exceed Amount] Dollars (\$_____) unless a larger amount is agreed to by and between the Parties in accordance with the amendment requirements of this Agreement.

- A. Method of Compensation. The Contractor shall perform the Services and shall invoice the Town for work performed based on the rates and/or compensation methodology and amounts described in Exhibit B subject to the not to exceed amount set forth in this Section. Monthly, partial, progress payments shall be made by the Town to the Contractor for the percentage of the Scope of Work completed. Progress payments shall not constitute a waiver of the right of the Town to require the fulfillment of all material terms of this Agreement and the delivery of all improvements embraced in this Agreement.
- B. Final payment may be requested by the Contractor upon completion and acceptance, by the Town, of all work or Services as set forth in Exhibit A. The total amount of final payment shall consist of the compensation set forth in paragraph 2.1, as adjusted in accordance with approved change orders, if applicable, less all previous payments to the Contractor.
- C. Should work beyond that described in Exhibit A be required, it will be paid for as extra work at a cost to be agreed upon in separate written agreement by the Town and the Contractor prior to commencement of the additional work. Such additional agreements shall be executed and approved by all persons required by Town purchasing ordinances or policies.
- D. The Town, before making any payment, may require the Contractor to furnish releases or receipts from any or all persons performing work under this Agreement and/or supplying material or services to the Contractor, or any subcontractor if this is deemed necessary to protect the Town's interest. The Town, however, may in its discretion make payment in part or full to the Contractor without requiring the furnishing of such releases or receipts.
- 2.2 Reimbursable Expenses. If this Agreement is for lump sum compensation, there shall be no reimbursable expenses. If the Agreement is for compensation based on a time and materials methodology, the following shall be considered "reimbursable expenses" for purposes of this Agreement and may be billed to the Town without administrative mark-up but which must be accounted for by the Contractor and proof of payment shall be provided by the Contractor with the Contractor's monthly invoices:
- None
 - Vehicle Mileage (billed at not more than the prevailing per mile charge permitted by the IRS as a tax deductible business expense)
 - Printing and Photocopying Related to the Services (billed at actual cost)
 - Long Distance Telephone Charges Related to the Services
 - Postage and Delivery Services
 - Lodging and Meals (but only with prior written approval of the Town as to dates and maximum amount)

Any fee, cost, charge, or expense incurred by the Contractor not otherwise specifically authorized by this Agreement shall be deemed a non-reimbursable cost that shall be borne by the Contractor and shall not be billed or invoiced to the Town and shall not be paid by the Town.

- 2.3 Increases in Compensation or Reimbursable Expenses. Any increases or modification to the compensation or reimbursable expenses shall be subject to the approval of the Town and shall be made only by written amendment of this Agreement executed by both Parties.
- 2.4 Payment Processing. The Contractor shall submit invoices and requests for payment in a form acceptable to the Town. Invoices shall not be submitted more often than once each month unless otherwise approved by this Agreement or in writing by the Town in accordance with the amendment requirements of this Agreement. Unless otherwise directed or accepted by the Town, all invoices shall contain sufficient information to account for all appropriate measure(s) of Contractor work effort (e.g., task completion, work product delivery, or time) and all authorized reimbursable expenses for the Services during the stated period of the invoice. Following receipt of a Contractor's invoice, the Town shall promptly review the Contractor's invoice. All Town payments for Services rendered pursuant to this Agreement shall be issued in the business name of Contractor only, and in no event shall any such payments be issued to an individual. In no event shall any Town payments to Contractor be in the form of or based upon a salary or an hourly wage rate.
- 2.5 Town Dispute of Invoice or Invoiced Item(s). The Town may dispute any Contractor compensation and/or reimbursable expense requested by the Contractor described in any invoice and may request additional information from the Contractor substantiating any and all compensation sought by the Contractor before accepting the invoice. When additional information is requested by the Town, the Town shall advise the Contractor in writing, identifying the specific item(s) that are in dispute and giving specific reasons for any request for information. The Town shall pay the Contractor within forty-five (45) days of the receipt of an invoice for any undisputed charges or, if the Town disputes an item or invoice and additional information is requested, within thirty (30) days of acceptance of the item or invoice by the Town following receipt of the information requested and resolution of the dispute. To the extent possible, undisputed charges within the same invoice as disputed charges shall be timely paid in accordance with this Agreement. Payment by the Town shall be deemed made and completed upon hand delivery to the Contractor or designee of the Contractor or upon deposit of such payment or notice in the U.S. Mail, postage pre-paid, addressed to the Contractor.

3.0 CONTRACTOR'S REPRESENTATIONS AND OFFERED PERFORMANCE

The Contractor offers to perform the Services in accordance with the following Contractor-elected practices and procedures. By this Agreement, the Town accepts such offer and the following are hereby made part of the terms and conditions of this Agreement:

- 3.1 General. The Contractor shall become fully acquainted with the available information related to the Services. The Contractor shall affirmatively request from the Town Representative and relevant Town staff such information that the Contractor, based on the Contractor's professional experience, should reasonably expect is available and which would be relevant to the performance of the Services. The Contractor shall promptly inform the Town concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Agreement. The Contractor shall provide all of the Services in a timely and

professional manner. The Contractor shall comply with all applicable federal, state and local laws, ordinances, regulations, and resolutions.

- 3.2 Independent Contractor. The Contractor shall perform the Services as an independent contractor and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with the Town. This Agreement does not require the Contractor to work exclusively for the Town. This Agreement shall not be interpreted as the Town dictating or directing the Contractor's performance or the time of performance beyond a completion schedule and a range of mutually agreeable work hours, but shall be interpreted as the Contractor's offer and Town acceptance of terms and conditions for performance. The Contractor's business operations shall not be combined with the Town by virtue of this Agreement, and the Town will not provide any training to Contractor, its agents, or employees beyond that minimal level required for performance of the Services. The Parties acknowledge that the Contractor may require some assistance or direction from the Town in order for the Services to meet the Town's contractual expectations. Any provisions in this Agreement that may appear to grant the Town the right to direct or control Contractor or the Services shall be construed as Town plans or specifications regarding the Services.
- 3.3 Liability for Employment-Related Rights and Compensation. The Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Contractor, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. The Contractor will comply with all laws, regulations, municipal codes, and ordinances and other requirements and standards applicable to the Contractor's employees, including, without limitation, federal and state laws governing wages and overtime, equal employment, safety and health, employees' citizenship, withholdings, reports and record keeping. **CONTRACTOR ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS CONTRACTOR OR SOME ENTITY OTHER THAN THE TOWN PROVIDES SUCH BENEFITS. CONTRACTOR FURTHER ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO WORKERS' COMPENSATION BENEFITS. CONTRACTOR ALSO ACKNOWLEDGES THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED OR PAID PURSUANT TO THIS AGREEMENT.** To the maximum extent permitted by law, Contractor waives all claims against the Town for any Employee Benefits; the Contractor will defend the Town from any claim and will indemnify the Town against any liability for any Employee Benefits for the Contractor imposed on the Town ; and the Contractor will reimburse the Town for any award, judgment, or fine against the Town based on the position the Contractor was ever the Town's employee, and all attorneys' fees and costs the Town reasonably incurs defending itself against any such liability.
- 3.4 Interaction with Public. The Contractor recognizes that its conduct during the performance of the Services hereunder reflects upon its reputation in the community as well as upon the public perception of the Town. Therefore, the Contractor offers and warrants to the Town that the Contractor, its agents and employees will conduct

all of their interactions with the citizens and the public relating to the performance of the Services hereunder in such a manner as to provide customer service that reflects positively upon its reputation and the Town's public image.

- 3.5 Subcontractors. The Parties recognize and agree that subcontractors may be utilized by the Contractor for the performance of certain Services if and as described more particularly in **Exhibit A**; however, the engagement or use of subcontractors will not relieve or excuse the Contractor from performance of any obligations imposed in accordance with this Agreement and Contractor shall remain solely responsible for ensuring that any subcontractors engaged to perform Services hereunder shall perform such Services in accordance with all terms and conditions of this Agreement.
- 3.6 Standard of Performance. In performing the Services, the Contractor warrants that it shall use that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by highly competent members of the same profession practicing in the State of Colorado. The Contractor represents to the Town that the Contractor is, and its employees or sub-contractors performing such Services are, properly licensed and/or registered within the State of Colorado for the performance of the Services (if licensure and/or registration is required by applicable law) and that the Contractor and employees possess the skills, knowledge, and abilities to perform the Services competently, timely, and professionally in accordance with this Agreement. In addition, the Contractor warrants and represents that it will provide the Services in accordance with more specific standards of performance as are included within **Exhibit A**. The Contractor represents, covenants and agrees that the Services will be provided to the Town free from any material errors. The Contractor's failure to meet or exceed any of the foregoing standards and warranties may be considered a material breach of this Agreement and may be grounds for termination of the Agreement pursuant to Section 4.0 below, in addition to any other remedies as provided in Section 9.0 below.
- 3.7 Review of Books and Records. The Contractor shall promptly comply with any written Town request for the Town or any of its duly authorized representatives to reasonably access and review any books, documents, papers, and records of the Contractor that are pertinent to the Contractor's performance under this Agreement for the purpose of the Town performing an audit, examination, or other review of the Services.
- 3.8 Licenses and Permits. The Contractor shall be responsible at the Contractor's expense for obtaining, and maintaining in a valid and effective status, all licenses and permits necessary to perform the Services unless specifically stated otherwise in this Agreement.
- 3.9 Affirmative Action. The Contractor warrants that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor warrants that it will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex 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.

- 3.10 Employment of or Contracts with Illegal Aliens. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Contractor shall not contract with a subcontractor that fails to certify that the subcontractor does not knowingly employ or contract with any illegal aliens. By entering into this Agreement, the Contractor certifies as of the date of this Agreement that it does not knowingly employ or contract with an illegal alien who will perform work under this contract for Services and that the Contractor will participate in the e-verify program or department program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services. The Contractor is prohibited from using either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed. 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 notify the subcontractor and the Town within three (3) days that the Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien. The Contractor shall terminate the subcontract if the subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice regarding Contractor's actual knowledge. The Contractor shall not terminate the subcontract 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. The Contractor is required to comply with any reasonable request made by the Department of Labor and Employment made in the course of an investigation undertaken to determine compliance with this provision and applicable state law. If the Contractor violates this provision, the Town may terminate this Agreement, and the Contractor may be liable for actual and/or consequential damages incurred by the Town, notwithstanding any limitation on such damages provided by such Agreement.
- 3.11 Duty to Warn. The Contractor agrees to call to the Town's attention errors in any drawings, plans, sketches, instructions, information, requirements, procedures, and/or other data supplied to the Contractor (by the Town or by any other party) that it becomes aware of and believes may be unsuitable, improper, or inaccurate in a material way. However, the Contractor shall not independently verify the validity, completeness or accuracy of such information unless included in the Services or otherwise expressly engaged to do so by the Town.

4.0 TERM AND TERMINATION

- 4.1 Term. This Agreement shall be effective on the **Insert Date day of 20Year at 12:01 a.m.**, (the "Effective Date") and shall terminate at the earlier of the date on which all obligations of the parties have been met (to include all Services have been completed) or **11:59 p.m. on Insert Date, 20Year**, or on a prior date of termination as may be permitted by this Agreement; provided, however, that the Parties may mutually agree in writing to extend the term of this Agreement, subject to annual appropriation. Those provisions that survive termination, to include the indemnification obligations and any warranty obligations, shall remain in effect past termination.
- 4.2 Continuing Services Required. The Contractor shall perform the Services in accordance with this Agreement commencing on the Effective Date until such Services are terminated or suspended in accordance with this Agreement. The Contractor shall not temporarily delay, postpone, or suspend the performance of the Services without the written consent of the Town Council, Town Administrator, the Town Representative, or other Town employee expressly authorized in writing to direct the Contractor's services.
- 4.3 Town Unilateral Termination. This Agreement may be terminated by the Town for any or no reason upon written notice delivered to the Contractor at least ten (10) days prior to termination. In the event of the Town's exercise of the right of unilateral termination as provided by this paragraph:
- A. Unless otherwise provided in any notice of termination, the Contractor shall provide no further services in connection with this Agreement after receipt of a notice of termination; and
- B. All finished or unfinished documents, data, studies and reports prepared by the Contractor pursuant to this Agreement shall be delivered by the Contractor to the Town and shall become the property of the Town; and
- C. The Contractor shall submit to the Town a final accounting and final invoice of charges for all outstanding and unpaid Services and reimbursable expenses performed prior to the Contractor's receipt of notice of termination and for any services authorized to be performed by the notice of termination as provided by Section 4.3(A) above. Such final accounting and final invoice shall be delivered to the Town within thirty (30) days of the date of termination; thereafter, no other invoice, bill, or other form of statement of charges owing to the Contractor shall be submitted to or accepted by the Town.
- 4.4 Termination for Non-Performance. Should a party to this Agreement fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing party if the performing party first provides written notice to the non-performing party which notice shall specify the non-performance, provide both a demand to cure the non-performance and reasonable time to cure the non-performance, and state a date upon which the Agreement shall be terminated if there is a failure to timely cure the non-performance. For purpose of this Section 4.4, "reasonable time" shall be not less

than five (5) business days. In the event of a failure to timely cure a non-performance and upon the date of the resulting termination for non-performance, the Contractor shall prepare a final accounting and final invoice of charges for all performed but unpaid Services and authorized reimbursable expenses. Such final accounting and final invoice shall be delivered to the Town within fifteen (15) days of the date of termination; thereafter, no other invoice, bill, or other form of statement of charges owing to the Contractor shall be submitted to or accepted by the Town. Provided that notice of non-performance is provided in accordance with this Section 4.4, nothing in this Section 4.4 shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party.

- 4.5 Unilateral Suspension of Services. The Town may suspend the Contractor's performance of the Services at the Town's discretion and for any reason by delivery of written notice of suspension to the Contractor which notice shall state a specific date of suspension. Upon receipt of such notice of suspension, the Contractor shall immediately cease performance of the Services on the date of suspension except: (1) as may be specifically authorized by the notice of suspension (e.g., to secure the work area from damage due to weather or to complete a specific report or study); or (2) for the submission of an invoice for Services performed prior to the date of suspension in accordance with this Agreement.
- 4.6 Delivery of Notice of Termination. Any notice of termination permitted by this Section 4.0 and its subsections shall be addressed to the person signing this Agreement on behalf of either Town or Contractor at the address shown below or such other address as either party may notify the other of and shall be deemed given upon delivery if personally delivered, or forty-eight (48) hours after deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

5.0 INSURANCE

- 5.1 Insurance Generally. During the term of this Agreement, the Contractor shall obtain and shall continuously maintain, at the Contractor's expense, insurance of the kind and in the minimum amounts specified as follows by checking the appropriate boxes:

- The Contractor shall obtain and maintain the types, forms, and coverage(s) of insurance deemed by the Contractor to be sufficient to meet or exceed the Contractor's minimum statutory and legal obligations arising under this Agreement ("Contractor Insurance"); or
- The Contractor shall secure and maintain the following ("Required Insurance"):
- Worker's Compensation Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by law. Such policy of insurance shall be endorsed to include the Town as a Certificate Holder.
- Comprehensive General Liability insurance with minimum combined single limits of _____ Dollars (\$_____) each occurrence and of _____ Dollars (\$_____) aggregate. The policy shall be applicable

to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the Town as Certificate Holder and name the Town, and its elected officials, officers, employees and agents as additional insured parties.

- Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than _____ Dollars (\$_____) each occurrence with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Agreement, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the Town as Certificate Holder and name the Town, and its elected officials, officers, employees and agents as additional insured parties.

- Professional Liability (errors and omissions) Insurance with a minimum limit of coverage of _____ Dollars (\$_____) per claim and annual aggregate. Such policy of insurance shall be obtained and maintained for one (1) year following completion of all Services under this Agreement. Such policy of insurance shall be endorsed to include the Town as a Certificate Holder.

The Required Insurance shall be procured and maintained with insurers with an A- or better rating as determined by Best's Key Rating Guide. All Required Insurance shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor.

5.2 Additional Requirements for All Policies. In addition to specific requirements imposed on insurance by this Section 5.0 and its subsections, insurance shall conform to all of the following:

A. For both Contractor Insurance and Required Insurance, all policies of insurance shall be primary insurance, and any insurance carried by the Town, its officers, or its employees shall be excess and not contributory insurance to that provided by the Contractor; provided, however, that the Town shall not be obligated to obtain or maintain any insurance whatsoever for any claim, damage, or purpose arising from or related to this Agreement and the Services. The Contractor shall not be an insured party for any Town-obtained insurance policy or coverage.

B. For both Contractor Insurance and Required Insurance, the Contractor shall be solely responsible for any deductible losses.

C. For Required Insurance, no policy of insurance shall contain any exclusion for bodily injury or property damage arising from completed operations.

D. For Required Insurance, every policy of insurance shall provide that the Town will receive notice no less than thirty (30) days prior to any cancellation, termination, or a material change in such policy or in the alternative, the Contractor shall provide such notice as soon as reasonably practicable and in no event less than thirty (30) days prior to any cancellation, termination, or a material change in such policy.

5.3 Failure to Obtain or Maintain Insurance. The Contractor's failure to obtain and continuously maintain policies of insurance in accordance with this Section 5.0 and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the Town may immediately terminate this Agreement, or, at its discretion, the Town 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 Town shall be repaid by Contractor to the Town immediately upon demand by the Town, or at the Town's sole discretion, the Town may offset the cost of the premiums against any monies due to the Contractor from the Town pursuant to this Agreement.

5.4 Insurance Certificates. Prior to commencement of the Services, the Contractor shall submit to the Town certificates of insurance for all Required Insurance. Insurance limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this Section 5.0 and its subsections shall be indicated on each certificate of insurance. Certificates of insurance shall reference the Project Name as identified on the first page of this Agreement. The Town may request and the Contractor shall provide within three (3) business days of such request a current certified copy of any policy of Required Insurance and any endorsement of such policy. The Town may, at its election, withhold payment for Services until the requested insurance policies are received and found to be in accordance with the Agreement.

6.0 CLAIMS, INDEMNIFICATION, HOLD HARMLESS AND DEFENSE

6.1 Notices of Claim. A Party shall notify the other Party immediately and in writing in the event that a Party learns of a third-party claim or an allegation of a third-party claim arising or resulting from the Parties' performance or failure to perform pursuant to this Agreement. The Parties shall reasonably cooperate in sharing information concerning potential claims.

6.2 Claims Challenging Town Law, Ordinance, Rule, or Policy/Procedure. In the event any claim is asserted by a third-party against the Town and/or the Contractor alleging that any law, statute, ordinance, rule or approved Town policy or procedure is unlawful, unconstitutional or otherwise improper, then:

A. The Contractor shall not be entitled to and shall not defend such claim; and

B. The Town may, at its sole discretion, elect to defend, not defend, settle, confess, compromise, or otherwise direct the manner in which such claim is addressed; and

C. The Contractor shall reasonably cooperate with the Town in any Town defense of such claim although the Contractor shall bear any cost or expense incurred by the Contractor in such cooperation, including but not limited to the Contractor's cost and expense incurred in consultation with its own legal counsel; and

D. Only if authorized by law and without waiving the provisions of the Colorado Constitution or the Colorado Governmental Immunity Act, the Town shall indemnify and hold Contractor harmless for any damages, liability, expenses, or court awards, including costs and attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by any third-party, including but not limited to, any person, firm, partnership, or corporation, in connection with or arising out of such claim.

6.3 Indemnification for Certain Claims. For any claim not within the scope of Section 6.2 above, Contractor expressly agrees to indemnify and hold harmless the Town, and any of its council members, board members, commissioners, officials, officers, agents, Contractors, attorneys, or employees from any and all damages, liability, expenses, or court awards, including costs and attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by any third-party, including but not limited to, any person, firm, partnership, or corporation, in connection with or arising out of any intentional, reckless, negligent or tortious conduct, error, omission, or act of commission by Contractor or any of its employees, agents, or others acting on Contractor's behalf in performance of the Services. Nothing in this Agreement shall be construed as constituting a covenant, promise, or agreement by the Contractor to indemnify or hold the Town, its elected officials, board members, commissioners, officials, officers, agents, contractors, attorneys, or employees harmless for any negligence solely attributable to the Town, its elected officials, boards, commissions, officials, officers, agents, Contractors, attorneys, or employees. The Contractor's obligation to indemnify pursuant to this Section shall survive the completion of the Services and shall survive the termination of this Agreement.

6.4 Defense of Claims.

A. Claims Against Both the Town and Contractor. In the event any claim is asserted by a third-party against both the Town and Contractor arising out of any Party's performance of the Services which claim is not within the scope of Section 6.2 above, the Town shall be entitled to elect to defend such claim on behalf of both the Town and Contractor subject to the provisions governing indemnification set forth in this Section. In the event that the Town elects to defend such claim, the Town shall consult with Contractor in such defense but the Town is entitled to exercise its independent discretion in the manner of defense, including but not limited to the selection of litigation counsel and the discretion to settle, confess, compromise, or otherwise direct and dispose of any claim. In the event that the Town elects to defend such claim, Contractor may at its own cost and expense elect to assume the defense of Contractor, in which case Contractor shall bear its own attorneys' fees, costs, and expenses in such defense and such fees, costs, and expenses shall not be subject to indemnification pursuant to this Section.

- B. Claims Against Only One Party. In the event of any claim asserted by a third-party against only one Party to this Agreement arising out of any Party's performance of the Services which claim is not within the scope of Section 6.2 above, the Party shall be entitled to elect to defend such claim on behalf of such Party subject to the provisions governing indemnification set forth in this Section. Where appropriate, the defending Party may also elect to join the other Party through third-party practice or otherwise in accordance with the Colorado Rules of Civil Procedure or other applicable rules, in which case the joined Party may defend such claim subject to indemnification pursuant to this Section. In the event that a Party elects to intervene voluntarily in any claim asserted against the other Party arising out of any Party's performance of the Services or any claim that any law, statute, ordinance, rule or approved Town policy or procedure is unlawful, unconstitutional or otherwise improper, the intervening Party shall bear its own attorneys' fees, costs, and expenses in such intervention and such fees, costs, and expenses shall not be subject to indemnification pursuant to this Section.

7.0 RECORDS AND OWNERSHIP OF DOCUMENTS

- 7.1 Retention and Open Records Act Compliance. All records of the Contractor related to the provision of Services hereunder, including public records as defined in the Colorado Open Records Act ("CORA"), and records produced or maintained in accordance with this Agreement, are to be retained and stored in accordance with the Town's records retention and disposal policies. Those records which constitute "public records" under CORA are to be at the Town offices or accessible and opened for public inspection in accordance with CORA and Town policies. Public records requests for such records shall be processed in accordance with Town policies. Contractor agrees to allow access by the Town and the public to all documents subject to disclosure under applicable law. Contractor's willful failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Agreement by the Town. For purposes of CORA, the Town Clerk is the custodian of all records produced or created as a result of this Agreement. Nothing contained herein shall limit the Contractor's right to defend against disclosure of records alleged to be public.
- 7.2 Town's Right of Inspection. The Town shall have the right to request that the Contractor provide to the Town a list of all records of the Contractor related to the provision of Services hereunder retained by the Contractor in accordance with this subsection and the storage location and method. Contractor agrees to allow inspection at reasonable times by the Town of all documents and records produced or maintained in accordance with this Agreement.
- 7.3 Ownership. Any work product, materials, and documents produced by the Contractor pursuant to this Agreement shall become property of the Town of Milliken upon delivery and shall not be made subject to any copyright unless authorized by the Town. Other materials, methodology and proprietary work used or provided by the Contractor to the Town not specifically created and delivered pursuant to the Services outlined in this Agreement may be protected by a copyright held by the Contractor and the Contractor reserves all rights granted to it by any copyright. The Town shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1)

for exclusive use internally by Town staff and/or Town contractors; or (2) pursuant to a request under the Colorado Open Records Act, C.R.S. § 24-72-203, to the extent that such statute applies; or (3) pursuant to law, regulation, or court order. The Contractor waives any right to prevent its name from being used in connection with the Services.

- 7.4 Return of Records to Town. At the Town's request, upon expiration or termination of this Agreement, all records of the Contractor related to the provision of Services hereunder and records produced or maintained in accordance with this Agreement, are to be returned to the Town in a reasonable format and with an index as determined and requested by the Town.

8.0 FORCE MAJEURE

Neither the Contractor nor the Town shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by "force majeure." As used in this Agreement, "force majeure" means acts of God, acts of the public enemy, acts of terrorism, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

9.0 REMEDIES

In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, the Town may exercise the following remedial actions if the Contractor substantially fails to perform the duties and obligations of this Agreement. Substantial failure to perform the duties and obligations of this Agreement shall mean a significant, insufficient, incorrect, or improper performance, activities or inactions by the Contractor. The remedial actions include:

- A. Suspend the Contractor's performance pending necessary corrective action as specified by the Town without the Contractor's entitlement to an adjustment in any charge, fee, rate, price, cost, or schedule; and/or
- B. Withhold payment to the Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or
- C. Deny payment for those services which have not been satisfactorily performed, and which, due to circumstances caused by the Contractor, cannot be performed, or if performed would be of no value to the Town; and/or
- D. Terminate this Agreement in accordance with this Agreement; and/or
- E. Other remedies as may be provided by attached addendum or addenda.

The foregoing remedies are cumulative and the Town, in its sole discretion, may exercise any or all of the remedies individually or simultaneously.

10.0 MISCELLANEOUS PROVISIONS

- 10.1 No Waiver of Rights. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party. The Town's approval or acceptance of, or payment for, services shall not be construed to operate as a waiver of any rights or benefits to be provided under this Agreement. No covenant or term of this Agreement shall be deemed to be waived by the Town except in writing signed by the Town Council or by a person expressly authorized to sign such waiver, and any written waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver unless specifically stated.
- 10.2 No Waiver of Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the Town, its officials, employees, contractors, or agents, or any other person acting on behalf of the Town and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10 of the Colorado Revised Statutes.
- 10.3 Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section 10.3 shall not authorize assignment.
- 10.4 No Third-party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third-party, including any agent, sub-consultant or sub-contractor of Contractor. Absolutely no third-party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.
- 10.5 Article X, Section 20/TABOR. The Parties understand and acknowledge that the Town is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the Town are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the Town's current fiscal period ending upon the next succeeding December 31. Financial obligations of the Town payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of Town of Milliken, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.
- 10.6 Governing Law, Venue, and Enforcement. This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Weld County, Colorado. To reduce the cost of dispute resolution and to expedite the resolution of disputes under this Agreement, the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement. The Parties agree that the rule that

ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement. If there is any conflict between the language of this Agreement and any exhibit or attachment, the language of this Agreement shall govern.

- 10.7 Survival of Terms and Conditions. The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.
- 10.8 Assignment and Release. All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by the Contractor without the express written consent of the Town. Any written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by the Town through the authorizing agent executing this Agreement. No assignment shall release the Contractor from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment.
- 10.9 Interpretation and Mutual Negotiation. It is the intent of the Parties that this Agreement shall in all instances be interpreted to reflect the Contractor's status as an independent contractor with the Town and that in no event shall this Agreement be interpreted as establishing an employment relationship between the Town and either Contractor or Contractor's employees, agents, or representatives. The Parties agree that this Agreement is the result of mutual negotiation between the Parties and that the Agreement shall not be construed against the Town on grounds relating to drafting, revision, review, or recommendation by any agent or representative of the Town. The Parties further agree that all warranties in this Agreement are made by the Contractor to induce the Town to accept the Contractor's offer to enter into this Agreement and have been incorporated into the Agreement at the Contractor's request.
- 10.10 Paragraph Captions. The captions of the paragraphs and sections are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.
- 10.11 Agreement Controls. In the event a conflict exists between this Agreement and any term in any exhibit attached or incorporated into this Agreement, the terms in this Agreement shall supersede the terms in such exhibit.
- 10.12 Integration and Amendment. This Agreement represents the entire and integrated agreement between the Town and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this Agreement must be in writing and be signed by both the Town and the Contractor.
- 10.13 Severability. Invalidation of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase, or word herein or the application thereof in

any given circumstance shall not affect the validity of any other provision of this Agreement.

- 10.14 Incorporation of Exhibits. Unless otherwise stated in this Agreement, exhibits, applications, or documents referenced in this Agreement shall be incorporated into this Agreement for all purposes. In the event of a conflict between any incorporated exhibit and this Agreement, the provisions of this Agreement shall govern and control.
- 10.15 Notices. Unless otherwise specifically required by a provision of this Agreement, any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States Mail properly addressed to the intended recipient.

If to the Town :

If to Contractor:

Town Administrator Milliken Town Hall 1101 Broad Street Milliken, CO 80543	Contractor's Name Contractor's Address
With Copy to: Town Attorney c/o Town of Milliken 1101 Broad Street Milliken, CO 80543	With Copy to:

- 10.16 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

11.0 ATTACHMENTS

In addition to the attached Exhibits, the following are attached to this Agreement for reference:

- Contractor's Certificate(s) of Insurance
- Contractor Proof of Professional Licensing
- Other

12.0 AUTHORITY

The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of Town of Milliken and the Contractor and bind their respective entities.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK-SIGNATURE PAGE FOLLOWS

THIS AGREEMENT is executed and made effective as provided above.

TOWN OF MILLIKEN, COLORADO:

Approval by Town Board of Trustees

Not Required

By: _____
Mayor or Mayor Pro Tem

Approval by Town Administrator

Not Required

By: _____
Town Administrator

ATTEST:

Town Clerk

APPROVED AS TO FORM (*Excluding Exhibits*)

Not Required

Town Attorney

CONTRACTOR:

By: _____

Printed name: _____

Its: _____

STATE OF _____)
COUNTY OF _____) ss.

The foregoing Professional Services Agreement was acknowledged before me this ____ day of _____, 20__, by _____ as _____ of _____, a _____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

(Required for all contracts (C.R.S. § 8-40-202(2)(b)(IV)))

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
COMPENSATION

Town of Milliken RFP for On Call Engineering Services No.7 - 2015

Consultants

Scoring Panel	EST	JVA	AECOM	ICON	Ayers Ass.
Seth	46	43	46	48	45
John	22	24	38	44	44
Kent	42	42	44	46	45
Troy	40	39	43	44	43
Total Scores	150	148	171	182	177