TOWN OF MILLIKEN
TOWN BOARD OF TRUSTEES
AGENDA MEMORANDUM

To: Mayor Tokunaga and Town Board of Trustees From: Martha Perkins, Community Development Director Via: Kent Brown, Town Administrator			Meeting Date: Wednesday, January 27, 2016
Agenda Item #	Action: X	Discussion:	Information:
Agenda Title: Consideration of Approval of Renewal of an Agreement between The Town of Milliken and ProCode, Inc. for Building Department Services for the Town			
Attachments: Proposed Agreement Building Permits Report			

PURPOSE

To review and consider approval of an agreement that renews the previous year's Building Department Services contract between the Town of Milliken and ProCode, Inc. for 2016.

BACKGROUND

During the development of the 2015 Budget, the Board directed Staff to draft a new Request for Proposals (RFP) to provide a full range of building services for the Town of Milliken. The Town solicited bids to find out what options existed for possible contractors providing a full range of building services for the Town of Milliken.

In November 2014, Town Staff prepared a Request for Proposals (RFP #19-2014) for building inspection and plan review services. Proposals were received and the Board of Trustees awarded the contract for building services to ProCode, Inc. on January 28, 2015. Jonathan Gesick, President of ProCode, Inc. took office and starting providing services to the Town on February 2, 2015.

After obtaining the Meritage Permit Software license and transitioning the building permits partially completed by the previous contractor, the contractual relationship between the Town of Milliken and ProCode, Inc. has worked well. The contractor has provide faster plan review, inspection turn-around times, and has worked really hard to meet the needs of the local residents and contractors.

Town Attorney Michow has provided a revised professional services agreement that all parties have reviewed. Staff is recommending that the Board of Trustees retain ProCode, Inc. for building services with a revised professional services agreement.

BUDGET IMPLICATIONS

The Town's Proposed 2016 Budget for Building Department Services totals $180,000. ProCode's contractual agreement charges approximately 60% of the building permit fees currently being collected by the Town, not including the impact, water, and wastewater fees and the use tax that the Town collects. The cost of inspections is included as part of the building permit fee and is not billed separately.

Year	Permit Revenue	Building Service Cost
2014	$233,585	$167,222
2015	$288,702	$164,458

In 2015, the Town paid an additional cost of $8,300 for the Meritage Permit Software. This amount paid for setting up the software and the software license and maintenance. In 2016, Staff expects this cost to go down to $4,800 for the software license and maintenance. The software is not included as part of this contract.

RECOMMENDATION

Staff recommends continuing the services of ProCode, Inc. for building department services for 2016 through the attached proposed contract.

SUGGESTED MOTION

"I move to approve the agreement renewal by and between the Town of Milliken and ProCode, Inc. for Building Department Services for 2016."

PROFESSIONAL SERVICES AGREEMENT

This Agreement is being entered into by and between The Town of Milliken and ProCode Inc. The Town and the Contractor may be collectively referred to herein as the "Parties."

1.0 PARTIES

The Parties to this Agreement are the Town of Milliken, 1101 Broad Street, Milliken, CO 80543, a Colorado municipal corporation, hereinafter referred to as the "Town", and ProCode Inc., a Colorado corporation, 360 Walnut Avenue, Eaton, CO 80615, hereinafter referred to as "Contractor".

2.0 RECITALS AND PURPOSE

2.1 The Town desires to engage the Contractor for building inspection and associated services as set forth in this Agreement and in accordance with the Scope of Services attached hereto as **Exhibit A.**

2.2 The Contractor represents that it has the special expertise and background necessary to provide the Town with the services.

3.0 SCOPE OF SERVICES

The Contractor agrees to provide the Town with the specific professional services ("Services") as set forth in the Scope of Services attached hereto as **Exhibit A**. All documents, including original drawings, estimates, specifications, field notes, as built documents and data are the property of the Town. Contractor may retain reproducible copies of drawings and other documents.

4.0 COMPENSATION

4.1 Not to Exceed Amount ("NTE"). The Town shall pay the Contractor for Services in accordance with the Fee Schedule attached as **Exhibit B**. Such fees shall be inclusive of all costs of whatsoever nature associated with the Contractor's efforts, including but not limited to salaries, benefits, expenses, overhead, administration, profits, and outside consultant fees. No charges shall exceed the charges or rates identified in **Exhibit B**. The Fee Schedule and Services shall only be changed by written amendment to this Agreement. No Town employee has the authority to bind the Town with regard to any payment for any Services which exceeds the amount payable under the terms of this Agreement.

4.2 Non-reimbursable Costs, Charges, Fees, or Other Expenses. 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.

4.3 Payment Processing. The Contractor shall submit monthly, a detailed invoice to the Town describing the professional services rendered. If applicable, the invoice shall

document the total permit cost, by permit number, indicating the percentage that is owed to the Contractor. The Town shall pay the invoice within thirty days of receipt unless the work or the documentation therefore are unsatisfactory.

4.4 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 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.

5.0 PROJECT REPRESENTATION

5.1 The Town designates the Town Administrator or his designee, as the responsible Town staff member to provide direction to the Contractor during the conduct of the project. The Contractor shall comply with the directions given by the Town Administrator or his designee.

5.2 The Contractor designates Jonathan Gesick as its project manager. The Town may rely upon the guidance, opinions, and recommendations provided by the Contractor and its representatives. Should any of the representatives be replaced, particularly Chris Chevarie, and such replacement require the Town or the Contractor to undertake additional re-evaluations, coordination of pending projects, new employee orientations, or similar start-up work, the Contractor shall be fully responsible for all such additional costs and services.

6.0 TERM AND TERMINATION

6.1 This Agreement shall be effective on the **28th day of January 2016 at 12:01 a.m.**, (the "Effective Date") and shall terminate at **11:59 p.m. on January 28, 2017**, 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 by written amendment or letter extension signed by the Mayor, subject to annual appropriation by the Town.

6.2 This Agreement may be terminated by either party for material breach or default of this Agreement by the other party not caused by any action or omission of the other party by giving the other party written notice at least one (1) month in advance of the termination date. Termination pursuant to this subsection shall not prevent either party from exercising any other legal remedies which may be available to it.

6.3 In addition to the foregoing, this Agreement may be terminated by the Town for its convenience and without cause of any nature by giving written notice at least thirty (30) days in advance of the termination date. In the event of such termination, the Contractor will be paid for the reasonable value of the services rendered to the date of termination, not to exceed the total amount set forth in the Agreement, and upon such payment, all obligations of the Town to the Contractor under this Agreement will cease.

7.0 INSURANCE

The Contractor agrees to procure and maintain, at its own cost, the following policy or policies of insurance. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to the Contract Documents by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

7.1 Contractor shall procure and maintain, and shall cause each Subcontractor of the Contractor to procure and maintain or insure the activity of Contractor's Subcontractors in Contractor's own policy, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the Town. All coverages shall be continuously maintained from the date of commencement of services hereunder. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

a. Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract, and Employers' Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS ($500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS ($500,000) disease - policy limit, and FIVE HUNDRED THOUSAND DOLLARS ($500,000) disease - each employee or an affidavit in compliance with the statutory requirements.

b. Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS ($1,000,000) each occurrence and ONE MILLION DOLLARS ($1,000,000) aggregate. The policy shall be applicable to all premises and operations. 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.

c. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS ($1,000,000) each occurrence and ONE MILLION DOLLARS ($1,000,000) aggregate with respect to each of Contractor's owned, hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

d. If applicable, Professional Liability insurance with minimum limits of ONE MILLION DOLLARS ($1,000,000) each occurrence and ONE MILLION DOLLARS ($1,000,000).

7.2 The policies required above, except for the Workers' Compensation insurance, Employers' Liability insurance, and Professional Liability insurance, shall be endorsed to include the Town, and its officers and employees, as additional insureds. Every policy required above 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 Contractor. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductible losses under each of the policies required above.

7.3 Certificates of insurance shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the Town. Each certificate shall identify the Project and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the Town. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

7.4 Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the Town may immediately terminate the contract, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Town shall be repaid by Contractor to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to Contractor from the Owner.

7.5 The parties hereto understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently $350,000 per person and $990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101 *et seq.*, 10 C.R.S., as from time to time amended, or otherwise available to the Town, its officers, or its employees.

8.0 INDEMNIFICATION

To the fullest extent permitted by law, the Contractor agrees to indemnify and hold harmless the Town, and its officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the services hereunder, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the act, omission, or other fault of the Contractor or any subcontractor of the Contractor, or any officer, employee, or agent of the Contractor or any subcontractor, or any other person for whom Contractor is responsible. The Contractor shall

investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands, and to bear all other costs and expenses related thereto, including court costs and attorneys' fees. The Contractor's indemnification obligation shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the Town.

9.0 QUALITY OF WORK AND PERSONNEL

9.1 Contractor's professional services shall be in accordance with the prevailing standard of practice normally exercised in the performance of professional services of a similar nature in Weld County.

9.2 The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under the Contract. Such personnel shall not be employees or have any contractual relationship with the Town.

9.3 All of the services required hereunder will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State or Local law to perform such services.

9.4 None of the work or services covered by this Contract shall be subcontracted without the prior written approval of the Town. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Contract.

10.0 STANDARD OF PERFORMANCE

10.1 In performing the Services, the Contractor shall use that degree of care and skill ordinarily exercised under similar circumstances by members of the same profession practicing in the State of Colorado. The Contractor represents to the Town that the Contractor and the Contractor's employees possess the skills, knowledge, and abilities to competently, timely, and professionally perform the Services in accordance with this Agreement. In addition, more specific standards of the Contractor performance are attached to this Agreement in **Exhibit A** (Scope of Services).

10.2. Notice of Changes That May Affect Performance. The Contractor shall promptly inform the Town's Authorized Representative of any reasonably anticipated or known employment-related actions (e.g., terminations, resignations, reduction in hours/service, hiring, and substitutions of employees) which may affect in any manner the performance of the Services. Employment-related actions shall specifically include the securing of, retention of, or modification in relationships with any employees or subcontractors performing Services under this Agreement. The Town shall be provided a reasonable advance opportunity to make recommendations to the Contractor regarding any proposed hiring, retention, or selection of any new employee or any subcontractor that will either: (1) have a supervisory role in the performance of the Services; or (2) engage in direct and substantial contact with the public. Such recommendation by the Town concerning an employment-related action shall not be binding on the Contractor.

10.3 Relationships and Representation. The Contractor and all the Contractor's employees providing Services hereunder shall, at all times, foster and maintain professional and harmonious relationships with the members of the Town Board, all employees of the Town, all employees of the Town's contract services providers and all Town businesses, residents, customers and shall represent the Town in the best light possible to members of the public, staff, elected and appointed officials and media.

11.0 INSPECTION OF RECORDS AND WORK PRODUCT

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

11.2 The Contractor shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contracts and such other records as may be deemed necessary by the Town to assure proper accounting from all project funds. These records will be made available for audit purposes to the Town or any authorized representative, and will be retained for three (3) years after the expiration of this Contract unless written permission to destroy them is granted by the Town.

11.3 Any work product, materials, and documents produced by the Contractor pursuant to this Agreement shall become property of the Town 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.

12.0 MISCELLANEOUS

12.1 Compliance with Laws. Contractor shall be solely responsible for compliance with all applicable federal, state, and local laws, including the ordinances, resolutions, rules, and regulations of the Town; for payment of all applicable taxes; and obtaining and keeping in force all applicable permits and approvals.

a. Civil Rights Act of 1964. Contractor shall comply with Title VI of the Civil Rights Act of 1964, which provides that no person shall, on the grounds of race, color, creed, religion, sex or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

b. Section 109 of the Housing and Community Development Act of 1974. Contractor shall comply with Section 109 of the Housing and Community

Development Act of 1974, which provides that no person in the United States shall on the grounds of race, color, creed, religion, sex or national origin be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title

12.2 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 Board 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.

12.3 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.

12.4 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 12.4 shall not authorize assignment.

12.5 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.

12.6 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.

12.7 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.

12.8 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.

12.9 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. 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.

12.10 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.

12.11 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.

12.12 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.

12.13 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.

12.14 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.

12.15 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.

12.16 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:

Town Administrator
Post Office Drawer 290
1101 Broad Street
Milliken, CO 80543

If to Contractor:

ProCode, Inc.
Jonathan Gesick, President
360 Walnut Avenue
Eaton, CO 80615

With Copy to:

Town Attorney
c/o Town of Milliken
1101 Broad Street
Milliken CO 80543

12.17 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.

13.0 EQUAL OPPORTUNITY EMPLOYER

Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability or national origin. Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, age, sex, disability, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity Laws.

14.0 COMPLIANCE WITH C.R.S. §8-17.5-101, ET. SEQ.

In accordance with *Colorado Revised Statutes* (C.R.S.) §8-17.5-11, *et. seq.*, the Contractor shall meet the following requirements prior to signing this Agreement and during the duration thereof:

14.1 The Contractor shall certify compliance with the Basic Pilot Program (created in Public Law 208, 104th Congress as amended, and expanded in Public Law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security) on the attached certification.

14.2 The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract for services.

14.3 The Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract for services.

14.4 At the time of signing this Agreement (public contract for services), the Contractor has verified or attempted to verify through participation in the Basic Pilot Program (created in Public Law 208, 104th Congress as amended, and expended in Public Law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security, registration available at https://www/vis-dhs.com\employerregistration), that the Contractor does not employ any illegal aliens and, if the Contractor was not accepted into the Basic Pilot Program prior to entering into this public contract for services, the Contractor shall apply to participate in the Basic Pilot Program every three months until the Contractor is accepted or this public contract for services has been completed, whichever is earlier. The provisions specified in this paragraph shall not be required or effective in this public contract for services if the Basic Pilot Program is discontinued.

14.5 The Contractor shall not use the Basic Pilot Program procedures to undertake pre-employment screening of job applicants while this public contract for services is being performed.

14.6 If Contractor obtains actual knowledge that a subcontractor performing work under this public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall; notify the subcontractor and the Town within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to the previous paragraph, the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

14.7 Contractor shall comply with any reasonable requests by the department of Labor and Employment (the Department) made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. §8-17.5-102(5).

14.8 If Contractor violates this section of this Agreement, the Town may terminate this Agreement for a breach of the contract. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the Town.

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

15.0 INTEREST OF MEMBERS OF A TOWN

No member of the governing body of the Town and no other public official, officer, employee or agent of the Town who exercises any functions or responsibilities in connection with the planning and carrying out of the Agreement, shall have any personal financial interest, direct or indirect in this Contract; and the Contractor shall take appropriate steps to assure compliance.

16.0 INTEREST OF CONTRACTOR AND EMPLOYEES

The Contractor covenants that it presently has no interest and shall not acquire interest, direct or indirect, which would allow the Contractor to receive compensation in excess of that being paid pursuant to the Agreement, or any other interest which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants, that in the performance of this Contract, no person having any such interest shall be employed.

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SIGNATURE PAGE FOLLOWS

This Contract was authorized by the Town Board on January 27, 2016

The Contractor has read and understands this Agreement and has discussed and made any changes it/he/she deems necessary or appropriate and will continue to comply with its provisions during the term(s) of the Agreement which includes providing insurance and/or documentation thereof as necessary before commencement.

TOWN OF MILLIKEN, a Colorado municipal corporation

_____
Kent Brown, Town Administrator
Telephone: (970) 660-5043
Facsimile: (970) 587-2678

ATTEST:

_____
Cheryl Powell, Town Clerk

Approved as to form:

_____
Linda Michow, Town Attorney

CONTRACTOR:

ProCode Inc.

_____
Printed Name: Jonathan Gesick

Title: President

EXHIBIT A

SCOPE OF SERVICES

ProCode Inc. provides all of the necessary services to implement and maintain a successful building department. Primary services include:

Services Required	Services provided by ProCode Inc.
Act as the Chief Building Official	✓
Review and implement inspection and plan review policies.	✓
Provide all necessary inspections and plan review services.	✓
Coordinate with other departments.	✓
Maintain and adopt local building codes and fee schedules.	✓
Provide necessary staffing requirements as needed to accommodate growth in the community.	✓
Attend all meetings as requested.	✓
Communicate and respond to citizen complaints and concerns.	✓
Provide reports as requested by the Town.	✓
Train and work with office staff as needed.	✓
Maintain all certifications and training on new and existing codes.	✓
Document inspections and plan reviews using electronic, written or other appropriate means.	✓
Provide code enforcement as requested by the Town.	✓
Provide customized software for record management and inspection documentation.	✓

CUSTOMIZED SERVICES

ProCode Inc. is aware that each municipality has its own characteristics and special needs for their building department. As a company we understand and can originate a structure that meets the specific requirements of the municipality.

QUICK TURN-A-ROUND TIMES FOR PLAN REVIEWS

We provide quick plan review turn-around times. At the beginning of each day all residential plan reviews that have been submitted, with complete information, will be reviewed and returned with comments to the front staff the following day. All commercial reviews will be done within 5-10 business days assuming all necessary documents have been received. We can accept and review plans electronically if requested by the applicant.

INSPECTION SCHEDULING

Inspection requests received before 7:30 am will be completed that day. If an inspection is requested after 7:30 am, and there is sufficient time to complete the inspection, it will be done that day. Inspection hours run from 7:30 am until 4:00 pm unless another time has been arranged. We always try to accommodate the clients schedule if we can. A specific time can be requested. We will have an inspector in Milliken in the morning and afternoon to allow for am or pm inspections. Inspections can be scheduled over the phone or on our website.

Fees

Our goal at ProCode Inc. is to provide excellent building department services at an affordable price. We want Milliken to be able to maintain a budget that will show taxpayers that the Town is being responsible with their funds. We have set our fees to cover all expenses and make a reasonable profit to provide for better services and future growth of our company.

EXHIBIT B

FEE SCHEDULE

For every permit that is issued the Town of Milliken will retain 40% of the fee. There are no hidden costs or additional charges for any of our services. Here is ProCode Inc.'s fee schedule.

Building Department Fees	ProCode Inc. Fee Schedule
Existing permit inspections.	No Additional Charge
Existing plan review fees	No Additional Charge
Administration Fees	0%
Building Permit Fees	60%
Commercial Plan Review Fees	60%
Residential Plan Review Fees	60%
Residential Master Plan Review Fees	$50
Electrical Fees	60%
On-site Meetings with Clients	No Additional Charge
Building Official Services	No Additional Charge
Disaster & Emergency Services	No Additional Charge
Inspection/Permit Software Services	No Additional Charge*
Jurisdiction Owned Projects	Fees are waived/No Charge
Testimonial and Investigation Fees	No Additional Charge
Miscellaneous Fees	No Additional Charge

*If the Town of Milliken currently subscribes to a software system such as Meritage, Accela, Permits Plus or other that ProCode Inc. can be added as users, ProCode Inc. will pay for our staff as users on your system. If no such system exists, an estimated cost will be given to provide these services and an agreement will be made with Milliken.

Milliken
From 01/01/2015 to 12/31/2015

	Residential			Commercial						
	New	Alteration	Misc	New	Alteration	Misc	Misc.	Other	One-Stop	Total
Permit Activity										
Permits Issued	88	69	0	10	11	0	0	0	167	345
Valuation	$14,038,432.85	$977,685.89	$0.00	$4,904,220.00	$997,561.00	$0.00	$0.00	$0.00	$1,041,785.53	$21,959,685.27
Total Fees Paid to Jurisdiction	$227,538.37	$227,538.37	$227,538.37	$227,538.37	$227,538.37	$227,538.37	$227,538.37	$227,538.37	$227,538.37	$227,538.37
Plan Reviews										
Received	91	68	0	9	12	0	0	0	0	180
Released (OK'ed)	88	71	0	9	12	0	0	0	1	181
Avg. days to first comments	0.82	0.82	0	1.78	2.75	0	0	0	0	1
Inspections										
Number	2015	475	2	150	71	0	0	32	375	3120
Inspection Pass %	99.35%	95.79%	100.00%	93.33%	97.18%	0%	0%	84.38%	98.40%	98.27%
% of inspections completed next business day	92.96%	95.16%	100.00%	92.16%	91.55%	0%	0%	96.88%	92.99%	93.27%
Voided Permits										
Number	8	8	5	5	5	5	5	5	5	51

Milliken
From 01/01/2014 to 12/31/2014

	Residential			Commercial						
	New	Alteration	Misc	New	Alteration	Misc	Misc.	Other	One-Stop	Total
Permit Activity										
Permits Issued	91	56	12	6	7	0	0	0	89	261
Valuation	$15,096,485.92	$863,474.28	$519,715.00	$1,047,140.14	$216,101.00	$0.00	$0.00	$0.00	$330,725.05	$18,073,641.39
Total Fees Paid to Jurisdiction	$184,928.75	$184,928.75	$184,928.75	$184,928.75	$184,928.75	$184,928.75	$184,928.75	$184,928.75	$184,928.75	$184,928.75
Plan Reviews										
Received	90	63	0	8	6	0	0	0	0	167
Released (OK'ed)	92	62	0	8	6	0	0	0	0	168
Avg. days to first comments	4.92	6.89	0	9.75	8.83	0	0	0	0	6.03
Inspections										
Number	2101	357	10	31	55	0	0	37	113	2704