



**TOWN OF MILLIKEN
TOWN BOARD OF TRUSTEES
AGENDA MEMORANDUM**

To: Mayor Tokunaga and Town Board of Trustees	Meeting Date:
From: Kent Brown, Town Administrator	Wednesday, February 25, 2015

Agenda Item #	Action: X	Discussion:	Information:
Agenda Title: Consideration of Approval of an Agreement by and between the Town of Milliken and ProCode, Inc. for Building Department Services for the Town			
Attachments: Previous Board minutes of January 28, 2015 Signed Agreement between ProCode, Inc. and the Town Milliken			

PURPOSE

To vote on the agreement for Building Department Services with only the participation of Board members that have no potential conflict of interest or any appearance of a conflict of interest resulting from the award of the contract.

BACKGROUND

At the Board's request, a request for proposal to provide building department services for the Town of Milliken was prepared, advertised and completed. The Board of Trustees awarded the contract for building inspection services to ProCode, Inc. on January 28, 2015. Jonathon Gesick, President of ProCode, Inc. took office and starting providing services to the Town on February 2, 2015.

Due to allegations of a conflict of interest, there may be a need for the Board of Trustees to revisit the vote on the agreement for Building Department Services.

BUDGET IMPLICATIONS

RECOMMENDATION

If the Board has determined earlier in the meeting that a conflict of interest existed which violated the Town of Milliken's Board of Trustees Policies and Procedures (or other statutes), then the Board of Trustees could:

Revisit the vote on the agreement for Building Department Services. After the agenda item is announced and before any discussion or vote occurs; all Board members should follow the Town of Milliken Board of Trustees Policies & Procedures Manual regarding conflicts of interest, specifically section 13.6. As written in section 13.6,

When a Trustee (or Mayor) believes that he/she has a personal or private interest, potential conflict, or appearance of conflict, in a matter proposed or pending before the Board, the member shall request to speak when the agenda item with which the member has a conflict is called and either;

- i. Disclose that there may be a personal or private interest, potential conflict, or appearance of conflict, in the matter and will not participate in the discussion or decision; and step down from the Board platform and leave the Chambers during the Board's discussion and action; or
- ii. Request legal advice from the Town Attorney.

SUGGESTED MOTION

"I move to approve the Agreement by and Between the Town of Milliken and ProCode, Inc. for Building Department Services for 2015."

**TOWN OF MILLIKEN
BOARD OF TRUSTEES
MILLIKEN MEETING HOUSE, 1201 BROAD STREET**

MEETING MINUTES

Wednesday January 28, 2015 – 7:00 P.M.

Call to Order

The Town of Milliken Board of Trustees convened a regular session on Wednesday, January 28, 2015 at 7:00 p.m. Those present: Mayor Miff Tokunaga, Mayor Pro Tem Linda Measner; Trustees: Linda Beck, LeRon Ehrlich, Jordan Jemiola, Ken Kidd and Lois Ann Onorato. Also present: Town Administrator Kent Brown, Town Clerk Cheryl Powell, Treasurer & Accounting/Finance Director Patrick Murphy, Community Development Director Martha Perkins and Town Attorney Bruce Fickel. Absent: Community Engagement Specialist/Planner Seth Hyberger.

Pledge of Allegiance

Mayor Tokunaga called the meeting to order.

Roll Call

Trustee's: Ehrlich, Onorato, Jemiola, Mayor Pro Tem Measner, Mayor Tokunaga, Trustee Beck and Trustee Kidd.

Agenda Approval

Trustee Jemiola requested Action #1 moved to Consent Agenda. Town Administrator Brown requested an Executive Session at the end of the meeting citing C.R.S 24-6-402(4)(a), for the purchase, acquisition, lease, transfer or sale of any real, personal, or other property. Trustee Ehrlich would like to discuss the Meeting House audio system that has been budgeted for 2015 and requested to add this to the Discussion Agenda.

Citizen Comments

None

Recognition

Mayor Tokunaga recognized Parks Director Josh Roseberry for his involvement in the presentation that was given to the Colorado Municipal League (CML) on

Tuesday, January 27, 2015. This presentation was based on the collaboration effort and the community engagement process for obtaining the Skate Park Grant. The Mayor said several other municipalities were in attendance at CML and he wanted to be sure that Director Roseberry was recognized for presenting.

Minutes of Previous Meeting

- January 14, 2015 – Approved as distributed.

Acknowledgement of List of Bills

Trustee Kidd inquired about a payment to Spradley Barr Ford for body repair to a vehicle. Accounting and Finance Director Murphy explained this was damage to a vehicle in which the side of the vehicle hit a pole in a parking lot in Johnstown.

List of Bills was acknowledged and accepted.

CONSENT AGENDA

1. Resolution 15-03, Authorizing Elected Officials and Specified Town Staff to Conduct Banking Business on Behalf of the Town of Milliken

A Resolution to update signatures to conduct banking business on behalf of the Town of Milliken by adding Town Administrator Kent Brown.

2. Water Lease Agreement with Bigfoot Turf of Excess Water Credits

To consider for approval a Water Lease with Big Foot Turf Farms, Inc. to lease "excess credits" from the Town of Milliken's Plan for Augmentation.

3. Resolution 15-04, Authorizing the Town Administrator to Apply for and Secure Additional Water Rights for Augmentation from the Town's RO Wells

To secure additional water rights to be used for replacement of depletions from wells owned by Milliken and return flow obligations pursuant to the Augmentation Plan decreed in Case No. 02CW339.

4. Consideration and Approval of an Agreement for an On-Call Engineering Firm move to consent

To consider for approval the selection of an on-call engineering firm, Lamp Rynearson, to continue to serve as the Town of Milliken's Engineer. The State of Colorado's Department of Transportation (CDOT) requested that the engineering firm be selected through a bid or Request for Proposal process

for transportation-related grants. After receiving ten (10) proposals and interviewing three (3) firms, staff recommends that Lamp Rynearson continue to serve as the Town's Engineer.

Mayor Pro Tem Measner moved to approve the Consent Agenda. Trustee Onorato seconded.

Discussion: None

Vote: All in favor, none opposed. Motion passed.

ACTION AGENDA

1. Consideration and Approval of an Agreement by and Between the Town of Milliken and SAFEbuilt Colorado, Inc. for Building Department Services for the Town

Community Development Director Martha Perkins explained that this item was postponed from the last Board meeting at the direction of the Town Board. The only item that staff updated was a revised regional building permit and impact fee comparison from another Town. Director Perkins explained that with the removal of the cash-in-lieu of raw water fee, Milliken is in the lower half of the group of comparable municipalities as far as the cost for building fees. Director Perkins asked the Town Board for consideration and approval of an Agreement by and Between the Town of Milliken and SAFEbuilt Colorado, Inc. to provide a full range of building department services for the Town in 2015. She explained that a Request for Proposal (RFP) was sent out and the Town received four (4) proposals, staff interviewed three (3) of the companies. Director Perkins explained to the Board the criteria that the Town Staff used to base their decision on, such as experience, expertise, office location, software, software cost, administrative support and turn-around time for residential plan reviews. She also explained that, after discussion during the interview process, SAFEbuilt, the Town's current contractor has added am/pm inspection services, plus an additional module called Contractor Connect, which is a software module that will allow contractors to request permits and inspections online as well as track a permit in the plan review process and view inspection results in real time. These additional services and support would be included in the fee it presented in its response to the RFP. The turn-around time for residential and commercial plan review seems to be in-line with other communities.

Director Perkins explained staff's concern with ProCode, stating that even though its costs for services are less, the concern is that it is a start-up business and the President (Jonathan Gesick) of the company is currently employed by Weld County. During the interview process he stated he would

resign from his position with the County if he received this contract. Staff inquired about his backup staff and he explained that he would use a building inspector that is currently employed by Weld County. Director Perkins' concern is that other municipalities that she has worked for have had to have a Memorandum of Understanding (MOU) with that county or municipality before they could utilize that employee's services. As an additional cost, ProCode had given quotes for two (2) software programs; Accela and Meritage. The Town would be paying for the cost of the software.

Director Perkins explained that CCI was the other building services company that the Town interviewed. The president of the company would be the Town's Building Official and is also writing his own software program. The problem with this software is that the president of CCI was not sure if the Town's data, which is currently in Meritage, could be converted to his software. Director Perkins explained to the Town Board that after reviewing the Building Services RFP Comparison, staff recommends retaining SAFEbuilt's services.

Trustee Jemilola moved to proceed with a contract with ProCode and include the terms for a twelve (12) month review period and if the Town is satisfied, to set it up for renewal. Mayor Pro Tem Measner seconded.

Discussion: Town Attorney Fickel asked if the motion is to execute the contract, or to bring it back to the Board. Trustee Jemilola indicated that there is not a contract in place, so it would need to be brought back before the Board. Mayor Tokunaga asked when SAFEbuilt's contract ends. Director Perkins responded January 31, 2015. Perkins indicated that the Town would need to request SAFEbuilt to extend their contract, until the ProCode contract is executed. Mayor Tokunaga asked if the ProCode contract needs to come back before the Board if it is essentially the same terms or could the Board just direct the Town Administrator to sign the contract. Trustee Jemilola indicated that this would be fine, if it is using the same contract guidelines. Town Attorney Fickel responded that the motion would be to authorize the Town Administrator to execute the contract on behalf of the Town Board under the same terms that were in the RFP set forth in the contract. Trustee Jemilola responded that is correct, and if there are substantial changes, it would need to come back before the Town Board.

Mayor Tokunaga asked Director Perkins about the backup inspector for ProCode regarding the need to execute an MOU with Weld County. Director Perkins replied yes, it was her understanding that the backup inspector for ProCode works for Weld County and would not be resigning his position with the County. Perkins suggested consulting the Town Attorney in regard to this.

Trustee Jemilola requested a call for vote.

Trustee Ehrlich asked for the motion to be repeated.

Town Attorney Fickel stated that the motion would be, to authorize the Town Administrator to execute the contract with ProCode, based on its RFP without substantial changes. Town Attorney Fickel confirmed that the contract that would be used would be the Independent Contractor Contract that was previously sent to the Town Board.

Vote: Roll call vote: Trustee Ehrlich – yes, Trustee Onorato – yes, Trustee Jemiola – yes, Mayor Pro Tem Measner – yes, Mayor Tokunaga – yes, Trustee Beck – no, Trustee Kidd – yes. Motion passed.

Trustee Beck explained her reasoning as to why she opposed the vote. She indicated that when you have an employee from the county trying to start up a business it feels as if it is under the radar and not the way to do things. They are a startup company and we don't know if they will be around. The other company that is writing their own software could be a problem. In her opinion SAFEbuilt has done a good job it has met the Town's needs and our concerns and she feels the Town should have stayed with it.

Trustee Kidd stated that after reviewing the ProCode proposal, they are not writing their own software, it was the other company. Trustee Beck indicated she meant the other company (CCI).

2. Consideration and Approval of a Contract Extension with Waste Management

Accounting and Finance Director Murphy explained to the Town Board that the Town had an ongoing contract with Waste Management for solid waste disposal for the Town of Milliken. Director Murphy explained that the current contract extension with Waste Management is the third year of up to five (5) additional one-year terms, in accordance with the contract signed on January 25, 2012. Director Murphy explained that the Agreement also provides for a potential annual increase in rates of 2.75% per year if the Agreement is extended and provided Waste Management provides the Town a sixty (60) day notice of its proposed rate adjustment.

Waste Management sent notice to the Town on December 11, 2014, of its intent and desire to continue with the Agreement and its request for a rate adjustment of 2.75%, which will take effect on March 1, 2015, in accordance with the Agreement. Staff's recommendation is to continue using Waste Management's services.

Trustee Jemiola moved that the Town agree to extend the Solid Waste Collection Services Agreement with Waste Management of Colorado, Inc. for one additional year, from March 1, 2015, through February 28, 2016, and

accept the requested rate adjustment of 2.75% in accordance with the Agreement. Trustee Ehrlich seconded.

Discussion: Mayor asked if this the appropriate time to ask Waste Management what else they can provide the Town. Director Murphy has asked about increased recycling at a reduced cost and has not had success at this time while speaking with Waste Management representative Mike Woodruff. Director Murphy suggested that if the Board wanted to extend the contract with Waste Management further, there may be some leverage in doing that. Mayor Tokunaga expressed that he is a strong proponent of recycling and asked Director Murphy to further investigate any options available. Trustee Kidd asked if Johnstown's rates are less than Milliken's due to the volume. Director Murphy explained that Johnstown's and Milliken's services are a little different in which Milliken is allowed ten (10) additional bags of yard waste each week at no additional cost. Town Board would like this information reiterated to Milliken residents as a reminder since many of them do not take advantage of this. The Board requested the reminder be placed in the monthly Milliken Mail and other venues in which to reach the residents.

Vote: All in favor, none opposed. Motion passed.

3. Consideration and Approval of Resolution 15-05, Updating Revenues Related to Miscellaneous Services Provided by the Town of Milliken

Director Murphy asked the Town Board to consider for approval Resolution 15-05, to adjust the Town Fee Schedule to reflect the rate changes necessary to fund the price increase requested by Waste Management, Inc. upon the extension of the Solid Waste Management Services Agreement with the Town, and other miscellaneous adjustments. Director Murphy also included in the fee schedule copies on the Plotter and the cost on construction water meters.

Trustee Ehrlich moved to adopt the recommended Fee Schedule with changes to the Refuse Collection Rates, and other miscellaneous charges, effective March 1, 2015. Trustee Jemiola seconded.

Discussion: None.

Vote: All in favor, none opposed. Motion passed.

DISCUSSION AGENDA

Trustee Ehrlich asked about the upgrade to the sound system since there are funds for this in the budget. Town Administrator Brown explained that the staff will work on this.

INFORMATIONAL AGENDA

1. Fields Annexation

Community Development Director Perkins provided the Town Board with documentation regarding the annexation petition and other relevant documentation for the McDowell's property annexation into the Town of Milliken to ensure that a section of land owned by the Fields was not annexed into the Town by error. Staff found that the Mill Iron V Subdivision annexation was recorded in 1998 through Ordinance 367. There was also a letter in the file from Attorney Fickel stating the Notice of Public Hearing regarding the annexation and it was published for four (4) consecutive weeks in the Johnstown Breeze. The Plat was recorded in 1999 and the Fields were included in the mailing list for the Notice of Public Hearing.

There was also a Personal Representatives Deed that was recorded in March 2007. The deed includes a survey, which Staff believes is the strip of land in question. Mr. Fields took ownership of the property in question for a payment of \$878.00 per the Last Will and Testament of James McDowall III, as the Representative for the McDowell Estate in Probate Court. Staff believes that the sliver of land was purchased by the Fields after it had been annexed into Town.

Town Attorney Fickel provided the Town Board with an update, stating that he had spoken to David Fields attorney extensively this afternoon and that both he and the Fields attorney agree that the Section in the Statute that speaks of detachment for failure to serve utilities is probably not viable. The Fields attorney had concern whether the annexation was proper. Attorney Fickel advised him that the same documents that have been provided to the Town Board will be sent to him. Attorney Fickel explained there is a provision in the Statute that says, if someone is adjacent to a municipality and the Town and the property owner think the property should be detached, that they can submit a request to the Town Board. Town Attorney advised the Town Board that this would be a Quasi-Judicial hearing, and therefore Attorney Fickel has advised the Fields attorney to ask his clients to refrain from conversations with the Town Board. The Fields will let the Town know how and if they want to proceed.

Mayor Tokunaga asked if annexation would eventually happen, especially if there is further annexation into Town from the west. Town Attorney said the property would be an enclave and the Town could force annexation.

Executive Session

Mayor Pro Tem Measner moved to go into Executive Session under C.R.S. 24-6-402(4)(a). Trustee Onorato seconded.

Vote: All in favor, none opposed. Motion passed.

Executive Session commenced at approximately 7:45 P.M.

Executive Session ended at 8:14 P.M.

Regular Meeting Resumed – The time is 8:14 P.M.

ASSIGNMENT AND PROJECT UPDATE(S)

Other Business

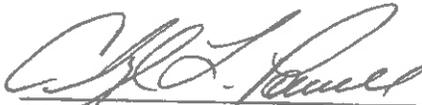
Discussion regarding the appraisal for mineral rights and its results.

Summary of Meeting (Review of Action Items, Staff Assignments & Schedule)

Adjournment

Hearing no further business, the Mayor adjourned the meeting at 8:17 P.M.

Prepared by:


Cheryl Powell, Town Clerk

Approved by:


Milt Tokunaga, Mayor

ADDENDUM NO. 1

The Town of Milliken is a statutory municipality and as such its power and authority are controlled by the provisions of the Colorado Revised Statutes and the applicable case law. The terms of this addendum are dictated in part by the Colorado statutes and the Town's Insurance carrier.

This Addendum to the Agreement, which includes by reference all documents related to the services and materials being provided by the Contractor is being entered into by and between The Town of Milliken and the undersigned Contractor, with the intention to modify and supersede the terms of any conflicting terms of all other documents, which are collectively referred to as the Agreement.

1.0 PARTIES

The parties to this Agreement are the Town of Milliken, a Colorado municipal corporation, hereinafter referred to as the "Town", and the undersigned Contractor, hereinafter referred to as "Contractor".

2.0 RECITALS AND PURPOSE

2.1 The Town desires to engage the Contractor for the purposes set forth in the Contractor's Agreement and the Addendum.

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 as set forth in the Contract attached hereto and incorporated herein by reference. 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 The Town shall pay the Contractor for services under the Agreement a total not to exceed the amounts set forth in the Agreement. Such amounts 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 hourly charges shall exceed the hourly rates identified in the Agreement. The scope of services and payment therefore shall only be changed by a properly authorized 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 The Contractor shall submit monthly a detailed invoice to the Town describing the professional services rendered. 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 one (1) month of receipt unless the work or the documentation therefore are unsatisfactory.

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, President and Certified Building Official, 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 Chaverie, and such replacement require the Town or the Contractor to undertake additional reevaluations, coordination, orientations, etc., the Contractor shall be fully responsible for all such additional costs and services.

6.0 TERM

The Contractor's services under this Agreement shall commence as provided in the Agreement.

7.0 INSURANCE

7.1 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.

7.1.1 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.

7.1.1.1 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.

7.1.1.2 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.

7.1.1.3 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.

- 7.1.1.4 If applicable, Professional Liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000).
- 7.1.2 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.
- 7.1.3 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.
- 7.1.4 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.
- 7.1.5 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 \$150,000 per person and \$600,000 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

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.

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.

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.

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 INDEPENDENT CONTRACTOR

Contractor and any persons employed by Contractor for the performance of work hereunder shall be independent contractors and not agents of the Town. Any provisions in this Agreement that may appear to give the Town the right to direct Contractor as to details of doing work or to exercise a measure of control over the work mean that Contractor shall follow the direction of the Town as to end results of the work only. As an independent contractor, Contractor is not entitled to workers' compensation benefits except as may be provided by the independent contractor nor to unemployment insurance benefits unless unemployment compensation coverage is provided by the independent contractor or some other entity. The Contractor is obligated to pay all federal and state income tax on any moneys earned or paid pursuant to this contract.

11.0 ASSIGNMENT

Contractor shall not assign or delegate this Agreement or any portion thereof, or any monies due to or become due hereunder without the Town's prior written consent.

12.0 PERFORMANCE

12.1 (This paragraph is applicable only if both parties have signed it)

Time of Completion: The work to be performed pursuant to this Agreement shall be fully completed within N/A calendar days of the Contractor having received Notice to

ENGINEER:

Any such notice shall be sent certified or registered mail, return receipt requested, postage prepaid.

13.0 TERMINATION

13.1 This Agreement may be terminated by either party for material breach or default of this Agreement by the other party not caused by any action or omission of the other party by giving the other party written notice at least 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.

13.2 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 seven (7) 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.

14.0 INSPECTION

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.

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 years after the expiration of this Contract unless written permission to destroy them is granted by the Town.

15.0 ENFORCEMENT

15.1 In the event that suit is brought upon this Agreement to enforce its terms, the prevailing party shall be entitled to its reasonable attorneys' fees and related court costs.

15.2 Colorado law shall apply to the construction and enforcement of this Agreement. The parties agree to the jurisdiction and venue of the courts of Weld County in connection with any dispute arising out of or in any matter connected with this Agreement.

16.0 COMPLIANCE WITH LAWS

- 16.1 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.
- 16.2 **Civil Rights Act of 1964.** Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- 16.3 **Section 109 of the Housing and Community Development Act of 1974.** No person in the United States shall, on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or part with funds made available under this title.

17.0 INTEGRATION AND AMENDMENT

This Addendum and the Agreement represent the entire Agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Town Administrator after being authorized to do so, if necessary, by the Town Board of Trustees and the Contractor.

18.0 EQUAL OPPORTUNITY EMPLOYER

- 18.1 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.
- 18.2 Contractor shall be in compliance with the applicable provisions of the American with Disabilities Act of 1990 as enacted and from time to time amended and any other applicable federal, state, or local laws and regulations. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the life of this Agreement or any renewal thereof.

19.0 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:

- 19.1 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.

- 19.2 The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract for services.
- 19.3 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.
- 19.4 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.
- 19.5 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.
- 19.6 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.
- 19.7 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).
- 19.8 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.
- 19.9 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.

20.0 SEVERABILITY

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

21.0 MEDIATION

In the event of a dispute regarding the provisions of this Agreement it will be submitted to a mutually acceptable mediator within seven (7) days after receipt of written notice of the dispute. Mediation will be concluded and a written advisory opinion issued if no resolution is effected within fourteen (14) days from the commencement of mediation. The parties may elect to accept and implement the provisions of the mediator's advisory agreement or proceed with litigation in Weld County.

22.0 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.

23.0 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.

24.0 ELECTRONIC SIGNATURE

This Contract may be executed by electronic signature in accordance with C.R.S. 24-71.3-101 *et seq.*

This Contract was authorized by the Town Board on
January 28, 2015.

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, COLORADO
A municipal corporation
Post Office Drawer 290
Milliken, CO 80543
Telephone: 970-660-5043
Fax 970-587-2678

By: 
Kent Brown, Town Administrator

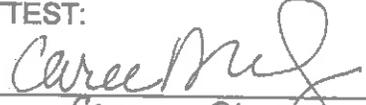
ATTEST:

Cheryl Powell, Town Clerk

ProCade, Inc.
360 Walnut Ave
Estlin, CO 80615

By: Jonathan D Gesick 

Title: President

ATTEST:

Name: Caree Rineparger
Title: Building Tech.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/29/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER JOHN C. BECKETT & ASSOCIATES, INC. 220 Smith Street Ft. Collins CO 80524-	CONTACT NAME: PHONE (A/C No. Ext): (970) 484-2805 FAX (A/C. No.): (970) 484-2895 E-MAIL ADDRESS: tim@beckettinsurance.com	
	INSURER(S) AFFORDING COVERAGE NAIC #	
INSURED Procode, Inc. 360 Walnut Ave. Weld Eaton CO 80615-	INSURER A: UNITED FIRE & CASUALTY COMPANY	
	INSURER B: LLOYDS OF LONDON	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATION MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL BOBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY	Y	PENDING	01/29/2015	01/29/2016	EACH OCCURRENCE	\$ 1000000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						DAMAGE TO RENTED PREMISES (Ea occurrence)
						MED EXP (Any one person)	\$ 5000
						PERSONAL & ADV INJURY	\$ 1000000
						GENERAL AGGREGATE	\$ 2000000
						PRODUCTS - COMP/OP AGG	\$ 2000000
						NOWAD	\$
	AUTOMOBILE LIABILITY		NO COVERAGE	//	//	COMBINED SINGLE LIMIT (Ea accident)	\$
	<input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			//	//	BODILY INJURY (Per person)	\$
				//	//	BODILY INJURY (Per accident)	\$
				//	//	PROPERTY DAMAGE (Per accident)	\$
				//	//		\$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR		NO COVERAGE	//	//	EACH OCCURRENCE	\$
	EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE			//	//	AGGREGATE	\$
	DED RETENTION \$			//	//		\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		NO COVERAGE	//	//	WC STATUTORY LIMITS	OTHR
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/M		//	//	E.L. EACH ACCIDENT	\$
	If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		//	//	E.L. DISEASE - EA EMPLOYEE	\$
				//	//	E.L. DISEASE - POLICY LIMIT	\$
B	PROFESSIONAL LIABILITY	N	PENDING	01/29/2015	01/29/2016	EACH OCCURRENCE	1000000
				//	//	AGGREGATE LIMIT	1000000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
CERTIFICATE HOLDER IS ALSO ADDITIONAL INSURED ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED.

CERTIFICATE HOLDER () - (970) 587-2678 Town of Milliken 1101 Broad Street Drawer 290 Milliken CO 80543-	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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EXHIBIT B

Fee for Existing Permits not Completed by Previous Provider

Existing Permits and Inspections: The following fee will apply to any and all required inspections not completed by the previous service provider. All required inspections on open permits that were not completed prior to the acceptance of this Contract on the day Contract is signed by the Town and the Contractor will be assessed a fee of \$30 per inspection paid to the Contractor.