



**TOWN OF MILLIKEN  
TOWN BOARD  
AGENDA MEMORANDUM**

To: Mayor Tokunaga and Board of Trustees	Meeting Date:
From: Kent Brown, Town Administrator	Wednesday, June 10, 2015

Consent:	Action: <b>X</b>	Discussion:	Information:
Agenda Title: Approval of Contract for Municipal Abatement Services			
Attachments: Proposed Contract for Municipal Abatement Program with Escape Landscapes			

**PURPOSE**

The Town desires to engage the services of Escape Landscapes to serve as the Contractor, to perform municipal abatements for properties in code violation with the Town of Milliken. To note, Tim Woodcock, who is one of the owners of Escape Landscapes, also serves as the Chairman of the Town of Milliken's Planning and Zoning Commission.

**BACKGROUND**

For the last five (5) years the Town has utilized the services of Escape Landscapes as our abatement contractor. Escape Landscapes has maintained a mutually beneficial relationship with Town staff in performing these abatements. The Contractor commences all abatement work within forty-eight (48) hours of notification from the Town and expeditiously proceeds to completion.

**BUDGET IMPLICATIONS**

The Town is invoiced by Escape Landscapes for the services provided. The Town then adds its administrative fees and creates an invoice for the property owner. If the charge is not collected, it is given to Weld County to be placed as a special assessment addition to their property taxes.

**STAFF RECOMMENDATION**

Staff recommends that the Board of Trustees approve the contract and authorize the Town Administrator to sign.

**SUGGESTED MOTION**

"I move to approve the contract for municipal abatement services with Escape Landscapes and authorize the Town Administrator to sign."

**MUNICIPAL ABATEMENT PROGRAM  
AGREEMENT FOR SERVICES OF CONTRACTOR**

This Agreement is made and entered this 10th Day of June, 2015 by and between the Town of Milliken ("Town"), a Colorado municipal corporation and Escape Landscapes, Inc. ("Contractor").

**THE PARTIES AGREE AS FOLLOWS:**

1. **Scope of Work - Contract Documents.** Contractor shall furnish, except as may otherwise be provided in writing, all labor, services, materials, tools, and equipment for the project consisting of controlling vegetative growth and noxious or dangerous weeds includes other flammable materials found upon or in certain lots and lands in the Town of Milliken, and the removal of tree branches, refuse and other waste materials, including clearance of drainage ditches as required by weed abatement regulations and under this Agreement. Contractor will complete the work in a thorough and workmanlike manner in every respect to the satisfaction and approval of the Town, within the time specified herein and in strict accordance with the contract documents and the municipal ordinances.

Municipal ordinances and all of the said documents are hereby made a part of this Agreement and form the contract documents as fully as if the same were set forth at length herein.

2. **Description of Project.**

- a. Contractor agrees to complete the project consisting of controlling vegetative growth and noxious or dangerous weeds and/or flammable materials found upon or in certain lots and lands in the Town of Milliken, and the removal of tree branches, refuse, and other waste materials including clearance of drainage ditches as required by weed abatement regulations and attached Exhibit A, Scope of Services, as directed by the Town in its sole discretion.
- b. Contractor shall be responsible for providing all necessary labor, equipment, including but not limited to direct and indirect appurtenances, traffic control, and safety equipment to perform the services required of the Contractor by this Agreement.
- c. Contractor shall ensure the safety of the public and their properties during the performance of the work, and all traffic control shall be in accordance with the Manual on Uniform Traffic Control Devices and the requirements of the Town, and for maintaining access through the area in which the work is to be performed.

3. **Relationship of Contractor to Town.** The Contractor accepts the relationship of trust and confidence established between it and the Town by this Agreement. Contractor covenants with the Town to furnish its best skill and judgment and to cooperate with the Town's Project Manager and all other persons and entities in furthering the interests of the Town. Contractor agrees to furnish efficient business administration and superintendence and to use its best efforts to furnish at all times an adequate supply of workers and materials and to perform the work in the best way and in the most expeditious and economical manner consistent with the interests of the Town and full performance of the mitigation necessary.

4. **Contractor Representations.** In order to induce the Town to enter into this Agreement, the Contractor makes the following representations:

- a. The Contractor has familiarized itself with the nature and the extent of the contract documents, work, the locality, all physical characteristics of the area, drainage,

topography, and all other features of the terrain, and with the local conditions and federal, state, and local laws, ordinances, rules, and regulations that in any manner may affect cost, progress, or performance of the work, or apply in any manner whatsoever to the work.

- b. Contractor has carefully considered all typical physical conditions at the typical sites and existing facilities affecting cost, progress, or performance of the work.
  - c. Contractor has given the Town written notice of all conflicts, errors, or discrepancies that it has discovered in the contract documents and such documents are acceptable to the Contractor.
  - d. Contractor shall notify the Project Manager, of any unusual circumstances and the potential additional costs prior to completing work.
5. **Project Manager.** Town's Project Manager, for the purposes of the contract documents is the following or such other person as the Town may designate in writing: **Town's Code Enforcement Officer.**
6. **Term of This Agreement**
- a. The period of the contract will commence on **June 10, 2015** and expire on **March 31, 2016** with an option for the Town to extend said contract with the successful bidder for up to one (1) additional one year term upon agreement by both parties.
  - b. Prompt completion of the work is essential to the Town. Time is of the essence in all respects regarding this Agreement and the work. Contractor shall commence all abatement work within Forty-Eight (48) Hours of notification from the Town and expeditiously proceed to completion. The Town reserves the right to contact other landscape companies to perform abatement services, if the need for this arises.
7. **Price of Work.** The Town agrees to pay, and Contractor agrees to accept, in full payment for the performance of this Agreement, an amount that shall not exceed unit prices and unit costs shown in Exhibit B attached hereto and incorporated herein by reference.
8. **Scope of Payment.** The Contractor shall accept the compensation, as herein provided, in full payment for furnishing all materials, equipment, labor, tools, and incidentals necessary to complete the work and for performing all work contemplated and embraced under this Agreement. Compensation includes loss or damage caused by the nature of the work, the action of the elements, or any unforeseen difficulties which may be encountered the for all during prosecution of the work, for all expenses incurred in consequence of the suspension or discontinuance of the work as herein specified. Compensation shall be for completing the work according to all contract documents. The payment for any work shall not relieve the Contractor of any obligations to correct any defective work or material. No funds, payable under this Agreement or any part thereof, shall become due and payable, if the Town so elects, until the Contractor shall satisfy the Town that it has fully settled or paid for all materials and equipment used in or upon the work and labor done in connection therewith. The Town may pay any or all such claims or bills, wholly or in part, and deduct the amount or amounts so paid from any funds due Contractor. In the event the surety on any contract, performance bond, payment, bond or warranty bond given by the Contractor becomes insolvent, or is placed in the hands of a receiver, or has its right to do business in the state revoked, the Town may withhold payment of funds due Contractor until the Contractor has provided a bond or other security to the satisfaction of the Town in lieu of the bond so executed by such surety.

9. **Application for Payment.** By the **7th and 21st day of each month**, Contractor shall submit to the Town for review and approval, an application for payment fully completed and signed by Contractor covering the work completed and accompanied by such supporting documentation as is required by these contract documents, including without limitation, invoices, and all other documents the Town may require. In no case can any billing be submitted after **October 19, 2015** without prior written consent of the Town. All work requests received by the Contractor from the Town prior to **September 28, 2015** shall be executed and completed by the Contractor. All requests for work from the Town after **September 28, 2015** will be handled on a case by case basis between the Contractor and the Town.
10. **No Personal Liability.** In carrying out any of the provisions of this Agreement or in exercising any power or authority thereby, there shall be no personal liability of the Town, its governing body, staff, consultants, officials, attorneys, representatives, agents, or employees.
11. **Observation of All Laws.** Contractor is familiar with all applicable federal, state, and local laws, codes, ordinances, and regulations which in any manner affect those engaged or employed in the work or the material or equipment used in or upon the site or in any way affect the conduct of the work or construction of the project. No pleas or claims of misunderstanding or ignorance by Contractor shall in any way serve to modify the provisions of the Agreement. Contractor shall at all times observe and comply with all federal, state, county, local, and municipal laws, codes, ordinances, and regulations in any manner affecting the conduct of the work or the project. It is not the responsibility of Contractor to determine that this Agreement and the contract documents are in accordance with applicable laws, statutes, building codes, and regulations; however, if Contractor knows, or should have reason to know, that any of the contract documents are at variance therewith in any respect, Contractor shall promptly notify the Town in writing, and any necessary changes shall be made as provided herein.
12. **Agreement Provisions Prevail.** The intent and purpose of this Agreement and the Scope of Work documents are to complement each other; however, the terms and provisions of this Agreement shall prevail regarding differences in, discrepancies with, or conflicts of, terms or provisions contained in other contract documents.
13. **Termination of Contractor's Responsibility.** Each abatement will be considered complete when all work has been finished, the final inspection made, and the work accepted by Town's designated representative. Inspection by the Town will typically take place within Forty-Eight (48) hours after notification from the Contractor of the completed work.
14. **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 Work, 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 attorney's 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.

- 15. Prohibition Against Employing Illegal Aliens.** Contractor shall not knowingly employ or Contract with an illegal alien to perform work under this Contract. 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.

Contractor has confirmed or has attempted to confirm the employment eligibility of all employees who are newly hired for employment in the United States through participating in the basic pilot program as defined in C.R.S. 8-17.5.101(1)(“Program”) and, if Contractor has not been accepted into the Program prior to entering into this contract, that the Contractor shall apply to participate in the Program every three months until the Contractor is accepted or the Contract has been completed, whichever is earlier This provision shall not be required or effective if the Program is discontinued. Contractor is prohibited from using the Program procedures to undertake pre-employment screening of job applicants while this Contract is being performed.

If the Contractor obtains actual knowledge that a subcontractor performing work under this contract for services knowingly employs or contracts with an illegal alien the, Contractor shall:

- a. 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
- b. Terminate the subcontract with the subcontractor within three days of receiving the notice required pursuant to this paragraph if the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the Contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

The Contractor shall comply with any reasonable request by the Department of Labor and Employment 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).

If the Contractor violates a provision of this Contract requirement pursuant to C.R.S. 8-17.5.102, the Town may terminate the Contract for breach of contract. If the Contract is so terminated, the Contractor shall be liable for actual and consequential damages to the Town.

**16. Insurance and Bonds.**

- a. The Contractor shall not commence work under this Agreement until it has obtained all insurance required by the contract documents and such insurance has been approved by The Town. Contractor shall not allow any subcontractor to commence work on this project until all similar insurance required of the subcontractor has been obtained and approved. For the duration of this Agreement, the Contractor must maintain the insurance coverage required in this section.
- b. The Contractor agrees to procure and maintain, at its own cost, the following policy 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.
- c. Contractor shall procure and maintain, and shall cause each Subcontractor of the Contractor to procure and maintain (or shall insure the activity of Contractor’s

Subcontractors in Contractor's policy with respect to), the minimum insurance coverage's listed below. Such coverage's, shall be procured and maintained with forms and insurers acceptable to the Town. All coverage's shall be continuously maintained from the date of commencement of the work. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

- i. 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 ONE HUNDRED THOUSAND DOLLARS (\$100,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease –policy limit, and ONE HUNDRED THOUSAND DOLLARS (\$100,000) disease – each employee.
  - ii. Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for explosion, collapse, and underground hazards.
  - iii. 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.
  - iv. The policies required above, except for the Workers' Compensation insurance and Employers' Liability insurance, and Automobile Liability shall be endorsed to include the Town, and its officers and employees, as additional insured. Every policy required above shall be primary insurance, and any insurance carried by the City/Town, its officers, or its employees, shall be excess and not to contributory insurance 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.
- d. Certificates of insurance shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverage's, conditions, and minimum limits 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 coverage's 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. The words "endeavor to" will not appear in the portion of the certificate addressing cancellation. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- e. Failure on the part of the Contractor to procure or maintain policies providing the required coverage's, 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 Town.

- f. 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, 24-10-114 et.seq., 10 C.R.S.**, as from time to time amended, or otherwise available to the Town, its officers, or its employees.
17. **Evidence of Satisfaction of Liens.** Contractor shall provide Town with written evidence that all persons who have done work or furnished material under this Agreement, and are entitled to liens therefore under any laws of the State of Colorado have been fully paid or are not entitled to such liens. Final payment shall not be made to Contractor until the Town is reasonably satisfied that all claims or liens have been satisfied by Contractor.
18. **Guaranty of Work.** Contractor agrees to guarantee all work under this Agreement. If any unsatisfactory condition or damage develops within the time of this guaranty due to materials or workmanship that are defective, inferior, or not in accordance with the Agreement, as reasonably determined by Town, then the Contractor shall, when notified by Town, immediately place such work in condition satisfactory to Town. The Town shall have all available remedies to enforce such guaranty, except that Town shall not have any work performed independently to fulfill such guaranty and require Contractor to pay Town such sums as were expended by the Town for such work, unless the Town has first given notice to the Contractor of the deficiency and given the Contractor a reasonable opportunity to cure the same.
19. **Costs and Attorneys' Fees.** In addition to the indemnification provisions of this Agreement and the contract documents, and provided that the Town is not in material default of this Agreement or the direct cause of litigation, the Contractor shall be responsible for and pay the Town for all of the costs, expert, and attorney's fees related to litigation or other forms of dispute resolution arising out of any matter related to this Agreement, the contract documents or the work.
20. **No Assignment.** This Agreement shall not be assigned by the Contractor without the prior written approval of the Town.
21. **Governing Law.** This Agreement shall be deemed entered into in Weld County, Colorado, and shall be governed by the laws of the State of Colorado. 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.
22. **Subcontracting.** The Contractor shall not subcontract without the prior written approval of the Town.
23. **Equal Opportunity Employer.**
  - a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability, or national origin. The 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. The 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.

- b. The Contractor shall be in compliance with the appropriate provisions of the **American with Disabilities Act of 1990** as enacted and from time to time amended and any other applicable federal regulation. A signed, written certificate stating compliance with the **Americans with Disabilities Act** may be requested at any time during the life of any purchase order or contract and with any new purchase order or contract issued by the Town.

**24. Independent Contractor.**

- a. Contractor and any persons employed by Contractor for the performance of work hereunder shall be independent contractors and not employees or agents of the Town. Nothing herein shall be construed as establishing a quality standard for any individual, or as establishing any right on the part of the City/Town to oversee the actual work of the Contractor or to instruct any individual as to how the work be performed.
- b. Contractor shall have the right to employ such assistance as may be required for the performance of work under this Agreement. Said Contractor shall be responsible for the compensation, insurance, and all clerical detail pertaining to such assistants, and shall be solely responsible for providing any training, tools, benefits, materials, and equipment.
- c. **THE PARTIES HERETO UNDERSTAND THAT THE CONTRACTOR AND THE CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS ARE NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS UNDER ANY WORKERS' COMPENSATION INSURANCE POLICY OF THE TOWN, AND THAT CONTRACTOR IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX AND OTHER APPLICABLE TAXES AND OTHER AMOUNTS DUE ON ANY MONEYS PURSUANT TO THIS AGREEMENT .**

BY THEIR SIGNATURES the parties to the terms agree of this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Escape Landscapes (Contractor), 302 S Pauline Ave, Milliken, CO 80543

By: \_\_\_\_\_ Date \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

ATTEST:

Town of Milliken, 1101 Broad Street, Milliken, CO 80543

By: \_\_\_\_\_  
Cheryl Powell, Town Clerk

By: \_\_\_\_\_  
Kent Brown, Town Administrator

## **EXHIBIT A**

### **SCOPE OF SERVICES**

1. Contractor shall furnish, except as may otherwise be provided in writing, all labor, services, materials, tools, and equipment for the project consisting of destroying and proper disposal of vegetative growth (noxious or dangerous weeds included) not in compliance with **Chapter 7, Article III of the Town of Milliken Municipal Code** and its latest revisions, found upon or in certain lots and lands in the Town of Milliken and the removal and proper disposal of tree branches, refuse, and other waste materials, including clearance of drainage ditches as required by weed abatement regulations and the direction of the Town.
2. The Contractor must respond and abate all locations provided to the Contractor by the Town within **Five business days of notification by the Town.**
3. The Contractor must provide a camera, so as to take a picture of each lot and location he/she cleans before and after the work is completed. The photos are to include items to be removed, such as: weeds, refuse, appliances, limbs, or any other abatable materials, as directed by the Town. Significant identified landmarks must also be included within the picture so as to confirm location. The pictures must be attached to each billing statement by the Contractor for abatement work provided. All photos must be identified by address and parcel number. The Contractor is responsible for all costs incurred to generate the required photos.

**EXHIBIT B**

**COSTS OF SERVICES**

Mowing & Weed Eating: **\$55.00/man hour.**

Large Lot mowing with tractor & bush hog: **\$65.00/hour.**

Hauling of debris from parcels to the disposal site the cost shall be as follows:

Removal/Load, Haul and Disposal Charge: **\$40.00/Cubic Yard.**

Weed Spraying: **\$18.00/1000 Square Feet/min. \$40.00/lot.**

Administrative Fee: **\$40.00/Hour.**

(Includes: Paint, photos, scheduling and office supplies)