

**TOWN OF MILLIKEN  
RESOLUTION NO. 16-16**

**A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT  
WITH STEWART ENVIRONMENTAL CONSULTANTS, LLC, AND  
DELEGATING AUTHORITY TO THE TOWN ADMINISTRATOR TO  
EXECUTE THE AGREEMENT ON BEHALF OF THE TOWN**

**WHEREAS**, the Town of Milliken is a statutory town organized under the laws of the State of Colorado; and

**WHEREAS**, the Town desires to have performed certain professional engineering services as described in the Professional Services Agreement by and between the Town and Stewart Environmental Consultants, LLC, a Colorado limited liability company ("Consultant"); and

**WHEREAS**, as set forth in the Professional Services Agreement ("Agreement") the Consultant will undertake a pilot test at the Town's existing water treatment plant following the date on which CDPHE has issued written consent to proceed and the Town and the Town's reviewing engineer has approved the Consultant's final pilot test plan; and

**WHEREAS**, the pilot test will be designed to provide verifiable data and will assist the Town with analyzing whether increased recovery of potable drinking water from the Town's existing groundwater supplies is financially feasible as a long-term treatment and water supply alternative; and

**WHEREAS**, the Consultant represents that the Consultant has the skill, ability, and expertise to perform the services described in the Agreement, a copy of which is attached to this Resolution as **Exhibit 1**; and

**WHEREAS**, the Consultant has represented to the Town that the water treatment plant may be converted to a zero liquid discharge facility at a reasonable cost, eliminating the need for the State of Colorado discharge permit; and

**WHEREAS**, the Consultant has also represented that the pilot test will verify that the recovery of groundwater may be increased to 99% at an economical cost; and

**WHEREAS**, the Board of Trustees desires to approve the Agreement and delegate authority to the Town Administrator to execute the Agreement on behalf of the Town of Milliken.

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF MILLIKEN, COLORADO, that:**

**Section 1.** The Board of Trustees of the Town of Milliken: (a) approves the Agreement in substantially the form attached hereto as **Exhibit 1**; (b) authorizes the Town Administrator and the Town Attorney to negotiate non-material changes to the Agreement in order to finalize same prior to execution by the Town Administrator provided that such changes do not increase the not-to-exceed compensation set forth in the Agreement; (c) authorizes the Town Administrator to execute the Agreement on behalf on the Town when in final form.

**Section 2.** This Resolution shall take effect immediately.

**ADOPTED AND APPROVED** this 27<sup>th</sup> day of July, 2016.

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
Cheryl L. Powell, Town Clerk

**Exhibit 1**  
**Professional Services Agreement**  
(Stewart Environmental Consultants, LLC)

(attached)

**TOWN OF MILLIKEN  
PROFESSIONAL SERVICES AGREEMENT**

**INDEPENDENT CONTRACTOR**

Project/Services Name: Milliken RO Facility Efficiency Pilot Test

**THIS PROFESSIONAL SERVICES AGREEMENT** ("Agreement") is entered into by and between **Stewart Environmental Consultants, LLC**, a Colorado limited liability company, whose business address is 3801 Automation Way, Suite 200, Fort Collins, CO 80525 (the "Consultant") and the **TOWN OF MILLIKEN**, a statutory Town of the State of Colorado (the "Town"). The Town and the Consultant may be collectively referred to herein as the "Parties."

**RECITALS AND REPRESENTATIONS**

**WHEREAS**, the Town desires to have performed certain professional engineering services as described in this Agreement; and

**WHEREAS**, the Consultant represents that the Consultant has the skill, ability, and expertise to perform the services described in this Agreement; and

**WHEREAS**, the Town desires to engage the Consultant to provide the services offered by the Consultant and described in this Agreement subject to the terms and conditions of the Agreement; and

**WHEREAS**, specifically, the Town desires to engage the Consultant to conduct a pilot test of a specific water treatment process designed to increase the recovery of potable groundwater from the Town's existing water treatment facility ("Water Treatment Plant"); and

**WHEREAS**, the Consultant has represented to the Town that the Water Treatment Plan may be converted to a zero liquid discharge facility, eliminating the need for the State of Colorado discharge permit; and

**WHEREAS**, the Consultant has also represented that the pilot test will verify that the recovery of groundwater may be increased to 99%; and

**WHEREAS**, if successful, the pilot test may provide the basis for designing the proper configuration of the Water Treatment Plant for improved treatability of the groundwater, serving as initial design criteria for an onsite system (the "Future Reconfiguration Project"); and

**WHEREAS**, the Parties intend that the results determined and verified during the pilot test to be valuable to the Town in designing the funding the Future Reconfiguration Project.

**NOW, THEREFORE**, in consideration of the benefits and obligations of this Agreement, the Parties mutually agree as follows:

## 1.0 SERVICES AND PURPOSE OF AGREEMENT

- 1.1 Services. The Town desires to achieve, secure, receive, or obtain certain service(s) or work product(s) as more specifically described in the Consultant proposal dated July 11, 2016 attached hereto as **Exhibit A** related to the pilot test to be performed at the Water Treatment Plant (the "Services"). As an independent contractor, the Consultant offers to perform and/or deliver the Services in accordance with the terms and conditions of this Agreement. The Parties recognize and acknowledge that, although the Town has requested certain general services to be performed or certain work product to be produced, the Consultant has offered to the Town the process, procedures, terms, and conditions under which the Consultant plans and proposes to achieve or produce the services and/or work product(s) and the Town, through this Agreement, has accepted such process, procedures, terms, and conditions as binding on the Parties.
- 1.2 Town Representative. The Town assigns the Town Administrator as the Town Representative for this Agreement. The Town Representative and the Town's Reviewing Engineer (Bradley Simons, PE, group leader for water and wastewater resources at TZA Water Engineers, Inc., a *Lamp Rynearson Company*) (the "Reviewing Engineer") will monitor the Consultant's progress and performance under this Agreement and shall be available to the Consultant to respond to questions, assist in understanding Town policies, procedures, and practices, and supervise the performance of the Services under this Agreement. The Town Representative shall be primarily responsible for the performance of any Town obligations under this Agreement. The Town Representative shall retain authority to change the Reviewing Engineer during the term of this Agreement.
- 1.3 Changes to Services. Any changes to the Services that are mutually agreed upon between the Town and the Consultant shall be made in a formal writing referencing this Agreement and, only upon execution by both Parties of such formal writing, shall become an amendment to the Services described in this Agreement. To be effective, any written change must be signed by the Consultant and by the Town or by a person expressly authorized in writing to sign on behalf of the Town. Changes to the Services or to this Agreement shall not be made through oral agreement or electronic mail messages.

## 2.0 COMPENSATION

- 2.1 Commencement of and Compensation for Services. Following execution of this Agreement by the Town, the Consultant shall be authorized to commence performance of the Services as described in **Exhibit A**, subject to the requirements and limitations on compensation as provided by this Section 2.0 and its subsections. **MAXIMUM COMPENSATION under this Agreement is two hundred thousand dollars (\$200,000.00)**, including the \$100,000.00 "Success Fee" specifically referenced in **Exhibit B**. The maximum compensation shall not be modified or amended unless and until a duly executed amendment reflecting any additional compensation is authorized as set forth in Section 10.12.

A. Method of Compensation. The Consultant shall perform the Services and shall invoice the Town for work performed in accordance with the payment schedule or method of compensation set forth in **Exhibit B**. The \$100,000.00 "Success Fee" set forth in **Exhibit B** shall not be due and payable to the Consultant until such time as

the Reviewing Engineer has completed a written verification and analysis of all success parameters set forth in the success matrix attached as Exhibit B-2. If any parameter measurable set forth in the success matrix are not met, the Reviewing Engineer shall document the same in the Reviewing Engineer's written report. The Reviewing Engineer shall provide a final written summary report to the Town Administrator documenting in writing the adherence of the pilot test to the parameters set forth in the success matrix. By way of example, and not limitation, the success matrix includes as a measurable that treatment cost for the RO process shall not exceed \$2.70 per 1,000 gallons of treated water (+/- 30%). The Parties acknowledge and agree that the treatment cost of \$2.70 per 1,000 gallons shall include all costs related to brine and RO permeate disposal, costs of plant operation and related costs. If in the professional opinion of the Reviewing Engineer total treatment costs will exceed \$3.51 per 1,000 gallons (\$2.70 plus 30%), then the success measurable will not be satisfied and the success fee of \$100,000.00 will not be due and payable to Consultant.

**B. Reimbursable Expenses.** The following shall be considered "reimbursable expenses" for purposes of this Agreement and may be billed to the Town without administrative mark-up but which must be accounted for by the Consultant and proof of payment shall be provided by the Consultant with the Consultant's monthly invoices:

- None
- Vehicle Mileage (billed at not more than the prevailing per mile charge permitted by the Internal Revenue Service as a deductible business expense)
- Printing and Photocopying Related to the Services (billed at actual cost)
- Long Distance Telephone Charges Related to the Services
- Postage and Delivery Services
- Lodging and Meals (but only with prior written approval of the Town as to dates and maximum amount)

**C. Non-reimbursable Costs, Charges, Fees, or Other Expenses.** Any fee, cost, charge, or expense incurred by the Consultant not otherwise specifically authorized by this Agreement shall be deemed a non-reimbursable cost that shall be borne by the Consultant and shall not be billed or invoiced to the Town and shall not be paid by the Town unless the same are specifically set forth in Exhibit B.

**D. Increases in Compensation or Reimbursable Expenses.** Any increases or modification to the compensation or reimbursable expenses shall be subject to the approval of the Town and shall be made only by written amendment of this Agreement executed by both Parties.

**E. Credit of Consultant Fee if Future Reconfiguration Project is Viable and Funded.** If the success fee of \$100,000 is earned by Consultant and the Town Board at a future date elects to move forward with the final design of the Future Reconfiguration Project, Consultant agrees to credit the total amount of the Maximum Compensation set forth in Section 2.1.A. above (\$200,000.00) toward any design or consulting fee(s) to be earned by Consultant during the design and construction of the Future Reconfiguration Project.

**2.2 Payment Processing.** The Consultant shall submit invoices and requests for payment in a form acceptable to the Town as noted in Exhibit B. Unless otherwise

directed or accepted by the Town, all invoices shall contain sufficient information to account for all appropriate measure(s) of Consultant work effort (e.g., task completion, work product delivery, or time) and all authorized reimbursable expenses for the Services during the stated period of the invoice. Following receipt of a Consultant's invoice, the Town shall promptly review the Consultant's invoice. All Town payments for Services rendered pursuant to this Agreement shall be issued in the business name of Consultant only, and in no event shall any such payments be issued to an individual. In no event shall any Town payments to Consultant be in the form of or based upon a salary or an hourly rate.

- 2.3 Town Dispute of Invoice or Invoiced Item(s). The Town may dispute any Consultant compensation and/or reimbursable expense requested by the Consultant described in any invoice and may request additional information from the Consultant substantiating any and all compensation sought by the Consultant before accepting the invoice. When additional information is requested by the Town, the Town shall advise the Consultant 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 Consultant within forty-five (45) days of the receipt of an invoice for any undisputed charges or, if the Town disputes an item or invoice and additional information is requested, within thirty (30) days of acceptance of the item or invoice by the Town following receipt of the information requested and resolution of the dispute. To the extent possible, undisputed charges within the same invoice as disputed charges shall be timely paid in accordance with this Agreement. Payment by the Town shall be deemed made and completed upon hand delivery to the Consultant or designee of the Consultant or upon deposit of such payment or notice in the U.S. Mail, postage pre-paid, addressed to the Consultant.

### **3.0 CONSULTANT'S REPRESENTATIONS AND OFFERED PERFORMANCE**

- 3.1 Independent Contractor. The Consultant shall perform the Services as an independent contractor and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with the Town. This Agreement does not require the Consultant to work exclusively for the Town. This Agreement shall not be interpreted as the Town dictating or directing the Consultant's performance or the time of performance beyond a completion schedule and a range of mutually agreeable work hours, but shall be interpreted as the Consultant's offer and Town acceptance of terms and conditions for performance. The Consultant's business operations shall not be combined with the Town by virtue of this Agreement, and the Town will not provide any training to Consultant, its agents, or employees beyond that minimal level required for performance of the Services. The Parties acknowledge that the Consultant may require some assistance or direction from the Town in order for the Services to meet the Town's contractual expectations. Any provisions in this Agreement that may appear to grant the Town the right to direct or control Consultant or the Services shall be construed as Town plans or specifications regarding the Services.

Subject to conformance with Town-adopted policies and procedures and full conformance with Consultant's representations set forth in this Agreement, the Consultant shall have and maintain the requisite judgment, discretion, and responsibility for and control of the performance of the Services, the discipline of the Consultant's employees and other matters incidental to the performance of the

Services, duties and responsibilities as described and contemplated in this Agreement. Consultant shall provide and bear the cost of all tools, and any other items, wages, or services required in the performance of the Services, and the Town shall not provide any other assistance or benefits to Consultant for performance of the Services under this Agreement.

The Parties recognize and understand that some level of direction and supervision by the Town is necessarily involved in successfully implementing Town policies and procedures and in administering this Agreement, but the Parties each understand that the Consultant shall bear the burden and shall advise the Town in writing of any conflict or inconsistency between the Town's direction or supervision and the Consultant's legal status as an independent contractor.

The Consultant, by execution of this Agreement and having received such counsel and advice as deemed appropriate by the Consultant, represents to the Town that this Agreement does not create a partnership, joint venture, employer/employee or other relationship with the Town other than that of an independent contractor and the Consultant understands that the Town shall reasonably rely upon such representation in the Town's execution of this Agreement.

- 3.2 Liability for Employment-Related Rights and Compensation. The Consultant shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Consultant, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. The Consultant will comply with all laws, regulations, municipal codes, and ordinances and other requirements and standards applicable to the Consultant's employees, including, without limitation, federal and state laws governing wages and overtime, equal employment, safety and health, employees' citizenship, withholdings, reports and record keeping. Accordingly, the Town shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds, insurance premiums or payments, workers' compensation benefits or any other amenities of employment to any of the Consultant's employees or any other liabilities whatsoever, unless otherwise specifically provided herein.

The Town will not include the Consultant as an insured under any policy the Town has for itself. The Town shall not be obligated to secure nor provide any insurance coverage or employment benefits of any kind or type to or for the Consultant or the Consultant's employees, sub-consultants, subcontractors, agents, or representatives, including but not limited to coverage or benefits related to: local, state, or federal income or other tax contributions, FICA, workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension or retirement account contributions, profit sharing, professional liability insurance, or errors and omissions insurance. The following disclosure is provided in accordance with Colorado law:

**CONSULTANT ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS CONSULTANT OR SOME ENTITY OTHER THAN THE TOWN**

**PROVIDES SUCH BENEFITS. CONSULTANT FURTHER ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO WORKERS' COMPENSATION BENEFITS. CONSULTANT ALSO ACKNOWLEDGES THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED OR PAID PURSUANT TO THIS AGREEMENT.**

To the maximum extent permitted by law, the Consultant waives all claims against the Town for any Employee Benefits; the Consultant will defend the Town from any claim and will indemnify the Town against any liability for any Employee Benefits for the Consultant imposed on the Town; and the Consultant will reimburse the Town for any award, judgment, or fine against the Town based on the position the Consultant was ever the Town's employee, and all attorneys' fees and costs the Town reasonably incurs defending itself against any such liability.

- 3.3 Interaction with Public. The Consultant recognizes that its conduct during the performance of the Services hereunder reflects upon its reputation in the community as well as upon the public perception of the Town. Therefore, the Consultant offers and warrants to the Town that the Consultant, its agents and employees will conduct all of their interactions with the citizens and the public relating to the performance of the Services hereunder in such a manner as to provide customer service that reflects positively upon its reputation and the Town's public image.
- 3.4 Personnel Issues. The Parties recognize and understand that certain key personnel, such as those individuals employed by the Consultant to manage, supervise, direct, or plan for providing the Services contemplated by this Agreement, can have an impact on the favorable outcome of the project and on the stewardship of Town funds toward providing the Services. Subject to such recognition and understanding, the Consultant warrants that it will employ key personnel that will provide the Services in a professional manner. In the event the Town Administrator becomes dissatisfied with the professionalism of the performance of a Consultant employee providing Services under this Agreement, utilizing an objective standard based upon the Consultant's representations and Town specifications regarding the Services, which may include, but is not limited to, behavior which brings discredit upon the Town, the Consultant offers the Town the following process by which the Consultant will resolve the Town Administrator's dissatisfaction. The Town Administrator shall have the option of, in her or his sole discretion, providing timely notification to the Consultant of such dissatisfaction. The notification may include the known facts which give rise to the problem, and may include a request by the Town that the Consultant consider a transfer or reassignment of such employee out of service to the Town when such employee is failing to perform the Services in a professional and effective manner. Thereafter, representatives of the Consultant and the Town Administrator shall meet to discuss possible remedies the Contactor might voluntarily offer to address the problems experienced by the Town. The Consultant shall act within thirty (30) calendar days and in good faith to resolve any problems experienced by the Town. If problems persist after the Consultant has taken such action in good faith, and provided the Town Administrator has notified the Consultant of the Town's continuing dissatisfaction in accordance with this Section, the Consultant will offer to remove any Consultant employee from performing any work for the Town, to reasonably limit, in any manner, the work done for the Town by any

Consultant employee, or to transfer or reassign any of its employees out of service to the Town or to a different position acceptable to the Town Administrator. Upon the Town Administrator's acceptance of such offer, the Consultant will transfer permanently or reassign any Consultant employee as soon as reasonably possible. By its signature to this Agreement, the Town accepts the Consultant's offer of this process. Nothing in this Agreement shall be construed to abrogate in whole or in part the right of the Consultant to hire, discipline, terminate, assign or otherwise manage or control its workforce.

- 3.5 Subcontractors. The Consultant shall not use any subcontractor(s) to perform any of the Services, unless approved in advance and in writing by the Town Administrator. It is anticipated that outside scientists will provide some of the labor on this project. They will be identified prior to the start of the work provided in Exhibit A. Examples of these scientists are from strategic partners with Stewart Environmental or faculty from the Colorado School of Mines.
- 3.6 Standard of Performance. In performing the Services, the Consultant warrants that it shall use that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by highly competent members of the same profession practicing in the State of Colorado. The Consultant represents to the Town that the Consultant is, and its employees or sub-contractors performing such Services are, properly licensed and/or registered within the State of Colorado for the performance of the Services (if licensure and/or registration is required by applicable law) and that the Consultant and employees possess the skills, knowledge, and abilities to perform the Services competently, timely, and professionally in accordance with this Agreement. In addition, the Consultant warrants and represents that it will provide the Services in accordance with more specific standards of performance as are:

- included within Exhibit A; or
- attached to this Agreement as Exhibit \_\_\_\_\_; or
- not included and not attached.

The Consultant represents, covenants and agrees that the Services will be provided to the Town free from any material errors. The Consultant's failure to meet or exceed any of the foregoing standards and warranties may be considered a material breach of this Agreement and may be grounds for termination of the Agreement pursuant to Section 4.0 below, in addition to any other remedies as provided in Section 9.0 below.

- 3.7 Review of Books and Records. The Consultant shall promptly comply with any written Town request for the Town or any of its duly authorized representatives to reasonably access and review any books, documents, papers, and records of the Consultant that are pertinent to the Consultant's performance under this Agreement for the purpose of the Town performing an audit, examination, or other review of the Services. The Consultant shall fully cooperate with the Reviewing Engineer to provide any additional data or information pertinent to the Reviewing Engineer completing its third-party independent review of Consultant's pilot test report.
- 3.9 Licenses and Permits. The Consultant shall be responsible at the Consultant's expense for obtaining, and maintaining in a valid and effective status, all licenses

and permits necessary to perform the Services unless specifically stated otherwise in this Agreement.

- 3.9 Affirmative Action. The Consultant warrants that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Consultant warrants that it will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 3.10 Employment of or Contracts with Illegal Aliens. The Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Consultant shall not contract with a subcontractor that fails to certify that the subcontractor does not knowingly employ or contract with any illegal aliens. By entering into this Agreement, the Consultant certifies as of the date of this Agreement that it does not knowingly employ or contract with an illegal alien who will perform work under this contract for Services and that the Consultant will participate in the e-verify program or department program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services. The Consultant is prohibited from using either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed. If the Consultant obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Consultant shall be required to notify the subcontractor and the Town within three (3) days that the Consultant has actual knowledge that a subcontractor is employing or contracting with an illegal alien. The Consultant shall terminate the subcontract if the subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice regarding Consultant's actual knowledge. The Consultant shall not terminate the subcontract if, during such three (3) days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Consultant is required to comply with any reasonable request made by the Department of Labor and Employment made in the course of an investigation undertaken to determine compliance with this provision and applicable state law. If the Consultant violates this provision, the Town may terminate this Agreement, and the Consultant may be liable for actual and/or consequential damages incurred by the Town, notwithstanding any limitation on such damages provided by such Agreement.

#### **4.0 TERM AND TERMINATION**

- 4.1 Term. This Agreement shall be effective on the **1<sup>st</sup> day of August, 2016 at 12:01 a.m.**, (the "Effective Date") and shall terminate at **11:59 p.m. on December 31, 2016**, or on a prior date of termination as may be permitted by this Agreement.
- 4.2 Continuing Services Required. The Consultant shall perform the Services in accordance with this Agreement commencing on the Effective Date until such Services are terminated or suspended in accordance with this Agreement. The

Consultant shall not temporarily delay, postpone, or suspend the performance of the Services without the written consent of the Town Board or the Town Representative.

4.3 Town Unilateral Termination. This Agreement may be terminated by the Town for any or no reason upon written notice delivered to the Consultant at least ten (10) days prior to termination. In the event of the Town's exercise of the right of unilateral termination as provided by this paragraph:

A. Unless otherwise provided in any notice of termination, the Consultant shall provide no further services in connection with this Agreement after receipt of a notice of termination; and

B. All finished or unfinished documents, data, studies and reports prepared by the Consultant pursuant to this Agreement shall be delivered by the Consultant to the Town and shall become the property of the Town; and

C. The Consultant shall submit to the Town a final accounting and final invoice of charges for all outstanding and unpaid Services and reimbursable expenses performed prior to the Consultant's receipt of notice of termination and for any services authorized to be performed by the notice of termination as provided by Section 4.3(A) above. Such final accounting and final invoice shall be delivered to the Town within thirty (30) days of the date of termination; thereafter, no other invoice, bill, or other form of statement of charges owing to the Consultant shall be submitted to or accepted by the Town.

4.4 Termination for Non-Performance. Should a party to this Agreement fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing party if the performing party first provides written notice to the non-performing party which notice shall specify the non-performance, provide both a demand to cure the non-performance and reasonable time to cure the non-performance, and state a date upon which the Agreement shall be terminated if there is a failure to timely cure the non-performance. For purpose of this Section 4.4, "reasonable time" shall be not less than five (5) business days. In the event of a failure to timely cure a non-performance and upon the date of the resulting termination for non-performance, the Consultant shall prepare a final accounting and final invoice of charges for all performed but unpaid Services and authorized reimbursable expenses. Such final accounting and final invoice shall be delivered to the Town within fifteen (15) days of the date of termination; thereafter, no other invoice, bill, or other form of statement of charges owing to the Consultant shall be submitted to or accepted by the Town. Provided that notice of non-performance is provided in accordance with this Section 4.4, nothing in this Section 4.4 shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party.

4.5 Unilateral Suspension of Services. The Town may suspend the Consultant's performance of the Services at the Town's discretion and for any reason by delivery of written notice of suspension to the Consultant which notice shall state a specific date of suspension. Upon receipt of such notice of suspension, the Consultant shall immediately cease performance of the Services on the date of suspension except: (1) as may be specifically authorized by the notice of suspension (e.g., to secure the work area from damage due to weather or to complete a specific report or study); or

(2) for the submission of an invoice for Services performed prior to the date of suspension in accordance with this Agreement.

- 4.6 Reinstatement of Services Following Town's Unilateral Suspension. The Town may at its discretion direct the Consultant to continue performance of the Services following suspension. If such direction by the Town is made within (30) days of the date of suspension, the Consultant shall recommence performance of the Services in accordance with this Agreement. If such direction to recommence suspended Services is made more than thirty-one (31) days following the date of suspension, the Consultant may elect to: (1) provide written notice to the Town that such suspension is considered a unilateral termination of this Agreement pursuant to Section 4.3; or (2) recommence performance in accordance with this Agreement; or (3) if suspension exceeded sixty (60) consecutive days, request from the Town an equitable adjustment in compensation or a reasonable re-start fee and, if such request is rejected by the Town, to provide written notice to the Town that such suspension and rejection of additional compensation is considered a unilateral termination of this Agreement pursuant to Section 4.3. Nothing in this Agreement shall preclude the Parties from executing a written amendment or agreement to suspend the Services upon terms and conditions mutually acceptable to the Parties for any period of time.
- 4.7 Delivery of Notice of Termination. Any notice of termination permitted by this Section 4.0 and its subsections shall be addressed to the person signing this Agreement on behalf of either Town or Consultant at the address shown below or such other address as either party may notify the other of and shall be deemed given upon delivery if personally delivered, or forty-eight (48) hours after deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

## 5.0 INSURANCE

- 5.1 Insurance Generally. During the term of this Agreement, the Consultant shall obtain and shall continuously maintain, at the Consultant's expense, insurance of the kind and in the minimum amounts specified as follows:
- The Consultant shall obtain and maintain the types, forms, and coverage(s) of insurance deemed by the Consultant to be sufficient to meet or exceed the Consultant's minimum statutory and legal obligations arising under this Agreement ("Consultant Insurance"); or
  - The Consultant shall secure and maintain the following ("Required Insurance"):
    - Worker's Compensation Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by law. Such policy of insurance shall be endorsed to include the Town as a Certificate Holder.
    - Comprehensive General Liability insurance with minimum combined single limits of Two Million Dollars (\$2,000,000.00) each occurrence and of Two Million Dollars (\$2,000,000.00) aggregate. The policy shall be applicable to all premises and all operations of the Consultant. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee

acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the Town as Certificate Holder and name the Town, and its elected officials, officers, employees and agents as additional insured parties.

- Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000.00) each occurrence with respect to each of the Consultant's owned, hired and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Agreement, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the Town as Certificate Holder and name the Town, and its elected officials, officers, employees and agents as additional insured parties.
- Professional Liability (errors and omissions) Insurance with a minimum limit of coverage of Two Million Dollars (\$2,000,000.00) per claim and annual aggregate. Such policy of insurance shall be obtained and maintained for one (1) year following completion of all Services under this Agreement. Such policy of insurance shall be endorsed to include the Town as a Certificate Holder.

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

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

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

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

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

D. For Required Insurance, every policy of insurance shall provide that the Town will receive notice no less than thirty (30) days prior to any cancellation, termination, or a

material change in such policy or in the alternative, the Consultant shall provide such notice as soon as reasonably practicable and in no event less than thirty (30) days prior to any cancellation, termination, or a material change in such policy.

- 5.3 Failure to Obtain or Maintain Insurance. The Consultant's failure to obtain and continuously maintain policies of insurance in accordance with this Section 5.0 and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Consultant arising from performance or non-performance of this Agreement. Failure on the part of the Consultant to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the Town may immediately terminate this Agreement, or, at its discretion, the Town may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Town shall be repaid by Consultant to the Town immediately upon demand by the Town, or at the Town's sole discretion, the Town may offset the cost of the premiums against any monies due to the Consultant from the Town pursuant to this Agreement.
- 5.4 Insurance Certificates. Prior to commencement of the Services, the Consultant shall submit to the Town certificates of insurance for all Required Insurance. Insurance limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this Section 5.0 and its subsections shall be indicated on each certificate of insurance. Certificates of insurance shall reference the Project Name as identified on the first page of this Agreement. The Town may request and the Consultant shall provide within three (3) business days of such request a current certified copy of any policy of Required Insurance and any endorsement of such policy. The Town may, at its election, withhold payment for Services until the requested insurance policies are received and found to be in accordance with the Agreement.

## **6.0 CLAIMS, INDEMNIFICATION, HOLD HARMLESS AND DEFENSE**

- 6.1 Notices of Claim. A Party shall notify the other Party immediately and in writing in the event that a Party learns of a third-party claim or an allegation of a third-party claim arising or resulting from the Parties' performance or failure to perform pursuant to this Agreement. The Parties shall reasonably cooperate in sharing information concerning potential claims.
- 6.2 Claims Challenging Town Law, Ordinance, Rule, or Policy/Procedure. In the event any claim is asserted by a third-party against the Town and/or the Consultant alleging that any law, statute, ordinance, rule or approved Town policy or procedure is unlawful, unconstitutional or otherwise improper, then:
- A. The Consultant shall not be entitled to and shall not defend such claim; and
  - B. The Town may, at its sole discretion, elect to defend, not defend, settle, confess, compromise, or otherwise direct the manner in which such claim is addressed; and
  - C. The Consultant shall reasonably cooperate with the Town in any Town defense of such claim although the Consultant shall bear any cost or expense incurred by the

Consultant in such cooperation, including but not limited to the Consultant's cost and expense incurred in consultation with its own legal counsel; and

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

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

6.4 Defense of Claims.

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

B. Claims Against Only One Party. In the event of any claim asserted by a third-party against only one Party to this Agreement arising out of any Party's performance of the Services which claim is not within the scope of Section 6.2 above, the Party shall be entitled to elect to defend such claim on behalf of such Party subject to the

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

## 7.0 RECORDS AND OWNERSHIP OF DOCUMENTS

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

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 Consultant waives any right to prevent its name from being used in connection with the Services.

- 7.4 Return of Records to Town. At the Town's request, upon expiration or termination of this Agreement, all records of the Consultant related to the provision of Services hereunder, including public records as defined in the Colorado Open Records Act ("CORA"), and records produced or maintained in accordance with this Agreement, are to be returned to the Town in a reasonable format and with an index as determined and requested by the Town.

## **8.0 FORCE MAJEURE**

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

## **9.0 REMEDIES**

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

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

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

## 10.0 MISCELLANEOUS PROVISIONS

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

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

- 10.7 Survival of Terms and Conditions. The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.
- 10.8 Assignment and Release. All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by the Consultant without the express written consent of the Town. Any written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by the Town through the authorizing agent executing this Agreement. No assignment shall release the Consultant from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment.
- 10.9 Interpretation and Mutual Negotiation. It is the intent of the Parties that this Agreement shall in all instances be interpreted to reflect the Consultant'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 Consultant or Consultant'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 Consultant to induce the Town to accept the Consultant's offer to enter into this Agreement and have been incorporated into the Agreement at the Consultant's request.
- 10.10 Paragraph Captions. The captions of the paragraphs and sections are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.
- 10.11 Agreement Controls. In the event a conflict exists between this Agreement and any term in any exhibit attached or incorporated into this Agreement, the terms in this Agreement shall supersede the terms in such exhibit.
- 10.12 Integration and Amendment. This Agreement represents the entire and integrated agreement between the Town and the Consultant 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 Consultant.
- 10.13 Severability. Invalidation of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

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

**If to the Town:**

**If to Consultant:**

<p>Town Administrator Town of Milliken 1101 Broad Street Milliken, CO 80543</p>	<p>Stewart Environmental Consultants 3801 Automation Way, Suite 200 Fort Collins, CO 80525 Attn: David R. Stewart, President</p>
<p>With Copy to: Town Attorney Town of Milliken c/o Michow Cox &amp; McAskin LLP 6530 S. Yosemite Street, Suite 200 Greenwood Village, Colorado 80111</p>	

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

**11.0 AUTHORITY**

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

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK-SIGNATURE PAGE FOLLOWS

**THIS AGREEMENT is executed and made effective as provided above.**

TOWN OF MILLIKEN, COLORADO

By: \_\_\_\_\_  
Kent Brown, Town Administrator,  
Authorized pursuant to Board of  
Trustees Resolution No. 16-\_\_\_\_

ATTEST:

\_\_\_\_\_  
Town Clerk

CONSULTANT: **Stewart Environmental Consultants,  
LLC**, a Colorado limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF COLORADO )

COUNTY OF \_\_\_\_\_ ) ss.

The foregoing Professional Services Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_ as \_\_\_\_\_ of **Stewart Environmental Consultants, LLC**, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public  
(Required for all contracts pursuant to C.R.S. § 8-40-202(2)(b)(IV))

ACKNOWLEDGED AND AGREED:

**Stewart CMF, LLC**, a Colorado limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By executing this Professional Services Agreement ("Agreement"), the Consultant and Stewart CMF, LLC, hereby specifically agree that this Agreement constitutes a public record and confirms that the distribution of this Agreement does not violate any provision of the Confidentiality Agreement by and between the Town, the Consultant, Stewart CMF, LLC and FEI Engineers, Inc.

**EXHIBIT A**

Project/Services Name: Milliken RO Facility Efficiency Pilot Test

**SCOPE OF SERVICES**

*(attached – proposal dated July 11, 2016 and pilot test timeline, consisting of 11 pages)*

**EXHIBIT B**

Project/Services Name: Milliken RO Facility Efficiency Pilot Test

**PAYMENT SCHEDULE / METHOD OF COMPENSATION**

Task/Event	Compensation Due to Consultant
CDPHE approval of pilot/demonstration application in substantially the form attached as <u>Exhibit B-1</u> , or written authorization to proceed from CDPHE as necessary to confirm that the pilot test at the Milliken RO Facility will not violate the continued shut down of the RO Facility as required by the terms of the Compliance Order and Consent as executed by the Town and CDPHE-Water Quality Division.	\$25,000.00
<p>Completion of final pilot test plan approval of plan by Town Reviewing Engineer</p> <p>Completion of pilot test mobilization and setup with verification of mobilization and setup by Town Administrator and the Reviewing Engineer (identified in Section 1.2 of the Agreement)</p>	<p>\$10,000.00</p> <p>\$30,000.00</p>
Completion of pilot test laboratory analysis by Consultant, completion of third party verification testing of laboratory results, and completion of final pilot test report including laboratory results and third party laboratory results verification, with conveyance of a minimum of three (3) written copies of the same to the Town Administrator.	\$35,000.00
<b>Subtotal:</b>	<b>\$100,000.00</b>
Review of pilot test report by Reviewing Engineer selected by the Town Administrator and written analysis of compliance with all parameters set forth in success matrix attached as <u>Exhibit B-2*</u> .	\$100,000.00
<b>Total (with success fee earned):</b>	<b>\$200,000.00</b>
<p><i>*Note: if any parameters set forth in the success matrix are not satisfied, then the success fee of \$100,000.00 shall not be paid to the Consultant. The Reviewing Engineer shall provide a final written summary report to the Town Administrator documenting in writing the adherence of the pilot test to the parameters set forth in the success matrix.</i></p>	

**EXHIBIT B-1**

Project/Services Name: Milliken RO Facility Efficiency Pilot Test

**CDPHE Pilot / Demonstration Scale Application**

Colorado Department of Public Health and Environment  
 Water Quality Control Division  
 4300 Cherry Creek Drive South, B2  
 Denver, Colorado 80246-1530  
 CDPHE.WQEngReview@state.co.us  
 303-652-6298

Drinking Water Program  
 Pilot/Demonstration Scale  
 Application Form

**Design Criteria for Potable Water Systems: APPENDIX C  
 Drinking Water Program  
 Pilot/Demonstration Scale Application**

A. Applicant Information	
Applicant / Entity	Town of Milliken
PWSID	002192511
Representative Name/Title	Don Stonebrink, Water/Wastewater Superintendent
Address (include City, State, Zip Code)	PO Box 290 Milliken, CO 80543
Email	dstonebrink@millikencolorado.gov
Phone	970-880-5029
B. Water Plant Information	
Demonstration Scale Description:	The existing RO treatment plant has not operated since December of 2014, due to selenium and TDS concentrations in the brine exceeding the discharge permit limits. There will be no discharge to surface water during the proposed pilot study. The existing RO treatment system is limited to a recovery of approximately 85% - 70%. The proposed pilot test includes testing a high recovery RO system, with recovery in the range of 95-99%, paired with membrane distillation or atmospheric evaporators to treat brine waste, targeting a zero liquid discharge. Pilot testing will determine the equipment sizing, ability of the proposed high recovery RO system to treat alluvial well water, chemical feed dosing rates, energy requirement for membrane distillation/atmospheric evaporator, and sludge production. RO system permeate will be sent to the Town's sewer collection system. Brine and solids produced will be trucked and disposed in a Subtitle D landfill, if TCLP limits are met (if TCLP limits are not met, then Subtitle C disposal will be required).
Equipment Description:	The following equipment will be used for pilot scale: 200 mesh bag filter, 1 micron cartridge filter, first stage RO system, interstage precipitation reactor (IPR), ceramic membrane Micro Filtration (CMF) pretreatment system, CMF filtration system, second stage RO system, and membrane distillation. The pilot equipment is supplied by Gleason Environmental Consultants. Brine will also be sent to an atmospheric evaporator vendor for testing.
Calculations:	N/A
Water quality monitoring:	The samples will be collected at influent to the pilot, post 1st stage RO, post IPR, post-CMF, Post 2nd stage RO, and post evaporator. Sludge from the IPR underflow and evaporator/membrane distillation process will be analyzed for TCLP and radionuclides for determination of sludge disposal options and TENDRM compliance.
Process Control:	The pilot scale plant will be designed to treat 10,000 gallons of raw water. Flow rate for first stage RO and second stage RO will be at 10 gpm, CMF and IPR will be at 1.5 gpm. Pilot scale plant will be automated and can run for 24 hours a day.
	Estimated duration for pilot test will be for approximately 3 weeks. The estimated start date is mid-August 2018.



**EXHIBIT B-2**

Project/Services Name: Milliken RO Facility Efficiency Pilot Test

**Success Matrix**

<b>Parameter</b>	<b>Success Measurable</b>
<b>Selected Treatment Main Unit Processes</b>	Reverse Osmosis Unit with Brine Treatment for added capacity utilizing IPR, CMF and RO Technology
<b>Water Recovery</b>	99 percent +/- 1%
<b>Brine Disposal</b>	Evaporation (approximate \$0.5/1000 gallons)
<b>Economics (All economic claims in Success Matrix are within +/-30 percent)</b>	\$4,200,000 Capital Cost \$2.70 per 1000 gallons
<b>Operation</b>	Two Operators needed for Sludge Press (OSHA)
	Complex System, Trained Operator Needed
	Possible to Setup to Control itself
<b>Environmental</b>	Meets EPA and CDPHE regulations for consumptive water