



TOWN BOARD AGENDA

Wednesday, August 5, 2026 at 5:30 PM

MEETING LOCATION

1201 Broad Street, Meeting House, Milliken, CO 80543

Zoom Meeting Details

To Join via Zoom

<https://us02web.zoom.us/j/81993287069?pwd=m7AIW8o812RaY6qr4ncOSZybZURsiz.1>

Meeting ID: 819 9328 7069 Passcode: 357737

One tap mobile +17193594580,,81993287069#,,,,*357737# US

Join instructions:

https://us02web.zoom.us/join/81993287069/invitation?signature=z2_Xbacj8JAlnaSkGXYgxj7FxQDZM7IMuw2NTuehWXA

- 1. Call to Order**
- 2. Pledge of Allegiance**
- 3. Roll Call**
- 4. Agenda Approval**
- 5. Action Agenda**
 - a. Approval of Professional Services Agreement with Ayres Associates, Inc. for Preparation of the Water Supply Element**
Kevin Koelbel, Community Development Director
 - b. Discussion of negotiations related to a possible new town administrator contract, including possible executive session.**
Michael Orcutt, Mayor Pro Tem, Matthew Gould, Town Attorney
- 6. Adjournment**

ACCOMMODATION NOTICE

The Town of Milliken complies with Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973 guidelines. Ensuring the public's access to and participating in public meetings is a priority for the Town of Milliken.

In the event you are in need of reasonable accommodation in order to attend or participate in a public meeting conducted by the Town of Milliken, please contact the Town Clerk, Caree Rinebarger at (970) 660-5045 within 3 to 5 days before the scheduled meeting date, in order to allow the Town to better accommodate your request.

NOTE:

Agendas will be published no later than 24-hours prior to the meeting.

Headings in this agenda are for organizational purposes only. The Board of Trustees may take formal action on any matter reasonably related to any item listed under any

section of this agenda. Town of Marble v. Darien, 181 P.3d 1148 (Colo. 2008); Benson v. McCormick, 578 P.2d 651 (1978).

Contact: Caree Rinebarger, Town Clerk
CRinebarger@town.milliken.co.us | (970) 587-4331



5.a.

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

To: Mayor Austin and Trustees

Meeting Date:

From: Kevin Koelbel, Community Development
Director

August 5, 2026

Via: Steven Krolczyk, Interim Town Administrator

Item Category: Professional Service Agreement

Agenda Title: Approval of Professional Services Agreement with Ayres Associates, Inc.
for Preparation of the Water Supply Element

Attachments:

1. PSA Ayres Water Supply

PURPOSE

Approval of a Professional Services Agreement with Ayres Associates, Inc. to prepare the Town of Milliken Water Supply Element and related amendments to the Comprehensive Plan as required by Senate Bill 24-174.

BACKGROUND

Senate Bill 24-174 requires municipalities to adopt a Water Supply Element as part of their Comprehensive Plan by the state-established deadline. To meet this requirement, staff recommends contracting with Ayres Associates to prepare the Water Supply Element.

Ayres Associates has an established understanding of the Town's existing conditions, growth projections, and long-term planning goals through their completion of the Town's Housing Needs Assessment and their ongoing work preparing the Strategic Growth Element of the Comprehensive Plan. This familiarity provides continuity between the required planning documents, reduces duplication of effort, and allows the consultant to efficiently develop a Water Supply Element that is consistent with the Town's overall planning framework and state requirements.

Utilizing Ayres Associates will allow the Town to build upon previously completed analyses, streamline the planning process, and maintain the project schedule necessary to meet the statutory deadline established under SB24-174.

BUDGET IMPLICATIONS

The proposed agreement is for a lump-sum amount not to exceed \$17,500. There will be additional costs associated with this plan that will be incurred by our contracted Water Engineer for assistance with this plan.

STAFF RECOMMENDATIONS

Staff recommends approval of Professional Services Agreement with Ayres Associates, Inc. for Preparation of the Water Supply Element

SUGGESTED MOTION

I move to approve the Professional Services Agreement with Ayres Associates, Inc. for Preparation of the Water Supply Element and direct the mayor to sign such agreement.

**Town of Milliken
PROFESSIONAL SERVICES AGREEMENT**

Comprehensive Plan Water Supply Element

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 5th day of August, 2026 by and between the **TOWN OF MILLIKEN, COLORADO**, a municipal corporation of the State of Colorado, with offices at 1101 Broad Street, Milliken, Colorado 80543 (the "**Town**"), and Ayres Associates Inc. with offices at 3665 JFK Parkway, Bldg. 2, Suite 100, Fort Collins, CO 80525-3152 (the "**Contractor**").

WITNESSETH

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

WHEREAS, the Contractor has represented that it has expertise in regard to municipal compliance with statutory requirements set forth in Title 24, Article 32, Part 37 of the Colorado Revised Statutes;

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

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

1.0 SERVICES AND PURPOSE OF AGREEMENT

- 1.1 Services. The Town desires to achieve, secure, receive, or obtain certain service(s) or work product(s) as more specifically described in **Exhibit A** (the "Services"). **Exhibit A** describes the requirements and deliverables required by this Agreement and is incorporated herein by reference. As an independent contractor, the Contractor offers and agrees to perform and/or deliver the Services in accordance with the terms and conditions of this Agreement.
- 1.2 Party Representatives. The Town assigns the Town Administrator or his or her designee, which shall initially be Kevin Koelbel, as the Town Representative for this Agreement. The Town Representative will monitor the Contractor's progress and performance under this Agreement and shall be available to the Contractor to respond to questions, assist in understanding Town policies, procedures, and practices, and supervise the performance of any Town obligations under this Agreement. The Contractor designates Mike Scholl as the Contractor's Representative for this Agreement, who shall be primarily responsible for coordinating the Services of the Contractor and maintaining communications with the Town. The Contractor shall not change the Contractor's Representative without notifying the Town.
- 1.3 Changes to Services. Any changes to the Services that are mutually agreed upon between the Town and the Contractor shall be made in a formal writing referencing

this Agreement and, only upon execution by both Parties of such formal writing, shall become an amendment to the Services described in this Agreement. To be effective, any written change must be signed by the Contractor and by the Town or by a person expressly authorized in writing to sign on behalf of the Town. Changes to the Services or to this Agreement shall not be made through oral agreement or electronic mail messages.

- 1.4 Meeting Attendance. The Contractor shall attend such meetings of the Town relative to the Services set forth in **Exhibit A** as may be requested by the Town. Any requirement made by the named representatives of the Town shall be given with reasonable notice to the Contractor so that a representative may attend.
- 1.5 Lawful Performance. It is further agreed that no party to this Agreement will perform contrary to any state, federal, or county law, or any of the ordinances of the Town of Milliken, Colorado.

2.0 COMPENSATION

- 2.1 Commencement of and Compensation for Services. Following execution of this Agreement by the Town, the Contractor shall be authorized to and shall commence performance of the Services as described in **Exhibit A**, subject to the requirements and limitations on compensation as provided by this Section 2.0 and its subsections. Compensation to be paid hereunder shall not exceed Seventeen Thousand Five Hundred Dollars (\$17,500) unless a different amount is agreed to by and between the Parties in accordance with the amendment requirements of this Agreement.
 - A. Method of Compensation. The Contractor shall perform the Services and shall invoice the Town for work performed based on the rates and/or compensation methodology and amounts described in **Exhibit B** subject to the not to exceed amount set forth in this Section. The Contractor shall submit invoices no more often than once per month. Contractor may mail invoices to Town of Milliken, Attn: Accounts Payable, P.O. Box 290, Milliken, CO 80543 or email invoices to accountspayable@millikenco.gov. Monthly, partial, progress payments shall be made by the Town to the Contractor for the percentage of Services completed. Progress payments shall not constitute a waiver of the right of the Town to require the fulfillment of all material terms of this Agreement and the delivery of all improvements embraced in this Agreement.
 - B. Additional Services. Should work beyond that described in **Exhibit A** be required, it will be paid for as extra work at a cost to be agreed upon in separate written agreement by the Town and the Contractor prior to commencement of the additional work. Such additional agreements shall be executed and approved by all persons required by Town purchasing ordinances or policies.
 - C. Receipts. The Town, before making any payment, may require the Contractor to furnish releases or receipts from any or all persons performing work under this Agreement and/or supplying material or services to the Contractor, or any subcontractor if this is deemed necessary to protect the Town's interest. The

Town, however, may in its discretion make payment in part or full to the Contractor without requiring the furnishing of such releases or receipts.

- 2.2 Reimbursable Expenses. If this Agreement is for lump sum compensation, there shall be no reimbursable expenses. If the Agreement is for compensation based on a time and materials methodology, the following shall be considered "reimbursable expenses" for purposes of this Agreement and may be billed to the Town without administrative mark-up but which must be accounted for by the Contractor and proof of payment shall be provided by the Contractor with the Contractor's monthly invoices:

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

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

- 2.3 Increases in Compensation or Reimbursable Expenses. Any increases or modification to the compensation or reimbursable expenses shall be subject to the approval of the Town and shall be made only by written amendment of this Agreement executed by both Parties.
- 2.4 Payment Processing. The Contractor shall submit any invoices and requests for payment required or permitted by this Agreement in a form acceptable to the Town. Unless otherwise directed or accepted by the Town, all invoices shall contain sufficient information to account for all appropriate measure(s) of Contractor work effort (e.g., task completion, work product delivery, or time) and all authorized reimbursable expenses for the Services during the stated period of the invoice. Following receipt of a Contractor's invoice, the Town shall promptly review the Contractor's invoice. All Town payments for Services rendered pursuant to this Agreement shall be issued in the business name of Contractor only, and in no event shall any such payments be issued to an individual. In no event shall any Town payments to Contractor be in the form of or based upon a salary or an hourly wage rate.
- 2.5 Town Dispute of Invoice or Invoiced Item(s). The Town may dispute any Contractor compensation and/or reimbursable expense requested by the Contractor described in any invoice and may request additional information from the Contractor substantiating any and all compensation sought by the Contractor before accepting the invoice. When additional information is requested by the Town, the Town shall advise the Contractor in writing, identifying the specific item(s) that are in dispute and giving specific reasons for any request for information. The Town shall pay the Contractor

within forty-five (45) days of the receipt of an invoice for any undisputed charges or, if the Town disputes an item or invoice and additional information is requested, within thirty (30) days of acceptance of the item or invoice by the Town following receipt of the information requested and resolution of the dispute. To the extent possible, undisputed charges within the same invoice as disputed charges shall be timely paid in accordance with this Agreement. Payment by the Town shall be deemed made and completed upon hand delivery to the Contractor or designee of the Contractor or upon deposit of such payment or notice in the U.S. Mail, postage pre-paid, addressed to the Contractor.

3.0 CONTRACTOR'S REPRESENTATIONS AND OFFERED PERFORMANCE

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

- 3.1 General. The Contractor shall become fully acquainted with the available information related to the Services. The Contractor shall affirmatively request from the Town Representative and relevant Town staff such information that the Contractor, based on the Contractor's professional experience, should reasonably expect is available and which would be relevant to the performance of the Services. The Contractor shall promptly inform the Town concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Agreement. The Contractor shall provide all of the Services in a timely and professional manner. The Contractor shall comply with all applicable federal, state and local laws, ordinances, regulations, and resolutions.
- 3.2 Independent Contractor. The Contractor shall perform the Services as an independent contractor and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with the Town. This Agreement does not require the Contractor to work exclusively for the Town. This Agreement shall not be interpreted as the Town dictating or directing the Contractor's performance or the time of performance beyond the completion schedule set forth in **Exhibit C** and a range of mutually agreeable work hours but shall be interpreted as the Contractor's offer and Town acceptance of terms and conditions for performance. The Contractor's business operations shall not be combined with the Town by virtue of this Agreement, and the Town will not provide any training to Contractor, its agents, or employees beyond that minimal level required for performance of the Services. The Parties acknowledge that the Contractor may require some assistance or direction from the Town in order for the Services to meet the Town's contractual expectations. Any provisions in this Agreement that may appear to grant the Town the right to direct or control Contractor or the Services shall be construed as Town plans or specifications regarding the Services.
- 3.3 Liability for Employment-Related Rights and Compensation. The Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Contractor,

as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. The Contractor will comply with all laws, regulations, municipal codes, and ordinances and other requirements and standards applicable to the Contractor's employees, including, without limitation, federal and state laws governing wages and overtime, equal employment, safety and health, employees' citizenship, withholdings, reports and record keeping. **CONTRACTOR ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS CONTRACTOR OR SOME ENTITY OTHER THAN THE TOWN PROVIDES SUCH BENEFITS. CONTRACTOR FURTHER ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO WORKERS' COMPENSATION BENEFITS. CONTRACTOR ALSO ACKNOWLEDGES THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED OR PAID PURSUANT TO THIS AGREEMENT.** To the maximum extent permitted by law, Contractor waives all claims against the Town for any Employee Benefits; the Contractor will defend the Town from any claim and will indemnify the Town against any liability for any Employee Benefits for the Contractor imposed on the Town; and the Contractor will reimburse the Town for any award, judgment, or fine against the Town based on the position the Contractor was ever the Town's employee, and all attorneys' fees and costs the Town reasonably incurs defending itself against any such liability.

- 3.4 Interaction with Public. The Contractor recognizes that its conduct during the performance of the Services hereunder reflects upon its reputation in the community as well as upon the public perception of the Town. Therefore, the Contractor offers and warrants to the Town that the Contractor, its agents and employees will conduct all of their interactions with the citizens and the public relating to the performance of the Services hereunder in such a manner as to provide customer service that reflects positively upon its reputation and the Town's public image.
- 3.5 Subcontractors. The Parties recognize and agree that subcontractors may be utilized by the Contractor for the performance of certain Services if and as described more particularly in **Exhibit A**; however, the engagement or use of subcontractors will not relieve or excuse the Contractor from performance of any obligations imposed in accordance with this Agreement and Contractor shall remain solely responsible for ensuring that any subcontractors engaged to perform Services hereunder shall perform such Services in accordance with all terms and conditions of this Agreement.
- 3.6 Standard of Performance. In performing the Services, the Contractor warrants that it shall use that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by competent members of the same profession practicing in the State of Colorado. The Contractor represents to the Town that the Contractor is, and its employees or subcontractors performing such Services are, properly licensed and/or registered within the State of Colorado for the performance of the Services (if licensure and/or registration is required by applicable law) and that the Contractor and employees possess the skills, knowledge, and abilities to perform the Services competently, timely, and professionally in accordance with this Agreement. In

addition, the Contractor warrants and represents that it will provide the Services in accordance with more specific standards of performance as are included within **Exhibit A**, if any. The Contractor represents, covenants and agrees that the Services will be provided to the Town free from any material errors. The Contractor's failure to meet or exceed any of the foregoing standards and warranties may be considered a material breach of this Agreement and may be grounds for termination of the Agreement pursuant to Section 4.0 below, in addition to any other remedies as provided in Section 9.0 below.

- 3.7 **Review of Books and Records.** The Contractor shall promptly comply with any written Town request for the Town or any of its duly authorized representatives to reasonably access and review any books, documents, papers, and records of the Contractor that are pertinent to the Contractor's performance under this Agreement for the purpose of the Town performing an audit, examination, or other review of the Services.
- 3.8 **Licenses and Permits.** The Contractor shall be responsible at the Contractor's expense for obtaining, and maintaining in a valid and effective status, all licenses and permits necessary to perform the Services unless specifically stated otherwise in this Agreement.
- 3.9 **Affirmative Action.** The Contractor warrants that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor warrants that it will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 3.10 **Duty to Warn.** The Contractor agrees to call to the Town's attention errors in any drawings, plans, sketches, instructions, information, requirements, procedures, and/or other data supplied to the Contractor (by the Town or by any other party) that it becomes aware of and believes may be unsuitable, improper, or inaccurate in a material way. However, the Contractor shall not independently verify the validity, completeness or accuracy of such information unless included in the Services or otherwise expressly engaged to do so by the Town.

4.0 TERM AND TERMINATION

- 4.1 Term. This Agreement shall terminate at the earlier of the date on which all obligations of the parties have been met (to include all Services have been completed) or **5:00 p.m.** on Thursday, December 31, 2026, or on a prior date of termination as may be permitted by this Agreement; provided, however, that the Parties may mutually agree in writing to extend the term of this Agreement, subject to annual appropriation. Those provisions that survive termination, to include the indemnification obligations and any warranty obligations, shall remain in effect past termination.
- 4.2 Continuing Services Required. The Contractor shall perform the Services in accordance with this Agreement commencing on the Effective Date until such Services are terminated or suspended in accordance with this Agreement. The Contractor shall not temporarily delay, postpone, or suspend the performance of the Services without the written consent of the Town Council, Town Administrator, the Town Representative, or other Town employee expressly authorized in writing to direct the Contractor's services.
- 4.3 Town Unilateral Termination. This Agreement may be terminated by the Town for any or no reason upon written notice delivered to the Contractor at least thirty (30) days prior to termination. In the event of the Town's exercise of the right of unilateral termination as provided by this paragraph:
- A. Unless otherwise provided in any notice of termination, the Contractor shall provide no further services in connection with this Agreement after receipt of a notice of termination; and
 - B. All finished or unfinished documents, data, studies and reports prepared by the Contractor pursuant to this Agreement shall be delivered by the Contractor to the Town and shall become the property of the Town; and
 - C. The Contractor shall submit to the Town a final accounting and final invoice of charges for all outstanding and unpaid Services and reimbursable expenses performed prior to the Contractor's receipt of notice of termination and for any services authorized to be performed by the notice of termination as provided by Section 4.3(A) above. Such final accounting and final invoice shall be delivered to the Town within thirty (30) days of the date of termination; thereafter, no other invoice, bill, or other form of statement of charges owing to the Contractor shall be submitted to or accepted by the Town.
- 4.4 Termination for Non-Performance. Should a party to this Agreement fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing party if the performing party first provides written notice to the non-performing party which notice shall specify the non-performance, provide both a demand to cure the non-performance and reasonable time to cure the non-performance, and state a date upon which the Agreement shall be terminated if there is a failure to timely cure the non-performance. For purpose of this Section 4.4, "reasonable time" shall be not less than five (5) business days. In the

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

4.5 Unilateral Suspension of Services. The Town may suspend the Contractor's performance of the Services at the Town's discretion and for any reason by delivery of written notice of suspension to the Contractor which notice shall state a specific date of suspension. Upon receipt of such notice of suspension, the Contractor shall immediately cease performance of the Services on the date of suspension except: (1) as may be specifically authorized by the notice of suspension (e.g., to secure the work area from damage due to weather or to complete a specific report or study); or (2) for the submission of an invoice for Services performed prior to the date of suspension in accordance with this Agreement.

4.6 Delivery of Notice of Termination. Any notice of termination permitted by this Section 4.0 and its subsections shall be addressed to the person signing this Agreement on behalf of either Town or Contractor at the address shown below or such other address as either party may notify the other of and shall be deemed given upon delivery if personally delivered, or forty-eight (48) hours after deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

5.0 INSURANCE

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

☐ The Contractor shall obtain and maintain the types, forms, and coverage(s) of insurance deemed by the Contractor to be sufficient to meet or exceed the Contractor's minimum statutory and legal obligations arising under this Agreement ("Contractor Insurance") subject to the Town's approval upon receipt of certificates in compliance with section 5.4; or

☒ The Contractor shall secure and maintain the following ("Required Insurance"):

☒ Worker's Compensation Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by law. Such policy of insurance shall be endorsed to include the Town as a Certificate Holder.

- ☒ Commercial General Liability Insurance with minimum combined single limits of One Million Dollars (\$1,000,000.00) 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 Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the Town as Certificate Holder and name the Town, and its elected officials, officers, employees and agents as additional insured parties.
- ☐ Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000.00) each occurrence with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Agreement, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the Town as Certificate Holder and name the Town, and its elected officials, officers, employees and agents as additional insured parties.
- ☐ Professional Liability (errors and omissions) Insurance with a minimum limit of coverage of _____ (\$_____) per claim and annual aggregate. Such policy of insurance shall be obtained and maintained for one (1) year following completion of all Services under this Agreement. Such policy of insurance shall be endorsed to include the Town as a Certificate Holder.

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

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

A. For both Contractor Insurance and Required Insurance, all policies of insurance shall be primary insurance, and any insurance carried by the Town, its officers, or its employees shall be excess and not contributory insurance to that provided by the Contractor; provided, however, that the Town shall not be obligated to obtain or maintain any insurance whatsoever for any claim, damage, or purpose arising from or

related to this Agreement and the Services. The Contractor shall not be an insured party for any Town-obtained insurance policy or coverage.

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

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

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

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

The Contractor agrees, to the fullest extent permitted by law, to indemnify, defend and hold the Town, its agencies, employees, officials and agents ("Indemnitees") harmless from any and all claims, settlements, judgments, damages and costs, including reasonable attorney fees, of every kind and nature made, to include all costs associated with the investigation and defense of any claim, rendered or incurred by or on behalf of the Indemnitees, that may arise, occur, or grow out of any errors, omissions, breaches of contract (including this Agreement), or intentional or negligent acts, done by the Contractor, its employees, subcontractors or any independent consultants working under the direction of either the Contractor or any subcontractor in the performance of this Agreement. Nothing in this section 6.0 shall be construed as an agreement by the Contractor to indemnify or hold Indemnitees harmless for any negligence solely attributable to the Town. In accordance with provisions of the Colorado Constitution, including without limitation Sections 1 and 2 of Article XI and Section 20 of Article X, as well as section 29-1-110 of the Colorado Revised Statutes, the Town shall owe no indemnification obligation to the Contractor.

7.0 RECORDS AND OWNERSHIP OF DOCUMENTS

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

copyright held by the Contractor and the Contractor reserves all rights granted to it by any copyright. The Town shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by Town staff and/or Town contractors; or (2) pursuant to a request under the Colorado Open Records Act, C.R.S. § 24-72-203, to the extent that such statute applies; or (3) pursuant to law, regulation, or court order. The Contractor waives any right to prevent its name from being used in connection with the Services.

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

8.0 FORCE MAJEURE

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

9.0 REMEDIES

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

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

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

10.0 MISCELLANEOUS PROVISIONS

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

- 10.6 Governing Law, Venue, and Enforcement. This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Weld County, Colorado, and state court litigation in such court shall be the sole means of binding dispute resolution. 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.
- 10.7 Survival of Terms and Conditions. The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.
- 10.8 Assignment and Release. All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by the Contractor without the express written consent of the Town. Any written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by the Town through the authorizing agent executing this Agreement. No assignment shall release the Contractor from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment.
- 10.9 Interpretation and Mutual Negotiation. It is the intent of the Parties that this Agreement shall in all instances be interpreted to reflect the Contractor's status as an independent contractor with the Town and that in no event shall this Agreement be interpreted as establishing an employment relationship between the Town and either Contractor or Contractor's employees, agents, or representatives. The Parties agree that this Agreement is the result of mutual negotiation between the Parties and that the Agreement shall not be construed against the Town on grounds relating to drafting, revision, review, or recommendation by any agent or representative of the Town. The Parties further agree that all warranties in this Agreement are made by the Contractor to induce the Town to accept the Contractor's offer to enter into this Agreement and have been incorporated into the Agreement at the Contractor's request.
- 10.10 Paragraph Captions. The captions of the paragraphs and sections are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.
- 10.11 Integration and Amendment. This Agreement represents the entire and integrated agreement between the Town and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. Any

amendments to this Agreement must be in writing and be signed by both the Town and the Contractor.

- 10.12 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.
- 10.13 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 such incorporated exhibit or other item and this Agreement, the provisions of this Agreement shall govern and control.
- 10.14 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 electronic mail, 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 or when sent by electronic mail, read receipt requested.

If to the Town :

If to Contractor:

Interim Town Administrator Milliken Town Hall 1101 Broad Street Milliken, CO 80543 skrolczyk@millikenco.gov	Mike Scholl, EDFP Ayres Associates Inc. 3665 JFK Parkway Bldg. 2, Suite 100 Fort Collins, CO 80526-3152
With Copy to: Milliken Town Attorney Matthew T. Gould Bell, Gould, Linder & Scott, P.C 318 East Oak Street Fort Collins, CO 80524 mgould@bell-law.com	With Copy to: Matt Ashby, Vice President Ayres Associates Inc. 214 W. Lincolnway, Suite 22 Cheyenne, WY 82001

- 10.15 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the

provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

11.0 ATTACHMENTS

In addition to the Exhibits, the following are attached to this Agreement and incorporated by this reference:

1. Contractor's Certificate(s) of Insurance
2. Ayres Scope of Work dated August 5, 2026

12.0 AUTHORITY

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

SIGNATURE PAGE FOLLOWS

THIS AGREEMENT is executed and made effective as provided above.

TOWN OF MILLIKEN, COLORADO:

Approval by Mayor

ATTEST:

Town Clerk

By: _____

Elizabeth Austin, Mayor

APPROVED AS TO FORM (*Including Exhibits*)

Town Attorney

CONTRACTOR:

Ayres Associates Inc.

By: Matt Ashby

Vice President

STATE OF _____)
COUNTY OF _____)ss.

The foregoing Professional Services Agreement was acknowledged before me this ____ day of _____, 20 ____, by [Contractor Signing Rep Full Name] as [Contractor Signing Rep Title] of [Contractor Full Name].

Witness my hand and official seal.

My commission expires:_____.

Notary Public

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

EXHIBIT A

SCOPE OF SERVICES

The Water Supply Element will provide the Town with a practical framework for coordinating future growth, land use planning, and water resource management while satisfying the requirements of Colorado Senate Bill 24-174. The project will rely on existing engineering studies, utility master plans, and information provided by the Town and its water providers. Preparation of new hydraulic models, water rights analyses, engineering design, or updates to the Utility Master Plan are specifically excluded from this scope of work.

Consistent with SB24-174, the Water Supply Element will:

- Coordinate with local water providers.
- Evaluate future water demand associated with anticipated growth.
- Assess the relationship between projected development and available water supplies.
- Recommend water conservation policies and growth management strategies.
- Prepare an adoptable Water Supply Element for incorporation into the Comprehensive Plan.

Task 1 – Project Initiation

- Kickoff meeting (virtual)
- Data, plans, and policies request
- Coordination with Town staff
- Consult with water provider(s)

Deliverable: Project work plan

Task 2 – Existing Water Supply Assessment

Existing conditions will be summarized rather than recreated, allowing the project to leverage previous engineering work while focusing on the planning implications for future growth.

Review:

- Utility Master Plan
- Water Efficiency Plan
- Capital Improvement Plan
- Existing water rights summary
- Existing treatment capacity
- Existing storage
- Existing service area

Meet with the Public Works Director or consulting engineer to confirm findings.

Deliverable: Existing Conditions chapter.

Task 3 – Water Supply Capacity

Meet with the water provider(s).

Document the following:

- Existing supplies
- Planned improvements
- Capacity constraints
- Future projects

- Areas needing additional study

This satisfies a key requirement of SB24-174.

Deliverable: Water Supply Adequacy Assessment

Task 4 – Future Water Demand Assessment

Ayres will integrate the Town's future land use, housing, employment, and development projections to estimate future water demand under anticipated growth scenario using the following:

- Comprehensive Plan
- Future Land Use Map
- Strategic Growth Element
- Housing Needs Assessment
- Population forecasts
- Development pipeline

To complete the following estimates:

- Future demand
- Buildout demand
- Demand timing

Deliverable: Future Water Demand Assessment

Task 5 – Water Conservation Policies

Prepare recommendations that support efficient water use while accommodating anticipated growth.

The Water Supply Element will include policy recommendations addressing areas, such as:

- Water conservation
- Landscape standards
- Xeriscaping
- Water-wise development practices
- Reuse opportunities
- Demand management
- Coordination with development review
- Conservation incentives

Where appropriate, the Water Supply Element will provide policy recommendations that can be considered during future updates to the Town's development regulations and subdivision standards.

Deliverable: Draft recommendations

Task 6 – Water Supply Element

Prepare a concise, adoption-ready Water Supply Element suitable for incorporation into the Comprehensive Plan.

Chapters to include:

1. Introduction
2. Existing Conditions
3. Future Demand
4. Water Supply Assessment
5. Water Conservation Policies
6. Coordination

7. Implementation

Task 7 – Adoption

- Planning Commission presentation (in-person)
- Board/Council presentation (in-person)
- Final revisions

Final Deliverables

- Existing Conditions Summary
- Draft Water Supply Element
- Final Water Supply Element
- Implementation Matrix
- Two public presentations

Project Assumptions

- The Town will provide available engineering reports, utility master plans, and relevant GIS or planning documents.
- Existing engineering analyses will be relied upon and summarized rather than recreated.
- Up to three virtual coordination meetings with Town staff and water providers are included.
- Two in-person public meetings (Planning Commission and Town Board/City Council) are included.
- Additional engineering analysis requested after project initiation may require an amendment to the scope of work and fee.

EXHIBIT B

BUDGET

We believe that we can complete the work for a proposed a lump-sum budget of **\$17,500**, following the scope of work provided in tasks as outlined earlier. A lump-sum contract allows for cost certainty and helps reduce administrative burden and encourages our team to stay on schedule and work efficiently.

If a per-hour billing structure is preferred by the Town, we are happy to accommodate that as well. For more information, please refer to the Project Approach section above.

Lump Sum Budget: \$17,500

- ◆ **Project-related expenses will be billed at cost and included in the lump sum budget. No significant expenses are anticipated, other than mileage associated with project travel.**



5.b.

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

To: Mayor Austin and Trustees
From: Michael Orcutt, Mayor Pro Tem, Matthew Gould, Town Attorney
Via: Steven Krolczyk, Interim Town Administrator

Meeting Date:
August 5, 2026

Item Category: Executive Sessions

Agenda Title: Discussion of negotiations related to a possible new town administrator contract, including possible executive session.

Attachments:
None

PURPOSE

Mayor Pro Tem Orcutt called the special meeting for the purpose of discussing negotiations related to a possible new town administrator contract. The purpose includes a possible executive session to determine positions relative to matters that may be subject to negotiations, develop strategies for negotiations, and to instruct negotiators with respect to negotiable matters pertinent to hiring a new town administrator and entering into an employment contract.

BACKGROUND

The previous town administrator retired effective June 1, 2026, and a staff member has been designated to fulfill the duties of town administrator on a temporary basis pending the hiring and appointment of a Town Administrator. Candidates have been interviewed and finalists identified.

BUDGET IMPLICATIONS

N/A

STAFF RECOMMENDATIONS

N/A

SUGGESTED MOTION

I move that we enter executive session pursuant to section 24-6-402(4)(e)(I) of the Colorado Revised Statutes for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategies for negotiations and instructing negotiators with respect to a possible employment contract with a new town administrator.