

## **AGREEMENT TO PROVIDE BUILDING DEPARTMENT SERVICES**

**THIS AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the TOWN OF JOHNSTOWN, COLORADO, a home-rule municipal corporation of the State of Colorado (“Town”), and PROCODE, INC., a Colorado corporation.

**WHEREAS**, the Town does not have a building department and does not employ a building official; and

**WHEREAS**, the Town desires to utilize the services of ProCode, Inc. to perform building department services for the Town; and

**WHEREAS**, at the time of the execution of this Agreement, the parties anticipate that ProCode, Inc. shall be primarily responsible for providing the services described herein; and

**WHEREAS**, in order to set forth clearly the responsibilities, obligations, powers and rights of each of the parties, the Town and ProCode, Inc. (hereinafter, “Building Official”) hereby enter into this Agreement.

**NOW, THEREFORE**, in consideration of recitals, promises, and covenants herein set forth, and other good and valuable consideration herein receipted for, the parties agree as follows:

1. **SERVICES** – The Town and Building Official agree that Building Official shall perform the following services for the Town: review plans, process permits, conduct inspections, prepare certificates of occupancy, respond to phone referrals, attend conferences with building permit applicants and any and all other reasonable activities requested by the Town. Building Official shall also inspect and investigate complaints of Code violations when so directed by an administrative officer of the Town, and be available for testimony in any proceeding regarding such violations. (Collectively, the foregoing shall be referred to as the “Services.”) The Services shall be performed for residential, commercial and industrial properties within the incorporated boundaries of the Town and be based upon the Town’s adopted Building Code, Mechanical Code, Plumbing Code, Electrical Code and any other related Codes adopted in Chapter 18 of the Johnstown Municipal Code. Building Official agrees to designate Jonathan Gesick to be primarily responsible for providing, and/or coordinating for the provision of, the Services hereunder.

Building Official further agrees to:

- a. Inspect properties, residential, commercial and industrial, with twenty-four (24) hours of a request by the Town, except that weekends and holidays shall not be included in the twenty-four (24) hour time period;

- b. Review development plans, in whatever form, within ten (10) business days of a request by the Town;
  - c. Provide regular reports as may be required by the Town Manager concerning building activity within the Town;
  - d. On or before June 1, 2022, provide the Town Manager with updated internal procedures implemented to streamline the permit process for quicker processing and, if requested, to amend the internal procedures consistent with the Town Manager's direction;
  - e. On or before June 1, 2022, recommend updated permit fee schedules for residential, commercial and industrial properties and thereafter present such recommended fee schedules to Town Council;
  - f. During the 2022 calendar year and each year thereafter during this contract, conduct a 2 hour program annually to educate members of the public regarding building guidelines and best practices and provide the Town Manager with documentation that may be posted on the Town of Johnstown's website to further community education.
2. HOURS – The parties expect and agree that Building Official shall work as many hours as required per week for the Town. The Town does not dictate Building Official's hours, but expects and requires that Building Official perform the Services in a timely manner and that such Services will be generally performed during regular business hours. If Building Official is unavailable during any particular week, Building Official shall provide notice to the Town Manager.
3. CERTIFICATION – Building Official represents and agrees that Jonathan Gesick and, if applicable, all other persons providing Services pursuant to this Agreement are certified building official(s), and or inspector(s), with certifications in building, plumbing, mechanical and electrical disciplines for commercial, industrial and residential properties. Building Official and persons providing Services shall maintain the appropriate certifications during the term of this Agreement according to the discipline in which they are involved and performing Services.
4. COMPENSATION – In consideration of Building Official's high level credentials and ability and agreement to deliver the Services, the Town agrees to pay Building Official at the monthly rates shown below for the next three (3) years, unless otherwise amended, which is based on the expectation that Building Official shall provide the required Services for the Town. The compensation will be paid to Building Official within five (5) working days following the first regular Town business meeting of the month for all invoices submitted at least ten (10) days prior to such meeting.

Building Official's compensation shall be as follows:

- a. 2022 calendar year - \$15,750.00 monthly
- b. 2023 calendar year - \$16,225 monthly
- c. 2024 calendar year and subsequent years - \$16,725 monthly

5. INDEPENDENT CONTRACTOR – Building Official understands and agrees that Building Official is an independent contractor and not an employee of the Town. The Town shall not provide benefits of any kind to Building Official. The Town shall not be responsible for withholding any portion of Building Official’s compensation for the payment of Federal Insurance Contributions Act (FICA) tax, workers’ compensation or other taxes or benefits. THE BUILDING OFFICIAL IS NOT ENTITLED TO UNEMPLOYMENT COMPENSATION COVERAGE FROM THE TOWN. THE BUILDING OFFICIAL IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON MONEYS PAID PURSUANT TO THIS AGREEMENT. The Town does not require that Building Official work exclusively for the Town. As long as there is not a conflict of interest with the Town, Building Official may engage in any other lawful business activities during the term of this Agreement.
  
6. SUBCONTRACTOR – Building Official may retain a subcontractor to perform Services for the Town and shall be responsible for directing the subcontractor to perform such Services. ProCode shall pay the subcontractor for hours worked and these additional hours shall not be billed to the Town. Retention of a subcontractor shall be subject to the following provisions:
  - (a) Subcontractor Qualifications. Subcontractor shall be qualified to perform the Services for the Town and have appropriate certifications. Prior to retaining a subcontractor, Building Official shall provide the name and qualifications of subcontractor to the Town. Subcontractor may not perform Services for the Town until the Town, in its discretion, provides written approval of the retention of subcontractor.
  
  - (b) Subcontractor Obligations. Building Official shall require that subcontractor: (1) agrees to be bound by the terms of the Agreement; (2) be fully insured to the minimum extent provided in Paragraph 11 of this Agreement and maintain, through Building Official or independently, worker’s compensation insurance in accordance with the lawful requirements of the State of Colorado; and (3) understands and agrees that he or she is not an employee of the Town, is not entitled to unemployment compensation coverage by the Town, is not entitled to benefits provided to Town employees, is not entitled to insurance coverage provided to Town employees and that he or she is obligated to pay federal and state income taxes on moneys earned with respect to work for the Town, unless the taxes are otherwise paid by an employer. Subcontractor shall not perform Services for the Town until the foregoing obligations are satisfied.
  
7. LIABILITIES –
  - (a) The Town shall not be liable for the direct payment of any salaries, wages or other compensation to any personnel, including but not limited to subcontractors, performing services herein for Building Official or for the Town at the request of Building Official.

- (b) Building Official or his employees shall not be deemed to assume any liability for intentional or negligent acts of said Town or any officer, agent, or employee thereof.
  - (c) Building Official assumes full responsibility for any and all damages caused by Building Official's exercise of its activities under by this Agreement. Building Official agrees that it will at all times protect, defend and indemnify and hold harmless the Town, its officers, agents, employees, tenants and their successors and assigns from and against all liabilities, losses, claims, demands, actions and court costs (including reasonable attorneys' fees), arising from or related to loss or damage to property or injury to or death to any persons resulting in any manner from the actions or failure to act of Building Official or any invitees, guests, agents, employees or subcontractors of Building Official, whether brought by any of such persons or any other person arising from Building Official's activities or failure to act.
8. TERM AND RENEWAL – The term of this Agreement shall be one year from its anniversary date. The Agreement shall be automatically renewed annually on its anniversary date unless either party provides written notice of termination at least sixty (60) days prior to the termination.
9. TERMINATION – Either party may terminate this Agreement by providing sixty (60) days advanced written notice. In such case, Building Official shall complete all outstanding obligations to the Town within thirty (30) days. After providing a reasonable opportunity to cure, either party may terminate this Agreement based on a breach of the Agreement without providing sixty (60) days advanced written notice. Upon termination, the remainder of Building Official responsibilities shall be transferred to the Town.
10. NOTICES –
- (a) All notices to Building Official shall be sent certified or registered mail, return receipt requested, and first class mail, postage prepaid, to ProCode, Inc., Attention: Jonathan Gesick, 39 S Parish Ave, Johnstown, CO 80534.
  - (b) All notices to the Town shall be sent certified or registered mail, return receipt requested, and first class mail, postage prepaid, to Town Manager, 450 South Parish, P.O. Box 609, Johnstown, CO 80534.
  - (c) In the alternative, either Party may provide notice via E-mail delivery on the condition that the other party acknowledges receipt of the E-mail and agrees in a responsive E-mail communication to accept notice in such manner.
11. INSURANCE – Building Official shall maintain the following insurance coverage during the term of this Agreement and any subsequent renewals.

- (a) Building Official shall maintain errors and omissions liability insurance, the terms of which shall be subject to approval by the Town, and shall provide that any notices of cancellation or non-renewal be provided to the Town. The minimum coverage of errors and omissions liability insurance shall be one million dollars (\$1,000,000.00) with five hundred thousand dollars (\$500,000.00) per occurrence.
- (b) Building Official shall maintain one million dollars (\$1,000,000.00) general liability insurance, the terms of which shall be subject to approval by the Town, and shall provide that any notice of cancellation or non-renewal be provided to the Town.
- (c) Building Official shall maintain worker's compensation insurance in accordance with lawful requirements of the State of Colorado. Any notice of cancellation or non-renewal shall be provided to the Town.
- (d) All insurance policies shall include the Town of Johnstown as an additional insured.

12. CODE MODIFICATIONS AND UPDATES – In addition to the Services set forth herein, Building Official shall make periodic recommendation to the Town for modifying, improving or updating the relevant Uniform Codes in effect pursuant to Chapter 18 of the Johnstown Municipal Code. At a minimum, Building Official shall make recommendations to the Town Manager regarding the adoption of, along with appropriate modifications to, the Uniform Codes revised and adopted by the International Code Council in 2018 as necessary. Such recommendations shall be made in writing by both the Town Manager and Building Official and shall thereafter be presented to Town Council. Building Official shall facilitate public input prior to providing recommendations to Town Council.

13. LAWS – The validity, interpretation, performance, and enforcement of this Agreement shall be governed by the laws of the State of Colorado, and venue shall be in Weld County, Colorado, for any litigation.

14. DISPUTE RESOLUTION – In the event of any dispute arising under this Agreement, the Parties shall submit the matter to mediation prior to commencing legal action. The cost of the mediation shall be split equally between the Parties.

15. SEVERABILITY – If any portion of this Agreement shall be or becomes illegal, invalid or unenforceable in whole or in part for any reason, such provision shall be ineffective only to the extent of such illegality, invalidity or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement. If any court of competent jurisdiction should deem any covenant herein to be invalid, illegal or unenforceable because its scope is considered excessive, such covenant shall be modified so that the scope of the covenant is reduced only to the minimum extent necessary to render the modified covenant valid, legal and enforceable.

16. NON-APPROPRIATION OF FUNDS – Pursuant to Section 29-1-110, C.R.S., as amended, financial obligations of the Town payable as set forth herein, after the current fiscal year, are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. This Agreement shall be terminated effective January 1 of the first fiscal year for which funds are not appropriated.
17. RETURN OF RECORDS – Upon termination of this Agreement, Building Official shall return to Town all records, notes, documents and other items that were used, created or controlled by Building Official during the term of this Agreement.
18. ASSIGNMENT AND BINDING EFFECT – Building Official shall not transfer or assign its interest in this Agreement. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than the Town and the Building Official.
19. NO PUBLIC OFFICIAL PERSONAL LIABILITY – Nothing herein shall be construed as creating any personal liability on the part of any elected official, officer, employee or agent of the Town.
20. NO PRESUMPTION – Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is its own free and voluntary act and deed, without compulsion. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.
21. AMENDMENT – This Agreement may not be amended or modified except by a subsequent written instrument signed by both Parties.
22. ENTIRE AGREEMENT – This Agreement constitutes the entire agreement and understanding between the Parties and supersedes all prior agreements or understandings.
23. HEADINGS – The headings used herein are for convenience purposes only and shall not limit the meaning of the language contained herein.

IN WITNESS WHEREOF, the Town, by motion duly adopted by its governing body, caused this Agreement to be signed by its Mayor and attested by its Clerk. Likewise, Building Official has subscribed to this Agreement by affixing his signature, all on the same day and year first above written.

PROCEDURE, INC.

By: \_\_\_\_\_  
Jonathan Gesick, President

TOWN OF JOHNSTOWN, COLORADO

By: \_\_\_\_\_  
Gary Lebsack, Mayor

ATTEST:

By: \_\_\_\_\_  
Diana Seele, Town Clerk