

TOWN OF TIMNATH, COLORADO

RESOLUTION NO. 25, SERIES 2012

**A RESOLUTION APPROVING THE AGREEMENT BETWEEN THE TOWN
AND DUNCAN, OSTRANDER & DINGESS, P.C.**

WHEREAS, the Town Council of the Town of Timnath ("Town") pursuant to C.R.S. § 31-15-103, has the power to pass resolutions; and

WHEREAS, attached hereto as Exhibit A is the Engagement Letter with Duncan, Ostrander & Dingess, P.C. ("Agreement"); and

WHEREAS, the Town Council is familiar with the Agreement and finds it to be in the best interest of the Town, its residents, and the general public.


NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO as follows:

Section 1. Approval

The Town Council hereby approves the Agreement.

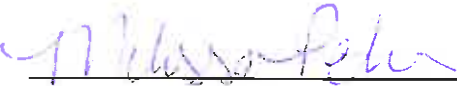
INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON NOVEMBER 13, 2012,

TOWN OF TIMNATH, COLORADO



Jill Grossman-Belisle, Mayor

ATTEST:



Milissa Peters, Town Clerk

FEE AGREEMENT

This Fee Agreement ("Agreement") is between Duncan, Ostrander & Dingess, P.C., subsequently referred to as "Law Firm" and the Town of Timnath, subsequently referred to as "Client". The Law Firm and Client are collectively referred to as the "Parties."

Client has requested Law Firm to provide it with legal assistance in the acquisition of property. Because the Client is a municipal entity, the Law Firm has requested that one person be designated to bind the Client with respect to fees and representation of Client in such matter. This is done to avoid confusion, duplication of effort and conflicting instructions. The person so designated to act for the Client is _____. To avoid misunderstanding, Client and Law Firm wish to formalize their agreement regarding fees and representation of Client by this written Agreement.

Client and Law Firm agree as follows:

1. The Law Firm's engagement is limited to performance of services referenced below. Because we are not your general counsel, the Law Firm's acceptance of this engagement does not involve an undertaking to represent you or your interest in any other matter.

2. Robert Duncan will have primary responsibility for your representation and will use other Law Firm lawyers and legal assistants as believed appropriate in the circumstances. The Law Firm will provide legal counsel to you in accordance with this Agreement and in reliance upon information and guidance provided by you, keep you informed of progress and developments, and respond to your inquiries. We will use e-mail to communicate with you, or on your behalf, during the course of the representation. Ordinary Internet e-mail is inherently insecure. If you would like us to engage in something more secure than ordinary Internet e-mail, please contact us and indicate so, otherwise we will presume that ordinary Internet e-mail is acceptable.

3. Client agrees to pay the Law Firm for its services. Client acknowledges the factors considered by the Law Firm in determining its fees are: the time involved, difficulties encountered, skill required to perform the legal service properly, responsibility of the Law Firm, familiarity with the area of law involved, time limitation imposed by the Client or the circumstances, amount involved and results obtained.

4. Client agrees to pay a per hour fee as set forth below for all work done by the Law Firm and the staff. We typically review our billing rates in June of each year as part of our planning process for the coming year. Any rate changes will require client's agreement.

a)	Shareholders	\$315.00
b)	Special Counsel (Jim Birch)	\$275.00
c)	Other Special Counsel	\$245.00
d)	Associate	\$245.00
e)	Law Clerk	\$110.00
f)	Legal Assistants	\$110.00

Additional charges include, online and access fees for computer database research in excess of flat-rate charges normally incurred by the firm, court filing fees (including computer filing charges), service of process costs, court reporter fees, expert fees, computerized legal research expenses, long distance telephone charges, delivery charges, copying, postage, Federal Express and lodging.

5. Either at the commencement or during the course of our representation, the Law Firm may express opinions or beliefs concerning litigation or various courses of action and the results that might be anticipated. Any such statement made by any attorney of the Law Firm is intended to be an expression of opinion only, based on information available to us at the time, and should not be construed by you as a promise or guarantee.

6. Unless we agree to an alternative method of pricing, the Law Firm's fees will be billed on the amount of time spent on your behalf. The Client will receive an itemized statement showing the work that the Law Firm has done and all of the costs incurred on the account each month. Payment is due promptly upon receipt of our statement. Any estimate of fees and costs that we may have discussed or provided below represents an estimate only of such fees and costs. It is also expressly understood that payment of the Law Firm's fees and costs is in no way contingent upon the outcome in the matter.

7. With regard to costs and fees for discovery, the Law Firm estimates the following costs, which would include, but are not limited to: court reporter fees, service of process costs, photocopying, delivery charges and expert fees, to be \$5,000.00. The Law Firm also estimates the following attorney fees, which would include, but are not limited to: preparation of discovery requests, responses to discovery requests, analysis of documents, and preparation for and attendance at depositions, to be \$10,000.00.

8. Client has been informed and understands that the court may award attorney fees in addition to the amount of recovery being claimed. Client understands that the Fee Agreement should contain a provision as to how any specially awarded attorney fees will be accounted for and handled. Fees awarded will be applied to the bill of the Law Firm. Unawarded fees will be the responsibility of the Client.

9. Client has been informed and understands that a court sometimes awards costs and attorney fees to the opposing party. Client has been informed and understands that should that happen in this representation, Client will be responsible to pay such award. Client understands that an award against it will be paid out of the proceeds of any amount collected on Client's behalf.

10. Client may terminate the Law Firm's representation at any time by notifying us. Your termination of our services will not affect your responsibility for payment of outstanding statements and accrued fees and expenses incurred before termination or incurred thereafter in connection with orderly transition of the matter. If such a termination occurs, your papers and property will be returned to you promptly. Our own internal files pertaining to the matter will be retained. The Law Firm files include, for example, Law Firm administrative records, time and expense reports, personnel and staffing materials, credit and accounting records, and internal lawyers' work product, including investigative reports, prepared by or for the internal use of

lawyers. All such documents retained by the Law Firm will be transferred to the person responsible for administering our records retention program. We reserve the right to destroy or otherwise dispose of such documents or other materials (including, without limitation, copies of any ESI provided to us by you) retained by us seven years after termination of our engagement.

11. Client acknowledges the Law Firm may withdraw from representation in this matter at any time if client insists on presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification or reversal of existing law; or client insists that the Law Firm pursue a course of conduct that is illegal or that is prohibited under the disciplinary rules; or by other conduct render it unreasonably difficult for the Law Firm to carry out its employment; or client insists that the Law Firm engage in conduct that is contrary to the judgment and advice of the Law Firm and its attorneys; or deliberately disregards an agreement or obligation to the Law Firm as to expenses or fees for services rendered. In the event of withdrawal from employment the Law Firm will take reasonable steps to avoid foreseeable prejudice to the rights of Client, including giving due notice to the Client, allowing reasonable time for employment of other counsel, and delivering all papers and properties to which Client is entitled.

12. To enable the Law Firm to represent you effectively, you agree to cooperate fully with the Law Firm in all matters relating to the matter, and to fully and accurately disclose to us all facts and documents that may be relevant to the matter or that we may otherwise request. You also will make yourself reasonably available to attend meetings, discovery proceedings and conferences, hearings, and other proceedings.

13. An integral part of your agreement to cooperate fully with us is your undertaking to preserve all materials potentially relevant to issues that have been or can reasonably be expected to be raised in the lawsuit or potential lawsuit. If you have not already done so, you should take steps to issue a "litigation hold" on materials. If you have questions regarding what that communication should contain and to whom it should be disseminated, please contact me. You should also send out periodic reminders to the appropriate personnel during the course of the lawsuit.

14. In light of court rules, it is especially important that you take steps to preserve hard copy documents, and also electronically stored information ("ESI"). Failure to do so could result in sanctions or other court rulings adverse to your interests in the lawsuit. The category of discoverable ESI can include within its scope, among other things, electronic mail ("e-mail") messages and word processing files (including hidden elements of these files known as "metadata"), and computer back up tapes. To help us ensure that any automatic deletion protocols are suspended and that all reasonably accessible ESI is being preserved, you agree to make available to us your company's information technology ("IT") personnel (if applicable) or any other individual responsible for such functions.

15. The Law Firm agrees that it will comply with the requirements set forth in C.R.S. §§ 8-17.5-101 *et. seq.* during the terms of this engagement.

16. At the conclusion of the case the Client has the option to have the files delivered to it or the Law Firm will hold it for seven years, after which time the files may be destroyed.

17. This Agreement shall be binding upon the Client and the Law Firm and their legal representatives, successors and assigns.

18. This Agreement shall be construed and governed by the laws of the State of Colorado.

19. This Agreement contains the entire agreement between the Client and the Law Firm regarding the Law Firm's fees and representation of Client. This Agreement shall not be modified or revoked except by written agreement signed by the Client and the Law Firm.

20. Client acknowledges reading and signing this Agreement and receiving a copy.

DATED this 13th day of November, 2012.

TOWN OF TIMNATH

By:  _____

DUNCAN, OSTRANDER & DINGESS, P.C.

By: _____
Robert R. Duncan, Esq.