

**TOWN OF TIMNATH, COLORADO  
RESOLUTION NO. 49, SERIES 2014**

**A RESOLUTION APPROVING THE PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE TOWN OF TIMNATH AND FUSION SIGN AND DESIGN**

**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 Agreement Between the Town of Timnath, Colorado and the Fusion Sign and Design (the "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 Agreement is hereby approved in substantially the form as attached hereto, subject to technical or otherwise non-substantive modifications, as deemed necessary by the Town Manager in consultation with the Town Planner, Engineer, Legal Counsel, and other applicable staff or consultants.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON AUGUST 26, 2014,

**TOWN OF TIMNATH, COLORADO**

  
\_\_\_\_\_  
Jill Grossman-Belisle, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Milissa Peters, Town Clerk



**EXHIBIT A**  
**AGREEMENT**

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE TOWN OF TIMNATH  
AND FUSION SIGN AND DESIGN**

This Professional Services Agreement, hereinafter "Agreement," is made by and between the Town of Timnath, hereinafter the "Town," and the undersigned contractor, hereinafter the "Contractor," and both collectively referred to from time to time herein as the "Parties."

**WHEREAS**, the Town desires to retain Contractor for the services as described herein; and

**WHEREAS**, the Contractor desires to be retained by the Town for the services as described herein.

**NOW, THEREFORE**, in consideration of the agreements and covenants contained herein, the Parties hereto agree as follows:

**1. BASIC TERMS:**

**A. Name, Address and Phone Number of the Parties.**

a. Town:

Town of Timnath  
4800 Goodman Street  
Timnath, Colorado 80547  
Phone: 970-224-3211

b. Contractor:

Fusion Sign and Design  
680 Columbia Avenue  
Riverside, CA 92507  
Phone:                     

4165 Sinton Road  
Colorado Springs, CO 80907  
Phone: 719-302-5144

**B. Scope of Services.** The scope of services shall be as set forth in ATTACHMENT A to this Agreement.

**C. Provision of Services by Town.** Town shall provide the following services related to this project:

- a. Identify and approve eligible companies for sign display;
- b. Provide timely review and input on matters related to sign placement, installation, and design;

**D. Compensation.** The Contractor shall be compensated through revenues for sign space rental. Space rental shall be for \$75 per month per sign and subject to change with the Town

Council's approval. The Contractor shall collect these fees directly from the Builder/Developer.

~~The Town shall remit payment to the Contractor as outlined in Section 2 of the Scope of Services less 10% of said revenue that shall be held back by the Town for administrative costs. The contractor shall remit payment of 10% of all fees collected, to the Town, by the 10<sup>th</sup> of the subsequent month that the fees are collected. Accompanying the payment shall be all required documentation listed in Attachment A, including but not limited to a current listing of all signs, the maintenance report, and an update on any issues from previous months.~~

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- E. Term.** The term commences on date written below and shall automatically renew each year. Notwithstanding anything contained herein to the contrary, and consistent with Article X, Section 20 of the Colorado Constitution, the Town's payment obligations for any renewal term do not constitute a multi-year fiscal obligation of the Town. All financial obligations of the town under this Agreement are subject to the annual appropriation of sufficient funds for the same by the Timnath Town Council, acting in its sole and exclusive discretion. In the event of non-appropriation, this Agreement shall automatically terminate upon the first day of the fiscal year for which funds are not appropriated and neither Party shall have any continuing obligation to the other under this Agreement except as explicitly provided herein.
- F. Commencement Date.** The "Commencement Date" is \_\_\_\_\_, 2014 and is when the services described in this Agreement are to commence.
- G. Approval by the Town Council.** This Agreement is contingent upon and subject to approval by the Town Council. If such approval is granted after the Commencement Date, the Commencement Date shall be extended until such approval is received and the Termination Date shall be extended to reflect the Term of this Agreement.
- II. Termination.** Either Party may terminate this Agreement upon sixty (60) days written notice to the other. Termination shall not affect liability for time and expenses accrued through the date of termination.

**2. CONTRACTOR NOT EMPLOYEE.** Contractor is an independent contractor and not an employee, partner or agent of the Town.

As an independent contractor, Contractor is not entitled to workers' compensation benefits, and, as an independent contractor, Contractor is obligated to pay federal and state income tax on any moneys earned pursuant to this contractual relationship.

The Contractor shall at all times, be an independent contractor. The Contractor shall have exclusive domain and control over the activities of its employees, if any, and under no circumstances shall Independent Contractor or Independent Contractor's employees be considered employees or agents of the Town.

**3. INDEMNIFICATION.** Contractor shall defend, release, indemnify and save and hold harmless the Town, its officers, agents and employees from and against: (1) any and all damages, including but not limited to, loss of use of property or injuries to or death of any person or persons (including, but not limited to, property and officers, agents, and employees of the Town) and (2) any and all claims, demands, suits, actions, liabilities, costs, expenses (including but not limited to reasonable attorney fees, expert witness fees and all associated defense fees), causes of action, or other legal, equitable or administrative proceedings of any kind or nature whatsoever, of or by anyone whomsoever, regardless of

the legal theory(ies) upon which premised including but not limited to contract, tort, express and/or implied warranty, strict liability, and workers' compensation, in any way resulting from, connected with, or arising out of, directly or indirectly, the tortious or negligent actions or omissions of Contractor in connection with Contractor's operations or performance herewith or Contractor's use or occupancy of real or personal property hereunder, including tortious or negligent acts or omissions of employees, agents, or representatives of Contractor; provided however, that Contractor need not indemnify the Town or its officers, agents and employees from damages proximately caused by and apportioned to the negligence of the Town's officers, agents and employees.

This indemnity shall also extend to the Town's defense costs, in the event that the Town, in its sole discretion elects to provide its own defense. The Town retains the right to disapprove counsel, if any, selected by Contractor to fulfill the foregoing defense indemnity obligation, which right of disapproval shall not be unreasonably exercised.

Insurance coverage requirements specified herein shall in no way lessen or limit the liability of Contractor under the terms of this indemnification obligation. Contractor shall obtain, at its own expense, any additional insurance that Contractor deems necessary for the Town's protection in the performance of this Agreement.

This defense and indemnification obligation shall survive the expiration or termination of this Agreement. The Parties acknowledge that provisions of this Section are not intended to waive any of the rights and defenses afforded the Town under the Colorado Governmental Immunity Act (C.R.S. § 24-10-101, et. seq.).

**4. CONTRACTOR LICENSE, EXPERTISE AND INSURANCE.** Town has selected Contractor because of Contractor's special training, education and expertise to provide the services identified herein. Contractor shall maintain general liability insurance, at its expense, in an amount of at least One Million Dollars (\$1,000,000.00) and insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom.

Any such insurance shall name the Town of Timnath as an additional insured. The Contractor shall deliver to the Town at the time of entering into this contract copies of policies of liability insurance required herein or certificates evidencing the existence and amounts of such insurance with loss payable clauses satisfactory to the Town. No policy shall be cancelable or subject to reduction of coverage except after twenty (20) days prior written notice to the Town. All such policies shall be written as primary policies not contributing with and not in excess of coverage which the Town may carry.

The work performed by Contractor under this Agreement shall be consistent with the highest professional standards of the Denver Metropolitan and Colorado Front Range areas. Contractor shall maintain such licenses as may be necessary to provide the services set forth in this Agreement.

**6. TABOR.** Colorado Constitution, Article X, Section 20. Notwithstanding other provisions in this Agreement to the contrary, the Parties understand and acknowledge that the Town is subject to Article X, § 20 of the Colorado Constitution ("TABOR").

- A. The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement.

- B. 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.
- C. 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 ordinances and resolutions of the Town and other applicable law.
- D. Notwithstanding any other provision of this Agreement concerning termination, upon the Town's failure to appropriate such funds, the Agreement shall automatically terminate.

**7. CONFIDENTIALITY.** The Parties agree that Contractor will, in the course of its duties hereunder, receive information concerning the Town, its employees, elected and appointed officials, property, equipment and functions. Contractor agrees to hold all such information confidential and to not disclose the same other than to the extent required to perform its duties, or upon a proper request from an authorized Town official, or pursuant to a proper request under the Colorado Open Records Act, C.R.S. § 24-72-101, et. seq., to which the authorized Town official has confirmed it is appropriate for Contractor to respond or pursuant to a lawful court order. The requirements of this Section shall survive the termination of this Agreement.

**8. ILLEGAL ALIENS – PUBLIC CONTRACT FOR SERVICES.** "E-verify program" as used herein means the electronic employment verification program created in Public Law 104-208, as amended, and expanded in Public Law 108-156, as amended, and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program. "Department" as used herein means the department of labor and employment. "Department program" as used herein means the employment verification program established pursuant to C.R.S. § 8-17.5-102(5)(c).

- A. The undersigned, on behalf of the Contractor, certifies that, at the time of this certification and the execution of this Agreement, the Contractor does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that the Contractor will participate in the e-verify program, pursuant to C.R.S. § 8-17.5.101 or department program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
- B. (a) The Contractor shall not:
  - (I) Knowingly employ or contract with an illegal alien to perform work under this Agreement for services; or
  - (II) Enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- (b) In addition:
  - (I) The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the e-verify program or the department program;

- (II) The Contractor 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;
  - (III) If the Contractor obtains actual knowledge that a subcontractor performing work under this Agreement for services knowingly employs or contracts with an illegal alien, the Contractor shall be required to:
    - (A) Notify the subcontractor and the Town within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
    - (B) Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien;
  - (IV) The Contractor shall comply with any reasonable request by Department of Labor and Employment (Department) made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S § 8-17.5.102(5).
- C. If the Contractor breaches this Section 8, the Town may terminate this Agreement for breach of the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the Town.
  - D. The Contractor shall, within twenty (20) days after hiring an employee who is newly hired for employment to perform work under this Agreement, affirm that the Contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 U.S.C. sec. 1324a, and not altered or falsified the identification documents for such employees. The Contractor shall provide a written notarized copy of the affirmation to the Town.
  - E. If the Contractor has not been accepted into the department program prior to entering into this Agreement, the Contractor shall apply to participate in the Program every three (3) months until the Contractor is accepted or the contract has been completed, whichever is earlier. This provision shall not be required or effective if the department program is discontinued.

## 9. MISCELLANEOUS.

- A. Severability/Governing Law. This Agreement is to be governed and construed according to the laws of the State of Colorado with venue of any litigation to be in Larimer County. If any provisions of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement, and all such other provisions shall remain in full force and effect. It is the intention of the Parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision valid, then the provision shall have the meaning which renders it valid.

B. Entire Agreement. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the Parties hereto or displayed by Town to Contractor with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Agreement. This Agreement is and shall be considered to be the only agreement between the Parties hereto and their representatives and agents. All negotiations and oral agreements acceptable to both Parties have been merged into and are included herein. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the Parties hereto or their respective successors in interest.

C. Waiver and Modification. The subsequent acceptance of services hereunder by Town after a breach of this Agreement shall not be deemed to be a waiver of any preceding breach by Contractor of any term, covenant or condition herein. No modification of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement, and no waiver of the breach of any provision of this Agreement shall be construed as a waiver of any subsequent breach of the same or any other provision hereof. If this Agreement is contingent upon approval by the Town Council, it is expressly agreed that, except as may otherwise be provided by applicable statute or ordinance, no official of the Town has the authority to waive or modify any provision of this Agreement without formal approval of the Town Council.

D. Defaults and Remedies.

- a. In the event the Contractor defaults in the performance of any of the terms of conditions of this agreement, and if the Town determines a remedy is reasonably possible and said default is not remedied within thirty (30) days after notice thereof by the Town, the Town, at its option, shall have the right to terminate this Agreement immediately upon notification thereof, without waiving any other rights it may have against the Contractor for damages or other relief as permitted by law.
- b. The failure of the Town to insist upon the strict performance of any of the provisions of this Agreement, or failure to exercise any other right, option or remedy hereby reserved or as permitted by law, shall not be construed as a waiver for the future of any such provisions, right, option, or remedy, or as a waiver of any subsequent breach thereof.
- c. Should any section or any part of this Agreement be rendered void invalid or unenforceable by any court of law, any such final determination shall not render void, invalid or unenforceable any other sections or portions of this Agreement unless the Town and the Contractor determine in writing that its purpose cannot be accomplished by the remaining provisions not so invalidated.
- d. Should litigation or arbitration occur between the parties hereto relating to the provisions of this Agreement, all reasonable litigation or arbitration expenses and costs, including reasonable attorney's fees incurred by the prevailing party, shall be paid by the non-prevailing party to the prevailing party.
- e. The Town and the Contractor shall act in a reasonable manner to ensure



the timely efficient completion of this Agreement.

E. Entire Agreement. This Agreement and ~~the attached price schedule~~ Attachment A contain the entire understanding of the parties, and there are no further or other agreements or understandings in effect between the parties hereto relating to the subject matter hereof, and any prior understanding or agreement of the parties shall not be binding unless set forth herein, and, except to the extent expressly provided for herein, no amendments of this Agreement may be made without the written consent of both parties hereto. The kiosk specification sheets are to be used for the purpose of illustration only, and will not supersede this Agreement at any time as it pertains to the Town's ownership of signs, artwork, and design.

F. Headings. The headings and titles in this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part hereof.

G. Time. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.

H. Corporate Authority. If Contractor is a corporation, an LLC, an LLP, a limited partnership, a general partnership, an LLLP, or other non-natural entity, each individual executing this Agreement on behalf of said entity represents and warrants that they are duly authorized to execute and deliver this Agreement on behalf of said entity, in accordance with a duly adopted resolution of the board of directors, partners, or members of said entity or in accordance with the governing documents of said entity, and that this Agreement is binding upon said entity in accordance with its terms.

I. Notices. Any notice or other communication given by any of the Parties hereto to another relating to this Agreement shall be in writing and shall be deemed to have been duly given:

- a. On the date and at the time of delivery if delivered personally to the party to whom notice is given at the address specified in Section 1, above;
- b. On the date of delivery or attempted delivery shown on the return receipt if mailed to the party to whom notice is given by first class mail, sent by registered or certified mail, return receipt requested, postage prepaid and properly addressed as specified in Section 1, above; or
- c. Within twenty-four (24) hours after deposit with a nationally recognized overnight courier or messenger service, properly addressed as specified in Section 1, above.

Either party may change such address by fifteen (15) days written notice to the other provided, however, the Parties may not designate more than one place and address to receive notices as provided in this Agreement.

J. Non-Assignment. This Agreement is an agreement for services by which Contractor was selected for Contractor's expertise. This Agreement may not be assigned by either Party.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

TOWN OF TIMNATH:

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

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

ATTEST:

\_\_\_\_\_  
Milissa Peters, Town Clerk

CONTRACTOR:

FUSION SIGN AND DESIGN

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

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Gary White

Title: Town Attorney

STATE OF COLORADO     )  
  )ss.  
COUNTY OF LARMER     )

The foregoing Professional Services Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_ as the \_\_\_\_\_ of Contractor.

Witness my hand and official seal.

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

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_

**ATTACHMENT A**  
(Scope of Services)

**1. Contractor shall:**

A. Act as administrator of the sign program.

B. Market and notify Builders/Developers and other customers of Sign Program details and solicit participation.

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C. Act as the primary point of contact for all Builders/Developers and other customers who participate in the Sign Program and will handle all Builder/Developers concerns and transactions.

D. Work directly with Builders/Developers and other customers in assisting them in formulating locations and arranging orders.

E. Place orders for signs with Contractor.

F. Invoice participating Builders/Developers and other customers and pay agreed-upon rates to Contractor in accordance with Section I of this Agreement.

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G. Coordinate design standards for all signs with the Town of Timnath prior to fabrication of any signs.

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H. Provide a proof of each sign for Town approval prior to fabrication.

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A-I. Design, install and maintain, in consultation with the Town of Timnath Town Planner, directional subdivision signs, and fabricate materials for, all Town-owned sign structures and panels in accordance with the Town of Timnath Land Use Code and all applicable specifications designated by the Town. Contractor will comply with all applicable ~~City-Town~~ building codes and ordinances during its performance of any term or condition of this Agreement. Any direct or indirect costs associated with engineered calculations, drawings ~~and/or plotting must be presented to and approved by the Town prior to any commitment toward the execution of said services~~ are the responsibility of the contractor.

J. Prepare and maintain an official electronic map that indicates all approved sign locations, a listing of the builder/developers/subdivision that are currently displayed at each approved location, ~~the date that each sign was added to the kiosk, and the number of available spaces, if any,~~ at each location. This map shall be updated and sent to the Town within 7 days of any changes including but not limited to:

- a. Additional sign kiosk locations constructed
- b. New builder/developer/subdivision placard added to any location
- c. Builder/developer/subdivision placard removed from any location
- d. Change in number of placards posted or available.

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K. Each revision of the official electronic map shall sent via email, and in the body of the email a description of the change to the map and the reason for such change.

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~~L.~~ Based on demand, the contractor shall propose additional designate potential sign kiosk locations and provide via email computer generated maps to the Town, within seven (7) working days. Contractor shall prepare and maintain these computer generated maps. The Town shall have final approval of all sign kiosk locations.

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~~B.M.~~ Following the approval of (a) new sign kiosk location(s), the contractor will provide the Town with construction documents of the new kiosk for the Town's review and approval prior to the scheduling of installation. Town shall have final approval over the design of any new kiosks.

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~~N.~~ Following approval of new sign kiosk location(s) by the Town, provide the Town with installation date(s) prior to the installation of the new sign kiosk(s). New kiosks are to be constructed at the sole cost of the contractor. The Town shall retain ownership of any Kiosk built by the contractor, (s) which shall occur within seven (7) working days. If the installation date exceeds seven (7) working days of receipt, approval, or permit, an email notice explaining the circumstance and the projects affected shall be provided to the Town. Non-federal holidays shall not be cause for delay if client specified seven (7) working day turnaround time unless otherwise disclosed to client by prior notification. Updated area maps listing all new and all approved signs shall be emailed to the Town within seven (7) working days of installation of new signs. The maps are to be provided in a format that can be altered for the purpose of electronically circling signs and emailing to clients. The email shall include the reason(s) for the update including the new builder and/or panel name(s) installed on signs. Addition to maps include a disclosure stating that the sign locations on the map are approved locations which may not currently be in place. Signs are installed based upon demand. All signs numbered on map may be installed within seven (7) working days.

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~~E.O.~~ Vendor shall be responsible for coordinating and executing all pre-installation safety inspections, including but not limited to contacting a utility locate service and/or all required utilities or any similar service.

~~Provide job orders within five (5) working days of job completion to be sent via email to the Town's office and specifically Town's Town Planner.~~

~~E.P.~~ Maintain the area within a six (6) foot radius of each sign structure, or further if required to ensure abatement of all obstructions which inhibit visibility of the structure, including, but not limited to, any form of vegetation. Weed abatement shall be performed as needed, with particular attention to rural or undeveloped areas. If, in the opinion of the Town, a sign structure is situated such that visibility is permanently inhibited, Vendor shall immediately relocate said structure to the satisfaction of the Town.

~~E.Q.~~ Perform monthly inspection of sign structures and provide a monthly checklist, in excel format, to the Town with the status of each structure and panels sent via email within 10 working days of inspection of area and as a comprehensive report at end of each month. The Town to be notified immediately of any unusual activity such as missing kiosk or panels, a significant number of signs down, weed problem, etc.

~~F.R.~~ Provide inventory of all signs (structure and panels count) to the Town on a monthly basis. Report to be sent via email.

~~G.S.~~ Replace and/or repair any damaged sign structure(s) due to theft, vandalism, or graffiti to the total satisfaction of the Town. Removal of graffiti shall be performed within 48 hours of observation by Contractor or notice. Damage to sign structure(s) due to reasonable wear and tear of sign structure shall be replaced and/or repaired within five (5) days of notice by the Town or other reporting party.

~~H.T.~~ Provide the Town, at no cost, the Town up to six (6) panels for the purpose of public service institutional directional panels, or for the Town's purposes.

~~I.U.~~ Upon request, provide the Town with an installed header and a top position panel that includes a designated website panel as specified by the Town on all new kiosks signs installed. Maintenance of panel shall be done by the Contractor at no additional expense to the Town, except in the case of panel replacement due to life expectancy, loss or damage due to vandalism or other forces.

~~J.V.~~ Cooperate with the Town to the maximum extent commercially reasonable to integrate an internet based directional sign program management program mutually acceptable to the Contractor and the Town.

~~K.W.~~ Upon direction by the Town, remove illegal directional signs as indicated by any Town's ordinance or policies. A list of signs removed (with builder and project name and sign locations) shall be supplied to the Town within two (2) working days. Such signs shall be available for inspection by the Town or stored in an area specified by the Town.

~~L.~~ Consult with the Town prior to ~~contacting potential participating Builders with regards to the Sign Program.~~

~~M.X.~~ Consult with the Town prior to incurring any costs that are extraordinary and not specified in this Agreement.

~~N.Y.~~ A photo image of all new signs and/or structures must be provided to the Town within seven (7) working days of executed installation or removal. A before and an after photo image of all maintenance, removal and/or relocation must be provided to the Town within seven (7) working days of the completed maintenance, removal or relocation. A before and an after photo image of all damaged, missing or repaired/replaced kiosk panels or structures must be provided to the Town within seven (7) working days of executed repair or replacement.

**2. The Town shall:**

A. Assist the contractor in the development of a sign standards document that will outline the look and character of the Kiosk signs.

B. Provide approval or denial of proof signs within 2 working days of their submittal to the Town.

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~~A.C. Provide the contractor with any available information on the design, cost and construction of the existing Kiosks.~~

~~A. Act as the Administrator of the Sign Program.~~

~~B. Market and notify Builders and other customers of Sign Program details and solicit participation.~~

~~C. Act as the primary point of contact for all Builders and other customers who participate in the Sign Program and will handle all Builder concerns and transactions.~~

~~D. Work directly with Builders and other customers in assisting them in formulating location and arranging orders.~~

~~E. Place orders for signs with Contractor.~~

~~F. Invoice participating Builders and other customers and pay agreed upon rates to Contractor in accordance with Section 3 of this Agreement.~~

### 2.3. Payment for Service and Terms of Payment:

A. Compensation for Contractor's Services shall be in accordance with the Agreement for services. Any special or extraordinary services that are not identified said Agreement shall be subject to negotiation and agreement concerning pricing prior to any execution of work.

~~A. The Town will receive a 2% discount on all invoices paid within 15 days of the Town's receipt thereof. The Contractor will remove sign panels due to non-payment by builders within 10 days of the builder being past due, to the Town within the dates specified by the Town.~~

~~B.~~

~~C. Until such time as billings can be generated monthly by an on-line system for Sign Program administration, Contractor will invoice the Town once monthly for service charges incurred during the previous month. Invoice must include copies of previous month's inspection checklist to be eligible for payment.~~

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~~D.~~  
~~E.~~

**3.4. Sign Ownership:**

- A. The Town shall own all sign structures and designs. All artwork and designs are the exclusive property of the Town. The Contractor surrenders any rights to the artwork and design.
- B. Removal of sign panel(s) and structure(s) when use is terminated during the term of this Agreement shall be the responsibility of the Contractor.

**4.5. Town Sign Ordinances:**

- A. The Contractor hereby agrees to conform to all applicable sign ordinances within the Town and specifically agrees not to violate any section of ordinance including, but not limited to, any form of participation in the placement of "bootleg" and/or other illegal signs.