

**TOWN OF TIMNATH, COLORADO  
RESOLUTION NO. 4, SERIES 2016**

**A RESOLUTION APPROVING AN INDEPENDENT CONTRACTOR AGREEMENT  
WITH MANTOOTH MARKETING COMPANY, LLC**

**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 Independent Contractor Agreement between the Town of Timnath and Mantooth Marketing Company, LLC (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 JANUARY 12, 2016.**

**TOWN OF TIMNATH, COLORADO**



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

**ATTEST:**



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



**EXHIBIT A**

**AGREEMENT**

**INDEPENDENT CONTRACTOR AGREEMENT**  
**Mantooth Marketing**

This **INDEPENDENT CONTRACTOR AGREEMENT**, including any and all exhibits attached hereto (the "Agreement"), is entered into as of the 1<sup>st</sup> day of January, 2016, by and between **THE TOWN OF TIMNATH**, a home rule municipal corporation and political subdivision of the State of Colorado (the "Town"), and **MANTOOTH MARKETING COMPANY LLC**, a Colorado limited liability company (the "Contractor"). The Town and the Contractor are referred to herein individually as a "Party" and collectively as the "Parties."

**RECITALS**

WHEREAS, the Town was organized pursuant to Title 31 of the Colorado Revised Statutes to provide certain services within its corporate boundaries; and

WHEREAS, the Town is authorized to contract for the provision of such services pursuant to § 31-15-101, C.R.S., as amended; and

WHEREAS, funds have been budgeted and are available for the work to be performed by the Contractor under this Agreement, and other necessary approvals have been obtained; and

WHEREAS, the Town desires to engage the Contractor to render the services described in this Agreement; and

WHEREAS, the Contractor has represented that it has the professional experience, skill and resources to perform the services, as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and stipulations set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

**TERMS AND CONDITIONS**

1. **SCOPE OF SERVICES.** The Contractor shall perform the services described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Services"): (a) in a first-class manner, to the satisfaction of the Town, using the degree of skill and knowledge customarily employed by other professionals performing similar services in the area of the Town; (b) within the time period and pursuant to the Scope of Services specified in said **Exhibit A**; and (c) in compliance with all applicable federal, state, county and local or municipal body or agency statutes, ordinances and regulations, including, without limitation, any licensing, bonding, and permit requirements, and including without limitation, any such laws relating to storage, use or disposal of hazardous wastes, substances or materials. **Exhibit A** may take any form, including forms which may include price and payment terms. In the event of any conflict between terms set forth in the body of this Agreement and terms set forth in **Exhibit A**, the terms in the body of this Agreement shall govern. Contractor shall have no right or authority, express or implied, to take any action, expend any sum, incur any obligation, or otherwise obligate the Town in any manner whatsoever, except to the extent specifically provided in this Agreement.

2. TERM/RENEWAL.

a. This Agreement shall be effective as of January 1st, 2016 and shall terminate upon the earlier to occur of (i) midnight, December 31, 2016, or (ii) completion of the Services], unless otherwise earlier terminated in accordance with Section 18. Notwithstanding the foregoing, this Agreement shall automatically renew on January 1<sup>st</sup> of each succeeding year for an additional one (1) year term unless: 1) terminated pursuant to this Agreement; 2) failure by the Town to budget and appropriate funds for the succeeding year; or 3) completion of the Services contemplated herein.

b. This Agreement is contingent upon and subject to approval by the Town Council. If such approval is granted after the effective date, the effective date shall be extended until such approval is received.

3. ADDITIONAL SERVICES. The Town may, in writing, request the Contractor to provide additional services not set forth in **Exhibit A**. The terms and conditions of the provision of such services shall be subject to the mutual agreement of the Contractor and the Town pursuant to a written service/work order executed by an authorized representative of the Town and the Contractor. Authorization to proceed with additional services shall not be given unless the Town has appropriated funds sufficient to cover the additional compensable amount. To the extent additional services are provided pursuant to this Section 3, the terms and conditions of this Agreement relating to Services shall also apply to any additional services rendered.

4. REPAIRS/CLAIMS. The Contractor shall notify the Town immediately of any and all damage caused by the Contractor to Town property and that of third parties. The Contractor will promptly repair or, at the Town's option, reimburse the Town for the repair of any damage to property caused by the Contractor or its employees, agents or equipment. In addition, the Contractor shall promptly notify the Town of all potential claims it becomes aware of. The Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the Town the opportunity to review and inspect such evidence, including the scene of any damage or accidents. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Services and shall provide all reasonable protection to prevent damage or injury to persons and property, including any material and equipment related to the Services, whether in storage on or off site, under the care, custody, or control of the Contractor or any of its subcontractors.

5. GENERAL PERFORMANCE STANDARDS.

a. The Contractor has by careful examination ascertained (i) the nature and location of the Services; (ii) the configuration of the ground on which the Services are to be performed; (iii) the character, quality, and quantity of the labor, materials, equipment and facilities necessary to complete the Services; (iv) the general and local conditions pertaining to the Services; and (v) all other matters which in any way may affect the performance of the Services by the

Contractor. Contractor enters into this Agreement solely because of the results of such examination and not because of any representations pertaining to the Services or the provision thereof made to it by the Town or any agent of the Town and not contained in this Agreement. The Contractor represents that it has or shall acquire the capacity and the professional experience and skill to perform the Services and that the Services shall be performed in accordance with the standards of care, skill and diligence provided by competent professionals who perform services of a similar nature to those specified in this Agreement. If competent professionals find that the Contractor's performance of the Services does not meet this standard, the Contractor shall, at the Town's request, re-perform the Services not meeting this standard without additional compensation.

b. The Services of the Contractor shall be undertaken and completed to assure their expeditious completion in light of the purposes of this Agreement. If performance of the Services by the Contractor is delayed due to factors beyond the Contractor's reasonable control, or if conditions of the scope or type of services are expected to change, Contractor shall give timely notice to the Town of such a delay or change and receive an equitable adjustment of time and/or compensation, as negotiated between the Parties.

c. The Services provided under this Agreement shall be adequate and sufficient for the intended purposes and shall be completed in a good and workmanlike manner.

d. The Contractor declares that it has complied with all Federal, State and local laws, rules, regulations, ordinances and/or similar directives regarding business permits, certificates and licenses that are required to provide the Services under this Agreement.

e. The responsibilities and obligations of the Contractor under this Agreement shall not be relieved or affected in any respect by the presence of any agent, consultant, sub-consultant or employee of the Town. Acceptance of the Services or any documents performed or prepared by the Contractor by the Town shall not relieve the Contractor of any responsibility for deficiencies, omissions or errors in said Services or documents.

6. MONTHLY STATUS REPORT. The Contractor shall provide to the Town, at the Town's request, on or before the 25<sup>th</sup> of each month, a narrative progress and status report describing work in progress and results achieved during the reporting period, including a description of the Services performed during the invoice period and the Services anticipated to be performed during the ensuing invoice period ("Monthly Report").

7. COMPENSATION AND INVOICES.

a. Compensation. Compensation for the Services provided under this Agreement shall be in accordance with the "Fee Schedule" or "Contract Price," attached hereto as **Exhibit A**. The Contractor shall be responsible for all expenses it incurs in performance of this Agreement and shall not be entitled to any reimbursement or compensation except as provided in **Exhibit A** of this Agreement, unless said reimbursement or compensation is approved in writing by the Town in advance of incurring such expenses. Any direct reimbursable costs for materials will be reimbursable at the Contractor's actual cost, provided that the Contractor shall notify the Town of the estimated amount of such reimbursable costs (or any material adjustments thereto subsequently identified) prior to commencing the requested services.

b. Invoices. Invoices for the Services shall be submitted monthly, by the 10<sup>th</sup> of each month, during the term of the Agreement and shall contain the following information:

- i. An itemized statement of the Services performed.
- ii. Any other reasonable information required by the Town to process payment of the invoice, including project and/or cost codes as provided in any applicable written service/work order.

The Town shall be charged only for the actual time and direct costs incurred for the performance of the Services. Invoices received by the Town after the 10<sup>th</sup> of each month may be processed the following month.

8. TIME FOR PAYMENT. Payment for the Services shall be made by the Town within thirty (30) days of receipt of (i) a timely, satisfactory and detailed invoice and (ii) if applicable, a satisfactory and detailed Monthly Report, for that portion of the Services performed and not previously billed. The Town may determine to waive or extend the deadline for filing the Monthly Report, or may make payment for Services to the Contractor notwithstanding a delay in filing the Monthly Report, upon reasonable request of the Contractor, if it is in the best interest of the Town to do so. In the event a Town Council meeting is not scheduled in time to review payment of an invoice, the Town hereby authorizes payment for Services, subject to the appropriation and budget requirements under Section 27, without the need for additional Council approval, so long as any payment required to be made does not exceed the amounts appropriated for such Services as set forth in the Town's approved budget. Such payment shall require review and approval of each Monthly Report and invoice by the Town Manager or applicable Department Head, as appropriate, subject to ratification at the next succeeding special or regular Board meeting.

9. INDEPENDENT CONTRACTOR. The Contractor is an independent contractor and nothing herein shall constitute or designate the Contractor or any of its employees or agents as employees or agents of the Town. The Contractor shall have full power and authority to select the means, manner and method of performing its duties under this Agreement, without detailed control or direction from the Town, and shall be responsible for supervising its own employees or subcontractors. The Town is concerned only with the results to be obtained. The Town shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or its employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state or federal income or other tax contributions, insurance contributions (e.g. FICA taxes), workers' compensation, disability, injury, health or life insurance, professional liability insurance, errors and omissions insurance, vacation or sick-time benefits, retirement account contributions, or any other form of taxes, benefits or insurance. The Contractor shall be responsible for its safety, the safety of its employees, the public and the work site in general and shall comply with all applicable provisions of local, state and federal laws, regulations and orders affecting safety and health, including but not limited to the Occupational Safety and Health Act of 1970 (OSH Act). All personnel furnished by the Contractor will be deemed employees of the Contractor and will not for any purpose be considered employees or agents of the Town, and the Contractor will

comply with all employment laws relative to such employees, including but not limited to Wage and Hour laws, Worker Compensation Laws, Immigration Laws and OSHA-type laws. **The Contractor is not entitled to worker's compensation benefits or unemployment insurance benefits, unless unemployment compensation coverage is provided by the Contractor or some other entity other than the Town, and the Contractor is obligated to pay federal and state income taxes on moneys earned pursuant to this Agreement.**

**10. PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION: EMPLOYEE MEMBERSHIP.** Contractor agrees that, concurrent with execution of this Agreement, Contractor will disclose to the Town the membership status of any of Contractor's employees that are members of the Colorado Public Employees' Retirement Association pursuant to § 24-51-301, *et seq.*, C.R.S. Failure to meet this requirement shall be a material breach of this Agreement, and Town's obligations to perform under this Agreement are specifically conditioned on Contractors performance as required under this Paragraph 10.

**11. EQUAL OPPORTUNITY; EMPLOYMENT ELIGIBILITY.** This Agreement is subject to all applicable laws and executive orders relating to equal opportunity and non-discrimination in employment and the Contractor represents and warrants that it will not discriminate in its employment practices in violation of any such applicable law or executive order.

The Contractor hereby states that it does not knowingly employ or contract with illegal aliens and that the Contractor has participated in or has attempted to participate in the E-Verify Program or Department Program (formerly known as the Basic Pilot Program) (as defined in § 8-17.5-101, C.R.S.) in order to verify that it does not employ any illegal aliens. The Contractor affirmatively makes the follow declarations:

a. The Contractor shall not knowingly employ or contract with an illegal alien who will perform work under the public contract for services contemplated herein and will participate in the E-Verify Program or Department Program (as defined in § 8-17.5-101, C.R.S.) in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services contemplated herein.

b. The Contractor shall not knowingly 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 the services contemplated herein.

c. 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.

d. 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.

e. If the Contractor obtains actual knowledge that a subcontractor performing the services under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to:

i. 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.

ii. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required above 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.

f. The Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that such Department is undertaking pursuant to the authority established in § 8-17.5-102, C.R.S.

g. If the Contractor violates a provision of the Agreement pursuant to § 8-17.5-102, C.R.S., the Town may terminate the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the Town.

## 12. CONTRACTOR'S INSURANCE.

a. The Contractor shall acquire and maintain, at its sole cost and expense, during the entire term of this Agreement, insurance coverage in the minimum amounts set forth in **Exhibit B**, attached hereto and incorporated herein by this reference. A waiver of subrogation and rights of recovery against the Town, its directors, officers, employees and agents is required for each coverage provided. The insurance policies will be endorsed to name the Town and its respective managers, council members, officers, directors, partners and employees, as additional insured. All coverage provided pursuant to this Agreement shall be written as primary policies, not contributing with and not supplemental to any coverage that the Town may carry, and any insurance maintained by the Town shall be considered excess. The Town shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein.

b. Prior to commencing any work under this Agreement, the Contractor shall provide the Town with a certificate or certificates evidencing the policies required by this Agreement, as well as the amounts of coverage for the respective types of coverage. If the Contractor subcontracts any portion(s) of the Services, said subcontractor(s) shall be required to furnish certificates evidencing statutory workers' compensation insurance, comprehensive general liability insurance and automobile liability insurance in amounts satisfactory to the Town and the Contractor. If the coverage required expires during the term of this Agreement, the Contractor or subcontractor shall provide replacement certificate(s) evidencing the continuation of the required policies.



c. The Contractor's failure to purchase the required insurance shall not serve to release it from any obligations contained herein; nor shall the purchase of the required insurance serve to limit the Contractor's liability under any provision herein. The Contractor shall be responsible for the payment of any deductibles on issued policies.

13. CONFIDENTIALITY AND CONFLICTS.

a. 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 §§ 24-72-202, *et seq.*, C.R.S., 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.

b. Conflicts. Prior to the execution of, and during the performance of this Agreement and prior to the execution of future agreements with the Town, the Contractor agrees to notify the owner of conflicts that impact the Services to the Town.

14. OWNERSHIP OF DOCUMENTS. All documents produced by or on behalf of the Contractor pursuant to this Agreement, including, but not limited to, all maps, plans, drawings, specifications, reports, electronic files and other documents, in whatever form, shall remain the property of the Town under all circumstances, upon payment to the Contractor of the invoices representing the work by which such materials were produced. The Contractor shall maintain electronic and reproducible copies on file of any such instruments of service involved in the Services, shall make them available for the Town's use, and shall provide such copies to the Town upon request at no cost.

15. LIENS AND ENCUMBRANCES. The Contractor shall not have any right or interest in any Town assets, nor any claim or lien with respect thereto, arising out of this Agreement or the performance of the services contemplated herein. The Contractor, for itself, hereby waives and releases any and all statutory or common law mechanic's, materialmen's or other such lien claims, or rights to place a lien upon the Town's property or any improvements thereon in connection with any Services performed under or in connection with this Agreement, and the Contractor shall cause all permitted subcontractors, suppliers, materialmen, and others claiming by, through or under the Contractor to execute similar waivers prior to commencing any work or providing any materials in connection with the Services. The Contractor further agrees to execute a sworn affidavit respecting the payment and lien releases of all subcontractors, suppliers and materialmen, and release of lien respecting the Services at such time or times and in such form as may be reasonably requested by the Town. The Contractor will provide indemnification against all such liens for labor performed, materials supplied or used by the Contractor and/or any other person in connection with the Services undertaken by the Contractor, in accordance with Section 15(b) below.

16. INDEMNIFICATION.

a. The Contractor shall defend, indemnify and hold harmless the Town and each of its directors, council members, officers, contractors, employees, agents and consultants, from and against any and all claims, demands, losses, liabilities, actions, lawsuits, damages, and expenses, including reasonable legal expenses and attorneys' fees, arising directly or indirectly, in whole or in part, out of the errors or omissions, negligence, willful misconduct, or any criminal or tortious act or omission of the Contractor or any of its subcontractors, officers, agents or employees, in connection with this Agreement and/or the Contractor's performance of the Services or work pursuant to this Agreement. The Contractor is not obligated to indemnify the Town for the Town's own negligence. This indemnification obligation will not be limited in any way by any limitation on the amount or types of damages, compensation or benefits payable by or for the Contractor under worker's compensation acts, disability acts or other employee benefit acts.

b. The Contractor will at all times indemnify, defend and hold the Town and its directors, council members, officers, managers, agents and employees harmless against any liability for claims and liens for labor performed or materials used or furnished in the performance of Contractor's Services, including any costs and expenses incurred in the defense of such claims and liens, reasonable attorneys' fees and any damages to the Town resulting from such claims or liens. After written demand by the Town, the Contractor will immediately cause the effect of any suit or lien to be removed from the Town's property. In the event the Contractor fails to do so, the Town is authorized to use whatever means in its discretion it may deem appropriate to cause said lien or suit to be removed or dismissed, and the costs thereof, together with reasonable attorneys' fees, will be immediately due and payable by the Contractor or may, at the Town's option, be offset against any sums due and payable to Contractor pursuant to this Agreement. In the event a suit on such claim or lien is brought, the Contractor will, at the option of the Town, defend said suit at its own cost and expense, with counsel satisfactory to the Town and will pay and satisfy any such claim, lien, or judgment as may be established by the decision of the Court in such suit. The Contractor may litigate any such lien or suit, provided the Contractor causes the effect thereof to be removed promptly in advance from the Town's property.

c. This indemnity coverage shall also cover 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 the 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 the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it 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.

17. ASSIGNMENT. The Contractor shall not assign this Agreement or parts thereof, or its respective duties, without the express written consent of the Town. Any attempted assignment, delegation or subcontracting of this Agreement in whole or in part with respect to which the Town has not consented, in writing, shall be null and void and of no effect whatsoever.

18. SUB-CONTRACTORS. The Contractor is solely and fully responsible to the Town for the performance of all Services under this Agreement, whether performed by the Contractor or a subcontractor engaged by the Contractor. The Contractor shall not subcontract any Services without prior written approval by the Town. The Contractor agrees that each and every agreement of the Contractor with any subcontractor to perform Services under this Agreement shall contain an indemnification provision identical to the one contained herein holding the Town harmless for the acts of the subcontractor. The Contractor further agrees that any such subcontract shall be terminable for cause or convenience and that, unless directed otherwise by the Town, the Contractor shall immediately terminate all such subcontracts immediately upon termination of this Agreement. Prior to commencing any Services, a subcontractor shall provide evidence of insurance coverage to the Town. The Contractor further agrees that all such subcontracts shall provide that they may be terminated immediately without further cost upon termination of this Agreement. Neither the Town's approval of any subcontractors, suppliers or materialmen, nor the failure of performance thereof by such parties, will relieve, release or affect in any manner any of the Contractor's duties, liabilities or obligations under this Agreement, and the Contractor will at all times be and remain fully liable. The Contractor agrees that each of its employees, and any subcontractors, suppliers and materialmen will be properly qualified and will use reasonable care in the performance of their duties.

19. TERMINATION. This Agreement may be terminated for cause or for convenience by the Contractor upon delivery of sixty (60) days prior written notice to the Town and by the Town by giving the Contractor sixty (60) days prior written notice. Such notice shall not be required for automatic expiration under Section 2 hereof. If this Agreement is terminated, the Contractor shall be paid for all the Services satisfactorily performed prior to the designated termination date, including reimbursable expenses due. Said payment shall be made in the normal course of business. Should either Party to this Agreement be declared bankrupt, make a general assignment for the benefit of creditors or commit a substantial and material breach of this Agreement in the view of the other Party, said other Party shall be excused from rendering or accepting any further performance under this Agreement. In the event of termination by either Party hereto, the Contractor shall cooperate with the Town to ensure a timely and efficient transition of all work and work product to the Town or its designees. Such transition shall be complete and all time, fees and costs associated with such transition shall not be billed by the Contractor to the Town.

20. DEFAULT. If either Party fails to perform in accordance with the terms, covenants and conditions of this Agreement, or is otherwise in default of any of the terms of this Agreement, the non-defaulting party shall deliver written notice to the defaulting party of the default, at the address specified in Section 20 below, and the defaulting party will have fifteen (15) days from and after receipt of the notice to cure the default. If the default is not of a type which can be cured within such fifteen (15)-day period and the defaulting party gives written notice to the non-defaulting party within such fifteen (15)-day period that it is actively and diligently pursuing a cure, the defaulting party will have a reasonable period of time given the nature of the default following the end of the 15-day period to cure the default, provided that the defaulting party is at all times within the additional time period actively and diligently pursuing the cure. If any default under this Agreement is not cured as described above, the non-defaulting party will, in

additional to any other legal or equitable remedy, have the right to terminate this Agreement and enforce the defaulting party's obligations pursuant to this Agreement by an action for injunction or specific performance.

21. **NOTICES.** Any notice or communication required under this Agreement must be in writing, and may be given personally, sent via nationally recognized overnight carrier service, or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same will be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) three days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or sent via nationally recognized overnight carrier service, a notice will be deemed to have been given and received on the first to occur of (i) one business day after being deposited with a nationally recognized overnight air courier service or (ii) delivery to the party to whom it is addressed. Any party hereto may at any time, by giving written notice to the other party hereto as provided herein designate additional persons to whom notices or communications will be given, and designate any other address in substitution of the address to which such notice or communication will be given. Such notices or communications will be given to the parties at their addresses set forth below:

To the Town:

Town of Timnath  
Attn: April D. Getchius, Town Manager  
4800 Goodman Street  
Timnath CO, 80547  
970-224-3211 (phone)  
970-224-3217 (fax)

With a copy to:

WHITE BEAR ANKELE TANAKA & WALDRON  
ATTORNEYS AT LAW  
Attn: Robert G. Rogers  
2154 East Commons Avenue, Suite 2000  
Centennial, Colorado 80122  
(303) 858-1800 (phone)  
(303) 858-1801 (fax)

Contractor:

Mantooth Marketing Company, LLC  
8334 Coeur D'Alene Drive  
Fort Collins, CO 80525  
Tel: 970-663-1888  
Fax: 970-682-1327

22. **AUDITS.** The Town shall have the right to audit, with reasonable notice, any of the Contractor's books and records which may be necessary to substantiate any invoices and payments under this Agreement (including, but not limited to, receipts, time sheets, payroll and personnel records) and the Contractor agrees to maintain adequate books and records for such

purposes during the term of this Agreement and for a period of two (2) years thereafter and to make the same available to the Town at all reasonable times and for so long thereafter as there may remain any unresolved question or dispute regarding any item pertaining thereto.

23. ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between the Parties hereto relating to the Services, and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. This Agreement may not be modified except by a writing executed by both the Contractor and the Town.

24. BINDING AGREEMENT. This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the Parties hereto.

25. NO WAIVER. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default be deemed a waiver of any subsequent default.

26. GOVERNING LAW / DISPUTES. This Agreement and all claims or controversies arising out of or relating to this Agreement shall be governed and construed in accordance with the law of the State of Colorado, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado. Venue for all actions arising from this Agreement shall be in the District Court in and for Larimer County. The Parties expressly and irrevocably waive any objections or rights which may affect venue of any such action, including, but not limited to, *forum non-conveniens* or otherwise. At the Town's request, the Contractor shall carry on its duties and obligations under this Agreement during any legal proceedings and the Town shall continue to pay for the Services performed under this Agreement until and unless this Agreement is otherwise terminated. In the event of any litigation between the Town and the Contractor to enforce any provision of this Agreement or any right of either Party hereto, the Parties agree that the court shall award costs and expenses to the prevailing Party, such costs and expenses to include reasonable attorneys' fees. Otherwise, each Party shall pay its own costs and fees for litigation. At the Town's request, the Contractor will consent to being joined in litigation between the Town and third parties, but such consent shall not be construed as an admission of fault or liability. The Contractor shall not be responsible for delays in the performance of the Services caused by factors beyond its reasonable control including delays caused by Act of God, accidents, failure of any governmental or other regulatory authority to act in a timely manner or failure of the Town to furnish timely information or to approve or disapprove of Contractor's Services in a timely manner.

27. GOOD FAITH OF PARTIES. In the performance of this Agreement, or in considering any requested approval, acceptance, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.

28. SUBJECT TO ANNUAL APPROPRIATION AND BUDGET. The Town does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The performance of those obligations of the Town pursuant to this Agreement requiring budgeting and appropriation of funds are subject to annual budgeting and appropriations. The Contractor expressly understands and agrees that the Town's obligations under this Agreement shall extend only to monies appropriated for the purposes of this Agreement by the Town Council for the Town and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. No provision of this Agreement shall be construed or interpreted as a delegation of governmental powers by the Town, or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the Town or statutory debt limitation, including, without limitation, Article X, Section 20 or Article XI, Section 6 of the Constitution of the State of Colorado. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of Town funds. The Town's obligations under this Agreement exist subject to annual budgeting and appropriations, and shall remain subject to the same for the entire term of this Agreement.

29. GOVERNMENTAL IMMUNITY. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the Town, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the Town and, in particular, governmental immunity afforded or available to the Town pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S.

30. NEGOTIATED PROVISIONS. This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being acknowledged that each Party has contributed substantially and materially to the preparation of this Agreement.

31. SEVERABILITY. If any portion of this Agreement is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion of this Agreement, which shall remain in full force and effect. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

32. NO THIRD PARTY BENEFICIARIES. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the Parties that any person other than Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

33. OPEN RECORDS. The Parties understand that all material provided or produced under this Agreement may be subject to the Colorado Open Records Act, §§ 24-72-202, *et seq.*, C.R.S. In the event of the filing of a lawsuit to compel such disclosure, the Town will tender all such material for judicial determination on the issue of disclosure.

34. TAX EXEMPT STATUS. The Town is exempt from Colorado State sales and use taxes. Accordingly, taxes from which the Town is exempt shall not be included in any invoices submitted to the Town. The Town shall, upon request, furnish Contractor with a copy of its certificate of tax exemption. Contractor and subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an Exemption Certificate and purchase the materials tax free. Pursuant to § 39-26-1 14(1)(a)(XIX)(A), C.R.S., Contractor and subcontractors shall be liable for exempt taxes paid due to failure to apply for Exemption Certificates or for failure to use said certificate.

35. COUNTERPART EXECUTION. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings.

*[Remainder of page intentionally left blank. Signature pages follow].*

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

TOWN:

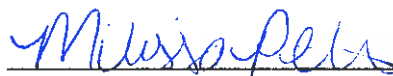
THE TOWN OF TIMNATH, a home rule municipal corporation of the State of Colorado



---

Jill Grossman-Belisle, Mayor

ATTEST:



---

Town Clerk



CONTRACTOR:

MANTOOTH MARKETING COMPANY, a  
Colorado limited liability company

\_\_\_\_\_

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

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

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF \_\_\_\_\_        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_, by \_\_\_\_\_, as the \_\_\_\_\_  
of \_\_\_\_\_.

WITNESS my hand and official seal.

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

(S E A L)

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

**EXHIBIT A**  
**SCOPE OF SERVICES**

Thank you for giving Mantooth Marketing Company the opportunity to submit a proposal to assist the Town of Timnath with its marketing and events efforts in 2016.

Serving northern Colorado for the past 20 years in all areas marketing, public relations and event planning, we feel we have the experience, creativity and organization to help you elevate town pride and deepen residents' connection with their community. Our successes with marketing clients come directly from our belief that every decision is based on a possible relationship; every possible relationship, every step of the way; not only your own relationship with the community, but also how the community views their relationship with your organization.

**THANK  
YOU**



# SCOPE

## OF WORK

### STRATEGIC MARKETING PLANNING AND EXECUTION

We will develop a 2016 plan that includes a combination of tactics designed to help you meet your goals. These goals can be pre-determined by your organization or we can assist in creating them. We will determine your target audiences for each of the goals before developing our strategy and tactics. The plan will include the following tactics, but not be limited to them:

- Media Buys & Advertising Placement
  - Mantooth has great relationships with all of our local media outlets – we can help you get the best ad space, radio spots and more all for a competitive price
  - We will take creative direction of all advertising, as well as ensure deadlines are met for submission
- Public Relations Campaign
  - We will create a purpose-driven, active dialogue with your target audience with the goal of developing increased visibility and maintaining a positive image.
    - This will include sending press releases announcing major developments – such as road expansion and new businesses coming to town, events and more
    - This will include event listings on community calendars
- Social
  - Facebook – Actively planning for and managing your page, engaging your audience and keeping them informed of happenings in Timnath

### EVENT PLANNING AND EXECUTION

Based on the success of Taste in Timnath, each of these events will include a full promotional plan along with the execution. Day of staffing will be billed separately at a lower rate than marketing and planning.

- Easter Event – NEW
  - With virtually no Easter events in northern Colorado, we feel that the Town of Timnath has an opportunity to attract a wide audience by hosting one
- Summer Series
  - Summer BBQ
  - Movie Nights in the Park or Summer Concert Series - NEW
  - Fourth of July Fireworks – NEW
    - The day of staffing at this event will be charged at a higher rate due to the holiday
- Taste in Timnath, including a 5k race
- Holiday Lighting Festival



# COMPENSATION

All phases include constant communication in the form of meetings, phone calls and emails. A meeting and status update schedule can be set based on your desire. We've broken up the fees monthly for your convenience.

## ESTIMATED HOURLY BREAKDOWN:

SCOPE OF WORK	HOURS	COST
Monthly Marketing	12	\$1020
Event Planning	485 (40 Monthly)	\$32,500 (\$2705 Monthly)
TOTAL MONTHLY	105-154	\$3725

At Mantooh we are slightly different than most marketing companies for our service fee. You are only charged for the minutes and hours worked. If at any time we find hours are below the retainer we have quoted, you will be charged only for that time. It can drive our accounting department a bit crazy but we feel strongly that if 15 minutes are worked than you should only pay for those 15 minutes.

*Please note: graphic design is charged at an extra \$85 per hour.*

Thank you for this opportunity.



**EXHIBIT B**  
**INSURANCE REQUIREMENTS**

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.