TOWN OF TIMNATH, COLORADO

RESOLUTION NO. 72, SERIES 2010

A RESOLUTION CONTRACTING WITH TST, INC. CONSULTING ENGINEERS AS PROFESSIONAL CONSULTANTS FOR THE OLD TOWN IMPROVEMENT PROJECT

WHEREAS, the Town of Timnath Town Council wishes to appoint TST, Inc., Consulting Engineers as professional consultants for the Town of Timnath.

WHEREAS, TST Inc., shall provide general consultation and technical support concerning engineering matters related to the Old Town Improvement Project.

BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO:

Section 1. The Town of Timnath Town Council agrees to contract with TST, Inc., Consulting Engineers.

Section 2. Effective Date

This Resolution shall be effective upon August 4, 2010

PASSED, APPROVED AND ADOPTED THIS 18TH DAY OF AUGUST, 2010

TOWN OF TIMNATH, COLORADO

Donna Benson, Mayor

ATTEST:

Milissa McGuire, Town Clerk
AGREEMENT

For

PROFESSIONAL SERVICES

For

TOWN OF TIMNATH
GENERAL CONSULTATION

Project No. 0879.0000.00

This is an AGREEMENT made between TOWN OF TIMNATH (TOWN) and TST, INC. CONSULTING ENGINEERS (TST).

Whereas, the TOWN desires to have certain professional services performed by TST regarding the Old Town Improvement Project and other projects with the Town.

Whereas, TST is duly accredited and this AGREEMENT provides for said professional services.

Therefore, TOWN and TST, in consideration of their mutual covenants herein, agree in respect of the performance of professional services provided by TST and the payment for those services by TOWN as set forth in Sections 1 through 6 below.

SECTION 1 - Basic Services

For the purposes of this AGREEMENT, the Basic Services shall include general consultation on engineering matters as they relate to the Old Town Improvement Project and general planning, capital and public improvements in the Town. Specific tasks to be performed shall be:

1.1 General Consultation

TST will provide professional engineering consultation services as the Town Engineer. General consultation services shall include, but not be limited to:

1.1.1 Provide engineering consultation and services regarding the Old Town Improvement Project as required.

1.1.2 Provide technical support and advise the Town on matters related to engineering/surveying standards and practices.

1.1.3 Participate in negotiations, contract preparation, and meetings in which the Town desires professional engineering representation.
1.1.4 Technical liaison between the Town and contractors and others to be determined by the Town.

1.1.5 Provide engineering services as directed and required by the Town.

SECTION 2 - Additional Services

Services not contemplated in Section 1, may be required as the project progresses. If such work shall become known to TST, the scope of additional services shall be defined and authorized by the TOWN, or TOWN’s representative. A change order to the AGREEMENT will be prepared and presented to the TOWN. Descriptions of additional services, compensation, and period-of-services adjustments will be presented in the change order.

When authorized by the TOWN, or TOWN's representative, TST shall furnish Additional Services which are not included in the Basic Services described in Section 1, which include but are not limited to the following:

2.1 Services resulting from significant changes in the project including, but not limited to, changes in size, complexity, TOWN's schedule, significant changes required by others, and/or revisions due to causes beyond TST's control.

2.2 Building inspection including foundation, electrical, plumbing/heating, or any other duties assigned to the TOWN building inspector or building official.

2.3 Proprietor of TOWN documents and records (approved plans, plats reports, etc...) which would otherwise be the responsibility of the TOWN clerk.

2.4 Code enforcement or any other duties typically performed by the TOWN code enforcement officer or police department.

2.5 Enforcement of County, State, or Federal regulations pertaining to construction site safety, pollution, hazard mitigation, endangered or threatened species, etc...

SECTION 3 - Period of Service

The period of service for this work shall commence upon the signing of this contract by the TOWN and shall end upon completion of all Basic Services. Work shall progress in a timely manner to support the schedule established by the TOWN and TST.

SECTION 4 - Compensation

4.1 Methods of Payment for Services and Expenses of TST

4.1.1 TOWN shall pay TST for basic services rendered under Section 1 as follows:
4.1.1.1 Basic Services (Section 1) will be provided for on an hourly plus expenses basis according to the current schedule of fees (attached as Exhibit A).

4.1.2 TOWN shall pay TST for additional services rendered under Section 2 as follows:

4.1.2.1 Additional Services (Section 2) will be provided for on an hourly plus expenses basis according to the current schedule of fees (attached as Exhibit A).

4.2 Times of Payments

TST shall submit monthly invoices for the hourly rate plus expenses for services actually completed at the time of billing for Sections 4.1.1.1 and 4.1.2.1.

4.3 Other Provisions Concerning Payments

4.3.1 If TOWN fails to make any payment due TST for services and expenses within thirty (30) days after receipt of TST’S invoice, the amounts due TST will be increased at the rate of 1 1/2% per month from said thirtieth day, and in addition, TST may, after giving seven (7) days’ written notice to TOWN, suspend services under this AGREEMENT until TST has been paid in full all amounts due for services, expenses, and charges. If it is necessary to retain an attorney to enforce collection, reasonable attorney's fees and court costs will be added to the amount otherwise due TST.

4.3.2 In the event of termination by TOWN under paragraph 6.1 upon the completion of any phase of the basic services, progress payments due TST for services rendered through such phase shall constitute total payment for such services. In the event of such termination by TOWN during any phase of the basic services, TST will be paid for services rendered during that phase on the basis of TST’s hourly rates based on the current Schedule of Fees for services rendered during that phase to date of termination by TST’S principals and employees engaged directly in work on the project. In the event of any such termination, TST will also be reimbursed for the charges of independent professional associates and consultants employed by TST to render basic services and for all unpaid additional services and unpaid reimbursable expenses, plus all termination expenses. Termination expenses mean reimbursable expenses directly attributable to termination which, if termination is at TOWN’S convenience, shall include an amount computed as a percentage of total compensation for basic services earned by TST to the date of termination.

4.3.3 It is understood and agreed that any appropriation of funds or other arrangements for funds necessary for covering payments due TST under the various sections of this AGREEMENT have been made or will be made by the TOWN as the work progresses. It is further agreed that the TOWN shall inform the TST regarding any pertinent arrangements for funds as the work proceeds.
SECTION 5 - TOWN's Responsibilities

TOWN shall do the following in a timely manner so as not to delay the services of TST:

5.1 Designate in writing a person to act as TOWN's representative with respect to the services to be rendered under this AGREEMENT. Such person shall have complete authority to transmit instructions, receive information, approve scope of additional services, interpret and define TOWN's policies and decisions with respect to TST's services for the project.

5.2 Assist TST by placing at TST's disposal all available information pertinent to the project.

SECTION 6 - General Considerations

6.1 Termination

The obligation to provide further services under this AGREEMENT may be terminated by either party upon thirty days' written notice.

6.2 Reuse of Documents

All documents including drawings and specifications prepared or furnished by TST (and TST's independent professional associates and consultants) pursuant to this AGREEMENT are instruments of service in respect of the project, and TST shall retain an ownership and property interest therein whether or not the project is completed. TOWN may make and retain copies for information and reference in connection with the use and occupancy of the project by TOWN however, such documents are not intended or represented to be suitable for reuse by TOWN or others on extensions of the project or on any other project. Any reuse without written verification or adaptation by TST for the specific purpose intended will be at TOWN's sole risk and without liability or legal exposure to TST or TST's independent professional associates or consultants, and TOWN shall indemnify and hold harmless TST and TST's independent professional associates and consultants from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom. Any such verification or adaptation will entitle TST to further compensation at rates to be agreed upon by TOWN and TST.

6.3 Insurance

TST shall procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness, or disease 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.
6.4 **Limitation of Liability**

TOWN, in consideration of the fee negotiated for the project, specifically agrees to the limitation to the TOWN of the liability of TST and its officers, directors, shareholders, partners, agents and employees for all damages of any kind or nature associated with errors or omissions of TST, to the sum of $1,000,000.00.

6.5 **Controlling Law**

This AGREEMENT is to be governed by the law of the State of Colorado.

6.6 **Successors and Assigns**

6.6.1 TOWN and TST each is hereby bound, and the partners, successors, executors, administrators, assigns, and legal representatives of TOWN and TST are hereby bound to the other party to this AGREEMENT and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this AGREEMENT.

6.6.2 Neither TOWN nor TST shall assign, sublet, or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this AGREEMENT without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this AGREEMENT. Nothing contained in this paragraph shall prevent TST from employing such independent professional associates and consultants as TST may deem appropriate to assist him in the performance of services hereunder.

6.6.3 Nothing under this AGREEMENT shall be construed to give any rights or benefits in this AGREEMENT to anyone other than TOWN and TST and all duties and responsibilities undertaken pursuant to this AGREEMENT will be for the sole and exclusive benefit of TOWN and TST and not for the benefit of any other party.
SECTION 7 - Extent of Agreement

This AGREEMENT (consisting of pages 1 to 7, inclusive), and any referenced attached Exhibits constitute the entire AGREEMENT between TOWN and TST and supersede all prior written or oral understandings. This AGREEMENT and said Exhibits may only be amended, supplemented, modified, or canceled by duly executed written instrument.

In witness whereof, the parties hereto have made and executed this AGREEMENT as of the day and year signed by the TOWN.

TOWN OF TIMNATH
(TOWN)
By: [Signature]
Title: [Title]
Date: [Date]

TST, INC. CONSULTING ENGINEERS
(TST)
By: [Signature]
Title: President
Date: 8/9/10

Attest: [Signature]
TST, INC. reviews scheduled fees on an annual basis. New schedules are issued as warranted, but no more than once annually. Charges for all work including continuing projects will be based on the new Schedule of Fees.

**PERSONNEL CHARGES**

Personnel charges are for technical work not covered by lump sum fee agreements. Personnel are assigned to various tasks based on the skills necessary to perform the required services. Charges may also be incurred for word processing, report preparation, and Client requested accounting.

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<td>Project Accountant</td>
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**REIMBURSABLE EXPENSES**

Outside consultants and expenses will be charged at cost plus 10 percent (10%). Automobiles will be charged at $0.60 per mile. Prints are $0.25 per square foot, mylars are $1.25 per square foot, and color plots are $5.00 per square foot.

Effective 11/09
EXHIBIT “B”

REQUIRED PROVISIONS FOR CONTRACT FOR SERVICES PROHIBITING EMPLOYMENT OF ILLEGAL ALIENS

Engineer shall not:

1. Knowingly employ or contract with an illegal alien to perform work under this public contract for services; or

2. 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 public contract for services.

Engineer has verified or attempted to verify through participation in the basic pilot program that the Engineer does not employ any illegal aliens and, if the Engineer is not accepted into the basic pilot program prior to entering into a public contract for services, that the Engineer shall apply to participate in the basic pilot program every three months until the Engineer is accepted or the public contract for services has been completed, whichever is earlier. The provision specified in this subparagraph shall not be required or effective in a public contract for services if the basic pilot program is discontinued.

Engineer is prohibited from using basic pilot program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.

If the Engineer obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the Engineer shall be required to:

1. Notify the subcontractor and the contracting state agency of political subdivision within three days that the Engineer has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

2. Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to subparagraph 1 of this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; except that the Engineer shall not terminate the contract with the subcontractor if during such three days that subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

IF ENGINEER VIOLATES ANY OF THE AFOREMENTIONED REQUIREMENTS, THE TOWN MAY TERMINATE THE CONTRACT FOR BREACH OF CONTRACT. IF THIS CONTRACT IS SO TERMINATED, ENGINEER SHALL BE LIABLE FOR ACTUAL AND CONSEQUENTIAL DAMAGES TO THE TOWN OF TIMNATH.

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