

TOWN OF TIMNATH

RESOLUTION NO. 84, SERIES 2011

**A RESOLUTION APPROVING THE
PROFESSIONAL SERVICES AGREEMENT
BETWEEN W.L. CONTRACTORS, INC. AND THE
TOWN OF TIMNATH**

WHEREAS, the Town of Timnath ("TOWN") has previously entered into a professional Services agreement with W.L. Contractors for traffic signal maintenance; and

WHEREAS, the Town has been pleased with the comprehensive level of services W.L. Contractors Inc., has previously delivered, and

WHEREAS, the Town Council ("Council") of the Town desires to enter into the attached Agreement/Contract.

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

Section 1. The Town Council hereby approves the Professional Services Agreement Attached hereto as **Exhibit A**, and authorizes the Mayor and Town Staff to enter into that Agreement.

MOVED, SECONDED AND ADOPTED ON THE 18th DAY OF JANUARY, 2011

TOWN OF TIMNATH, COLORADO

BY: *Donna Benson*
Donna Benson, Mayor

ATTEST:

BY: *Milissa McGuire*
Milissa McGuire, Town Clerk



**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF TIMNATH
AND W.L CONTRACTORS, INC.**

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:*

W.L Contractors, Inc.
5920 Lamar Street
Arvada, Colorado 80003
Phone: 1-303-422-7985

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

C. Compensation. The services set forth in this Agreement shall be completed for an amount not to exceed **\$20,000 per year**. Not later than the **tenth (10th) of each month**, Contractor shall submit an invoice to the Town for the prior month's services.

D. Term. The term of this Agreement shall commence on the Commencement Date and terminate on the Termination Date as hereinafter defined subject, however, to prior termination as hereinafter provided in this Agreement. At the Termination Date set forth herein, this Agreement shall be considered renewed for regular periods of one (1) year, not to exceed five (5) years provided neither party submits a notice of termination as hereinafter provided in this Agreement. Renewal shall be at the same or different rate of compensation as determined between the Town and the Firm provided, however, that if no agreement is reached concerning compensation, the compensation existing at the time of renewal will continue.

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.

E. Commencement Date. The "Commencement Date" is **January 1, 2011** and is when the services described in this Agreement are to commence.

F. Termination Date. The "Termination Date" of this Agreement is **December 31, 2011**.

G. Approval by the Town Council. This Agreement X is is not (check one) contingent upon and subject to approval by the Town Council. If this Agreement is contingent upon and is subject to approval by the Town Council and 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.

H. Termination. Either Party may terminate this Agreement upon **thirty (30) days** written notice to the other.

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

As an Independent Contractor you are not entitled to workers' compensation benefits and that as an Independent Contractor you are obligated to pay federal and state income tax on any moneys earned pursuant to our contract 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 **\$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.

5. DOCUMENTS. All documents prepared or furnished by Contractor (and independent professional associates and sub-consultants) pursuant to this Agreement shall be the property of the Town. In addition, the Town shall have access to Contractor's financial records for the purposes of audit. Such records shall be complete and available for audit for **ninety (90) days** after final payment under this Agreement and shall be retained and available for audit purposes for at least **five (5) years** after final payment hereunder.

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 CONTRACTS 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).

(1) 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 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.

(2)(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 the 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).

(3) 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.

(4) 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.

(5) If the Contractor has not 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 waiver by Town of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition on any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of services hereunder by Town shall not be deemed to be a waiver of any preceding breach by Contractor of any term, covenant or condition of this Agreement. 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. 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.

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

F. 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.

G. 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 to be 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.

H. NON-ASSIGNMENT. This Agreement is an agreement for services by which Contractor was selected for Contractor's special expertise. This Agreement may not be assigned by either Party.

I. LAWFUL PRESENCE AFFIDAVIT. If a natural person, the undersigned shall complete the attached Lawful Presence Affidavit, **ATTACHMENT B**.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement as of the 18th day of January, 2011.

TOWN OF TIMNATH

By: Donna Benson
Donna Benson

Title: Mayor

ATTEST:

By: Milissa McGuire
Milissa McGuire

Title: Town Clerk

CONTRACTOR:

W.L. Contractors, Inc.

By: _____

Title: _____

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TOWN OF TIMNATH

By: Donna Benson
Donna Benson

Title: Mayor

ATTEST:

By: Milissa McGuire
Milissa McGuire

Title: Town Clerk


CONTRACTOR:

W.L. Contractors, Inc.

By: [Signature]

Title: OPERATIONS MANAGER

APPROVED AS TO FORM:

By: 
Ted Svitavsky

Title: Town Attorney

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing **Professional Services Agreement** was acknowledged before me this
____ day of _____, 20____ by **Donna Benson** as the Mayor of the
Town of Timnath.

Witness my hand and official seal.

My commission expires: _____

Notary Public

Address

STATE OF COLORADO)
) ss.
COUNTY OF _____)

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

Address

STATE OF COLORADO)

COUNTY OF LARIMER)

) ss.

The foregoing Professional Services Agreement was acknowledged before me this day of _____, 20____ by Donna Benson as the Mayor of the Town of Timnath.

Witness my hand and official seal.

My commission expires: _____

Notary Public

Address

STATE OF COLORADO)

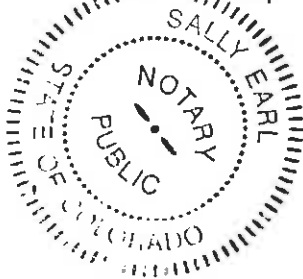
COUNTY OF Jefferson)

) ss.

The foregoing Professional Services Agreement was acknowledged before me this day of 26th JANUARY, 2011 by Tim Leach as the OPERATIONS MANAGER of Contractor.

Witness my hand and official seal.

My commission expires: My Commission Expires 03-16-2011



Sally Earl
Notary Public

5920 LAMAR

Arvada, Co 80003
Address

ATTACHMENT A
(Scope of Services)

The work to be performed under this contract shall consist of the supply and installation of various materials and equipment to install, repair or upgrade traffic signal installations.

This contract is for planned, routine work requests, short term work requests and emergency signal work. The contractor shall have a 24-hour emergency or after-hour contact service and be able to respond to the Town within a 1-1 ½-hour timeframe to either assist and back up the Town's Project Manager/Public Works Department as needed and on occasion, when necessary, respond to signal malfunctions or issues independently for repairs when Town employees are not available.

In addition to general maintenance, the contractor shall assist the Town in standardizing all existing signal software and hardware. The contractor shall also assist the Town in evaluating and determining what may be the best software and hardware for the Town's needs and then assist the Town in standardizing all traffic lights to a common operating and detection system to simplify future synching and provide for more efficient maintenance.

The contractor shall provide all labor, materials, and equipment necessary to complete the services described herein. The work shall be completed with all necessary accessories for proper operation. Traffic signal plans will indicate the extent and general arrangement of the installation. If any departures from the plans are deemed necessary by the contractor, details of such departures and the reasons therefore shall be submitted immediately to the Project Manager/Public Works Department for approval. No such departures shall be made prior to written approval of the Project Manager/Public Works Department.

The contractor shall have on the job site an I.M.S.A certified Level II or Level III Signal Technician. This person shall be on the job site any time conduit is to be trenched, or pushed and placed, any time wiring is to be placed or connected, or any time traffic signal components or cabinets are being placed or wired. All work done within cabinets shall be done by a certified I.M.S.A Level II or Level III Signal Technician.

Contractor shall furnish one updated as-built hard copy drawing specifically detailing all the traffic signal facilities with changes including any new or re-built intersections within 15 days of project or work completion. Drawing shall not be a hand corrected original plan/drawing, but a clean precise hand drawing with accurate, clear information easy to read. Drawing shall be submitted, reviewed, and approved by the Project Manager/Public Works Department.

HOURLY RATES
(To be billed in half hour increments)

VEHICLE EQUIPMENT PER HOUR

1. COMPUTER	\$10.00
2. SERVICE TRUCK	\$15.00
3. BUCKET TRUCK	\$27.00
4. AIR COMPRESSOR	\$10.00
5. MISSILE/MOLE	\$5.00
6. AUGGER TRUCK	\$45.00

PERSONNEL

1. SUPERVISOR	\$60.00
2. FOREMAN	\$55.00
3. SIGNAL TECH III	\$55.00
4. SIGNAL TECH II / ELECTRICIAN	\$50.00
5. SIGNAL TECH I / APPRENTICE ELECTRICIAN	\$40.00
6. MASTER ELECTRICIAN	\$60.00
7. OPERATOR	\$40.00
8. LABORER / GROUNDSMAN	\$35.00
9. TRAFFIC ENGINEER	\$125.00

UNIT COSTS

CONFLICT MONITOR TEST & DOCUMENTATION (PER LOCATION)	\$275.00
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**ATTACHMENT B
LAWFUL PRESENCE AFFIDAVIT**

If you are the sole proprietor (not Inc. or LLC) of your business, you must now comply with the requirements of House Bill 06S-1023. If you have not done so in a previous year, you must:

- Complete the Lawful Presence Affidavit below.**
- Sign the Affidavit** before a Notary Public (A notary is available at Town Hall)
- Return the Affidavit** with your signed contract, application or renewal.
- Enclose a copy of the identification** presented to the Notary (e.g. driver's license)

(This form should only be filled out by applicants who are applying as a sole proprietor)
I, swear or affirm under penalty of perjury under the laws of the State of Colorado that (check one):

- I am a United States citizen; or
- I am a legal Permanent Resident of the United States; or
- I am otherwise lawfully present in the United States pursuant to Federal law.

I understand that this sworn statement is required by law because I have applied for a license or permit or am contracting with the Town, which falls under the definition of a public benefit. I understand that state law requires me to provide proof that I am lawfully present in the United States prior to receipt of this public benefit. I further acknowledge that making a false, fictitious, or fraudulent statement or representation in this sworn affidavit is punishable under the criminal laws of Colorado as perjury in the second degree under Colorado Revised Statute 18-8503 and it shall constitute a separate criminal offense each time a public benefit is fraudulently received.

Signature

Date

STATE OF COLORADO)
)ss
COUNTY OF _____)

SUBSCRIBED and sworn to before me, the undersigned Notary Public, this ____ day of _____, 20____, by _____, who presented _____ as identification.
(Document Provided and Document Number)

Notary Public

My Commission Expires:_____

Per HB 06S-1023, you must provide a copy of one of the following IDs with this Affidavit.

- Colorado Driver's License
- Military IDs
- Native American tribal document
- Colorado ID card
- Coast Guard mariner document
