

TOWN OF TIMNATH, COLORADO
TOWN COUNCIL

RESOLUTION NO. 94, 2011

A RESOLUTION APPROVING THE PROFESSIONAL SERVICES
AGREEMENT BETWEEN HORIZON VEGETATION MANAGEMENT
AND THE TOWN OF TIMNATH

WHEREAS, the Town of Timnath ("TOWN") wishes to contract with Horizon
Vegetation Management for professional services for the Town; and

WHEREAS, Horizon Vegetation Management shall provide weed spraying professional
services for the Town.

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
with Horizon Vegetation Management, attached hereto as Exhibit A.

MOVED, SECONDED AND ADOPTED ON THE 15th DAY OF MARCH, 2011

TOWN OF TIMNATH, COLORADO

BY: Jill Grossman-Belisle
Jill Grossman-Belisle, Mayor

ATTEST:

BY: Milissa McGuire
Milissa McGuire, Town Clerk



**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF TIMNATH
AND HORIZON LAWN AND TREE CARE, INC.
A/K/A HORIZON VEGETATION MANAGEMENT**

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:*

Horizon Lawn and Tree Care, Inc.
a/k/a Horizon Vegetation Management
4400 Harback Road
Bennett, Colorado 80102
Phone: 303-419-5332

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

C. Compensation. The Town reserves the right to add or subtract additional work to the contractor based on the following unit prices of \$50.00 per lane mile and \$45.00 per acre. The services set forth in this Agreement shall be completed for an amount no less than **\$10,000** and not to exceed **\$28,275**. The Contractor shall submit an invoice to the Town for the prior month's services not later than the **tenth (10th) of each month**.

D. Term. The term commences on the Commencement Date and terminates on the Termination Date as hereinafter defined.

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 **March, 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 monies 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 15th day of March, 2011.

TOWN OF TIMNATH

By: Jill Grossman-Belisle
Jill Grossman- Belisle

Title: Town Mayor

ATTEST:

Milissa McGuire
Milissa McGuire, Town Clerk

CONTRACTOR:

Horizon Lawn and Tree Care, Inc.

a/k/a Horizon Vegetation Management

By: _____

Title: _____

APPROVED AS TO FORM:

Ted Svitavsky, Town Attorney

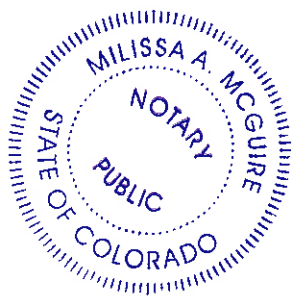
Title: Town Attorney

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing **Professional Services Agreement** was acknowledged before me this 15 day of March, 2011 by Jill Grossman-Belisle as the **Mayor** of the Town of Timnath.

Witness my hand and official seal.

My commission expires: 7-29-12



Milissa A. McGuire
Notary Public
4800 Goodman Street
Timnath Co 80547
Address

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing **Professional Services Agreement** was acknowledged before me this _____ day of _____, 20____ by _____ as the _____ of **Horizon Lawn and Tree Care, Inc.** a/k/a Horizon Vegetation Management.

Witness my hand and official seal.

My commission expires: _____

Notary Public

Address

ATTACHMENT A
(Scope of Services)

HORIZON LAWN AND TREE CARE, INC.
A/K/A HORIZON VEGETATION MANAGEMENT

SCOPE OF WORK: The Contractor shall furnish all labor, materials and equipment necessary to provide quality professional land management. Through the use of qualified, trained personnel and by using practices and methods recognized and accepted as standards in the industry, Contractor will provide services and products as summarized in the attached.

- A comprehensive written weed spraying program that outlines targeted problem areas within the Town limits that have current weed growth and possibility for future weed growth, chemicals that will be used in spraying applications, spraying schedule, and mowing schedule.
- Perform a minimum of three (3) spraying applications for goat head and noxious weed mitigation in the Old Town area including alleys (approximately 3.5 lane miles). These areas include the following Dixon Street, Second Avenue, Third Avenue, Sugar Trail, Kern Street, Fourth Avenue and Fifth Avenue.
- Perform a minimum of three (3) roadside spraying to control noxious weeds and nuisance broadleaf plants in the Town-owned right of ways (approximately 27 lane miles). These include the following Harmony Road, CR5 (Main Street), County Road 44, County Road 36 (River Pass Road), County Road 3 (Three Bell Parkway) and County Road 1 (Latham Parkway).
- Prevent cat tail growth at the northwest corner of Main Street and Harmony Road a minimum of three spray applications (approximately 1/3 of an acre).
- Contractor shall apply a minimum of three applications to prevent weed growth from occurring in the chip seal area on CR 1 and CR 40 (approximately 11.5 lane miles).
- Contractor shall apply two spray applications to a Town-owned parcel referred to as the Thompson Property (approximately 31 acres).
- Contractor shall apply two weed control and broadleaf control spray applications to the Walmart Reservoir (approximately 20-55 acres).
- Contractor shall apply two spray applications to the Timnath Reservoir parking lot (approximately 1/2 of an acre)

- Contractor shall mow the Thompson Property (approximately 31 acres) twice, once in the summer and once in the fall.

