TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 10, SERIES 2015

A RESOLUTION AUTHORIZING APPROVAL OF A PROFESSIONAL SERVICES
CONTRACT WITH MINES & ASSOCIATES

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 a professional services contract with Mines
& Associates; and

WHEREAS, the Town Council is familiar with the contract 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 purchase authorization and contract 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 FEBRUARY 24, 2015.

TOWN OF TIMNATH, COLORADO

[Signature]
Jill Grossman-Belisle, Mayor

ATTEST:

[Signature]
Milissa Peters
CMC
Town Clerk

[ SEAL ]
EXHIBIT A

CONTRACT
INDEPENDENT CONTRACTOR AGREEMENT

This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the “Agreement”), is entered into as of the 24th day of February, 2015, by and between THE TOWN OF TIMNATH, a home rule municipal corporation and political subdivision of the State of Colorado (the “Town”), and Mines and Associates, Inc., a Colorado corporation (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 February 24, 2015, and shall terminate upon the earlier to occur of (i) midnight, December 31, 2015, 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 1st 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.

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. An annual utilization report will be provided for the employee assistance services.

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 B. 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 B 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. Payment in advance for the year will be made upon receipt of the invoice. Invoices 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.

Invoices received by the Town after the 10th 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 for that portion of the Services performed and not previously billed. 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.

A. 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 monies earned pursuant to this Agreement.

B. The Town shall have no direction and control over CONTRACTOR or CONTRACTOR employees, agents, subcontractors or the manner and method utilized by CONTRACTOR and is interested only in results obtained by CONTRACTOR. CONTRACTOR shall determine and have sole discretion over the manner and methods utilized to achieve the results desired by the Town and shall be solely responsible for the direction, control and supervision of its acts and those of its agents, employees and subcontractors incident to the performance of this Agreement. CONTRACTOR shall not have nor shall it represent itself as having any authority to make contracts in the manner of or binding on the Town or to pledge the Town credit or to extend credit in the Town’s name. The Town shall not have the authority to make contracts or extend credit for CONTRACTOR.

C. CONTRACTOR has sole responsibility to determine those matters governing the employment terms and conditions for its employees working under this Agreement, including but not limited to selection, hiring, discipline, grievance resolution, pay, benefits and supervision and control of its employees. The Town has no authority or rights and shall not share or have any responsibility in the determination of such matters for such employees.

D. The Town agrees not to hire or contract directly with CONTRACTOR employees or former CONTRACTOR employees for at least one year after the termination of this Agreement for employee assistance services, managed mental health care, or preferred provider services, or to share proprietary information with any other vendor of these services except as may be required by law.

10. **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.

11. 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 C, 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.

12. RELEASES, LICENSES, PERMITS

A. CONTRACTOR shall obtain all releases, licenses, permits or other authorizations required to fulfill its obligations under this Agreement and shall indemnify and hold harmless THE TOWN from all claims, demands, liability, suits or proceedings arising out of a failure to obtain required releases, licenses, permits or authorization.

13. PATIENT-MENTAL HEALTH CLINICIAN PRIVILEGE

THE TOWN acknowledges and agrees that all information and results or examinations or treatments performed pursuant to the provisions of this Agreement shall be subject to the Mental Health Clinician Patient Privilege prohibiting unauthorized release of professional information or communication. In the case of worker's compensation cases where the employee has made application, confidentiality is waived.

14. RELEASE OF MEDICAL INFORMATION

A. THE TOWN agrees that no information or communication made known to CONTRACTOR or subcontractors during the performance of services pursuant to this Agreement shall be disclosed or released to any third party, excluding persons or departments within THE TOWN or its affiliates designated or with a need to receive such information, pursuant to any request, demand, subpoena or order for such information without the clinician first notifying THE TOWN and making reasonable efforts to notify the patient, or his personal representative, of such request, demand, subpoena or order. The purpose of such notice is to afford the patient, his personal representative and/or THE TOWN a reasonable opportunity to prevent the unauthorized disclosure of such information.

B. THE TOWN agrees, during the full term of this Agreement, CONTRACTOR shall have the right to designate and make public reference to the THE TOWN'S business status with CONTRACTOR.

15. CHANGES

CONTRACTOR has the right to change Program Costs, consideration (as described in Exhibit A of this Agreement), or other fees with the renewal of the contract as long as CONTRACTOR contacts customer by email, fax or courier prior to the renewal date explaining the proposed changes and giving the THE TOWN a reasonable amount of time and opportunity to opt out of the proposed changes. To opt out of the proposed changes, THE TOWN must notify CONTRACTOR in writing within thirty (30) days after receiving notice of the proposed changes. If THE TOWN does not opt out of the proposed changes within thirty (30) days after receiving notice, THE TOWN is agreeing to the proposed changes being incorporated into the renewed contract.
16. CONFIDENTIAL INFORMATION

A. All data, records, lists of employees and employers and all other information which may come into the possession of CONTRACTOR or of which CONTRACTOR may acquire knowledge by attending meetings of THE TOWN in any way by reason of its relationship are confidential, and no information from such records, lists or data shall be divulged by CONTRACTOR except as authorized by THE TOWN or as required by governmental authority. In the event of a demand for information by a governmental authority and to the extent legally permissible, no information shall be disclosed without prior notice and consent of THE TOWN; which consent shall not be unreasonably withheld.

B. Confidential Information shall also include any and all information, documentation, or material that has or could have commercial value or other utility in the business and/or services in which the disclosing party is engaged. Confidential Information may be in oral, visual, or graphic form and, for purposes of this Agreement, shall include any and all information relating to CONTRACTOR' services and provider network, to which THE TOWN may gain access. The party receiving Confidential Information, under this Agreement, shall not, without the prior written approval of the disclosing party, use for the receiving party's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for their benefit or to the detriment of the disclosing party, any such Confidential Information.

C. Confidential Information shall also consist of any Protected Health Information ("PHI"), as that term is described under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the parties agree that they shall undertake and implement any actions required by HIPAA, concerning the disclosure, receipt, handling, maintenance and disposition of any PHI, to the extent applicable under this Agreement.

17. REFERRAL

Referrals will be made with respect to the employees' insurance.

18. 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.

19. 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.

20. INDEMNIFICATION AND LIMITATION OF LIABILITY

A. CONTRACTOR agrees to indemnify and hold harmless THE TOWN from all liability, losses, damages, claims, suits, or causes of action, and the damage and expenses incurred in connection therewith, including reasonable attorneys’ fee, which result from the negligent performance of Services by CONTRACTOR, its employees, agents or contractors.

B. THE TOWN agrees to indemnify and hold harmless CONTRACTOR from all liability, losses, damages, claims, suits, or causes of action, and the damage and expenses incurred in connection therewith, including reasonable attorneys' fee, which result from the negligence of THE TOWN, its employees, agents or contractors (other than CONTRACTOR) in connection with this Agreement.

C. Notwithstanding anything in this Agreement to the contrary, each party’s liability to the other party hereunder shall be limited to the amount of actual damages suffered by the other party and, in no event, shall either party be responsible or liable for any consequential, punitive, indirect or any similar type of damages, suffered by the other party, even though such other similar types of damages may have been foreseeable hereunder.

D. In no event whatsoever shall either party be liable for indirect, consequential, exemplary, punitive, or special damages.

21. 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.

22. 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.

23. 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.

24. 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 addition 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.

25. 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)
26. **AUDITS.**

THE TOWN may audit the clinical EAP services of CONTRACTOR associated with this Agreement at THE TOWN’s expense. The audit must be conducted by a licensed mental health professional who is a Certified Employee Assistance Professional (CEAP) and a member of the Employee Assistance Professionals Association (EAPA) in order to guarantee professional standards. The choice of this individual must be mutually acceptable to CONTRACTOR and THE TOWN. The auditor cannot be a competitor of CONTRACTOR. The scope of the audit includes only clinical services pertaining specifically to this Agreement and excludes operational, financial or all other aspects of CONTRACTOR and the business of CONTRACTOR.

27. **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.

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

29. **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.

30. **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 the 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.

31. **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.

32. **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.

33. **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.

34. **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.

35. **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.

36. **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.

37. **OPEN RECORDS.** The Parties understand that some 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.

38. **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.

39. **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

[Signature]
April D. Getchius, AICP
Town Manager

ATTEST:

[Signature]
Town Clerk

CONTRACTOR:

MINES AND ASSOCIATES, a Colorado corporation

[Signature]
Printed Name: Robert A. Mines
Title: CEO
STATE OF COLORADO
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: ____________________________

(SEAL)

______________________________
Notary Public
EXHIBIT A
SCOPE OF SERVICES

1. STATEMENT OF WORK (SOW)
   A. CONTRACTOR shall perform the following employee assistance program (EAP) services each Agreement year:
      i. Provide up to 5 face-to-face or telephone appointments/sessions per Agreement year to each employee (Member) and/or household member (Eligible) for assessment, referral, and/or short-term therapy.
      ii. Provide up to ten (10) hours of orientation and introductory supervisor training.
      iii. Provide up to two (2) hours of workshops and/or trainings with additional hours available at an additional cost as described in Exhibit B.
      iv. Provide after-hours clinical emergency coverage seven days per week, 24 hours per day.
      v. Provide on-line behavioral health services.
      vi. Provide financial/legal services as described in Appendix A.
      vii. Provide treatment oversight services.
      viii. Provide crisis intervention services at the request of the THE TOWN.
      ix. Provide unlimited consultation to management.
      x. Provide up to four (4) hours of conflict mediation services per separate issue. Additional hours beyond the initial four (4) hours will be billed as is stated in Section 2.A.
      xi. Provide an annual report.
      xii. In the event that the operations of CONTRACTOR services are substantially interrupted by acts of war, fire, insurrection, riot, earthquakes, communication equipment failure beyond CONTRACTOR control or other acts of nature or any cause that is not the fault of CONTRACTOR or is beyond reasonable control of CONTRACTOR, CONTRACTOR shall be relieved of its obligations as to those affected operations and only those affected portions of this Agreement for the duration of such interruption.
      xiii. The records of CONTRACTOR will be the property of Mines and Associates, P.C. unless otherwise stipulated and subject to appropriate Federal and State Law, including HIPAA, regarding such The Town files.
      xiv. Excluded Services. The following services are excluded from employee assistance contracts and CONTRACTOR will have no obligation to provide any of the following services in conjunction with an EAP contract.
         a. Pre-employment assessments for security personnel and other personnel as requested from time to time. These are available as a separate service and fee.
         b. Psychological, psychiatric, neurological, educational, IQ or neuropsychological testing.
         c. Remedial and social skills education services, such as evaluation or treatment of learning disabilities, learning disorders, academic skill disorders, language, disorders, intellectual disabilities, motor skill disorders, deaf education, blind
education, communication disorders, behavioral training, attention deficit disorders, or cognitive rehabilitation.

d. Fitness for duty evaluations. These are available as a separate service and fee.

e. EAP services include assessment and triage of chronic or acute mental disorders, psychological issues, addictions or disorders that need the attention of a medical doctor. Treatment in an EAP model is not clinically appropriate for the above listed conditions.

f. Court ordered counseling or evaluation for any reason including but not limited to child custody, domestic violence, DUI's or other legal matters. Referrals for these types of services will be made outside the CONTRACTOR system.

g. Evaluations related to determinations or excuses for leave of absence or time off. These are a subset of Fitness for Duty and billed separately.

h. Workers’ Compensation evaluations or treatment. These services are available as a separate service and fee.

i. Inpatient, day treatment, partial care, residential or intensive outpatient services associated with psychological or substance abuse diagnoses.

j. Services by providers who are not part of the CONTRACTOR EAP or PPO network and services not authorized by CONTRACTOR.

k. Medication or medication management.

l. Examination and diagnostic services in connection with obtaining employment or a particular employment assignment, admission to or continuing in school, securing any kind of license or certificate (including professional licenses), or obtaining any kind of insurance coverage.

m. Testimony in legal proceedings or creation of records for legal proceedings or other preparation for legal proceedings. These services are available as a separate service and fee paid in advance by the party requesting them.

n. Guidance on workplace issues when the employee or participant sues or threatens to sue the employer.

o. Acupuncture, massage therapy, biofeedback or hypnotherapy.

p. Intervention among more than two (2) employees is defined as an organizational development process and is billable under the organizational development preferred THE TOWN fee, as defined in Section 2.A.

B. Any supplemental Statement of Work as mutually agreed to and executed by the Parties in writing may amend or replace an existing Statement of Work as specified in the supplemental SOW, or describe new and additional Services to be provided to THE TOWN by CONTRACTOR. Each supplemental SOW shall be incorporated into this Agreement and attached as an addendum.

C. Any additional services requested by THE TOWN must be made via any method as described in Section Error! Reference source not found. of this agreement. THE TOWN accepts responsibility for costs incurred regarding fee-for-service requested by THE TOWN of CONTRACTOR as if those services were a part of the original Statement of Work.

2. CONSIDERATION
A. In consideration of CONTRACTOR' performance pursuant to this Agreement, THE TOWN agrees to pay CONTRACTOR $4,450 per Year, in advance. THE TOWN is responsible for adjustment of payment each Term to ensure correct payment per Member. The payment of these Costs shall commence on the Effective Date of this Agreement. Additional critical incident/trauma services described as "On-Scene Support" are available upon request of and authorization by THE TOWN. Services are billed to THE TOWN at $300.00 per hour per therapist, including travel time. Process groups are billed at $300.00 per hour per therapist. Additional workshops beyond those provided in the Agreement are available according to the chart in EXHIBIT B. Organizational development and/or team building interventions and training are available at a fee of $300.00 per hour per consultant. Breakthrough projects are bid separately at different rates and on a project basis. Conflict Mediation is billed at $300.00 per hour. Fitness for Duty evaluations may be requested and are billed at $3,500.00 per evaluation. Workers' Compensation evaluations are $3,500.00. Treatment case management services are billed at $175.00 per hour. Testimony in legal proceedings or creation of records for legal proceedings or other preparation for legal proceedings are billed at $500.00 per hour with a ten hour minimum retainer paid in advance by the requesting party. THE TOWN may elect to allow an individual employee or an employee's dependent to use additional sessions above and beyond the amount stated in section 1.A.i; THE TOWN will designate to CONTRACTOR how many additional sessions any individual will get and THE TOWN organization will be billed at a rate of $150 per session.

B. Terms of payment are net 10 days.

C. THE TOWN shall not share in the profits or losses of CONTRACTOR from this Agreement.

D. THE TOWN will reimburse for travel expenses outside the state of Colorado, upon prior approval by THE TOWN. These expenses may include such items as mileage (determined by IRS regulations), meals, hotel and airfare.

E. CONTRACTOR requires a 5 business day notice of cancellations for both wellness seminars and conflict resolution. For wellness seminars, if CONTRACTOR does not receive notice of cancellation, the workshop hours will be charged against their total contract training hours. In the event that THE TOWN does not have a sufficient number of contract training hours available during any term, CONTRACTOR will bill $300/hour for each hour that was scheduled.

F. CONTRACTOR reserves the right to charge a late fee of $50 in addition to 1.5% monthly interest for any outstanding fees that remain unpaid beyond the due date.

G. If The Town wishes to conduct an audit of the Clinical services provided by Contractor, as outlined in Section 26, it shall do so at its own expense.

3. LIABILITY FOR EXPENSES

A. All expenses in any way pertaining to the provision of services under this Agreement shall be assumed solely by CONTRACTOR; provided, however, THE TOWN shall incur any and all expenses for advertising or marketing the program to its employees. CONTRACTOR agrees that it shall assume sole responsibility for receiving funds and paying all expenses of every kind and nature incurred directly or indirectly under this Agreement. Except as otherwise noted in Sections 2.D, 2.E, and 2.G, above, THE TOWN assumes no financial responsibility of any kind or nature relative to the Agreement other than as set forth herein.
EXHIBIT B
FEE SCHEDULE / CONTRACT PRICE

The fee for services described in Exhibit A shall be as described in Exhibit A.

WORKSHOP & TRAINING FEES

For additional training hours beyond those included in the scope of work contemplated in Exhibit B Section 1.A.iii, the following fee schedule applies,

<table>
<thead>
<tr>
<th>TIME PERIOD</th>
<th>COST</th>
</tr>
</thead>
<tbody>
<tr>
<td>1- 2 Hours</td>
<td>$300 Base</td>
</tr>
<tr>
<td>½ Day (4 Hours)</td>
<td>$300 Base</td>
</tr>
<tr>
<td>Full Day (8 Hours)</td>
<td>$300 Base</td>
</tr>
</tbody>
</table>
EXHIBIT C
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.
APPENDIX A

MINES & ASSOCIATES
A National Business Psychology Firm

TO ACCESS TIERED LEGAL/FINANCIAL SERVICES:
Call Mines and Associates at 303-832-1068 or 800-873-7138. An operations staff person will get basic demographic information from you and do a short assessment to get you authorized for the appropriate services. Once you have authorization, we will transfer you to speak with a representative of CLC Incorporated.

Legal and Financial Program

Description of Benefits:

- **Legal** - Each member is entitled to one (1) initial **thirty-minute** office or telephone consultation per separate legal matter at no cost with a **network attorney**. In the event that you wish to retain a participating attorney after the initial consultation, you will be provided with a preferred rate reduction of **25%** from the attorney’s normal hourly rate. Virtually all types of legal matters are eligible for these services.

- **Financial** - Each member is entitled to no cost telephonic consultation with CLC’s staff model **financial counselors**. Typical matters include credit counseling, debt and budgeting assistance, tax planning, retirement and college planning questions. These services are provided by seasoned financial professionals and licensed CPA’s. Telephone consultations are generally limited to between **thirty and sixty minutes** per issue. Local referrals are available for more complex financial planning issues.

- **Mediation** - Each member is entitled to one (1) initial **thirty-minute** office or telephone consultation per separate legal matter at no cost with a **network mediator**. In the event that the member wishes to retain a participating mediator after the initial consultation, they will be provided with a preferred rate reduction of **25%** from the mediator’s normal hourly rate. Typical matters may include divorce & child custody, contractual & consumer disputes, real estate & landlord tenant, car accidents & insurance disputes, etc.

- **Tax Consultation and Preparation** - Members are entitled to receive a **30-minute** telephonic income tax planning related consultation per year on each separate tax issue they encounter. Preparation of all personal income tax documents are prepared by a CPA at a preferred rate reduction of **25%** from the CPA’s normal fee.

- **“Do It Yourself” Legal Forms Document Preparation** - Our simple and inexpensive online/assisted (members will have access to telephonic document preparers) process will enable consumers to complete their own legal document preparation from the comfort of their home, without incurring the cost of an attorney, or dealing with lengthy completion and delivery periods. Members will receive a preferred discount of **10%** off and the types of forms include, divorce, wills, living wills, power of attorneys, immigration and much more.
• **Website** - Each member shall be provided with unlimited access to the CLC Core Web Site with information on thousands of legal and financial topics, over 5,000 legal, more than 45 financial calculators, professionally written articles, FAQ’s and much more and financial forms for our members’ use. Click on the CLC icon on the MINES website: www.minesandassociates.com.

  User name: mines
  Password: associates

• **Attorney-Assisted Will Preparation** — *For a separate fee*, members may choose to prepare a will with the assistance of an attorney. A simple questionnaire will be sent out in a “Will-Kit” to be filled out by the member and returned to an attorney. The attorney may discuss and recommend other estate planning services to properly protect your estate. If during the initial consultation it is determined that a simple will does not meet your needs, you may obtain other estate-planning services at a preferred rate of 25% off the attorney’s normal fees.

**Examples of the types of matters for which members may use this program include:**

• **Civil / Consumer Issues**
  This category includes issues relating to retail transactions, warranty and other consumer products matters, issues relating to governmental entitlements and benefits, advice on small claims court and other general legal matters.

• **Personal / Family Legal Services**
  These services include adoption and guardianship, custody and support matters, divorce, separation and annulment issues, name changes as well as other domestic or family law issues.

• **Financial Matters**
  In addition to the financial counseling category listed above, members are entitled to bankruptcy representation and defense of lending related legal issues by appropriately qualified attorneys.

• **Business Legal Services**
  This category provides for advice, consultation and representation for contracts, incorporation, partnerships and other commercial activities.

• **Real Estate**
  Real estate services include assistance in the acquisition or sale of real property, lease and rental agreements, property boundary disputes and other matters surrounding personal real property.

• **Criminal Matters**
  These services include the defense of both misdemeanor as well as felony criminal acts of all kinds.

• **IRS Matters**
  These services are performed by former, senior level, IRS employees. These specialists possess the ability to negotiate with the IRS on the member’s behalf, whether in an audit environment or to assist them with a lien or a balance due, in order to affect the most favorable outcome.

• **Estate Planning Law**
CLC has secured relationships with estate planning law firms that have agreed to prepare the most popular of estate planning/asset preservation vehicles at prices as low as 25% off usual fees. These services include Wills, Revocable Living Trusts, Charitable Trusts, etc.

- **Immigration and Naturalization**
  This category of services includes, green cards, U.S. citizenship, work and student visas, family based immigration, deportation and removal defense, INS and immigration court appeals, asylum and many immigration issues.

- **Financial Services**
  It is becoming increasingly important for individuals to plan for the future. According to the Journal of Accountancy, one of the top priorities of most Americans is to accumulate wealth for retirement years. There are many areas in which the professionals we have contracted with can help members with their Retirement Planning needs. One of the most effective ways to meet this objective is to manage cash flow and invest it properly to reach desired levels of saving. The professionals who we can refer members to will assist them in charting a path which will assist them to accumulate savings and invest the savings into a well-diversified portfolio.

**Personal Services For:**

- Retirement Planning
- College Funding
- Life Insurance Needs
- Estate Conservation
- Charitable Giving
- IRA Funding
- General Budget Assistance
- Attorney-Assisted Will Preparation

**Business Services For:**

- Buy-Sell Funding
- Deferred Compensation
- Executive Bonus
- Key Person Protection
- Voluntary Payroll Deduction Programs
- Qualified Plan Funding
- SEP
- Keoghs
- 401(k)s
- Pensions

Matters involving disputes or actions between members and their employer, CLC or its plan sponsors, agents or their officers, directors or employees are specifically excluded from eligibility of this plan. Also excluded are matters that, in the attorney’s opinion, lack merit. Court costs, filing fees and fines are the responsibility of the member.