1. CALL TO ORDER AND ROLL CALL
   Mayor          Jill Grossman-Belisle
   Mayor Pro Tem  Bryan Voronin
   Councilmember  Bill Neal
   Councilmember  Aaron Pearson
   Councilmember  Paul Steinway

2. AMENDMENTS TO THE AGENDA: Note: The Council may add to this agenda, any item for discussion or action.

3. PUBLIC COMMENT: Note: It is requested that public comments be limited to three minutes. When several people wish to speak with the same position, they are requested to select a spokesperson to state that position.

4. CONSENT AGENDA
   a. Approval of the January 23, 2018, Town Council Meeting Minutes
   b. Approval of the Check Register
   c. RESOLUTION NO. 13, SERIES 2018, A Resolution Approving Town Purchase Authorization and Ratifying a Contract with Angel Light Pyrotechnics, LLC
   d. ORDINANCE NO. 8, SERIES 2018, Setting Public Hearing, An Ordinance Amending Chapter 16, Article 6 of the Timnath Land Use Code and Setting a Public Hearing on February 27, 2018, at 6:00 p.m.

5. REPORTS
   a. Mayor and Council

6. BUSINESS
      Presented by Matt Blakely, Contracted Director of Community Development
   b. RESOLUTION NO. 14, SERIES 2018, A Resolution Approving an Agreement with Buxton Company
      Presented by April Getchius, Town Manager
   c. RESOLUTION NO. 15, SERIES 2018, A Resolution Approving an Agreement with Mantooth Marketing Company
      Presented by April Getchius, Town Manager
   d. RESOLUTION NO. 16, SERIES 2018, A Resolution Approving the Design Phase of the Harmony Road Widening Phase 4 Project
      Presented by Don Taranto, Contracted Town Engineer
   e. RESOLUTION NO. 17, SERIES 2018, A Resolution Approving and Ratifying a Service Agreement with Magellan Strategies
      Presented by April Getchius, Town Manager
f. **EXECUTIVE SESSION:** “For the purposes of discussion concerning the purchase, acquisition, lease, transfer, or sale of real, personal, or other property interests under Section §24-6-402(a), C.R.S.; discussion concerning personnel matters under §24-6-402(4)(f), C.R.S.; discussion regarding positions relative to matters that may be subject to negotiations and development of a strategy for negotiations under §24-6-402(4)(e), C.R.S.; and conferences with the Town’s attorney for purposes of receiving legal advice on specific legal questions under §24-6-402(4)(b), C.R.S.”

*Presented by Robert Rogers, Contracted Town Attorney*

7. **ADJOURNMENT**
1. CALL TO ORDER AND ROLL CALL:
Mayor Grossman-Belisle called to order the meeting of the Town Council on Tuesday, January 23, 2018, at 6:04 p.m.

Present:
   a. Mayor Jill Grossman-Belisle
   b. Mayor Pro Tem Bryan Voronin
   c. Councilmember Bill Neal
   d. Councilmember Aaron Pearson
   e. Councilmember Paul Steinway

Also Present:
   a. April Getchius, Town Manager
   b. Robert Rogers, Contracted Town Attorney
   c. Don Taranto, Contracted Town Engineer
   d. Matt Blakely, Contracted Community Development Director
   e. Brian Williamson, Contracted Town Planner
   f. Kevin Koelbel, Contracted Town Planner
   g. Phil Goldstein, Timnath Resident
   h. Raymond Wright, Timnath Resident
   i. Randall Black, Timnath Resident
   j. Kyle Battige, CPW
   k. Ty Petersburg, CPW
   l. Charlie Higgs, Fort Collins Resident and Colorado angler
   m. Mitch McGuire, Timnath Resident

2. AMENDMENTS TO THE AGENDA:
   a. Item 6d was removed
   b. Item 6c was moved to 6d
   c. A new Item 6c was added

3. PUBLIC COMMENT ON NON-AGENDA ITEMS:
   a. Raymond Wright, Timnath Resident, expressed his concerns for the traffic issues regarding the Walmart parking lot.
   b. Randall Black, Timnath Resident, asked who was monitoring the Thornton pipeline. Mr. Taranto explained the communication the Town has had with Thornton and working for
limited disruption. Ms. Getchius explained the Town has an intergovernmental agreement with the City of Thornton regarding the pipeline construction.

4. CONSENT AGENDA:
   a. Approval of the January 9, 2018, Town Council Meeting Minutes
   b. Approval of the Check Register

Councilmember Pearson moved to approve the consent agenda. Councilmember Voronin seconded the motion. The motion passed unanimously by voice vote.

5. REPORTS:
   a. Mayor/Council
      i. 6 candidates running for 2 Council seats
      ii. Chik-Fil-A opening
   b. Staff-Included in the packet

6. BUSINESS:
   a. RESOLUTION NO. 10, SERIES 2018, A Resolution Approving Amendments to a Timnath Town Policy Regarding Timnath Reservoir

Staff Comments:
- Mr. Williamson spoke to Council about the proposed resolution.

Council Comments:
- Councilmember Neal asked for the correction of a clerical error.
- Councilmember Pearson spoke about the responsibility of ice fishermen.
- Mayor Grossman-Belisle spoke about the size of the reservoir compared to the size of the Gateway Reservoir and the visibility as it pertains to ice fishing.
- Councilmember Pearson asked about the ice fishing safety and Mr. Petersburg stated that the level of common sense was fairly high.
- Mayor Grossman-Belisle spoke about approving the resolution with the changes discussed. She also spoke about the respect for the residents who live in the Wildwing subdivision whose properties back up to the reservoir shoreline. She stated her concerns for ice fishing.
- Councilmember Neal spoke about appreciating where CPW and the angler groups were coming from and their comments. He also spoke about being competitive regarding pricing and fees.
- Mr. Blakely spoke about the costs to staff the reservoir.
- Councilmember Steinway asked about a liability waiver for permit holders and Mr. Blakely confirmed the use and requirement of a signed liability waiver.
• Councilmember Steinway asked about the number of anglers and the available use by residents and Mr. McGuire spoke to his experience at free locations and lack of crowding.
• Council discussed fees, reviewing statistic on a regular basis and making adjustments as needed.

Presentation:
• Kyle Battige, CPW, presented to Council the role of CPW’s involvement in the reservoir and the fishery. He further spoke about public access and proposed permit revenue. Mr. Battige explained the investment the CPW has made in fish stock to the reservoir over the past 4 years. He also spoke about future management of the fishery and accessibility to the public.
• Ty Petersburg, CPW, spoke to Council about public access and economic impact for the community. He further spoke about normal patrol services and permit cost support. He also provided a listing of area reservoir fees.
• Mr. Battige spoke about grant opportunities to help with infrastructure improvements.

Public Comments:
• Charlie Higgs, spoke about being a Colorado angler and the CPW’s involvement. Mr. Higgs provided a written statement (attached hereto).
• Mitch McGuire, Timnath Resident, spoke about his personal use of the reservoir for fishing. He also spoke about the access for ice fishing.

Councilmember Neal moved to Approve RESOLUTION NO. 10, SERIES 2018, A Resolution Approving Amendments to a Timnath Town Policy Regarding Timnath Reservoir as amended. Councilmember Voronin seconded the motion. The motion passed unanimously by voice vote.

b. RESOLUTION NO. 11, SERIES 2018, A Resolution Approving an Agreement with Hill Research Consultants and Associated Town Council Purchase Authorization

Staff Comments:
• Ms. Getchius spoke to Council about the proposed resolution.

Councilmember Neal moved to approve RESOLUTION NO. 11, SERIES 2018, A Resolution Approving an Agreement with Hill Research Consultants and Associated Town Council Purchase Authorization. Councilmember Pearson seconded the motion. The motion passed unanimously by voice vote.

c. DISCUSSION/POSSIBLE ACTION: Authorizing the Town Manager to sign a contract for fireworks on the 4th of July

Council Comments:
• Mayor Grossman-Belisle spoke to Council about funding and deadline to contract for firework services and noted that $100,000 had been raised in pledged sponsorships to pay for the fireworks.

Councilmember Neal moved to Authorize the Town Manager to sign a contract for fireworks on the 4th of July. Councilmember Pearson seconded the motion. The motion passed unanimously by voice vote.
d. **Moved from c. - RESOLUTION NO. 12, SERIES 2018**, A Resolution Approving a Coordinated Planning Agreement Between the Town of Timnath And Weld County, Colorado

Staff Comments:
- Ms. Getchius spoke to Council about the proposed ordinance.

Public Comments:
- Mr. Black asked about the election regarding property involving Severance and Mayor Grossman-Belisle explained that the matter currently is in litigation and ongoing.

**Councilmember Neal moved to approve RESOLUTION NO. 12, SERIES 2018, A Resolution Approving a Coordinated Planning Agreement Between the Town of Timnath And Weld County, Colorado. Councilmember Voronin seconded the motion. The motion passed unanimously by voice vote.**

e. **REMOVED - EXECUTIVE SESSION**: “For the purposes of discussion concerning the purchase, acquisition, lease, transfer, or sale of real, personal, or other property interests under Section §24-6-402(a), C.R.S.; discussion concerning personnel matters under §24-6-402(4)(f), C.R.S.; discussion regarding positions relative to matters that may be subject to negotiations and development of a strategy for negotiations under §24-6-402(4)(e), C.R.S.; and conferences with the Town’s attorney for purposes of receiving legal advice on specific legal questions under §24-6-402(4)(b), C.R.S.”

7. **ADJOURNMENT:**

Mayor Grossman-Belisle adjourned the meeting 7:29p.m.

**Town Council approved the January 23, 2018, Town Council Meeting Minutes on February 13, 2018.**

TOWN OF TIMNATH

____________________________________
Jill Grossman-Belisle, Mayor

ATTEST:

____________________________________
Milissa Peters, CMC
Town Clerk

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**Date:** Feb 06, 2018 04:58PM

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**Total 2018 LASERFICHE:** 409.68

**Total DEZIRE SANCHEZ:** 409.68

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**Total Diesel Services of N. Colorado:** 1,830.32

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**Total 1174086.10:** 286.00

**Total EARTH ENGINEERING CONSULTANTS,:** 286.00

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**Total 20824:** 10,820.00

**Total Felsburg, Holt & Ullevig:** 10,820.00

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**FORT COLLINS LOVELAND WATER DIST JAN 2018**

**Total:**

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- **Total Crescent Electric:** 623.14
- **Total 2018 LASERFICHE:** 409.68
- **Total Diesel Services of N. Colorado:** 1,830.32
- **Total EARTH ENGINEERING CONSULTANTS,:** 286.00
- **Total Felsburg, Holt & Ullevig:** 10,820.00
- **Total FORT COLLINS LOVELAND WATER DIST JAN 2018:** 13.40
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Total FORT COLLINS LOVELAND WATER DIST: 259.51

**Front Range Pest Control**

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Total 28249: 85.00

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Total 28250: 85.00

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Total Houska Automotive Services Inc: 74.53

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Total Intn'l Assoc Chiefs of Police: 150.00

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Dated: ______________________________________________________
Mayor: ______________________________________________________
City Council: ______________________________________________________
City Recorder: ______________________________________________________
**TOWN COUNCIL COMMUNICATION**

| Meeting Date: |
| February 13, 2018 |
| Item: |
| A Resolution Approving Town Purchase Authorization and Ratifying a Contract with Angel Light Pyrotechnics, LLC |

**Presented by:**
April D. Getchius, AICP
Town Manager

**EXECUTIVE SUMMARY:** At the January 23, 2018 meeting, the Town Council authorized the Town Manager to execute a contract with Angel Light Pyrotechnics, LLC for Fourth of July fireworks in 2018. The approval, by motion, needs to be ratified and because this item is not budgeted it requires Town Council authorization for the expenditure of $46,100. Over $100,000 have been pledged from private sources to pay for the Fourth of July celebration and additional donations are expected.

**STAFF RECOMMENDATION:** Staff recommends approval.

**KEY POINTS/SUPPORTING INFORMATION:**
- Over $100,000 have been raised to support the Fourth of July celebration.
- The contract with Angel Light Pyrotechnics is for $46,100.
- Other than Town cleanup, events were not budgeted in 2018 so the expenditure will require Town Council authorization.

**ADVANTAGES:** Allows the fireworks to occur in 2018.

**DISADVANTAGES:** None.

**FINANCIAL IMPACT:** Costs for the fireworks will be reimbursed to the Town through private donations.

**RECOMMENDED MOTION:** I move approval of Resolution No. 13, Series 2018 entitled “A Resolution Approving Town Purchase Authorization and Ratifying a Contract with Angel Light Pyrotechnics, LLC.”

**ATTACHMENTS:** 1. Town Council Purchase Authorization Form.
2. Resolution
3. Agreement with Angel Light Pyrotechnics, LLC
**Town Council Purchase Authorization**

**Date:** 2/9/2018

**Vendor:** Angel Light Pyrotechnics

**Department:** Admin/General Government

**Project:** Fourth of July Fireworks 2018

**Description:** This agreement will provide for the Town's Fourth of July fireworks for 2018 at a cost of $46,100. The Town Council authorized an amount at the January 23, 2018 meeting of an amount not to exceed $55,000.

---

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<th>Is this purchase more than $25,000</th>
<th>X Yes</th>
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<tr>
<td>Is this the purchase of Real Estate or Land</td>
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<td>Is this the purchase of Public Art</td>
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<tr>
<td>Is this a budget request for a purchase that will exceed the approved budget</td>
<td>X Yes</td>
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**Advantages:** Allows for the 2018 Fireworks to proceed with private funding.

**Disadvantages:** Additional authorizations will be forthcoming for costs associated with the fireworks.

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<table>
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<th>Description</th>
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<th>Current Balance</th>
<th>Additional Budget Requested</th>
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**Financial Impact:** The Town will collect private funding for the fireworks display.

**Recommendation/Justification:** Recommend approval.

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**Requesting Department Signature**

[Signature]

Date: 2/9/18

**Town Manager Signature**

[Signature]

Date: 2/9/18
A RESOLUTION APPROVING TOWN PURCHASE AUTHORIZATION AND RATIFYING A CONTRACT WITH ANGEL LIGHT PYROTECHNICS, LLC

WHEREAS, the Town Council of the Town of Timnath (“Town”) pursuant to C.R.S. § 31-15-103, has the power to pass resolutions; and

WHEREAS, attached hereto as Exhibit A is an agreement (“Agreement”) between the Town of Timnath and Angel Light Pyrotechnics, LLC; and

WHEREAS, the Town Council, by motion, authorized the Town Manager to execute said Agreement on January 23, 2018; and

WHEREAS, the Town Council may approve purchases which were not budgeted; and

WHEREAS, the Town has collected pledges for over $100,000 in private sponsorships for the Town’s 2018 Fourth of July celebration; and

WHEREAS, the Town Council is familiar with the Agreement and finds it to be in the best interest of the Town, its residents, and the general public.

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

Section 1. Approval
The Agreement is hereby approved and ratified 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. The Council also hereby approves the Town Council purchase authorization for said Agreement.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON FEBRUARY 13, 2018

TOWN OF TIMNATH, COLORADO

Jill Grossman-Belisle, Mayor
ATTEST:

Milissa Peters, CMC
Town Clerk
EXHIBIT A

AGREEMENT
2018 Contract

Contracted Parties:

Angel Light Pyrotechnics, LLC

&

Town of Timnath

Re: Pyromusical Fireworks Display for

July 4th 2018, Rain Date: July 5th 2018

Angel Light Pyrotechnics, LLC (further known as A.L.P.) is licensed for business by the U.S. Department of Justice, Bureau of Alcohol Tobacco Firearms and Explosives and the State of Colorado for fireworks displays and special effects. A.L.P. shall:

- ALP will acquire permits and inspections needed for the fireworks show only. Excluding “Special Events” permits for the event.
- Set up and fire all display fireworks and special effects for the show.
- Provide insurance, labor, assistance and consultation to perform work in compliance with published, applicable Federal, State Local Laws, Codes and Regulations.
- Have final determination as to the safe firing of any and all pyrotechnic and firework devices.
- Provide equipment and devices necessary or required to complete the Display.
- Perform “Dud hunt(s)” and retrieval of unexploded fireworks immediately after the show and the following morning after night shows.
- Clean up of major fireworks debris, 3 inches and larger, on the entire fallout site. (Small debris, under 3 inches, will be the sponsors’ responsibility.)
**Town of Timnath (further known as the Sponsor) shall:**

- Provide the payment of a $23,050.00 deposit in advance due at the signing of the contract to reserve the date, and a final $23,050.00 show fee due immediately after each completed show, or a total of $46,100.00 may be paid in advance.

- Sponsor shall agree to procure and furnish a suitable place to display the said fireworks, and to secure all police, fire, local and state permits, and to arrange for any bonds as required by law in the Sponsor’s community when necessary, and agree to furnish necessary police, fire, and Sponsor’s protection, for proper crowd control, auto parking, and proper supervision in cleaning of debris or any pyrotechnic material which remains at the site of the display after a display has taken place.

- Provide contact information for any event personnel for fire watch, crowd control, security, Radio Frequency manager, set up, and area access, including keys, for set up, tear down and dud hunts.

- Provide a copy of any specific music and sound system needed for choreography and performance of the final show. If no music is specified ALP will choose a set of music.

- Provide parking arrangements for pyro crew.

- Provide a temporary crowd control barrier and monitors at positions determined by A.L.P. and A.H.J. to prevent spectators and unauthorized persons from entering the fallout area. The crowd line needs to be established for 2-3 days if possible but at minimum 8 hours prior to show time through the next morning. At no time will general public be allowed within 100 feet of the set up when explosives are present. This may require 2 crowd lines if there are other events nearby.

- Provide overnight security when explosives are present the night of July 3rd

- Arrange to mow and/or pre burn around launch site measuring approximately 700’ radius from the point determined by A.L.P. in order to remove dry ground cover.

- Arrange for a water truck to wet launch area 1 hr before the show start time.

- Know in the case of a cancellation of the show by the sponsor, after the contract is signed, for reasons other than those listed below, the sponsor agrees to pay A.L.P. 40% of the total display price.
**Circumstances, affecting the planning or performance of the display that are beyond the control of the Sponsor and/or A.L.P.**

We recommend you purchase event cancellation insurance due to scenarios described in paragraph 2. (below)

(A.L.P. reserves the right to cancel or postpone this contract due to overseas fireworks importation problems and/or fireworks industry supply shortages causing a lack in A.L.P. inventory.)

(Circumstances include severe weather at our Warehouse location in all below scenarios.)

1. **Weather delay** - If extreme rain or other inclement weather described in paragraph 2. (below) should delay the set up of the display, the start of the display may be delayed by the same amount of time or more. **A.L.P. can still fire the display in light rain or snow if needed.**

2. **Cancellation/Postponement before the display set up has commenced** - Should inclement weather or other circumstances that are beyond the control of the Sponsor and/or A.L.P.; extreme rain, hail, extreme snow, ice, fog, cold -15 F or lower, high winds, lightning, or dry conditions creating a significant fire danger, or other extreme conditions or other severe weather, affect the planning or performance of the display, thus causing the Sponsor, Authority Having Jurisdiction or the Lead Pyrotechnician for A.L.P. to cancel the display before A.L.P. begins set up;

   - The sponsor will have 6 months from the date of this contract to reschedule the display, one time, for no additional fees, including insurance transfer, excluding other pre-contracted show dates.

   - If the display is rescheduled for a date after 6 months, a fee of 15% of the total display price will be added.

   - Should the Sponsor not wish to reschedule and cancel the display, the Sponsor agrees to pay A.L.P. 30% of the total display price specified in this document. The sponsor must choose one option within 10 business days of postponing.

   - If no decision is made within 10 business days, the default is a cancelation.

3. **Display date weather cancellation after the display has been set up** - Should inclement weather or circumstances as described in paragraph 2 (above) cause the Sponsor, Authority Having Jurisdiction or the Lead Pyrotechnician for A.L.P. to cancel the display after the display is set up, A.L.P. will attempt to fire the display on the following day for an additional fee of $300 per day, 2 days maximum, including insurance transfer. The Sponsor agrees to maintain site security until the show is performed.

   - Should the sponsor wish the display to be performed on a date more than two days after the original display date (thus causing A.L.P. to remove its equipment from the site and set up again on the alternate date), the Sponsor agrees to pay A.L.P. an additional fee of 20% of the total display price specified in this document for the added labor and transportation expense.

   - Should the Sponsor not wish to reschedule and cancel the display, the Sponsor agrees to pay A.L.P. 50% of the total display price specified in this document.

   - The sponsor must choose one option on the original contracted display date.

4. **Display date weather cancellation after the display has begun** - Should inclement weather or other circumstances as described in paragraph 2 (above) cause either the Authority Having Jurisdiction or the Lead pyrotechnician for A.L.P. to cancel the display after the show has begun, the Sponsor agrees to pay A.L.P. 100% of the total display cost specified in this document, including any unpaid balance thereof. A.L.P. will carry over an equal amount of the remaining undamaged, unfired fireworks product to the Sponsor’s next contract for a comparable event with A.L.P. in the form of credited dollar amount.
NOTICE AND DISCLAIMER

In every show there is an uncertain amount of unfired product (misfires or duds). A.L.P. has no quality control on the manufacture of imported product. If severe weather is encountered while the show is set up, there also may be a delay in the shoot time and a shot count loss due to weather damage, which is considered a circumstance out of our control. A.L.P. does its best to purchase, build and protect reliable and high quality product. We take great care in firing the product safely and completely. We don't like taking fireworks back to the shop. :)

A.L.P is not responsible for problems due to legal or illegal RF signal blocking.

The contracted party agrees to contact A.L.P. immediately if any "dud" is found. (They look like plain paper wrapped, burnt baseballs/softballs) A.L.P. can then determine and perform proper and safe handling of that product.

Urgent Calls 970-215-6496.

The contracted party is hereby notified that all firework shows and the product used in the shows may have a risk to life and property. The risk is significantly increased if not handled properly by qualified professionals.

A.L.P. reserves the right to postpone or cancel a show due to inadequate fire protection, due to the absence or low participation of the Fire Department or Authority Having Jurisdiction (A.H.J.), rendering the display unsafe or high risk. Refer to page 3 for scenarios.

A.L.P. reserves the right to video and/or photo our set up and all of our effects during all performances for liability, advertising and research reasons.

A.L.P. reserves the right to postpone or cancel a show due to adverse weather conditions, which are determined by the A.H.J. and A.L.P. Rain dates will then be discussed. Refer to page 3 for scenarios.

In the event of an accident the contracted parties agree to relieve Angel Light Pyrotechnics LLC. (A.L.P.), it’s owners, it’s employees, it’s volunteers, and it’s suppliers, from any and all liability associated with the planning, set up, and use of fireworks and special effects.
This Contract contains the entire agreement of the parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the parties.

The under signed agree to and will abide to all pages and provisions of this contract.

Angel Light Pyrotechnics, LLC: Larry Darrington, Jr.

Date: 1-24-18

Representative of Timnath

Date: 1/26/2018
EXECUTIVE SUMMARY:
This proposal is to amend the Land Use Code section relative to Completion Security, Short Term Rentals, and new Development Processes. The Completion Security section is for developers to allow options for various forms of completion security. This change may reduce the cost to developers while maintaining an acceptable amount and type of security that the Town can access in the event that the Town needs to remedy a project. The Short Term rentals section is to add a total amount of short term rentals per subdivision based off a percentage of the current number of occupied residences which allows the Town to have better regulation of the total number of short term rentals. The new development processes will be adding in a concept review application, a change of use application, and modification to prior approval application. These new applications will allow staff to have the ability to have more review of applications and ensure that new development applications or changes to existing approved plans meet Town Code. The new application types will come with new fee’s associated with them.

PLANNING COMMISSION ACTION ON 2/16/2018: The Timnath Land Use Code Amendments were approved by Planning Commission at its regularly scheduled meeting on 2/6/2018 unanimously by 5-0 vote

STAFF RECOMMENDATION: Staff recommends approval the Land Use Code Amendments.

KEY POINTS/SUPPORTING INFORMATION:
The following amendments are being recommended by Staff to the Land Use Code:

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<th>Section</th>
<th>Recommended amendment (Deletion or Addition):</th>
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<td>6.7.2.</td>
<td>Security Requirements</td>
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<td>A.</td>
<td>Completion Security: To assure the construction, installation, and completion of the Public Improvements in all Phases of the Property, Developer shall, prior to commencing any work within a particular Phase of the Property, furnish to the Town Engineer an irrevocable sight draft letter of credit or other security reasonably acceptable to the Town Engineer as listed below (“Completion Security”) to secure the completion of Public Improvements required for the applicable Phase of the development. The Town of Timnath shall be designated as the beneficiary of the Completion Security. The Completion Security shall be provided Phase by Phase and shall be in the amount equal to one hundred percent (100%) of the estimated costs of the Public Improvements to be completed within a Phase. The amount of the Completion Security shall not include the portion of the Public Improvements which are to be constructed for the water improvements managed by the Water District or the sanitary sewer improvements managed by the Sewer District, nor shall it include any costs of</td>
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improvements for gas, electric, telephone, or cable TV.

1. Upon provision of such Completion Security to the Town in a manner acceptable to the Town Engineer for the applicable Phase, authorization to proceed with construction may be issued by the Town Engineer within such Phase.

2. **Completion Security may be comprised of the following options:**
   
   - A construction completion bond – Bond may not to exceed 80% of the total cost of the Public Improvements.
   - Sight draft Letter of Credit – minimum 20% of the total cost of the Public Improvements if combined with a warranty Bond.
   - Cash

3. Upon completion of fifty percent (50%) or more of the improvements with- in a Phase, as verified by the Town Engineer, Developer may request that the one hundred percent (100%) Completion Security be reduced to fifty percent (50%) of the initial Completion Security pending Town approval and at the sole discretion of the Town Engineer.

4. Upon issuance of a Letter of Initial Acceptance of 100% of the required improvements by the Town Engineer in accordance with the provisions herein, the Completion Security will be reduced to twenty percent (20%) of the initial Completion Security to be held as Warranty Security or released once replaced by Warranty Security as described below. This requirement for a Completion Security also applies to earthwork performed under a separate “Early Grading Permit” if so applied for and issued by the Town with the exception that no Warranty Security will be held upon completion of the Early Grading Permit for the grading improvements.

B. Warranty Security: Developer shall warrant any and all Public Improvements for a period of two (2) years from the date Town issues a letter of Initial Acceptance for the applicable Phase that has been constructed. As a condition of issuance of any letter of Initial Acceptance of any Public Improvements, Developer shall provide to Town a **warranty bond, sight draft letter of credit or other security in a form satisfactory to the Town Engineer** (“Warranty Security”), and in the amount of the remaining Completion Security set forth in paragraph above, to ensure that Public Improvements for which Initial Acceptance has occurred will attain Final Acceptance by the Town during the Warranty Period, which Warranty Security will be satisfied by either retention or replacement of the remaining Completion Security.

1. If prior to the issuance of a letter of Final Acceptance, any significant warranty work is required in connection with Public Improvements for which a letter of Initial Acceptance has been issued by the Town Engineer, the Town may require Warranty Security for up to two (2) years from the date of completion of said significant warranty work, provided that the two (2) year period for the remainder of the Public Improvements in such Phase shall not be extended. In such event, the Town Engineer shall issue a supplemental letter of Initial Acceptance specifying the Warranty Security required by Town and the work to be completed by Developer prior to a letter of Final Acceptance for such Public Improvements.
4.4.26.13 Short Term Rental Permits will be issued to residents in a limited quantity based on the following regulations:
   a. Each subdivision, neighborhood, or current old town area will be allowed 1% of the total number of COs (Certificate of Occupancy) issued.
   b. Rentable Multi-Family Residential units will not count towards permitting numbers.
   c. Permits will be on a first come first serve basis.
   d. Single Family, Attached Single Family, Ownership Multi-Family COs will be used to determine the number of available permits.
   e. The number of permits will increase as the total number of COs increase and will be updated on an annual basis.
   f. The number of permits available based on COs will be as follows:
      - 1-100 COs = 1 permit
      - 101-200 COs = 2 permits
      - 201-300 COs = 3 permits
      - 301-400 COs = 4 permits
      - 401-500 COs = 5 permits
      - 501-600 COs = 6 permits
      - 601-700 COs = 7 permits
      - 701-800 COs = 8 permits
      - 801-900 COs = 9 permits
      - 901-1000 COs = 10 permits etc.
   g. There will be no waiting list for people wanting a permit after all the currently available permits are issued.
   h. If a resident moves within Town to a new neighborhood or owns multiple properties in Town their permit will not be transferrable and will have to apply for a new permit within that subdivision.

2.9.17 Concept Review. The purpose of a concept review is to provide initial comments on a development plan before it is submitted for the subdivision or site plan process.
  2.9.17.1 Pre application conference. See Section 2.9.3.1
  2.9.17.2 Concept Review submittal. The applicant shall submit one copy of the complete application package to the Town Planner. All concept review application packages shall include:
   a. Land Use application and application fee.
   b. Concept review – pertinent Technical Criteria Form
   c. Title commitment or proof of ownership or proof of authorized agent
   d. Written statement to describe the precise nature of the proposed design and its characteristics.
   e. Vicinity map
   f. Conceptual drawing to scale
  2.9.17.3 Town Planner shall review for completeness. See Section 2.9.3
  2.9.17.4 Referrals. Referrals shall be sent to all affected agencies and local governments,
and specific property owners, if applicable.

2.9.17.5 Staff/referral review. Staff will complete a review of the concept drawing based on the Town’s concept review criteria. Staff will then prepare a report identifying and issues of concern that the applicant shall address and forward it to the applicant.

2.9.17.6 Concept review criteria. The Town shall use the following criteria in addition to other applicable provisions of this Code to evaluate the applicant’s concept plan.

- a. The concept represents a functional system of land use and is consistent with the rationale and criteria set forth in this Code and the Town Comprehensive Plan.
- b. The transportation design is adequate, given existing and planned capacities of those systems.
- c. Negative impacts on adjacent land uses have been identified and mitigated.

2.9.18 Modification to Prior Approval. A modification to prior approval is an administrative review procedure for minor changes of a previously approved development application. Concept review will be required to determine if the proposed changes fall within the modification to prior approval.

2.9.18.1 Applicability. A modification to prior approval is permitted when:

- a. The amended plan continues to comply with the standards of this code, per the original approval;
- b. The amended plan does not change more than 10% of any measurable standard on the approved plan;
- c. The amended plan does not change the character of the development;
- d. The amended plan does not change the boundary of the approved plan or show improvements outside of the boundary of the approved plan;

2.9.18.2 Pre application conference. See section 2.9.3.1

2.9.18.3 Modification to prior approval application submittal. The applicant shall submit a complete Modification to prior approval application package to the Town Planner. Modification to prior approval application package shall include the following unless waived by the Town Planner:

- a. Land Use application and application fee.
- b. Modification to Prior Approval – pertinent Technical Criteria Form
- c. Title commitment or proof of ownership or proof of authorized agent
- d. Written statement to describe the precise nature of the proposed modification and its characteristics.
- e. Approved Drawings/Documents
- f. Proposed modification drawings/documents

2.9.18.4 Town Planner shall review for completeness. See section 2.9.3

2.9.18.5 Referrals. Referrals shall be sent to all affected agencies and local governments, and specific property owners.

2.9.18.6 Posting a sign. See Section 2.9.4

2.9.18.7 Decision. After certification that the application is complete, and meets all of the Town Criteria, the Town Planner shall render a determination if the modification shall be an administrative approval approved with conditions or denied.
2.9.18 Review criteria
a. Same as originally approved process

2.9.19 Change in Use. Change in use review is an administrative review procedure in which there is a change within a structure from one permitted use to another which will result in no further development of the site beyond the original approval, or existing site conditions, or increased impacts such as traffic. Further, all changes in use will require building permit submission and approvals. If a change in use results in an increased impact then a development site plan review will be required per Section 2.9.9 per determination of the Community Development Director.

<table>
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<th>ADVANTAGES:</th>
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<tr>
<td>• This change may reduce the cost to developers while maintaining an acceptable amount and type of security that the Town can access in the event that the Town needs to remedy a project.</td>
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<tr>
<td>• Formalizes the process for applicants/owners to make changes to their property regarding uses and minor modifications.</td>
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<tr>
<td>• Provides additional clarity as it relates to short term vacation rentals within the Town.</td>
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<th>DISADVANTAGES:</th>
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<tbody>
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<td>• None</td>
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<th>FINANCIAL IMPACT:</th>
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<td>• Very minimal impacts, but there would be a small increase in revenue associated with new application types</td>
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<th>RECOMMENDED MOTION:</th>
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<tr>
<td>• I move to recommend approval of Ordinance 8, Series 2018, Amendments to the Land Use Code.</td>
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<th>ATTACHMENTS:</th>
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<td>1. Ordinance</td>
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AN ORDINANCE ADOPTING BY REFERENCE AMENDMENTS OF THE LAND USE ORDINANCES OF THE TOWN OF A GENERAL AND PERMANENT NATURE, ENTITLED THE “TIMNATH LAND USE CODE, 2015 EDITION”

WHEREAS, The Town of Timnath (the "Town") is a home rule municipality operating under the Timnath Home Rule Charter (the “Charter”) adopted on November 7, 2006 and the Town’s Municipal Code (the “Code”). Pursuant to the Charter, the Code and the authority given home rule municipalities, the Town may adopt and amend ordinances; and

WHEREAS, The Timnath Planning Commission held a regularly scheduled meeting on February 6, 2018 and recommended approval to Town Council unanimously by 5-0 vote; and

WHEREAS, The Timnath Town Council held a regularly scheduled meeting on February 27, 2018 and upon hearing the statements of staff, the applicant(s) and giving consideration to the recommendations, to the Town Council determines as provided below; and

WHEREAS, The Town Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the preservation of public health, welfare, peace, safety and property and that this Ordinance is necessary for the protection of public convenience and welfare.

NOW, THEREFORE, THE COUNCIL OF THE TOWN OF TIMNATH, COLORADO, ORDAINS:

SECTION 1 – AMENDMENTS
   1. Set forth as Exhibit A

SECTION 2 – SEVERABILITY
If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Council hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one or parts be declared unconstitutional or invalid.

SECTION 3 – REPEAL
Any and all ordinances or codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such ordinance or code or part thereof shall not revive any other section or part of any ordinance or code heretofore repealed or superseded and this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this Ordinance.
ARTICLE 4 – EFFECTIVE DATE
This Ordinance shall take effect upon adoption at second reading, as provided by Section 3.5.5 of the Charter.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH ON FIRST READING, ON FEBRUARY 13, 2018, AND SET FOR PUBLIC HEARING AND SECOND READING AT 6:00 P.M. ON FEBRUARY 27, 2018 AT THE TIMNATH ADMINISTRATION BUILDING, 4800 GOODMAN STREET, TIMNATH COLORADO AND ORDERED PUBLISHED BY TITLE THIS 13TH DAY OF FEBRUARY 2018.

MOVED, SECONDED AND FINALLY ADOPTED ON SECOND READING FOLLOWING PUBLIC HEARING BY THE TIMNATH TOWN COUNCIL ON FEBRUARY 27, 2018.

TOWN OF TIMNATH, COLORADO

Jill Grossman-Belisle, Mayor

ATTEST:

__________________________________________
Milissa Peters, CMC
Town Clerk
EXHIBIT A
Land Use Code Amendments
(see attached)
6.7.2. Security Requirements

A. Completion Security: To assure the construction, installation, and completion of the Public Improvements in all Phases of the Property, Developer shall, prior to commencing any work within a particular Phase of the Property, furnish to the Town Engineer an irrevocable sight draft letter of credit or other security reasonably acceptable to the Town Engineer as listed below (“Completion Security”) to secure the completion of Public Improvements required for the applicable Phase of the development. The Town of Timnath shall be designated as the beneficiary of the Completion Security. The Completion Security shall be provided Phase by Phase and shall be in the amount equal to one hundred percent (100%) of the estimated costs of the Public Improvements to be completed within a Phase. The amount of the Completion Security shall not include the portion of the Public Improvements which are to be constructed for the water improvements managed by the Water District or the sanitary sewer improvements managed by the Sewer District, nor shall it include any costs of improvements for gas, electric, telephone, or cable TV.

1. Upon provision of such Completion Security to the Town in a manner acceptable to the Town Engineer for the applicable Phase, authorization to proceed with construction may be issued by the Town Engineer within such Phase.

2. **Completion Security may be comprised of the following options:**
   - A construction completion bond – Bond may not to exceed 80% of the total cost of the Public Improvements.
   - Sight draft Letter of Credit – minimum 20% of the total cost of the Public Improvements if combined with a warranty Bond.
   - Cash

3. Upon completion of fifty percent (50%) or more of the improvements within a Phase, as verified by the Town Engineer, Developer may request that the one hundred percent (100%) Completion Security be reduced to fifty percent (50%) of the initial Completion Security pending Town approval and at the sole discretion of the Town Engineer.

4. Upon issuance of a Letter of Initial Acceptance of 100% of the required improvements by the Town Engineer in accordance with the provisions herein, the Completion Security will be reduced to twenty percent (20%) of the initial Completion Security to be held as Warranty Security or released once replaced by Warranty Security as described below. This requirement for a Completion Security also applies to earthwork performed under a separate “Early Grading Permit” if so applied for and issued by the Town with the exception that no Warranty Security will be held upon completion of the Early Grading Permit for the grading improvements.

B. Warranty Security: Developer shall warrant any and all Public Improvements for a period of two (2) years from the date Town issues a letter of Initial Acceptance for the applicable Phase that has been constructed. As a condition of issuance of any letter of Initial Acceptance of any Public Improvements, Developer shall provide to Town a warranty bond sight draft letter of credit or other security in a form satisfactory to the Town Engineer (“Warranty Security”), and in the amount of the remaining Completion Security set forth in paragraph above, to ensure that Public Improvements for which Initial Acceptance has occurred will attain Final Acceptance by the Town during the Warranty Period, which Warranty Security will be satisfied by either retention or replacement of the remaining Completion Security.
1. If prior to the issuance of a letter of Final Acceptance, any significant warranty work is required in connection with Public Improvements for which a letter of Initial Acceptance has been issued by the Town Engineer, the Town may require Warranty Security for up to two (2) years from the date of completion of said significant warranty work, provided that the two (2) year period for the remainder of the Public Improvements in such Phase shall not be extended. In such event, the Town Engineer shall issue a supplemental letter of Initial Acceptance specifying the Warranty Security required by Town and the work to be completed by Developer prior to a letter of Final Acceptance for such Public Improvements.

4.4.26.13 Short Term Rental Permits will be issued to residents in a limited quantity based on the following regulations:
   a. Each subdivision, neighborhood, or current old town area will be allowed 1% of the total number of COs (Certificate of Occupancy) issued.
   b. Rentable Multi-Family Residential units will not count towards permitting numbers.
   c. Permits will be on a first come first serve basis.
   d. Single Family, Attached Single Family, Ownership Multi-Family COs will be used to determine the number of available permits.
   e. The number of permits will increase as the total number of COs increase and will be updated on an annual basis.
   f. The number of permits available based on COs will be as follows:
      - 1-100 COs = 1 permit
      - 101-200 COs = 2 permits
      - 201-300 COs = 3 permits
      - 301-400 COs = 4 permits
      - 401-500 COs = 5 permits
      - 501-600 COs = 6 permits
      - 601-700 COs = 7 permits
      - 701-800 COs = 8 permits
      - 801-900 COs = 9 permits
      - 901-1000 COs = 10 permits etc.
   g. There will be no waiting list for people wanting a permit after all the currently available permits are issued.
   h. If a resident moves within Town to a new neighborhood or owns multiple properties in Town their permit will not be transferrable and will have to apply for a new permit within that subdivision.

2.9.17 Concept Review. The purpose of a concept review is to provide initial comments on a development plan before it is submitted for the subdivision or site plan process.
   2.9.17.1 Pre application conference. See Section 2.9.3.1
   2.9.17.2 Concept Review submittal. The applicant shall submit one copy of the complete application package to the Town Planner. All concept review application packages shall include:
      a. Land Use application and application fee.
      b. Concept review – pertinent Technical Criteria Form
      c. Title commitment or proof of ownership or proof of authorized agent
2.9.18

Modification to Prior Approval. A modification to prior approval is an administrative review procedure for minor changes of a previously approved development application. Concept review will be required to determine if the proposed changes fall within the modification to prior approval.

2.9.18.1 Applicability. A modification to prior approval is permitted when:
   a. The amended plan continues to comply with the standards of this code, per the original approval;
   b. The amended plan does not change more than 10% of any measurable standard on the approved plan;
   c. The amended plan does not change the character of the development;
   d. The amended plan does not change the boundary of the approved plan or show improvements outside of the boundary of the approved plan;

2.9.18.2 Pre application conference. See section 2.9.3.1

2.9.18.3 Modification to prior approval application submittal. The applicant shall submit a complete Modification to prior approval application package to the Town Planner. Modification to prior approval application package shall include the following unless waived by the Town Planner:
   a. Land Use application and application fee,
   b. Modification to Prior Approval – pertinent Technical Criteria Form
   c. Title commitment or proof of ownership or proof of authorized agent
   d. Written statement to describe the precise nature of the proposed modification and its characteristics,
   e. Approved Drawings/Documents
   f. Proposed modification drawings/documents

2.9.18.4 Town Planner shall review for completeness. See section 2.9.3

2.9.18.5 Referrals. Referrals shall be sent to all affected agencies and local governments, and specific property owners.

2.9.18.6 Posting a sign. See Section 2.9.4
2.9.18.7 Decision. After certification that the application is complete, and meets all of the Town Criteria, the Town Planner shall render a determination if the modification shall be an administrative approval approved with conditions or denied.

2.9.18.8 Review criteria
   a. Same as originally approved process

2.9.19 Change in Use. Change in use review is an administrative review procedure in which there is a change within a structure from one permitted use to another which will result in no further development of the site beyond the original approval, or existing site conditions, or increased impacts such as traffic. Further, all changes in use will require building permit submission and approvals. If a change in use results in an increased impact then a development site plan review will be required per Section 2.9.9 per determination of the Community Development Director.
**EXECUTIVE SUMMARY:**
On the occasion that a building permit expires due to inactivity, the Town currently only allows for extensions in writing or in the case that an extension is not requested the permit will expire and will need to be re-instated. The re-instatement of said permit requires that the permit fees be paid in full as if it were a new permit. To provide some relief to this requirement, staff is requesting that the language be revised to allow for the fee to be reduced to half the original permit fee amount in the case of a permit that is exactly the same as the original plans and specifications and that the suspension of the work has not exceeded a year.

Town Staff and SAFEbuilt are comfortable with this change as it takes much less effort to re-instate an expired permit than collecting the full fees as would be required with the current code.

**STAFF RECOMMENDATION:**
Staff recommends approval of the amendments to Chapter 18 – Building Regulations of the municipal code to revise the code language for expired building permits.

**KEY POINTS/SUPPORTING INFORMATION:**
The Town of Timnath Town Council adopted Chapter 18 – Building Regulations and by reference the 2012 edition of the International Building Code with the amendments enumerated therein. The following amendments are being proposed to Section 105 – Permits and more specifically sub-Section 105.5 – Expiration, of the 2012 edition of the International Building Code by deleting the current code language and replacing with what follows as proposed:

**Current:**
Section 105.5 – Expiration: Every Permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

**Proposed:**
Section 105.5 – Expiration: Every permit issued by the building official under the provisions of this code shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within 180 days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefor shall be one half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work, and provided further that such suspension or abandonment has not exceeded one year. In order to renew action on a permit after expiration, the permittee shall pay a new full permit fee.
**ADVANTAGES:**
1. Provides clarity for re-instatement of an expired permit.
2. Allows permits that have expired to be re-instated without opening a new permit.
3. Provides relief to contractors/home builders when permits expire.

**DISADVANTAGES:**
1. Currently, the Town passes on the permit review fee to SAFEbuilt. SAFEbuilt has implemented this amendment elsewhere and is comfortable with the change, the $\frac{1}{2}$ fee reduction will cover their review and re-instatement costs, but it is less than what would be required as per the current code language.
2. The Town will recover a portion of their fees, but it is less than what would be required per the current code language.

**FINANCIAL IMPACT:** The Town and SAFEbuilt will recoup half of the review fees associated with re-instatement of an expired permit in lieu of the fees that would be required for a new permit. Both the Town and SAFEbuilt are comfortable with this arrangement as the effort associated with re-instating an expired permit that is exactly the same as the original permit is less than would be required with a new permit.

**RECOMMENDATIONS:**
I move to recommend approval of Ordinance 7, Series 2018, an Ordinance amending Chapter 18 – Building Regulations of the municipal code to revise the code language for expired building permits.

**ATTACHMENTS:**
1. Ordinance
TOWN OF TIMNATH, COLORADO
ORDINANCE NO. 7, SERIES 2018

AN ORDINANCE AMENDING CHAPTER 18 – BUILDING REGULATIONS OF THE MUNICIPAL CODE TO REVISE THE FEE FOR EXPIRED BUILDING PERMITS

WHEREAS, The Town of Timnath (the "Town") is a home rule municipality operating under the Timnath Home Rule Charter (the “Charter”) adopted on November 7, 2006 and the Town’s Municipal Code (the “Code”). Pursuant to the Charter, the Code and the authority given home rule municipalities, the Town may adopt and amend ordinances; and

WHEREAS, the Town of Timnath Town Council adopted Chapter 18 – Building Regulations and by reference the 2012 edition of the International Building Code with the amendments enumerated therein; and

WHEREAS, the Town Council of the Town of Timnath amends the current Chapter 18 – Building Regulations and more specifically the 2012 edition of the International Building Code Section 105.5 regarding the expiration of building permits and the reinstatement of such expired permit; and

WHEREAS, The Town Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the preservation of public health, welfare, peace, safety and property and that this Ordinance is necessary for the protection of public convenience and welfare.

NOW, THEREFORE, THE COUNCIL OF THE TOWN OF TIMNATH, COLORADO, ORDAINS:

ARTICLE 1 - The Town Council hereby approves the following amendments to Chapter 18 – Building Regulations, specifically Section 105 – Permits and more specifically Section 105.5 – Expiration of the 2012 edition of the International Building Code is amended by the deletion of this section in its entirety and replaced with the following:

Section 105.5 – Expiration: Every permit issued by the building official under the provisions of this code shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within 180 days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefor shall be one half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work, and provided further that such suspension or abandonment has
not exceeded one year. In order to renew action on a permit after expiration, the permittee shall pay a new full permit fee.

**ARTICLE 2 – SEVERABILITY**
If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision, or application shall not affect any of the remaining parts, provisions or applications of this Ordinance that can be given effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

**ARTICLE 3 – CODE REVISIONS**
Minor changes such as the format and other changes to unify the revised Code may be necessary. The Town Clerk is hereby authorized to make such changes, provided that neither the intent nor substantive content will be altered by such changes.

**ARTICLE 4 – EFFECTIVE DATE**
This Ordinance shall take effect upon adoption at second reading, as provided by Section 3.5.5 of the Charter.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH ON FIRST READING, ON JANUARY 23, 2018, AND SET FOR PUBLIC HEARING AND SECOND READING AT 6:00 P.M. ON FEBRUARY 13, 2018 AT THE TIMNATH ADMINISTRATION BUILDING, 4800 GOODMAN STREET, TIMNATH COLORADO AND ORDERED PUBLISHED BY TITLE THIS 23RD DAY OF JANUARY 2018.

MOVED, SECONDED AND FINALLY ADOPTED ON SECOND READING FOLLOWING PUBLIC HEARING BY THE TIMNATH TOWN COUNCIL ON FEBRUARY 13, 2018.

TOWN OF TIMNATH, COLORADO

______________________________
Jill Grossman-Belisle, Mayor

**ATTEST:**

______________________________
Milissa Peters, CMC
Town Clerk
**EXECUTIVE SUMMARY:** The attached agreement with Buxton Company will assist the Town in retail attraction. Buxton Company is a large retail recruitment company that has both governments and retailers/restaurants as clients. The company will assist us with identifying national, regional and local retailers, restaurants and services to bring to Timnath. They will assist with marketing material preparation, coordinate meetings at ICSC (a major retailer trade show with 40,000+ attendees), help us identify appropriate companies that are compatible with the Town’s vision for economic development and assist with introductions to key site selectors. In addition, the first year fee includes access to Visa credit card information to identify where Timnath shoppers live. Given that Costco is a Visa retailer, we will be able to determine where individuals shopping at Costco and Walmart come from. It is a three-year contract that can be cancelled with sixty days’ notice.

**STAFF RECOMMENDATION:** Staff recommends approval of the resolution and agreement.

**KEY POINTS/SUPPORTING INFORMATION:**

- Buxton Company is a company that works with both the retail community and local government agencies.
- Local government clients include:
  - Downtown Dallas, Inc.
  - Flagstaff, Arizona
  - City of Lamar, Colorado
  - City of Lakewood, Colorado
  - City of Dayton, Ohio
  - City of Prescott, Arizona
  - Maui
- They are familiar with our area and region and have visited to meet with us.
- It is a three-year contract with costs as follows:
  - Year one - $65,000
  - Year two - $50,000
  - Year three - $50,000
- Contract can be cancelled with sixty days’ notice.
**ADVANTAGES:** Provides support to staff for attraction of retailers/restaurants with hard data on Timnath’s trade area and market.

**DISADVANTAGES:** None.

**FINANCIAL IMPACT:** Economic development consultation is included in the 2018 budget. Successful attraction of the right businesses will increase the Town’s revenues and provide services sought by our residents.

**RECOMMENDED MOTION:** I move approval of Resolution No. 14, Series 2018 entitled “A Resolution Approving an Agreement with Buxton Company.”

**ATTACHMENTS:** 1. Resolution  
2. Agreement
TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 14, SERIES 2018

A RESOLUTION APPROVING AN AGREEMENT WITH BUXTON COMPANY

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 an agreement (“Agreement”) with the Buxton Company for retail recruitment services; and

WHEREAS, the Town Council is familiar with the Agreement and finds it to be in the best interest of the Town, its residents, and the general public.

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

Section 1. Approval
The Agreement is hereby approved in substantially the form as attached hereto, subject to technical or otherwise non-substantive modifications, as deemed necessary by the Town Manager in consultation with the Town Planner, Engineer, Legal Counsel, and other applicable staff or consultants.


TOWN OF TIMNATH, COLORADO

____________________________________
Jill Grossman-Belisle, Mayor

ATTEST:

____________________________________
Milissa Peters, CMC
Town Clerk
INDEPENDENT CONTRACTOR AGREEMENT
(Market Research and Marketing Services)

This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the “Agreement”), is entered into as of the 13th day of February, 2018, by and between THE TOWN OF TIMNATH, a home rule municipal corporation and political subdivision of the State of Colorado (the “Town”), and BUXTON COMPANY, a Texas corporation registered and in good standing with the State of Colorado (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, et seq., C.R.S.; 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; (c) in such a manner as to minimize any annoyance, interference or disruption to the residents, tenants, occupants and invitees within the Town; and (d) 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 13, 2018, and shall terminate on the earlier to occur of: (i) termination pursuant to Section 19 hereof; (ii) completion of the Services; or (iii) December 31, 2020. Notwithstanding the foregoing, this Agreement shall terminate pursuant to (i) or (ii) above or if the Town determines not to appropriate funds for this Agreement for the next succeeding year.

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

3. ADDITIONAL SERVICES. The Town may 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 of which it becomes aware. 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. Review, acceptance or approval by the Town of the Services performed or any documents prepared by the Contractor shall not relieve the Contractor of any responsibility for deficiencies, omissions or errors in said Services or documents, nor shall it be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

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

7. COMPENSATION AND INVOICES.

a. Compensation. Compensation for the Services provided under this Agreement shall be in accordance with the compensation schedule attached hereto in Exhibit A. The Contractor shall be responsible for all expenses it incurs in performance of this Agreement and
shall not be entitled to any reimbursement or compensation except as provided in Exhibit A of this Agreement, unless said reimbursement or compensation is approved in writing by the Town in advance of incurring such expenses. Any direct reimbursable costs for materials will be reimbursable at the Contractor’s actual cost, provided that the Contractor shall make a reasonable attempt to notify the Town of the estimated amount of such reimbursable costs (or any material adjustments thereto subsequently identified) prior to commencing the requested services. Concurrent with the execution of this Agreement, the Contractor shall provide the Town with a current completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification) (“W-9”). No payments will be made to the Contractor until the completed W-9 is provided. The W-9 shall be attached hereto and incorporated herein as Exhibit B.

b. Invoices. Invoices for the Services shall be submitted as provided in Exhibit A 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.

8. TIME FOR PAYMENT. Payment for the Services shall be made by the Town within thirty (30) days of receipt of: (i) a timely, satisfactory and detailed invoice; and (ii) if applicable, a satisfactory and detailed Monthly Report, for that portion of the Services performed and not previously billed. The Town may determine to waive or extend the deadline for filing the Monthly Report, or may make payment for Services to the Contractor notwithstanding a delay in filing the Monthly Report, upon reasonable request of the Contractor, if it is in the best interest of the Town to do so. In the event a Town Council meeting is not scheduled in time to review payment of an invoice, the Town hereby authorizes payment for Services, subject to the appropriation and budget requirements under Section 28, without the need for additional Town 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 Town Council meeting.

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

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

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

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

a. The Contractor shall not knowingly employ or contract with an illegal alien who will perform work under the public contract for services contemplated in the Agreement 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 in the Agreement.

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 in the Agreement.
c. The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-Verify Program or the Department Program.

d. The Contractor is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

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

i. Notify the subcontractor and the Town within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien.

ii. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required above the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

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

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

12. CONTRACTOR’S INSURANCE.

a. The Contractor shall acquire and maintain, at its sole cost and expense, during the entire term of this Agreement, insurance coverage in the minimum amounts set forth in Exhibit 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 Commercial General Liability and Comprehensive Automobile Liability Insurance policies will be endorsed to name the Town as an 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 required by this Section 12 of the Agreement.
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, which certificate(s) shall be attached hereto as Exhibit C-1. 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 in the Agreement; nor shall the purchase of the required insurance serve to limit the Contractor’s liability under any provision in the Agreement. The Contractor shall be responsible for the payment of any deductibles on issued policies.

13. CONFIDENTIALITY AND CONFLICTS.

a. Confidentiality. During the performance of this Agreement, if the Contractor is notified that certain information is to be considered confidential, the Contractor, on behalf of its employees, agrees to enter into a confidentiality agreement. Any information deemed confidential by the Town and given to the Contractor by the Town, or developed by the Contractor as a result of the performance of a particular task, shall remain confidential. In addition, the Contractor shall hold in strict confidence, and shall not use in competition, any information which the Contractor becomes aware of under or by virtue of this Agreement which the Town deems confidential, or which the Town has agreed to hold confidential, or which, if revealed to a third party, might reasonably be construed to be contrary to the best interests of the Town.

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

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

15. LIENS AND ENCUMBRANCES. The Contractor shall not have any right or interest in any Town assets, nor any claim or lien with respect thereto, arising out of this Agreement or the performance of the services contemplated in the Agreement. 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 16(b), below.

16. INDEMNIFICATION.

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

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

c. This indemnity coverage shall also cover the Town’s defense costs in the event that the Town, in its sole discretion, elects to provide its own defense. The Town retains the right to disapprove counsel, if any, selected by the Contractor to fulfill the foregoing defense indemnity obligation, which right of disapproval shall not be unreasonably exercised. Insurance
coverage requirements specified in the Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the Town’s protection in the performance of this Agreement. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

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

18. SUB-CONTRACTORS. The Contractor is solely and fully responsible to the Town for the performance of all Services under this Agreement, whether performed by the Contractor or a subcontractor engaged by the Contractor. The Contractor shall not subcontract any Services without prior written approval by the Town. The Contractor agrees that each and every agreement of the Contractor with any subcontractor to perform Services under this Agreement shall contain an indemnification provision identical to the one contained in Section 16 of this Agreement holding the Town harmless for the acts of the subcontractor. The Contractor further agrees that any such subcontract shall be terminable for cause or convenience and that, unless directed otherwise by the Town, the Contractor shall immediately terminate all such subcontracts immediately upon termination of this Agreement. Prior to commencing any Services, a subcontractor shall provide evidence of insurance coverage to the Town. The Contractor further agrees that all such subcontracts shall provide that they may be terminated immediately without further cost upon termination of this Agreement. Neither the Town’s approval of any subcontractors, suppliers or materialmen, nor the failure of performance thereof by such parties, will relieve, release or affect in any manner any of the Contractor’s duties, liabilities or obligations under this Agreement, and the Contractor will at all times be and remain fully liable. The Contractor agrees that each of its employees, and any subcontractors, suppliers and materialmen will be properly qualified and will use reasonable care in the performance of their duties.

19. TERMINATION. In addition to the termination provisions contained in Section 2, above, the initial term of this Agreement, subject to the annual appropriation provisions contained herein, is for three (3) years with Services invoiced annually. At any time during this initial three-year term, the Town may terminate the Agreement for cause or convenience for the following year by provided written notice to the Contractor at least sixty (60) days in advance of the end of the year. If the Town cancels the Service prior to the expiration of the initial three-year term, the Town will be invoiced ten percent (10%) of the total remaining balance as shown on Exhibit A. Written notice shall not be required for automatic expiration under Section 2, above. 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.
20. **DEFAULT.** If either Party fails to perform in accordance with the terms, covenants and conditions of this Agreement, or is otherwise in default of any of the terms of this Agreement, the non-defaulting party shall deliver written notice to the defaulting party of the default, at the address specified in Section 21 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 fifteen (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.

21. **NOTICES.** Any notice or communication required under this Agreement must be in writing, and may be given personally, sent via nationally recognized overnight carrier service, or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same will be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent; or (ii) three days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or sent via nationally recognized overnight carrier service, a notice will be deemed to have been given and received on the first to occur of: (i) one business day after being deposited with a nationally recognized overnight air courier service; or (ii) delivery to the party to whom it is addressed. Any party hereto may at any time, by giving written notice to the other party hereto as provided in this Section 21 of the Agreement, 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
4800 Goodman Street
Timnath, CO 80547
Attention: April D. Getchius, Town Manager
970-224-3211 (phone)
970-224-3217 (fax)
agetchius@timnathgov.com

With copy to: **WHITE BEAR ANKELE TANAKA & WALDRON**
Attorneys at Law
2154 East Commons Avenue, Suite 2000
Centennial, Colorado 80122
Attention: Robert G. Rogers, Esq.
(303) 858-1800 (phone)
(303) 858-1801 (fax)
22. AUDITS. The Town shall have the right to audit, with reasonable notice, any of the Contractor’s books and records which may be necessary to substantiate any invoices and payments under this Agreement (including, but not limited to, receipts, time sheets, payroll and personnel records) and the Contractor agrees to maintain adequate books and records for such purposes during the term of this Agreement and for a period of two (2) years after termination of the Agreement and to make the same available to the Town at all reasonable times and for so long thereafter as there may remain any unresolved question or dispute regarding any item pertaining thereto.

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

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

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

26. GOVERNING LAW / DISPUTES.

a. Arbitration. All claims, counterclaims, disputes and other matters in question between the Parties hereto arising out of or relating to this Agreement or the breach hereof may be decided by Arbitration upon the mutual agreement to do so by the Parties to this Agreement. In that case, arbitration will be administered by the Judicial Arbiter Group in Denver, Colorado under its arbitration rules, by a single arbitrator, unless a different arbitrator is agreed upon by the Parties. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. THE PARTIES RECOGNIZE THAT BY AGREEING TO BINDING ARBITRATION AS THE METHOD FOR DISPUTE RESOLUTION, THEY RELINQUISH THE RIGHT TO BRING AN ACTION IN COURT AND WAIVE THE RIGHT TO A JURY TRIAL AND THE EXTENSIVE DISCOVERY RIGHTS TYPICALLY PERMITTED IN JUDICIAL PROCEEDINGS. Colorado law shall apply to any dispute, without regard to conflict of law.
principles that would result in the application of any law other than the law of the State of Colorado. Each Party will be responsible for paying one half of all fees and expenses charged by the arbitrator. Notice of request for arbitration must be filed in writing with the other Party(ies) to this Agreement. If agreed to, notice must be filed with the Judicial Arbiter Group. The request must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. In the event that the Parties do not agree to arbitration, each party shall be permitted to pursue all available legal and equitable remedies.

b. **Litigation and Venue.** In the event the Parties do not agree to arbitration pursuant to Section 26(a), above, venue for all actions arising from this Agreement shall be in the District Court in and for the county in which the Town is located. 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.

c. **Prevailing Party.** Other than arbitration fees as set forth in Section 26(a) of the Agreement, in the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, whether by litigation, arbitration or other proceedings, the prevailing party shall recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney’s fees. For purposes of this Agreement, “prevailing party” shall mean the party in whose favor a judgment, decree, or final order is rendered, either by an arbitrator or the court, after appeal, if any. In the event both Parties prevail on one or more claims, the prevailing party shall mean the net winner of a dispute, taking into account the claims pursued, the claims on which the pursuing party was successful, the amount of money sought, the amount of money awarded, and offsets or counterclaims pursued (successfully or unsuccessfully) by the other Party. Notwithstanding the foregoing, if a written offer of compromise made by either Party is not accepted by the other Party within thirty (30) days after receipt and the Party not accepting such offer fails to obtain a more favorable judgment, the non-accepting Party shall not be entitled to recover its costs of suit and reasonable attorney’s fees and costs (even if it is the prevailing party) and shall be obligated to pay the costs of suit and reasonable attorney’s fees and costs incurred by the offering Party.

d. **At the Town’s request,** the Contractor will consent to being joined in litigation between the Town and third parties, but such consent shall not be construed as an admission of fault or liability. The Contractor shall not be responsible for delays in the performance of the Services caused by factors beyond its reasonable control including delays caused by Act of God, accidents, failure of any governmental or other regulatory authority to act in a timely manner or failure of the Town to furnish timely information or to approve or disapprove of Contractor’s Services in a timely manner.

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

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

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

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

31. **SEVERABILITY.** If any covenant, term, condition or provision of this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition or provision shall not affect any other provision contained in the Agreement, the intention being that such provisions are severable. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

32. **NO THIRD PARTY BENEFICIARIES.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the Parties that any person other than Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
33. **OPEN RECORDS.** The Parties understand that all material provided or produced under this Agreement may be subject to the Colorado Open Records Act, §§ 24-72-202, *et seq.*, C.R.S.

34. **WARRANTY.** The Contractor shall and does by this Agreement guarantee and warrant that all workmanship, materials, and equipment furnished, installed, or performed for the accomplishment of the Services (collectively, the “Work”) will be of good quality and new, unless otherwise required or permitted by the Agreement. The Contractor further warrants that the Work will conform to all requirements of the Agreement and all other applicable laws, ordinances, codes, rules and regulations of any governmental authorities having jurisdiction over the Work. All Services are subject to the satisfaction and acceptance of the Town, but payments for the completed Work will not constitute final acceptance nor discharge the obligation of the Contractor to correct defects at a later date. Such warranties set forth in the Agreement are in addition to, and not in lieu of, any other warranties prescribed by Colorado law.

35. **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. The 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.

36. **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 and political subdivision of the State of Colorado

______________________________
Jill Grossman-Belisle, Mayor

ATTEST:

______________________________
Town Clerk

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law

______________________________
General Counsel to the Town

Town’s Signature Page to Independent Contractor Agreement for Market Research and Marketing Services with the Town of Timnath, dated February 13, 2018
BUXTON COMPANY, a Texas corporation registered and in good standing with the State of Colorado

______________________________
Printed Name: ____________________

Title: ______________________________

STATE OF COLORADO                      )
COUNTY OF ____________                  ) ss.

The foregoing instrument was acknowledged before me this ___ day of __________, 2018, by ________________________________, as the ________________________________ of Contractor.

WITNESS my hand and official seal.

My commission expires: ____________________________

(S E A L)

Notary Public

Contractor’s Signature Page to Independent Contractor Agreement for Market Research and Marketing Services with the Town of Timnath, dated February 13, 2018
EXHIBIT A
SCOPE OF SERVICES AND COMPENSATION SCHEDULE
Proposal

RETAIL RECRUITMENT & VISITOR INSIGHTS SOLUTION

Town of TIMNATH

Prepared by: Parker Key
Expiration: March 30, 2018
OUR VALUE PROPOSITION

Since our founding in 1994, Buxton has been a leading force in retail site selection and development. We are recognized for creating solutions that provide results. Buxton began as a service to help retailers make informed site selection decisions by understanding their customers and precisely determining their markets. Buxton soon realized that the company’s expertise in retail site and market analysis could also be leveraged to benefit communities desiring retail expansion.

More than simply providing data, Buxton supplies custom marketing materials and strategies targeting the unique site requirements of retailers, developers, and commercial real estate brokers. Buxton clients achieve outstanding success using our tools for retail identification, selection, and recruitment. Clients benefit from Buxton’s unique understanding of site selection from the retailer’s point of view.

- **Grow Your Community.** Create new, permanent jobs that will satisfy your citizens’ desire to shop at home; retain dollars currently spent outside of your community and maximize revenue growth to fund city services

- **Leverage Buxton’s Retail Industry Expertise.** Establish credibility with decision makers by providing factual evidence to support your site and gain a competitive position by leveraging our experience:
  - 4,000+ total clients from the retail, restaurant, healthcare, and public sector industries
  - 800+ public sector clients nationwide
  - 40+ million square feet of retail space recruited
  - 500+ cumulative years of retail management and economic development experience

- **Access Your Buxton Solution with Ease.** Utilize your best-in-class retail recruitment solution via SCOUT™ with the touch of a button from any mobile device; gain answers to your retail recruitment and site analysis questions and have the big picture in the palm of your hand

- **Develop a Long-Term Partnership.** Receive personal guidance and ongoing insight into key industry topics
SCOPE OF SERVICES

Buxton is pleased to present this proposal to the Town of Timnath, CO. The purpose of this proposal is to outline and review your community development objectives and how Buxton’s solutions will enhance your ability to effectively meet those objectives.

Town of Timnath’s Objectives:

1. Understand current retail and restaurant economic condition
2. Develop profile of residents and visitors
3. Recruit sustainable, complementary retail concepts that fit the vision for Timnath’s retail sector; heavy focus on capitalizing on momentum at I-25 and Harmony Road
4. Retain and strengthen existing/future retailers and restaurants through market insights and tools

Retail Recruitment and Retention Solution: Your Community & Visitor Profile

Our solution is a total marketing strategy that enables community leaders to understand the consumer profile of their residents and to identify specific retailers and restaurants who seek a market with household purchasing habits just like yours. This solution provides you with the ability to actively pursue identified retailers, making a compelling case for their expansion to the Town of Timnath by utilizing custom marketing packages that Buxton will create for you. You will have access to the same analytical information and insights retailers depend on today to make site selection decisions. This knowledge will provide you with instant credibility and the ability to differentiate your community.

Step 1 – Research Your Community

Buxton uses over 250 consumer and business databases that are updated regularly and compares your potential sites to the universe of all competing sites operating in the U.S. We define your current retail situation and those in any neighboring communities that impact your retail environment.

Step 2 – Define and Evaluate Your Trade Area

Customers shop by convenience, measuring distance based on time, not mileage. We will conduct a custom drive-time analysis to determine your trade area using our proprietary methodology and knowledge of individual retail clients’ actual trade areas. Your drive-time trade area will be provided to you as a map that accurately depicts your consumer shopping patterns.

Step 3 – Profile Your Trade Area’s Residential and Visitor Customers

You will have insights into more than 7,500 categories of lifestyles, purchase behaviors, and media reading and viewing habits of your residents and visitors. Buxton will develop three (3) unique profiles for your solution:

1. Residential Profile – will analyze all the households in your drive-time trade area.
2. Visitor Profile – will analyze all domestic Visa expenditures for a recent twelve (12) month period where the cardholder’s originating address is located outside of your drive-time trade area. Consumer expenditures are represented in the form of percentages and are consolidated at the ZIP+4 level so as to de-identify individual cardholder information, which provides Buxton with a way to develop an accurate consumer profile of the visitors to your community.
3. Combined Total Community Consumer Profile – Buxton will combine your residential and visitor profiles to develop your overall consumer profile which will be used to match retailers and restaurants as fits for your community.
Step 4 – We Match Retailers and Restaurants to Market Potential
Buxton will match the consumer profile of your community’s trade area against the customer profiles of 5,000+ retailers in our proprietary database. We will identify the similarity between the two profiles analyzed using Buxton’s proprietary retail matching algorithm to determine if your site presents an attractive opportunity for each retailer. We then qualify the list of matched results to verify that a retailer is currently operating or expanding, that they operate in similar sites, and that your site affords adequate buffer from competition and cannibalization to be realistically considered.

Step 5 – We Create Marketing Packages
Buxton will assemble individualized marketing packages for up to twenty (20) targeted retailers. We will notify each retailer’s key real estate decision maker by letter, informing them that they have been qualified by Buxton as a potential viable fit for your site and should expect to be contacted by a representative of the city.

Your marketing packages will be delivered to you in SCOUT and include a:

1. Map of the retail site and trade area
2. Map of the retailer’s potential customers
3. Retailer match report that compares the site’s trade area characteristics and consumer profile with the retailer’s sites in similar trade areas

Step 6 – We Provide Business Retention Tools
Buxton will provide reports through SCOUT that can be used to support business retention efforts by helping local business owners to make better business decisions. In addition, Buxton is pleased to offer the Town of Timnath access to LSMx. LSMx, which stands for Local Store Marketing powered by Buxton, is a customer acquisition solution designed specifically for small business owners and franchisees. The Town of Timnath can also leverage this tool to support local businesses and entrepreneurs, foster an environment that encourages private-public partnerships, and strengthen the business climate in their community. Upon execution of the LSMx Addendum, the Town of Timnath will have access to up to 25 complimentary *LSMx monthly subscriptions/license codes to distribute to local retailers, restaurants and service providers.

Solution Deliverables:
- SCOUT Touch access
- Drive time trade area maps
- Retail site assessment
- Residential, visitor, and combined profile
- Retailer specific marketing packages (for up to twenty (20) retailers)
- Mobile tablet device at completion with pre-loaded findings
- *LSMx subscriptions (for up to twenty-five (25) monthly license codes)

Multi Year Deliverables:
Years 2 and 3 of this agreement will include a Retail Recruitment model refresh, retail marketing packages, *LSMx subscriptions, and full access to SCOUT and SCOUT Touch.

*LSMx deliverables are subject to the Town of Timnath executing the LSMx Addendum and the terms and conditions described therein.
Access and Use Your Retail Recruitment and Retention Solution via SCOUT Touch

Buxton’s Retail Recruitment and Retention solution will allow you to actively recruit retailers to your community and support existing businesses with the push of a button in SCOUT Touch, providing you with crucial information about your community, your trade areas, your residents, and much more. SCOUT is a web-based platform that is accessible on any Windows or iOS enabled device with an Internet connection. It is designed to give decision-makers in your community access to the data and solutions that will assist them in making better business decisions. The Retail Recruitment and Retention solution includes one (1) mobile tablet device that will be provided at completion and pre-loaded with all key findings. This mobile tablet device, possession of the Town of Timnath, enables four (4) SCOUT users with the ability to run demographic and trade area profile reports, and view maps and other data elements.

In Buxton’s SCOUT Touch you will be able to:

- Identify retail matches
- Run variable reports
- View city limit maps
- Run healthcare reports
- See aerial view
- View physician intelligence
- Run comparable reports
- Run demographic reports

Support local business retention and expansion efforts with reports contained in the SCOUT reporting suite, including but not limited to:

**Consumer Propensity Report**
Quantifies likelihood of consumers of a given trade area to consume various goods and services or possess certain attitudes and opinions. This report can help local entrepreneurs, business owners and store managers better optimize their merchandise/product offerings or their local marketing strategies.

**Create Profiles Report**
Profiles a specific trade area to determine the likes/dislikes, spending behavior, and marketing preferences of the households and workers within that geography. This report can help local businesses evaluate a market’s retail potential or enhance marketing efforts.

**Retail Leakage and Surplus Report**
Quantifies the potential surplus or leakage in a trade area. This guide can help businesses understand how well the retail needs of residents are being met, uncover unmet demand and opportunities, and measure the difference between actual and potential retail sales.

**Count Base Daytime Population Report**
Examines the workforce in the study area and provides a count of the workforce population by industry. This report allows retail and restaurant owners to gain insights about how the population in the trade area differs during work hours so local businesses can cater to different types of workers.
**SUPPORT**

**SCOUT Technical Requirements**
SCOUT can be accessed at the following URL: [www.buxtonco.com](http://www.buxtonco.com)

SCOUT is a web-based application accessible on any desktop, laptop, or mobile tablet device that has an Internet connection. When operating SCOUT, Buxton’s recommended hardware configuration is 4-core CPU, 4 GB RAM (or higher). Examples include most modern-day laptops or desktops purchased within the last 3 years, iPad Pro 2017 or newer, Microsoft Surface Pro 2 or newer, or Samsung Galaxy Tab S3. The recommended browser for accessing SCOUT is the latest version of Chrome.

**Buxton’s Helpdesk**
(1-817-332-3681) is available during normal office hours (8:00 AM-5:30 PM CST, excluding weekends and public holidays). Buxton’s Helpdesk team will be available to support all educational, functional, and technical inquiries and will respond to all requests within twenty-four (24) hours of submission.

<table>
<thead>
<tr>
<th>Buxton’s Helpdesk</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monday – Friday: 8:00 am – 5:30 pm CST</td>
</tr>
<tr>
<td>1-817-332-3681</td>
</tr>
</tbody>
</table>
TERM, FEES, AND DELIVERY

**Agreement Term**

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year 1</td>
<td>Fee (50% invoiced upon execution of this agreement; 50% invoiced upon targeted retailer identification)</td>
<td>$65,000</td>
</tr>
<tr>
<td>Year 2</td>
<td>Fee (Invoiced 1st anniversary of this agreement)</td>
<td>$50,000</td>
</tr>
<tr>
<td>Year 3</td>
<td>Fee (Invoiced 2nd anniversary of this agreement)</td>
<td>$50,000</td>
</tr>
</tbody>
</table>

**Three (3) Years**

**Delivery**

The Town of Timnath, CO will have access to retail match lists and marketing packages within sixty (60) business days of execution.

Your SCOUT access will be enabled within ten (10) business days of the execution of this agreement. The Town of Timnath, CO will have access to retail match lists and marketing packages within sixty (60) business days of execution. The initial term of this agreement is for three (3) years with services invoiced annually. However, at any time during this initial 3-year term, the Town of Timnath may cancel services for the following year by providing written notice to Buxton at least sixty (60) days in advance of a yearly renewal. If the Town of Timnath cancels services prior to the expiration of the initial term, the Town of Timnath will be invoiced 10% of the total remaining balance. All service fees associated with this agreement are due in net ten (10) days of the date of the invoice. Execution of this agreement will act as full consent that Buxton may include the Town of Timnath on its client list and in presentations and public relations efforts. Additionally, Buxton may issue a press release announcing the Town of Timnath as a client. When doing so, Buxton will not reveal information that is confidential and proprietary to the Town of Timnath.

**Buxton**

Signature
Printed Name
Title Date

Please provide us with a primary point of contact for invoice receipt.
Name:
Phone:
Email:
Preferred Method of Receipt: Email OR U.S. Mail

**Town of Timnath, CO**

Signature
Printed Name
Title Date

Please provide us with a primary point of contact.
Name:
Phone:
Email:
PROJECT TIMELINE

Within ten (10) business days of executed agreement:
• Acquire retail location areas from the Town of Timnath
• SCOUT access

Within sixty (60) business days post data acquisition:
• Deliver marketing packages and begin communication with retailers

• Research and verify the Town of Timnath’s retail trade area
• Define drive-time trade areas

• Evaluate the Town of Timnath’s retail potential
• Analyze retail leakage/surplus
• Examine local business retention and expansion

• Determine customer profile

• Assess retail sites
• Determine matching retailers and restaurants market potential
LSMx Addendum

Business Retention Supplement

Prepared by Parker Key
January 15, 2018

**Town of Timnath, CO**
4800 Goodman Street
Timnath, CO 80547

This Addendum is entered into between the Town of Timnath, CO (“Town of Timnath”), Buxton Company (“Buxton”), and LSMx, Inc. (“LSMx”) (each a “Party” and collectively the “Parties”). This Addendum is attached to and made part of the Agreement between Buxton and the Town of Timnath, dated __________________________ (“Buxton Agreement”).

The purpose of this Addendum is to provide the Town of Timnath with access to LSMx software subscriptions for the Term of the Buxton Agreement, unless terminated earlier as set forth in the Buxton Agreement. The Parties acknowledge that this Addendum and each of its provisions is expressly contingent upon the Buxton Agreement and associated fees remaining in full force and effect.

**Background**

LSMx, which stands for Local Store Marketing powered by Buxton, is a proprietary customer acquisition solution designed specifically for small business owners and franchisees. Local governments and economic development agencies can also leverage this tool to support local businesses and entrepreneurs, foster an environment that encourages private-public partnerships, and strengthen the business climate in their community. For each month of the Term of the Buxton Agreement, the Town of Timnath will have access to up to 25 complimentary LSMx monthly subscriptions.

**Deliverables and Terms**

- Up to 25 LSMx subscriptions will be provided at no additional charge to the Town of Timnath for designation of access at the Town of Timnath’s sole discretion to local retail, restaurant and service provider subscribers (each a “subscriber”) during the Term of the Buxton Agreement.
- Any default or termination under the Buxton Agreement will also constitute a default and termination under this Addendum. In the event that the Buxton Agreement is terminated, the 25 monthly subscriptions will be canceled, at which time, each Subscriber will have the option of continuing their subscription at standard rates. Standard rates will be the prevailing rate at the time of cancelation.
- All fees associated with advertising campaigns executed via the LSMx software by the subscriber are at an additional cost to the subscriber. Each subscriber executing advertising campaigns within the LSMx software are responsible for such costs via the credit card information they provide in the LSMx software.
- If the Town of Timnath requests services not specified in this Addendum, the parties shall enter into an additional Addendum setting forth the additional services, fees, and other mutually agreed upon terms.
- The Parties to this Addendum expressly agree to the following terms and conditions:
Each subscriber will be subject to the applicable terms and conditions contained in the LSMx software license agreement accessed via the LSMx software.

The LSMx software is provided to each subscriber under a non-exclusive, non-transferable, limited, non-sublicensable, revocable license to access and use the LSMx software.

The LSMx software is not being sold to the Town of Timnath or a subscriber and it is not available for resell.

The LSMx software license does not convey any rights in or to the LSMx software or any patent, copyright, trademark or any other intellectual property rights of LSMx. LSMx retains all right, title, and interest in and to the LSMx software (including any upgrades, improvements, modifications, derivatives, and refinements to the LSMx software).

The parties hereby agree to and accept the terms of this Addendum as of the date written below.

Buxton Company

By: __________________________
Name: David Glover
Title: Chief Financial Officer
Date: __________________________

LSMx, Inc.

By: __________________________
Name: David Glover
Title: Chief Financial Officer
Date: __________________________
LSMx, **Local Store Marketing** powered by Buxton, is a simple, but powerful, customer acquisition solution, that allows local business owners to easily see and understand:

- Who and where their best potential customers are coming from
- How far their most valuable customers are willing to drive to their location
- How many potential customers are near or around them

**LSMx:**
- Alerts users about upcoming local events that could be driving business
- Shows where specific competitors are in relation to potential customers
- Highlights traffic congestion that might interfere with performance

**Key Differentiator**
LSMx completely executes marketing campaigns to the potential customers users see right from their mobile device in just minutes. Local businesses can target the potential customers that LSMx identifies with any or all the following marketing channels:

- Direct Mail
- Email
- Facebook
- Google
- Mobile Banner Ads

**Benefits to the Town of Timnath**
- Encourages private-public partnerships
- Supports local businesses
- Provides local businesses with resources (analytics, application, marketing automation, marketing execution) normally reserved for much larger entities
- Supports business retention
- Supports localization efforts
- Supports increase in local tax income because businesses can be more successful
EXHIBIT B
CONTRACTOR’S COMPLETED W-9
EXHIBIT C
INSURANCE REQUIREMENTS

NOTE: All insurance required and provided hereunder shall also comply with the provisions of Section 12 of the Agreement.

1. Standard Worker’s Compensation and Employer’s Liability Insurance covering all employees of Contractor involved with the performance of the Services, with policy amounts and coverage in compliance with the laws of the jurisdiction in which the Services will be performed.

2. Commercial General Liability Insurance with minimum limits of liability of not less than $1,000,000 per occurrence for bodily injury and property damage liability; $2,000,000 designated location, general aggregate. Such insurance will include coverage for contractual liability, personal injury and broad form property damage, and shall include all major divisions of coverage and be on a comprehensive basis including, but not limited to:
   a. premises operations;
   b. personal injury liability without employment exclusion;
   c. blanket contractual;
   d. broad form property damages, including completed operations;
   e. medical payments;
   f. products and completed operations;
   g. independent consultants coverage;
   h. coverage inclusive of construction means, methods, techniques, sequences, and procedures, employed in the capacity of a construction consultant; and

   This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.

3. Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired automobiles used in connection with the performance of the Services, with limits of liability of not less than $1,000,000 combined single limit bodily injury and property damage. This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.

4. If applicable: Contractor shall secure and maintain a third party fidelity bond in favor of the Town covering the Contractor and its employees and agents who may provide or be responsible for the provision of Services where such activities contemplate the responsibility for money or property of the Town. Such bond shall protect the Town against any fraudulent or dishonest act which may result in the loss of money, securities, or other property belonging to or in the possession of the Town. Said bond shall be in an amount as determined by the Town, from a surety acceptable to the Town.

5. Any other insurance commonly used by contractors for services of the type to be performed pursuant to this Agreement.

6. Professional liability insurance in the amount of $1,000,000.00 each occurrence.
THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Wortham Insurance & Risk Mgmt.
1600 West Seventh Street
Fort Worth, TX  76102-2505

CONTACT
NAME: Wortham Insurance & Risk Mgmt.
FAX (A/C, No): 817 336-8257
E-MAIL ADDRESS: WorthamInsurance.com

INSURER(S) AFFORDING COVERAGE NAIC #
INSURER A : National Fire Insurance Co of H
INSURER B : Continental Casualty Company
INSURER C :
INSURER D :
INSURER E :
INSURER F :

MEMBERSHIP

POLICY NUMBER
5088174785
05/03/2017
05/03/2018

PREMISES OCCUR
EACH OCCURRENCE $1,000,000
CLAIMS-MADE PREMISES ( Ea occurrence) $300,000
MED EXP (Any one person) $15,000
PERSONAL & ADV INJURY $1,000,000
GENERAL AGGREGATE $2,000,000
PRODUCTS - COMP/OP AGG $2,000,000

POLICY NUMBER
5088174821
05/03/2017
05/03/2018

X OCCUR
COMBINED SINGLE LIMIT ( Ea accident) $1,000,000
BODILY INJURY (Per person) $
BODILY INJURY (Per accident) $
PROPERTY DAMAGE ( Per accident) $

POLICY NUMBER
WC2093007771
05/03/2017
05/03/2018
X PER STATUTE OTHER
E.L. EACH ACCIDENT $1,000,000
E.L. DISEASE - EA EMPLOYEE $1,000,000
E.L. DISEASE - POLICY LIMIT $1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
General Liability Extension Endorsement CNA74879XX 01/15
General Aggregate Limit - Designated Projects Endorsement CNA74826XX 01/15
Additional Insured - Designated Person or Organization Endorsement CNA74745XX 01/15
Waiver of Transfer of Rights of Recovery Against Others to the Insurer Endorsement CNA75008XX 01/15
Waiver of Transfer of Rights of Recovery Against Other To Us CA0444 10/13
(See Attached Descriptions)

CERTIFICATE HOLDER
Town of Timnath
4800 Goodman Street
Timnath, CO  80547

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
John L. Wortham & Son L.P.

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<table>
<thead>
<tr>
<th>Description</th>
<th>Endorsement Code</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extended Coverage Endorsement - Business Auto Plus</td>
<td>SCA23500D</td>
<td>10/11</td>
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<tr>
<td>Texas Waiver Of Our Right To Recover From Others Endorsement</td>
<td>WC420304B</td>
<td>06/14</td>
</tr>
<tr>
<td>Waiver Of Our Right To Recover From Others</td>
<td>WC000313</td>
<td>04/84</td>
</tr>
</tbody>
</table>
EXHIBIT D
CERTIFICATE OF GOOD STANDING WITH COLORADO SECRETARY OF STATE
OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Wayne W. Williams, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

Buxton Company

is an entity formed or registered under the law of Texas, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20161227026.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 02/02/2018 that have been posted, and by documents delivered to this office electronically through 02/05/2018 @ 08:46:09.

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 02/05/2018 @ 08:46:09 in accordance with applicable law. This certificate is assigned Confirmation Number 10700442.

End of Certificate

Notice: A certificate issued electronically from the Colorado Secretary of State’s Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State’s Web site, http://www.sos.state.co.us/biz/CertificateSearchCriteria.do and entering the certificate’s confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, http://www.sos.state.co.us/ click “Businesses, trademarks, trade names” and select “Frequently Asked Questions.”
**EXECUTIVE SUMMARY:** The attached contract will engage Mantooth Marketing Company to manage Timnath’s 4th of July celebration for a cost of $34,600. As of this writing, the Town has received $122,000 in donation pledges for this event.

**STAFF RECOMMENDATION:** Staff recommends approval of this resolution.

**KEY POINTS/SUPPORTING INFORMATION:**
- Private financial pledges to the Town for this event total $122,000 as of the date of this writing.
- The Town will hold the 4th of July celebration at Timnath Reservoir.
- The contract amount for Mantooth Marketing Company to coordinate this event is $34,600.
- This item is not budgeted. A Council authorization allowing this expenditure is also approved by the attached resolution.

**ADVANTAGES:** Allows the Timnath 4th of July celebration to be held in 2018.

**DISADVANTAGES:** None.

**FINANCIAL IMPACT:** This item is not budgeted but the Town has received private financial pledges to pay for the event.

**RECOMMENDED MOTION:** I move approval of Resolution No. 15, Series 2018 entitled “A Resolution Approving an Agreement with Mantooth Marketing Company.”

**ATTACHMENTS:**
1. Town Council Purchase Authorization
2. Resolution
3. Agreement
### Town Council Purchase Authorization

<table>
<thead>
<tr>
<th>Date:</th>
<th>1/23/2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vendor:</td>
<td>Mantooth Marketing Company</td>
</tr>
<tr>
<td>Department:</td>
<td>General Gov't.</td>
</tr>
<tr>
<td>Project:</td>
<td>4th of July</td>
</tr>
<tr>
<td>Description:</td>
<td>Event planning services for the 2018 4th of July</td>
</tr>
<tr>
<td>Is this purchase more than $25,000</td>
<td>Yes</td>
</tr>
<tr>
<td>Is this the purchase of Real Estate or Land</td>
<td>Yes</td>
</tr>
<tr>
<td>Is this the purchase of Public Art</td>
<td>Yes</td>
</tr>
<tr>
<td>Is this a budget request for a purchase that will exceed the approved budget</td>
<td>Yes</td>
</tr>
</tbody>
</table>

**Advantages:** Engages Mantooth Company to manage 4th of July celebration

**Disadvantages:** None. Will be paid from sponsorship revenues.

<table>
<thead>
<tr>
<th>Description</th>
<th>Approved Budget</th>
<th>Current Balance</th>
<th>Additional Budget Requested</th>
<th>Requested</th>
<th>Budget Remaining</th>
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<tr>
<td>4th of July</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$34,600</td>
<td>$0</td>
</tr>
</tbody>
</table>

**Financial Impact:** Additional expense from general fund balance for 2018.

**Recommendation/Justification:** As of this writing, the Town has raised approximately $122,000 to cover costs of the 4th of July celebration.

---

**Requesting Department Signature**

- Signed by: [Signature]
- Date: 2/7/2018

**Town Manager Signature**

- Signed by: [Signature]
- Date: 2/7/2018
TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 15, SERIES 2018

A RESOLUTION APPROVING AN AGREEMENT WITH MANTooth MARKETING COMPANY

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 an Agreement with Mantooth Marketing Company; and

WHEREAS, the Town has raised funds to support the Fourth of July celebration; and

WHEREAS, Mantooth Marketing Company will coordinate the event; and

WHEREAS, the Town Council is familiar with the Agreement and finds it to be in the best interest of the Town, its residents, and the general public.

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

Section 1. Approval
The Agreement is hereby approved in substantially the form as attached hereto, subject to technical or otherwise non-substantive modifications, as deemed necessary by the Town Manager in consultation with the Town Planner, Engineer, Legal Counsel, and other applicable staff or consultants. The attached Town Council Purchase Authorization is also hereby approved.


TOWN OF TIMNATH, COLORADO

_________________________________________
Jill Grossman-Belisle, Mayor

ATTEST:

_________________________________________
Milissa Peters, CMC
Town Clerk
EXHIBIT A

AGREEMENT
INDEPENDENT CONTRACTOR AGREEMENT
(Marketing and Coordinating 4th of July Firework Celebration)

This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the “Agreement”), is entered into as of the 13th day of February, 2018, by and between THE TOWN OF TIMNATH, a home rule municipal corporation and political subdivision of the State of Colorado (the “Town”), and THE MANTOOTH COMPANY, LLC, d/b/a Mantooth Marketing Company, a Colorado limited liability company (the “Contractor”). The Town and the Contractor are referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

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

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

WHEREAS, fund 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; (c) in such a manner as to minimize any annoyance, interference or disruption to the residents, tenants, occupants and invitees within the Town; and (d) 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 13, 2018 and shall terminate on the earlier to occur of: (i) termination pursuant to Section 19 hereof; (ii) completion of the Services; or (iii) December 31, 2018.

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

3. ADDITIONAL SERVICES. The Town may 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 of which it becomes aware. 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. Review, acceptance or approval by the Town of the Services performed or any documents prepared by the Contractor shall not relieve the Contractor of any responsibility for deficiencies, omissions or errors in said Services or documents, nor shall it be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

6. INTENTIONALLY DELETED.

7. COMPENSATION AND INVOICES.

a. Compensation. Compensation for the Services provided under this Agreement shall be in accordance with the compensation schedule attached hereto as Exhibit A. The Contractor shall be responsible for all expenses it incurs in performance of this Agreement and shall not be entitled to any reimbursement or compensation except as provided in Exhibit A of this Agreement, unless said reimbursement or compensation is approved in writing by the Town in advance of incurring such expenses. Any direct reimbursable costs for materials will be reimbursable at the Contractor’s actual cost, provided that the Contractor shall make a reasonable attempt to notify the Town of the estimated amount of such reimbursable costs (or any material
adjustments thereto subsequently identified) prior to commencing the requested services. Concurrent with the execution of this Agreement, the Contractor shall provide the Town with a current completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification) (“W-9”). No payments will be made to the Contractor until the completed W-9 is provided. The W-9 shall be attached hereto and incorporated herein as Exhibit B.

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

i. An itemized statement of the Services performed.

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

The Town shall be charged only for the actual time and direct costs incurred for the performance of the Services. Invoices received by the Town after the 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 a timely, satisfactory and detailed invoice. 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 28, without the need for additional Town 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 invoice by the Town Manager or applicable Department Head, as appropriate, subject to ratification at the next succeeding special or regular Town Council meeting.

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

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

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

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

a. The Contractor shall not knowingly employ or contract with an illegal alien who will perform work under the public contract for services contemplated in the Agreement 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 in the Agreement.

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 in the Agreement.

c. The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-Verify Program or the Department Program.
d. The Contractor is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

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

   i. Notify the subcontractor and the Town within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien.

   ii. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required above the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

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

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

12. CONTRACTOR’S INSURANCE.

a. The Contractor shall acquire and maintain, at its sole cost and expense, during the entire term of this Agreement, insurance coverage in the minimum amounts set forth in Exhibit 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 Commercial General Liability and Comprehensive Automobile Liability Insurance policies will be endorsed to name the Town as an 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 required by this Section 12 of the Agreement.

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, which certificate(s) shall be attached hereto as Exhibit C-1. 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 in the Agreement; nor shall the purchase of the required insurance serve to limit the Contractor’s liability under any provision in the Agreement. The Contractor shall be responsible for the payment of any deductibles on issued policies.

13. CONFIDENTIALITY AND CONFLICTS.

a. Confidentiality. During the performance of this Agreement, if the Contractor is notified that certain information is to be considered confidential, the Contractor, on behalf of its employees, agrees to enter into a confidentiality agreement. Any information deemed confidential by the Town and given to the Contractor by the Town, or developed by the Contractor as a result of the performance of a particular task, shall remain confidential. In addition, the Contractor shall hold in strict confidence, and shall not use in competition, any information which the Contractor becomes aware of under or by virtue of this Agreement which the Town deems confidential, or which the Town has agreed to hold confidential, or which, if revealed to a third party, might reasonably be construed to be contrary to the best interests of the Town.

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

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

15. INTENTIONALLY DELETED.

16. INDEMNIFICATION.

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

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

c. This indemnity coverage shall also cover the Town’s defense costs in the event that the Town, in its sole discretion, elects to provide its own defense. The Town retains the right to disapprove counsel, if any, selected by the Contractor to fulfill the foregoing defense indemnity obligation, which right of disapproval shall not be unreasonably exercised. Insurance coverage requirements specified in the Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the Town’s protection in the performance of this Agreement. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

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

18. SUB-CONTRACTORS. The Contractor is solely and fully responsible to the Town for the performance of all Services under this Agreement, whether performed by the Contractor or a subcontractor engaged by the Contractor. The Contractor shall not subcontract any Services without prior written approval by the Town. The Contractor agrees that each and every agreement of the Contractor with any subcontractor to perform Services under this Agreement shall contain an indemnification provision identical to the one contained in Section 16 of this Agreement holding the Town harmless for the acts of the subcontractor. The Contractor further agrees that any such subcontract shall be terminable for cause or convenience and that, unless directed otherwise by the Town, the Contractor shall immediately terminate all
such subcontracts immediately upon termination of this Agreement. Prior to commencing any Services, a subcontractor shall provide evidence of insurance coverage to the Town. The Contractor further agrees that all such subcontracts shall provide that they may be terminated immediately without further cost upon termination of this Agreement. Neither the Town’s approval of any subcontractors, suppliers or materialmen, nor the failure of performance thereof by such parties, will relieve, release or affect in any manner any of the Contractor’s duties, liabilities or obligations under this Agreement, and the Contractor will at all times be and remain fully liable. The Contractor agrees that each of its employees, and any subcontractors, suppliers and materialmen will be properly qualified and will use reasonable care in the performance of their duties.

19. **TERMINATION.** In addition to the termination provisions contained in Section 2, above, 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, above. 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. All time, fees and costs associated with such transition shall not be billed by the Contractor to the Town.

20. **DEFAULT.** If either Party fails to perform in accordance with the terms, covenants and conditions of this Agreement, or is otherwise in default of any of the terms of this Agreement, the non-defaulting party shall deliver written notice to the defaulting party of the default, at the address specified in Section 21 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 fifteen (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.

21. **NOTICES.** Any notice or communication required under this Agreement must be in writing, and may be given personally, sent via nationally recognized overnight carrier service, or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same will be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as the party to whom notices are to
be sent; or (ii) three days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or sent via nationally recognized overnight carrier service, a notice will be deemed to have been given and received on the first to occur of: (i) one business day after being deposited with a nationally recognized overnight air courier service; or (ii) delivery to the party to whom it is addressed. Any party hereto may at any time, by giving written notice to the other party hereto as provided in this Section 21 of the Agreement, 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  
4800 Goodman Street  
Timnath, CO 80547  
Attention: April D. Getchius, Town Manager  
970-224-3211 (phone)  
970-224-3217 (fax)  
agetchius@timnathgov.com

With copy to:  WHITE BEAR ANKELE TANAKA & WALDRON  
 Attorneys at Law  
2154 East Commons Avenue, Suite 2000  
Centennial, Colorado 80122  
Attention: Robert G. Rogers, Esq.  
(303) 858-1800 (phone)  
(303) 858-1801 (fax)  
rrogers@wbapc.com

Contractor:  The Mantooth Company, LLC  
3030 South College Avenue, Suite 204  
Fort Collins, Colorado 80525  
Attention: Jill Maasch  
(970) 663-1888 (phone)  

22. **AUDITS.** The Town shall have the right to audit, with reasonable notice, any of the Contractor’s books and records which may be necessary to substantiate any invoices and payments under this Agreement (including, but not limited to, receipts, time sheets, payroll and personnel records) and the Contractor agrees to maintain adequate books and records for such purposes during the term of this Agreement and for a period of two (2) years after termination of the Agreement and to make the same available to the Town at all reasonable times and for so long thereafter as there may remain any unresolved question or dispute regarding any item pertaining thereto.

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

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

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

26. **GOVERNING LAW / DISPUTES.**

   a. **Arbitration.** All claims, counterclaims, disputes and other matters in question between the Parties hereto arising out of or relating to this Agreement or the breach hereof may be decided by Arbitration upon the mutual agreement to do so by the Parties to this Agreement. In that case, arbitration will be administered by the Judicial Arbiter Group in Denver, Colorado under its arbitration rules, by a single arbitrator, unless a different arbitrator is agreed upon by the Parties. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. **THE PARTIES RECOGNIZE THAT BY AGREEING TO BINDING ARBITRATION AS THE METHOD FOR DISPUTE RESOLUTION, THEY RELINQUISH THE RIGHT TO BRING AN ACTION IN COURT AND WAIVE THE RIGHT TO A JURY TRIAL AND THE EXTENSIVE DISCOVERY RIGHTS TYPICALLY PERMITTED IN JUDICIAL PROCEEDINGS.** Colorado law shall apply to any dispute, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado. Each Party will be responsible for paying one half of all fees and expenses charged by the arbitrator. Notice of request for arbitration must be filed in writing with the other Party(ies) to this Agreement. If agreed to, notice must be filed with the Judicial Arbiter Group. The request must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. In the event that the Parties do not agree to arbitration, each party shall be permitted to pursue all available legal and equitable remedies.

   b. **Litigation and Venue.** In the event the Parties do not agree to arbitration pursuant to Section 26(a), above, venue for all actions arising from this Agreement shall be in the District Court in and for the county in which the Town is located. 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.

   c. **Prevailing Party.** Other than arbitration fees as set forth in Section 26(a) of the Agreement, in the event that it becomes necessary for either party to enforce the provisions of
this Agreement or to obtain redress for the breach or violation of any of its provisions, whether by litigation, arbitration or other proceedings, the prevailing party shall recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney’s fees. For purposes of this Agreement, “prevailing party” shall mean the party in whose favor a judgment, decree, or final order is rendered, either by an arbitrator or the court, after appeal, if any. In the event both Parties prevail on one or more claims, the prevailing party shall mean the net winner of a dispute, taking into account the claims pursued, the claims on which the pursuing party was successful, the amount of money sought, the amount of money awarded, and offsets or counterclaims pursued (successfully or unsuccessfully) by the other Party. Notwithstanding the foregoing, if a written offer of compromise made by either Party is not accepted by the other Party within thirty (30) days after receipt and the Party not accepting such offer fails to obtain a more favorable judgment, the non-accepting Party shall not be entitled to recover its costs of suit and reasonable attorney’s fees and costs (even if it is the prevailing party) and shall be obligated to pay the costs of suit and reasonable attorney’s fees and costs incurred by the offering Party.

d. At the Town’s request, the Contractor will consent to being joined in litigation between the Town and third parties, but such consent shall not be construed as an admission of fault or liability. The Contractor shall not be responsible for delays in the performance of the Services caused by factors beyond its reasonable control including delays caused by Act of God, accidents, failure of any governmental or other regulatory authority to act in a timely manner or failure of the Town to furnish timely information or to approve or disapprove of Contractor’s Services in a timely manner.

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

28. **SUBJECT TO ANNUAL APPROPRIATION AND BUDGET.** The Town does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The performance of those obligations of the Town pursuant to this Agreement requiring budgeting and appropriation of funds are subject to annual budgeting and appropriations. The Contractor expressly understands and agrees that the Town’s obligations under this Agreement shall extend only to monies appropriated for the purposes of this Agreement by the Town and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. No provision of this Agreement shall be construed or interpreted as a delegation of governmental powers by the Town, or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the Town or statutory debt limitation, including, without limitation, Article X, Section 20 or Article XI, Section 6 of the Constitution of the State of Colorado. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of Town funds. The Town’s obligations under this Agreement exist subject to annual budgeting and appropriations, and shall remain subject to the same for the entire term of this Agreement.
29. **GOVERNMENTAL IMMUNITY.** Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the Town, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the Town and, in particular, governmental immunity afforded or available to the Town pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, et seq., C.R.S.

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

31. **SEVERABILITY.** If any covenant, term, condition or provision of this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition or provision shall not affect any other provision contained in the Agreement, the intention being that such provisions are severable. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

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

33. **OPEN RECORDS.** The Parties understand that all material provided or produced under this Agreement may be subject to the Colorado Open Records Act, §§ 24-72-202, et seq., C.R.S.

34. **INTENTIONALLY DELETED.**

35. **STANDARD OF CARE.** In providing services under this Agreement, the Contractor shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time.

36. **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. The 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.
37. **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 and political subdivision of the State of Colorado

______________________________
Jill Grossman-Belisle, Mayor

ATTEST:

______________________________
Town Clerk

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law

______________________________
General Counsel to the Town
CONTRACTOR:

The Mantooth Company, a Colorado limited liability company

Printed Name: __________________________
Title: _______________________________

STATE OF COLORADO )
COUNTY OF _____________ ) ss.

The foregoing instrument was acknowledged before me this ___ day of ____________, 2017, by ______________________________, as the ______________________________ of The Mantooth Company.

WITNESS my hand and official seal.

My commission expires: __________________________

(S E A L)

Notary Public

Contractor’s Signature Page to Independent Contractor Agreement for Marketing and Coordinating 4th of July Firework Celebration Services with the Town of Timnath, dated February 13, 2018
EXHIBIT A
SCOPE OF SERVICES/COMPENSATION SCHEDULE
Below is the budget we've estimated for a fireworks only 4th of July event.

## 4TH OF JULY FIREWORKS CELEBRATION

<table>
<thead>
<tr>
<th>Mantooth Services</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Logistics and Event Staffing</strong></td>
<td>$24,600</td>
</tr>
<tr>
<td>Includes: permits, security, fireworks and pyromusical, site planning, marketing, planning and operational meetings</td>
<td></td>
</tr>
<tr>
<td><strong>Event Day of Staffing</strong></td>
<td>$9,000</td>
</tr>
<tr>
<td><em>This is an estimated amount based off of projected hours and holiday pay rates and may vary due to event and sponsorship changes</em></td>
<td></td>
</tr>
<tr>
<td><strong>Graphic Design</strong></td>
<td>$1,000</td>
</tr>
<tr>
<td>Event branding and collateral design</td>
<td></td>
</tr>
<tr>
<td><em>This is an estimate and may vary due to event and sponsorship changes</em></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$34,600</td>
</tr>
</tbody>
</table>

This total does not include Mantooth's time to plan and execute stage coordination, music, kids activities, food vendors, beer, or any activity for attendees to participate in. If these activities are added back to the scope of event, Mantooth can provide separate proposals for each item. Please remember when you are discussing sponsorships and sponsor benefits that these items have been removed from the event.
EXHIBIT B
CONTRACTOR’S COMPLETED W-9
EXHIBIT C
INSURANCE REQUIREMENTS

NOTE: All insurance required and provided hereunder shall also comply with the provisions of Section 12 of the Agreement.

1. Standard Worker’s Compensation and Employer’s Liability Insurance covering all employees of Contractor involved with the performance of the Services, with policy amounts and coverage in compliance with the laws of the jurisdiction in which the Services will be performed.

2. Commercial General Liability Insurance with minimum limits of liability of not less than $1,000,000 per occurrence for bodily injury and property damage liability; $2,000,000 designated location, general aggregate. Such insurance will include coverage for contractual liability, personal injury and broad form property damage, and shall include all major divisions of coverage and be on a comprehensive basis including, but not limited to:
   a. premises operations;
   b. personal injury liability without employment exclusion;
   c. blanket contractual;
   d. broad form property damages, including completed operations;
   e. medical payments;
   f. products and completed operations;
   g. independent consultants coverage;
   h. coverage inclusive of construction means, methods, techniques, sequences, and procedures, employed in the capacity of a construction consultant; and

This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.

3. Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired automobiles used in connection with the performance of the Services, with limits of liability of not less than $1,000,000 combined single limit bodily injury and property damage. This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.

4. If applicable: Contractor shall secure and maintain a third party fidelity bond in favor of the Town covering the Contractor and its employees and agents who may provide or be responsible for the provision of Services where such activities contemplate the responsibility for money or property of the Town. Such bond shall protect the Town against any fraudulent or dishonest act which may result in the loss of money, securities, or other property belonging to or in the possession of the Town. Said bond shall be in an amount as determined by the Town, from a surety acceptable to the Town.

5. Any other insurance commonly used by contractors for services of the type to be performed pursuant to this Agreement.

6. Professional liability insurance in the amount of $1,000,000.00 each occurrence.
**EXECUTIVE SUMMARY:** The design for the next section of the Harmony Road widening (Phase 4) is to be completed so that the project is ready to go to construction when desired by council. This resolution approves funding for various contracts related to the design phase.

**STAFF RECOMMENDATION:** Approval

**KEY POINTS/SUPPORTING INFORMATION:**
- Harmony Road Phase 4 is not currently funded as a CIP project.
- Completion of the design in 2018 would allow the project construction to proceed subject to the Council amending the 2018 budget.
- Contracts to complete the design would include the following:
  - Interwest Consulting Group – Completed the plans for the previous phases and currently has 80% design plans for the Phase 4 section. They are the most familiar with the constraints of the project and are best suited to complete the design plans. Will need to modify the plans to account for changes during Phase 3 and work by the Ridge at Harmony at Latham Parkway. Estimated at $122,000.
  - TST, Inc. Consulting Engineers – for completion of landscape design plans to include in the construction plans. TST will also provide project administration as the Town Engineer to include coordination of design, meetings with property owners and other Jurisdictions to obtain required ROW and approval for utility relocations, and preparation of bidding documents. Estimated at $110,000
  - Earth Engineering Consultants – to re-evaluate the pavement design report prepared in 2008 to update to current LCUASS requirements and optimize pavement section. Estimated at $10,000
- Total estimated cost for completion of design services is $242,000. CIP funding request is for $250,000 to allow for adjustments in negotiated contracts. Previous CIPs had the overall project budgeted at $7.3 million.

**ADVANTAGES:** Allows for completion of design plans during 2018 to be ready for construction.

**DISADVANTAGES:** None

**FINANCIAL IMPACT:** Not currently a 2018 CIP item. Per discussions with the Town, it has been determined that it would be in the Town’s best interest to finalize the design.

**RECOMMENDED MOTION:** I move to approve Resolution No. 16, Series 2018 approving the design phase for the Harmony Road Widening Phase 4 Project.

**ATTACHMENTS:** 1. Resolution, 2. Town Council Purchase Authorization
**Town Council Purchase Authorization**

**Date:** February 13, 2018  
**Vendor:** Various  
**Department:** Engineering  
**Project:** Harmony Road Phase 4  
**Description:** Complete the construction plans for Harmony Road Phase 3, obtain ROW and other agreements to have project ready for construction.

<table>
<thead>
<tr>
<th>Is this purchase more than $25,000</th>
<th>X Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is this the purchase of Real Estate or Land</td>
<td>Yes</td>
<td>X No</td>
</tr>
<tr>
<td>Is this the purchase of Public Art</td>
<td>Yes</td>
<td>X No</td>
</tr>
<tr>
<td>Is this a budget request for a purchase that will exceed the approved budget</td>
<td>X Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

**Advantages:** Completes the design of a future Capital Improvement Project to be ready to go to construction when needed.

**Disadvantages:** None

<table>
<thead>
<tr>
<th>Description</th>
<th>Approved Budget</th>
<th>Current Balance</th>
<th>Additional Budget Requested</th>
<th>Requested</th>
<th>Budget Remaining</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harmony Road Phase 4</td>
<td>$0</td>
<td>$0</td>
<td>$0.00</td>
<td>$250,000</td>
<td>$0</td>
</tr>
</tbody>
</table>

**Financial Impact:** Not currently a 2018 CIP item. Have determined finalizing the design in 2018 is in the Town’s best interest.

**Recommendation/Justification:** Recommend approval as item is budgeted for and needed

---

**Requesting Department Signature**

**Date: 2/7/18**

---

**Town Manager Signature**

**Date**
TOWN OF TIMNATH, COLORADO  
RESOLUTION NO. 16, SERIES 2018  

A RESOLUTION APPROVING THE DESIGN PHASE  
OF THE HARMONY ROAD WIDENING PHASE 4  

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, the Town has determined a need to complete the widening of Harmony Road from Three Bell Parkway to Latham Parkway; and  

WHEREAS, the Town Council is familiar with the Project and finds it to be in the best interest of the Town, its residents, and the general public to proceed with completion of the design as a 2018 Capital Improvement Project; and  

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

Section 1. Approval  
The required agreements and expenditure of funds up to $250,000 is hereby approved for the construction of the Harmony Road Widening Phase 3 project. The required agreements may be finalized by the Town Manager in consultation with the Town Planner, Engineer, Legal Counsel, and other applicable staff or consultants.  


TOWN OF TIMNATH, COLORADO  

Jill Grossman-Belisle, Mayor  

ATTEST:  

Milissa Peters, CMC  
Town Clerk
**TOWN COUNCIL COMMUNICATION**

<table>
<thead>
<tr>
<th>Meeting Date: February 13, 2018</th>
<th>Item: A Resolution Approving and Ratifying a Service Agreement with Magellan Strategies</th>
<th>Ordinance □ Resolution √ Discussion □ For Information □</th>
</tr>
</thead>
<tbody>
<tr>
<td>Presented by: April D. Getchius, AICP Town Manager</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**EXECUTIVE SUMMARY:** This resolution approves an agreement with Magellan Strategies to conduct a survey of Town residents. The firm that we originally recommended is unable to perform the required services. The cost of the Magellan Strategies contract is $27,000. All survey work and analysis will be complete by March 6, 2018.

**STAFF RECOMMENDATION:** Staff recommends approval of this Agreement.

**KEY POINTS/SUPPORTING INFORMATION:**
- Magellan Strategies is based out of Boulder.
- The firm can meet our required deadlines.
- The cost of the services is $27,000.
- Time is of the essence, so the Council needs to ratify the agreement signed by the Town Manager which was needed in order to begin the services and meet the deadlines.

**ADVANTAGES:** Allows the survey to move forward in a timely manner.

**DISADVANTAGES:** None.

**FINANCIAL IMPACT:** Council previously approved a purchase authorization for this project.

**RECOMMENDED MOTION:** I move approval of Resolution No. 17, Series 2018 entitled “A Resolution Approving and Ratifying a Service Agreement with Magellan Strategies.”

**ATTACHMENTS:** 1. Resolution  2. Agreement
TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 17, SERIES 2018

A RESOLUTION APPROVING AND RATIFYING A SERVICE AGREEMENT WITH MAGELLAN STRATEGIES

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 an Agreement with Magellan Strategies to conduct a resident survey and focus groups discussion; and

WHEREAS, Council previously approved a Purchase Authorization for this project; and

WHEREAS, time is of the essence and the Town Council needs to ratify the Town Manager’s signature on the Agreement; and

WHEREAS, the Town Council is familiar with the Agreement and finds it to be in the best interest of the Town, its residents, and the general public.

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

Section 1. Approval
The Agreement is hereby approved in substantially the form as attached hereto, subject to technical or otherwise non-substantive modifications, as deemed necessary by the Town Manager in consultation with the Town Planner, Engineer, Legal Counsel, and other applicable staff or consultants.


TOWN OF TIMNATH, COLORADO

_____________________________________
Jill Grossman-Belisle, Mayor
ATTEST:

__________________________
Milissa Peters, CMC
Town Clerk
EXHIBIT A

AGREEMENT
Magellan Strategies – Town of Tinmath Services Agreement

This services agreement ("Agreement"), made and entered into as of February 8, 2018 ("Effective Date"), is by and between the Town of Tinmath, Colorado with offices located at 4800 Goodman Street, Tinmath, CO 80547 ("Client"), and Magellan Strategies, a Colorado S-Corporation, with offices located at 1685 Boxelder Street, Suite 300, Louisville, CO 80027 ("Consultant").

The Client desires to retain the services of Consultant and Consultant desires to perform certain services for the Client. In consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the parties hereby acknowledge the receipt and sufficiency of which hereto, the parties agree as follows.

1. SERVICES.

1.1 Consultant will oversee and conduct a multi-mode 50 question quantitative survey research project among the residents of Tinmath, Colorado. The survey will attempt to interview qualified respondents by calling them on the telephone using both landline and cell phone sample, emailing qualified respondents the survey, and compiling survey response data from returned copies of the survey that will be mailed to qualified households. Consultant is not responsible for the printing, mailing, postage and delivery of the survey to qualified households.

1.2 Consultant will deliver to the Client a topline document showing the responses to each question among all respondents, an in-depth written summary of the survey findings, and an extensive Power Point presentation of the survey findings.

1.3 Consultant will oversee and manage three, in-person qualitative focus group sessions with 12 participants in each session. Consultant will develop the focus group discussion guide and moderate each of the three focus groups.

1.4 Consultant will deliver to the Client an in-depth written summary of the three focus groups and a Power Point presentation.

1.5 Consultant will complete all deliverables and responsibilities to Client no later than Tuesday, March 6th.

2. TERM. This Agreement shall commence on February 8th, 2018 and end on March 26th, 2018.

3. COMPENSATION, ADDITIONAL SERVICES AND INVOICING. In consideration for all Services, Client agrees to pay Consultant a total amount of twenty seven thousand dollars, ($27,000) ("Services Fee"). The Services Fee is calculated as follows:

Initials: ________________

Consultant: ____________________________

Client: ____________________________

Magellan Strategies – EGE Air Alliance Services Agreement
Quantitative survey research project ............................................. $12,000
Qualitative focus group research project ....................................... $15,000

Total Fees .................................................................................. $27,000

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of
the Effective Date.

CONSULTANT
Magellan Strategies

by: ____________________________________________________________

Print Name and Title____________________________________________

CLIENT
Town of Tinmath, Colorado

by: ____________________________________________________________

Print Name and Title____________________________________________

Magellan Strategies – EGE Air Alliance Services Agreement
TOWN COUNCIL COMMUNICATION

Meeting Date: 

Item: EXECUTIVE SESSION: “For the purposes of discussion concerning the purchase, acquisition, lease, transfer, or sale of real, personal, or other property interests under Section §24-6-402(a), C.R.S.; discussion concerning personnel matters under §24-6-402(4)(f), C.R.S.; discussion regarding positions relative to matters that may be subject to negotiations and development of a strategy for negotiations under §24-6-402(4)(e), C.R.S.; and conferences with the Town’s attorney for purposes of receiving legal advice on specific legal questions under §24-6-402(4)(b), C.R.S.”

Presented by:
Town Attorney

Ordinance ☐ Resolution ☐ Discussion X

KEY POINTS/SUPPORTING INFORMATION:

EXECUTIVE SESSION: “For the purposes of discussion concerning the purchase, acquisition, lease, transfer, or sale of real, personal, or other property interests under Section §24-6-402(a), C.R.S.; discussion concerning personnel matters under §24-6-402(4)(f), C.R.S.; discussion regarding positions relative to matters that may be subject to negotiations and development of a strategy for negotiations under §24-6-402(4)(e), C.R.S.; and conferences with the Town’s attorney for purposes of receiving legal advice on specific legal questions under §24-6-402(4)(b), C.R.S.”

ADVANTAGES:
N/A

DISADVANTAGES:
N/A

FINANCIAL IMPACT:
N/A

RECOMMENDATIONS:
I move to enter into Executive Session “For ______________________________.”

ATTACHMENTS:
N/A