

**TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 78, SERIES 2018**

**A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH
TST INC., CONSULTING ENGINEERS**

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 Professional Services Agreement between the Town and TST INC., Consulting Engineers for engineering services (the “Agreement”); and

WHEREAS, the Agreement was entered into on March 12, 2013 for an initial term of thirty-six months (the “Initial Term”); and

WHEREAS, according to the terms of the Agreement, upon expiration of the Initial Term, the Agreement automatically extends for successive additional thirty-six month terms; and

WHEREAS, the Agreement was extended on June 28, 2016 for another thirty-six month term; and

WHEREAS, the Town Council desires to extend the Agreement for an additional thirty-six month term effective January 1, 2019; 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 to extend the Agreement.

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 attached hereto as Exhibit A, with such modifications and additions as the Town Manager, in consultation with Legal Counsel, determines to be necessary and appropriate to protect the interests of the Town or effectuate the purposes set forth herein and not otherwise inconsistent with this Resolution.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON DECEMBER 11, 2018.

TOWN OF TIMNATH, COLORADO



Jill Grossman-Belisle, Mayor

ATTEST:



Milissa Peters-Garcia, CMC
Town Clerk



EXHIBIT A
AGREEMENT

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF TIMNATH AND
TST INC., CONSULTING ENGINEERS**

This Professional Services Agreement (the "**Agreement**"), is made by and between the Town of Timnath (the "**Town**") and the undersigned contractor (the "**Contractor**"). Town and Contractor shall be collectively referred to herein from time to time as the "**Parties**".

WHEREAS, the Town desires to retain Contractor and Contractor desires to be retained to provide the professional Services defined in paragraph 1.C, below (the "**Services**"); and

NOW, THEREFORE, in consideration of the agreements and covenants contained herein, the Parties hereto agree as follows:

1. BASIC TERMS:

a. Name, Address, and Phone Number of the Parties.

i. Town of Timnath
Town of Timnath
C/O The Town Manager
4800 Goodman Drive
Timnath, Colorado 80547

ii. Contractor
TST Inc. Consulting Engineers
C/O Donald Taranto
748 Whalers Way
Suite 200
Fort Collins, CO 80525

b. Exhibits and Attachments. All attachments specifically referred to herein shall be deemed incorporated herein by reference as if fully stated herein. Due to the day to day nature of the professional services relationship between Contractor and the Town, the parties acknowledge that informal amendments to exhibits or attachments may occur by custom and practice; however, the parties agree that no such amendment shall occur which is directly in conflict with a specific provision hereof without prior approval by the Town Council as evidenced by written amendments hereto. This Agreement may also be amended by replacement of any Section herein in writing and initialed by the Mayor and Contractor.

c. Scope of Services. The "**Scope of Services**" attached hereto as **Exhibit A** defines generally the "**Services**" that Contractor will continue to provide to Town, subject to such direction as may be provided to Contractor by the Town.

d. **Titles.** Donald Taranto or another individual assigned by Contractor and agreed to by the Town Manager shall be designated as the "Town Engineer" and "Public Works Director" and shall direct the provision of Services to Town on behalf of Contractor. Notwithstanding such reference, Contractor is solely liable to the Town for performance of this Agreement and Contractor, not Mr. Taranto individually, shall be responsible directly to the Town for Services provided by Contractor. No individual employee of Contractor shall be considered or deemed to have personally undertaken the obligations of this Agreement or to have personally guaranteed the performance hereof by Contractor. Mr. Taranto may hold himself out as the Town Engineer and Town Public Works Director to persons doing business with, residing in, or otherwise dealing with Town, and may utilize business cards prepared by Town for such purposes.

e. **Compensation.** Fees for the Services shall be invoiced to the Town not later than the tenth (10th) day of each month in amounts subject to the following provisions:

f. **Compensation for the Services provided pursuant to this Agreement shall be subject to a Periodic Invoice Cap (defined below) for all Services performed for the Town and the Timnath Development Authority. Special work that can be charged to third party developers or work conducted in connection with unforeseen opportunities for the Town which is outside the normal routine shall be categorized as "Out of Scope Services", and shall fall outside the Periodic Invoice Cap and be paid hourly as approved in writing by the Town Manager.**

- i. **The initial "Periodic Invoice Cap" for fees, exclusive of costs per the Special Provisions contained in Exhibit B as defined below, shall be in amounts as follows:**
 1. **Town Engineer and Public Works Director: \$204,660 annually, with a quarterly cap of \$51,165 .**
 2. **Engineering: \$243,483 annually, with a quarterly cap of \$60,871 .**
 3. **Planning: \$561,610 annually, with no quarterly cap.**
- ii. **The Periodic Invoice Cap shall be applicable for Services provided from and after January 1 of the applicable year. All Periodic Invoice Cap amounts shall be adjusted January 1 of each calendar year by increasing the Periodic Invoice Cap by 3.0%.**
- iii. **Each monthly invoice from Contractor shall contain a cover memorandum showing, at a minimum, how fees billed in excess of the Periodic Invoice Cap will be deferred and accounted for as part of the "Deferral Above Periodic Cap", and any additional information reasonably requested by the Town Council or Town Manager. Items discussed in paragraphs i and v of this subsection shall be due in addition to the Periodic Invoice Cap. The amount of the Deferral Above Periodic Cap shall accrue from month to month (the "Accrued Deferral Above Periodic Cap"), provided that it's accrual shall be limited to \$100,000 per year (the "Annual Deferral Cap"). The Parties acknowledge that Accrued Deferral Above Periodic Cap from**

the previous term of this agreement, subject to the Annual Deferral Cap, shall continue to accrue from year to year throughout the Term and Additional Terms but shall never exceed a "Maximum Deferral" of \$300,000. Amounts which exceed the Annual deferred Cap and the Maximum Deferral shall be forgiven annually.

- iv. The Deferral Above Periodic Cap and Accrued Deferral Above Periodic Cap shall be reflected on the Town's books as a contingent liability, due and payable to Contractor in the event the Professional Service Agreement is terminated for convenience. In no event shall any contingent liability exceed the Maximum Deferral and no payment shall be due which is greater than the lesser of the total contingent liability or the Maximum Deferral. The parties agree that the Deferral Above Periodic Cap and Accrued Deferral Above Periodic Cap represent fees for valid Services performed each month during the Term, properly due to Contractor as a portion of the Services for which the Periodic Invoice Cap is due, and that payment of such amounts by the Town in the event of termination for convenience of the Professional Services Agreement is not a penalty but is payment of earned fees constituting the Periodic Invoice Cap.
- v. The periodic invoice cap shall not apply to extraordinary Services, including but not limited to capital projects, bond issues, litigation, major retail development project negotiations, or fees for services which are billed to the Town which are reimbursable to Town by third parties, whether actually reimbursed or not in the discretion of the Town. When such matters arise, Contractor will discuss with the Town Manager additional budget amounts which may be necessary to pay fees for such work. In addition to amounts described above, Contractor may incur out of pocket costs in the handling of the Town's matters. These costs may include photocopying charges, handling charges, delivery charges, telephone, fax, filing and recording fees, and other costs which Contractor may advance payment on the Town's behalf. These will also be billed on a monthly basis. These costs are subject to the same payment terms as fees. All bills are due upon receipt, and if any bill is not paid during the month of receipt of an invoice, interest will accrue at a rate of one percent per month.

g. Term and Termination. Notwithstanding the date of execution hereof or the date of ratification by the Town of the execution hereof, Contractor is engaged pursuant to this Agreement for a term of 36 months commencing January 1, 2019, and continuing through December 31, 2021 (the "Initial Term"), subject to annual budget appropriation of revenues sufficient to pay the "Periodic Invoice Cap" as increased annually pursuant to paragraph E of this section. Fees for Services will be billed and itemized monthly per existing invoice formats. If fees in any month are less than the Periodic Invoice Cap, the lesser amount shall be paid. Upon the expiration of the Initial Term, this Agreement shall be deemed automatically extended for successive additional 36 month terms ("Additional Term(s)") until such time as this Agreement is terminated by formal Council action to terminate. Contractor further agrees that this Agreement shall be subject to periodic audits as requested by the Town to confirm the reasonableness of

Contractor's time billed and Contractor's billable rates, and Contractor agrees to cooperate in providing documentation reasonably necessary to assist the Town in performing such audits upon request of the Town.

The parties acknowledge that the engagement created by this Agreement may be terminated for convenience at any time but only by formal resolution of the Town, as set forth below, adopted in a public meeting whereupon the Accrued Deferral Above Periodic Cap described above shall be due and payable in full within ten (10) days of adoption of such Resolution. Services shall terminate thirty (30) calendar days after such Resolution is adopted. The compensation provisions set forth above shall be binding through the date Services are terminated. Subject only to the foregoing, the Town shall have the unfettered right to take formal action to terminate this Agreement.

2. CONTRACTOR NOT EMPLOYEE. Contractor is an independent contractor and not an employee, partner or agent of the Town and, as such, is not entitled to workers' compensation benefits and is obligated to pay federal and state income tax on any moneys earned pursuant to this Agreement. Contractor shall, at all times, have exclusive domain and control over the activities of its employees, if any, and under no circumstances shall Contractor or Contractor's employees be considered employees or agents of the Town. The Services set forth in this Agreement shall be provided by Contractor using its own employees, supplies, and resources sufficient to meet the needs of the Town as directed by Council.

3. SPECIAL PROVISIONS. Exhibit B contains special provisions which are deemed a part of this Agreement. The application of certain provisions of Exhibit B may be limited to specific Services set forth in Exhibit A. Unless such limitations are set forth, all provisions of Exhibit B are intended to apply to all provisions of this Agreement and all Services set forth in Exhibit A.

4. COLORADO CONSTITUTION, ARTICLE X, SECTION 20. Notwithstanding other provisions in this Agreement to the contrary, if any, the Parties understand and acknowledge that the Town is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). Consistent with Article X, Section 20 of the Colorado Constitution, the Town's payment obligations to Contractor in any year following the year of the execution hereof are not intended to and do not constitute a multi-year fiscal obligation to the Town. All financial obligations of the Town under this Agreement are subject to the annual appropriation of sufficient funds for the same by the Timnath Town Council, acting in its sole and exclusive discretion. In the event of non-appropriation which occurs as set forth herein, this Agreement shall automatically terminate upon the first day of the fiscal year for which funds are not appropriated and neither Party shall have any continuing obligation to the other under this Agreement except as explicitly provided herein with respect to the obligation to pay the Accrued Deferral Above Periodic Cap amount which obligation shall survive any termination and non-appropriation.

5. CONFIDENTIALITY. The Parties agree that Contractor will, in the course of its duties hereunder, receive information concerning the Town, its employees, elected and appointed officials, property, equipment and functions. Contractor agrees to hold all such information confidential and to not disclose the same other than to the extent required to perform its duties, or upon a proper request from an authorized Town official, or pursuant to a proper request under the

Colorado Open Records Act, C.R.S. § 24-72-101, et. Seq., to which the authorized Town official has confirmed it is appropriate for Contractor to respond or pursuant to a lawful court order. The requirements of this Section shall survive the termination of this Agreement.

6. ILLEGAL ALIENS – PUBLIC CONTRACTS FOR SERVICES. “**E-verify Program**” as used herein means the electronic employment verification program created in Public Law 104-208, as amended, and explained in Public Law 108-156, as amended, and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program. “**Department**” as used herein means the Department of Labor and Employment. “**Department Program**” as used herein means the employment verification program established by the Department pursuant to C.R.S. § 8-17-102(5)9c). The undersigned on behalf of the Contractor certifies that, at the time of this certification and the execution of this Agreement, the Contractor does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that the Contractor will participate in the E-verify Program, pursuant to C.R.S. § 8-17.5.191 or Department Program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement and will otherwise seek and obtain its own legal counsel for advice on how to comply with such laws.

7. MISCELLANEOUS PROVISIONS.

a. **Severability/Governing Law.** This Agreement is to be governed and construed according to the laws of the State of Colorado with venue of any litigation to be in Larimer County. If any provisions of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement, and all such other provisions shall remain in full force and effect. It is the intention of the Parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision valid, then the provision shall have the meaning which renders it valid.

b. **Entire Agreement.** It is understood that there are no oral agreements between the Parties hereto effecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the Parties hereto or displayed by Town to Contractor with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Agreement. This Agreement is and shall be considered to be the only agreement between the Parties hereto and their representatives and agents. All negotiations and oral agreements acceptable to both Parties have been merged into and are included herein. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the Parties hereto or their respective successors in interest.

c. **Waiver and Modification.** The waiver by Town of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition on any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of Services hereunder by Town shall not be deemed to be a waiver of any previous breach by Contractor of any term, covenant or condition of this Agreement. No modification of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement, and no waiver of any breach of any provision of this Agreement shall be construed as a waiver of any subsequent breach of the same or any other provision hereof.

If this Agreement is contingent upon approval by the Town Council, it is expressly agreed that, except as may otherwise be provided by applicable statute or ordinance, no official of the Town has the authority to waive or modify any provision of this Agreement without formal approval of the Town Council.

d. **Headings.** The headings and titles in this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part hereof.

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

f. **Corporate Authority.** If Contractor is a corporation, an LLC, an LLP, a limited partnership, a general partnership, an LLLP, or other non-natural entity, each individual executing this Agreement on behalf of said entity represents and warrants that they are duly authorized to execute and deliver this Agreement on behalf of said entity, in accordance with a duly adopted resolution of the board of directors, partners, or members of said entity or in accordance with the governing documents of said entity, and that this Agreement is binding upon said entity in accordance with its terms.

g. **Notices.** Any notice or other communication given by any of the Parties hereto to another relating to this Agreement shall be in writing and shall be deemed to have been duly given:

- i. On the date and at the time of delivery if delivered personally to the party to whom notices is given at the address specified in Section 1, above;
- ii. On the date of delivery or attempted delivery shown on the return receipt if mailed to the party to whom notices is to be given by first class mail, sent by registered or certified mail, return receipt requested, postage prepaid and properly addressed as specified in Section 1, above; or
- iii. Within twenty-four (24) hours after deposit with a nationally recognized overnight courier or messenger service, properly addressed as specified in Section 1, above.
- iv. Either Party may change such address by fifteen (15) days written notice to the other provided, however, the Parties may not designate more than one place and address to received notices as provided in this Agreement.

h. **Non-Assignment.** This Agreement is an agreement for Services by which Contractor was selected for Contractor's special expertise. This Agreement may not be assigned by either party.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement as of the _____ day of _____, 2018.

TOWN OF TIMNATH

By: [Signature]

Title: _____
Mayor

ATTEST:

[Signature]
Town Clerk

CONTRACTOR:

TST, INC. CONSULTING ENGINEERS

By: [Signature]

Title: President

STATE OF COLORADO
COUNTY OF Larimer

The foregoing Professional Services Agreement was acknowledged before me this 12 day of December, 2018 by Donald N. Taranto as President.

Witness my hand and official seal.

My commission expires: 06/18/20

[Signature]
Notary Public

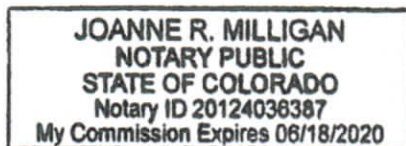


EXHIBIT A
(Scope of Services)

Public Works Director Responsibilities:

- Provide recommendations and assistance to the Town Council, Planning Commission, Town Manager and other staff on development, planning, engineering, and public works issues.
- Assist citizens with concerns and respond to questions regarding the physical improvements to the Town.
- Act as the Town's director for maintenance and repair of streets, storm drainage and open space.
- Coordinate the design, bidding and construction management of the Town's Capital Improvement Projects.
- Coordinate the review of plans and issue permits for all work within Town rights-of-way and Town-owned property.
- Coordinate the traffic signal and signage maintenance and construction throughout the Town.
- Coordinate and administer the Town's snow removal services.
- Coordinate improvements and construction with related entities including City of Fort Collins, Town of Windsor, Larimer County, Weld County, Town of Severance, and others.
- Maintain the real property assets of the Town and recommend actions relative to improvements and major maintenance/repair work to the real property of the Town.
- Attend all staff, Planning Commission and Town Council meetings and work sessions as required by the Town Manager.
- Supervise public works staff including coordinating their work program, conducting performance evaluations and general supervision.
- Participates in and approves all personnel actions as it relates to Public Works, Planning, and Engineering activities
- Serve as a 24-hour emergency contact for Larimer County Sheriff's Department, Timnath Police Department, City of Fort Collins Public Works Department and others as assigned by Town Manager.
- Assists in annual budget preparation; monitors expenditures in the Engineering and Public Works activities; determines equipment, personnel, and materials needs for the Engineering and Public Works activities; Prepares the Town's Capital Improvement Plan in consultation with the Town Manager, Finance Director and others.
- Monitor and assure Town public works employees are screened and satisfactorily pass drug testing and criminal background checks prior to performing any assigned work in accordance with Town policies.
- All communications to the Town Council or media unless otherwise authorized, shall be through the Town Manager or his/her designee. All mass communications to the Town residents shall be reviewed and approved by the Town Manager or his/her designee prior to printing and dissemination
- The Public Works Director will prepare a monthly update to various projects and assignments as well as updated capital improvement schedules noting elements of capital

improvement plan implementation (i.e. scheduled dates for design completion, bidding, construction, completion).

- Prepare Town resolutions and Town ordinances and Town Council communications as may be required.
- Assist in the continued development of the Town's road and striping maintenance plan.

Town Engineer Responsibilities:

- Oversees Engineering activities; direct activities of personnel in the carrying out of functions.
- Coordinate design of the Town Public Works, community development and public facilities construction projects, including but not limited to: sidewalks, storm water facilities, water and sewer lines, trails and park improvements; performs field measurements and assessments as required for the design and construction of Town construction projects; assists with the acquisition of easements and rights-of-way for Town construction projects.
- Coordinates engineering-related activities with the other Town departments and outside agencies; works closely with other departments in carrying out engineering functions for the Town; participate with Town staff and outside agencies in the review of development activities and Town projects; provide staff support to the other Town departments as needed and/or directed.
- Assists with the selection and supervision of Contractor professional engineers for specialized engineering work , such as geotechnical and traffic professionals and assist with the administration of professional service contracts
- Assists in annual budget preparation; monitors expenditures in the Engineering activities; determines equipment, personnel, and materials needs for the Engineering activities; coordinates and assists with the preparation of the Town's Capital Improvement Plan
- Participate in the long and short term planning activities of the Town; makes recommendations to the Town Manager regarding engineering issues; makes regular reports to the Town Manager, reviews and prepares technical reports and studies; attends public meetings and provides recommendations and input; prepares presentation materials; represents the Town in meetings with the public and other public entities
- Provide monthly reports to the Town Council on Public Works' activities and issues. Provide recommendations to Town Manager, Planning Commission and Town Council as required.
- Attend all Town Council meetings and work sessions as required by the Town Manager.
- Prepare Town resolutions and Town ordinances and Town Council communications as may be required.
- Other duties as may be assigned.

General Engineering Responsibilities:

- Provide engineering consultation and services regarding existing and future Town capital improvement projects as required.
- Provide consultation and review services relative to Town public works and maintenance related projects.
- Provide technical support and advise the Town on matters related to engineering/surveying standards and practices.
- Participate in negotiations, contract preparation, ROW procurement and meetings in

which the Town requires professional engineering representation.

- Technical liaison between the Town and other jurisdictions and authorities as determined by the Town Manager.
- Provide engineering services as directed and required by the Town Manager.
- Provide assistance as needed relative to Town planning efforts and special projects.
- Coordination with all Town utility providers relative to existing and future service.
- Provide service relative to annual budgets and cost estimates.
- Provide services relative to grade certifications for CO issuance.
- Review all grading and ROW crossing permits.
- Review building permit applications.
- Assist in the continued development of the Towns road and striping maintenance plan.
- Attend the NFRMPO Technical Committee meetings.
- Annual updates of HUFT/CDOT inventory.
- Oversee the installation, repair and maintenance of traffic signals and other traffic control devices as needed and be available as 24 hour emergency contact for related issues.
- Provide monthly reports to the Town Council on Engineering activities and issues. Provide recommendations to Town Manager, Planning Commission and Town Council as required.
- Prepare Town resolutions and Town ordinances and Town Council communications as may be required.
- Other duties as may be assigned.

Planning/Community Development Services:

- Oversees Planning activities; direct activities of personnel in the carrying out of functions; evaluate employee work performance with assistance of appropriate supervisors; participates in and approves all personnel actions as it relates to Planning activities.
- Provide recommendations and assistance to the Town Council, Planning Commission, Town Manager, Town Engineer, and other staff on development planning and related issues.
- Assist citizens with concerns and respond to questions regarding the planning related issues and/or improvements to the Town.
- Coordinate and update the Town's Zoning and all other maps annually or as needed.
- Coordinate and administer the Town's Comprehensive Plan and any updates thereto.
- Coordinate the master planning of Town recreation amenities; public parks, trails and trailheads, and natural open spaces.
- Coordinate and maintain connections with special districts and referral agencies within and adjacent to the Town's limits.
- Participate in the long and short term planning activities of the Town; makes recommendations to the Town Manager regarding planning issues; makes regular reports to the Town Manager, reviews and prepares technical reports and studies; attends public meetings and provides recommendations and input; prepares presentation materials; represents the Town in meetings with the public and other public entities.
- Coordinate planning-related activities with the Town's Code Enforcement department.
- Assists with the selection and supervision of Contracted professional planners and landscape architects for specialized planning work, such as park design, comprehensive

plan updates, planning studies and assist with the administration of professional service contracts.

- **Oversee Building Department operations; review plat plans for Land Use Code compliance and conformance with the Zoning Code.**
- **Coordinate the review and issuance of sign permits within the Town.**
- **Coordinate and assign addressing within the Town and with outside agencies.**
- **Review and provide recommendations regarding grant applications; coordinate the preparation of submission grant applications as required.**
- **Assists in annual budget preparation; monitors expenditures in Planning activities; determines personnel and materials needs for the Planning activities; assists with the preparation of the Town's Capital Improvement Plan.**
- **Responsible for the Town's Planning Commission meetings and work sessions. Prepare Planning Commission communications, agenda's and notices. Coordinates the delivery and distribution of Planning Commission communication.**
- **Prepare monthly Community Development staff reports for the Town Council and attend staff, Town Council meetings and work sessions as required. Prepare Town Resolutions and Town Ordinances as may be required.**
- **Act as the Town's Local Government Designee for Colorado Oil and Gas Commission activities.**
- **Other duties as may be assigned.**
- **Supervise and evaluate town employees, as assigned.**

Capital Improvements:

- **Potential design of Town recreation amenities; public parks, trails and trailheads, and natural open spaces. Said design will be billed against the capital improvement project budget.**
- **Potential engineering and Planning services relative to Capital Improvements Projects defined in the Town's Annual Budget will be billed on a per project basis when the budgeted Capital Improvement Projects are approved for design and/or construction.**

Development Review:

- **Coordinate the review of development applications for all annexations and developments within the Town's Growth Management Area and Town limits. Summarize referral agency input and provide recommendations and staff reports to the Town's Planning Commission and Town Council for all development actions.**
- **Submittal routing.**
- **Review submittals.**
- **Coordinate referrals.**
- **Comment review meetings.**
- **Staff reports.**
- **SIA coordination.**
- **Document recordation.**
- **Resolutions and ordinances.**
- **Provide consultation and review of development submittals as required by the Town.**
- **Inspection and documentation of all development related construction activities.**

**EXHIBIT B
SPECIAL PROVISIONS**

1. **INDEMNIFICATION.** Contractor shall indemnify and save and hold harmless the Town, its officers, agents and employees from and against: (1) damages, including but not limited to, loss of use of property or injuries to or death of any person or persons (including but not limited to property and officers and employees of the Town) and (2) claims, demands, suits, actions, liabilities, costs, expenses (including but not limited to reasonable attorney fees, expert witness fees and all associated defense fees), causes of action, or other legal, equitable or administrative proceedings, including but not limited to contract, tort, express and/or implied warranty, strict liability, and workers' compensation which is incurred by the Town but only to the extent caused by the tortious or negligent actions or omissions of Contractor in connection with Contractor's operations or performance herewith or Contractor's use or occupancy of real or personal property hereunder, including tortious or negligent acts or omissions of employees, agents, or representatives of Contractor; provided however, that Contractor need not indemnify the Town or its officers, agents and employees from damages proximately caused by and apportioned to the negligence of the Town's officers, agents and employees.

Insurance coverage requirements specified herein shall in no way lessen or limit the liability of Contractor under the terms of *this* indemnification obligation. Contractor shall obtain, at its own expense, any additional insurance that Contractor deems necessary for the Town's protection in the performance of this Agreement.

This indemnification obligation shall survive the expiration or termination of this Agreement. The Parties acknowledge that provisions of this Section are not intended to waive any of the rights and defenses afforded the Town under the Colorado Governmental Immunity Act (C.R.S. § 24-10-101, et. seq.).

2. **CONTRACTOR LICENSE, EXPERTISE AND INSURANCE.** Town has selected Contractor because of Contractor's special training, education and expertise to provide the services identified herein. Contractor shall maintain general liability and professional liability insurance, at its expense, in an amount of at least \$1,000,000.00 and insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom. Additionally, Town specifically agrees to limit the liability of Contractor and its officers, directors, shareholders, partners, agents and employees for all damages of any kind or nature associated with errors or omissions of the Contractor to the sum of \$1,000,000.00 for all Capital projects services and \$500,000.00 for all Administrative and Development Review services.

Any such insurance shall name the Town of Timnath as an additional insured. The Contractor shall deliver to the Town at the time of entering into this contract copies of policies of liability insurance required herein or certificates evidencing the existence and amounts of such insurance with loss payable clauses satisfactory to the Town. No policy shall be cancelable or subject to reduction of coverage except after twenty (20) days prior written notice to the

Town. All such policies shall be written as primary policies not contributing with and not in excess of coverage which the Town may carry.

The work performed by Contractor under this Agreement shall be consistent with the professional standards of the Denver Metropolitan and Colorado Front Range areas. Contractor shall maintain such licenses as may be necessary to provide the services set forth in this Agreement.

3. DOCUMENTS. All documents prepared or furnished by Contractor (and independent professional associates and sub-Contractors) pursuant to this Agreement shall be the property of the Town. In addition, the Town shall have access to Contractor's financial records for the purposes of audit. Such records shall be complete and available for audit for ninety (90) days after final payment under this Agreement and shall be retained and available for audit purposes for at least three (3) years after final payment hereunder.

The Town acknowledges the Contractor's construction documents, including electronic files, as the work papers of the Contractor and the Contractor's instruments of professional service. Nevertheless, the final construction documents prepared under this Agreement shall become the property of the Town upon completion of the services and payment in full of all monies due to the Contractor. The Town shall not reuse or make any modification to the construction documents without the prior written authorization of the Contractor. The Town agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the Contractor, its officers, directors, employees and Subcontractors (collectively, Contractor) against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized reuse or modification of the construction documents by the Town or any person or entity that acquires or obtains the construction documents from or through the Town without the written authorization of the Contractor.

Under no circumstances shall the transfer of ownership of the Contractor's drawings, specifications, electronic files or other instruments of service be deemed a sale by the Contractor, and the Contractor makes no warranties, either express or implied, or merchantability and fitness for any particular purpose, nor shall such transfer be construed or regarded as any waiver or other relinquishment of the Contractor's copyrights in any of the foregoing, full ownership of which shall remain with the Contractor, absent the Contractor's express prior written consent.