

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE TOWN OF TIMNATH  
AND [REDACTED]**

This Professional Services Agreement, including any and all exhibits attached hereto, hereinafter the “Agreement”, is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2019, by and between **THE TOWN OF TIMNATH**, a home rule municipal corporation and political subdivision of the State of Colorado (the “Town”), and [REDACTED], a [REDACTED] (the “Contractor”) both collectively referred to from time to time herein as the “Parties”.

**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., as amended; and

**WHEREAS**, funds have been budgeted and are available for the work to be performed by the Contractor under this Agreement, and other necessary approvals have been obtained; and

**WHEREAS**, the Town desires to engage the Contractor to render the services described in this Agreement; and

**WHEREAS**, the Contractor has represented that it has the professional experience, skill and resources to perform the services, as set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and stipulations set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

**I. BASIC TERMS:**

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

B. Scope of Services. The Contractor shall perform the services described in **Exhibit A**, attached hereto and incorporated by reference. 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 the Agreement shall govern.

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

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

E. Notwithstanding anything contained herein to the contrary, and consistent with Article X, Section 20 of the Colorado Constitution, the Town's payment obligations for any renewal term do not constitute a multi-year fiscal obligation of the Town. All financial obligations of the Town under this Agreement are subject to the annual appropriation of sufficient funds for the same by the Timnath Town Council, acting in its sole and exclusive discretion. In the event of non-appropriation, this Agreement shall automatically terminate upon the first day of the fiscal year for which funds are not appropriated and neither Party shall have any continuing obligation to the other under this Agreement except as explicitly provided herein.

F. Commencement Date. The "**Commencement Date**" is                      and is when the services described in this Agreement are to commence.

G. Termination Date. The "**Termination Date**" of this Agreement is                     .

H. Approval by the Town Council. This Agreement is contingent upon and subject to approval by the Town Council. If this Agreement is contingent upon and is subject to approval by the Town Council and such approval is granted after the Commencement Date, the Commencement Date shall be extended until such approval is received and the Termination Date shall be extended to reflect the Term of this Agreement.

I. Termination. Either Party may terminate this Agreement for cause or convenience upon thirty (30) days written notice to the other. If this Agreement is terminated, the Contractor shall be paid for all the services satisfactorily performed prior to the designated termination date. Said payment shall be made in the normal course of business.

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

As an Independent Contractor you are not entitled to workers' compensation benefits or unemployment insurance benefits, unless unemployment compensation coverage is provided by the Contractor or some other entity other than the Town, and that as an Independent Contractor you are obligated to pay federal and state income tax on any moneys earned pursuant to our contract relationship.

The Contractor shall, at all times, be an independent contractor. The Contractor shall have exclusive domain and control over the activities of its employees, if any, and under no circumstances shall Independent Contractor or Independent Contractor's employees be considered employees or agents of the Town.

**III. INDEMNIFICATION.** Contractor shall defend, release, indemnify and save and hold harmless the Town, its officers, agents and employees from and against: (1) any and all damages, including but not limited to, loss of use of property or injuries to or death of any person or persons (including but not limited to property and officers, agents and employees of the Town) and (2) any and all claims, demands, suits, actions, liabilities, costs, expenses (including but not

limited to reasonable attorney fees, expert witness fees and all associated defense fees), causes of action, or other legal, equitable or administrative proceedings of any kind or nature whatsoever, of or by anyone whomsoever, regardless of the legal theory(ies) upon which premised, including but not limited to contract, tort, express and/or implied warranty, strict liability, and workers' compensation, in any way resulting from, connected with, or arising out of, directly or indirectly, the tortious or negligent actions or omissions of Contractor in connection with Contractor's operations or performance herewith or Contractor's use or occupancy of real or personal property hereunder, including tortious or negligent acts or omissions of employees, agents, or representatives of Contractor; provided however, that Contractor need not indemnify the Town or its officers, agents and employees from damages proximately caused by and apportioned to the negligence of the Town's officers, agents and employees.

This indemnity shall also extend to the Town's defense costs, in the event that the Town, in its sole discretion elects to provide its own defense. The Town retains the right to disapprove counsel, if any, selected by Contractor to fulfill the foregoing defense indemnity obligation, which right of disapproval shall not be unreasonably exercised.

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

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

**IV. CONTRACTOR LICENSE, EXPERTISE AND INSURANCE.** Town has selected Contractor because of Contractor's special training, education and expertise to provide the services identified herein. Contractor shall maintain general liability insurance, at its expense, in an amount of at least \$2,000,000.00 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 there from.

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 performed in 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. Contractor shall maintain such licenses as may be necessary to provide the services set forth in this Agreement.

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

**VI. TABOR.** Colorado Constitution, Article X, Section 20. Notwithstanding other provisions in this Agreement to the contrary, the Parties understand and acknowledge that the Town is subject to Article X, § 20 of the Colorado Constitution ("**TABOR**").

A. The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement.

B. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the Town are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the Town's current fiscal period ending upon the next succeeding December 31.

C. Financial obligations of the Town payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with ordinances and resolutions of the Town and other applicable law.

D. Notwithstanding any other provision of this Agreement concerning termination, upon the Town's failure to appropriate such funds, the Agreement shall automatically terminate.

**VII. CONFIDENTIALITY AND CONFLICTS.** 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. Prior to the execution of, and during the performance of this Agreement, the Contractor agrees to notify the Town of any conflicts that impact the services to the Town.

**VIII. ILLEGAL ALIENS - PUBLIC CONTRACTS FOR SERVICES.** "**E-verify program**" as used herein means the electronic employment verification program created in Public Law 104-208, as amended, and expanded in Public Law 108-156, as amended, and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program. "**Department**" as used herein means the department of

labor and employment. “**Department program**” as used herein means the employment verification program established pursuant to C.R.S. § 8-17.5-102(5)(c).

A. The undersigned on behalf of the Contractor certifies that, at the time of this certification and the execution of this Agreement, the Contractor does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that the Contractor will participate in the e-verify program, pursuant C.R.S. § 8-17.5.101 or department program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

B. The Contractor shall not:

1. Knowingly employ or contract with an illegal alien to perform work under this Agreement for services; or

2. Enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. In addition:

1. 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;

2. 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;

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

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

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

4. The Contractor shall comply with any reasonable request by the Department of Labor and Employment (Department) made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5.102(5).

D. If the Contractor breaches this Section 8, the Town may terminate this Agreement for breach of the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the Town.

E. The Contractor shall, within twenty (20) days after hiring an employee who is newly hired for employment to perform work under this Agreement, affirm that the Contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 U.S.C. § 1324(a), and not altered or falsified the identification documents for such employees. The Contractor shall provide a written, notarized copy of the affirmation to the Town.

F. If the Contractor has not accepted into the department program prior to entering into this Agreement, the Contractor shall apply to participate in the Program every three (3) months until the Contractor is accepted or the contract has been completed, whichever is earlier. This provision shall not be required or effective if the department program is discontinued.

**IX. SUBCONTRACTORS.** 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 agrees that each and every agreement of the Contractor with any subcontractor to perform Services under this Agreement shall contain an indemnification provision identical to the one contained herein holding the Town harmless for the acts of the subcontractor. The Contractor further agrees that any such subcontract shall be terminable for cause or convenience and that, unless directed otherwise by the Town, the Contractor shall immediately terminate all such subcontracts immediately upon termination of this Agreement. Prior to commencing any Services, a subcontractor shall provide evidence of insurance coverage to the Town. The Contractor further agrees that all such subcontracts shall provide that they may be terminated immediately without further cost upon termination of this Agreement. Neither the Town's approval of any subcontractors, suppliers or materialmen, nor the failure of performance thereof by such parties, will relieve, release or affect in any manner any of the Contractor's duties, liabilities or obligations under this Agreement, and the Contractor will at all times be and remain fully liable. The Contractor agrees that each of its employees, and any subcontractors, suppliers and materialmen will be properly qualified and will use reasonable care in the performance of their duties.

**X. LIENS AND ENCUMBRANCES.** The Contractor shall not have any right or interest in any Town assets, nor any claim or lien with respect thereto, arising out of this Agreement or the performance of the services contemplated herein. The Contractor, for itself, hereby waives and releases any and all statutory or common law mechanic's, materialmen's or other such lien claims, or rights to place a lien upon the Town's property or any improvements thereon in connection with any Services performed under or in connection with this Agreement, and the Contractor shall cause all permitted subcontractors, suppliers, materialmen, and others claiming by, through or under the Contractor to execute similar waivers prior to commencing any work or providing any materials in connection with the Services. The Contractor further agrees to execute a sworn affidavit respecting the payment and lien releases of all subcontractors, suppliers and materialmen, and release of lien respecting the Services at such time or times and in such form as may be reasonably requested by the Town. The Contractor will provide indemnification against all such liens for labor performed, materials supplied or used by the Contractor and/or any other person in connection with the Services undertaken by the Contractor.

**XI. 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, 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 damages, injunction or specific performance.

**XII. 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. 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 (A) above, venue for all actions arising from this Agreement shall be in the District Court in and for Larimer County. The Parties expressly and irrevocably waive any objections or rights which may affect venue of any such action, including, but not limited to, forum non-conveniens or otherwise. At the Town's request, the Contractor shall carry on its duties and obligations under this Agreement during any legal proceedings and the Town shall continue to pay for the Services performed under this Agreement until and unless this Agreement is otherwise terminated.

C. Prevailing Party. 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.

### **XIII. MISCELLANEOUS.**

A. Severability. If any provisions of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement, and all such other provisions shall remain in full force and effect. It is the intention of the Parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision valid, then the provision shall have the meaning which renders it valid.

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

C. Waiver and Modification. The waiver by Town of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition on any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of services hereunder by Town shall not be deemed to be a waiver of



any preceding breach by Contractor of any term, covenant or condition of this Agreement. No modification of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement, and no waiver of the breach of any provision of this Agreement shall be construed as a waiver of any subsequent breach of the same or any other provision hereof. If this Agreement is contingent upon approval by the Town Council, it is expressly agreed that, except as may otherwise be provided by applicable statute or ordinance, no official of the Town has the authority to waive or modify any provision of this Agreement without formal approval of the Town Council.

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

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

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

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

1. On the date and at the time of delivery if delivered personally to the party to whom notice is given at the address specified in **Section 1**, above;

2. On the date of delivery or attempted delivery shown on the return receipt if mailed to the party to whom notice is to be given by first class mail, sent by registered or certified mail, return receipt requested, postage prepaid and properly addressed as specified in **Section 1**, above; or

3. Within twenty-four (24) hours after deposit with a nationally recognized overnight courier or messenger service, properly addressed as specified in **Section 1**, above.

Either party may change such address by fifteen (15) days written notice to the other provided; however, the Parties may not designate more than one place and address to receive notices as provided in this Agreement.

H. Non –Assignment / No Third Party Beneficiaries. 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 with express written consent. 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 the Parties receiving such services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

I. 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.

J. 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.

K. 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.

*[Signatures begin on the next page]*

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first written above.

**TOWN:**

THE TOWN OF TIMNATH

By: \_\_\_\_\_  
Jill Grossman-Belisle, Mayor

Attest:

By: \_\_\_\_\_  
Milissa Peters, CMC  
Town Clerk

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON

\_\_\_\_\_  
General Counsel to the District



**EXHIBIT A**  
(Scope of Services)