



**REQUEST FOR PROPOSALS  
TOWN OF TIMNATH**

**HARMONY MEDIANS - LANDSCAPE MANAGEMENT SERVICES**

**1) Introduction**

The Town of Timnath (Town) is seeking to retain a Landscape Maintenance Contractor to assist the Town in maintaining the Harmony Road medians, from Main Street (CR5) to Three Bell Parkway as well as the Weitzel Street median from Harmony Road south to the 2<sup>nd</sup> entrance to Costco. Maintenance duties will consist of weeding, dead heading flowers, pruning trees and shrubs, trash and clippings/ branch removal and disposal, Spring clean-ups and winter watering. Landscape maintenance on the medians will also require a traffic control plan.

**NOTICE IS HEREBY GIVEN**, proposals should be prepared and submitted in a form which addresses the needs outlined herein. Late proposals will not be accepted. Proposals will be accepted until **Friday, March 22, 2019 at 3:00 p.m.** Sealed proposals shall be submitted to:

Matt Blakely  
Community Development Director  
Town of Timnath  
4800 Goodman Street  
Timnath, CO 80547  
(970) 224-3211

Questions shall be directed to:  
Paul Bass, Project Manager  
[pbass@tstinc.com](mailto:pbass@tstinc.com)

The Town reserves the right to reject any and all proposals and to waive irregularities and informalities in the submittal and evaluation process. This Request for Proposals (RFP) does not obligate the Town to pay any costs incurred by respondents in the preparation and submission of a proposal. Furthermore, the RFP does not obligate the Town to accept or contract for any expressed or implied services.

The successful vendor must comply with the Town's equal opportunity requirements. The Town is committed to a program of equal employment opportunity regardless of race, color, creed, gender, sexual orientation, age, nationality or disability.



## 2) RFP Review and Selection Process:

The Town seeks to retain a company to maintain the landscape beds, in the Harmony Road medians (See Exhibit C). All contractors responding to this RFP will be considered candidates for review. This will be an annual contract that at the discretion of the Town, may be renewed on an annual basis.

The Town reserves the right to reject any or all submittals and to waive informalities in the proposals as the Town deems appropriate. All responses submitted to the Town pursuant to this RFP, and the Contract made and entered into by the Town, will be subject to all applicable ordinances, rules and regulations, findings and policy determinations adopted, recognized or promulgated by the Town that may be in effect at the time of this RFP.

## 3) Contract Scope of Services

The Town intends to award one contract to the most qualified contractor. It is anticipated that the contractual responsibilities will include services in all of the following areas:

### a. Safety

- i. Any necessary lane closures, traffic control measures, personnel or signage required to accomplish all tasks within the scope of this contract safely and with minimal impact to the Monday through Friday, Harmony Road peak traffic times of 7:30am – 9:00am and 4:00pm-6:00pm.
- ii. Contractor shall submit a Traffic Control Plan for Town approval. Any lane closures require 48 hour advance notice and shall be conducted in accordance with the approved Traffic Control Plan.

### b. Spring Clean up

- i. Scheduling - Spring clean-up will be scheduled between March 1 and no later than March 20<sup>th</sup> of each growing season. The initial spring clean-up will be scheduled within one week of Notice to Proceed.
- ii. Ornamental grasses - All grasses to be trimmed level to within 8-12" above ground level. All clippings to be picked up and removed from site.
- iii. Shrubs - All pruning and thinning will be performed to retain the intended shape and function of plant material using proper horticultural techniques. Shrubs will be trimmed with a slight inward slope rising from the bottom of the plant to retain proper fullness of foliage at all levels.
- iv. Deciduous Trees - will be cleared of sprouts from trunk. "Lifting" of tree limbs up to 8 feet above the ground is NOT included (tree pruning, fertilization and maintenance is being handled under an existing separate contract with the Town).
- v. Evergreen Trees - Dead branches at base of evergreens will be removed. All other pruning and evergreen tree maintenance is NOT included (tree pruning,



fertilization and maintenance is being handled under an existing separate contract with the Town).

- vi. Weed Removal - All weeds to be removed by manual means only. Any chemical applications require Town approval.
- vii. Perennials and Bulbs - All perennials and bulbs to be dead headed if old or spent blooms are present.
- viii. Debris, Trash and Clippings - All debris, clippings, litter and trash to be collected and removed.
- ix. Irrigation – Above ground drip irrigation is to be monitored for adequate coverage and operation. Missing or broken emitters, tubing, and/or punctured above ground poly pipe shall be repaired when discovered as part of this contract. Remote control valves, valve boxes, lateral piping, mainline, or controller issues shall be brought to the attention of the Town for the Town to repair (this contract does not include any work associated with these items).

**c. Routine Bed Maintenance**

- i. Scheduling – twice monthly and as per Scheduling Exhibit B.
- ii. Weed Removal - All weeds to be removed by manual means only. All chemical uses to be approved by Town before application.
- iii. Perennial Maintenance - Flowering perennials and bulbs will be serviced to remove flowers that are fading or dead (“deadheading”) to prolong blooming time and to improve the general appearance of the plant. Note that Daffodils to be trimmed back after bloom is complete and no later than June 1 of each growing season.
- iv. Debris and Trash - All debris, clippings, litter and trash to be collected and removed.
- v. Reporting - Submit maintenance report noting any surface irrigation problems, insect or disease issues and all dead or dying plants. Bring any irrigation issues related to remote control valves, valve boxes, lateral lines, main lines, and the controller to the attention of the Town. Minor surface irrigation repairs shall be itemized and approved prior to commencing with the work.

**d. Winter Watering**

- i. Scheduling – see Exhibit B. Watering will commence in November of each growing season and after irrigation blow-outs have occurred.
- ii. Winter Watering - Deep root watering will be done for each tree, once a month until end of March for each growing season.

**e. Insect, Disease, and Weed Control Through Chemical Applications**

- i. Any application of chemical treatments must be approved by the Town of Timnath, before application and will be billed separately from this contract.



- ii. Treatment of bed areas for weed control will be the responsibility of **Contractor** and must be approved by the Town before application.
- iii. All products will be applied as directed by the manufacturers' instructions and in accordance with all state and federal regulations.
- iv. **Contractor** must possess and maintain an active certified Pesticide Control License issued through the CO Department of Agriculture and Consumer Services. Only trained applicators will apply agricultural chemicals.
- v. Open ground in plant beds will be treated by manual means to control weed pressure as environmental, horticultural, and weather conditions permit.
- vi. **Contractor** will maintain a log listing all applications and will have MSDS sheets available for each product used on the **Client's** property.

f. **Additional Provisions**

- i. Property inspections will be conducted regularly by an authorized Town representative. **Contractor** will document and correct any landscape maintenance deficiencies identified within one week, or provide a status update for work requiring a longer period to accomplish.
- ii. **Contractor** will provide the **Client** with a contact list for use in case of emergencies and will have personnel on call after regular business hours to respond accordingly.
- iii. **Contractor** will be proactive in identifying any landscape site conditions that affect long-term plant health and vigor and will advise the **Client** accordingly. **Contractor** does not provide any warranty, whether express or implied, pertaining to the improvement or survival of planted or sodded areas; furthermore, this proposal does not include any allowance for tree, shrub, or plant replacement. **Contractor** will only be responsible for replacement of plant material that dies as a direct and identifiable result of improper maintenance practices.

g. **Additional Services**

- i. **Contractor** may be asked to provide routine services (such as minor surface irrigation repair and plant material replacement), special services and/or landscape enhancements over and above the Contract Scope of Services at an additional charge with written approval from an authorized management representative of the **Client**. The Town will manage the irrigation controller and conduct all subsurface repairs and any remote control valves.

4) **General Qualifications Required**

The Town is seeking a firm with knowledge and experience sufficient to qualify itself as a specialist in landscape maintenance in high visibility and a heavily used roadway setting. The Contractor shall submit references of relevant experience demonstrating the Contractor's:



- Ability to work with town staff
- Approach to customer service and quality control
- Safety measures taken to ensure worker safety
- Experience with landscape maintenance in similar settings

All qualified Contractors must have a minimum of three (3) references from other municipalities where the Contractor or team has completed similar work. At least one (1) of the references provided must be within the State of Colorado.

## 5) Submittal Requirements

Interested Contractors shall submit three (3) copies of their Statement of Proposal. The statement shall be well composed and shall concisely present the Contractor's qualifications for the respective contract. A massive submittal is not necessary and is discouraged. All statements shall adhere to the following format:

- a. **Letter of Transmittal** – The letter is not intended to be a summary of the proposal itself. The letter of transmittal must contain the following statements and information:
  - i. Company name, address, and telephone number(s) of the contractor submitting the proposal.
  - ii. Name, title, address, e-mail address, and telephone number of the person or persons to contact who are authorized to represent the contractor and to whom correspondence should be directed.
  - iii. Federal and state taxpayer identification numbers of the contractor.
  - iv. Briefly state your understanding of the services to be performed and make a positive commitment to provide the services as specified.
  - v. The letter must be signed by a corporate officer or other individual who is legally authorized to bind the applicant to both its proposal and cost schedule.
  - vi. Statement which indicates “proposal and cost schedule shall be valid and binding for ninety (90) days following proposal due date and will become part of the contract that is negotiated with the Town.”
  
- b. **General Vendor Information** – Please provide the following information:
  - i. Length of time in business.
  - ii. Length of time in business of providing proposed services.
  - iii. Total number of clients.
  - iv. Total number of public sector clients.
  - v. Three references, including the name, address, and phone number of a contact person, from projects of similar size and scope.
  - vi. List any industry award/recognition that you have received, the awarding party, and the date received.



- vii. Current sample certificate of insurance.
- viii. Number of full-time personnel in:
  - 1. Location of headquarters and any field offices
  - 2. Location of office which would service the Town
- c. If your company has had a contract terminated for default during the past five years, all such incidents must be described. Termination for default is defined as notice to stop performance due to the vendor's non-performance or poor performance; and the issue was either (a) not litigated or (b) litigated, and such litigation determined the vendor to be in default. If default occurred, list complete name, address and telephone number of the party. If NO such terminations for default have been experienced by the vendor in the past five years, declare that. The Town will evaluate the facts and may, at its sole discretion, reject the vendor's proposal if the facts discovered indicate that completion of a contract resulting from this RFP may be jeopardized by selection of this vendor.

#### **6) Selection**

The Town reserves the right to reject any or all proposals, to waive irregularities or informalities in the proposals, and to re-advertise for proposals if desired. After considering all proposals and information provided during the application process, the Town will select the contractor who is the most advantageous to the Town from the standpoint of service, previous experience, and ability to deliver or for any other reason deemed by the Town to be in the best interest of the Town.



## 7) Selection Schedule

<i>RFP Advertisement</i>	Wednesday, March 6, 2019
<i>Pre-Proposal Briefing (Not Mandatory)</i>	<b>Wednesday, March 13, 2019 @ 2:00 PM</b> 4800 Goodman Street, Timnath, CO (From I-25, East on Harmony Road, South on Three Bell Parkway, ¼ mile south, Left on Iron Forge, Left on Goodman Road)
<i>Email Questions will be accepted until</i>	<b>Monday, March 18, 2019 @ 5:00 PM</b> Email questions to Paul Bass at <a href="mailto:pbass@tstinc.com">pbass@tstinc.com</a>
<i>Responses will be issued by</i>	<b>Wednesday, March 20, 2019 @ 5:00 PM</b>
<i>Proposal Submittal Deadline</i>	<b>Friday, March 22, 2019 @ 3:00 PM</b> (must be received and time stamped 4800 Goodman Street Timnath, CO 80547)
<i>Notice of Award</i>	Monday, March 25, 2019
<i>Award of Contract</i>	March 26, 2019 – Town Council Meeting
<i>Notice to Proceed</i>	March 27, 2019

**All questions are to be emailed to Paul Bass, Project Manager, at [pbass@tstinc.com](mailto:pbass@tstinc.com)**



**Exhibit A - Landscape Management Service Pricing Sheet**

To ensure consistency and for proper analysis, pricing submission should follow the format reflected. Prices should include all labor, material cost, sub-contracted expense, traffic control and safety, overhead, and tax.

<u>Description of Services</u>	<u>Unit Cost</u>	<u>Year 1</u>	<u>Year 2</u> <u>(if renewed)</u>	<u>Year 3</u> <u>(if renewed)</u>	<u>Three Year</u> <u>Total</u>
<b>1.Spring Clean Up</b>	\$	\$	\$	\$	\$
<b>2.Routine Bed Maintenance</b>	\$	\$	\$	\$	\$
<b>4.Winter Watering</b>	\$	\$	\$	\$	\$
<b>GRAND TOTAL</b>	\$	\$	\$	\$	\$

**Outside of Contract Scope - Costs**

<b>Chemical Applications - per application cost</b>	<b>Harmony Median 1 Cost</b>	<b>Harmony Median 2 Cost</b>	<b>Harmony Median 3 Cost</b>	<b>Harmony Median 4 Cost</b>	<b>Weitzel Median Cost</b>
	\$	\$	\$	\$	\$





**Exhibit B – Landscape Maintenance Schedule**

Item	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total Visits
Spring Clean Up			1										1
Routine Bed Maintenance				2	2	2	2	2	2	1			13
Winter Watering	1	1	1								1	1	5

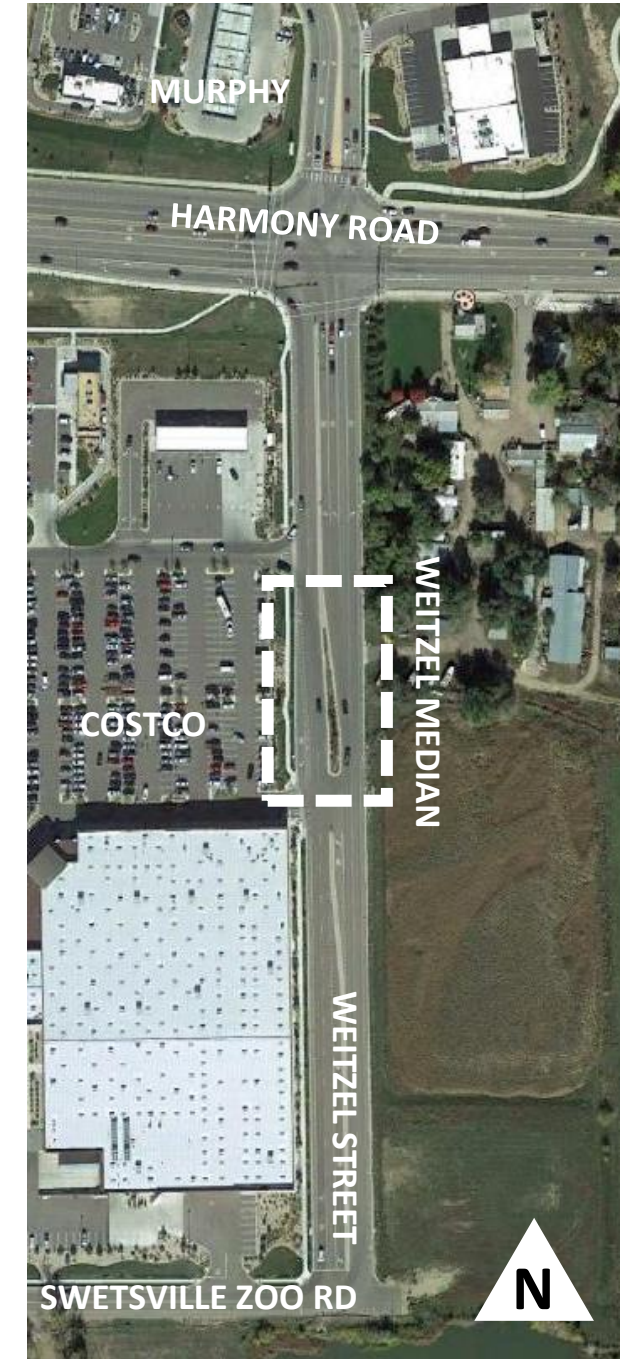
EXHIBIT C – Site Maps



HARMONY MEDIANS – WEST (MAIN STREET TO RAILROAD)



HARMONY MEDIANS – EAST (RAILROAD TO THREE BELL PARKWAY)



WEITZEL MEDIAN



**EXHIBIT D – FORM OF AGREEMENT**

**INDEPENDENT CONTRACTOR AGREEMENT**  
([Type of Services])

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This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the “Agreement”), is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2017, by and between THE TOWN OF TIMNATH, a home rule municipal corporation and political subdivision of the State of Colorado (the “Town”), and \*\* CONTRACTOR, a 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, 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 [\_\_\_\_\_] 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, 2017. Notwithstanding the foregoing, unless terminated pursuant to (i) or (ii) above, or unless the Town determines not to appropriate funds for this Agreement for the next succeeding year, this Agreement shall automatically renew for each succeeding year for an additional one (1) year term commencing January 1 of 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 25<sup>th</sup> 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 as **Exhibit B**. The Contractor shall be responsible for all expenses it incurs in performance of this Agreement and shall not be entitled to any reimbursement or compensation except as provided in **Exhibit B** of this Agreement, unless said reimbursement or compensation is approved in writing by the Town in advance of incurring such expenses. Any direct reimbursable costs for materials will be reimbursable at the Contractor's actual cost, provided that the Contractor shall 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-1**.

b. Invoices. Invoices for the Services shall be submitted monthly, by the 10<sup>th</sup> 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 10<sup>th</sup> of each month may be processed the following month.

8. TIME FOR PAYMENT. Payment for the Services shall be made by the Town within thirty (30) days of receipt of: (i) a timely, satisfactory and detailed invoice; 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, 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](mailto: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)  
[rogers@wbapc.com](mailto:rogers@wbapc.com)

Contractor: \*\* Contractor  
\_\_\_\_\_  
\_\_\_\_\_  
Attention:  
(phone)  
(fax)  
email@

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 Arbitrator 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 Arbitrator 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.

**[FOR WORK AND MATERIALS CONTRACTS]**

34. WARRANTY AND PERMITS. 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 the applicable building code and all other applicable laws, ordinances, codes, rules and regulations of any governmental authorities having jurisdiction over the Work. All materials 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.

a. The Contractor hereby warrants the Work for a period of one (1) year from the date of completion and initial acceptance of the Work. The Contractor will immediately correct or replace any Work that is defective or not conforming to the Agreement at its sole expense to the reasonable satisfaction of the Town. The Contractor’s guarantees and warranties shall in all cases survive termination of this Agreement. This warranty shall be enforceable by the Town, its successors and assigns.

b. Prior to final payment for any Services involving Work, and at any time thereafter but before the final inspection, as set forth below, the Contractor and the Town shall, at the request of the Town, conduct an inspection of the Work for the purpose of determining whether any Work is defective or otherwise not in conformance with the Agreement. The Contractor’s fees and costs associated with the inspection shall be included in the compensation schedule set forth in Exhibit B and shall not be billed separately to the Town. In the event the Contractor neglects to include the fees and costs associated with the inspection in the compensation schedule set forth in Exhibit B, the Contractor is deemed to have waived these fees and costs. After completion of the inspection, the Town will provide the Contractor with written notice of any Work requiring corrective action. The Contractor agrees to correct or replace the defective Work within a reasonable time, as agreed to by the Parties, but in no event later than



thirty (30) calendar days from the date of notice from the Town, unless otherwise agreed to by the Town.

c. The Contractor agrees that if warranty issues appear before payment has been made under this Agreement, the Town may withhold payment until such warranty issues are resolved to the Town's satisfaction. If repair or replacement of any warranty or defective Work is not made by the Contractor promptly upon request by the Town as set forth in this Agreement, in addition to any other remedy, the Town may withhold any payment the Town may owe to the Contractor, including payments under other contracts or agreements related or unrelated to the Work and Services.

d. The Contractor shall promptly notify the Town of any Work, whether by the Contractor, its subcontractors or any third parties, which the Contractor believes to be defective or not conforming with the Agreement.

e. The Contractor shall, at its expense, obtain all permits, licenses and other consents required from all governmental authorities, utility companies and appropriate parties under any restrictive covenants in connection with the Work. The Contractor shall comply with all of the terms and conditions of all permits, licenses and consents.

f. At or around eleven (11) months, but no more than one (1) year, after the completion and acceptance of the Work, the Contractor and the Town shall, at the request of the Town, conduct a final inspection of the Work for the purpose of determining whether any Work is defective or otherwise not in conformance with the Agreement. The Contractor's fees and costs associated with the inspection shall be included in the compensation schedule set forth in Exhibit B and shall not be billed separately to the Town. In the event the Contractor neglects to include the fees and costs associated with the inspection in the compensation schedule set forth in Exhibit B, the Contractor is deemed to have waived these fees and costs. After completion of the final inspection, the Town will provide the Contractor with written notice of any Work requiring corrective action. In the event the Contractor does not correct or replace the defective Work within thirty (30) calendar days from the date of notice from the Town, or within such other reasonable time as agreed to by the Parties, the Town may correct or replace the defective Work and the Contractor shall reimburse the Town for the related costs and fees.

**[FOR SERVICE CONTRACTS]**

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.

**[FOR ENGINEERING CONTRACTS]**

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

*Town's Signature Page to Independent Contractor Agreement for \_\_\_\_ Services with the  
Town of Timnath, dated \_\_, 2017*

**\*\* CONTRACTOR:**

\_\_\_\_\_, a \_\_\_\_\_

\_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF \_\_\_\_\_        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, 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 \_\_\_\_ Services with the Town of Timnath, dated \_\_, 2017***

**EXHIBIT A**  
**SCOPE OF SERVICES**

**EXHIBIT B**  
**COMPENSATION SCHEDULE**

**EXHIBIT B-1**  
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.**



**EXHIBIT C-1**  
**CERTIFICATE(S) OF INSURANCE**

**EXHIBIT D [OPTIONAL]**  
CERTIFICATE OF GOOD STANDING WITH COLORADO SECRETARY OF STATE