

**TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 80, SERIES**

**A RESOLUTION APPROVING THE COOPERATIVE AGREEMENT
BETWEEN THE STATEWIDE INTERNET PORTAL AUTHORITY (SIPA) AND THE
TOWN OF TIMNATH**


WHEREAS, the Town Council ("Council") of the Town desires to enter into the attached agreement.

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

Section 1. The Town Council hereby approves the Cooperative Agreement Attached hereto as **Exhibit A**, and authorizes the Mayor and Town Staff to enter into that agreement.

MOVED, SECONDED AND ADOPTED ON THE 18th DAY OF JANUARY, 2011

TOWN OF TIMNATH, COLORADO

BY: 
Donna Benson, Mayor

ATTEST:

BY: 
Milissa McGuire, Town Clerk



**ELIGIBLE GOVERNMENTAL ENTITY AGREEMENT BETWEEN
THE STATEWIDE INTERNET PORTAL AUTHORITY OF THE STATE OF
COLORADO AND TOWN OF TIMNATH, COLORADO REGARDING THE
TRANSMISSION OF ELECTRONIC INFORMATION**

This Eligible Governmental Entity Agreement (this “EGE”) by and between The Statewide Internet Portal Authority of the State of Colorado (“SIPA”), and Town of Timnath, Colorado (the “Town”), is made and entered into on this 18 day of January, 2010. Capitalized terms used but not defined in this EGE shall have the meanings ascribed to them in the Master Agreement (as defined below).

RECITALS

WHEREAS, SIPA and the Town wish to enter into a cooperative agreement as to the transmission of electronic information; and

WHEREAS, pursuant to § 24-37.7–105 C.R.S., SIPA operates to provide electronic access for members of the public to electronic information; and

WHEREAS, pursuant to § 24-37.7–104 C.R.S., SIPA operates as a political subdivision of the State of Colorado; and

WHEREAS, § 29-1-203, C.R.S., authorizes local governments to cooperate or contract with each other to provide any function or service lawfully authorized to each other; and

WHEREAS, § 24-37.7-104 (1)(q) authorizes SIPA and the Town, to make and execute agreements, contracts, or instruments necessary or convenient to the exercise of the powers and function of SIPA with the Town, as an Eligible Governmental Entity, as set forth in § 24-37.7-101 through 113;

WHEREAS, all Eligible Governmental Entities under § 24-37.7-104(1)(q) who enter into an Eligible Governmental Entity Agreement are intended beneficiaries under the Master Agreement dated May 2, 2005 between NIC, Inc., and SIPA, as amended by a First Amendment to the Master Agreement dated January 31, 2006 (both attached as Exhibit A and incorporated herein by reference) (the “Master Agreement”);

WHEREAS, NIC, Inc., does business in Colorado through its wholly owned subsidiary, Colorado Interactive LLC (hereinafter “Portal Contractor”);

WHEREAS, SIPA by this EGE will provide applications and services to the Town pursuant to Task Orders and work orders; and

WHEREAS, a work order will be prepared for each application involving Portal Services.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, SIPA and the Town agree as follows:

1. The Town shall make available to SIPA electronic information maintained in the general conduct of the Town's business. As mutually agreed upon in subsequent work orders, Task Orders, or corresponding statements of work, the Town will provide reasonable levels of support in placing online with SIPA certain Town-owned electronic information, as mutually agreed by the Town and SIPA, with due regard to the workload and priorities of the Town, SIPA and its Portal Contractor.

2. SIPA shall make such information available to the general public through the officially recognized statewide internet portal created pursuant to §24-37.7-105, C.R.S. and as set forth in the Master Agreement.

3. SIPA shall charge Transaction Fees and Statutory Fees in its normal course of business. SIPA shall make timely distribution of Statutory Fees received (and, if called for in a given situation, the Town's portion of any Transaction Fee received), to the Town Treasurer in a manner mutually agreed by the parties.

4. SIPA and the Town may enter into work orders and Task Orders under this EGE. Work orders shall describe specific Portal Services to be provided to the Town, and the Town acknowledges that such Portal Services shall be provided to the Town pursuant to the terms of Article 1.B. of the Master Agreement. Task Orders shall cover the purchase of goods and services from SIPA through the use of Town funds. All work orders and Task Orders may be approved by one or more of the following: (1) the Town official, or his or her designee, who is responsible for the Town department that controls access to certain Town electronic information; (2) any department that must provide resources under the work order or Task Order, such as the information technology department of the Town; (3) those persons or entities who regularly approve Town contracts, such as the Town finance department and Town legal department. Task Orders shall contain specific time or performance milestones for the Portal Contractor, timelines for completion of relevant Task Orders, statements of work, design specifications and other criteria relevant to the completion of an applicable Task Order, criteria and procedures for acceptance by the Town and remedying incomplete or inaccurate work for each phase of a relevant Task Order. Notwithstanding Article 30(b) of the Master Agreement, as amended, the Town shall be a principal beneficiary of, and entitled to enforce all covenants, representations and warranties set forth in, a Task Order when the Town purchases goods and services from SIPA through the use of Town funds.

5. SIPA shall be responsible for the operation of, and all costs and expenses associated with, establishing and maintaining electronic access to Town databases or other software applications, including but without limitation, the cost of purchasing, developing and maintaining programs used to interface with Town software applications that provide access to

Town-owned data. The Town's maximum financial obligation shall be limited to the amount set forth and appropriated pursuant to each individual work order or Task Order.

6. Subject to Section 13 below, each party shall have the right to terminate this EGE by giving the other party 60 days' written notice. Unless otherwise specified in such notice, this EGE will terminate at the end of such 60-day period, and the liabilities of the parties hereunder for further performance of the terms of this EGE shall thereupon cease, but the parties shall not be released from any duty to perform up to the date of termination.

7. None of the terms or conditions of this EGE gives or allows any claim, benefit, or right of action by any third person not a party hereto. Nothing in this EGE shall be deemed as any waiver of immunity or liability limits granted to the Town or SIPA by the Colorado Governmental Immunity Act or any similar statutory provision.

8. This EGE constitutes the entire agreement of the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral. This EGE may be amended, modified, or changed, in whole or part, only by written agreement approved by each party.

9. Neither SIPA nor Portal Contractor have responsibility for the accuracy or completeness of the data contained within the Town databases. SIPA and Portal Contractor shall be responsible only for the accurate and complete transmission of data to and from such Town databases, in accordance with the specifications of any Town-owned software.

10. This EGE and any written amendments thereto may be executed in counterpart, each of which shall constitute an original and together, which shall constitute one and the same agreement. Delivery of an executed signature page of this EGE by facsimile or email transmission will constitute effective and binding execution and delivery of this EGE.

11. The books and records accounting for all Transaction Fees and Statutory Fees due the Town shall be made available to the Town for it to audit, inspect and copy during reasonable business hours, at its own expense, upon reasonable prior notice to SIPA.

12. Confidential information for the purpose of this EGE is information relating to SIPA's, the Town's or the Portal Contractor's research, development, trade secrets, business affairs, internal operations, management procedures, and information not disclosable to the public under the Colorado Open Records Act. Confidential information does not include information lawfully obtained through third parties, which is in the public domain, or which is developed independently without reference to a party's confidential information. Neither party shall use or disclose, directly or indirectly, without prior written authorization, any confidential information of the other or confidential information of the Portal Contractor. SIPA shall use its reasonable best efforts to ensure that the Portal Contractor protects Town confidential information from unauthorized disclosure. Notwithstanding anything to the contrary herein, each party acknowledges that given the subject matter of this EGE, such party shall not disclose

confidential information of the other (whether in written or electronic form) to any third party, except as required by law or as necessary to carry out the specific purpose of this EGE; provided, however, that if such disclosure is necessary, any third party who receives such confidential information shall also be bound by the nondisclosure provisions of this Section 12. Upon termination of this EGE, the parties shall return or destroy (at the other party's request) all confidential information of the other and if such information is destroyed, each party shall demonstrate evidence of such destruction to the other.

13. Upon termination of this EGE, all rights and obligations of the parties shall terminate except that the obligations set forth in Sections 3 (concerning payment of fees due the Town), 4 (last sentence), 5, 7, 8, 10, 11 (but survival of this provision is limited to 12 months after termination), 12, 14.A and 14.D., shall survive any such expiration or termination. In addition, if the Master Agreement is terminated, the provisions of Article 8 and Section 1 of the Special Provisions of the Master Agreement shall also survive for one year, except this one-year limitation shall not apply as to intentional fraud with respect to Town matters by Portal Contractor or any of its employees in the course of their employment.

14. Miscellaneous Provisions

A. Independent Authority. SIPA SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT AUTHORITY AND NOT AS AN EMPLOYEE OF THE TOWN. NEITHER SIPA NOR ANY AGENT OR EMPLOYEE OF SIPA SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE TOWN. SIPA AND ITS AGENTS SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID BY THE TOWN PURSUANT TO THIS EGE. SIPA ACKNOWLEDGES THAT SIPA AND ITS EMPLOYEES OR AGENTS ARE NOT ENTITLED TO TOWN EMPLOYMENT OR UNEMPLOYMENT BENEFITS UNLESS SIPA OR A THIRD PARTY PROVIDES SUCH BENEFITS AND THAT THE TOWN DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH BENEFITS. SIPA SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE TOWN TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY AUTHORIZED BY THE TOWN. SIPA AND ITS AGENTS SHALL PROVIDE AND KEEP IN FORCE WORKERS' COMPENSATION (AND PROVIDE PROOF OF SUCH INSURANCE WHEN REQUESTED BY THE TOWN) AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF SIPA, ITS EMPLOYEES AND AGENTS.

B. Non-discrimination. SIPA agrees to comply with the letter and the spirit of all applicable state and federal laws respecting illegal discrimination and unfair employment practices.

C. Illegal Aliens. SIPA shall not, and by signing this EGE certifies that it does not, knowingly employ or contract with an illegal alien to perform work under this EGE. SIPA shall not enter into a subcontract with a subcontractor that fails to certify to SIPA that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this EGE. SIPA affirms that it has verified or attempted to verify through participation in the Basic Pilot Employment Verification Program administered by the United States Department of Homeland Security that SIPA does not employ illegal aliens. In the event SIPA is not accepted into the Basic Pilot Program prior to entering into this EGE, unless the Basic Pilot Program is discontinued by the federal government, SIPA shall apply to the participate in the Basic Pilot Program every three months until SIPA is accepted or this EGE has terminated, whichever is earlier. SIPA is prohibited from using the Basic Pilot Program procedures to undertake pre-employment screening of job applicants while this EGE is in effect.

In the event that SIPA obtains actual knowledge that a subcontractor performing work under this EGE knowingly employs or contracts with an illegal alien, SIPA shall be required to:

- (i) Notify the subcontractor and the Town within three days that SIPA has actual knowledge that the subcontractor is employing or contracting with an illegal alien; AND
- (ii) Terminate the subcontract with the subcontractor if, within three days of receiving such notice, the subcontractor does not stop employing or contracting with the illegal alien; except that SIPA shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

SIPA is required under this EGE to comply with any reasonable request by the Town made in the course of an investigation the Town is undertaking pursuant to its legal authority.

Violation of this Section 14.C. of this EGE shall constitute a breach of this EGE and may result in termination by the Town. SIPA shall be liable to the Town for actual and consequential damages resulting from such breach pursuant to §8-17.5-101(3) C.R.S. The Town shall also report any such breach to the Office of the Secretary of State.

SIPA acknowledges that the Town may investigate whether SIPA is complying with this Section 14.C. This may include on-site inspections and the review of documentation that proves the citizenship of any person performing work under this EGE and any other reasonable steps necessary to determine compliance with the provisions of this Section.

D. Choice of Law. The laws of the State of Colorado (except Colorado laws related to choice of law or conflict of law) and rules and regulations issued pursuant

thereto shall be applied in the interpretation, execution, and enforcement of this EGE. Any provision, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with this EGE shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision, in whole or in part, shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this EGE to the extent that this EGE is capable of being performed.

At all times during the performance of this EGE, SIPA shall strictly adhere to all applicable federal and state laws, rules, and regulations that have been or may hereafter be established.

E. Software Piracy Prohibition. No State or other public funds payable under this EGE shall knowingly be used for the acquisition, operation, or maintenance of computer software in violation of United States copyright laws or applicable licensing restrictions. SIPA hereby certifies that, for the term of this EGE and any extensions, SIPA has in place appropriate systems and controls to prevent such improper use of public funds. If the Town determines that SIPA is in violation of this paragraph, the Town may exercise any remedy available at law or equity or under this EGE, including, without limitation, immediate termination of the EGE and any remedy consistent with United States copyright laws or applicable licensing restrictions.

F. Notices. All notices required or permitted under this EGE shall be in writing and delivered personally, by facsimile, by email or by first class certified mail, return receipt. If delivered personally, notice shall be deemed given when actually received. If delivered by facsimile or email, notice shall be deemed given upon full transmission of such notice and confirmation of receipt during regular business hours. If delivered by mail, notice shall be deemed given at the date and time indicated on the return receipt. Notices shall be delivered to:

If to SIPA:

Statewide Internet Portal Authority
Attn: John D. Conley, Executive Director
633 17th Street, Suite 1610
Denver, CO 80202
Phone: (303) 866-4211
Fax: (303) 866-3995
Email: sipa@cosipa.gov

If to the Town:

Town of Timnath
Attn: Sherri Wagner
Title: Interim Town Manager
Address: 4800 Goodman Street, Timnath, Colorado, 80547
Phone: 970-224-3211
Fax: 970-224-3217
Email: swagner@timnathgov.com

And to other address or addresses as the parties may designate in writing.

G. Employee Financial Interest. The signatories aver that to their knowledge, no employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described herein.

This EGE is entered into as of the day and year set forth above.

John D. Conley, Executive Director
Statewide Internet Portal Authority

Date: _____



Name: Donna Benson
Title: Mayor
Town of Timnath, CO

Date: 1-18-11