

**TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 71, SERIES 2015**

**A RESOLUTION RATIFYING A SUBSTANTIVE MODIFICATION TO THE
PREVIOUSLY APPROVED INTERGOVERNMENTAL AGREEMENT BETWEEN
THE TOWN OF TIMNATH, COLORADO, THE TIMNATH DEVELOPMENT
AUTHORITY, THE POUFRE VALLEY FIRE PROTECTION DISTRICT AND THE
POUDRE FIRE AUTHORITY**

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

WHEREAS, the Town Council previously passed Resolution No. 40, Series 2015 on June 23, 2015, approving an Amended And Restated Intergovernmental Agreement between The Town Of Timnath, Colorado, the Timnath Development Authority, the Poudre Valley Fire Protection District and the Poudre Fire Authority (the “Agreement”); and

WHEREAS, after approval, but before execution of the original version of the Agreement, the Poudre Fire Authority requested substantive modifications to the Agreement, attached hereto as Exhibit A, and Town Staff is re-submitting the modified Agreement for further review and consideration; and

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

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

Section 1. Approval

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

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON OCTOBER 13, 2015.

TOWN OF TIMNATH, COLORADO



Jill Grossman-Belisle, Mayor

ATTEST:



Milissa Peters, CMC
Town Clerk



EXHIBIT A
AGREEMENT

**AMENDED AND RESTATED
INTERGOVERNMENTAL AGREEMENT BETWEEN
THE TOWN OF TIMNATH, COLORADO,
THE TIMNATH DEVELOPMENT AUTHORITY,
THE POUFRE VALLEY FIRE PROTECTION DISTRICT AND
THE POUFRE FIRE AUTHORITY**

This Amended and Restated Intergovernmental Agreement (the "Agreement") is entered into as of this 13th day of October, 2015 (the "Effective Date") between the Town of Timnath, Colorado (the "Town"), a Colorado home-rule municipality; the Timnath Development Authority (the "TDA"), an urban renewal authority established pursuant to the Colorado Urban Renewal Law; the Poudre Valley Fire Protection District (the "Fire District"), a Colorado fire protection district authorized pursuant to Section 32-1-101, et. seq., C.R.S.; and the Poudre Fire Authority, a separate legal authority organized pursuant to Section 29-1-203(4), C.R.S. (the "Fire Authority").

RECITALS

1. The Fire District is a quasi-governmental corporation and political subdivision of the State of Colorado existing pursuant to § 32-1-101, et seq., C.R.S., and was organized to provide fire protection, emergency medical and rescue services ("Fire Protection Services") to the residents and property owners within its jurisdictional boundaries.

2. The Fire Authority was formed in 1981 by intergovernmental agreement between the Fire District and the City of Fort Collins, to provide Fire Protection Services to all areas within the Fire District and the City of Fort Collins, the intergovernmental agreement having been most recently amended and restated by intergovernmental agreement dated July 15, 2014 ("Fire Authority IGA"). The Fire District and the Fire Authority may hereinafter be referred to jointly as the "Fire Department".

3. As a Colorado home-rule municipality, the Town has the power to provide Fire Protection Services pursuant to §§31-15-601(1)(1), 31-15-201, 31-23-207, 31-23-214, 31-23-303 and 31-30-101, C.R.S.

4. On November 10, 2004, the Board of Trustees of the Town authorized the formation of the TDA with the Board serving as the Directors of the TDA. Pursuant to the Timnath Urban Renewal Plan approved by the Town Board on December 15, 2004 (the "Plan"), the TDA has received since adoption of the Plan, and will continue to receive, property tax increment collected within the Plan area, now based on 10.595 mills, as assessed above the base amount, levied by the Fire District (the "District Increment").

5. The Town believes it to be in the best interests of the Town's residents and visitors to provide within its municipal boundaries standardized Fire Protection Services by a single provider.

6. The Fire District has provided Fire Protection Services to the Town since 1950 and currently provides Fire Protection Services to most lands within the Town through the Fire Authority.

7. By Resolution No. 2000-F, and pursuant to § 29-22-102, C.R.S., the Town designated the Fire Department as the emergency response authority for hazardous substance incidents occurring within the corporate limits of Timnath.

8. The Town, the Fire District and the Fire Authority entered into an agreement on February 6, 2001 (the "2001 Service Agreement"), whereby the parties agreed to take the necessary steps to make the Fire District the exclusive Fire Protection Services provider for the Town; agreed that the Fire District could charge fees for its services; agreed that the Fire District would provide fire prevention services and hazardous substances response; agreed that the Fire Authority would assume the Fire District's obligations to provide Fire Protection Services; agreed that the Town would require landowners seeking annexation into the town to seek inclusion in the Fire District and the Fire District would consider inclusion of all lands legally eligible for inclusion in the Fire District; and agreed that the Town, during an annexation process, would take all actions necessary and appropriate to exclude the lands in another fire protection district and include them into the Fire District.

9. The Town and the Fire District also entered into an intergovernmental agreement dated July 20, 2005 (the "2005 IGA"), whereby the Town designated the Fire District as the fire service provider for the Town with all areas of the Town to be included in the boundaries of the Fire District. The Town agreed to require landowners who seek annexation of their lands into the Town, which lands are located within a fire protection district other than the Fire District, to concurrently petition for exclusion of the lands from the other fire protection district and inclusion of such lands into the Fire District. As to lands already within the Town which are located within a fire protection district other than the Fire District, the Town agreed to file petitions to exclude such lands from the boundaries of the other fire protection district and request, or require where possible, the owners of such excluded lands to petition for inclusion into the Fire District.

10. In 2008, the Town did not seek inclusion of a portion of the Graves Annexation into the Fire District as required by the 2001 Service Agreement and the 2005 IGA. Said portion therefore remains outside the Fire District despite its annexation to the Town, and still within the service area of the Windsor/Severance Fire Protection District. The parties acknowledge that the Town has been in ongoing negotiations with the owners of the property in the Graves Annexation in an effort to facilitate exclusion of said property from the Windsor/Severance Fire Protection District and include said property in the Fire District.

11. The Town, TDA, Fire District, and the Fire Authority, (collectively, the "Parties", or individually a "Party") entered into an Intergovernmental Agreement dated March 1, 2007 (the "2007 IGA") regarding, among other things, the construction of a new fire station within the corporate boundaries of the Town and the payment of the District Increment to the Fire District. From the inception of the TDA to the Effective Date, the TDA has accumulated

and currently holds in escrow District Increment in the approximate amount of \$1,908,041.05 for the purpose of facilitating construction of a new fire station under the 2007 IGA (the "Accumulated District Increment").

12. The Town and the Fire Authority have shared facilities for many years with the Town formerly occupying facilities owned by the Fire Authority (the "Town Hall") and the Fire Department occupying an existing fire station facility owned by the Town. Pursuant to an Exchange Agreement dated February 10, 2012 (the "Exchange Agreement"), the Fire Authority transferred the Town Hall to Riverbend Ventures LLC ("Riverbend Ventures") in exchange for the conveyance of property designated as Lot 15 under the applicable preliminary plat, owned by Riverbend Ventures to the Fire Authority by Special Warranty Deed dated February 10, 2012 and recorded on February 15, 2012 at Reception # 20120010397 in the records of the Clerk and Recorder for Larimer County (the "Old Lot 15 Fire Authority Property").

13. Riverbend Ventures, the Town and the TDA entered into a "Public Improvements Agreement" dated February 10, 2012, and recorded on April 25, 2012 at Reception # 20120027087 of the Larimer County, Colorado real property records (the "Original Public Improvements Agreement") which was subsequently amended and restated in its entirety in the "Amended and Restated Public Improvements Agreement" dated October 14, 2014, and recorded on June 26, 2015 at Reception # 20150040691 of the Larimer County, Colorado records (the "Restated Public Improvements Agreement"). The Restated Public Improvements Agreement provides that the TDA will design, construct, install, and pay the cost of certain public improvements as described in Exhibit C to the Restated Public Improvements Agreement (the "Public Improvements"), which costs are to be repaid in part by the applicable property owners through lot assessments that are due on a per-lot basis upon application for the building permit for the applicable lot (however, the Fire Authority has agreed in Section 2.3 below to pay its \$100,000 share of this assessment for the hereafter described Lot 8 when Lot 8 is conveyed to the Fire Authority as provided herein). Pursuant to the Restated Public Improvements Agreement, Riverbend Ventures and the Town have submitted and processed a Final Plat for the area and development which was recorded on June 23, 2015 at Reception # 20150039320 of the Larimer County, Colorado real property records (the "Plat"). The Plat includes and reconfigures the Old Lot 15 Fire Authority Property which is shown thereon, in part, as Lot 8 ("Lot 8").

14. The Restated Public Improvements Agreement contemplates the construction on Lot 8 of the new fire station contemplated in the 2007 IGA (the "Lot 8 Fire Station"), rather than the Old Lot 15 Fire Authority Property. The Fire Authority and the Fire District believe that Lot 8 is a suitable location to construct the Lot 8 Fire Station.

15. The Old Lot 15 Fire Authority Property, which is described in metes and bounds, is not configured using the same legal description as Lot 8, which is described using a lot and block description. Therefore, upon approval of the Plat and as hereafter provided, the Fire Authority will convey the Old Lot 15 Fire Authority Property to the Town or such person or entity designated by the Town in exchange for Lot 8 being conveyed to the Fire Authority.

16. The Fire Authority has completed design of the Lot 8 Fire Station, which was submitted to the Town through an application for Fire Station Conditional Use Permit, and

approved by the Town Planning Commission on May 5, 2015, and approved by the Town Council on May 12, 2015, by Resolution No. 31, Series 2015 (the "Station Design"). This design submittal shall be considered the "Approved Station Design" for purposes of this document.

17. Based upon events and circumstances occurring since the execution of the 2007 IGA, the Parties desire to restate and replace the 2007 IGA pursuant to the terms and conditions of this Agreement.

18. Pursuant to § 31-25-112(1)(d), C.R.S., a public body has the ability to enter into agreements with an urban renewal authority respecting action to be taken by the authority and public body including agreements respecting the planning or undertaking of plans, projects, programs, works, operations, or activities which such public body is otherwise empowered to undertake.

19. Pursuant to Article XIV, Section 18 of the Colorado Constitution and §29-1-203, C.R.S., the parties are authorized to enter into intergovernmental agreements for the provision of services of mutual benefit.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, receipt of which is acknowledged, the Parties agree as follows:

Section 1.0 Conveyance of Lot 8. Upon recording of the Plat, the TDA and the Town shall work cooperatively to require the owner to transfer the newly platted Lot 8 to the Fire Authority by special warranty deed, free and clear of all liens and encumbrances, including free and clear of any and all declarations, covenants or conditions, except only those permitted exceptions listed on **Exhibit A**, attached hereto and incorporated herein. The Town shall be responsible for all costs associated with conveyance of Lot 8 or portions thereof, including the cost of a standard policy of title insurance to be issued to the Fire Authority in the insured amount of \$400,000.00. Prior to and as a condition of receiving Lot 8, but in a simultaneous closing, the Fire Authority shall convey by special warranty deed its interest in the Old Lot 15 Fire Authority Property to such person or entity as designated by the Town and TDA. In addition, at the closing for Lot 8, the Fire Authority agrees to relinquish to Riverbend Ventures all of the Fire Authority's right title and interest in and to the easement granted to it in that certain "Grant of Easement" dated February 10, 2012, and recorded on February 15, 2012, at Reception #20120010398 of the Larimer County, Colorado records. The Town shall be responsible for all costs associated with such conveyance of the Old Lot 15 Fire Authority Property or portions thereof, including the cost of a standard policy of title insurance to be issued to the grantee in an insured amount of \$400,000.00. The Town and the Fire Authority acknowledge that one of the permitted exceptions subject to which the Fire Authority will take title to Lot 8 is the "Annexation Agreement Riverbend Project" dated December 22, 2008, and recorded on January 9, 2009, at Reception #20090001236 of the Larimer County, Colorado records (the "Annexation Agreement"). The Town agrees that in the event there is any conflict

between the provisions of this Agreement and the Annexation Agreement that are enforceable against or impose an obligation on Lot 8 or the Fire Authority as the owner of Lot 8, that the provisions of this Agreement shall control as between the Town and the Fire Authority.

Section 2.0. Construction and Operation of the Lot 8 Fire Station.

Section 2.1. Obligation to Commence Construction. The Fire Authority agrees to commence construction of the Lot 8 Fire Station within 12 months of the satisfaction of all of the following conditions: (a) the completion of all public improvements as described in Section 2.3 of this Agreement, with the exception of the Fire Signal, which shall be completed and operational prior to occupancy of the Lot 8 Fire Station, (b) conveyance of the Old Lot 15 Fire Authority Property to the Town or its designee and conveyance of Lot 8 to the Fire Authority, (c) the provision of adequate access to Lot 8 for its intended use, including provision of an access and emergency easement across Lot 7 to provide shared access with the Town Hall and allow Fire Authority vehicles and apparatus to cross Lot 7 to reach Lot 8 as shown on the site plan for Lot 8 previously submitted to the Town, (d) the payment to the Fire District of the District Increment as required by Sections 3.2.A. and 3.2.B. of this Agreement, (e) the release of Lot 8 from the Original and Restated Public Improvements Agreements as contemplated by the second paragraph of Section 2.3, and (f) the termination and cancellation of the "Right of First Offer (Riverbend Lot 15)" recorded on February 15, 2012 at Reception #20120010402 of the Larimer County, Colorado records and of the "Fire Station Option Agreement (Lot 15 Riverbend)" recorded on February 15, 2012 at Reception #20120010403 of the Larimer County, Colorado records. For purposes of this Agreement, construction commences on the date that the Fire Authority obtains a building permit for the Lot 8 Fire Station (the "Commencement Date").

Section 2.2 Station Design/Construction Costs. The Lot 8 Fire Station shall be designed so as to comply with the requirements of the Town's Code, building regulations, and design requirements existing as of the Effective Date and applicable to similar structures throughout the Town. The Fire Authority shall utilize the Station Design for the construction of the Lot 8 Fire Station, through the standard Fire Authority construction procurement process. The Town will waive applicable permit fees and administrative or overhead charges except those resulting in a direct cost to the Town, such as building permit fees that are payable to the Town's contract building plan reviewer and inspector. The Parties agree that changes in the Station Design may be required as a result of Town Code regulations which are required of any applicant. These changes will be made at the cost of the Fire Authority. Any changes to the Station Design or site plan that are not required by the Town Code or Town standards shall be made at the expense of the Party requesting the changes.

Section 2.3. Public Improvements and Fire Authority Cost Share for Lot 8. The TDA and the Town will be responsible for paying, from non-District Increment, for the installation of any and all costs associated with the Public Improvements necessary for the construction and operation of the Lot 8 Fire Station as described in the Restated Public Improvements Agreement (other than the public improvements assessment as described herein). The emergency signal and mast arms (the "Fire Signal") listed in Exhibit C of the Restated Public Improvements Agreement shall be considered as a component of the required Public

Improvements to be constructed by the TDA or Town and must include red/yellow/green lights for traffic on both directions of Harmony Road and for traffic entering Harmony Road from the Road Right of Way (Signal Tree Drive), and must be capable of Opticom activation from responding fire apparatus. The Fire Signal must be installed prior to the Completion of Construction of the Lot 8 Fire Station. Additionally, the Town shall pay all costs associated with installing additional Opticom, as determined reasonably necessary by the Fire Authority, on newly installed traffic signals within the Town's control and maintenance of all Opticom systems located within the Town's control.

The Parties acknowledge that the Lot 8 Infrastructure Assessment described and set forth in Exhibit D of the Restated Public Improvements Agreement includes an increased Lot 8 Assessment amount over and above the amount associated with the Original Lot 15 Fire Authority Property under the Original Public Improvements Agreement. The Parties further agree that the Lot 8 Infrastructure Assessment is \$240,671. The Town agrees that it will pay \$140,671 of that amount from non-District Increment with the balance of \$100,000 to be paid by the Fire Authority to the TDA upon the transfer of Lot 8 to the Fire Authority. Upon the Fire Authority's payment of \$100,000, the TDA and the Town shall deliver to the Fire Authority for recording the fully executed original of the "Release of Public Improvement Agreements" attached hereto and incorporated herein as **Exhibit B**, releasing Lot 8 from any and all current and future obligations under the Original and Restated Public Improvements Agreements, as these agreements now exist or are hereafter amended, but such release shall not be deemed to waive or terminate any rights or benefits the Fire Authority may have as a third party beneficiary under such agreements. In addition, the Fire Authority shall have no obligation to transfer the Old Lot 15 Fire Authority Property as contemplated in Section 1.0 until it has received such fully executed release. The Fire Authority and the Fire District shall not be subject to any other fees associated with development of Lot 8 or construction of the Lot 8 Fire Station (other than building and development fees as stated in Section 2.2), including any and all fees and charges contemplated by the Restated Public Improvements Agreement or by the Annexation Agreement.

Section 2.4. Staffing and Temporary Fire Station. The Parties agree that a staffed temporary fire station in Timnath is desirable prior to the opening and staffing of the Lot 8 Fire Station. The Town hereby grants to the Fire Authority the right to possess and use, at no charge, the Town's real property located at 4104 Main Street, Timnath, Colorado, to be used as the temporary fire station (the "Temporary Station"). The Fire Authority may use the Temporary Station until it has the Lot 8 Fire Station in full operation. The Fire Authority agrees to begin its operation of the Temporary Station within 30 days of the Effective Date, subject to the granting of any necessary approvals by the Town for the Fire Authority to place and use the mobile home on the site of the Temporary Station. The Fire Authority hereby agrees to staff the Temporary Station upon its opening, and subsequently staff the Lot 8 Fire Station beginning immediately upon the Lot 8 Fire Station's opening. The level of ongoing staff at the Temporary Station and the Lot 8 Fire Station shall be a management decision of the Fire Authority and subject to the Fire Authority's discretion. The Temporary Station is anticipated to be closed within three months of the Completion of Construction of the Lot 8 Fire Station, and may be closed immediately upon the initial staffing of the Lot 8 Fire Station. However, in the event Lot 8 is not conveyed to the Fire Authority for any reason on or before June 1, 2016, the Fire Authority may, in its sole discretion, cease staffing the Temporary Station.

Section 3.0. Payment of Tax Increment Amounts from Accumulated District Increment and Ongoing District Increment.

Section 3.1. Revenues of the TDA. Pursuant to the Plan, all of the Accumulated District Increment received by the TDA has been maintained in an escrow account from inception of the TDA to the Effective Date, and additionally the TDA will continue to receive District Increment from the Effective Date until its dissolution (“Ongoing District Increment”).

Section 3.2. Payment of Accumulated Increment for Funding Temporary Fire Station and Lot 8 Fire Station Construction.

- A.** Upon the opening of the Temporary Station, the Town and TDA shall pay \$425,000 of the Accumulated District Increment to the Fire District to support the construction, staffing, equipping and operation of the Temporary Station.
- B.** Upon the Commencement Date, the Town and TDA shall pay to the Fire District all of the Accumulated District Increment remaining after payment of the \$425,000 pursuant to Paragraph 3.2.A., to be used toward construction of Lot 8 Fire Station.
- C.** After the Commencement Date, the Town and TDA shall pay to the Fire District all Ongoing District Increment they receive after the Commencement Date and shall continue such payment of the Ongoing District Increment so received provided the Lot 8 Fire Station is built and staffed initially. The Town and TDA shall pay the Ongoing District Increment to the Fire District after its receipt on a monthly basis on the first day of each month.

Section 3.3. Use of Accumulated and Ongoing District Increment. The Fire District will convey to the Fire Authority the Accumulated and Ongoing District Increment received from the TDA, and the Fire Authority will use the Accumulated and Ongoing District Increment payments to meet its obligations under this Agreement, including but not limited to the following:

Section 3.3.1. The planning, design, and construction of the Lot 8 Fire Station, or, as provided for in Section 2.4, the establishment of the Temporary Station.

Section 3.3.2. The Fire Authority’s costs of the escalating service demands in the Plan area resulting from increased development prior to and after construction of the Lot 8 Fire Station.

Section 3.3.3. The operation, maintenance, and equipping of the Temporary Station and of the Lot 8 Fire Station once construction is complete.

Section 3.3.4. The cost of staffing the Temporary Station and Lot 8 Fire Station as described in this Agreement.

Section 3.3.5. The purchase of a new fire engine to operate from the Temporary Station or the Lot 8 Fire Station. The actual purchase date of a new fire engine will be determined by the Fire Authority based on need and the availability of funds.

Section 3.3.6. To provide Fire Protection Services to the Lot 8 Fire Station response area.

Section 3.4. Fire District's Base Property Tax. Nothing in this Agreement will alter or diminish the Fire District's right to receive and spend as it determines appropriate its property tax assessment base amount.

Section 3.5. Sole Remedy. If the Fire Department fails to meet its obligations under this Agreement, the TDA's and the Town's exclusive remedies shall be to cease making Ongoing District Increment payments and they shall be entitled to reimbursement of previous District Increment payments to the Fire District, except for the \$425,000 to be paid pursuant to Section 3.2. A., and those funds expended in good faith by the Fire Authority for construction of the Lot 8 Fire Station prior to suspension or termination of construction. The TDA and Town must provide the Fire Department with written notice 30 days prior to ceasing its Ongoing District Increment payments.

Section 3.6. District Increment Payments Constitute an Obligation. The District Increment payments are intended to be used to offset a portion of the costs the Fire Authority will incur to plan, construct, equip, and operate the Lot 8 Fire Station. The TDA's pledge to remit the District Increment payments constitutes a binding obligation pursuant to the Colorado Urban Renewal Law that is not subject to annual appropriation by the TDA.

Section 4.0. Entire Agreement; Terminating the 2007 IGA.

This Agreement represents the full understanding of the Parties, and supersedes any prior understanding, agreement or discussion of the Parties regarding the subject matter. This Agreement is not intended to supersede or modify the 2001 Service Agreement or the 2005 IGA. Upon its execution by all Parties, this Agreement shall replace and supersede the 2007 IGA, which shall be of no further force or effect.

Section 5.0. Force Majeure.

All deadlines set forth in Section 2.0 of this Agreement may be extended by the Fire District or the Fire Authority if reasonably necessary for delays caused by war, civil unrest, acts of God, natural disaster or other similar event, or unreasonable delays caused by the Town, the TDA, or Riverbend Ventures LLC, and its successors, assigns or grantees.

Section 6.0 Term and Annual Appropriation.

This Agreement shall become effective upon execution by all Parties. Except for the TDA's pledge to remit District Increment payments as set forth in Section 3.0, the obligations of any Party under this Agreement dependent upon expenditure of funds by such Party shall be conditioned upon the annual appropriation of sufficient funds therefore by the Party's governing or funding body.

Section 7.0. Termination.

This Agreement shall terminate on December 15, 2029, unless sooner terminated as provided herein. This Agreement can also be terminated by any Party hereto giving written notice to the others prior to the Commencement Date that the Lot 8 Fire Station will not be built. Such termination shall be effective on the date of such notice. In the event of termination for this reason, all District Increment payments not already expended on or irrevocably contractually obligated by the Fire Authority for the construction, staffing, equipping, and operation of the Temporary Station and for the design, construction, and equipping of the Lot 8 Fire Station shall be reimbursed to the TDA. However, the Fire Authority shall be entitled to retain from the \$425,000 paid to it under Section 3.2.A. its reasonable costs to discontinue its operation of the Temporary Station in the event of such termination. Termination of this Agreement shall not impact any other agreements among the Parties existing and still in force at the time of termination of this Agreement.

Section 8.0. Severability.

If any provision of this Agreement is held invalid or unenforceable for any reason, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

Section 9.0. Breach and Waiver.

If any Party is in breach of its obligations hereunder, the Party claiming a breach shall provide the breaching Party with notice of the breach in writing and a reasonable opportunity to cure. In the event of failure to cure, the non-breaching Party may terminate the Agreement and seek any legal or equitable remedy against the breaching Party unless otherwise provided in this Agreement. A waiver of any Party to this Agreement of the breach of any term or provision shall not operate or be construed as a waiver of any subsequent breach by any Party.

Section 10.0. No Third Party Beneficiaries.

Any 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 person or entity.

Section 11.0. Notice.

Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if hand delivered or sent by certified mail, return receipt requested, postage and fees prepaid, or by commercial overnight courier, addressed to the party to whom such notice is to be given at the address set forth below, or at such other address as has been previously furnished in writing, to the other Party or Parties. Such notice shall be given when deposited in the United States mail or with a commercial courier.

FOR THE TOWN OF TIMNATH, COLORADO
Town Manager
4800 Goodman Street
Timnath, CO 80547

FOR THE TIMNATH DEVELOPMENT AUTHORITY
4800 Goodman Street
Timnath, CO 80547

FOR THE POUFRE FIRE AUTHORITY
102 Remington Street
Fort Collins, CO 80524

FOR THE POUFRE VALLEY FIRE PROTECTION DISTRICT
President
102 Remington Street
Fort Collins, CO 80524

Section 12.0. Exhibits and Recitals.

The Recitals and the exhibits referred to in this Agreement are incorporated herein for all purposes.

Section 13.0. Additional Documents or Action.

The Parties may execute any additional documents or take any additional action reasonably necessary to carry out this Agreement.

Section 14.0. Termination of Fire Authority.

If the Amended and Restated Intergovernmental Agreement which created the Fire Authority is terminated or the Fire Authority otherwise ceases to exist, any rights or obligations of the Fire Authority or the Fire Department hereunder shall be assumed by the Fire District.

Section 15.0. Assignment.

This Agreement shall not be assigned or amended by any Party, unless in writing executed by all Parties. Any assignment of this Agreement without the other Parties' prior written consent shall be null and void.

Section 16.0. Paragraph Headings.

The paragraph headings in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the meaning, scope or intent of this Agreement or of any provisions herein.

Section 17.0. Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

Section 18.0 Survival of Obligations.

All representations and all unperformed obligations of the Parties herein required shall survive the conveyances in Section 1.0 and all Parties shall remain bound by this Agreement until all of their respective obligations hereunder have been completely performed as provide herein.

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


TOWN OF TIMNATH, COLORADO

By: 
Jill Grossman-Belisle, Mayor

ATTEST: 

TIMNATH DEVELOPMENT AUTHORITY

By: 
Jill Grossman-Belisle, Chair

ATTEST: 

POUDRE VALLEY FIRE PROTECTION DISTRICT

By: Earlie Thomas
Earlie Thomas, Chair
Earlie Thomas

ATTEST: Severly R. McBride

POUDRE FIRE AUTHORITY

By: Kristin Stephens
Kristin Stephens, Chair

ATTEST: Kristin A. Howard

Exhibit A
Permitted Exceptions

Exhibit A
Permitted Exceptions

1. RIGHTS OF WAY FOR DITCHES AND COUNTY ROADS AS ESTABLISHED AND/OR USED
2. TERMS, CONDITIONS AND PROVISIONS OF TOWN OF TIMINATH, COLORADO ORDINANCE NO. 42 RECORDED NOVEMBER 12, 2008, AT RECEPTION NO. 20080070313 OF THE LARIMER COUNTY, COLORADO RECORDS.
3. TERMS, CONDITIONS AND PROVISIONS OF THE ANNEXATION AGREEMENT RECORDED JANUARY 09, 2009, AT RECEPTION NO. 20090001236 OF THE LARIMER COUNTY, COLORADO RECORDS.
4. THOSE MATTERS SHOWN ON THE RIVERBEND ANNEXATION MAP RECORDED JANUARY 9, 2009, UNDER RECEPTION NO. 20090001237 OF THE LARIMER COUNTY, COLORADO RECORDS.
5. ALL OIL, GAS, MINERALS AND OTHER MINERAL RIGHTS AS RESERVED IN INSTRUMENT RECORDED DECEMBER 09, 2011, UNDER RECEPTION NO. 20110076966 OF THE LARIMER COUNTY, COLORADO RECORDS, AND ANY AND ALL ASSIGNMENTS THEREOF OR INTERESTS THEREIN.
6. TERMS, CONDITIONS AND PROVISIONS OF COVENANT RECORDED DECEMBER 28, 2011, AT RECEPTION NO. 20110081454 OF THE LARIMER COUNTY, COLORADO RECORDS.
7. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF RIVERBEND 1ST FILING RECORDED JUNE 23, 2015 AT RECEPTION NO. 20150039320 OF THE LARIMER COUNTY, COLORADO RECORDS.
8. MATTERS SHOWN ON LAND SURVEY PLAT RECORDED FEBRUARY 14, 2013, AT RECEPTION NO. 20130012403.
9. ANY FUTURE TAX, LIEN, FEE, OR ASSESSMENT BY REASON OF INCLUSION OF SUBJECT PROPERTY IN THE SOUTH FORT COLLINS SANITATION DISTRICT, AS EVIDENCED BY INSTRUMENTS RECORDED AUGUST 20, 2004, UNDER RECEPTION NO. 2004-0082193, AND JANUARY 21, 2009, UNDER RECEPTION NOS. 20090003560 AND 20090003561.
10. REAL PROPERTY TAXES FOR 2015 AND ALL SUBSEQUENT YEARS.
11. MATTERS CREATED BY OR THROUGH GRANTEE.

Exhibit B
Lot 8 Release

EXHIBIT B

RELEASE OF PUBLIC IMPROVEMENT AGREEMENTS AND CLAIMS

THIS RELEASE OF PUBLIC IMPROVEMENT AGREEMENTS AND CLAIMS (“Release”) is executed this 13 day of October, 2015, by the **TIMNATH DEVELOPMENT AUTHORITY**, an urban renewal authority established pursuant Title 31, Article 25, Part 1 of the Colorado Revised Statutes (the “TDA”) with its address at 4800 Goodman Street, Timnath, CO 80547; the **TOWN OF TIMNATH, COLORADO**, a municipal corporation (the “Town”) with its address at 4800 Goodman Street, Timnath, CO 80547; **RIVERBEND VENTURES, LLC, TIMNATH LANDS, LLC** and **ARBOR HOLDINGS, LLC**, each of which is a Colorado limited liability company (collectively, “Riverbend Ventures”) and each with the address of 2725 Rocky Mountain Avenue, Suite 400, Loveland, CO 80538; and the **POUDRE FIRE AUTHORITY**, a separate legal entity organized pursuant to C.R.S Section 29-1-203(4) (the “PFA”) with its address at 102 Remington Street, Fort Collins, CO 80524. The TDA, the Town, Riverbend Ventures, and the PFA shall be collectively referred to as the “Parties.”

WHEREAS, the Town, the TDA and Riverbend Ventures have previously entered into that certain “Public Improvements Agreement” dated February 10, 2012, and recorded on April 25, 2012, at Reception #20120027087 of the Larimer County, Colorado records, and that certain “Amended and Restated Public Improvements Agreement” dated October 14, 2014, and recorded on June 26, 2015, at Reception 20150040691 of the Larimer County, Colorado records (jointly, the “Public Improvement Agreements”); and

WHEREAS, the Public Improvement Agreements provide that the TDA will be designing, constructing, installing, and paying the cost of the “Public Improvements” described in Exhibit “C” attached to each of the Public Improvement Agreements (the “Public Improvements”); and

WHEREAS, the Public Improvement Agreements currently encumber that certain real property legally described as Lot 8 of the Riverbend 1st Filing, Town of Timnath, County of Larimer, State of Colorado (“Lot 8”) and Lot 8 will be benefited and served by the Public Improvements; and

WHEREAS, under the Public Improvement Agreements Lot 8 currently has assessed against it “Lot Infrastructure Assessments” in the total amount of \$240,671 (the “Lot 8 Assessment”); and

WHEREAS, Riverbend Ventures is the current fee title owner of Lot 8; and

WHEREAS, the PFA has agreed under an “Amended and Restated Intergovernmental Agreement between the Town of Timnath, Colorado, the Timnath Development Authority, the Poudre Valley Fire Protection District and the Poudre Fire Authority” dated [DATE] (the “IGA”) to accept conveyance of fee title to Lot 8 from Riverbend Ventures and to build and operate a new fire station on Lot 8 to serve the Town, but subject to several conditions, including, without limitation, the following conditions: (1) that the PFA shall only be obligated under the Public

Improvement Agreements to pay to the Town the total amount of \$100,000 for the Lot 8 Assessment, (2) that the PFA shall be released from any and all other current and future obligations under the Public Improvement Agreements, as these Agreements now exist or are hereafter amended, and (3) that the Town, the TDA and Riverbend Ventures acknowledge and agree that this Release shall not be deemed to waive or terminate any the PFA's rights or benefits it has or may have as a third-party beneficiary under the Public Improvement Agreements; and

WHEREAS, the Town and TDA have agreed in the IGA to provide this Release to the Fire Authority subject to these aforesaid conditions; and


WHEREAS, Riverbend Ventures has also agreed to provide this Release subject to the aforesaid conditions provided the PFA agrees to release Riverbend Ventures from any and all claims or causes PFA may have against Riverbend Ventures arising from the TDA's or the Town's design, construction or installation of the Public Improvements, which release the PFA has agreed to provide.

NOW THEREFORE, for and in consideration of the Fire Authority paying to the Town the total amount of One Hundred Thousand Dollars (\$100,000.00) as payment in full of the Lot 8 Assessment, together with other good and valuable consideration, the receipt and adequacy of which the Parties acknowledge, the Town, the TDA and Riverbend Ventures hereby release Lot 8 from any and all other current and future obligations under the Public Improvement Agreements, as the Public Improvement Agreements now exist or are hereafter amended. Notwithstanding the foregoing, the Town, the TDA and Riverbend Ventures acknowledge and agree that this Release shall not be deemed to waive or terminate any of the PFA's rights or benefits it has or may have as a third-party beneficiary under the Public Improvement Agreements. The PFA hereby releases Riverbend Ventures and its principals, members, managers, agents, employees, predecessors and their respective heirs, personal representatives, successors and assigns (the "Released Parties") from any and all claims and causes of action that PFA has now or may have in the future against any of the Released Parties arising from the TDA's and/or the Town's design, construction or installation of the Public Improvements. However, nothing herein shall be deemed a release of any claims the PFA may have now or in the future against the Town and/or the TDA arising from the design, construction or installation of the Public Improvements.

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


TIMNATH DEVELOPMENT AUTHORITY

By:



Jill Grossman-Belisle, Chairperson

ATTEST:



Authority Secretary