

**TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 10, SERIES 2014**

A RESOLUTION APPOINTING DIRECTORS TO THE BOARD OF DIRECTORS OF EACH OF SERRATOGA FALLS METROPOLITAN DISTRICT NO. 1 AND SERRATOGA FALLS METROPOLITAN DISTRICT NO. 3 AND APPROVING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN AND THE DISTRICTS

WHEREAS, the Town of Timnath, Colorado (the "Town"), is a municipality duly organized and existing under Article XX of the Colorado Constitution; and

WHEREAS, each of Serratoga Falls Metropolitan District No. 1 and Serratoga Falls Metropolitan District No. 3 (collectively, the "Districts") are each a quasi-municipal corporation and political subdivision of the State of Colorado, which were duly organized in accordance with Article 1, Title 32, C.R.S., and operate pursuant to a Consolidated Service Plan approved by the Town on March 9, 2006 (the "Service Plan"); and

WHEREAS, Serratoga Falls, LLC, which is the owner of all of property within the Districts, has submitted a request that the Town Council appoint Directors to each of the Districts' Board of Directors ("Board") because there are no duly elected Directors of the Districts and the failure to appoint new Boards will result in an interruption of services provided by the Districts; and

WHEREAS, pursuant to Section 32-1-905(2.5), C.R.S., the Town Council of the Town may appoint Directors from a pool of qualified, willing candidates to the Boards of Directors of the Districts and desires to appoint Directors subject to certain conditions as set forth in this Resolution;

WHEREAS, the Town Council finds that it is in the best interests of the citizens of the Town to enter into an Intergovernmental Agreement with the Districts to assure the Districts' performance of the conditions set forth herein; and

WHEREAS, the appointment of Directors and the Intergovernmental Agreement were duly noticed and considered at a public meeting of the Town Council held on January 28, 2014, at 6:00 p.m. at Timnath Town Hall.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Timnath, Colorado:

1. The foregoing recitals are incorporated herein by reference and are adopted as findings and determinations of the Town Council.
2. Subject to the conditions set forth herein, the Town Council hereby appoints the following individuals as members of the Board of Directors of Serratoga Falls Metropolitan District No. 1:

B. Joseph Leininger, 1 Penrose Blvd., Colorado Springs, CO, 80906
Byron Levkulich, 875 S Emerson St., Denver CO, 80209
James W. Geisz, 605 High Valley Ct., Colorado Springs, CO, 80905
Aaron M. Patsch, 3160 Orion Dr., Colorado Springs, CO, 80906
Mark Goldstein, 2850 McClelland Drive, Suite 2400, Fort Collins, CO 80525

3. Subject to the conditions set forth herein, the Town Council hereby appoints the following individuals as members of the Board of Directors of Serratoga Falls Metropolitan District No. 3:

B. Joseph Leininger, 1 Penrose Blvd., Colorado Springs, CO, 80906
Byron Levkulich, 875 S Emerson St., Denver CO, 80209
James W. Geisz, 605 High Valley Ct., Colorado Springs, CO, 80905
Aaron M. Patsch, 3160 Orion Dr., Colorado Springs, CO, 80906
Mark Goldstein, 2850 McClelland Drive, Suite 2400, Fort Collins, CO 80525

4. Pursuant to Section 32-1-905(2.5), each Board shall call a special election within six (6) months of these appointments and shall not act to remove or replace any of the Directors except as a result of or during said election.

5. The Town Council hereby approves and authorizes and directs the Mayor and the Town Clerk to execute and deliver the Intergovernmental Agreement in form substantially as attached hereto and incorporated herein by this reference as **Exhibit A**, but with such modifications thereto as are consistent with the terms and provisions of this Resolution and which the President of the Town Council shall approve.

6. A condition of these appointments shall be approval and execution of the Intergovernmental Agreement by the Boards of the Districts within thirty (30) days of these appointments.

7. Until such time as the Town has either (i) completed quinquennial findings of due diligence regarding District debt through an informal review process or pursuant to Section 32-1-1101.5, C.R.S.. or (ii) approved amendments to the Districts' Service Plan in lieu thereof, the Districts may not exercise any power not specifically enumerated below, such limitation of powers to operate as conditions to these appointments:

(a) Performing all ministerial actions required to comply with state statutes, rules and regulations necessary to maintain the corporate existence of the Districts including, but not limited to, preparing and filing with the appropriate agencies annual budgets, audits or applications for audit exemptions, transparency notices and other reports;

(b) Performing all ministerial actions required to comply with their Service Plan including, but not limited to, preparing and filing with the Town annual reports.

(c) The officers of the Town are authorized and directed to take all necessary actions or appropriate to effectuate the provisions of this Resolution, and to comply with the requirements of law.

8. All actions heretofore taken (not inconsistent with the provisions of this Resolution) by the Town Council directed toward the accomplishment of the transactions herein authorized, are hereby ratified, approved and confirmed.

9. All acts, orders, resolutions or parts thereof of the Town that are inconsistent or in conflict with this Resolution are hereby repealed to the extent only of such inconsistency or conflict.

10. This Resolution shall be in full force and effect upon its passage and approval.

Adopted this 28th day of January, 2014.

TOWN OF TIMNATH, COLORADO



Jill Grossman-Belisle, Mayor

Attest:

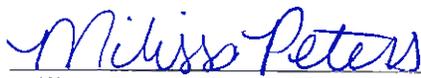

Milissa Peters, Town Clerk

EXHIBIT A
FORM OF INTERGOVERNMENTAL AGREEMENT

**INTERGOVERNMENTAL AGREEMENT AMONG
THE TOWN OF TIMNATH,
SERRATOGA FALLS METROPOLITAN DISTRICT NO. 1, AND
SERRATOGA FALLS METROPOLITAN DISTRICT NO. 3**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into as of this 28th day of January, 2014, by and among the TOWN OF TIMNATH, a home-rule municipality and political subdivision of the State of Colorado ("Town"), and SERRATOGA FALLS METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado ("District No. 1"), and SERRATOGA FALLS METROPOLITAN DISTRICT NO. 3, a quasi-municipal corporation and political subdivision of the State of Colorado ("District No. 3" and together with District No. 1, the "Districts"). Each of the Town and the Districts may be referred to herein as a "Party" and, collectively, the "Parties."

RECITALS

WHEREAS, the Districts were organized to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate and maintain public infrastructure improvements and facilities (the "Public Improvements") necessary to develop the residential project known as the Serratoga Falls Development; and

WHEREAS, the services to be provided by the Districts and the powers they may exercise are more specifically set forth in their respective Service Plans as approved by the Town on August 8, 2007 (the "Service Plans"); and

WHEREAS, by resolution adopted by the Town Council on January 28, 2014 (the "Resolution"), pursuant to the authority granted by Section 32-1-905, C.R.S., the Town appointed qualified electors to fill vacancies on each of the District's respective Board of Directors (each a "Board" and, collectively, the "Boards") subject to certain conditions set forth in said resolution including the requirement that the Districts enter into and perform this Agreement with the Town; and

WHEREAS, the Town and the District have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this Agreement.

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

COVENANTS AND AGREEMENTS

1. Legal Authority for and Purposes of Director Appointments. Section 32-1-905(2.5), C.R.S., provides in relevant part that, if there are no duly elected directors of a district and if the failure to appoint a new board will result in the interruption of services that are being provided by a district, then the governing body of the municipality in which the district is located may appoint directors from a pool of duly qualified, willing candidates. The Parties acknowledge that:

(a) All five (5) positions on each of the Districts' Boards have been vacant for more than one (1) year. As a result, the Districts have not been able to provide the services for which they were organized and perform the activities necessary to comply with the requirements of state statutes and their respective Service Plans.

(b) All of the property within the Districts' collective boundaries (the "Property") is wholly within the boundaries of the Town. Notice of board vacancies for both Districts was published in the *Fort Collins Coloradoan* as required by Section 32-1-808(2)(a), C.R.S. on December 20, 2013, and no other qualified electors filed letters of interest in filling the vacant positions within the ten (10) day notice period set forth therein.

(c) The individuals listed below were appointed on the 28th day of January, 2014, to serve on the Boards of District No. 1 and District No. 3, respectively, pursuant to Section 32-1-905, C.R.S., for the limited purposes set forth herein conditioned on execution and strict performance of this Agreement. The Districts shall conduct the election required by said statute and shall not act to remove or replace any of the following directors except as a result of or during said election:

B. Joseph Leininger, 1 Penrose Blvd., Colorado Springs, CO, 80906

Byron Levkulich, 875 S Emerson St., Denver CO, 80209

James W. Geisz, 605 High Valley Ct., Colorado Springs, CO, 80905

Aaron M. Patsch, 3160 Orion Dr., Colorado Springs, CO, 80906

Mark Goldstein, 1205 W. Elizabeth St., PMB #134, Fort Collins, CO, 80521

(d) The Town intends to require various metropolitan districts under the Town's jurisdiction to submit applications for quinquennial findings of due diligence regarding debt either in informal review processes or pursuant to Section 32-1-1101.5, C.R.S. ("Quinquennial Review"), but has agreed to consider the Districts' request to amend their respective Service Plans as an alternative to the Quinquennial Review.

2. Limitations on Districts. Each District hereby agrees that until completion of either (i) the Quinquennial Review or (ii) Service Plan amendments to the satisfaction of the Town, the powers of the Directors and each of the Districts shall be limited to the following and that any exercise of any power not specifically enumerated below shall constitute a breach of this Agreement and a material modification of the District's service plans:

(a) Performing all ministerial actions required to comply with state statutes, rules and regulations necessary to maintain the corporate existence of the Districts including, but not limited to, preparing and filing with the appropriate agencies annual budgets, audits or applications for audit exemptions, transparency notices and other reports;

(b) Performing all ministerial actions required to comply with their respective Service Plans including, but not limited to, preparing and filing with the Town annual reports;

3. Limitation on Additional Debt. The Districts shall not be authorized to issue additional debt until completion of the Quinquennial Review or, in the alternative, the Service Plan amendments, and any such additional debt issued thereafter shall comply with such modifications or amendments to their respective Service Plans, if any, that may be required by the Town. "Debt" shall be construed in its broadest possible sense to include any form of financial undertaking by the Districts which is not specifically approved by the Town.

4. Notices. Notices of every District Board meeting, which shall include the meeting agenda, shall be provided to the Town not less than seventy-two (72) hours prior to such meeting. No action shall be taken at such meetings which is not specifically denoted on such agendas. All notices required under this Agreement shall be in writing and shall be deemed to have been validly given or served on the date actually delivered if delivered in person or by courier or via nationally recognized overnight air courier service, or three (3) days after deposit of same in the United States mail, postage prepaid, addressed as follows:

To the Town: Town of Timnath
4800 Goodman Street
Timnath, CO 80547
Attn: Town Manager
Phone: (970) 224-3211

With a copy to: White Bear & Ankele Professional Corporation
2154 E. Commons Ave., Suite 2000
Centennial, CO 80122
Attn: Gary White/Robert Rogers
Phone: (303) 858-1800

To the Districts: Serratoga Falls Metropolitan District Nos. 1 and 3
1530 16th Street, Suite 300
Denver, CO 80202
Attn: Byron Levkulich
Phone: (720) 723-2850

With a copy to: Spencer Fane & Grimshaw LLP
1700 Lincoln St,
Denver, CO 80203
Attn: Matthew R. Dalton
Phone: (303) 839-3800

Each Party shall have the right from time to time to change its address or contact information by giving the other Parties at least ten (10) days written notice thereof.

5. Term. This Agreement shall terminate automatically and without the need for further action with respect to each District upon the Town's completion of the Quinquennial Review or, in the alternative, approval of Service Plan amendments, unless the Parties agree in writing to earlier termination. Upon termination, this Agreement and the limitations on the Districts' powers set forth herein shall be of no force and effect, and thereafter the Districts' powers shall have all powers granted to them under the Special District subject only to the limitations set forth in their respective Service Plans as then in effect.

6. Entire Agreement of the Parties. This Agreement constitutes the entire agreement among the Parties and supersedes all prior written or oral agreements, negotiations, or representations and understandings of the Parties with respect to the subject matter contained herein.

7. Amendment. This Agreement may be amended, modified, changed, or terminated in whole or in part only by a written agreement duly authorized and executed by the Parties hereto and without amendment to the Service Plan. The need for formal amendment to the Service Plan shall be determined according to state law then in effect.

8. Assignment. No Party hereto shall assign any of its rights nor delegate any of its duties hereunder to any person or entity without having first obtained the prior written consent of all other Parties, which consent will not be unreasonably withheld; provided, however that Town consent shall not be required for District No. 1's assignment of rights or delegation of duties to District No. 3 pursuant to a master IGA. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

9. Default/Remedies. In the event of a breach or default of this Agreement by any Party, the non-defaulting Parties shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party/Parties in such proceeding shall receive as part of its judgment or award its reasonable attorneys' fees.

10. Governing Law. This Agreement shall be governed and construed under the laws of the State of Colorado.

11. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

12. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

13. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the Districts and the Town any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Districts and the Town shall be for the sole and exclusive benefit of the Districts and the Town. Except as otherwise stated herein, this Agreement is not intended to, and shall not limit in any ways the powers and responsibilities of the Town, the Districts, or any other entity not a party hereto.

14. Severability. If any covenant, term, condition, or provision under 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 herein, the intention being that such provisions are severable.

15. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

16. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

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[SIGNATURE PAGE FOR INTERGOVERNMENTAL AGREEMENT]

SERRATOGA FALLS METROPOLITAN
DISTRICT
NO. 1, a quasi-municipal corporation and
political subdivision of the State of Colorado.

By: _____
President

Attest:

Secretary

SERRATOGA FALLS METROPOLITAN
DISTRICT
NO. 3, a quasi-municipal corporation and
political subdivision of the State of Colorado.

By: _____
President

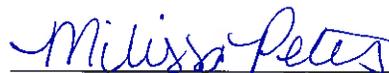
Attest:

Secretary

TOWN OF TIMNATH, COLORADO

By:  _____
Jill Grossman-Belisle, Mayor

Attest:

By:  _____
Milissa Peters, Clerk