

TOWN OF TIMNATH, COLORADO
RESOLUTION NO. ~~31~~, SERIES 2014

32

A RESOLUTION APPROVING FORM ADMINISTRATIVE REVIEW FEE
AGREEMENT

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, attached hereto as Exhibit A is the Form Administrative Review Fee Agreement (the "Form Agreement"); and

WHEREAS, the Town Council is familiar with the Form Agreement 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 Form Agreement is hereby approved for use by the Town 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 JUNE 10, 2014,

TOWN OF TIMNATH, COLORADO



Jill Grossman-Belisle, Mayor

ATTEST:



Milissa Peters, Town Clerk



EXHIBIT A

AGREEMENT



TOWN OF TIMNATH

**AGREEMENT FOR PAYMENT OF LAND USE APPLICATION REVIEW
EXPENSES INCURRED BY THE TOWN**

Regarding Project: _____

THIS AGREEMENT (the “**Agreement**”), made and entered into this ____ day of _____ 20__, by and between the TOWN OF TIMNATH, COLORADO, a Colorado municipal corporation (the “**Town**”), and _____, a Colorado _____ hereinafter referred to as (the “**Applicant**”), [and _____ as owner (if different that Applicant)]. The Town and the Applicant are referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

WITNESSETH

WHEREAS, the Applicant is seeking approvals by the Town pursuant to the Timnath Land Use Code for a certain property situated in the County of Larimer, State of Colorado, and legally described in **Exhibit A**, attached hereto and incorporated herein (the “**Property**”); and

WHEREAS, the Town’s review process includes review of the Applicant’s proposed plans for the Property which identify land use, the location of parks, schools and open space dedications, general location of streets, and a review of utility service issues including the installation of public improvements, dedication of utility easements, confirmation of the availability of utility services and the method for developing and paying for such utility services; and

WHEREAS, the Parties recognize that the fees as specified by the Municipal Code of the Town of Timnath are not adequate to fully cover the Town’s expenses in considering the application(s), which include, but are not limited to, legal publications, engineering fees, attorney fees, land planner fees, other consultant fees, reproduction of materials, public hearing expenses and recording of documents; and

WHEREAS, the Parties recognize that Section 16.1.12 of the Timnath Municipal Code requires the Applicant to pay for all such expenses incurred in processing the application(s) related to Property, and

WHEREAS, the Parties recognize that the Town will incur expenses prior to the Applicant's formal submittal of any Development review proposal; and

WHEREAS, the Parties hereto recognize that the Town will continue to incur expenses throughout the entire review process until either (i) abandonment of the work by either the Town or the Applicant or (ii) completion of the process through final acceptance.

NOW, THEREFORE, for and in consideration of the foregoing premises and of the mutual promises and conditions hereinafter contained, it is hereby agreed as follows:

AGREEMENT

1. Full and Separate Accounting of Annexation and Development Review Expenses. The Town will maintain separate accounts of all funds expended and fees and expenses incurred by the Town as a result of the development review of the above referenced Project. Expenses to be charged to the Applicant's account shall include, but shall not be limited to, those fees and expenses attributable to legal publications, referral costs, engineering services, attorney fees, planner/consultant fees, reproduction of materials, public hearing expenses, the securing of permits and easements, construction observation, close-out/initial acceptance, final acceptance and the recording of documents.

a. Applicant Payment of Expenses. The Applicant acknowledges that the Town does not employ in-house staff to review development proposals. All annexation and development proposals are reviewed by third party consultants (the "Consultants") engaged by the Town. The Town attempts to set the deposit amount to cover two months of the costs incurred by the Town and the fees of the Consultants to be incurred as part of the review and approval of the Applicant's project. Subsequent deposits may be required when the initial deposits are 85% depleted. Subsequent deposits may be required in excess of the fee. The amount of subsequent deposits may be in the amount that is anticipated to be sufficient to cover the review costs of the Town for the following month.

b. Initial Deposit. Upon the execution of this Agreement, the Applicant agrees to deposit with the Town the sum of \$_____, which sum shall serve as an initial deposit and partial payment of Consultant costs incurred by the Town while processing the Applicant's proposal.

c. Continuing Deposit. As the Town receives billings from its Consultants, but not more than quarterly, it will forward an invoice to the Applicant along with the amount necessary to supplement the original deposit in the form substantially similar to the form attached hereto as **Exhibit B**. In the event the Applicant fails to pay the invoice as submitted by the Town within ten (10) days of the Town's delivery of an invoice, the Town shall be entitled to take the following action: (i) suspend all further review; (ii) cancel any public hearings scheduled by the Town with respect to the review process; and

(iii) apply the funds on deposit to fees or expenses incurred by the Town in reviewing the application.

d. Deposit Reduction. As the project advances, the Applicant may request a reduction in the deposit amount on file with the Town. Any reduction of the deposit amount shall be in the sole discretion of the Town Council and must be approved by a resolution of the Town Council.

e. Payment of Balance Due at Termination. In the event the Town's review expenses are greater than the funds held by the Town at the time of its suspension of review, the Applicant agrees to reimburse to the Town, upon demand, such funds as are necessary to retire the balance due to Consultants at the time of the Town's termination of the review.

f. Obligation to Pay Fees in Excess of Deposit. The Applicant understands that the initial and future deposits must be replenished to pay the Consultants and costs of the Town incurred in processing the application of the Applicant. The Town will make every effort to keep these charges at a normal, reasonable and acceptable level, but the actual amount is subject to factors outside the control of these professionals. Factors including the quality of materials submitted by the Applicant, input from review agencies, unforeseen problems or issues, and decisions by the Town of Timnath Planning Commission and/or Town Council may affect charges from Consultants.

g. Request for Revision of Fee Amounts. In the event that the Applicant believes any fees charged by the Town for its costs or for Consultants are not accurate or warranted, the Applicant may submit a request for review of such fees, including a specific explanation of the basis for alleging that the fees are in excess of what is appropriate. The Applicant may also request a meeting among the Applicant, the Town Manager and the Consultant charging the fees. In the event the parties are not able to resolve the dispute, the Applicant and the Town may determine whether to proceed with the application.

h. Reimbursement of Balance. In the event there are funds remaining from the Applicant's initial or subsequent deposit after approval of the project by the Town and payment of all costs and fees subject to this Agreement, or upon termination of any application pursuant to Section 3 below, the Town shall reimburse such fund balance to the Applicant.

2. Application Termination. Except where the law or an agreement with the Town provides otherwise, the Applicant may terminate its application at any time by giving written notice to the Town. The Town shall take all reasonable steps necessary to terminate the accrual of costs to the Applicant and file such notices as are required under the Town's annexation and development review regulations. The Applicant will be liable for all costs incurred and those costs reasonably incurred by the Town to terminate the application. In the event an application is terminated and the Applicant desires to resubmit the application for approval, this Agreement will be reinstated and made current prior to processing any application.

3. Collection of Fees and Costs. If the Applicant fails to pay the fees required herein when due, the Town may take those steps necessary and authorized by law to collect the fees due. The Town shall also be entitled to all court costs and attorney fees incurred in collection of the balance due, including interest on the amount due from its due date at the rate of 18% per annum.

4. Assignment. If Applicant sells or conveys all or any portion of the project area, Applicant shall assign or transfer any and all of its interests, rights, or obligations under this Agreement to the purchaser.

5. Notice. All notices or billing invoices required under this Agreement shall be in writing and shall be delivered or sent by mail to the addresses of Parties herein set forth. All notices so given shall be considered effective on the date of delivery, or seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Either party by notice so given may change the address to which further notices shall be sent.

Notice to Town:

Town of Timnath
4800 Goodman Street
Timnath, Colorado 80547
Attention:
(970) 224-3211 (phone)
(970) 224-3217 (fax)

with copy to:

White Bear Ankele Tanaka & Waldron
Professional Corporation
2154 E. Commons Ave., Suite 2000
Centennial, Colorado 80122
Attention: Robert G. Rogers, Esq.
(303) 858-1800 (phone)
(303) 858-1802 (fax)

Notice to Applicant:

Attention: _____
_____(phone)
_____(Fax)

6. 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.

7. Severability. If any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid, and Parties shall cooperate to cure any such defect.

8. Execution and Counterparts. This Agreement may be executed and filed in any number of counterparts, all of which when taken together shall constitute the entire agreement of Parties. Signature pages may be removed from any counterpart and attached to another counterpart to constitute a single document.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Should any party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that exclusive venue of such suit or action shall be in Larimer County, Colorado.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the Town and the Applicant have caused this Agreement to be duly executed on the day and year first above written.

APPLICANT:

a Colorado Corporation

_____, _____

By: _____

TOWN OF TIMNATH:

By: April Getchius, Town Manager

ATTEST:

Milissa Peters, Town Clerk

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B
FORM OF INVOICE