

**TOWN OF TIMNATH, COLORADO  
RESOLUTION NO. 44, SERIES 2016**

**A RESOLUTION APPROVING SEWER SERVICES ASSISTANCE 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 Sewer Services Assistance Agreement(the “Agreement”) Between the Town and Poudre School District, a statutory Colorado school district (the “Owner”); and

**WHEREAS**, pursuant to Town Ordinance Number 28, 2008 (the “Ordinance”), the Owner’s property in the Old Town Area, as defined in Exhibit 1 to the ordinance, is required to be connected to the Old Town Sewer Project, under the Ordinance; and

**WHEREAS**, the Agreement states the terms by which the Town will assist the Owner in connecting to the Old Town Sewer Project to comply with the Ordinance; and

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

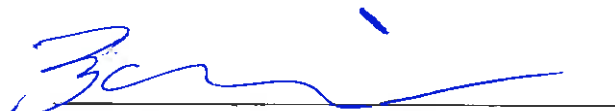
**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO as follows:**

**Section 1. Approval**

The Agreement 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 JUNE 14<sup>TH</sup>, 2016.**

**TOWN OF TIMNATH, COLORADO**

  
\_\_\_\_\_  
Bryan Voronin, Mayor Pro Tem

ATTEST:

*Milissa Peters*

Milissa Peters, CMC  
Town Clerk



**EXHIBIT A**  
**AGREEMENT**

## SEWER SERVICES ASSISTANCE AGREEMENT

Owner's Name  
Address  
Timnath, CO 80547

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This SEWER SERVICES ASSISTANCE AGREEMENT, including any and all exhibits attached hereto (the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the TOWN OF TIMNATH, Colorado ("Town"), and POUUDRE SCHOOL DISTRICT, a statutory Colorado school district ("Owner"). The Town and the Owner 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 has the ability to enact ordinances for the public health, safety, and welfare pursuant to Sections 2.4 and 3.1 of the Town of Timnath, Colorado, Home Rule Charter; and

WHEREAS, in furtherance of these objectives and pursuant to Ordinance No. 28, 2008, Adopting Article V of Chapter 11 of the Timnath Municipal Code Entitled "Old Town Sewer Project" ("Ordinance"), the Town requires that all structures in the Old Town Area, as defined in Exhibit 1 to the Ordinance, connect to a public sewer service; and

WHEREAS, Owner's property located at \_\_\_\_\_ ("Property"), is an Eligible Structure as defined by the Ordinance and is required to be connected to the Old Town Sewer Project ("Project") under the Ordinance; and

WHEREAS, Owner seeks Town assistance regarding required connection of Property to a public sewer service as provided for in the Ordinance.

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. OWNER RESPONSIBILITIES. The Owner hereby agrees to cooperate with the Town to ensure connection of the Property to the Project, and Owner agrees to have Owner's existing septic system pumped and filled with sand by the Town and at the Town's expense as determined by the Town in its sole discretion. The Owner shall allow the Town access to the

Property as necessary for the completion of the Project and shall not take any action that would adversely delay, impair, or prevent completion of the Project.

2. TOWN RESPONSIBILITIES. The Town agrees to provide the assistance regarding the Project as outlined in the Ordinance. Namely, the Town agrees to:

- a. Install sewer service without cost to the Owner, including payment of tap fee and all costs associated with connecting an individual sewer service line not to exceed four (4) inches in diameter *from the sewer main up to and connecting to the sewer line outside of the school building, intercepting the line between the school building and the septic tank. The work WILL NOT extend into the structure, or modify how sewer is conveyed to the septic tank (i.e., modify grinder or ejector pumps);*
- b. Pump the Owner's existing septic system and fill the septic system with sand without cost to the Owner;
- c. Repair damage to concrete driveways, sprinkler systems, and sod, but not damage to trees and shrubs; and
- d. Arrange for inclusion of the Property into the South Ft. Collins Sanitation District.
- e. All work to be done by the Town's selected contractor during the contractor's normal work hours. This will typically be 7:30 a.m.-5 p.m., Monday through Friday.
- f. The design and construction will be specifically and according to plans to be negotiated by the Parties (the "Negotiated Plans"), which Negotiated Plans are anticipated to differ from certain of the foregoing subsections of this Section 2. The Owner shall pay any additional cost of additional work resulting from the Negotiated Plans, beyond the scope of the described work in subsections (a.) through (e.) of this Section 2 above.

3. TERMINATION. This Agreement shall terminate only upon Owner's full compliance with the Ordinance.

4. RELEASE.

- a. The Owner, on behalf of all occupants of the Property and their agents, successors, and assigns, hereby waives and releases any present or future claims, demands, losses, liabilities, actions, lawsuits, damages, and expenses, whether arising in tort, contract, or otherwise, it might have against the Town or the Town's employees or elected or appointed officers arising directly or indirectly or purportedly, in whole or in part, out of this Agreement or any action, omission, or work by or on behalf of the Town in connection with this Agreement, including

but not limited to excavation; boring; transport of equipment and materials; unloading of sand; and reparation of concrete, driveways, sprinkler systems, or sod.

5. ASSIGNMENT. The Owner 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.

6. ACKNOWLEDGMENTS. Owner hereby acknowledges that Town is only responsible for the costs specified in Paragraph 2 of this Agreement.

7. SUBJECT TO ANNUAL APPROPRIATE AND BUDGET. The Town's obligations under this Agreement are specifically subject to appropriation by the Town Council of sums necessary. 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 Owner 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 Council for 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 either Party, 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.

8. 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 Parties, their respective officials, employees, contractors, or agents, or any other person acting on behalf of the Parties and, in particular, governmental immunity afforded or available to the Parties pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S.

11. SEVERABILITY. If any portion of this Agreement is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion of this Agreement, which shall remain in full force and effect. 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.

12. 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.

13. 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. In the event of the filing of a lawsuit to compel such disclosure, the Town will tender all such material for judicial determination on the issue of disclosure.

14. 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 this \_\_\_\_ day of \_\_\_\_\_, 2016. 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 of the State of Colorado



April D. Getchius, AICP  
Town Manager

ATTEST:



Town Clerk

*Town's Signature Page to Sewer Services Assistance Agreement*



Owner:POUDRE SCHOOL DISTRICT, a statutory Colorado school district

By: \_\_\_\_\_  
President, Board of Education

Attest:

\_\_\_\_\_  
Secretary to the Board of Education

STATE OF COLORADO    )  
                                  ) ss.  
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as the President of the Board of Education of Poudre School District, a statutory Colorado school district, and by \_\_\_\_\_, as Secretary to the Board of Education. .

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

(S E A L)

\_\_\_\_\_  
Notary Public

*Owner's Signature Page to Sewer Services Assistance Agreement*