

**Timnath Development Authority Agenda  
Meeting Agenda  
February 25, 2014**

**IMMEDIATELY FOLLOWING THE TIMNATH LIQUOR BOARD MEETING AT 6:00 p.m.**

***Meeting will be held at Timnath Administration Building  
4800 Goodman Street, Timnath, Colorado***

**1. CALL TO ORDER AND ROLL CALL**

Chairperson	Jill Grossman-Belisle
Commissioner	Marty Chiaramonte
Commissioner	Bill Neal
Commissioner	Paul Steinway
Commissioner	Bryan Voronin

**2. CONSENT AGENDA**

- a. Approval of the January 28, 2014, Timnath Development Authority Meeting Minutes
- b. Ratification of Loan Agreement in Amount not to Exceed \$36,725,000 and Related Financing Documents

**3. BUSINESS**

- a. **RESOLUTION NO. TDA-6, SERIES 2014**, A Resolution Approving the Amended and Restated Cooperation Agreement Between the Town of Timnath and the Timnath Development Authority

**4. ADJOURNMENT**

**Timnath Development Authority Agenda**  
**Regular Meeting Minutes**  
**January 14, 2014, 6:00 p.m.**  
*Meeting was held at **Timnath Administration Building***  
***4800 Goodman Street, Timnath, Colorado***

**1. CALL TO ORDER AND ROLL CALL**

Chairperson Grossman-Belisle called to order the regular meeting of the Timanth Development Authority on Tuesday, January 28, 2014, at 6:03 p.m.

**Present:**

- a. Chairperson Jill Grossman-Belisle
- b. Commissioner Paul Steinway
- c. Commissioner Bryan Voronin

**Absent:**

- a. Commissioner Marty Chiamonte
- b. Commissioner Bill Neal

**Also Present:**

- a. April Getchius, Town Manager
- b. Gary White, Contacted Town Attorney
- c. Don Taranto, Contracted Town Engineer
- d. Milissa Peters, Town Clerk
- e. Matt Blakely, Contracted Town Planner
- f. Brian Williamson, Contracted Town Planner

**2. CONSENT AGENDA**

- a. Approval of the January 14, 2014, Timnath Development Authority Meeting Minutes

**Commissioner Steinway moved to approve THE CONSENT AGENDA. Commissioner Voronin seconded the motion. The motion passed unanimously by voice vote.**

**3. GENERAL BUSINESS:**

- a. **RESOLUTION NO. TDA-2, SERIES 2014**, A Resolution Approving the Loan Cooperation Agreement

**Commissioner Steinway moved to approve RESOLUTION NO. TDA-2, SERIES 2014**, A Resolution Approving the Loan Cooperation Agreement. **Commissioner Voronin seconded the motion. The motion passed unanimously by voice vote.**

- b. **RESOLUTION NO. TDA-3, SERIES 2014**, A Resolution Approving the Compass Loan Documents

Staff Comments:

- Ms. Getchius explained that there were no pre-payment consequences.

Commissioner Questions and Comments:

- Commissioner Steinway asked about the fixed rate and interest period regarding the final terms of the loan and Chairperson Grossman-Belisle explained the final terms.

**Commissioner Steinway moved to approve RESOLUTION NO. TDA-3, SERIES 2014, A Resolution Approving the Compass Loan Documents. Commissioner Voronin seconded the motion. The motion passed unanimously by voice vote.**

- c. **RESOLUTION NO. TDA-4, SERIES 2014, A Resolution Approving the Connell Construction Agreement**

Commissioner Questions and Comments:

- Chairperson Grossman-Belisle spoke to the Commission about the proposed resolution.
- Commissioner Voronin asked if there was a penalty for delay and Mr. Taranto stated that there were penalties in place.

**Commissioner Steinway moved to approve RESOLUTION NO. TDA-4, SERIES 2014, A Resolution Approving the Connell Construction Agreement. Commissioner Voronin seconded the motion. The motion passed unanimously by voice vote.**

- d. **RESOLUTION NO. TDA-5, SERIES 2014, A Resolution Approving A Bond Counsel Engagement Letter with Kutak Rock, LLP**

Commissioner Questions and Comments:

- Chairperson Grossman-Belisle spoke to the Commission about the proposed resolution.

**Commissioner Steinway moved to approve RESOLUTION NO. TDA-5, SERIES 2014, A Resolution Approving a Bond Counsel Engagement Letter with Kutak Rock, LLP. Commissioner Voronin seconded the motion. The motion passed unanimously by voice vote.**

#### **4. REPORTS**

- a. **TDA Chair - No reports**
- b. **TDA Commissioners – No reports**
- c. **TDA Attorney – No reports**

#### **5. ADJOURNMENT**

Chairperson Voronin adjourned the meeting at 6:17 p.m.

**The TDA approved the January 28, 2014, TDA Meeting Minutes on February 25, 2014.**

**TIMNATH DEVELOPMENT AUTHORITY**

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Bryan Voronin, Chairperson

**ATTEST:**

By \_\_\_\_\_  
Milissa Peters, Secretary

**COVER MEMORANDUM**

**TO:** Town Council, Town of Timnath, Board of Commissioners, Timnath Development Authority

**FROM:** White, Bear & Ankele Professional Corporation

**RE:** Draft Amended and Restated Cooperation Agreement

**DATE:** February 21, 2014

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Enclosed is the most current draft of the Second Amendment to Cooperation Agreement between the Town of Timnath and the Timnath Development Authority (the “Second Amendment”). During the drafting and review process, the Town and TDA’s staff and consultants identified several organizational and structural challenges that would be most efficiently addressed in an amended and restated agreement, rather than an additional amendment that modifies and makes references to surviving provisions within the underlying cooperation agreement and the first amendment thereto. Accordingly, bond counsel for the pending Compass Loan Agreement is currently redrafting the Second Amendment in amended and restated form (the “Amended and Restated Cooperation Agreement”). The substantive impact of Amended and Restated Cooperation Agreement is intended to be identical to the impact of the Second Amendment. Upon completion and in advance of the council meeting on February 25th, the final draft of the Amended and Restated Cooperation Agreement will be forwarded individually to each council member via email. Copies of the final draft of the Amended and Restated Cooperation Agreement will also be available at the meeting.

**TIMNATH DEVELOPMENT AUTHORITY  
RESOLUTION NO. TDA-6, SERIES 2014**

**A RESOLUTION APPROVING THE AMENDED AND RESTATED COOPERATION  
AGREEMENT BETWEEN THE TOWN OF TIMNATH AND THE TIMNATH  
DEVELOPMENT AUTHORITY**

**WHEREAS**, the Board of Commissioners of the Timnath Development Authority (the “TDA”), pursuant to the provisions of the Colorado Revised Statutes, has the power to pass resolutions and enter into contracts and agreements; and

**WHEREAS**, attached hereto as Exhibit A is the Amended and Restated Cooperation Agreement between the Town of Timnath, Colorado and the Timnath Development Authority; and

**WHEREAS**, the Board of Commissioners is familiar with the Agreement and finds its terms to be in the best interest of the TDA, the residents within its boundaries, and the general public.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TIMNATH DEVELOPMENT AUTHORITY, 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 Chairperson in consultation with applicable staff and consultants.

INTRODUCED, MOVED, AND ADOPTED ON FEBRUARY 25, 2014,

**TIMNATH DEVELOPMENT AUTHORITY**

\_\_\_\_\_  
Bryan Voronin, Chairperson

**ATTEST:**

\_\_\_\_\_  
Milissa Peters, Secretary

**EXHIBIT A**  
**AGREEMENT**

**SECOND AMENDMENT TO  
COOPERATION AGREEMENT  
BETWEEN  
TOWN OF TIMNATH, COLORADO  
AND  
TIMNATH DEVELOPMENT AUTHORITY  
REGARDING BONDS AND OTHER OBLIGATIONS**

**THIS SECOND AMENDMENT TO COOPERATION AGREEMENT** (this “Second Amendment”) is made and entered into as of the \_\_\_\_ day of February, 2014, by and between the Town of Timnath, Colorado (the “Town”), a municipal corporation of the State of Colorado, and the Timnath Development Authority (the “Authority”), a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado and the home rule charter of the Town (the “Timnath Town Charter”).

**RECITALS**

WHEREAS, the Town is a home rule municipal corporation duly organized and existing under and pursuant to the Timnath Town Charter; and

WHEREAS, the Authority is a body corporate and has been duly organized, established and authorized by the Town to transact business and exercise its powers as an urban renewal authority, all under and pursuant to the Colorado Urban Renewal Law, Section 31-25-101, et seq., Colorado Revised Statutes, as amended (the “Act”); and

WHEREAS, pursuant to Sections 31-25-105 and 31-25-109 of the Act, the Authority has the power and authority to borrow money and to apply for and accept loans, and to issue or incur notes, interim certificates or receipts, temporary bonds, certificates of indebtedness, debentures, advances or other obligations, including refunding obligations, all for the purpose of financing the activities and operations authorized to be undertaken by the Authority with respect to projects in accordance with the Act and an urban renewal plan; and

WHEREAS, the Town approved the “Timnath Urban Renewal Plan,” in December 2004 and amended such plan in March 2007 (as so amended, the “Plan”); and

WHEREAS, for the purpose of financing the costs of projects authorized by the Act and the Plan, the Authority has previously issued its Variable Rate Tax Increment Revenue Bonds, Series 2007 (the “Series 2007 Bonds”) and, in connection therewith, the Authority and the Town entered into a Cooperation Agreement Regarding Bonds and Other Obligations dated as of August 1, 2007 (the “2007 Cooperation Agreement”), relating to the payment by the Town of Pledged Sales Tax Revenues (as defined therein) to the Authority or its designee; and

WHEREAS, for the purpose of refunding the Series 2007 Bonds, the Authority and Compass Mortgage Corporation, an Alabama corporation (“Compass”) entered into a Loan

Agreement dated as of April 1, 2011 (the “2011 Loan Agreement”), the proceeds of which were applied to the repayment in full of the Series 2007 Bonds; and

WHEREAS, the Authority and Compass subsequently made certain modifications to the 2011 Loan Agreement to provide for the increase of the loan amount thereunder to facilitate the funding of additional costs of projects authorized by the Act and the Plan and, in connection therewith, the promissory note issued in 2011 was cancelled in lieu of a new promissory note reflecting a new loan amount (the “2012 Note”); and

WHEREAS, the Authority and the Town previously amended the 2007 Cooperation Agreement pursuant to a First Amendment to Cooperation Agreement dated as of January 27, 2012 (the “First Amendment”) for the purposes of: (i) clarifying the nature of the then outstanding Authority obligation as a loan, rather than a bond, and making certain conforming changes to accommodate such existing loan structure, as well as the structures of future refunding or additional obligations of the Authority, and (ii) broadening the projects anticipated to be funded by such obligations to accommodate the use of additional moneys funded as evidenced by the 2012 Note and any other Obligations (as defined in the First Amendment); and

WHEREAS, the Board of Commissioners of the Authority (the “Board”) has determined that it is in the best interests of the Authority to refinance the 2012 Note and finance public infrastructure improvements relating to the new Costco site located within the Plan Area (as defined in the 2007 Cooperation Agreement) and, for such purposes, the Board has requested a loan from Compass Mortgage Corporation (“Compass”) in an amount of up to \$36,725,000 (the “2014 Loan”); and

WHEREAS, Compass has agreed to make the 2014 Loan to the Authority in accordance with the terms and conditions set forth in the Amended and Restated 2014 Loan Agreement (defined in Section 1.04 below), which agreement shall amend and restate in its entirety the 2011 Loan Agreement, as amended; and

WHEREAS, the Act and Section 18, Article XIV of the Colorado Constitution authorize the Town and the Authority to enter into cooperative agreements, such as the 2007 Cooperation Agreement as amended by the First Amendment and as further amended by this Second Amendment.

NOW, THEREFORE, for and in consideration of the foregoing recitals, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the 2007 Cooperation Agreement, as previously amended by the First Amendment (as so amended, the “Original Agreement”), is hereby further amended as follows:

1.0 Amendments to Original Agreement. The Original Agreement is hereby amended as set forth in this Second Amendment.

1.1 All capitalized terms used and not otherwise defined or redefined in this Second Amendment shall have the respective meanings assigned in the First Amendment and, if not

defined or redefined in the First Amendment, shall have the respective meanings set forth in the 2007 Cooperation Agreement.

1.2 The meaning of the following defined term set forth in the First Amendment is hereby amended and restated in its entirety to read as follows.

“Projects” means collectively, (a) the capital improvements and land acquisition authorized by the Plan, including but not limited to the capital improvements authorized by the Amended and Restated Annexation and Development Agreement among Flatiron Companies, LLC, Cache la Poudre Investors North, LLC, the Authority and the Town (the “North Development Agreement”), and the land acquisition and improvements authorized by the Annexation and Development Agreement and the Public/Private Partnership Agreement among Cache La Poudre Investors South, LLC, Cache La Poudre Development South, LLC, the Authority, and the Town (the “South Development Agreement”), to the extent authorized by the Plan (b) the reimbursement of advances previously made by a developer or other persons or entities for the purpose of funding those items included in (a) above, (c) the funding of reserve funds established for the payment of any Obligation in accordance with any Obligation Documents, (d) costs related to the issuance of any Obligation, and (e) amounts due to any Credit Enhancer or Lender pursuant to Obligation Documents.

1.3 The meaning of the following defined terms set forth in the 2007 Cooperation Agreement are hereby amended and restated in their respective entirety to read as follows:

“Incremental Taxes” means, for each Fiscal Year subsequent to the original approval of the Plan in December of 2004, (a) the Pledged Property Tax Revenues and (b) the Pledged Sales Tax Revenues.

“Pledged Sales Tax Revenues” means, subject to the provisions of Section 2.2 of the Cooperation Agreement, 82% of the Sales Tax Revenues in excess of the Sales Tax Base Amount which are collected by the Town on behalf of the Authority within the Plan Area, and which will be used to pay Obligations of the Authority.

1.4 The following defined terms are hereby added as defined terms (in the appropriate alphabetical order) to the Original Agreement:

“2014 Loan” means the loan made by Compass Mortgage Corporation, as lender, to the Authority, as borrower, in the original principal amount of \$36,725,000, the repayment of which is governed by the Amended and Restated 2014 Loan Agreement.

“Amended and Restated 2014 Loan Agreement” means the Amended and Restated Loan Agreement dated as of February \_\_\_, 2014 by and between

the Authority, as borrower, and Compass Mortgage Corporation, as lender.

“Cooperation Agreement” means the 2007 Cooperation Agreement, as amended by the First Amendment and as further amended by this Second Amendment.

“Cost Overrun Reimbursement” has the meaning set forth in the Public/Private Partnership Agreement.

“Costco” means, collectively, the membership warehouse club to be constructed on the Costco Property in a building containing approximately 150,000 square feet, including, without limitation, an integrated tire sales and installation center, together with a free-standing fuel-filling facility, and parking and other improvements associated with all of the foregoing and a liquor store that may be operated by a third party entity, all as contemplated by the Public/Private Partnership Agreement.

“Costco Incremental Sales Tax Revenue” means the portion of Sales Tax levied by the Town within the TDA Property that is in excess of the Sales Tax Base Amount (as such term is defined in the Public/Private Partnership Agreement).

“Costco Opening Date” means the first day that Costco is open for business for a period of one day on the Costco Property.

“Costco Property” means the real property described in Exhibit A to the Public/Private Partnership Agreement.

“Fiscal Year” means the 12 months commencing on the first day of January of any calendar year and ending on the last day of December of the same calendar year.

“Gross Sales Tax Revenue” means 100% of the Sales Tax Revenues.

“Net Sales Tax Revenue” means (i) prior to the Costco Opening Date, 82% of the Gross Sales Tax Revenue; (ii) for the period commencing on the Costco Opening Date to and including the anniversary that is five (5) years after such date, *plus* such additional time as is necessary for the Owner (as defined in the Public/Private Partnership Agreement) to recover 50% of the Cost Overrun Reimbursement: (a) 82% of the Gross Sales Tax Revenue (excluding the Costco Incremental Sales Tax Revenue) and (b) 32% of the Costco Incremental Sales Tax Revenue; and (iii) thereafter, 82% of the Gross Sales Tax Revenue.

“Pledged Property Tax Revenues” means the Property Tax Revenues in excess of the Property Tax Base Amount.

“Public/Private Partnership Agreement” means the Public/Private Partnership Agreement Regarding Gateway Timnath South dated as of January 14, 2014 by and among the Authority, Cache La Poudre Investors South, LLC, Cache La Poudre Development South, LLC and the Town.

“TDA Property” means the portion of the Costco Property located within the Plan Area, as depicted on Exhibit B to the Public/Private Partnership Agreement.

1.5 The term “Pledged Revenue,” as defined in the 2007 Cooperation Agreement, is hereby deleted.

1.6 All references in the Original Agreement to “Pledged Revenue” shall hereafter be deemed to mean and refer to “Incremental Taxes” (as such term is defined in this Second Amendment) and the Original Agreement is hereby amended to the extent necessary to accomplish the same.

1.7 The Authority and the Town hereby affirm that (a) the 2014 Loan (as defined in the recitals hereof) is an “Obligation” within the meaning of the First Amendment; (b) Compass (as defined in the recitals hereof) is a “Lender” within the meaning of the First Amendment; and (c) the Amended and Restated 2014 Loan Agreement is an “Obligation Document” within the meaning of the First Amendment. Accordingly, Compass is an intended third party beneficiary of the 2007 Cooperation Agreement, as amended by the First Amendment and as further amended by this Second Amendment.

1.8 Amendment to Section 2.1 of 2007 Cooperation Agreement. Section 2.1 of the 2007 Cooperation Agreement is hereby amended by the addition of the following at the end of such Section 2.1:

The Town acknowledges the Authority’s obligations under the Public/Private Partnership Agreement with respect to the Pledged Sales Tax Revenues and agrees that the provisions of such agreement have no effect on the Town’s obligations to collect and remit the Pledged Sales Tax Revenues to the Authority as provided in this Section 2.1.

1.9 Amendment and Restatement of Section 2.2 of 2007 Cooperation Agreement. Section 2.2 of the 2007 Cooperation Agreement is hereby amended and restated in its entirety to read as follows:

2.2 The Pledged Sales Tax Revenues shall be used by the Authority or its designee in accordance with the applicable Obligation Document(s), following the application of the Pledged

Property Tax Revenues in accordance with the applicable Obligation Document(s), to pay Obligations incurred by the Authority in the planning, demolition, design, construction, financing or other activities related to the Projects in or for the benefit of the Plan Area, including payments on Obligations and payments to a Credit Enhancer, if any, and a Lender, if any, and, with respect to each Fiscal Year, the Authority agrees to return to the Town any Pledged Sales Tax Revenues not needed for the payment of Obligations in such Fiscal Year; provided, however, that for so long as the Public/Private Partnership Agreement is in effect and binding on the Authority, for purposes of this Section 2.2 the term “Pledged Sales Tax Revenues” shall mean “Net Sales Tax Revenues” as defined in the Second Amendment; and further provided, that for so long as the Amended and Restated 2014 Loan Agreement is in effect, the Town and the Authority agree that all Pledged Sales Tax Revenues (and Net Sales Tax Revenues) shall be treated as provided in the Amended and Restated 2014 Loan Agreement; in particular, Sections 4.02(a) and (b) thereof. To the extent of any conflict between the Amended and Restated 2014 Loan Agreement and the Public/Private Partnership Agreement with respect to the subject matter of this Section 2.2, the Amended and Restated 2014 Loan Agreement shall govern for so long as it remains in effect.

1.10 Amendment and Restatement of Section 3.1(a) of 2007 Cooperation Agreement. In order to clarify the intent of the Town and the Authority with respect to Section 3.1(a) of the 2007 Cooperation Agreement, said Section 3.1(a) is hereby amended and restated in its entirety as follows, for the purpose of adding the italicized text:

(a) Until the termination of this Agreement and to the extent permitted by law, the Town agrees that it will not reduce the percentage of the Sales Tax and will not exempt from the Sales Tax any item or transaction unless the net effect of such change will not materially reduce or delay the receipt by the Authority of the Pledged Sales Tax Revenues; provided, however, that the foregoing shall not apply to a reduction in percentage of the Sales Tax or modification or exemption from Sales Tax imposed as a result of successful initiative *or referendum resulting in an amendment to the applicable Town ordinance or pertinent provisions of the Timnath Town Charter or as a result of a Constitutional amendment.*

1.11 Amendment and Restatement of Section 4.4 of 2007 Cooperation Agreement. Section 4.4 of the 2007 Cooperation Agreement is hereby amended and restated in its entirety to read as follows:

4.4 Beneficiaries. The owners of the Obligations, any trustee for Obligations under an Obligation Document, any Credit Enhancer, if any, and any Lender, if any, shall be designated third party beneficiaries of this Agreement; provided, however, that such owner(s), trustee(s), Credit Enhancer(s) and Lender(s) shall be limited to their respective rights and revenue pledge(s) set forth in the applicable Obligation Document.

2.0 Affirmation of Authority Revenues. The Town and the Authority hereby affirm that the Incremental Taxes constitute revenues of the Authority, as contemplated by the Plan.

3.0 Governing Law. This Second Amendment shall be governed by and construed in accordance with the laws of the State of Colorado.

4.0 Entire Agreement; Ratification. The 2007 Cooperation Agreement, as amended by the First Amendment and further amended by this Second Amendment, shall be read, taken and construed as one and the same instrument so that, except as expressly supplemented or amended by the First Amendment and by this Second Amendment, all of the rights, remedies, terms, conditions, covenants and agreements of the 2007 Cooperation Agreement shall remain in full force and effect. The 2007 Cooperation Agreement as amended by the First Amendment and as further amended by this Second Amendment is hereby ratified and confirmed and sets forth the entire agreement and understanding of the parties related to the matters set forth therein and herein.

5.0 Headings. Section headings of this Second Amendment have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions of this Second Amendment.

6.0 Counterparts. This Second Amendment may be executed in one or more counterparts, each of which when executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

[The remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, the Town and the Authority have caused this Second Amendment to Cooperation Agreement Regarding Bonds and Other Obligations to be duly executed and delivered by their duly authorized officers as of the date first above written.

**TOWN OF TIMNATH, COLORADO**

ATTEST:

By: \_\_\_\_\_  
Town Clerk

By: \_\_\_\_\_  
Jill Grossman-Belisle, Mayor

**TIMNATH DEVELOPMENT AUTHORITY**

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Jill Grossman-Belisle, Chair